REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR
1973-74

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS
VOLUME II
DIRECT TAXES

Errata for the Audit Report, 1973-74 (Revenue Receipts)

Vol. II

Sl. No.	*Page*	*Para*	*Line*	*For*	*Read*
1.	3	2(b)	6th line from bottom	state	Estate
2.	12	6(a)(ii)	18th line from top	benginning	beginning
3.	18	6(c)	14th from bottom	lakshs	lakhs
4.	18	6(c)	last		2,38,732
5.	20	7(iii)(i)(b)	8th to 10th from top	Appellate Commissioners in favour of Assistant assessees.	Appellate Assistant Commissioners in favour of assessees.
6.	90	28(ii)(b)	6th from top	Finaly	Final
7.	98	32.6	8th from bottom	about	above
8.	100	32.7	25th from top	Ommissions	Omissions
9.	106	35	10th from bottom	Feburary	February
10.	107	36(i)	4th from bottom	and	any
11.	135	52(ii)	5th from the bottom	This resulted short levy	This resulted in short levy.

Report

Of The

Comptroller

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Of India

For The Year

1973-74

Union Government (Civil)

Revenue Receipts

Volume II

Direct Taxes

VOLUME II

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PREFATORY REMARKS

As mentioned in the prefatory remarks of Volume I of the Audit Report on Revenue Receipts of the Union Government, the results of audit of receipts under Direct Taxes are presented in a separate volume. In this volume, points arising from the audit of Corporation Tax, Income-tax and other Direct Taxes, i.e., Wealth-tax , Gift-tax and Estate Duty, are included. The Report is arranged in the following order :—

(i) Chapter I sets out statistical and other information relating to Direct Taxes together with a review of certain areas of tax administration.

(ii) Chapter II mentions the results of audit of Corporation Tax.

(iii) Chapter III deals, similarly, with the points that had arisen in the audit of Income-tax receipts.

(iv) Chapter IV relates to Wealth-tax, Gift-tax and Estate Duty.

The points brought out in this Report are those which have come to notice during the course of test audit. They are not intended to convey or to be understood as conveying any general reflection on the working of the Department concerned.

CHAPTER I

GENERAL

The total proceeds from Direct Taxes for the year 1973-74 amounted to Rs. 1375.06 crores out of which a sum of Rs. 539.05 crores was assigned to the States. The figures for the three years 1971-72, 1972-73 and 1973-74 are as follows :—

(In crores of rupees)

	1971-72	1972-73	1973-74
III. Corporation Tax	472.08	557.86	582.60
IV. Taxes on income other than Corporation Tax . . .	534.39	625.47	741.37
V. Estate Duty	9.03	9.78	10.53
VI. Taxes on Wealth	25.14	35.94	35.78
VII. Expenditure tax	(—)0.01	..	(—)0.01
VIII. Gift-tax	3.52	4.02	4.79
Gross Total	1044.15	1233.07	1375.06
Less share of net proceeds assigned to States			
Income-tax	*459.86*	*487.92*	*527.85*
Estate Duty	*7.64*	*7.19*	*11.20*
Total	*467.50*	*495.11*	*539.05*
Net receipts	*576.65*	*737.96*	*836.01*

The gross receipts under Direct Taxes during 1973-74 went up by Rs. 141.99 crores when compared with the receipts during 1972-73 as against the increase of Rs. 188.92 crores in 1972-73 over those for 1971-72. Taxes on income other than Corporation tax accounted for an increase of Rs. 115.90 crores.

The break-up of total collection of Corporation tax and Taxes on income other than Corporation tax, as furnished by the Ministry of Finance, during 1973-74 is as under :—

Pre-assessment and post-assessment collection of tax during 1973-74 :—

	(In crores) Rs.
(*a*) Deduction at Source	299.66
(*b*) Advance Tax (net)	761.57
(*c*) Self assessment	140.23
(*d*) Regular assessment	103.07
Total	1304.53

(b) *Advance Tax-Demand and Collection**

Demand raised (*i.e.* notices issued) and collected by way of advance tax during 1973-74 :—

(*i*) Demand raised	No. of cases—5,97,437 Amount—Rs. 838.05 crores.
(*ii*) Demand collected out of (i)	No. of cases—Not available Amount—Rs. 794.10 crores
(*iii*) Arrears under advance tax on 31-3-1974	No. of cases—Not available. Amount—Rs. 43.95 crores.

(c) Total amount of dividend derived during the previous year relevant to the assessment year 1973-74 by foreign companies from Indian companies on shares held by such foreign companies in the Indian companies. ... ... Rs. 43.28 crores

2. *Variations between the Budget estimates and the actuals* :—

(i) The actuals for the year 1973-74 under the Major Heads 'IV-Taxes on Income other than Corporation Tax', 'V-Estate Duty' and 'VIII-Gift Tax' exceeded the Budget estimates; whereas those under 'III, Corporation Tax' and 'VI-Taxes on Wealth' were

*Figures furnished by the Ministry of Finance.

less than the Budget estimates. The figures for the years from 1969-70 to 1973-74 under the above heads are given below :—

(a) *III. Corporation Tax and IV Taxes on Income etc.*

(in crores of rupees)

Year	Budget estimates.	Actuals	Variation	Percentage of variation.
1	2	3	4	5
III—*Corporation Tax.*				
1969-70 . . .	326.20	353.39	27.19	8.34
1970-71 . . .	342.00	370.52	28.52	8.34
1971-72 . . .	411.00	472.08	61.08	14.86
1972-73 . . .	493.50	557.86	64.36	13.04
1973-74 . . .	608.00	582.60	(—)25.40	(—)4.18
IV—*Taxes on Income etc.**				
1969-70 . . .	362.30	448.45	86.15	23.78
1970-71 . . .	436.75	473.17	36.42	8.34
1971-72 . . .	491.00	534.39	43.39	8.84
1972-73 . . .	583.00	625.47	42.47	7.28
1973-74 . . .	650.60	741.37	90.77	13.95

(b) *V. Estate Duty, VI. Taxes on Wealth and VIII. Gift Tax.*

Estate Duty*

1969-70 . . .	7.50	6.94	(—)0.56	(—)7.47
1970-71 . . .	7.50	7.86	0.36	4.80
1971-72 . . .	7.00	9.03	2.03	29.00
1972-73 . . .	8.00	9.78	1.78	22.25
1973-74 . . .	9.25	10.53	1.28	13.84

*Gross figures have been taken.

1	2	3	4	5
Wealth Tax				
1969-70 . . .	12.00	15.62	3.62	30.17
1970-71 . . .	18.00	15.31	(—)2.69	(—)14.94
1971-72 . . .	30.00	25.14	(—)4.86	(—)16.20
1972-73 . . .	43.00	35.94	(—)7.06	(—)16.42
1973-74 . . .	43.00	35.78	(—)7.22	(—)16.79
Gift Tax				
1969-70 . . .	1.50	2.02	0.52	34.67
1970-71 . . .	1.50	2.45	0.95	63.33
1971-72 . . .	2.00	3.52	1.52	76.00
1972-73 . . .	2.50	4.02	1.52	60.80
1973-74 . . .	3.50	4.79	1.29	36.86

(ii) The details of variations under the Minor Heads of the Major Heads III and IV for the year 1973-74 are given below :—

(In lakhs of rupees)

	Budget Estimates	Actuals	Increase (+) Shortfall(—)	Percentage of variation
III—*Corporation Tax.*				
(*i*) Ordinary Collections	5,85,00	5,67,72	(—)17,28	(—)2.95
(*ii*) Excess Profits Tax .	...	(—)24	(—)24	...
(*iii*) Super Profits Tax .	...	(—)8	(—)8	...
(*iv*) Business Profits Tax .	...	(—)8	(—)8	...
(*v*) Sur-tax . . .	21,50	14,19	(—)7,31	(—)34.00
(*vi*) Miscellaneous . .	1,50	1,09	(—)41	(—)27.33
TOTAL . . .	6,08,00	5,82,60	(—)25,40	(—)4.18

IV—*Taxes on Income Other than Corporation Tax*

(*i*) Ordinary collections%	6,20,10	6,92,82	72,72	11.73
(*ii*) Surcharge (Union) .	15,50	37,33	21,83	140.83
(*iii*) Surcharge (Special) .	5,50	4,56	(—)94	(—)17.09
(*iv*) Additional Surcharge (Union) . . .	75	7	(—)68	(—)90.67
(*v*) Excess Profits Tax .	..	..	..	..
(*vi*) Business Profits Tax .	..	..	..	..
(*vii*) Super-tax . . .	..	8	8	..
(*viii*) Miscellaneous . .	8,75	6,51	(—)2,24	(—)25.60
Deduct—Share of net proceeds assigned to States . .	*5,15,87*	*5,27,85*	*11,98*	*2.32*
Total	1,34,73	2,13,52	78,79	58.48

3. *Cost of Collection*

The expenditure incurred during the year 1973-74 in collecting Corporation Tax and Taxes on Income other than Corporation Tax, together with the corresponding figures for the preceding three years, is as under :—

(In crores of rupees)

	Gross collections	Expenditure on collections
III—Corporation Tax		
1970-71	370.52	2.36
1971-72	472.08	2.59
1972-73	557.86	2.82
1973-74	582.60	3.11
IV—Taxes on Income etc		
1970-71	473.17	16.53
1971-72	534.39	18.12
1972-73	625.47	19.72
1973-74	741.37	21.76

%The actuals include receipts under minor head "Receipts in England"

4. (i) The total number of income-tax paying assessees (including companies) in the books of the department as on 31st March, 1974 was 34,60,843. As compared to the previous year ending 31st March, 1973 there was an increase of 72,584 assessees. The figures status-wise showing the amount of tax collected from each category are given below :—

	Number of assessees		Amount of tax collected (in crores of rupees)	
	As on 31st March, 1973	As on 31st March, 1974	As on 31st March, 1973	As on 31st March, 1974
Individuals . .	26,92,169	27,51,301	490.85	512.42
Hindu Undivided Families . .	1,84,373	1,74,850	39.14	37.08
Firms . . .	4,55,558	4,71,668	86.07	100.12
Companies . .	30,805	31,821	635.53	643.49
Others . . .	25,354	31,203	9.82	8.77
TOTAL .	33,88,259	34,60,843	1,261.41	1,301.88*

(ii) Category-wise number of income-tax paying assessees together with amount of tax collected from each category, is indicated in the following table :—

	Number of assessees		Tax collected	
	As on 31st March, 1973	As on 31st March, 1974	during 1972-73	during 1973-74
			(in crores of rupees)	
(a) Business cases having income over Rs. 25,000.	2,42,553	2,56,953	809.76	740.22
(b) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000 .	2,66,284	2,79,713	125.09	134.69
(c) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000 .	6,22,084	6,39,645	74.72	87.83
(d) All other cases except those mentioned in the category below and refund cases .	14,67,955	13,89,968	145.91	281.27
(e) Government salary cases and non-Government salary cases below Rs. 18,000 .	7,89,383	8,94,564	105.93	57.87
TOTAL . . .	33,88,259	34,60,843	1,261.41	1,301.88

*Differs from the amount shown in para 1. The Ministry have been requested to reconcile.

(iii) The total number of wealth-tax assessees in the books of the department as on 31st March, 1973 and 31st March, 1974 was as follows :—

	As on 31st March, 1973	As on 31st March, 1974
Individuals	1,83,168	1,87,948
Hindu Undivided Families	27,700	28,806
Others	310	927
TOTAL	2,11,178	2,17,681

(iv) The total number of gift-tax assessees in the books of the department as on 31st March, 1973 and 31st March, 1974 was as follows :—

	As on 31st March, 1973	As on 31st March, 1974
Individuals	62,199	73,081
Hindu Undivided Families	1,112	1,031
Others	131	181
TOTAL	63,442	74,293

(v) The total number of estate duty assessment cases in the books of the department as on 31st March, 1973 and 31st March, 1974 was as follows :—

As on 31st March, 1973	29,456
As on 31st March, 1974	24,770

(vi) The number of estate duty assessments completed during 1973-74 was as follows :—

Principal value of property	No. of assessments completed
(i) Exceeded Rs. 20 lakhs	13
(ii) Between Rs. 10 lakhs and Rs. 20 lakhs	78
(iii) Between Rs. 5 lakhs and Rs. 10 lakhs.	218
(iv) Between Rs. 1 lakh and Rs. 5 lakhs	4,134
(v) Between Rs. 50,000 and Rs. 1 lakh	4,385
TOTAL	8,828

5. *Arrears of tax demands*

(a) Corporation Tax and Income-tax

(i) The total demand of tax raised and remaining uncollected as on 31st March, 1974 was Rs. 615.66 crores as furnished by the Ministry. This does not include Rs. 199.94 crores, the collection of which had not fallen due on that date.

(ii) The figures of Corporation tax, Income-tax, interest and penalty comprised in the gross arrears of Rs. 815.60 crores and the years to which they relate are shown below :—

(In crores of rupees)

	Corporation Tax.	Income-tax	Interest	Penalty	Total
Arrears of 1962-63 and earlier years	7.85	35.54	1.95	3.43	48.77
1963-64 to 1970-71	37.10	146.89	28.80	28.74	241.53
1971-72	20.07	66.58	18.21	11.49	116.35
1972-73	22.33	67.89	23.46	13.01	126.69
1973-74	62.50	149.05	45.26	25.45	282.26
TOTAL	149.85	465.95	117.68	82.12	815.60

(iii) The table below shows the number of assessees from whom gross arrears of Rs. 815.60 crores are due :—

Arrear Demands	No. of assessees	Total arrears of tax (in crores of rupees)
Upto Rs. 1 lakh in each case	21,41,533	426.72
Over Rs. 1 lakh upto Rs. 5 lakhs in each case . .	4,934	113.24
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case .	871	61.24
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case .	520	80.74
Over Rs. 25 lakhs in each case	238	133.66
TOTAL	21,48,096	815.60

(iv) Tax demand certified to Tax Recovery Officers and State Government Officers for recovery and its year-wise particulars to the end of 1973-74 are as follows :—

(In lakhs of rupees)

	Demand certified				
	At the beginning of the year	During the year	Total	Demand recovered	Balance
1966-67 . .	15861.52	6009.15	21870.67	5548.43	16322.24
1967-68 . .	16427.95	6991.79	23419.74	4650.52	18769.22
1968-69 . .	27875.08	15144.11	43019.19	7804.13	35215.06
1969-70 . .	35951.64	18355.33	54306.97	11645.23	42661.74
1970-71 . .	42524.85	18136.27	60661.12	14536.62	46124.50
1971-72 . .	48353.39	20879.46	69232.85	16752.36	52480.49
1972-73 . .	53057.03	26498.44	79555.47	18906.34	60649.13
1973-74 . .	59815.15	19261.77	79076.92	16193.00	62883.92

(v) Arrears of Sur-tax demands outstanding on 31st March, 1974 are as follows :—

Relating to demands raised in	Amount outstanding (in lakhs of rupees)
1965-66	0.63
1966-67	2.10
1967-68	10.18
1968-69	11.66
1969-70	21.37
1970-71	31.48
1971-72	74.20
1972-73	235.09
1973-74	233.61
TOTAL	620.32

(vi) The following table shows the position of arrears of Annuity Deposits for the last three years :—

(In lakhs of rupees)

	As on 31st March, 1972	As on 31st March, 1973	As on 31st March, 1974
(i) Arrears of Advance Annuity Deposits	516.58	308.99	327.00
(ii) Arrears of self and provisional Annuity Deposits	100.34	65.77	53.85
(iii) Arrears of Regular Annuity Deposits	4076.39	3168.24	2090.85
	4693.31	3543.00	2471 .70

(b) *Other Direct Taxes (i.e., Wealth-tax, Gift-tax and Estate Duty)*

The following table shows the year-wise arrears of demands outstanding and the number of cases relating thereto under the three other direct taxes, *i.e.* wealth-tax, gift-tax and estate duty as on 31st March, 1974 :—

(in lakhs of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	No. of cases	Amount Rs.	No. of Cases	Amount Rs.	No. of cases	Amount Rs.
1970-71 and earlier years. . . .	14,771	326.78	3,800	76.55	3,116	427.53
1971-72 . . .	10,260	301.49	3,232	29.46	1,483	144.56
1972-73 . . .	25,467	765.78	6,259	96.08	2,582	393.28
1973-74 . . .	52,162	1508.96	15,607	158.16	4,597	609.65
TOTAL . .	1,02,660	2903.01	28,898	360.25	11,778	1575.02

6. *Arrears of assessments*

(a) (i) Income-tax including Corporation Tax

The number of assessment cases which are to be finalised as on 31st March, 1974 has increased as compared to that at the close of the previous year. The position of assessments pending as on 31st March, 1974 was 17.20 lakhs as compared to 13.93 lakhs as on 31st March, 1973 and 11.24 lakhs as on 31st March, 1972. Of 17.20 lakhs of pending cases as many as 9.54 lakhs cases relate to small income cases and summary assessments.

(ii) The number of assessments completed out of the arrear assessments and out of current assessments

during the past five years as furnished by the Ministry is given below :—

Financial year	No. of assessments for disposal	No. of assessments completed: Out of current	Out of arrears	Total	Percentage	No. of assessments pending at the end of the year
1969-70	48,79,697	21,34,814	14,23,076	35,57,890	72.9	13,21,807
1970-71	47,30,992	22,48,534	12,43,629	34,92,163	73.8	12,38,829
1971-72	49,67,924	23,56,949	14,87,270*	38,44,219	77.4	11,23,705
1972-73	49,90,722	25,07,241	10,90,816	35,98,057	72.1	13,92,665
1973-74	51,55,600	22,27,807	12,08,196	34,36,003	66.6	17,19,597

*In explaining the reasons for the number of assessments completed out of the arrears during 1971-72 being more than the number of arrear assessments available for completion at the benginning of that year, the Ministry of Finance had stated that on a "physical verification of the assessment records" it was found that the actual arrears carried forward at the end of 1970-71 were 14.87 lakhs as against 12.39 lakhs reported earlier. The Public Accounts Committee suggested in Paragraph 1.42 of their 115 th Report that the statistics should be subjected to a test check by the internal audit organisation so that mistakes of this kind may not persist.

It will be seen that the downward trend in disposals has persisted and there is a shortfall of 1,62,054 in disposals during 1973-74 when compared to the performance in 1972-73.

(iii) Category-wise break-up of the total number of assessments completed during the years 1972-73 and 1973-74 is as under :—

		1972-73	1973-74
(*a*)	Business cases having income over Rs. 25,000	2,09,953	2,06,347
(*b*)	Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000 . . .	1,08,273	1,14,386
(*c*)	Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000 . . .	1,71,068	1,77,110
(*d*)	All other cases except those mentioned in categories (e) & (f) and refund cases . .	3,88,941	3,70,933
(*e*)	Small income scheme cases, Government salary cases and non-Govt. salary cases below Rs. 18,000	66,364	61,332
(*f*)	Summary Assessments	26,53,458	25,05,895
	Total	35,98,057	34,36,003

(iv) Status-wise break-up of income-tax assessments completed during the year 1972-73 and 1973-74 is as under :—

	1972-73	1973-74
(*i*) Individuals	29,02,080	27,63,811
(*ii*) Hindu Undivided Families . . .	1,91,402	1,75,812
(*iii*) Firms	4,45,277	4,40,471
(*iv*) Companies	32,020	29,466
(*v*) Associations of Persons	27,278	26,443
Total	35,98,057	34,36,003

(v) The position of pendency of income-tax assessments for the last three years is as under :—

Year	As on 31st March, 1972	As on 31st March, 1973	As on 31st March 1974	
			No of cases	Approximate amount of tax involved (in lakhs of rupees)
1969-70 and earlier years	48,733	36,613	23,398	602
1970-71 . .	2,82,131	32,674	15,439	345
1971-72 . .	7,92,841	3,35,410	38,537	717
1972-73 . .	...	9,87,968	3,88,489	3553
1973-74 . .	...	...	12,53,734	10148
Total . .	11,23,705	13,92,665	17,19,597	15365

(vi) Category-wise break-up of pending income-tax assessments as on 31-3-1973 and 31-3-1974 is as under :—

	As on 31st March, 1973	As on 31st March, 1974
(*a*) Business cases having income over Rs. 25,000 .	1,45,773	1,66,764
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000 . . .	98,438	1,11,715
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000 . . .	1,46,767	1,60,966
(*d*) All other cases except those mentioned in categories(e) & (f) below and refund cases .	3,14,954	3,25,811
(*e*) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	47,867	52,060
(*f*) Summary assessments	6,38,866	9,02,281
Total	13,92,665	17,19,597

(vii) Status-wise and year-wise break-up of pendency of income-tax assessments as on 31-3-1974 are as under :—

Status	1969-70 and earlier years	1970-71	1971-72	1972-73	1973-74	Total
Individuals	15,302	11,588	28,591	2,79,028	9,72,258	13,06,767
Hindu Undivided Families	1,879	1,140	2,740	27,532	63,416	96,707
Companies	1,950	393	844	6,824	15,646	25,657
Firms	3,603	1,988	5,075	68,175	1,79,215	2,58,056
Associations of persons	664	330	1,287	6,930	23,199	32,410
Total	23,398	15,439	38,537	3,88,489	12,53,734	17,19,597

(viii) The number of assessments completed and demand raised month-wise during 1972-73 and 1973-74 are as below :—

	1972-73		1973-74	
	No. of assessments completed	Demand raised (Rs. in crores)	No. of assessments completed	Demand raised (Rs. in crores)
April	47,876	13.32	62,526	11.45
May	57,536	16.67	84,987	20.20
June	81,454	13.08	1,36,795	14.97
July	1,59,201	21.89	2,21,530	25.92
August	2,76,159		2,69,133	32.60
September	3,49,981	43.5	3,46,688	38.37
October.	3,49,573	63.26	2,71,388	48.20
November	3,69,681	83.92	3,75,998	63.66
December	4,85,231	95.68	3,68,835	65.74
January.	4,41,391	113.00	3,85,738	97.81
February	4,55,613	119.65	4,16,780	112.72
March	5,24,361	239.73	4,95,605	321.25
Total	35,98,057	859.89	34,36,003	852.89

It may be seen from the above figures that bulk of the demand is raised in the last quarter leading to a large carry-forward of uncollected demands.

(ix) *Re-opened cases and set aside cases which are pending.*

(1) Year-wise details of cases of assessments cancelled under section 146 of the Income-tax Act, 1961 (or under the

corresponding provisions of the old Act) and which are pending finalization on 31-3-1974, are as follows :—

Assessment year	No. of cases
1966-67 and earlier years	1,292
1967-68	456
1968-69	716
1969-70	843
1970-71	1,078
1971-72	1,005
1972-73	447
1973-74	698
Total	6,535

(2) Year-wise details of cases of assessments cancelled under section 263 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act) which are pending finalization on 31-3-1974 are as follows :—

Assessment year	No. of cases
1966-67	104
1967-68	44
1968-69	49
1969-70	72
1970-71	88
1971-72	32
1972-73	28
1973-74	20
Total	437

(3) Year-wise details of cases of assessments set aside by the Appellate Assistant Commissioner under Section 251 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act) or by the Appellate Tribunal under Section 254

of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act), where fresh assessments have not been completed as on 31st March, 1974 :—

Set aside by Appellate Assistant Commissoners		Set aside by Appellate Tribunals	
Assessment year	No. of cases	Assessment year	No. of cases
1966-67 and earlier years	3,941	1966-67 and earlier years	490
1967-68 . . .	841	1967-68 . . .	63
1968-69 . . .	1,002	1968-69 . .	56
1969-70 . .	1,073	1969-70 . .	68
1970-71 . . .	1,107	1970-71 . . .	52
1971-72 . . .	679	1971-72 . .	46
1972-73 . . .	756	1972-73 . .	78
1973-74 . . .	841	1973-74 . .	105
Total . .	10,240	Total .	958

(b) *Pendency of Super Profits Tax and Sur-tax Assessments*

The position of pendency as on 31st March, 1974 as furnished by the Ministry is given below :—

	Super Profits Tax	Sur-tax
(*i*) Total number of cases for disposal during 1973-74	27	3,454
(*ii*) Number of cases disposed of provisionally	—	294
(*iii*) Number of cases disposed of finally	12	1,295
(*iv*) Amount of demand raised on provisional assessments . .	—	Rs. 1,175.19 lakhs
(*v*) Amount of demand collected on provisional assessments . .	—	Rs. 984.02 lakhs
(*vi*) Amount of demand raised on final assessments	Rs. 13.22 lakhs	Rs. 1,477.84 lakhs
(*vii*) Amount of demand collected on final assessments	Rs. 5.74 lakhs	Rs. 1,067.25 lakhs
(*viii*) Number of cases pending as on 31st March, 1974 . . .	15	2,159
(*ix*) Approximate amount of tax involved in (viii)	Rs. 3.68 lakhs	Rs. 2,100.20 lakhs

Year-wise details of assessments under Sur-tax Act pending as on 31st March, 1974 :—

Year	Number of assessments
1964-65, 1965-66, 1966-67	44
1967-68	22
1968-69	50
1969-70	62
1970-71	117
1971-72	290
1972-73	606
1973-74	968
TOTAL	2,159

(c) The table below shows the year-wise details of Wealth-tax, Gift-tax and Estate duty assessments pending without finalization on 31st March, 1974 and the approximate amount of tax/duty involved therein.

	No. of assessments pending			Approximate amount of tax involved (in lakshs of rupees)		
Year	Wealth-tax	Gift tax	Estate duty	Wealth-tax	Gift-tax	Estate duty
1967-68 and earlier years	10,089	412	961	213.56	18.94	47.63
1968-69	6,125	252	333	92.99	0.94	25.01
1969-70	8,367	541	530	158.75	5.57	31.80
1970-71	17,222	1,345	937	230.73	4.99	83.61
1971-72	27,574	2,434	1,383	445.50	12.44	108.41
1972-73	53,128	5,153	3,316	823.88	32.05	249.04
1973-74	1,16,227	10,977	7,505	1638.31	85.76	644.68
	2,38,732	21,114	14,965	3603.72	160.69	1190.18

7. *Appeals pending on 30th June, 1974*

(i) Particulars in respect of appeals pending on 30th June, 1974 are as under :—

	Income-tax appeals with Appellate Assistant Commissioners	Income-tax revision petitions with Commissioners
(*a*) No. of appeals/revision petitions . .	2,30,311	12,220
(*b*) Out of appeals/revision petitions instituted during 1973-74	91,895	5,724
(*c*) Out of appeals/revision petitions instituted in earlier years	62,054	4,465

(ii) Year-wise break-up of appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax respectively for the period ending 30th June, 1973 and 30th June, 1974 respectively with reference to the year of institution is as under :—

Year of institution	Appeals pending with Appellate Assistant Commissioners		Revision petitions pending with Commissioners of Income-tax	
	30th June, 1973	30th June, 1974	30th June, 1973	30th June, 1974
1962-63 and earlier years .	13	—	52	26
1963-64	34	—	37	32
1964-65	92	4	49	23
1965-66	223	24	27	14
1966-67	611	31	51	31
1967-68	1,656	577	62	28
1968-69	4,101	759	168	72
1969-70	8,105	1,612	281	116
1970-71	15,943	5,051	593	316
1971-72	41,798	16,163	1,406	845
1972-73	99,413	37,833	5,197	2,962
1973-74	66,929	91,895	1,921	5,724
1974-75	—	76,362	—	2,031
TOTAL	2,38,918	2,30,311	9,844	12,220

(iii) The following table gives details of appeals/references disposed of during 1971-72, 1972-73 and 1973-74.

*	1971-72	1972-73	1973-74
(*i*) Appeals filed before Appellate Assistant Commissioners . .	2,47,574	2,32,297	2,12,995
(*a*) Appeals disposed of by Appellate Assistant Commissioners . .	2,12,311	2,56,821	2,25,138
(*b*) No. of appeals decided by Appellate Commissioners in favour of Assistant assessees . . .	1,26,600	1,68,113	1,49,077
(*ii*) No. of appeals filed before Income-tax Appellate Tribunals			
(*a*) by assessees	29,150	31,146	29,985
(*b*) by department . . .	10,533	13,254	14,968
(*iii*) No. of assessees' appeals decided by Tribunal in favour of assessees. .	21,616	23,662	29,236
(*iv*) No. of departmental appeals decided by Tribunals in favour of the department	2,801	3,838	5,327
(*v*) No. of references filed to the High Courts			
(*a*) by assessees	512	488	332
(*b*) by department . . .	1,999	1,039	919
(*vi*) No. of references disposed of in favour of			
(*a*) assessees	205	120	107
(*b*) department	223	214	179
(*vii*) No. of appeals filed to the Supreme Court			
(*a*) by assessees	16	23	12
(*b*) by department	57	140	153
(*viii*) No. of appeals disposed of by the Supreme Court in favour of . .			
(*a*) assessees	34	20	1
(*b*) department	26	37	12

*The figures above include Other Taxes also.

8. *Frauds and evasions*

(*a*) Income-tax

(*i*) No. of cases in which penalty under Section 28(1)(c)/271(1)(c) was levied in 1973-74 . .	12,407
(*ii*) No. of cases in which prosecution for concealment of income was launched	108
(*iii*) No. of cases in which composition was effected without launching prosecution . .	1
(*iv*) Concealed income involved in (i) . . .	Rs. 23,65,17,000
(*v*) Total amount of penalty levied in (i) . .	Rs. 16,22,31,000
(*vi*) Extra tax demanded on concealed income in item (iv)	Rs. 10,02,29,000
(*vii*) Cases out of (ii) in which convictions were obtained	1
(*viii*) Composition money levied in respect of (iii)	Rs. 2,000
(*ix*) Nature of punishment in respect of (vii)— . . Convicted to imprisonment till rising of court and fine of Rs. 500	One case

(*b*)

	Wealth-tax	ax
(*i*) No. of cases in which penalty u/s 18(1)(c)/17(1)(c) was levied	833	30
(*ii*) No. of cases in which prosecution for concealment was launched	5	—
(*iii*) No. of cases in which composition was effected without launching prosecution . . .	—	—
(*iv*) Concealment of net wealth/value of gift involved in(i)	Rs. 4,98,54,100	Rs. 8,40,300
(*v*) Total amount of penalty levied .	Rs. 93,15,500	Rs. 1,47,700
(*vi*) Extra tax demanded on concealment	Rs. 11,82,000	Rs. 1,26,200
(*vii*) Cases out of (ii) in which convictions were obtained	Nil	Nil
(*viii*) Composition fees levied in respect of cases in (iii)	Does not arise	
(*ix*) Nature of punishment in respect of (vii) . .	Does not arise	

N.B.—Figures appearing in paragraphs 4 to 8 above have been furnished by the Ministry of Finance.

9. *Results of test audit in general*

(i) Corporation Tax and Income-tax.

During the period from 1st September, 1973 to 30th June, 1974 test audit of the documents of the income-tax offices revealed total under-assessment of tax of Rs. 1380.81 lakhs in 13,197 cases and over-assessment of tax of Rs. 79.74 lakhs in 2,915 cases. Besides these, various defects in following the prescribed procedure also came to the notice of audit.

Of the total 13,197 cases of under-assessment, short-levy of tax of Rs. 1232.66 lakhs was noticed in 948 cases alone. The remaining 12,249 cases accounted for under-assessment of tax of Rs. 148.15 lakhs.

The under-assessment of tax of Rs. 1380.81 lakhs is due to mistakes categorised broadly under the following heads :—

	No. of items	Amount (in lakhs of rupees)
1. Avoidable mistakes involving considerable revenue	1,500	24.06
2. Failure to observe the provisions of the Finance Acts.	120	29.20
3. Incorrect status adopted in the assessments	62	11.43
4. Incorrect computation of salary income	327	5.02
5. Incorrect computation of income from house property	578	13.14
6. Incorrect computation of dividend income	130	6.85
7. Incorrect computation of business income	1,709	136.32
8. Irregularities in allowing depreciation and development rebate	728	68.93
9. Irregular exemption and excess reliefs given	834	532.32
10. Irregularities in connection with export incentives	22	15.73

11. Irregular computation of capital gains . . .	94	16.61
12. Mistakes in assessment of firms and partners .	278	12.92
13. Omission to include income of spouse/minor child etc.	34	5.37
14. Irregular set-off of losses	42	1.70
15. Mistakes in assessments while giving effect to appellate orders	43	6.72
16. Income escaping assessment	1,027	33.18
17. Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.	2,549	119.72
18. Avoidable or incorrect payment of interest by Government	24	10.20
19. Omission/short-levy of penalty	70	68.23
20. Excess or irregular refunds	339	5.69
21. Under-assessment due to adoption of incorrect procedure	3	13.08
22. Other topics of interest/miscellaneous . . .	2,574	180.03
23. Under-assessment of Sur-tax/Super-Profits tax .	110	64.36
Total . . .	13,197	1,380.81

(ii) *Wealth-tax*

During test audit of assessments made under the Wealth-tax Act, 1957 short-levy of tax of Rs. 147.74 lakhs was noticed in 2,550 cases. The number of cases in which over-assessment was noticed was 744 and tax involved was Rs. 7.47 lakhs.

The under-assessment of tax of Rs. 147.74 lakhs was due to mistakes categorised broadly under the following heads :—

	No. of items	Tax (in lakhs of rupees)
1. Mistakes in calculation of tax, computation of wealth	868	9.00
2. Wealth escaping assessment	360	71.00
3. Incorrect valuation of assets	180	4.56
4. Incorrect reliefs and exemptions	648	9.58
[illegible]n or incorrect levy of additional wealth-tax	59	3.52
6. Non-levy or incorrect levy of penalty	210	43.59
7. Other lapses	225	6.49
TOTAL	2,550	147.74

(iii) *Gift-tax*

During the test audit of gift-tax assessments it was noticed that in 397 cases there was short-levy of tax of Rs. 6.74 lakhs and in 148 cases there was over-charge of tax of Rs. 1.52 lakhs.

(iv) *Estate Duty*

In test audit of estate duty assessments, it was noticed that in 342 cases there was short levy of estate duty of Rs. 11.55 lakhs and in 108 cases there was over-charge of duty of Rs. 1.68 lakhs.

10. *Summary Assessment Scheme*

10.1 In paragraph 1.48 of their 51st Report, the Public Accounts Committee (5th Lok Sabha) suggested a review of the Small Income Scheme. Accordingly, a review of the working of the scheme has been made on the basis of a test check conducted in a few important charges.

The Small Income scheme was introduced first on the recommendations of the Direct Taxes Administrative Enquiry Committee, 1958-59. The detailed scheme issued in 1967 provided for a summary assessment, without requiring the presence of the assessees or their accounts books in (i) Government salary cases, (ii) Non-government salary cases below Rs. 18,000 and (iii) other non-company cases not exceeding Rs. 7,500. The general limit of Rs. 7,500 was raised in 1968 to Rs. 10,000. In August, 1968 this limit was further raised to Rs. 15,000 in respect of the cities of Bombay and Calcutta. The scheme was also extended to registered firms with 4 or more partners and total income not exceeding Rs. 20,000. In 1971, the Summary Assessment scheme was embodied in the Income-tax Act, 1961, through the Taxation Laws (Amendment) Act, 1970. The revised section 143 of the Act authorised the Income-tax Officer to make a summary assessment on the basis of return of income filed under section 139 of the Act, without requiring the presence of the assessee or production by him of any evidence in support of his income. The Income-tax Officer's satisfaction about the return being correct and complete is no more a condition precedent for such summary assessment. The assessee can object to the assessement but there is no appeal against it. The Income-tax Officer is empowered to make obvious adjustments such as those in respect of arithmetical errors and deductions, allowances or reliefs, *prima facie* admissible or inadmissible on the basis of the return.

The Board issued detailed instructions in April, 1971 to extend this scheme to the following/types of cases, in addition to those covered earlier under the Small Income scheme :—

(i) such of the company cases in the city charges of Bombay, Madras, Gujarat, Delhi and Calcutta as the Commissioners may in their discretion decide;

(ii) non-company cases upto Rs. 25,000 in general and not exceeding Rs. 50,000 in the city charges of Bombay and Calcutta;

(iii) business cases involving losses under Rs. 10,000 and

(iv) first year assesment cases involving income from sources other than salary up to Rs. 500.

In June, 1972 the limit of Rs. 500 in the case of first year assessment cases was raised to Rs. 2,000 and the Commissioners of Income-tax in places other than Bombay and Calcutta were authorised to bring non-company cases up to Rs. 50,000 within the ambit of the scheme at their discretion.

10.2. As indicated in the Board's circular No. 1-D of 1964 and recapitulated in para 1.48 of the 51st Report of the Public Accounts Committee, the objectives of the scheme were :—

(i) to obtain a quick reduction in the large number of pending assessments, particularly those in small income categories ;

(ii) to ensure that instead of frittering away their energies on small cases which constituted about 80 per cent of the total number of assessments and yielded only about 5 per cent of the total tax revenue, the departmental officers would concentrate on the relatively small number of big cases which yielded bulk of the tax revenues; and

(iii) to save genuine small income assessees from being subjected to harassment by being asked to appear before the Income-tax authorities.

10.3. The statistical data about the assessments completed, assessments pending, arrears of tax etc., given in the preceding paragraphs, would indicate the following broad conclusions about the fulfilment of the objectives of the scheme :—

(i) The number of assessments pending went up from 11.24 lakhs on 31st March, 1972 to 13.93 lakhs

on 31st March, 1973 and 17.20 lakhs on 31st March, 1974. The pendency in small income and summary cases registered a sharp increase from 4.84 lakhs as on 31st March, 1972 to 6.87 lakhs on 31st March, 1973 and 9.54 lakhs on 31st March, 1974. The first objective of the scheme was not, therefore, fulfilled.

(ii) (a) While the gross arrears of tax varied from Rs. 805 crores on 31st March, 1972 to 790 crores on 31st March, 1973 and Rs. 816 crores on 31st March, 1974 the arrears due from the assessees owing over rupees one lakh each increased continuously from Rs. 359 crores on 31st March, 1973 to Rs. 376 crores on 31st March, 1973 and Rs. 389 crores on 31st March, 1974.

(b) The number of category I assessments completed declined continuously from 2.73 lakhs in 1971-72 to 2.10 lakhs in 1972-73 and 2.06 lakhs in 1973-74. The pendency in category I rose from 1.24 lakhs on 31st March, 1972 to 1.46 lakhs on 31st March, 1973 and 1.67 lakhs on 31st March, 1974.

(c) The total number of assessments completed each year declined continuously from 38.44 lakhs in 1971-72 to 35.98 lakhs in 1972-73 and 34.36 lakhs in 1973-74, despite 23.12, 26.53 and 25.06 lakhs assessments completed under the summary procedure in these three years respectively.

The second objective of the scheme about concentrating on big income cases was also not, therefore, fulfilled.

(iii) As for the third objective, it was pointed out in audit even in November, 1969 that in about 39 per

cent of the small income cases, assessments were still made under section 143(3). A further test check in Madhya Pradesh, Orissa, Tamil Nadu and West Bengal again revealed cases where the assessees and/or their books were called for and assessments made under section 143(3) even where summary assessments should have been made. In Bombay and Poona, Inspecting Assistant Commissioners' inspections revealed a tendency on the part of certain assessing officers to call for the assessees even before finalising the assessments under the Summary Assessment procedure. In Andhra Pradesh, it was noticed in 140 cases that additions were made to the returned income even while making assessments under the Summary Assessment procedure during 1971-72. The test check also revealed a general failure in completing the assessments under the Summary Assessment procedure within the assessment year resulting in huge arrears in the pendency of small assessments. This would indicate that even the third objective of the scheme was not met.

10.4. Test check conducted in a few selected wards in Andhra Pradesh, Bihar, Bombay (and Poona), Gujarat, Madhya Pradesh and West Bengal confirmed the above broad conclusions and also revealed that the average demand in small assessment cases has been, generally, declining from year to year and the collection of demand against summary assessments is slower though the assessment in these cases is based on a straight acceptance of the return field. The test check also brought to light many defects in the implementation of the scheme. Thus :—

(i) The total number of assessments pending in Bombay and Poona on 31st March, 1974 was 1.90 lakhs. Of these as many as 1.01 lakhs or 53 per cent were

such as could be completed under the Summary Assessment scheme. In Gujarat, the general limit for summary assessments was raised by the Commissioner under his discretionary powers from Rs. 25,000 to Rs. 50,000 from the 1st of June, 1973. Nevertheless, the total number of assessments completed during 1973-74 was only 3.03 lakhs against 3.24 lakhs in 1970-71. As a result, the number of pending assessments went up from 0.99 lakhs on 31st March, 1972 to 1.82 lakhs on 31st March, 1973 and 2.64 lakhs on 31st March, 1974. Of the assessments pending on 31st March, 1974 as many as 1.61 lakhs or 61 per cent were summary assessment cases.

(ii) In Madhya Pradesh, while the total number of assessments completed increased from 1.42 lakhs in 1971-72 to 1.51 lakhs both in 1972-73 and 1973-74, the number of Category—I assessments completed came down rather sharply from 11,385 in 1971-72 to 8,866 in 1972-73; it went up only marginally to 9,287 in 1973-74. While the overall pendency went up by 25 per cent in 1973-74, the pendency in category—I assessments went up at the rate of 32 per cent. In West Bengal, while the total number of assessments completed declined from 7.30 lakhs in 1971-72 to 5.63 lakhs in 1972-73 and 4.95 lakhs in 1973-74, the number of category—I assessments completed declined from 51,935 in 1971-72 to 31,382 in 1972-73 and 29,259 in 1973-74. The pendency in category—I assessments rose from 36,099 on 31st March, 1972 to 39,957 on 31st March, 1973 despite the total pendecy remaining about the same on these two dates, i.e. 4.61 and 4.62 lakhs respectively. In Andhra Pradesh, while the total number of assessments pending, which went up from 22,326 on 31st March,

1972 to 61,910 on 31st March, 1973 came down to 55,550 on 31st March, 1974, the category—I assessments pending continued to rise from 2,919 on 31st March, 1972 to 4,404 on 31st March, 1973 and 4,597 on 31st March, 1974. In Bombay and Poona, the pendency in category—I assessments went up from 14,870 on 31st March, 1972 to 17,835 on 31st March, 1973 and 28,207 on 31st March, 1974. In Gujarat also, the pendency in category-I assessments continued to rise from 12,477 on 31st March, 1972 to 18,485 on 31st March, 1973 and 19,844 on 31st March, 1974. The scheme did not, therefore, succeed in shifting the emphasis to big income cases. In a major revenue collection centre like Bombay, the demand and collection of revenue went down from Rs. 385.93 and Rs. 303.04 crores in 1971-72 to Rs. 286.96 and Rs. 225.16 crores in 1972-73 and Rs. 203.53 and Rs. 152.85 crores in 1973-74.

(iii) In West Bengal, a test check conducted in 16 wards also revealed 119 cases where summary assessments were made though on the basis of income returned, assessments should have been made after detailed scrutiny. In 52 cases, obvious adjustments were not made while making summary assessments as required under section 143(1) of the Act. In Madhya Pradesh also, the test check revealed a case where summary assessment was made in 1971-72 and 1972-73 though on the basis of the assesse's income for the earlier years, the assessment should not have been so made. The case involved a tax effect of over Rs. 11,000.

(iv) The Public Accounts Committee had sounded a note of warning in paragraph 1.48 of their 51st Report in stating that it should be ensured that the scheme

is not exploited by some unscrupulous high income assessees masquerading themselves as small income assessees. In that context the following table, giving the average demand per summary assessment during each of the last 3 years in some of the charges, may be of interest:—

	1971-72	1972-73	1973-74
	Rs.	Rs.	Rs.
Andhra Pradesh	373	280	289
Bombay and Poona	770	473	456
Gujarat	477	275	418
Kerala	222	191	204
Madhya Pradesh	247	207	200
West Bengal	138	85	106

The average demand per summary assessment has declined almost continuously every where.

(v) Although a summary assessment is based on a straight acceptance of the return filed, the collection of demand against summary assessments was slower almost every where in comparison with the collection of demand against other assessments. Thus, in Bombay and Poona the collection against summary assessments was 59 per cent, 70 per cent and 60 per cent during the years 1971-72, 1972-73 and 1973-74 against the collection of a steady 80 per cent in all these years against other assessments. Similarly, in West Bengal the collection against summary assessments was 34 per cent, 28 per cent and 35 per cent against 69 per cent, 68 per cent and 59 per cent in other cases during the said three years. In Kerala, the collection against summary assessments declined sharply from 80 per cent in 1971-72 and 75 per cent in 1972-73 to 55 per cent in 1973-74, while the collection against other assessments remained steady at over 70 per cent.

10.5. An examination, in a few selected cases, of the assessments completed during the summary assessment procedure revealed the following types of defects :—

(i) Mistakes in computation of income from business or income from house property and/or in calculation of tax.

(ii) Exemptions, deductions or reliefs wrongly allowed or not allowed.

(iii) Apparent under-assessment of income.

(iv) Under-assessment of capital gains.

(v) Failure to tax refunds of annuity deposits.

(vi) Share of income from firm not included or wrongly included.

(vii) Credit not given for advance tax or excess credit given.

(viii) Interest not charged or granted as admissible.

(ix) Non-inclusion or incorrect valuation of perquisites.

(x) Non-application of section 64.

(xi) Lack of co-ordination between income-tax and wealth-tax assessments.

(xii) Particulars of contracts not furnished under section 285A.

In 75 cases, 6 in Andhra Pradesh, 20 in Karnataka, 36 in Kerala, 10 in Tamil Nadu and 3 in West Bengal, such defects resulted in under-assessment of Rs. 6,330, Rs. 13,899, Rs. 23,777, Rs. 29,791 and Rs. 28,985 respectively making up a total of Rs. 1.02 lakhs. In 19 cases in Kerala and Karnataka

the defects resulted in an over-assessment of Rs. 11,011. In many other cases, the tax effect could not be ascertained.

10.6. As a measure of safeguard, in the interest of revenue, the Board had also laid down the following post-assessment checks in respect of the assessments completed under the Summary Assessment scheme :—

(i) Out of the assessments completed under the scheme, 20 per cent of the cases with incomes over Rs. 25,000, 5 per cent of the cases with incomes between Rs. 15,000 and Rs. 25,000 and 2 per cent of the other cases should be selected at random and subjected to detailed post-assessment scrutiny.

(ii) Certain trades or professions such as dealings in steel, steel products, foodgrains, sugar and paper in which, on the basis of market information, there is reason to believe that large profits have been made, should be selected for detailed post-assessment scrutiny.

(iii) The Inspecting Assistant Commissioner should inspect about 25 summary assessment cases in each summary circle to see whether the assessments were made in the correct manner, whether additions which should or which should not have been made were correctly made or left out and whether cases which should have been done under the Summary Assessment scheme were actually taken up for scrutiny by calling the assessees and/or their books.

The test check revealed that these safeguards were not properly implemented. The detailed post-assessment scrutiny was not conducted at all in Bihar, Bombay, Kerala, Madhya Pradesh and West Bengal. In Andhra Pradesh such scrutiny was conducted in only three wards out of the five covered in

the test check and in Gujarat and Tamil Nadu the number of cases taken up for such scrutiny was much less than that prescribed. As for the selection of specified trades or professions in which, on the basis of market information, there is reason to believe that large profits have been made, there was a total failure every where except in two wards out of five in Andhra Pradesh. The Inspecting Assistant Commissioners did not carry out the prescribed inspections in Bihar, Kerala, Madhya Pradesh and West Bengal. In Andhra Pradesh such inspections were not carried out in two wards out of the five covered by the test check. In Bombay and Poona, no such inspections were carried out during 1971-72; the inspections carried out in 1972-73 revealed a tendency on the part of certain assessing officers in some charges to call the assessees unnecessarily before finalising the summary assessments. In Tamil Nadu no such inspections were carried out during 1972-73 and 1973-74 though in 1971-72 inspections to the extent of about 40 per cent of the prescribed limits had been carried out.

The assessments made under the Summary Assessment scheme were not checked in internal audit except in some cases in Kerala.

10.7. The review would, thus, seem to indicate that the scheme has not been properly implemented and has, by and large, failed to achieve its main objectives.

These observations were sent to the Ministry in November, 1974. Their comments are awaited (March 1975).

11. *Collection and Recovery Procedure*

11.1 The Public Accounts Committee have been repeatedly expressing their concern at the growing arrears of Income-tax and the slow progress in their recovery. In paragraph 1.258 of their 46th Report (Third Lok Sabha), the Committee, while reiterating the concern expressed in their 6th, 21st and 28th

Reports, pointed out that it was imperative that the past arrears should be realised by intensifying the collection effort and current collection should not be allowed to accumulate. Again, in paragraph 1.24 of their 17th Report (Fourth Lok Sabha) the Committee, while reiterating the concern expressed in their 46th and 3rd Reports, pointed out that the arrears were continuously on the rise and that the measures taken by the Board had not resulted in any significant improvement. The Committee repeated their concern in paragraphs 1.80 and 1.54 of their 73rd and 117th Reports (Fourth Lok Sabha). In these and, more recently, in paragraphs 4.48 to 4.59 and 3.25 to 3.30 of their 51st and 87the Reports (Fifth Lok Sabha) respectively, the Committee suggested various measures for the expeditious clearance of arrears and drew pointed attention, *inter alia,* to the prompt and timely issue of advance tax notices, reconciliation and verification of credits in respect of tax deducted at source, timely completion of assessments and the charging of interest due under section 220(2) of the Act. The Committee also desired that special attention should be paid to big cases.

11.2. A test check was conducted in a few selected charges to review the progress in the collection of demands and the liquidation of arrears in the context of the suggestions of the Committee.

The total demand of tax remaining uncollected as on 31st March, 1972, 31st March, 1973 and 31st March, 1974 (excluding the demand raised but not due for payment on these dates) amounted to Rs. 583, Rs. 630 and Rs. 616 crores respectively. A test check conducted in Andhra Pradesh, Bombay and West Bengal revealed that the percentage of collection against the demand raised was continuously on the decline during these three years. In Andhra Pradesh, the percentage fell from 62 in 1971-72 to 58 in 1972-73 and to 57 in 1973-74. In Bombay and West Bengal, the percentages fell from 70 and 47 in 1971-72 to 62 and 40 in 1972-73, and 60 and 36 in 1973-74. In Andhra Pradesh, the percentage was continuously on the decline in respect of both the collection against the current

demand as well as the collection against the arrear demand. In Bombay and West Bengal, the percentage of collection against arrear demand improved slightly during 1973-74 (after declining to a greater extent during 1972-73), but in the total figure, this improvement was more than off-set by the continuous decline in the percentage of collection against current demand.

11.3. It will be seen from the figures in paragraph 1(a) that the pre-assessment collection of tax amounts to about 92 per cent of the total collection; the biggest component of this being the advance tax. In 1973-74, the collection by way of advance tax amounted to Rs. 762 crores out of a total collection of Rs. 1,305 crores. The advance tax collections are made on the basis of the notices issued by the Income-tax Officers under section 210 of the Income-Tax Act, 1961, and/or the estimates filed by the assessees under section 212 of the Income-tax Act, 1961. Omissions in the issue of advance tax notices were pointed out in paragraph 91 of the Audit Report (Civil) 1962 and paragraph 37 of the Audit Report (Civil) on Revenue Receipts, 1963. In paragraph 1.80(ii) of their 73rd Report (Fourth Lok Sabha), the Public Accounts Committee had desired that the department should work out an arrangement to ensure that advance tax notices were duly issued and collections watched. The present test check again revealed failures in this regard particularly in Andhra Pradesh, Gujarat, Madhya Pradesh, Orissa, Punjab and Poona. In the Commissioner's charge at Poona alone, it was noticed that advance tax notices were not issued in as many as 3,128 cases.

11.4. The second big component of the pre-assessment collection is deduction of tax at source, Rs. 300 crores in 1973-74 out of the total collection of Rs. 1,305 crores. In paragraph 5.53 of their 73rd Report (Fourth Lok Sabha), the Public Accounts Committee had cautioned the department against taxes deducted at source being not fully remitted into Government treasury. In paragraph 4.57 of their 51st Report (Fifth Lok Sabha), the Committee had also drawn attention to a system of reconciliation between the amount of tax deducted

at source and the amount remitted to Government account as in vogue in Britain and desired that the system should be studied and a procedure devised to arrive at a satisfactory system of reconciliation. The present test check in Bombay, Karnataka and West Bengal again revealed that records of deduction and collection of tax at source were not properly maintained and it was not ensured that the tax deducted at source was promptly remitted to Government treasury. The department had not yet devised any effective machinery to ensure that the tax deducted at source had actually been remitted to Government account.

11.5. The post-assessment collection for 1973-74, made on the basis of demands raised after final assessment, came to about 8 per cent (Rs. 103 crores out of Rs. 1,305 crores). Where the assessees default in the payment of such demand, the Act places almost the entire responsibility for collection on the departmental officers on whom the Act confers considerable powers for that purpose. The test check revealed the following factors which contributed to the retardation of post assessment collections:—

(i) The primary factors like the rush of assessments during the last quarter of the year, the completion of assessments, particularly, those in big income cases, towards the fag end of the limitation period and the persistent delays in the finalisation of the assessments set aside or cancelled in appeal or revision, have been pointed out in the successive Audit Reports. In that context, the Public Accounts Committee in paragraph 1.80 of their 73rd Report (Fourth Lok Sabha) had pointed out that the tendency to delay assessments till the end of the financial year and make cumulative assessments for more than one year, particularly in big assessment cases, resulting in piling up of huge demands should be firmly checked and the assessment work spaced out evenly. The present test check revealed that these primary factors were still responsible, in

no small measure, for the piling up of the arrears. A test check in West Bengal showed, for instance, that out of the assessments completed in the year 1973-74, only 16 per cent related to the assessment year 1973-74, 34 per cent related to the assessment year 1972-73, 43 per cent related to the assessment year 1971-72 and the balance pertained to the earlier years. The number of set aside and cancelled assessments pending on 31st March, 1973 and 31st March, 1974 were 19,330 and 18,170 respectively.

(ii) After the assessment, the Income-tax Officer is required to serve upon the assessee a notice of demand specifying the sums payable. According to the instructions issued by the Board on the subject, such demand notices should be served within a fortnight and in the case of particularly obstructive assessees within a month of the passing of the relevant order. The test check revealed that the demand notices were not, in fact, issued promptly. In Gujarat, for instance, delays of 30 to 80 days in this regard were noticed.

(iii) After the service of the demand notice, the Act allows a period of 35 days for the payment of the amounts demanded. If the amount is not paid within that time, the assessee is liable to pay simple interest at 12 per cent per annum. Further, the assessee shall in that event be deemed to be in default and would then be subject to the penalties prescribed in the Act. The Income-tax Officer would also issue a certificate of recovery to the Tax Recovery Officer for recovery of the demand by attachment and sale of the assessee's movable or immovable property, arrest of the assessee and his detention in prison, appointing a receiver for the management of the assessee's movable and immovable properties, etc.

A test check in West Bengal revealed that in the issue of recovery certificates to the Tax Recovery Officer there were delays of one to two years in many cases. In Rajasthan it was noticed during a test check in some of the Tax Recovery Offices that out of 28,133 recovery certificates received during 1973-74, as many as 19,829 were received during the month of March, 1974. The test check also revealed that no action to enforce recovery was taken by the assessing Income-tax officers before recovery certificates were issued at the fag end of the year. It showed, further, that the recovery certificates were not complete in many cases and did not indicate essential particulars like the complete address of the defaulter, the details of assets of the defaulter etc. with the result that the recovery action by the Tax Recovery Officers got retarded. Similarly, in Tamil Nadu it was noticed that the statements of assets of the defaulters were not enclosed with the recovery certificates in most of the cases. A test check of ten Tax Recovery Offices in three Commissioners' charges revealed that out of 54,379 cases involving arrears of Rs. 3,991 lakhs certified to them up to the end of December, 1973, recovery was effected only in 4,166 cases (7.6 per cent) involving an amount of Rs. 67 lakhs (1.7 per cent). In 14 cases, interest amounting to Rs. 76,483 was not recovered at the time of recovery. In 38 cases, notices required to be issued within 15 days of the receipt of the recovery certificates were issued after 90 to 217 days. In 36 cases involving arrears of Rs. 27.15 lakhs, there was no effective follow-up action after the issue of notices.

(iv) After issue of recovery certificates, the Income-tax Officers and the Tax Recovery Officers are required to keep in touch with each other in the interest of

correct and prompt recovery of the demand in default. It was noticed during a test check in Orissa, Rajasthan and West Bengal that in most of the cases where recovery certificates had been issued, the action taken by the Tax Recovery Officer was not on record and was not known. Apparently, the prescribed annual reconciliation between the records of the Income-tax Officer and the Tax Recovery Officer was not being done and the prescribed certificate of such reconciliation was not being sent to the Board.

(v) Rule 118 of the Income-tax Rules, 1962 provides that the Income-tax Officer should calculate the interest payable at the end of each financial year or upto the date of payment, as the case may be, and issue a notice of demand in respect of the interest so calculated. While taking note of the widespread failure to charge interest in accordance with these provisions, the Public Accounts Committee in para 4.55 of their 51st Report (5th Lok Sabha) had desired that the Board should ensure that the instructions regarding charging of interest are complied with by the Income-tax Officers and the Tax Recovery Officers. The present review conducted in Andhra Pradesh, Gujarat, Kerala, Orissa, Rajasthan and Tamil Nadu revealed that the failure was still widespread. There were 344 cases, In Tamil Nadu (10), Orissa (190), Andhra Pradesh (73) and Kerala (71) and many cases in Gujarat and Rajasthan where interest payable under section 220(2) of the Act was not levied in accordance with Rule 118.

(vi) An important control for keeping a watch on the collection of demands is the Demand and Collection Register. A test check conducted in Andhra

Pradesh, Gujarat, Kerala, Orissa, Rajasthan, Tamil Nadu and West Bengal revealed that sufficient attention was not paid to the maintenance of this register. The following were some of the defects frequently noticed:—

(a) At the time of the opening of the new register, the demands outstanding in the old register were not correctly carried forward.

(b) Particulars like the date of demand notice, date of service of the notice, the due date of payment, the extensions of time, if any granted, and the actual dates of payments were not noted in the register in many cases.

(c) In Tamil Nadu and Orissa the collections were not noted in the register or were wrongly noted in many cases.

(d) In Orissa, the register contained omissions, repetitions and skipping over of serial numbers as also omissions of particulars like the assessment year.

(vii) In paragraphs 1.25 and 1.55 of their 17th and 117th Reports (4th Lok Sabha), the Public Accounts Committee had desired that concentrated attention should be paid to the liquidation of arrears in big cases. The demands outstanding on 31st March, 1972, 31st March, 1973, and 31st March, 1974 included 220, 230 and 238 cases involving arrears of over Rs. 25 lakhs each. Out of the 230 cases outstanding on 31st March, 1973, 159 still fell in that category on 31st March, 1974. These included 22 cases involving arrears of over Rs. 1 crore each. The total demand in arrears in these 22 cases was

Rs. 32.54 crores (excluding the demand of Rs. 11.14 crores not due on 31st March, 1974). The demand stayed by different High Courts amounted to Rs. 2.81 crores in 4 cases and that stayed by the Income-tax Appellate Tribunal amounted to Rs. 1.75 crores in two cases only. The highest two demands outstanding were, one of Rs. 4.58 crores due from a former shipping magnate and the other of Rs. 3.19 crores due from a business magnate. The test check revealed that the more coercive penal and recovery measures were not generally enforced. In West Bengal, for instance, out of 55 cases with arrears of Rs. 25 lakhs or more each, notices for attachment of movable or immovable properties were issued in 17 cases only, action for arrest and detention was initiated only in one case, and action for acquiring properties transferred during the pendency of assessment, demand and recovery proceedings or action against the directors where demands were outstanding against companies, was not taken in any case. A sample check of the big outstanding items revealed the following typical cases :

(a) In Rajasthan, an arrear demand of Rs. 34.97 lakhs for different assessment years between 1959-60 and 1972-73 was pending against an assessee. Recovery certificates were stated to have been issued in respect of all the demands except the one relating to 1971-72, but copies of these certificates were not on record with the Income-tax Officer. The amounts of oustanding arrears as per the Income-tax Officer's records did not tally with those in the books of the Tax Recovery Officer. In five cases, involving Rs. 15.33 lakhs, recovery certificates were not traceable with the Tax Recovery Officer. In most of the cases,

notices were issued by the Tax Recovery Officer after a lapse of about 3 months from the date of receipt of the certificates, but in two cases involving Rs. 5.73 lakhs such notices were issued after 2 to 4½ years. In one case involving Rs. 1.38 lakhs, no notice had been issued by the Tax Recovery Officer. In two cases involving Rs. 5.48 lakhs, notices were issued on 6th April, 1968 and 20th March, 1972 but no follow-up action was taken.

(b) In Bihar, a demand of Rs. 62.82 lakhs was outstanding against an assessee in respect of the assessment years 1967-68, 1969-70, 1970-71 and 1971-72. All these assessments had been completed at the fag end of the limitation period. Interest of Rs. 5.63 lakhs had been charged under section 220(2) of the Income-Tax Act, 1961 in respect of the assessment year 1967-68 and 1969-70 but no demand had been raised. For the assessment year 1971-72, interest had not been charged at all. No specific reason was assigned for the non-payment of about 50 per cent of the demand.

(c) In another case in Bihar, where a demand of Rs. 27.50 lakhs was outstanding, the assessment for the year 1963-64 was completed on 25th March, 1968 for an amount of Rs. 12.28 lakhs, but the demand notice was served after 1 year and 9 months on 28th December, 1969.

(d) In Kerala, an arrear demand of Rs. 50.77 lakhs was outstanding against an assessee. In 1957, while the arrears due from the assessee amounted to Rs. 50.96 lakhs, the Board agreed with him to settle the case at Rs. 23 lakhs. The assessee failed to honour the terms of the settlement but

gifted his properties to his wife and children in the meantime. The assessee expired in 1966. The petitions filed by the legal heirs were dismissed by the court, but the Commissioner of Income-Tax made an ad hoc arrangement with the legal heirs that notices issued under section 226(3) of the Income-Tax Act, 1961 should not be operated for a period of 3 months subject to the legal heirs' executing an agreement to pay every month a sum of Rs. 20,000. This rate of payment would not help to reduce the arrears pending collection at all, as the interest accruing thereon itself would be over Rs. 35,000 per month. The operation of notices under section 226(3) was suspended upto 25th March, 1974 only but proceedings under that section were not started even after that. No demand had been raised in respect of the interest due under section 220(2) of the Income-Tax Act, 1961 from 1st April, 1970. The amount of this interest worked out to over Rs. 14 lakhs. The interest levied for the earlier period was calculated at 6 per cent instead of 9 per cent from 1st October, 1967 involving a short demand of Rs. 32,600.

(e) In West Bengal, an arrear demand of Rs. 31.84 lakhs was outstanding against an assessee on 31st March, 1974 in respect of different assessment years between 1946-47 and 1957-58. Although the demand was so very old, notice under section 226(3) of the Income-Tax Act, 1961 was issued on 26th March, 1965 only and, consequently, it had no effect. Similarly, a notice for the attachment of property was issued after the said properties had already been transferred in the name of wife and relatives so that the order of attachment became ineffective. A proposal for the issue of an arrest warrant under

Rule 73 of the Second Schedule of the Income-tax Act was made only on 31st June, 1972 when the assessee had become untraceable.

(f) In Bombay, an arrear demand of Rs. 107.99 lakhs was outstanding against an assessee on 31st March, 1974 for assessment years between 1968-69 and 1974-75. In August, 1972, the department granted easy instalments of Rs. 2.50 lakhs per month. The assessee defaulted on these instalments. The stock-in-trade of the assessee was attached in September, 1973 but, subsequently, the assessee was allowed to retain the sale proceeds of this stock-in-trade. Actually, the assessee had been making very good profits year after year but still defaulted on the payment of taxes. A monopoly group who had the management of the assessee company was dissipating the funds of the assessee by disposing of the assessee's immovable properties and diverting the sale proceeds (Rs. 40 lakhs) of the assessee company to purchase shares of their own sister concerns at rates more than 100 per cent above the market rates and by advancing the funds of the assessee company (Rs. 1.81 crores) as loans to their own sister concerns. The department took over the business and management of the assessee company by appointing a receiver only on 16th January, 1974

The para was sent to the Ministry in November, 1974. Their comments are awaited (March, 1975).

12. *Administration of Section* 230*A*.

12.1. As a safeguard against tax evasion, the Direct Taxes (Amendment) Act, 1964 introduced section 230A in the Income-tax Act, 1961 providing that no Registering Officer appointed

under the Indian Registration Act, 1908, would register any document purporting to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property valued at more than Rs. 50,000 unless the transferor produces a tax clearance certificate from the Income-Tax Officer certifying that the transferor has paid or made satisfactory provision for payment of all existing liabilities under the different direct taxes enactments or that the registration of the documents will not prejudicially affect the recovery of any such liabilities. The section was amended by the Finance (No. 2) Act, 1971 with effect from 1st October, 1971 so as to extend its scope to transfers of agricultural land also.

The provision is also intended to ensure that the assessees do not alienate their assets before the existing tax liabilities are fully paid and/or satisfactory provision has been made for payment thereof. In the application for the issue of the certificate, the person who applies for such certificate, has to furnish the nature of the property, particulars on how the property was acquired and the full value of the consideration for which it is proposed to be transferred. The Income-Tax Officer can make use of these details to ensure that the income from the asset has already been returned/assessed to Income-tax, its value has been considered for Wealth Tax/Gift Tax, and the capital gains, if any, are duly brought to assessment.

12.2. A test check in some Commissioner's charges for the period 1st October, 1971 to 31st March, 1973 revealed the following deficiencies in the working of this important provision :—

(i) The test check in Andhra Pradesh, Assam, Bihar, Karnataka, Madhya Pradesh, Punjab and Uttar Pradesh revealed 361 cases where transfers of properties of a total value of Rs. 3.31 crores were registered even though the value in each document exceeded Rs. 50,000 and tax clearance certificates were not furnished. The default was particularly

widespread in Punjab where the test check conducted in 13 Registering Offices alone revealed as many as 278 cases involving property valued at Rs. 2.21 crores.

(ii) In a number of cases it was noticed that the transactions between the same parties entered into on or about the same dates were, apparently, split up and registered under separate documents with a view to defeating the provisions of Section 230A of the Income-tax Act. Twenty three such cases involving properties of a total value of Rs. 25 lakhs were noticed in Assam, Bihar, Kerala and Punjab. The individual values of properties in these cases varied from Rs. 51,000 to Rs. 2.50 lakhs but these had been split up into 2, 3, 4 or even 5 separate documents executed between the same parties on or about the same dates.

(iii) A tendency to state the value at exactly Rs. 50,000 or a little below that, apparently with the same object of defeating the provisions of the law, was also noticed. The test check in Assam and Punjab revealed 275 cases with values ranging between Rs. 45,000 and Rs. 50,000. In 93 of these, the values ranged between Rs. 49,000 and Rs. 50,000.

(iv) Cases were also noticed where the information available in the applications for obtaining the Income-Tax Clearance Certificates, was not used in Direct Taxes assessments. Thus in Calcutta, Income-tax clearance certificates were given in 9 cases for transfer of properties valuing from Rs. 50,000 to Rs. 1,93,750 but the persons concerned were not called upon to file their Income-tax or Wealth-tax

returns. In 8 other cases, the particulars furnished by the applicants were indicative of the fact that the applicants were assessable to Wealth-tax; the property values in these cases varied from Rs. 50,000 to Rs. 2,16,666. The applicants were not, however, assessed to Wealth-tax. Similarly in Bombay, Wealth-Tax return was not called for from an applicant who had asked for a certificate for transfer of property valued at Rs. 2,90,000. In some cases, the values given in the transfer documents varied from those declared in the relevant Direct Taxes assessments but no action was taken to rectify the latter. Thus in 9 Wealth-tax cases in Bombay, a comparison of the values of certain properties with the values deemed for the same properties in connection with their transfer revealed an under-statement of wealth to the extent of Rs. 8,60,836. In another case, the tax clearance certificate was issued but the resultant capital g was not charged to tax. In Andhra Prade cases the value in the transfer documents differed from the value on which Gift-tax was levied. The total under-assessment of tax in these 13 cases amounted to Rs. 22,840.

12.3. There is no provision in the rules made under section 230A or in the form of the application for tax clearance certificates to make the assessee furnish a valuation certificate given by an approved valuer to support the value indicated by him. The departmental officers are, therefore, guided solely by the particulars of value as furnished by the applicants.

The para was sent to the Ministry in November, 1974 Their comments are awaited (March, 1975).

CHAPTER II

CORPORATION TAX

13. As on 31st March, 1974 there were 40,169* companies. These included 540 foreign companies and 1,294 associations not for profit registered as companies limited by guarantee. The remaining 38,335 companies comprised 450 Government companies and 37,885 non-Government companies with paid-up capital of Rs. 4,645 crores and Rs. 2,430 crores respectively. Among non-Government companies over 81 per cent were private limited companies.

The definition of "Indian company" in the Income-tax Act has been amended from 1st April, 1971 to include also a corporation established by a Central, State or Provincial Act. According to the information furnished by the Ministry of Finance the number of Public Sector Undertakings assessed as companies for the assessment year 1973-74 was 333. The total amount of the tax levied in the case of these undertakings was Rs. 14,88,66,995. The amount of tax actually paid by these Undertakings during the year, including pre-assessment collections, was, however, Rs. 61,87,54,932 including tax collected at pre-assessment stage.

The Income-tax Act, 1961 as amended from 1st April, 1971, also empowers the Central Board of Direct Taxes to declare any institution, association or body to be a 'company' for any assessment year or years. The Ministry of Finance have

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*Figures taken from the Eighteenth Annual Report on the working and administration of the Companies Act, 1956 of the Ministry of Law, Justice & Company Affairs.

intimated that the following number of associations have been declared as 'companies' :—

Year	No. of associations declared as companies.
1971-72	33
1972-73	2
1973-74	10

According to the information furnished by the Ministry of Finance (Department of Revenue), out of 2,787 and 3,617 companies registered in India during the years 1972-73 and 1973-74, 1,222 and 517 companies respectively were brought on record of the Income-tax department till July, 1974. The Ministry of Finance have stated that the remaining 4,665 companies are still in the starting stage and their first assessment year in many cases would be 1975-76. The total number of company assessees as on 1st April, 1973 and 1st April, 1974 were 30,072 and 32,707 respectively. The number of company assessments completed and assessments pending at the close of the year 1973-74 as furnished by the Ministry of Finance, are given below :—

(i)	Total number of company assessments pending at the beginning of the year 1973-74 . . .	22,730
(ii)	Number of assessments out of (i) completed during 1973-74	14,180
(iii)	Total number of current assessments required to be completed during 1973-74 . . .	32,393
(iv)	Number of assessments out of (iii) completed during 1973-74	15,286
(v)	Number of assessments pending as on 31st March, 1974	25,657

Some instances of mistakes noticed in company assessments are given in the following paragraphs under the categories mentioned in paragraph 9(i).

14. *Avoidable mistakes involving considerable revenues*

(i) The Income-tax Act, 1961 allows, in the case of a company, a deduction of 50 per cent of the sums paid as donations to recognised funds and institutions.

A company returned its income for assessment year 1972-73, after deducting 50 per cent of Rs. 1,50,000 paid by it to the National Defence Fund. While making his own computation of income for the purpose of assessment, the Income-tax Officer adopted the net income as returned by the company but, inadvertently, allowed the deduction once again of the full amount of donation of Rs. 1,50,000 over and above that of Rs. 75,000 admissible and claimed. This resulted in an excess allowance of Rs. 1,50,000 and a short levy of tax of Rs. 1,20,253.

The Ministry have accepted the mistake and stated that an additional demand of Rs. 1,20,253 has been raised (January, 1975).

(ii) The computation of net income, in the original assessment (28th February, 1963) of an assessee for the assessment year 1958-59, resulted in a loss of Rs. 15,48,810. By an order passed subsequently under section 154 of the Income-tax Act, 1961, the quantum of loss was reduced to Rs. 14,81,931. The assessment was again re-opened on 9th November, 1971 under section 154 *ibid* for giving effect to the revisionary orders of the Commissioner of Income Tax passed on 6th August, 1965 allowing the assessee relief amounting to Rs. 8,014. The resultant amount of loss to be carried forward was Rs. 14,89,945 but it was incorrectly determined at Rs. 15,56,824 on the basis of the figure of loss of Rs. 15,48,810 worked out during the original assessment. The amount of loss to be carried forward was thus enhanced by Rs. 66,879 which resulted in the forgoing of revenue to the extent of Rs. 33,440 in the assessment year 1962-63.

The Ministry have accepted the objection. Report regarding rectification is awaited (March, 1975).

15. *Non-observance of the provisions of the Finance Acts*

(i) Under the Finance Act, 1964, an Indian company in which the public are substantially interested is liable for additional tax at 7.5 per cent of the amount of equity dividends declared or distributed by it during the previous year.

In the case of a company, while giving effect to the Income-tax Appellate Tribunal's orders for assessment year 1964-65 treating the company as one in which public were substantially interested, the additional tax at 7.5 per cent of the equity dividend declared/paid amounting to Rs. 9,88,267 during the previous year relevant to the assessment year 1964-65 was not levied. This resulted in a short levy of tax of Rs. 74,120.

The Ministry have replied (December, 1974) that the assessment has been rectified raising an additional demand of Rs. 74,120.

(ii) According to the Finance Act, 1964, the rate of tax applicable to a company in which the public are substantially interested, is lower than that applicable to a closely-held company. One of the conditions to be satisfied by a company to be classified as a company in which the public are substantially interested is that the shares of the company carrying not less than 50 per cent (40 per cent in the case of a manufacturing company) of the voting power must be held throughout the relevant previous year by the public, not being a director or a company in which the public are not substantially interested. It is further provided that if the shares of a company carrying more than 50 per cent (40 per cent in the case of a manufacturing company) are held during the relevant previous year by five or less persons, it cannot be regarded as a company in which the public are substantially interested.

(a) In one case, though more than 50 per cent of the shares of a company were held, during the relevant

previous year, by the Directors and five other companies belonging to the same group in which public were not substantially interested, the department treated the company as one in which public were substantially interested and levied tax at concessional rate.

(b) In another case, though more than 50 per cent of the shares of the company were held during the relevant previous year by five or less persons, the department treated the company as one in which public were substantially interested and levied tax at concessional rate.

This incorrect determination of status of the companies led to a tax undercharge of Rs. 1,17,557 for the assessment year 1964-65. As rectifications were barred by limitation, the cases involved a loss of revenue of Rs. 1,17,557.

While accepting the objection in principle in respect of (b), the Ministry have stated that no remedial action is possible.

Final reply in respect of (a) is awaited from the Ministry (March, 1975).

(iii) Under the Finance Act, 1968, a company in which the public are substantially interested is liable to pay additional tax at 7.5 per cent on the amount of equity dividends declared or distributed by it during the previous year relevant to the assessment year in excess of 10 per cent of its paid-up equity share capital as on the first day of the previous year.

In one case of such a company there was a change in determination of the previous year which was accepted by the department. The business income for the assessment year 1968-69 was computed taking the profit earned by it during the 17 months period from 1st November, 1966 to 31st March, 1968 for which the company drew up two separate accounts, one for the period ended 31st October, 1967 and the other for the subsequent

period. During the relevant previous year the assessee declared equity dividend of Rs. 44,42,500 which was in excess of 10 per cent of the paid-up equity share capital of Rs. 1,04,00,000 as on the first day of the previous year i.e., 1st November, 1966. The company was, therefore, liable to additional tax of Rs. 2,55,188 instead of which a tax of Rs. 99,631 only was levied by the department. The department took into account the equity dividend declared in excess of 10 per cent of the aggregate amount of the paid-up equity share capital as on 1st November, 1966 and 1st November, 1967. This resulted in tax undercharge of Rs. 1,55,557.

The Ministry have accepted the mistake. As a result of rectification an additional demand of Rs. 1,55,557 is stated to have been raised.

16. *Incorrect computation of business income of companies*

(i) In the assessment of an employee, the Income-tax Act requires that, besides salary, any perquisites provided by the employer should also be included in the employee's income and assessed to tax. The perquisites by way of rent-free accommodation or free conveyances are assessed at prescribed rates, irrespective of the actual expenditure incurred by the employer on providing such perquisites.

With a view to curbing excessive expenditure being incurred on the provision of perquisites to employees, particularly company employees, the Income-tax Act provides that such expenditure or any allowance in respect of the employer's assets used by the employees, would be inadmissible for deduction in determining the taxable income of the employer, to the extent such expenditure or allowance exceeds one-fifth of the salary of the employee.

(a) In the assessment of four companies, for the assessment year 1968-69, 1969-70 and 1971-72 completed during December, 1971 to March, 1972, while

applying the provisions of the Act for limiting the expenditure on provision of perquisites to the employees, the notional value prescribed for the assessment of perquisites in the hands of the employees amounting to Rs. 99,654 was adopted, instead of taking the actual expenditure incurred plus allowance given under section 32 as depreciation of assets used by the employees aggregating to Rs. 4,28,700. This resulted in a short levy of tax of Rs. 2,47,300 in the four cases.

Final reply is awaited from the Ministry (March, 1975).

(b) In another case, during the assessment years 1969-70 and 1970-71, a company incurred expenditure on repairs and maintenance and also made provision for depreciation of bungalow and bungalow furniture occupied by its employees . While calculating the inadmissible portion of the expenditure, proportionate expenses incurred/provision made for eleven months only of each year were taken into account on the ground that during the leave period of one month in a year the employees did not use the assets. As the company was committed to maintain the assets during the entire year and to incur expenditure/make provision irrespective of the fact whether these were used by the employees for the full year or less, the entire expenditure incurred/ provision made by the company should have been considered for the purpose of disallowance. The omission resulted in underassessment of income by Rs. 1,40,411 and Rs. 1,44,542 for the assessment years 1969-70 and 1970-71 respectively with cosequential tax undercharge of Rs. 1,56,724.

The Ministry have accepted the mistake (January, 1975). Further report regarding rectification and recovery is awaited (March, 1975).

(ii) (a) Under the Income-tax Act, 1961, expenditure in the nature of capital expenditure is not allowed as a business expense in the computation of income. During the previous year 1966-67 relevant to the assessment year 1967-68 a company incurred an expenditure of Rs. 1,14,279 on the purchase of tools and equipment and charged it to the profit and loss account. The amount was allowed as business expense in the computation of income. The omission to add back the capital expenditure resulted in under-assessment of income. In the case of the same assessee depreciation was also allowed incorrectly. As a result of the two mistakes, there was a net excess computation of loss of Rs. 96,924 carried forward for adjustment against future years' profits. The department accepted the mistakes.

The Ministry have replied (January, 1975) that the assessment in question has been rectified.

(b) There is no provision in the Income-tax Act, 1961 for allowing amortization of expenses incurred for the purchase of technical documents which are not in the nature of patents or trade marks. A provision to allow amortization of expenses relating to "feasibility reports" and "project reports" was made with effect from 1st April, 1971 only.

A company purchased technical documents for Rs. 13,45,271 during the previous years relating to the assessment years 1966-67 to 1970-71 and amortization amounting to Rs. 6,90,749 was allowed by the department. Since these expenses were not in the nature of patents and trade marks and amortization could not be allowed as an alternative to depreciation, the deduction made by the department was incorrect and it resulted in underassessment of aggregate income amounting to Rs. 6,90,749 during the assessment years 1966-67 to 1970-71. The tax effect involved for all these years is Rs. 3,79,909.

Final reply of the Ministry is awaited (March, 1975).

(c) Preliminary expenses of the kind specified in the Income-tax Act, 1961 incurred after 31st March, 1970 in connection with the starting of a new venture or for expansion of existing business, are deductible from business income in ten equal annual instalments.

A company, which was engaged in the manufacture of chemical fertilizers, incurred expenditure of Rs. 1,91,750 towards "Soda Ash Project expenses" during the previous years relevant to the assessment years 1968-69 and 1969-70 and the expenditure was allowed in the assessments completed in February, 1972. These expenses were in the nature of preliminary expenses for a new venture and were incurred before 1st April, 1970. The incorrect deduction allowed in computing the total income resulted in under-assessment of income of Rs. 1,91,750 with cor -uent short levy of tax of Rs. 1,05,460.

Final reply from the Ministry is awaited (March, 1975).

(iii) In the case of a company, development and training expenses incurred in earlier years were allowed to the extent of Rs. 3,55,374 as deduction in computing business income for the assessment years 1968-69 and 1969-70. The deduction was not admissible as the expenditure was not incurred during the previous years relevant to these assessment years.

This resulted in a reduction in the loss to be carried over by the company to the extent of Rs. 3,55,374.

While accepting the above position, the Ministry have stated (January, 1975) that the assessments in question have been revised.

(iv) Under the provisions of the Income-tax Act, 1961 it is only the expenditure laid out wholly and exclusively for the purpose of business that can be allowed in computing the business income of the assessee. Accordingly, interest on borrowings not expended for the purpose of business is not deductible.

Further, interest paid on borrowings is an item of expenditure that can be allowed in computing the income under different sources. Accordingly, where necessary, the utilisation of the capital borrowed has to be apportioned between different sources of income.

(a) A private limited company advanced a sum of Rs. 1,76,630 to a relative of the Managing Director for the construction of a house. Though the company took loans from various parties and incurred interest payments thereon, it did not charge any interest on the money advanced to the Managing Director's relative. If proportionate interest of Rs. 37,090 attributable to the loan diverted to the Director's relative, were disallowed, as it was not used for the purpose of the business, in the assessments for the assessment years 1968-69 to 1970-71, additional revenue of Rs. 20,400 would accrue.

The Ministry have accepted (March, 1975) the objection for the assessment year 1970-71. The assessments for the years 1968-69 and 1969-70 are stated to have been set aside by the Appellate Assistant Commissioner.

(b) In the case of another private company, where borrowings were not wholly utilized in the business of the company but were diverted to some of the directors and their relatives to the extent of Rs. 4,97,756 on the average for the assessment year 1970-71, proportionate interest charges of Rs. 59,730 were not disallowed resulting in a short levy of tax Rs. 38,800.

(c) In still another case for the assessment years 1968-69 and 1969-70 interest of Rs. 3,83,795 and Rs. 3,76,766 paid on borrowed capital was allowed as deduction in full in computing the business income. It was pointed out in audit, in June, 1972 that as

the company held large investments in shares which yielded dividend income of Rs. 1,91,259 and Rs. 1,57,268 for the two assessment years, the interest charges incurred on the holding of investments in shares should have been determined on a proportionate basis. The omission to do so resulted in the assessee getting more relief on the inter-corporate dividend income than otherwise admissible.

The Ministry have accepted the objection in principle. The assessments are stated to have been revised under section 147 raising additional demand of Rs. 1,82,753.

(v) Under the Income-tax Act, 1961, any expenditure incurred wholly or exclusively for business purposes is an allowable item provided it is not a mere provision. A company made a provision of Rs. 5,62,605 for replacement of motor vehicles and the same was charged to the profit and loss account for the previous year 1967-68. While making assessment for the assessment year 1968-69, the Income-tax Officer allowed the provision as a business expense. The omission to add back the provision resulted in under-assessment of income. In the same case depreciation was also allowed incorrectly. These mistakes in computation of income accounted for a net excess computation of loss of Rs. 5,90,625 carried forward for adjustment against future years' profits.

The Ministry have accepted the mistakes. Rectificatory action is stated to have been taken (December, 1974).

(vi) It has been judicially held that expenditure incurred in connection with breach of law would not be an admissible deduction, even if incurred for the purposes of the business, as infraction of law is not a normal incident of business.

In the assessment of a textile company for the assessment years 1970-71 and 1971-72 completed in November, 1970 and December, 1971 two sums of Rs. 3,04,376 and Rs. 3,47,754

debited to its profit and loss account, representing payments made to the Textile Commissioner for non-production of coarse cloth to the prescribed extent were allowed as deduction in determining the company's taxable income. As the payments were made for infringement of the statutory orders issued by the Textile Commissioner under the Cotton Textiles (Control) Order, they would not be admissible as deduction. The incorrect deduction allowed for these payments in the assessment for the two years led to under-assessment of business income by Rs. 6,52,130 with consequent short levy of tax of Rs. 4,56,490.

The Ministry have accepted the objection. Further report regarding rectification is awaited (March, 1975).

(vii) The computation of insurance business income is governed by special provisions of Income-tax Act, 1961 under which dividend income included in the insurance business income loses its identity as dividend and is treated as business income irrespective of its source and the various deductions admissible under the other provisions of the Act for dividends are not admissible.

However, deductions were allowed in thirteen assessments relating to four insurance companies resulting in aggregate under-charge of income-tax of Rs. 19,44,290 for the assessment years 1968-69 to 1972-73.

Final reply from the Ministry is awaited (March, 1975).

17. *Irregular allowance of discount to a foreign company*

By an agreement entered into in August, 1961, between the Indian Refineries Limited and a foreign company having world-wide operations, the foreign company undertook to construct pipe-line and erect permanent pumping stations and terminals and also to supply materials to be employed in the work. The payment was to be made in rupees as well as in foreign currency; the latter, which was to cover the estimated cost of goods and

services of non-Indian origin, was expressed in terms of U.S. dollars. According to the terms of agreement, 5 per cent of the foreign currency payment was to be made on the date of signature of each contract, another 3 per cent on the expiry of 12 months from the date of signature, and the balance in 20 equal half yearly instalments starting on the expiry of 2 years after the signature of the contract. The drafts which were to be drawn by the Indian Refineries Limited in U.S. dollars were to mature at intervals of six months, and thus, the first instalment being payable after 24 months, the last draft would mature after 138 months. The amounts represented by these drafts were to carry interest at six per cent per annum and separate drafts for interest were to be issued. The contract did not provide for any discount the party may voluntarily incur in encashing the dollar drafts earlier than when they were due.

In the balance sheets prepared for the Indian business, these drafts did not form part of the assets of the company's Indian business, but were transferred by the company to its head office. Similarly, the liabilities on account of foreign materials purchased by the head office abroad, formed part of head office account; the head office in turn having a running account with the Indian branch, which showed the net result at the end of the year after taking into account the debits on account of materials supplied and services rendered by head office and credits for remittances from India.

On 29th December, 1966 the foreign company had with it, in its head office account, the drafts issued by the Indian Refineries Limited of the aggregate face value of $ 1,79,66,255 falling due for payment in 1966—74. These drafts were discounted on that date with a bank in Geneva and after paying discount charges of $ 80, 28, 104 (Rs. 6.05 crores) ($ 77,37,881 on dollar drafts and $ 2,90,223 on lira drafts), the net proceeds realised were $ 99,38,150. The discount charges amounting to Rs. 6.05 crores in terms of Indian currency were allowed as deduction in the assessment for the year 1967-68, treating it as

expenditure incurred wholly and exclusively for the purpose of business. This was irregular for the following reasons :

(a) According to the contract, there is no provision permitting the party to discount the dollar drafts.

(b) The allowance was made on the basis of certificate dated 2nd August, 1971 from the company's auditor that the amount realised by the sale of dollar drafts was utilised to pay off the loans and other liabilities relating to the Indian business, even though according to the company itself, it was not able to correlate these dollars to their utilisation for paying liabilities of the Indian branch.

(c) Out of total cost of Rs. 21.45 crores incurred in Italy upto 31st December, 1965, the cost of capital assets came to Rs. 3.76 crores (i.e. nearly 18 per cent) and the entire amount of discount charges could not, therefore, be treated as revenue expenditure.

(d) In view of the fact that interest at six per cent per annum had already been paid to the company as consideration for deferment of the payment, further allowance of discount charges which was not provided for in the contract is unjustified.

Final reply from the Ministry is awaited (March, 1975).

18. *Under assessment of tax due to incorrect allowance of development rebate and depreciation allowance*

(i) Under the provisions of the Income-tax Act, the grant of development rebate on new plant and machinery owned by an assessee is subject to the condition, *inter alia,* that the new plant and machinery is installed in the relevant previous year and is wholly used for the purpose of business.

In the case of an assessee company, development rebate of Rs. 3,16,142 was allowed in the assessment year 1968-69 on machinery valuing Rs. 15,80,712 which was not installed and put to use in the relevant previous year. The erroneous grant of development rebate resulted in under-charge of tax of Rs. 1,73,877.

The Ministry have accepted the mistake and taken necessary rectificatory action (December, 1974).

(ii) The provisions of the Income-tax Act, 1961 for the grant of development rebate in respect of new plant and machinery are not applicable to road transport vehicles.

In respect of three companies engaged in the manufacture of automobile parts, development rebate was allowed on fork lift trucks, treating the same as plant and machinery even though these items are correctly classifiable under the category of motor cars, lorries and trucks. This resulted in incorrect allowance of development rebate on transport vehicles for the assessment years 1970-71 to 1972-73. Including the allowance granted for the earlier assessment years 1967-68 to 1969-70, the total incorrect allowance made was Rs. 1,84,353 involving short levy of tax of Rs. 1,01,410.

Final reply from the Ministry is awaited (March, 1975).

(iii) The grant of development rebate is also subject to the condition that the assessee creates a reserve for an amount not less than 75 per cent of the development rebate actually allowed. The reserve should be created in the relevant year *i.e.* in the year of use of the machinery and if there is loss in that year, it should be created in the year in which the rebate is carried forward and set-off. But any reserve created in one year in excess of the statutory requirement of 75 per cent cannot be reckoned for allowing development rebate for any other year.

If the reserve created is utilised at any time during the following eight years for payment of dividends or for remittance outside India or for any such purpose which is not the purpose of the business, the development rebate allowed should be withdrawn.

(a) In the assessment of a public limited company for the assessment year 1966-67 completed in January, 1971, part of the unabsorbed development rebate for the assessment years 1961-62 and 1962-63 amounting to Rs. 1,16,25,033 for which no development rebate reserve was created in the respective previous years, was set-off to the extent of the income available *viz.*, Rs. 44,71,381. For the rebate so set-off, the reserve required was Rs. 33,53,535 but the reserve not having been created in the previous years relevant to the assessment years 1961-62 and 1962-63, it should have been created in the accounts for the assessment year 1966-67. In the accounts for the previous year relevant to the assessment year 1966-67, a reserve of Rs. 35,00,000 was initially created but subsequently in the year 1968, while closing the accounts for the assessment year 1968-69, a sum of Rs. 16,00,000 was withdrawn from the reserve of Rs. 35,00,000 and utilised for payment of dividends. For the reserve of Rs. 19,00,000 left for the assessment year 1966-67, the company was entitled to development rebate of Rs. 25,33,333 only. The development rebate granted was therefore in excess to the extent of Rs. 19,38,048. This resulted in short levy of tax of Rs. 10,65,920 for the assessment year 1966-67.

The Ministry have accepted the objection in principle (February, 1975).

(b) An assessee company had returned a loss of Rs. 20,32,476 for the assessment year 1968-69. During this year and in the earlier two years, the company had installed some machinery but had not claimed any development rebate in respect of that machinery as it had not created development rebate reserve due to losses suffered by it. The loss returned by the company was converted into profit by the Income-tax Officer

and the assessment was completed by him on 28th February, 1972 on an income of Rs. 28,58,840. After the completion of the assessment, the assessee company created the necessary reserve in the accounts of 1971-72 and requested the Income-tax Officer to allow the development rebate by re-opening the assessment under section 154 of the Act. The Income-tax Officer, accordingly, revised the assessment and allowed the assessee company a development rebate of Rs. 10,66,822.

It was pointed out in audit that the order passed by the Income-tax Officer was irregular as it was not a case of mistake apparent from record to be rectified by him under section 154 of the Act and that the assessee was not entitled to the development rebate as the reserve had not been created by the company before the completion of the original assessment as required under the Act.

The wrong allowance of development rebate resulted in under-assessment of tax of Rs. 5,86,752.

No sur-tax proceedings were initiated by the department. The sur-tax payable by the company amounts to Rs. 1,06,105.

The Ministry have accepted the above position in principle (February, 1975).

(iv) If any machinery or plant on which development rebate was allowed in any earlier assessment is sold or transferred before the expiry of eight years from the end of the previous year in which it was installed, the development rebate so granted should be deemed to have been allowed wrongly and the total income should be recomputed withdrawing the development rebate originally allowed. The word "transfer" as used in the Act for the purpose is wide enough to include both permanent and temporary transfer and does not necessarily imply that there should be a change and/or loss of ownership of the machinery or plant.

(a) During the assessment years 1960-61 to 1966-67 a company was allowed development rebate of Rs. 7,96,640 on plant and machinery which along with marketing facilities and other installation were let on hire during the previous years relevant to the assessment years 1967-68 to 1972-73 when the only income of the company from rentals of these assets was assessed under "other sources". As the plant and machinery were transferred within the prohibited period, the income for the assessment years 1960-61 to 1966-67 was required to have been re-computed withdrawing the total development rebate of Rs. 7,96,640. But this was not done resulting in under-assessment of income for each of the assessment years with consequent tax under-charge aggregating Rs. 5,25,344.

While not accepting the position, the Ministry have stated (January, 1975) that the assessee had merely given the plant and machinery in question on hire and had not transferred the same.

(b) During the previous year corresponding to the assessment year 1970-71, a company sold out its plant and machinery on which development rebate of an aggregate amount of Rs. 2,00,282 had been allowed during the years 1962-63 to 1967-68 and 1969-70. As the plant and machinery were sold out within the prohibited period, development rebate of of Rs. 2,00,282, originally allowed, was required to be withdrawn. This was, however, not done by the department. The resultant under-charge of tax was Rs. 1,15,275.

While accepting the mistake, the Ministry have intimated (January, 1975) that as a result of rectification additional demand of Rs. 1,15,275 has been raised and collected.

(v) In the case of an assessee, depreciation of factory buildings with asbestos roofing was allowed at the rates applicable to Class I buildings for the assessment year 1970-71, though the assessee had claimed the higher rates applicable to Class II

buildings. For the assessment years 1971-72 and 1972-73, depreciation was, however, allowed at the higher rates applicable to Class II buildings as claimed by the assessee. The total excess depreciation allowed on this account for both the years was Rs. 6,90,372 and the short levy of tax was Rs. 3,84,696.

Final reply from the Ministry is awaited (March, 1975).

(vi) The loss of an assessee for the assessment year 1963-64 was assessed more by Rs. 2.91 lakhs by allowing deduction for depreciation of Rs. 5.82 lakhs instead of Rs. 2.91 lakhs admissible under the provisions of the Act.

The mistake has been accepted by the Ministry and rectified under section 154 of the Act (December, 1974).

19. *Irregular exemptions or excess reliefs given*

(i) Paragraph 46(a) of the Audit Report (Civil) on Revenue Receipts, 1968 had pointed out 3 cases where the value of fixed assets under construction, machinery awaiting installation and unused machinery, had been wrongly taken into account in the computation of capital employed for the purpose of exemption from tax upto 6 per cent per annum of the capi[illegible]loyed in newly established industrial undertakings.

Such erroneous computation of income does not still seem to have been discontinued altogether. For example, in three cases for the assessment years 1964-65, 1966-67, and 1971-72, the assessments of which were completed in March, 1969 (revised in May, 1972), May, 1970 and November, 1972 respectively, the value of such assets viz. building under construction, uninstalled plant and machinery and stores and spares in transit, was included in determining the capital employed. This resulted in excess relief with consequent under-assessment of tax of Rs. 1,05,740. In one case involving tax of Rs. 26,670 the rectification of the mistake had become time-barred.

Final reply of the Ministry is awaited (March, 1975).

(ii) (a) Under section 80-J of the Income Tax Act, 1961, while computing the income of an assessee, the profits and gains attributable to new industrial undertakings can be allowed as a deduction upto a maximum of 6 per cent of the capital employed subject to certain conditions. Sub-section 3 thereof stipulates that the profits and gains of new industrial undertakings included in the total income is to be computed in accordance with the provisions of the Act without applying the provisions of section 64 and Chapter VI-A of the Income-tax Act, 1961. The consensus of judicial opinion in the matter leads to the following guide lines : (1) in the case of any assessee managing more than one industrial undertaking, each undertaking should be treated separately for the purpose of relief under section 80-J, separate records of depreciation, development rebate and losses brought forward being maintained ; (2) the profits and gains of the new units should be computed in the normal manner by applying sections 28 to 43 for allowance of relief under the section; (3) where there is unabsorbed depreciation and loss in the new undertaking carried forward from earlier years, the depreciation and loss will have to be set off before determining the extent of deduction that can be allowed in the assessment year. It is thus established that a notional assessment to determine the relief admissible under section 80-J to a new unit has to be carried out.

A new unit belonging to an assessee company started production in the previous year relevant to assessment year 1967-68; relief under section 80-J was allowed to this unit from assessment year 1967-68 onwards. Since the assessee did not have sufficient income to absorb the deductions fully the actual deductions under Section 80-J(3) were allowed as under :—

Assessment year 1969-70	Rs. 8,12,352
Assessment year 1970-71	Rs. 13,85,042

No separate assessment of the new unit was, however, made before allowing these deductions, which were allowed against the total assessed income of the assessee which included income from old units also for these assessment years. Had the income of the new unit been computed separately from assessment year 1967-68 onwards after adjustment of the loss carried forward, unabsorbed development rebate and depreciation, there would have been no positive income even at the close of the previous year relevant to the assessment year 1970-71, but only accumulation of unabsorbed depreciation, development rebate and loss carried forward to the extent of Rs. 13,15,449.

As the new unit had not made any profits in assessment year 1969-70 and 1970-71, allowance of the deduction under section 80-J in the assessment of these two years resulted in under-assessment of income of Rs. 21,97,394 and short levy of tax of Rs. 12,08,511.

For the levy of sur-tax, the chargeable profits of the assessee for the assessment year 1969-70 were computed at a loss of Rs. 60,426 on the basis of the assessed income. As the deduction of Rs. 8,12,352 allowed to the assessee under section 80-J was not admissible and hence the assessed income would be enhanced to that extent, the chargeable profits would increase by Rs. 3,65,559 and work out to a positive figure of Rs. 3,05,133. Sur-tax leviable on this sum would be Rs. 76,283 approximately. Further, an amount of Rs. 75,32,689 shown as long-term loans obtained by the company from a bank was considered as capital under rule 1(5) of the second schedule to the Companies (Profits) Sur-tax Act, 1964, and interest paid thereon was added back. However, since all the conditions specified in rule 1(5) had not been satisfied, the loan should not have been treated as capital. This resulted in under-assessment of chargeable profits by Rs. 55,627 and short levy of tax by Rs. 13,907.

Reply from the Ministry is awaited (March, 1975).

(b) From the assessment year 1967-68, new industrial undertakings incurring losses or earning insufficient profits are allowed to carry forward the deficiency on which tax-holiday concession is provided. For computation of capital of the new undertakings, the Income-tax Rules provide for deduction from the value of the assets employed therein of any borrowed money or debts due by the person carrying on the business. While computing capital employed in a new industrial undertaking, debts due by an assessee company were not deducted from the value of the assets employed in all the four units of the undertaking. This omission caused excess computation of capital employed in the undertaking to the extent of Rs. 28,76,699 leading to excess allowance of relief of Rs. 1,72,600. As the available profits in respect of two units were insufficient to absorb the relief allowed, the error resulted in excess carry forward of deficiency of Rs. 68,553 and tax under-charge of Rs. 57,226 (at 55 per cent on Rs. 1,04,047) for the assessment year 1967-68.

The Ministry have accepted the objection in principle (January, 1975).

(c) In the case of another company, for the assessment years 1969-70, 1970-71 and 1971-72 reliefs of Rs. 43,683, Rs. 1,28,818 and Rs. 2,72,207 including Rs. 50,301 carried forward from the previous year were allowed in respect of one of its newly established industrial units. But as the company did not derive any profits from this unit during the assessment years 1969-70 and 1970-71, no relief was allowable for these years and for the assessment year 1971-72 it was entitled to relief to the extent of the available profit of Rs. 72,565 only. The allowance of inadmissible reliefs resulted in under-assessment of income by Rs. 43,683, Rs. 1,28,818 and Rs. 1,99,642 with consequent tax under-charge of the aggregate amount of Rs. 2,40,264 for the three assessment years.

The Ministry have accepted the above position. The assessments are stated to have been rectified and an additional demand of Rs. 2,40,264 raised.

(d) Three companies were granted tax exemption for the assessment year 1957-58 and the following years for the new industrial undertakings set up by them. The companies were granted tax exemption again in the assessment for the assessment years 1967-68 to 1970-71 to the extent of Rs. 43,64,809 on the ground that there was substantial expansion of the industrial undertakings. The companies having already been given the tax exemption for the industrial undertakings in the initial assessment year 1957-58 and the following assessment years, they were not eligible for the tax relief in respect of the same industrial undertakings for the periods falling beyond the initial five years. The grant of tax relief on grounds of substantial expansion was not in conformity with the provisions of the Act. The incorrect grant of relief to the three companies for the assessment years 1967-68 to 1970-71 involved tax revenue of Rs. 24,00,000 (approximately).

Final reply from the Ministry is awaited (March, 1975).

(iii) Where the gross total income of an assessee includes any profits and gains attributable to any priority industry, a deduction equal to 8 per cent of such profits and gains is allowable in computing the total income of the assessee.

(a) An assessee manufacturing humidifiers and their spare parts was allowed such deduction classifying his industry under item 4 of the Fifth/Sixth Schedule of the Act. Item 24 of Schedule I of the Industries (Development and Regulation) Act, 1951 which pertains to this item specifically includes only textile machinery such as spinning frames, carding machines, power-looms and the like and their spare parts as priority industries. The humidifiers manufactured by the assessee are gereral purposes machinery which are used not only in the textile industry but in other industries where controlled conditions of humidity are required. This was also borne out by the pamphlet published by the assessee describing the equipment, as also a reference made in an appellate order for the assessment years 1968-69 to 1971-72.

The humidifiers, therefore, would not seem to be covered by item No. 4 of the Fifth/Sixth Schedule and the deduction would not be allowable.

Irregular allowance calculated on the basis mentioned above, resulted in short levy of tax to the extent of Rs. 3,06,909 for the assessment years 1966-67 to 1971-72.

The Ministry have not accepted the above position on the ground that the humidifiers fall in the category of textile accessories (January, 1975). However, note was not taken of the fact that the assessee itself had contended before the Central Excise authorities that the humidifiers manufactured by it were of use in various industries and not meant exclusively for textile units.

(b) In another case an assessee company, manufacturing gasket-sheetings used in the manufacture of automobile gaskets claimed and was allowed the deduction attributable to profits from priority industries, on the ground that the item manufactured by the company is an "automobile ancillary" listed in the Schedule to the Income-tax Act, 1961. As the article manufactured by the company was not by itself an auto-ancillary, but only an intermediate product used by actual manufacturers of auto-ancillaries, the allowance of the aforesaid deduction was incorrect. This led to an aggregate underassessment of income of Rs. 4,46,777 in assessment years 1967-68 to 1971-72.

The total short levy of income-tax amounted to Rs. 2,44,404.

The Ministry have accepted the mistake. (February, 1975). Further report regarding rectification is awaited. (March, 1975).

(iv) A domestic company carrying on hotel business is entitled to various types of concessions, such as, grant of development rebate on new plant and machinery at higher rates deduction of certain percentage of profits derived from hotel business and tax-holiday benefits, provided, the company is one approved by the Central Government in this behalf.

(a) In the case of a company running a hotel, the concessions as mentioned above were allowed in the assessments for the assessment years 1967-68 to 1969-70 and 1971-72. Since approval of the Central Government had not been accorded for extending the concessions under the Income-tax Act, it was pointed out in October, 1972 that the assessee was not entitled to the concessions. The incorrect extension of the concessions to the assessee resulted in short levy of tax of Rs. 80,288 for the three assessment years 1967-68 to 1969-70. Accepting the mistake the department revised the assessments in February and March, 1974 raising additional demand of Rs. 80,288. For the assessment year 1971-72 the department reported that there was no tax effect as the total income was nil.

(b) In another case, on the basis of the recommendations of the Hotel Review and Survey Committee, the Ministry of Tourism, issued orders in August, 1969 fixing the star category of three hotels owned by a company. The Income-tax Department construed this order as the approval of the Central Government under the Income-tax Act and allowed the concessions mentioned above for the assessment years 1968-69 to 1972-73. In the absence of a specific approval of the Central Government, the concessions allowed were not in order. There was, thus, an incorrect allowance resulting in under-assessment of tax of Rs. 2,71,600.

The Ministry have not accepted the objection on the ground that the assessee had since obtained a letter dated 12-7-1974 from the Department of Tourism, "which makes it clear that the three hotels run by the assessee company have been approved for and from the assessment year 1968-69" for the purpose of the aforesaid tax concessions.

(v) Profits and gains derived from shipping business are entitled to deduction (in computing the business income) upto a maximum of six per cent per annum on the capital employed in the business. The relief is not available to other incomes though they might constitute business income.

In the assessment of a shipping corporation for the assessment year 1971-72 completed in February, 1974 in computing the income from shipping business a sum of Rs. 2,83,506 representing interest earned on balance outstanding with a foreign company was included on the ground that the income in question was part of business income. As the interest income was only incidental or ancillary to the main business (*i.e.* shipping), inasmuch as the same was not derived from shipping business but out of extending credit facilities to the customer, it was pointed out in June, 1974 that the inclusion of the interest income was not in order and the incorrect relief resulted in under-assessment of income-tax of Rs. 1,55,930.

Final reply from the Ministry is awaited (February, 1975).

(vi) Where the gross total income of a company includes dividends received by it from an Indian company, the Income-tax Act allows a partial deduction in respect of such dividend income. In computing this deduction any dividends attributable to the tax-free profits of a new industrial undertaking are not to be taken into account as these are deductible in full under a separate provision of the Act. In one case for the assessment year 1968-69, while allowing a full deduction of Rs. 1,51,240 in respect of dividends attributable to tax-free profits of an industrial undertaking, the Income-tax Officer failed to revise the deduction already allowed in respect of inter-corporate dividends inclusive of the said amount of Rs. 1,51,240. This resulted in under-assessment of income to the extent of Rs. 90,744 and short levy of tax of Rs. 58,970.

The mistake has been accepted by the Ministry (January, 1975). Further report regarding rectification is awaited (March, 1975).

(vii) The deductions allowed from the gross total income are subject to the condition that the aggregate amount of such deductions should, in no case, exceed the gross total income.

The total income assessable for assessment year 1968-69 and 1969-70 of a company was a "net loss" as the business loss of Rs. 7,78,724 and Rs. 6,93,320 far exceeded its dividend income of Rs. 1,75,379 and Rs. 27,710 respectively. The gross total income being thus a loss, no relief by way of deduction was admissible. However, the assessing officer allowed deduction of Rs. 1,05,227 and Rs. 16,626 in these two assessment years on account of inter-corporate dividends, at the rate of 60 per cent of the dividend income. This inadmissible deduction resulted in the business loss being computed in excess by Rs. 1,21,853 for being carried forward for set-off in future years.

The Ministry have accepted the mistake and have intimated that necessary rectificatory action has been taken (January, 1975).

(viii) Under the Income-tax Act, 1961 as it stood prior to its amendment from 1-4-1971, the income of a charitable trust which is not applied to charitable purposes in the year but accumulated for application to such purposes in future years is allowed exemption only under certain conditions. One of the conditions is that the money so accumulated should be invested in Government securities or securities approved by the Government.

In the assessment of a charitable trust, the entire income from the trust was allowed exemption for the assessment years 1965-66, 1966-67, 1968-69 and 1969-70 though the accumulated income had not been invested in the prescribed manner. The irregular exemption resulted in an under-assessment of tax of Rs. 42,763 for the above assessment years.

The Ministry have accepted the mistakes for the assessment years 1968-69 and 1969-70 and have intimated (February, 1975) that the assessments for 1965-66 and 1966-67 were cancelled by the Appellate Assistant Commissioner. The matter is now stated to be before the Supreme Court.

20. *Incorrect grant of export incentives*

As an incentive to the development of export markets for Indian goods on a long-term basis the Finance Act, 1968 introduced section 35-B in the Income-tax Act, 1961 with effect from 1st April, 1968 providing for a weighted deduction, in determining the taxable income from business, of one and one-third times the actual expenses incurred after 29th February, 1968 by domestic companies and other non-corporate tax payers resident in India, to promote the sale outside India, of any goods, services or facilities dealt in or provided by them in the course of their business. While introducing the provision, the Finance Minister had stated :

> "As part of the measures designed primarily to assist export promotion,..... I propose also to provide for the grant of an Export Markets Development Allowance to tax payers other than foreign companies at the rate of one and one-third of the revenue expenditure incurred for the development of export markets".

The expenditure qualifying for the weighted deduction is that incurred by the assessee on a long-term basis wholly and exclusively on certain specified activities exercised outside India. The activities specified include, *inter alia,* distribution, supply or provision outside India, of such goods, services or facilities and maintenance outside India of a branch office or agency for the promotion of the sale outside India of such goods, services or facilities.

The concession was intended, primarily, for development of export markets. Its benefit, however, was obtained also by certain assessees who had not exported any goods or services but who by the nature of the operations of their business were

operating in foreign stations long before the new section came into force.

(a) Thus in the case of an air transport company, the weighted deduction was allowed in the assessment year 1970-71 in respect of commission paid to other international airlines for honouring the assessee company's tickets on sectors flown over their flights. The erroneous allowance resulted in excess computation of loss by Rs. 1,35,26,907.

(b) In the case of two companies carrying on the business of printing and publishing of newspapers, the weighted deductions amounting to Rs. 44,394 in one case for the assessment year 1969-70 and Rs. 2,93,099 in the other case for the assessment years 1969-70 to 1971-72 were allowed in respect of the expediture incurred on the maintenance of sale-cum-editorial offices abroad for sales of publications, booking of advertisements and collection of articles, news items etc. for publication. The deduction in the second case resulted in short levy of tax of Rs. 1,74,290.

(c) In the case of four textile companies, the weighted deduction of Rs. 9,12,998 was allowed in various assessment years from 1970-71 to 1973-74 in respect of commission paid to agents in foreign countries out of the sale proceeds of traditional cloth exports. These deductions resulted in short levy of tax of Rs. 5,27,018.

Final reply from the Ministry is awaited (March, 1975).

21. *Incorrect computation of Corporation Tax*

An investment company means a company whose gross income consists mainly of income which is chargeable under the heads "interest on securities", "income from house property",

"capital gains" and "income from other sources". Under the provisions of the Income-tax Act, 1961 an investment company should distribute 90 per cent of its distributable income as dividends to its shareholders and the omission to comply with the requirements of the law would entail levy of additional tax at the rate of 50 per cent of the distributable income as reduced by the amount of dividends actually distributed.

A company derived income of Rs. 3,48,990 from the sources, income from house property, income from other sources and capital gains and a sum of Rs. 2,96,734 from business for the assessment year 1969-70, the assessment of which was completed in November, 1969. In his order dated 3rd April, 1971 under section 264 of the Income-tax Act, 1961 the Additional Commissioner of Income-tax had also confirmed the assessment on a revision petition filed by the assessee. As the company was an investment company, it should have distributed a sum of Rs. 2,79,310 as dividends to its shareholders. The company actually distributed a sum of Rs. 1,90,000 only as dividends and the Income-tax Officer did not consider levy of additional tax on the ground that the assessee had distributed dividends in excess of the prescribed limit of 60 per cent of the distributable income in his orders of September, 1970. The Income-tax Officer, however, overlooked the fact that the assessee was an investment company and the statutory percentage prescribed for distribution of dividends was 90 per cent and not 60 per cent. As the dividends distributed fell short of 90 per cent of the distributable income viz. Rs. 2,79,310 the assessee would become liable for levy of additional tax of Rs. 60,172.

While accepting the objection, the Ministry have informed (February, 1975) that additional demand of Rs. 60,172 has been raised and collected.

22. *Mistakes committed while giving effect to appellate orders*

(i) The assessment of a company for assessment year 1966-67 was completed in March, 1970. This assessment was set aside

by the Appellate Assistant Commissioner in January, 1971. While giving effect to the orders of the Appellate Assistant Commissioner in February, 1971, tax to the tune of Rs. 47,966 paid in July, 1970 by the assessee was refunded. However, in the fresh assessment made, giving effect to the orders of the Appellate Assistant Commissioner, the credit for Rs. 47,966 already refunded was again given inadvertently. This resulted in an excess refund of Rs. 47,966.

The Ministry have replied (December, 1974) that as a result of rectification the additional demand of Rs. 47,966 has since been collected.

(ii) A company had paid advance tax of Rs. 95,327 for the assessment year 1969-70. The regular assessment of the company was completed on 31st March, 1970 determining the tax payable at Rs. 92,092 and the excess amount of advance tax of Rs. 3,235 was refunded. On appeal, the Income-tax Officer's order of assessment dated 31st March, 1970 was set aside with a direction that the assessment be made afresh.

While giving effect to the appellate orders, the assessing officer inadvertently refunded the tax of Rs. 92,092 determined on original assessment, even though this amount represented advance tax for the assessment year 1969-70. This resulted in an irregular refund of Rs. 92,092.

The Ministry have not accepted (January, 1975) the above position on the ground that the refund vouchers were not actually issued but were cancelled and placed on record. In fact, the refund vouchers were cancelled after the mistake was pointed out by audit.

(iii) In the case of a company, the Appellate Assistant Commissioner had ordered in appeal that for the assessment years 1966-67 and 1967-68, deductions of Rs. 3,09,436 and Rs. 3,23,800 respectively should be given on account of liability for bonus for the accounting years 1965 and 1966, which had

originally not been allowed by the department, on the ground that neither any provisions for payment of bonus nor any payment was made in the relevant accounting years.

However, while giving effect to the Appellate Assistant Commissioner's orders for these two years, inadvertently the deductions allowed in assessment years 1967-68 and 1968-69, on the basis of actual payments to the extent of Rs. 3,05,908 and Rs. 3,23,800 respectively for these two accounting years were not withdrawn. This led to a total short levy of tax of Rs. 3,46,339 in these two assessment years.

The Ministry have accepted the mistake and rectificatory action has been taken (February, 1975). Report regarding collection of tax is awaited.

23. *Income escaping assessment*

Under the provisions of the Income-tax Act, 1961, all income accruing or arising, whether directly or indirectly through or from any business connection in India shall be deemed to accrue or arise in India. In the case of a non-resident, however, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to purchases of goods in India for the purpose of export. It was, however, noticed that, in the case of a non-resident sterling company, which, through its statutory agents in India, purchased tobacco, got it processed in India, sold part of the processed tobacco in India and exported the balance outside India, the income arising out of sales of tobacco in India was alone returned by the company and brought to assessment from the assessment year 1964-65. When the omission to tax the income arising out of sales outside India was pointed out, the department contended that such income was not taxable after the amendment of the Act from 1st April, 1964 deleting the clarification that the aforesaid exemption in the case of a non-resident should not be allowed if the non-resident had an office or agency in India for the purpose of buying and export

and the goods are subjected to any kind of manufacturing process before being exported from India. However, the exemption, even after amendment, is confined to the income arising through or from operations which are confined to the purchase of goods in India for the purpose of export. Since, in the present case, the raw tobacco purchased in India was subjected to considerable manufacturing processes in India and sold in U.K. in the same condition without any further processing, the exemption would not be admissible and part of the income arising from the sales outside India would reasonably be attributable to the operations carried out in India (this proportion was held to be 50% by the assessing authority till the assessment year 1963-64). The omission to bring such income to tax resulted in under-assessment of income of Rs. 6,96,444 with a tax effect of about Rs. 5 lakhs for the assessment years 1968-69 to 1971-72 alone. There would be similar escapement for the other assessment years from 1964-65.

Final reply from the Ministry is awaited (March, 1975).

24. *Non-levy or short levy of interest*

The Income-tax Act, 1961 provides for the levy of interest in the event of non-payment or short payment of advance tax or any tax, interest, penalty, fine etc. payable under a notice of demand from the Income-tax Officer. In the following four cases a short levy of such interest amounting to Rs. 7,51,810 was noticed.

(i) Where a person has already been assessed for an earlier year, the advance tax payable is determined and demanded by the department. The assessee, has, however, the option to pay a lesser amount, if, in his estimate, the current income and the advance tax payable thereon, would be less than the demand.

If the advance tax paid exceeds the tax payable on the income shown in the return filed by the assessee, and if the regular assessment is likely to be delayed, a provisional assessment

can be made at the request of the assessee and the excess advance tax refunded. Where, however, the advance tax paid on the basis of the assessee's own estimate falls short of 75 per cent of the tax determined on regular assessment, the assessee is liable to pay interest on the amount of the deficiency for the period from 1st April of the assessment year to the date of regular assessment.

(a) A company estimated the advance tax payable by it during 1968-69 for the assessment year 1969-70 at Rs. 2,43,750 against Rs. 7,46,712 demanded by the department. As tax was not payable as per the returns filed by the company, a provisional assessment was made on 13th April, 1970 and the advance tax of Rs. 2,43,750 was refunded to the company. On completion of the regular assessment on 30th March, 1972, the tax payable was determined as Rs. 13,39,713. As the advance tax paid by the company on the basis of its own estimate fell short of 75 per cent of the final tax determined, interest was levied taking the deficiency as Rs. 7,61,035 (Rs. 10,04,785—Rs. 2,43,750) for the entire period from 1st April, 1969 to 30th March, 1972. As the advance tax paid by the company was already refunded in full on the basis of the provisional assessment made on 13th April, 1970, it was pointed out in August, 1973, that the interest for the subsequent period i.e. from 14th April, 1970 to 30th March, 1972 should have been levied on the sum of Rs. 10,04,785 which represented the deficiency for the above period. The mistake resulted in short levy of interest of Rs. 42,400.

The Ministry have not accepted the above position and have contended that there is no provision in the Act to deduct from the advance tax paid by an assessee any sum that may be refunded to him on a provisional assessment. They have further

stated that the lacuna in the provisions of the Act brought to light by the above objection is being examined (February, 1975). In audit's view there is no lacuna in law, when section 215 is read with section 141-A of the Income-tax Act, 1961.

(b) A person who has not been previously assessed by way of regular assessment is required to file an estimate of the advance-tax payable by him and pay such amount of advance tax, as accords with his estimate. The Act also provides that such estimate shall be filed before the date on which the last instalment of advance tax is due (which in this case was 15th December, 1970). Omission to file an estimate renders the person liable for payment of penal interest at prescribed rates.

A company, which had not been assessed previously, filed an estimate of advance tax payable by it in respect of the assessment year 1971-72 on 15th March, 1971 and paid a sum of Rs. 14,00,000 in accordance with such estimate. On regular assessment completed in January, 1972 this sum of Rs. 14,00,000 was treated as "advance tax" and no penal interest was levied. As the amount of Rs. 14,00,000 was not paid with reference to any legally valid estimate (the one filed on 15th March. 1971 being belated), penal interest of Rs. 3,70,006 was correctly leviable. This was not levied.

The Ministry have partly accepted the objection (January, 1975).

(ii) Under the Income-tax Act, 1961, an assessee is required to pay tax demand within 35 days from the date of receipt of the demand notice. Failure to do so renders him liable to interest at the specified rate.

(a) A company failed to pay tax demand of Rs. 18,51,037 for the assessment year 1967-68 within the sta-

tutory period and was, therefore, liable to pay interest of Rs. 2,48,293 for the period of default from 29th September, 1971 to 26th December 1972. But no interest was charged by the department.

(b) In another case a company served with a notice on 27th March, 1971 did not pay the tax demand of Rs. 4,49,930 for the assessment year 1966-67 till 23rd July, 1973 when the department allowed it to make the payment of tax by instalments. Interest of Rs. 91,111 was therefore chargeable in respect of the unpaid tax demand for the period ended 31st March, 1973 for which no demand was raised by the department.

The Ministry in their reply (February, 1975) have stated that in consequence of rectification in the case of (a) interest of Rs. 2,48,293 has since been collected. The mistake in the case of (b) has also been accepted (January, 1975) by the Ministry in principle.

25. *Avoidable/incorrect payment of interest by Government*

Under the Income-tax Act, 1961, where the advance tax paid by an assessee during a financial year exceeds the amount of tax payable as determined on regular assessment, the Government is liable to pay interest at the prescribed rate on the amount of advance tax paid in excess for the period from 1st April next following the financial year to the date of regular assessment, provided that in respect of any amount refunded on provisional assessment, no interest shall be paid for any period after the date of such provisional assessment.

(i) (a) A company, whose previous year (relevant to the assessment year 1971-72) ended on 31st December, 1970, paid advance tax in full, as demanded by the department, before the

prescribed due date *viz.* 15th December, 1970. Thereafter the company filed an estimate in February, 1971 and paid a further instalment of advance tax of Rs. 9,51,709 according to this estimate. On regular assessment, this amount was refunded to the company as "advance tax" paid in excess and interest of Rs. 17,823 was also allowed thereon. The payment of interest on the refund of Rs. 9,51,709 was not in order, as this amount was not paid by the company with reference to any legally valid estimate of advance tax under section 212 of the Income-tax Act, 1961, as the one filed in February, 1971 was belated. This resulted in an irregular payment of interest of Rs. 17,823.

(b) In the assessment of another company for the assessment year 1965-66, owing to the incorrect application of the provisions of law relating to payment of interest on advance tax, interest amounting to Rs. 1,00,006 was paid in excess.

While accepting the mistakes the Ministry have stated (December, 1974 and February, 1975) that the additional demands of Rs. 17,823 and Rs. 1,00,006 have been collected.

(c) In another case an assessee company fi ... return of income for the assessment year 1965-66 on 29th October, 1965 declaring a loss of Rs. 27,72,031. The company had paid an advance tax of Rs. 5 lakhs in respect of that assessment year. The regular assessment was concluded on 25th March, 1970 determining the loss at Rs. 27,34,309 and the advance tax of Rs. 5 lakhs paid by the assessee was refunded together with interest under section 214, amounting to Rs. 1,86,874. Though the assessee had written to the department on 22nd April, 1966 and 23rd August, 1968 to complete the assessment early and to refund the advance tax paid by it, a provisional assessment was not made as laid down in section 141-A of the Income-tax Act, 1961. The omission to make a provisional assessment, resulted in avoidable payment of interest to the extent of Rs. 71,200.

The Ministry have accepted the above position (January, 1975).

(ii) Section 244 of the Income-tax Act, 1961 provides for payment of interest by the Central Government, to an assessee where refund of tax, due in consequence of appellate orders, is not paid within six months of the receipt of such orders. Apparently to save avoidable payment of interest, the Board had stipulated in their Circular No. 20 (LXXVI-42) D of 1962 dated the 18th July, 1962, that in such cases, the Income-tax Officer should dispose of the refund case within a fortnight of the date of receipt of appellate orders.

An assessee became entitled to refund of tax (aggregating Rs. 4,88,155) pertaining to five assessment years due to the appellate orders passed on various dates between 25th March, 1969 to 15th February, 1971. The Income-tax Officer disposed of the refund cases only on 24th January, 1972 and the assessee was paid interest of Rs. 66,988 under section 244 of the Act. Had the Income-tax Officer taken action within a fortnight or at least within the period of six months allowed in the Act, the payment of interest of Rs. 66,988 could have been avoided.

The Ministry have accepted the above position (January, 1975).

26. *Irregular refund*

The Supreme Court held in a case in May, 1964 that the income of the Nidhis, permanent funds and institutions carrying on similar activities is taxable. The Central Board of Direct Taxes issued a Press Notification in May, 1965 deciding as a special case not to re-open the assessments completed prior to the assessment year 1964-65. The Board's instructions did not cover cases in which assessments for years earlier to 1964-65 had already been completed and were in accordance with the correct legal position and tax dues had also been collected.

A company carrying on the nidhi business claimed exemption for the income from business for the assessment years 1960-61 to 1963-64. Rejecting the assessee's claim the Income-tax Officer completed the assessments for the four assessment years in October, 1960, August, 1961 and December, 1964 and raised a demand of tax of Rs. 62,150. The demands were also paid by the assessee.

The appeals preferred by the assessee against the assessments for all the four assessment years 1960-61 to 1963-64 were rejected by the Appellate Assistant Commissioner. The assessee filed a revision petition before the Commissioner of Income-tax in October, 1966 for the two assessment years 1960-61 and 1961-62. The Commissioner in his orders of February, 1967 accepted the claim and ordered for the refund of the tax already collected. Similarly, on a revision petition filed in October, 1967 in respect of the assessment years 1962-63 and 1963-64, the Commissioner ordered the refund of the tax already collected in October, 1968. Consequently, the entire tax demand of Rs. 62,150 collected from the assessee was refunded.

The refund was neither in accordance with the law as enunciated by the Supreme Court nor in accordance with the instructions issued by the Central Board of Direct Taxes in their Press Notification of May, 1965.

Final reply from the Ministry is awaited (March, 1975).

SUR-TAX

27. Sur-tax is leviable on the amount by which the 'chargeable profits' of a company exceed the statutory deduction which is an amount equal to 10 per cent of the capital of the company or an amount of Rs. 2 lakhs, whichever is greater.

During the period under review under-assessment of sur-tax of Rs. 64.36 lakhs was noticed in 110 cases. A few illustrative cases are mentioned in the following paragraphs :—

28. (i) Under rule 4 of the Second Schedule to the Companies (Profits) Sur-tax Act, 1964 where a part of the income, profits and gains of a company is not includible in its total income as computed under the Income-tax Act, its capital shall be the sum ascertained in accordance with rules 1, 2 and 3, diminished by an amount which bears to that sum the same proportion as the amount of the aforesaid income, profits and gains bears to the total amount of its income, profits and gains.

(a) In the case of an assessee, the income under the Income-tax Act for the assessment year 1968-69 was computed, after allowing the deductions admissible under sections 80I and 80J of the Act. Hence from the capital base computed under rules 1, 2 and 3 of the Second Schedule to the Companies (Profits) Sur-tax Act, a proportionate amount as required under rule 4 should have been deducted. Omission to do so resulted in under-assessment of chargeable amount to the extent of Rs. 6,88,094 and short levy of sur-tax of Rs. 2,40,832.

The Ministry have accepted the mistake (February, 1975).

(b) In three other company cases for the assessment years 1967-68, 1967-68 & 1968-69, and 1968-69, 1969-70 & 1970-71 respectively deductions of Rs. 4,43,689, Rs. 2,39,256, Rs. 6,26,772, Rs. 6,16,886, Rs. 7,42,291 and Rs. 3,12,598 were allowed in computing the total income but proportionate reductions were not made in the computation of capital base for the purpose of sur-tax assessment of the respective assessment years. The omissions resulted in a total short levy of sur-tax of Rs. 1,85,821.

The Ministry have accepted the omissions. Report regarding rectification and recovery is awaited (March, 1975).

(ii) Under the Companies (Profits) Sur-tax Act, 1964, profits chargeable to sur-tax are computed by deducting from

the total income, *inter alia,* an amount calculated at prescribed percentage of capital base which is computed on the basis of paid-up capital and reserves as on the first day of the previous year relevant to the assessment year. The Act also provides for increasing or decreasing the capital base proportionately according to enhancement or reduction of paid-up capital during the relevant previous year.

(a) In two cases during the assessment year 1967-68 and in another case during the assessment year 1970-71 the capital base computed for the purpose of allowing statutory deduction was proportionately increased by the department on account of issue of fully paid-up bonus shares during the relevant previous year out of reserves and/or share premium account. Since the increase of paid-up share capital was by way of transfer from reserves and share premium account to share capital, there was actually no effective increase in the capital base during the relevant previous years. Addition on account of proportionate increase in paid-up capital thus resulted in excess computation of capital base leading to excess allowance of statutory deductions by Rs. 4,14,466, Rs. 1,14,333 and Rs. 33,333 respectively. Consequent sur-tax undercharge amounted to Rs. 1,45,063, Rs. 40,017 and Rs. 8,333.

The Ministry have accepted the mistakes (January, 1975).

(b) In computing the capital for the purpose of standard deduction, moneys borrowed for the creation of a capital asset in India are included in the capital of the company.

A company purchased plant and machinery from its foreign collaborator on deferred credit basis. In the assessments of the company for the assessment years 1968-69 to 1972-73 while computing the capital of the company, the balance due to the foreign supplier in respect of supplies already made was included. It has been judicially held in October, 1964 that the outstanding balance due in cases of such purchase on deferred credit would

not amount to borrowal of money. Hence it was pointed out in audit in July, 1973 that the balance amount due to the foreign supplier was not to be reckoned in the capital of the company and that the incorrect inclusion resulted in under-assessment of sur-tax of Rs. 10,55,300.

Finaly reply from the Ministry is awaited (March, 1975).

(iii) Under the Income-tax Act when a trading liability is allowed for any assessment year in computing the income of an assessee, any remission thereof subsequently in cash or in any other manner is deemed to be profits or gains of the business chargeable to income-tax as income of the financial year in which the remission is made. It has been held judicially that when a competent authority issues orders fixing the liability of an assessee in a particular year an enforceable legal liability arises on and from the date of the orders and is a proper deduction in computing the income of that year if the assessee maintains accounts under the mercantile system. This position holds good even if an appeal has been filed by the assessee till the appeal is disposed of.

In the case of two sugar manufacturing companies deductions of Rs. 9,83,362 and Rs. 5,61,884 were allowed for the assessment years 1960-61 and 1961-62 as liabilities towards additional cane price payable to the sugar cane growers. In the assessment year 1966-67 the two companies claimed further deductions of Rs. 21,03,573 and Rs. 18,08,517 on the basis of the additional price payable to the growers as per the orders of the Sugar Cane Price Fixation Authority. These claims were not allowed on the ground that the assessees had not accepted the award of the Sugar Cane Price Fixation Authority but had approached the Government for reconsideration. Subsequently, in 1967 the Government fixed the additional price payable to the growers as Rs. 6,48,656 in the first case and Rs. 4,10,993 in the second case. The extra deductions allowed for the assessment years 1960-61 and 1961-62 to the extent of Rs. 3,34,706 and

Rs. 1,50,891 were then assessed to tax as income for the assessment years 1969-70 and 1968-69 respectively. It was pointed out in June, 1972 that the additional liabilities accrued on the orders of the Sugar Cane Price Fixation Authority to the extent of Rs. 21,03,573 and Rs. 18,08,517 should have been allowed for the assessment year 1966-67 as claimed and the extra amounts so allowed for the assessment years 1960-61, 1961-62 and 1966-67 as compared to the amounts based on the final orders of the Government *i.e.* Rs. 24,38,279 and Rs. 19,59,408 should have been assessed as income for the assessment years 1969-70 and 1968-69 respectively. The incorrect assessments resulted in short levy of sur-tax of Rs. 2,36,600 in the first case and Rs. 2,84,840 in the second case.

Final reply from the Ministry is awaited (March, 1975).

(iv) Interest payable on borrowed money which has formed part of capital base for purpose of sur-tax is to be included in computing the profits chargeable to sur-tax.

The rupee loan obtained by a company was treated as borrowed money and was accordingly included in the capital base for purpose of sur-tax assessments for 1965-66, 1966-67 and 1967-68. But interest amounts of Rs. 4,50,923, Rs. 4,50,000 and Rs. 2,02,368 paid on such loans by the assessee during the relevant previous years were not added back to the total income in determining the chargeable profits. As a result, the chargeable profits for the respective assessment year were under-assessed leading to total sur-tax undercharge of Rs. 3,95,164 for the assessment years 1965-66 to 1967-68.

While accepting the mistake, the Ministry have replied (January, 1975) that the additional demand raised as a result of rectification has since been collected.

29. (i) The chargeable profits of a company for the assessment year 1966-67 were computed at Rs. 5,07,123 on which sur-tax of Rs. 1,77,493 was leviable at the prescribed rate of 35 per cent. The department, however, incorrectly levied tax of Rs. 17,749 only resulting in short levy of Rs. 1,59,744.

The Ministry have accepted the objection and the assessment is stated to have been revised (January, 1975).

(ii) In the case of two companies assessed by the same Income-tax Officer, no action was taken to call for sur-tax returns for the assessment years 1969-70 and 1970-71 for which income-tax assessments were completed in September, 1969 and August, 1970 respectively. On the basis of the total income and the income-tax payable determined in these two cases, the sur-tax leviable amounted to Rs. 40,560.

The Ministry have accepted the mistake in principle (February, 1975).

(iii) Consequent on the revision of the income tax assessment of a company for the assessment year 1967-68, the sur-tax assessment of the company was also revised upwards in July, 1968. The balance sur-tax of Rs. 91,806 due was adjusted against a tax credit certificate granted to the company. However, when the income-tax assessment of the company for the assessment year 1967-68 was rectified in September, 1971, credit was given for a sum of Rs. 91,806 as for excess sur-tax paid by the assessee which did not, in fact, exist. This wrong adjustment resulted in the grant of excess credit to the extent of Rs. 91,806. The case had also been checked by Internal Audit.

The Ministry have replied (October, 1974) that the assessment in question has been revised and the additional demand of Rs. 91,806 collected.

30. **Over-assessments**

(i) Under the Finance Act, 1964, the rate of tax applicable to a company in which the public are substantially interested was less than that applicable to a closely-held company.

During the assessment year 1964-65, a company in which the public were substantially interested was taxed on an income of Rs. 57,71,710 from a specified priority industry included in its total income at the rate of 54 per cent as applicable to companies in which the public were not substantially interested instead of the correct rate of 45 per cent as applicable to the former type of companies. Application of incorrect rate resulted in tax overcharge of Rs. 5,19,454 for the assessment year 1964-65. On the other hand, additional tax of Rs. 3,27,600 leviable at the rate of 7.5 per cent by way of reduction of rebate on super-tax on account of dividend distribution of Rs. 43,68,000 was not levied by the department. There was thus a net tax overcharge of Rs. 1,91,854.

The Ministry have accepted the mistake (December, 1974). Further report regarding rectification and refund is awaited (March, 1975).

(ii) A financial corporation issued debenture bonds on discount in different years. The assessing officer allowed the loss on the issue of debentures to be capitalised and written off in subsequent ten years at the rate of ten per cent of the loss in each year. However, as the loss representing the discount was not attended with the acquisition of an asset or benefit of enduring nature, it could not be treated as capital expenditure. The Supreme Court had decided in 1966 that the expenditure incurred in issuing debentures was to be treated as business expenditure on revenue account. Due to the incorrect capitalisation of the expenditure, the taxable income of the assessee was over-assessed, during the assessment years 1965-66

CHAPTER III

INCOME TAX

31. Income-tax collected from persons other than companies is booked under the Major Head "IV-Taxes on income other than Corporation Tax". Under Article 270 of the Constitution, 75 per cent of the net proceeds of these taxes, except the tax attributable to Union emoluments, Union Territories and Union Surcharges, was assigned to the States upto the end of 1973-74, to give effect to the recommendations of the Fifth Finance Commission.

A test check of records relating to assessments of persons other than companies has revealed mistakes involving under-assessment of tax indicated in paragraph 9(i). Some instances of the various types of mistakes are given in the following paragraphs.

32. *Concealment of income by a family group of assessees—Voluntary disclosure—Settlement arrived at by the department.*

32.1. In August, 1962, the department received a complaint alleging that a family group of assessees were over-invoicing exports of textiles and making benami investments in various textile mills. In December, 1962, the department considered calling for a total wealth statement of the assessees with a view to investigating the complaint. The matter was not, however, pursued. On the 21st May, 1965 the Enforcement Directorate conducted a raid and seized certain documents relating to export of art-silk fabrics, ready made garments etc. from the said family group of assessees. On the 28th May, 1965 the family group and the concerns belonging to them made a "voluntary disclosure"

of undisclosed income of Rs. 25,92,500 for the periods upto 31st March, 1964 under the Voluntary Disclosure Scheme embodied in section 68 of the Finance Act, 1965 and made a part payment of tax amounting to Rs. 7.99 lakhs on 29th May, 1965.

32.2. The group were traditionally exporting fabrics to Ceylon and Far East. The Government of India announced various export promotion schemes for art-silk fabrics, ready made garments and handicrafts. These schemes allowed the exporters of these goods, incentive import licences, on the basis of their export performance, for the import of art-silk yarn and dyes for use in the manufacture of the exportable commodities. Under these schemes, this group of assessees obtained import licences of the value of Rs. 86.82 lakhs. These import licences were admittedly sold by the group though the books of accounts were so manipulated as to show that the art-silk yarn and dyes imported were utilised in manufacture. The disclosure petition mentioned above for the period upto 31-3-1964 showed an income of Rs. 21,92,500 from this illegal sale of licences and the balance Rs. 4 lakhs representing income from the sale of yarn. The amount of Rs. 25,92,500 was arrived at by first computing the total wealth of all the members of the family group and their trading concerns on 31st March, 1964 and the personal expenditure during the period from April, 1957 to March, 1964 as Rs. 1,10,09,605 and deducting therefrom Rs. 84,17,100 representing the opening capital in April, 1957, income already assessed, depreciation reserve created and development rebate allowed during the period and the outstanding liabilities on 31st March, 1964.

32.3. Considering the disclosure as inadequate, the department made investigations and the Income-tax Officer in May, 1967 reported that besides the disclosed income of Rs. 25,92,500, the family group, on the basis of figures and data available had concealed income of Rs. 63,65,023 (Rs. 21,80,804 upto 31st March, 1964 and Rs. 41,84,219 upto 31st March, 1967). The Inspecting Assistant Commissioner of Income-tax in his report of 3-6-1967 felt that on the basis of the market reports

for premia quoted on import licences, the short-fall in the disclosed income would be Rs. 91,48,737; while on the basis of investments it would be Rs. 63,65,023 (modified as Rs. 65,56,850 in October, 1967).

32.4. Finding that the department were making investigations to bring out further concealed income, the family group came forward with a settlement petition on 28th Octbore, 1967 offering a further sum of Rs. 5.50 lakhs to tax. This additional amount was raised to Rs. 11.60 lakhs in a subsequent petition dated 9th February, 1968 making up a total of Rs. 37,52,731 for the period upto 31st March, 1964. For the subsequent period from 1st April, 1964 to 31st March, 1967, the group offered in their petition dated 28th October, 1967 an amount of Rs. 22.75 lakhs besides share of profits of 5 export firms belonging to the group amounting to Rs. 5.01 lakhs. In June, 1969 the group revised these amounts of undisclosed income and share of profits in 5 export firms to Rs. 24.12 lakhs and Rs. 4.31 lakhs respectively. Thus the group disclosed in all for the period upto the assessment year 1967-68 concealed income of Rs. 61,64,387 besides Rs. 4,31,142 representing share of profits relating to the export firms for the period from assessment year 1965-66 to 1967-68.

32.5. The department arrived at two settlements with the group in April, 1968 (hereinafter referred to as first settlement) and March, 1970(hereinafter referred to as second settlement) for the said two periods taking the undisclosed income as Rs. 37,22,500 and Rs. 31,03,231 or a total of Rs. 68,25,731.

32.6. Of the import licences of Rs. 86.82 lakhs mentioned abovt, licences of art-silk yarn amounted to Rs. 82.13 lakhs, Rs. 62.79 lakhs for the period upto 31-3-1964 and Rs. 19.34 lakhs for the subsequent period. Licences for dyes obtained during the period upto 31-3-1964 made up the balance of Rs. 4.69 lakhs. Although the licences were meant for actual import and use for the manufacture, there was a market for the purchase of these import licences at a considerable premium which reportedly varied from 148 per cent to 330 per cent for art-silk

yarn and from 90 per cent to 220 per cent for dyes, the average quotations being 215 per cent and 146 per cent respectively. In May, 1967 the department itself found that the premia on the sale of art-silk licences varied from 234 per cent to 471 per cent giving an average of 352 per cent. Even adopting the lower averages, the profits on the sale of the aforesaid licences of the value of Rs. 86.82 lakhs would work out to Rs. 183.43 lakhs made up of Rs. 176.57 lakhs for art-silk yarn licences and Rs. 6.86 lakhs for dyes licences. As against this, the income actually brought to assessment was only Rs. 81.12 lakhs *i.e.* Rs. 64.26 lakhs in the two settlements and Rs. 16.86 lakhs earlier returned by the group during the years upto 1963-64.

32.7. Audit scrutiny of the settlements made by the department revealed a short assessment of as much as Rs. 94.96 lakhs (involving a tax effect of Rs. 83.08 lakhs) as indicated below.

In the first settlement for the period upto 31-3-1964, the computation of undisclosed income was based on an assessment of the total of net wealth as on 31-3-1964 and the outgoings for the period from 1-4-1957 to 31-3-1964 reduced by the total of the opening capital on 1-4-1957 and the income already assessed for the period from 1-4-1957 to 31-3-1964. In this computation the following omissions/mistakes were noticed :—

A. Assets not included in computing net wealth on 31-3-1964.

	Rs.
(*i*) Outstanding export bills of export concerns of the group	27.31 lakhs
(*ii*) Assets of 5 export concerns in which the group had family interest	11.57 lakhs
(*iii*) Investments, interests and assets in other family concerns	1.78 lakhs
(*iv*) Deduction allowed on account of foreign remittances without any evidence . . .	1.12 lakhs
(*v*) Part of profits on sale of silk yarn admittedly secreted through 6 concerns belonging to the group	Amount not known
(*vi*) The group had admittedly financed exports through 10 firms by advancing goods and cash. The commission received from these firms was taken into account. The advances outstanding on 31-3-1964 were not ascertained and added .	Amount not known

B. Liabilities wrongly allowed in the computation of net wealth on 31-3-1964.

	Rs.
(*i*) Reserves in firm's accounts wrongly allowed as liabilities	8.57 lakhs
(*ii*) Incorrect allowance for sales-tax liability on sale of licences	3.44 lakhs
(*iii*) Liabilities accepted without any supporting details	1.40 lakhs
C. Outgoings not taken into account :	
Insurance permia paid and expenditure on stamp paper brokerage etc. for creating bogus hundi loans not added	2.30 lakhs
D. Mistakes in comuptation of income already assessed	
(*i*) Mistakes in calculating income already assessed	3.39 lakhs
(*ii*) Inclusion of foreign income already assessed .	9.36 lakhs
Total for the first settlement	70.24 lakhs (excluding items (v) and (vi) of 'A').

The second settlement was based on a valuation of unexplained credits and investments in various concerns as reduced by the cash balances on 31-3-1964 and the known liabilities, together with share of profits of 5 export firms belonging to the group. In this settlement the following ommissions/mistakes were noticed :—

	Rs.
(*i*) Credits in the accounts for the year 1964-65 of two members of the group in a firm acquired by the group taken less than the actuals, without giving any reasons.	15.36 lakhs
(*ii*) Liability in respect of the aquisition of a firm not borne out by the corresponding wealth-tax returns.	7.17 lakhs
(*iii*) Tax paid on voluntary disclosure not included in investments	1.00 lakh
(*iv*) Additions made to the share of profits of the 5 export firms wrongly set off against other undisclosed income	1.19 lakhs
Total for the second settlement	24.72 lakhs

32.8. The following further irregularities were also noticed:—

(i) In addition to the art-silk yarn and dyes import licences of the value of Rs. 86.82 lakhs the group also received import licences of the value of Rs. 4.95 lakhs for machinery and embellishment during 1965-66 and 1966-67. There was no evidence to indicate that these licences were actually utilised. If these licences were also sold away, the profits arising from their sale remained to be ascertained and taxed.

(ii) The drawback obtained from the Customs department and the raw cotton incentives received during the settlement periods were not ascertained and added to the undisclosed income.

(iii) Out of the income of Rs. 25.92 lakhs voluntarily disclosed by the group in respect of the period upto 31-3-1964, a sum of Rs. 14.40 lakhs was given set-off in the hands of the members other than the declarants. Further, one of the declarant firms came into existence only during the period relevant to the assessment year 1964-65 whereas the set-off was given for the assessment year 1962-63.

(iv) In March, 1970 the Income-tax Officer reported to the Commissioner that statements of assets and liabilities were being obtained from the members of the group to ensure that all investments in lands and buildings in the names of the members of the group and their benamis were duly considered in arriving at the undisclosed income. No action was, however, taken in the matter.

(v) As per the second settlement of March, 1970, the income of the five export firms in which the group had interest, was taxed in the hands of the four members of the group and not in the hands of the

ostensible partners of the firms. Even in their disclosure of 1965, the group admitted the fact. The profits from the five export firms for the settlement period relevant to the assessment years 1960-61 to 1964-65 also should have been assessed in the hands of the four members.

32.9. The taxes due on the two settlements were to be paid in certain agreed instalments. The payment of the tax due on the first settlement was completed in October, 1972. Of the taxes due on the second settlement, an amount of Rs. 3,99,849 was outstanding on 30-11-1973. In 1965, the group had pledged with the department certain securities by way of title deeds for lands owned by four members of the group to the extent of 10.39 acres in connection with the payment of taxes under the voluntary disclosure scheme. For the taxes due under the settlement, the securities were retained by the department besides obtaining an undertaking in August, 1969 on Rs. 4.50 stamp paper from four members of the group that their interest in the various properties would not be alienated. Under the Stamp Act, the duty payable was about Rs. 12,400.

For delay in payment of the instalments on the due dates, interest leviable under section 220 of the Income-tax Act, 1961, Act was not levied. This interest amounted to Rs. 2.5 lakhs in respect of the first settlement and Rs. 2.85 lakhs (upto 31-12-1963) in respect of the second settlement. Similar interest leviable for the belated payment of tax in the assessment for the year 1965-66 of a member of the family group amounting to Rs. 16,500 was also not levied.

32.10. Penalties levied under sections 221(1), 271(1)(a) and 273 of the Income-tax Act, 1961 amounted to Rs. 3.84 lakhs. Of this, an amount of Rs. 16,600 only has been collected. For concealment of income a penalty of Rs. 3,63,839 was levied for the assessment years 1960-61 to 1964-65 against the

minimum penalty of Rs. 5,10,341 leviable. The penalty levied was cancelled in appeal by the Appellate Tribunal. For the assessment years 1965-66 to 1967-68, no penalty for concealment of income was levied.

32.11. During their investigations, the department came across a number of economic offences such as the clandestine sale of actual users' import licences, purchase of foreign exchange from unauthorised dealers, failure to repatriate export earnings within the prescribed period etc. These were not reported promptly to the concerned Enforcement and Licencing Authorities. In fact in 1965, the Enforcement Directorate requested for a copy of the statement made by the family group with the voluntary disclosure petition. But this was refused by the department on the ground of secrecy in terms of Section 68(8) of the Finance Act, 1965. In fact, as already stated, the disclosure petition was not considered valid and the same statement was filed by the group with the settlement petition which was not subject to the said secrecy clause. Further, in May and October, 1966 the group had themselves waived the protection under the said secrecy clause of the Finance Act, 1965. Even so, it was only in September, 1970 that the department agreed to furnish copies of the depositions made by the members of the group to the Directorate.

Final reply from the Ministry is awaited (March, 1975).

33. *Incorrect status adopted in assessments*

(i) A firm comprising six partners was assessed in the status of a registered firm on the basis of an instrument of partnership dated 30.1.1969. Consequent upon the retirement of one partner, introduction of two new partners and alteration in profit sharing ratio amongst the partners, a fresh partnership deed was executed on 20-2-1971. For the assessment year 1971-72, assessment was made in the status of registered firm

for the two periods; first from 1-4-1970 to 20-2-1971 and the second from 21-2-1971 to 31-3-1971. Income for both the periods was determined at Rs. 1,23,540. In respect of the first period the actual distribution of profits among the partners was not in accordance with the relevant partnership deed dated 30-1-1969. According to the Income-tax Act, a change in the profit sharing ratio of partners amounts to a change in the constitution of the firm which entails cancellation of its registration. In consequence, the assessment of the firm for the assessment year 1971-72 should have been completed in the status of an unregistered firm. Failure to do so resulted in shortcharge of tax of Rs. 61,008 in the hands of the firm.

While accepting the mistake, the Ministry have stated (January, 1975) that the assessment has been revised raising an additional demand of Rs. 61,008.

(ii) Under the Income-tax Act, a firm can be registered if the Income-tax Officer is satisfied, *inter alia,* that there is a genuine firm in existence. The registration once granted can be continued for subsequent years if there is no change in the constitution of the firm or the shares of the partners.

A firm was granted registration for the assessment year 1966-67 on the basis of partnership deeds executed on 31st March, 1965 and 12th October, 1965. According to the latter deed there were 21 partners including 4 minors admitted to the benefits of partnership. The registration was continued for the assessment year 1967-68 although for the previous year relevant to that year the firm had actually distributed its profits among 20 partners only excluding one of the minors. The assessment was completed on 18-3-1972 on a total income of Rs. 2,01,805. When it was pointed out during local audit in June, 1972 that in view of the change in the shares of partners the registration could not be continued for the year 1967-68, it was stated that there was inadvertent mistake in the distribution of profits to the exclusion of a minor partner and that the mistake had been set right by a transfer entry in the books in

August, 1972. The assessing officer also rectified the assessment on 5th March, 1974 by treating it a mistake apparent from record.

Under section 11 of the Companies Act, 1956 no partnership consisting of more than 20 persons can be formed unless it is registered as a company. Under the Income-tax Act, the expression 'Partner' is specifically defined to include a minor admitted to the benefits of a partnership and hence in working the number of partners for purposes of compliance with the provisions of section 11 of the Companies Act, minors admitted to the benefit of partnership like major partners will have to be taken into consideration. Since in this case there were 21 partners, the assessee is not in law a firm.

34. *Incorrect computation of dividend income*

Prior to 5th April, 1966 the net sterling dividends after deduction of tax recovered at source in the United Kingdom were assessed to Indian income-tax. Consequent on the changes made by the United Kingdom Finance Act, 1965, the Central Board of Direct Taxes issued instructions in circular letter F. No. 2/1/68-I.T(AI), dated 7th March, 1968 that after 5th April, 1966 the gross dividends should be assessed to Indian income-tax as the gross dividend was deemed for purpose of the United Kingdom income-tax to represent the recipient's income.

(i) In the case of an assessee deriving income from dividends in sterling from the United Kingdom for the assessment years 1967-68 to 1972-73, the net dividend income was charged to tax instead of the gross dividend income. This resulted in short levy of tax of Rs. 61,000 for all the six years.

Final reply from the Ministry is awaited (March, 1975).

(ii) Under the Income-tax Act, 1961, when a company in which public are not substantially interested, makes any payment as advance or loan to a shareholder having substantial interest,

the amount of such advance of loan to the extent that company has accumulated profits, is deemed to have been received by such shareholder as dividend and is taxed accordingly.

During the previous years relevant to the assessment years 1962-63, 1963-64, 1964-65 and 1966-67, a shareholder having substantial interest in a closely-held company, received from the company, loans of Rs. 46,982, Rs. 1,97,774, Rs. 10,530 and Rs. 52,636. These loans were within the accumulated profits of the company during the respective years. These were not, however, assessed to tax as income from dividend in the hands of the shareholder. This led to an underassessment of income by Rs. 46,982, Rs. 1,97,774, Rs. 10,530 and Rs. 52,636 during the assessment years 1962-63, 1963-64, 1964-65 and 1966-67 respectively with consequent total under-charge of tax of Rs. 1,90,555.

While accepting the mistake, the Ministry have intimated (August, 1974) that the assessments for the years 1963-64 and 1964-65 have been revised and the rectification for the assessment year 1962-63 is barred by limitation. Re-assessment for the assessment year 1966-67 is stated to be pending.

35. *Irregularities in allowing depreciation*

A firm formed in October, 1968 with a view to carrying on the business of growing and manufacturing tea, purchased a tea estate from a company. According to the sale deed registered in Feburary, 1969 the total value of property was Rs. 19.50 lakhs, comprising land valued at Rs. 17 lakhs, buildings Rs. 2.10 lakhs, machinery Rs. 0.30 lakhs and furniture Rs. 0.10 lakhs. While claiming depreciation for the assessment year 1969-70, the assessee re-allocated the total consideration of Rs. 19.50 lakhs between depreciable and non-depreciable assets and adopted different values for the assets as, land Rs. 8.82 lakhs, buildings Rs. 4.89 lakhs, machinery Rs. 6.03 lakhs and furniture Rs. 0.10 lakhs. The depreciation allowance for the assessment year 1969-70 and also for the subsequent

assessment years 1970-71 to 1972-73 was allowed by the department on the basis of such modified values of buildings, plant and machinery. As a result, there was an excessive allowance of depreciation of Rs. 3,34,520 for the assessment years 1969-70 to 1972-73, involving a revenue of Rs. 1,64,500 (approximately).

The values adopted for the depreciable and non-depreciable assets in the assessment of the vendor-company were the same as those specified in the sale deed and on that basis a terminal loss of Rs. 22,888 in respect of buildings, plant and machinery and a terminal profit of Rs. 1,702 for furni[illegible] were determined in its assessment. If the values adopted in the assessment of the purchaser (assessee firm) were taken in the assessment of the vendor instead of terminal loss, there would be a chargeable profit of Rs. 3,59,717 and a capital gain of Rs. 4,70,188 in respect of plant and machinery in its assessment, involving a revenue of Rs. 3,89,740.

Final reply from the Ministry is awaited (March, 1975).

36. *Irregular exemptions or excess reliefs given*

(i) Section 10(10) of the Income-tax Act, 1961 as it stood prior to its amendment by the Finance Act, 1972, from 1973-74, exempted gratuities from income-tax in the following cases:—

(a) any death-cum-retirement gratuity received under the Death-Cum-Retirement Gratuity Scheme of the Central Government;

(b) and death-cum-retirement gratuity received under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act;

(c) any retiring gratuity received after 1-6-1953 under the new Pension Code applicable to the Defence Services; and

(d) any other gratuity not exceeding one-half month's salary for each year of completed service subject to a maximum of Rs. 24,000 or 15 months' salary, whichever is less.

The condition imposed in the last category limiting the exemption to an amount not exceeding one half-month's salary for each year of the completed service subject to a maximum of Rs. 24,000 or 15 months' salary, whichever is less, was based on the analogy of the maximum limit on the amount of gratuity admissible uner the Death-Cum-Retirement Gratuity Scheme of the Central Government. It is apparent that the word "similar" in the second category was intended to take care of the same condition in respect of the gratuities paid by State Governments, local authorities or statutory Corporations.

During the previous years relevant to the assessment years 1971-72 and 1972-73, four Managing Directors of erstwhile scheduled banks which were nationalised on 19-7-1969, who continued to serve with the nationalised banks as 'Custodians' and were governed by the service conditions contractually entered into by them with the private banks prior to nationalisation, received on the conclusion of their contracts of service, retirement gratuities of Rs. 75,000 each. Under a directive issued by the Central Board of Direct Taxes in January, 1972, these amounts, though received by them not under any gratuity scheme similar to the Death-Cum-Retirement Gratuity Scheme of the Central Government, were exempted from income-tax instead of being charged to tax on the sums in excess of Rs. 24,000. This was done on the basis, firstly, that the gratuity schemes of the former scheduled banks constituted gratuity schemes of statutory corporations on the nationalisation of these banks and secondly, that these schemes could be classed as

similar to the Death-cum-Retirement Gratuity Scheme of the Central Government irrespective of the fact that these did not provide for the same maximum amounts of gratuity admissible.

The gratuities paid in these cases were not in respect of the services rendered to the statutory corporations represented by the Banks after nationalisation but in respect of services rendered prior to nationalisation. Further, the amount paid exceeded the ceiling of Rs. 24,000 prescribed in the Act. The erroneous exemptions allowed to the four assessees resulted in an under-assessment of income of Rs. 51,000 in each case involving a tax benefit of Rs. 36,643, Rs. 35,504, Rs. 38,399 and Rs. 35,191 or Rs. 1,45,737 in all.

Final reply from the Ministry is awaited (March, 1975).

(ii) Under section 80-G of the Income-tax Act, 1961, a deduction of fifty five per cent of the amounts paid as donations by an assessee, other than a company, to certain funds is allowed subject to fulfilment of the prescribed conditions. One of the conditions prescribed is that the fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 or under section 25 of the Companies Act, 1956.

A Drought Relief Fund, though constituted for a charitable purpose, was neither a public trust nor registered under the Societies Registration Act or the Companies Act. The fund was also kept outside the Government account so that the donations made to it could not be treated as contributions made to the Government. The donations did not, therefore, qualify for deductions under section 80-G of the Act.

It was, however, noticed that deductions on account of donations made to that fund were allowed in the case of 39 assessees, for the assessment year 1968-69 to the extent of Rs. 2,69,849 resulting in short levy of income-tax amounting to Rs. 1,40,680.

Finaly reply from the Ministry is awaited (March, 1975).

(iii) Where the profits from a new industrial undertaking fall short of 6 per cent of the capital employed in the undertaking, the deficiency is allowed to be carried forward and set off against the profits for the subsequent years. Further, under the Income-tax Act as applicable to the assessment year 1967-68, certain categories of income of a co-operative society are entitled to relief by way of rebate of tax at the average rate applicable to the total income.

In the assessment of a co-operative sugar manufacturing society for the assessment year 1967-68 (assessment completed in January, 1971), the profits of the new industrial undertaking fell short of 6 per cent of the capital employed by Rs. 74,475. Besides this deficiency, the other categories of exempted income aggregating Rs. 1,17,517 for which only rebate of tax was admissible, were also carried forward and set off against the profits for the following assessment year 1968-69. The incorrect carry forward and set off resulted in a short levy of tax of Rs. 76,064.

The Ministry have replied (January, 1975) that the assessment has been rectified and additional demand of Rs. 76,064 collected.

(iv) The income from business of co-operative societies, engaged in certain specified categories of activities is wholly exempt. Income of such societies from activities other than those specified is chargeable to tax after allowing a deduction (from their business income) of Rs. 15,000 for assessment year 1969-70 and Rs. 20,000 for later assessment years.

(a) In the case of a co-operative society, engaged in the business of supplying goods to other consumer co-operative societies, managerial subsidy received from the State Government was incorrectly treated as wholly exempt instead of treating such subsidy as other business income chargeable to tax. This resulted

in a total under-assessment of Rs. 1,00,000 in the assessment years 1967-68 to 1969-70 leading to an aggregate short levy of income-tax of Rs. 46,399.

Though the case had been seen in internal audit, the mistake was not pointed out by them.

The Ministry have accepted the objection and necessary rectification is stated to have been carried out (January, 1975).

(b) In the case of another co-operative society, commission earned by it during assessment years 1970-71 to 1972-73 to the extent of Rs. 48,867, Rs. 93,575 and Rs. 83,381 respectively for working as sub-agent in a scheme of monopoly purchase of paddy and rice was exempted incorrectly from levy of income-tax resulting in an aggregate short levy of tax of Rs. 1,35,074.

The Ministry have accepted the mistake (January, 1975). Further report regarding rectification is awaited (March, 1975).

(v) Under the provisions of the Income-tax Act, income derived from property held under trust wholly for charitable purposes and income derived by such trusts from voluntary contributions are exempt from tax.

In the case of an assessee association of cloth marchants, it was seen that the association undertook negotiation of rates with transport contractors for transportation of goods of its members and received commission therefor. The assessee, while offering this income for taxation, claimed its other income comprising contributions from members by way of monthly subscriptions and admission fees as exempt from tax. This was conceded by the department.

As the fixing of transport contracts for its members by the assessee association was not incidental to the main object of charity and was clearly a non-charitable purpose, the activities

of the association did not fall wholly within the ambit of 'charitable purposes'. Further, payment of entrance fees and annual subscriptions by members to the association was a condition precedent to their membership and was the price of admission to the privileges and benefits of the association which were given under a contract and were not voluntary contributions. Therefore, the entire income of the assessee including the amounts collected from its members was taxable. The short demand arising out of the incorrect exemption granted, worked out to Rs. 63,362 for the assessment years 1964-65 to 1971-72.

Final reply from the Ministry is awaited (March, 1975).

(vi) Rule 19-A of the Income-tax Rules, 1962 stipulates that for the purpose of allowing deduction under section 80-J of the Income-tax Act, 1961 to a newly established industrial undertaking, the capital employed in the business shall be an amount equivalent to the value (written-down value in the case of assets entitled to depreciation allowance) of the assets employed in the business as on the first day of the computation period, reduced by the aggregate of the amounts of borrowed money and debts owed by the assessee.

An assessee claimed and was allowed by the assessing officer, deduction under section 80-J of the Act at six per cent of the capital employed computed on the basis of the original cost of the assets (even though they were entitled to depreciation allowance) as on the last day of the computation period. The amount of capital so computed was also not reduced by the debts owed by the assessee. This erroneous computation resulted in excess deductions to the extent of Rs. 43,438, Rs. 1,19,660, Rs. 1,46,571 and Rs. 2,74,463 in the assessment years 1969-70, 1970-71, 1971-72 and 1972-73 respectively involving an aggregate tax under-charge of Rs. 1,75,000.

The Ministry have accepted the mistake. Further report regarding rectification and recovery is awaited. (March, 1975).

(vii) Domestic companies and also non-corporate tax payers resident in India, who incur any expenditure under specified heads to facilitate or promote the sale outside India of any goods, services or facilities dealt in or provided by them in the course of their business are allowed a weighted deduction equal to one and one-third times the amount of such expenditure incurred after 29th February, 1968. This incentive is intended for development of export markets for Indian goods on a long-term basis.

A registered firm, having a branch in Malaysia claimed the weighted deduction in respect of expenditure incurred by the branch on purchase of goods, sur-tax (sales-tax), duty (import duty) and lorry hire-charges for the assessment years 1970-71 and 1971-72. In the two assessments completed in March, 1973 the Income-tax Officer disallowed the claim for the expenditure on purchase of goods but allowed the other claims for weighted deduction. The claim for weighted deduction was not admissible even in respect of sur-tax (sales-tax), duty (import duty) and lorry hire-charges as these were incurred on the purchase of goods in the normal course of trade and did not constitute developmental expenses listed in the Act. Further, the expenditure incurred on the carriage of goods is specifically excluded from the concession. The excess deduction of Rs. 2,08,668 allowed by the Income-tax Officer for the two assessment years 1970-71 and 1971-72 resulted in short levy of tax of Rs. 1,00,030.

The Ministry have partly accepted the objection (February, 1975).

37. *Incorrect computation of capital gains*

Under the provisions of the Income-tax Act, 1961, long-term capital gains arising from transfer of land and buildings including rights in land and building are taxable at a higher rate than those arising from transfer of 'other assets', as the deduction to be allowed in computing total income is less for the long-term capital gains from assets of the former type than for 'other assets'.

(i) In the assessment for 1970-71 of a firm which owned a theatre and, in addition, was engaged in the business of film distribution, capital gains arising from the transfer of leasehold rights in the theatre building with extensive adjoining land in a central locality of a premier city, was attributed by the Income-tax Officer entirely to the "goodwill" of film exhibition business instead of treating it as due to the prevailing abnormal increase in land prices in that area. This resulted in the assessee getting a deduction of 65 per cent of the capital gains of Rs. 9,04,180 instead of 45 per cent thereof, leading to an under-assessment of income of Rs. 1,80,840 and a short levy of tax of Rs. 1,34,442 in the hands of the firm and its partners.

Final reply from the Ministry is awaited. (March, 1975).

(ii) In another case, the shares of a private limited company (whose business consisted only of ownership of a building and letting it out to its shareholders), carried with them the right to occupy or sub-let the premises in proportion to the number of shares held. These shares were sold by a registered firm. While assessing the resultant capital gains, the assessing officer allowed a deduction of 65 per cent on the basis that the gain had arisen from the sale of "any other capital assets" instead of restricting it to the correct allowance of 45 per cent as the gain actually related to capital assets consisting of certain rights in a building in the form of shares. The excessive allowance, erroneously given, resulted in an under-assessment of the long-term capital gains by Rs. 1,90,000 for assessment year 1968-69, leading to a short levy of income-tax of Rs. 82,856 in the hands of the firm and its partners.

The Ministry have accepted the mistake in principle (February, 1975).

38. *Omission to include income of spouse/minor children*

(i) Income arising directly or indirectly to a minor from his admission to the benefits of partnership in a firm has to be

clubbed with the income of the individual (the father), if he is also a partner in that firm. Where the individual represents a Hindu Undivided Family, his share-income from the firm is taxable in the hands of the Hindu Undivided Family, whereas the share-income of the minor child has to be taxed in the hands of the Individual.

An individual became a partner in two firms in his capacity as Karta of the Hindu Undivided Family in June, 1969 and August, 1969. The individual's minor daughters also were partners in these firms. In the assessments for the assessment years 1970-71 to 1972-73 the share incomes of the minor daughters in the firms were assessed separately in their hands instead of being clubbed in the assessment of the individual. The omission to assess the share-incomes of the minors in the hands of the Individual resulted in net under-assessment of tax of Rs. 1,35,000.

The Ministry have accepted the mistake. Further report regarding rectification and recovery is awaited. (March, 1975).

(ii) In another case, an assessee who was being assessed as an individual and also as the Karta of a Hindu Undivided Family was a partner in two registered firms. In one of these firms, his wife was also a partner. In the other firm, his four minor children were admitted to the benefits of partnership. In computing the total income of the assessee in the capacity of 'Individual' for the assessment year 1972-73, the share incomes received by the wife and minor children from the two firms were not included in the assessee's total income as required under section 64 of the Income-tax Act, 1961. This resulted in a short levy of tax of Rs. 53,876.

The Ministry have accepted the mistake (August, 1974). Report regarding rectification and recovery is awaited (March, 1975).

39. *Income escaping assessment*

(i) During the assessment year 1967-68 a biri manufacturing firm suppressed the fact of consumption of 5,760 Kgs. and 532 Kgs. of duty paid and non-duty paid tobacco respectively and claimed these quantities as handling wastage over and above one per cent normally allowed in assessment. Production of biris with this quantity of tobacco at the rate of one thousand biris per 408 grammes of tobacco was worked out by the department incorrectly at 1,542 thousands instead of the correct quantity of 15,421 thousands. The value of the concealed production of biris at the average selling rate of Rs. 6.97 per thousand was not taken into consideration in computing the total assessable income. As a result, income of Rs. 1,07,484 escaped assessment with consequent tax under-charge of Rs. 17,025 from the firm and Rs. 66,716 from its three partners.

The mistake has been accepted by the Ministry (August, 1974).

(ii) A co-operative sugar mill despatched to a marketing society on 27th June, 1968, 3,903 quintals of sugar for sale to parties to be authorised by them. The sale was actually effected in July and August, 1968 i.e. after the closure of the previous year ending 30th June, 1968 relevant to the assessment year 1969-70. The assessee credited its sale account for the year ending 30th June, 1968 with the actual sale proceeds of Rs. 10,58,745. At the time of assessment for the assessment year 1969-70, the assessee claimed that as the goods sent on consignment were sold away only in the next assessment year, the profit of Rs. 3,19,988 would not be deemed to have accrued in 1969-70. The Appellate Assistant Commissioner on appeal upheld the contention of the assessee. Accordingly, the assessment for the assessment year 1969-70 was revised in October, 1972 deleting the income of Rs. 3,19,988. In the return for the assessment year 1970-71 filed in October, 1971, the assessee did not, however, take into account this income of Rs. 3,19,988.

The Income-tax Officer also overlooked the omission in making the assessment in January, 1971. Income of Rs. 3,19,988 thus escaped assessment altogether. On this being pointed out by audit, the department revised the assessment in March, 1974 reducing the loss carried forward for adjustment against subsequent year's income by Rs. 3,19,988. At the rates applicable for the assessment year 1973-74, the approximate tax involved was Rs. 1,42,590.

The Ministry have accepted the mistake (January, 1975).

(iii) The factory building of an assessee alongwith the machinery inside it was damaged by fire in June, 1963 and the assessee received a compensation of Rs. 2,63,000 from the insurance company. Out of this compensation, a sum of Rs. 1,40,120 was determined by the Income-tax Officer to be profit under section 41(2) of the Income-tax Act, 1961. The profit was added to the income of the assessee for the assessment year 1965-66. In February, 1971 the appellate authority deleted the addition on the ground that the insurance company had settled the claim on 5th December, 1963 itself, and as such, the profit was taxable in the assessment year 1964-65. A proposal for re-opening the assessment for 1964-65 under section 147 of the Act was, accordingly, sent to the Commissioner of Income-tax on 31st March, 1971. It was noticed during audit (January, 1974) that neither any action had thereafter been taken to pursue the case, nor was it shown pending in the Blue Book of the assessing officer. The case was also not noted in the other prescribed registers for keeping a watch over this. The additional tax payable on the profit of Rs. 1,40,120 is Rs. 77,380.

The Ministry have accepted the objection (February, 1975). Further report regarding rectification and recovery is awaited (March, 1975).

(iv) A provident fund for the benefit of its employees was created by an employer under a trust from 1st August, 1956. The fund was recognised by the Commissioner of Income-tax

from 30th June, 1971. Section 10(25)(ii) of the Income-tax Act, 1961 exempts the income of a provident fund from the levy of income-tax after it is recognised. Therefore, the income of the fund prior to 30th June, 1971 was liable to income-tax. The assessee (trustees of the fund) did not, however, file return of income for any year. The Income-tax Officer did not also initiate any action in the matter, nor were the assessments shown pending in any of his records.

When this was pointed out (July, 1973) by audit, notices under section 148 were issued for the years 1965-66 to 1971-72 and the returns were received from the assessee in March, 1974. Even on the basis of returned income, the assessee is liable to pay a tax of Rs. 53,700 (gross tax of Rs. 1,26,260 minus tax deducted at source Rs. 72,560). Report regarding the action taken, if any, for the assessment years prior to 1965-66 is awaited.

40. *Non-levy/short levy of interest*

(i) Under the Income-tax Act, 1961 any person who has not been assessed previously has to send to the Income-tax Officer before the 1st March of each financial year an estimate of his total income for the relevant previous year and pay advance tax based on this estimate on the specified dates. Failure to file the estimate and pay the tax within the due dates renders the assessee liable to pay interest.

(a) A firm which was never assessed before 28th July, 1967 did not submit its estimate of income and did not pay advance tax due thereon in respect of the previous year relevant to the assessment year 1965-66. Its income for this year was assessed at Rs. 6,81,836 and tax of Rs. 4,61,880 was levied thereon. The firm was, therefore, liable to pay interest amounting to Rs. 1,29,641 for the assessment year 1965-66 which was not levied by the department.

The Ministry have accepted the mistake in principle and stated (December, 1974) that the assessment has been rectified.

(b) In another case, the assessments of an unregistered firm for each of the assessment years 1967-68 to 1969-70 were completed on the basis of a total income of Rs. 3,01,923. The firm submitted estimates of 'nil' income for the assessment years 1967-68 and 1969-70 and, accordingly, did not pay any advance tax for these years. For the assessment year 1968-69, however, the firm submitted an estimate and paid advance tax of Rs. 3,432 only. The assessee was, therefore, liable to pay total interest of Rs. 1,59,043 for the three assessment years which was not levied by the department.

While accepting the objection in principle, the Ministry have intimated (December, 1974) that the assessments have been revised raising an additional demand of Rs. 1,59,043.

(ii) If a tax demand due to Government is not paid within the prescribed time the assessee is liable to pay simple interest at the prescribed rate per annum from the day following the due date. The Income-tax Rules contemplate that the Income-tax Officer should calculate the interest at the end of each financial year if the amount in respect of which the interest is payable has not been paid in full before the end of the financial year. Where the assessee is in default in making the payment of tax, the Income-tax Officer forwards to the Tax Recovery Officer, a certificate under his signature specifying the amount of arrears due from the assessee. At the time of issuing the certificate the Income-tax Officer has to calculate the interest payable by the assessee on the amount of arrears upto the date of issue of the certificate and include the interest in the certificate.

A sum of Rs. 31,67,462 was due from an assessee towards tax for the assessment years 1962-63, 1963-64, 1965-66 to 1969-70 and the arrears were reported to the Tax Recovery Officer on 24th July, 1972 for recovery by issue of certificate.

For the sum of Rs. 2,01,053 due from the assessee for the assessment year 1964-65 a similar certificate was issued on 21-3-1970. The asessments for the years mentioned above were completed on various dates from March, 1967 to March, 1972. The amount of interest leviable on the arrears outstanding at the close of each year was not levied and the interest due upto the date of issue of the certificate to the Tax Recovery Officer was also not included in the certificates issued in March, 1970 and July, 1972. The total interest leviable for all the years worked out to Rs. 7,49,258. The omission to levy interest to the extent of Rs. 17,078 relating to the assessment years 1967-68 and 1969-70 was pointed out in internal audit on 19th July, 1972. Neither at the time of issue of the recovery certificate on 24-7-1972, nor subsequently, the omission was rectified till it was pointed out in revenue audit in August, 1973.

The Ministry have accepted the objection (December, 1974).

41. *Non-levy or short levy of penalty for delayed submission of returns and concealment of income*

Under Income Tax Act, 1961, as applicable for the assessment year 1968-69, where an assessee has concealed his income or furnished inaccurate particulars of his income, he is liable to penalty which should not be less than the income in respect of which the particulars have been concealed or furnished inaccurately. Further, where the total income returned by a person is less than 80 per cent of the total income as assessed, such person is deemed to have concealed the particulars of his income unless he can prove to the contrary.

The total income of an individual for the assessment year 1968-69 was assessed at Rs. 1,19,961 as against returned income of Rs. 75,517. As there was apparent concealment of income, a penalty of Rs. 44,444 was attracted. But the department levied a penalty of Rs. 6,476 only resulting in under-charge of Rs. 37,968.

The Ministry have stated (December, 1974) that the assessment in question has been rectified and an additional demand of Rs. 37,968 raised.

42. *Tax under-charge/loss of revenue due to adoption of incorrect procedure*

(i) The net income of an assessee, according to the profit and loss accounts submitted by it alongwith the return of income for the assessment years 1968-69 and 1969-70 was Rs. 2,03,192 and Rs. 1,66,217 respectively (total Rs. 3,69,409). The Income-tax Officer, however, rejected the accounts of the assessee and decided, under section 145(2) of the Income-tax Act, 1961 to determine the taxable profits at 15 per cent of the figures of sales as estimated by him. The assessable income was accordingly estimated at Rs. 2,92,500. As the returned income was more, it was incorrect on the part of the Income-tax Officer to have invoked section 145(2) of the Act and reduced the net income. This resulted in the forgoing of revenue to the extent of Rs. 48,570.

The Ministry have accepted the objection in principle (January, 1975). Further report is awaited (March, 1975).

(ii) As a measure for countering evasion of tax, the Income-tax Act provides that any expenditure in respect of which payment is made for a sum exceeding Rs. 2,500 otherwise than by crossed cheques or bank draft shall not be allowed as deduction in determining business income except in cases specified in the Rules made in this regard. In the Rules it was provided that payments in cash exceeding Rs. 2,500 each would be allowable in exceptional or unavoidable circumstances and on the assessee furnishing evidence to the satisfaction of the Income-tax Officer as to the genuineness of the payments and the identity of the payees. This Rule was amended with effect from 1st April, 1970 providing for the allowance of payments in cash exceeding Rs. 2,500 in exceptional or unavoidable circumstances or when payment by cheque or bank draft was not practicable or would have caused genuine difficulty to the payee.

Two firms engaged in trading, mainly in sugar, claimed to have made payments in cash totalling over Rs. 31,00,000 in 496 cases to sugar manufacturers and other suppliers on grounds of business expediency, during the year relevant to the assessment year 1970-71. In the assessments completed in March, 1973 the firms' claim for deduction of the amounts was allowed on production of vouchers.

It was noticed in audit in October, 1973 that most of the payments related to leading and established traders situated in towns and cities where banking facilities were fully available. In the case of one of the firms, the department earlier conducted a search and seizure as the firm had indulged in illegal trade on large scale. Neither the exceptional or unavoidable circumstances contemplated in the Income-tax Rules permitting payment in cash, nor the impracticability of the payment by cheque or draft nor the genuine difficulties that would have been caused to the payees had the assessee made the payment in cheques or bank drafts, was established in the case so as to warrant allowing the payments as business expenditure.

If the payments made in cash, contrary to the provisions of the Income-tax Act and the Rules framed thereunder, were disallowed, revenue of Rs. 12,00,000 would accrue to Government.

Final reply from the Ministry is awaited (March, 1975).

(iii) No penalty under the Income-tax Act can be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard.

In two cases, an Inspecting Assistant Commissioner of Income-tax passed penalty orders without giving a reasonable opportunity of being heard to the assessees, with the result that the orders passed by him were challenged by the assessees before the Tribunal, and the Tribunal struck down the orders holding them

as bad in law. Failure to comply with the mandatory requirements of law on the part of the departmental authorities thus resulted in loss of revenue of Rs. 63,796.

In one of these cases the procedure adopted by the Inspecting Assistant Commissioner was peculiar. He fixed the date of hearing at such a short notice that the assessee was enabled to get away on a plea of technicality. Even the Appellate Tribunal was constrained to remark thus :

> "It is indeed unfortunate that a senior officer like the Inspecting Assistant Commissioner who levied the penalties failed to comply with the express requirement of law. It is unfortunate for two reasons. First, when the assessee informed him that the notice fixing the hearing on 9th March, 1972 was received after the expiry of the time fixed for hearing, he had sufficient time to give another hearing to the assessee. It is true that the penalty proceedings were getting time-barred by 31st March, 1972, but he had three weeks before him by that time and in fact he waited till 27th March, 1972 to finalise the penalty proceedings. Within that time he could have easily given a notice of another hearing to the assessee. Second, from the material on record and the admission of the assessee before the Income-tax Officer and the Appellate Assistant Commissioner, there appears to be a clear case for levying penalty under Section 271(1)(c) of the Act and the Inspecting Assistant Commissioner has thrown away the case by what we may describe as his negligence to comply with an express requirement of law".

While accepting the objection in principle, the Ministry in their reply (February, 1975) have stated that the Additional Commissioner of Income-tax had taken note of the lapse of the

Inspecting Assistant Commissioner concerned and the explanation of the Officer is under consideration. No remedial action is stated to be possible at this stage.

Other topics of interest

43. *Omission to follow prescribed procedure involving loss of revenue*

In paragraph 52 of the Audit Report on Revenue Receipts 1966, the defective maintenance of records, non-receipt of annual returns, omission to check the returns received and take final action etc. in regard to taxes deducted at source from salaries paid to persons by private employers were pointed out. Suitable instructions in the matter were also issued by the Central Board of Direct Taxes in March, 1968.

A test check of six income-tax wards in a circle revealed that no systematic action was taken to call for the returns wherever due, check the returns received, verify the tax deducted at source and remitted to Government and invoke penal provisions wherever necessary. The following were some of the defects and irregularities noticed :—

(a) The register of employers was not maintained properly. The defective registers would not have enabled the department to exercise any control over the prompt receipt of returns, correct deduction of tax at source and remittance of the tax collected into Government account.

(b) In one ward the position of receipt of annual returns from employers due on 30th April of each financial year was as follows :

	1970-71	1971-72	1972-73
No. of returns due	1,958	2,368	3,171
No. of returns received	1,266	1,703	1,699
Balance due	692	665	1,472

(c) In five wards, the returns were received late and no proceedings were initiated for levy of fine. The maximum fine leviable was Rs. 3,01,160.

Year	No.	Amount of fine.
		Rs.
1970-71	255	2,63,770
1971-72	48	25,970
1972-73	19	11,420
	322	3,01,160

(d) In one ward a sum of Rs. 17,928 stated to have been remitted by four employers between 26th April, 1972 and 31st March, 1973 was not traceable in the daily collection registers of the department.

(e) In 98 cases in one ward, tax was short deducted/not deducted at source to the extent of Rs. 21,783.

(f) In three cases in one ward, the employers did not remit the tax of Rs. 1,868 deducted at source.

(g) Penal interest of Rs. 5,570 was not levied in one ward in seven cases for omission to deduct tax or after deduction to remit it to Government in time.

Final reply from the Ministry is awaited (March, 1975).

44. *Collection of tax without demand followed by immediate refund*

The Public Accounts Committee, in paragraph 2.145 of their 29th Report (4th Lok Sabha) and again in paragraph 2.18 of their 76th Report (4th Lok Sabha) had taken a serious view of the irregular devices adopted by some Income-tax Officers in making irregular collection of amounts from assessees to make good the short-fall in budget estimates and had advised

the Central Board of Direct Taxes to keep a special watch in this connection. In pursuance of this, the Central Board of Direct Taxes had also issued instructions (December, 1967) for not resorting to such practices again.

Notwithstanding the recommendations of the Public Accounts Committee and the instructions of the Board, such irregular practices continue to come to notice.

(i) In one ward an assessing officer required an assessee to pay provisionally income-tax of Rs. 55,000 (for the assessment year 1971-72) on 28th March, 1972, although section 141 of the Act regarding provisional assessments was abolished from 1st April, 1971. The assessee paid the amount as demanded. The regular assessment in this case was made just after two days (30-3-1972) which actually resulted in a net demand of only Rs. 3,539 against the assessee. The remaining amount of Rs. 51,461 was refunded to the assessee in April, 1972, i.e. within one month but in the next financial year.

(ii) In three other wards in the same Commissioner's charge, six assessees paid an amount of Rs. 80,000 on 28th, 29th and 31st March, 1972 although there were no demands due from them on these days. The amounts were refunded in the first week of April, 1972.

The Ministry have accepted the irregularities in all the cases (February, 1975).

45. *Loss of revenue due to procedural lapse*

In respect of persons already assessed to tax, the Income-tax Officer has to issue a demand notice for the payment of advance tax. For the assessees whose previous year falls on or before 31st of December, the advance tax is payable in three instalments, the last instalment being due on 15th December. The law provides that if the assessee estimates that the advance tax payable

by him would be less than that demanded by the Income-tax Officer, he can file a revised estimate and pay advance tax accordingly. On completion of regular assessment, if the advance tax paid is found to be less than 75 per cent of the tax determined as payable, penal interest is leviable.

The previous year of an assessee assessed in a Central Circle for the assessment year 1971-72 ended on 30th June, 1970. While determining the advance tax payable by the assessee as Rs. 2,46,546, based on the latest completed assessment, the department issued a notice for payment of the first instalment of advance tax of Rs. 82,182 in May, 1970 (payable by 15th June, 1970). The department found that the demand notice was not served on the assessee properly and hence served a duplicate demand notice on 16th December, 1970, seven months after the despatch of the first notice. The duplicate notice was received by the assessee on 27th December, 1970. The assessee filed an estimate on 30th December, 1970 declaring a loss of Rs. 47,477 and paid no tax. The final assessment was made in November, 1973 and a tax of Rs. 1,89,688 was determined as payable by the assessee.

As the previous year relevant to the assessment year 1971-72 ended on 30th June, 1970, the last instalment of advance tax was payable by 15th December, 1970. The notice for payment of advance tax was, however, issued by the department on 27th December, 1970 only and as their notice became illegal, the department on the basis of the final assessment could not enforce levy of penal interest of Rs. 55,000 for failure to pay advance tax in time. Had a proper notice been served in time, the loss could have been averted.

The Ministry have accepted (February, 1975) that there has been considerable delay in the service of demand notice for the payment of advance tax and have stated that there is no possibility of any remedial action at this stage. (February, 1975).

46. *Non-production of records to Revenue Audit for scrutiny*

The programme of local audit of income-tax offices is drawn up sufficiently in advance, at least one month before the local audit, and communicated to the department with a view to enabling them to keep ready the concerned records for audit scrutiny. According to Board's instructions of October, 1968, reiterated in April, 1970, the records when requisitioned in revenue audit are to be made available by the Income-tax Officers on the same day and if any particular record is not made available to them the reason for the same should be stated specifically in a note and the records should on no account be withheld by the Income-tax Officers on flimsy grounds.

Excluding the cases where the records could not be made available to audit due to their being held up with the appellate authorities and due to transfer from one Income-tax Office to another, it was found on analysis of 26 local audit reports issued between 1st April, 1973 and 31st August, 1973 in 2 Commissioners' charges that the department did not make available for audit scrutiny number of files mentioned below either without assigning any reasons or stating in some cases that the records were not readily available or traceable or the records were lying with the internal audit.

	No. of files.
Not produced during the last audit	396
Not produced during the last two audits	128
Not produced during the last three audits	34
	558

The non-production of records results in not carrying out in audit its statutory duty. Delayed production would render audit scrutiny ineffective as rectifications/revisions, if any, to be made as a result may become time-barred.

47. *Procedural irregularities in the grant of registration/continuation of registration to firms*

According to the provisions of section 185(1) of the Income-tax Act, 1961, as amended by the Taxation Laws (Amendment) Act, 1970 and Income-tax (Amendment) Rules, 1971, which came into effect from 1-4-1971, firms have to apply for registration/continuation of registration in amended forms, viz. Form No. 11, 11-A or 12, as the case may be. The amended forms contain a new declaration that none of the partners of the firm was, at the relevant time, a benamidar of another partner who is not related as a spouse or minor child.

Cases have come to notice where registration/continuation of registration have been granted on applications in old forms which are without the new declaration. This is irregular as the provisions of the law have not been complied with. As such, these firms are liable to be assessed as unregistered firms. In respect of 30 cases pointed out during the audit of ten Income-tax Offices under one Commissioner's charge, the under-assessment of tax on this account works out to Rs. 13,47,000 approximately.

The Ministry in their reply (February, 1975) have stated that there has been a technical default in the matter.

48. *Over-assessments*

(i) Under the provisions of the Income-tax Act, 1961, a co-operative society is entitled to a deduction from its gross total income of the whole of the amounts of profits and gains of business attributable to certain specified activities. In the assessments of a co-operative society for the assessment years 1967-68, 1968-69 and 1970-71, the amounts to be so deducted were determined by reducing the gross profits from such specified activities by the expenses relatable to those activities. However, while computing the taxable income of the society, these

expenses were added back, treating them as inadmissible business expenses. This resulted in incorrect disallowance, since the expenses had already been excluded from the aforesaid deduction. The over-assessment of income for the three years aggregated Rs. 1,57,657, resulting in excess levy of tax amounting to Rs. 73,673.

In addition, there were other mistakes in the computation of income and in the calculation of tax and surcharge for the assessment year 1968-69, leading to a further over-assessment of income by Rs. 31,162 with a corresponding excess levy of tax to the extent of Rs. 10,854.

The total amount of overcharge was Rs. 84,527.

While accepting the objection the Ministry have stated (January, 1975) that the assessments have been revised and the amount of overcharge refunded.

(ii) On the assessed income of Rs. 2,44,388 of an individual for the assessment year 1960-61 the department incorrectly levied total tax of Rs. 2,94,602 against the correctly chargeable tax of Rs. 1,79,886. As a result, there was net overcharge of tax by Rs. 1,14,716.

The Ministry have replied (January, 1975) that the assessment has been rectified and that the amount of overcharge has been adjusted against other demands against the assessee.

CHAPTER IV

OTHER DIRECT TAXES

WEALTH TAX

49. Wealth-tax is levied on the net wealth of "individuals" and "Hindu Undivided Families". The expression "individual" has been held to include a group of persons forming a unit e.g. a corporation created by a statute or a registered society. With effect from the assessment year 1960-61, however, companies are not liable to wealth-tax. Also the Finance Act, 1972 has amended the Wealth-tax Act with retrospective effect from 1957-58 to exempt co-operative societies from the charge of wealth-tax.

The Finance Act, 1969 brought agricultural property also within the purview of the Wealth-tax Act with effect from the assessment year 1970-71. The net proceeds of wealth-tax on agricultural property were to be passed on to the States as grants-in-aid. A provision of Rs. 4 crores was made on this account in the Budget for 1970-71. This provision was deleted in the revised estimates as no collections were anticipated in that year. In 1971-72, a provision of Rs. 7.25 crores was made but in the revised estimates it was reduced to Rs. 3.50 crores. Again in 1972-73, a budget provision of Rs. 9.25 crores was made but in the revised estimates it was deleted altogether in view of the small collections. Thereafter, in the Budgets for the years 1973-74, 1974-75 and 1975-76 no provision has been made for payment of grants-in-aid to States as the disbursements made in 1971-72 "exceeded the actual collections" in these later years.

In paragraph 2.9 of their 50th report, the Public Accounts Committee (5th Lok Sabha) had suggested that in order to improve the wealth-tax administration, especially to ensure that all the assessees liable to pay wealth-tax are borne on the books of the department, the income-tax returns of all the assessees having business income of over Rs. 15,000 should be reviewed to see whether all those having taxable wealth are submitting returns of wealth. The Committee had also suggested that in respect of house property Government should intensify survey on the basis of municipal records etc. In paragraph 1.12 of their 103rd report, the Committee took note of the Ministry's reply to the effect that a partial review had resulted in 9,352 additional cases being brought on to the Wealth-tax Register. The Committee reiterated that a complete review should be made and suggested that a critical examination of income-tax cases should be a continuous process with a view to finding out the evasion of wealth-tax. The Ministry have stated that a complete review has been ordered; the results of the review are still awaited. The total number of wealth-tax assessees on the books of the department as on 31st March, 1974 was 2,17,681 while the total number of income-tax assessees having business income of over Rs. 15,000 (excluding companies) was over 5 lakhs.

50. During the test audit of assessments made under the Wealth-tax Act, 1957, conducted during the period 1st September, 1973 to 30th June, 1974, the following types of under-assessment of tax were noticed.

1. Under-assessment due to mistakes in calculation of tax and in the computation of net wealth .

2. Wealth escaping assessment.

3. Under-assessment due to incorrect valuation of assets.

4. Under-assessment due to irregular/excessive allowances and exemptions.

5. Omission to levy additional wealth-tax.

6. Non-levy or incorrect levy of penalty for late filing of returns.

A few cases illustrating such mistakes are given in the following paragraphs.

51. *Valuation of immovable properties*

Under the Wealth-tax Act, as amended by the Taxation Laws (Amendment) Act, 1972, from 1st January, 1973, the Wealth-tax Officer can, in regard to the valuation of capital assets seek the help of the Valuation Officer if he considers that the estimate made by a registered valuer requires an upward revision. In a case where valuation by a registered valuer is not made, the Wealth-tax Officer, if he is of the opinion that the fair market value of the capital asset exceeds the value claimed by 33⅓ per cent or Rs. 50,000, can make a reference to the Valuation Officer. Similar provisions are made in the Gift-tax Act. Under the Income-tax Act, also, a reference may be made to the Valuation Officer for ascertaining the fair market value of a capital asset (i) for the purpose of levy of capital gains tax wherever the tax authority considers that the fair market value of a capital asset exceeds the value claimed by 15 per cent or by Rs. 25,000 or where the valuation made by a registered valuer is not found acceptable, and (ii) for initiating proceedings for the acquisition of the immovable property.

For this purpose, a Regional Valuation Cell having jurisdiction over Maharashtra, Gujarat, Andhra Pradesh, Karnataka, Kerala, Goa and Tamil Nadu States started functioning on 1st January, 1973. The entire Zone is divided into five districts, each under the charge of a Valuation Officer. The following

table shows the performance of this Cell in regard to the valuation of immovable properties during 1973-74 :—

Total number of cases for disposal	2348
No. of cases in which valuation was completed	876
No. of cases pending with the Cell as on 31st March, 1974	1472
No. of cases pending for over 3 months	530
Total volume of work handled by the Cell. . .	Rs. 73.21 crores
Under-valuation noticed in the declared value of the properties	Rs. 25.05 crores

The pending cases and those pending for over three months as on 31st March, 1974 could be distributed as follows :—

District	Pending cases	Cases pending over three months
Bombay	379	199
Ahmedabad	436	162
Hyderabad	145	51
Bangalore	405	97
Madras	107	21
Total	1472	530

Action taken to revise valuation on the basis of valuation given by the Cell has not been intimated.

52. (A) *Under-assessment due to mistakes in computation of wealth*

(i) The net wealth of an individual as computed by the department for the assessment years 1966-67 to 1969-70 included jewellery valued at Rs. 63,639 on the basis of an authorised valuer's report. The assessments for the years 1963-64

to 1965-66 were completed in March, 1973 accepting the value of jewellery as declared by the individual himself (Rs. 6,690) and not supported by any valuer's report. There was no mention of any additions to jewellery in the subsequent assessment years. In the circumstances, the net wealth for the assessment years 1963-64 to 1965-66 should have been computed having regard to the current value of jewellery i.e. Rs. 63,639 particularly when these assessments were made only in March, 1973. Further, the value of jewellery was allowed exemption for the assessment year 1963-64 though this exemption stood withdrawn from 1st April, 1963.

Also, there was under-assessment of wealth in all the assessment years from 1963-64 to 1969-70 on account of inadmissible deductions allowed in respect of disputed income-tax liabilities.

There was a total undercharge of wealth-tax to the extent of Rs. 30,631 during the assessment years 1963-64 to 1969-70. The Ministry have accepted the mistakes.

(ii) A trust had returned a net wealth of Rs. 2,28,485 for the assessment year 1972-73, after deducting the life interest of a beneficiary estimated at Rs. 1,45,228. The assessing officer, not accepting the valuation of the life interest made by the trust computed it afresh at Rs. 2,51,463 and again deducted this from the wealth returned without adding back the amount of Rs. 1,45,228 already deducted from the wealth returned by the trust. This resulted short-levy of wealth-tax of Rs. 11,618.

The Ministry have accepted the mistake.

(iii) Mistakes in the computation of wealth were also noticed in 7 other cases pertaining to different assessment years from 1964-65 to 1972-73 with undercharge of wealth-tax varying

from Rs. 1,118 to Rs 8,458 and totalling Rs. 26,181. All these mistakes have been accepted by the Ministry.

(B) *Mistakes in calculation of tax*

(i) By an amendment of the Wealth-tax Act, 1957 made by the Finance Act, 1971, the initial exemption of Rs. 1 lakh in the case of an individual assessee having a net taxable wealth exceeding Rs. 1 lakh, was withdrawn with effect from the assessment year 1972-73. In 4 cases the initial exemption was allowed in the assessment year 1972-73 resulting in a short-levy of wealth-tax of Rs. 4,066.

(ii) For the assessment years 1971-72 and 1972-73, the rate of tax in the slab upto Rs. 5 lakhs of net wealth is 1 per cent and that in respect of the next slab upto Rs. 10 lakhs is 2 per cent. In 3 cases, one for the assessment year 1971-72 and the other two for the assessment year 1972-73, although the net wealth exceeded Rs. 5 lakhs in each case, the tax was levied at a flat rate of 1 per cent instead of adopting the rate of 2 per cent for the portion of net wealth in excess of Rs. 5 lakhs. As a result, there was a short-levy of tax of Rs. 6,208.

The Ministry have accepted the mistakes.

(iii) Section 21(4) of the Wealth-tax Act, 1957, as amended from 1st April, 1971, provides that in the case of a trust created for beneficiaries the shares of whom are indeterminate or unknown, tax should be levied at 1½ per cent or at the appropriate rate of tax specified in the schedule to the Act, whichever is more beneficial to the revenue.

In four such cases, the department levied tax at 1 per cent instead of at 1½ per cent on the total wealth of Rs. 13,26,153 for the assessment year 1971-72 although the above statutory provision was attracted. The application of the incorrect tax rate resulted in undercharge of wealth-tax amounting to Rs. 10,534 for the assessment year 1971-72.

The Ministry have accepted the mistake in all the cases.

(iv) Where the assets of a trust are held partly for the benefit of other persons, the liability to wealth-tax in respect of the residuary part is computed at the rate applicable to the whole of the net wealth of the trust, including the interest of the beneficiaries.

In the wealth-tax assessment of a trust for the assessment years 1967-68 to 1972-73 the tax on the residuary part of the net wealth (other than the portion held for beneficiaries) was erroneously levied at the rates applicable as if the residuary portion alone was the net wealth of the trust, instead of at the average rate applicable to the total net wealth of the trust. This resulted in a short-levy of wealth-tax of Rs. 6,469 for these assessment years. The Ministry's final reply is awaited (March, 1975).

(v) In eight cases for different assessment years between 1962-63 and 1972-73, mistakes were noticed in the calculation of the amount of tax. As a result of these mistakes, wealth-tax of Rs. 87,245 was levied in these cases instead of the correct amount of Rs. 1,43,684. The tax undercharge varied from Rs. 1,969 to Rs. 27,731 making up a total of Rs. 56,439.

The mistakes have been accepted by the Ministry.

53. *Under-assessment of wealth in the cases of a family group of assessees*

Para 32 of Chapter III of this Report deals with the concealment of income by a family group of assessees. Under the Voluntary Disclosure Scheme, envisaged in the Finance Act, 1965, the family group of assessees disclosed undeclared income of Rs. 25,92,500 and subsequently offered for assessment Rs. 11,60,231 for the assessment years 1960-61 to 1964-65 through a settlement. Based on the disclosures made and the settlement effected, the department completed the wealth-tax

assessments for the assessment years 1960-61 to 1964-65. In these assessments it was noticed that the wealth was short-assessed by Rs. 31.58 lakhs involving a wealth-tax undercharge of Rs. 42,750.

(i) In the settlement for the assessment years 1960-61 to 1964-65, the undisclosed income was arrived at Rs. 11,30,000 to be spread equally over the five assessment years in the hands of four members of the group. Accordingly, the income-tax assessments were made by adding a sum of Rs. 56,500 to the income of each of the four members for each of the five assessment years. In the wealth-tax assessments of the four members of the group for the five assessment years, wealth of Rs. 56,500 was charged to tax. As the undisclosed income of Rs. 11,30,000 was determined by the department as income earned and subsisting with the assessees, the drawings and outgoings having already been considered for arriving at the voluntary disclosure, the progressive total of wealth spread over to each member for each year should have been assessed to tax. Accordingly, instead of adding Rs. 56,500 for each of the five years, the addition to wealth for the assessment year 1960-61 should have been Rs. 56,500, for the assessment year 1961-62, Rs. 1,13,000 for the assessment year 1962-63, Rs. 1,69,500 and so on. The mistake resulted in short-levy on wealth of Rs. 22,60,000 involving wealth-tax of Rs. 28,550.

(ii) In the wealth-tax assessments of two members of the group for the assessment year 1964-65, reduction in the share of interest in partnership firms was claimed due to partition but the Wealth-tax Officer negatived the claim. In appeal, the Appellate Tribunal upheld the claim. While revising the assessments, the Wealth-tax Officer reduced the share of interest in excess by Rs. 4,58,241. This resulted in short-levy of wealth-tax of Rs. 7,200 (*approximately*).

(iii) The group acquired a textile unit and it admitted at the time of voluntary disclosure that over and above the acquisition price of Rs. 3,15,000, a sum of Rs. 1,00,000 had been

spent as extra consideration. The extra consideration should have been assessed to wealth-tax for the assessment years 1963-64 and 1964-65. The wealth not assessed to tax was Rs. 2,00,000 involving a revenue of Rs. 3,200.

(iv) Out of the finance commission of Rs. 11,35,000 a sum of Rs. 1,20,000 was withheld by the group towards outstanding sales tax and expenses and the balance of Rs. 10,15,000 only was offered as voluntary disclosure. In the wealth-tax returns of the four members of the group, no such liability was shown outstanding. Hence the amount of Rs. 1,20,000 received and not yet spent should have been assessed as wealth for the assessment years 1963-64 and 1964-65. The wealth that escaped assessment was Rs. 2,40,000 involving wealth tax of Rs. 3,800.

(v) Out of the disclosed income of Rs. 25,92,500 only Rs. 13,69,820 set off in the assessments of two firms belonging to the group was considered for wealth-tax assessments. The reasons for exclusion of the balance of Rs. 12,22,680 were not evident from records.

(vi) While arriving at the undisclosed income, a sum of Rs. 27,184 was deducted as representing agricultural income, but the value of the corresponding agricultural assets was not returned by the group in their wealth-tax returns for the assessment years from 1970-71 onwards.

54. *Other cases of wealth escaping assessment.*

(i) From the assessment year 1960-61, a company is not liable to wealth-tax. A company incorporated outside India is a company for the purpose of wealth-tax if it has a place of business in India. If it has no place of business in India, it is liable to wealth-tax in the status of an individual in respect of the assets held in India.

Six non-resident companies had no place of business in India. Out of these, three companies held shares in resident companies and the other three companies, besides holding shares in resident companies, received royalties from Indian companies for technical services rendered. During local audits conducted in July and October, 1973 and June, 1974 it was noticed that wealth comprising the value of shares held and the amount of royalties due on the valuation dates was not charged to wealth-tax. The total wealth that escaped assessment of wealth-tax in the six cases amounted to Rs. 34.95 crores involving a revenue of Rs. 66.75 lakhs for the assessment years 1964-65 to 1973-74. The Ministry have accepted the objection in one case (January, 1975). In the other cases they have stated (March, 1975) that the Wealth-tax Act is being amended retrospectively to exempt such cases from the levy of wealth-tax.

(ii) Under the Wealth-tax Act, all assets which are in the ownership of an assessee are includible in his wealth. But, by a fiction of law certain assets though not belonging to the assessee, are also to be treated as his wealth. For example, if an individual has transferred his assets otherwise than for adequate consideration to other persons or association of persons where the beneficiary is the transferor himself or his minor child or spouse, then such assets are to be included in the 'net wealth' of the individual. This clubbing provision is also attracted in cases where the transfer of assets is revocable. These provisions of the law had not been followed in the wealth-tax assessments of an individual assessee :

(a) By a deed dated 13-2-1957 the assessee created three trusts for the benefit of her three minor children and transferred 15,000 ordinary shares of Rs. 10 each in a certain company, without adequate consideration. The value of these shares was, however, omitted to be included in the net wealth of the assessee for the assessment years 1961-62 to 1971-72.

(b) The value of 3,751 shares in another company owned by the assessee and transferred otherwise than under an irrevocable transfer by two instruments dated 24-3-1961 to her father-in-law and mother-in-law was omitted to be included in the net wealth for the assessment years 1965-66 to 1968-69.

The following further omissions were also noticed in the assessments of the assessee :

(1) Value of 3,203 bonus shares returned by the assessee was omitted to be assessed for the assessment years 1969-70 and 1970-71.

(2) Shares of the value of Rs. 25,440 in a company and an advance of Rs. 8,750 made to a certain individual were omitted to be included in the net wealth for the assessment year 1964-65.

(3) Shares of the value of Rs. 4,903 in another company were omitted to be included in the net wealth for the assessment year 1968-69.

(4) The value of "rice mills and miscellaneous buildings" (Rs. 10,800) returned by the assessee under agricultural wealth was wrongly allowed exemption under section 5(1)(iva) of the Act for the assessment year 1970-71.

(5) An amount of Rs. 54,328 was included under loans and advances in the computation of net wealth for the assessment year 1966-67 while the amount correctly includible was only Rs. 34,328.

At the instance of audit, the department revised the assessments (March, 1974) and raised an additional demand of Rs. 1,13,775. The details of recovery are awaited.

(iii) It is now established law that compensation receivable is an asset within the meaning of section 2(e) of the Wealth-tax Act, 1957, and as such, is assessable to wealth-tax.

(a) In one case agricultural land belonging to an assessee was notified (on 23rd March, 1965) for compulsory acquisition by a State Government. The amount of compensation receivable by the assessee amounted to Rs. 3,72,312. In addition, the assessee was also to receive interest from 25th March, 1965, at 6 per cent on the amount of compensation due to be received. The amount of compensation receivable by the assessee on the valuation date relevant to the assessment years 1965-66, 1966-67 and 1967-68 was Rs. 3,72,312, Rs. 3,94,651 and Rs. 4,16,990 respectively. These amounts were not included in the net wealth of the assessee for the respective years, resulting in underassessment of wealth-tax of Rs. 24,320.

The Ministry have stated that notices for reopening the assessments were issued on 5-4-1973 and served on 29-6-1973.

(b) In another case, a perusal of the income-tax case of an assessee for the assessment year 1968-69 showed that he had been awarded a compensation of Rs. 2,63,751 on 26th March, 1968 by the Government of Madhya Pradesh for acquisition of his land. The income-tax assessments for the subsequent years revealed that in the next two accounting years (April, 1969 to March, 1971), he had kept an amount of Rs. 1,05,000 received as compensation in fixed deposits. The balance amount of compensation receivable was Rs. 1,58,751.

The compensation receivable and the fixed deposits are assets within the meaning of Section 2(e) of the Wealth-tax Act, 1957. The assessee did not, however, reveal these assets in his returns of wealth for the assessment years 1968-69, 1969-70 and 1970-71, nor did the assessing officer, taking clue from the income tax case, initiate necessary action. This resulted in loss of revenue of Rs. 5,320.

Besides the wealth-tax due as pointed out above, the assessee was also liable to pay a minimum penalty of Rs. 7,91,250 (Rs. 2,63,750 in each year for the three years) under section 18(1)(c) of the Act, for not disclosing the wealth in his returns.

While accepting the objection, the Additional Commissioner stated (April, 1973) that the assessments had been reopened. The Ministry have stated (January, 1975) that the reassessment proceedings have been dropped as in view of certain liabilities claimed by the assessee in the re-assessment proceedings, the net wealth was found to be even below the original figure.

(iv) Section 161 of the Income-tax Act and section 21 of the Wealth-tax Act are enabling sections under which the department, in respect of trust property, has the option either to tax the trustees or the beneficiaries.

(a) In one ward, an assessing authority had taxed the trust income in the hands of the beneficiaries but omitted to make corresponding assessments under the Wealth-tax Act. The officer having jurisdiction over trust property also did not make any assessments in the hands of the trustees with the result that, on a very approximate basis, wealth of Rs. 1,70,000 relating to each of the three beneficiaries escaped assessment for the years 1965-66 to 1971-72. The short demand of tax was Rs. 8,400.

On this being pointed out, the department contended that the primary responsibility to assess the tax in such cases is that of the officer having jurisdiction over the trustees and that the direct assessment on beneficiaries under Income-tax Act itself was a mistake and that necessary proceedings to assess the wealth in the hands of the trustees have since been initiated by the other officer.

It was pointed out to the department that it was open to the department either to assess the trustees or the beneficiaries and steps should have been taken by the department to ensure that the assessment is made on either of them. Failure to

evolve and follow a procedure for coordinated action in this regard resulted in wealth escaping assessment at both the ends from 1965-66. The Ministry have accepted the objection (February, 1975).

(b) In another case, a trust was formed on 29th June, 1963 with a corpus of Rs 1,50,000. The trust invested the amount in a company and the quantum of its investment with the company went on increasing till the accounting year relevant to the assessment year 1970-71. The trust had not been declared as a public charitable trust and, therefore, the income of the trust was subjected to income-tax. The wealth possessed by the trust was also liable to wealth-tax. But, neither the trust submitted its returns of wealth nor did the wealth-tax officer initiate action to assess the wealth to tax. When this was pointed out (July, 1973) by audit, the assessments for the years 1965-66 to 1973-74 were opened and tax of Rs. 14,480 levied on 24th January, 1974.

(v) An assessee submitted a duplicate blank wealth-tax return in respect of the assessment year 1964-65. He was called for hearing on 26th November, 1971, but he did not turn up. Thereafter, the case was not pursued nor was any note of pendency made in the records of the Wealth-tax Officer. While the assessee was assessed to wealth-tax for the years 1965-66, 1966-67 and 1968-69, assessment for the assessment year 1969-70 was neither made nor kept pending in the records of the assessing officer.

Thus, the wealth of the assessee for these two years escaped assessment. The wealth assessed to tax for the assessment years 1965-66 to 1968-69 was Rs. 3,81,740 and on this basis, for the two years (1964-65 and 1969-70) there was a loss of revenue to the extent of Rs. 2,820. The Ministry have accepted the objection.

(vi) In five other cases for different assessment years between 1957-58 and 1972-73, it was noticed that certain assets which should have formed part of the net wealth were left out

resulting in under-assessment of wealth-tax varying from Rs. 2,626 to Rs. 10,606 and making up a total of Rs. 29,215. The Ministry have accepted the objection in four cases; in the fifth case they have accepted it partly.

55. *Under-assessment due to incorrect valuation of assets*

(i) Immovable property at Calcutta valued at Rs. 80,243 was included in the assessed wealth of an individual for the assessment years 1957-58 and 1958-59 on the basis of the return whereas the value of the same assets was computed by the department at Rs. 20,92,670 in respect of the assessment year 1959-60 on the basis of the valuer's certificate filed by the assessee in respect of an adjoining land. Besides, wealth of Rs. 1,53,525 representing the assessee's 50 per cent share of a holding at Puri and the amount receivable by him from the Government of West Bengal for acquisition of land at Calcutta escaped assessment in both the assessment years 1957-58 and 1958-59. The resultant under-assessment of wealth was to the extent of Rs. 21,65,952 in each of these assessment years with consequent loss of revenue of Rs. 18,876 and Rs. 19,659 respectively.

The Ministry have accepted the objection regarding under-valuation/non-inclusion of immovable property but stated that no remedial action is possible now. Regarding the objection on failure to assess the compensation amount the Ministry's final reply is awaited (March, 1975).

(ii) During a scrutiny of the wealth-tax assessment of a family in June, 1973, it was noticed that two house properties were valued in March, 1969, by an approved valuer at Rs. 32,818 and Rs. 24,500. In the family partition effected in August, 1969 between the father and his three year old minor son, the values were taken as Rs. 1,00,000 and Rs. 1,25,000 respectively and it was specifically mentioned that a correct valuation of the properties had been made for purposes of equal partition. In the wealth-tax assessments of the father and minor son for the assessment years 1971-72 and 1972-73, made subsequent to the family

partition, the Wealth-tax Officer adopted the values of the properties as Rs. 45,000 and Rs. 24,500 respectively. The omission to adopt the correct value of Rs. 1,00,000 and Rs. 1,25,000 as mentioned in the partition deed resulted in short levy of wealth-tax of Rs. 3,235 for the two assessment years.

In the father's wealth-tax assessment for the assessment year 1972-73, the value of a building site was taken as Rs. 36,510 but in the gift deed dated 3-8-1971 by which the assessee came in possession of the site, the value was shown as Rs. 86,250. The assessee also indicated the value of the site as Rs. 86,250 in the application for grant of income-tax clearance certificate for raising loans for constructing a building on the site. The omission to adopt the value of the site as Rs. 86,250 instead of Rs. 36,510 resulted in short levy of tax of Rs. 1,900.

The wealth-tax assessments of the father for the assessment years 1965-66 to 1970-71 would also require revision in view of the value of Rs. 1,25,000 indicated in the partition deed in respect of one of the house properties. This would involve an additional tax of Rs. 3,000. The total undercharge would thus come to Rs. 8,135.

The Ministry have accepted the objection but stated that remedial action for 1965-66 is barred by limitation.

(iii) An assessee advanced a loan of Rs. 4,25,000 to a cloth mill during the period from 1st April, 1960 to 31st March, 1961. While making the assessment for the assessment year 1961-62, the Wealth-tax Officer valued the loan only at 50% (Rs. 2,12,500) as on the valuation date (31st March, 1961) on the ground that the condition of the loan on the valuation date was not good. In his comments (January, 1974) the Inspecting Assistant Commissioner (Audit) upheld the action of the Wealth-tax Officer, stating, *inter-alia,* that the appellate authorities had, in the cases of other assessees in similar circumstances, valued similar loans at or slightly above 50% on the basis of the reports of valuers.

The above position notwithstanding, at the time the assessment was made in this case by the Wealth-tax Officer (December, 1972), the assessee had already received back, during the years 1962-63 to 1964-65, a sum of Rs. 3,18,750 (75% of the loan) and this should have been in the knowledge of the Wealth-tax Officer. Further, the balance amount of Rs. 1,06,250 had not been written off by the assessee as irrecoverable.

The wealth of the assessee was, therefore, under-assessed by Rs. 2,12,500 resulting in the forgoing of revenue to the extent of Rs. 4,250.

(iv) Net wealth of an assessee means the aggregate value of all his assets minus the aggregate value of all debts owed by him on the valuation date. Debts which are secured on or which have been incurred in relation to any property in respect of which wealth-tax is not chargeable are not, however, to be deducted in computing the 'net wealth'. Failure to observe this principle was noticed in the case of 13 assessees during different assessment years between 1963-64 and 1972-73 where debts secured on or taken for exempt assets such as life insurance policies, gold bonds etc. were allowed as deduction in the computation of net wealth. The resultant under-assessments of wealth-tax varied from Rs. 1,038 to Rs. 5,714 making up a total of Rs. 19,974.

The mistakes have been accepted by the Ministry in nine cases.

56. *Under-assessment due to irregular allowances and exemptions*

(A) Irregular exemptions of house and/or agricultural land.

(i) In the case of an assessee, deduction of Rs. one lakh was allowed for the assessment year 1965-66 from the value of his interest in a partnership firm in respect of a house which was used by him alongwith other partners of the firm for residential purposes. As the house belonged to the firm and not to the assessee, the exemption was not admissible. The consequent tax undercharge of Rs. 2,500 was pointed out in January, 1974. The Ministry have accepted the mistake.

(ii) Agricultural land belonging to the assessee is exempt from wealth-tax upto a maximum of Rs. 1,50,000. Where, however, an assessee owns both agricultural land as well as a house or part of a house in an urban area, the maximum exemption limit of Rs. 1,50,000 applies to the combined value of the land and the house. The net wealth of three assessees on the valuation date relevant to the assessment year 1970-71 included the value of agricultural lands located both in and out of India to the extent of Rs. 4,64,388 in each case but the agricultural wealth in excess of the prescribed exemption was omitted to be taxed in the three assessments completed in March, 1971. When the omission was pointed out in audit in July, 1971, the assessments were revised in July, 1973, resulting in a total additional demand of Rs. 7,504.

(iii) In three cases where the assessees owned both agricultural land as well as residential house, the exemption in respect of the house was allowed over and above the maximum exemption of Rs. 1,50,000 in respect of agricultural land instead of applying the combined limit of Rs. 1,50,000. As a result, there was a total short levy of wealth-tax of Rs. 5,683 during the assessment years 1970-71 to 1972-73. The department accepted the mistakes and created additional demands.

(B) Non-withdrawal of exemption in respect of jewellery.

In paragraph 53(ii) of the Audit Report, 1972-73 it was pointed out that, notwithstanding the retrospective amendment of section 5(1)(viii) of the Wealth-tax Act, 1957, with effect from 1st April, 1963, and in spite of the instructions issued by the Central Board of Direct Taxes in October, 1971 directing the assessing officers to reopen all assessments from assessment year 1963-64 onwards to include jewellery in the total wealth of the assessees, several cases were noticed where the value of personal jewellery had not been included in net wealth and under-assessments had consequently resulted.

(i) As many as twenty six such instances were again noticed in eight Commisioners' charges where the exemption was not withdrawn resulting in a total undercharge of tax of Rs. 44,730. The Ministry have accepted the objection in all the cases and stated that additional demands have been raised.

(ii) In another case where an exemption of Rs. 2,70,455 allowed for each of the assessment years 1968-69 to 1970-71 was similarly not withdrawn and also the value of the interest of the assessee in a firm amounting to Rs. 1,35,786 was not included in his total wealth during the assessment years 1969-70 to 1971-72, there was a short levy of wealth-tax of Rs. 25,248 during the assessment years 1968-69 to 1971-72.

The Ministry have accepted the objection and stated that the assessments have been revised and an additional demand of Rs. 25,248 raised (January, 1975).

(C) Irregular/excessive exemption of securities, deposits etc.

(i) Wealth-tax is not payable by an assessee in respect of any deposit made with the Government or in any security of the Government or of a local authority (other than those specifically exempted in the Wealth-tax Act) which the Central Government may by notification in the official Gazette, exempt from wealth-tax. But the value of such deposits/securities is included in the net wealth for rate purposes. In one case, for the assessment years 1957-58 to 1961-62, the Wealth-tax Officer allowed rebate amounting to Rs. 67,297 on Government securities valued at Rs. 44,35,929 although no notification declaring the said securities to be exempt from wealth-tax was issued by the Central Government. This resulted in an incorrect grant of rebate of Rs. 67,297. On this being pointed out (October, 1971), the department accepted the mistake and rectified the assessment in August, 1972.

(ii) The value of any equity shares of a company held by an assessee is exempt from wealth-tax, where such shares form

part of the initial issue of equity share capital made by the company after the 31st day of March, 1964. The exemption is admissible for five successive assessment years commencing with the year following the date on which the company commences the operations for which it has been established.

An assessee's claim for such exemption of wealth of Rs. 3,60,960 representing value of certain shares during the assessment year 1972-73 was allowed by the department even though the Director's report of the relevant company indicated that the company had not commenced operations earlier to the assessment year 1972-73. The incorrect exemption resulted in under-assessment of wealth of Rs. 3,60,960 leading to a short levy of tax of Rs. 26,737.

Though the case was seen by internal audit, this mistake was not noticed by them.

The Ministry have accepted the mistake and stated that an additional demand of Rs. 26,737 has been collected (January, 1975).

(iii) The value of investments in shares and securities is exempt upto Rs. 1,50,000. Where, however, the aggregate value of treasury saving deposit certificates, 15 year annuity certificates, 12 year national defence certificates etc., held by an assessee continuously from a date prior to 1st March, 1970 is itself in excess of Rs. 1,50,000, the exemption limit is to be raised to the extent of the value of such certificates. In paragraph 53 (i) of the Audit Report, 1972-73, instances of excessive exemption allowed in this regard were pointed out. Similar mistakes were again noticed in a number of cases.

(a) In fifteen cases for the assessment years 1971-72, 1972-73 and 1973-74 it was noticed that the investments in the specified certificates mentioned above held continuously from a date prior to 1st March, 1970 did not exceed Rs. 1,50,000 but the value

of such certificates was exempted over and above the exemption of Rs. 1,50,000 in respect of other securities, shares, etc. The excessive exemption in these cases resulted in a short levy of wealth-tax of Rs. 58,430 in these fifteen cases.

The Ministry have accepted the objection in eleven cases; their final reply is awaited in the remaining four.

(b) In four other cases for the assessment years 1969-70 to 1972-73 exemptions were allowed in excess of the limit of Rs. 1,50,000 or the enhanced limit of the value of the specified certificates held continuously from a date prior to 1st March, 1970 or in respect of securities not actually held by the assessee but by the trustees of a trust of which the assessee was the beneficiary. The excessive exemptions in these cases resulted in a short levy of wealth tax of Rs. 28,806.

The Ministry have accepted the objection in three cases; for the fourth their final reply is awaited (March, 1975).

57. *Omission to levy additional wealth-tax on urban immovable properties*

Additional wealth-tax on urban immovable properties has been levied from 1965-66. Instances of omissions to levy this tax have been repeatedly pointed out in the past. It will be noticed from the following instances that such omissions/mistakes are still fairly widespread.

(i) In two cases additional wealth-tax of Rs. 1,71,422 was not levied as mentioned below :—

(a) The net wealth of an assessee for the assessment years 1971-72 and 1972-73 (assessments completed on 30-3-1973) comprised urban immovable properties of the value of Rs. 12,15,050 in Coimbatore district. No additional wealth-tax was levied in the case. The additional wealth-tax leviable worked out to Rs. 80,106 (approximately) for the two years.

(b) In the other case an assessee owned immovable properties to the extent of Rs. 14,45,120 of which properties of the value of Rs. 12,95,120 were situated in urban areas in Coimbatore. In the assessments completed in March, 1973 for the assessment years 1971-72 and 1972-73 additional wealth-tax of Rs. 91,316 was not levied.

The omissions were pointed out in audit in July, 1973. Accepting the omissions, the department stated in September, 1974 that the original assessments were set aside in appeal on other grounds. Additional wealth-tax of Rs. 1,71,422 would become recoverable as and when fresh assessments are made.

The Ministry have also accepted the mistakes.

(ii) In 15 other cases, 2 in Delhi, 3 in Calcutta, 3 in Bombay, 2 in Madras, 3 in Bangalore and 2 in Coimbatore in the assessments made for different assessments years, between 1965-66 and 1973-74, additional wealth-tax on urban immovable property was omitted to be levied. The total value of such property in these cases exceeded Rs. 1 crore. The amounts of tax not levied varied from Rs. 1,772 to Rs. 19,600; the total came to Rs. 1,22,294.

The Ministry have accepted the mistake in thirteen cases; in one case they have stated that on reduction of wealth by rectification no additional wealth tax is leviable and in one case their reply is awaited.

(iii) In four cases pertaining to the assessment year 1965-66 to 1971-72, the additional wealth tax was incorrectly calculated with undercharges varying from Rs. 3,670 to Rs. 18,036 making up a total of Rs. 45,265. The Ministry have accepted the mistakes in all the four cases.

(iv) Urban immovable property owned by an assessee and used throughout the previous year for the purposes of his business

is exempt from the additional levy. The exemption does not extend to immovable properties used for the purposes of partnership concerns or companies in which the assessee is a partner or shareholder.

In the case of an assessee, immovable property valued at Rs. 6,57,900 owned by him in Coimbatore but used by various partnership firms or companies in which the assessee was either a partner or had controlling interest was not subjected to the levy of additional tax. It was pointed out in audit in August, 1973 that as the buildings were not used for his own business, the exemption would not enure and wealth-tax was leviable. The approximate additional wealth-tax leviable for the three assessment years 1965-66 to 1967-68 amounted to Rs. 17,022.

The Ministry have accepted the objection partly.

(v) In two cases assessed in the same ward in Madras for the assessment year 1971-72 (assessments completed in December, 1971 and February, 1972) it was noticed in July, 1972 that additional wealth-tax was levied at the rates prevailing for the assessment years 1970-71 instead of at the revised rates for the assessment year 1971-72. This resulted in short levy of wealth-tax of Rs. 33,935. Accepting the mistake in both the cases the department intimated that in one case the assessment had been revised in March, 1973 raising additional demand of Rs. 31,135 and in the other case a demand of Rs. 2,800 had been raised in the revision carried out in January, 1973. The additional demand of Rs. 31,135 in the first case is reported to have been recovered by adjustment and report regarding the recovery of Rs. 2,800 in the second case is awaited.

(vi) Under the Wealth-tax Act prior to its amendment by the Finance Act, 1970 urban areas were classified into four categories based on population for the levy of additional wealth-tax. The categorisation was abolished with effect from 1-4-1971, from which date an initial exemption of rupees five lakhs was allowed in every case. In the case of an assessee for the assessment year

1971-72, it was noticed that additional wealth-tax was charged on urban assets wrongly according to the classification of cities as per the old provisions of the Act prior to its amendment and also allowing initial exemption of Rs. 5 lakhs as per the amended provisions. As a result there was an under-charge of tax of Rs. 10,715. The mistake has been rectified and additional demand of tax raised.

58. *Under-assessment due to mistake in calculation of additional wealth-tax*

An assessee owned urban assets worth Rs. 8 lakhs in Delhi in respect of each of the assessment years 1971-72 and 1972-73. Additional wealth-tax on assets worth Rs. 8 lakhs works out to Rs. 15,000 in each assessment year. The department, however, worked out and levied additional wealth-tax at Rs. 7,000 in each assessment year. This led to a short levy of additional wealth-tax of Rs. 16,000 for both the assessment years (Rs. 8,000 in each assessment year). On the mistake being pointed out in audit, the department has carried out the rectification on 30-5-1974.

59. *Non-levy or incorrect levy of penalty for late filing of wealth-tax returns*

(i) Under section 18(1) of the Wealth-tax Act, penalty is leviable if an assessee has, without reasonable cause, failed to furnish his wealth-tax return within the time prescribed in the Act. According to the instructions issued by the Central Board of Direct Taxes in July, 1969, the Wealth-tax Officer, where he has decided not to levy any penalty, has to record detailed reasons for not invoking the penalty provisions. In spite of this being pointed out in paragraph 57 of the Audit Report for 1972-73, instances continued to be noticed where Wealth Officers had not recorded reasons for not invoking the penalty provisions. In twenty cases where no penalty proceedings were initiated there was no indication that the Wealth-tax Officer had decided

against the levy of penalty. The minimum penalty leviable in these cases was Rs. 2,17,266. The Ministry's final reply is awaited (March, 1975).

(ii) The rate of penalty was 2 per cent of the tax for every month of default upto 31st March, 1969. This was enhanced from 1st April, 1969 to one half per cent of net wealth for every month of default. The Supreme Court held in November, 1969 that the crucial date for the imposition of penalty was the date of completion of assessment and, accordingly, in all cases where assessments were finalised after 1st April, 1969, penalty is leviable at the enhanced rates effective from 1st April, 1969. In spite of a comment made in paragraph 57 of the Audit Report for 1972-73 about cases where penalty had been levied at the old rates though assessments were made after 1st April, 1969, instances continued to be noticed where the penalty was similarly short-levied. In four cases where assessments were completed after 1st April, 1969 penalty was levied at the old rates instead of at the enhanced rates, resulting in short-levy of penalty of Rs. 4,49,105.

The Ministry have accepted the objection only partly as in their view penalty is leviable in such cases at old rates upto 31st March, 1969 and at enhanced rates thereafter. On that basis the short levy comes to Rs. 63,836.

(iii) In three cases penalties for the late filing of returns were incorrectly levied at the old rate even for the assessment years 1968-69 to 1972-73. The short levy of penalty in these three cases amounted to Rs. 35,646.

The Ministry have accepted the objection in all the 3 cases and stated that additional demands have been raised. They have added that the additional demand has been collected in one case (Rs. 10,856) and partly collected in the second (Rs. 10,000); in the third the revised order has been set aside by the Appellate Assistant Commissioner (February, 1975).

60. *Under-assessment of wealth-tax due to incorrect rectification of assessment*

Apparent mistake in an assessment order can be rectified at any time before the expiry of four years from the date of the order. In November, 1971, the Board had issued instructions that mistakes arising as a result of subsequent interpretation of law by the Supreme Court could be rectified treating them as mistakes apparent from the record provided that the application for rectification was filed by the assessee within the statutory time.

The wealth tax assessments of an assessee were revised for the assessment years 1962-63 to 1967-68 in January, 1973 to take into account the enhanced compensation awarded by the court for the acquisition of lands by the Government and interest thereon. While rectifying the assessments, the status of the assessee which was adopted as 'individual' in the original assessments completed on various dates during 1964 to 1968 was changed to 'Hindu undivided family' in response to the representation of the assessee made in December, 1972 based on the Supreme Court judgment in 1969. As the rectification was made on the basis of a request after the expiry of four years from the dates of original assessment it was pointed out in audit in June, 1972 that the revision was not in order for these assessment years. The Ministry have accepted the objection and stated that the assessments were rectified and additional demand collected, but the Appellate Assistant Commissioner cancelled the order in appeal and the department has taken the matter to the Tribunal.

61. *Over-assessment*

(i) Where the tax payable on the basis of the return filed by an assessee exceeds five hundred rupees, the assessee should pay the tax so payable within thirty days of furnishing the return. After a regular assessment is made, the tax so paid is deemed to have been paid towards the regular assessment.

In four cases, it was noticed that the tax paid on self-assessment by the assessees on the basis of their wealth tax returns for the assessment year 1971-72 was omitted to be given credit at the time of regular assessment resulting in excess demand of tax of Rs. 52,579. Accepting the mistakes pointed out in June, 1972 and July, 1972, the department revised the assessments subsequently. The excess demands were refunded either in cash or by adjustment.

(ii) Where an assessee is an individual who is not a citizen of India and who is not resident in India, the wealth-tax payable by him is reduced by an amount equal to 50 per cent thereof. However, in the case of two assessees who were not citizens of India and who were not resident in India, the wealth tax payable for the assessment years 1968-69 to 1972-73 in one case and 1967-68 and 1969-70 in the other, was not so reduced resulting in excess demands of tax of Rs. 13,484 and Rs. 8,883 respectively. On the mistakes being pointed out, in the first case necessary rectification for the assessment years 1970-71 to 1972-73 was made in August, 1973 allowing refund of Rs. 12,999. About the assessment years 1968-69 and 1969-70, it was stated that the rectifications had become time barred. In the second case the assessments were revised in February, 1974.

(iii) Under the provisions of the Wealth-tax Act, 1957, as amended by the Finance Act, 1970, the value of investments in shares and securities and bank deposits held in the assessee's name for at least six months, shall not be included in assessable wealth to the extent of Rs. 1,50,000.

In the case of three individuals, this exemption was not allowed in the assessment years 1971-72 and 1972-73. The omission resulted in an excess levy of Wealth-tax of Rs. 7,106 in the three cases.

The Ministry have accepted the mistakes.

GIFT TAX

62. Gift-tax is levied on the aggregate value of all gifts made by a person during the year. All transfers of property which are made without adequate consideration in money or money's worth are liable to tax unless specifically exempted by the Act. The term 'property' for the purpose of Gift-tax Act has been given a very wide meaning and connotes not only tangible movable and immovable property including agricultural land, but also includes other valuable rights and interests.

A limited review of gifts of agricultural land conducted by Government at the instance of the Public Accounts Committee had revealed that out of 10,544 cases of gifts registered in the months of September and October during 1969-70 and 1970-71, gift tax proceedings had not been initiated in as many as 4,590 cases involving gifts of Rs. 3.15 crores and gift-tax of Rs. 16.90 lakhs. In paragraph 1.28 of their 103rd Report, the Committee suggested that a complete review of all gifts of agricultural land during the years from 1965-66 to 1972-73 should be conducted and a target date should be fixed for the completion of this review which should not be beyond one year from January, 1974. The Ministry have stated that a complete review from 1965-66 "has been ordered to be completed by 31-12-1974". The results of the review are awaited (March, 1975).

63. During the test audit of the assessments made under the Gift-tax Act conducted during the period from 1st September, 1973 to 30th June, 1974, the following types of under-assessment of tax were noticed :

1. Incorrect calculation of tax.
2. Incorrect valuation of gifts.
3. Non-levy of Gift-tax.
4. Gifts escaping assessment.

A few cases illustrating the above types of mistakes are given in the following paragraphs :

64. *Incorrect calculation of tax*

The rates of gift tax were revised upwards from the assessment year 1971-72. In paragraph 62 of the Audit Report, 1972-73, a case in which the department failed to apply the new rates in 1971-72 was pointed out. A similar case was noticed again. The taxable gifts of an assessee were determined at Rs. 1,34,000 and Rs. 2,78,000 for the assessment years 1971-72 and 1972-73 respectively. The correct tax, according to the revised rates, worked out to Rs. 18,299 and Rs. 50,970 for these assessment years. The department, however, levied gift tax of Rs. 14,350 and Rs. 42,600 only by incorrectly adopting the rates relating to the assessment year 1970-71. Accepting the mistake pointed out in August, 1973, the department revised the assessments in August, 1973, raising additional demand of Rs. 12,319 for both the assessment years.

65. *Incorrect valuation of gifts*

Section 6 of the Gift-tax Act, 1958 stipulates that for the purpose of levy of gift tax, the value of any property gifted, other than cash, should be estimated at the price, which it would fetch, if sold in the open market on the date the gift was made.

(i) An assessee gifted three of his house properties to his wife and sons in the previous year relevant to the assessment year 1964-65. The assessee valued the gifted properties at Rs. 1,10,000, but did not support the valuation by the report of an approved valuer or any other evidence. The Gift-tax Officer enhanced the value of the properties to Rs. 1,35,500 only though the value taken for wealth tax assessment of 1964-65 was Rs. 1,72,150. Further, even this value of Rs. 1,72,150 would appear to be under-stated in view of the fact that the annual rental value of the properties was shown as Rs. 25,134 by the assessee in his income tax returns for the assessment year 1965-66.

The fact of under-valuation of the gift, pointed out in audit in June, 1971, was accepted by the Additional Commissioner in December, 1973. In February, 1974, however, it was intimated that no action in the matter was possible, because limit of time prescribed in section 16(1)(a) of the Gift-tax Act, 1958 had expired on 31st March, 1973.

The Ministry's final reply is awaited.

(ii) An assessee who was in possession of a piece of land measuring 6655 square yards, made a gift of 4670 sq. yards of the land to her sons during the previous year relevant to the assessment year 1972-73. The land gifted and that remaining with the assessee was valued at Rs. 50 per sq. yard by the assessee and returned as such for wealth tax and gift tax purposes. The Wealth-tax Officer assessed the value of land in possession of the assessee to wealth-tax at Rs. 60 per sq. yard, that being the prevalent market value of land in that industrial area. However, for the purpose of gift tax assessment in respect of the plot gifted, the value as returned by the assessee i.e. at Rs. 50 per sq. yard, was adopted, though both the plots formed one stretch of land adjoining the main road in the industrial zone and the valuation adopted, therefore, should have been the same for both the assessments. Variation in the valuation adopted resulted in under-assessment of gift of Rs. 46,700 and short-levy of gift-tax of Rs. 11,675. Both the wealth tax and gift tax assessments were completed on the same date.

The Ministry have accepted the objection.

66. *Non-levy of gift tax*

(i) If a firm is reconstituted with the same old partners or with addition of some new partners, revising the profit sharing ratios as per mutual consent, and if, consequently, one or more partners surrender a portion of their profits in favour of other partners, the surrender would constitute "transfer of property" and would attract levy of gift tax.

(a) A firm consisting of four partners was reconstituted in July, 1970 with the retirement of two partners and admission of three new minor partners. The new partners did not contribute any capital but were admitted to the benefits of partnership on the sole consideration of natural love and affection. The surrender of interest by the two retired partners in favour of the three new partners constituted a gift chargeable to gift tax which was not actually levied. The value of the gift was Rs. 3,63,550 and the gift tax leviable worked out to Rs. 53,700. When the omission was pointed out in audit in July, 1973, the department initiated necessary proceedings for charging the gift to tax in December, 1973. Report regarding recovery of the additional demand is still awaited (March, 1975).

(b) In five other similar cases it was noticed in audit conducted between June, 1973 and December, 1973 that the reductions in profit sharing ratios of certain partners were not treated as transfers of property leading to escapement of gift of Rs. 2,44,654 involving gift tax of Rs. 16,819. The Ministry have accepted the objection in four cases (partly in one case); their reply is awaited in the fifth case.

(ii) A person who was not resident in India remitted foreign currency worth Rs. 49,000 in favour of his wife and children, who were residents in India. The remittance was made through an Indian Bank which deposited the amount in their favour in India on 28th May, 1966. Certificates issued under the National Defence Remittance Scheme based on the above foreign currency remittances were sold by the Bank in India and sale proceeds amounting Rs. 23,520 were also deposited in their names on 28th July, 1966. Though the gift was completed in India, no tax was levied on it treating it as a gift of movable property situated outside India. The omission resulted in short levy of tax of Rs. 3,522. The Ministry have accepted the objection.

67. *Gifts escaping assessment*

(i) An assessee, by a deed of settlement, settled on 3rd November, 1964, 7/12th and 3/12th of his share in a firm in

favour of his grand children without adequate consideration. No action was taken by the department to assess to tax the gift involved in the transfer. The omission was pointed out in audit in July, 1973. The Ministry have accepted the objection and stated that additional demand of Rs. 14,773 has been raised and collected.

(ii) Properties consisting of a godown and a house were gifted by an assessee to her son in the previous year relevant to the assessment year 1965-66. Value of the gift was shown at Rs. 40,000 in the gift tax return, although the value as per the wealth tax returns of the assessee for the earlier years, was Rs. 90,000. The Gift-tax Officer estimated the value of the gift at Rs. 95,000.

A scrutiny of the wealth tax returns of the assessee, however, revealed that the gifted properties included also shops estimated to cost Rs. 62,100, which were neither returned by the assessee, nor brought to tax by the Gift-tax Officer. The omission, when pointed out by audit (June, 1973) was rectified (February, 1974) under section 16(1) of the Act, creating an additional demand of Rs. 13,750 based on the total value of the gift (Rs. 1,50,000) as assessed by an approved valuer on 31st March, 1969. The assessee was also liable to pay minimum penalty of Rs. 5,300 for furnishing inaccurate particulars of gifts; the penalty proceedings, initiated at the instance of audit, are yet to be finalised.

(iii) Under section 4(a) of the Gift-tax Act, 1958, where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property exceeds the value of the consideration shall be deemed to be a gift and subjected to gift tax.

An assessee, had, during the previous year relevant to the assessment year 1970-71, transferred his entire business to his

nephew without consideration. He was not, however, assessed to gift tax. When the omission was pointed out by audit, the department made the gift tax assessment, raising a demand of Rs. 10,303 (March, 1974). Collection particulars are awaited.

68. *Over-assessment*

(i) Under section 18-A of the Gift-tax Act, 1958, where any stamp duty is paid under any law relating to stamp duty on an instrument of gift of property in respect of which the gift tax payable exceeds Rs. 1,000, the assessee shall be entitled to a deduction from the gift tax payable by him of an amount equal to the stamp duty so paid or one-half of the sum by which the gift-tax payable before making the deduction under this section exceeds Rs. 1,000 whichever is less.

Omissions to allow this deduction were noticed in six cases for different assessment years from 1968-69 to 1973-74 resulting in over-charges of gift tax varying from Rs. 2,250 to Rs. 5,250 making up a total of Rs. 22,775. One of these cases had been checked in internal audit but the omission had not been noticed.

(ii) In two other cases mistakes in calculation of tax or application of the rate schedule resulted in overcharges of Rs. 1,250 and Rs. 3,310 for the assessment year 1972-73.

(iii) In the case of a gift of Rs. 1,10,000 made by a minor, tax amounting to Rs. 12,500 was levied. A minor, being incompetent in law to contract or to alienate property, is also incompetent to make a gift. The gift made by a minor is, therefore, void in law and does not attract levy of gift tax. The tax of Rs. 12,500 was thus erroneously levied.

The Ministry have accepted the objections in all these cases.

ESTATE DUTY

69. Estate duty is levied on all property passing on death. Certain properties though not actually passing are deemed to pass on death; such as, interests ceasing on death or property which the deceased was competent to dispose of at the time of death, or gifts where the donor is not entirely excluded from the possession and enjoyment of gifted property. Agricultural lands throughout India except in the States of West Bengal and Jammu and Kashmir are also subject to duty, as the Legislatures of all the States, except these two, have adopted resolutions under Article 252(1) of the Constitution requesting Parliament to legislate in respect of estate duty on agricultural lands.

70. During the test audit of assessments made under the Estate Duty Act, 1953, conducted during the period 1st September, 1973 to 30th June, 1974 the following types of under-assessment of duty were noticed :—

1. Incorrect valuation of estate.

2. Irregular reliefs and exemptions.

3. Estate escaping assessment.

A few cases illustrating the above types of mistakes are given in the following paragraphs :

71. *Incorrect valuation of estate*

(i) While determining the principal value of the estate passing on death of a deceased, deductions amounting to Rs. 1,89,003 were allowed in the assessment year 1959-60 towards liabilities on account of outstanding income-tax for that year as on the date (5th December, 1961) of death. A further deduction of Rs. 46,783 was allowed in the assessment year 1961-62, as claimed by the accountable person on the ground that as against

the income-tax demand of Rs. 2,74,353 pertaining to that year, payment of Rs. 2,27,570 only had been made till the death of the deceased. However, the appellate orders in the income-tax case, passed after the death of the deceased (but before the completion of assessment in March, 1973), resulted in—

(a) a refund of tax of Rs. 22,863 relating to the assessment year 1959-60;

(b) a reduction in the tax-demand for the assessment year 1961-62 from Rs. 2,74,353 to Rs. 1,86,261; and

(c) a refund of tax of Rs. 1,42,026 relating to other assessment years (1956-57 to 1961-62 except 1959-60).

The quantum of outstanding liability should have, therefore, been reduced by Rs. 69,646 (Rs. 22,863 plus Rs. 46,783) and the refund of income-tax amounting to Rs. 1,42,026 added to the principal value of the estate. As this was not done, the value of the estate stood under-assessed by Rs. 2,11,672 on which estate duty of Rs. 84,670 was payable.

The Ministry have accepted the objection in principle.

(ii) An amount of Rs. 11,16,961 was determined, in the case of a deceased, to be the slice of assets passing on death under section 17 of the Estate Duty Act, 1953. While working out the amount of slice, the Assistant Controller of Estate Duty adopted the book value (Rs. 25,16,716) of the quoted investments as against their market value of Rs. 30,03,214 and the profits for preceding three accounting years at Rs. 11,60,022 though the correct quantum of profits was Rs. 10,11,649. Due to these errors, the dutiable slice was under-valued by Rs. 1,63,795, which resulted in the forgoing of revenue to the extent of Rs. 40,940.

The Ministry have accepted the objection in principle.

(iii) Income-tax and wealth-tax liabilities outstanding on the date of death, being debts, are deductible from the principal value of the estate. In one case, advance income-tax already paid before the date of death was incorrectly deducted as debt which resulted in under-assessment of principal value to the extent of Rs. 42,276 with a consequent short levy of duty of Rs. 35,935.

The Ministry have accepted the objection.

(iv) In determining the principal value of an estate for levy of estate duty, a deduction is admissible for liabilities which are debts owed by the deceased. Such liabilities shall include income-tax assessed on the deceased and remaining unpaid on the date of death. However, it has been held that tax payable in respect of unaccounted money offered for settlement under the Voluntary Disclosure Scheme will not constitute a liability owed by the assessee on the date of his death. As such, the amount of such tax is not allowable as a deduction in computing the value of property chargeable to estate duty.

In the estate duty assessment of a person who died on 29th December, 1963, the tax due on an amount of Rs. 1,35,000 offered for settlement under Voluntary Disclosure Scheme was erroneously allowed as a "debt", resulting in underassessment of the estate by Rs. 80,375 leading to a short levy of duty of Rs. 16,075.

The Ministry's final reply is awaited.

(v) Under the provisions of the Estate Duty Act, 1953, moneys received under a policy of insurance, effected by any person on his life, where the policy is kept up by him for the benefit of an assignee shall be deemed to pass on the death of the assured. The Act further provides that in computing the principal value of an estate, allowance shall be made for debts

and encumbrances of the deceased. It has been judicially held that debts and encumbrances for which allowance has to be made, should be deducted from the value of the property liable to duty.

The free estate of a person, who died in January, 1966, was computed at a deficit of Rs. 30.71 lakhs, after allowing for debts and encumbrances. The assessing officer included in the free estate, an amount of Rs. 56,176 representing the moneys received under three life insurance policies kept up by the deceased for the benefit of his wife and daughters. As the deceased had, during his life time, absolutely assigned the three policies to his wife and two daughters, no part of the debts and encumbrances on the free estate was enforceable against the moneys received under the policies, since such receipts are property passing under other titles and are assessable as a separate estate, not includible in the free estate. The incorrect inclusion of property in the free estate and the irregular set off of debts thereon, resulted in an under-assessment of the estate by Rs. 56,176 leading to a short levy of estate duty of Rs. 14,044.

The Ministry have accepted the mistake (March, 1975).

(vi) In one case, for assessment year 1969-70 (assessment completed in August, 1969), two immovable properties were valued at Rs. 2,29,500 (Rs. 49,500 and Rs. 1,80,000) and the assessment was also accepted by the assessee. The assessee died in April, 1970 and in the estate duty return the value of the two properties was mentioned by the accountable person as Rs. 1,00,600 (Rs. 44,600 and Rs. 56,000) on the basis of a valuation certificate issued in June, 1970 by an approved valuer. While completing the estate duty assessment in February, 1971, the assessing officer took the value of the two immovable properties as Rs. 1,40,900 (Rs. 44,600 and Rs. 96,300) averaging the value arrived at by the annual rental method and the valuation made by the approved valuer. It was pointed out in Audit in November, 1972, that the value

adopted for wealth-tax purpose on 31st March, 1969 and accepted by the assessee was Rs. 2,29,500 and the omission to consider and follow the same valuation (the value in April, 1970 cannot be less than the value in March, 1969) in the estate duty assessment resulted in short levy of estate duty of Rs. 13,290. The procedure of averaging the value arrived at by the annual rental method and the value certified by the approved valuer is not also authorised by the Central Board of Direct Taxes for valuation of immovable properties.

The Ministry have accepted the objection.

(vii) While computing the principal value of the estate in two cases (dates of death—6th January, 1967 and 1st January, 1971) certain agricultural properties were omitted to be assessed to tax. This resulted in short computation of the principal value of the estate involving an undercharge of duty of Rs. 4,593 and Rs. 3,744 respectively.

The Ministry have accepted the objection in both the cases.

72. *Irregular reliefs and exemptions*

(i) Under the Estate Duty Act, no estate duty is payable in respect of one house or part thereof exclusively used by the deceased for his residence upto a value of Rs. 1,00,000 if such a house is situated in a place with a population exceeding ten thousand and the full principal value thereof in any other case. This exemption is not strictly applicable to lands appurtenant to the residences. In Para 64(e) of the Audit Report on Revenue Receipts 1969-70, two cases of incorrect exemption of the value of lands appurtenant to house property were commented upon as a result of which the Central Board of Direct Taxes issued instructions in August, 1972 that the Assistant Controllers should take the facts and circumstances of each case into account and decide how much of the land could be said to be appurtenant

to the house for the proper use and enjoyment thereof and how much should be brought to tax as being outside the purview of the provisions of the Act.

In the local audit of an estate duty ward in Februray, 1974 it was noticed that in four cases the assessments of which were concluded in October, 1972, January, 1973 and February, 1973 respectively, value of land measuring 19,726 sft., 9,771 sft., 3,999 sft. and 8,360 sft. appurtenant to the house properties was exempted in full as claimed by the assessee without deciding the extent of land required for the proper use and enjoyment of the property and bringing the value of the remaining land to estate duty as contemplated in the instructions of the Board. Even in the revisions of the assessments made subsequently but prior to the date of audit, this aspect was overlooked by the assessing officer. If the value of land appurtenant to the house properties is included in the principal estate, additional estate duty of Rs. 33,010 on estate of Rs. 1,47,075 would become leviable.

The Ministry's final reply is awaited.

(ii) In the case of the estate of a person, who died in November, 1971, exemption was allowed for a house property, which belonged to a trust and not to the deceased person who had only a life interest therein. The incorrect exemption resulted in underassessment of the estate by Rs. 1 lakh, leading to a short levy of duty of Rs. 22,490.

Though the case had been seen by Internal Audit, this mistake was not noticed by them.

The Ministry have not accepted the objection as in their view the exemption could extend also to an interest in property. This view is against the express provisions of the law.

(iii) According to the provisions of Estate Duty Act, 1953, pension not exceeding Rs. 15,000 per annum payable out of an

approved superannuation fund is exempt from estate duty provided the beneficiary was a dependant of the deceased.

In the estate duty assessment of a deceased person (who was not married) even though the beneficiaries of the commuted value of pension of Rs. 13,933 amounting to Rs. 64,495 payable from the fund, were the married sisters and brother of the deceased and so not his dependants, exemption from the principal value of the estate in respect of this amount was erroneously allowed. This resulted in a short levy of estate duty of Rs. 16,123.

The Ministry have accepted the mistake and stated that additional demand has been raised.

73. *Estate escaping assessment*

(i) In the case of an assessee who died on 5th December, 1961 the following irregularities were noticed :—

(a) While determining the principal value of the estate left by the deceased, two properties were valued at Rs. 71,100 and Rs. 2,000 as on the date of death. These properties were, however, sold by the accountable person subsequently and the valuation report (by an approved valuer) submitted along with the income tax case revealed that the values of these properties were Rs. 97,600 and Rs. 10,000 respectively even as far back as on 1-1-1954. The properties were thus undervalued by at least Rs. 34,500.

(b) Agricultural land measuring 67.93 acres was valued at Rs. 1,95,800 as on the date of death. The land was sold by the accountable person subsequently and the valuation report submitted with the income tax case revealed that the value of the land was Rs. 5,000 per acre in 1961. The correct value of the land was, therefore, Rs. 3,39,650 and the value adopted for estate duty assessment was thus underassessed by Rs. 1,43,850.

(c) The value of 214.62 acres of land held by the deceased was taken as Rs. 56,016 at Rs. 216 per acre. Out of this, 196.69 acres of land was sold by the accountable person in March, 1971 for Rs. 2,06,525. The valuation report submitted by the accountable person alongwith her income-tax return for the year 1971-72 showed that the value of land sold was Rs. 1,59,514 in January, 1954 (nearly Rs. 811 per acre). At this rate, the value of entire land of 214.62 acres works out to Rs. 1,74,055 in January, 1954. The acceptance of lower value (Rs. 56,016) resulted in undervaluation of estate by Rs. 1,18,039.

(d) Jewellery worth Rs. 9,00,000 which the deceased had claimed as heirloom during his life-time was sold by the accountable person for Rs. 13,80,000 after the death of the deceased. The estate duty assessment was amended under Rule 11(2) of the Estate Duty Rules and a duty of Rs. 5,22,290 was levied, calculated at the average rate of duty, instead of at the rate appropriate to the principal value of the estate. The correct amount of duty leviable was Rs. 5,52,000.

The short levy of duty on account of (a), (b), (c) and (d) comes to Rs. 1,48,270.

The Ministry's final reply is awaited.

(ii) From the Income-tax assessment records of an assessee, it was noticed in January, 1974, that the assessee transferred 899 shares of a company to a trust with a stipulation in the trust deed that the shares would revert back to the assessee after seven years from the date of transfer viz. 7th September, 1957. The assessee died on 27th February, 1966. Though the deceased became the owner of the shares on 7th September, 1964, *i.e.* long before her death, the property was neither returned by the accountable person in the estate duty return nor included by the assessing officer in the assessment completed in February, 1973. The value of the property that escaped assessment was Rs. 1,25,280 involving estate duty of Rs. 31,570.

The Ministry have accepted the objection and stated that additional demand has been raised.

74. *Loss of revenue due to time bar*

The notice for submission of the accounts of the estate of a deceased, who died on 3rd October, 1960, was issued on 8th October, 1965 and served on the accountable person on 12th October, 1965. The accounts were filed by the accountable person on 29th January, 1966 under protest. The assessment was completed in February, 1970 and estate duty of Rs. 4,796 was demanded and collected.

As the proceedings for the levy of estate duty were not commenced in this case by the assessing officer within five years from the date of death as enjoined in section 73-A of the Estate Duty Act, 1953, the assessment was quashed by the appellate authority on an appeal by the accountable person. Had the proceedings been started in time by the assessing officer, the loss of revenue could have been avoided.

The Ministry have accepted the objection and stated that no remedial action is possible now.

75. *Over-assessment*

Under the Estate Duty Act, the properties which are deemed to pass on the death of a person include *inter-alia* the interest of the deceased in a Hindu Undivided Family of which he is a member. The share of the lineal descendants of the deceased in such a family is also includible in the value of the estate for the purpose of determining the rate of duty payable.

In one case, the lineal descendants' share was correctly included as Rs. 6,87,395 in the gross value of the estate. The rebate of duty admissible on the share was, however, incorrectly

computed on a sum of Rs. 6,02,865 only. This resulted in excess levy of duty of Rs. 18,127.

The Ministry have accepted the objection.

NEW DELHI
the 11th April, 1975

(V. GAURISHANKER)
Director of Receipt Audit

Countersigned

NEW DELHI
the 11th April, 1975

(A. BAKSI)
Comptroller and Auditor General of India

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