REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR
1974-75

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS
VOLUME II
DIRECT TAXES

ERRATA

S. No.	Page	Para	Line	*For*	*Read*
1.	39	14.5	2nd from bottom	of survey	of 530 survey
2.	51	14.11 (iv)(a)	10th from top	meter	metre
3.	103	27(c)	1st from top	( )	(c)
4.	139	43(iii)	15th from top	Rs. 1,99,804	Rs. 1,99,084
5.	192	70(i)	12th from top	1965	1966
6.	221	77(iv)	6th from bottom	(iii) In the case ———the value of	(iv) In 7 other cases in four different Commissioners'
7.	239	89(iii)(b)	2nd from top	principal	principle

S/37C&AG/75

Report

Of The

Comptroller

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For The Year

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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 two reviews 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 1974-75 amounted to Rs. 1,653.95 crores out of which a sum of Rs. 526.19 crores was assigned to the States. The figures for the three years 1972-73, 1973-74 and 1974-75 are given below according to the revised system of classification in Government accounts adopted from the financial year 1974-75 :—

(in crores of rupees)

	1972-73	1973-74	1974-75
020 Corporation Tax	557.86	582.60	709.48
021 Taxes on Income other than Corporation Tax	625.47	741.37	878.25
028 Other Taxes on Income and Expenditure	—	(—)0.01	10.99
031 Estate Duty	9.78	10.53	10.94
032 Taxes on Wealth	35.94	35.78	39.23
033 Gift Tax	4.02	4.79	5.06
GROSS TOTAL .	1233.07	1375.06	1653.95
Less share of net proceeds assigned to States			
Income-tax	*487.92*	*527.85*	*516.16*
Estate Duty	*7.19*	*11.20*	*10.03*
TOTAL .	*495.11*	*539.05*	*526.19*
Net receipts	737.96	836.01	1127.76

The gross receipts under Direct Taxes during 1974-75 went up by Rs. 278.89 crores when compared with the receipts during 1973-74 as against the increase of Rs. 141.99 crores in 1973-74 over those for 1972-73. Taxes on income other than Corporation tax accounted for an increase of Rs. 136.88 crores. Receipts under Corporation tax registered an increase of Rs. 126.88 crores.

(a) 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 1974-75 is as under :—

Pre-assessment and post-assessment collection of tax during 1974-75 :—

		(in crores of rupees)
(*i*)	Deduction at Source	310.26
(*ii*)	Advance Tax (net)	990.97
(*iii*)	Self assessment	178.73
(*iv*)	Regular assessment	64.04
	TOTAL	1544.00

(b) The details of deductions at source under some broad categories are as under :—

		(in crores of rupees)
(*i*)	Dividends distributed by companies	47.69
(*ii*)	Salaries	169.51
(*iii*)	Payments to contractors	21.01
(*iv*)	Winnings from Lotteries and Crossword puzzles	1.51

(c) Deduction of tax at source by companies on dividends distributed.*

(1)	(*i*)	No. of company assessees as on 1-4-1974	32737
	(*ii*)	No. of company assessees as on 1-4-1975	36481
		(*a*) No. of foreign company assessees as on 1-4-1974 [included in (*i*) above].	1024
		(*b*) No. of foreign company assessees as on 1-4-1975 [included in (*ii*) above].	990
(2)	No. of foreign companies which had made the prescribed arrangements for declaration and payment of dividends within India :		
	As on 1-4-1974		4
	As on 1-4-1975		4

*Provisional figures furnished by the Ministry of Finance.

(3) No. of companies which have distributed dividends during 1974-75 and amount of dividend :

	No.	Amount of dividend (in thousands of rupees)
(*a*) Indian companies	4992	1,71,87,00
(*b*) Foreign companies	3	51,58

(4) No. of companies out of (3) from whom the statement prescribed in Rule 37(2) was received:

(*a*) Indian companies	4647
(*b*) Foreign companies	3

(5) No. of companies and amount of deduction of tax shown in the statements in (4) above :

	No. of companies	Amount (in thousands of rupees)
(*a*) Indian companies	4644	38,23,95
(*b*) Foreign companies	3	11,55

(6) No. of companies out of (4) in which the tax deducted was remitted to banks within a week :

(*a*) Indian companies	4509
(*b*) Foreign companies	2

(7) Amount involved in (6) above :

(*a*) Indian companies	37,26,30
(*b*) Foreign companies	22

(8) No. of companies out of (6) which remitted the tax deducted, after one week of date of deduction or receipt of challan :

(*a*) Indian companies	136
(*b*) Foreign companies	1

(9) No. of companies out of (4) above from whom the returns prescribed in section 286 were not received, when the dividends paid to a company exceeded Re. 1 and to any other share-holder Rs. 5,000

(*a*) Indian companies	62
(*b*) Foreign companies	—

(10) No. of companies out of (3) above which have (a) not deducted tax at source and (b) not furnished the statement prescribed in Rule 37(2) :

	Tax not deducted at source	State-ment not furnished under Rule 37(2)
(*a*) Indian companies	55	69
(*b*) Foreign companies	—	—

(d) *Advance Tax*—Demand and Collection*

Demand raised (*i.e.* notices issued) and collected by way of advance tax during 1974-75 :—

	Number of cases	Amount (in crores of rupees)
(*i*) Demand raised	6,82,764	1030.83
(*ii*) Demand collected out of (*i*) . . .	Not available	985.02
(*iii*) Arrears under advance tax as on 31st March, 1975	Not available	45.81

(e) Interest levied under various provisions of the Income-tax Act, 1961.*

	(in thousands of rupees)
(*i*) The total amount of interest levied under the various provisions of the Income-tax Act during the year 1974-75	77,87,91
(*ii*) Of the amount of interest levied, the amount :	
(*a*) Completely waived by the Department . .	57,51
(*b*) Reduced by the Department	56,39

*Figures furnished by the Ministry of Finance.

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

(i) The actuals for the year 1974-75 under the Major Heads '020—Corporation Tax,' '021—Taxes on Income other than Corporation Tax', '031—Estate Duty' and '033—Gift Tax' exceeded the Budget estimates ; whereas those under '032—Taxes on Wealth' were less than the Budget estimates. The figures for the years from 1970-71 to 1974-75 under the above heads are given below :—

(in crores of rupees)

Year	Budget estimates	Actuals	Variation	Percentage of variation
(1)	(2)	(3)	(4)	(5)
020—Corporation Tax :				
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
1974-75	661.00	709.48	48.48	7.33
021—Taxes on Income etc.*				
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
1974-75	709.00	878.25	169.25	23.87
031—Estate Duty*				
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
1974-75	9.00	10.94	1.94	21.55
032—Taxes on Wealth				
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
1974-75	40.00	39.23	(—)0.77	(—) 1.92
033—Gift Tax				
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
1974-75	4.00	5.06	1.06	26.50

The Ministry of Finance have stated that the variation between the Budget estimates and the actuals under Corporation Tax and Taxes on Income etc. is mainly attributable to larger collections under the head 'Advance tax'.

*Gross figures have been taken.

(ii) The details of variations under the heads subordinate to the Major Heads 020 and 021 for the year 1974-75 are given below :—

(in lakhs of rupees)

	Budget estimates	Actuals	Increase(+) Shortfall(—)	Percentage of variation
020—Corporation Tax :				
(*i*) Ordinary Collections	6,39,50	6,81,58**	42,08	6.58
(*ii*) Excess Profits Tax	..	1	1	..
(*iii*) Super Profits Tax	..	(—)7	(—)7	..
(*iv*) Business Profits Tax	..	8	8	..
(*v*) Sur-tax	20,00	15,51	(—)4,49	22.45
(*vi*) Other receipts*	1,50	12,37	10,87	724.67
TOTAL	6,61,00	7,09,48	48,48	7.33
021—Taxes on Income other than Corporation Tax:				
(*i*) Ordinary collections	6,75,25	8,22,84	1,47,59	21.85
(*ii*) Surcharge (Union)	16,00	44,07	28,07	175.44
(*iii*) Surcharge (Special)	5,75	3,51	(—)2,24	(—)38.96
(*iv*) Additional Surcharge (Union)	75	7	(—)68	(—)90.66
(*v*) Excess Profits Tax	..	(—)1	(—)1	..
(*vi*) Business Profits Tax	..	3	3	..
(*vii*) Super-tax	..	9	9	..
(*viii*) Other Receipts*.	11,25	7,65	(—)3,60	(—)32.00
Deduct—Share of net proceeds assigned to States	*4,91,26*	*5,16,16*	*24,90*	*5.07*
TOTAL	2,17,74	3,62,09	1,44,35	66.29

*Budget provision under "other receipts" has been shown as against "Miscellaneous".

**Includes collections of Super-tax and Surcharge.

3. *Cost of Collection*

The expenditure incurred during the year 1974-75 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
020—Corporation Tax		
1971-72	472.08	2.59
1972-73	557.86	2.82
1973-74	582.60	3.11
1974-75	709.48	3.90
021—Taxes on Income etc.		
1971-72	534.39	18.12
1972-73	625.47	19.72
1973-74	741.37	21.76
1974-75	878.25	27.31

4. (i) The total number of assessees (including companies) in the books of the Department as on 31st March, 1975 was 36,37,434. As compared to the previous year ending 31st March, 1974, there was an increase of 1,76,591 assessees. The figures status-wise with the amount of tax collected from each category during the year 1973-74 (the Ministry of Finance have not furnished the information for the year 1974-75) are given below :—

	Number of assessees		(in crores of rupees) Amount of tax collected
	As on 31st March, 1974	As on 31st March, 1975	As on 31st March, 1974
Individuals	27,51,301	28,84,767	512.42
Hindu Undivided Families	1,74,850	1,75,651	37.08
Firms	4,71,668	5,07,137	100.12
Companies	31,821	35,911	643.49
Others	31,203	33,968	8.77
TOTAL	34,60,843	36,37,434	1,301.88

(ii) Information in respect of foreign companies, including companies which have declared their Indian income on the basis of apportionment of their global income, is given below :—

A. Cases where returns have been filed and assessments completed as on 30-6-1975:—

		(in crores of rupees)
(*i*) No. of foreign companies	645	
(*ii*) Income returned		33.00
(*iii*) Income assessed		39.05
(*iv*) Gross demand		25.85
(*v*) Demand outstanding out of (iv) as on 30-6-75 .		0.65
(*vi*) Tax paid upto 30-6-75 [(iv)-(v)] . . .		25.20

B. Cases where returns have been filed but assessments were pending as on 30-6-1975:—

(*i*) No. of foreign companies	208	
(*ii*) Income returned		20.34
(*iii*) Gross demand being tax due on income returned		23.30
(*iv*) Demand outstanding out of (iii) as on 30-6-1975 .		Nil
(*v*) Tax paid upto 30-6-1975		23.30

C. Cases where no returns have been filed as on 30-6-1975:—

(*i*) No. of foreign companies	12	

(iii) Information in respect of only those foreign companies which have declared their Indian income on the basis of apportionment of their global income is as under :—

		(in crores of rupees)
A. Cases where returns have been filed and assessments completed as on 30-6-1975:—		
(*i*) No. of foreign companies	44	
(*ii*) Global income shown		126.49
(*iii*) Income returned		(—)0.36
(*iv*) Income assessed		0.06
(*v*) Gross demand		0.92
(*vi*) Demand outstanding out of (v) as on 30-6-1975 .		0.01
(*vii*) Tax paid upto 30-6-1975 [(v)-(vi)] . . .		0.91

	(in crores of rupees)
B. Cases where returns have been filed but assessments were pending as on 30-6-1975:—	
(*i*) No. of foreign companies	24
(*ii*) Global income shown	(—)63.03
(*iii*) Income returned	(—)4.76
(*iv*) Gross demand being tax due on income returned	0.32
(*v*) Demand outstanding out of (iv) as on 30-6-1975 .	0.11
(*vi*) Tax paid upto 30-6-1975	0.21
C. Cases where no returns have been filed as on 30-6-1975	
(*i*) No. of foreign companies	—

(iv) Category-wise number of Income-tax paying assessees together with amount of tax collected from each category during the year 1973-74 (the Ministry of Finance have not furnished information for the year 1974-75) is indicated in the following table :—

	Number of assessees		Tax collected during 1973-74
	As on 31st March, 1974	As on 31st March, 1975	(in crores of rupees)
(*a*) Business cases having income over Rs. 25,000 . . .	2,56,953	2,28,357	740.22
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000 . . .	2,79,713	1,75,372	134.69
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	6,39,645	2,65,640	87.83
(*d*) All other cases except those mentioned in category (e) below and refund cases . . .	13,89,968	4,46,551	281.27
(*e*) Government salary cases and non-Government salary cases below Rs. 18,000 . . .	8,94,564	1,29,203	57.87
(*f*) Summary assessment cases .	*	23,92,311	
TOTAL . . .	34,60,843	36,37,434	1,301.88

*Not separately reported.

(v) The total number of wealth-tax assessees in the books of the Department as on 31st March, 1974 and 31st March, 1975 was as follows :—

	As on 31st March, 1974	As on 31st March, 1975
Individuals	1,87,948	1,88,797
Hindu Undivided Families	28,806	28,712
Others	927	1,419
TOTAL	2,17,681	2,18,928

(vi) The total number of gift-tax assessees in the books of the Department as on 31st March, 1974 and 31st March, 1975 was as follows :—

	As on 31st March, 1974	As on 31st March, 1975
Individuals	73,081	86,792
Hindu Undivided Families	1,031	976
Others	181	186
TOTAL	74,293	87,954

(vii) The total number of estate duty assessment cases in the books of the Department as on 31st March, 1974 and 31st March, 1975 was as follows :—

As on 31st March, 1974	24,770
As on 31st March, 1975	20,084

(viii) The number of estate duty assessments completed during 1974-75 was as follows :—

Principal value of property	Number of assessments completed
(*i*) Exceeded Rs. 20 lakhs	12
(*ii*) Between Rs. 10 lakhs and Rs. 20 lakhs . .	52
(*iii*) Between Rs. 5 lakhs and Rs. 10 lakhs. . .	192
(*iv*) Between Rs. 1 lakh and Rs. 5 lakhs . . .	4,806
(*v*) Between Rs. 50,000 and Rs. 1 lakh . . .	5,920
TOTAL	10,982

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, 1975 was Rs. 699.21 crores as furnished by the Ministry. This does not include Rs. 236.75 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. 935.96 crores and the years to which they relate are shown below :—

	Corporation tax	Income-tax	Interest	Penalty	Total
				(in crores of rupees)	
Arrears of 1963-64 and earlier years .	8.28	34.02	2.40	2.34	47.04
1964-65 to 1971-72 . .	40.14	161.90	36.50	36.06	274.60
1972-73 . .	15.89	44.51	15.75	10.88	87.03
1973-74 . .	24.59	81.97	30.47	19.25	156.28
1974-75 . .	90.73	186.53	65.05	28.70	371.01
TOTAL .	179.63	508.93	150.17	97.23	935.96

(iii) The table below shows the number of assessees from whom gross arrears of Rs. 935.96 crores are due :—

Arrear demands	No. of assessees	Total arrears of tax (in crores of rupees)
Upto Rs. 1 lakh in each case	28,06,895	490.04
Over Rs. 1 lakh upto Rs. 5 lakhs in each case . .	5,252	112.39
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case . .	846	60.89
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case . .	520	80.93
Over Rs. 25 lakhs in each case	302	191.71
TOTAL	28,13,815	935.96

(iv) Tax demand certified to Tax Recovery Officers and State Government Officers for recovery and its year-wise particulars to the end of 1974-75 are as under :—

	Demand certified			Demand recovered	Balance
	At the beginning of the year	During the year	Total		
				(in lakhs of rupees)	
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
1974-75 . .	61607.00	18816.00	80423.00	17629.00	62794.00

(v) Demands of Income-tax stayed as on 31st March, 1975 on account of appeals and revision petitions are as under :—

(in crores of rupees)

(*a*) By the Courts	28.52
(*b*) By the Income-tax authorities :	
(*i*) Pending disposal of appeals etc. (including amounts under protective assessments.)	72.72
(*ii*) Pending disposal of scaling down petitions	4.61
(*iii*) For other reasons.	8.58

(vi) Arrears of Sur-tax demands outstanding as on 31st March, 1975 are as follows :—

Relating to demands raised in	Amount outstanding (in lakhs of rupees)
1965-66	0.33
1966-67	1.30
1967-68	5.07
1968-69	5.19
1969-70	8.22
1970-71	10.76
1971-72	26.17
1972-73	59.66
1973-74	89.33
1974-75	624.26
TOTAL	830.29

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

	As on 31st March, 1973*	As on 31st March, 1974*	As on 31st March, 1975
		(in lakhs of rupees)	
(*i*) Arrears of Advance Annuity Deposits	384.33	322.86	257.67
(*ii*) Arrears of self and provisional Annuity Deposits	65.77	53.85	41.61
(*iii*) Arrears of Regular Annuity Deposits	3108.90	2363.74	1993.06
TOTAL . . .	3559.00	2740.45	2292.34

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

(i) 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, 1975 :—

(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	12,608	292.97	3,629	59.67	2,335	344.51
1971-72	7,251	241.48	2,247	18.32	919	59.55
1972-73	13,210	488.55	3,656	79.93	1,480	275.61
1973-74	25,450	874.54	6,382	74.38	1,962	215.16
1974-75	57,337	5658.67	16,625	268.77	3,966	492.65
TOTAL	1,15,856	7556.21	32,539	501.07	10,662	1387.48

*Figures supplied by the Ministry of Finance and printed in the Audit Report, 1973-74 are stated to be provisional and have now been revised by them.

(ii) Demands of tax/duty stayed on appeals and revision petitions for Wealth-tax, Gift-tax and Estate Duty as on 31st March, 1975 are as under :—

(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.
(*i*) By the Courts .	39	210.90	5	55.49	22	13.06
(*ii*) By the Tribunals .	17	10.64	3	0.59	8	3.98
(*iii*) By Wealth-tax/ Gift-tax/Estate Duty authorities :						
(*a*) on account of appeals pending before Courts/ Wealth-tax/Gift-tax/Estate Duty authorities (excluding demands stayed by the Courts and the Tribunals shown in (i) & (ii) above/Revisions .	600	246.15	53	10.29	231	253.06
(*b*) on account of any other reasons (*e.g.* settlement petitions, protective assessments, D.I.T. relief claims, etc).	164	51.29	196	41.27	48	26.94
TOTAL . .	820	518.98	257	107.64	309	297.04

6. *Arrears of assessments*

(a) Income-tax including Corporation Tax.

(i) The number of assessment cases which are to be finalised as on 31st March, 1975 has decreased as compared to that at the close of the previous year. The position of assessments pending as on 31st March, 1975 was 16.77 lakhs as compared to 17.20 lakhs as on 31st March, 1974 and 13.93 lakhs as on 31st March, 1973. Of 16.77 lakhs of pending cases as many as 7.22 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	Number of assessments completed: Out of current	Out of arrears	Total	Percentage	No. of assessments pending at the end of the year
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
1974-75	55,18,327	24,23,575	14,17,271	38,40,846	69.6	16,77,481

*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 beginning 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 115th 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. Further, in their 186th Report the Committee also emphasized the need for the setting up of an efficient statistical information system in the Department.

(iii) Category-wise break-up of the total number of assessments completed during the years 1973-74 and 1974-75 is as under :—

	1973-74	1974-75
(*a*) Business cases having income over Rs. 25,000 .	2,06,347	2,60,806
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,14,386	1,44,269
(*c*) Business cases having income over Rs. Rs. 7,500 but not exceeding Rs. 15,000 . . .	1,77,110	2,29,139
(*d*) All other cases except those mentioned in categories (e) and (f) and refund cases . . .	3,70,933	4,98,584
(*e*) Small income scheme cases, Government salary and non-Govt. salary cases below Rs. 18,000 .	61,332	78,011
(*f*) Summary assessments	25,05 895	26,30,037
TOTAL	34,36,003	38,40,846

(iv) Status-wise break-up of income-tax assessments completed during the year 1973-74 and 1974-75 is as under :—

	1973-74	1974-75
(*i*) Individuals	27,63,811	31,33,348
(*ii*) Hindu Undivided Families	1,75,812	1,66,135
(*iii*) Firms	4,40,471	4,74,435
(*iv*) Companies	29,466	36,574
(*v*) Associations of persons	26,443	30,354
TOTAL	34,36,003	38,40,846

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

Year	As on 31st March, 1973	As on 31st March, 1974 No. of cases	Approximate amount of tax involved (in lakhs of rupees)	As on 31st March, 1975
1970-71 and earlier years	69,287	38,837	9,47	29,039
1971-72	3,35,410	38,537	7,17	16,843
1972-73	9,87,968	3,88,489	35,53	30,608
1973-74	—	12,53,734	1,01,48	3,67,964
1974-75	—	—	—	12,33,027
TOTAL	13,92,665	17,19,597	1,53,65	16,77,481

The Ministry of Finance have not furnished the approximate amount of tax involved in the assessments pending as on 31st March, 1975.

(vi) Category-wise break-up of pending income-tax assessments as on 31st March, 1974 and 31st March, 1975 is as under :—

	As on 31st March, 1974	As on 31st March, 1975
(a) Business cases having income over Rs. 25,000	1,66,764	1,65,778
(b) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000.	1,11,715	1,34,885
(c) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000 .	1,60,966	2,18,681
(d) All other cases except those mentioned in categories (e) and (f) below and refund cases	3,25,811	4,36,065
(e) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	52,060	73,531
(f) Summary assessments	9,02,281	6,48,541
Total	17,19,597	16,77,481

(vii) Status-wise and year-wise break-up of pendency of income-tax assessments as on 31st March, 1975 are as under :—

Status	1970-71 and earlier years	1971-72	1972-73	1973-74	1974-75	Total
Individuals	20,659	12,758	23,720	2,64,285	9,63,263	12,84,685
Hindu Undivided Families	1,673	943	1,808	21,455	57,647	83,526
Companies	2,120	592	731	7,681	17,314	28,438
Firms	4,036	1,921	3,761	67,295	1,78,209	2,55,222
Associations of persons	551	629	588	7,248	16,594	25,610
Total	29,039	16,843	30,608	3,67,964	12,33,027	16,77,481

(viii) The number of assessments completed and demand raised month-wise during 1973-74 and 1974-75 are as below :—

	1973-74		1974-75	
	No. of assessments completed	Demand raised (Rs. in crores)	No. of assessments completed	Demand raised (Rs. in crores)
April . . .	62,526	11.45	51,275	10.35
May . . .	84,987	20.20	87,779	14.26
June . . .	1,36,795	14.97	2,03,863	23.91
July . . .	2,21,530	25.92	3,72,738	57.20
August . . .	2,69,133	32.60	3,60,503	48.49
September . .	3,46,688	38.37	4,07,992	70.85
October . . .	2,71,388	48.20	3,34,537	72.88
November . .	3,75,998	63.66	3,44,231	69.00
December . .	3,68,835	65.74	3,96,008	100.29
January . . .	3,85,738	97.81	4,07,833	121.37
February . . .	4,16,780	112.72	3,97,674	170.94
March . . .	4,95,605	321.25	4,76,413	321.27
TOTAL . . .	34,36,003	852.89	38,40,846	1080.81

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 assessments and set aside assessments which are pending*

(1) Year-wise details 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 finalisation on 31st March, 1975 are as follows :—

Assessment year	Number of assessments
1966-67 and earlier years	1,218
1967-68	419
1968-69	499
1969-70	585
1970-71	779
1971-72	1,033
1972-73	964
1973-74	753
1974-75	1,082
TOTAL	7,332

(2) Year-wise details of assessments cancelled under section 263 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act) which are pending finalisation on 31st March, 1975 are as follows :—

Assessment year	Number of assessments
1966-67 and earlier years	105
1967-68	44
1968-69	65
1969-70	61
1970-71	462
1971-72	388
1972-73	381
1973-74	231
1974-75	571
TOTAL	2,308

(3) Year-wise details of assessments set aside by the Appellate Assistant Commissioners under Section 251 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act) or by the Appellate Tribunals 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, 1975 :—

Set aside by Appellate Assistant Commissioners		Set aside by Appellate Tribunals	
Assessment year	No. of cases	Assessment year	No. of cases
1966-67 and earlier years	3,325	1966-67 and earlier years	383
1967-68	697	1967-68	74
1968-69	797	1968-69	83
1969-70	953	1969-70	84
1970-71	958	1970-71	69
1971-72	1,012	1971-72	49
1972-73	725	1972-73	39
1973-74	749	1973-74	37
1974-75	971	1974-75	124
TOTAL	10,187	TOTAL	942

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

The position of pendency as on 31st March, 1975, as furnished by the Ministry, is given below :—

	Super Profits tax	Sur-tax
(*i*) Total number of cases for disposal during 1974-75	22	4137
(*ii*) Number of cases disposed of provisionally	..	443
(*iii*) Number of cases disposed of finally	6	1798
(*iv*) Amount of demand raised on provisional assessments	..	Rs. 20,85,04,000
(*v*) Amount of demand collected on provisional assessments	..	Rs. 16,29,48,000
(*vi*) Amount of demand raised on final assessments	Rs. 6,95,000	Rs. 21,14,88,000
(*vii*) Amount of demand collected on final assessments	Rs. 6,03,000	Rs. 13,38,96,000
(*viii*) Numberof cases pending as on 31st March, 1975	16	2339
(*ix*) Approximate amount of tax involved in (viii)	Rs, 87 000	Rs. 13,68,65,000

Year-wise details of assessments under Companies (Profits) Sur-tax Act, 1964, pending as on 31st March, 1975 are as under :—

Year	Number of assessments
1964-65 1965-66 1966-67	37
1967-68	20
1968-69	24
1969-70	34
1970-71	71
1971-72	123
1972-73	327
1973-74	665
1974-75	1,038
TOTAL	2,339

(c) The table below shows the year-wise details of Wealth-tax, Gift-tax and Estate Duty assessments pending without finalisation on 31st March, 1975. The approximate amount of tax/duty involved therein has not been furnished by the Ministry of Finance :—

	No. of assessments pending		
	Wealth-tax	Gift-tax	Estate Duty
1969-70 and earlier years	18,051	2,269	1,380
1970-71	11,848	1,433	755
1971-72	17,742	2,213	1,010
1972-73	31,142	3,787	1,965
1973-74	57,060	6,773	3,765
1974-75	1,08,381	9,830	11,209
TOTAL	2,44,224	26,305	20,084

8. *Reliefs and Refunds*

(a) *Reliefs*

The Income-tax Act contains several provisions in Chapter VI-A, affording reliefs to tax payers either for the purpose of providing an incentive for saving or development or for the purpose of relieving hardship arising from certain types of obligatory expenditure. The Ministry were requested to furnish information regarding the number of cases where these tax benefits were actually availed of by the assessees and the following table gives the information, as furnished by the Ministry, for the assessment years 1971-72 and 1972-73 :—

	Assessment year	No. of assessees	Amount of relief allowed (in thousands of rupees)
(*i*) Relief on account of expenditure on medical treatment of handicapped dependants	1971-72	1220	2,40
	1972-73	684	1,01
(*ii*) Relief in respect of payments for securing retirement benefits . .	1971-72	537	1,70
	1972-73	184	1,21
(*iii*) Relief in respect of income earned by Indian teachers, research workers working in foreign universities and educational institutions . . .	1971-72	481	1,56
	1972-73	258	1,06
(*iv*) Relief for newly established industrial undertakings and hotels . . .	1971-72	1080	3,60,33
	1972-73	634	9,11,15
(*v*) Relief for expenditure incurred on education abroad of children of foreigners	1971-72	435	1,68
	1972-73	174	69
(*vi*) Relief for industrial undertakings which provide employment for displaced persons	1971-72	465	62,48
	1972-73	232	18,45

(b) *Refunds*

(*i*) Refunds under Section 237 :

1. No. of applications pending on 1-4-74.	16,215
2. No. of refund applications received during the year 1974-75 .	1,33,316
3. No. and amount of refunds made during 1974-75 :	
(*a*) Out of (1) above :	
(*i*) No.	15,861
(*ii*) Amount	Rs. 1,27 68,000
(*b*) Out of (2) above :	
(*i*) No.	1,18,019
(*ii*) Amount	Rs. 8,63,86,000
4. No. of refund cases in which interest was paid u/s 243, the amount of such interest, and the amount of refund, on which such interest was paid during 1974-75 :	
(*a*) Out of (1) above :	
(*i*) No.	8
(*ii*) Amount of refund	Rs. 22,000
(*iii*) Amount of interest paid	Rs. 2,000
(*b*) Out of (2) above :	
(*i*) No.	58
(*ii*) Amount of refund	Rs. 85,000
(*iii*) Amount of interest paid	Rs. 7,000
5. No. and amount of refunds made during 1974-75 on which no interest was paid :	
(*i*) No.	1,33,814
(*ii*) Amount	Rs. 9,83,79,000
6. No. of refund applications pending as on 31-3-1975 .	15,651
7. Break-up of applications mentioned at (6) above.	
(*i*) Refund applications for less than a year . .	15,297
(*ii*) between 1 year and 2 years	354
(*iii*) for 2 years and more	..

(ii) Appeal/Revision etc. effects and Refunds under Section 240 and payment of interest under section 244

1. No. of assessments which were pending revision on account of appellate/revision etc., orders 9,913

2. No. of assessments which arose for similar revision in 1974-75 1,19,012

3. No. of assessments which were revised during 1974-75 :

   (*i*) Out of those pending as on 1-4-74 9,640

   (*ii*) Out of those that arose during 1-4-74 to 31-3-75 . . 1,10,181

4. No. of assessments which resulted in refund as a result of revision and total amount of refund given :

	No.	Amount of refund
(*i*) Under item 3(i) above . . .	4,985	Rs. 2,92,83 000
(*ii*) Under item 3(ii) above . . .	56,201	Rs. 32,60,02,000

5. No. of assessments in which interest became payable u/s 244 and amount of interest :

	No.	Amount of interest
(*i*) Under item 4(i) above . . .	42	Rs. 2,25,000
(*ii*) Under item 4(ii) above . . .	113	Rs. 8,99,000

6. No. of assessments pending revision on 1-4-1975 :

   (*i*) Out of (1) above 273

   (*ii*) Out of (2) above 8,831

7. Break-up of assessments mentioned at (6) above :

   (*i*) Pending for less than 1 year . . . 8,831

   (*ii*) Pending for more than 1 year and less than 2 years 250

   (*iii*) Pending for more than 2 years . . . 23

9. *Searches and Seizures*

		1972-73	1973-74	1974-75
(*i*) Total number of searches and seizure operations conducted . . .		532	538	2,029
(*ii*) Total amount each of money, bullion and jewellery or other valuable articles or things seized .		(Rs. in lakhs)		
	Cash	155	141	385
	Jewellery and bullion	132	108	940
	Other assets	167	191	388
	TOTAL	454	440	1,713

(*iii*) Total amount each of money, bullion and jewellery or other valuable articles or things released — Assets other than those shown against item (iv) below (assets held as on 31-3-75) have either been released or appropriated against tax demand.

(*iv*) Total amount of money, bullion and jewellery or other valuable articles or things held as on 31-3-75 irrespective of the year of search	(Rs. in lakhs)
Cash	507
Bullion and jewellery	730+598 Kg. silver+4 Kg. gold+48 Gold Sovereigns.
Other assets	625+1656$ + 26£ + 35 Shillings+146 silver coins+60 Kg. Silver utensils.
TOTAL	1862+598 Kg. silver+4 Kg. gold+48 Gold sovereigns+1656$+26£+35 Shillings+146 silver coins+60 Kg. silver utensils.

(*v*) The earliest date from which any of these assets is still retained . . — 2-5-1965

(*vi*) The arrangements made for the safe custody of assets still held and for their physical verification	Cash is deposited in the Personal Deposit Account of the C.I.T. in the Reserve Bank of India/State Bank of India. Other valuables are kept either in the well-guarded strong room in the office building or in the Treasury or in the Bank Vaults etc.		
(*vii*) Complaints of losses and pilferage . . .	Nil		
(*viii*) No. of cases out of the total searches and seizures mentioned above where the assessments have been completed as on 31-3-75 .	441	208	290
(*ix*) No. of cases where assessments were completed by reducing or waiving penalties u/s 271(4A) . .	12	1	—
(*x*) The total amount of arrears of income-tax pending as on 31-3-75 in respect of the assessments completed . . .	(in lakhs of rupees 1011	275	416
(*xi*) The amounts of concealed income estimated in these cases at the time of search and seizure . . .	1089	540	362
(*xii*) The amounts on which actual assessments were made . . .	1007	190	278
(*xiii*) No. of cases in which incriminating evidence was found during search and seizure operations indicating an offence for which prosecution could be launched under any section of the Act . .	96	54	126
(*xiv*) No. of cases where prosecutions were launched .	2	2	5
(*xv*) No. of cases where convictions were obtained .	1	..	1

10. *Frauds and evasions*

(a) Income-tax

(*i*) No. of cases in which penalty under Section 28(1)(c)/271(1)(c) was levied in 1974-75	8,216
(*ii*) No. of cases in which prosecution for concealment of income was launched	56
(*iii*) No. of cases in which composition was effected without launching prosecution	2
(*iv*) Concealed income involved in (i)	Rs. 19.45 crores
(*v*) Total amount of penalty levied in (i) . . .	Rs. 15.48 crores
(*vi*) Extra tax demanded on concealed income in item (iv)	Rs. 8.62 crores
(*vii*) Cases out of (ii) in which convictions were obtained .	3
(*viii*) Composition money levied in respect of (iii) . .	Rs. 9,700
(*ix*) Nature of punishment in respect of (vii) :	
(*a*) Convicted to imprisonment till rising of court and fine of Rs. 500	one case
(*b*) Convicted to one day imprisonment and fine of Rs. 250	one case
(*c*) Convicted to imprisonment till rising of court and fine totalling Rs. 16,000	one case

(b) Wealth-tax and Gift-tax—

	Wealth-tax	Gift-tax
(*i*) No. of cases in which penalty u/s 18(1)(c)/17(1)(c) was levied	995	26
(*ii*) No. of cases in which prosecution for concealment was launched . . .	5	..
(*iii*) No. of cases in which composition was effected without launching prosecution .	..	..

	Rs.	Rs.
(*iv*) Concealment of net wealth/value of gift involved in (i)	38,08,60,000	4,49,000
(*v*) Total amount of penalty levied . . .	34,63,82,000	19,000
(*vi*) Extra tax demand on concealment . .	57,08,000	51,000
(*vii*) Cases out of (ii) in which convictions were obtained	..	..
(*viii*) Composition fees levied in respect of cases in (iii)	..	..
(*ix*) Nature of punishment in respect of (vii) .	..	..

11. *Revenue demands written-off by the Department during the year* 1974 75

(a) A demand of Rs. 480.81 lakhs in 7,906 cases was written off by the Revenue Department during the year 1974-75. Of this, a sum of Rs. 91.44 lakhs relates to 74 company assessees and Rs. 389.37 lakhs to 7,832 non-company assessees.

	Companies		Non-companies		Total	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
I. Assessees having died leaving behind no assets or gone into liquidation or become insolvent :						
(*a*) Assessees having died leaving behind no assets .	..	..	76	96,67,480	76	96,67,480
(*b*) Assessees having gone into liquidation . .	37	29,16,481	..	..	37	29,16,481
(*c*) Assessees having become insolvent . . .	..	..	24	36,29,964	24	36,29,964
(*d*) Assessees which are defunct though not gone into liquidation	18	61,30,502	..	..	18	61,30,502
TOTAL	55	90,46,983	100	1,32,97,444	155	2,23,44,427
II. Assessees being untraceable	19	97,059	4815	8,58,282	4834	9,55,341
III. Assessees having left India	..	..	28	12,04,340	28	12,04,340

IV. For other reasons :						
(*i*) Assessees who are alive but have no attachable assets	..	..	348	1,15,79,525	348	1,15,79,525
(*ii*) Amount being petty etc.	..	..	2525	86,423	2525	86,423
(*iii*) Amount written off as a result of settlement (cases of scaling down of demand) . .	..	..	4	1,09,38,675	4	1,09,38,675
(*iv*) Demands rendered unenforceable by subsequent developments such as duplicate demands wrongly made, demands being protective etc.	..	..	4	52,188	4	52,188
TOTAL	..	..	2881	2,26,56,811	2881	2,26,56,811
V. Amount written off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount for recovery . .	..	..	8	9,20,469	8	9,20,469
GRAND TOTAL	74	91,44,042	7832	3,89,37,346	7906	4,80,81,388

12. *The results of functioning of the Valuation Cells are detailed below :—*

(1) No. of Valuation Units/Districts

Year	No. of Valuation Units	No. of Valuation Districts functioning
1972-73	20	Nil
1973-74	80	8
1974-75	80	10

(2) No. of cases referred to the Valuation Cells :

Year	Wealth-tax	Gift-tax	Estate Duty
1972-73	535	2	200
1973-74	1,724	30	189
1974-75	11,022	61	285

(3) Total amount of Valuation declared by the assessees :

(in lakhs of rupees)

Year	Wealth-tax	Gift-tax	Estate Duty
1972-73	3768.01	2.19	441.34
1973-74	2740.90	21.31	146.65
1974-75	9636.99	47.73	201.84

(4) No. of cases decided by the Valuation Cells and the total amount of valuation made by the Cells :

(in lakhs of rupees)

Year	Wealth-tax		Gift-tax		Estate Duty	
	No. of cases	Total amount	No. of cases	Total amount	No. of cases	Total amount
1972-73	504	7747.32	4	3.42	171	975.72
1973-74	529+ 57*	5204.69	21+2*	45.27	195+ 34*	488.33
1974-75	5707+ 206*	19583.49	36+3*	70.15	98+ 14*	359.31

*The cases returned to Income-tax Officers.

(5) No. of cases pending in the Valuation Cells on 1-4-1975 :

	Number
Wealth-tax	8,355
Gift-tax	32
Estate Duty	247

(6) Expenditure incurred on Valuation Cells during 1972-73, 1973-74 and 1974-75 :

Year	Expenditure
	Rs.
1972-73	4,36,240
1973-74	26,29,282
1974-75	61,94,372

13. *Results of test audit in general*

(i) *Corporation Tax and Income-tax*

During the period from 1st July, 1974 to 31st March, 1975 test audit of the documents of the income-tax offices revealed total under-assessment of tax of Rs. 1015.50 lakhs in 16,436 cases and over-assessment of tax of Rs. 75.77 lakhs in 2,680 cases. Besides these, various defects in following the prescribed procedure also came to the notice of Audit.

Of the total 16,436 cases of under-assessment, short levy of tax of Rs. 838.48 lakhs was noticed in 1,316 cases alone. The remaining 15,120 cases accounted for under-assessment of tax of Rs. 177.02 lakhs.

N.B.—Figures appearing in paragraphs 4 to 12 above have been furnished by the Ministry of Finance.

The under-assessment of tax of Rs. 1015.50 lakhs is due to mistakes categorised broadly under the following heads :—

	No. of items	Amount (in lakhs of rupees)
1. Income escaping assessment	1372	60.09
2. Failure to observe the provisions of the Finance Acts	73	8.27
3. Incorrect status adopted in assessments	67	23.35
4. Incorrect computation of salary income	583	11.89
5. Incorrect computation of income from house property	700	17.57
6. Incorrect computation of dividend income	84	2.13
7. Incorrect computation of business income	2548	113.60
8. Irregularities in allowing depreciation and development rebate	855	97.60
9. Irregularities in connection with export incentives	32	9.48
10. Irregular exemptions and excess reliefs given	1141	257.17
11. Irregular computation of capital gains	152	21.04
12. Mistakes in assessment of firms and partners	413	40.12
13. Omission to include income of spouse/minor child etc.	36	5.16
14. Avoidable mistakes involving considerable revenues	118	39.26
15. Irregular set off of losses	57	4.70
16. Under-assessment due to adoption of incorrect procedure	11	—
17. Mistakes in assessments while giving effect to appellate orders	83	12.87
18. Excess or irregular refunds	429	12.92
19. Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.	3235	72.61
20. Avoidable or incorrect payment of interest by Government	30	19.98
21. Omission/short levy of penalty	50	24.11
22. Other topics of interest/miscellaneous	4292	112.59
23. Under-assessment of Surtax/Super Profits Tax.	75	48.99
Total	16436	1015.50

(ii) *Wealth-tax*

During test audit of assessments made under the Wealth-tax Act, 1957, short levy of tax of Rs. 96.28 lakhs was noticed in 3,209 cases. The number of cases in which over-assessment was noticed was 750 and tax involved was Rs. 9.82 lakhs.

The under-assessment of tax of Rs. 96.28 lakhs was due to mistakes categorised broadly under the following heads :—

	No. of items	Tax (in lakhs of rupees)
(*i*) Omission to assess returned wealth and raise demand	4	1.38
(*ii*) Wealth escaping assessment	595	15.79
(*iii*) Incorrect valuation of assets	359	10.42
(*iv*) Irregular/excessive allowances and exemptions	716	8.69
(*v*) Mistakes in computation of net wealth	561	14.18
(*vi*) Mistakes in calculation of tax	429	6.18
(*vii*) Non-levy or incorrect levy of additional wealth-tax	39	3.80
(*viii*) Non-levy or incorrect levy of penalty and non-levy of interest	370	29.90
(*ix*) Incorrect status adopted in the assessments	41	3.68
(*x*) Mistakes in refunds	13	1.28
(*xi*) Miscellaneous	82	0.98
TOTAL	3,209	96.28

(iii) *Gift-tax*

During the test audit of gift-tax assessments, it was noticed that in 587 cases there was short levy of tax of Rs. 15.28 lakhs and in 123 cases there was over-charge of tax of Rs. 1.09 lakhs.

(iv) *Estate Duty*

In test audit of estate duty assessments, it was noticed that in 423 cases there was short levy of estate duty of Rs. 34.34 lakhs and in 58 cases there was over-charge of duty of Rs. 1.18 lakhs.

14. *Valuation of urban immovable properties*

14.1. The Income-tax Act and other direct taxes enactments have been repeatedly amended in recent years with a view to preventing evasion of taxes through under-valuation of immovable properties. The provision made in 1964 about the production of a tax clearance certificate for registration of transfer documents in respect of properties valued at more than Rs. 50,000 and flaws noticed in the actual administration of this provision were pointed out in paragraph 12 of the Audit Report 1973-74.

14.2. The Income-tax Act, 1961 was also amended through the Taxation Laws (Amendment) Act, 1972 with effect from 15th November, 1972 to introduce a new chapter—Chapter XX-A—authorising the Department to acquire an immovable property, where such property is transferred by sale or exchange and the true consideration for such transfer is concealed with the object of evading taxes. Under these new provisions acquisition notices were issued in 8,258 cases upto 31st March, 1975. Of these, the proceedings were dropped in 2,785 cases. Acquisition orders were made in 136 cases covering 120 properties, whose total consideration, as stated in the instruments of transfer, was Rs. 1.28 crores against the fair market value of Rs. 2.59 crores. None of the acquisition orders had, however, become final as on 31st March, 1975 and not a single property had been acquired by that time.

14.3. The subject of valuation of properties is itself of considerable importance not only in the normal working of the various direct taxes, but more so in the proper implementation of the said new provisions made specifically to tackle the problem of under-valuation of properties.

14.4. The basic principle underlying the valuation of properties as laid down in the various Direct Taxes Acts is that the value of any property shall be estimated to be the price which, in the opinion of the assessing authority the property would

fetch, if sold in the open market. It has been judicially held that the Statute does not contemplate actual sale or the actual state of the market but only enjoins that it would be assumed that there is an open market and the property can be sold in such a market and on that basis the value has to be found out.

14.5. The Public Accounts Committee have repeatedly, expressed concern about the extent to which property values are depressed in tax returns. The Audit Report (Civil) on Revenue Receipts, 1969 mentioned a case in paragraph 58(a) where two urban properties declared for wealth-tax at Rs. 1,80,000 and Rs. 1,00,000 were acquired/purchased by a State Government and a University at Rs. 26.40 lakhs and Rs. 10 lakhs respectively. While commenting upon this case, the Public Accounts Committee (Fourth Lok Sabha) in paragraph 1.88 of their 117th Report, emphasised the need to undertake a survey of all metropolitan properties in accordance with a time-bound programme. The Committee re-iterated the suggestion in their 25th and 88th Reports and the Board issued instruction No. 265 through their letter No. 326/6/70-WT, dated 12th January, 1971 that a time-bound programme for survey should be drawn-up.

A test check conducted in respect of certain localities in a few major cities indicated the following position :—

(i) In Ahmedabad, no regular or special survey was carried out by the Department in a recently developed posh locality, either to locate new assessees or to detect evasion of taxes through under-valuation of properties.

(ii) In Bhubaneswar, no special survey was conducted in pursuance of the recommendations of the Public Accounts Committee but a general survey was carried out from August, 1974 in a few areas only. Out of survey reports received till March, 1975, follow-up action had been taken only in 230 cases.

(iii) In Bombay, routine surveys had been undertaken since July, 1972 but there was no effective procedure for follow-up action on the results of these surveys. There was no evidence of any special survey, as required by the Public Accounts Committee, having been conducted till March, 1975.

(iv) In Calcutta, it was noticed that the surveys conducted by the Department covered only shops and premises and the surveys were conducted at random and not in any systematic manner. There was no scheme for an over-all survey of immovable properties in areas developed in the recent past in and around Calcutta.

(v) In Delhi, only a partial survey was conducted in a selected locality and the survey reports did not contain essential details like the cost and nature of construction. No extracts of these survey reports were found in the assessment records of the concerned assessees and some of the assessing officers expressed complete unawareness of the receipt of any such extracts. A co-relation of the survey reports with the records in the Land and Development Office showed that, in many cases, the persons shown as owners in the survey reports were different from those shown as such in the records of the Land and Development Office.

(vi) In Hyderabad, a limited survey was conducted in 1974. The survey was a new-case-oriented one and was confined to certain old and established business area. The survey registers did not contain any information about the owners of the buildings or details relating to the area of site, nature of construction, date and the cost of construction.

(vii) In Jaipur and Udaipur, surveys were conducted in some localities/colonies but these were incomplete and did not cover all the properties in a locality or

all localities of the city. Follow-up action was also not found complete as the survey reports had not been forwarded to the assessing officers in all cases.

(viii) In Kanpur, a partial survey was conducted but there was no evidence of any follow-up action. The results of survey were passed on to two assessing officers having jurisdiction over the localities in August, 1973 but these were not available in those offices at the time of audit. In one of the assessing offices the results were stated to have been misplaced.

14.6. In relation to house properties, the Central Board of Direct Taxes have, by executive instructions, (*vide* Board's circular No. 4-D (W.T.) of 1965 dated 30th July, 1965) indicated two methods of valuation which could be adopted in cases where market values cannot be ascertained with due regard to the nature, size and locality of the property, the amenities available and the prices prevailing for similar assets in the same locality or in the neighbourhood. The first of these two methods, called the capitalisation method involves capitalisation, at the rate of return expected from house properties, of the net annual average income from the property. This method is suited mainly to the case of properties which are fully developed and fetch economic rent. The fairness of the results obtained would depend on the correctness of the net annual average income on the one hand and the multiplier adopted for capitalisation on the other. The second method, called the land and building method, involves valuing the land and the building separately. This method is more suitable in important cities where land has a very high value and the income from the building does not, often, give a proper idea as to the value of the land on which it is situated.

14.7. In May, 1969 the Central Board of Direct Taxes issued instructions that, where on the basis of a Valuer's certificate, the value of a property is shown at a higher figure in a certain year as compared to its value declared in the earlier

years, the earlier assessment should be reopened only in cases where the assessee had failed to furnish all relevant details in the earlier years and not in cases where the higher valuation had resulted from a difference in the method of valuation adopted. The Board also stated that where an assessee, filing a return for the first time on the basis of a Valuer's certificate, had not filed any return in the earlier years on a *bona fide* belief that the value of his assets was below the taxable limit, no action should be taken for the earlier assessment years. These instructions were revised, at the instance of Audit in June, 1970, to provide that even where the higher valuation in the subsequent year was attributable to a different basis of valuation, the earlier assessments should be reopened if the difference in valuation exceeded 25% of the value adopted in the earlier years and the assessee could not plausibly explain the difference. The revised instructions also provided that where a return was filed for the first time on the basis of a Valuer's certificate, an enquiry should be made in regard to the earlier years so as to reopen earlier assessments, if it was found that the assessee was liable to wealth-tax in any earlier year.

14.8. It was noticed during the test check that the Valuers, generally, adopted the income capitalisation method for the valuation of house properties. There were, however, cases where this method was not followed, though it was the appropriate method or where it was applied incorrectly. Some instances are given below :—

(i) In Ahmedabad, a building property constructed on a lease-hold plot of 3,691 sq. yds. at a returned cost of Rs. 6,20,325 was valued by the Valuation Cell at Rs. 8,76,000 in December, 1970. The value was determined on the basis of the fair average rate of construction. It did not include the value of lease-hold rights, the cost of lifts and the cost of temporary garages. The Valuer had stated that this could not be taken to be the value of the property which would depend on the income that the property was fetching.

During the previous year relevant to the assessment year 1969-70, the total effective rent realised from this building was Rs. 3,52,291 and even on the basis of taking the value at 8 times the net annual rental income, the value of the property would be over Rs. 14 lakhs. The assessment was, however, made at Rs. 8.76 lakhs.

(ii) In Kanpur, a house property constructed in 1967-68 was not returned or assessed to wealth-tax for the assessment year 1968-69 though it had been completed and let out prior to the relevant valuation date *i.e.* 31st March, 1968. The cost of the building was estimated by an approved Valuer in September, 1968 at Rs. 2,11,267 and the value of land (3,011 sq. yds.) at the prevailing municipal market rate of Rs. 60/- per sq. yard for this locality was Rs. 1,80,660. The total value of the property not assessed to tax for 1968-69 was thus, Rs. 3,91,930.

For the assessment years 1969-70 to 1971-72, the property was assessed to tax at a value of Rs. 2,65,825 on the basis of the value computed by an approved Valuer on the land and building method. For the assessment year 1972-73, the property was valued by another Valuer on the basis of the income capitalisation method and the annual value was multiplied by ten. If the same method with the same multiplier was followed for the assessment years 1969-70 to 1971-72, the value of the property would work out to Rs. 4 lakhs as against Rs. 2,65,825 taken for assessment.

(iii) In Hyderabad, two properties were valued at Rs. 5,42,686 on the basis of land and building method. Under income capitalisation method the value of these properties would work out to Rs. 8,05, 800.

In 3 cases where housing properties were valued on income capitalisation method, it was noticed that there was an under-valuation of Rs. 2.64 lakhs per year, either because of the adoption of a lower net income in respect of the property or due to the adoption of a higher yield rate.

14.9. In 1968, the Government of India set up its own Valuation Cells in Ahmedabad, Bombay, Calcutta, Delhi, Lucknow and Madras for the valuation of properties for purposes of assessment to direct taxes. The Central Board of Direct Taxes issued instructions, from time to time, about the types of cases to be referred by the departmental authorities to these Valuation Cells. In December, 1971, in Instruction No. 365 issued through circular F. No. 319/5/70 WT, dated 28th December, 1971, the Board directed that, apart from referring cases where a reference is considered necessary in the interest of revenue, the following types of cases should be referred to the Valuation Cells :—

(i) Cases under the Income-tax Act, where there is a suspected under-valuation of Rs. 50,000 or more;

(ii) Cases under other direct taxes;

(a) where the net annual rental value is not less than Rs. 10,000 and the declared value is less than 8 times the net annual rental value, or

(b) where the returned value is Rs. 5 lakhs or more, or

(c) where there is a suspected under-valuation of 20 per cent, with a monetary minimum of Rs. 50,000.

In 1972, the various direct tax enactments were amended through the Taxation Laws (Amendment) Act, 1972 to provide a statutory basis for reference of the question of valuation to the Valuation Cells. According to the rules framed under the

amended Acts, in the case of wealth-tax a reference would lie to the Valuation Officer, if, in a case supported by the certificate of a registered Valuer, the assessing officer is of the opinion that the returned value is less than the fair market value and, in any other case, the assessing officer considers that the fair market value exceeds the returned value by more than 33⅓ per cent or Rs. 50,000, whichever is less.

Instances were noticed during the test check where cases, which apparently called for a reference to the Valuation Cell, were not so referred. A few instances are given below :—

(i) In Ahmedabad, a self-occupied property, in a residential-*cum*-commercial locality, and on a land area of 5,980 sq. yards was returned and assessed to wealth-tax at Rs. 2.50 lakhs in the assessment years 1963-64 to 1969-70. The value was not reassessed/revised upwards at any stage during these years, nor was it referred to the Valuation Cell. In the assessment year 1968-69, the assessee produced a certificate from an approved valuer showing the value of the property at Rs. 2,40,000. As a result of an objection raised by Audit in 1972, the valuation was referred to the Valuation Cell, who, in October, 1974 determined the value of the property at Rs. 19.47 lakhs on 31st March, 1967, Rs. 22.83 lakhs on 31st March, 1968 and Rs. 25.93 lakhs on 31st March, 1969. On the basis of this valuation, the short recovery of wealth-tax in the 3 assessment years would be of the order of Rs. 2.84 lakhs.

Another similar property with a land area of 15,600 sq. yards was returned and assessed at Rs. 5.50 lakhs for the assessment year 1968-69. The assessment was completed in March, 1973. Though the value exceeded Rs. 5 lakhs, no reference was made to the Valuation Cell.

(ii) In Bombay, the number of cases referred to the Valuation Cell for re-valuation of properties was 310 in 1973-74 and 185 in 1974-75 as against the total number of wealth-tax assessees *viz.*, 45,256 and 47,985 as on 31st March, 1974 and 31st March, 1975 respectively.

In one case, an assessee constructed two buildings, very near each other, in Colaba at the same time and declared their values as Rs. 47,14,987 and Rs. 50,59,260. The former property was valued by the departmental Valuation Cell, on a reference made to them under the Income-tax Act, at Rs. 77,50,000. The valuation of the other property was not referred to the Valuation Cell.

(iii) In Rajasthan, out of 476 properties reviewed, only seven were found to have been valued by the departmental Valuation Cell. The Commissioner had issued instructions in November, 1973 that all properties whose returned value is Rs. 2.00 lakhs or more should be referred to the Valuation Cell. It was, however, noticed that in the case of 11 properties these instructions had not been followed.

14.10. The Public Accounts Committee had also suggested in paragraph 2.7 of their 117th Report (1969-70) and again in paragraph 1.24 of their 25th Report (1971-72) that it would be necessary to devise adequate checks over the work of Valuers to ensure that valuation is correctly and fairly done. The Wealth-tax Rules empower the Board not to register any Valuer, if in their opinion, such Valuer has been guilty of misconduct in his professional capacity. The test check revealed that the valuation by Valuers was always much lower than that by the departmental Valuation Cell. Thus—

(i) In Calcutta, out of 13 cases studied, 4 cases valued by approved valuers were subsequently valued by the departmental Valuation Cell. The departmental

valuation worked out to be more in each case, the percentage of increase varying from 31 to 100. The Department had not, however, tried to prepare any list of valuers, whose estimates were invariably or generally lower than those of the Department itself.

(ii) In Hyderabad, in 10 cases, all but one of which had been valued by approved Valuers, it was seen that the rates of land and unit costs of building were substantially lower than the rates adopted by the Valuation Cell for similar properties in the same areas and at the same time. On the basis of rates adopted by the Valuation Cell, the under-valuation, in these cases, worked out to 42 to 70 per cent or a total of Rs. 12.60 lakhs per year.

(iii) In Kanpur, the value of land of a property was returned at Rs. 1,02,400 for the assessment years 1969-70 to 1972-73 on the basis of an approved Valuer's report, who computed the value at Rs. 32 per sq. yd. The Municipal market rate of land in that locality was Rs. 85 per sq. yard for the assessment year 1968-69, and Rs. 130 per sq. yard in July, 1973. The departmental Valuation Cell valued the land for the assessment year 1973-74 at the rate of Rs. 127 per sq. yard. Adopting a graded rate of increase in the market rate from time to time, the aggregate under-valuation for the assessment years 1969-70 to 1972-73 would work out to Rs. 9,97,400.

In the case of another property in the same locality, an approved Valuer adopted the rate of Rs. 35 per sq. yard in the valuation of a building property on a land area of 2,540 sq. yards. The valuation was accepted for the assessment years 1973-74 and 1974-75. On the basis of the

valuation given by the Valuation Cell in the other case, there would be an aggregate under-valuation of Rs. 4,52,120 in the two assessment years.

(iv) In Rajasthan, in the case of seven properties referred to the Valuation Cell, the valuation by the Cell was more than that returned on the basis of the approved Valuers' certificates to the extent of 21.7 to 296.4 per cent. Further, the valuation certificates did not, in many cases, contain vital information like location, area of land, built up area, specifications of construction, etc. Sometimes the value of land was not included or was included only partially.

14.11 In paragraph 1.89 of their 117th Report (1969-70) and again in paragraph 5.32 of their 119th Report (1973-74), the Public Accounts Committee had emphasised the need to establish a proper co-ordination among different direct taxes assessments and also between the Central and State taxes departments to improve the quality of tax administration. The present test check revealed a lack of such co-ordination in many cases resulting in loss of revenue. It also revealed cases where information already available with the Department was not made use of in the interest of revenue. A few instances are given below :—

(i) In Ahmedabad, a house property jointly owned by five individuals was assessed to wealth-tax at less than Rs. 6.00 lakhs on the basis of an approved Valuer's report. In the estate duty assessment of one of the co-owners completed in February, 1974, the value of the property was taken as Rs. 17,47,900 on the basis of the departmental Valuation Officer's report of October, 1973. The Wealth-tax Officer did not refer this case to the Valuation Officer at any stage though the value exceeded Rs. 5 lakhs. Even after the departmental valuation for estate duty purposes, the higher value was not adopted in the

wealth-tax assessment. The failure to refer the case to the Valuation Cell and to co-ordinate the value ascertained for estate duty resulted in an aggregate under-assessment of wealth of Rs. 26.69 lakhs for 5 years for only two co-owners; the records of the remaining co-owners were not made available.

(ii) In Bombay, a house property at Peddar Road, jointly, owned by 6 persons, was returned and assessed to wealth-tax at Rs. 10,57,897 during the assessment years 1957-58 to 1960-61. The property was acquired by the Government of India in July, 1961 at a compensation of Rs. 22,37,349. In the assessment to capital gains tax, the Appellate Tribunal accepted the assessee's claim in September, 1974 based on an approved Valuer's report, that the valuation of the property as on 1st January, 1954 was Rs. 19,26,900. There was still no attempt to revise the valuation in the wealth-tax assessment for the assessment years 1957-58 to 1960-61.

(iii) In Bombay, also a multi-storeyed building on Warden Road was officially valued by the Department in January, 1972. According to the valuation report, the cost of each flat of about 2,200 sq. ft. carpet area in this building would be Rs. 3.30 lakhs. It was, however, noticed that an assessee, owning a flat in this building, returned the value of her flat for the assessment years 1973-74 and 1974-75 at Rs. 1,27,000 as per valuation of an approved Valuer made on 5th June, 1973. The Department accepted this return. On the basis of the Department's own valuation, there would be an under-assessment of Rs. 2.03 lakhs in each of the assessment years. This would also call for a review in the case of all other 46 flat owners in this building.

In another case, a flat in a multi-storeyed building at Cumballa Hill, returned at Rs. 3 lakhs was officially valued at Rs. 3.50 lakhs as on 31st March, 1973. This valuation was not made use of by the Department in the revision or completion of assessments of the other 71 flat owners in the same building, though much lower valuation was returned in their cases.

In still another case, departmental valuation of a property in Cuffe Parade, made for the purpose of Income-tax Act, came to Rs. 77.50 lakhs as against the declared value of Rs. 47,10,987. The revision of the wealth-tax assessments of flat owners for this building which was apparently called for, was not, however, taken up.

(iv) In Rajasthan, the State Government levy a tax on the value of urban lands and buildings under the Rajasthan Lands and Buildings Tax Act, 1964. The principles of valuation under this Act are the same as those under the Central Direct Taxes enactments. The State Lands and Buildings Tax Department had worked out land rates for various urban localities as on 31st March, 1973 on the basis of the rates given in the returns filed by the assessees, rates obtained in actual sales, reserve prices fixed and rates received during auctions held by the Urban Improvement Trusts/Municipalities, etc. On a review of 15 cases, it was seen that the values assessed to wealth-tax were lower by 21.6 to over 100 per cent than the values determined by the State Lands and Buildings Tax Department for the same properties. A similar lack of co-ordination was noticed in the following instances :—

(a) Although many properties in the cities of Jaipur, Jodhpur and Udaipur have vast landed areas and land prices have risen very steeply in the last few

years, the Valuers, as well as the assessing officers, were found to have continued with the old low rates, resulting in large scale under-valuations of such properties. Thus, in the valuation of seven properties situated in Mirza Ismail Road in Jaipur, the Valuers had adopted rates of land ranging from Rs. 7.50 to Rs. 80 per sq. yard during the years 1967 to 1971, though the value of land in this area was being assessed at Rs. 630 per sq. meter as on 31st March, 1973 by the State Lands and Buildings Tax Department.

(b) A commercial building property at Mirza Ismail Road, Jaipur was assessed to wealth-tax on the basis of value of land computed at Rs. 160 per sq. yard for show room land, Rs. 60 per sq. yeard for workshop land and Rs. 50 per sq. yard for petrol pump land making up a total of Rs. 1,67,250. Similar lands in nearby commercial buildings, were valued by other Valuers at Rs. 250 per sq. yard in March, 1969 and Rs. 350 per sq. yard in March, 1973. There would be an aggregate under-valuation in this case of over Rs. 13 lakhs during the three assessment years, 1970-71 to 1972-73.

(c) In Jodhpur, a house property assessed to wealth-tax at Rs. 2.90 lakhs to Rs. 3.50 lakhs during the assessment years 1969-70 to 1973-74 had a land area of 22,967 sq. yards. This land was valued at Rs. 3 per sq. yard on the basis of a valuation made in 1964 for the assessment year 1957-58. The Urban Improvement Trust had fixed a reserve price of Rs. 18 per sq. yard for plots in this area in January, 1970 and the State Lands and Buildings Tax Department had fixed a rate of Rs. 44 per sq. yard for similar lands in this area in March, 1973. On the basis of these rates, there would be an aggregate under-valuation of

about Rs. 18 lakhs during the assessment years 1969-70 to 1973-74.

(d) Another property assessed to wealth-tax at Rs. 2,91,135 to Rs. 3 lakhs during the assessment years from 1969-70 to 1974-75, had a land area of 28,047 sq. yards. This land was valued at Rs. 3 per sq. yard. The rates adopted by some other Valuers for similar plots in the same area during these years varied from Rs. 15 to Rs. 25 per sq. yard. The reserve price fixed by the Urban Improvement Trust, in January, 1970 for this area, was Rs. 22.50 per sq. yard and the rate fixed by the State Lands and Building Tax Department in March, 1973 was Rs. 28.35 per sq. yard. There would be an aggregate under-valuation of about Rs. 32 lakhs in the 6 assessment years from 1969-70 to 1974-75.

(e) In two other cases, landed properties of 64,603 and 48,800 sq. yards in the same area in Jodhpur were assessed during the assessment years 1965-66 to 1972-73, at rates below Rs. 2 per sq. yard. The rate based on actual sales in another case in the same area rose from Rs. 9 per sq. yard in 1965-66 to Rs. 33.30 per sq. yard in 1972-73. The State Lands and Building Tax Department had valued similar land in that area at Rs. 45 per sq. yard in March, 1973. Even on the basis of the former graded rate, the aggregate under-valuation in these two cases would be over Rs. 55 lakhs in the said assessment years.

(f) A building in Jaipur was assessed to wealth-tax at the same figure of Rs. 1,95,000 in 4 assessment years, 1968-69 to 1971-72. The land area of 8,237 sq. yards was valued at Rs. 5 per sq. yard for developed land (875 sq. yards) and Rs. 10 to 15 per sq. yard for undeveloped land (7,362 sq.

yards). According to the Collector, the prevailing rate in September, 1970 was Rs. 50 per sq. yard. Adjacent vacant plots were auctioned by the Urban Improvement Trust in July, 1972 at an average rate of Rs. 52.50 per sq. yard. The State Land and Building Tax Department valued the land in this area at Rs. 70 per sq. metre in March, 1973. On a conservative estimate, there would be an aggregate under-valuation of Rs. 11 lakhs in the said four assessment years.

14.12. As the values of urban properties keep on increasing from year to year, the Central Board of Direct Taxes had issued instructions in July, 1969 (circular No. 6/11/69 WT, dated 3rd July, 1969) to the effect that the assessable values of such properties once determined should ordinarily be left undisturbed in two subsequent assessment years only. Instances where the assessable values were not revised over much longer periods were noticed in Ahmedabad, Hyderabad and Jaipur.

In Rajasthan, the plinth area rates prescribed by the State P.W.D. in March, 1968 were adopted for calculating the cost of buildings. These rates, according to the Superintending Engineer of the departmental Valuation Cell, were not suitable for this purpose, as these were meant basically, for calculation of standard rents of Government buildings in which the specifications used are considerably different as compared to private buildings. The Superintending Engineer had stated in November, 1974 that the said State P.W.D. rates were "very low and unrealistic". The departmental Valuation Cell itself had been following the Central Public Works Department plinth area rates and cost indices circulated by the Central Board of Direct Taxes for the guidance of the assessing authorities in December, 1971 (Instruction No. 365 issued through circular F. No. 319/5/70 WT, dated 28th December, 1971).

The Commissioner had issued instructions in August, 1972 that the property values computed on the State P.W.D. plinth area rates of 1968 should be stepped up progressively in the

subsequent years. It was, however, noticed that 234 urban properties belonging to 151 assessees and valued at over Rs. 1.35 crores were valued by the assessing officers at the same price in 2 to 7 successive assessment years from 1968-69 to 1974-75.

14.13. In Rajasthan, in over 2/3rd of the 476 cases reviewed, essential details like area of land, built-up area, specifications of construction, site and building plans, copies of purchase deeds, etc. were not obtained. As a result, not only, in most of the cases, the values as returned by the assessees were accepted or they were marginally increased on agreed basis without making any effort to ascertain the market values on the relevant valuation dates, but also concealment of wealth went unnoticed in some cases. A few instances are given below :—

(a) In returning for wealth-tax a property consisting of land and building, an assessee in Jaipur, had been returning the area of land as 69,382 sq. ft. since the assessment year 1957-58. The assessee sold 45,757 sq. ft. of this land in two lots in September, 1958 and April, 1970. The balance of land was measured by a Valuer as 73,260 sq. ft. Apparently, the original area of land was 1,19,017 sq. ft. instead of 69,382 sq. ft. as returned and accepted. The aggregate amount of wealth escaping assessment over the 13 years from 1957-58 to 1969-70 would be over Rs. 23 lakhs.

(b) An assessee in Jodhpur had been returning a land area of 44,000 sq. ft. with a building property since the assessment year 1957-58. The valuation certificates of approved Valuers furnished by the assessee in the assessment years 1968-69 and 1971-72, however, showed the area of land as 1,38,177 sq. ft. Thus, for a period of 11 years from 1957-58 to 1967-68 the land area was short returned and assessed by 94,177 sq. ft. making for an aggregate escapement of wealth of over Rs. 11 lakhs.

(c) In Udaipur, two plots of land jointly owned by 6 brothers had been returned during the assessment years 1965-66 to 1972-73 with an area of 1,72,464 sq. ft. In the assessment year 1973-74, the total area of these plots was taken as 3,88,044 sq. ft. A land area of 2,15,580 sq. ft. thus escaped assessment during the said 8 years making up an aggregate escapement of wealth of over Rs. 40 lakhs.

(d) In Jodhpur, an undeveloped land area of 15,361 sq. yards with a building property was assessed to wealth-tax at the rate of 28 paise per sq. yard, while similar undeveloped plots were valued at rates ranging from Rs. 1.50 to Rs. 22.50 per sq. yard. The developed part of this plot itself was valued at Rs. 18 per sq. yard. The aggregate under-valuation in the 9 assessment years from 1966-67 to 1974-75 would be of the order of Rs. 24 lakhs.

The Ministry have stated (January, 1976) that necessary information has been called for from the field formations.

15. *Working of Tax Recovery Officers*

15.1. The Income-tax Act, 1961 provides that when any tax, interest, penalty, fine or other sum payable under the Act is not paid within 35 days of the service of the notice of demand or within such extended time as the Income-tax Officer may allow, the assessee shall be deemed to be in default. The Act further provides that where an assessee is in default or is deemed to be in default in making a payment of tax, the Income-tax Officer may forward to the Tax Recovery Officer a certificate specifying the amount of arrears due from the defaulter. The Tax Recovery Officer would then proceed to recover the amount by attachment and sale of the defaulter's property, his arrest and detention in prison and the appointment of a receiver for the management of his property, as may be considered necessary. The detailed procedure for the recovery of tax by the Tax Recovery Officer is laid down in the Second Schedule to the Act.

The Tax Recovery Officers were, formerly, the Revenue Officers of the State Governments. In 1967, the Department decided to take over the tax recovery work from the State Governments, with a view to arranging a more expeditious clearance of the rising arrears of tax demand. In paragraph 4.56 of their 51st Report (5th Lok Sabha), the Public Accounts Committee desired that the Board should closely watch the impact of taking over this work of arrears of tax demands and take necessary measures to improve the system. The Committee also hoped that with the taking over of tax recovery work there would be proper co-ordination between the Tax Recovery Officers and the assessing officers.

15.2. The position of the tax demands certified to Tax Recovery Officers and State Government Officers for recovery and their year-wise particulars to the end of 1974-75 is given in paragraph 5(a) (iv) of this Report.

It will be seen that the outstanding demands increased year after year from 1966-67 to 1974-75 and the amount recovered was less in every year than even the amount certified.

The system of maintaining statistical figures of tax demands certified to Tax Recovery Officers would also seem to be defective inasmuch as the yearly closing balances do not tally with the opening balances of the succeeding years.

15.3. A test check conducted in a few selected Tax Recovery Offices in West Begal, Assam and Haryana indicated that the pace of recovery was much too slow. As against 71,571 and 41,389 certificate cases involving gross demands of Rs. 133.84 crores and Rs. 11.89 crores as on 31-3-1974 in West Bengal and Assam, demands amounting to Rs. 115.34 crores and Rs. 4.04 crores were reduced/stayed during the year, leaving effective demands of Rs. 18.50 crores and Rs. 7.85 crores respectively. Effective demand thus stood at 13.82 per cent of gross demand in West Bengal and 66 per cent in Assam. As against this, the

collection of demands accounted for a mere Rs. 1.25 crores and Rs. 0.17 crore respectively *i.e.* 6.7 per cent in West Bengal and 2.2 per cent in Assam, of the effective demand. The outstandings in Haryana and Assam increased from Rs. 1.03 crores and Rs. 4.83 crores as on 31-3-1972 to Rs. 1.74 crores and Rs. 7.68 crores as on 31-3-1974 respectively.

Out of the said gross demand of Rs. 133.84 crores in West Bengal, demands to the order of Rs. 85.24 crores covering 28,897 cases were locked up due to grant of stay orders or for want of information from Income-tax Officers.

15.4. *Transfer of work from the State Government.*—The certificate cases transferred from the State Government to the charge of the various Tax Recovery Officers were not being properly pursued in West Bengal. Against 4,357 certificate cases for the period 1945-46 to 1966-67 received in 8 charges as many as 2,580 cases (59% of total number of cases received) related to the period prior to 1960-61. Out of 8 charges, the money value involved in 5 charges amounted to Rs. 13.05 crores against which Rs. 6.25 crores related to pre-1960-61 period (47.87% of the value of certificates received). In one charge, only 16 cases involving Rs. 5.34 lakhs were either satisfied or cancelled during 1969-70 against the outstanding demand of Rs. 4.53 crores, covering 719 cases *i.e.* 1.18% (in value) and 2.22% (in number). In another charge, even the particulars of cases received from the State Government were not available as no separate register was maintained for those cases.

In one charge in West Bengal, certificate cases involving demands of Rs. 31.13 crores had not been handed over to the Tax Recovery Officers with the result that the outstanding demands were lying unattended. In another charge, work covering 656 certificates valued at Rs. 3.41 crores had not been allotted to any Tax Recovery Officer.

In Orissa, the Tax Recovery Officers had not taken stock of the pending cases transferred by the State Government.

15.5. *Defects in certificate cases.*—No proceedings for the recovery of any sum payable under the Income-tax Act, 1961 shall be commenced after the expiration of one year from the last day of the financial year in which the demand is made. This indicates that the flow of issue of certificates should be continuous and rush of certificates towards the end of the year, resulting in the issue of infructuous certificates should be avoided. The Board also issued instructions in July, 1972 against raising of wrongful demands on infructuous certificates.

On a test check of 10 Tax Recovery Offices in West Bengal, it was noticed that in 251 cases involving Rs. 3.52 crores, the certificate debtors denied claims on the ground that the demands had either been paid or subsequently reduced or set aside in appeal. In one office in West Bengal and 5 offices in Bihar, certificates for Rs. 4.05 lakhs and Rs. 1.37 lakhs were issued by the Income-tax Officers although the demands had already been satisfied/reduced/cancelled. In one charge in West Bengal, 7 certificate cases amounting to Rs. 40,726 were noticed to have been issued by the Income-tax Officer twice. In many cases in Andhra Pradesh, it was noticed that the correct and full addresses of the defaulters and the property particulars of firms and partners, where necessary, were not noted in the certificates issued by the Income-tax Officers.

15.6. *Defective maintenance of Tax Recovery Registers.*—Recovery certificates received from the Income-tax Officers are entered in the Tax Recovery Registers (Form X) which is an important basic record to enable the Tax Recovery Officer to keep watch over the progress of the tax recovery work. A test check in West Bengal, Andhra Pradesh and Haryana revealed that these registers were not being maintained properly. In 13 Tax Recovery Offices in West Bengal it was noticed that during the years 1970-71 to 1973-74 the figures as per Tax Recovery Officer's Register (No. X) were less than those as per Income-

tax Officer's Register (No. IX) by 68,885 cases and in excess by 3,482 cases. This was apparently due to the fact that certificate cases received from the Income-tax Officers were not immediately entered in the registers and acted upon. In Haryana, 279 certificates received from the Income-tax Officer during March, 1972 to March, 1975 were not entered in the Tax Recovery Officer's Register (No. X). In Andhra Pradesh, the disposals were not being noted in the Tax Recovery Registers.

15.7. *Irregularities in the issue and service of demand notices.*—(i) Under Rule 2 of the Second Schedule to the Income-tax Act, 1961, the Tax Recovery Officer has to serve a notice on the defaulter to pay the dues within 15 days. The issue of this demand notice is mandatory and cannot be dispensed with. A test check in West Bengal, Orissa and Haryana revealed abnormal delays in the issue of such notices. In 8 Tax Recovery offices in West Bengal, there was a delay of 1 to 4 years in 197 cases involving Rs. 2.45 crores. In 27 cases in Haryana and 9 cases in Orissa, the delay ranged from 2 to 6 months and 5 to 8 months respectively.

(ii) In West Bengal, even initial demand notices were not issued in many cases. In 3 charges, the value of 22,935 such certificate cases was Rs. 3.88 crores. In another 5 and 2 charges, the demand notices were not issued in 55,532 and 20,405 cases out of 83,811 and 21,937 cases received from the Income-tax Officers; the money value in these cases accounted for Rs. 8.22 crores and Rs. 5.66 crores respectively.

In one charge, the percentage of demand notices issued over the total number of certificate cases received from the Income-tax Officer came to 12.5 per cent in 1970-71, 11.94 per cent in 1971-72, 19.81 per cent in 1972-73 and nil per cent in 1973-74

(iii) In 7 charges, it was noticed that in 168 certificate cases involving Rs. 88.53 lakhs although demand notices had been issued as early as two years back, the same had not been served till audit (March, 1975).

(iv) In one Tax Recovery Officer's charge although distress warrant and warning notices were issued for Rs. 3.10 lakhs covering 44 cases, there was no record of any follow-up action thereagainst.

15.8. *Inadequate steps to realise Government dues.*—Rule 4 of the Second Schedule to the Income-tax Act, 1961 provides for various coercive measures including attachment and sale of defaulter's property and his arrest and detention in prison to realise outstanding dues where moneys are not paid within 15 days of the service of demand notice. From the cases test checked in West Bengal, Assam, Haryana and Punjab, it was noticed that action taken in this regard was not adequate. In 3 charges in West Bengal, out of 26,645 certificate cases involving Rs. 16.13 crores lying outstanding as on 31-3-1974, attachment of movable and immovable properties was reported to have been made in 150 cases only. But nothing was recovered by sale thereagainst except a sum of Rs. 66,000 in respect of one charge. Not in a single case was a Receiver appointed or recovery enforced through arrest or detention of defaulters. In one case the defaulter had disposed of his properties worth Rs. 2 lakhs before the Tax Recovery Officer initiated any action in the matter. In respect of 3 certificate cases the defaulter firm had already been dissolved before the demand notices were served. In Assam and Haryana in 7 cases involving Rs. 1.50 lakhs and 14 cases involving Rs. 2.38 lakhs respectively, no action had been taken to realise the outstandings after the issue of demand notices.

In the case of one defaulting assessee in Punjab, the value of certificates received during the period from March, 1968 to March, 1973 for which no action had been taken stood at Rs. 2.96 lakhs.

15.9. *Interest under section* 220(2) *not realised.*—Under the Income-tax Act, 1961 and rules framed thereunder, the amount of interest on the outstanding demand as shown in the certificate cases issued by the Income-tax Officer together with the further

interest similarly calculated for the period commencing immediately after the date of issue of the certificate till the date of payment, is recoverable from the defaulter.

A test check conducted in a few Tax Recovery Officers' charges in West Bengal and Assam revealed that amounts of interest of Rs. 1,02,828 in 6 cases and Rs. 30,585 in 2 cases respectively were not charged. In Punjab, interest of Rs. 556 was not charged in one Tax Recovery office and that of Rs. 12,447 short charged in 3 other Tax Recovery offices.

15.10. *Delay in depositing of Government money and handling of cash.*—In accordance with the instructions issued by the Board in July, 1971, the Tax Recovery Officers and the Inspectors attached to them should follow the detailed procedure laid down in the compilation of Central Treasury Rules regarding handling of cash and deposit thereof in the Government accounts. A test check conducted in West Bengal, Tamil Nadu, Assam and Haryana revealed the following irregularities :—

(i) Cash collection from certified debtors was not remitted into the Treasury promptly. The delay in this regard ranged from 5 to 30 days in some cases in West Bengal, 15 days to 4 months in 9 cases in Haryana, 20 days to 1 year in 25 cases in Assam and more than a month in one case in Tamil Nadu.

(ii) Collections made in cash were not entered in the cash book. This was noticed in 55 cases in Haryana.

(iii) Cheques received from certified debtors in realisation of arrear tax were not entered in the cash book. This was noticed in 30 cases in Assam, 30 cases in Haryana and 6 cases in Punjab.

(iv) 32 cheques in Assam and 10 cheques in Haryana were received back as dishonoured from the bank/ treasury. There was no indication on record about the further action taken in the matter, if any.

(v) In Tamil Nadu and Haryana, in one case each, the amount realised by the Tax Recovery Officer was not remitted into the treasury but deposited into a Current Account opened for the purpose in the State Bank of India. The amounts involved were thus kept out of Government Account.

15.11. *Lack of co-ordination between Income-tax Officers and Tax Recovery Officers.*—It was noticed that the Tax Recovery Officers had seldom pursued their references made to the Income-tax Officers. Out of 80 cases test checked in 2 charges in West Bengal where initial notices of demand could not be issued, no action was noticed to have been taken by the Tax Recovery Officers in 59 cases to ascertain the correct whereabouts of the assessees concerned.

In 5 Tax Recovery offices in West Bengal and 2 Tax Recovery offices in Bihar, certified demands of Rs. 94.66 lakhs and Rs. 8.22 lakhs in 145 and 295 cases respectively were lying pending for want of clarification from the Income-tax Officers on various points such as certificate debtors' assets, payments made by them, etc. or for their amendment/cancellation. In one charge alone in West Bengal, out of 11,359 cases, demands amounting to Rs. 2.54 crores covering 3,510 cases representing 66% of the value of certificates, were locked up on this account.

In 3 Tax Recovery Officers' charges in West Bengal and 2 Tax Recovery Officers' charges in Assam, in 15 and 3 certificate cases involving Rs. 30.77 lakhs and Rs. 0.31 lakh, the amount could not be recovered as necessary lists of assets of movable and immovable property and correct addresses of the defaulters were not supplied by the Income-tax Officers.

15.12. *Irregularities in the disposal/sale/auction of attached properties—(i) Fixation of reserve price.*—Under the Board's instructions issued in October, 1971, the Tax Recovery Officer should consult the Income-tax Officer in fixing the reserve price of immovable property attached by him

as a measure to recover the arrears of tax if the certified demand exceeds Rs. 25,000 in muffasil areas and Rs. 50,000 in urban areas. Prior approval of the Inspecting Assistant Commissioner is required if the certified demand exceeds Rs. 50,000 in muffasil areas and Rs. 1,00,000 in urban areas. These instructions were, generally, not followed by the Tax Recovery Officers in Haryana and Madhya Pradesh where the reserve prices were fixed by the Tax Recovery Officers on their own even though in certain cases the demands exceeded the prescribed limits.

No guidelines were prescribed by the Commissioners of Income-tax in Poona, Nagpur, Bombay, Karnataka and Madhya Pradesh for valuation of properties. The Tax Recovery Officer also did not, generally, seek the help of the Public Works Department authorities or Valuation Cells to ascertain the value of any immovable property before putting it to auction. In Bombay, in the absence of information in Wealth-tax records sometimes the Municipal Valuer was consulted.

Out of 14 cases test checked in Madhya Pradesh, in one case only, the valuation of property was noticed to have been got done by the Government Valuer.

In Nagpur and Poona, the values of immovable properties were generally fixed by the Tax Recovery Officer in consultation with the Inspecting Assistant Commissioner on actual inspection of the site or on the basis of municipal rateable value.

(ii) *Fixation of reserve price without valuation of property.*—In ten cases in Uttar Pradesh (sale price Rs. 7.76 lakhs), the properties were put to auction against an arbitrary reserve price fixed without any valuation by departmental Valuer or Public Works Department. The reserve price for 9 properties was fixed as Rs. 4.53 lakhs against which an amount of Rs. 7.10 lakhs was received on auction.

In another case in Uttar Pradesh, the reserve price of Rs. 0.60 lakh was revised downwards to Rs. 0.22 lakh (37 per cent of

the original) at the instance of Tax Recovery Officer after unsuccessful attempts to auction the property departmentally. While revising the reserve price neither the departmental Valuer nor the Public Works Department was consulted. The sale was effected at the revised lower reserve price. The arrears of tax of Rs. 0.15 lakh for which property was attached could not be realised as the property was already encumbered for Rs. 0.38 lakh.

Again in seven cases in Uttar Pradesh, the gap of period between the date of fixation of reserve price for auction and the date of last valuation was two and a half years to four years. Against the maximum reserve price of Rs. 1.18 lakhs these properties were actually disposed of for Rs. 1.91 lakhs.

In one case in Madhya Pradesh, the reserve price of a property was fixed by the Tax Recovery Officer himself at Rs. 1,50,000. The property was auctioned on 20-5-1974 for the same amount although the Income-tax Officer in his letter dated 24-4-1974 addressed to the Tax Recovery Officer had stated that the market price of the said property had been estimated by the Nazul Officer as Rs. 2,10,670.

(iii) *Sale of property below the reserve price/without fixation of reserve price.*—In one case each in Uttar Pradesh and Karnataka, attached property was sold for Rs. 0.66 lakh and Rs. 0.72 lakh against the reserve price of Rs. 1.20 lakhs and Rs. 0.80 lakh respectively.

In two cases in Uttar Pradesh and one case in Kerala, sales were effected for Rs. 1.34 lakhs and Rs. 76,500 without fixing reserve price. The property in the latter case valued Rs. 86,025.

In three cases in Uttar Pradesh, instead of the maximum valuation (Rs. 0.73 lakh), the minimum valuation (Rs. 0.48 lakh) indicated by the Valuation Cell was adopted as reserve price against which bids of Rs. 0.59 lakh were accepted. In one case

in Bombay, half share in the immovable property was first valued at Rs. 50,000 for two auctions and then it was reduced to Rs. 25,000 at the time of the third auction. The property was auctioned for Rs. 27,280. The cost of auction worked out to about Rs. 3,000.

(iv) *Sale of property without proper publicity/pooling of bids.*—In one case in Andhra Pradesh, vacant lands of the defaulter firm were attached for the realisation of arrears of tax and penalty amounting to Rs. 1,09,207. A sister concern of the defaulter firm offered to purchase the lands attached by the Department for Rs. 1,10,000. The Tax Recovery Officer informed the Inspecting Assistant Commissioner that attached lands were agreed to be sold about a year back for Rs. 2 lakhs and that there were offers of more than Rs. 1.50 lakhs. He also stated that some of the partners of the sister concern which offered Rs. 1,10,000 were also the partners of the defaulter firm. In February, 1975 the property was attached, proclamation of sale issued and auction conducted on 28-2-1975. No publicity for the auction through advertisement in press was given. No reserve price was fixed either. Though the entire lands were auctioned in 3 lots, all the three auctions were finalised in favour of the partners of the said sister concern and the auction proceeds actually worked out to Rs. 1,10,000 for the entire lot, *i.e.* the same amount as originally offered by the firm.

In one case in Orissa, the attached immovable property whose reserve price was fixed by the Income-tax Officer as Rs. 1,00,000 was auctioned on 30-11-1974 for Rs. 81,000 against the auction notice published in the local dailies on 27-11-1974.

In one case in Bombay, 2 properties whose reserve price was Rs. 28,000 and Rs. 8,000, were auctioned on 22-12-1971 and 10-9-1972 for Rs. 26,500 and Rs. 8,000 respectively. The cost of auction amounted to Rs. 825 and Rs. 5,858 respectively. The auction proceeds were below the reserve price in respect of the first property and taking into account the cost of auction, it was a case of loss in the second case also. The first property

was purchased by the co-sharers who had already half share in the property. In the case of the second property, there were no bidders except the tenants themselves for all the three auctions.

In one case in Ratnagiri, there was a prior mortgage of Rs. 20,000 over the attached property. The reserve price was fixed by the Valuation Officer at Rs. 25,000 (subject to a further deduction for the mortgage). The property was sold for Rs. 12,000 (buyer to take responsibility for the mortgage). It was noticed to be a case of pooling of bidders by the three sons of the defaulters.

(v) *Sale of property through private negotiations.*—Rule 66 of the Second Schedule to the Income-tax Act, 1961 permits private sale, withdrawing the property from the effect of attachment only where the defaulter can satisfy the Tax Recovery Officer that the private sale of such property or any other immovable property of the defaulter can fetch money to cover up the whole of the certified demand.

In one case in West Bengal, against the certified demand of Rs. 8,37,730 covering five certificate cases, certain properties of a defaulter were attached and the sale proceeds were ordered to be deposited with the Tax Recovery Officer. But on the petition of the defaulter, the Tax Recovery Officer permitted private sale of another property on a consideration of Rs. 2,71,970 only, leaving a balance of Rs. 5,65,760 unrealised. As the entire demand was not satisfied, permission of private sale was in contravention of Rule 66.

(vi) *Inordinate delay in sale of attached property.*—In three cases in Uttar Pradesh, the sale was effected four to seven years after the date of attachment. In another case in Uttar Pradesh, the arrears of tax amounting to Rs. 1.17 lakhs could not be liquidated as the possession of the property could not be handed over to the auction purchaser. Pending the transfer of the property in the name of purchaser, the sale price paid by him was kept in the fixed deposit on which the purchaser had drawn Rs. 50,000 as interest. Still in another case in Uttar Pradesh, an

immovable property sold in March, 1972 was not got transferred by the auction purchaser in his name till June, 1975. Although the Collector had recommended in February, 1973 for the cancellation of the sale, no action had been taken in this regard (June, 1975).

15.13. *Miscellaneous irregularities* (*West Bengal*).—(i) Demand notice in respect of a certificate case for Rs. 4,34,636, received by the Tax Recovery Officer on 31-3-1965, was served on the certificate debtor only on 25-4-1966 after several unsuccessful attempts. On the basis of list of assets in the form of shares held by the certificate debtor, received by the Tax Recovery Officer on 13-7-1967, prohibitory orders under rule 26(i) (ii) of the Second Schedule were served on the companies in the month of December, 1967. Out of 1,750 shares held by the certificate debtor in 8 different companies, only 225 shares in two companies were available at that time for partial realisation of outstanding dues, whereas the remaining shares were reported to have been either disposed of or transferred during the month of September, 1967.

Thus, instead of furnishing the list of assets along with the certificate case, the Income-tax Officer sent it to the Tax Recovery Officer only in July, 1967 *i.e.* after a delay of more than 2 years and again the inordinate delay in the service of prohibitory orders on the companies helped the certificate debtor to dispose of/transfer the bulk of shares in the intervening period.

(ii) Total outstanding dues against a certificate debtor, the managing director of a private company, amounted to Rs. 16,42,641 covering 8 certificate cases relating to the assessment years 1950-51 to 1962-63. It appeared from the Income-tax Officer's letter dated 28-3-1962 to the Collector that the certificate debtor had assets in the form of fixed deposits in banks and also shares in the various joint stock companies including the company in which he was managing director. The company had gone into liquidation on 28-2-1967 by which time the

certificate debtor had already died. No recovery proceeding was instituted till September, 1968 when a sum of Rs. 2,60,090 was realised by way of attachment of movable properties. The above realisation included a sum of Rs. 1,91,730 received from the liquidator of the private company in which the certificate debtor was managing director.

Lists of assets etc. were called for by the Tax Recovery Officer from the Income-tax Officer in June, 1973 but no reply could be obtained. In April, 1974 a further sum of Rs. 70,550 was realised from the liquidator, leaving a balance of Rs. 13,12,001. Although the assets in the form of shares had been known to the Department since as early as March, 1962, no action was taken to issue prohibitory orders on the shares under rule 26(1) (ii) of the Second Schedule.

The Ministry have stated (March, 1976) that the audit objection is under consideration.

CHAPTER II

CORPORATION TAX

16. As on 31st March, 1975 there were 43,644* companies. These included 510 foreign companies and 1,326 associations not for profit registered as companies limited by guarantee. The remaining 41,808 companies comprised 573 Government companies and 41,235 non-Government companies with paid-up capital of Rs. 4,966 crores and Rs. 2,630 crores respectively. Among non-Government companies over 81 per cent were private limited companies.

The definition of "Indian company" in the Income-tax Act was amended from 1st April, 1971 to include also a statutory corporation. According to the information furnished by the Ministry of Finance, the number of Public Sector Undertakings assessed as companies for the assessment year 1974-75 was 385. The total amount of the tax levied in the case of these undertakings was Rs. 26,97,00,629. The amount of tax actually paid by these undertakings during the year, including pre-assessment collections, was, however, Rs. 1,02,75,11,360.

This has been explained by the Ministry of Finance as follows :—

> "The tax collected for assessment year 1974-75 is more by Rs. 75.78 crores for which the reason is that in some cases assessments have not yet been completed but the tax deducted at source has been taken into account while arriving at the figure of total tax collected."

*As per figures given by the Department of Company Affairs, Ministry of Law, Justice and Company Affairs.

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 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
1974-75	1

17. According to the information furnished by the Ministry of Finance (Department of Revenue), out of 3,617 and 3,708 companies registered in India during the years 1973-74 and 1974-75, 517 and 2,922 companies were brought on the records of the Income-tax Department till July, 1974 and July, 1975 respectively; the remaining companies were still in the starting stage and their first assessment years, in many cases, would be 1975-76 and 1976-77 respectively. The total number of company assessees as on 1st April, 1974 and 1st April, 1975 were 32,737 and 36,481 respectively.

The number of company assessments completed and assessments pending at the close of the year 1974-75 as furnished by the Ministry of Finance, are given below :—

(*i*) Total number of company assessments pending at the beginning of the year 1974-75	29,274
(*ii*) Number of assessments out of (i) completed during 1974-75	18,611
(*iii*) Total number of current assessments required to be completed during 1974-75	35,738
(*iv*) Number of assessments out of (iii) completed during 1974-75	17,963
(*v*) Number of assessments pending as on 31st March, 1975	28,438

Some instances of mistakes noticed in company assessments are given in the following paragraphs.

18. *Income escaping assessment*

(i) In terms of certain contracts concluded between the assessee and a party in East German Democratic Republic, within the framework of a trade agreement between the Government of India and the Government of German Democratic Republic, the assessee exported goods valued at Rs. 15,26,937 between November, 1965 and March, 1966 and received payment in the form of drafts which were payable 180 days after the date of the relevant bills of lading; the dates of maturity of all the accepted bills falling after June 6, 1966. In the wake of devaluation of Indian currency with effect from June 6, 1966, the two Governments further decided as per an agreement dated 2nd September, 1966, that the values of all existing and un-implemented contracts concluded prior to June 6, 1966, for export of goods from India to the German Democratic Republic be increased by 57.5 per cent in terms of Indian currency. It was also provided that such re-valuation was required to be made in respect of payments due on or after June 6, 1966 under terms of deferred payment in shipments made under existing contracts and for payments due in full or in part on June 6, 1966 for earlier shipments, for which documents were, on or after June 6, 1966, in the process of negotiation or were sent already on collection basis. Accordingly, the assessee preferred his claims for a supplementary payment of Rs. 8,77,920, being 57.5 per cent of his export earnings of Rs. 15,26,937 pending collection, but omitted to bring into his books of accounts maintained on the mercantile system of accounting, the amount of the supplementary bill during the previous year relevant to the assessment year 1967-68. The non-inclusion of the enhanced claim for Rs. 8,77,920 in the accounts resulted in under-assessment of income by an equivalent amount, with consequent tax under-charge of Rs. 4,82,856 for the assessment year 1967-68.

The Ministry have accepted the objection (January, 1976).

(ii) During its previous years relevant to the assessment years 1966-67 to 1969-70, an assessee company paid Rs. 2,40,104 to a non-resident company as royalty in accordance with an agreement in terms of which its Income-tax liability on this account was also to be borne by the assessee company. Accordingly, the assessee company debited its profit and loss account with an equal amount of Rs. 2,40,104 towards tax liability which was, however, not deposited into Government account. The appellate authority held this tax liability, as part of royalty payment. The gross income of the non-resident company for these years thus amounted to Rs. 4,80,208 which should have been taxed as its business income. But this income was not returned by the company nor was it taxed by the Department. As a result, there was a tax under-charge of Rs. 2,40,104.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(iii) Under the provisions of the Income-tax Act, 1961, all income accruing from any business connection in India or from any property or asset or source of income in India, is deemed to arise in India and is chargeable to Indian income-tax. Where all the operations of a business are not carried out in India, the income of the business deemed to accrue in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

An Indian company entered into a collaboration agreement with a non-resident company in October, 1968 for the manufacture and construction of rice milling equipment in India. Under the agreement, the non-resident company agreed to make available to the Indian company :

(a) certain parts of the machinery requiring special technique and/or expensive investments until the

Indian company was able to manufacture such items to the required standards; and

(b) an exclusive licence in India; and also to supply complete technical documentation inclusive of general, manufacturing and special data and know-how required for the successful manufacture of machinery in India on commercial basis.

In consideration of the rights, licences and technical information granted, the foreign company became entitled to two payments *viz.*, (i) initial payment of $ 21,000 (Rs. 1,58,751) and (ii) royalty as and when the manufactured products were sold. Whereas the royalty received by the foreign company was charged to tax, it was found in audit in May, 1973, that the initial payment of $ 21,000 (Rs. 1,58,751) received by the foreign company during the year ending 30th November, 1969, was not charged to tax for the assessment year 1970-71 (assessment made in January, 1973). As the initial payment and royalty were received for one and the same purpose, in respect of assets located in India and as under the terms of the agreement, all technical assets made available to the Indian company were returnable after the agreement period of five years was over, it was pointed out that the initial payment of $ 21,000 (Rs. 1,58,751) which was in the nature of lease income had also to be taxed in the hands of the foreign company. The approximate revenue involved was Rs. 79,375.

The Ministry have stated (March, 1976) that the objection is under active consideration.

(iv) The assessments made by the Department of a company for the assessment years 1969-70, 1970-71 and 1971-72 showed a net loss in each of the three years. Cash receipts from Government as export incentives amounting to Rs. 64,614, Rs. 2,13,087 and Rs. 83,254 during the relevant assessment years were omitted to be included in the computation of net profits although these were taxable. Further, a sum of

Rs. 52,800 claimed in the assessment year 1971-72 as a loss arising out of mis-appropriation was allowed although the investigation of the case was pending and the admissibility of the item as a business loss had not yet been finally determined. There was also a totalling mistake of Rs. 1,000 in the computation of income for the assessment year 1970-71. These mistakes resulted in excess computation and carry forward of loss by Rs. 64,614, Rs. 2,14,087 and Rs. 1,36,054 for the three assessment years respectively which would have resulted in tax under-charge in subsequent years when the company started earning profits.

While accepting the objection, the Ministry have stated (October, 1975) that the assessments in question have been revised.

19. *Failure to observe the provisions of the Finance Acts*

(i) According to the Finance Acts, 1969 to 1973, a domestic company in which the public are not substantially interested and which is mainly engaged in industrial activity is charged to tax on its total income at 55 per cent upto Rs. 10 lakhs and at 60 per cent on the excess over Rs. 10 lakhs.

In the case of an industrial company, in which the public were not substantially interested, tax was charged at a flat rate of 55 per cent on the entire total income instead of charging it at the slab rate of 60 per cent on the excess of income over Rs. 10 lakhs. This led to an aggregate short levy of tax of Rs. 3,16,619 in the assessment years 1970-71 to 1973-74, after taking into account the consequent reduction in sur-tax liability.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(ii) With a view to encouraging the development of exports of indigenous goods, the Finance Acts of the years from 1962 to 1967, provided for a rebate at the average rate of income-tax (including super-tax upto the assessment year 1964-65) on an amount equal to two per cent of the sale proceeds of such exports subject to certain conditions. This concession was not applicable to exports of sugar.

In the case of a company, manufacturing sugar, the aforesaid concession was incorrectly allowed in relation to the exports of raw sugar and also of confectionery, amounting to Rs. 45.13 lakhs, for the assessment year 1967-68. This resulted in under-assessment of tax of Rs. 62,820.

The Ministry have accepted the objection (January, 1976). The assessment in question is stated to have been rectified raising an additional demand of Rs. 62,820 out of which an amount of Rs. 62,129 is stated to have been collected.

(iii) Under the provisions of the Finance Act, 1971, income received by a non-resident company by way of fees from an Indian concern for rendering technical services is chargeable at a concessional rate of tax of 50 per cent as against 70 per cent on other income.

A non-resident company having technical know-how about the manufacture of distillation trays used for producing heavy water, entered into an agreement with its Indian subsidiary for the supply of the said technical information for which the Indian company paid a fee of $ 1,25,000 equivalent to Rs. 9,47,695 in Indian currency during the previous year relevant to the assessment year 1971-72. The Indian subsidiary which had no scope to utilise the said technical information for its own use entered into a simultaneous agreement with a third party for supply of the technical information against payment of a fee of $ 2,50,000. Thus, the Indian subsidiary actually made a business deal with the technical know-how and the fees paid by

the Indian company to the non-resident affiliate were not in the nature of fees for technical services received and did not, therefore, qualify for the concessional rate of tax.

The levy of the concessional rate of tax of 50 per cent as against 70 per cent on Rs. 1,89,539 representing taxable portion of the total fees of Rs. 9,47,695, resulted in an undercharge of tax of Rs. 37,908 for the assessment year 1971-72.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(iv) In granting interest under Section 214 of the Income-tax Act, 1961 for the assessment years 1968-69 and 1969-70 to a foreign company, tax was deducted at source only at the rate of 10 per cent instead of at the rate of 70 per cent as prescribed in the respective Finance Acts. This resulted in short recovery of tax at source of Rs. 6,39,068. This mistake also resulted in excess remittance of advance tax for the assessment years 1972-73 and 1973-74 and consequent additional payment of interest under Section 214 to the extent of Rs. 22,400 and Rs. 47,900 respectively.

In the case of another foreign company, tax was deducted at source from the payment of interest under Section 214 for the assessment year 1973-74 at the rate of 21 per cent instead of at the correct rate of 73.5 per cent resulting in short deduction of tax of Rs. 16,096.

The Ministry have accepted the objections (February, 1976).

20. *Incorrect status adopted in assessments*

(i) Under the Income-tax Act, 1961, before making any payment to a non-resident person (other than a company) of any sum taxable under the Act, the person responsible for paying has to deduct tax at the rates prescribed in the Finance Act.

An Indian company, while paying technical fees and royalties to its foreign collaborator, deducted tax at source at 50 per cent only treating the status of the foreign collaborator as a 'company'. But this foreign collaborator had not been declared as a company for the purpose of the Indian Income-tax Act, 1961 and, therefore, tax should have been deducted treating the status of the foreign collaborator as an 'Association of Persons'. Short demand of tax, while computing the tax due on 'tax on tax' basis worked out to Rs. 8,37,350 for the two assessment years, 1968-69 and 1969-70.

The Ministry have accepted (March, 1976) the objection insofar as it relates to short deduction of tax at source by treating the assessee as a company.

(ii) Companies in which the public are substantially interested are taxed at a rate lower than that applicable to other companies. Further, a company is not treated as such a company if it is subsidiary of another company in which the public are not substantially interested.

In the case of a company, the Department levied tax in the assessment year 1970-71, at the rate applicable to a company in which the public are substantially interested although the company was a cent per cent subsidiary of another company in which the public were not substantially interested. This incorrect determination of the status of the company resulted in tax undercharge of Rs. 1,05,000.

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

21. *Incorrect computation of income from house property*

Income from house property, assessable under the Income-tax Act, 1961, is computed with reference to the annual value of the property. This is deemed to be the sum for which the property might reasonably be expected to be let from year to year. Under departmental instructions either the rent receivable

in respect of the property or its annual letting value fixed by the Municipality, whichever is higher, is to be adopted as the annual value for such computation. Further, taxes levied by any local authority for any particular year only are deductible from the annual value of the house property as determined for that year. Taxes paid for earlier years are not, therefore, deductible in determining the annual value of a particular year.

In the case of a company, while determining income from property for the assessment years 1971-72 and 1972-73 the assessing officer computed the income from property with reference to the rent receivable which was lower than the municipal valuation. Further, in the assessment for the year 1972-73 he allowed deduction of municipal taxes of Rs. 1,79,136 which included taxes amounting to Rs. 1,28,630 pertaining to other years not relevant to that assessment year. These mistakes resulted in under-charge of tax of Rs. 87,713.

The Ministry have accepted the mistakes (January, 1976) and stated that as a result of rectification, additional demands amounting to Rs. 87,713 have since been raised and collected.

22. *Incorrect computation of business income*

(i) The Income-tax Act provides that income from business shall be computed in accordance with the method of accounting regularly employed by the assessee. Where the assessee adopts the mercantile system of accounting, expenditure for which a legal liability has been incurred is debited and allowed deduction, even if actual payment is not made during the accounting year. But if no specific liability has arisen during the year and the liability is only a contingent one, no deduction is permissible for such liability even under the mercantile system.

Where an employer sets apart sums for leave salary payable to employees for leave unavailed, the liability for actual payment arises only when the employee takes leave or is discharged or after being refused leave, quits the employment. As the actual

liability arises only on the happening of any of these contingencies, it was judicially held in 1966 that liability for leave salary is not a specific one but only a contingent one and no deduction is permissible for such sums set apart for leave salary.

In the assessments of eleven companies for the assessment years 1968-69 to 1972-73 completed during the period October, 1968 to March, 1974, deduction was allowed for sums set apart for the leave accumulation fund aggregating to Rs. 10,36,844. The incorrect deduction allowed resulted in short levy of tax of Rs. 5,99,030 (approx.).

The Ministry have accepted (February, 1976) the objection in one case; in the remaining ten cases, the audit objection is stated to be under active consideration of the Ministry (March, 1976).

(ii) A company borrowed large sums of money from financial institutions for construction of plant, including purchase of machinery. Pending the setting up of the business, these sums were kept in deposit accounts with banks. The interest amounting to Rs. 2.54 lakhs accruing on these deposit accounts during the previous year relevant to the assessment year 1967-68 was not considered for assessment on the ground that the interest earned would go to reduce the amount of interest payable on the funds borrowed by the company and only the net amount would be capitalised.

Omission to consider the amount of gross interest earned for assessment was not in order as the income is assessable as 'income from other sources' and not as 'business income' pending the setting up of the business. Further, as judicially interpreted, the interest paid on borrowings pending setting up of the business, is neither business expenditure, nor can it be said to be expenditure laid out "wholly and exclusively for the purpose of making or earning the interest".

Omission to assess the interest of Rs. 2.54 lakhs resulted in short levy of income-tax of Rs. 1,99,117 (including penal interest of Rs. 58,980).

The Ministry have accepted the objection (November, 1975).

(iii) According to the provisions contained in the First Schedule to the Income-tax Act, 1961, in the computation of profits and gains of an insurance business, other than life insurance business, any amount either written off or reserved in the accounts to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction.

An assessee company engaged in general insurance business used to keep the value of investments in shares always at market rates by claiming as loss, the difference between the book value and the market value each year, as a debit in the profit and loss account which was allowed by the Department as permitted under the rules. During the previous year relevant to the assessment year 1971-72, the assessee claimed a loss of Rs. 4,38,928 on account of sale of investments, being the difference between the book value and the sale value of the said investments. The Department allowed a loss of Rs. 3,72,536 after deducting a sum of Rs. 66,392 from the claimed loss towards the increase in the depreciation reserve during the previous year relevant to the assessment year 1970-71. However, as the shares had, all along, been valued at market price, the loss or gain should have been computed by comparing the sale price with the market price at the beginning of the year and not with the original purchase price. As such, the department should have rejected the loss as claimed by the assessee and brought to tax the actual profit of Rs. 1,11,506 computed with reference to the difference between the market value and the sale price. The allowance of a net loss of Rs. 3,72,536, therefore, resulted in an under-assessment of income by Rs. 4,84,042 with consequent tax under-charge of Rs. 2,66,222 for the assessment year 1971-72 together with interest under-charge of Rs. 12,942 and Rs. 1,18,735 on account of belated submission of return of income and short payment of advance tax.

The Ministry have stated (February, 1976) that the reserve of Rs. 3,72,536 was created to cover the deficiency of the market

value of its investments in shares at the close of the account year and that this deduction was admissible under the provisions of the Income-tax Act, 1961.

(iv) The computation of insurance business income is governed by special provisions contained in the 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.

In the assessment of an insurance company for the assessment year 1973-74 completed in February, 1974, deductions admissible for inter-corporate dividends and dividends attributable to profits and gains from new industrial undertakings were allowed for a total sum of Rs. 6,50,353 resulting in under-charge of income-tax of Rs. 4,43,860.

The Ministry of Finance have stated (March, 1976) that they have sought the opinion of the Ministry of Law in a similar objection.

(v) A company having commitments to make payments in foreign exchange had to suffer rupee loss consequent upon the devaluation of Indian rupee with effect from 6th June, 1966. The same company, however, gained when the British pound was devalued on 19th November, 1967 inasmuch as it had to pay fewer rupees for its purchases abroad. In the case of such an Indian company purchasing raw material from abroad, there was a remission of its liability for payment to the foreign suppliers to the extent of Rs. 3,75,000 during the previous year relevant to the assessment year 1968-69 as a result of devaluation of pound sterling with effect from 19th November, 1967. However, only a part of the amount *viz.*, Rs. 1,52,000 was sought to be taxed during the assessment year 1971-72 on actual receipt basis although the same company had, in the previous year, claimed a loss of Rs. 9,41,339 on account of rupee devaluation on 6th June, 1966, which was allowed in full, irrespective of the fact

that the entire loss did not wholly relate to the operations for that year. Consequently, there was a net under-assessment of income by Rs. 2,43,232 for the assessment year 1968-69 with resultant tax under-charge of Rs. 1,33,778.

The Ministry have accepted the objection in principle (February, 1976).

(vi) A resident company carrying on general insurance business claimed a loss of Rs. 27,82,682 in the assessment year 1972-73, on account of revaluation of its current assets in its Accra Branch following the devaluation of the U.S. dollar and pound sterling in 1971. This claim was accepted on the ground that the assessing officer was bound to accept the results disclosed in the assessee's accounts submitted to the Controller of Insurance.

The stand of the assessing officer is not correct as the rules permit adjustments to be made in the accounts submitted to the Controller of Insurance depending upon whether an item of expenditure is allowable under the Income-tax Act. In fact, in the assessment of another insurance company in the same charge, such losses were not claimed. Further, in the assessment of the same assessee for the assessment year 1967-68, profits arising from revaluation of its assets in some African countries including Accra, following devaluation of Indian rupee in 1966, were not assessed to tax. Consistent with this stand, this loss of Rs. 27,82,682 should not have been allowed in the assessment year 1972-73. Incorrect allowance in this respect resulted in short levy of tax of Rs. 23,62,563 (including short levy of Rs. 3,57,137 in surtax assessment).

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(vii) Under the Income-tax Act, 1961, the income received or accrued in the previous year is chargeable to tax in the following assessment year but the profits earned by non-residents by carriage of passengers or cargo by ship at Indian ports, are assessable in the same year at the rates in force, one sixth of the amount paid

or payable on account of such carriage, being deemed as income accruing in India. Where the amounts paid or payable in respect of such carriage by ship are expressed in terms of United States dollars, the rules made under the Act stipulate that the rate of exchange to be adopted for determining the income chargeable to tax shall be Rs. 7.50 for each dollar.

In the assessments of seventeen non-resident shipping companies, all assessed in the same income-tax ward, in respect of income earned by carriage of passengers and cargo shipped at Indian ports during the year 1973-74, completed in the same year during the period June, 1973 to March, 1974, in determining the income at one sixth of the freight earnings expressed in United States dollars, the rate of exchange was adopted as Rs. 7.279 per dollar as against Rs. 7.50 prescribed under the statute. This resulted in under-assessment of incomt of Rs. 1,26,258 with consequent short levy of tax of Rs. 92,425.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(viii) During the previous year relevant to the assessment year 1970-71, an assessee company, incurred an expenditure of Rs. 1,12,476 on the conversion of certain machinery which according to the assessee's own statement resulted in an enduring benefit to the assessee by way of improved quality of goods manufactured. Accordingly, the expenditure should have been treated as capital expenditure.

The Income-tax Officer, however, stated that by this expenditure no new asset had come into existence and allowed it as revenue expenditure. In the case of another company belonging to the same group, an expenditure of identical nature was treated as capital expenditure. This incorrect treatment of expenditure resulted in under-assessment of income of Rs. 1,12,476 and short levy of tax of Rs. 55,675.

The objection has been accepted by the Ministry (November, 1975).

(ix) Under the Income-tax Rules, 1962, only 40 per cent of the income derived from the sale of tea grown and manufactured by a seller in India is deemed to be income derived from manufacturing and selling operations of the assessee and hence liable to income-tax, the remaining 60 per cent being deemed to relate to the cultivation of tea, income from which is agricultural in nature and hence not liable to income-tax. In computing such taxable income, therefore, no deduction is to be allowed of any amount which wholly relates to the agricultural operations and not to the manufacturing or selling operations.

A tea company incurred expenditure on crop insurance to the extent of Rs. 27,699, Rs. 39,279, Rs. 60,758 and Rs. 79,042 in the previous years relevant to the four assessment years 1970-71 to 1973-74. This expenditure, being attributable wholly to agricultural operations, did not qualify for deduction in computing taxable income.

Further, in computing any business income, expenditure of a capital nature is not allowable. The same tea company incurred expenditure of Rs. 1,86,286, Rs. 1,52,472, Rs. 3,25,670 and Rs. 3,41,788 during the same period on maintenance and up-keep of immature tea plants and capitalised the expenditure in its books of accounts. Such capital expenditure would qualify for the grant of development allowance under the Income-tax Act, 1961, subject to the conditions prescribed therein but cannot be deemed to be revenue expenditure and deducted from taxable income.

As the Department allowed both the above items of expenditure in computing taxable income in the relevant assessment years, there was under-assessment of income to the extent of Rs. 2,13,985, Rs. 1,91,751 Rs. 3,86,428, Rs. 4,20,830 during the four assessment years from 1970-71 to 1973-74 resulting in under-charge of tax of Rs. 89,262, Rs. 87,138 and Rs. 21,127 (total Rs. 1,97,527) during the assessment years 1971-72 to 1973-74.

Further, as a result of the aforesaid under-charge of tax, there was also short levy of interest of Rs. 15,978 for the assessment year 1971-72 on account of short payment of advance tax by the assessee and excess payment of interest of Rs. 20,359 by the Department for the assessment years 1972-73 and 1973-74 on account of excess payment of advance tax for the two years (total Rs. 36,337).

The Ministry have stated (February, 1976) that the matter is under consideration.

(x) A public limited company engaged in the manufacture of hessian bags, sutli, etc. received during the previous year ending 30th September, 1972, relevant to the assessment year 1973-74, ten orders from a Government department for the supply of 7,110 bales, in all, of jute bags to the Food Corporation of India. Each order was to be executed by the last date of the month in which the supply order was placed. As against these orders for 7,110 bales. the assessee company manufactured 5,270 bales and actually supplied only 3,405 bales ; the remaining 1,865 bales of manufactured goods were retained in its stock till the end of the previous year. The assessee company claimed, in the return for the assessment year 1973-74, a loss of Rs. 2,28,548 representing (i) the difference in the sale price and the market price (on 3-10-1972) of 1,840 bales not manufactured till the close of the previous year and (ii) the excess of the Central Excise duty payable on 30th September, 1972 on 1,865 bales kept in stock over the rate of the Central Excise duty included in the supply orders.

Income of the assessee company, for the assessment year 1973-74, was determined at Rs. 10,25,330 after allowing the loss in question claimed by the company. The losses worked out on account of Central Excise duty on the stock not cleared and those on account of difference between the rates agreed to by the purchaser and the market rates (on the bags not manufactured by it) were unreal as this quantum of goods could not be supplied by 30th September, 1972 and no supply order was also existing

for it beyond 30th September, 1972 and, therefore, no ascertainable loss was sustained by the assessee company. By allowing the hypothetical and, therefore, inadmissible claim of loss, the income of the company was short computed by Rs. 2,28,548.

In addition, the assessee company was erroneously allowed depreciation allowance of Rs. 5,276 in respect of a new building under construction which was not put to use of business in the relevant previous year. This resulted in further short computation of income of the company by Rs. 5,276.

Cumulative effect of these mistakes was short computation of income of the assessee company by Rs. 2,33,824 and short charge of tax of Rs. 1,35,033.

The Ministry have accepted (January, 1976) the objection except in respect of loss on 1,865 bales.

(xi) Any expenditure not laid out or expended wholly and exclusively for the purposes of business is not allowable in computing the income chargeable under the head "Profits and gains of business or profession". It is further provided in the Act that any excessive or unreasonable expenditure which results directly or indirectly in any benefit or amenity to a director should not be allowed.

(a) According to an agreement approved by Government, a domestic company manufacturing train lighting dynamos and switchgear had been paying since 1956 a sum of £ 10,000 per annum to the holding company abroad by way of fees for technical know-how for the manufacture of those items. As the company had been engaged in the manufacture of the articles for a sufficiently long time, the Government in a letter dated 20th September, 1973, withdrew its approval to such continued payment of £ 10,000 every year after 1965. In the light of the Government decision, fee amounting to Rs. 1,80,400 claimed by the assessee in respect of the assessment year 1971-72 was not allowed as it was no more considered as expenditure incidental to the business. Similar expenditure claimed by the company for the assessment year 1970-71, was, however, not added back.

This resulted in under-assessment of income of Rs. 1,80,000 (equivalent to £ 10,000) with consequent under-charge of tax of Rs. 1,08,000 for the assessment year 1970-71.

The assessments for the assessment years 1967-68 to 1969-70 also require to be re-examined by the Department in this regard.

The Ministry have accepted the objection (February, 1976).

(b) In the assessments of another company for the assessment years 1970-71 and 1971-72, expenditure amounting to Rs. 3,19,398 incurred on account of medical and other ancillary expenses in India and abroad in respect of one of its directors was allowed by the Department in the computation of its business income. A major part of the expenditure in respect of the assessment year 1970-71 was initially met by a non-resident relative of the director, who was reimbursed by the company after the Department agreed to allow the expenses in its assessment. By meeting these expenses largely incurred by the director in personal capacity, the company provided personal benefit and/or amenity and the heavy expenditure was not legitimately related wholly and exclusively to the purpose of business. This resulted in tax under-charge of Rs. 2,07,609 during the two assessment years.

While not accepting the objection, the Ministry have stated (January, 1976) that the Income-tax Officer had examined the matter and allowed the entire claim in consultation with the Inspecting Assistant Commissioner but as a precaution, the assessment for the assessment year 1971-72 has been rectified.

(c) In still another case, with the change in the status of a company, which had been formerly controlled and managed from London, to that of a domestic company with effect from the assessment year 1970-71, all its connections with its parent office in London were discontinued from the relevant previous year. The company debited to its accounts for the previous year relevant to the assessment year 1971-72 an expenditure of Rs. 4,22,177 incurred in London Office which was allowed in assessment. As the expenditure incurred in London Office

was not, *prima facie,* incidental to the business carried on in India, it was not allowable as a business expense of the company. Omission to add back this inadmissible expenditure resulted in under-assessment of income by Rs. 4,22,177 with consequent under-charge of tax of Rs. 2,53,306 for the assessment year 1971-72.

The Ministry have not accepted the objection. They have stated (January, 1976) that the mere fact that the control and management of the company shifted from London to Calcutta should not be taken to imply that the expenses incurred at the London Office could not have been incurred for the purpose of business.

(xii) It has been judicially held that expenditure incurred in connection with proceedings regarding breach of law would not be an admissible deduction, even if incurred for the purposes of the business.

(a) In the assessment of a transport company for the assessment years 1969-70, 1970-71 and 1971-72, sums of Rs. 68,758, Rs. 1,94,919 and Rs. 2,09,367 respectively debited to its profit and loss accounts, representing payments of interest made to the Commissioners of Provident Fund for failure to deposit employer's and employee's contributions to Provident Fund in time, were allowed as deduction in determining the company's taxable income. As the payments were made for infringement of statutory orders, they would not constitute admissible expenditure. The incorrect computation of income resulted in excess deductions aggregating to Rs. 4,73,044 for the aforesaid three assessment years which were allowed to be carried forward to subsequent assessment year(s) due to insufficiency of profits in the relevant assessment years.

The Ministry have accepted the objection (January, 1976).

(b) In another case, an assessee manufacturing *inter alia,* rayon and artificial silk fabrics, was granted licence for importing a machine costing Rs. 2,40,000 for producing tetron suiting on the express condition, that, after the machine started production, the assessee would export tetron suiting worth Rs. 80,000 in each year for three successive years, in addition to the normal export quota of Rs. 10 lakhs per year, failing which, an equivalent amount would be payable by the assessee to the Government of India. In the accounting year relevant to the assessment year 1968-69, the assessee did not export the special quota of cloth worth Rs. 80,000 but diverted the same to home market. The amount of Rs. 80,000 paid to the Government of India as per the bond, for failure to keep up export commitment, was treated as an allowable expenditure under Section 37(1) of the Income-tax Act, 1961. However, the payment being for infraction of law and not in the nature of liquidated damages, could not have been allowed as an admissible expenditure. By doing so, the assessee was relieved from payment of tax of Rs. 44,000.

The Ministry have accepted the objection (March, 1976).

(c) The accounts of a company for the previous year relevant to the assessment year 1967-68 included an expenditure of Rs. 9,17,220 on account of penalty imposed by the Reserve Bank of India for infringement of laws. This was, irregularly, allowed by the Department as normal business expenditure. An amount of Rs. 5,42,688 was refunded by the Reserve Bank of India out of the penalty of Rs. 9,17,220 during the previous year relevant to the assessment year 1968-69. This amount was included in the total income of the assessee for the assessment year 1968-69. The original amount itself was disallowable in the assessment year 1967-68, and hence the refund was not includible in the total income for the assessment year 1968-69. The net effect of the assessments for the two assessment years was excess carry forward of loss of earlier years to the extent of Rs. 3,74,532 (Rs. 9,17,220 less refund of Rs. 5,42,688).

While accepting the objection, the Ministry have stated (February, 1976), that the assessments in question have been revised.

(xiii) Under Section 280 ZB of the Income-tax Act, 1961, any company engaged in the manufacture or production of any of the articles mentioned in the First Schedule to the Industries (Development and Regulations) Act, 1951, is eligible for the grant of tax credit certificate in respect of the tax payable on the profits and gains attributable to such manufacture or production.

In the assessment of a company manufacturing drugs and pharmaceuticals, soaps, cosmetics and toilet preparations, such tax credit was calculated in respect of the taxable income including income which was not directly derived from the manufacture or process of the articles specified in the Industries (Development and Regulations) Act, 1951. Consequently, tax credit certificates for amounts aggregating to Rs. 32,60,934 were issued for the assessment years 1966-67, 1967-68, 1968-69, 1969-70 and 1970-71 as against the net admissible amount of only Rs. 30,53,245 for these years.

This resulted in the excessive allowance of tax credit certificates to the tune of Rs. 2,07,689 in all these years.

The Ministry in their reply (March, 1976) have stated that the audit objection is under active consideration.

Incorrect allowance of depreciation and development rebate

23. *Depreciation*

(i) Under the provisions of the Income-tax Act, 1961, in computing income from business, depreciation on buildings, machinery plant or furniture owned by the assessee and used for the purposes of the business is allowed at the prescribed

rates. Under the rules made in this regard, upto the assessment year 1969-70 special higher rates of depreciation ranging from 9 per cent to 40 per cent were prescribed for "specified" concerns. In the case of concerns which are not specified, depreciation has to be allowed only at the general rate of 7 per cent in the absence of any claims for application of special rates for individual items of machinery prescribed in the Rules. The mode of application of the different rates of depreciation was also clarified by the Central Board of Direct Taxes in their Circular Instruction No. 416 of 12th May, 1972.

In the assessments of three companies engaged in automobile industry and one company engaged in manufacture of tractors and accessories, for the assessment years 1964-65 to 1968-69, completed during the period September, 1965 to February, 1969, depreciation was allowed on the entire plant and machinery at 10 per cent in three cases and 12 per cent in one case. As these concerns were not "specified" ones, they were entitled to depreciation at the general rate of 7 per cent only. The allowance of depreciation at incorrect rates resulted in excess depreciation of Rs. 6,39,976 involving tax under-charge of Rs. 3,08,891 in the four cases.

The Ministry have stated (March, 1976) that the audit objection in these cases is still under consideration.

(ii) The Act also provides that where full effect cannot be given to depreciation allowance in any year due to there being no profits or the profits being insufficient, the unabsorbed depreciation can be carried forward and set off against the profits for succeeding years.

In the case of a company, out of the unabsorbed depreciation of Rs. 6,97,119 relating to the assessment year 1963-64, a sum of Rs. 4,74,560 was set off against the income for the assessment year 1970-71 in the assessment concluded in December,

1971, the balance of Rs. 2,22,559 being available for carry forward to subsequent years. This adjustment was, however, over-looked while concluding the assessment for the assessment year 1971-72 in January, 1974, where the original amount of Rs. 6,97,119 was again carried forward, resulting in excess carry forward of depreciation to the next year by Rs. 4,36,965.

The objection has been accepted by the Ministry (October, 1975) and the assessment in question is stated to have been revised.

(iii) A non-resident company carrying on its business in India, with its assets situated in India, was maintaining its accounts in sterling pounds. For the assessment year 1967-68 in respect of the accounting year ending 24th September, 1966, the assessee company claimed depreciation allowance on the written-down value which was maintained in sterling pounds. In converting the sterling value, the post-devaluation rate of Rs. 21 for one pound was taken into account. The fact that the value of the assets of the company situated in India could not be revised (*i.e.* appreciated) consequent on the devaluation of rupee in June, 1966 was over-looked by the assessing officer. This omission resulted in under-assessment of tax of Rs. 2,16,794 for the assessment years 1967-68 and 1968-69.

While accepting the objection, the Ministry have stated (March, 1976) that reassessment has since been completed and the additional demand raised has also been collected.

(iv) In the case of an assessee company, depreciation claimed by it on a building used as school for the benefit of its employees was disallowed from the assessment year 1970-71 onwards, as the school was run by a trust and the trust deed showed that the school was a charitable institution and was not intended for the exclusive benefit of the employees. For the same reason depreciation allowed in earlier assessment years from 1966-67 to 1969-70 should have been withdrawn. Failure to do so resulted in under-assessment of income of Rs. 73,317 and short levy of

tax or Rs. 40,326 during the assessment years 1966-67 to 1969-70.

The Ministry have accepted (November, 1975) the objection. The assessments in question are stated to have been rectified raising an additional demand of Rs. 40,326.

(v) The Income-tax Act, 1961 provides that where, in a scheme of amalgamation any capital asset is transferred by the amalgamating company to the amalgamated Indian company, the written down value of the transferred capital assets to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purpose of its busin[illegible]ie depreciation on the transferred assets, as such, is admis[illegible]e in the hands of the company to whom the assets are tran[illegible]red and not to both the transferor and the transferee compan[illegible]

In one case, although normal depreciation of Rs. 5,16,[illegible] for the full year calculated on the written down value of the transferred assets as on the date of transfer was allowed in the hands of the amalgamated company, normal depreciation of Rs. 5,79,366 on the same assets for the full year was again allowed in the computation of income of the amalgamating company for the assessment year 1970-71. Allowance of depreciation twice on the same assets resulted in excess allowance of depreciation by Rs. 5,79,366 which was allowed to be carried forward to the subsequent assessment year due to insufficiency of profits in the relevant year.

The Ministry have stated (March, 1976) that the audit objection is under consideration.

(vi) Under the Income-tax Rules, 1962 new rates of depreciation have been prescribed from 1st April, 1970 according to which the general rate of 10 per cent is to be applied in respect of plant and machinery for which no special rate has been prescribed. For the assessment years 1970-71 to 1972-73,

the same company claimed and was allowed depreciation at 15 per cent on a part of its plant and machinery on the ground that these came into contact with corrosive chemical, *i.e.* hard water. As hard water is not a corrosive chemical, the general rate of 10 per cent was admissible. Thus, depreciation to the extent of Rs. 7,93,030 was allowed in excess during these years resulting in under-charge of tax amounting to Rs. 4,38,842.

While accepting the objection, the Ministry have stated (March, 1976) that the assessments in question have since been revised.

(vii) In the assessment of a company for the assessment year 1972-73 completed in March, 1973, depreciation of Rs. 21,200 was allowed in respect of goodwill of Rs. 4,23,900 representing payment made by the company to another company towards the value of un-expired permits. As no depreciation is admissible for "goodwill", the incorrect allowance resulted in excessive computation of loss from business by Rs. 14,108.

While accepting the objection, the Ministry have intimated (October, 1975) that the assessment in question has been revised and as a result, the loss has been reduced by Rs. 14,108.

(viii) The Income-tax Rules also provide for additional depreciation for extra shift working of plant and machinery depending upon the number of days of double and triple shift working. However, in September, 1970, the Central Board of Direct Taxes issued instructions that the extra shift allowance could be granted with reference to the number of days the concern as a whole worked without making any attempt to determine the number of days for which each machine worked double or triple shift. These instructions of the Board are not in accordance with the provisions of the rules.

(a) In five cases for the assessment years 1969-70 to 1972-73 completed during the period October, 1971 to

March, 1973, it was noticed that the extra shift allowance granted on the basis of the instructions issued by the Board in 1970 resulted in excessive depreciation of Rs. 8,00,417 involving a tax of Rs. 4,23,000 (approx.). In another case, extra shift allowance was granted in the assessment for the assessment year 1967-68 completed in March, 1971 on the entire machinery in a staple fibre plant on the basis of the total number of days of working of another plant for production of rayon, the two plants, though separate, having been treated by the Department as one concern. As the staple fibre plant had remained closed for about six months in the year for want of raw material and power cut, the grant of full extra shift allowance resulted in excessive depreciation of Rs. 5,91,000 involving tax revenue of Rs. 3,25,000.

(b) In the assessment of taxable income of a sugar factory for the years 1964-65 to 1970-71, the Income-tax Officer allowed extra shift allowance at the flat rate of fifty per cent of the normal depreciation allowance for double shift work and at cent per cent thereof for triple shift work, irrespective of the number of days for which the factory worked double and triple shift in the respective years. As a result, extra shift allowance totalling Rs. 5,54, 675 was allowed in excess and revenue of Rs. 3,05,070 was forgone.

(c) According to the information furnished by an assessee with the return of income for the assessment year 1970-71, only 25 per cent of the machinery had worked double shift and 35 per cent, triple shift, during the relevant previous year. Hence extra shift allowance should have been allowed only in respect of that percentage of machinery which had worked double/triple shift. It was, however, noticed that extra shift allowance was allowed on the value of the entire machinery installed in the factory. This resulted in under-assessment of income by Rs. 3,38,489 and short levy of tax of Rs. 1,86,190 (approx.).

(d) Extra shift allowance is not admissible for certain specified plant and machinery such as electrical machinery, weighing machines, locomotives etc.

In the assessments of a company for the assessment years 1966-67 to 1971-72 completed during the period March, 1971 to February, 1974, extra shift depreciation amounting to Rs. 53,34,143 was allowed on plant and machinery including electrical machinery, weigh bridges and locomotives, contrary to the rules made under the statute. The incorrect deduction allowed resulted in excessive depreciation being carried forward to be set off in the following years with consequent under-assessment of income of Rs. 53,34,143 involving tax revenue of Rs. 29,33,779.

The Ministry have stated (March, 1976) that objections in respect of sub-paragraphs (a), (b) and (d) are under consideration. In regard to sub-paragraph (c) they have stated (November, 1975) that the grant of full triple shift allowance is in accordance with the Income-tax Rules.

24. *Development rebate*

The Income-tax Act, 1961, also allowed till 31st May, 1974, a development rebate in respect of new ship or new machinery or plant owned by the assessee and wholly used for the purpose of the business carried on by him. The rebate was admissible in respect of the previous year in which the ship was acquired or the machinery or plant was installed or where the ship, machinery or plant were first put to use in the immediately succeeding year, then, in respect of that previous year. An important condition for the admissibility of this rebate was that an amount equal to 75 per cent of the rebate to be allowed should be debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of 8 years next following, for the purposes of the business of the undertaking.

(i) During the previous year relevant to the assessment year 1969-70, an assessee created development rebate reserve for an amount of Rs. 70,00,000. The amount of development rebate allowable on the basis of this reserve worked out to Rs. 93,33,333 whereas an amount of Rs. 96,66,666 was actually allowed by the Department. Development rebate was thus allowed in excess by Rs. 3,33,333. As the assessment resulted in a loss, the excess allowance of development rebate led to excess carry forward of loss by an identical amount for the assessment year 1969-70.

The Ministry have accepted the objection (November, 1975) and stated that the assessment has been rectified and the assessed loss reduced by Rs. 3,33,333.

(ii) In the context of the aforesaid condition about the creation of development rebate reserve, the Supreme Court, while stressing the need for strict compliance with the statutory provisions, held in April, 1970 that entries in the account books required under the Act are not an idle formality.

In one case, development rebate of Rs. 17,46,648 was determined as allowable for the assessment year 1965-66 the assessment of which was completed in February, 1970 and revised in March, 1971. As there were insufficient profits to absorb the rebate, the rebate was carried forward and adjusted to the extent of Rs. 12,95,641 in the assessment year 1967-68 (assessment completed and revised on the same dates) and the balance of Rs. 4,51,007 was adjusted in the assessment year 1968-69 (assessment completed in March, 1970). As the assessee did not create necessary reserve as contemplated under the Act, the development rebate of Rs. 17,46,648 determined for the assessment year 1965-66 was held to be inadmissible by the Department. While the assessment for the assessment year 1968-69 was revised on 25th March, 1974 to withdraw the development rebate of Rs. 4,51,007, no action was taken to withdraw the development rebate of Rs. 12,95,641 adjusted in the assessment year 1967-68. The omission involving a revenue of Rs. 7,12,604 was pointed

out in audit in August, 1974. The Department stated in reply that the assessment for the assessment year 1967-68 could not be rectified on account of time-bar as the Board's instructions for re-opening assessments already completed in the light of the Supreme Court's judgment were received sometime in late 1972 or early 1973.

In fact, while revising the assessments in March, 1971, the development rebate already allowed could have been disallowed in the light of the Supreme Court judgment which was reported in 1970. Even after the receipt of the Board's instructions, time was available for rectification of the assessment for the assessment year 1967-68, upto 27th February, 1974. The loss of revenue of Rs. 7,12,604 could have been avoided if timely action had been taken by the Department for rectification.

The Ministry have stated (March, 1976) that the audit objection is still under consideration.

(iii) An assessee was allowed development rebate on the cost of new machinery which included an amount of Rs. 1,00,000 for the purchase of technical "know-how" and another amount of Rs. 1,68,566 on account of capitalisation of initial expenditure. As clarified by the Board in September, 1962, the amount of Rs. 1,00,000 was not includible in the cost of the assets, because the expenditure was not specifically attributable to the acquisition of the plant and machinery. So was also the expenditure of Rs. 1,68,566, because it was in the nature of deferred revenue payment incurred before the commissioning of the plant for production, on revenue items like donation, advertisements, printing and stationery, rent and taxes on buildings etc.

The cost of machinery was thus inflated to the extent of Rs. 2,68,566 on which development rebate of Rs. 53,713 was incorrectly allowed in the assessment year 1965-66. This also led to the admission of excessive depreciation allowance to the

extent of Rs. 1,41,033 in the seven assessment years from 1965-66 to 1971-72. This had the effect of forgoing of revenue of Rs. 1,12,450 in the assessment year 1973-74, when the assessee was assessed to positive income.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

25. *Incorrect grant of export incentives*

Under the Income-tax Act, 1961 as applicable with effect from the assessment year 1969-70, a domestic company or a non-corporate tax payer resident in India incurring expenditure after 29th February, 1968 wholly and exclusively on any of the items specified in the Act in connection with the development of export markets is entitled to a weighted deduction from the taxable income at the rate of one and one third times (one and one-half times in certain cases of expenditure incurred after 28th February, 1973 in certain cases) the amount of such expenditure incurred by him during the previous year provided that the said expenditure was not incurred on items like carriage, freight and insurance of the goods, whether in India or outside.

(a) In the case of 21 companies and 3 firms, the weighted deduction was allowed in respect of trade commission aggregating to Rs. 1,68,82,785 paid to foreign agents abroad in the assessment years 1971-72 to 1974-75, even though this expenditure cannot be treated as having been incurred on the development of export markets as specified in the Act ; the expenditure was incurred in the normal course of trade and business. The erroneous allowance resulted in an under-assessment of income totalling Rs. 56,27,595 in all these twenty four cases leading to a short levy of tax of Rs. 33,97,552.

The Ministry have not accepted (January, February and March, 1976) the objection in all the cases stating that such trade commission paid to foreign agents is covered by

Section 35B(1) (b) (iii) of the Act. They have added that remedial action has, however, been initiated in 13 cases as a measure of precaution.

(b) In another case, an assessee company allowed cash discounts on export sales to the extent of Rs. 2,32,746 during the previous years relevant to the assessment years 1969-70 to 1972-73. As cash discounts on export sales do not fall in any of the items of expenditure specified in the Act, the assessee was not entitled to weighted deduction of the amount as claimed by it and allowed by the Department. The allowance of such weighted deduction, therefore, resulted in under-assessment of income to the extent of Rs. 77,582 with consequent tax under-charge of Rs. 42,670.

(c) In the assessment for the year 1969-70 of an Indian company, weighted deduction of an amount of Rs. 2,64,713 equal to one-third of the amount of the total expenditure of Rs. 7,94,140 incurred by the asessee towards the development of export markets was allowed by the Department. As the said total expenditure of Rs. 7,94,140 included expenditure of Rs. 5,74,272 on account of carriage, cartage, freight etc., weighted deduction to the extent of Rs. 1,91,424, being one-third of Rs. 5,74,272, was not allowable to the assessee. The omission to disallow the same resulted in tax under-charge of Rs. 98,638 for the assessment year 1969-70.

The Ministry have accepted the objections in the cases mentioned in sub-paragraphs (b) and (c) (October, 1975 and November, 1975).

Irregular exemptions and excess reliefs given

26. *Excessive double taxation relief*

Under the Income-tax Act, 1961, a resident person is entitled to a relief in respect of his foreign income, doubly taxed in India and in a foreign country with which there is no agreement for avoidance of double taxation. The double taxation relief is

allowed by way of deduction from the Indian income-tax payable. Such relief is calculated at the lower of the rates of tax applicable in the two countries on such income doubly taxed. As there is no provision in section 91 of the Act to grant a refund, if the amount of relief exceeds the total amount of Indian income-tax payable, the relief is to be limited to the Indian tax.

In the assessment for the assessment years 1969-70 and 1970-71 of an assessee company having income in Malaysia, the aforesaid relief at the rate admissible exceeded the Indian tax payable by the company for the respective years. The Income-tax Officer granted refund for the excess amounts. This led to an excessive tax relief aggregating to Rs. 8,02,978 in the two assessment years.

While accepting the objection (January, 1976), the Ministry have stated that the assessment in question has been revised and the additional tax of Rs. 8,02,978 raised and collected.

27. *Irregular/excessive tax holiday relief*

(i) As an incentive for the setting up of new industries, the Income-tax Act, 1961, provides for tax holiday relief for profits derived from a newly established industrial undertaking, a new ship or the business of a hotel upto six per cent of the capital employed in the undertaking or the ship or business of the hotel, as the case may be. Under the rules prescribed for computing the capital employed, in the case of assets entitled to depreciation, the written down values as determined for purposes of income-tax, and not the values shown for such assets in the books of the assessee, are to be adopted. As pointed out in paragraphs 46(a) of the Audit Report (Civil) on Revenue Receipts, 1968 and Paragraph 19(i) of the Audit Report (Civil) on Revenue Receipts 1973-74 (Volume II), the value of fixed assets under construction, machinery awaiting installation and unused machinery would not constitute capital employed and should be excluded from the capital computation.

(a) In the assessment of a company for the year ended 31st December, 1969 relevant to the assessment year 1970-71, completed in October, 1972, tax holiday relief was allowed to the extent of Rs. 88,54,254, being six per cent of the capital employed in a new industrial undertaking, which was computed as Rs. 14,75,70,913. The capital computation was incorrect because the total value of depreciable assets as on the first day of the computation period was taken as Rs. 12,38,12,606 instead of the correct written down value amounting to Rs. 10,29,80,374 and sums of Rs. 8,13,120 representing the value of plant and machinery not installed and Rs. 2,00,23,917 shown on the assets side of the balance sheet as 'prepaid interest and insurance charges' were included in the total value of assets. The last mentioned sum did not represent any actual payment but was merely a book adjustment debiting 'prepaid interest charges' and crediting 'unsecured loans' in respect of interest payable for future years. The amount included under 'unsecured loans' shown in the liabilities side of the Balance Sheet was also not deducted from the value of assets to arrive at the capital. The fictitious asset was incorrectly included in the computation of the capital employed.

These mistakes resulted in excessive tax holiday relief to the extent of Rs. 25,00,156 with consequent short levy of tax of Rs. 13,75,000.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(b) In another case for the assessment year 1970-71, the Department considered the value of the assets as on the first day of the computation period at Rs. 3,21,32,702 as per books of accounts of the assessee company instead of considering the written down value of the assets of Rs. 2,95,65,031, as computed in assesesment. This incorrect computation of capital resulted in excess allowance and carry forward of reilef amounting to Rs. 1,54,060 for the assessment year 1970-71.

The Ministry have accepted the objection (November, 1975).

(c) In the case of a shipping company, the calculation of capital employed was made on the basis of cost of purchase at the beginning of the year for the first year and written down value at the beginning of the year in subsequent years.

This incorrect computation of capital resulted in an inadmissible allowance of Rs. 2,31,115 for the assessment years 1969-70 to 1971-72 with tax under-charge of Rs. 1,57,736.

The Ministry have accepted the objection (March, 1976).

(d) In the assessment of another assessee company, for the assessment year 1971-72, the value of uninstalled machinery of Rs. 22,75,488 was included in determining the capital employed, resulting in an excess computation of loss to the extent of Rs. 1,36,529 for the assessment year 1971-72.

The Ministry have accepted the objection (February, 1976).

(ii) There is no provision in the Act and the Rules for including in the computation of the capital employed, any borrowed money and debt due by the person carrying on the business.

A newly established industrial undertaking commenced its production in the previous year relevant to the assessment year 1965-66 and the deficiency for the assessment years 1967-68 to 1969-70 was carried forward and set off fully against the income for the assessment year 1970-71. While computing the capital for the assessment year 1967-68, the average secured loan of Rs. 23,75,000 taken by the assessee from a financial institution was not deducted. This resulted in over-computation of capital by an identical amount, with consequent excess carry forward of deficiency of Rs. 1,42,500 for the said assessment year. The entire deficiency having been adjusted against the income for the assessment year 1970-71, there was excess allowance of relief to the extent of Rs. 1,42,500 with consequent tax under-charge of Rs. 1,18,019.

The Ministry have accepted (November, 1975) the objection. The assessments in question are also stated to have been revised.

(iii) The assessment of a company for the assessment year 1971-72 was completed at a loss of Rs. 5,70,725 (taking into account a mistake pointed out by internal audit), after allowing deduction in respect of profits from a newly established industrial undertaking to the extent of Rs. 21,60,000. The capital employed in the new unit was not distinctly and separately ascertainable and was not computed in the prescribed manner nor was any proof as to the adequacy of profits to admit of the claim for such allowance given by the assessee. The deduction of Rs. 21,60,000 was, therefore, irregular. This resulted in an under-assessment of income to the extent of Rs. 21,60,000 with consequent tax under-charge of Rs. 12,51,421 for the assessment year 1971-72.

The Ministry have accepted (January, 1976) the objection.

(iv) The Act provides that the aforesaid relief would be admissible for a period of 5 years from the assessment year relevant to the previous year in which the undertaking begins to manuafcture or produce articles.

An assessee company commenced its manufacturing operations in the previous year relevant to the assessment year 1968-69. The relief from taxation was, however, claimed by the company and allowed by the Department to it during the five assessment years 1969-70 to 1973-74. The company having commenced production in the previous year relevant to the assessment year 1968-69, the last year for which relief was admissible was 1972-73. It was, however, allowed a deduction of Rs. 5,86,133 in the assessment year 1973-74. This incorrect allowance resulted in under-assessment of income by Rs. 5,86,133 for the assessment year 1973-74 with consequent tax under-charge of Rs. 3,38,492.

The Ministry have not accepted (December, 1975) the objection, stating that though the plant was inaugurated on 7th November 1967, the actual production was started in the accounting year commencing on 26th December, 1967.

(v) The tax holiday relief is not admissible if the industrial undertaking is formed by the splitting up, or the reconstruction, of a business already in existence or if it is formed by the transfer to a new business of a building, machinery or plant previously used for any purpose provided that the value of the plant and machinery so transferred exceeds twenty per cent of the total value of the machinery or plant used in the business.

(a) In the assessment of a company for the assessment years 1968-69 to 1970-71 completed in October, 1969 and February, 1971, tax holiday relief was given to the extent of Rs. 10,12,830. Subsequently, it was noticed by the Department in February, 1973 that the company was not entitled to the relief, as there was no new industrial undertaking but only a reconstruction of existing business. The tax holiday relief incorrectly given was accordingly withdrawn by revision of the assessments for the assessment year 1968-69 in December, 1973 and for 1969-70 in July, 1974. The assessment for the assessment year 1970-71 was, however, not revised till the date of audit (July 1974) to withdraw the relief given to the extent of Rs. 5,69,093. This resulted in omission to recover additional tax of Rs. 3,98,300.

The Ministry have accepted the objection in principle and stated that the assessment in question has been rectified (March, 1976).

(b) In the case of another company, one solvent plant and one oil mill-*cum*-ginning factory were purchased from two registered firms and the same businesses were continued. The machinery acquired by the assessee company included old machinery of the value of more than 20% of the machinery used in the business. The relief was, nevertheless, allowed. The incorrect allowance resulted in short levy of tax aggregating to Rs. 70,414 during the assessment years 1970-71 to 1972-73.

The Ministry have accepted the objection partly (January, 1976).

(vi) It has been judicially held that it is only if any taxable income remains after setting off the unabsorbed depreciation and carried-forward losses of past years relating to a newly established industrial undertaking that the question of granting the said deduction would arise. In case there is loss or insufficient profit, the whole or balance of the deficiency as the case may be, can be carried forward for a specified period for allowance in the year/ years of profit from the said newly established unit only.

(a) During the previous year relevant to the assessment year 1967-68, an assessee company started a new industrial unit for the manufacture of petrochemicals. It suffered a total loss of Rs. 10,22,82,418 upto the assessment year 1970-71 and earned profit of Rs. 4,59,04,226 in the assessment years 1971-72 and 1972-73. As the said profit was not sufficient to absorb the past losses from the newly established unit, the deduction on account of profits and gains from the newly established unit was not admissible to the assessee company. The Department, however, allowed a total deduction of Rs. 2,52,93,557 in the assessment of the company for the assessment years 1971-72 and 1972-73. The incorrect allowance of relief resulted in under-assessment of income by an identical amount with consequent tax undercharge of Rs. 1,40,76,773 for the assessment years 1971-72 and 1972-73.

(b) Similarly, in the case of another unit which came into operation in the previous year relevant to the assessment year 1970-71, the profits earned by the new unit during the previous year relevant to the assessment year 1972-73 were not sufficient to absorb the past losses and the profit of Rs. 9,64,396 earned during the previous year relevant to the assessment year 1973-74 could admit of its claim for set off of deficiency to that extent only. Hence, the grant by the Department of relief on account of profits from the new unit to the extent of Rs. 3,22,612 and Rs. 9,65,108 for the assessment years 1972-73 and 1973-74 respectively resulted in under-assessment of income of Rs. 3,22,619 and Rs. 712 with consequent tax under-charge of Rs. 1,82,288 for the two assessment years.

(c) In the case of another assessee, while rectifying the assessment for the assessment year 1968-69 under Section 154 of the Act, the Department allowed full deduction of the statutorily exempted amount of Rs. 15,04,415 instead of restricting it to the profits derived from the new industrial undertaking which amounted to Rs. 11,27,924. This resulted in under-assessment of income of Rs. 3,76,491 and short levy of tax of Rs. 2,07,070.

The Ministry have accepted the above objections in all these cases. As a result of rectification in the case of (c), additional demand of Rs. 2,07,070 is stated to have been raised and collected.

(vii) As clarified in a judicial decision, the relief in the case of a new ship is admissible only if profits and gains are directly derived from the ship and the benefit cannot be availed of if the assessee uses the ships as instruments for carrying on his business activity which produces the income.

During the previous year relevant to the assessment year 1972-73, an assessee company purchased trawlers for catching shrimps which were exported to foreign countries in a finished state. The assessee claimed relief of Rs. 3,39,957 in respect of the profits derived from ships for the assessment year 1973-74 which was allowed by the Department and a deficiency of Rs. 40,227 was allowed to be carried forward to the subsequent assessment year. As the profits and gains in respect of which the aforesaid relief was allowed did not arise directly from the ships used by the assessee but were derived from the export of shrimps to foreign countries in a finished state, the assessee was not entitled to the aforesaid relief as claimed and allowed by the Department. The allowance of the aforesaid relief, therefore, resulted in under-assessment of income by an identical amount with consequent tax under-charge of Rs. 1.96,324 and Rs. 23,231 for the assessment years 1973-74 and 1974-75 respectively.

The Ministry have in their reply (January, 1976) stated that the trawlers purchased by the assessee were fitted with refrigeration plant, electrical installation and other machinery entitling it to the relief.

(viii) An assessee company was allowed reliefs amounting to Rs. 6,18,179, Rs. 12,19,003 and Rs. 13,03,615 equal to six per cent of the capital employed in a new hotel, for the assessment years 1967-68, 1968-69 and 1969-70 respectively. Due to the following irregularities in the computation of capital, reliefs were allowed in excess by Rs. 1,69,811, Rs. 87,706 and Rs. 93,205 respectively for the above assessment years :

(a) The written down values of fixed assets as on the first day of the relevant previous years were taken in excess of those arrived at under the Income-tax Rules.

(b) There was a mistake in totalling to the extent of Rs. 10,98,508 in the computation of capital for the assessment year 1967-68.

(c) Although the capital was computed on average cost basis, one half of the current year's profit amounting to Rs. 2,70,665 was included in the capital for the same assessment year (1967-68).

(d) Although assets under construction, being not used for earning any profit for the new unit were not includible in capital, building under construction amounting to Rs. 91,600 was taken into account in the computation of capital for the assessment year 1969-70.

The excess allowance of reliefs resulted in excess carry forward of deficiencies for the said assessment years.

The Ministry have partly accepted the objection (February, 1976).

(ix) Prior to its amendment by the Finance Act, 1975, the Act also allowed relief in the hands of the shareholders in respect of dividends from tax holiday profits of a new industrial undertaking, ship or hotel. Para 49(b) of the Audit Report for the year 1970-71 had pointed out an omission on the part of the Income-tax Officer of a company ward to take timely action in regard to the grant of exemption to the individual shareholders on account of profits attributable to new industrial undertakings as and when the assessments of the companies were completed or revised.

For the calendar year 1968, a company declared dividends of Rs. 45,68,618. A provisional certificate exempting 34.57 per cent of these dividends was issued by the Income-tax Officer assessing the company in March, 1969. In the case of nine shareholders who received dividend income of Rs. 12,12,138 from this company, relief to the tune of Rs. 4,18,896 was allowed in the assessment year 1970-71 on the basis of this provisonal certificate. The assessment of the company was subsequently completed in March, 1972 and on this basis, the relief allowable to the shareholders worked out to 0.37 per cent only. No action was, however, taken to revise the provisional certificate and to withdraw the excess relief. This omission resulted in grant of excess relief of Rs. 4,15,241 in these nine cases alone involving an under-assessment of income of Rs. 2,18,690 and short levy of tax of Rs. 1,52,328.

The Ministry have accepted the objection (November, 1975). The assessments in question are stated to have been revised and additional demand of Rs. 1,52,328 raised.

28. *Other reliefs*

(i) Where the gross total income of an assessee, being a company, includes any income by way of dividends from a domestic company, or by way of dividends attributable to profits and gains from a new industrial undertaking, the assessee

is entitled, in the computation of its total income, to certain deductions from income by way of dividends. These deductions have to be calculated with reference to the net dividend income after deducting the expenses incurred in earning the dividend income.

(a) In the case of nine assessees, where the gross total income included income from inter-corporate dividends and dividends attributable to profits and gains from new industrial undertakings, deductions were allowed with reference to the amount of gross dividends instead of the net amounts. This resulted in excess allowance of relief of Rs. 37,11,489 in different assessment years from 1968-69 to 1973-74 with a consequential total short demand of tax of Rs. 14,24,787.

In the case of 7 assessees, the Ministry have expressed the view (January, 1976) that gross dividend is correctly taken in allowing the deductions. In two cases, however, they have stated (March, 1976) that the objections are under active consideration.

(b) In the case of a company which was a partner in a firm, the aforesaid relief was allowed in respect of the company's share of the dividend income of the firm. As the dividend was received by the registered firm as share-holder and not by the company direct, the allowance was not in order. The irregular allowance resulted in under-assessment of income amounting to Rs. 1,25,423 in the assessment years 1972-73 and 1973-74 leading to an aggregate short levy of income-tax of Rs. 91,286.

The Ministry have not accepted the objection, stating that the Act provides for the allocation of share income from a firm under the same heads of income in the hands of the partners as in those of the firm. However, the relief in question is related to dividend income and not to income under any particular head and the income in question here cannot be dividend income in the hands of the partners who are not shareholders.

(ii) Upto the assessment year 1972-73, in the case of certain specified industrial undertakings, the Act allowed a deduction of 8 per cent up to 1971-72 and 5 per cent in 1972-73, of the profits and gains derived from priority industries. As clarified by the Board, this deduction is to be calculated on the income after giving effect to the relevant provisions of the Act for set off or carry forward of loss and in the matter of set off of loss, the profits and/or losses of a specified industry should not be mixed up with those of a non-specified industry.

(a) An assessee company, engaged in the extraction and processing of mineral oil, was allowed, during the assessments for the years 1969-70 and 1970-71, deduction of Rs. 52,34,944 and Rs. 82,97,971 respectively on account of profits from a priority industry calculated at the rate of 8 per cent of the total assessed profits. As the total income as computed for each of the two assessment years, included receipts of Rs. 5,91,600 and Rs. 35,26,888 on account of transportation, through its own pipelines, of crude oil belonging to another company, which could not be deemed to really belong to the category of profits from priority industry eligible for relief, the assessee company was not entitled to any relief in respect of the said receipts. The irregular allowance of relief on the aforesaid profits resulted in under-assessment of business income by Rs. 5,91,600 and Rs. 35,26,888 for the assessment years 1969-70 and 1970-71 respectively with consequent tax under-charge of Rs. 22,54,168 for the two assessment years.

(b) In another case, an assessee company manufacturing certain articles listed in the sixth schedule to the Income-tax Act, 1961, in several units, was allowed relief of Rs. 18,99,889 in respect of profits and gains attributable to such industry in the assessments for the years 1971-72 and 1972-73, computed separately with reference to profits of each unit for the years relevant to the assessment years, instead of being computed on the aggregate of the profits and/or losses of the priority industry as a whole. Further, the profits and/or losses

of the units were computed without taking into account the "carried forward" losses of the units concerned from previous years in contravention of the clarification on the subject issued by the Central Board of Direct Taxes. For the priority industry as a whole, after taking into account the progressive losses carried forward from earlier years, there were actually no taxable profits and gains left for the said assessment years. The assessee company, therefore, was not entitled to the relief allowed on the profits from the priority industry for the said assessment years. Irregular allowance of relief to the extent of Rs. 18,99,889 resulted in under-assessment of income by an identical amount with consequent tax under-charge of Rs. 10,45,172 for the above assessment years.

The Ministry have accepted the objections in the above two cases (December, 1975 and January, 1976).

(c) A domestic company engaged in a priority industry, derived interest income, rental income and other miscellaneous receipts to the extent of Rs. 7,26,225 and Rs. 7,10,755 in the accounting years relevant to the asesment years 1971-72 and 1972-73 respectively. These amounts should have been excluded while working out the admissible deduction, as the exemption is confined to the profits and gains attributable to the priority industry and not to those of all the business activities of the assessee. The omission in this regard resulted in a short levy of tax to the extent of Rs. 65,943 for the two years.

The Ministry have accepted the objection partly (January, 1976).

(d) Similarly, in the case of an assessee company for the year relevant to the assessment year 1966-67 interest of Rs. 23,02,837 on loan taken for the purpose of the priority industry was not deducted by the Department from the profits attributable to such industry for the purpose of determining the relief admissible. This resulted in excess allowance of relief of Rs. 1,84,227 with tax under-charge of Rs. 1,01,325.

The Ministry, in their reply (March, 1976), have stated that the objection is under active consideration.

(iii) In computing the total income of an assessee, relief by way of deduction to the extent prescribed is admissible in respect of donations to certain funds and charitable institutions. The charitable institutions have, however, to fulfil the conditions laid down in the Act to become entitled to the relief.

Though under the Income-tax Act, the Income-tax Officer is competent to grant exemption certificates to the institutions so that contributions to them would become entitled to the relief, the Central Board of Direct Taxes decided that the certificates should be issued only by the Commissioner of Income-tax. After examining the question of the period of validity of the exemption certificates issued by the Commissioners, the Central Board of Direct Taxes issued instructions in April, 1969 that :—

(a) the exemption certificates should initially be made valid for only one asssessment year,

(b) after scrutiny of accounts of the first year, the certificates should be renewed for the subsequent three years ; and

(c) further renewal should be done only after a careful examination of the whole case again.

In January, 1972 the Board re-iterated the instructions of 1969 with the modification that further renewals of exemption certificates should be done once in three years. In October, 1972 the Board amended the instructions to the effect that the renewals of exemption certificates should be made only for one year instead of three years. If the charitable trusts/institutions get themselves registered with the Commissioners of Income-tax under the amended provisions of the Income-tax Act, the

Board clarified in July, 1973 that the renewal of exemption certificate could be granted for a period exceeding one year in suitable cases subject to the over-all limit of three years.

In eight assessments pertaining to six assessees for the assessment years 1970-71 to 1973-74, the relief was incorrectly allowed on donations of Rs. 4,28,195 involving a tax revenue of Rs. 1,31,910. Brief details of the relief allowed are as under :—

(a) In respect of donation of Rs. 13,000 paid to two institutions reference to the exemption certificate, issued by the Commissioner of Income-tax was not called for and kept on record.

(b) In one case, relief on donation of Rs. 1 lakh was allowed for the assessment year 1972-73 though the exemption certificates specifically limited the reliefs for the assessment year 1971-72 only.

(c) In respect of donation of Rs. 3,15,195 made to seven institutions, the exemption certificates were issued during the period November, 1955 to August, 1966 and the assessment related to the assessment years 1970-71 to 1973-74.

The Ministry, in their reply (March, 1976), have stated that the audit objection is still under consideration.

(iv) As an incentive for export of Indian technology, the Income-tax Act provides for tax exemption for income by way of royalty, commission or fees received by an Indian company from a foreign company in consideration for any patent, invention or process made available or for technical services rendered under an agreement approved by the Central Government in this behalf. For the assessment years 1966-67 to 1968-69, the exemption was allowable for part of such income but from

the assessment year 1969-70 onwards full exemption is granted by outright deduction of the entire amount of such income from the gross total income.

In the assessment of an Indian company for the assessment years 1969-70, 1970-71 and 1972-73 deduction was allowed in full for fees received from a foreign company aggregating to Rs. 4,02,710 for setting up a textile mill under an agreement approved by the Government in July, 1969. The above sum included technical service charges of Rs. 1,50,545, representing the remuneration payable by the foreign company to the technicians deputed by the Indian company. Under the terms of a supplemental agreement forming part of the main agreement, the remuneration was payable by the foreign company to the technicians and their families in India. The Indian company received the technical service charges, paid a lesser amount to the technicians towards their remuneration and appropriated the difference of Rs. 92,000 (in Ceylon currency equivalent to Indian Rs. 1,15,920). The amount retained was also allowed as a deduction though such retention was not permitted under the agreement approved by Government. The incorrect deduction allowed for the sum of Rs. 1,15,920 resulted in short levy of tax of Rs. 76,000 (approximately) for the three years.

The Ministry have stated (March, 1976) that the audit objection is still under consideration.

(v) The Act provides that the aggregate amount of deductions admissible shall not exceed the gross total income of the assessee. It follows that no deduction can be allowed in a case where the gross total income is a negative figure.

(a) In one case, where the total loss of a company for the assessment year 1970-71 was computed at Rs. 4,50,539 after setting off business loss against dividend income of Rs. 2,62,500 from an industrial undertaking, the Department allowed a further

deduction of Rs. 2,62,500 on account of dividends from an industrial undertaking, and computed the total loss at Rs. 7,13,039. The incorrect allowance of relief resulted in an excess computation of loss to the extent of Rs. 2,62,500 for the assessment year 1970-71.

While accepting the objection (November, 1975), the Ministry have stated that the assessment in question has been revised and the loss has been reduced by Rs. 2,62,500.

(b) In another case the gross total income for each of the assessment years 1969-70 to 1971-72 was computed as a loss. The assessee was not, therefore, entitled to any further deductions under the provisions contained in Chapter VIA of the Act. The Department, however, allowed a deduction of Rs. 13,11,506 in the aggregate for the three assessment years 1969-70 to 1971-72 which resulted in an excess computation of loss by an identical amount, which was allowed to be carried forward for future set off against taxable income.

The Ministry have accepted (January, 1976) the objection. The assessments in question are stated to have been revised.

29. *Incorrect computation of capital gains*

Under the provisions of the Income-tax Act, 1961, capital gains on the transfer of a capital asset are computed with reference to the cost of acquisition of the asset or where the capital asset became the property of the assessee before 1-1-1954, at the option of the assessee, fair market value of the asset as on 1-1-1954. In cases of acquisition of such property by a holding company, from its 100% subsidiary prior to 1-1-1954, the Act further provides that such option is available only if the holding company was an Indian company.

A non-resident company acquired certain shares of an Indian company at book value from its wholly-owned Indian subsidiary in 1963 as a result of internal re-organisation of its group companies. While assessing capital gains on the sale of these shares

in the assessment year 1972-73, the assessee non-resident company was allowed the option to substitute the fair market value of these shares as on 1-1-1954. As the concession to substitute such value was available only to the holding company which was an Indian company and as the assessee company was not an Indian company, this resulted in an erroneous option and consequently incorrect substitution of the value of the assets at Rs. 9,95,479 being the fair market value as on 1-1-1954 against the actual cost of Rs. 3,06,000. This led to under-assessment of capital gains by Rs. 6,89,479, and consequent under-charge of capital gains tax of Rs. 2,98,750.

While accepting the objection, the Ministry have stated (December, 1975) that the assessment has been revised and additional demand of Rs. 2,98,750 raised and collected.

30. *Avoidable mistakes involving considerable revenues*

(i) In the income-tax assessment of an industrial company in which public were not substantially interested tax was inadvertently levied for the assessment years 1968-69 and 1969-70, at a flat rate of 55 per cent instead of at the rate of 55 per cent on the first Rs. 10 lakhs and at 60 per cent on the excess over Rs. 10 lakhs, correctly leviable. This resulted in a total short levy of tax of Rs. 2,17,814.

The Ministry have accepted the objection (November, 1975). The assessments in question are stated to have been rectified and an additional demand of Rs. 2,17,814 raised.

(ii) Under the provisions contained in the First Schedule to the Income-tax Act, 1961, for the computation of profits and gains of an insurance business, other than life insurance business, any amount either written off or reserved in the accounts to meet depreciation of or loss on realisation of investments shall be allowed as a deduction.

In computing the income of an insurance company for the assessment year 1969-70, the Department disallowed a sum of Rs. 3,11,531 as excess provision made by the assessee for the difference between the book value and the realisable value of the investments held by the assessee. This was, however, restored on appeal and the assessment was revised on 16-2-1972. In the assessment for the subsequent assessment year *i.e.* 1970-71, the assessee claimed Rs. 4,11,531 on account of the difference between the book value and the realisation value of the investments and this amount included Rs. 3,11,531 which had been initially disallowed by the Department in the previous assessment year. Although the disallowance in 1969-70 had been restored on appeal, the entire claim of Rs. 4,11,531 was allowed in full by the Department in the assessment made on 15-3-1973. This resulted in an under-assessment of income by Rs. 3,11,531 for the assessment year 1970-71 with consequent tax under-charge of Rs. 1,71,343.

The Ministry have stated that the Income-tax Appellate Tribunal had set aside the Assistant Appellate Commissioner's order for the assessment year 1969-70 on 24-11-1973.

(iii) The Public Accounts Committee have, almost year after year, commented upon the continuance of a very common mistake involving the dropping of one lakh of rupees in big income assessments, either in the computation of total income or in the calculation of tax. In recent years, the Committee have commented upon this mistake in their 51st Report (paragraph 2.45) and 119th Report (paragraphs 1.32 and 1.42). Despite the Committee's exhortations on this subject, this common mistake continues to recur. In the assessments of two banking companies for the assessment years 1969-70 and 1971-72, it was noticed in audit that gross income from interest on securities was assessed by the Department at Rs. 12,76,30,411 instead of Rs. 12,77,03,411 in the first case and permissible depreciation was worked out at Rs. 22,85,830 as against the correct amount of Rs. 21,85,830 in the second case. The two mistakes resulted in total under-assessment of tax of Rs. 1,10,133.

The Ministry of Finance have accepted the mistakes and stated that the assessments have been revised (January, 1976).

31. *Irregular set off of losses*

Under the provisions of the Income-tax Act, 1961, if a loss incurred by an assessee under the head "Profits and gains of business or profession", not being loss sustained in speculation business, cannot be or is not wholly set off against income under any other head of income, the loss so computed can be carried forward for a period of 8 years until it is set off and wiped out from the profits of the same busines in the subsequent years. However, in the case of a private limited company, such carry forward and set off of losses is admissible only where the shares of the company carrying not less than 51 per cent of voting powers are, beneficially, held by persons who so held the shares in the years in which the loss was incurred.

It was noticed in the case of an assessee, a private limited company, that though the share-holding of the company to the extent of over 51 per cent had changed hands during 1964-65, the losses incurred and computed for the assessment years 1959-60, 1960-61 and 1961-62 were allowed to be carried forward and set off against profits of the assessment years 1967-68, 1968-69 and 1969-70. This resulted in an under-assessment of income of Rs. 4,92,192 and short levy of tax of Rs. 3,19,925.

The Ministry have stated (November, 1975) that the matter is under examination.

32. *Mistakes in assessments while giving effect to appellate orders*

(i) In accordance with the orders issued by the Appellate Assistant Commissioner, several items of expenditure treated as capital expenditure by the Income-tax Officer, during the assessment years 1961-62 to 1965-66 were allowed to be treated as

revenue. While implementing the appellate orders, the depreciation allowance that had been allowed by the Income-tax Officer on the capital expenditure was not withdrawn. This resulted in excess allowance of depreciation to the extent of Rs. 1,85,092 for the assessment years 1963-64 to 1969-70.

Further, depreciation allowance allowed as a result of appellate orders for the assessment years 1963-64 and 1965-66 was not taken into account in arriving at the written down values of the machinery for successive years. This resulted in excess allowance of depreciation to the extent of Rs. 70,378 for the assessment years 1964-65 to 1969-70.

As a result of these mistakes, there was a short levy of tax of Rs. 1,22,340.

The Ministry have accepted (November, 1975) the objections. The assessments in question have been revised and additional demand of Rs. 1,22,340 raised.

(ii) In the assessment of a manufacturing company, the Income-tax Officer disallowed the claim of the assessee for deduction of the whole of the expenditure on technical know-how but allowed deduction at the rate of 1/14th thereof for each assessment year on the analogy of provisions of the Income-tax Act relating to write off of patents. The disallowed expenditure was consequently treated as an asset and included in the computation of capital employed for purposes of tax holiday relief.

On appeal for all the assessment years, the Tribunal upheld the assessee's contention and directed the Department to allow the expenditure on technical know-how in full as revenue expenditure in the respective assessment years.

While giving effect to the Tribunal's orders, the assessing officer failed to exclude this item of expenditure in the computation of capital employed (which was taken into account earlier) for purposes of tax holiday relief. This resulted in short levy of tax aggregating Rs. 80,631 in these assessment years.

Accepting the objection (September, 1975), the Ministry have stated that the assessments in question have been rectified and the additional demand of Rs. 80,631 raised and collected.

(iii) The taxable income of an assessee, for the assessment year 1962-63 included an amount of Rs. 15,55,596 being the profit realised under Section 41(2) of the Income-tax Act, 1961, on account of sale of one of its units, in the relevant previous year. This amount was subsequently reduced to Rs. 13,83,480 in a rectification order, as the Income-tax Officer, while computing the profit under Section 41(2) of the Act had not taken into consideration, the expenditure on repairs to machinery and building in the previous years relevant to the assessment years 1961-62 and 1962-63 treating the same as capital expenditure. The assessee appealed successfully against the disallowance of revenue expenditure of Rs. 1,31,849 pertaining to the assessment year 1961-62. While revising the assessments of the company, to give effect to the appellate orders, profit under Section 41(2) of the Act for the assessment year 1962-63 was not revised. This resulted in under-assessment of income of Rs. 1,31,849 and short levy of tax of Rs. 65,924.

The Ministry have accepted (November, 1975) the objection. The additional demand of Rs. 65,924 is stated to have been raised and collected as a result of rectification of the assessment.

(iv) The claim of an assessee to treat certain sums advanced to its employees for meeting expenditure incidental to the business, as allowable expenditure, was rejected by the Income-tax Officer. However, the appellate authority, considering the fact that out of the advances, some expenses were actually incurred in the relevant previous year though they were included by adjustment against the advance, in the profit and loss account of the following year, directed the Income-tax Officer to admit such expenses in the year in which they were actually incurred.

The assessments for the years 1966-67 to 1970-71 were finally made on the lines set out in the appellate orders. As expenses actually debited to the accounts of a succeeding year were allowed in the earlier year, these should have been ignored for the purpose of determining the taxable income of the succeeding year. This was, however, not done and the same expenses stood allowed twice over, once in the year in which they were incurred and again in the next year when such expenses, by adjustment against advance, were debited to the profit and loss account of the assessee. This resulted in under-assessment of income of the assessee for the years 1967-68 to 1970-71 and forgoing of revenue totalling Rs. 75,250.

The Ministry have stated (February, 1976) that the matter is under consideration.

(v) The total income of a company for the asessment year 1971-72 was computed at Rs. 51,31,073 and after setting off of earlier years' business loss and unabsorbed depreciation and development rebate aggregating Rs. 2,21,571, the net taxable income was arrived at Rs. 31,46,737. Subsequently, a sum of Rs. 27,26,229 having been reduced in appeal, the assessment was revised but while computing the net taxable income, the Department incorrectly took the figure of Rs. 31,46,737 as the total income of the assessee instead of the correct figure of Rs. 51,31,073 and set it off in full against part of the aforesaid losses once again. This led to under-charge of tax of Rs. 3,52,385 and excess carry forward of unabsorbed depreciation and business loss aggregating Rs. 13,63,153 and consequent short-levy of interest of Rs. 1,15,112 for non-payment of advance tax.

The Ministry have accepted the objection (November, 1975).

33. *Excess or irregular refunds*

In the case of a company, only three challans for a total amount of Rs. 5,33,000 in support of payment of advance tax by the assessee company during the financial year relevant to the assessment year 1966-67 were available on record whereas credit for such advance tax was afforded by the Department for an

amount of Rs. 7,10,640. The challans for the remaining sum of Rs. 1,77,640 could not be produced to Audit. *Prima facie,* excess credit for advance tax to the extent of Rs. 1,77,640 was, therefore, given to the assessee. This together with interest of Rs. 9,738 allowed thereon, resulted in excess refund of Rs. 1,87,378.

The Ministry have stated (February, 1976) that although the Department's portion of the challan is even today not available, the assessee has produced his portion of the challan and that the Income-tax Officer has been directed to trace out the relevant Advance Tax Daily Collection Register and confirm the payment made by the assessee.

34. *Non-levy/incorrect levy of interest*

(i) In respect of deductions of tax at source from salaries, the Income-tax Act, 1961, provides for the submission of an annual return within thirty days from the 31st day of March each year as also of a monthly return of tax deductions, by the prescribed person, in a prescribed form, giving details of the employees, income received or due to be received by each one of them, amount of tax deducted etc. The Act further provides that if such prescribed person fails to deduct or after deduction fails to pay the tax within the prescribed period, he shall be deemed to be an assessee in default in respect of the tax and consequently shall be liable, to pay interest on such tax and also to prosecution.

(a) A test check of the annual returns of three companies revealed that in two cases there had been delay in depositing the tax deducted from salaries of the persons employed therein and accordingly interest to the extent of Rs. 36,391 for the assessment year 1972-73 was leviable but was not levied by the Department. Further, in respect of the maintenance of the annual and monthly returns the following irregularities were noticed :—

A. In none of the cases, the challans in respect of the total tax deducted at source from salaries, were maintained properly with the result that a large number of challans could not be produced to audit.

B. The certificates regarding the deposit of taxes were not forthcoming. In the absence of these documents as also complete lists of challans, the exact amount of interest leviable on account of belated payment of tax could not be calculated in audit.

C. In none of the cases, the monthly return of tax deducted, as required under the Income-tax Rules, had been furnished.

(b) In the case of a foreign technician employed by a company, the tax due on the salary paid to him during the previous years relevant to the assessment years 1966-67 to 1971-72 was paid by the company only after the conclusion of assessments and issue of demand notices by the Department. There was a failure on the part of the employer to deduct the tax at source and remit it to Government and, therefore, interest amounting to Rs. 67,324 was chargeable from the employer and prosecution action also could be taken. The Department did not, however, charge the interest, much less initiate prosecution action.

The Ministry, while accepting the objections in both the cases (November, 1975), have stated that additional demand of Rs. 67,324 has been raised in the case of (b) out of which a demand of Rs. 12,619 has since been collected.

(ii) Under the provisions of the Income-tax Act, any person responsible for paying to a non-resident any sum chargeable to tax shall deduct income-tax thereon at the rates in force. The tax so deducted at source shall be paid to the credit of the Central Government within one week from the date of deduction and any delay in such payment entails levy of interest.

An Indian company paid a sum of Rs. 48,577 in July, 1969 to a foreign company towards the net amount of royalty due to the latter, after deducting tax of Rs. 23,926 from the gross amount of Rs. 72,503. The company did not, however, pay the tax of

Rs. 23,926 deducted at source, to the credit of the Central Government. The Department made a note of the omission in February, 1973 but no further action was taken to collect the tax.

On the omission being pointed out in audit on 20th August, 1974, the Department issued notice to the company on 23rd August, 1974, for payment of the tax retained by the company together with interest thereon. The company paid Rs. 23,926 together with interest of Rs. 12,914 on 10th September, 1974. The tax deductible at source, however, amounted to Rs. 32,865 at the rates in force, as against Rs. 23,926 paid by the company. This was pointed out by Audit in February, 1975 and the balance amount of Rs. 14,268 including interest for belated payment of tax, was paid by the company in April, 1975.

The Ministry while accepting the objection, have stated (January, 1976) that the assessee company has paid an additional amount of Rs. 51,100 to the credit of the Central Government.

(iii) Under the provisions of the Income-tax Act, 1961, where the tax payable on current income is likely to exceed the amount of advance tax demanded by more than 33⅓ per cent, the assessee is required to file an estimate of his income and pay the amount of advance tax according to such estimate on or before the due dates prescribed for payment of advance tax instalments. Any payment made by an assessee unsupported by a valid estimate shall not be treated as advance tax paid in respect of the relevant assessment year and interest for short payment of advance tax shall be computed accordingly.

In the case of five assessees, who either did not file estimates and make advance tax payments within time or whose payments were not supported by valid estimates filed within time prescribed, the payments were required to be ignored for the purpose of levy of interest on short payments of advance tax. These were, however, not so excluded by the Income-tax Officer in computation of interest chargeable for the assessment years 1971-72 to 1974-75. This resulted in a short levy of interest amounting to Rs. 3,29,429.

This omission was not noticed in all the five cases seen in Internal Audit. The Ministry have stated, in three cases, that credit for the payments was to be given even where these were not made on valid estimates. They have, however, accepted the objection in two cases (February, 1976).

35. *Avoidable or incorrect payment of interest by Government*

(i) The Central Board of Direct Taxes issued instructions in April, 1966, directing the Income-tax Officers to complete regular assessments as soon as possible after the receipt of the returns so that excess of advance tax paid could either be adjusted against the demand or refunded to the assessee. From April, 1968, the Income-tax Act, 1961, has been amended to provide for provisional assessment and for grant of refund of advance tax paid in excess so as to avoid payment of interest on excess advance tax paid.

(a) An assessee filed returns of income for the assessment years 1968-69 and 1969-70 on 13-1-1969 and 18-12-1969 respectively. But provisional assessment for the assessment year 1968-69 was made only on 13-5-1970 and for the assessment year 1969-70 no provisional assessment was made. On completion of the regular assessments on 22-6-1971 and 9-3-1972 respectively in respect of the above assessment years, interest amounting to Rs. 2.83 lakhs and Rs. 6.76 lakhs was paid to the assessee on account of excess advance tax paid. Had a provisional assessment for refund been made within six months from the date of filing of returns, payment of interest amounting to Rs. 5.65 lakhs could have been avoided.

The Ministry have accepted the objection (January, 1976).

(b) In the case of three companies, provisional assessments were not made by the Department in spite of request having been made by the assessees and there was inordinate delay in the completion of regular assessments. This led to avoidable payment of interest of Rs. 99,559 for the assessment year 1971-72 and Rs. 51,473 for the assessment years 1968-69 and 1969-70.

The Ministry have accepted the objection (October, 1975) in the case of (b); their reply is awaited in the case of (a).

(ii) Under the Income-tax Act, 1961 where a refund due to an assessee in pursuance of an order passed in appeal is not granted within a period of six months from the date of such order, the assessee becomes entitled to interest at a specified rate on the amount of refund from the date immediately following the expiry of the period of six months to the date on which the refund is granted. Where, however, a refund is withheld by an order passed by the competent authority, the Act provides that interest shall also be paid to the assessee at the specified rate on the amount of refund ultimately determined to be due as a result of appeal or further proceedings in the matter for the period commencing after the expiry of six months from the date of the order withholding the refund to the date the refund is granted.

(a) In one case a sum of Rs. 13,42,111 which became refundable to an assessee for the assessment year 1961-62 was ordered by the competent authority to be withheld pending decision of the Tribunal to whom the case had been referred by the Department. The Tribunal decided the case in favour of the assessee and the Department made a reference to the High Court. The High Court decided it in favour of the Department on 20-5-1969. But the Supreme Court before whom the matter was taken by the assessee, reversed the judgment of the High Court on 8-11-1971. The payment of refund was still delayed by the Department. The refund of Rs. 13,42,111 was made in two instalments on 30-3-1972 and 1-11-1972 only together with interest of Rs. 8,02,981 for delayed payment, calculated with reference to the date of the original refund order.

Delay in payment of refund beyond the date of Supreme Court's judgment resulted in avoidable payment of interest of Rs. 69,269.

(b) In another case, the refunds due to the assessee as a result of appellate orders for the assessment years 1964-65 and 1965-66 were not granted as the Department preferred second appeal to the higher appellate authorities where also the earlier decisions were upheld. The refunds were ultimately made by the Department after a lapse of over four years from the date of the relevant appellate orders. As a result of this delay, the Department incurred a liability of Rs. 1,03,315 as interest to the assessee. This liability could have been avoided had the refund been made within six months of the appellate orders as provided for under the Act.

The Ministry have accepted the objection (October, 1975) in the above case. In respect of (a), the objection is stated to be under active consideration of the Ministry (March, 1976).

(iii) In the case of a private limited company neither any notice of demand for payment of advance tax for the assessment year 1973-74 was issued nor was any estimate for payment of advance tax filed by the assessee in the preceding financial year. A voluntary payment of Rs. 50 lakhs was, however, made by the assessee in the financial year 1972-73. This was treated by the assessing officer as payment of advance tax and after adjusting against it the tax of Rs. 43,89,699 determined on regular assessment, the assessee was allowed interest of Rs. 36,419.

The payment of interest of Rs. 36,419 to the assessee was irregular as the voluntary payment was neither in pursuance of a notice of demand for payment of advance tax nor on the basis of assessee's own estimate.

The Ministry have accepted the objection (November, 1975).

36. *Non-levy of penalty*

The Income-tax Act, 1961 provides that when an assessee is in continuing default in making a payment of advance tax, he shall be liable to pay penalty of an amount to be decided by the Income-tax Officer so, however, that the total amount of penalty does not exceed the amount of tax actually in arrears.

In the case of an assessee company, revised demand of advance tax was raised for Rs. 6,66,409. The assessee company paid Rs. 4,10,121 only without filing any estimate of its own regarding its liability to pay advance tax. As this was a case of continuing default, the Department could have levied a penalty upto a maximum of Rs. 2,56,288 being equal to the tax in arrears but this was not done. Nor did the Income-tax Officer record his findings as to whether he was satisfied that the default on the part of the assessee was for good and sufficient reasons, in which case the levy of a penalty could have been waived.

The Ministry have accepted the objection (November, 1975) regarding under-charge due to non-levy of penalty for failure to pay the advance tax.

Other topics of interest

37. *Interest accrued on loans not assessed to tax*

Where an assessee is following mercantile system of accounting, all income accrued, whether realised or not, is to be included in the total income and assessed to tax. It has been judicially held that income is accrued when the assessee has acquired a right to receive it and created a debt in his favour.

A financial corporation engaged in making medium and long-term credits to industrial concerns in the country, had been crediting interest accrued on loans considered doubtful to an "interest suspense account" instead of to the profit and loss account as part of its total interest income. In the tax assessment of the corporation upto the assessment year 1967-68, the corporation had been offering the amount so credited to "interest suspense account" for assessment as part of its total income because the amount clearly represented accrued income for which debit entries had been actually passed in the accounts of the debtors concerned. For the assessment years 1968-69 to 1969-70, however, when the Income-tax Officer added back such credits under "interest suspense account" in the computation of total income, the corporation claimed that this was not correct as the amounts held in the suspense account did not constitute its income for the relevant years in accordance with the method of accounting regularly employed by it.

The corporation's appeals before the Appellate Assistant Commissioner were dismissed on 16-9-1970 and 19-12-1970, with the Appellate Assistant Commissioner holding that (i) the interest income had definitely accrued or arisen to the corporation as debts had been created against the debtors concerned, (ii) the loans advanced by the corporation were fully secured in respect of principal as well as interest so that no part of the accrued interest could be called a bad debt, and (iii) all the interest paid by the corporation on monies raised by it to finance these loans had been claimed as deductible expenditure.

The corporation went in appeal to the Tribunal. While the corporation's appeals for the assessment years 1968-69 and 1969-70 were pending before the Tribunal and that for 1970-71 before the Appellate Assistant Commissioner, the then Central Board of Revenue, on a petition received by it from the corporation, took a decision in November, 1972 that since the

corporation had been regularly following this method of accounting, the claim that the interest income credited to suspense account should not be assessed to tax, was acceptable to the Board. This decision was, subsequently, circulated by the Reserve Bank of India in November, 1973 to all State Finance Corporations in the country.

As the income was clearly assessable in this case on the basis of actual accrual in the relevant years and the method of accounting regularly employed by an assessee is acceptable under the law only where the income of the assessee can be properly deduced therefrom, the decision of the Board appears to be erroneous. The decision has led to large concessions being claimed and g[illegible] in the case of the said corporation as well as in those [illegible]er financial corporations/companies. The under-assessment of income noticed in the case of eight corporations/companies, for different assessment years from 1968-69 to 1974-75 amounted to Rs. 2,41,91,643 with a tax effect of Rs. 1,34,40,234.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

38. *Loss of revenue due to failure to take appropriate action*

In December, 1971, a Tax Recovery Officer received a certificate from the Income-tax Officer for recovery of arrears of tax of Rs. 1,66,328 due from a company. The demand pertained to the assessment years 1962-63 onwards. The company stopped filing returns of income for the years subsequent to 1962-63 and, therefore, the assessment for the years 1963-64 to 1969-70 had to be made ex-parte. As the company went on ignoring payment of outstanding dues and was reported to have discontinued its business from the year 1970, the only course open to the Tax Recovery Officer, for ensuring that the recovery dues were not lost, was to approach the Registrar of

Companies to dissolve the company and, then proceed under section 179 of the Income-tax Act, 1961, for recovering tax from the directors of the company. However, instead of taking such action, which according to the Commissioner of Income-tax, would have yielded results, the Tax Recovery Officer obtained, in March, 1972, written undertaking from each of the directors of the company for payment of his share of tax in instalments. As, under the company law, a director is not personally responsible for company's income-tax liabilities unless the case comes within the purview of section 179 of the Income-tax Act, 1961, the undertakings so obtained were futile and did not bind the directors in any way, legally or otherwise, to pay the tax arrears. On the other hand, the time gained in furnishing such undertakings was utilised by the directors to transfer their personal properties with a view to liquidating the sources from which Government could realise the tax arrears. In February, 1974, when the quantum of outstanding dues rose to Rs. 2,10,150, the Tax Recovery Officer made a report that the outstanding dues were irrecoverable.

The Ministry in their reply (March, 1976) have stated that the audit objection is under active consideration.

39. *Non-deduction of tax from payments to a non-resident*

Income-tax Act, 1961, imposes a statutory obligation on a person responsible for paying to a non-resident, any sum (not being dividends or interest on securities) chargeable under the Act, to deduct income-tax unless he is himself liable to pay income-tax thereon as an agent. The Act further provides that any person from or through whom a non-resident is in receipt of any income, whether directly or indirectly, should be deemed to be an agent of the non-resident.

During the previous years relevant to the assessment years 1964-65 to 1967-68, a private company in India paid royalty

aggregating Rs. 2,27,946 to a non-resident company in London without deducting tax at source. Since the non-resident company received royalty income from the assessee company in India, the assessee company was liable to pay the tax itself as an agent of the non-resident. A total tax aggregating to Rs. 1,54,504 for the said assessment years was, therefore, leviable on the assessee which was not levied.

The Ministry have stated (December, 1975) that the assessee company only made a provision for these liabilities owing to a non-resident in the relevant years; it could not obtain necessary permission of the Reserve Bank to remit these amounts and the provisions made were written back and brought to tax in later years.

SURTAX

40. To act as 'a dis-incentive to excessive profits' and 'to help to keep down the prices', a special tax called super profits tax was imposed on companies making excessive profits during the assessment year 1963-64 under the Super Profits Tax Act, 1963. This tax was replaced, from the assessment year 1964-65, by surtax which has since continued. In paragraph 1.2 of their 50th Report and again in paragraph 2.248 of their 51st Report, the Public Accounts Committee (5th Lok Sabha) observed that if surtax is going to be a permanent measure, it would be helpful, both to the Department and the assessees, if it is integrated into the general tax structure, and recommended that, as a step towards simplification and rationalisation, there could be a separate Corporation-tax Act incorporating therein the provisions relating to surtax. The recommendation was not accepted by the Government as in their view, most of the provisions in the Income-tax Act apply both to corporate as well as non-corporate tax payers and the mere separation of the few provisions relating

to companies was not likely to lead to any significant simplification of the tax laws and procedures. In this connection, it may be re-iterated that the Income-tax Act is overloaded with cumbersome, repetitive and complex provisions and corporation-tax is compounded by levy of surtax so that the need for simplification, wherever it is feasible, can, hardly, be over-emphasized.

During the period under review, under-assessment of super profits tax/surtax of Rs. 48.99 lakhs was noticed in 75 cases. A few illustrative cases are given in the following paragraphs :—

41. Surtax is levied under the Companies (Profits) Surtax Act, 1964. A company becomes liable to surtax when its 'chargeable profits' exceed the statutory deduction which is an amount equal to 10 per cent of the capital of the company or Rs. 2 lakhs, whichever is greater.

(i) The printed accounts of a company for the years 1969 and 1970 showed that the directors recommended re-appropriation of Rs. 61,42,500 and Rs. 92,13,750 respectively out of general reserve for distribution of final dividends which was approved in the general meeting held in the succeeding years. In view of a judicial pronouncement, only the net balances, i.e. the general reserve balances as reduced by the above sums, should have been treated as the amount of general reserve as at the beginning of the years 1970 and 1971 respectively and considered in the computation of capital for purposes of surtax assessments for the assessment years 1971-72 and 1972-73. As the gross amounts were considered by the Department, the capital base was incorrectly inflated by Rs. 61,42,500 and Rs. 92,13,750 respectively in the assessment years 1971-72 and 1972-73 resulting in excess allowance of statutory deduction of Rs. 6,14,250 and Rs. 9,21,375 with consequent short levy of surtax to the extent of Rs. 3,83,906.

While accepting the objection (December, 1975), the Ministry have stated that the assessments in question have been revised raising an additional demand of Rs. 3,83,906.

(ii) The Act provides that moneys borrowed by a company from any person in a country outside India for the creation of a capital asset in India, are includible in computing the capital of the company.

In the case of an assessee company for the assessment years 1972-73 and 1973-74, amounts of Rs. 53,46,990 and Rs. 39,73,757 respectively, representing deferred instalments due towards the cost of machinery purchased on deferred payment basis from a foreign supplier were included in the capital of the company. It has been judicially held in October, 1964 that the outstanding balance due in case of such purchases on deferred credit would not amount to borrowal of money. The inclusion of these amounts in the capital, was, therefore, irregular. The incorrect inclusion resulted in a short demand of surtax of Rs. 2,51,378 for these two years.

While accepting the objection, the Ministry have stated (November, 1975) that the assessments have been revised.

42. The Companies (Profits) Surtax Act, 1964, provides that where a part of the income of a company is not includible in its total income computed under the Income-tax Act, its capital should be reduced proportionately.

(i) In one case, the Department, incorrectly, allowed various reliefs amounting to Rs. 2,89,28,692 on account of profits from priority industry, profits and gains from various industrial undertakings or ships, royalties from Indian companies etc. in the income-tax assessments of a company for the assessment years 1967-68 to 1973-74. This resulted in an under-assessment of chargeable profits and incorrect computation of capital base for the relevant surtax assessments with consequential under-charge of Rs. 7,17,944 for the assessment years 1970-71 to 1973-74.

The Ministry, in their reply (March, 1976) have stated that the audit objection is under active consideration.

(ii) Under the Banking Companies Act, 1949, every banking company is required to create a reserve fund to which a sum equivalent to not less than 20 per cent of the net profit should be transferred before declaration of any dividend. In addition to the statutory reserve, a banking company may, on its own, create certain reserves out of its divisible profits.

In computing the chargeable profits of banking companies, the amount transferred to the statutory reserve or non-statutory reserve, whichever is higher is allowed as a deduction subject to the limitation that in the case of statutory transfers the amount transferred should not exceed the statutory requirement and in the case of non-statutory transfers the sum transferred should not exceed the highest of the amounts, if any, transferred during any one of the three accounting years preceding the accounting year in question.

In the case of a banking company, in computing the chargeable profits for the assessment years 1971-72 and 1972-73, the entire amounts of Rs. 4,12,780 and Rs. 5,50,000 respectively transferred to the reserve fund were allowed as deductions without applying the limits laid down in the rules. This resulted in short demand of surtax of Rs. 92,005 for the two assessment years.

While accepting the mistake, the Ministry have intimated (December, 1975) that the assessments in question have been revised.

(iii) The Banking Companies Act, 1949 also provides that any banking company incorporated outside India should prepare a profit and loss account and balance sheet in respect of all business transacted through its branches in India and super profits

tax/surtax is leviable on the excess over normal profit arising out of business in India on the basis of Indian capital as computed under the provisions of the Super Profits Tax Act, 1963/ Companies (Profits) Surtax Act, 1964. Net chargeable profit for the above purpose is required to be arrived at after deduction of the amount which is actually deposited with the Reserve Bank of India to the extent required by the foreign bank under the said Act.

In the case of a non-resident banking company, the assessee showed, in its returns for the assessment years 1968-69 to 1969-70, net chargeable profit at a negative figure calculated on the basis of its world capital as reduced by a proportionate amount in respect of profits not includible in the total income under the Income-tax Act, 1961, which in this case were profits arising outside India. The assessee's computation was accepted by the Department and consequently super profits tax/surtax was not levied for any of the assessment years. Although the assessee company had all along prepared separate profit and loss accounts and balance sheets in respect of its business in India and had filed the same with its returns, the Department did not base its calculations on the capital employed in India as disclosed in its balance sheets drawn up in accordance with the provisions of the Banking Companies Act, 1949. Non-levy of super profits tax/surtax resulted in tax undercharge of an aggregate amount of Rs. 1,15,630 for the two assessment years.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

43. *Over-assessments*

(i) The Income-tax Act, 1961, provides that in computing profits and gains of a new industrial undertaking, a deduction at 6 per cent of the capital employed in such undertaking shall be allowed. The statute further provides that where the profits and

gains derived from the undertaking in any year fall short of the relevant amount of the capital employed, the deficiency shall be carried forward and set off in the subsequent assessment year and so on.

In the assessment for the assessment year 1970-71, of a company such deficiency relating to the assessment years 1967-68 and 1968-69 was inadvertently omitted to be set off against profits derived from the new industrial undertaking. This, coupled with another mistake relating to allowance of relief in respect of priority industry, resulted in an over-assessment of income by Rs. 33,07,305 leading to an excess levy of income-tax of Rs. 18,19,020.

The Ministry have accepted the objection (December, 1975). The assessment in question is stated to have been revised and the refund of Rs. 18,19,020 allowed.

(ii) A company was assessed to tax for the assessment year 1971-72 at 55 per cent on its total income of Rs. 7,87,463 which comprised Rs. 2,26,676 as income from own manufacturing operations, Rs. 5,50,787 as share income from two registered firms and Rs. 10,000 as income from undisclosed sources. The assessee had unabsorbed depreciation of Rs. 69,022 and a carried forward business loss of Rs. 23,276 for the assessment years 1968-69 and 1969-70 respectively. It was also entitled to set off of unabsorbed development rebate of Rs. 2,17,756 for the assessment years 1968-69, 1969-70 and 1970-71. Further, the assessee company was also entitled during the assessment year 1970-71 to the deduction of an amount equivalent to six per cent of the capital employed representing the tax holiday benefit to new industrial undertakings. These deductions/set offs were either not allowed or incorrectly allowed in the assessment for the assessment year 1971-72, resulting in total over-assessment of income by Rs. 3,50,062. The consequent tax over-charge was partially set off due to incorrect levy of tax at the lower rate of 55 per cent applicable to an industrial company although the share

income from registered firms received by the assessee company exceeded the income from its own manufacturing operations and hence it could not be taxed as an industrial company and the correct rate of tax would be 65 per cent. There was a net tax over-charge of Rs. 1,49,379.

The Ministry have accepted the objection (October, 1975). The assessment in question is stated to have been rectified.

(iii) The assessment of a company for the assessment year 1964-65 was revised in an order dated 22nd August, 1972 to give effect to the decision of the Appellate Tribunal in an appeal by the assessee for this year. As a result, the unabsorbed development rebate to be carried forward in the assessment year 1964-65 for set off in the assessment year 1966-67 (there being no positive income for the assessment year 1965-66) was increased from Rs. 98,106 to Rs. 1,99,804. Even though more than a year had elapsed, the assessment for 1966-67 had not been rectified setting off the additional amount of unabsorbed development rebate of Rs. 1,00,978 against the income for that year. The rectification had apparently been lost sight of, resulting in an over-assessment of income for the assessment year 1966-67 by Rs. 1,00,978 leading to an excess levy of tax of Rs. 55,539.

While accepting the objection, the Ministry have stated (March, 1976) that the mistake has since been rectified.

(iv) The income from house property of a resident banking company as computed for the assessment year 1969-70 was Rs. 1,81,382. However, while determining the total income, it was taken at Rs. 2,19,060 by mistake which resulted in an over-assessment of income by Rs. 37,678 with consequent over-charge of tax of Rs. 20,723 for the said assessment year.

While accepting the objection, the Ministry have intimated (January, 1976) that the assessment in question has been revised and the amount of Rs. 20,723 refunded in September, 1975.

CHAPTER III

INCOME TAX

44. According to the revised system of classification in Government accounts adopted from the financial year 1974-75, income-tax collected from persons other than companies is booked under the Major Head "021-Taxes on income other than Corporation Tax". Under Article 270 of the Constitution, 80 per cent of the net proceeds of this tax except insofar as it is attributable to Union emoluments, Union Territories and Union Surcharges, is assigned to the States from the year 1974-75 to give effect to the recommendations of the Sixth Finance Commission. The percentage of net proceeds so assigned till 1973-74 was 75.

A test check of the records relating to assessments of persons other than companies has revealed mistakes involving under-assessment of tax indicated in paragraph 13(i). Some instances of the various types of mistakes are given in the following paragraphs :—

45. *Irregular exemption in the case of a Federation of Cotton Mills*

Under the provisions of the Income-tax Act, 1961, income from property held under trust wholly for charitable purposes, is exempt to the extent to which the income is applied for such purposes in India. However, the Act permits trusts to accumulate or set apart income for future application, provided the trust specifies, by notice in writing given to the Income-tax Officer, indicating the purpose for which the income is being accumulated or set apart and the period, not exceeding ten years, for which it is to be accumulated or set apart, and the money so accumulated or set apart is invested in specified securities within the time prescribed. These provisions apply also to societies and companies formed without a profit motive, for charitable purposes.

A Cotton Mills Federation, claiming to be charitable institution, had accumulated an amount of Rs. 1,09,50,000 during the period 1962 to 1971 for the purposes of acquiring a building. During the previous year relevant to the assessment year 1972-73, the institution paid an amount of Rs. 80,00,000 out of the accumulated balance of Rs. 1,09,50,000 to a firm of contractors and architects. The assessing officer allowed exemption in respect of the sum so paid treating it as having been utilised for the purpose for which it was accumulated, in the year immediately following the specified period, even though the institution had not acquired any building in that year *viz.*, accounting year 1971-72 and the amount had ceased to remain invested in specified securities. This irregular exemption resulted in an under-assessment of income by Rs. 80,00,000 in the assessment year 1972-73, leading to a short levy of tax of Rs. 78,20,000.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

46. *Income escaping assessment*

(i) On a study made by the Directorate of Sugar, Government of India, of the effect of partial decontrol of sugar from November, 1967, it was found, *inter alia*, that most of the sugar mills in the country had made abnormal profits. The quantum of profits made by each mill for the season October, 1967 to September, 1968 as estimated by the Directorate was communicated to the Commissioners of Income-tax by the Central Board of Direct Taxes in October, 1968 with the remark that since the actual sale price of free market sugar was much higher than Rs. 300 per quintal, the profits for tax purposes might be, at least, twenty per cent higher than those estimated by the Directorate.

A co-operative sugar manufacturing society disclosed gross profits of Rs. 33 lakhs and Rs. 9.5 lakhs for the previous years ended 30th June, 1968 and 30th June, 1969, relevant to the assessment years 1969-70 and 1970-71 respectively, and the

assessments for the two years were completed in March, 1971 (revised in October, 1972) and January, 1973 on the basis of these profits. The profits made by the society as estimated on the basis of the data collected and circulated by the Board in October, 1968, would, however, be Rs. 60 lakhs and Rs. 37.5 lakhs for the said two assessment years. The shortfall of Rs. 55 lakhs for the two years, involving a tax revenue of over Rs. 22 lakhs, apart from the penalty leviable for non-disclosure of income, was not looked into, while completing the assessments for the two years.

The Registrar of Co-operative Societies, while auditing the accounts of the society, had pointed out that, in spite of a substantial reduction of more than Rs. 38 lakhs in the purchase price of cane, due to fall in price from Rs. 110 per ton to Rs. 90 per ton for the year ended 30th June, 1969, relevant to the assessment year 1970-71, the society had shown a net loss of Rs. 12 lakhs, which required to be probed further.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(ii) According to the provisions of the Income-tax Act. 1961 a capital asset held by a person for not more than twenty four months immediately preceding the date of transfer is treated as a 'short-term capital asset', and any gains arising from the sale or transfer of such asset are assessable to tax as 'income from other sources'.

In the case of an assessee who sold a house property costing Rs. 2,05,000 to a Co-operative Housing Society on 2nd April, 1968, for an amount of Rs. 4,56,000, the short-term capital gain of Rs. 2,51,000 arising from the sale was not assessed to tax though the sale was made within 24 months of the construction of the property. This resulted in a short levy of tax of Rs. 1,91,193 for the assessment year 1969-70.

The Ministry have accepted the mistake (January, 1976).

(iii) Where an import licence is sold at a premium, the premium received by the seller is income assessable to income-tax.

A registered firm engaged in manuafcture and export of sea-foods, obtained licences from Government for import of stainless steel. During the year ended 31st March 1971, the firm earned a premium of Rs. 2,45,438 on sale of two such licences and the amount was included by the firm in its income-tax return filed for the assessment year 1971-72. On a reference made by the Department to the buyers of the licences for verification, one of the buyers, while confirming the sale of two licences as reported by the assessee, intimated in February, 1974 that a third licence for a value of Rs. 81,259 was also purchased from the firm at a premium of Rs. 89,383 and that the amount was paid to the assessee in November, 1970. The sale of the third licence and the premium earned thereon was not disclosed by the firm, nor was it considered by the Department, while completing the assessment subsequently, in March, 1974. On the basis of the profit margin adopted by the Department for computing the premia earned on sale of the licences, the income that escaped assessment for the assessment year 1971-72 worked out to Rs. 1,21,887 with consequent short levy of tax of Rs. 1,15,607 in the hands of the firm and the partners.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(iv) The Income-tax Act provides that if an assessee is found to be the owner of any money, jewellery or other valuable article, the value of such article is not recorded in the assessee's books of account and the assessee is not able to offer a satisfactory explanation about the source of the article, the value of the article may be deemed to be the income of the assessee for the relevant financial year.

On the search of the premises of a cine artist in November, 1970, undisclosed assets in the form of jewellery valued at Rs. 2,33,730 were found. While completing the assessment for

the relevant assessment year 1971-72, in December, 1973, the assessing officer included a part only of the undisclosed assets, amounting to Rs. 1,15,430. The omission to include the balance amount of Rs. 1,18,300 in the assessment for the assessment year 1971-72 resulted in short levy of tax of Rs. 1,10,370.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

(v) Any payment of interest, salary, bonus, commission or remuneration made by a firm to any of its partners is not to be deducted in computing the income of the firm. In the case of an unregistered firm which submitted accounts for its head office as well as for its paper mill for the previous year relevant to the assessment year 1971-72, interest of Rs. 68,320 paid to its partners and debited to the mill account was not added back. This resulted in tax under-charge of Rs. 84,947 including short levy of interest.

While accepting the objection in principle, the Ministry have stated (September, 1975) that the assessment in question has been set aside by the Appellate Assistant Commissioner to be made afresh as "sufficient time was not allowed to the assessee to produce all the evidence in his possession in support of the accounts submitted before the Income-tax Officer".

(vi) Under the provisions of the Income-tax Act, 1961, the total income of a "resident" person includes all income received in India as well as that accruing or arising to him both in India and outside India.

In the case of an assessee, the rental income from properties situated in Hong Kong and dividend income from companies also situated in Hong Kong, were not included in the total income for the assessment year 1969-70, though the status of the assessee was determined as "resident". As a result, income of Rs. 90,314 escaped assessment in that assessment year, leading to a short levy of tax of Rs. 45,390.

The Ministry have accepted the objection and stated (November, 1975) that the assessment is being revised.

(vii) The Income-tax Act, 1961, exempts income from a trust held by an assessee wholly for charitable or religious purposes to the extent it is applied in India. The exemption is also available for the income not spent immediately but set apart or accumulated for a specified period not exceeding ten years. In the latter case, however, if any such income is not utilised for the purpose for which it is so set apart in the year immediately following the expiry of the specified period, it shall be deemed to be the income of the assessee of that previous year and assessed to tax.

An assessee set apart a sum of Rs. 27,230 out of the income of the trust held by it for the assessment year 1963-64 till 31st December, 1969, in order to provide greater benefits to the beneficiaries. As, however, the said income was not utilised during the year ending on 31st December 1970, it was required to be included in his total income for the assessment year 1971-72. As this was not done, there was an escapement of income by an identical amount for the assessment year 1971-72 with consequent tax under-charge of Rs. 22,043.

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

(viii) A registered firm received interest of Rs. 30,550, Rs. 92,154 and Rs. 78,765 during the previous years relevant to the assessment years 1970-71, 1971-72 and 1972-73 in respect of loans advanced to a company in which the partners of the firm were directors and which was assessed in the same income-tax ward. While the interest receipts for the assessment years 1970-71 and 1972-73 were assessed to tax, the interest income of Rs. 92,154 for the assessment year 1971-72 was neither returned by the assessee nor considered in the assessment completed in April, 1973. The income escaping assessment involved tax revenue of Rs. 67,000 in the hands of the firm and the partners.

The Ministry have stated (March, 1976) that the audit objection is under consideration.

(ix) Under Section 11(1) of the Income-tax Act; 1961, before its amendment from the 1st April, 1971, where the income derived from properties held under trust wholly for charitable and religious purposes, was more than the expenditure, such excess beyond Rs. 10,000 or 25 per cent of the income, whichever was more, was liable to income-tax. In the case of an assessee, the accumulation of income during the nine previous years from 1961-62 to 1970-71 was Rs. 4,43,681 but in none of the assessment years from 1962-63 to 1970-71 was any income brought to tax. It was seen from the information available in the records of the Income-tax Office that during the previous years relevant to the assessment years 1963-64 and 1966-67, the excess of income over expenditure amounting to Rs. 1,42,905 and Rs. 56,305 respectively was more than 25 per cent of the income of the respective years and the amounts of Rs. 83,760 and Rs. 19,543 were liable to tax in the assessment years 1963-64 and 1966-67. As these incomes were not brought to tax, revenue of Rs. 53,365 was forgone. As regards the other six years, data to determine the quantum of accumulation of income was neither furnished by the assessee with the return of income, nor obtained by the Income-tax Officer before deciding that no tax was payable by the assessee in those years.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

47. *Incorrect status adopted in assessments*

(i) Under the provisions of the Income-tax Act, 1961, a person who is "resident", is chargeable to tax in respect of the total income received or accruing in India as well as outside

India. Where, however, the person has not been "resident" in India in nine out of the ten years preceding the previous year, he is said to be resident but not ordinarily resident, and in such cases the income which accrues outside India is not included in the total income chargeable to tax unless such income is derived from a business controlled in or a profession set up in India.

(a) In the assessment of an individual for the assessment year 1972-73, income of Rs. 42,575 accruing to the individual outside India was excluded from the total income and from levy of income-tax, on the ground that the individual was not ordinarily resident and the foreign income was not derived from business controlled in India. The correct status of the individual for the assessment year 1972-73 was, however, 'resident'. The adoption of the incorrect residential status and the consequent omission to assess the foreign income resulted in short levy of tax of Rs. 31,087.

(b) In another case, an individual was assessed as "resident but not ordinarily resident" for the assessment years 1967-68 and 1968-69 but the income accruing from his proprietory shroff business in Singapore which should be considered as being controlled in India, was not included. In the assessment for the assessment year 1973-74, the individual was assessed in the status of a "non-resident" and the income from his foreign business was on that ground excluded. Applying the criteria prescribed in the Act, the individual was assessable as resident and ordinarily resident and the income from the foreign business should have been included in the total income and charged to tax.

The omission to include the foreign income for the assessment years 1967-68, 1968-69 and 1973-74 resulted in short levy of tax of Rs. 96,700 subject to allowance of double taxation relief.

The Ministry have accepted the objection in the case of (a) and stated that rectification has been made raising an additional demand of Rs. 31,087. In respect of (b), the Ministry have stated that the audit objection is under active consideration (March, 1976).

(ii) According to the Explanation below section 185(1) of the Income-tax Act, 1961 effective from the assessment year 1971-72, a firm shall not be regarded as a genuine firm if any partner of the firm was, in relation to the whole or any part of his share in the income or property of the firm, at any time during the previous year, a benamidar of any other partner. The firm would, then, be not entitled to registration under section 185(1)(a) or for continuation of registration under section 184(7) of the Act.

In the case of an assessee, a registered firm, the Income-tax Officer, in the assessment order for the assessment year 1965-66, recorded that, since according to the partenership deed, one of the partners had complete control over the share income of the other, the share of the latter should be treated as the share of the former, thus establishing that one partner was benamidar of the other. The firm was, however, granted continuation of registration upto the assessment year 1971-72. The firm was reconstituted with effect from 21-7-1971 (during the previous year relevant to the assessment year 1972-73) and it was granted fresh registration on the basis of application made under section 184(8) of the Act. The clause regarding the control one partner had over the share income of the other, was omitted from the partnership deed of the reconstituted firm.

As during the entire previous year relevant to the assessment year 1971-72 and during a part of the previous year relevant to the assessment year 1972-73, a partner of the firm was benamidar of the other, continuation/grant of registration should not have been accorded, in accordance with the provisions of the Explanation below section 185(1) read with sections 185(1)(b) and 186(1) of the Act.

Incorrect grant of registration and failure to assess the assessee in the status of an unregistered firm resulted in a short levy of tax of Rs. 19,901 and Rs. 44,295 for the assessment years 1971-72 and 1972-73 respectively.

The Ministry have stated (February, 1976) that all that the partnership deed could be said to have stipulated at the relevant time for the assessment year 1965-66 was that the interest of some brothers (partners) in the firm could not be disposed of unilaterally without the consent of the senior amongst the brothers and that this stipulation would not lead to the conclusion of benamidar.

(iii) Under the provisions of the Income-tax Act, 1961, where an individual, being a member of a Hindu undivided family, converts his individual property into property belonging to the family by throwing it into the family stock, after 31st December, 1969, the income derived from the converted property, insofar as it is attributable to his interest in the family property, is includible in his income in individual status. In cases where the converted property is partitioned, the income from the portion of the property allotted to the spouse and minor son is also includible in the income of the individual in his individual status. The income so included is to be excluded from the income of the Hindu undivided family.

An assessee was a partner in a firm in his individual capacity. In April, 1970, he converted his share of interest in the firm into the character of Hindu undivided family with his two major sons. Soon after this, there was a partition and the profits received from the firm were equally distributed among the three persons and the share income of the assessee for the assessment years 1971-72 onwards was assessed in the status of the Hindu undivided family. As the income was received from the converted property, the same should have been treated as the individual income of the assessee and clubbed with his other individual income. The omission involved under-charge of income-tax of Rs. 53,900 for the assessment years 1971-72 to 1974-75.

While accepting the objection, the Ministry have stated that action under section 147(b) has been initiated (March, 1976).

48. *Incorrect computation of income from house property*

(i) The annual value of property chargeable to income-tax under the head "Income from house property" is the sum for which the property might, reasonably, be expected to let from year to year. The income is, thus, to be computed on a notional basis and not with reference to actual receipts.

(a) An assessee owned two houses, the annual income from which was assessed at Rs. 8,160 in the assessment for the year 1957-58. In the subsequent fifteen years from 1958-59 to 1972-73, the same income was adopted without making an endeavour to reassess the annual value, although, the Wealth-tax officer, while making wealth-tax assessment for the year 1964-65, had reassessed the market value of the properties and raised it from Rs. 70,000 (as returned) to Rs. 1,87,800. The Wealth-tax Officer had also held that the value of properties would be raised by five per cent in each succeeding year because of the substantial and continuous appreciation of the value of house properties. Taking the income from these properties to correspond at least to six per cent of their market value, the under-assessment of house property income in the assessment years 1964-65 to 1972-73 amounted to Rs. 1,18,130 involving a short levy of tax of Rs. 52,680.

The Ministry have accepted the objection (February, 1976).

(b) In another case, an assessee received a monthly rent of Rs. 3,000 per month for one year and Rs. 3,500 per month for two subsequent years and the same was adopted as the basis for determining the annual letting value in computing income from house property. It was, however, seen that the same property was, in turn, let during this period by the lessee at a monthly rent of Rs. 5,500 *i.e.*, Rs. 66,000 per annum. Its municipal rateable value was also Rs. 66,175 per annum. Determination of annual value based purely on actual rent received by the assessee, ignoring the municipal rateable value

as well as the ultimate rent for the property received by the lessee, resulted in short demand o ftax of Rs. 31,168 for the assessment years 1971-72 to 1973-74.

The Ministry have stated (December, 1975) that the rent realized by the lessee is not a correct guide in this case and that the municipal valuation had been scaled down, subsequently, to Rs. 40,950.

(c) In yet another case of an individual, for the assessment year 1971-72, income from a house property owned by him was determined at Rs. 24,016. In the assessment for the subsequent assessment years 1972-73 and 1973-74, the income from the property was assessed at reduced amounts of Rs. 12,791 and Rs. 8,201, the fall in income being attributed to reduced rent paid by the tenants due to losses suffered by them.

As income from the house property is assessable on the basis of the annual value and not on the basis of actual rents received, the adoption of the reduced amounts of Rs. 12,791 and Rs. 8,201 for assessment was not in conformity with the provisions of the Act. The error resulted in short levy of tax of Rs. 23,250 for the two years.

The Ministry have accepted the objection (January, 1976); report regarding rectification is awaited (March, 1976).

(ii) In para 16(i) of the Audit Report on Revenue Receipts for 1972-73, it was pointed out that the Department allowed an erroneous deduction amounting to Rs. 4,00,883 in computing the house property income, for repairs, in a case where the cost of repairs to the building was to be borne by the tenant and not the assessee.

A similar mistake was noticed in the computation of income from property jointly owned by four individuals. Under a lease agreement with the tenant, a company running a hotel, the tenant company was to carry out repairs to the building from time to time and to maintain it in good condition. In view of such a condition, apart from the annual value of the property being enhanced on that account, the assessee was not entitled to claim statutory deduction on account of "repairs". The

Department, however, allowed statutory deduction amounting to Rs. 23,000 in the assessment year 1969-70 and also similar deduction in other years, in computing the income from this property. This erroneous deduction resulted in aggregate under-assessment of tax of Rs. 65,426 in the hands of the four joint owners for the assessment years 1969-70 to 1972-73.

The Ministry have accepted the objection (February, 1976). Report regarding rectification of assessments is awaited (March, 1976).

49. *Incorrect computation of business income*

(i) In computing the business income of an assessee, any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund is allowed as deduction.

An assessee made a provision of Rs. 73,479 towards contribution to 'Employees Provident Fund' during the previous years relevant to the assessment years 1968-69 to 1971-72. This was allowed as deduction from business income while completing assessments of the respective assessment years. The amounts were not, however, remitted to the Provident Fund Commissioner; these were kept in 'General Fund' as the assessee contended before the High Court that the Provident Fund Act was not applicable to his case. The High Court decided the case in favour of the assessee in August, 1969 and the writ appeal filed by the Provident Fund Commissioner was also dismissed in December, 1971. It was pointed out by Audit in January, 1975 that the provision for the contributions made in the respective assessment years should be disallowed in view of the fact that the assessee was not bound by the Employees Provident Fund Act. The under-assessment of income was Rs. 73,479 and the resultant under-charge of income-tax was Rs. 49,760. Accepting the omission, the Department stated that as the High Court decided the case against the Department in August, 1969, the entire sum would have to be considered in the assessment year 1971-72 (relevant to the date of judgment) and re-opened the assessment in April, 1975.

While accepting the objection (January, 1976), the Ministry have stated that the assessment in question has been revised and that the amount of additional tax raised is Rs. 62,144.

(ii) Section 36(2) of the Income-tax Act, 1961 prohibits any deduction on account of bad debt being allowed, when the debt has not been taken into account in computing the income of the assessee in any year or the debt does not represent money lent in the ordinary course of a business of money lending carried on by the assessee.

An assessee, Hindu undivided family, claimed and was allowed a bad debt allowance of Rs. 87,646 in the assessments for the assessment years 1971-72 (Rs. 72,095) and 1972-73 (Rs. 15,551). The business of the assessee was not money lending. The assessee did not supply any material, raw or finished, to the debtor in the normal course of its business. On the other hand, the debtor, who was the brother of the 'Karta' of the family, was supplying raw materials to the assessee and his role, therefore, could have been only that of a creditor and not a debtor. The debt actually represented advances made by the assessee to the debtor for consideration other than the normal business carried on by the assessee. It should not have been taken into account for computing the income of the assessee.

The allowance was thus incorrectly made, resulting in the forgoing of revenue to the extent of Rs. 46,310 in two years.

The Ministry have accepted the objection (October, 1975).

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

(i) Under the provisions of the Income-tax Act, 1961, depreciation for buildings, plant and machinery, calculated at prescribed rates on their written down value, is allowed in

computing income from business. The rules prescribed in this regard provide, *inter alia*, that depreciation for factory buildings shall be allowed at double the rate for non-factory buildings and that depreciation for building contractors' plant shall be allowed at fifteen per cent of the written down value.

In the assessment of an unregistered firm, engaged in the business of building contracts, for the assessment years 1968-69 to 1971-72, depreciation was allowed for non-factory buildings at double the rate *viz.* fifteen per cent instead of at the rate of seven and a half per cent, and for shuttering materials at 33⅓ per cent instead of at the prescribed rate of 15 per cent. These errors resulted in the determination of excessive loss of Rs. 4,17,085 for the four years.

The Ministry have accepted the mistakes (January, 1976).

(ii) In the case of two registered firms, depreciation at 15 per cent of the cost was allowed for "air compressors" and "tube-wells drilling machinery" on the ground that air compressors form part of the drilling machinery and that drilling machinery falls under the classification of "Mines and Quarries". Audit pointed out that these items of machinery would be more appropriately classified as "general machinery" on which the rate of depreciation allowable is 10 per cent. The incorrect allowance resulted in under-assessment of income of Rs. 64,060 for the assessment year 1971-72, involving a short levy of tax of Rs. 39,436 in the two cases.

While accepting the objection, the Ministry have stated that the assessments have been revised and additional demand of Rs. 39,436 raised and collected (November, 1975).

(iii) For the assessment years 1970-71 and 1971-72, the Income-tax Act provided for the grant of development rebate, in respect of new plant and machinery installed and used in the business. Where the business is a specified priority industry, the development rebate is allowed at thirty five per cent of the actual cost of plant and machinery installed prior to 1st April,

1970, while for other businesses the rate is twenty per cent only. Production of vegetable oils and oil cakes by solvent extraction process from seeds other than cotton-seed is one of the specified priority industries.

In the assessment of a registered firm engaged in the business of production of vegetable oils and oil cakes, development rebate of Rs. 1,53,644 was allowed at thirty five per cent of the cost of machinery, as claimed by the assessee for the assessment year 1970-71, which was carried forward and set off in the assessment for the assessment year 1971-72 completed in October, 1973. As the production of vegetable oils and oil cakes by the assessee was by the conventional method of using expellers and not by the solvent extraction process as specified in the Act, development rebate was admissible only at the lower rate of twenty per cent and not at thirty five per cent as claimed and allowed. The incorrect classification of the assessee's business as a priority industry, resulted in excessive grant of development rebate of Rs. 65,844 with consequent short levy of tax of Rs. 31,240 in the hands of the firm and the partners.

The Ministry have accepted the objection (February, 1976).

(iv) The grant of development rebate is also subject to the condition that an amount equal to seventy five per cent of the development rebate actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account.

The income-tax assessment of a registered firm for the assessment year 1969-70 was revised on 14th June, 1973 at a loss of Rs. 6,81,330. In the determination of the loss, the assessee was allowed development rebate of Rs. 2,58,568 against the reserve of only Rs. 26,677. Keeping in view the amount of reserve created, the firm was eligible for a development rebate of Rs. 35,569 only. The development rebate was, thus, allowed in excess by Rs. 2,22,999 resulting in excess computation of loss by the same amount.

The Ministry have accepted the position and stated that the excess allowance of Rs. 2,22,999 has been withdrawn (November, 1975).

51. *Irregular exemptions and excess reliefs given*

(i) Under section 11(1) of the Income-tax Act, 1961, till its amendment from April, 1971, the accumulation of income made by a charitable/religious trust to the extent of 25 per cent thereof, was exempt from tax. Where the accumulation exceeded this limit, the exemption could be allowed only on the fulfilment of certain conditions laid down in section 11(2) of the Act. It was clarified in the Board's circular of November, 1968 that in such cases, non-compliance with the said conditions, would entail forfeiture of the title to exemption from tax on the entire accumulation including the initial 25 per cent of income.

In the case of an assessee, accumulation in excess of twenty five percent of income alone was brought to tax in the assessment years 1968-69, 1969-70 and 1970-71 though one of the conditions prescribed in section 11(2) of the Act was not fulfilled. The exemption allowed to the accumulation equivalent to 25 per cent of income was also not correct. The income was under-assessed by Rs. 41,444, Rs. 47,892 and Rs. 44,047 respectively in the said three years. The income was further under-assessed by Rs. 5,574, Rs. 10,405 and Rs. 11,840 in these years, because in the income and expenditure accounts of the assessee, only net receipts (gross receipts minus tax deducted at source) on account of dividend and interest on fixed deposits etc. were included. The cumulative effect of these errors was abandonment of revenue totalling Rs. 1,28,710.

The Ministry have stated (February, 1976) that the matter is under consideration.

(ii) Under the provisions of the Income-tax Act, 1922, which were in vogue till the assessment year 1961-62, income derived from business carried on in the course of fulfilling a primary purpose of a charitable trust or institution or carried on mainly by the beneficiaries of the trust or institution, was exempt from tax as being intended for carrying out an object of general public utility. Under the Income-tax Act, 1961, which is effective from the assessment year 1962-63, the term "charitable purpose" is defined to include the advancement of any other object of general public utility not involving the carrying on of any activity for profit. Under the new law, therefore, though the activity of a charitable trust or institution may be for general public utility, if it involves the carrying on of a commercial operation, it ceases to be a charitable object and the exemption from tax is not available for the income of such a trust or institution.

By a deed of trust executed in the year 1923 a property consisting of a building and appurtenant land was settled on a trust for the purpose of holding meetings, dramatic or other entertainments, private or public, the trustees being empowered to charge reasonable rent for such use of the property. The property was regularly used as a cinema theatre and the income of the trust comprised mainly profits derived from the business of running the cinema theatre, from screen advertisements and by way of rent from stalls attached to the theatre. The maintenance charges of the theatre and the expenses necessary to earn the above income constituted the only expenditure of the trust.

The exemption for the income of the trust allowed upto the assessment year 1961-62 under the provisions of the Act of 1922 was continued to be allowed under the new Act also from the assessment year 1962-63 onwards. For two of the assessment years 1966-67 and 1968-69, the exemption was initially disallowed on a different ground but, on appeal by the assessee, the exemption was allowed for those two years for the income spent.

Under the provisions of the new Act of 1961, the exemption is not available, as the object of the trust involves the carrying on of an activity for profit and the entire income is assessable to tax. If the exemption allowed in the assessment years 1970-71 to 1973-74 completed during the period December, 1970 to February, 1974 is withdrawn, tax of Rs. 44,615 will be recoverable from the assessee. The tax similarly due for the earlier assessment years 1962-63 to 1969-70, would represent loss of revenue as revision has become time-barred.

The Ministry have stated (March, 1976) that the audit objection is still under consideration.

(iii) Where the gross total income of an assessee includes profits and gains from a new industrial undertaking, he is entitled to a deduction from such profits and gains of an amount equal to six per cent of the capital employed on such undertaking, the said capital being computed in the manner laid down in the Income-tax Rules, 1962. It is also provided that, where full effect cannot be given to such a deduction in any year due to insufficiency of profits, the deficiency can be carried forward and set off against such profits and gains for the succeeding year.

In the regular assessments of a registered firm to which these provisions applied for the assessment years 1972-73 and 1973-74 the capital employed was computed incorrectly, with the result that deductions were allowed in excess by Rs. 60,000 and Rs. 55,407 respectively, and the deduction quantified for the assessment year 1972-73 was carried forward and set off against the profits assessed for the assessment year 1973-74. Though the mistake in respect of the assessment year 1972-73 was subsequently rectified, corresponding rectification was not carried out for the assessment year 1973-74. Thus, deduction to the extent of Rs. 1,15,407 was allowed in excess, for the assessment year 1973-74, resulting in short levy of tax amounting to Rs. 31,851 in the hands of the firm and about Rs. 50,230 in the hands of the partners.

The Ministry have accepted the objection. The assessment in the case of the firm is stated to have been rectified, raising an additional demand of Rs. 31,851 (October, 1975). Report regarding rectification in the case of partners and collection of demands is awaited (March, 1976).

(iv) Under the provisions of the Income-tax Act, 1961, the entire income of a co-operative society from specified activities is exempt from income-tax. Income other than that from the specified activities is exempt only up to twenty thousand rupees.

A co-operative society engaged in banking business received subsidy of Rs. 1,59,830 and Rs. 73,554 from the Government in the previous years relevant to the assessment years 1970-71 and 1971-72 for various purposes such as 'for branches, for supervision of Weavers' Co-operative Societies, for contribution to Thrift Fund Schemes and for interest rebate for Weavers' Societies'. The amounts were incorrectly treated as wholly exempt instead of treating such subsidy as 'other business income' chargeable to tax. This resulted in under-assessment of income tax of Rs. 1,02,685.

The Ministry have stated (March, 1976) that the subsidy is in the nature of compensating the loss to the assessee to a certain extent and that the same cannot be classified as non-business income and subjected to tax. In Audit's view, the subsidy does not constitute assessee's income from specified activities.

(v) A resident assessee served as a doctor abroad and received a stipend of 7,725 American dollars in the previous year relevant to the assessment year 1971-72. This was exempted in the computation of the total income of the assessee by the Income-tax Officer under section 10(16) of the Income-tax Act, 1961, which was irregular. The incorrect allowance resulted in a tax under-charge of Rs. 56,705.

While accepting the objection, the Ministry have stated (November, 1975) that the rectification resulted in an additional demand of Rs. 56,705 but after taking into account the interest

of Rs. 10,180 waived by the Department and double income-tax relief of Rs. 12,525 admissible to the assessee, the net additional demand is Rs. 34,000.

(vi) The Finance Act, 1972 amended the definition of "income" in the Income-tax Act, 1961 with effect from 1st April, 1972, to specifically provide that, winnings from horse races would be regarded as income for purposes of taxation. However, it was also provided that such income would continue to be exempt from income-tax for the assessment year 1972-73.

In one case, an assessee received Rs. 60,626 in February, 1972 by way of winnings from horse races. As this receipt formed part of his income under "other sources" for the previous year (which ended on 30th April, 1972 for 'other sources') relevant to the assessment year 1973-74, it attracted tax liability. It was, however, not assessed to tax and this resulted in a short levy of tax of Rs. 43,407.

The Ministry have intimated (December, 1975) that as a result of rectification, additional demand of Rs. 43,407 has been raised.

52. *Incorrect computation of capital gains*

(i) Under the Income-tax Act, 1922, capital gains tax becomes payable by an assessee on the profits and gains arising from the sale, exchange, relinquishment or transfer of a capital asset which is deemed to be the income of the previous year in which the sale, exchange, relinquishment or transfer takes place.

An assessee sold, during the previous year relevant to the assessment year 1958-59, certain mines and mining rights and buildings to a company wholly owned by the assessee and his wife at a consideration of Rs. 29,91,133 which was not paid in cash by the company but stood in its books as loan in the name of the assessee. During the previous year relevant to the assessment year 1960-61, the company issued shares of face value

of Rs. 5,00,000 in favour of the assessee and the sum of Rs. 5,00,000 was adjusted by debit to the loan account already opened in his name. But the market value of the shares was Rs. 9,96,000. There was thus a capital gain of Rs. 4,96,000 (by exchange of capital assets) which escaped assessment resulting in under-charge of tax of Rs. 3,73,032, for the assessment year 1960-61. Rectification being barred by limitation, there was a loss of revenue to the same extent.

The Ministry have accepted the objection (October, 1975).

(ii) The Income-tax Act provides that if the fair market value of a capital asset transferred, as on the date of transfer, exceeds the full value of the consideration declared by the assessee by an amount not less than fifteen per cent of the declared value, the fair market value on the date of transfer shall be taken to be the full value of the consideration for the purpose of determining the amount of capital gain arising on such transfer.

A non-resident individual sold 20,553 equity shares in an Indian company during the year relevant to the assessment year 1971-72. On 17th December, 1969, the assessee applied to the Reserve Bank of India for approval for the transfer of shares at Rs. 12.90 per share and on 29th December, 1969, the permission sought for was accorded. The actual sale took place in December, 1970. In the assessment completed in December, 1971, the Department, presuming the existence of a sale agreement, assessed the capital gain from the sale as Rs. 38,844, taking the sale value at the rate of Rs. 12.90 per share as returned by the assessee. The market value of the share at the time of sale was Rs. 20.744 as worked out for the wealth-tax assessment of the assessee. The fair market value of the share being more than fifteen per cent of the declared value of Rs. 12.90 per share, the capital gain should have been determined, adopting the fair market value as the sale value. As this was not done, the capital gain was under-assessed by Rs. 54,677 resulting in short levy of tax of Rs. 45,700.

The Ministry have accepted the objection (February, 1976).

(iii) The long-term capital gains arising from transfer of land and buildings are taxable at a rate higher than that applicable to those arising from transfer of other capital assets, as the deduction to be allowed in computing the total income is less in the former case.

In the assessment for the assessment year 1971-72 of a firm which owned a theatre and was engaged in the business of film distribution also, capital gain arising from the sale of its cinema theatre was erroneously attributed by the assessing officer to "goodwill" arising out of the business of film exhibition instead of attributing it to the prevailing abnormally high price of land in that urban area. This resulted in the assessee getting a deduction of 65 per cent of the capital gains of Rs. 12,74,156 instead of 45 per cent thereof, leading to an under-assessment of income by Rs. 1,94,034 resulting in a short levy of tax of Rs. 1,80,581 in the hands of the firm and its partners.

The Ministry have stated (February, 1976) that the audit objection is under consideration.

(iv) The income chargeable under the head 'capital gains' is computed by deducting from the full value of consideration received the following three items :

(a) the cost of acquisition of the capital asset;

(b) the cost of any improvement of the asset; and

(c) the expenditure incurred wholly and exclusively in connection with the transfer.

While returning his income from capital gains on the sale of a house, an assessee, deducted from the sale price of Rs. 1,54,000 not only the cost of acquisition of Rs. 44,074 but also a sum of

Rs. 54,925 which he had spent as legal expenses for enhancement of rent fixed by the court. This claim was accepted by the Income-tax Officer who taxed him for capital gains only on an amount of Rs. 55,000. There is no provision in law for deducting legal expenses. The under-assessment of capital gains of Rs. 54,925 accounted for short levy of tax of Rs. 22,280.

The Ministry have accepted the objection. The assessment in question is stated to have been revised raising an additional demand of Rs. 22,280 (January, 1976). Report regarding collection is awaited (March, 1976).

53. *Mistakes in assessment of firms and partners*

(i) Under the Income-tax Act, 1961 as well as according to the judicial pronouncements, income by way of rent received from parting with mining rights is assessable in the hands of recipients as "income from other sources" as if it is a return on the capital held by the assessee and not as "profits and gains of business or profession". Accordingly, only such expenditure as is allowable under the Income-tax Act to earn income from other sources is to be allowed in computing the assessable income from the lease of such mining rights.

A registered firm received an income of Rs. 11,95,817 by way of mining rent which was assessed in its hands as income from profits and gains of business and accordingly, expenditure including development rebate and depreciation to the extent of Rs. 6,14,524 was allowed to be deducted for the assessment years 1968-69 to 1971-72. As the income was correctly assessable under the head "income from other sources", such expenditure did not qualify for deduction. Further, the same expenditure was also allowed in the hands of the lessee firm which carried out the actual mining operations. As a result, there was under-assessment of income by Rs. 6,14,524 with consequent tax under-charge of Rs. 1,32,512 in the hands of the firm and Rs. 2,75,680 in the hands of its two partners for the assessment years 1968-69 to 1971-72.

The Ministry have stated (February, 1976) that the owner was carrying on the business of running the colliery through an agent and a deputy agent and that in terms of the agreement, the amount of income received by the assessee was not lease rent but business income. In Audit's view, the provisions of a particular agreement would not over-rule the provisions of the Act and the law.

(ii) In the previous year relevant to the assessment year 1971-72, a firm received refund of sales-tax amounting to Rs. 1,05,000, which had been allowed as deduction in the assessments of earlier two years. The firm did not take the refund in its own accounts; instead, it credited the amount in the personal accounts of the partners of the firm. Although under Section 41(1) of the Income-tax Act, 1961, the refund was to be treated as profit from business of the firm, the same was not included in the income of the assessee either for the year 1970-71 in which the refund became due or for the year 1971-72 in which the refund was actually received. This resulted in reduction in the taxable income of the assessee by Rs. 1,05,000 with a tax under-charge of Rs. 91,480.

The Ministry have accepted the objection and the additional demand of Rs. 91,480 is stated to have been raised (January, 1976).

(iii) Under the provisions of section 67(1) of the Income-tax Act, 1961, the income-tax payable by a registered firm in respect of the total income of the previous year shall be deducted from the total income of the firm and the balance ascertained and apportioned among the partners.

In the case of a registered firm, the assessed income was reduced by an incorrect amount of income-tax and the share income of the partners was consequently incorrectly apportioned resulting in an under-assessment of income to the tune of Rs. 53,518 in the hands of the partners. The tax under-charged from the partners, taking the share income from the firm as the only income of the partners, was Rs. 41,768.

While accepting the mistake, the Ministry have stated (December, 1975) that the assessment in question has been revised.

(iv) The assessment of a registered firm for the assessment year 1970-71, was revised on 25-9-73, to give effect to appellate orders. As a result, the share-income of each of the three partners, was determined at Rs. 1,89,481, as against Rs. 1,74,729, in the original assessment. The assessments of the partners, taking into account the revised share income of Rs. 1,89,481, had not been revised, till the date of audit, even though more than a year had passed since the revision in the case of the firm. Further, no note for such a revision had been kept by the Income-tax Officer. Failure to ascertain and adopt the correct share of income of partners resulted in short-levy of tax of Rs. 34,050.

The Ministry have accepted the objection and intimated (October, 1975) that, as a result of rectification, additional demand of Rs. 34,050 has been raised and collected.

(v) Share income from a firm received by its two partners was assessed as their individual income upto the assessment year 1967-68. For the assessment years 1968-69 to 1971-72, however, their share income from the firm was divided among the other members of their families viz., wives and minor children and only a part of the share income, instead of the entire share income from the firm, was assessed in their hands. There was no finding of the Income-tax Officer on record regarding the total or partial partition of their respective Hindu undivided families. This resulted in short demand of Rs. 3,20,350 for the assessment years 1968-69 to 1971-72.

The Ministry have stated (March, 1976) that the audit objection is under consideration.

(vi) On the rectification, under section 154, of the original assessment of an assessee (registered firm) for the assessment year 1970-71 enhancing the total income by Rs. 28,430, the share allocation among the partners and their assessments were not revised. There were certain mistakes in the calculation of tax. Further, interest under section 215 was wrongly calculated on 75 per cent of tax instead of on the total amount (as amended from 1-4-1970) of assessed tax reduced by advance tax paid in case of both the firm and the partners. The mistakes resulted in an under-charge of Rs. 80,292.

The Ministry have accepted the objection (January, 1976). A net demand of Rs. 80,292 is stated to have been created (February, 1976).

(vii) In the previous year relevant to the assessment year, 1972-73, a family business was converted into partnership business. According to clause 3 of the partnership deed which was executed on 30th March, 1971, the firm was constituted with effect from 1st January, 1971. However, the business properties of the family, which were to form the basis and the nucleus of the partnership business, were partitioned among its members on 20th March, 1971. This was also accepted by the Income-tax Officer under section 171 of the Income-tax Act, 1961. Therefore, the business remained with the family upto 20th March, 1971 and hence, it was not correct to treat it as belonging to the firm from a prior date, and this rendered clause 3 of the deed inoperative.

The Income-tax Officer allowed registration to the firm which was constituted from 1st January, 1971 on the basis of the deed of 30-3-1971. As, however, no firm could have been in existence on 1st January, 1971 and the clause of the deed on the basis of which registration was sought was inoperative, no registration could be allowed. The incorrect registration allowed to the assessee entailed forgoing of revenue totalling Rs. 1,20,430 for the assessment years 1972-73 and 1973-74.

The Ministry have stated (January, 1976) that the said clause 3 does not render the entire partnership document as redundant/ inoperative for the whole of the accounting period. In Audit's view, the doctrine of severability is not applicable to the facts of the case.

(viii) Under the Income-tax Act, 1961, a partnership firm which has no legal existence apart from its partners, is treated as a distinct assessable unit and is assessed to tax in respect of its total income received from various sources.

During the previous years relevant to the assessment years 1967-68 to 1972-73 such a firm earned dividend income of Rs. 7,14,000 on share investments in a limited company in which its partners had substantial interest. The Department, however, considered the income to have been earned by the individual partners and did not consider the total income in the assessment of the firm. As a result, income of the firm to the extent of Rs. 7,14,000 escaped assessment.

Further, rental income received by the firm by letting out house property to its own workshop employees was assessable as business income. In determining the rental income from such house property, the Department incorrectly gave statutory reliefs on account of repairs admissible only in the case of income computed under "house property" although depreciation on the property had already been allowed separately. The irregular reliefs resulted in under-assessment of income by Rs. 30,200 for the assessment years 1967-68 to 1972-73. The resultant tax under-charge on account of these two mistakes amounted to Rs. 1,93,639.

While accepting the objections partly, the Ministry have stated (February, 1976) that a part of the factory was not let out to the workshop employees.

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

(i) Income arising directly or indirectly to a minor child of an individual from his admission to the benefits of partnership in a firm has to be clubbed with the income of such individual if he is also a partner in that firm. This equally applies to the income of the spouse in similar circumstances.

(a) In two cases, where the assessees were partners as representatives of their Hindu undivided families, the income of their minor sons admitted to the benefits of partnership was not clubbed with the income of the individuals though under the Indian Partnership Act and according to various judicial pronouncements, only an individual can enter into a partnership and his representative status is relevant only to determine the hand in which his share income from the firm is to be taxed. Accordingly, the income of the minor sons should have been clubbed with the income of the fathers in their individual capacity. Failure to do so, in one case, resulted in under-assessment of income of Rs. 40,295 and Rs. 44,205 and short levy of tax of Rs. 30,300 and Rs. 34,036 during the assessment years 1969-70 and 1970-71 respectively. Similar conditions prevailed during the earlier assessments also.

In the other case, there was under-assessment of income of Rs. 40,644 and consequent tax under-charge of Rs. 30,481 for the assessment year 1970-71.

(b) In another case, an assessee and his wife were partners in a registered firm and their minor son was admitted to the benefits of its partnership. Upto the assessment year 1965-66, the incomes of the wife and the son were, rightly, clubbed with the income of the assessee and taxed. From the assessment year 1966-67, the assessee threw his share in the partnership, into the common stock of his Hindu undivided family, and became a partner in the firm in his representative capacity as 'Karta'

of Hindu undivided family. The Department did not club the income of the wife and the son from the firm with that of the assessee individual from the assessment year 1966-67 on the ground that the husband was a partner in the firm in a representative capacity. This, as already stated, is an erroneous view. It resulted in under-assessment of income of Rs. 2,70,014 with consequential short levy of tax of Rs. 1,62,189 during the assessment years 1966-67 to 1968-69.

The Ministry have accepted the objection in these cases. In the case of (b) they have stated (November, 1975) that the assessment for the assessment year 1966-67 has been revised and additional demand of Rs. 34,224 raised; remedial action for the assessment years 1967-68 and 1968-69 is being taken.

(ii) Under the provisions of the Income-tax Act, 1961, any income arising directly or indirectly to a minor child, not being a married daughter, of an individual from assets transferred directly or indirectly by such individual to the minor child without adequate consideration, should be included in the total income of the individual and assessed. Such income is not to be assessed in the hands of the minor child.

An individual holding eighty per cent share in a registered firm, relinquished her share in the firm in favour of her two minor daughters by gifting forty per cent share to each of them, with effect from 1st April, 1972. The relinquishment having been made without adequate consideration, was deemed as a gift under the Gift-tax Act, 1958, and proceedings were initiated by the Department for levy of gift-tax. But, the share income of the two minor daughters from the firm for the year ended 31st March, 1973, relevant to the assessment year 1973-74 was separately assessed in December, 1973 in the hands of the respective minor children instead of being clubbed with the income of the individual as required under the law. The omission to apply the provisions of the Act for clubbing of income, resulted in under-assessment of income of

Rs. 1,28,984 with consequent short levy of tax of Rs. 36,326 in the assessment of the individual completed in November, 1973.

The Ministry have stated (March, 1976) that the individual (lady) surrendered her goodwill to the firm and, therefore, the share income of the minors is not includible in the hands of the assessee.

55. *Avoidable mistakes involving considerable revenues*

(i) While revising the income-tax assessment of a Hindu undivided family for the assessment year 1965-66 in January, 1974 to give effect to the decision of the Appellate Tribunal in an appeal filed by the assessee against the original assessment completed in March, 1970, the total income was computed at Rs. 3,37,790 as against the correct figure of Rs. 4,37,790. The error crept in while allowing deduction for life insurance premia of Rs. 4,200 from the gross total income of Rs. 4,41,990. The under-assessment of the total income by Rs. 1,00,000 led to a short levy of Rs. 63,962 as tax and Rs. 12,500 towards annuity deposit payable by the assessee for the year.

While accepting the objection, the Ministry have stated (December, 1975) that additional demand of Rs. 76,462 has been raised.

(ii) Where any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Income-tax Act, 1961, the Income-tax Officer is required to serve upon the assessee a notice of demand specifying the sum payable. According to the instructions issued by the Board, 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.

It was noticed during the audit of a ward on 20th December, 1974, that in a case where the Department completed the assessments for the assessment years 1967-68 to 1969-70 on

30-1-1974 with a total tax demand of Rs. 19,239, the relevant demand notices were not served on the assessee till the date of audit, *i.e.*, even after a period of nearly 11 months.

In their reply, the Ministry have intimated that as a result of rectification, additional demand of Rs. 19,239 has been raised (October, 1975). Report regarding collection is awaited (March, 1976).

(iii) Under section 199 of the Income-tax Act, 1961, credit for the tax deducted at source is given on production of a certificate supporting the deduction made. In the case of an assessee such credit was given twice, once on production of the original certificate and again on the production of a duplicate copy of the certificate resulting in excess relief and short levy of tax of Rs. 13,693 for the assessment years 1970-71 and 1971-72.

The Ministry have replied (October, 1975) that the assessments in question have been revised and that the amount of additional tax raised and collected is Rs. 13,693.

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

In the assessment of a registered firm engaged in the business of film production and assessed in a Central Circle, for the assessment year 1965-66 completed in September, 1969, an addition of Rs. 1,03,000 was made by the Department to the income returned by the assessee, on the ground that the value of the closing stock of three films produced during the year was under-stated at Rs. 4,80,000. On appeal by the assessee, the Appellate Assistant Commissioner set aside the assessment in August, 1972 for being re-done. In the re-assessment made in July, 1973, the closing stock value was adopted as Rs. 2,39,750 in accordance with the executive guidelines issued in September, 1972.

For the assessment year 1966-67, the assessee returned an income of Rs. 64,310 after deducting from the gross income the sum of Rs. 5,83,000 as the opening stock value of the three films as determined originally as the closing stock for the assessment year 1965-66. In the assessment completed in February, 1971, the Income-tax Officer disallowed certain interest payments and expenses and worked out the total income as Rs. 2,93,089 which was finally determined on best judgment as Rs. 3,50,000.

The assessment for the assessment year 1966-67 which was based on the opening stock value of Rs. 5,83,000 was, however, not revised when the re-assessment for the earlier year, 1965-66, was made subsequently in July, 1973 when the closing stock value was reduced to Rs. 2,39,750. The omission resulted in under-assessment of income of Rs. 3,43,250 for the assessment year 1966-67 with consequent short levy of tax of Rs. 2,00,000.

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

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

(i) Under the provisions of the Income-tax Act, 1961 where the amount specified in a notice of demand is not paid within thirty-five days of the service of the notice, the assessee is liable to pay interest at prescribed rates from the day commencing after the end of the period. Where the amount is not paid within the prescribed period or within the extended period, if extension of time has been granted, the assessee shall be deemed to be in default, and the Income-tax Officer may forward to the Tax Recovery Officer a certificate of arrears for recovery by attachment and sale of the assessee's property or by other specified modes.

Under the rules made in this regard, the Income-tax Officer shall include the interest due for the delay in payment of the amount demanded, upto the date of issue of the certificate, to the Tax Recovery Officer and the latter shall levy and recover further interest due after that date.

An individual assessed in a Central Circle was in default in payment of taxes amounting to Rs. 16,17,123 for the assessment years 1963-64 and 1965-66 and a certificate of arrears was issued in August, 1972 to the Tax Recovery Officer for recovery. The Income-tax Officer did not, however, include in the certificate the interest leviable for the delay in payment, which amounted to Rs. 2,27,963.

In the case of another assessee, a firm, assessed in the same income-tax ward, certificates of arrears were issued in March, 1972, for recovery of taxes amounting to Rs. 9,42,341 in respect of the assessment years 1962-63 to 1965-66 and 1967-68. The assessee paid Rs. 30,000 in September, 1972, Rs. 10,000 in December, 1972 and Rs. 10,00,000 in March, 1973. The Tax Recovery Officer, after adjusting the tax arrears, refunded a sum of Rs. 97,662 by adjustment against the tax demands of the partner of the firm, without levying interest amounting to Rs. 76,500 for the delay in payment.

The Ministry have stated (March, 1976) that the audit objection is under consideration.

(ii) The Income-tax Rules, 1962, 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 and issue a demand notice for such interest.

In respect of two assessees assessed in a Central Circle, sums of Rs. 4,25,384 and Rs. 4,24,638 representing arrears of income-tax for the assessment years 1967-68 to 1969-70 were due as on 31st March, 1973. It was noticed in audit in May, 1973 that the Department had neither calculated the interest

leviable under the Act as on 31st March, 1973 nor issued a notice to the assessee.

The Ministry have accepted the objections. The amount of additional tax raised as a result of rectification, is stated to be Rs. 55,674 (February, 1976).

(iii) According to an amendment to the Income-tax Act, 1961, made in 1970, where a return of income is not received and an *ex parte* assessment is made, interest is payable by the assessee at the prescribed rates for non-submission of the return of income for the period from the due date for filing the return to the date of assessment. In March, 1971 the Board of Direct Taxes issued instructions that the amendment would not apply to the assessment year 1970-71 or an earlier year and would apply to the assessment year 1971-72 onwards. This view is not correct as the amended law applies to assessments relating to earlier years also where such assessments were completed after 1st April, 1971.

In six cases, three for the assessment year 1961-62 and three for the assessment year 1970-71, *ex parte* assessments were made (one in August, 1973 and five in March, 1974), as the assessees had not filed the returns of income. Following the Board's instructions, the Income-tax Officers did not levy interest for the non-submission of the returns of income. The interest involved was Rs. 3,26,981.

The Ministry have stated (March, 1976) that the amended law came into force with effect from 1-4-1971 and is not applicable to the assessment year 1970-71 or any earlier year.

58. *Non-levy/short levy of penalty*

(i) Under the Income-tax Act, 1961 as amended from the 1st April, 1968 and before its amendment by the Taxation Laws (Amendment) Act, 1975, the minimum amount of penalty leviable on an assessee who has concealed the particulars of his income is the amount of income concealed.

In the case of two assessees penalties for concealment of income were imposed at hundred per cent of the amount of tax and not at hundred per cent of the income concealed during the assessment years 1967-68 to 1969-70 resulting in short levy of penalty amounting to Rs. 1,85,084.

While accepting the objections in principle, the Ministry have replied (December, 1975) that since no returns had been filed, the penalties imposed under Section 271(1)(c) of the Income-tax Act, 1961, were illegal.

(ii) Where the total income returned by an assessee is less than eighty per cent of the amount assessed, there is deemed to be a concealment of income and the penalty provisions are attracted unless the assessee proves that the failure to return the correct income was not due to any fraud or negligence on his part.

(a) In two cases for the assessment year 1971-72, it was noticed that though a minimum penalty totalling Rs. 72,958 was leviable for concealment on the above basis, no notices were issued and no penalty was levied. Reasons for non-initiation of penalty proceedings were also not recorded.

(b) In the case of another assessee, the difference between the assessed and returned income in all the nine years from 1965-66 to 1973-74 was far in excess of the limit of 20 per cent prescribed under the Act; it varied from 79 per cent in 1968-69 to 35 per cent in 1969-70. In each of these years, penalty was leviable, because the assessee did not submit any explanation to exonerate himself from his failure to return correct income. But the assessing officer did not initiate penalty proceedings in any of these years, nor did he record any reason as to why the initiation of penalty proceedings was dispensed with. Non-compliance with the provisions of the Act resulted in the forgoing of revenue of Rs. 2.40.670, which was the minimum amount of penalty leviable.

The Ministry have accepted the mistake in the case of (a) (January, 1976). In respect of (b), the Ministry have stated (March, 1976) that the audit objection is under active consideration.

Other Topics of Interest

59. *Depreciation and development rebate on machinery obtained on hire-purchase*

The Income-tax Act, 1961, provides for depreciation allowance in respect of buildings, plant and machinery, and also (till 31-5-1974) for development rebate in respect of new plant and machinery installed and used for business, in computing income from business. The depreciation allowance and development rebate are admissible only if the assets are owned by the assessee. Where plant and machinery are obtained on hire-purchase, the transfer of ownership thereon in favour of the hirer happens only after the last instalment of the hire charges is paid to the vendors, and hence no depreciation or development rebate is admissible till that date.

On the incorrect grant of depreciation and development rebate in such cases of hire purchase, being pointed out in the Audit Report 1966, the Public Accounts Committee recommended, in February, 1968, that, keeping in view the judicial pronouncements on the subject, an early decision should be taken as to whether the law itself required any amendment. The Ministry reported in December, 1968 that an amendment to the Income-tax Act sponsored for the purpose would have to await the passing of the Hire Purchase Bill which was then before the Parliament.

The Hire Purchase Bill was passed by the Parliament in June, 1972, but no amendment to the Income-tax Act has been made so far (March, 1976). As a result, depreciation and development rebate on plant and machinery obtained on hire purchase continued to be given contrary to the law. In seven cases noticed on test check in local audit, the depreciation and development rebate so allowed resulted in short levy of tax of Rs. 2,23,800.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

60. *Non-completion of set aside assessments*

The taxable income of an assessee for the assessment year 1960-61 was determined at Rs. 5,04,914 in March, 1965. This included an income of Rs. 4,60,000 from undisclosed sources (credit under hundi loans). In March, 1966, the Appellate Assistant Commissioner remanded the case to the assessing officer with the direction to submit the remand report within six months. As no remand report was submitted in spite of reminders, the Appellate Assistant Commissioner set aside the assessment in March, 1968. It was pointed out by Audit in July, 1970 that the set aside assessment had not been completed although the assessment was to be done within two years and delay would cause erosion of evidence in regard to the income from undisclosed sources. In September, 1970, the Commissioner of Income-tax informed Audit that as huge hundi loans were raised by the assessee, their verification would take some a bit of time.

It was seen in July, 1975 that the assessment for the year 1960-61 had not been completed. It was also seen that the assessments for the subsequent six years from 1961-62 to 1966-67 were also set aside in November, 1968 and January, 1972, but none of the assessments was re-made, although tax of Rs. 8,17,670 and additional tax (under Section 104 of the Act) of Rs. 80,180 (total Rs. 8,97,850) was payable by the assessee in pursuance of the original assessments. The assessee had paid tax of Rs. 4,22,680, but the Income-tax Officer, consequent on the setting aside of the assessments, allowed refunds of Rs. 2,24,950, leaving revenue exceeding rupees seven lakhs unassessed and unrealised.

The Ministry have accepted the objection in principle (February, 1976).

61. *Incorrect determination of income of a scientific research association*

Under the Income-tax Act, 1961, any income of an approved scientific research association which is solely applied for the purpose of scientific research does not form part of its total income for the purpose of levy of income-tax.

During the previous year relevant to the assessment year 1969-70, an approved association of persons, having as its object the undertaking of scientific research, had an excess of income over expenditure of Rs. 8,49,876. While the association utilised a sum of Rs. 4,53,070 for its own purposes, the balance sum of Rs. 3,96,806 was paid to a Chamber of Commerce as contribution. As the latter contribution was not apparently for the purpose of scientific research for which the association was established, the sum of Rs. 3,96,860 was, *prima facie*, required to be taxed in the hands of the association. As, however, the assessment for the assessment year 1969-70 was completed by the Department with "nil" income, there was an under-assessment of income of an identical amount with consequent tax under-charge of Rs. 2,88,806 for the said assessment year.

The Ministry have stated in reply (January, 1976) that payment made by the assessee was for the services rendered by the officers and the staff of the Chamber and use of office space etc.

62. *Write off*

In the case of an assessee firm which had discontinued its business by the end of 1959, a best judgment assessment was made in February, 1963 for the assessment year 1958-59, estimating its total income at Rs. 1,00,000 on the basis of some

material gathered from the Commercial Tax Department. This assessment was cancelled in December, 1963 at the request of the assessee. The fresh assessment was completed, *ex parte*, in August, 1972 on an estimated income of Rs. 1,07,000 and a penalty for concealment was also levied. The total demand of Rs. 70,577 (tax Rs. 64,891 and penalty Rs. 5,686) was written off as irrecoverable in November, 1974.

There was a delay of over four years in completing the first assessment which was cancelled and a further delay of nine years in making the fresh assessment, though no useful additional material was gathered for completing the fresh assessment. These delays led to the irrecoverability of the arrears.

The Ministry have stated (March, 1976) that the audit objection is under active consideration.

63. *Cases of over-assessment*

(i) Refund of income-tax paid in earlier years is not treated as income in the year of receipt, for the purpose of income-tax. In the profit and loss account of a registered firm, for the year relevant to the assessment year 1973-74, a sum of Rs. 33,100 was included on account of refund of income-tax. As this was not excluded while computing the income for the said assessment year, there was an over-assessment of income by Rs. 33,100 with consequent tax over-charge of Rs. 28,705 in the hands of the firm and its partners.

The Ministry have accepted the objection. The assessment in question is stated to have been revised (October, 1975).

(ii) In the case of new assessees there is an obligation to pay advance tax alongwith the estimate of their total income. Failure to do so, renders them liable to pay interest calculated at the prescribed rate from the 1st April next following the financial

year in which the advance tax was payable upto the date of the regular assessment.

(a) In the assessment of a registered firm completed on 13th March, 1974, interest of Rs. 42,588 for the period from 1st April, 1971 to 13th March, 1974 was levied by the Department for failure to submit the estimate of income and to pay advance tax due thereon for the relevant previous year whereas a sum of Rs. 14,871 only was actually leviable upon the assessee on the above score. There was, thus, an excess levy of interest of Rs. 27,717 for the assessment year 1971-72.

The Ministry have accepted the objection in principal (October, 1975).

(b) In the case of two other assessees, interest of Rs. 54,032 and Rs. 26,991 was levied for failure to submit estimate of advance tax for the assessment years 1970-71 and 1971-72 respectively, even though they were not new assessees and had been assessed to tax earlier for the assessment years 1949-50 and 1960-61 respectively. There was, thus, an over-charge of interest of Rs. 81,023 in these two cases.

The objections have been accepted in principle by the Ministry (December, 1975).

(iii) Under the provisions of the Income-tax Act, 1961, interest is chargeable on the assessee if the return of income is filed beyond the prescribed due date. However, such interest could not be levied, prior to the amendment of the Act with effect from 1st April, 1971, if the assessee did not, at all, file the return and a "best judgment" assessment was made.

In the case of an individual, for the assessment year 1970-71, even though a "best judgment" assessment was made, as the assessee had not filed his return of income, interest was erroneously charged as in the case of a belated submission of return of income leading to excess levy of interest of Rs. 28,415.

While accepting the objection, the Ministry have stated (October, 1975) that the assessment has been revised.

(iv) In the case of an assessee, while revising the assessment for the assessment year 1967-68 on 25th February, 1972, no credit was given for income-tax of Rs. 45,000 already paid. On this being pointed out in audit, the Department accepted the mistake and revised the assessment (October, 1973) by giving credit for Rs. 45,000.

The Ministry have accepted the objection (January, 1976).

(v) The total income of a Hindu undivided family for the assessment year 1967-68 amounting to Rs. 1,29,072 included long-term capital gains of Rs. 1,19,882 relating to land and buildings. Under the Income-tax Act, 1961, as it stood prior to amendment by the Finance (No. 2) Act, 1967, tax on such long-term capital gains exceeding Rs. 5,000 was leviable at three-fourths of the average rate of income-tax or 15 per cent of such net capital gains, whichever is greater. Accordingly, total tax leviable was Rs. 17,704 (15 per cent being more than average rate of tax) against which the Department levied a tax of Rs. 66,957. This resulted in a tax over-charge of Rs. 49,253.

The Ministry have accepted the objection (October, 1975). The assessment in question is stated to have been revised.

(vi) In the assessment of an individual for the assessment year, 1970-71, the amounts of capital gains and profit under Section 41(2) of the Income-tax Act, 1961, arising on sale of eight barges were, inadvertently, computed at Rs. 3,77,159 instead of at Rs. 3,38,271. This resulted in excess levy of tax of Rs. 32,083.

While accepting the objection, the Ministry of Finance have stated (November, 1975) that the assessment has been revised and the over-assessment has been found as Rs. 1,81,305 because of the appeal effect given.

CHAPTER IV

OTHER DIRECT TAXES

A.—*WEALTH TAX*

64. 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, retrospectively, from 1957-58 to exempt co-operative societies from the charge of wealth-tax and the Finance Act, 1975 has amended the Act from 1st April, 1975 to categorise all statutory corporations and foreign companies as 'companies' for the purpose of the Wealth-tax Act.

65. 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 the year 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 small collections. Thereafter, in the Budget for the years 1973-74, 1974-75 and 1975-76, no provision on this account 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.

66. Foreign companies, which had no place of business in India, were liable to wealth-tax in the status of 'individuals' in respect of their assets held in India. In paragraphs 56(ii) and 54(i) of the Audit Reports, 1972-73 and 1973-74, respectively, certain instances of non-levy of wealth-tax in such cases involving a revenue of over Rs. 67 lakhs were pointed out. The Finance Act, 1975 has amended the Wealth-tax Act to exempt such foreign companies from the levy of wealth-tax retrospectively from 1st April, 1957.

67. During the test audit of assessments made under the Wealth-tax Act, 1957, conducted during the period 1st July, 1974 to 31st March, 1975, the following types of mistakes resulting in under-assessment of tax were noticed :—

(i) Omission to assess returned wealth and raise demand.

(ii) Wealth escaping assessment.

(iii) Incorrect valuation of assets.

(iv) Irregular/excessive allowances and exemptions.

(v) Mistakes in computation of net wealth.

(vi) Mistakes in calculation of tax.

(vii) Non-levy or incorrect levy of additional wealth-tax.

(viii) Non-levy or incorrect levy of penalty and non-levy of interest.

(ix) Incorrect status adopted in the assessments.

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

68. *Omission to assess returned wealth and raise demand*

(i) The wealth-tax assessments of an assessee right from the year 1957-58 to 1972-73 had not been made even though the assessee had submitted returns of wealth for all these years and

the returned wealth was more than Rs. 4 lakhs in each year. On the delay being pointed out by Audit in January, 1974, the Department stated in April, 1974 that provisional assessments for the years 1957-58 to 1963-64 had been made on 25th March, 1964 and those for 1964-65 to 1972-73 were made on 4th April, 1974. On test check of these assessments conducted in June, 1975, the following omissions were noticed:—

(a) For the assessment years 1957-58 to 1963-64, neither orders on provisional assessment had been passed nor had notices of demand in the prescribed form been issued. Only letters were seen to have been issued on 25th March, 1964 to the assessee demanding payment of Rs. 15,737 by 31st March, 1964 *i.e.* within a period of six days. These provisional assessments were stated to have been made in March, 1964, when they could not be made as Section 15-C, enabling the Wealth-tax Officer to make assessments provisionally, was introduced in the Wealth-tax Act with effect from 1st April, 1965. For the assessment years 1964-65 to 1972-73 also, though provisional assessments were stated to have been made, no assessment orders were passed. Only letters were issued on 4th April, 1974, in place of notices of demand in the prescribed form, demanding payment of Rs. 21,570 within ten days.

As the period allowed for payment of moneys demanded in both these cases was reduced from the prescribed period of thirty-five days to six days and ten days, it was necessary for the assessing authority, under the proviso to Section 31 of the Act, to have recorded the reasons for such reduction and obtained the approval of the Inspecting Assistant Commissioner before issue of these letters. Neither the reasons were recorded nor was the permission obtained. The letters of demand are, therefore, not good in law.

(b) The Demand and Collection Registers for the years 1963-64 and 1964-65 were not made available in the absence of which verification of the act of noting and raising the demand of Rs. 15,737 could not be conducted by Audit. The demand,

though not collected, was not carried forward in the Demand and Collection Registers for the following years upto 1974-75.

(c) The assessee was liable to pay, upto 31st March, 1975, an interest of Rs. 15,640 for non-payment of tax. No demand for interest was, however, created.

(d) All the regular assessments were pending till June, 1975 despite a lapse of 14 months since the case was brought to the notice of the assessing officer.

While accepting the objection, the Ministry have stated (February, 1976) that, as there was no possibility of raising a statutory demand for the first block of assessment years 1957-58 to 1963-64 and as, for the assessment years 1964-65 to 1972-73, no statutory demand had been raised, there was no question of carry forward of demand on which interest could be charged. They have added that steps are being taken to refer property for valuation.

(ii) As per the Wealth-tax assessment records of a ward, the total wealth of an assessee and tax leviable thereon for the assessment year 1973-74 were determined, on 25th February 1974, at Rs. 2,78,100 and Rs. 2,752 respectively but the demand of Rs. 2,752 was not noted in the Demand and Collection Register which showed the connected wealth-tax return submitted by the assessee as 'filed'. The assessment for the assessment year 1973-74 was also not shown in the Blue Book of the assessing officer as pending. Even though the omissions were pointed out in audit in May, 1975, the Department had not taken action to raise the demand of Rs. 2,752 (March, 1976).

The Ministry have accepted that notice of demand, on the basis of the assessment made, has not been issued to the assessee and added that it is being issued (January, 1976).

69. *Wealth escaping assessment*

(i) The Public Accounts Committee have been emphasising the need for proper co-ordination among the assessment records

pertaining to different direct taxes (paragraph 4.12 of the Committee's 186th Report). In their 50th Report (paragraph 2.9) and 103rd Report (Paragraph 1.12), the Committee also laid particular stress on a critical examination of income-tax cases with a view to finding out the evasion of wealth-tax. In the following cases, however, it was noticed that the information available in the income-tax and other assessment records of the assessees was not used to initiate action for making assessments under the Wealth-tax Act.

(a) A club which was being assessed to income-tax every year in respect of its income by way of rent from urban buildings and lands owned by it in a commercial area, sold a part of the properties during the year ended 30th September, 1963, for a total consideration of Rs. 26,50,000, the properties retained by it being valued at Rs. 10,00,000. The club was assessed in the assessment year 1964-65 to capital gains tax on capital gains arising from the said sale.

The club was assessable to wealth-tax, as a body of individuals, in respect of the above properties from 1957 onwards but it did not file any wealth-tax return nor were the returns called for by the Department. The wealth-tax and additional wealth-tax on urban property leviable for the assessment years 1957-58 to 1972-73 amounted to Rs. 4,18,000.

On the omission being pointed out in audit in December, 1973, it was reported by the Department in March, 1975 that the matter had been referred to the Central Board of Direct Taxes.

The Ministry have stated (January, 1976) that the club has been declared to be a company retrospectively from the assessment year 1960-61 and the objection survives only for the assessment years 1957-58 to 1959-60 which 'are beyond our reach now'.

(b) Certain properties owned by two assessees, each having 50 per cent share, were acquired by Government in the year 1959 and the compensation received was assessed to wealth-tax. The assessees, however, appealed against the quantum of compensation. The matter was finally settled outside the Court as

a result of which enhanced amount of Rs. 5,12,000 (inclusive of interest amounting to Rs. 1,19,598) was paid on 13th September, 1966. The interest was assessed to income-tax by re-opening the assessments for the assessment years 1960-61 to 1967-68. But the amount of the additional compensation was neither returned by the assessees nor assessed by the Department to wealth-tax by re-opening the assessments relating to the assessment years 1960-61 to 1966-67. This resulted in wealth of Rs. 31,58,834 escaping assessment with consequent short levy of wealth-tax of Rs. 43,183.

The Ministry have accepted the objection.

(c) In the income-tax assessments of two individuals assessed in a Central Circle for the assessment years 1969-70 and 1970-71, completed in March, 1972 and February, 1973, the taxable incomes were determined as Rs. 6,12,320 and Rs. 11,65,600 in one case for the two years and Rs. 3,10,000 in the second case for the assessment year 1970-71. The assessed incomes included finance commission at three per cent of the turnover which was estimated by the Department at Rs. 1,97,44,000 and Rs. 1,14,46,000 in the first case and Rs. 1,03,49,000 in the second case. Further, a sum of Rs. 8,00,600 was seized from the first individual in a raid in May, 1969.

The assessees were not assessed to wealth-tax for any of the years. The assessees did not file any wealth-tax returns and the Department did not call for them.

On the omission being pointed out by Audit in May, 1974, the Department stated that the assessees were already in considerable arrears in payment of taxes and further assessments would only increase the arrears. It was also stated that no action was taken by the assessing officer to make wealth-tax assessments in the exercise of his discretion.

The wealth-tax due on the moneys seized in the first case alone amounted to Rs. 23,030 for the assessment years 1970-71 to 1972-73.

The Ministry have accepted the objection.

(d) In the wealth-tax assessments of three individuals, assessed by the same Wealth-tax Officer for the assessment years 1966-67 to 1971-72 (assessments completed in September and December, 1972), it was noticed that the value of foreign wealth, by way of interest in partnership business in Ceylon, included in their net wealth and assessed to tax, was less than the actual value returned and assessed in the foreign country, as seen from the certificates filed by the assessees while claiming double taxation relief in respect of tax on foreign assets. The shortfall in the wealth assessed amounted to Rs. 15,43,300 resulting in a short levy of wealth-tax of Rs. 9,230.

The Ministry have accepted the objection in all the three cases.

(e) Similar failure to correlate income-tax and wealth-tax assessment records were noticed in three other cases where the assessees were apparently liable to wealth-tax for various years from 1966-67 to 1973-74 but they did not file any wealth-tax returns and the Department also did not call for the same, much less initiate penal action for non-disclosure of taxable wealth. The wealth escaping assessment in all these cases amounted to Rs. 20,52,510 with a tax undercharge of Rs. 8,263.

The Ministry have accepted the objection in two cases.

(ii) In the estate duty assessment of an individual, (who expired on 8th August, 1968) in February, 1974, the value of an immovable property in which the deceased had 1/5th share was assessed at Rs. 17,47,900 on the basis of the departmental Valuer's report of October, 1973 as against the value of Rs. 5,29,800 returned by the accountable person supported by an approved Valuer's report.

A check of the wealth-tax assessments of two of the five co-owners of the property showed that the value of this property had been taken at less than Rs. 6,00,000 during the assessment years 1967-68 to 1972-73. Further, each of the co-owners had

been allowed a deduction of Rs. 1,00,000 for self-occupation while, on the basis of the information available in the departmental Valuer's report, the exemption admissible would only be Rs. 42,000. As a result of this lack of co-ordination, there was an under-assessment of wealth by Rs. 32.49 lakhs and short-levy of wealth-tax of Rs. 20,571 in respect of two co-owners alone for the assessment years 1967-68 to 1972-73.

The Ministry have accepted the objection.

(iii) In para 53(ii) of the Audit Report, 1972-73 and para 56(B) of the Audit Report, 1973-74, 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, withdrawing the exemption in respect of jewellery, and in spite of the instructions issued by the Central Board of Direct Taxes in October, 1971, directing the assessing officers to re-open all assessments from the 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. Instances continue to be noticed where the value of personal jewellery is not included in the net wealth either in the original or revised assessments :—

(a) In the wealth-tax assessment of a Hindu undivided family, the exemption in respect of personal jewellery allowed in the assessment years 1968-69 to 1970-71 was required to be withdrawn but this had not been done till the time of audit in January, 1975 *i.e.* even after a lapse of three years since the issue of the Board's instructions. On the under-assessment of wealth amounting to Rs. 10,75,752 in the assessment years 1968-69 and 1969-70 and Rs. 5,75,752 in the assessment year, 1970-71 with consequential short levy of tax aggregating Rs. 74,340 being pointed out in January, 1975, the assessment for the year 1970-71 was rectified creating an additional demand of Rs. 17,240 and those for other years were re-opened.

Even though the assessments were seen in Internal Audit, the omissions were not noticed by them.

The Ministry have accepted the objection.

(b) The wealth-tax returns submitted by an individual for the assessment years 1967-68 to 1969-70 included jewellery valued at Rs. 2,70,000, Rs. 4,67,910 and Rs. 4,42,910 respectively. Though the assessments were completed on 23rd September, 1971, *i.e.* after the amendment of the Act, the value of jewellery was exempted. This value, as taken by the Department in the assessment year 1966-67, amounted to Rs. 4,75,000 against the declared value of Rs. 2,70,000. Hence the allowance of inadmissible exemption led to under-assessment of net wealth by Rs. 4,75,000, Rs. 4,67,910 and Rs. 4,42,910 respectively for the assessment years 1967-68, 1968-69 and 1969-70 with consequent total tax undercharge of Rs. 16,634 for the three assessment years.

The Ministry have accepted the objection and stated that additional demand of Rs. 16,634 has been raised.

(c) In as many as seventeen more cases assessed in eight Commissioners' charges, exemptions for personal jewellery having an aggregate value of Rs. 40,20,903 were allowed or were not withdrawn in respect of various assessment years between 1964-65 and 1971-72. The resultant undercharge of wealth-tax amounted to Rs. 35,689.

The Ministry have accepted the objection in all the cases; a total additional demand of Rs. 31,066 is also stated to have been raised.

(iv) The right to receive compensation on acquisition of immovable property by the State is an asset within the meaning of section 2(e) of the Wealth-tax Act, 1957, the value of which is includible in the net wealth of the person who is entitled to

receive the compensation. Some instances of failure to bring such right to tax were pointed out in para 54(iii) of the Audit Report, 1973-74. Similar failures were again noticed in 5 cases in 3 Commissioners' charges. The omissions in these cases resulted in a total short levy of wealth-tax of Rs. 27,358 for various assessment years from 1957-58 to 1970-71.

The Ministry have accepted the objection in all the cases; an additional demand of Rs. 14,236 is stated to have been raised in four of these five cases.

(v) In computing the net wealth of an assessee for the assessment years 1967-68 and 1968-69, value of certain buildings let out by the assessee was omitted to be included in the total wealth. As a result, wealth to the tune of Rs. 1,98,020 escaped assessment involving a short levy of wealth-tax of Rs. 12,870 (including additional wealth-tax) for the two assessment years.

The Ministry have accepted the objection and stated that the additional demand has been raised and adjusted against the refund due to the assessee.

70. *Incorrect valuation of assets*

(i) For the purpose of Wealth-tax Act, the term 'asset' includes property of every description. Wealth-tax is, therefore, leviable even on the value of an interest—vested or contingent—in property. A 'vested interest' is one which takes effect forthwith or on the happening of an event which is certain to happen: a 'contingent interest' is one which is to take effect only on the happening of a specified but uncertain event.

In the case of a trust of an immovable property created in 1928, the settlor, who had three sons, declared that after the death of his last surviving son, the property shall be offered for outright sale for Rs. 8,00,000 'to his grandson from the first son and if he be not alive, then to the great grandson and if even he

be not alive, then to the eldest grandson from the second son'. As one son of the settler is still alive, the interest created in favour of the first grandson is a vested interest and that created in favour of the great grandson and the second grandson is a contingent interest.

The trust was assessed to wealth-tax for this property at Rs. 6,92,000 upto the assessment year 1969-70. For the assessment year 1970-71, however, apprehending that the property was being considerably under-valued, the Department referred the matter to the Valuation Officer who, in his report of 26th July, 1972, determined the value at Rs. 1.03 crores for 1963 to 1965, Rs. 67 lakhs for 1965 to 1969 and Rs. 74 lakhs for 1970-71. When the assessments were re-opened, the trust contended on the basis of legal opinion obtained by it (including one from a retired Chief Justice of the Supreme Court) that in view of the stipulation in the trust deed regarding the offer to be made to a specified person for Rs. 8 lakhs, the market value of the property in the hands of the trust could not exceed Rs. 8 lakhs. The Department, after consulting the Ministry of Law, accepted this contention and accordingly the value of Rs. 8 lakhs was adopted in the assessments of the trust.

The question of including the value of the vested or contingent interest in the assessment of the beneficiaries, who had been given the right to purchase the property worth nearly a crore of rupees for Rs. 8 lakhs only, was discussed between the Board and the Ministry of Law in February, 1973 when the Ministry of Law opined that no assessment of the value of the rights of beneficiaries could be made as these rights could arise only after the happening of the contingencies. Consequently, the value of the respective interests in the property escaped assessment in the hands of the specified beneficiaries.

The Ministry have stated (February, 1976) that the Department was already seized of the various issues.

(ii) The value of a self-occupied residential property located in Ahmedabad was continuously taken at Rs. 2,50,000 in the wealth-tax assessments for the years 1963-64 to 1969-70. The property had been valued by a Valuer, who had estimated the value of the land at Rs. 59 per sq. yard but who had reduced it to Rs. 27 per sq. yard treating the building standing on the land as an encumbrance. It was pointed out in audit that the valuation did not appear to be rational in view of the steep rise in the values of urban properties. The Central Board of Direct Taxes ordered the property to be valued departmentally. In October, 1974, the Valuation Cell of the Department determined the value of the property at Rs. 19.47 lakhs for the assessment year 1967-68, Rs. 22.83 lakhs for the assessment year 1968-69 and Rs. 25.93 lakhs for the assessment year 1969-70. Under the executive instructions of the Department, the value as determined by the Valuation Officer is binding on the Wealth-tax Officer.

If the value of the property as determined by the departmental Valuer is adopted, the wealth-tax further leviable would work out to Rs. 2,84,116 for the three assessment years.

The Ministry have stated (February, 1976) that assessments have been re-opened following the Valuer's report.

(iii) An individual had one-sixth share of a land and building in an urban commercial area and one-seventh share of the adjoining vacant site measuring 28.90 grounds. In September, 1971, a registered Valuer valued the land and building at Rs. 20,93,000 under the capitalisation method and at Rs. 20,88,000 under the 'rental valuation method' but recommended a value of Rs. 8,50,000 for adoption on the plea that the rental value was high and was not a permanent feature. The Valuer valued the vacant site at Rs. 1,44,500 adopting a rate of Rs. 5,000 per ground as against the rate of Rs. 60,000 per ground adopted for the adjoining built-up site on the plea that the vacant site was occupied by unauthorised squatters and their eviction was difficult.

Adopting the values certified by the Valuer, the Wealth-tax Officer completed the wealth-tax assessment of one of the co-owners of the building and the site for the assessment year 1971-72 in January, 1972. On being pointed out in audit in January, 1973 that the values adopted in the wealth-tax assessment were very low, the Department referred the valuation of the building and the vacant site to the departmental Valuation Cell. The value of the two properties was, thus, determined in November, 1974, after considering all aspects, at Rs. 27,12,100 and Rs. 5,16,600.

On the basis of the valuation determined by the departmental Valuation Cell, the under-assessment of wealth amounted to Rs. 22,34,200 for one assessment year alone (1971-72) involving short levy of wealth-tax of Rs. 31,440 on the six co-owners.

The Ministry have accepted the objection.

(iv) In the wealth-tax assessments of an assessee for the assessment years 1971-72 and 1972-73, the value of certain properties consisting of buildings, *chawls* and *dhobi ghats* was adopted as Rs. 2,00,000 on the basis of a valuation made by an approved Valuer in April, 1966 when the annual rental income from the properties was Rs. 11,702. Although in the previous years relevant to the assessment years 1971-72 and 1972-73, the annual rental income from these properties, as per the income-tax records, had risen to Rs. 17,417, the value of the properties was not re-assessed. On the basis of the increased rental income capitalised at twenty times, the value of the properties would work out to about Rs. 3,50,000. The total wealth of the assessee was, therefore, under-valued by Rs. 1,50,000 in each of the above two years resulting in a short levy of wealth-tax (including additional wealth-tax on urban property) of Rs. 30,950.

The Ministry have stated (January, 1976) that the audit objection is under consideration.

(v) While working out the interest of each of the three partners in a firm for the purpose of their assessment to wealth-tax for the assessment year, 1971-72 (assessment completed in January, 1972), a building in an urban area owned by the firm was taken at its book value of Rs. 22,93,650 and not at its market value. The property was valued by an architect, early in 1972, at Rs. 45,65,088. The value, as returned by two of the three partners for the assessment year, 1972-73, was Rs. 35,70,814. The Wealth-tax Officer adopted this returned value of Rs. 35,70,814 in the wealth-tax assessment of one of the partners for the assessment year 1972-73 in November, 1972.

When the large variation in the value of the property adopted for these two consecutive assessment years was pointed out by Audit in June, 1974, the Department referred the valuation to the departmental Valuation Cell in January, 1975. Even if the value is computed at eight times the annual letting value determined under the Income-tax Act for the assessment year 1971-72, it would work out to Rs. 30,70,480 for that year. The consequent under-assessment of wealth and wealth-tax would be Rs. 7,76,830 and Rs. 28,605 respectively.

The Ministry have accepted in principle (March, 1976) the failure of the Wealth-tax Officer to refer the case to Valuation Cell.

(vi) An assessee returned the value of his agricultural lands at Rs. 2,630 for the assessment years 1970-71, 1971-72 and 1972-73 on the basis of a Valuer's report. The value had been computed at Rs. 500 per acre. Accepting the value returned, the assessments for the three years were made by the Department in January and July, 1973. In the return for the assessment year 1973-74 filed in August, 1973, the assessee returned the value of the same lands as Rs. 3,94,500 adopting a rate of Rs. 75,000 per acre. The value returned was accepted by the Wealth-tax Officer and the assessment was completed in October, 1973. When the large variation in value between the assessment years 1970-71 to 1972-73 and 1973-74 was pointed out in audit

in September, 1974, the Department revised the assessments for the assessment years, 1970-71 to 1972-73 in January, 1975 adopting a rate of Rs. 30,000 per acre. The consequent increase in value of net wealth for the three years was Rs. 4,65,510 involving additional demand of wealth-tax of Rs. 23,972.

The Ministry have accepted the objection; additional demand raised and collected is of Rs. 23,963.

(vii) In the wealth-tax assessment of an individual for the assessment year 1973-74, completed in December, 1973, the taxable wealth was determined as Rs. 7,66,900. This included certain urban lands, 111 grounds in extent, the value of which was returned by the assessee and adopted in the assessment as Rs. 5,50,000. In the valuation certificate filed by the assessee (issued in September, 1968 by an approved Valuer), the probable value of the land in two years' time had been estimated at eight lakhs of rupees. The value of the property for the assessment year 1973-74 should have, therefore, been not less than Rs. 8,00,000 as against Rs. 5,50,000 adopted in the assessment. The under-valuation of the property led to a short levy of wealth-tax and additional wealth-tax of Rs. 17,669 for 1973-74 alone.

On this being pointed out in audit in May, 1974, the Department stated in January, 1975 that action had been initiated to re-open the assessments for the assessment years 1970-71 to 1973-74 to consider the market value of the property.

The Ministry have accepted the objection and stated that additional demand has been raised and collected.

(viii) For the purpose of assessment to wealth-tax, the value of shares in companies is calculated at their market value if the shares are regularly quoted at a recognised stock exchange. Where the shares are not so quoted, the value is determined by the break-up value method, *i.e.* on the basis of the amount by which the assets of the company exceed its liabilities (as shown

in the relevant balance sheet but subject to certain prescribed adjustments) :

(a) In determining the value of unquoted shares by break-up value method, a provision for tax is allowable only to the extent of taxes payable on the book profits. In the case of two individuals, in determining the value of 13,475 unquoted equity shares of Rs. 100 each in a private limited company on the valuation dates relevant to the assessment years 1970-71 to 1972-73, provisions of Rs. 20,50,732, Rs. 23,12,812 and Rs. 25,98,172 made by the company towards income-tax payable by it, were allowed as liabilities in full instead of restricting them to the net liabilities after taking into account the advance taxes paid. This resulted in an under-assessment of wealth by Rs. 26,26,452 with consequent short levy of wealth-tax of Rs. 75,543 in the assessments completed in June, 1971 and January, 1973 in the two cases for the three years.

The Ministry have accepted the objection.

(b) The value of a depreciable asset to be adopted for valuation of unquoted equity shares, shall be its 'written down value' *i.e.* the actual cost less depreciation allowed in income-tax assessments upto the preceding valuation date and not its book value. For depreciable assets acquired during the previous year, such 'written down value' is the actual cost irrespective of any depreciation admissible for the year.

In the case of two assessees holding 5001 and 5890 unquoted equity shares of a company, the break-up value of shares was worked out after erroneously reducing the value of the assets, added during the

previous year corresponding to the valuation date, 31st March, 1972, by the amount of depreciation for the year. This resulted in an under-assessment of wealth of Rs. 7,78,429 in the assessment year 1972-73 leading to a short levy of wealth-tax of Rs. 16,219.

The Ministry have accepted the objection.

(c) In two other cases, mistakes in the valuation of unquoted shares resulted in an under-assessment of wealth of Rs. 7,31,080 in the assessment years 1970-71 to 1973-74 with a total tax undercharge of Rs. 14,743.

The Ministry have accepted the objection in one case; in the other, they have accepted it partly.

(ix) Where a person carries on business in partnership, his interest in the partnership business, as on the valuation date, is includible in his net wealth for assessment to wealth-tax. The valuation of such interest, which is based on the net worth of the firm, is made in accordance with the Wealth-tax Rules issued under the Wealth-tax Act, 1957. In the case of 8 assessees, assessed in 3 Commissioners' charges, it was noticed that there was under-valuation of the assessees' interests due to an erroneous computation of the net worth of their firms. The under-valuation resulted in under-assessment of wealth of Rs. 22,72,284, in the aggregate in the assessment years 1969-70 to 1973-74, with a wealth-tax effect of Rs. 29,124.

The Ministry have accepted the objection in two cases; the additional demand raised in these two cases is Rs. 8,734. In two other cases, the Ministry have stated that there was no purchase value for the goodwill of the firm of which the assessees were partners. The Ministry's final reply in the remaining four cases is awaited (March, 1976).

(iv) The value of investments in shares and securities is exempt upto Rs. 1.50 lakhs. Where, however, the aggregate value of specified investments of the nature of ten year treasury savings deposit certificates, fifteen year annuity certificates, ten year defence deposit certificates, twelve year national plan certificates etc., held by an assessee continuously from a date prior to 1st March, 1970 is, in itself, in excess of Rs. 1.50 lakhs, the exemption limit is to be raised to the extent of the value of such deposits and certificates.

In para 53(i) of the Audit Report, 1972-73 and para 56C(iii), of the Audit Report, 1973-74, instances of excessive exemption allowed in this regard were pointed out. Similar mistakes were again found in the case of 30 assessees, assessed in as many as sixteen Commissioners' charges. In these cases, the Wealth-tax Officers, while making assessments for the assessment years 1971-72 to 1974-75, allowed exemption for the specified investments over and above Rs. 1.50 lakhs, even though the specified investments, in themselves, did not exceed Rs. 1.50 lakhs in each case. The excessive exemptions in these cases resulted in an aggregate tax undercharge of Rs. 89,774.

The Ministry have accepted the mistakes in all the cases; an additional demand of Rs. 74,171 is stated to have been raised in 26 cases of which a demand of Rs. 40,667 is stated to have been collected. In one case rectification of the undercharge of Rs. 4,517 for the assessment year 1971-72 is reported to have become time-barred.

(v) As a result of amendment of the Act from the assessment year 1972-73, the exemption, available earlier for one house or part of a house belonging to an assessee and exclusively used by him for residential purposes, is admissible in respect of one house or part thereof even if it is not used by the assessee but is let out. This removal of the restriction about personal use does not mean extension of the exemption to non-residential buildings. In the case of eight assessees, however, it was noticed

that exemptions totalling Rs. 9,41,484 were irregularly allowed in the assessments for the years 1971-72 to 1974-75 in respect of buildings used as factories, cinemas and commercial premises. The resultant short levy of wealth-tax was of Rs. 17,542.

The Ministry have taken the view that the term 'house' covers not only buildings used for residential purposes but also those used for other purposes.

(vi) Till the amendment of the Act from 1st April, 1975, the exemptions in respect of a house or part of a house and agricultural land together could not exceed Rs. 1.50 lakhs. It was, however, noticed in three cases that exemptions totalling Rs. 4,54,024 were allowed over and above this limit in wealth-tax assessments for the years 1971-72 to 1973-74. As a result, there was a short levy of wealth-tax of Rs. 9,940.

The Ministry have accepted the objections in all the three cases and have stated that in two cases an additional demand of Rs. 7,723 has been raised and collected.

72. *Mistakes in computation of net wealth*

(i) 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. Instances of failure to observe this principle were pointed out in para 53(v) of the Audit Report, 1972-73 and para 55(iv) of the Audit Report, 1973-74. Similar mistakes were again noticed in audit in the case of as many as 19 assessees in six different Commissioners' charges where debts secured on, or incurred for, assets like life insurance policies, provident funds, house property, agricultural lands and implements etc. were allowed as deduction in the computation of net wealth, even though these assets were not charged to wealth-tax. The irregular deduction of Rs. 39,62,664,

in the aggregate, made in these cases resulted in an under-assessment of wealth-tax of Rs. 36,905 in different assessment years between 1967-68 and 1973-74.

The Ministry have accepted the mistakes in all the cases; additional demands of Rs. 24,664 are stated to have been raised in 13 cases.

(ii) An individual created a waqf for religious and charitable purposes by earmarking 4,000 preference shares of Tata Iron and Steel of a face value of Rs. 4,00,000. On his death, his son 'A' sold the above shares but did not pay the sale proceeds over to the trustees of the waqf. On a representation by the trustees, the matter was arbitrated upon and in a compromise award the arbitrator, on 9th January, 1947, directed that the corpus of the waqf be treated as the market value of the shares as on date (Rs. 7,00,000). This was agreed to be paid in ten annual instalments (ending in 1957) and until such time this amount was fully paid up, 'A' was directed to pay annually, in addition to the instalment due, the *pro rata* income accruing from such of the corpus of the waqf as was still undelivered. In order to secure the aforesaid payments, 'B', another heir of the settlor of the waqf, placed the total income of a *jagir* at the disposal of the Controller of Waqf until such time the amount representing the value of the corpus was fully paid up and also authorised the trustees to recover, at the end of each year through the Officers of the State, such amount as might have remained unpaid under the terms of the compromise. This *jagir* was converted into a cash annuity of Rs. 1,07,532 per annum in 1953 and till the death of 'B', in August, 1961, not a single instalment had been paid to the trustees.

In the wealth-tax assessment of 'B' for the assessment year 1957-58, the claim for deduction of the liability was disallowed on the ground that the time limit for the payment of the corpus had long expired and no action had been taken by the trustees to recover the corpus. In appeal, however, half the liability of Rs. 7,00,000 was allowed.

'B' died in August, 1961 and, in his estate duty assessment, the Assistant Controller of Estate Duty disallowed the liability as non-existing.

In the wealth-tax assessment of the five legal heirs of 'B' for the assessment years 1971-72 and 1972-73, deduction for the entire liability, with the estimated present value of Rs. 11,32,500, was, however, allowed as an outstanding debt in certain proportions from the gross assets of the assessees. This deduction was allowed despite the fact that twenty-three years had elapsed since the award during which the trustees had not taken any legal steps to enforce the recovery of the debt and since 1953, the liability, if at all, stood secured on an annuity which is a non-taxable asset. As the Department themselves have held in the estate duty assessment that the debt was non-existing even in 1961 and in any case, as it was secured against a non-taxable asset, it should not have been deducted in the wealth-tax assessments for the assessment years 1971-72 and 1972-73 or earlier years. The incorrect allowance resulted in an under-assessment of wealth-tax of Rs. 33,420 for these two years alone in the case of the said five assessees. The under-assessment for the earlier years in the case of these assessees and in the case of 'B' or his estate is also to be computed.

The Ministry have accepted the objection in principle.

(iii) In the wealth-tax assessments of an assessee for seven assessment years from 1965-66 to 1971-72, net wealth was wrongly computed inasmuch as tax liabilities outstanding for more than twelve months on the respective valuation dates were allowed as deduction against the provisions of the Wealth-tax Act, 1957; the current years' wealth-tax liabilities were wrongly computed against the executive instructions of the Central Board of Direct Taxes issued in November, 1968 and an under-assessment of wealth of Rs. 3,85,000 was made due to a totalling mistake in the assessment order for the year 1970-71. The additional wealth-tax on urban properties was also not correctly

computed for the assessment years 1966-67 to 1970-71. As a result of all these mistakes, there was a total short levy of wealth-tax of Rs. 3,98,290 in all these seven years.

The Ministry have accepted the short levy to the extent of Rs. 2,40,072 and have stated that the relevant assessments have been rectified. They have added that the recovery of the additional demand is not possible as one of the beneficiaries of the assessee-trust has filed a writ petition challenging the validity of Murshidabad Estate (Trust) Act, 1963 empowering the Official Trustee to dispose of the properties of the Trust for payment of liabilities of the Estate.

(iv) An assessee returned for the assessment year 1966-67 a net wealth of Rs. 14,75,500. He later on filed a revised return and returned a net wealth of Rs. 8,73,891 only. In explanation of the decrease in his net wealth, the assessee stated that his grandfather had expired on 17th April, 1965 and, according to the will left by the deceased, his estate comprising a deficit of Rs. 4,31,190 had passed to the assessee on the former's death.

The Wealth-tax Officer accepted the claim of the assessee for set-off of the deficit against his personal wealth and assessed the net wealth at Rs. 9,06,680 in the assessment order passed on 25-2-1971. Audit pointed out in January, 1973 that the liability of an heir of a deceased Hindu to pay the debts of the deceased was only to the extent of the assets inherited by him from the deceased and that the irregular set-off of this deficit had resulted in an under-assessment of total wealth by Rs. 4,31,190 and short levy of tax of Rs. 7,691.

While accepting the objection, the Ministry have stated in February, 1976 that no remedial action is possible due to limitation.

(v) The Wealth-tax Act, 1957 prohibits the deduction of tax which is outstanding for more than 12 months on the valuation date from the assessable wealth. In the case of three individuals, their net wealth for the assessment years 1961-62 to

1972-73 was computed by the Department after allowing deductions on account of wealth-tax and income-tax liabilities which had been outstanding for more than 12 months on the respective valuation dates. The allowance of these inadmissible deductions led to undercharge of wealth-tax of Rs. 13,862.

The Ministry have accepted the mistakes and stated that the additional demand raised and collected is of Rs. 13,862.

(vi) Wealth-tax is not leviable on furniture intended for the personal use of an assessee.

In the wealth-tax assessments of an individual for the assessment years 1967-68 to 1970-71, advance payments of Rs. 10,94,000 made for the purchase of furniture were allowed an exemption, though the total value of the furniture actually received was only Rs. 5,880. 'Personal use' by the assessee could not be made of furniture worth Rs. 10,88,120 not received. There was, thus, an under-assessment of wealth aggregating Rs. 10,88,120 involving a total short levy of tax of Rs. 29,886 in these four assessment years.

The Ministry have stated (January, 1976), that the audit objection is under consideration.

(vii) Mistakes in the computation of net wealth resulting from double or excessive deductions for certain exemptions, liabilities etc. were noticed in the case of yet other six assessees in different Commissioners' charges. The resultant under-assessments of wealth-tax in various assessment years between 1967-68 and 1972-73 ranging between Rs. 1,678 and Rs. 9,437 totalled Rs. 25,247.

The Ministry have accepted the mistakes in all the cases; an additional demand of Rs. 15,810 is stated to have been collected in 5 cases.

73. *Mistakes in calculation of tax*

(i) The net wealth of a Hindu undivided family assessee which included a share in the value of 17 house properties was determined at Rs. 1,40,928 and Rs. 1,42,300 for the assessment years 1972-73 and 1973-74 respectively. Owing to the error in the computation of value of the properties, calculated at 20 times of annual letting value, the share was taken as Rs. 97,600 instead of Rs. 1,08,837 in the assessment year 1972-73. Again, in the assessment year 1973-74 assessee's share in the value of those properties was taken as Rs. 1,08,223 in place of Rs. 1,52,602 due to computation error and determination of the value of house properties at 15 times instead of at 20 times of the annual letting value as had been returned and adopted in the immediately preceding year. Further, in both the assessment years, against the admissible exemption upto rupees one lakh in respect of assessee's share in the value of one house or part thereof, his share in the value of all house properties was aggregated and then exemption up to rupees one lakh allowed from such aggregate value. By so doing, the assessing officer allowed to the assessee exemptions of Rs. 97,600 and rupees one lakh instead of the admissible exemptions of Rs. 21,977 and Rs. 50,232 in the assessment years 1972-73 and 1973-74 respectively. These mistakes led to under-computation of the wealth of the assessee by Rs. 86,860 and Rs. 94,147 in the assessment years 1972-73 and 1973-74 respectively resulting in undercharge of tax of Rs. 4,596 in the two years.

Similarly, net wealth of seven other co-owner Hindu undivided family assessees was under-computed by Rs. 10,49,446 leading to undercharge of tax of Rs. 22,427.

Total undercharge of tax from all the eight assessees in both the years amounted to Rs. 27,023.

The Ministry have accepted the objection and stated that additional demand has been raised and collected in all the eight cases.

(ii) The wealth-tax assessments of a Hindu undivided family for the assessment years 1967-68 and 1968-69 were revised in March, 1973 to give effect to an appellate decision. In determining the tax payable at the time of revision, the tax on the net wealth exceeding Rs. 20 lakhs was levied at two per cent instead of at two and a half per cent resulting in a short levy of tax of Rs. 24,560 for the two assessment years.

The Ministry have accepted the objection and stated that additional demand has been raised and collected.

(iii) In the case of five assessees in different Commissioners' charges, mistakes in the application of the tax rates given in the Schedule to the Wealth-tax Act, 1957 were noticed in audit of the assessments for various years between 1964-65 and 1972-73. The resultant undercharge of tax was of Rs. 23,585.

The Ministry have accepted the mistakes in all the cases and stated that additional demand raised is of Rs. 13,632 of which Rs. 3,102 has been collected.

(iv) By an amendment of the Wealth-tax Act, 1957, made by the Finance Act, 1971 (effective from the assessment year 1972-73), the initial exemption of Rs. 1 lakh in the case of an individual and Rs. 2 lakhs in the case of a Hindu undivided family were withdrawn with the result that a uniform rate structure is now applicable to individuals and Hindu undivided families alike. The initial exemption of Rs. 1 lakh or Rs. 2 lakhs has ceased to be available from the assessment year 1972-73 in cases where the net wealth exceeds these limits. Instances of irregular allowance of initial exemption in the case of assessees having assessable net wealth for the assessment year 1972-73 above these limits were pointed out in para 52(A) (iii)(c) of the Audit Report for 1972-73 and para 52(B) (i) of the Audit Report for 1973-74. Similar mistakes have been noticed in the case of as many as 14 assessees in different Commissioners' charges where inadmissible initial exemptions were

incorrectly allowed in the assessment years 1972-73 and 1973-74. The resultant undercharge of wealth-tax was of Rs. 20,723.

The Ministry have accepted the mistakes in all the cases and stated that in these cases an additional demand of Rs. 15,257 has been raised of which Rs. 13,373 has been recovered.

(v) In the case of two other assessees, basic exemption allowed in assessment for the years 1970-71 and 1971-72 was of Rs. 2 lakhs instead of Rs. 1 lakh and, in the case of one of them, tax rate was incorrectly applied while calculating the tax for the assessment years 1972-73 and 1973-74. These mistakes resulted in a short levy of tax of Rs. 4,924. The mistakes have been rectified and the short demand of Rs. 4,924 has been collected.

The Ministry have accepted the mistakes in both the cases.

(vi) Cases were reported through para 70(a) of the Audit Report, 1970-71, para 39(iii) of the Audit Report, 1971-72 and para 52(A) (ii) of the Audit Report, 1972-73 where, despite a revision in the rate of tax for the relevant assessment year, the tax was calculated at the rates applicable to earlier years. Similar cases pertaining to as many as 7 assessees in different Commissioners' charges were noticed again in the year under report. In these cases, in making assessments for the assessment years 1971-72 and 1972-73, rates applicable in the assessment year 1970-71 were applied with consequent undercharge of wealth-tax of Rs. 18,560 in all. Rectification of the mistakes has been made in all the cases creating an additional demand of Rs. 18,560. A sum of Rs. 11,641 has been collected.

The Ministry have accepted the mistakes in all the cases.

(vii) In the case of 23 assessees in thirteen different Commissioners' charges, mistakes were noticed in the calculation of the amounts of tax in the assessments for various

years from 1961-62 to 1963-64 and 1967-68 to 1973-74. The resultant short levy of wealth-tax is of Rs. 99,400.

The Ministry have accepted the mistakes in 22 cases and stated that an additional demand of Rs. 83,538 has been raised of which Rs. 51,427 has been collected.

(viii) Under the Wealth-tax Act, 1957, wealth-tax payable by an individual who is not a citizen of India and who is not resident in India shall be reduced by an amount equal to 50 per cent of the tax payable.

The aforesaid relief was incorrectly allowed to one individual who was not a citizen of India but who was resident in India (though not ordinarily resident) in assessment for the years 1969-70 to 1972-73 and to another who was a citizen of India in assessment for the years 1967-68, 1968-69 and 1971-72. These mistakes respectively resulted in short levy of wealth-tax of Rs. 5,328 and Rs. 2,271.

The Ministry have accepted the mistake in both the cases and stated that an additional demand of Rs. 7,599 has been raised of which Rs. 2,271 has been collected.

(ix) In the following cases mistakes were noticed in computation of the value of life interest of beneficiaries in trusts which is includible in net wealth :—

(a) The Rules framed under the Wealth-tax Act, 1957 prescribe the mode of computation of the value of life interest of a beneficiary in a trust. Such computation is to be based on the present value of income receivable (as reduced by expenses incurred on collection subject to a prescribed limit) from year to year. The income that may be presumed to arise year after year is to be taken as the average of three years' income (including the year ending on the valuation date).

In the case of an assessee, who was a beneficiary in several trusts, computation of the value of her life interest for the assessment years 1963-64 to 1971-72 was incorrectly made inasmuch as (i) income adopted was for the year ending on the valuation date after deduction of tax at source (which is not an expense incurred on collection) instead of an average of three years' income before such deduction and (ii) capitalisation of the income, on actuarial principle, was made at an interest rate of 5 per cent instead of the prescribed rate of 6½ per cent. These mistakes resulted in a total short levy of wealth-tax of Rs. 4,532 in all these assessment years.

The Ministry have accepted the mistakes and stated that additional demand has been raised.

(b) In case of three other assessees in different Commissioners' charges mistakes in the calculation of their life interest in trusts were also noticed with the result that there was an under-assessment of wealth totalling Rs. 6,65,698 and wealth-tax of Rs. 11,590 for different assessment years, 1968-69 and from 1970-71 to 1973-74.

The Ministry have accepted the mistakes in case of two assessees and have stated that additional demand raised and collected is Rs. 7,657.

74. *Non-levy or incorrect levy of additional wealth-tax*

(i) Under the Wealth-tax Act, 1957, where the net wealth of an individual or a Hindu undivided family includes buildings or lands (other than premises for use by him for his business or profession), or any rights therein, situated in an urban area, additional wealth-tax is leviable on the value of urban assets. The purpose of the levy was to curb excessive investment in urban property. Finding that Government had not undertaken any review to find out how far this objective had been achieved, the Public Accounts Committee had desired in para 2.60 of their 88th Report (Fifth Lok Sabha) that such a review should be

conducted after ascertaining the revenue realised through additional wealth-tax and the number of cases involved from year to year. As reported by the Ministry to the Committee in October, 1973, the matter was referred by them to the Chief Economic Adviser who was of the view that the review might be deferred till the urban immovable property ceiling laws were enacted and their impact on additional wealth-tax on such property was known.

The Committee in para 1.21 of their 118th Report (Fifth Lok Sabha), after considering the report of the Government, reiterated their view that, in spite of the difficulties involved, the study of the position as recommended earlier continued to be urgent and would, in fact, be helpful to rational implementation of economic measures envisaged by the country's national policy. The Ministry were advised to give further consideration to this issue (April, 1974). Report about action taken by the Ministry in this regard is awaited.

(ii) Instances of omission to levy or of incorrect levy of additional wealth-tax have been repeatedly pointed out in the Audit Reports of earlier years. It will be noticed from the following instances that such omissions/mistakes are still fairly widespread.

(a) On the assessed value of urban immovable assets of Rs. 18,05,034 held by one non-resident individual, additional wealth-tax levied for the assessment years 1971-72 and 1972-73 was Rs. 46,352 instead of Rs. 81,350 correctly leviable. The under-charge of tax of Rs. 34,998 was the result of omission to keep in view the amendments to the Wealth-tax Act, 1957 carried out by the Finance Act, 1970 with effect from the assessment year 1971-72.

Further, wealth-tax on the assessed net wealth of Rs. 25,44,030 of the same assessee for the assessment year 1969-70 was under-charged by Rs. 3,850 due to incorrect application of rates of tax.

The Ministry have stated in February, 1976 that the mistakes have been kept in view by the assessing officer while reframing the assessments which had been set aside by an appellate authority.

(b) In the case of another non-resident individual, additional wealth-tax on urban assets valued at Rs. 22,44,833 for each of the assessment years 1966-67 to 1969-70 was correctly leviable to the extent of Rs. 25,896 whereas the additional wealth-tax levied by the Department in each of these years amounted to Rs. 20,896 only. This resulted in total tax undercharge of Rs. 20,000 for the four assessment years.

The Ministry have stated that the Appellate Assistant Commissioner has set aside the assessments and added that the points raised will be kept in view while framing fresh assessments.

(c) The assessed net wealth of three assessees for the assessment year 1971-72 included *inter alia* urban immovable properties valued at Rs. 6,94,800, Rs. 8,41,056 and Rs. 8,94,600 on which additional wealth-tax was leviable to the extent of Rs. 9,740, Rs. 17,052 and Rs. 19,730 respectively. The Department, however. did not levy any such tax in the case of the first assessee and in the other two cases, additional wealth-tax only of Rs. 1,532 and Rs. 1,946 was levied. The short levy of wealth-tax was, thus, of Rs. 9,740, Rs. 15,520 and Rs. 17,784 respectively, totalling Rs. 43,044. The mistakes have been rectified in all the cases creating an additional demand of Rs. 43,044.

The Ministry have accepted the objections.

(d) In the wealth-tax assessments of an individual for the assessment years 1971-72 and 1972-73 additional wealth-tax was levied inadvertently at Rs. 2,375 and Rs. 2,101 respectively instead of at Rs. 21,875 and Rs. 15,477 correctly leviable. This resulted in a total short levy of additional wealth-tax of Rs. 32,876. Though the case was seen in Internal Audit, this mistake was not noticed by them.

The Ministry have accepted the mistake.

(e) In the case of 12 other assessees in different Commissioners' charges, though the assessed net wealth for various assessment years between 1965-66 and 1973-74 included urban immovable property valued, in the aggregate, at Rs. 1,81,71,489, no additional wealth-tax was levied. The effect of this omisssion along with mistakes in calculation of wealth-tax in some of these cases was a short levy of tax of Rs. 1,00,491. In the case of one of these assessees, additional wealth-tax was levied in the original assessment for the year 1973-74 itself but the omission to levy additional wealth-tax of Rs. 16,110 for the years 1971-72 and 1972-73 was not rectified by revising the assessments for these earlier years.

The Ministry have accepted the objection in all the cases. In 8 cases an additional demand of Rs. 70,298 has been raised of which Rs. 27,106 has been collected.

75. *Non-levy or incorrect levy of penalty and non-levy of interest*

(i) Penalty is leviable if an assessee has, without reasonable cause, failed to furnish the wealth-tax return within the time prescribed in the Act. Emphasising the need for levying the penalty, the Central Board of Direct Taxes, in their executive instructions issued in July, 1969, directed that where the Wealth-tax Officer has decided not to levy any penalty having regard to the circumstances of the case, a note should be recorded in the order-sheet giving detailed reasons for not invoking the penalty provisions. In spite of this being pointed out in para 57 of the Audit Report for 1972-73 and para 59 of the Audit Report for 1973-74, instances continued to be noticed where the Wealth-tax Officers had not recorded reasons for not invoking the penalty provisions.

(a) In the case of 9 assessees in the same Commissioner's charge, there was delay ranging from 1 to 30 months in filing the wealth-tax returns for various assessment years between 1966-67 and 1973-74. Though no penalty proceedings were initiated,

there was no indication from the assessment records that the Wealth-tax Officer had decided against the levy of penalty. The minimum penalty leviable in these cases was Rs. 2,25,581.

The Ministry have accepted the failure of the Wealth-tax Officer to record reasons for not initiating penalty proceedings for late filing of wealth-tax returns in the case of four of the assessees.

(b) In the case of five other assessees in four Commissioners' charges, the assessing officer did not record reasons for not invoking the penalty provisions of the Act in respect of delay in submission of returns by the assessees for the different assessment years between 1967-68 and 1972-73. The minimum penalty leviable in their case was Rs. 78,884.

The Ministry have accepted in principle the objection in the case of one assessee on whom penalty of Rs. 13,116 has been levied. Non-levy of penalty of Rs. 10,179 in another case has also been accepted by the Ministry but they have stated that no action is possible now (February, 1976). In the case of yet another assessee the Ministry have accepted the failure on the part of the Wealth-tax Officer to record reasons for non-levy of penalty. In the remaining two cases their final reply is awaited (March, 1976).

(ii) An assessee submitted his returns of wealth for the years 1963-64 to 1965-66 on 29th March, 1971. On the same day, regular assessments for these years were completed and penalty proceedings for late filing of returns of wealth were initiated. The amount of minimum penalty leviable was Rs. 65,900 and orders to complete the proceedings were to be passed by 31st March, 1973. It was, however, noticed in audit, in February, 1974, that no penalty orders had been passed, which resulted in a loss of revenue of Rs. 65,900. Subsequently, in September, 1974, it was further noticed by Audit that :—

(a) On 28th March, 1974 *i.e.* after the limitation period, the Wealth-tax Officer had passed orders to drop the penalty

proceedings for the assessment year 1963-64 and to levy penalty of Rs. 30,315 for the assessment years 1964-65 and 1965-66. The minimum penalty leviable for all these years was Rs. 65,900.

(b) The assessee submitted, on 14th May, 1974, an application to the Commissioner for waiving the penalty imposable for late filing of returns. As the application was then time-barred, no action could have been taken on it. The penalty was, however, reduced by the Commissioner from Rs. 30,315 to 2,600 in July, 1974.

The Ministry have accepted the mistake in dropping the penalty for the year 1963-64 and levying penalty for the assessment years 1964-65 and 1965-66.

(iii) An assessee was brought on the General Index Register of the Wealth-tax Officer in October, 1970 when notice calling for return of wealth-tax for the assessment year 1970-71 was issued to him under Section 14(2) of the Wealth-tax Act, 1957. The assessee had net wealth in excess of the exemption limit for the earlier assessment years but notices were not issued in respect of these years. In May, 1971, the assessee filed returns for the assessment year 1970-71 as well as for the earlier years from 1964-65 to 1969-70. The assessee simultaneously submitted an application to the Commissioner for waiver of penalty leviable for late filing of returns for the assessment years 1964-65 to 1969-70. Treating the returns for these six years as having been filed by the assessee voluntarily under the 'Voluntary Disclosure Scheme', the Commissioner waived, under Section 18(2A) of the Act, penalty of Rs. 32,607 leviable for all these years.

In another case, Wealth-tax Officer issued notices to an assessee, in 1967 calling for wealth-tax returns for the assessment years 1966-67 and 1967-68 and in November, 1971 for the return for the assessment year 1971-72. However, no notices calling for returns for the assessment years 1968-69 to 1970-71 were issued. The assessee submitted returns for all the assessment years from 1966-67 to 1971-72 in February, 1972 and also an

application to the Commissioner for waiver of penalty imposable for late filing of returns for the assessment years 1968-69 to 1970-71. The returns for these three years were similarly treated as voluntary returns and penalty of Rs. 17,730 imposable for all the three years was waived by the Commissioner.

If the Department had taken action under Sections 14(2) and 17 of the Act calling for the returns for the assessment years 1964-65 to 1969-70 in the first case and 1968-69 to 1970-71 in the second case, the provisions of Section 18(2A) of the Act would not have been applicable with the result that penalty of Rs. 50,337 would not have been waived.

The Ministry have accepted the objection in principle in the second case. In not accepting the objection in the first case, they have stated that the Wealth-tax Officer could not have anticipated in October, 1971 that the assessee had taxable wealth for earlier years without examining the return for 1970-71. In Audit's view, the returns filed for the assessment years 1964-65 to 1969-70, after a notice calling for the return for the assessment year 1970-71 had been issued by the assessing authority, could not have been treated as voluntary returns.

(iv) An assessee failed to file his return of wealth for the assessment years 1967-68, 1968-69 and 1969-70 in time. The Wealth-tax Officer initiated the penalty proceedings under Section 18(1)(a) of the Wealth-tax Act, 1957 and issued notice under Section 18(2) thereof in January, 1971 to which no reply was received. The assessee did not also respond to the show cause notice served on him. The assessing officer was, however, transferred before he could complete the proceedings. His successor finalised the proceedings (in March, 1973) on the basis of the notice issued in January, 1971 and levied penalty amounting to Rs. 44,287 without giving a fresh opportunity to the assessee of being heard. In appeal, the Appellate Assistant Commissioner quashed the orders levying penalty on the ground that the succeeding assessing officer did not allow the assessee a

fresh opportunity of being heard as provided in the proviso to section 39 of the Act. Revenue of Rs. 44,287 was thus lost due to the failure of the assessing officer to abide by the provisions of the Act.

The Ministry have accepted the loss of revenue due to these procedural irregularities.

(v) Partial partition of the property of a Hindu undivided family, which took place on the valuation date (Dewali, 1968) relevant to the assessment year 1969-70, was accepted by the assessing officer. The assessee delayed filing of return of wealth for the year 1969-70 which resulted in initiating penalty proceedings against him under Section 18(1)(a) of the Wealth-tax Act, 1957. The Commissioner of Wealth-tax, while considering the representation of the assessee against the initiation of the penalty proceedings, confirmed the action of the Wealth-tax Officer. The amount of minimum penalty leviable was Rs. 20,250.

The penalty proceedings were, however, dropped in March, 1974 on the ground that no penalty could have been levied on the family after it had been partitioned on the relevant valuation date. The partition, being only partial in nature, did not obliterate the Hindu undivided family ; it continued to be in existence and remained liable to wealth-tax on assets which were retained by it after such partial partition. It was noticed in audit that the assessee continued to be assessed in the status of a Hindu undivided family even after the partial partition. The proceedings were, therefore, incorrectly dropped resulting in loss of revenue of Rs. 20,250.

The para was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

(vi) Under the provisions of the Wealth-tax Act, 1957, the assessee is required to calculate the tax on the basis of his own return and pay the amount of tax if it exceeds Rs. 500 within

30 days of his furnishing the return. Non-payment of self-assessment tax within the time limit entails a penalty upto 50 per cent of the tax.

In respect of 11 assessees in two Commissioners' charges who failed to pay the self-assessment tax for various assessment years from 1966-67 to 1969-70 and 1971-72 within the prescribed time, the assessing officers did not initiate penal action for the non-payment. Had penal action been taken, the penalty upto a maximum limit of Rs. 23,436 might have been imposable.

The Ministry have stated in respect of 7 assessees that the audit objection has been accepted and the additional demand raised and collected is Rs. 9,927 (later on reduced to Rs. 5,827 in appeal). In the remaining 4 cases they have accepted the failure of the Wealth-tax Officer to record reasons for non-levy of penalty for late payment of self-assessed tax.

(vii) Under the provisions of the Wealth-tax Act, 1957, interest is chargeable at the prescribed rate if the tax demanded is not paid within a period of thirty-five days from the date of service of demand notice.

It was noticed in audit in one ward in December, 1974 and January, 1975 that 7 assessees paid the tax demands relating to various assessment years from 1964-65 to 1972-73 after the expiry of the prescribed period but interest for belated payment amounting in all to Rs. 6,017 was not charged.

In yet another case of assessment of a Hindu undivided family for the assessment years 1967-68 to 1970-71, a similar belated payment of tax demand escaped charge of interest of Rs. 3,790.

The Ministry have accepted the objection in all the 8 cases and stated that demand on account of interest of Rs 9,229 has been raised. Interest which has been realised is Rs. 4,743.

76. *Incorrect status adopted in the assessments*

Under the provisions of the Wealth-tax Act, 1957, the net wealth of the estate of a deceased person is chargeable to tax in the hands of the executor of his estate and for this purpose the executor shall have the same status as that of the deceased on the valuation date immediately preceding his death.

An assessee, who was being assessed to wealth-tax as a person resident in India, had appointed a person residing in Scotland as executor of his estate before his death on 2nd June, 1970. The assessment of his estate in the hands of his executor was, under the provisions of the Act, to be continued to be made in the status of the deceased *i.e.* as 'resident in India' but it was made in the status of a 'non-resident'. The tax was, thus, levied at the concessional rates applicable to non-residents. The adoption of incorrect status resulted in a total short levy of tax of Rs. 5,092 for the assessment years 1970-71 to 1973-74. In the same case, for the assessment year 1970-71 the assessee's share in a coffee estate owned by a partnership was computed less by Rs. 72,120 leading to a further short levy of tax of Rs. 714. The mistakes have been rectified.

The Ministry have accepted the objection.

77. *Over-assessments*

(i) In the case of an individual, the following mistakes in calculation of tax were noticed in audit in June, 1974 :—

(a) For the assessment years 1969-70 and 1970-71, the amount of tax payable worked out to Rs. 1,98,000 and Rs. 2,18,000 respectively instead of Rs. 1,79,000 and Rs. 1,98,000 levied by the Department. Thus, there was an undercharge of wealth-tax of Rs. 19,000 and Rs. 20,000 respectively for these assessment years.

(b) For the assessment year 1971-72, the Department applied the higher rates of tax as applicable for the assessment year 1972-73 and consequently levied wealth-tax of Rs. 5,61,450 instead of the correct tax of Rs. 4,50,450. The resultant over-charge of tax is of Rs. 1,11,000.

The combined effect of these mistakes is an over-assessment of tax of Rs. 72,000. The Ministry have stated that mistake in calculation arose while giving effect to the Appellate Assistant Commissioner's order of 30th November, 1973 and since the said order was not clear as to whether the relief allowed was in respect of movable or immovable property, the Appellate Assistant Commissioner was requested to clarify the position. Report about the tax effect of the revised clarificatory order passed by the Appellate Assistant Commissioner in October, 1975 is awaited (March, 1976).

(ii) The net wealth of an assessee for the assessment year 1970-71 was assessed at Rs. 20,84,029 inclusive of urban immovable property valuing Rs. 17,05,725. Additional wealth-tax payable on urban immovable property was erroneously calculated in accordance with the new provisions and at higher rates of tax made applicable with effect from the assessment year 1971-72 which resulted in excess demand of Rs. 42,991.

The Ministry have accepted the mistake and stated that the amount of over-charge refunded is Rs. 42,991.

(iii) In the case of an assessee, while computing the value of urban assets for the assessment years 1970-71 to 1973-74, the exemption allowable for self-occupied property was inadvertently not given. This resulted in an excess levy of additional wealth-tax of Rs. 12,817.

Though the case was seen by Internal Audit, this mistake was not noticed by them.

The Ministry have accepted the mistake.

(iii) In the case of an assessee, while computing the value of charges, statutory exemptions provided for in Section 5 of the Wealth-tax Act, 1957 were not allowed in assessments for various years between 1971-72 and 1974-75 resulting in an over-charge of tax of Rs. 47,030. Refunds of Rs. 44,802 have been made.

The Ministry have accepted the mistakes in all the cases.

(v) In yet 3 other cases in different Commissioners' charges, calculation mistakes in assessments for various years from 1965-66 to 1968-69 and between 1970-71 and 1972-73 caused an over-charge of tax of Rs. 23,891.

The Ministry have accepted the mistakes in all the cases and stated that refunds of Rs. 23,891 involved in these cases have been made.

B—*GIFT TAX*

78. Gift-tax is levied on the aggregate value of all gifts made by a person during the relevant previous 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 the 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.

79. In paragraph 3.10 of their 50th Report (5th Lok Sabha), the Public Accounts Committee, expressed an apprehension that the Central Board of Direct Taxes had not taken steps to ensure that all cases of gifts of agricultural land were brought to tax and desired that a review should be made to ascertain the extent of non-levy of tax on such gifts in the past. A limited review conducted by Government revealed that out of 10,544 cases of gifts registered in the months of September and October during the years, 1969-70 and 1970-71, gift-tax proceedings had not been initiated in as many as 4,590 cases involving gifts of a total value of Rs. 2.15 crores and gift-tax of Rs. 16.90 lakhs. In paragraph 1.28 of their 103rd Report, the Committee desired 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 of Finance stated in July, 1974, that a complete review from

1965-66 "has been ordered to be completed by 31st December, 1974". The complete results of this review are still awaited (March, 1976).

80. During the test audit of assessments made under the Gift-tax Act, 1958, conducted during the period from 1st July, 1974 to 31st March, 1975, the following types of mistakes resulting in under-assessment of tax were noticed :

1. Gifts escaping assessment.
2. Incorrect valuation of gifts.
3. Irregular/excessive exemptions and reliefs.
4. Incorrect calculation of tax.

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

81. *Gifts escaping assessment*

(i) Under the provisions of the Gift-tax Act, the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth is to be treated as a gift.

In one case, a sum of Rs. 5,62,164 received by an assessee during the previous year relevant to the assessment year, 1971-72 in a state lottery was shared by him equally with his major son and two minor sons by depositing the share of each in a separate bank account. It was noticed in audit in October, 1974 that, while gift-tax was levied on the amount transferred to the major son, no such tax was levied on the total sum of Rs. 2,81,082 transferred to the two minor sons. This resulted in a short levy of tax of Rs. 67,048.

The Ministry, while accepting the objection, have stated (March, 1976) that an additional demand of Rs. 67,048 has been created.

(ii) A father and his son, who had equal interest in certain properties acquired by the State on payment of Rs. 31.90 lakhs as compensation, claimed higher compensation in Court. When the additional compensation of Rs. 5,12,000 (Rs. 3,92,402 as compensation and Rs. 1,19,598 as interest thereon) was settled outside the Court and paid in September, 1966, the son received and utilised the entire amount and the father acquiesced in it. This constituted a gift of half of the additional amount by the father to the son. No gift-tax proceedings were, however, initiated resulting in non-levy of tax of Rs. 35,200.

The Ministry have stated (January, 1976) that there is no element of gift involved as the son discharged certain liabilities of his father between 1966 and 1975 to the extent of half the amount of Rs. 5,12,000.

(iii) An individual created a trust during the previous year relevant to the assessment year 1968-69 by transfer, without consideration, of immovable property valued at Rs. 3,94,680 for making a provision for his grandson. When omission to levy gift-tax of Rs. 65,170 on this transfer was pointed out by Audit in July, 1974, the Department stated that the assessee had submitted a gift-tax return in June, 1969 but the same was not readily available. The Department obtained a duplicate return from the assessee in August, 1974. The assessment proceedings started on the duplicate return are yet to be finalised (March, 1976).

The Ministry have accepted the objection in principle.

(iv) The 'dower' of an assessee which was fixed at Rs. 1,100 at the time of her marriage in July, 1957 was enhanced to Rs. 2,51,000 in December, 1958. The assessee received Rs. 2,54,228 in settlement of the enhanced dower from her husband in cash during the accounting year relevant to the assessment year 1970-71. It has been judicially held in a similar case that 'dower' being a deferred payment was only a contingent debt to be discharged in the event of death or dissolution of marriage. That being so, until and unless such contingency happens, the 'dower' is not due and payable to the assessee.

The above transfer was, therefore, gratuitous and voluntary in nature attracting the provisions of the Gift-tax Act, 1958. The omission to treat this transaction as gift resulted in non-levy of tax of Rs. 24,846.

Also the income derived by the assessee from the asset transferred was not clubbed with the income of her husband as required by the provisions of the Income-tax Act leading to a further short demand of tax of Rs. 3,276.

The Ministry have stated (January, 1976) that action under the Gift-tax Act and Income-tax Act has been initiated as a precautionary measure.

(v) An individual died intestate in November, 1970 and his property comprising shares in companies and interest in houses, devolved on his wife, four sons and seven daughters under the Hindu Succession Act. The wife of the deceased relinquished her share in the estate in favour of the four sons and filed a gift-tax return for the assessment year, 1972-73. This was accepted by the Department and the gift-tax assessment was completed. There was a similar relinqishment of their rights in the estate by the seven daughters in favour of the four sons. The value of the interest relinquished, amounting to Rs. 1,13,148, was not assessed to gift-tax. The gift-tax leviable was Rs. 3,900. On the omission being pointed out in audit, the Department replied that proceedings for levy of gift-tax had been initiated.

The Ministry have accepted the objection.

(vi) A registered firm with three partners having equal shares was reconstituted on 19th October, 1971, by admitting six minors, who did not bring in any capital, to the benefits of partnership. As the admission of the minors resulted directly in the reduction of the share of one of the existing partners by 20⅓ per cent, there was a deemed gift made by that partner. Computed at 20⅓

per cent of three times the average profit earned by the firm in the five preceding years, the value of the deemed gift made by the partner worked out to Rs. 49,000. No proceedings were, however, initiated for charging gift-tax.

On the omission being pointed out in audit (August, 1974), the gift was brought to tax creating and collecting a demand of Rs. 5,350. The Ministry have accepted the objection.

(vii) The Public Accounts Committee have repeatedly emphasised the need for a proper co-ordination with reference to the assessment records pertaining to different direct taxes. (Paragraph 4.12 of the Committee's 186th Report—Fifth Lok Sabha). In 4 cases, in different Commissioners' charges, it was noticed that the information pertaining to gifts made or received by certain persons was available in the assessment records relating to income-tax or wealth-tax but the concerned assessees had not returned these gifts to tax and no action was taken by the Department to bring these gifts to tax. The total value of the gifts in these 4 cases relating to the assessment years 1970-71 and 1971-72 amounted to Rs. 5,55,680, the gift-tax leviable thereon being Rs. 70,501.

The Ministry have accepted the objection in all the cases. In one case, the Ministry have stated that the additional demand of Rs. 12,003 has been raised and collected.

82. *Incorrect valuation of gifts*

(i) Under the provisions of the Gift-tax Act, 1958, the value of any property other than cash transferred by way of gift is to be estimated to be the price which it would fetch if sold in the open market on the date on which the gift is made.

In respect of flats constructed by Tenant Co-partnership Co-operative Housing Societies, the Central Board of Direct Taxes issued instructions in January, 1969 that, where the legal

ownership of flats vests in the individual members and not in the society, the individual members are entitled to claim exemption of the value of the property for purposes of wealth-tax if the properties are used by the members for residential purposes. In March, 1969, the Board issued further instructions that, as the individual members and not the co-operative societies are the owners of the flats, the income arising out of the flats is assessable in the hands of the individual members.

An assessee, owning a flat in Bombay allotted by a co-operative society, gifted the same on 1st November, 1971. The value of the gifted property was returned by the assessee as Rs. 51,800 representing the investment made by him with the society as per the certificates issued by them. The value was accepted and the gift-tax assessment was completed in December, 1973. As the assessee was the legal owner of the flat, the market value of the flat should have been taken into consideration for purposes of levy of gift-tax. In the income-tax assessment for the assessment year 1971-72, the income from the property was assessed at Rs. 10,777. Adopting twenty times of that amount under the rental valuation method, the market value would approximately be Rs. 2,15,500 and the gift-tax leviable would be Rs. 34,135 against Rs. 3,377 levied in the assessment made in December, 1973 involving an under-assessment of tax of Rs. 30,758.

The para was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

(ii) An individual had 5/16th share in a property. He gifted a part of this share on 29th March, 1974. This gift was assessed to gift-tax in the assessment year 1974-75 on the value returned. In the wealth-tax assessment of the individual (valuation date, 31st March, 1974) for the same assessment year, completed on the same day, the assessing officer, not accepting the returned valuation of the property (in respect of the share retained), adopted a much higher value on the basis of an Appellate Tribunnal's decision in respect of value of an identical property in the case of a co-owner of the property.

Omission to correlate and compare the valuation as per assessment under different Acts resulted in an under-assessment of gift by Rs. 1,29,230 involving a short levy of gift-tax of Rs. 32,307.

Though the case had been seen by Internal Audit, this mistake was not noticed.

The Ministry have accepted the objection.

(iii) In the gift-tax assessment made in January, 1974 for the assessment year, 1973-74, in respect of an urban house property settled by an individual on his children in September, 1972, the value of the property was adopted as Rs. 1,68,500 as returned by the assessee. In the wealth-tax assessment of the individual for the earlier assessment years 1969-70 and 1970-71, completed before 1972, the above property had been valued at Rs. 2,52,150 and this was accepted by the assessee. The under-valuation of the property for gift-tax assessment resulted in short levy of gift-tax of Rs. 16,730.

The Ministry have accepted the objection.

(iv) An assessee sold a house property for a consideration of Rs. 82,000 on 7th September, 1970. The Income-tax Officer found that the value was grossly under-stated and determined the market value of the said property at Rs. 1,60,000, while subjecting the transaction to capital gains tax. The difference of Rs. 78,000 constituted a deemed gift under the Gift-tax Act. It was, however, not subjected to gift-tax with the result that there was non-levy of tax of Rs. 7,450.

The Ministry have stated (March, 1976) that the surplus having been assessed to capital gains tax cannot be subjected also to gift-tax.

(v) In one case it was noticed that, though the total market value of the properties gifted by an assessee was Rs. 1,22,405 as per the settlement deeds concerned, only a sum of Rs. 99,600 was returned by the assessee and was adopted by the Gift-tax Officer as the total value of these gifts and was assessed to gift-tax in the assessment year 1973-74, in March, 1974. This resulted in an under-assessment of tax of Rs. 3,665.

The Ministry have stated (November, 1975) that the audit objection is under consideration.

83. *Irregular/excessive exemptions and reliefs*

(i) Under the provisions of the Gift-tax Act, 1958, a gift made to a dependent relative on the occasion of his/her marriage is exempt to the extent of Rs. 10,000 in value.

An assessee executed on 4th October, 1968 a promissory note in favour of her three daughters undertaking to pay to each of them a sum of Rs. 33,000, intended to be gifted to them on the occasion of their marriage fixed for 6th October, 1968. It was also stipulated that if the amounts were not paid with interest @ 8% within a period of two years, each daughter would get, in lieu thereof, 1/7th share in a coffee estate with accrued income therefrom for the year 1970-71. As no payment could be made before 4th October, 1970, a gift of 3/7th of the coffee estate (valued at Rs. 1,28,712) was made by a gift deed dated 30th March, 1971 registered on 31st March, 1971. While taxing this gift in the assessment year 1971-72, the Gift-tax Officer allowed an exemption of Rs. 10,000 in respect of each donee, treating these as gifts on the occasion of marriage on the basis of the original agreement.

The agreement of 4th October, 1968, having been executed in the absence of consideration, had no validity in law and was, therefore, not enforceable. The gift, therefore, materialised only

on 31st March, 1971 and on that date it could not be treated as a gift 'on the occasion of marriage' nor as having been made to relatives who were dependent on the donor. The incorrect exemption resulted in undercharge of tax of Rs. 7,377.

The Ministry have accepted the objection.

(ii) According to section 5(1)(xvi) of the Gift-tax Act, any gift, made out of sums received as privy purse, for the maintenance of any relatives dependent on the donor for support and maintenance, is exempt from gift-tax. An assessee, a former ruler, made cash gifts amounting to Rs. 96,120 to three of his relatives. As the three persons had their own sources of income, they could not be considered as dependent on the assessee for support and maintenance. Accordingly, the gifts made to them were not eligible for exemption under section 5(1)(xvi). The incorrect exemption resulted in short levy of tax of Rs. 5,364 for the assessment years 1969-70 to 1971-72.

The Ministry have stated (December, 1975) that the issue whether such payments are liable to income-tax in the hands of the recipients or gift-tax in the hands of the assessee has been under examination of the Department since 7th March, 1973.

84. *Incorrect calculation of tax*

In 3 cases for the assessment years 1971-72, 1972-73 and 1973-74, falling in two Commissioners' charges, it was noticed during audit that the Gift-tax Officers had wrongly calculated the amounts of tax leviable. The total value of gifts in these cases amounted to Rs. 1,81,400 and the total gift-tax leviable worked out to Rs. 25,990. The gift-tax actually levied was Rs. 18,820 with a short levy of Rs. 7,170. The Ministry of Finance have accepted the objection in all the cases and stated that additional demands totalling Rs. 7,170 have been raised and collected.

85. *Cases of 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.

In respect of gifts made in the previous year relevant to the assessment year 1972-73, an assessee returned a total gift of Rs. 2,79,964 after deducting the stamp duty paid. This was accepted by the Department. The incorrect deduction of stamp duty paid from the gift itself instead of from the tax payable resulted in an excess levy of tax of Rs. 12,196.

In another case for the assessment year 1971-72, where the stamp duty of Rs. 2,070 was deducted from the value of the taxable gift and not from the gift-tax, there was a similar over-assessment of Rs. 1,760 and in two cases for the assessment years 1971-72 and 1972-73, the admissible deduction for stamp duty paid was omitted to be allowed, involving an over-assessment of Rs. 2,298.

The Ministry have accepted the objection in all these cases.

(ii) Under the provisions of the Gift-tax Act, tax is leviable on the slab system of rates relatable to the value of the taxable gifts. Where the value of the taxable gifts exceeds Rs. 50,000 but does not exceed Rs. 1 lakh, gift-tax payable, from the assessment year 1971-72 onwards, is Rs. 4,000 plus 15 per cent of the amount by which the value of such gifts exceeds Rs. 50,000.

In the gift-tax assessment of an individual for the assessment year 1972-73, completed in January, 1974, the value of the taxable gifts was computed as Rs. 51,000 and gift-tax of Rs. 7,650 was levied by applying the prescribed rate of 15 per cent on the entire value of the taxable gifts. The correct tax leviable at the slab rates as prescribed in the Act was Rs. 4,150 only.

On the excess levy of Rs. 3,500 being pointed out in audit in August, 1974, the Department revised the assessment reducing the outstanding tax demand by Rs. 3,500.

The Ministry have accepted the objection.

(iii) In the case of an assessee, who gifted an amount of Rs. 50,000 to his wife during the previous year relevant to assessment year, 1972-73, for the first time, exemption of Rs. 5,000 was allowed from the taxable gift instead of Rs. 50,000 allowable under Section 5(1)(viii) of the Gift-tax Act, resulting in over-assessment of taxable gift by Rs. 45,000 and excess levy of tax of Rs. 3,790.

The objection has been accepted by the Ministry.

C—ESTATE DUTY

86. 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; property which a deceased was competent to dispose of at the time of death or gifts where a 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.

87. During the test audit of assessments made under the Estate Duty Act, 1953 conducted during the period, 1st July, 1974 to 31st March, 1975, the following types of mistakes resulting in under-assessment of duty were noticed :—

1. Estate escaping assessment.
2. Incorrect valuation of certain assets.
3. Irregular reliefs and exemptions.
4. Other mistakes in computing the principal value of the estate.
5. Excessive refunds.
6. Mistakes in giving effect to appellate orders.
7. Omission to levy interest/penalty.

A few instances of these mistakes are given in the following paragraphs :

88. *Escapement of estate from duty*

(i) In the assessment to estate duty of a deceased individual, made on 29th September, 1973, a sum of Rs. 1,00,815 being a debt due to him from a film studio, was not included in the principal value of the estate on the ground that it was 'presently irrecoverable' and the accountable person had undertaken to offer the realisation of the amount for duty as and when recovered. Subsequent to this assessment, in a letter received in the Film Circle on 14th November, 1973, this amount was offered for assessment to wealth-tax in view of the improved financial position of the studio on the tremendous success of their film.

However, no action was taken to include this amount for estate duty assessment till the date of audit (January, 1975), though the estate duty assessment had been revised under section 61 of the Estate Duty Act, 1953 on some other account. This inaction following lack of co-ordination resulted in an under-assessment of the principal value of the estate by Rs. 1,00,815 with an undercharge of duty of Rs. 85,693.

The Ministry have accepted the objection.

(ii) The Development Rebate Reserve held by a firm belongs to its partners and the share of each partner forms part of his estate which passes on his death. In two cases, the shares of the deceased in the Development Rebate Reserves held in the firm in which they had been partners, amounting to Rs. 41,388, were not considered in evaluating the principal value of the estates. The omissions resulted in short levy of duty of Rs. 11,577.

The Ministry have accepted the objection in both the cases.

(iii) Under the provisions of the Estate Duty Act, 1953, gifts made by a person within a period of two years prior to his death are to be added back to the estate as property deemed to pass on death.

(a) A person, who died on 29th January, 1972, had gifted a flat alongwith furniture, within a period of two years prior to his death. The assessing officer included the value of the flat in the principal value of the estate but overlooked to include also the value of furniture in the flat. This resulted in an under-assessment of estate by Rs. 22,500 involving a short levy of estate duty of Rs. 5,625.

Though the case had been seen in Internal Audit, this mistake was not noticed.

Final reply from the Ministry to para sent to them in November, 1975 is awaited (March, 1976).

(b) In another case, a deceased (who died in June, 1971) had made a gift of Rs. 14,000 within two years before his death. The donee invested the amount with the donor and the sum, together with interest, amounted to Rs. 14,106 on the date of death. The accountable person included the value of gift of Rs. 14,000 in the principal estate, in the return filed in July, 1972, and also claimed a deduction of Rs. 14,106 due to the donee on the date of death. At the time of assessment in October, 1973, while correctly rejecting the claim for deduction of Rs. 14,106 from the assessable estate, the Estate Duty Officer also omitted to include the sum of Rs. 14,000 in the assessable estate. The omission resulted in undercharge of estate duty of Rs. 3,500.

The Ministry have stated (March, 1976) that, having disallowed the liability, the inclusion of the gifted amount of Rs. 14,000 would lead to double taxation.

(c) In a third case, life insurance premia aggregating Rs. 5,134 on a policy in the name of the deceased's wife were paid by the deceased within two years preceding his death but the amount was not included in the estate. The omission resulted in under-assessment of the estate by Rs. 5,134 involving undercharge of duty of Rs. 1,539.

The Ministry have accepted the objection and stated that the additional demand of estate duty collected and adjusted is Rs. 1,759.

(iv) In the estate duty assessment of a deceased (who died in December, 1961), it was noticed that before the death of the deceased, a return ticket by Air-India International was purchased by the deceased to enable an American doctor to visit India and render him medical assistance. The doctor, however, travelled by a different airline and on his visit, he claimed Rs. 23,825 ($ 5,000) which was separately allowed as a deduction from the estate of the deceased. The value of the air-ticket, reserved with Air-India International, which had already been refunded to the accountable person, was not, however,

added to the principal value of the estate. This resulted in under-valuation of the principal value of the estate by Rs. 9,159 and short levy of estate duty of Rs. 3,664.

The Ministry have accepted the objection.

89. *Incorrect valuation of estate*

(i) In the estate duty assessment (completed in March, 1973) of a deceased, who expired in December, 1961, the value of 855.83 acres of land was taken as Rs. 8,66,838 (100 acres valued at Rs. 1,813 per acre and 755.83 acres at Rs. 907 per acre). Out of this, 324.50 acres of land were sold by the accountable person subsequently. In the Income-tax assessment records of the accountable person for the assessment year, 1968-69, these 324.50 acres of land were valued at Rs. 2,000 per acre, the rate which was determined on 1st January, 1954 by a Valuer approved by the Central Government. The approved Valuer had, *inter alia,* taken into account the fact that the land in question was adjacent to the city with a potential for development and that the entire 324.50 acres had been developed into a residential area. Even if this valuation as on 1st January, 1954 is accepted as reasonable, the value of 855.83 acres of land should have been worked out as Rs. 17,11,660 as against Rs. 8,66,838 adopted by the Assistant Controller of Estate Duty. The adoption of the lower value resulted in under-valuation of the estate by Rs. 8,44,822 with short levy of estate duty of Rs. 3,37,929.

When the under-valuation was pointed out by Audit in August, 1974, the Department stated that the valuation in this case was based on the transactions of actual sales reported by the Collector with his valuation report dated 30th October, 1967, worked out according to the provisions of the Land Acquisition Act. In this connection, it is to be observed that the Assistant Controller of Estate Duty had arrived at the average price of Rs. 1,813 per acre for 100 acres of agricultural land by taking a simple average of rates in 8 different sales in which the prices varied from Rs. 280 per acre to Rs. 4,529 per acre

and he had treated the remaining 755.83 acres as *bir* (non-cultivable) lands and valued them at half the rates on the ground that land revenue of *bir* lands was one-half of the land revenue on cultivable lands.

The paragraph was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

(ii) The estate of a deceased (who died in March, 1972) included the value of a 'Nursing home' leased out in July, 1971, at a monthly rent of Rs. 1,000. Though in the wealth-tax assessment the value of the property was determined as Rs. 5,05,784 and a registered Valuer valued the property, in October, 1973, at Rs. 3,46,372, the Estate Duty Officer, in the assessment made in February, 1974, took the value as Rs. 3,00,000 having regard to the subsisting lease on the property. It was pointed out in audit in January, 1975 that the lease of the property would not affect its market value and had the value of Rs. 5,05,784 adopted in the wealth-tax assessments been followed in the estate duty assessment, additional duty of Rs. 72,442 would have become recoverable. The Department stated in July, 1975, that the case had been referred to the departmental Valuation Cell for valuation of the property.

The Ministry have accepted the objection.

(iii) The principal value of any property is estimated to be the price which, in the opinion of the Estate Duty Officer, it would fetch if sold in the open market at the time of the deceased's death. In the case of shares of companies quoted in a recognised stock exchange, the value to be adopted is the market quotation of the scrip concerned on the stock exchange on the date of death. In the case of unquoted shares the value is to be arrived at by reference to the value of the total assets of the company.

(a) In the estate duty assessment of a person, who died on 9th August, 1971, the assessing officer came to the conclusion that the value of both the preference shares and equity shares held by the deceased in a colliery company was 'nil' on the ground that, considering the past losses and the threat of impending nationalisation of coal mines, the goodwill shown at Rs. 13.97 lakhs in the company's balance sheet as on 30th June, 1971 had "no value" and the net worth of the company was a deficiency. In coming to this conclusion, the assessing officer had overlooked the fact that the colliery had several years of lease still unexpired, which was included as an "asset" in its accounts for the year ending 30th June, 1971 against the composite heading, "Lease Rights, Goodwill etc". Inasmuch as a compensation of Rs. 37.51 lakhs was actually determined to be due to the company as on 30th January, 1973 on nationalisation, based on the past production of coal by the company, the exclusion, by the Assistant Controller of Estate Duty, of the value of goodwill shown by the company in its balance sheet, while computing the value of shares at the time of assessment in January, 1974, i.e., nearly a year after nationalisation, was not correct. Taking figure of Rs. 13.97 lakhs, either as goodwill or as value of interest in expectancy in the form of management compensation, the net worth of the company worked out to Rs. 9.50 lakhs allowing for a return of capital at Rs. 63.36 against each of the 15,000 preference shares. As the deceased held 2,335 of these preference shares, the omission resulted in under-assessment of the principal value of the estate of the deceased by Rs. 1,47,940 with a short levy of estate duty of Rs. 54,280.

Though the case was seen in Internal Audit, this omission was not noticed.

The paragraph was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

(b) In order to secure a uniform method of valuation of unquoted shares, the Central Board of Direct Taxes issued

executive instructions in March, 1968 authorising the extension of the principal of valuation, based on the value of the total assets of the company concerned as embodied in the Rules framed under the Wealth-tax Act, 1957, to estate duty assessment. If, however, the value is not so ascertainable, the Assistant Controller of Estate Duty is, under section 37 of the Estate Duty Act, 1953 itself, free to arrive at an independent valuation based on actual transactions that have taken place shortly before/after the death of the deceased.

In the estate duty assessment of a person, who died on 11th October, 1972, the value of 21,622 shares held by him in a 'closely-held company' was adopted at Rs. 13.50 per share under independent valuation, based on a few transfers recorded on a single day on 30th January, 1973, whereas the same shares would have been valued at Rs. 17.12 each had the executive instructions been followed. The valuation making a departure from the prescribed procedure led to under-assessment of the estate by Rs. 78,271 and a short levy of duty of Rs. 23,480.

Though the case was seen in Internal Audit, the point was not taken by them.

The para was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

(c) In the estate duty assessment of a person, who died on 23rd Jun 1972, the Assistant Controller of Estate Duty inadvertently .pplied the rules of valuation of shares in 'controlled companies' as embodied in the Estate Duty (Controlled Companies) Rules, 1953, for valuing 2900 unquoted shares held by the deceased in a 'closely-held company'. Had the shares been valued by the break-up value method, the correct method applicable to the case, each share would have been valued by Rs. 19 more. This resulted in an under-assessment of the estate by Rs. 55,100 and a short levy of estate duty of Rs. 21,550.

The para was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

(d) In two cases, shares quoted on the stock exchange were valued at rates much lower than the quoted rates and in a third case though the quoted rate of Rs. 105 per share was adopted, the total value of 321 shares was wrongly computed as Rs. 337.05 instead of Rs. 33,705. These cases involved short levy of Rs. 13,195.

The Ministry have accepted the objection in all the three cases.

90. *Irregular reliefs and exemptions*

(i) On an Income-tax reference, the High Court ruled in the case of a ruler of an erstwhile princely state that all the property succeeded to by him as "Ruler" was partible estate held by him as *karta* of the relevant Hindu undivided family. On his death, his official residence of a value of not less than Rs. 9 lakhs was exempted from estate duty under the provisions of the Estate Duty Act, specifically exempting buildings declared as 'official residence' of a Ruler. The property of the Hindu undivided family consisting of the deceased Ruler as *karta,* his wife and son, was succeeded to, on his death, by his widow and son in equal shares. On the widow dying shortly thereafter, the accountable person claimed exemption from estate duty for the value of the building declared as 'official residence' of the former ruler and this claim was allowed in the estate duty assessment of the widow. As the widow was herself not a 'ruler' and, on the death of the *karta,* she succeeded to half the joint family property under the operation of Hindu Law, her share of the property in the building in question could not be exempted under the provision of the Estate Duty Act relating to official residences of Rulers but had to be brought under the general provision relating to any other building exclusively used by the deceased for her residence for which exemption was available upto Rs. 1 lakh only. Incorrect exemption of the deceased's share in the value

of the building in her estate duty assessment resulted in non-assessment of property to the tune of Rs. 3.50 lakhs involving short levy of duty of Rs. 2,97,500.

Though the case was seen in Internal Audit, this mistake was not noticed by them.

The Ministry have stated (February, 1976) that in their view the High Court ruling did not cover the said official residence and the same could not, therefore, be considered as partible.

(ii) According to the provisions of the Estate Duty Act, 1953, no estate duty shall be chargeable in respect of one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed Rs. 1 lakh if such house is situated in a place with a population exceeding ten thousand and the full value thereof in any other case.

In the assessment of a deceased person, such exemption was allowed inadvertently, even though the house was not exclusively being used by him for his residence but had been let out. This resulted in under-assessment of the estate by Rs. 1,00,000 leading to a short levy of duty of Rs. 84,705.

Though the case was seen by Internal Audit, the mistake was not noticed

The Ministry have accepted the objection.

(iii) Moneys payable under one or more policies of insurance, effected by the deceased on his life for the purpose of paying estate duty or assigned to the Government for the said purpose, are includible in the principal value of the estate for determining the estate duty, though such moneys are exempt from payment of duty, to the extent of the amount of duty payable.

(a) In the case of a deceased belonging to Goa, an amount of Rs. 25,464, being half the value of an insurance policy effected for the payment of estate duty, was not included in the principal value for determining the rate of duty but rebate was allowed on the full value of the insurance policy after applying the prescribed limit of Rs. 50,000. This resulted in short levy of estate duty of Rs. 12,454.

The Ministry have accepted the objection and stated that the additional demand of Rs. 12.454 has been raised and collected.

(b) In another case, a person took a policy of insurance and lodged it with the Estate Duty Officer towards the payment of estate duty. The value of the policy on the date of death in April, 1972 was Rs. 31,788. In the estate duty assessment made in October, 1973, the assessing officer did not include the value of the policy in the assessable estate but allowed relief thereon at the average rate of duty and also set off the amount realised towards the duty payable. The omission to include the policy amount in the principal estate led to a short assesment of estate duty of Rs. 9,536.

The Ministry have accepted the objection.

(iv) A deceased, before his death on 17th June, 1972 had assigned an insurance policy on his life to his grandson. The deceased had also taken a loan of Rs. 72,390 from the Life Insurance Corporation against this policy. In March, 1972 the Life Insurance Corporation informed the insured that, because of the assignment of the policy, the loan of Rs. 72,390, which had been paid to him against the said policy, was incorrectly granted and requested him to repay the loan with interest of Rs. 6,515 before the maturity of the policy on 15th April, 1972. The insured thereafter borrowed Rs. 74,500

from a bank and repaid the loan plus interest thereon to the Life Insurance Corporation.

In the estate duty assessment, the bank loan of Rs. 74,500 and interest of Rs. 843 payable thereon (total Rs. 75,343) was allowed as deduction for computing the principal value of the estate. However, in view of the provisions of sections 46 of the Estate Duty Act, 1953, the debt was not deductible. The error resulted in a short levy of duty of Rs. 8,350.

The Ministry have accepted the objection.

(v) Under the Estate Duty Act, 1953, where any accountable person transfers any property comprised in the estate of the deceased and utilises the proceeds for the payment of estate duty, a deduction is allowed from the estate duty payable of a proportionate amount of the capital gains tax chargeable under the Income-tax Act on the sale of the property.

In the estate duty assessment of a deceased person, the aforesaid relief was erroneously allowed on the proceeds utilised for payment of probate fee also. As probate fee paid is itself deductible from the estate duty payable, this mistake resulted in short levy of estate duty to the extent of Rs. 8,929.

The Ministry have accepted the objection.

(vi) In the estate duty assessment, completed in February, 1973, of an individual (who died in February, 1970) the principal value of the estate was determined as Rs. 10,27,292 after allowing deduction for wealth-tax liability for the assessment years 1970-71, 1971-72 and 1972-73 amounting to Rs. 29,625 As these liabilities related to periods subsequent to the date of death, no deduction was permissible for such liabilities. The incorrect deduction allowed resulted in short levy of estate duty of Rs. 11,850.

On the error being pointed out in audit in January, 1974, the Department stated that the deduction was allowed provisionally and that it would be rectified as soon as the wealth-tax

assessments were completed. There is no provision in the Act for allowing deduction even provisionally for debts arising subsequent to the date of death.

The Ministry have accepted the objection.

(vii) According to the provisions of the Estate Duty Act, 1953, if any fees are paid under any law relating to court fees in force in any state for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable, the amount of estate duty payable shall be reduced by an amount equal to the court fees so paid.

(a) In the estate duty assessment of a deceased, a reduction in estate duty was allowed on account of probate fees paid. However, on the accountable person subsequently obtaining a refund out of the probate fees so paid, the assessment was not revised withdrawing appropriately the part of the deduction originally allowed. This resulted in a short levy of estate duty of Rs. 2,990.

Though the case was seen by Internal Audit, this mistake was not noticed by them.

(b) An accountable person claimed relief of Rs. 5,200 being the full amount of probate duty paid in respect of the estate of the deceased (who expired on 6th October, 1965), which included a sum of Rs. 1,14,243 being the market value of the shares held by the deceased in his capacity as *karta* of a Hindu undivided family in which he had 1/3rd share. A deduction of Rs. 2,160 for probate duty, being proportionate to the share of the deceased in the market value of these shares, was correctly allowable as against Rs. 5,200 actually allowed. There was thus a short collection of duty of Rs. 3,040.

(c) In another case, a refund of Rs. 4,725 was made in March, 1973 to the accountable person on production of a

true copy of the succession certificate and on a statement that "the original stamp papers were produced and verified". Since the stamp duty payable for the value of the property mentioned in the certificate would work out to Rs. 2,725 only, it was pointed out by Audit that the original documents be verified again. After verification, the Deputy Controller of Estate Duty reported that the certificate of Court Fee Stamp Papers granted by the Court was only for Rs. 2,725 and hence the relief was granted in excess by Rs. 2,000.

The Ministry have accepted the objections in all these cases.

91. *Other mistakes in computing the principal value of the estate*

(i) A Hindu undivided family held shares in an investment company. Both the Hindu undivided family and the investment company had advanced two loans amounting to Rs.1,28,000 and Rs. 86,045 to a private limited company. The financial position of the private company was stated to be bad. The Hindu undivided family considered the debt of Rs. 86,045 as "bad debt" and the amount was accordingly written off in its books.

In the estate duty assessment of the *karta* of the aforesaid Hindu undivided family, who died in May, 1971, while valuing the shares of the investment company, the assessing officer considered the debt of Rs. 1,28,000 owing to the company as good but while valuing the interest of the deceased in the Hindu undivided family, accepted the write-off of Rs. 86,045 (due from the same private company) in the books of the Hindu undivided family. The incorrect acceptance of the write-off resulted in an under-assessment of estate by Rs. 57,364 leading to a short levy of estate duty of Rs. 19,607.

Though the case was seen by Internal Audit, this mistake was not noticed by them.

The para was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

(ii) In the case of a deceased person, while computing the value of the estate, income-tax refunds amounting to Rs. 22,958 received after the date of death by the legal heirs of the deceased were not included in the estate. Further, wealth-tax liability of Rs. 8,521 for the assessment year 1968-69 was deducted from the estate, even though the deceased person was not liable to pay wealth-tax for the said assessment year. These two mistakes resulted in under-assessment of the estate by Rs. 31,479 and short levy of duty of Rs. 12,991.

The Ministry have accepted the objection and stated that an additional demand of Rs. 12,991 has been raised and collected.

(iii) In an estate duty assessment, the deceased was treated as *karta* of a Hindu undivided family consisting of himself and his 3 sons and accordingly his share in the family property was taken as one-fourth. Actually he had only one son and three grandsons and his correct share was half. The incorrect determination of the share of the deceased in the property of the Hindu undivided family, as one-fourth instead of one-half, resulted in an under-computation of the principal value of the estate by Rs. 86,402. Consequently the lineal descendants' share was also incorrectly adopted as Rs. 2,59,206 instead of Rs. 1,72,804 for rate purposes and for allowing rebate thereon. These mistakes resulted in a short levy of estate duty of Rs. 8,004.

The Ministry have accepted the objection and stated that an additional demand of Rs. 8,004 has been raised and collected.

(iv) In the estate duty return, filed in December 1973, of a deceased (who died on 31st October, 1973), the accountable person included value of jewellery of Rs. 22,240. At the time of assessment in March, 1974, however, the Estate Duty Officer, accepting the plea of the accountable person that the jewellery belonged to the deceased's wife and that he had inherited it from the wife of the deceased on her death in October, 1960, excluded it from the assessable estate.

It was pointed out in audit in January, 1975, that the value of the jewellery was includible in the estate as the jewellery actually belonged to the deceased inasmuch as its value had been returned and included in the wealth-tax assessment of the deceased for all the years upto 1973-74 and the deceased had specifically referred to this jewellery in his will drawn on 21st April, 1971 and left it for the enjoyment of his only son. The incorrect exclusion led to short assessment of estate by Rs. 22,240 involving estate duty of Rs. 3,336.

The para was sent to the Ministry in November, 1975; their final reply is awaited (March, 1976).

92. *Excessive refund*

Under the provisions of the Estate Duty Act, in cases where a particular point in an order of the assessing authority is appealed against and the appellate authority passes an order thereon which has been complied with, the former authority has no jurisdiction to initiate any proceedings thereafter to rectify the same assessment on any point already covered by the order of the appellate authority. Further, the authority which is competent to rectify a mistake must do so within the statutory period of five years if the mistake is apparent from the record.

In one case, the value of a house property was reduced in appeal by the Appellate Controller of Estate Duty, while considering a point of dispute not being one regarding the area of the land on which the house property stood, and the assessment was accordingly revised. Subsequently, on the basis of fresh evidence showing a smaller land area of the said house property than what had been assessed earlier, the Assistant Controller of Estate Duty further reduced the value of that property by his order of rectification made after the expiry of the time limit of five years and granted refund of Rs. 21,216 to the accountable person. As the Assistant Controller of Estate Duty was neither competent to revise the valuation made by the Appellate Controller nor to rectify a time-barred assessment, his action in the case resulted in excess refund of estate duty of Rs. 21,216.

The Ministry have accepted the objection and stated that the mistake has been rectified raising a demand of Rs. 21,546 for duty and interest.

93. *Mistakes in giving effect to appellate orders*

(i) The estate duty assessment of a deceased person was finalised including in the estate, belonging to the deceased, the full value of an immovable property rejecting the submission of the accountable person that the deceased had only 1/3rd share in the property. The full mortgage liability of Rs. 1,50,000 on the property was also allowed. On an appeal by the accountable person, the Appellate Tribunal held that the deceased had only 1/3rd share in the property. While giving effect to the Tribunal's decision, the assessing officer correctly considered for assessment 1/3rd value of the property but overlooked reducing proportionately the mortgage liability on the property. This resulted in an under-assessment of estate by Rs. 1 lakh

involving a short levy of estate duty of Rs. 15,764 (including interest of Rs. 1,574 for delay in filing the return).

The Ministry have accepted the objection and stated that an additional demand of Rs. 15,779 has been raised and collected.

(ii) Under the Estate Duty Act, 1953, where any gift-tax has been paid in respect of gift of any property and the property is also included in the estate of the donor, such gift-tax paid is allowable as a deduction from the estate duty payable. The Act also provides that property comprised in a gift, in which the donor retains some interest or benefit, is deemed to pass on the death of the donor.

In the estate duty assessment of a deceased person, an amount of Rs. 1,50,000, representing value of immovable property gifted by the deceased, was deemed to pass on his death and, therefore, included in his estate. In the estate duty assessment made on 28th February, 1974, rebate for gift-tax of Rs. 4,400 relatable to value of property, Rs. 1,50,000, was allowed. In an appeal by the accountable person, the Income Tax Appellate Tribunal held that the gifted property includible in the estate should be confined to the interest retained by the deceased which comprised of only one flat (valued at Rs. 18,000) in the property. While giving effect to the Income Tax Appellate Tribunal's order and reducing the value of the property included in the estate from Rs. 1,50,000 to Rs. 18,000, the deduction on account of gift-tax paid was to be correspondingly restricted to the gift-tax appropriate to Rs. 18,000, being the value of gift included in the estate. Omission to so restrict the relief resulted in a short levy of estate duty of Rs. 3,872.

Though the case was seen by the Internal Audit, the mistake was not noticed by them.

The para was sent to the Ministry in November, 1975 ; their final reply is awaited (March, 1976).

94. *Omission to levy interest/penalty*

(i) In their 88th Report (1972-73), the Public Accounts Committee pointed out the anomaly under the Estate Duty Act under which interest became leviable only when extension of time for submission of returns was applied for and granted by the Controller of Estate Duty and not otherwise and also the low rate of interest for delayed submission of returns *viz.* 6 per cent as against 12 per cent per annum on the outstanding dues under the Income-tax Act and recommended necessary amendments without delay. Accepting the recommendations, the Ministry stated in December, 1973 that the suggestions would be taken up when amendments to the Estate Duty Act were considered. Final action is yet (March, 1976) to be taken by Government in this regard.

(a) In two cases, where deaths occurred in June, 1965 and August, 1965, extension of time for submission of estate duty returns was applied for and granted upto March, 1968. The returns were, however, actually filed in December, 1968. Interest for belated submission of the returns was levied in both the cases till March, 1968. For the period of default between April, 1968 to December, 1968, in respect of which no extension was applied for and granted, neither interest nor penalty was levied in the two assessments completed in February, 1973. The delay was attributed to a dispute among the accountable persons. The maximum penalty leviable in the two cases, as laid down in the law, was Rs. 4,40,684.

(b) In another case, where death occurred in January, 1970, the accountable person applied for, and got extension of time for filing the estate duty return till 7th October, 1970. The

return was actually filed only on 21-8-71. The interest for belated filing of return was levied upto 7th October, 1970 in the revision of the assessment made in October, 1972. It was found in audit in January, 1974 that, for the period of default from 8th October, 1970 to 20th August, 1971, neither interest nor penalty as contemplated under the Act was levied. The maximum penalty leviable under the law was Rs. 29,097.

The para was sent to the Ministry in September, 1975; their final reply is awaited (March, 1976).

(ii) Under the provisions of the Estate Duty Act, where the demands of estate duty are allowed to be paid in instalments, interest at reasonable rates to be fixed by the Assistant Controller of Estate Duty are payable. In addition, the Controller may, at his discretion, levy penalty when the accountable person is in default in the payment of duty. In one case when a demand of Rs. 7,39,980 was raised (payable on or before 10-1-1966 as a result of provisional assessment) the accountable person agreed to pay the demand as and when the quarterly instalment of the privy purse was received by him as well as by way of adjustment of the monthly rent of his building occupied by the Income-tax Department. The accountable person was directed to pay the demands in instalments subject to payment of interest @ 6 per cent. Accordingly, the entire demand was paid up in several instalments between April, 1967 to June, 1972 but no action was taken to levy interest.

The interest chargeable would work out to Rs. 1,45,025 (approximately).

The Ministry have stated that there was no order of the Controller of Estate Duty for levy of interest and the Estate Duty Act does not provide for automatic running of interest.

95. *Over-assessment*

As a result of orders of the Appellate Authority, the principal value of the estate of a deceased person was reduced from Rs. 4,81,596 to Rs. 3,29,008 and the estate duty payable thereon was determined as Rs. 28,894. The accountable person having already made payment of estate duty of Rs. 37,400, the amount refundable, consequent upon the appeal effect, worked out to Rs. 8,506. However, the amount of refund was erroneously determined at Rs. 2,086 resulting in a short computation of Rs. 6,420.

The Ministry have accepted the objection.

NEW DELHI
The 31-3-, 1976

(V. GAURI SHANKER)
Director of Receipt Audit.

Countersigned

NEW DELHI
The 31.3, 1976

(A. BAKSI)
Comptroller & Auditor General of India

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