REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR
1975-76

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS
VOLUME II
DIRECT TAXES

ERRATA

S. No.	Page	Para	Line	*For*	*Read*
1.	17	7(b)	last line	Rs. 85 lakhs	Rs. 1.85 lakhs
2.	33	16(i)	last line	1,09,05	1990.05
3.	101	45(i)(c)	11th from bottom	8,16,614	8,15,614
4.	113	49.4(i)	22nd from top	Commissioner's	Commissioners'
5.	118	49.4(iii)(g)	24th from top	Rs. 33,629	Rs. 17,466
6.	155	66(iii)	3rd from bottom	Rs. 23,862	Rs. 23,863
7.	157	67(ii)	8th from top	31-3-75	13-3-75
8.	165	70(iv)	12th from bottom	9,375	Rs. 9,375
9.	165	71(i)	5th from bottom	year	years
10.	201	91(iii)(a)	5th from top	Insert the word 'that' in between words & figures '(January, 1977)' and 'the'	
11.	208	93(ii)(a)	4th from top	Delete 2nd 'the' appearing in this line	
12.	240	106(ii)	13th from top	Rs. 26,156	Rs. 26,516
13.	249	111	3rd from bottom	Rs. 3,687	Rs. 3,271

S/23 C&AG/76

Report

Of The

Comptroller

And

Auditor General

Of India

For The Year

1975-76

Union Government (Civil)

Revenue Receipts

Volume II

Direct Taxes

Kafon

of the

Constantinople

and

Vaquiot Cesaroni

of Italy

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.*, Gift-tax, Wealth-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.

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

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

(iv) Chapter IV relates to Gift-tax, Wealth-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 1975-76 amounted to Rs. 2204.93 crores out of which a sum of Rs. 742.31 crores was assigned to the States. The figures for the three years 1973-74, 1974-75 and 1975-76 are given below:—

(in crores of rupees)

	1973-74	1974-75	1975-76
020 Corporation Tax	582.60	709.48	861.70
021 Taxes on Income other than Corporation Tax	741.37	878.25	1214.36
028 Other Taxes on Income and Expenditure	(—)0.01	10.99	58.38
031 Estate Duty	10.53	10.94	11.65
032 Taxes on Wealth	35.78	39.23	53.73
033 Gift Tax	4.79	5.06	5.11
GROSS TOTAL	1375.06	1653.95	2204.93
Less share of net proceeds assigned to the States			
Income-tax	527.85	516.16	734.10
Estate Duty	11.20	10.03	8.21
TOTAL	539.05	526.19	742.31
Net receipts	836.01	1127.76	1462.62

The gross receipts under Direct Taxes during 1975-76 went up by Rs. 550.98 crores when compared with the receipts during 1974-75 as against an increase of Rs. 278.89 crores in 1974-75 over those for 1973-74. Taxes on income other than Corporation tax accounted for an increase of Rs. 336.11 crores. Receipts under Corporation tax registered an increase of Rs. 152.22 crores.

(a) The break-up of total collections of Corporation tax and Taxes on income other than Corporation tax, during 1975-76, as furnished by the Department of Revenue and Banking, is as under :—

Pre-assessment and post-assessment collection of tax during 1975-76 :—

	(in crores of rupees)
(*i*) Deduction at Source	350.77
(*ii*) Advance Tax (net)	1148.09
(*iii*) Self assessment	258.46
(*iv*) Regular assessment	274.20
	2031.52

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

	(in crores of rupees)
(*i*) Dividends distributed by companies	62.21
(*ii*) Salaries	163.13
(*iii*) Payments to contractors	27.31
(*iv*) Winnings from Lotteries and Crossword Puzzles	1.12

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

(1) (*i*) No. of company assessees as on 1-4-1975.	36,481
(*ii*) No. of company assessees as on 1-4-1976.	40,055
(*a*) No. of foreign company assessees as on 1-4-1975 [included in (i) above].	1,055
(*b*) No. of foreign company assessees as on 1-4-1976 [included in (ii) above]	1,059
(2) No. of foreign companies which had made the prescribed arrangements for declaration and payment of dividends within India:	
As on 1-4-1975	2
As on 1-4-1976	2

*Figures furnished by the Department of Revenue and Banking.

(3) No. of companies which have distributed dividends during 1975-76 and amount of dividend:

	No.	Amount of dividend (in thousands of rupees)
(*a*) Indian companies	3,950	1,59,66,54
(*b*) Foreign companies	1	50,85

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

(*a*) Indian companies	3,892
(*b*) Foreign companies	1

(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	3,890	37,15,62
(*b*) Foreign companies	1	11,33

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

(*a*) Indian companies	3,617
(*b*) Foreign companies	—

(7) Amount involved in (6) above:

(*a*) Indian companies	35,49,45
(*b*) Foreign companies	—

(8) No. of companies out of (4) which remitted the tax deducted, after one week of date of deduction or receipt of challan:

(*a*) Indian companies	273
(*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 shareholder Rs. 5,000:

(*a*) Indian companies	57
(*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	Statement not furnished under Rule 37(2)
(*a*) Indian companies	60	58
(*b*) Foreign companies	—	—

(d) *Advance Tax*—Demand and Collection*. Demand raised (*i.e.* notices issued) and collected by way of advance tax during 1975-76 :—

	Number of cases	Amount (in crores of rupees)
(*i*) Demand raised	Not available	1160.00
(*ii*) Demand collected out of (i)	7,49,458	1111.34
(*iii*) Arrears under advance tax as on 31st March, 1976	2,07,488	48.66

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

(i) The actuals for the year 1975-76 under the Major heads '020—Corporation Tax', '021—Taxes on Income other than Corporation Tax', '031—Estate Duty', '032—Taxes on Wealth' and '033—Gift-tax' exceeded the Budget estimates. The figures for the years from 1971-72 to 1975-76 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				
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
1975-76	780.50	861.70	81.20	10.40
021—Taxes on Income etc.**				
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
1975-76	791.00	1214.36	423.36	53.52

*Figures furnished by the Department of Revenue and Banking.

**Gross figures have been taken.

031—Estate Duty*				
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
1975-76	9.25	11.65	2.40	25.95
032—Taxes on Wealth				
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
1975-76	43.00	53.73	10.73	24.95
033—Gift-tax				
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
1975-76	4.50	5.11	0.61	13.55

The Department of Revenue and Banking have stated that the variation between the Budget estimates and the actuals under "020–Corporation Tax" and "021--Taxes on Income etc." is mainly attributable to larger collections due to the introduction of the Voluntary Disclosure of Income and Wealth Scheme in October, 1975 for which provision had not been made in the Budget estimates.

(ii) The details of variations under the heads subordinate to the Major Heads 020 and 021 for the year 1975-76 are given below :—

(in lakhs of rupees)

	Budget estimates	Actuals	Increase (+) Shortfall (—)	Percentage of variation
020—Corporation Tax				
(*i*) Ordinary collections	7,53,50	7,97,82	44,32	5.88
(*ii*) Super-tax on companies	..	67	67	..
(*iii*) Excess Profits Tax	..	10	10	..
(*iv*) Super Profits Tax	..	5	5	..
(*v*) Surtax	20,00	35,89	15,89	79.45
(*vi*) Surcharge	..	26,01	26,01	..
(*vii*) Other receipts**	7,00	1,16	(—)5,84	83.43
	7,80,50	8,61,70	81,20	10.40

*Gross figures have been taken.

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

021—Taxes on Income other than Corporation Tax				
(*i*) Ordinary collections .	7,47,00	11,35,53	3,88,53	52.01
(*ii*) Super-tax . . .	..	6	6	..
(*iii*) Surcharge . . .	36,00	62.69	26,69	74.14
(*iv*) Excess Profits Tax .	..	10	10	..
(*v*) Other receipts* .	8,00	15,98	7,98	99.75
Deduct—Share of net proceeds assigned to the States . .	5,43,37	7,34,10	1,90,73	35.10
	2,47,63	4,80,26	2,32,63	93.94

3. *Cost of Collection*

The expenditure incurred during the year 1975-76 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		
1972-73	557.86	2.82
1973-74	582.60	3.11
1974-75	709.48	3.90
1975-76	861.70	4.85
021—Taxes on Income etc.		
1972-73	625.47	19.72
1973-74	741.37	21.76
1974-75	878.25	27.31
1975-76	1214.36	33.96

4. (i) The total number of assessees (including companies) in the books of the Department as on 31st March, 1976 was 37,96,258. As compared to the previous year ending 31st March, 1975 there was an increase of 1,58,824 assessees. The number of

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

assessees status-wise as on 31-3-1975 and 31-3-1976 was as under :—

	As on 31st March, 1975	As on 31st March, 1976
Individuals	28,84,767	29,81,328
Hindu undivided families	1,75,651	1,86,717
Firms	5,07,137	5,49,568
Companies	35,911	40,055
Others	33,968	38,590
TOTAL	36,37,434	37,96,258

The Department of Revenue and Banking have not furnished the amount of tax collected status-wise.

(ii) Category-wise number of income-tax paying assessees during the years 1974-75 and 1975-76 is indicated in the following table :—

	As on 31st March, 1975	As on 31st March, 1976
(*a*) Business cases having income over Rs. 25,000	2,28,357	2,72,334
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,75,372	2,30,886
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	2,65,640	4,05,293
(*d*) All other cases (including refund cases) except those mentioned in categories (e) & (*f*) below	4,46,551	6,13,114
(*e*) Government salary cases and non-Government salary cases below Rs. 18,000	1,29,203	4,61,647
(*f*) Summary assessment cases	23,92,311	18,12,984
TOTAL	36,37,434	37,96,258

The Department of Revenue and Banking have not furnished the amount of tax collected category-wise.

(iii) The total number of wealth-tax assessees in the books of the Department as on 31st March, 1975 and 31st March, 1976 was as follows:—

	As on 31st March, 1975	As on 31st March, 1976
Individuals	1,88,797	1,99,953
Hindu undivided families	28,712	28,984
Others	1,419	1,587
TOTAL	2,18,928	2,30,524

(iv) The total number of gift-tax assessees in the books of the Department as on 31st March, 1975 and 31st March, 1976 was as follows :—

	As on 31st March, 1975	As on 31st March, 1976
Individuals	86,792	99,341
Hindu undivided families	976	1,358
Others	186	202
TOTAL	87,954	1,00,901

(v) The total number of estate duty assessment cases in the books of the Department as on 31st March, 1975 and 31st March, 1976 was as follows:—

As on 31st March, 1975	20,084
As on 31st March, 1976	40,095

(vi) The number of estate duty assessments completed during 1975-76 was as follows :—

Principal value of property	Number of assessments completed
(*i*) Exceeding Rs. 20 lakhs	8
(*ii*) Between Rs. 10 lakhs and Rs. 20 lakhs	62
(*iii*) Between Rs. 5 lakhs and Rs. 10 lakhs	216
(*iv*) Between Rs. 1 lakh and Rs. 5 lakhs	5,231
(*v*) Between Rs. 50,000 and Rs. 1 lakh	11,241
TOTAL	16,758

5. (i) *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 31-3-1976:

	No.	Amount (in crores of rupees)
(*i*) No. of foreign companies	449	
(*ii*) Income returned		7.25
(*iii*) Income assessed		13.30
(*iv*) Gross demand		7.00
(*v*) Demand outstanding out of (iv) as on 31-3-1976		0.38
(*vi*) Tax paid upto 31-3-1976 [(iv)-(v)]		6.62

B. Cases where returns have been filed but assessments were pending as on 31-3-1976:

(*i*) No. of foreign companies	454	
(*ii*) Income returned		82.68
(*iii*) Gross demand being tax due on income returned		40.85
(*iv*) Demand outstanding out of (iii) as on 31-3-1976		0.33
(*v*) Tax paid upto 31-3-1976 [(iii)—(iv)]		40.52

C. Cases where no returns have been filed as on 31-3-1976:

Number of foreign companies	127

(ii) *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 :—

A. Cases where returns have been filed and assessments completed as on 31-3-1976:

	No.	Amount (in crores of rupees)
(*i*) Number of foreign companies	28	
(*ii*) Global income shown		480.39
(*iii*) Income returned		1.95
(*iv*) Income assessed		1.93
(*v*) Gross demand		1.15
(*vi*) Demand outstanding out of (v) as on 31-3-1976		—
(*vii*) Tax paid upto 31-3-1976 [(v)—(vi)]		1.15

*The figures shown against "income returned" and "income assessed" is the total of positive income returned/assessed less the total of all losses returned/assessed in other cases.

B. Cases where returns have been filed but assessments were pending as on 31-3-1976:

	No.	Amount (in crores of rupees)
(*i*) Number of foreign companies	26	
(*ii*) Global income shown		551.00
(*iii*) Income returned		4.40
(*iv*) Gross demand being tax due on income returned.		4.84
(*v*) Demand outstanding out of (iv) as on 31-3-1976.		—
(*vi*) Tax paid upto 31-3-1976		4.84

C. Cases where no returns have been filed as on 31-3-1976.

No. of foreign companies. 2

6. *Arrears of tax demands*

(a) Corporation Tax and Income-tax.

(i) The total demand of tax raised and remaining uncollected as on 31st March, 1976 was Rs. 782.73 crores. This did not include Rs. 211.06 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. 993.79 crores and the years to which they relate are shown below :—

	Corporation Tax	Income-tax	Interest	Penalty	Total
				(in crores of rupees)	
Arrears of 1964-65 and earlier years .	10.53	35.67	2.93	4.62	53.75
1965-66 to 1972-73	39.63	167.07	40.73	31.16	278.59
1973-74 . .	13.56	50.29	19.25	13.08	96.18
1974-75 . .	33.82	92.60	35.73	14.93	177.08
1975-76 . .	94.57	192.84	75.59	25.19	388.19
TOTAL .	192.11	538.47	174.23	88.98	993.79

(iii) The table below shows the number of assessees from whom gross arrears of Rs. 993.79 crores are due :—

Arrear demands	Number of assessees	Total arrears of tax (in crores of rupees)
Upto Rs. 1 lakh in each case	33,06,673	529.36
Over Rs. 1 lakh upto Rs. 5 lakhs in each case. .	5,266	102.30
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case. .	832	54.14
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case.	508	79.30
Over Rs. 25 lakhs in each case.	304	228.69
TOTAL	33,13,583	993.79

(iv) Tax demand certified to Tax Recovery Officers and State Government Officers for recovery and its year-wise particulars to the end of 1975-76 are as under:—

	Demand certified				
	At the beginning of the year	During the year	Total	Demand recovered	Balance
				(in crores of rupees)	
1966-67 . .	158.62	60.09	218.71	55.48	163.22
1967-68 . .	164.28	69.92	234.20	46.51	187.69
1968-69 . .	278.75	151.44	430.19	78.04	352.15
1969-70 . .	359.52	183.55	543.07	116.45	426.62
1970-71 . .	425.25	181.36	606.61	145.37	461.25
1971-72 . .	483.53	208.79	692.33	167.52	524.80
1972-73 . .	530.57	264.98	795.55	189.06	606.49
1973-74 . .	598.15	192.62	790.77	161.93	628.84
1974-75 . .	616.07	188.16	804.23	176.29	627.94
1975-76 . .	616.35	333.92	950.27	290.56	659.71

(v) Demands of Income-tax (including Corporation-tax) stayed as on 31st March, 1976 on account of appeals and revision petitions were as under :—

	(in crores of rupees)
(*a*) By Courts	32.87
(*b*) By Income-tax authorities	
(*i*) Pending disposal of appeals etc. (including amounts under protective assessments, ...	94.53
(*ii*) Pending disposal of scaling down petitions . . .	3.04
(*iii*) For other reasons	10.47

(vi) Arrears of Surtax demands outstanding as on 31st March, 1976 were as follows :—

Relating to demands raised in	Amount outstanding (in lakhs of rupees)
1967-68	0.57
1968-69	1.25
1969-70	2.79
1970-71	7.50
1971-72	5.58
1972-73	21.65
1973-74	28.03
1974-75	201.39
1975-76	824.38
TOTAL	1093.14

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

	As on 31st March, 1974	As on 31st March, 1975	As on 31st March, 1976
			(in lakhs of rupees)
(*i*) Arrears out of Advance Annuity Deposits	322.86	257.67	0.72
(*ii*) Arrears out of self and provisional Annuity Deposits . . .	53.85	41.61	3.07
(*iii*) Arrears out of Regular Annuity Deposits	2363.74	1993.06	1395.90
TOTAL	2740.45	2292.34	1399.69

(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, 1976:—

(in lakhs of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	Number of cases	Amount Rs.	Number of cases	Amount Rs.	Number of cases	Amount Rs.
1971-72 and earlier years	14,743	422.51	4,692	82.75	3,051	361.17
1972-73	8,881	308.11	2,624	32.15	1,064	149.33
1973-74	13,966	475.71	3,801	38.87	1,351	147.26
1974-75	30,314	4376.05	7,412	163.78	2,276	324.62
1975-76	56,728	2655.89	17,441	204.48	5,761	548.56
TOTAL	1,24,632	8238.27	35,970	522.03	13,503	1530.94

(ii) Demands of tax/duty stayed on appeals and revision petitions for Wealth-tax, Gift-tax and Estate Duty as on 31st March, 1976 were as under :—

(In lakhs of rupees)

	Wealth-tax	Gift-tax	Estate Duty
(*a*) By Courts.	184.40	4.52	28.78
(*b*) By Wealth-tax/ Gift-tax/Estate Duty authorities			
(*i*) Pending disposal of appeals etc. (including amounts under protective assessments)	357.33	51.87	225.09
(*ii*) Pending disposal of settlement petitions	13.62	—	0.58
(*iii*) For other reasons	115.96	5.17	111.09

7. *Arrears of assessments*

(*a*) Income-tax including Corporation Tax

(*i*) The number of assessment cases to be finalised as on 31st March, 1976 has increased as compared to that at the close of the previous year. The number of assessments pending as on 31st March, 1976 was 17.27 lakhs as compared to 16,77 lakhs as on 31st March, 1975 and 17.20 lakhs as on 31st March, 1974. Of the 17.27 lakhs of pending cases as many as 5.79 lakh cases related to small income and summary assessments.

(ii) The number of assessments completed out of arrear assessments and out of current assessments during the past five years is given below :—

Financial year	Number of assessments for disposal	Number of assessments completed: Out of current	Out of arrears	Total	Percentage	Number of assessments pending at the end of the year
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
1975-76	57,34,327	25,08,108	14,99,536	40,07,644	69.9	17,26,683

(iii) Category-wise break-up of the total number of assessments completed during the years 1974-75 and 1975-76 is as under :—

	1974-75	1975-76
(*a*) Business cases having income over Rs. 25,000	2,60,806	3,10,130
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,44,269	1,88,707
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	2,29,139	3,01,424
(*d*) All other cases (including refund cases) except those mentioned in categories (e) and (f)	4,98,584	6,33,772
(*e*) Small income scheme cases, Government salary and non-Government salary cases below Rs. 18,000	78,011	92,992
(*f*) Summary assessments	26,30,037	24,80,619
TOTAL	38,40,846	40,07,644

(iv) Status-wise break-up of income-tax assessments completed during the years 1974-75 and 1975-76 is as under:—

	1974-75	1975-76
(*i*) Individuals	31,33,348	32,18,567
(*ii*) Hindu Undivided Families	1,66,135	1,93,545
(*iii*) Firms	4,74,435	5,19,344
(*iv*) Companies	36,574	40,327
(*v*) Associations of persons	30,354	35,861
TOTAL	38,40,846	40,07,644

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

Year	As on 31st March, 1974	As on 31st March, 1975	As on 31st March, 1976
1971-72 and earlier years	77,374	45,882	30,325
1972-73	3,88,489	30,608	17,391
1973-74	12,53,734	3,67,964	35,599
1974-75	—	12,33,027	4,22,143
1975-76	—	—	12,21,225
TOTAL	17,19,597	16,77,481	17,26,683

(vi) Category-wise break-up of pending income-tax assessments as on 31st March, 1975 and 31st March, 1976 is as under:—

	As on 31st March, 1975	As on 31st March, 1976
(*a*) Business cases having income over Rs. 25,000	1,65,778	1,81,297
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,34,885	1,69,897
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	2,18,681	2,70,718
(*d*) All other cases (including refund cases) except those mentioned in categories (e) and (f) below	4,36,065	5,25,966
(*e*) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	73,531	83,130
(*f*) Summary assessments	6,48,541	4,95,675
TOTAL	16,77,481	17,26,683

(vii) Status-wise and year-wise break-up of pendency of income-tax assessments as on 31st March, 1976 are as under: —

Status	1971-72 and earlier years	1972-73	1973-74	1974-75	1975-76	Total
Individuals	21,663	12,915	26,077	3,01,398	9,29,452	12,91,505
Hindu undivided families	1,763	1,515	1,959	24,879	59,601	89,717
Companies	2,339	481	1,251	8,465	19,077	31,613
Firms	3,990	2,153	4,413	78,615	1,89,280	2,78,451
Associations of persons	570	327	1,899	8,786	23,815	35,397
TOTAL	30,325	17,391	35,599	4,22,143	12,21,225	17,26,683

(viii) *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, 1976 are as follows :—

Assessment year	Number of assessments
1967-68 and earlier years	1,592
1968-69	446
1969-70	472
1970-71	605
1971-72	921
1972-73	1,296
1973-74	1,322
1974-75	980
1975-76	1,192
TOTAL	8,826

(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, 1976 are as follows :—

Assessment year	Number of assessments
1967-68 and earlier years	95
1968-69	63
1969-70	82
1970-71	162
1971-72	248
1972-73	319
1973-74	97
1974-75	38
1975-76	138
TOTAL	1,242

(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, 1976 :—

Set aside by Appellate Assistant Commissioners		Set aside by Appellate Tribunals	
Assessment year	Number of cases	Assessment year	Number of cases
1967-68 and earlier years	3,303	1967-68 and earlier years	531
1968-69	681	1968-69	88
1969-70	762	1969-70	108
1970-71	894	1970-71	102
1971-72	1,074	1971-72	92
1972-73	1,083	1972-73	74
1973-74	660	1973-74	58
1974-75	950	1974-75	53
1975-76	1,624	1975-76	295
TOTAL	11,031	TOTAL	1,401

(b) *Pendency of Super Profits Tax and Surtax assessments*

The position of pendency as on 31st March, 1976 is given below :—

	Super Profits tax	Surtax
(*i*) Total number of cases for disposal during 1975-76	20	4,270
(*ii*) Number of cases disposed of provisionally	—	617
(*iii*) Number of cases disposed of finally	2	1,571
(*iv*) Amount of demand raised on provisional assessments	—	Rs. 3998.68 lakhs
(*v*) Amount of demand collected on provisional assessments	—	Rs. 3603.99 lakhs
(*vi*) Amount of demand raised on final assessments.	Rs. 0.80 lakh	Rs. 2512.23 lakhs
(*vii*) Amount of demand collected on final assessments	Rs. 0.76 lakhs	Rs. 1781.40 lakhs
(*viii*) Number of cases pending as on 31st March, 1976	18	2,699
(*ix*) Approximate amount of tax involved in (*viii*)	Rs. .85 lakhs	Rs. 2367.38 lakhs

Year-wise details of assessments under Companies (Profits) Surtax Act, 1964, pending as on 31st March, 1976 are as under :—

Year	Number of assessments
1966-67 and earlier years	30
1967-68	12
1968-69	22
1969-70	20
1970-71	51
1971-72	78
1972-73	156
1973-74	437
1974-75	734
1975-76	1,159
TOTAL	2,699

(c) Year-wise details of Wealth-tax, Gift-tax and Estate Duty assessments pending on 31st March, 1976 are given below. The approximate amount of tax/duty involved therein has not been furnished by the Department of Revenue and Banking.

	Number of assessments pending		
	Wealth-tax	Gift-tax	Estate Duty
1970-71 and earlier years	21,019	4,996	1,838
1971-72	11,974	1,853	1,123
1972-73	18,773	2,635	1,653
1973-74	34,182	3,959	2,605
1974-75	58,185	7,934	7,008
1975-76	1,11,677	9,061	11,243
	2,55,810	30,438	25,470

8. Figures of interest levied under the various provisions of the Income-tax Act, 1961 are given below:—

(in crores of rupees)

(*i*) The total amount of interest levied under the various provisions of the Income-tax Act during the year 1975-76	97.22
(*ii*) Of the amount of interest levied, the amount:	
(*a*) Completely waived by the Department	4.03
(*b*) Reduced by the Department	2.14

9. *Appeals pending on 30th June, 1976.*

(i) Particulars in respect of appeals pending on 30th June, 1976 are as under :—

	Income-tax appeals with Appellate Assistant Commissioners	Income-tax revision petitions with Commissioners
(*a*) Number of appeals/revision petitions . .	2,21,619	7,364
(*b*) Out of appeals/revision petitions instituted during 1975-76	1,01,759	2,943
(*c*) Out of appeals/revision petitions instituted in earlier years	42,579	2,426

(ii) Year-wise break-up of appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax for the periods ending 30th June, 1975 and 30th June, 1976 respectively with reference to the year of institution is as under :—

Year of institution	Appeals pending with Appellate Assistant Commissioners		Revision petitions pending with Commissioners of Income-tax	
	30th June, 1975	30th June, 1976	30th June, 1975	30th June, 1976
1967-68 and earlier years . . .	82	93	121	99
1968-69 . . .	234	66	55	31
1969-70 . . .	363	153	63	36
1970-71 . . .	882	310	168	130
1971-72 . . .	3,878	1,162	308	208
1972-73 . . .	12,411	4,085	784	371
1973-74 . . .	31,000	8,601	1,543	548
1974-75 . . .	1,01,935	28,109	3,444	1,003
1975-76 . . .	72,114	1,01,759	2,077	2,943
1976-77 . . .	..	77,281	..	1,995
	2,22,899	2,21,619	8,563	7,364

(iii) The following table gives details of appeals/references disposed of during 1973-74, 1974-75 and 1975-76:—

	1973-74	1974-75	1975-76
(*i*) (*a*) No. of appeals filed before Appellate Assistant Commissioners . . .	1,78,219	2,03,970	2,01,168
(*b*) No. of appeals disposed of by 30-6-1976 . . .	1,69,618	1,75,861	99,409
(*ii*) No. of appeals filed before Income-tax Appellate Tribunals			
(*a*) by the assessees . .	29,985	20,603	31,223
(*b*) by the Department .	14,968	14,457	17,564
(*iii*) No. of assessees' appeals decided by the Tribunals in favour of the assessees . . .	29,236	14,707	25,056
(*iv*) No. of departmental appeals decided by the Tribunals in favour of the Department .	5,327	3,439	9,289
(*v*) No. of references filed to the High Courts			
(*a*) by the assessees . .	332	1,364	1,560
(*b*) by the Department .	919	3,028	3,456
(*vi*) No. of references disposed of in favour of the			
(*a*) assessees . . .	107	246	475
(*b*) Department . . .	179	269	419
(*vii*) No. of appeals filed to the Supreme Court.			
(*a*) by the assessees . .	12	46	14
(*b*) by the Department .	153	212	46
(*viii*) No. of appeals disposed of by the Supereme Court in favour of the			
(*a*) assessees . . .	1	73	12
(*b*) Department . . .	12	25	13

10. *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 Department of Revenue and Banking 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 them for the assessment years 1971-72, 1972-73 and 1974-75:—

	Assessment year	No. of assessments	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
	1974-75	407	70
(*ii*) Relief in respect of payments for securing retirement benefits	1971-72	537	1,70
	1972-73	184	1,21
	1974-75	84	1,12
(*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
	1974-75	83	74
(*iv*) Relief for newly established industrial undertakings or ships or hotels	1971-72	1080	3,60,33
	1972-73	634	9,11,15
	1974-75	704	2,70,84
(*v*) Relief for expenditure incurred on education abroad of children of foreigners	1971-72	535	1,68
	1972-73	174	69
	1974-75	168	98
(*vi*) Relief for industrial undertakings which provide employment for displaced persons	1971-72	465	62,48
	1972-73	232	18,45
	1974-75	345	2,43

(b) *Refunds*

(i) Refunds under Section 237 :

1. No. of applications pending on 1-4-75	15,651
2. No. of refund applications received during the year 1975-76	1,01,117
3. No. and amount of refunds made during 1975-76	
(*a*) Out of (1) above :	
(*i*) No.	15,615
(*ii*) Amount	Rs. 1,89,89,000
(*b*) Out of (2) above :	
(*i*) No.	95,693
(*ii*) Amount	Rs. 10,09,37,000
4. No. of refund cases in which interest was paid under Section 243, the amount of such interest, and the amount of refund, on which such interest was paid during 1975-76 :	
(*a*) Out of (1) above :	
(*i*) No.	..
(*ii*) Amount of refund	..
(*iii*) Amount of interest paid	..
(*b*) Out of (2) above :	
(*i*) No.	18
(*ii*) Amount of refund	Rs. 1,39,000
(*iii*) Amount of interest paid	Rs. 19,000
5. No. and amount of refunds made during 1975-76 on which no interest was paid :	
(*i*) No.	1,11,290
(*ii*) Amount	Rs. 11,97,87,000
6. No. of refund applications pending as on 31-3-1976	5,460
7. Break-up of applications mentioned at (6) above:	
(*i*) Refund applications for less than a year	5,424
(*ii*) between 1 year and 2 years	36
(*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		9,104
2. No. of assessments which arose for similar revision in 1975-76		1,32,581
3. No. of assessments which were revised during 1975-76 :		
(*i*) Out of those pending as on 1-4-75		8,961
(*ii*) Out of those that arose during 1-4-75 to 31-3-1976		1,25,026

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	5,159	Rs. 1,98,86,000
(*ii*) Under item 3(ii) above	58,086	Rs. 34,84,15,000

5. No. of assessments in which interest became payable under Section 244 and amount of interest :

	No.	Amount of interest
(*i*) Under item 4(i) above	60	Rs. 2,89,000
(*ii*) Under item 4(ii) above	164	Rs. 8,55,000

6. No. of assessments pending revision on 1-4-1976:	
(*i*) Out of (1) above	143
(*ii*) Out of (2) above	7,555
7. Break-up of assessments mentioned at (6) above :	
(*i*) Pending for less than 1 year	7,555
(*ii*) Pending for more than 1 year and less than 2 years	142
(*iii*) Pending for more than 2 years	1

11. *Voluntary Disclosures*

(i) Voluntary disclosures under the Voluntary Disclosure of Income and Wealth Scheme, 1975

	No.	Rs. (in crores)
1. No. of declarations received under Section 3(1)	2,41,079	
2. Amount of Income disclosed . .		689.41
3. No. of declarations received under Section 14(1), in cases of search and seizure	4,491	
4. Amount of income declared . .		56.66
5. No. of declarations received under Section 15(1) in respect of net wealth or value of assets not disclosed or understated	13,422	
6. Amount of net wealth declared and value of assets not disclosed or understated		841.72
7. Total number of declarations (1+3+5)	2,58,992	
8. Total amount of income declared (2+4)		746.07
9. Total amount of wealth declared .		841.72

Information was also called for in respect of the amount of tax paid by the declarants before making the declarations, the number of cases in which assessments had been completed by 31st March, 1976, the amount of income/wealth assessed and the taxes levied, collected and outstanding in respect thereof. The Department of Revenue and Banking have stated that this information is not available and it would take considerable time and energy to collect it from the various Commissioners of Income-tax. They have, however, intimated that the amount of tax collected upto 31st December, 1975 was Rs. 164 crores and that upto 31st March, 1976 over Rs. 199.24 crores. The total tax payable is stated to be over Rs. 249 crores.

(ii) Voluntary disclosures under Section 271(4A)/273A(i) of the Income-tax Act, 1961.

	No.	Rs. (in thousands)
1. No. of cases outstanding as on 1-4-75	5,036	
2. No. of declarants who made voluntary disclosures during 1975-76 . .	5,520	
TOTAL	10,556	
3. Amount of income declared :		
in respect of (1)		19,38,56
in respect of (2)		15,43,72
TOTAL		34,82,28
4. No. of cases in which the assessments have been completed . . .	3,795	
5. Amount of income involved in cases in (4) above	..	7,37,47
6. Amount of extra tax levied in cases in (4) above	..	1,85,42
7. Amount recovered out of (6) above .	..	1,12,40
8. No. of cases in which levy of penalty has been completely waived or reduced below the minimum	3,453	
9. Amount of income involved in (8) above.		6,17,83
10. No. of cases outstanding without finalisation on 31-3-1976	5,054	..

11. Year-wise details of (10) above :

1965-66	24
1966-67	35
1967-68	23
1968-69	16
1969-70	40
1970-71	77
1971-72	191
1972-73	333
1973-74	468
1974-75	909
1975-76	2,938
	5,054

12. *Searches and Seizures*

	1973-74	1974-75	1975-76
		(in lakhs of rupees)	
(*i*) Total number of searches and seizure operations conducted . .	538	2,029	2,635
(*ii*) Total amount each of money, bullion and jewellery or other valuable articles or things seized			
Cash	141	385	334
Jewellery and bullion . .	108	940	1,306
Other assets	191	388	495
TOTAL . .	440	1,713	2,135

	(In lakhs of rupees)
(*iii*) Total amount each of money, bullion and jewellery or other valuable articles or things released by 31-3-76	
Cash	101
Jewellery and bullion . .	442
Other assets	196
TOTAL . .	739

	(In lakhs of rupees)
(*iv*) Total amount of money, bullion and jewellery or other valuable articles or things held as on 31-3-1976 irrespective of the year of search	
Cash	467
Bullion and jewellery . .	1,452
Other assets	871
	2,790*
(*v*) The earliest date from which any of these assets is still retained.	2-5-1965

*(Excluding some ornaments not valued, sovereigns, silver and other foreign currency etc.).

(*vi*) The arrangements made for the safe custody of assets still held and for their physical verification.	Cash is deposited in the Personal Deposit Accounts of the Commissioners of Income-tax in the Reserve Bank of India. Other valuables are kept either in well-guarded strong rooms in the office buildings or in treasuries or in 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 31-3-1976	208	290	826	
(*ix*) No. of cases where assessments were completed by reducing or waiving penalties under Section 271 (4A) .	1	..	..	
		(In lakhs of rupees)		
(*x*) The total amount of arrears of income-tax pending as on 31-3-1976 in respect of the assessments completed	275	416	213	
(*xi*) The amounts of concealed income estimated in these cases at the time of search and seizure . . .	540	362	698	
(*xii*) The amounts on which actual assessments were made	190	278	603	
(*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	54	126	167	
(*xiv*) No. of cases in which prosecution was launched	2	5	..	
(*xv*) No. of cases in which convictions were obtained	..	1	..	

13. *Frauds and evasions*

(a) *Income-tax*

(*i*) No. of cases in which penalty under Section 28(1)(c)/271(1)(c) was levied in 1975-76 . . .	8,234
(*ii*) No. of cases in which prosecution for concealment of income was launched . . .	89
(*iii*) No. of cases in which composition was effected without launching prosecution . . .	3
(*iv*) Concealed income involved in (i) . . .	Rs. 16.35 crores
(*v*) Total amount of penalty levied in (i) . .	Rs. 13.67 crores
(*vi*) Extra tax demanded on concealed income in (iv)	Rs. 6.46 crores
(*vii*) Cases out of (ii) in which convictions were obtained	1
(*viii*) Composition money levied in respect of (iii) .	Rs. 22,500
(*ix*) Nature of punishment in respect of (vii) Convicted to one day's rigorous imprisonment and fine of Rs. 1,000	one case

(b) *Wealth-tax and Gift-tax*

	Wealth-tax	Gift-tax
(*i*) No. of cases in which penalty under Section 18(1)(a)/17(1)(c)was levied	908	45
(*ii*) No. of cases in which prosecution for concealment was launched .	23	..
(*iii*) No. of cases in which composition was effected without launching prosecution	1	..
	Rs.	Rs.
(*iv*) Concealment of net wealth/value of gift involved in (i) above . .	8,04,80,000	7,37,000
(*v*) Total amount of penalty levied .	4,18,55,000	30,000
(*vi*) Extra tax demand on concealment	23,42,000	78,000
(*vii*) Cases out of (ii) in which convictions were obtained . . .	..	..
(*viii*) Composition fees levied in respect of cases in (iii)	50,000	..
(*ix*) Nature of punishment in respect of (*vii*)	..	..

14. *Revenue demands written off by the Department during the year* 1975-76

(a) A demand of Rs. 531.91 lakhs in 12,485 cases was written off by the Revenue Department during the year 1975-76. Of this, a sum of Rs. 211.58 lakhs relates to 655 company assessees and Rs. 320.33 lakhs to 11,830 non-company assessees.

	Companies		Non-Companies		Total	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
1 2	3	4	5	6	7	8
I. Assessees having died leaving behind no assets or gone into liquidation or become insolvent :						
(*a*) Assessees having died leaving behind no assets	—	—	81	1,20,64,806	81	1,20,64,806
(*b*) Assessees having gone into liquidation	31	11,75,322	—	—	31	11,75,322
(*c*) Assessees having become insolvent	—	—	3	5,79,072	3	5,79,072
(*d*) Assessees which are defunct though not gone into liquidation.	4	6,50,194	—	—	4	6,50,194
TOTAL	35	18,25,516	84	1,26,43,878	119	1,44,69,394

1	2	3	4	5	6	7	8
II.	Assessees being untraceable	33	1,96,859	6,514	23,66,397	6,547	25,63,256
III.	Assessees having left India	—	—	9	5,17,012	9	5,17,012
IV.	For other reasons :						
	(*i*) Assessees who are alive but have no attachable assets.	22	1,91,15,600	310	60,24,775	332	2,51,40,375
	(*ii*) Amount being petty etc.	565	20,506	4,893	4,51,889	5,458	4,72,395
	(*iii*) Amount written off as a result of settlement (cases of scaling down of demand).	—	—	2	3,000	2	3,000
	(*iv*) Demands rendered unenforceable by subsequent developments such as duplicate demands wrongly made, demands being protective etc.	—	—	18	1,00,26,299	18	1,00,26,299
	TOTAL	587	1,91,36,106	5,223	1,65,05,963	5,810	3,56,42,069
V.	Amount written off on grounds of equity or as a matter of international courtesy or where time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount for recovery.	—	—	—	—	—	—
	GRAND TOTAL	655	2,11,58,481	11,830	3,20,33,250	12,485	5,31,91,731

(b) An arrear demand of Rs. 14,48,037 pertaining to the assessment years 1963-64 to 1968-69 against an individual assessee was written off on 31st March, 1975. The assessee was stated to have been getting a freedom fighters' pension of Rs. 200 per month since 15th August, 1972. It was also stated that the Customs Department had raided the assessee's premises in June, 1967 and seized Indian currency amounting to Rs. 4,37,770, gold bars weighing about 600 tolas and a sum of Rs. 2,90,000 lying in a locker belonging to the assessee in the *benami* name of some other person.

15. *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
1973-74	80	8
1974-75	80	10
1975-76	80	10

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

Year	Income-tax	Wealth-tax	Gift-tax	Estate Duty
1973-74	252	1,724	30	189
1974-75	906	11,022	61	285
1975-76	1,696	12,978	112	260

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

(in lakhs of rupees)

Year	Income-tax	Wealth-tax	Gift-tax	Estate Duty
1973-74	493.03	2740.90	21.31	146.65
1974-75	1409.75	9636.99	47.73	201.84
1975-76	2912.47	19811.84	111.06	752.93

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

(in lakhs of rupees)

Year	Income-tax		Wealth-tax		Gift-tax		Estate Duty	
	No. of cases	Total amount	No. of cases	Total amount	No. of cases	Total amount	No. of cases	Total amount
1973-74	294	641.57	529+ 57*	5204.69	21+ 2*	45.27	195+ 34*	488.33
1974-75	725+ 35*	1934.24	5707+ 206*	19583.49	36+ 3*	70.15	98+ 14*	359.31
1975-76	1401+ 55*	3538.28	12180+ 312*	39049.84	86+ 2*	270.07	296+ 23*	1246.38

(5) No. of cases pending in the Valuation Cells on 1-4-1976 :

	Number
Income-tax	572
Wealth-tax	8,906
Gift-tax	54
Estate Duty	184

(6) Expenditure incurred on Valuation Cells during 1973-74, 1974-75 and 1975-76 :

Year	Expenditure
1973-74	26,29,282
1974-75	61,94,372
1975-76	84,29,546

16. *Results of test audit in general*

(i) *Corporation Tax and Income-tax*

During the period from 1st April, 1975 to 31st March, 1976 test audit of the documents of the income-tax offices revealed total under-assessment of tax of Rs. 1990.05 lakhs in 21,837 cases and over-assessment of tax of Rs. 88.24 lakhs in 2,611 cases. Besides these, various defects in following the prescribed procedure also came to the notice of Audit.

*Cases returned to Income-tax Officers.

N.B.—Figures appearing in paragraphs 4 to 15 above [stated to be provisional in respect of paragraphs 6 (a)(i), (ii) & (iii), 6 (b) and 14 (a)] have been furnished by the Department of Revenue and Banking.

Of the total 21,837 cases of under-assessment, short levy of tax of Rs. 1735.74 lakhs was noticed in 1,551 cases alone. The remaining 20,286 cases accounted for under-assessment of tax of Rs. 254.31 lakhs.

The under-assessment of tax of Rs. 19,90.05 lakhs is due to mistakes categorised broadly under the following heads:

	No. of items	Amount (in lakhs of rupees)
1. Income escaping assessment.	1,610	262.16
2. Failure to observe the provisions of the Finance Acts.	399	20.45
3. Incorrect status adopted in assessments.	158	6.91
4. Incorrect computation of salary income.	769	12.37
5. Incorrect computation of income from house property.	1,011	20.95
6. Incorrect computation of dividend income.	94	3.76
7. Incorrect computation of business income.	3,491	220.21
8. Irregularities in allowing depreciation and development rebate.	1,130	111.14
9. Irregularities in connection with export incentives.	32	59.83
10. Irregular exemptions and excess reliefs given.	1,434	531 51
11. Irregular computation of capital gains.	220	31.02
12. Mistakes in assessment of firms and partners.	568	41.74
13. Omission to include income of spouse/minor child etc.	60	9.28
14. Avoidable mistakes involving considerable revenue.	8	161.20
15. Irregular set off of losses.	123	12.06
16. Under-assessment due to adoption of incorrect procedure.	7	2.82
17. Mistakes in assessments while giving effect to appellate orders.	63	3.26
18. Excess or irregular refunds.	647	18.88
19. Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.	3,278	124.25
20. Avoidable or incorrect payment of interest by Government.	59	30.43
21. Omission/short levy of penalty.	64	29.28
22. Other topics of interest/miscellaneous.	6,504	174.77
23. Under-assessment of Surtax/Super Profits Tax	108	101.77
TOTAL	21,837	1,09.05

(ii) *Wealth-tax*

During test audit of assessments made under the Wealth-tax Act, 1957, short levy of tax of Rs. 142.94 lakhs was noticed in 3,982 cases. The number of cases in which over-assessment was noticed was 634 and tax involved was Rs. 9.83 lakhs.

The under-assessment of tax of Rs. 142.94 lakhs was due to mistakes categorised broadly under the following heads:—

	No. of items	Amount (in lakhs of rupees)
1. Wealth escaping assessment	608	10.57
2. Incorrect valuation of assets	448	6.86
3. Mistakes in computation of net wealth	521	7.86
4. Irregular/excessive allowance and exemptions	1,061	16.11
5. Mistakes in calculation of tax	392	4.72
6. Non-levy or incorrect levy of additional wealth-tax	62	4.00
7. Non-levy or incorrect levy of penalty and non-levy of interest	445	84.17
8. Incorrect status adopted in assessments	27	1.73
9. Mistakes in refunds	21	0.74
10. Miscellaneous	397	6.18
TOTAL	3,982	142.94

(iii) *Gift-tax*

During the test audit of gift-tax assessments it was noticed that in 757 cases there was short levy of tax of Rs. 31.95 lakhs and in 103 cases there was overcharge of tax of Rs. 0.75 lakhs.

(iv) *Estate Duty*

In test audit of estate duty assessments, it was noticed that in 597 cases there was short levy of estate duty of Rs. 935.27 lakhs and in 76 cases there was overcharge of duty of Rs. 2.39 lakhs.

CHAPTER II

CORPORATION TAX

17. As on 31st March, 1976 there were 46,321 companies. These included 481 foreign companies and 1,337 associations not for profit registered as companies limited by guarantee. The remaining 44,503 companies comprised 651 Government companies and 43,852 non-Government companies with paid-up capital of Rs. 6,122 crores and Rs. 2,715 crores respectively. Among non-Government companies over 82 per cent were private limited companies.*

The definition of "Indian company" in the Income-tax Act was amended from Ist April, 1971 to include also a statutory corporation. According to the information furnished by the Department of Revenue and Banking, the number of Public Sector Undertakings assessed as companies for the assessment year 1975-76 was 409. The total amount of tax levied in the case of these Undertakings was Rs. 61.01 crores. The amount of tax actually paid by these Undertakings during the year, including pre-assessment collections, was, however, Rs. 103.52 crores.

This has been explained by the Department of Revenue and Banking as follows :—

> ".....the tax collected is more because it includes the figure of tax deducted at source, advance tax, self assessment tax also of those cases where assessment was not completed during 1975-76."

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*Figures given by the Department of Company Affairs, Ministry of Law, Justice and Company Affairs.

The Income-tax Act, 1961, as amended from Ist 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 Department of Revenue and Banking have intimated that the following number of associations have been declared as 'companies':

	No. of associations declared as companies
1971-72	33
1972-73	2
1973-74	10
1974-75	1
1975-76	2

18. The number of company assessments completed and assessments pending at the close of the year 1975-76 as furnished by the Department of Revenue and Banking, are given below:—

(*i*) Total number of company assessments pending at the beginning of the year 1975-76	32,158
(*ii*) Number of assessments out of (i) completed during 1975-76	20,170
(*iii*) Total number of current assessments required to be completed during 1975-76	39,782
(*iv*) Number of assessments out of (iii) completed during 1975-76	20,157
(*v*) Number of assessments pending on 31st March, 1976	31,613

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

19. *Income escaping assessment*

(*i*) Under the provisions of the Income-tax Act, 1961, a non-resident has to pay tax on any income which accrues or arises to him in India during the relevant previous year and all income accruing or arising directly or indirectly, from any business connection in India is deemed to accrue or arise in India.

(a) Six Indian companies, affiliated to six non-resident fertiliser manufacturers, were returning income from 1968-69 onwards by way of commission earned on sales effected in India by the non-resident manufacturers. The supplies were made to the Government of India who were stated to be directly making payments to the manufacturers and commission was received by the affiliated agents in India. The profits resulting from these sales were not brought to tax in the hands of the non-resident manufacturers. In view of the fact that the sales were concluded in India, profits on such sales accrued in India and were also attributable to the activities of the affiliated sole selling agents in India. Taking the gross profits at 5 per cent of the turnover and allowing commission paid to the agents at 1 per cent of the turnover as expenditure, the total short levy of income-tax and surtax would be Rs. 1.43 crores approximately for the assessment years 1968-69 to 1974-75.

Six other Indian companies were also acting as sole selling agents for these non-resident manufacturers. The particulars of sales effected through them could not be ascertained. The short levy of tax would go up further when these sales are also taken into account.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consider ion.

(b) In the assessment of a foreign company for the assessment year 1971-72 completed in March, 1974, the amounts received from an Indian company as consideration for providing engineering and technical services including the provision of foreign technicians in India and as contribution towards the cost of research and development, was included and assessed in full as arising from a business connection in India. Similar amounts aggregating Rs. 15,00,456 were received by the foreign company during the previous years relevant to the assessment years

1966-67 to 1968-69, but in the assessments for the three years, all completed in May, 1972, the amounts were not included either in part or in full, and were completely excluded as exempt. As a result, there was tax undercharge of Rs. 10,50,300.

The Department of Revenue and Banking have stated (December, 1976) that the audit objection being based on the findings of the Income-tax Officer in the assessment order for 1971-72 cannot be accepted as the said assessment did not survive before the Appellate Assistant Commissioner. It is, however, learnt that the Department have not accepted the Appellate Assistant Commissioner's decision; they have gone in appeal before the Tribunal.

(*ii*) On a study made by the Directorate of Inspection (Investigation) of the Central Board of Direct Taxes, of the effect of partial decontrol of sugar from November, 1967, it was found, *inter alia*, that 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 as the actual sale price of free market sugar was much higher than Rs. 300 adopted for estimating the profits, the profits for tax purposes might be at least 20 per cent higher than those estimated by the Directorate.

A sugar manufacturing company disclosed a profit of Rs. 24.05 lakhs for the year ended 30th September, 1968 relevant for the assessment year 1969-70 and the assessment was completed in January, 1972 on the basis of the profits so disclosed and revised in November, 1974. The actual profits made by the company as estimated on the basis of the data collected and circulated by the Board in October, 1968 would be Rs. 55.73 lakhs. The shortfall of Rs. 31.68 lakhs leading to escapement of income

to that extent involving tax revenue of Rs. 16,66,000 apart from penalty leviable for the undisclosed income, was not investigated by the Department.

The Department of Revenue and Banking have stated (January, 1977) that the Board's circular of 1968 only postulated a hypothetical situation based on certain assumptions and was intended only as a starting point of enquiry into the cases of sugar mills. They have not, however, indicated whether any enquiries on the lines indicated in that circular were, in fact, made in this case.

(*iii*) Under the provisions of the Income-tax Act, 1961, where an assessee has been allowed a deduction in his assessment on account of any trading liability or loss and subsequently the loss is recouped to him by payment either in cash or by provision of a benefit or he is absolved from meeting the trading liability either by way of remission or on any other account, the amount of loss thus saved to him is chargeable to tax in the year in which the loss is recouped or the liability is liquidated.

According to the terms of an agreement, an Indian company was liable to meet the tax liabilities on behalf of a non-resident company in respect of the technical fees payable by it to the non-resident company which was allowed as a deduction in the computation of total income of the Indian company. The aggregate tax liability in respect of the assessment years 1959-60 to 1963-64 which was initially determined at Rs. 11,99,852 was once reduced under appellate orders to Rs. 11,39,910 and the resultant remission of liability of Rs. 59,942 was correctly brought to tax by the Department in the assessment year 1964-65. As a result of a further appeal to the Tribunal, the tax liability was again brought down to Rs. 5,33,789 on 17-8-1971 when the additional relief of Rs. 6,06,121 should have been brought to tax in the assessment year 1972-73. Against this, the Department assessed a sum of

Rs. 4,04,733 only as per the assessee's calculations leading to an escapement of income of Rs. 2,01,388 with consequent tax undercharge of Rs. 1,13,533.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(*iv*) A case of failure to bring to tax, dividend earned by a Chit Fund company on vacant chits was pointed out in para 20(ii) of the Audit Report 1971-72. A similar failure was noticed in another case.

A company engaged in Chit Fund business did not return the income from dividend earned by it on vacant chits. The Department also did not include the same under the total income for levy of income-tax. The dividends accrued resulting from the discount paid by the successful bidder at the auctions are payable to each and every chit including those vacant and held by the Fund. Thus, the chits held by the Fund have yielded income which should have been brought to tax. The short assessment noticed for the assessment year 1970-71 was Rs. 1,57,719 with a consequential short demand of tax of Rs. 97,734. Minimum penalty leviable for concealment of income would be Rs. 1,57,719.

The Department of Revenue and Banking have accepted the objection in principle.

(*v*) A company which maintained its accounts on the mercantile system used to credit in its accounts interest accrued or received from its debtors till the assessment year 1971-72. Although the amounts of outstanding loans remained the same as before and were not declared by the assessee as bad debts, no such credits, however, appeared in its accounts for the years relevant to the assessment years 1972-73 and 1973-74. As a result, interest income of Rs. 71,909 escaped assessment in each of the two

assessment years, leading to a total tax undercharge of Rs. 96,987.

The objection has been accepted by the Department of Revenue and Banking (October, 1976).

(*vi*) A company, dealing mainly in buying and selling land after development, used to credit the net profit on sale of land to the profit and loss account. This practice was discontinued in the year relevant to the assessment year 1973-74 when the opening and closing values of the property as also the sale price of lands sold were exhibited in the profit and loss account. Although there was no sale of certain lands during the year, only one half of the opening value of these lands was included in the closing balance, without assigning any reasons. Reduction of the value of the land by fifty per cent without any basis led to under-assessment of total income by Rs. 1,57,295 with consequent undercharge of tax of Rs. 91,790 and short-levy of interest of Rs. 5,240 for non-filing of estimate of current income. The case would also attract the penal provisions of the law for concealment of income.

The Department of Revenue and Banking have accepted the objection (January, 1977).

(*vii*) Under the provisions of the Income-tax Rules, 1962, framed under the Income-tax Act, 1961, income derived from the sale of tea grown and manufactured by a seller in India shall be computed as if it were income derived from business, and forty per cent thereof shall be liable to tax.

Income of a non-resident tea company from interest received in India during the years relevant to the assessment years 1972-73, 1973-74 and 1974-75 amounted to Rs. 1,01,251, Rs. 51,243 and Rs. 28,348 respectively. Although such income was assessable as income from other sources, hundred per cent of which was taxable under the provisions of the Act, the Department included it in the assessee's income from tea business and brought only

forty per cent of it to tax, the balance sixty per cent escaping assessment. The aggregate tax undercharge on this account amounted to Rs. 78,688 for the three assessment years.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(*viii*) The purchaser of a certain house property which was in the occupation of two tenants, a firm and a company, at the time of its sale in 1963, entered into an agreement with the tenant firm in terms of which he paid the firm in the year 1965 a sum of Rs. 2,50,000 as consideration money for vacating the premises. The firm credited Rs. 1,60,000 out of it in its accounts and paid the balance of Rs. 90,000 to the other tenant. The sum of Rs. 90,000 so paid was not, however, credited to the accounts of the company nor was it considered by the Department in its assessment for the assessment year 1966-67. This led to excess carry forward of loss to the extent of Rs. 90,000 in the assessment year 1966-67 and consequent under-assessment of income of Rs. 54,280 and Rs. 35,720 in the assessment years 1971-72 and 1972-73 respectively, in which years the loss was set-off. The resultant total tax undercharge was Rs. 59,080.

The Department of Revenue and Banking have accepted the objection (December, 1976).

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

(*i*) Under the provisions of the Finance Acts, 1968 and 1969, where the total income of a non-resident company includes fees received from an Indian concern for rendering technical services in pursuance of an agreement made by it with the Indian concern, after the 29th February, 1964 and which has been approved by the Central Government, the tax chargeable on such fees is at a concessional rate of 50 per cent as against 70 per cent on other income.

In the case of a non-resident company, fees amounting to Rs. 12,46,550 and Rs. 36,08,860 received in the previous years relevant to the assessment years 1968-69 and 1969-70 respectively for rendering technical services to an Indian company in pursuance of an original agreement dated 26-8-1948 were inadvertently charged to tax at the rate of 50 per cent instead of at the rate of 70 per cent correctly chargeable. This resulted in a total short levy of tax of Rs. 9,71,082, in these two years.

The Department of Revenue and Banking have stated that the agreement for the period from 1-3-1967 to 30-6-1968 was a new agreement on the terms and conditions of the 1948 agreement. The approval letter of Government dated 31-10-1968, however, clearly stated that Government 'approve of the continuation of the agreement dated 26th August, 1948..... for the period from 1st March, 1967 to 30th June, 1968'.

(*ii*) Under the Income-tax Act, 1961, as it stood on 1-4-1966 the tax on long-term capital gains relating to lands or buildings was leviable at 40 per cent in the case of companies.

The quantum of long-term capital gains derived by a company, on sale of certain land during the year relevant to the assessment year 1966-67 was determined by the appellate authority as Rs. 5,80,036. Tax leviable thereon at the rate of 40 per cent worked out to Rs. 2,32,014 while the Department levied tax of Rs. 1,74,010 only at the rate of 30 per cent, resulting in tax undercharge of Rs. 58,004.

The objection has been accepted by the Department of Revenue and Banking (October, 1976).

21. *Incorrect status adopted in assessments*

(*i*) Under the Income-tax Act, 1961, a company having no share-capital can be deemed to be a company in which the public are substantially interested only if it is so declared by an order

of the Central Board of Direct Taxes, having regard to the objects, nature and composition of its membership and other relevant considerations.

A club in a metropolitan town, which had registered itself as a company without any share-capital and which was not also declared by an order of the Central Board of Direct Taxes to be a company in which the public were substantially interested, was assessed as a company in which the public were substantially interested during the assessment years 1966-67 to 1974-75. The rates of tax prescribed by the Finance Acts, 1966 to 1974 for a non-industrial company in which the public were not substantially interested being higher than those applicable to companies in which the public were substantially interested, the incorrect adoption of the status of the assessee led to total undercharge of tax of Rs. 68,837 in the nine assessment years from 1966-67 to 1974-75.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(*ii*) The Act further provides that a company, which is treated as one in which the public are substantially interested, suffers lesser tax liability in comparison with a company which is not so treated. To be so treated, a company shall, among other things, fulfil the conditions that it is not a private company, and that its shares are listed in a recognised stock exchange or its shares carrying more than 50 per cent of the voting power were, at no time during the relevant previous year, controlled or held by five or less persons. In computing this number, persons who are relatives of one another are treated together as a single person.

(a) In the assessment of a company for the assessment year 1974-75 completed in August, 1974, the status of the company was taken as one in which the public are substantially interested and tax calculated accordingly. It was, however, noticed in audit that in the statement of total income furnished by the

assessee along with the return, the status of the company was shown as one in which the public were not substantially interested, the shares of the company were not listed in a stock exchange and more than fifty per cent of the shares of the company were held by a single group of relatives as evidenced from the list of shareholders available for the assessment year 1969-70 and the share-holding had not changed subsequently. The company was, therefore, to be treated as one in which public are not substantially interested. The mistake in determining the status of the company resulted in a short levy of tax of Rs. 66,493.

The Department of Revenue and Banking have accepted the objection and stated (November, 1976) that as a result of rectification, additional demand of Rs. 66,493 has been raised and collected.

(b) In the case of another company not listed in the stock exchange, out of 30,376 equity shares of Rs. 100 each, 17,738 shares were held by the Managing Director, her husband and her two step-sons. Hence the company could not be treated as one in which the public are substantially interested. While completing the assessment for the assessment year 1971-72 in December, 1974 the company was, however, treated as one in which the public are substantially interested. This mistake resulted in an under-assessment of income-tax of Rs. 28,300.

While accepting the objection, the Department of Revenue and Banking have stated (October, 1976) that the assessment in question has been rectified and that the amount of additional tax raised and collected is Rs. 28,300.

(*iii*) Successive Finance Acts between 1966 and 1974 provide for concessional taxation in the case of industrial companies in contrast to non-industrial companies, where the companies are domestic companies in which the public are not substantially interested. For this purpose, an "industrial company" is defined as one which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the

construction of ships or in the manufacture or processing of goods or in mining. It has been held, that the expression "manufacturing or processing of goods" is not to include the activity carried on in preparing articles of food from raw materials.

A company which was mainly engaged in the business of preparation and sale of sweetmeats was classified by the Department as an industrial company and, on its assessed income of Rs. 69,160 for the assessment year 1971-72 and Rs. 52,629 for the assessment year 1972-73, tax at the concessional rate of 55 per cent was levied instead of at the normal rate of 65 per cent. As the activity of preparation of sweetmeats or other food articles from raw materials did not constitute "manufacture or processing of goods", the Department's action in treating the assessee company as an industrial company and applying the concessional rate of tax was not in order.

The Department of Revenue and Banking have accepted the objection.

22. *Incorrect computation of dividend income*

Where an assessee was in receipt of dividend from companies in the United Kingdom prior to 5th April, 1966, only the net dividend *i.e.* after deducting the tax recovered at source in the United Kingdom was adopted as income liable to Indian Income-tax. From 5th April, 1966, in view of the amendment of the relevant statute in the United Kingdom, the tax deducted at source was to be treated as the income of the assessee and hence the gross dividends would be liable to be assessed to Indian Income-tax. This position was clarified in executive instructions issued in March, 1968.

In the assessment of an Indian company deriving sterling dividends from the United Kingdom for the assessment years 1968-69, 1969-70 and 1972-73 completed during the period September, 1970 to October, 1974, the net dividend income only was included and charged to Indian income-tax instead of the gross amount of dividend. The incorrect adoption of the net

amount of the dividend resulted in short levy of tax of Rs. 80,392 for the three years.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

Incorrect computation of business income

23. *Non-resident companies*

(i) Under the provisions of the Income-tax Act, 1961, where a ship belonging to or chartered by a non-resident carries passengers or goods shipped at an Indian port, one-sixth of the amount payable for such carriage shall be deemed to be income accruing in India and shall be chargeable to income-tax. Where the income earned is expressed in foreign currency, it shall be converted into Indian rupees for determining the total income, at the rate of exchange prescribed in the rules made under the statute, the rate of conversion prescribed for United States dollars being rupees seven and paise fifty for one dollar.

In 43 cases of ships belonging to non-residents, which touched Indian ports during the years 1974 and 1975, in assessing the freight income earned and expressed in United States dollars, the amount was converted into rupees at the rate of Rs. 7.279 per dollar as against the rate of rupees seven and paise fifty per dollar prescribed in the rules. The adoption of the incorrect rate of conversion resulted in short levy of tax of Rs. 2,46,948.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(ii) In the computation of income of foreign concerns carrying on business in India through their branches, such part of the head office expenses as can be reasonably held as related to the activities of the Indian branch is allowed as deduction under Section 37 of the Income-tax Act, 1961.

The Indian branch of a foreign banking company had been claiming such head office expenses on the basis of the ratio of

gross Indian revenues to gross revenues of all overseas offices. In the assessment year 1967-68, the gross revenue of $ 19,48,346 of the said Indian branch included a profit of $ 2,69,600 (Rs. 20.22 lakhs) due to devaluation of the Indian rupee in 1966. This fortuitous gain was not excluded from the gross Indian revenues and gross world revenues for apportioning head office expenses, although the assessee had made no efforts in earning the same. As a result, head office expenses were allowed in excess to the extent of Rs. 2,13,669 leading to a short levy of tax of Rs. 1,49,568 for the assessment year 1967-68.

The Department of Revenue and Banking have stated that all the remedial action had already been barred by limitation when the audit objection was made. In fact remedial action could be taken upto 17-2-1976 while the audit objection was taken on 7-11-1975.

(iii) Under the Income-tax Act, 1961, income arising directly or indirectly from any business connection in India is deemed to accrue in India and is chargeable to tax even in the case of non-residents. It was judicially held in May, 1973 that the income by way of technical fees received by a foreign concern towards provision of technical services in India would be liable to tax *in toto* as income wholly arising in India.

In the assessment of a non-resident company for the assessment year 1971-72 completed in October, 1971 and revised in November, 1972 only fifty per cent of the technical fees received by the company from an Indian concern for providing technical services was brought to tax on the ground that only fifty per cent of it accrued in India. The omission to revise the assessment of the assessee company to bring to tax the technical fees of Rs. 2,32,056 in entirety in conformity with the judicial decision, resulted in short levy of tax of Rs. 81,220.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(iv) Under the Income-tax Act, 1961, the value of any benefit arising from business would constitute income chargeable to income-tax.

In terms of an agreement entered into in February, 1961, a non-resident company was entitled to receive from an Indian company annual fees of 6,000 Swiss Francs and the Indian Income-tax payable in respect of the annual fees by the foreign company was to be borne by the Indian company. In computing the income of the foreign company for levy of income-tax, the amount of income-tax paid by the Indian company in terms of the agreement is includible, as it is a benefit to the foreign company from its business. However, in the assessments of the foreign company for the assessment years 1969-70 to 1971-72, only the actual annual fees were included in the total income and the amount of income-tax thereon borne by the Indian company was not included, leading to short levy of tax of Rs. 15,964.

Further, the Finance Act, 1972 provides that for the assessment year 1972-73, the income derived by a non-resident company by way of royalties received from an Indian company is chargeable to income-tax at 50 per cent, if the royalty is derived in pursuance of an agreement entered into after 31st March, 1961 and approved by the Government of India. The rate of tax is 70 per cent, if the agreement was entered into on or before 31st March, 1961 or if it has not been approved by the Central Government. During the period relevant to the assessment year 1972-73, the non-resident assessee company received royalty of Rs. 74,987 from the Indian company under the agreement entered into in February, 1961. There was also no information on record to show that the agreement was approved by the Central Government. The royalty income was taxable at the higher rate of 70 per cent, but in the regular assessment completed in March, 1973, it was taxed at 50 per cent leading to short levy of tax of Rs. 14,993.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(v) According to the provisions of the Income-tax Act, 1961, deduction of any reasonable sum paid for realising a dividend is allowed. However, this does not contemplate allowance of expenditure incurred on remittances abroad of the dividends so realised nor to permit deduction of any loss due to exchange fluctuations, while so remitting the dividends realised in Rupees.

A non-resident (U.K.) company, holding 50 per cent shares in an Indian company, received from it a net dividend income of Rs. 4,17,797 for the assessment year 1974-75. The Sterling equivalent of this amount was £ 23,210.94 calculated at the rate of £ 1=Rs. 18 (being the official rate of exchange). However, the bankers of the non-resident company remitted a sum of £ 22,122.35 and the difference was mostly composed of losses due to exchange fluctuations and other remittance expenses, after realising the dividends on behalf of the assessee. But the non-resident company claimed the difference in equivalent rupees of Rs. 19,595 as "remittance expenses". This was erroneously allowed as expenses incurred on realising the dividend leading to a short levy of tax of Rs. 15,508.

The Department of Revenue and Banking have accepted the objection (January, 1977).

24. *Insurance Companies*

(i) Under the provisions of the First Schedule to the Income-tax Act, 1961, the profit and gains of a business of life insurance shall be the gross external incomings of the previous year from that business, less the management expenses or the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938, in respect of the last intervaluation

period ending before the commencement of the assessment year and as adjusted under the rule, whichever is greater. Further, the rules provide that the annual value of the property occupied by the assessee, which otherwise would have been assessable under the head "income from house property" shall be computed under the normal rules applicable to the computation of income under that head. It is also provided that the management expenses do not include any expenditure or allowance which may not be admissible under the provisions of Sections 30 to 43A of the Act in computing the profits and gains of business.

In the case of a corporation carrying on business of life insurance, the profits and gains of its life insurance business computed under the gross external incomings method were found to be greater for the two assessment years 1971-72 and 1972-73 and were assessed accordingly. The method of accounting followed by the corporation under the special rules governing the computation of life insurance business required certain adjustments in the computation of management expenses and "income from house property" for the purposes of gross incomings which were not carried out while completing the assessments for 1971-72 and 1972-73. This resulted in an under-assessment of income of the corporation aggregating Rs. 14,98,327 leading to a total short levy of tax of Rs. 7,61,285.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(ii) The Income-tax Act, 1961 further provides that the taxable income of any business of insurance shall be taken to be the balance of the profits disclosed in the annual accounts to be furnished to the Controller of Insurance, subject to adjustments as prescribed.

In the assessment of an insurance company for the assessment years 1970-71 to 1973-74, the income by way of interest on securities amounting to Rs. 1,59,000, Rs. 3,18,762, Rs. 3,48,718 and

Rs. 5,70,736 as included by the assessee in its return of income was substituted by lower amounts of Rs. 1,30.715, Rs. 2,69,732, Rs. 3,13,217 and Rs. 5,06,251 respectively on the basis of actual receipts during the relevant previous year. The incorrect adoption of receipts as the basis for assessment resulted in under-assessment of income of Rs. 1,77,301 with consequent short levy of tax of Rs. 1,09,690 for the four years.

The Department of Revenue and Banking have accepted the objection in principle (February, 1977).

(iii) According to the instructions issued by the Central Board of Direct Taxes on 26-4-1972, the interim compensation payable by the Central Government to insurance companies or other concerns for taking over their management is a revenue receipt and is taxable in their hands as income.

A sum of Rs. 2,64,527 receivable by an insurance company from the Central Government as management compensation during the year relevant to the assessment year 1972-73 was credited by the company to a reserve account styled as "Management Compensation Reserve" and thus escaped taxation. The assessment for the year having resulted in a loss, there was excess carry forward of loss by an identical amount.

The Department of Revenue and Banking have accepted the objection (October, 1976).

25. *Other Companies*

(*i*) Under the Income-tax Act, 1961, any sums paid or provided for in the accounts by an assessee as an employer to any gratuity fund established for the benefit of its employees is not allowable as a deduction in computing the business income of the assessee unless the gratuity fund has been specifically approved by the Commissioner of Income-tax. It was, however, decided by the Central Board of Direct Taxes in their circular dated 21-9-1970

that the provision for gratuity made on a scientific basis, *i.e* in the form of an actuarial valuation, upto the assessment year 1972-73 should be treated as an admissible deduction even if the gratuity fund was not approved. It was pointed out in audit that these instructions were extra-legal and these were, then, cancelled by the Board through a circular dated 26-9-1974. In that circular, the Board also directed that the benefit would not be extended to assessments which were pending on 26-9-1974.

In the computation of business income of nine companies for the assessment year 1972-73 and one company each for the assessment years 1972-73 to 1974-75 and 1972-73 to 1973-74, completed after 26-9-1974, the Department incorrectly allowed deductions of Rs. 22,66,317 representing provisions for contribution towards gratuity funds for employees which had not been approved under the Act. The irregular deduction led to an under-assessment of business income of Rs. 22,66,317 with consequential total tax undercharge of Rs. 10,29,232 in the case of nine assessee-companies and excess carry forward of loss of Rs. 4,26,652 to the following year in the remaining two cases.

The Department of Revenue and Banking have accepted the objections in all the cases.

(*ii*) Under the Income-tax Act, 1961, any expenditure which results in the payment of "salary" to an employee or in the provision to an employee of any benefit or amenity or perquisite (whether or not convertible into money) is not allowable as deduction from the business income to the extent such expenditure is in excess of a salary of Rs. 5,000 per month or allowance or perquisites in excess of Rs. 12,000 per annum, or one fifth of the salary payable to the employee, whichever is less.

In the case of six companies, expenditure incurred on payments of salary, commission and bonus to their employees in excess of the specified limits in the previous year relevant to the assessment

years 1972-73 to 1974-75 was not correctly disallowed in computing the taxable income of the companies. This resulted in an under-assessment of income of the companies aggregating Rs. 2,72,779 in assessment years 1972-73 to 1974-75 with a total short levy of tax of Rs. 1,81,964.

The Department of Revenue and Banking have accepted the mistakes (December, 1976).

(*iii*) In the computation of income of a financial corporation which is engaged in providing long-term finance for industrial development in India, deduction is admissible in respect of any special reserve created by such a corporation subject to certain conditions and is restricted to certain specified percentages. In the case of a financial corporation whose paid-up share-capital does not exceed three crores of rupees, the above deduction is restricted to twenty five per cent of its total income which shall be taken as income computed before making any deduction under Chapter VIA of the Act. The total income contemplated above is, therefore, the net income of the corporation arrived at after allowing all the admissible deductions under the Act including the allowance under question except the deduction under Chapter VIA.

In the case of one such corporation, it was observed that this deduction was worked out by the Department for assessment years 1973-74 and 1974-75 at 25 per cent of the income of the corporation before deducting this allowance resulting in short computation of income by Rs. 2,26,003 and Rs. 2,50,918 respectively with consequential total short demand of tax of Rs. 2,72,595.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(*iv*) The Income-tax Act, 1961 provides that expenditure of a capital nature should not be allowed in computing the business income.

"Guarantee commission" was payable by a company to the Industrial Finance Corporation of India for a guarantee executed by the Corporation on behalf of the assessee to enable purchase of machinery on a deferred payment basis. Although this capital expenditure was disallowed by the Department in the assessment years 1967-68 to 1969-70 and 1972-73 and such disallowance was also confirmed by the appellate authorities, the guarantee commission of Rs. 1,23,666 and Rs. 1,14,427 claimed by the assessee-company for the assessment years 1970-71 and 1971-72 was not so disallowed. The assessments for the years 1970-71 and 1971-72 having resulted in losses, there was excess computation and carry forward of loss of Rs. 1,23,666 and Rs. 1,14,427 respectively for the two years.

The Department of Revenue and Banking have accepted the objection (October, 1976).

(*v*) The Government of India permitted a certain company to participate in a project for the establishment of a jute bag factory in an African country and to acquire equity capital wholly through export of machinery of equal value. Subsequently, the Government of India granted cash assistance to the assessee to the extent of Rs. 2,48,919 against the value of such exports. The assessee treated these cash receipts as capital in nature in its accounts. Accepting this position, the Department omitted to tax these receipts. As cash subsidy received from the Government of India was revenue in nature, the omission of the Department to include it in the total income of the assessee led to an undercharge of tax of Rs. 28,206 for the assessment year 1971-72 and excess refund of tax of Rs. 1,11,415 for the assessment year 1972-73.

The Department of Revenue and Banking have stated (December, 1976) that the real effect of the transaction was that the cost of shares subscribed by the assessee got reduced by the amount of the subsidy and, therefore, the subsidy received was nothing but a capital receipt. In Audit's view, cash assistance as export incentive is taxable.

(*vi*) Under the provisions of the Income-tax Act, 1961, the amount of interest paid in respect of capital borrowed for the purposes of business is an admissible deduction in computing the profits and gains from business.

A private company purchased, on credit, second-hand transport vehicles from its sister concerns at a cost of Rs. 5,56,100 during the previous years relevant to the assessment years 1967-68 and 1968-69. As the sale price of the vehicles by the sister concerns was found to have been inflated, the Department fixed the reasonable price of the vehicles at half the cost claimed *viz.*, Rs. 2,78,050 and regulated the allowance for depreciation accordingly.

Though the Income-tax Officer left a note in the assessment records in March, 1973 that allowance for deduction of interest paid by the assessee to the sister concerns, on the credit balances, should be limited to the reasonable cost *viz.*, Rs. 2,78,050 as the price in excess thereof could not be considered as expenditure legitimately incurred in connection with business, it was found in audit in November, 1973, that deduction for interest was allowed in full as claimed by the assessee on the cost of Rs. 5,56,100. The omission to restrict the claim for interest deduction resulted in excess allowance of Rs. 50,050 involving tax of Rs. 27,520 for the assessment years 1967-68 and 1968-69, assessments of which were completed in March, 1973. It was further pointed out that similar disallowance was necessary in respect of later assessment years also.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977, that the audit objection is under active consideration.

(*vii*) Under the provisions of the Income-tax Act, 1961, if expenditure allowed in any assessment year is subsequently recouped, it should be considered as the income of the previous year in which it was received and assessed to tax.

An assessee-bank whose business was taken over by the Custodian under the Goa, Daman and Diu (Bank Reconstitution) Regulations, 1962, was allowed a subsidy amounting to Rs. 3,50,960 per annum towards interest paid by it to the Central Government at the rate of 5 per cent per annum on the balance of loan of Rs. 70,19,209 outstanding from 1-4-1967. While the interest paid by the assessee to the Government was allowed in the computation of income of the bank, the amount of subsidy received and credited to a reserve account was not included in the total income computed under the provisions of the Act. This resulted in a total short levy of tax of Rs. 37,419 for the assessment years 1970-71 to 1974-75.

Similarly, a sum of Rs. 12,72,087 was received in the previous year relevant to the assessment year 1969-70, out of which Rs. 3,50,960 pertained to the year ending 31-3-1968 and the balance related to the period prior to 1-4-1967. This was also not considered in the assessment for the assessment year 1969-70, resulting in a short levy of tax of Rs. 5,82,560. Thus the total short levy of tax in the assessment years 1969-70 to 1974-75 amounted to Rs. 6,19,979.

The Department of Revenue and Banking have accepted the objections in principle (December, 1976).

(*viii*) The Income-tax Act, 1961 provides for disallowance of a portion of the expenditure incurred by an assessee in respect of any of his assets used by his employees either wholly or partly

for their own purposes or benefit when, according to law, such expenditure is considered to be excessive.

During the assessment year 1971-72, a company incurred expenditure on repairs and maintenance and also made provision for depreciation on bungalows occupied by its employees. While calculating the inadmissible portion of the expenditure, proportionate expenditure on provision for eleven months only was taken into account on the ground that,during the leave period of one month in a year, the employees did not use the assets. As the company was committed to maintain the assets during the entire year and to incur expenditure/make provision irrespective of the fact whether they were used by the employees for the full year or less, the entire expenditure incurred/provision made by the company should have been considered for the purpose of disallowance. Omission to do so resulted in under-assessment of income by Rs. 1,67,847 with consequential undercharge of tax of Rs. 92,366.

The Department of Revenue and Banking have accepted the objection (October, 1976).

(*ix*) An Indian company received interest on fixed deposits in Sri Lanka for the assessment years 1968-69 to 1972-73. As the taxes deducted at source from such interest income aggregating Rs. 50,674 were paid to the credit of the Government of Sri Lanka and not to the Government of India, they could not be allowed as deductions in Indian assessments. The Department, however, afforded credit for Rs. 50,674 in the Indian assessments resulting in total undercharge of tax of an identical amount in the said assessments.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(*x*) The expenditure incurred by a certain company on payment of commission to the sole selling agent was disallowed by the Department in the assessment years 1968-69 to 1970-71

and also in 1972-73 on the basis of findings in the course of assessment for the assessment year 1968-69. However, in the assessment for the assessment year 1971-72 which was completed on a total loss of Rs. 86,033, the Department allowed such expenditure incurred by the assessee to the extent of Rs. 3,00,818 although the conditions leading to such disallowance in the other years remained unchanged. The omission to disallow the inadmissible expenditure led to an under-assessment of income of Rs. 2,11,052 and undercharge of tax of Rs. 1,16,079 in addition to irregular carry forward of loss of Rs. 89,766 for adjustment in subsequent years. There was also consequent non-levy of interest for belated submission of return to the extent of Rs. 25,733 in the assessment year 1971-72.

The objection has been accepted by the Department of Revenue and Banking (October, 1976).

(*xi*) In the case of a State Electricity Board assessed as a company, an amount of Rs. 2,17,003 credited to "Insurance Reserve Account" by debit to profit and loss account was not added back in computing its total income for the assessment year 1969-70.

In the assessment year 1971-72, interest income of Rs. 75,62,988 from investment and securities and expenditure of Rs. 58,24,732 being interest on borrowings were omitted to be taken into account in computing the total income resulting in net under-assessment of income by Rs. 17,38,256. Assessments for these two years, when rectified, would result in reduction in losses carried forward.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(*xii*) Under the Income-tax Act, 1961, any expenditure not laid out or expended wholly and exclusively for the purpose of business is not allowable in computing business income.

An assessee company did not remit the provident fund dues (employer's contribution) for the assessment years 1967-68, 1968-69 and 1969-70 to the trustees of the fund, although necessary provisions were made in its accounts. When the amounts were finally paid, the assessee had to pay penal interest amounting to Rs. 1,39,440 for the delayed remittance. This was admitted as admissible expenditure in the previous year relevant to the assessment year 1972-73. As the payment of the penal interest was not due to any exigency of the business carried on by the assessee, it was not an admissible deduction. Failure to disallow this item of expenditure resulted in excess computation and excess carry forward of business loss to the extent of Rs. 1,39,440 in the assessment year 1972-73.

The Department of Revenue and Banking have accepted the objection (October, 1976).

(*xiii*) 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 chargeable to tax after allowing a deduction of Rs. 20,000.

Three co-operative societies engaged in banking business received from the State Government subsidies amounting to Rs. 1,66,911 during the previous years relevant to the assessment years 1972-73 and 1973-74, for various purposes such as "for branches", "for supervision of weavers' co-operative societies", "for minimising the loss in opening new branches" etc. The amounts were incorrectly treated as wholly exempt, instead of being assessed as other income chargeable to tax. This resulted in short levy of tax of Rs. 35,375 in the three cases.

The Department of Revenue and Banking have stated that the subsidy forms an integral part of the banking business of the societies. The Act, however, clearly specifies the activities whose income is wholly exempt and receipt of subsidy is not one of them.

Incorrect allowance of depreciation and development rebate

26. *Depreciation*

(*i*) The Income-tax Act, 1961 provides for the grant of depreciation in computing the income from business, on buildings, plant and machinery and furniture owned by the assessee and used for the purposes of business. Under the Rules prescribed in this regard, depreciation is computed at specified rates calculated on the written-down value each year. The Rules also provide for additional depreciation for extra shift working of the plant and machinery, depending upon the number of days of double and triple shift work. The Central Board of Direct Taxes in their circulars of September, 1966 and December, 1967 issued necessary instructions in the matter in consultation with Audit.

However, in September 1970, the Central Board of Direct Taxes issued revised instructions that the extra shift allowance could be granted with reference to the number of days the concern worked without making any attempt for determining 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 Income-tax Act.

(*a*) It was noticed in the assessments of five assessee-companies for assessment years ranging from 1969-70 to 1974-75 that extra shift allowance, granted on the basis of the instructions issued by the Board in 1970, resulted in excessive depreciation of Rs. 9,57,861 involving under-assessment of income-tax of Rs. 5,36,333.

(*b*) In the case of another assessee-company, although there was no evidence that certain old machinery belonging to a company had worked extra shift during the previous years relevant to the assessment years 1971-72 and 1972-73, and the assessee had not furnished the prescribed particulars as required under the Act to substantiate the claim, the Department granted extra

shift allowance to the extent of Rs. 3,46,753 and Rs. 2,77,754 respectively for the two assessment years. This irregular allowance resulted in excess carry forward of loss to the extent of Rs. 6,24,507 for the two assessment years.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(*c*) In yet another case, in computing extra shift allowance for the accounting year ending 31-12-1970 due to a new industrial concern for triple shift working of plant, the allowance was allowed in full though it should have been limited to 210/240 of normal depreciation, the plant having started functioning only from June, 1970. This resulted in excess deduction of depreciation resulting in a short levy of tax of Rs. 1,54,000.

The objection has been accepted by the Department of Revenue and Banking (December, 1976).

(*ii*) Under the provisions of the Income-tax Act, 1961, where an assessee has acquired any asset from a country outside India from out of moneys borrowed in foreign currency for the purpose of his business and, in consequence of a change in the rate of exchange as determined by the Central Government at any time after the acquisition of the asset, there is an increase in the liability for repayment in Indian currency of the whole or part of the moneys borrowed by him, then the amount by which the liability is so increased during the previous year shall be added to the actual cost of the asset for the purpose of allowing depreciation thereon. The rate of exchange for the purpose is the one determined or recognised by the Central Government for conversion of currencies.

(*a*) A company utilised an amount of DM 24,12,141-99 for the import of plant and machinery out of two foreign loans in West German currency aggregating DM 29,19,261 obtained in July, 1965. The loans were repayable in three annual instalments

commencing from the date of first disbursement of the loan, *viz.*, July, 1965. For the assessment year 1974-75, the previous year of which ended on 30-6-1973, the company debited in its profit and loss account a sum of Rs. 17,34,199 representing additional liability in the loan due to fluctuation in bank exchange rate as "revenue expenditure." The Department disallowed the claim but permitted the amount to be added on to the cost of asset and allowed depreciation thereon, under the aforesaid provision. Since the increase in the cost was not due to any change in the official rate of exchange of currency as determined by the Central Government, but due to fluctuations in ruling bank exchange rate, there was no ground for allowing an addition to the cost of asset. This led to incorrect deduction of depreciation of Rs. 2,60,130 in the assessment year 1974-75 resulting in an undercharge of tax of Rs. 1,50,226.

The Department of Revenue and Banking have accepted the objection. The additional demand of Rs. 1,50,226 is stated to have been raised and collected (January, 1977).

(*b*) In another case, the assessee revalued upwards the cost of imported machinery in the assessment year 1969-70 to the extent of Rs. 11,51,260 consequent upon the devaluation of rupee and claimed and was allowed depreciation and development rebate on the enhanced cost of the imported machinery. As the payment had been made prior to devaluation of the rupee, the assessee did not qualify for depreciation and development rebate on Rs. 11,51,260. There being no taxable assessed income in the assessment year 1969-70, the unabsorbed depreciation of Rs. 3,45,378 and the unabsorbed development rebate of Rs. 2,30,252 on Rs. 11,51,260 was carried forward and adjusted against the taxable assessed income of the assessee in the assessment year 1970-71. The set off of the carried forward depreciation and development rebate along with the depreciation of Rs. 2,41,765 allowed in the assessment year 1970-71 on the written-down vaue of Rs. 8,05,882 on account of over-valuation

of machinery, resulted in excess deduction of the assessed income by Rs. 8,17,395. Thus the income of the assessee for the assessment year 1970-71 was under-assessed to the extent of Rs. 8,17,395 resulting in undercharge of tax to the tune of Rs. 4,49,567.

While accepting the objection, the Department of Revenue and Banking have stated that the assessments in question have been revised and additional demand of Rs. 4,49,567 raised.

(*iii*) In computing the loss of a company for the assessment years 1970-71 and 1971-72, the Department allowed depreciation on the written-down value of electric installation and water supply plant falling under the categories of "overhead cables" and "hydraulic works" respectively at the rate of ten per cent instead of five per cent admissible under the Rules. Further, extra shift allowance was allowed on water supply plant which was not admissible. These irregularities resulted in excess allowance of depreciation of Rs. 15,51,661 for both the years and consequent excess carry forward of loss by an identical amount.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(*iv*) Mistakes in allowing depreciation were also noticed in the following cases :

(*a*) In one case, the Department allowed depreciation at rates higher than those applicable in respect of certain electrical machinery. In another case, depreciation at the rate of ten per cent and extra shift allowance was allowed on assets falling under the category of "hydraulic works, pipelines and sluices" against the admissible rate of five per cent without extra shift allowance. In a third case, depreciation was allowed on 'bridges' which were not entitled to depreciation. These mistakes led to a total undercharge of tax of Rs. 2,80,685 for the assessment years 1966-67 to 1974-75 in the three cases.

(*b*) An assessee company claimed depreciation at 10 per cent of the written-down value of staff quarters and electric installations for the assessment year 1971-72. Erroneously, the entire written-down value of those assets was allowed as depreciation. Excess depreciation allowed was Rs. 2,91,240.

In the assessment year 1972-73, depreciation on electric installations was allowed at 20 per cent instead of at 10 per cent of the written-down value, resulting in excess allowance of Rs. 26,985.

There was, thus, an excess allowance of depreciation of Rs. 3,18,225 in the two years.

The Department of Revenue and Banking have accepted the objections in all these cases.

(*v*) The Act provides that the asset must be used in the business of the assessee during the period for which depreciation allowance is claimed.

In the case of an assessee—company, plant and machinery in a certain section were not used at all owing to the section not working during the previous years relevant to the assessment years 1971-72 and 1972-73 as was evident from the Directors' report and Auditors' notes respectively on the accounts for these years. The Department, however, allowed depreciation and extra shift allowance for both the assessment years on such plant and machinery. This resulted in excess allowance of Rs. 40,104 for both the years and excess carry forward of loss of an identical amount at the end of the assessment year 1972-73.

In the case of another company, while assessing the income earned by it from letting on hire a leasehold godown under the head "Income from other sources", the Department allowed depreciation on the said property. As the godown was neither owned by the assessee nor used by it in its business, the allowance of depreciation thereon was irregular. This led to total under-

assessment of income of Rs. 65,914 with consequent undercharge of tax of Rs. 43,659 for the assessment years 1970-71 to 1973-74. Besides, there was undercharge of tax of Rs. 3,149 in the assessment year 1973-74 due to a mistake in calculation of tax, and further short levy of interest of Rs. 135 for delayed submission of return in that year.

The Department of Revenue and Banking have accepted the objections in both the cases (October, 1976).

(*vi*) The Income-tax Rules, 1962 prohibit allowance of extra shift allowance on certain types of plant and machinery specified therein which include plant and machinery used in mines and quarries for which a special rate of depreciation is prescribed.

A company included certain workshop machinery of its cement manufacturing business in the category of 'surface and underground machinery used in mines and quarries' and claimed depreciation thereon at the special rate of fifteen per cent for the assessment year 1972-73 which was allowed by the Department. The company also claimed an extra shift allowance of Rs. 4,64,799 on this plant and machinery used in mines and quarries. This was not admissible but the Department allowed it.

In the case of the same assessee—company, extra shift allowance of Rs. 34,428 and Rs. 22,240 was allowed in respect of workshop machinery used in two different quarries in the assessment year 1971-72.

The erroneous allowance in these cases resulted in tax undercharge of Rs. 2,94,197 in the two assessment years.

The Department of Revenue and Banking have accepted the objections in both the cases (December, 1976).

27. *Development rebate*

(i) Under the provisions of the Income-tax Act, 1961, development rebate could not be allowed unless an amount equal to seventy-five per cent of the development rebate to be actually

allowed was debited to the profit and loss account of the relevant previous year and credited to a reserve account. Further, where the development rebate reserve created is inadequate, no rebate shall be allowed unless the short-fall is made good in the accounts of the same year. Otherwise, development rebate shall be allowed only to the extent the reserve created can be related to specified items of new plant or machinery and where no such plant or machinery can be wholly related or identified, development rebate in its entirety is to be disallowed.

An Indian company installed 12 items of new plant and machinery valued at Rs. 62,20,316 in the previous year relevant to the assessment year 1968-69. It claimed development rebate of Rs. 12,44,063 being 20 per cent of the cost of plant and machinery in the above assessment year which was allowed in full by the Department. The assessee, however, created a development rebate reserve of Rs. 9,00,000 in the accounts of the relevant year although a reserve of Rs. 9,33,048 ought to have been created to be eligible for full deduction of development rebate. The short-fall in the creation of reserve amounting to Rs. 33,048 was made good by the assessee in the accounts of only the following previous year and not during the same year. Consistent with the reserve of Rs. 9,00,000 created, development rebate for Rs. 11,89,509 only, wholly relatable to 11 of the 12 items of plant and machinery installed could have been allowed by the Department in accordance with the instructions issued by the Central Board of Direct Taxes on 1-3-1966. The action of the Department in conceding full allowance of development rebate resulted in excess allowance of such rebate by Rs. 54,554 in the assessment year 1968-69 with consequent tax undercharge of Rs. 32,732 in the said year.

The Department of Revenue and Banking have accepted the objection (January, 1977).

(ii) In the assessment of another company for the assessment year 1972-73, development rebate of Rs. 10,26,057 carried forward from the years 1963-64 to 1967-1968 and 1969-70 was allowed although the company had not created any reserve to merit this rebate either in the assessment year 1972-73 or in 1965-66, 1966-67, 1967-68 and 1969-70. In 1964-65, a reserve was created but a rebate of Rs. 34,683 only could be allowed against that reserve on items of plant and machinery installed in that year. The excess allowance of development rebate to the extent of Rs. 9,91,374 led to a tax undercharge of Rs. 5,58,887.

The Department of Revenue and Banking have accepted the objection on merits.

(iii) The Act also provided that if any machinery or plant on which development rebate was allowed in any earlier assessment is sold before the expiry of eight years from the end of the previous year in which it was installed, the development rebate so granted should be deemed to have been allowed wrongly and the total income should be recomputed withdrawing the development rebate originally allowed.

During the previous years relevant to the assessment years 1968-69 and 1971-72, a tea company sold eight of its gardens with plant and machinery in respect of which development rebate of an aggregate amount of Rs. 1,46,011 had earlier been allowed during the years 1961-62 to 1967-68. As the plant and machinery were sold within the prohibited period of eight years,the income for the assessment years 1961-62 to 1967-68 was required to be recomputed withdrawing the development rebate earlier allowed. As this was not done, there was under-assessment of income for each of the assessment years with consequent tax undercharge aggregating Rs. 99,470.

The Department of Revenue and Banking have accepted the objection partly (December, 1976).

(iv) Development rebate is admissible at a higher rate of 25 per cent on the value of plant and machinery installed for manufacture/production of articles specified in the Fifth Schedule to the Income-tax Act. One of the items specified therein is "paper and pulp including newsprint". An assessee-company set up a unit in the year 1970 for manufacture of 'Pillo pak' board. 'Pillo pak' board was manufactured from pulp which was also manufactured by the same unit from raw materials. Pulp produced by the unit being an intermediate product used in the production of the final articles namely Pillo pak board, the unit could be said to be engaged in the manufacture of pillo pak board only and not pulp. Pillo pak board is not one of the articles specified in the Fifth Schedule and, therefore, development rebate is admissible to the unit at the ordinary rate of 15 per cent and not at the higher rate of 25 per cent. Development rebate had, however, been allowed for assessment year 1971-72 at the higher rate of 25 per cent on the plant and machinery meant for production of pulp. Excess development rebate allowed amounted to Rs. 1,40,480 with a short levy of tax of Rs. 77,264.

The Department of Revenue and Banking have stated that the assessee had two plants, one manufacturing pulp and the other Pillo pak boards. That does not meet the audit point. Further, the relevant entry as quoted above apparently covers only paper pulp (January, 1977).

28. *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 respect 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.

(i) In the case of eight companies, the weighted deduction was allowed in respect of commission of Rs. 15,63,512 paid on such exports in the assessmet 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. The erroneous allowance resulted in under-assessment of income involving short levy of tax of Rs. 9,30,782.

The Department of Revenue and Banking have stated (March, 1977) that the Ministry of Law have expressed the view that expenditure in the natureof trade commission/trade discount is covered under the provisions of Section 35B(1)(b) of the Act. The Law Ministry's opinion, which is also an interim opinion, however says only that if the expenditure is covered under that section, it will be admissible for the incentive allowance.

(ii) A domestic company incurred, during the year relevant to the assessment year 1972-73, a capital expenditure of Rs. 2,45,068 towards setting up of an industrial joint venture for the manufacture of magnet wires and claimed the export market development allowance in the form of weighted deduction from the business income. The Department disallowed a sum of Rs. 82,926 out of the aforesaid amount as having been incurred in India and allowed a weighted deduction of Rs. 2,16,189 being one and one-third of the balance expenditure of Rs. 1,62,142. As the entire expenditure was capital in nature and shown as such in the books of accounts of the assessee, no such deduction was admissible under the export market development scheme. The irregular deduction led to under-assessment of income of Rs. 2,05,380 (after allowing for a deduction of Rs. 10,809 being additional allowance due for priority industries) with consequent undercharge of tax of Rs. 1,15,783.

The Department of Revenue and Banking have accepted the objection (January, 1977).

(iii) An Indian company entered into an agreement with a foreign firm in August, 1970 with the approval of the Government of India, for supply and erection of plant in the foreign country. The agreement provided, *inter alia*, for payment by the foreign firm of salary and allowances to the Indian technicians deputed to the foreign country.

In the assessment of the Indian company for the assessment year 1972-73 completed in February, 1975, weighted deduction for export market development was also allowed on an amount of Rs. 1,51,759 representing salaries paid to Indian Technicians deputed to the foreign country. Actually this amount had been reimbursed by the foreign firm in accordance with the agreement. The erroneous weighted eduction resulted in short levy of tax of Rs. 28,600.

The Department of Revenue and Banking have accepted the objection (December, 1976).

Irregular exemptions and excess reliefs given

29. *Incorrect allowance of double income-tax relief*

In cases where there is no agreement between the Government of India and a foreign country for either affording double taxation relief or avoiding double taxation in respect of the income-tax in both the countries, Section 91 of the Income-tax Act, 1961, provides for a unilateral relief by way of allowance of tax relief to the extent of the tax calculated on the doubly taxed income at the average rate of tax in India or the average rate of tax in the foreign country concerned, whichever is lower.

The total income of a company for the assessment years 1963-64 to 1968-69 included income which was assessed both in India and in a foreign country. The assessee-company claimed on such doubly taxed income, tax reliefs to the extent of Rs. 2,38,214, Rs. 3,75,369, Rs. 1,75,883, Rs. 95,064, Rs. 85,018 and Rs. 1,51,419 respectively for these assessment years, being

the actual tax paid in the foreign country converted for all the years at the post-devaluation rate of exchange effective from 6-6-1966. The claim was allowed by the Department in full. Failure to work out the average rate of tax in the foreign country, which was lower in all the assessment years, and to apply it to the doubly taxed income as required by law resulted in under-charge of tax to the extent of Rs. 2,58,765 for the six assessment years.

30. *Irregular allowance of relief in respect of new industrial undertakings*

Under Section 80J of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a new industrial undertaking, the assessee becomes entitled to a tax relief in respect of such profits and gains upto six per cent per annum of the capital employed in the undertaking, in the assessment year in which the industrial undertaking begins to manufacture or produce articles and also in each of the four assessment years immediately succeeding.

(i) The Rules framed under the Act provide that any borrowed money and debt due by the person carrying on the business shall be deducted from the value of assets in the computation of capital for this purpose.

(a) A company started two new units of industrial undertakings under its heavy engineering division in the year relevant to the assessment year 1961-62. The company did not maintain separate accounts for the new Units but worked out the profits earned by and the capital employed on these Units on a proportionate basis by relating their sales to the total sales of the heavy engineering division. However, in the computation of capital in the manner stated above, the Department did not deduct from the value of assets, the proportionate amounts of borrowed money and other debts relatable to the two Units out of the total borrowings and debts standing against the heavy engineering division.

This resulted in excess computation of capital to the extent of Rs. 6,17,85,929 for the four assessment years 1962-63 to 1965-66. Consequently, the relevant amount on which tax rebate was allowed was excess computed by Rs. 34,85,222 with resultant excess tax rebate or undercharge of tax of Rs. 17,08,868. Moreover, although the assessee company was entitled to relief in respect of the aforesaid Units upto the assessment year 1965-66 only which was the fifth and final year, the Department irregularly allowed tax relief of Rs. 8,22,293 on this account in the assessment year 1966-67. The total tax undercharge for the assessment years 1962-63 to 1966-67 (assessments completed during 1965 to 1971 and revised in 1974), was Rs. 25,31,161.

The Department of Revenue and Banking have stated that the objection is under active consideration (February, 1977).

(b) In another case, where moneys borrowed were not deducted from the value of assets employed in the new undertaking for the assessment years 1968-69 to 1970-71, there was an excess carry forward of tax holiday relief to the extent of Rs. 5,40,000 with tax undercharge of Rs. 3,01,425 for the assessment year 1972-73.

The Department of Revenue and Banking have accepted the objection and stated that the assessments have been rectified.

(ii) In a case where there is unabsorbed depreciation or loss in the new industrial unit in an earlier year, the depreciation and the loss have to be carried forward and set off against the profits and gains of the unit in the subsequent years before determining if any deduction is allowable towards tax free profits.

(a) An assessee-company started a new industrial undertaking in the assessment year 1972-73 and suffered a loss of Rs. 61,27,791 in that year. It made profits of Rs. 3,39,957 and Rs. 20,50,357 in the assessment years 1973-74 and 1974-75 respectively. Although the new unit incurred a loss in the assessment year

1972-73 and no profits were left in the assessment years 1973-74 and 1974-75 after setting off the loss brought forward from the previous year, the Department allowed reliefs of Rs. 1,73,077, Rs. 2,07,107 and Rs. 3,08,205 under Section 80J in the respective assessment years. This resulted in undercharge of tax of Rs. 1,96,324 and Rs. 2,01,210 in the assessments for the years 1973-74 and 1974-75 respectively.

Consequent to the under-assessment of total income in the income-tax assessments, the chargeable profits of the company were also under-assessed to the extent of Rs. 1,43,633 and Rs. 1,47,222 in the surtax assessments for the years 1973-74 and 1974-75, with resultant undercharge of surtax of Rs. 43,090 and Rs. 44,167 respectively.

The Department of Revenue and Banking have accepted the objection.

(b) In another case, a newly established industrial undertaking of an assessee-company commenced its business in the assessment year 1965-66. The unit was entitled to the six per cent tax holiday for the assessment years 1965-66 to 1969-70. The unit did not, however, record any profits or gains for these assessment years. While the relief due for the assessment years 1965-66 and 1966-67 could not be carried forward for adjustment under the law then prevailing, the relief due for the years 1967-68 to 1969-70 was eligible for carry forward and set off against the profits of the new industrial undertaking upto the assessment year 1972-73. This deficiency towards 80J relief aggregating Rs. 2,60,09,763 was set off by the Department in the assessment year 1971-72. This was irregular as the new industrial unit made a profit of Rs. 3,32,62,015 only in the assessment year 1971-72 while the unabsorbed depreciation and development rebate, computed on the basis of the working results of the unit, stood at Rs. 5,42,86,431 which had first to be set off. After this set off, there would be no profit left to adjust the deficiency

on account of the 6 per cent tax holiday. As the Department allowed the relief of Rs. 2,60,09,763 incorrectly in computing the total income of the assessee which was a positive figure including income from other sources, there was undercharge of tax of Rs. 1,43,05,370 in the assessment year 1971-72.

The Department of Revenue and Banking have stated that the assessment was made in this case on the basis of Law Ministry's advice on the point. Subsequently, on the basis of an audit objection in another case, the Board had reconsidered the entire issue and issued general instructions in March, 1976 in accordance with the audit view. They have added that the reopening of the assessment in this case in the light of the subsequent instructions would create several complications.

(iii) For purposes of this relief, each new industrial unit is treated as a separate undertaking and the deficiency in respect of one unit cannot be set off against the profits of another new unit, eligible for this relief.

(a) In the case of a manufacturing company, which had several industrial units in operation, there was no positive income from two of the units in the previous years relevant to the assessment years 1967-68 to 1969-70 and the relief was, therefore, allowed to be carried forward for set off against future profits from these units. Only one of these units made a profit in the assessment year 1972-73 while the other unit continued to incur a loss even in that year. However, the relief was set off against the income derived from the first unit in the assessment year 1972-73, although there was no profit from the latter unit in question, during the previous year relevant to the assessment year 1972-73. This erroneous deduction of relief in the assessment year 1972-73 resulted in an under-assessment of income by Rs. 2,34,534 leading to a short levy of tax of Rs. 1,32,224.

The Department of Revenue and Banking have accepted the objection.

(b) In the case of another company, manufacturing pharmaceuticals, and having several new industrial units in operation, there was no positive income from one of its new units in the previous year relevant to assessment year 1972-73. The Department allowed the deduction in respect of the new unit computed at six per cent of the capital employed on the unit from its income derived from other units. As there was no profit from the new industrial undertaking in question, the deficiency should have been carried forward for set off against the future profits, if any, from the same unit. The deduction of the relief in the assessment year 1972-73 itself resulted in under-assessment of income of the company by Rs. 3,71,016 in that year and a short levy of tax of Rs. 3,20,213 (including payment of interest of Rs. 69,380).

The Department of Revenue and Banking have accepted the point and stated that the assessment has been rectified and the additional demand of Rs. 3,20,213 raised and collected.

(iv) The amount of the relief to be allowed at six per cent per annum of the capital employed is to be worked out proportionately on a time basis, depending upon the whole or part of the previous year for which the capital was employed in the undertaking, particularly in the year in which it commences business.

(a) A company, whose previous year was the calendar year, brought into commission a new industrial undertaking which started production on 25-6-1972 and worked for 190 days in the year 1972. The capital employed in the undertaking during the year 1972, as computed by the Department, amounted to Rs. 42,52,340. The amount of relief to be calculated at six per cent per annum should, therefore, be proportionate to the actual number of days for which the capital was employed during the accounting year and would work out to Rs. 1,32,450. The

Department, in working out the tax relief, however, calculated it at Rs. 2,55,140 for the full year and, as the profits of the year were not sufficient to absorb the relief, allowed the deficiency to be carried forward. This led to excess carry forward of deficiency to the extent of Rs. 1,22,690 for the assessment year 1973-74.

The Department of Revenue and Banking have accepted the objection.

(b) In another case, a new industrial unit of an assessee-company started production on 1-12-1970 and worked for 31 days only during the previous year relevant to the assessment year 1971-72. The amount of relief was, therefore, admissible in the same proportion as the period of thirty one days bore to the whole year. The Department computed the relief for a full year at an amount of Rs. 2,50,887 being six per cent of the capital employed and allowed it in the assessment. The amount of relief admissible for the actual number of days the new unit worked, was Rs. 21,308 only. There was thus an excess allowance of exemption to the extent of Rs. 2,29,579 leading to undercharge of tax of Rs. 1,26,268 in the assessment year 1971-72.

(v) Under the rules for the computation of capital employed, the amount of capital is to be worked out either on the basis of average value of the assets and liabilities exhibited in the balance sheet of the assessee or on the basis of its capital at the commencement of the year, adding thereto or deducting therefrom moneys brought into or taken out of the business. Where the former method is employed, the profit earned by the assessee during the previous year is to be ignored as such profit would already stand included in the total assets and liabilities of the assessee as shown in the balance sheet.

In one case, it was noticed that the Income-tax Officer, after taking the average value of assets and liabilities, added thereto half the profits for the accounting year and thereby overstated

the capital employed in the new industrial undertaking for the assessment years 1959-60, 1960-61, 1962-63 and 1963-64. This resulted in a total short levy of tax of Rs. 9,51,697.

The Department of Revenue and Banking have accepted the objection.

(vi) The tax holiday relief is not admissible in cases where the industrial undertaking is formed by the splitting up, or reconstruction, of an existing business.

In the assessment of a company for the assessment year 1971-72 completed in March, 1974, tax holiday relief was allowed by deduction of Rs. 20,67,834 from the gross total income, the amount representing six per cent of the capital employed, while the profits derived from the undertaking were worked out at Rs. 2,30,948 only. The evidence produced by the company showed that there was merely a reconstruction of an existing business and that no new industrial undertaking as such was established. The tax holiday relief allowed treating it as a new undertaking and the deduction of the entire sum of Rs. 20,67,834 as against the profit of Rs. 2,30,948 were not in conformity with the provisions of the Act.

The incorrect relief resulted in short levy of tax of Rs. 10,10,290.

The Department of Revenue and Banking have accepted the objection.

31. *Irregular relief in respect of priority industry income*

Where the gross total income of a company includes any profits and gains attributable to any priority industry, the Income-tax Act, 1961 provided for a deduction from such profits and

gains of an amount equal to eight per cent thereof upto the assessment year 1971-72 and five per cent for the assessment year 1972-73 in computing the total income of the company.

(i) In the case of an assessee-compnay producing rayon and artificial silk fabrics, the manufacture of rayon grade "pulp" for the purpose of getting artificial fibre, was treated as a priority industry and the assessee was allowed various concessions admissible to priority industries under the Income-tax Act, 1961. These concessions consisted of development rebate on the machinery employed in the industry, its deduction under section 80E/1 and tax credit certificates under section 280ZB.

However, as per the list of articles given in the Sixth Schedule to the Income-tax Act, 1961 and First Schedule to the Industries (Development and Regulation) Act, 1951, it was 'paper industry' which came under the category of 'priority industry' and profits from the manufacture of pulp meant for producing paper was entitled to the aforesaid tax concessions. In the case of the above assessee, the pulp was produced for altogether different purpose and hence, it should not have been treated as a priority industry. As a result of the erroneous concessions, the income of the assessee was under-assessed and tax credit certificates were wrongly granted in the seven assessment years from 1966-67 to 1972-73 with an abandonment of revenue aggregating Rs. 2,67,83,365 due to short levy of tax of Rs. 1,19,26,866, surtax of Rs. 28,01,808 and incorrect admission of tax credit certificates for Rs. 1,20,54,691. The quantum of abandonment of revenue will further increase if the development rebate at the enhanced rate allowed in the assessment years 1966-67 and 1967-68 (details of which are awaited from the assessing officer) is taken into account.

The paragraph was sent to the Department of Revenue and Banking in November, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(ii) An Indian company engaged in planning, designing and installation of various air and gas treatment plants for purposes of ventilation, humidification, de-humidification, drying etc., and manufacturing articles like motors, fans, air filters, dust control equipments etc., was allowed the benefit of the lower rates of tax for the assessment years 1964-65 and 1965-66 and a straight deduction at the rate of eight per cent for the assessment years 1966-67 to 1971-72 and at the rate of five per cent for the assessment year 1972-73 in respect of its income from such activities on the ground that the assessee was engaged in a priority industry. It also got corresponding tax relief for manufacturing such items in the shape of tax credit certificates under the Income-tax Act, 1961. Articles manufactured by the assessee, however, indicated that they were not apparently meant for specialised use in a tailor-made condition to suit the special needs of any of the specified priority industries and as such income from such activities could not be treated as priority income within the meaning of the relevant provisions of the Income-tax Act, 1961, and the corresponding provisions in the Finance Acts 1964 and 1965. Incorrect treatment of the assessee's income as priority income for the assessment years 1964-65 to 1972-73 resulted in total undercharge of tax by Rs. 4,73,050 with consequent short levy of interest on account of short payment of advance tax by Rs. 43,591 in the assessment years 1970-71 to 1972-73.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(iii) An oil company derived income from extraction of mineral oil as well as from transportation of crude oil extracted by other concerns through its pipelines during the year relevant to the assessment year 1971-72. The income derived from extraction of oil being income from production of specified article would be entitled to the percentage relief as priority industry income, while the

income derived exclusively from transportation of crude oil of other concerns, not amounting to production activity, would not be entitled to such relief. The Department, while working out the relief for income derived from priority industry, also took into account the income of Rs. 80,14,579 from transportation of crude oil, and allowed relief thereon, which was not admissible. This irregular allowance of relief led to under-assessment of income by Rs. 6,41,166 (8 per cent of 80,14,579) and undercharge of tax of Rs. 3,58,641.

The Department of Revenue and Banking have accepted the objection.

32. *Other reliefs*

(i) The Income-tax Act, 1961 provides for certain deductions from the gross total income of an assessee-company in respect of inter-corporate dividend income included in such gross total income. Where the gross total income as defined in the Act, is 'nil' or there is loss, no such deduction is allowable, since there would be no positive income left to absorb such deduction.

Although the assessments of four assessee-companies, for the assessment year 1971-72 in one case and 1972-73 in the other three cases, were completed at loss figures after allowing depreciation and business loss (current/carried forward), the Department allowed deductions in respect of their income by way of inter-corporate dividends to the extent of Rs. 4,55,588 in the aggregate. The irregular allowance of such deductions led to excess carry forward of loss/depreciation to the extent of Rs. 4,55,588.

The Department of Revenue and Banking have accepted the objection and stated that the assessments have been rectified.

(ii) Where the gross total income of an assessee-company includes income by way of dividends from a domestic company, the assessee is entitled, in computing the total income, to a deduction at a certain percentage from such dividend income under

Section 80M of the Income-tax Act. The percentage deduction has to be calculated on the net dividend income after deducting the expenses incurred in earning the dividend income.

In the case of a company, such deduction under Section 80M was allowed with reference to the amount of the gross dividend instead of the net amount in the assessment years 1972-73 and 1973-74. This resulted in excess relief to the extent of Rs. 1,31,705 and Rs. 1,33,904 in the assessment years 1972-73 and 1973-74 respectively with an aggregate short levy of tax of Rs. 1,79,129.

The Department of Revenue and Banking have stated that the point is controversial, different High Courts have given conflicting decisions and the matter has been taken in appeal to the Supreme Court.

(iii) Under the provisions of the Income-tax Act, 1961, donations paid by an assessee to any institution constituted as a charitable trust, qualify for certain relief. Such relief has to be denied if the income of the trust is not exempt under the Act because of the funds of the trust having been invested in any concern, in which the trustees and their close relatives have a substantial interest, the amount of aggregate investment in such concern being in excess of 5 per cent of the capital of the concern.

A company made donations of Rs. 2 lakhs each in the years relevant to the assessment years 1971-72 and 1972-73 to four charitable trusts by book entries. The amounts so donated were retained by the company and exhibited in its balance sheet under outstanding liabilities. The trustees and their close relatives had a substantial interest in the assessee-company. As the total investments of the trusts in the company exceeded 5 per cent of the paid-up capital of the assessee-company, the donations would not qualify for the relief provided in the Act which, however, was allowed by the Department. The allowance

of relief resulted in a short levy of income-tax to the extent of Rs. 1,21,500 for these two years with a short levy of surtax of Rs. 19,625.

The Department of Revenue and Banking have stated that the investments of the trusts in the assessee-company, exclusive of loans, were less than 5 per cent of the paid-up capital of the company in each case and the relief allowed was, therefore, admissible. The law does not, however, provide for the exclusion of loans in such cases.

33. *Irregular computation of capital gains*

A domestic company floated a 100 per cent subsidiary in October, 1971 for the purpose of developing and trading in immovable properties. In February, 1972, it transferred, from its own assets, land worth Rs. 2,18,799 to the subsidiary at an enhanced value of Rs. 35,14,000. The financial consideration on this transfer was effected by adjustments in the books of both the domestic company and the subsidiary, partly by purchase of shares of Rs. 10,00,000 in the subsidiary and partly by an amount of Rs. 25,14,000 being treated as a loan advanced by the domestic company to the subsidiary, secured by a statutory charge on the property transferred till the loan was repaid. Upto November, 1972, the subsidiary company did no business, except holding this land; nor did it incur any expenditure on the development of this land as seen from its accounts. The holding company sold off, in November, 1972, its entire share-holding of Rs. 10,00,000 in the subsidiary to a group of 4 individuals for a cash consideration of Rs. 11,00,000 who simultaneously converted the subsidiary into a separate private limited company, severing its connections with the domestic company. The sale of the entire share-holding resulted in the transfer of the ownership as also the business of the subsidiary to the newly converted private limited company. Thus, effectively, it resulted in transferring the rights in the land of the parent domestic company worth Rs. 2,18,799 to the private limited company for an aggregate

value of Rs. 36,14,000, paid by the four individuals in cash to the extent of Rs. 11,00,000 and in the form of taking over by their private company of a loan liability of Rs. 25,14,000 owed to the domestic company.

Thus, by adopting the device of introducing a 100 per cent subsidiary company between the parent domestic company and the ultimate real buyers of the land, *viz.*, the private limited company, consisting of 4 individuals, the parent domestic company avoided paying tax on capital gains made to the extent of Rs. 33,95,201. This capital gain was left untaxed by the Department on the ground, apparently erroneous, that the transfer came under the provisions of Section 47 of the Income-tax Act, 1961. The Department over-looked the underlying fact of transfer of land for a much higher consideration through the device of a subsidiary. This resulted in a net short levy of tax on capital gains of Rs. 14,91,794.

The paragraph was sent to the Department of Revenue and Banking in October, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

34. *Mistakes involving considerable revenue*

(i) A company which followed the practice of crediting back charges on unsold stock and thus debiting only net charges applicable to the actual sales of a particular year to the profit and loss account of that year showed the value of its closing stock as Rs. 17,71,95,094 in its accounts for 1967 relevant to the assessment year 1968-69, while the value of the same opening stock in the subsequent accounting year relevant to the assessment year 1969-70 was taken as Rs. 19,94,14,839. The Department having accepted it in assessment, there was under-assessment of total income by Rs. 2,22,19,745 in the assessment year 1969-70 leading to tax undercharge of Rs. 1,55,53,821.

The paragraph was sent to the Department of Revenue and Banking in October, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(ii) While computing the business income of an assessee-company for the assessment year 1971-72, the Department started with the net loss figure of Rs. 6,45,29,624 as shown in the profit and loss account of the assessee. A sum of Rs. 8,72,440 representing adjustment of depreciation relating to earlier years, which figured in the profit and loss appropriation account, was deducted by the Department from the amount of net loss as per profit and loss account. As the amount of Rs. 8,72,440 was not charged to the profit and loss account proper, the Department's action in reducing the loss by that amount, led to short assessment of loss to the extent of Rs. 8,72,440 with consequential short carry forward of loss to that extent.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(iii) In the case of a company, the tax demands raised by the Department for the assessment years 1969-70 and 1972-73 amounting to Rs. 1,10,770 were set off in 1975 against a refund of Rs. 1,47,316 relating to the assessment year 1963-64. The refundable amount of Rs. 1,47,316 had, however, already been adjusted in full by the Department in 1964 against the tax demand of Rs. 1,55,649 for the assessment year 1962-63. Thus, the Department's action in setting off the tax dues for the assessment years 1969-70 and 1972-73 once again against the same refund led to irregular set off and non-realisation of tax dues to the extent of Rs. 1,10,770.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(iv) While computing the income of a company for the assessment year 1972-73, the Department adopted the figures contained in the assessee's profit and loss account, but instead of taking the net profit of Rs. 67,546 disclosed in the profit and loss account as the starting point for its computation, the Department erroneously assessed a loss of Rs. 2,31,062 mistaking some

other entry in the account as a net loss figure. This together with a totalling mistake in the assessment order resulted in under-assessment of income by Rs. 2,98,598.

The Department of Revenue and Banking have accepted the objection (October, 1976).

(v) Under the provisions of the Income-tax Act, 1961, as applicable to the assessment year 1964-65, long-term capital gains arising out of sale of lands or buildings were to be included in the total income for purposes of income-tax while super-tax was chargeable at the rate of fifteen per cent of such capital gains. These rates were different from those applicable to long-term capital gains arising out of sale of assets, other than lands and buildings.

In the case of an assessee-company for the assessment year 1964-65, the Department computed the long-term capital gains arising out of sale of lands and buildings as Rs. 13,70,788, on which a total tax of Rs. 5,48,315 including super-tax of Rs. 2,05,618 was correctly leviable. The Department, however, levied a total tax of Rs. 2,39,888 only by incorrectly applying the rates prescribed for assets other than lands and buildings. This led to a tax undercharge of Rs. 3,08,427.

The Department of Revenue and Banking have accepted the objection and stated that the assessment has been rectified and additional demand raised.

(vi) As mentioned in paragraphs 5.2 and 5.3 of the Public Accounts Committee's 186th Report (1975-76), the Committee have, almost year after year, commented upon the continuance of a very common mistake involving the dropping of one lakh of rupees or the wrong transcription of a digit from a substantial amount resulting in under-assessment of income or tax in big

income cases. Similar mistakes still continue to occur. Thus, in the assessments of two companies for the assessment year 1972-73, it was noticed that the Department had allowed a depreciation of Rs. 4,60,561 as against Rs. 46,056 claimed by the assessee in one case and arrived at a total income of Rs. 6,28,785 as against the correct amount of Rs. 7,28,785 in the second case. The two mistakes resulted in total excess carry forward of loss of Rs. 5,14,505.

The Department of Revenue and Banking have accepted the mistakes and stated that the assessments have been rectified (October, 1976).

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

(i) The practice followed by a certain company upto the assessment year 1965-66 was that deductions on account of bonus were claimed by it from business income on the basis of actual payments made by it, irrespective of the provision made for it in the previous year. This was accepted by the Department and the assessments were made accordingly. From the assessment year 1966-67, the company claimed that the estimated bonus liability included in the provision for bonus should be allowed in the year in which the provision was made inasmuch as it was an ascertained liability according to the Bonus Act, 1965. The Department did not accede to the claim and continued to make assessments upto the assessment year 1968-69 on the basis of actual payment only. The assessee went in appeal which was decided in its favour by the appellate authorities. While giving effect to the appellate orders for the assessment year 1966-67, the Department allowed bonus on the basis of ascertained liability but omitted to withdraw such bonus already allowed on the basis of actual payment in the assessment year 1967-68. This led to double allowance and under-assessment of income by Rs. 25,78,361 with consequent undercharge of tax of Rs. 14,19,222 apart from short levy of surtax to the extent of Rs. 4,08,281.

Similarly, in the assessment of another company, expenditure relating to bonus for earlier year amounting to Rs. 5,41,000 was allowed in the assessment year 1973-74. Later, on an appellate order directing inclusion of this expenditure in the assessment year 1972-73, the assessment for the assessment year 1972-73 was revised. While giving effect to the appellate orders in the assessment year 1972-73, the assessing officer omitted to withdraw the expenditure on bonus allowed earlier in the assessment year 1973-74. This resulted in an under-assessment of income by Rs. 5,41,000 and short levy of tax of Rs. 3,12,430.

The Department of Revenue and Banking have accepted the mistakes in both cases and stated that the assessments in question have been rectified (October, 1976).

(ii) In computing the income of a company for the assessment year 1970-71, the Department disallowed a provision of Rs. 85,000 made for certain "field services" but allowed the actual expenses of Rs. 78,875 already incurred on such services. The assessee having preferred an appeal, the Appellate Assistant Commissioner confirmed the addition but ordered that the actual expenses should be allowed to the extent of Rs. 90,759. While giving effect to the appeal orders, the Department allowed a further sum of Rs. 90,759, ignoring the amount of Rs. 78,875 already allowed in the original assessment. This resulted in under-assessment of total income by Rs. 78,875 with consequent tax undercharge of Rs. 51,269.

The Department of Revenue and Banking have accepted the objection (October, 1976).

36. *Excess or irregular refunds*

(i) Under the Income-tax Act, 1961, companies engaged in the manufacture or production of certain specified articles are entitled to tax credit certificates in respect of the tax payable on the profits and gains attributable to such manufacture or production activities for a period of five years from the base

assessment year 1965-66 at the rate of 20 per cent of the difference between the tax for the current assessment year and that for the base assessment year, limited to 10 per cent of the tax for the current assessment year.

A company engaged in the manufacture or production of such specified articles was granted tax credit certificate for Rs. 4,41,246 for the assessment year 1970-71 representing 20 per cent of the excess of tax payable for the assessment year 1970-71 over that payable for the base assessment year 1965-66. The amount due was not, however, restricted to the lower amount of Rs. 3,83,784 being 10 per cent of the tax actually levied for the assessment year 1970-71 *viz.*, Rs. 38,37,841. The tax credit certificate was thus allowed for an excess amount of Rs. 57,462 resulting in an excess refund to the assessee of an identical amount.

While accepting the objection the Department of Revenue and Banking have stated (October, 1976) that the assessment in question has been rectified and the amount of additional demand of Rs. 57,462 raised and collected.

(ii) In the case of an assessee-company, the assessment for the year 1966-67 was rectified on 25-3-1971 and an amount of Rs. 67,138 was determined as tax refundable which was paid by adjusting the same against the tax dues of the company for the assessment year 1965-66 as revised on 23-10-1973. As a result of subsequent revision of the assessment for the said year made on 23-7-1974, the assessee-company became eligible for a further refund of Rs. 8,83,410. While working out the refundable amount, however, the Department overlooked the refund of Rs. 67,138 already made and refunded incorrectly a sum of Rs. 9,50,548 on 29-7-1974. This resulted in an excess refund of Rs. 67,138.

While accepting the objection, the Department of Revenue and Banking have stated (November, 1976) that the assessment in question has been revised and that the amount of additional demand raised and collected is Rs. 67,138.

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

(i) Under the Income-tax Act, 1961, as it stood prior to its amendment with effect from Ist October, 1975, where the return of income filed by an assessee deriving income from business and keeping its accounts on the mercantile system of accounting is not accompanied by copies of manufacturing or trading account, profit and loss account and balance sheet and, if the accounts are audited, by a copy of the statement of audited accounts, the return has to be treated as incomplete and hence invalid. Interest for belated submission of return in such a case is leviable upto the date on which complete particulars are furnished instead of only upto the date on which the initial but incomplete return of income is filed.

As assessee-company filed its return of income for the assessment year 1971-72 on 6-10-1971 after the expiry of extended time allowed to it upto 30-9-1971. Its return was not supported by the required statement of audited accounts. The copies of the audited profit and loss account and the balance sheet were filed by the assessee only on 8-6-1973. Interest of Rs. 14,105 for the period 1-10-1971 to 6-10-1971, instead of Rs. 17,64,736 for the period 1-10-1971 to 8-6-1973 was levied by the Department for belated submission of the return of income leading to short levy of interest of Rs. 17,50,631.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(ii) Under the provisions of the Income-tax Act, 1961, and the Companies (Profits) Surtax Act, 1964, 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 said period of thirty-five days till the date of payment of tax.

A company did not pay surtax and income-tax demands for the assessment year 1964-65 within the specified period. It did not pay the surtax demands for the assessment years 1965-66 and 1967-68 at all (March, 1976). As the assessee was in default in paying taxes, interest of an aggregate amount of Rs. 7,52,617 for belated payment or non-payment was chargeable on the assessee in respect of these assessment years. The Department levied an interest of Rs. 46,410 only against default in respect of the income-tax demand for the assessment year 1964-65. This omission on the part of the Department resulted in net non-levy of interest to the extent of Rs. 7,06,207 for these assessment years.

The Department of Revenue and Banking have accepted the objection.

(iii) Where the tax payable on current income is likely to exceed the amount of advance tax demanded by the Department by more than thirty three and one-third per cent, the assessee is required to file an estimate of such current 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.

In the case of a non-resident insurance company, the Department issued demand for advance tax of Rs. 4,78,112 for the assessment year 1973-74 while the tax payable on its current income worked out to Rs. 7,29,602. As the excess tax liability was more than thirty three and one-third per cent of the advance tax demanded, the assessee was required to submit an estimate for the higher tax and pay advance tax accordingly. Failure to do so rendered the assessee liable to charge of interest to the extent of Rs. 54,095 which was not levied by the Department.

The Department of Revenue and Banking have accepted the objection (October, 1976).

(iv) The Income-tax Act, 1961, imposes a statutory obligation on every person responsible for paying to a non-resident any interest (not being interest on securities) or any other sum (not

being dividends) chargeable under the provisions of the Act, to deduct tax at source at the rates in force and to pay the tax so deducted to the credit of the Central Government within the prescribed time. Failure to deduct tax or failure to pay to Government account the tax so deducted would render a person liable to the charge of simple interest at prescribed rates and also to prosecution under Section 276B of the Act.

In the previous years relevant to the assessment years 1971-72 to 1973-74, a company paid royalty to two non-resident assessees to the extent of Rs. 7,38,812 and deducted tax at source amounting to Rs. 5,26,273. The tax so deducted was, however, not credited to Government account within the time prescribed in the Act. Failure on the part of the assessee to pay to Government account the tax so deducted rendered him liable to charge of interest at the prescribed rates from the date on which such tax was deductible to the date of actual payment and also to prosecution. Neither interest was charged nor any penal action taken.

The Department of Revenue and Banking have accepted the objection (December, 1976).

38. *Avoidable payment of interest by Government*

(i) The Board issued instructions in April, 1966 directing the Income-tax Officers to complete regular assessments as early as possible after the receipt of returns of income so that excess advance tax paid could either be adjusted against the demand or refunded to the assessee so as to avoid the payment of interest on such excess. The Act was also amended in 1968, making it obligatory to complete a provisional assessment for refund in such cases within 6 months. Instances of failure to apply these orders/provisions entailing avoidable payment of interest were pointed out in paras 47(a), 53(b), 22 and 35 of the Audit Reports, 1969-70, 1970-71, 1972-73 and 1974-75 respectively. Nevertheless, such failures continue to occur.

(a) A Government company filed its return of income on 29-12-1966 declaring loss for the assessment year 1966-67. The assessee after paying two instalments of advance tax aggregating Rs. 26,17,146 had filed an estimate of advance tax showing that there was no liability to pay the third instalment. The provisional and regular assessments were completed on 22-10-1969 and 11-9-1970 respectively and the amount of refund due was determined at Rs. 25,70,920. Interest of Rs. 7,08,289 was allowed for the period from 1-4-1966 to 22-10-1969, the date of provisional assessment. Though the assessee requested, on 23-8-1968, for early completion of regular assessment, pointing out that it was likely to get refund, provisional assessment was completed only on 22-10-1969, based on a further request dated 26-9-1969 of the assessee. The delay in completion of provisional assessment resulted in avoidable payment of interest of at least Rs. 2,31,380 for a period of one year.

Under the Income-tax Act, 1961, interest at the prescribed rate is payable by Government if the refund due is not granted within three months from the end of the month in which the proceedings are passed. Due to delay in refunding the amount due, there was a further avoidable payment of Rs. 48,659 towards interest for the period from 11-12-1970 to 21-8-1973.

There was thus a total avoidable payment of interest of Rs. 2,80,039.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(b) A banking company furnished its return of income for the assessment year 1972-73 on 31-7-1972 showing an income of Rs. 14,11,34,592. The company had paid advance tax of Rs. 9,25,37,610 which exceeded the tax payable on the basis of returned income by Rs. 1,29,72,984. The Department did not make a provisional assessment for refund as required under the

Act and did not also complete the regular assessment till 25-7-1974 *i.e.* for nearly two years. Income finally assessed and tax levied being Rs. 15,48,33,087 and Rs. 8,72,87,154 respectively, Government had to pay interest of Rs. 11,56,448 against excess advance tax collected. Had the Department taken timely action to refund the excess tax as required by law, payment of interest of Rs. 7,40,953 at least could have been avoided.

The Department of Revenue and Banking have accepted the objection.

(c) A company which paid advance tax of Rs. 85,84,744 filed its return of income for the assessment year 1972-73 on 28-12-1972 declaring its total income as Rs. 81,87,320. The Department did not make a provisional assessment within six months for refund of excess advance tax paid, and completed the regular assessment only on 10-3-1975 *i.e.*, more than 27 months after the date of submission of the return. On completion of the regular assessment, the assessee was paid interest of Rs. 3,20,331 on account of excess payment of advance tax. Had the Department taken timely action to refund the excess advance tax, the payment of such interest, at least to the extent of Rs. 1,81,300 could have been avoided.

The Department of Revenue and Banking have stated that the Income-tax Officer did not complete provisional assessment for the assessment year 1972-73 as he was aware that a huge additional demand was likely to be raised for earlier years on the basis of another audit objection. They have added that 73.5 per cent of the interest paid would be recovered as tax in the later year.

(d) A company furnished its returns of income for the assessment years 1971-72 and 1972-73 on 31-12-1972 and 3-4-1973 showing net losses of Rs. 26,40,962 and Rs. 15,74,730 respectively. The assessee had paid advance tax of Rs. 20,50,710 and Rs. 21,01,662 for these assessment years. A refund was, therefore, *prima facie* due and provisional assessments were required

to be made within a period of six months in case delay was anticipated in completing regular assessments. For the assessment year 1971-72, the Department made a provisional assessment only on 5-11-1973, *i.e.*, after a lapse of 10 months from the date of receipt of the return while, for the assessment year 1972-73, the Department made no provisional assessment, the regular assessment being done on 10-3-1975, *i.e.*, after a period of about 23 months from the date of receipt of the return. This led to avoidable payment of interest of Rs. 1,77,300 for the two assessment years.

The Department of Revenue and Banking have accepted the objection.

(e) In the case of four other companies where the advance tax paid exceeded the tax payable on the incomes returned, for the assessment years 1971-72 in one case and 1972-73 in three cases, and the assessees had requested for provisional assessment for refund, the Department neither made any refund on the basis of a provisional assessment, nor did it complete the regular assessment within the statutorily prescribed period of six months from the date of return. This resulted in payment of interest of Rs. 9,95,577 on completion of the regular assessments in these cases, of which, at least a sum of Rs. 5,38,294 could have been avoided had a refund been made within six months.

The Department of Revenue and Banking have accepted the objections in all these cases.

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

An assessee-company was entitled to a refund for the assessment year 1959-60 arising out of an appellate order passed on the 7th October, 1968. The Income-tax Officer issued the refund order only on the 23rd September, 1974, *i.e.*, after nearly six years and the assessee was paid interest of Rs. 55,039 under the aforesaid provisions of the Act. Had the Income-tax Officer taken action within a fortnight or at least within the period of six months allowed in the Act, interest to the extent of Rs. 55,039 need not have been paid.

The Department of Revenue and Banking have stated that the case fell under the old Act and no interest was actually payable. They have added that action is being initiated to recover the interest paid. Reasons for the inordinate delay of six years in allowing refund have not, however, been given.

39. *Non-levy of penalty*

Under the provisions of the Income-tax Act, 1961 (as it stood prior to 1-4-1976), an assessee is required to pay the amount of tax payable on the basis of the return as reduced by any tax paid in advance as also any tax deducted at source, within thirty days of furnishing the return if such tax exceeds Rs. 500. Failure to do so renders him liable to pay such amount of penalty as the Income-tax Officer may direct, subject to a maximum of 50 per cent of the tax remaining unpaid. According to an instruction issued by the Central Board of Direct Taxes, the Department should not delay the initiation of such penalty proceedings beyond a period of one month after the due date of payment.

A company submitted its return of income for the assessment year 1971-72 on 3-9-1971 for Rs. 45,39,952. The net tax payable on the basis of the return after adjusting advance tax paid and the tax deducted at source was Rs. 3,54,030, which the assessee should have paid before 3-10-1971. As the payment of tax was not made till 4-2-1972, the penal provisions of the Act were

attracted. But the Department neither initiated penalty proceedings nor specifically waived the penalty. A maximum penalty of Rs. 1,77,015 being 50 per cent of the tax due, could have been levied.

The Department of Revenue and Banking have accepted the objection in principle (October, 1976).

Other topics of interest

40. *Excessive relief on tax credit certificates*

Under the provisions of the Income-tax Act, 1961, a company engaged in the manufacture or production of any of the specified articles is entitled to a tax credit certificate, if the tax payable by it (including surtax if any) for the assessment years 1966-67 to 1970-71 in respect of the profits attributable to such manufacture or production exceeds such tax payable for the assessment year 1965-66 or any succeeding base year. The tax credit certificate is granted for an amount equal to twenty per cent of the excess of the tax payable for the relevant years over the tax for the base year, but is limited to 10 per cent of the tax payable for the relevant year.

(i) A company engaged in the manufacture of automobile ancillaries, a specified article, was granted tax credit certificates for amounts of Rs. 7,37,297 and Rs. 7,35,895 in April, 1970 and December, 1970 in respect of the assessment years 1969-70 and 1970-71 respectively which were adjusted against its tax dues. The income-tax and surtax assessments of the company for the two years were revised subsequently in September, 1974 and January, 1975, whereby the tax payable for the two years was reduced and consequently the maximum amounts for which tax credit certificates could be granted also got reduced to Rs. 7,09,497 and Rs. 6,69,172. The Department did not, however, revise the tax credit certificate to recover the excess amount of Rs. 94,032.

The Department of Revenue and Banking have accepted the objection.

(ii) Another company manufacturing specified articles did not earn any profit in the base year 1965-66 in its L.D. Polythene unit. Hence, the year 1966-67 was its base year when the profit made in that unit was Rs. 55,12,336. In the next year, its profits were less at Rs. 50,55,412 and as such the unit was not eligible for any tax credit either in respect of the assessment year 1966-67 which became its base year or in the assessment year 1967-68 when it had no excess profits. Also, the company's Rubber Chemical Phase I and Paints Phase II units did not earn any profit till the year 1967-68 and as such the assessment year 1967-68 was their base year when they were not eligible for any tax credit. The Department, however, allowed tax credit for the assessment years 1966-67 and 1967-68 in respect of the profits of the above mentioned three units, leading to excess aggregate tax credit of Rs. 6,09,942 for the two years.

The paragraph was sent to the Department of Revenue and Banking in October, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

41. *Postponement of collection of tax revenue due to failure to serve notice of demand*

Any tax, interest, penalty, fine or any other sum payable as a result of any order passed under the Income-tax Act, is required to be served upon the assessee through a notice of demand specifying the sum so payable without which the assessee is not liable to pay any such sum as specified in the order.

In one case, the Department passed an order for advance payment of tax of Rs. 14,27,915 in the financial year 1970-71. The notice in question was, however, not apparently served upon the assessee who did not pay any advance tax during that year.

Failure to serve the notice of demand resulted in the postponement of collection of revenue of Rs. 12,84,000 by 8 months and the balance sum of Rs. 1,43,915 by a period of 5 years and 8 days.

The Department of Revenue and Banking have accepted the objection.

42. *Non-levy of additional tax under Section* 104 *of the Income-tax Act*

Where the profits and gains distributed as dividends by a company, in which the public are not substantially interested, within 12 months of expiry of the previous year, are less than the statutory percentage of the distributable income of that previous year, additional tax ranging from 25 per cent to 50 per cent on such shortfall is leviable under Section 104 of the Income-tax Act, 1961. The rate of additional tax is 50 per cent in the case of an investment company. The distributable income is computed by deducting from the gross total income the Income-tax paid and certain other expenditure.

In the case of an investment company, the distributable income for the assessment year 1970-71 was wrongly computed by making the admissible deduction from the net total income instead of from the gross total income of the company. Due to the incorrect method adopted, the company was found to be not liable to additional tax under Section 104 of the Act. Under-assessment on this account amounted to Rs. 2,02,571 resulting in non-levy of additional tax of Rs. 1,01,286 in the assessment year 1970-71.

The Department of Revenue and Banking have accepted the objection.

SURTAX

43. To act as 'a disincentive 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 levied under the Companies (Profits) Surtax Act, 1964. Surtax is levied on the 'chargeable profits' of a company in so far as they exceed the statutory deduction, which is an amount equal to 10 per cent (15 per cent from 1-4-1977) of the capital of the company or Rs. 2 lakhs, whichever is greater.

During the period under review, under-assessment of super profits tax/surtax of Rs. 101.77 lakhs was noticed in 108 cases. A few illustrative cases are given in the following paragraphs :—

44. *Non-levy of Surtax*

In the case of a company-assessee, the chargeable profits for the assessment years 1967-68, 1968-69 and 1969-70 exceeded the amount of statutory deduction and thus attracted the levy of surtax in each year. The Department, however, did not levy surtax amounting to Rs. 1,35,535.

The Department of Revenue and Banking have accepted the objection (January, 1977).

45. *Incorrect computation of 'chargeable profits'*

(i) The Act and the rules framed thereunder provide that the 'chargeable profits' are to be computed by making certain adjustments to the total income as assessed under the Income-tax Act. One of the adjustments prescribed is the addition of the amount of interest paid by the company on its debentures or long-term loans included in its capital.

(a) The surtax assessments of a company for the assessment years 1968-69 and 1969-70 were revised in September, 1974, wherein the loans obtained by it from Government were included in determining its capital for statutory deduction, but the interest payable on such loans, amounting to Rs. 5,33,718 was not added

to the total income. This resulted in under-assessment of the chargeable profits by Rs.5,33,718 with consequent short levy of surtax of Rs. 1,74,000 for the two years.

The Department of Revenue and Banking have stated that the assessments have been rectified and the additional demand raised and collected.

(b) In the case of another company, though long-term loans aggregating Rs. 66,45,547 were included in the capital for purposes of levy of surtax, the interest of Rs. 4,67,105 payable thereon was not added to the chargeable profits. This resulted in an under-assessment of chargeable profits to the extent of Rs. 4,67,105 involving a short levy of surtax of Rs. 1,16,776 in the assessment year 1971-72.

The Department of Revenue and Banking have stated that the assessment in question has been revised raising an additional demand of Rs. 1,16,776.

(c) In a third case, while computing the chargeable profits of a company for the assessment year 1966-67, the amount of interest of Rs. 8,15,614 paid on the debentures and fixed loans, forming part of the capital base, was not added. This resulted in an under-assessment of chargeable profits of the company by Rs. 8,16,614 and a short levy of surtax of Rs. 2,85,816.

(ii) The Super Profits Tax Act, 1963, and the rules framed thereunder for the computation of chargeable profits provide that the total income as computed under the Income-tax Act, 1961, for any assessment year, after adjustment of certain exclusions specified in the Act, should be reduced by the amount of income-tax and super tax payable by the company in respect of its total income after making allowance for any relief, rebate or deduction in respect of income-tax and super tax to which the company is entitled under the provisions of the Income-tax Act.

In the computation of the chargeable profits of a company for the assessment year 1963-64 for the purpose of levy of super profits tax, a sum of Rs. 2,46,65,246 was deducted from the adjusted total income on account of income-tax and super tax while the correct amount deductible on this score was Rs. 2,43,36,124 after making allowance for certain tax reliefs to which the assessee was entitled. As a result, the chargeable profits were under-assessed by Rs. 3,29,122 with consequent undercharge of super profits tax of Rs. 1,64,562.

The Department of Revenue and Banking have accepted the objection.

46. *Incorrect computation of capital*

(i) Under the Companies (Profits) Surtax Act, 1964 amounts held in "reserves" with certain exceptions provided therein, are includible in the computation of capital for the purpose of standard deduction. Liabilities and provisions are not to be treated as reserves for this purpose and these are not includible in the computation of capital.

(a) While making the surtax assessments of a company for the assessment years 1969-70 to 1971-72, the amounts held in preference share capital redemption reserve, reserve for contingencies and replacement and rehabilitation reserve, which were not to be included under the aforeasid provisions of the Act, were, incorrectly, included in the computation of capital. This resulted in statutory deduction being admitted to an extent higher than that actually admissible and a short levy of tax of Rs. 17,00,000.

The Department of Revenue and Banking have accepted the objection (January, 1977).

(b) In the case of another company which made reserves for payment of dividends out of the profits of the previous years 1965-66 and 1966-67, the entire amount of reserves instead of

in the surtax assessment for 1967-68, a sum of Rs. 10,44,576 was added to the capital of the company being proportionate increase in the paid-up capital for 23 days in the year. As issue of bonus shares out of general reserve does not add to the capital base because of corresponding reduction in the level of the general reserve, the addition was irregular which led to excess allowance of standard deduction of Rs. 96,196 and consequent undercharge of surtax of Rs. 33,669.

The Department of Revenue and Banking have accepted the objection.

(iv) The Act also provides that capital, for this purpose, does not include borrowings unless they are utilized for the creation of a capital asset in India and the agreement under which the borrowings are made, provides for the repayment thereof during a period of not less than seven years.

(a) In computing the capital of an assessee company for the purpose of surtax assessment for 1974-75, the Department, incorrectly, included in the capital base a sum of Rs. 33,55,585 representing cash credit availed of from a bank against its working capital needs. Further, although a sum of Rs. 13,84,162 representing loans from directors and other persons was not, initially, included in the capital of the company, the same was incorrectly deducted from the capital base. As a result, the capital was overstated by Rs. 19,71,423 with consequent excess allowance of statutory deduction and under-assessment of net chargeable profit by Rs. 1,97,142. This led to an undercharge of surtax of Rs. 64,071 in the assessment year 1974-75.

The Department of Revenue and Banking have accepted the objection.

(b) The surtax assessments of a company for the assessment years 1968-69 and 1969-70 were revised in September, 1974, wherein the repayments of Rs. 48,17,858 and Rs. 42,14,285

towards loans obtained from Government, were not considered for proportionate reduction of the capital. This resulted in excessive capital computation with consequent short levy of surtax of Rs. 2,36,428 for the two years.

The Department of Revenue and Banking have accepted the objection.

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

(a) In computing the chargeable profits of a company for the assessment year 1972-73, though a sum of Rs. 34,74,184 representing the amount of tax credit certificates was excluded from the chargeable profits, the capital of the company was not reduced. This resulted in incorrect computation of capital base for the relevant surtax assessment, leading to an undercharge of surtax of Rs. 1,50,000.

The paragraph was sent to the Department of Revenue and Banking in October, 1976; they have stated in February, 1977, that the audit objection is under active consideration.

(b) In the surtax assessments of a company for the assessment years 1966-67 and 1968-69 to 1971-72, although income of Rs. 3,23,749 arising from a priority industry was correctly excluded from the chargeable profits of the company for the assessment year 1966-67, its capital was not proportionately reduced. Further, debenture redemption reserve of Rs. 20,00,000 was taken into account in the computation of capital for the assessment year 1971-72 although it was in the nature of a sinking fund and hence excludible in the computation of capital base.

Again, the balances standing to the credit of a general reserve account which was fed by the entire surplus profits of the company each year, were not reduced by the amounts of Rs. 65,52,000,

Rs. 36,40,000, Rs. 36,40,000 and Rs. 47,32,000 distributed later as dividends from the same account during the years relevant to the assessment years 1968-69 to 1971-72 respectively. These irregularities resulted in undercharge of surtax of Rs. 5,80,102.

The Department of Revenue and Banking have accepted the objection.

(c) While reducing the capital of a company computed for purposes of surtax, by the cost of certain investments, the income from which was not included in its chargeable profits, the Department set off against such cost, provisions for taxation, retirement benefits and proposed dividends, although these were in the nature of provisions and did not represent any fund, surplus or reserve as specified in the Second Schedule to the Companies (Profits) Surtax Act, 1964. This resulted in computation of excess capital with consequent short computation of chargeable profits in the assessment years 1964-65 to 1971-72, leading to aggregate undercharge of surtax of Rs. 4,18,743.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(d) In the surtax assessment of another company for the assessment year 1966-67 although profits arising from priority industries were excluded from chargeable profits, a proportionate reduction in the capital was not made, leading to an excess allowance of Rs. 1,35,905 and consequent undercharge of surtax of Rs. 46,567.

The Department of Revenue and Banking have accepted the objection (December, 1976).

47. *Over-assessments*

(i) Under the provisions of the Income-tax Act, 1961, interest for short or non-payment of advance tax by the assessee on his own estimate was payable upto the assessment year 1969-70

on the difference between seventy-five per cent of the tax determined on regular assessment and the amount of advance tax paid by the assessee on his own estimate from the first day of April next following the financial year in which the advance tax was payable to the date of regular assessment.

The assessments of a company, which filed estimates of loss and did not pay any advance tax for the assessment years 1963-64, 1964-65 and 1965-66 were completed on 29-3-1968, 26-3-1969 and 31-1-1970 respectively. They were further revised on 26-2-1975 to give effect to certain appellate orders on the original assessments. While doing so, the Department levied interest of Rs. 93,742, Rs. 95,648 and Rs. 28,081 respectively for the assessment years 1963-64, 1964-65 and 1965-66 for non-payment of advance tax. In determining these amounts the Department calculated the interest over the periods from the first day of the respective assessment years to the date of revised assessments *viz.*, 26-2-1975 instead of upto the dates of the original assessments *viz.*, 29-3-1968, 26-3-1969 and 31-1-1970. This led to a total over-charge of interest of Rs. 1,50,158 in the three assessment years.

(ii) An Indian company was assessed to a net chargeable profit of Rs. 64,87,811 in its super profits tax assessment for the assessment year 1963-64. While computing the super profits tax due thereon, the Department levied a tax of Rs. 40,95,087 whereas the tax correctly payable was only Rs. 37,91,487. This led to over-charge of super profits tax by Rs. 3,03,600.

The Department of Revenue and Banking have accepted the objection in both the cases.

CHAPTER III

INCOME TAX

48. 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 in so far as these are attributable to Union emoluments, Union Territories and Union Surcharges, is assigned to the States in accordance with the recommendations of the Sixth Finance Commission.

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 16(i). Some instances of the various types of mistakes are given in the following paragraphs.

49. *Working of salary circles*

Under the Income-tax Act, 1961, one of the heads of income is "salaries". The term salary has been defined by the Act to include gratuity, perquisites and any profit in lieu of or in addition to salary. Perquisite is comprehensively defined to include not only allowances but value of certain benefits and concessions allowed to the employee. The Act provides for recovery of tax by deduction at source. The amounts so recovered for the years 1975-76, 1974-75 and 1973-74 are as follows:—

Year	Total deduction at source	Deduction at source on income chargeable under the head 'Salaries'
		(In crores of rupees)
1975-76	350.77	163.13
1974-75	310.26	169.51
1973-74	299.66	158.23

Separate salary circles have been set up in bigger charges. The number of such circles working in the country as on 31-3-1976 was 20. Salary cases constituted about 18 per cent of the total number of cases.

The total number of salaried employees assessed in salary circles during the assessment year 1975-76 is estimated at over 7 lakhs. The progress in the completion of assessments in salary cases is indicated by the following figures:

(*i*) Number of assessments pending on 1-4-1975	2,27,578
(*ii*) Number of current assessments	5,26,403
(*iii*) Total number of assessments for disposal	7,53,981
(*iv*) Number of assessments completed	
(*a*) Out of arrears	2,05,626
(*b*) Out of current	3,92,625
(*c*) Total	5,98,251
(*v*) Number of assessments pending on 31-3-1976	1,55,730

49.2 The Act and the Rules place a statutory responsibility on all persons responsible for paying 'Salary' to deduct tax, at the time of payment of 'salary income', at the average rate of tax computed on the basis of the rates in force for the financial year in which the payment is made and to pay the sums so deducted to the credit of the Central Government within one week from the date of deduction. In special cases, if so permitted by the Income-tax Officer it could be paid quarterly on June 15th, September 15th, December 15th and March 15th. In the event of failure to so deduct the income-tax or, after deducting, to pay the sums deducted as prescribed to the credit of the Central Government, the employer would have to pay simple interest at the rate of 12 per cent per annum on the amount outstanding from the date on which it was deductible to the date on which it is actually paid. The employer would also be treated as an assessee in default and thereby become liable to the penalties and prosecution proceedings prescribed in the Act.

49.3 A person deducting tax at source, as aforesaid, is required to furnish to the person from whose salary the deduction is made, a tax deduction certificate showing the amount of income

chargeable under the head 'salaries', and the amount of tax deducted. This certificate forms the basis for the credit to be given to the employee in his income-tax assessment for the relevant year. Every employer is required to file with the Income-tax Officer, within 30 days from the 31st March in each year, an annual return of salary giving details of all amounts chargeable under the head 'Salaries' paid to the employee, and the amount of tax deducted and credited to the Central Government. This statement provides specific columns not only for various items of income assessable under 'salaries' such as wages, annuity, pension, gratuity, commission, bonus, fees or profits in lieu of or in addition to salary but also perquisites such as residential accommodation provided free of rent or at concessional rent, house-hold furniture provided by the employer, remuneration paid by the employer for personal services provided to the employee, free or concessional passages on home journeys or other touring provided by the employer, contribution to recognised provident fund in excess of 10 per cent of the employee's salary or interest on the provident fund balances credited at rates higher than those fixed by the Government or any other amenity provided by the employer free of cost or at concessional rate. In addition, the non-Government employers are also required to file with the Income-tax Officer a monthly return giving details of the amounts of 'salaries' paid to each employee, the amount of tax deducted and the date of payment thereof to the credit of Government. The Commissioners of Income-tax are empowered to waive this requirement and allow the submission, instead, of a monthly certificate of the tax deducted from salaries and paid to the credit of Government.

49.4 A general review of the working of salary circles in some of the charges revealed the following:—

(i) Certificates and returns

It would be apparent from the statutory provisions described above that the tax deduction certificate, the employers'

monthly return/certificate and the employers' annual return constitute the important tools in the hands of the Income-tax authorities to ensure that the statutory obligations are not avoided. It is necessary to see that the credit claimed for tax deducted at source is supported by a tax deduction certificate, that the monthly return/certificate is received and the amount of tax collected and paid to the credit of Government tallies with the collection accounted for in the Treasury. The annual return should also be tallied with the details of monthly return/certificate on the one hand and the incomes returned and the claims filed in individual assessments of the employees on the other.

Test check conducted in some of the Commissioners' charges revealed that neither the timely receipt of these important certificates/returns nor the checks and counter-checks for which these are designed were receiving adequate attention. Cases were noticed in Bihar, Delhi, Kerala, Orissa, Rajasthan and Uttar Pradesh charges where credits for tax deducted at source were allowed without production of tax deduction certificates. In Rajasthan, in one case such credit was allowed on the basis of a certificate, though the name of the assessee did not appear either in the monthly or the annual return. In Bombay in the case of a Managing Director of a multinational corporation, lump sum amounts of Rs. 5,17,419 for the financial year 1969-70 and Rs. 2,91,737 for the financial year 1973-74 shown in the tax deduction certificates, were accepted for assessment without calling for any details, though the annual returns did not give any break-up of the salaries, perquisite or other amenities comprising the lump sum amounts. In Kerala, credits for tax deducted at sources were allowed without the tax deduction certificate on the plea that the assessees were highly placed gazetted officers and their statements regarding deduction of tax at source could be accepted. In Tamil Nadu, monthly/annual returns are centralised in one ward for computerisation and the assessing officers have to rely on the tax deduction certificates for affording credit without any means of correlating the same with the monthly annual returns.

As for the monthly returns/certificates, it was noticed in 7 Commissioners' charges that these returns/certificates had not been received and no action had been taken in the matter. In 10 Commissioners' charges, the prescribed register for watching the receipt of these monthly returns/certificates was not kept or where maintained, it was not in the prescribed form and manner. In all these cases, it was not clear how it was ensured by the wards/circles that the tax deductible at source had actually been deducted in all cases and that the amounts deducted had been credited to Government account within the prescribed time.

There was a similar omission in regard to watching the receipt of the annual returns. In 5,871 cases, in 11 Commissioners' charges, these returns had not been received. The percentage of cases in which returns were not so received in these charges varied from 33 to 100. In 638 other cases in 5 Commissioners' charges, returns were received late by periods ranging from 1 month to 6 months upto December, 1975. Under the Act, the defaulters could be prosecuted and would be liable (before amendment by the Taxation Laws (Amendment) Act, 1975 from 1-10-1975) to a fine of upto Rs. 10 for every day of default. No action had, however, been initiated in any of these cases. In respect of 410 cases of delayed returns in the Commissioner's charges in Tamil Nadu, Calcutta and Andhra Pradesh alone, the fine leviable under the aforesaid provisions of the Act would amount to Rs. 22,56,800 upto the end of December, 1975. A test check of the annual returns received revealed the following position in some cases:—

(*a*) In 120 cases, in one circle in Calcutta, the total amount of tax paid as per challans fell short of the total amount shown in the annual returns by as much as Rs. 1,18,61,232. No action had been taken to reconcile the discrepancy.

(*b*) In Andhra Pradesh, similar discrepancies between the amounts given in the returns and the amounts shown by the monthly returns and the challans were noticed in 11 cases. Of

these, in 9 cases the amounts as per challans fell short of the amounts shown in the annual returns by Rs. 3,20,931; in the other two cases the amounts shown in the annual return were more than those posted in the Register of employees from the monthly returns/certificates by Rs. 3,72,208.

(c) In Karnataka, in the case of 8 employers, the total tax deduction as per the annual returns was Rs. 1,98,423 but the amounts credited as per the challans totalled only Rs. 1,55,937.

(d) Similarly, in one case in Poona, the annual return showed a total tax deduction of Rs. 1,86,284 while the corresponding monthly returns and the challans totalled only Rs. 1,47,978.

(ii) Deduction of tax

The test check also revealed 4 cases in Tamil Nadu and 2 cases in Calcutta where tax deductible at source had not been deducted/deposited. In 89 cases, in Calcutta, Haryana, Madhya Pradesh, Tamil Nadu and Uttar Pradesh, there had been short deductions of tax at source to the extent of Rs. 1,11,457. No penal action was taken in these cases. In 85 cases, in Bombay, Calcutta, Kerala, Tamil Nadu and Uttar Pradesh, the payments of tax deducted at source were made to the credit of Government account after delays of 14 days to 3 years. The interest leviable in these cases under the law, amounting to Rs. 5,06,246, was not levied. There were similar cases of delay also in Gujarat, Karnataka and Rajasthan.

In the case of three assessees in Karnataka who were partners in a registered firm, tax deducted at source was adjusted twice, once in the assessments of the Hindu undivided families of which the assessees were Karthas and again in their "Individual" assessments, with a resultant short collection of Rs. 10,086.

The Income-tax Rules allow a discretion as stated earlier, to the Income-tax authorities to permit certain employers to

pay the tax deducted at source to the credit of Government quarterly on the 15th July, 15th October, 15th January and 15th April. The Board issued executive instructions in November, 1975 to the effect that such permission should be granted only to small business houses. The Board also desired in these instructions that the permissions already granted in any cases to large business houses should be withdrawn. In Bombay, such permission given in 17 cases where average monthly deduction of tax was of the order of Rs. 14,22,000, was not withdrawn. Interest forgone in these cases works out to Rs. 1,70,600 per year. In Kerala and Tamil Nadu also, certain cases were noticed where permission granted earlier to big houses had not been withdrawn.

(*iii*) *Valuation and assessment of perquisites*

Many cases of incorrect computation/assessment of the perquisite value of various amenities provided by the employers were noticed in audit. The following are some of the instances :—

(a) Under the Rules, rent-free accommodation is evaluated at 10 per cent of the salary if unfurnished, and 12.5 per cent, if furnished (from 2-4-1974, however, the rent of furniture is separately added). The Rules also provide for increase in the aforesaid value if the fair rental value of the accommodation is far in excess of the above percentages and also for reducton thereof if the Income-tax Officer is satisfied that the fair rental value is less than the prescribed percentages.

In 53 cases, pertaining to different assessment years between 1969-70 and 1974-75, it was noticed in the Commissioners' charges in Assam, Calcutta and Uttar Pradesh that mistakes in valuing the perquisites involved in rent-free accommodation resulted in a total short levy of tax of Rs. 70,752. In seven cases pertaining to the assessment years, 1970-71 to 1973-74, it was noticed in Calcutta that the perquisite value of rent-free furnished accommodation was accepted at Rs. 85,131 as returned, though the amount

computed at 12.5 per cent of the salary worked out to Rs. 1,31,052 and there was nothing on record to show that the Income-tax Officer was satisfied that the fair rental value was less than the prescribed percentage. In Tamil Nadu in the case of 3 foreign employees of a company, deriving salary income of Rs. 1,10,000 to Rs. 1,80,000 per annum, the value of rent-free accommodation was calculated for the assessment year 1971-72 based on the municipal valuation of fair rental value adopted in the assessment years 1966-67 and 1967-68. The value so computed worked out to a mere two to five per cent of salary income. If 12.5 per cent of salary income were taken as the value of the perquisite, there would be a further charge of tax of Rs. 90,480 in these cases. Similarly, in one case in Kerala, the perquisite value of rent-free accommodation fixed by the Tribunal sometime in 1954 was still being accepted for assessment without any regard to the general rise in the fair rental values during this period. In Tamil Nadu also, in the case of a special director of a company belonging to a group, who was in receipt of salaries of Rs. 54,000 and Rs. 36,000 from two companies of the group, the value of rent-free accommodation for the assessment years, 1971-72 and 1972-73 was calculated at 12.5 per cent of Rs. 54,000 and not of the total salary income.

(b) Under the Act, "perquisite" includes any sum paid by the employer in respect of any obligation, which but for such payment, would have been payable by the employee. Thus, the provision of house building or other loans to the employees free of interest or on concessional interest would involve a perquisite in respect of the interest forgone. It was noticed, however, that the various banking and other financial institutions were advancing such loans to their employees either free of interest or at nominal interest which is far less than the concessional interest but the perquisite value in such cases was not computed and brought to tax. Such cases were noticed in Andhra Pradesh and Tamil Nadu. There is no specific rule or instruction from the Board on the

valuation of this perquisite, though Rule 3(g) of the Income-tax Rules, 1962 does make a general provision to the effect that the value of any other benefit or amenity should be determined on such basis and in such amount as the Income-tax Officer considers fair and reasonable.

(c) Under Rule 86 of the Income-tax Rules, 1962 a director of a company can be admitted to the benefits of an approved superannuation fund maintained by the company only if he is a whole-time *bona fide* employee of the company and does not beneficially own shares in the company carrying more than five per cent of the total voting power.

In Andhra Pradesh a director of a company was admitted to a superannuation fund though he was not a whole-time *bona fide* employee of the company. This resulted in short demand of tax of Rs. 28,152 in the assessment years 1972-73 and 1973-74. The assessee was also a Joint Managing Director of another company and received remuneration of Rs. 36,000 per year during the previous years relevant to the assessment years 1972-73 and 1973-74. In two more cases of another company the Managing Director and the Joint Managing Director were admitted to the benefits of the superannuation fund though they were not whole-time employees of the company and were also beneficially owning shares of the company carrying more than five per cent of the total voting power. In Tamil Nadu, a director of a group of four companies was drawing salary from all of them. He was admitted to the benefits of the superannuation fund maintained by two companies. As he cannot be considered as a *bona fide* whole-time employee of any of the companies he was not entitled to relief on his contributions to the fund and the company's contributions were to be treated as income in the hands of the individual.

(d) In Calcutta, it was noticed from the statements furnished by a company for the assessment year 1973-74 that the company had spent a sum of Rs. 86,411 on account of decoration and flower

arrangements in the gardens of the directors and high executives as well as for supply of other articles such as mattresses but the annual returns furnished by the company did not include any of this amount. A test check of the individual assessments of the employees indicated that the amounts were not added as perquisites.

(e) In Andhra Pradesh, a director of a company was allowed standard deduction in the assessment year 1972-73 on account of conveyance. It was pointed out in audit that the director might have been provided with car by the company. On enquiry, the Department found that the value of perquisites in the shape of rent-free accommodation, car, for the assessment years 1967-68 to 1972-73, amounting to Rs. 39,603 with a tax effect of Rs. 31,909 had not been brought to tax.

(f) In Andhra Pradesh also, a company sold 11 jeeps, vans and cars of the total book value of Rs. 2,36,260 to certain employees for a total sum of Rs. 93,558 during the assessment years 1973-74 and 1974-75. In the hands of the employees the perquisite representing the difference between market price and sale price was not taxed.

(g) In Assam in five cases mali allowance was assessed at a uniform rate of Rs. 720 per annum though the allowance actually received by the employees varied from Rs. 720 to Rs. 4,560. This resulted in a short levy of tax of Rs. 33,629 in the assessment years 1969-70 to 1974-75.

(h) The Act [Section 40A(5)] also provides for the disallowance, in the assessment of the employer, of payments on account of salary and perquisites in excess of the limits laid down in the Act (salary to an employee in excess of Rs. 5,000 a month and perquisites in excess of 1/5th of salary or Rs. 1,000 p.m., whichever is less). In the case of 36 employees of four companies in West Bengal, salary and the value of perquisites exceeded the prescribed limits by Rs. 1,71,507 but the excess was not disallowed

in the assessments of the companies resulting in under-assessment of tax of Rs. 98,004. Similarly, in the case of two foreign technicians of a company in West Bengal, the excess amounting to Rs. 1,09,370 of salary over the ceiling limit prescribed, was not disallowed in the assessment year 1972-73. In the case of 9 employees of four companies, there were discrepancies between the figures of salary shown in the annual returns and those shown in the statements under Section 40A(5) amounting to excess allowance to the extent of Rs. 78,179 during the assessment years 1972-73, 1973-74 and 1974-75.

(*iv*) *Reliefs and deductions*

(a) The Act allows a standard deduction in respect of certain obligatory expenses such as those on maintenance of conveyances, purchase of professional books etc. This deduction has to be limited to Rs. 1,000 in the case of an employee who is in receipt of a conveyance allowance or who is given the use of a conveyance by his employer. Prior to 1-4-1975, the Act allowed a separate deduction in respect of maintenance of conveyance by salaried employees on the condition that the deduction would not be admissible to an employee in receipt of a conveyance allowance. It was noticed in 34 cases in Assam, Karnataka, Rajasthan and Tamil Nadu that the standard deduction at the full rate without being limited to Rs. 1,000 was allowed even though the employees were either in receipt of conveyance allowance or were given the use of conveyance or free petrol by the employer. The undercharge of tax in these cases amounted to Rs. 41,363.

It was also noticed that many employers, particularly in the Public Sector, who were paying conveyance or car allowances to their employees, had adopted the practice of calling this allowance by various other names such as 'local travelling expenses', 'personal allowance', 'vehicle/car allowance' 'reimbursement of motor vehicle expenses', etc. It is open to question if this does not amount to an attempt to circumvent the provisions of the

law to enable the employees to claim the standard deduction upto the maximum amount of Rs. 3,500 without being limited to Rs. 1,000.

(b) The Act also contains a provision to the effect that any special allowance or benefit specifically granted to meet expenditure wholly, necessarily and exclusively incurred in the performance of duties of office or employment of profits is exempt from tax. In October, 1971, the Income-tax Tribunal at Bombay held that city compensatory allowance was exempt from tax under this provision. This decision of the Tribunal was confirmed by the Bombay High Court in August, 1974. Since this was not the intention, an explanation was added under the aforesaid provision in the Act by the Finance Act, 1975 retrospectively from 1-4-1962 to make it clear that city compensatory allowance was not exempt under this provision. The Bombay Tribunal held in June, 1975, that city compensatory allowance would still be admissible as a deduction in the computation of salary income under Section 16(v), which allowed a deduction in respect of any amount required to be spent by the assessee wholly, necessarily and exclusively in the performance of duties. This clause in Section 16 of the Act was deleted on the introduction of the standard deduction with effect from the 1st April, 1975. The Madhya Pradesh High Court have held in October, 1975 that city compensatory allowance is exempt *ab initio*, as it is not 'salary' at all. The position, therefore, continues to be uncertain and large groups of salaried employees in different areas continue to get the concession of tax being not paid on city compensatory allowance.

(*v*) *Other points*

(a) Although tax is deductible at source from income under the head 'salaries', there is nothing in the Act to exempt salaried employees from the provisions regarding the submission of returns of income (but for the limited provision in this regard made from 1-4-1975, in respect of persons with salaries not exceeding

Rs. 18,000 per annum) or from those relating to the payment of tax in advance, because of the reason that salaried employees may, as well, have income, under other heads. It was, however, noticed that in a very large number of cases, even during the periods upto 1974-75, salaried employees failed to submit their returns of income and the Department did not take any steps to issue notices calling for returns in such cases. In Bombay and Gujarat, 55 per cent and 30 to 40 per cent respectively of all the effective tax payers in this category were found to have defaulted in this regard. Similarly, it was noticed in the Commissioners' charges in Assam, Andhra Pradesh, Bombay, Calcutta and Uttar Pradesh that advance tax notices were also not issued in many cases.

(b) The Board had issued instructions in 1972 about the allotment of permanent account numbers to all salaried employees. They had also informed the Public Accounts Committee, *vide* para 4.57 of the Committee's 51st Report (1972-73), that they had started giving permanent account number to all assessees. The Income-tax Act, 1961 has since been amended from 1-4-1976 to include a provision in this regard. It was noticed during the test check, however, that there were still many omissions in the allotment of permanent account numbers. Thus in Karnataka, in 5 wards permanent account numbers had not been allotted till 31st March, 1976. In Rajasthan, Uttar Pradesh and West Bengal the numbers had yet (31st March, 1976) to be allotted in 4,617, 6,381 and 5,000 cases respectively, seen in test check.

The paragraph was sent to the Department of Revenue and Banking in November, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

50. *Device of deferred annuity policy in the case of assessees maintaining accounts on cash basis*

According to the terms of contract between certain film artists and film producers, the artists receive payments partly in the form of cash and partly in the form of single-premium annuity

insurance policies purchased from the Life Insurance Corporation of India, in favour of the artists but paid for by the producers in lump. In two such cases the amounts received in cash were shown by two film stars in their returns of income but the remuneration received in the form of annuity policies was not returned on the plea that the assessees followed cash system of accounting for their professional income.

Failure to treat the premium paid by the producers on account of deferred annuity policy in lieu of the remuneration payable to the artists as income due to them during the assessment years 1972-73 and 1973-74 resulted in an under-assessment of Rs. 11,86,917 leading to a total short levy of tax of Rs. 10,71,112 in respect of the two assessees for both the years.

The paragraph was sent to the Department of Revenue and Banking in November, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

51. *Under-assessment of commission on compensatory payments*

The premises of an assessee were searched by the Enforcement Directorate on 25th March, 1971 and cash of Rs. 66,766 was seized. The assessee admitted that he had indulged in transactions of compensatory payments to the tune of Rs. 1.5 crores during the period from October, 1968 to March, 1971 and received commission thereon. The assessments for the assessment years 1970-71 and 1971-72 were completed in March, 1973 and March, 1974 respectively, adopting the commission as one per cent on the compensatory payments distributed on a *pro rata* time basis. Accordingly, the commission income was adopted as Rs. 64,300 and Rs. 19,329 for the assessment years 1970-71 and 1971-72.

While revising the assessment for the assessment year 1969-70, originally completed in January, 1970, to include the commission receipts, the Department, after holding extensive enquiries

and consultations with the officials of the Enforcement Directorate, fixed the quantum of commission at 6 per cent of compensatory payments distributed. Accordingly, the commission payable for the assessment year 1969-70 was fixed at Rs. 1,92,000, being 6 per cent on the compensatory payments distributed during the relevant previous year and the assessment was completed in March, 1975. On the same basis the commission assessable for the assessment years 1970-71 and 1971-72 worked out to Rs. 3,85,800 and Rs. 3,22,200 respectively. The assessments for the assessment years 1970-71 and 1971-72 were, however, not revised to adopt the revised commission amounts. This resulted in tax undercharge of Rs. 4,48,000 for both the assessment years.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

52. *Income escaping assessment*

(i) Under the provisions of the Income-tax Act, 1961, income from house property owned by an assessee is assessable to tax on the basis of its annual value. It has been judicially held that tax is chargeable by virtue of ownership of the property, even if, in fact, the owner does not actually receive any income. Where, however, the property is occupied by the assessee for the purpose of any business or profession carried on by him, the profits of which are chargeable to tax, no income from such property is assessable.

An urban building owned by an individual and valued at Rs. 4,54,181 as on 30th June, 1973 as per his wealth-tax assessment, was used by a firm, in which the individual was a partner, for its business. No income from the property was returned by the assessee nor was it considered by the Department, in the assessments for the assessment years 1971-72 to 1974-75 completed during the period December, 1971 to September, 1974. Adopting a return of six per cent on the value of the

investment in the buildings, the income escaping assessment for the four years amounted to Rs. 72,800 with consequent short levy of tax of Rs. 32,600.

The Department of Revenue and Banking have stated that where a firm carries on business it is a business carried on by the partners and the property income is exempt under Section 22 of the Act. It has been judicially held that the partners of the firm are distinct assessable entities and the firm as such has a separate and distinct entity for the purpose of assessment. The Ministry of Law have already agreed with Audit in a reference under the Wealth-tax Act that the business carried on by the firm of which the assessee is a partner cannot be considered as a business carried on by him.

(ii) A film star acquired a house property in the previous year relevant to the assessment year 1960-61. Though in the assessment years 1960-61 and 1961-62 the Department assessed an income of Rs. 10,000 from this house property on estimated basis which stood the test of appeal, the assessee did not return and the Department did not assess any income from this property in the assessment years 1962-63 to 1972-73.

When this was pointed out by Audit in January, 1975, notices under Section 148 were issued for the years 1962-63 to 1972-73 and an income of Rs. 53,608 was brought to tax involving a tax of Rs. 38,568.

The paragraph was sent to the Department of Revenue and Banking in August 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(iii) An assessee who is the Managing Director of a company returned a sum of Rs. 18,000 as remuneration from the company against Rs. 46,302 actually paid to him by the company as per their accounts. The assessing officer accepted the income

returned and completed the assessment accordingly. This resulted in escapement of income of Rs. 28,302 with a tax effect of Rs. 26,000 (approx.).

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977 that the objection is under active consideration.

(iv) Under the provisions of the Income-tax Act, 1961, the value of any benefit, whether convertible into money or not, obtained from a company either by a director or by a relative of the director is assessable to tax as income.

A private company granted an interest free loan of Rs. 2,40,000 to its director in September, 1963. After his demise in April, 1964 the loan continued to be outstanding against his estate administered by his son who became a director of the company. The benefit derived by the director and his son by way of saving in interest for the eleven year period upto the year ended January, 1974, was not assessed as income in any of the assessment years 1964-65 to 1974-75 resulting in short levy of tax of Rs. 1,19,360. As the son of the deceased became a director of the company and as he was the administrator of the estate, the benefit of interest free loan would be assessable as income for the subsequent assessment years also.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(v) According to the provisions of the Income-tax Act, 1961, while computing the total income of a person any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government shall not be included in total income. Under executive instructions, in the case of a permanent civil servant who opts for service in a public undertaking and chooses to receive lump sum amount in lieu of pension, the

commuted value of 1/3rd of pension will be exempt from tax whereas the terminal benefit equivalent to the capital value of 2/3rd of pension payable in consideration of the optee's surrendering the right for drawing the 2/3rd pension will be chargeable to tax as income of the year in which it is due.

In the case of a civil servant who opted to serve in a public undertaking and received lump sum amount in lieu of pension, the above provisions of law were overlooked. This resulted in under-assessment of income of the assessee by Rs. 50,162 in the assessment year 1971-72 leading to a short levy of tax of Rs. 33,035.

The Department of Revenue and Banking have accepted the objection and stated that the additional demand of Rs. 33,035 has been raised and collected.

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

(i) According to the provisions of the Finance Act, 1974, tax at higher rates is chargeable in the case of Hindu undivided families having at least one member whose total income of the relevant previous year exceeds Rs. 5,000.

In the case of 124 such families in seven Commissioners' charges tax for the assessment years 1974-75 and 1975-76 was levied at the lower rates and not at the prescribed higher rates. As a result, there was a total undercharge of tax of Rs. 2,18,629 in these cases.

The Department of Revenue and Banking have accepted the objections in 120 cases; their comments are awaited in the remaining 4 cases (March, 1977).

(ii) Under the Income-tax Act, 1961, a firm and its partners are separately assessable, the firm in respect of its total income and the partners in respect of their share income from the firm. If a registered firm incurs a loss, the loss is apportioned among the partners. Where the firm is unregistered, the loss is allowed

to be carried forward by the firm and not allocated to partners. Under the instructions issued by the Central Board of Direct Taxes in 1966, before adopting the share income in the assessment of the partners the question of registration of the firm should be decided.

In the assessment of a Hindu undivided family for the assessment year 1974-75 completed in December, 1974, share of loss amounting to Rs. 1,54,668 from two firms (in which the assessee was a partner) as returned by the assessee was adopted provisionally without verifying whether the firms were registered. In the light of the instructions of the Central Board of Direct Taxes inclusion of loss provisionally in computing the income of the assessee was not correct.

Further, in calculating the tax on the total income, in this assessment, the higher rate applicable to Hindu undivided family as per the provisions of the Finance Act, 1974 was not applied even though the Hindu undivided family had two of its members whose total income exceeded Rs. 5,000. These mistakes resulted in undercharge of tax of Rs. 1,09,400.

The Department of Revenue and Banking have stated that in the case of one firm which was dissolved on 31-3-1973 the assessee was allowed remission of a sum of Rs. 9,387 from the balance in his current account with the dissolved firm and that in the case of the second one, the firm had applied for continuation of registration. In Audit's view, the condition about registration of firms in both the cases remained unfulfilled.

54. *Incorrect status adopted in assessments*

(i) Under the provisions of the Income-tax Act, 1961, assessable entities include an association of persons or body of individuals whether incorporated or not. As judicially clarified, when there is a combination of persons formed for the promotion of a joint enterprise, there would be an association of persons.

If, however, irrespective of joining together for a common purpose or a joint activity, the group of persons is found to be in receipt of a unit income, the group itself would be regarded as a unit and taxed under the category of "body of individuals" whether incorporated or not.

On the death of the head of a Mohammedan family in 1957, the share of the estate of the deceased devolved on his wife and children. The wife of the deceased also died in 1963 and from the assessment year 1964-65 onwards, the shares in the estates of both the deceased consisting of immovable and movable properties were being assessed in the hands of the children at 1/7th each according to Muslim Law. The income from the estate consisted of rental income of the property and hiring of furniture in the property. From the assessment year 1965-66 onwards, the estates had a new source of income by way of interest on loans advanced to private parties and the income from this source which stood at Rs. 20,119 in the assessment year 1965-66 went up to Rs. 1,16,788 in the assessment year 1974-75.

The income from the investment of funds was also shared in the same ratio in which the rental income from the immovable properties was shared by the beneficiaries of the estate. While the income from the house property belonging to the estate was assessable in the hands of the beneficiaries under the specific provisions of Section 26 of the Income-tax Act, 1961, the income from investments held jointly was assessable as body of individuals. However, the latter income was also assessed in the hands of the beneficiaries just like property income. The incorrect assessment of the interest income in the hands of the beneficiaries instead of as body of individuals resulted in undercharge of income-tax of Rs. 3,52,450 for the assesssment years 1965-66 to 1974-75.

The Department of Revenue and Banking have accepted the objection in principle (March, 1977).

(ii) Under the provisions of the Income-tax Act, 1961, registration granted to any firm for any assessment year shall have effect for every subsequent assessment year provided that there is no change in the constitution of the firm. In the event of a change, the firm has to apply for registration afresh.

A firm comprising four partners was assessed in the status of a registered firm upto the assessment year 1972-73. In the previous year relevant to the assessment year 1973-74 one more partner was admitted leading to a change in the constitution of the firm. The firm did not apply for fresh registration. Total income for the year was, however, determined at Rs. 86,580 in the status of a registered firm though the firm should correctly have been assessed as an unregistered firm. The incorrect adoption of status resulted in short charge of tax of Rs. 32,133 for the assessment year 1973-74.

Similar incorrect adoption of status resulted in a further short charge of tax of Rs. 29,622 for the assessment year 1974-75.

The total short charge worked out to Rs. 61,755.

The Department of Revenue and Banking have accepted the objection.

55. *Incorrect computation of salary income*

(i) According to the provisions of the Income-tax Act, 1961, income chargeable under the head "salaries" shall be computed after making a deduction for any amount actually spent by the assessee, which by the conditions of his service, he is required to spend out of his remuneration, wholly, necessarily and exclusively in the performance of his duties.

In the assessment of 43 Development Officers of an insurance corporation for the assessment years 1972-73 to 1974-75, the assessing officer, while computing the taxable incomes, allowed an *ad hoc* deduction of 25 per cent of the incentive bonus commission earned by them as expenses, without any check on the quantum of actual expenses incurred by them.

The deductions so allowed on an *ad hoc* basis, without verification of actual expenses were not in order. This resulted in a short levy of tax of Rs. 72,128 in the assessment years 1972-73 to 1974-75 in these 43 cases.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the objection is under active consideration.

(ii) Under the provisions of the Income-tax Act, 1961, the value of rent-free accommodation provided by the employer to an employee is to be treated as salary paid to him and charged to income-tax.

An assessee who was provided with rent-free residential accommodation by his employer company, claimed and was allowed a deduction of one-half of the fair rental value of the rent-free accommodation provided to him on the ground that such accommodation was used for his official purposes. As there is no provision in the Act for the deduction of any portion of the value of the rent-free accommodation provided to an employee, the assessee was not entitled to claim the deduction. The incorrect allowance of deduction resulted in undercharge of tax of Rs. 86,274 for the assessment years 1967-68 to 1974-75.

While accepting the objection the Department of Revenue and Banking have stated that the assessments in question are being revised.

(iii) Contributions made by an employer to an approved superannuation fund are not treated as a perquisite in the hands of the employee. Where, however, such contributions become disallowable in the hands of the employer due to any violation of the conditions for recognition of such fund, these would constitute a perquisite in the hands of the employees also.

In one case, contributions made by a company to an approved superannuation fund in respect of one of its directors were not found allowable in the hands of the company as the director was not a full time employee of the company. But these contributions were not treated as perquisite and taxed in the hands of the employee. This resulted in short demand of tax of Rs. 28,043 for the assessment years 1972-73 and 1973-74.

The Department of Revenue and Banking have accepted the objection and stated that the assessments have been revised and an additional demand of Rs. 28,043 raised.

56. *Incorrect computation of income from house property*

The annual letting value of property consisting of any building and land appurtenant thereto owned by an assessee, is assessable as income from house property, irrespective of whether the owner is actually in receipt of any income therefrom or not. According to Section 24(1)(ix) of the Income-tax Act, 1961, where a property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied, shall be allowed as deduction while computing the income from the property. The vacancy remission arises only if the property has been let out during the previous year relevant to the assessment year.

In the case of a four-storeyed building, the construction of which was completed in December, 1968, two floors were let out only in April, 1971 and February, 1972 respectively.

The assessee did not return any income in respect of these floors for the assessment years 1970-71 and 1971-72. The annual value of these floors thus escaped assessment for the assessment years 1970-71 and 1971-72 resulting in a tax undercharge of Rs. 53,783.

The Department of Revenue and Banking have accepted the objection (November, 1976). The assessments in question are stated to have been revised raising an additional demand of Rs. 53,783.

57. *Incorrect computation of deemed dividend*

Under the provisions of the Income-tax Act, 1961, any advance or loan made by a private company to a share-holder who has a substantial interest in it, is deemed as dividend in the hands

of the share-holder, to the extent to which the company possesses accumulated profits.

A private company advanced to a share-holder, who had a substantial interest in it, sums amounting to Rs. 35,138 and Rs. 33,991 during the assessment years 1968-69 and 1969-70 when the company had accumulated profits of Rs. 20,631 and Rs. 16,000 respectively. The omission to treat the advances to the extent of Rs. 20,631 and Rs. 16,000 as deemed dividends and assess them as income in the hands of the share-holder resulted in short levy of income-tax of Rs. 27,572 for the two years.

The Department of Revenue and Banking have accepted the objection and stated that the assessments in question are being rectified.

58. *Incorrect computation of business income*

(i) Under the provisions of the Income-tax Act, 1961, the total income of a person includes all income from whatever source derived which accrues or arises or is deemed to accrue or arise in India.

An assessee who had been including the commission received by him on accrual basis in his returns upto the assessment year 1972-73 did not include, in his return for the assessment year 1973-74, the commission amounting to Rs. 55,000 due from two companies for the reason that the commission in question was received after the closure of the financial year relevant to the assessment year 1973-74. The assessee proposed to offer the same for assessment for the year 1974-75 on cash basis. As the assessee had all along been including the commission income on due basis and as the companies, which paid the commission to the assessee had actually debited their profit and loss account by contra credit to the assessee's account before the closure of the financial year of the assessee, the commission of Rs. 55,000 would require to be assessed in the assessment year 1973-74 itself. The omission resulted in under-assessment of income-tax of Rs. 47,500.

The Department of Revenue and Banking have accepted the objection in principle.

59. *Irregular exemptions and excess reliefs given*

(i) Income derived from property held under trust wholly for charitable or religious purposes to the extent to which such income is applied to such purposes in India, is exempt from income-tax. In case, however, the income derived by the trust exceeds rupees twenty-five thousand in any previous year, the exemption is allowable only if the trust had furnished, along with the return of income, a certificate of audited accounts in the prescribed form duly signed and verified by a Chartered Accountant setting forth such particulars as may be prescribed.

In the case of a charitable trust, income for the assessment years 1973-74 and 1974-75 determined at Rs. 1,03,760 and Rs. 1,25,425 was exempted from tax even though the assessee had not furnished the prescribed certificate of audited accounts. The irregular allowance of exemption resulted in non-levy of a tax of Rs. 1,46,454 for the two years. Interest for late filing of returns of income for both the assessment years was also chargeable to the extent of Rs. 10,143. Total short charge of tax and interest amounted to Rs. 1,56,597.

While accepting the objection in principle, the Department of Revenue and Banking have stated (November, 1976) that the assessments have been revised but no demand could be created as the income of the Trust was held as exempt in the fresh assessment proceedings wherein the procedural defect was corrected.

(ii) Section 80J of the Income-tax Act, 1961, provides for tax holiday relief for profits derived from a newly established industrial undertaking upto 6 per cent of the capital employed in such an undertaking. Rule 19-A of the Income-tax Rules, 1962, prescribes the mode of computation of the capital employed.

According to the Rule the capital employed is the aggregate of the amounts representing the values of specified assets of the industrial undertaking reduced by the aggregate of borrowings and the debts owed by it. The borrowings from an approved source like Financial Corporations, the Life Insurance Corporation, from any person in a country outside India, the repayment periods of which are not less than seven years and which have been taken for the creation of a capital asset, are, however, not to be reduced. It has been judicially held in October, 1964 that the outstanding balance due in the case of purchases on deferred credit would not amount to borrowal of money.

In the case of an assessee, a registered firm, the amounts due to a foreign concern representing deferred instalments towards the cost of machinery purchased on deferred payment basis were considered as borrowings and were not reduced from the aggregate value of assets. This resulted in excess holiday relief of Rs. 72,000 in the assessment year 1968-69, Rs. 64,800 in 1969-70, Rs. 57,600 in 1970-71, and Rs. 50,400 in 1971-72 with consequential short levy of tax of Rs. 1,74,220.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the objection is under active consideration.

60. *Irregular computation of capital gains*

(i) The mode of computation of capital gains, as laid down by the Income-tax Act, 1961, is to deduct the cost of acquisition of the capital asset from the full value of the consideration received or accruing as a result of the transfer of the capital asset. In a case where the cost of any portion of the capital asset is nil to the assessee, the average cost will be the cost of acquisition for the purpose of such computation.

Six individual assessees who were all members of one family received bonus shares in respect of the equity shares held by them in two different companies. They sold out their share-holdings

in the previous year relevant to the assessment year 1973-74. While computing the cost of acquisition of the shares for the purposes of arriving at the capital gains arising on the transfer of the shares, the Department took into consideration the face value of all the shares sold, including the bonus shares, the cost of which was nil to the assessees, instead of taking the average cost for all the shares sold. This resulted in total under-asseess-ment of capital gains to the extent of Rs. 2,28,650, the tax under-charge on which amounted to Rs. 2,16,440. In addition, there were mistakes in the calculation of tax in two cases, leading to tax undercharge of Rs. 22,393. Thus the total undercharge of tax in the six cases during the assessment year 1973-74 amounted to Rs. 2,38,833.

The Department of Revenue and Banking have accepted the objection (October, 1976) and stated that the assessments in question are being revised.

(ii) Under the provisions of the Income-tax Act, 1961, where a capital gain arises from the transfer of a house belonging to the assessee and used as a residence by him or his parents for two years before the date of transfer and the assessee has, within a year before or after that date, purchased or has within two years from that date, constructed another house for his residence, then the net excess of capital gains over the cost of the new house alone is chargeable to tax as "income" of the previous year in which the transfer took place.

An assessee had claimed a deduction of Rs. 3,14,949, being the cost of purchase of two house properties for personal use from out of the capital gains arising from the sale proceeds of a house property in which he had received one-third share as a legacy from the estate of his deceased brother. This was allowed by the Department, even though the house property sold did not 'belong' to the assessee and the other conditions prescribed had not been

satisfied. The irregular allowance of deduction resulted in an under-assessment of income of the assessee by Rs. 3,14,949 in the assessment year 1970-71 and a short levy of tax of Rs. 1,34,620.

The Department of Revenue and Banking have stated (October, 1976) that the assessment was revised but, in appeal against the assessment made, the Appellate Assistant Commissioner had allowed the appeal. A second appeal is stated to have been filed by the Department before the Tribunal.

(iii) The Income-tax Act also provides for exemption from tax of capital gains arising from sale of agricultural lands, if, during the two years preceding the date on which transfer took place, the land in question was being used by the assessee or his parents for agricultural purposes and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes. The amount of capital gains exempt under these provisions is also restricted to the cost of the new land.

While revising the assessment of a Hindu undivided family for the assessment year 1973-74 in May, 1974 to give effect to appellate orders reducing the quantum of capital gains, the Income-tax Officer totally exempted the capital gains of Rs. 1,30,050 arising from the sale of certain landed properties in an urban area on the ground that the assessee had re-invested this amount in the purchase of agricultural lands within the time prescribed *viz.*, two years. The exemption granted was not correct as the same was considered for the first time in the revision order and was available only to 'Individuals' and not 'Hindu undivided families' in view of the specific provision in the statute that the assessee or his parent should have used the lands for agricultural purposes.

The under-assessment of income works out to Rs. 1,30,050 with a consequent undercharge of tax of Rs. 1,07,180.

The Department of Revenue and Banking have accepted the objection.

(iv) With a view to countering evasion of tax by under-stating the value of assets transferred, the Income-tax Act,1961, provides that, where the market value of an asset transferred, on the date of transfer, exceeds the full value of consideration as declared by the assessee, by more than 15 per cent of such declared value, the market value shall be taken to be full value of the consideration for determining the amount of capital gain chargeable to tax. Where the assets transferred are shares of investment companies which are not quoted in the stock exchange, their market value is determined under the executive instructions issued in October, 1967, with reference to the book values and not the market values of the assets and liabilities of the companies concerned.

(a) In the assessment of an individual for the assessment year 1973-74 completed in August, 1973, the capital gain arising on sale effected in July, 1972 of 114 unquoted equity shares of face value of Rs. 1,000 of an investment company, was determined as Rs. 1,46,832 taking the market value as Rs. 1,288 per share. The investment company's main source of income was the letting out of its buildings on rent. The gross rental and net income received for the year were Rs. 2,69,646 and Rs. 1,91,541 respectively. In determining the market value of the share at Rs. 1,288 each, the depreciated value of Rs. 2,75,636 of the buildings yielding gross annual rental of Rs. 2,69,646 as per the books of the company as on 30-9-1971 was adopted. At the recognised rate of capitalisation at twenty times the net rental income, the market value of the buildings would work out to Rs. 38,30,820 as against Rs. 2,75,636 adopted in the Department's computation. This gross undervaluation of the buildings resulted in under-assessment of capital gain by Rs. 6,87,192 and consequent short levy of tax of Rs. 3,18,768.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(b) In the case of another assessee, a capital loss of Rs. 31,920 on account of sale of shares of a company was determined in the assessment for the assessment year 1973-74 completed in December, 1973 adopting the rate of Rs. 60 per share as the sale price. It was, however, verified from the share market quotation in the stock exchange that the market value of the share was Rs. 100. The same rate was also adopted in the wealth-tax files. As the market value of the shares exceeded the sale consideration by more than fifteen per cent, the market rate should have been adopted for computing the capital gains. On this basis, there would actually be a capital gain of Rs. 10,640 as against the capital loss of Rs. 31,920 returned and accepted by the Department, resulting in excess carry forward of loss of Rs. 42,560.

The Department of Revenue and Banking have accepted the objection.

(c) In a third case, two Hindu undivided families jointly owning an urban property valued at Rs. 5,53,665 as per the wealth-tax return filed by them, sold the property to a trust in which their kartas were trustees for life, for a declared value of Rs. 3,75,000 and returned a capital gain of Rs. 15,490 for the assessment year 1970-71. The capital gain was not included in the assessment completed in a Central Circle in January, 1973 on the ground that it was exempt as a gift.

As the assessees themselves had declared the transaction as a sale for a consideration of Rs. 3,75,000 received in cash, the exemption allowed was not in conformity with the provisions of the Act and capital gain was assessable on the basis of the market value of the property which ~~excluded~~ exceeded the declared value by more

than 15 per cent. The omission to assess the capital gain on the basis of the market value of Rs. 5,53,665 resulted in short levy of capital gains tax of Rs. 67,875.

The Department of Revenue and Banking have stated that the assessment has been revised and the additional demand collected.

(v) Under Section 45 of the Income-tax Act, 1961, any profit or gains arising from the transfer of a capital asset effected in the previous year is chargeable to income-tax.

In the case of 3 assessees, the sale of immovable properties was effected on 31-3-1971 (relevant assessment year 1971-72) and possession of the said properties was given to the purchasers on the same date. In two cases the transfers were registered in the previous year relevant to the assessment year 1972-73 and in the third case in the previous year relevant to the assessment year 1975-76.

Judicial decisions have established that the transfer of title in an immovable property takes place only on the date of registration of the conveyance deed. As such, what is material for the purpose of Income-tax Act, 1961 is the date of legal transfer on the date of registration and not the earlier dates of execution of sale agreement or the date of physical possession of immovable property. The Income-tax Officer should, therefore, have assessed the capital gains in the assessment years 1972-73 and 1975-76. Instead, he assessed the capital gains to tax in all the three cases in the assessment year 1971-72 itself.

As there was higher incidence of taxation on capital gains by virtue of an amendment to the Income-tax Act, 1961 with effect from 1-4-1972, assessment of the capital gains to tax in the assessment year 1971-72 with reference to the date of execution of the sale deed instead of in the assessment years

1972-73 and 1975-76 with reference to the date of registration of the conveyance deed resulted in short levy of tax aggregating Rs. 1,03,165 in the three cases.

The Department of Revenue and Banking have not accepted the objection stating that after registration of the document the date of execution is the crucial date. That is not, however, the correct legal position, as expounded by the Supreme Court.

(vi) Income arising from the transfer of long-term capital assets (assets held by an assessee for not less than sixty months immediately preceding the date of their transfer) is eligible for certain deductions.

In one case, an assessee sold 7,500 shares on 27-3-1974 for Rs. 1,50,000 and derived an income of Rs. 1,13,700. The Income-tax Officer allowed the claim of deduction of Rs. 59,350 treating the transaction as falling under long-term capital gains and included the balance of Rs. 54,350 in the total income of the assessee for the assessment year 1974-75. 4,182 shares sold had, however, been held by the assessee for less than sixty months and, therefore, the income arising out of their transfer did not qualify for any deduction. The erroneous deduction allowed in respect of these shares resulted in tax undercharge of Rs. 35,242.

The Department of Revenue and Banking have accepted the objection and stated that the assessment has been revised.

61. *Mistakes in assessment of firms and partners*

(i) Under the Income-tax Act, firms are classified into two categories: registered firms and unregistered firms. A registered firm pays only a small amount of tax on its income; the rest of its income is apportioned among the partners and included in their individual assessments. Where, at the time of completion of the partners' assessments, the firm's assessment has not been completed, the share income from the firm is included in the partners' assessments on a provisional basis. In such cases the

partners' assessments are revised later to include the final share income when an intimation of the completion of the firm's assessment is received from the Income-tax Officer assessing the firm. As mentioned in paragraphs 8.1 and 8.6 of the Public Accounts Committee's 186th Report, instances of default in the revision of the partners' assessments in such cases have been commented upon repeatedly by the Committee and executive instructions thereon have also been issued by the Central Board of Direct Taxes in compliance with the Committee's recommendations. Nevertheless, such defaults are still noticed.

(a) A registered firm was assessed by an Income-tax Officer at one place and four of its partners were assessed by another Income-tax Officer at another place. The Income-tax Officer, on completion of assessments of the firm, intimated the particulars of share of profit of the partners to the Income-tax Officer concerned to enable the latter to carry out necessary rectifications in the partners' cases. It was noticed that rectifications for the assessment years 1959-60 to 1963-64 and 1965-66 involving a tax effect of Rs. 8,955 were not carried out and the rectifications for the assessment years 1964-65 to 1967-68 due to which an additional demand of Rs. 69,133 was raised in these four partners' cases were cancelled by the Appellate Assistant Commissioner, as they were time-barred. Thus the total loss of revenue due to non-compliance of the above provision of the Act was Rs. 78,088.

The Department of Revenue and Banking have accepted the objection (March 1977).

(b) In another case, where two assessees were partners in a firm, the assessments of one partner for the assessment years 1966-67 to 1969-70 and those of the other for the assessment years 1967-68 to 1969-70 were completed in 1970 and 1972 adopting the share income from the firm as originally determined in the firm's assessments. The firm's assessments for these assessment

years were subsequently re-opened and revised in December, 1973. The consequential revisions of the partners' assessments were not made till December, 1975, even though the firm and the partners were assessed in the same charge. The omission to revise the partners' assessments resulted in a tax undercharge of Rs. 14,753 in the case of the first partner and reduction of loss of Rs. 1,26,623 in the case of the second partner.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(ii) A firm is granted registration on an application made by all the partners if the partnership is evidenced by an instrument, the individual shares of the partners are specified in that instrument and the Income-tax Officer is satisfied about the genuineness of the firm. The registration so granted for any assessment year shall be continued for every subsequent assessment year provided that there is no change in the constitution of the firm and in the shares of the partners and the firm files a declaration to that effect.

(a) On the basis of a partnership deed executed on 22-12-1965, a firm comprising three partners applied for registration for the assessment year 1967-68 which was granted by the Department. The registration was continued for subsequent assessment years because the firm filed declaration to the effect that there was no change in the constitution of the firm in the relevant previous years.

Scrutiny of the instrument of partnership forming basis for the grant of registration indicated that individual shares of the partners were not specified therein. The firm was, therefore, not entitled to registration under the Income-tax Act.

The incorrect grant of registration to the firm resulted in short charge of tax of Rs. 22,264 for the assessment years 1972-73, 1973-74 and 1974-75 in respect of its income assessed at Rs. 24,710, Rs. 34,900 and Rs. 57,380 respectively.

The Department of Revenue and Banking have accepted the objection.

(b) A firm of seven partners was granted registration for the assessment year 1972-73 on the basis of an instrument of partnership. Continuation of registration was granted for the assessment year 1974-75 on the basis of a declaration filed by the assessee firm that there was no change in the shares of the partners. The accounts filed by the firm along with the return, however, revealed that the profits had not actually been distributed among the partners in the proportions stipulated in the original deed of partnership but were distributed in a different proportion. As one of the conditions for the grant of registration was not satisfied in this case, continuation of registration granted was irregular. This resulted in short demand of tax of Rs. 41,253.

The Department of Revenue and Banking have stated that there was only a clerical mistake of an arithmetical nature involving the reversal of the profit-sharing ratios of two partners. They have added that this mistake was committed not only in the statement of computation of income but also in the books of accounts of the assessee and the assessment order.

In another case, registration granted to a firm consisting of four partners sharing profits in the ratio of 25: 30: 30: 15 according to a partnership deed dated 15-10-1966 was continued based on the declaration signed by all the four partners, for the assessment year 1972-73 though the profits of the relevant previous year had been distributed amongst three partners only in the ratio of 40 : 30 : 30. Continuance of registration when there was a change in the profit-sharing ratio of the partners, was irregular and the firm should have been assessed as an unregistered firm in which case a further tax of Rs. 34,646 would be leviable.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(c) Two assessee firms which were granted registration upto the assessment year 1970-71 were treated as unregistered firm and

association of persons respectively for the assessment year 1971-72, as the assessees had not complied with the prescribed conditions for the continuance of registration in that year. However, in the subsequent years, 1972-73 and 1973-74 in one case and 1972-73 to 1974-75 in the other, when the assessee firms filed their applications for continuance of registration, continuance was granted by the Income-tax Officer. The grant of continuance of registration in these cases was not in order since the assessees had not been treated as registered firms in the immediately preceding year. The irregular grant of continuance of registration resulted in a short levy of tax of Rs. 98,567 in the case of these two assessees for the assessment years 1972-73 to 1974-75.

The Department of Revenue and Banking have stated that the mere fact that in one of the intervening years, continuation of registration was not allowed because of a technical default will not prejudice the claim of the assessees for such continuation in the subsequent years. In Audit's view continuance of registration pre-supposes existing registration in the immediately preceding year.

(iii) Under the provisions of Income-tax Act, 1961, income chargeable under the head "profits and gains of business or profession" shall be computed in accordance with the method of accounting regularly employed by the assessee.

(a) The method of accounting adopted by a registered firm engaged in contract works was that the expenditure incurred on each contract work was debited to the profit and loss account and the receipts for each work were credited therein. During the previous year relevant to the assessment year 1973-74, the firm was paid a sum of Rs. 2,89,947 by a public sector undertaking for the execution of contracts by the firm, as per the tax deduction certificate at source furnished by the latter. However, only a sum of Rs. 1,52,051 was returned by the firm as receipts and assessed for the assessment year 1973-74. The omission to assess

the balance of Rs. 1,37,896 in the assessment year 1973-74 resulted in undercharge of income-tax of Rs. 1,24,170 in the hands of the firm and its partners.

The Department of Revenue and Banking have accepted the objection (January, 1977).

(b) In another case, the returned income of Rs. 1,44,460 of an assessee firm for the assessment year, 1974-75 was arrived at by deducting the total expenditure of Rs. 20,81,536 from total contract receipts of Rs. 22,24,000 plus work-in-progress of Rs. 3,50,000. The net taxable income of the assessee, was however, determined by the Income-tax Officer at Rs. 1,55,801 under Section 143(3) of the Income-tax Act, 1961. The assessee kept its accounts on mercantile basis.

A scrutiny of the assessment records revealed that the assessee's only source of income was from contract works executed by it under the Military Engineering Service for an estimated value of Rs. 69,43,813. During the previous year 1973-74 relevant to the assessment year 1974-75 the assessee had received nine running account bills. In the 9th running account bill, the progressive value of the work done had been shown at Rs. 26,96,252 and a net payment of Rs. 1,40,000 was made to the assessee by a cheque dated 31st March, 1974. The amount of the receipts of the 9th running account bill was neither included by the assessee in its return of income nor was it included by the assessing officer during assessment. This resulted in under-assessment of total income by Rs. 2,11,922 with consequent tax undercharge of Rs. 53,489 and short levy of interest of Rs. 9,019 under Section 139 of the Income-tax Act, 1961 in the hands of the firm alone.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(iv) It has been judicially held that sales-tax collected by a businessman from the purchasers forms part of the sale price and accordingly is a trading receipt. The amounts so collected as sales-tax, if not paid to the Government in the relevant accounting year, are includible as trading receipts in the total income computed for levy of income-tax. The businessman would, however, be entitled to claim as deduction, any amounts paid subsequently in the year in which it is paid.

(a) In the case of an assessee, a registered firm, the amounts of sales-tax collected and remaining with the assessee in a separate account called "Sales-tax collection account" at the close of the accounting years relevant to the assessment years 1970-71 to 1972-73, were not included in the total income computed for those years. As a result, there was an aggregate under-assessment of income, in the three years, of Rs. 3,60,984 with a short levy of tax of Rs. 66,953.

The Department of Revenue and Banking have not accepted the objection stating that the assessee did not make any payment out of the collections only because the liability was contested by the assessee in the High Court. They have not, however, given any reasons for not bringing the collections to tax as trading receipts.

(b) In another case, an assessee firm, acting as a commission agent had received refund of sales-tax of Rs. 52,208 during the assessment year 1974-75. This amount payable by the assessee firm to the principal was not paid on the last date of the accounting year, relevant to the assessment year 1974-75. The assessee firm had also collected sales-tax to the tune of Rs. 44,221 during the same assessment year. This amount was also not paid to the State Government. It has been judicially held that the sales-tax collected from buyers, but not paid to the State or owners of goods nor refunded to purchasers is a trading receipt and

taxable in the year in which the amounts were received and as and when payments are made to the concerned parties, the same may be allowed as expenditure.

Omission to bring to tax the sales-tax receipts/refunds collected by the assessee firm but not paid to Government/Principal resulted in a short computation of income of Rs. 96,429 and a short levy of tax of Rs. 37,340.

The Department of Revenue and Banking have accepted the objection partly (March, 1977).

(c) In a third case, a registered firm claimed as deduction an amount of Rs. 62,956 as 'sales-tax interest' by including it in the total interest payment of Rs. 4,91,749 debited to the profit and loss account for the previous year relevant to the assessment year 1972-73. The deduction as claimed was allowed in computing the total income. No interest was, however, leviable under the provision of the Sales-tax Act but only penalty was leviable for default in payment of sales-tax. The payment of Rs. 62,956 shown as sales-tax interest was actually a penalty, which could not be considered as expenditure incurred in running a business. The income of the firm had thus, been under-assessed by Rs. 62,956 resulting in short levy of tax of Rs. 33,254 in the assessment year 1972-73.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(v) Under the provisions of Income-tax Act, 1961, any sum paid to an employee as bonus is an admissible deduction in arriving at the business income of the employer. The word "paid" has been defined in the Income-tax Act, 1961, as actually paid or incurred according to the method of accounting followed by the assessee. Any provision made for this purpose to meet future contingent liability on this account would not be an admissible deduction for the year in which the provision is made.

A registered firm made provisions of Rs. 44,511 and Rs. 52,864 for bonus in the balance-sheets in the accounting years relevant to the assessment years 1966-67 and 1967-68 respectively. No bonus out of these amounts was paid to the employees during these relevant accounting years; nor was any amount debited to the profit and loss account as liability incurred for these years. This provision for bonus was incorrectly allowed as business expenditure resulting in undercharge of tax of Rs. 95,130 and annuity demand of Rs. 5,565 in the hands of the firm and the partners.

The Department of Revenue and Banking have accepted the objection and stated (November, 1976) that the additional tax of Rs. 95,130 has been raised.

(vi) Under the provisions of the Income-tax Act, 1961 as it existed prior to 1-4-1976, income derived from a business of livestock breeding was fully exempt from income-tax. The provision originally applicable to the assessment years 1965-66 to 1967-68 was amended by the Finance (No. 2) Act, 1967 to continue the exemption beyond the assessment year 1967-68. According to a circular issued by the Central Board of Direct Taxes on 9-10-1967 explaining the scope and scheme of the provisions relating to income-tax and other direct taxes in the Finance (No. 2) Act, 1967, the exemption was continued beyond the assessment year 1967-68, 'having regard to the continuing need of our country for the growth and developmnet of such activities to supplement our food resources'. This obviously means that the concession was meant to cover only domestic animals such as cattle, sheep etc.

In the case of an assessee, an income of Rs. 26,500 from sale of lion and tiger cubs was exempted from income-tax treating it as income from a business of livestock breeding. This resulted in escapement of income involving of tax effect of over Rs. 10,000.

The Department of Revenue and Banking have stated that the law allows the concession to livestock breeding and the term 'livestock' would include lion and tiger cubs.

(vii) In computing the total income of a registered firm for the assessment year 1972-73, the gross profit of Rs. 1,06,168 appearing in a subsidiary account was considered instead of the net profit of Rs. 1,54,200 from the general profit and loss account. This resulted in under-assessment of income by Rs. 48,032 with short levy of tax of Rs. 13,268 in the firm's case and Rs. 20,093 in the cases of partners.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(viii) A lady was admitted as a partner in a firm in her individual capacity from 8th September, 1967, which was clearly stipulated in the partnership deed executed. However, her share of income from the firm was returned and assessed as part of a Hindu undivided family, of which she was a member, instead of as an 'individual' in her hands. This mistake resulted in a total under-assessment of her individual income by Rs. 2,03,541 for the assessment years 1970-71 to 1972-73. After allowing for the tax paid by the Hindu undivided family in excess, due to the mistaken allocation, this led to a net short levy of tax totalling Rs. 71,657 in these three assessment years.

The Department of Revenue and Banking have accepted the objection.

(ix) Under the provisions of the Income-tax Act, 1961, the partner of a professional firm is entitled to a deduction of a sum equal to the amount of premium paid in respect of a retirement annuity policy, while computing his total income. This deduction is admissible only if the aggregate of income accruing or

arising to the assessee, otherwise than through his personal exertion, chargeable under the heads "interest on securities", "house property", "capital gains" or "other sources" does not exceed Rs. 10,000 in a year.

In the assessment of two individuals who were partners in firms rendering professional services, though their income chargeable under the head "other sources" and derived otherwise than by personal exertion exceeded Rs. 10,000 every year for the assessment years 1971-72 to 1974-75 and 1972-73 to 1974-75 respectively, a deduction on account of expenditure on premium paid on retirement annuity policies was allowed. This resulted in under-assessment of income totalling Rs. 35,000, leading to a short levy of income-tax of Rs. 31,188 in assessment years 1971-72 to 1974-75.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

62. *Omission to include income of minors*

Under the provisions of the Income-tax Act, 1961, where minor son/sons are admitted to the benefits of partnership firm in which the father is also a partner, income of the minors from the firm would be clubbed with that of the father and assessed to tax in the hands of the father.

(i) In three different cases, the income of the minor sons, in similar circumstances were not included in the total income of their respective fathers on the ground that the fathers were partners in the firm as 'Karta' of Hindu undivided families and not in their individual capacity. It has been judicially held in a number of cases that even where an individual represented the family in which he was a co-parcener, the partnership was not between the family and the other partners; it was a partnership between the co-parcener individually and other partners. No

doubt the coparcener was accountable to the family for the income received, but the partnership was exclusively one between the contracting members.

In all the three cases, the non-clubbing of the incomes of minors with those of their fathers took place for a number of years. The errors resulted in the abandonment of revenue totalling Rs. 2,43,010.

The Department of Revenue and Banking have accepted the objection in principle.

(ii) In another charge, seven minors were admitted to the benefits of partnership in three firms in all of which their fathers were also partners. The share incomes of minors from these firms were assessable in the hands of their fathers. However, such incomes were assessed in the individual hands of the minors instead of being assessed in the hands of the fathers in their individual status. The omission to correctly assess the share income of the minors, resulted in an under-assessment of tax of Rs. 36,400.

The Department of Revenue and Banking have accepted the objection and stated that the assessments are being rectified (October, 1976).

(iii) In still another case, an assessee was a partner along with her two minor sons who were also admitted to the benefits of partnership of the firm. However, the share incomes of the minor sons were assessed separately in their individual hands instead of being clubbed in the assessment of their mother (individual) in the assessment years 1969-70 to 1974-75. The omission to assess the share incomes of minor sons in the hands of their mother resulted in a short levy of tax of Rs. 32,387.

The Department of Revenue and Banking have accepted the objection.

63. *Avoidable mistakes involving considerable revenue*

It has already been mentioned in paragraph 34(vi) that the common mistake involving the dropping of one lakh of rupees from the amount of total income or the amount of tax is still continuing to occur frequently. This mistake was noticed in three cases relating to the assessment years 1970-71, 1972-73 and 1974-75. In two of these cases, the total income was taken as Rs. 2,53,140 and Rs. 1,60,495 instead of Rs. 3,53,140 and Rs. 2,60,495 respectively. In the third case, the amount of tax was taken as Rs. 1,69,833 instead of the correct amount of Rs. 2,69,833. As a result, there was a total undercharge of tax of Rs. 2,67,700 in these three cases.

The Department of Revenue and Banking have accepted the objections in all the three cases.

64. *Irregular set off of losses*

Under the Income-tax Act, 1961, where for any assessment year , the net result of the computation under the head "profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any other head of income, so much of the loss as has not been so set off shall be carried forward to the following assessment year and it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year.

In computing the income of four assessees, the carried forward business loss was set off against income under the head "income from other sources" of the assessment year 1972-73. The incorrect set off resulted in tax undercharge of Rs. 84,446.

The Department of Revenue and Banking have accepted the objection and stated that the assessments in question have been rectified raising an additional demand of Rs. 84,446.

65. *Mistakes in giving effect to appellate orders*

The accounts books of an assessee (P.W.D. contractor) were rejected by the Income-tax Officer and income for the assessment year 1970-71 from four contract works executed in the previous year (ending Diwali, 1969) was determined at 15 per cent of the contract receipt of Rs. 7,83,936. In addition to the contract receipts, the assessee also received an amount of Rs. 1,54,576 awarded by an arbitration relating to a bridge-work, the construction of which was completed before Diwali, 1966 and all the expenditure incurred by the assessee for executing this work stood already considered in the assessments for the years prior to the year 1968-69. The assessee did not claim any expenditure against the receipt of Rs. 1,54,576. Therefore, the entire income from award was taxable in the year of its receipt *viz.* assessment year 1970-71. However, the Income-tax Officer allotted Rs. 1,31,390 (85 per cent of the receipt) for meeting expenditure and brought only 15 per cent (Rs. 23,186) thereof to tax. It was pointed out by Audit in May, 1973 that income of Rs. 1,31,390 had escaped assessment, on which tax of Rs. 65,500 was payable.

The assessment was set aside by the Appellate Assistant Commissioner in October, 1973 with a direction to exclude advance payments, if any, from the contract receipts in respect of works executed under lump sum contract and consequently, to apply profit rate on contract receipts based only on actual work done or work in progress. After the appellate orders were passed, the assessee informed the Income-tax Officer that so far as the assessment year 1970-71 was concerned, no advance payment was included in the contract receipts relating to the work executed under lump sum contract. In view of this, the income decided in original assessment remained unaffected by the appellate orders.

However, while making re-assessment in pursuance of the appellate orders, the Income-tax Officer accepted the accounts of the assessee and loss of Rs. 3,450 from contract work as

returned by the assessee. The taxable income from contract work was thus incorrectly reduced from Rs. 1,40,776 (as in the original assessment) to loss of Rs. 3,450. Added to this, income of Rs. 1,31,390 (out of award money) also escaped assessment as had already been pointed out by Audit. Thus the total income was under-assessed by Rs. 2,75,616 with a tax undercharge of Rs. 1,00,100.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

66. *Excess or irregular refunds*

An assessee is required to pay advance tax either with reference to the notice of demand received from the Department or a valid estimate filed by the assessee. Tax is also required to be paid on self assessment basis with reference to the return filed by the assessee within the prescribed time. These payments are subsequently adjustable against the demand raised on regular assessment and excess, if any, paid on demand so raised is refundable to the assessee.

In the regular assessments of an assessee for the assessment years 1968-69 and 1969-70, completed in March, 1972, the amounts of tax payable were determined as Rs. 1,513 and Rs. 2,135 respectively (after adjusting advance tax and self assessment tax amounting to Rs. 73,633) which were subsequently paid by the assessee. The regular assessments for these two assessment years were set aside in appeal in May, 1974 with a direction to make the assessments according to law. In September, 1974, the Department refunded to the assessee the entire tax paid by him including the advance tax and self assessment tax, quoting reference to Board's orders of February, 1973. According to the Board's orders, when the entire assessment is set aside, except the tax deducted at source and the like, the moneys payable on the basis of the assessment as such would become refundable.

Further, as the regular assessment was set aside and not cancelled, the advance tax and the self assessment tax paid by the assessee could be adjusted only in the regular assessment, to be re-done. The refund of a sum of Rs. 73,663 in September, 1974 was not correct.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(ii) In the assessment of an assessee for the assessment year 1969-70 completed on 2-3-1972 interest of Rs. 23,462 was allowed under Section 214 of the Income-tax Act, 1961. The amount of interest was arrived at on the aggregate amount of Rs. 10,90,000 paid by the assessee towards advance tax including payments of Rs. 4,40,000 and 1,50,000 made on 3-3-1969 and 22-3-1969 respectively. Since the last date for payment of advance tax was Ist March, 1969 (for the accounting year ending Diwali *viz.*, 21-10-1968), the payments of Rs. 5,90,000 made after Ist March, 1969 could not be considered as advance tax for the purpose of allowing interest under Section 214 of the Act. The grant of interest of Rs. 23,462 was, therefore, irregular.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(iii) Para 9(l) of Chapter XVII of the Office Manual, Volume II, Section II of the Income-tax Department requires that immediately a refund voucher has been signed, an appropriate entry will be made by the Income-tax Officer in the records of refunds in the assessment refund form (ITNS-150) under his signatures. The failure of an Income-tax Officer to observe these codal provisions resulted in an excess refund of Rs. 50,541.

Refunds of Rs. 23,862 and Rs. 26,678 for the assessment years, 1964-65 and 1965-66, respectively, were adjusted and included in the refunds authorised on 6-1-1972 and 30-3-1972

but these were again included in the total refund of Rs. 53,404 authorised on 17-10-1974. There was thus an excess refund of Rs. 50,541.

The Department of Revenue and Banking have accepted the objection.

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

(i) Under the provisions of the Income-tax Act, 1961, an assessee who has not previously been assessed by way of regular assessment, is required to submit an estimate of his current income and to pay advance tax accordingly. Non-compliance with this provision renders him liable to charge of interest at the prescribed rates on completion of the regular assessment.

An unregistered firm was assessed for the first time in respect of the assessment year 1966-67 on 4-3-1971. As the assessee firm had not been assessed to tax on any earlier occasion, it was required to submit an estimate of its current income and pay advance tax accordingly, for the assessment years 1966-67 to 1968-69. (The assessee firm did not have any taxable income for the assessment year 1969-70). Failure to do so, rendered the assessee liable to pay interest at the appropriate rates. The Department did not charge such interest which led to non-levy of interest to the extent of Rs. 89,809 for the three assessment years 1966-67 to 1968-69.

The Department of Revenue and Banking have accepted the objection (December, 1976).

(ii) Where the advance tax paid by an assessee on the basis of his own estimate for any financial year falls short of seventy-five per cent of the assessed tax, interest at the prescribed rate is payable on the amount by which the advance tax paid by the assessee falls short of the assessed tax for the period from the 1st day of April next following the relevant financial year upto the date of the regular assessment.

An individual assessee paid an advance tax of Rs. 17,644 for the financial year relevant to the assessment year 1971-72 on the basis of his own estimate. The tax due on regular assessment made on 13-3-1975, worked out to Rs. 5,66,679. As the advance tax paid by the assessee fell far short of seventy-five per cent of the tax due, interest to the extent of Rs. 2,43,771 was leviable at the prescribed rates for the period from 1-4-1971 to 31-3-1975 on the sum of Rs. 5,49,035 being the difference between the tax due on regular assessment and advance tax paid by the assessee. The Department, however, wrongly calculated interest at Rs. 1,81,343 on the difference between seventy-five per cent (instead of the whole) of the tax due and the advance tax paid, resulting in short levy of interest of Rs. 59,728 for the assessment year 1971-72.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(iii) Where an assessee fails to pay the tax specified in any notice of demand within 35 days of the service of the notice he shall be liable to pay interest at the prescribed rates from the day immediately following the above period of 35 days till the date of payment of tax.

An individual who failed to pay tax of Rs. 25,78,078 specified in a notice of demand in respect of the assessment year 1971-72 within the period allowed under the Act became liable to pay interest of Rs. 11,02,769 calculated from 30-6-1971 to 31-3-1975. The Department levied an interest of Rs. 8,50,766 only. There was thus a short levy of interest to the extent of Rs. 2,52,007.

The Department of Revenue and Banking have accepted the objection (October, 1976).

(iv) An assessee was liable to pay interest under Section 139 of the Income-tax Act, 1961, for belated submission of return for the assessment year 1971-72 at 9 per cent from 1-10-1971 to 31-3-1972 and at 12 per cent from 1-4-1972 to 6-3-1974 on the

assessed tax of Rs. 2,03,960. The Department charged a sum of Rs. 13,870 towards interest under Section 139 of the Act against the correct amount of interest of Rs. 56,497. This resulted in short levy of interest of Rs. 42,627.

The Department of Revenue and Banking have accepted the objection (November, 1976).

68. *Avoidable payment of interest by Government*

(i) Under the Income-tax Act, 1961, as it stood prior to its amendment by the Taxation Laws (Amendment) Act, 1970, where a refund becomes due to an assessee as a result of any order passed in appeal or other proceedings under the Act and the Income-tax Officer does not grant the refund within a period of six months from the date of such order, the Government shall pay to the assessee simple interest at a specified rate on the amount of the refund due, from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

In the case of an assessee, refunds aggregating Rs. 1,35,487 pertaining to the assessment years 1958-59, 1960-61, and 1962-63 to 1965-66 became due in April, 1969 as a result of the orders of the appellate authority but the same were not paid by the Department within the prescribed period of six months. The delay in making refunds resulted in avoidable payment of interest of Rs. 24,758 to the assessee.

The Department of Revenue and Banking have accepted the objection except for the assessment year 1958-59 for which, according to them, no interest was actually payable.

(ii) The Income-tax Act, 1961 repealing the Income-tax Act of 1922 introduced a new provision for payment of interest by Government if there is delay in payment of refund due to an assessee. This provision being substantive in nature, interest

is payable on such delayed refunds pertaining to the assessment year 1961-62 and earlier years, only if the relevant return of income had been filed under the Income-tax Act, 1961, *i.e.*, after 31-3-1962. Such interest is not payable on delayed refunds, relating to the assessments completed under the provisions of the repealed Income-tax Act, 1922, except in certain specified cases.

In the case of three individuals, who were partners of a registered firm, assessments for the assessment year 1949-50 had been completed under the 1922 Act prior to 1-4-1962. However, interest on account of delayed refunds arising from an appellate order for the assessment year 1949-50 in the case of the firm in which the three individuals were partners was allowed. This resulted in an irregular payment of interest totalling Rs. 44,611.

The Department of Revenue and Banking have stated that interest was admissible in this case under Section 297(2)(i) of the Income-tax Act, 1961. That view is, however, opposed to the judicial interpretation of that section by the Supreme Court.

69. *Non-levy of penalty*

(i) Under the Income-tax Act, 1961, as applicable from the assessment year 1968-69, where an assessee has concealed his income or furnished inaccurate particulars of his income he is liable to penalty which shall not be less than, but which shall not exceed twice the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished. According to the instructions issued by the Central Board of Direct Taxes on 7-7-1964 and subsequently re-affirmed on 1-9-1973, the assessing officers are required invariably to record the reasons for not initiating penalty proceedings where it is decided not to levy penalty.

Gold bars worth Rs. 1,00,950 and currency notes of the value of Rs. 7,450 found in the possession of an association of persons were recovered by the Customs authorities in a search. As the assessee did not disclose the amounts in its income return for the assessment year 1968-69 and did not also reply to a notice issued by the Department, the latter estimated a sum of Rs. 1,10,000 as income from undisclosed sources and brought it to tax in the said assessment year. No penalty proceedings were, however, initiated for concealment of income, although a minimum penalty of Rs. 1,10,000 was leviable in the case. No reasons for non-initiation of the penalty proceedings were also on record.

The Department of Revenue and Banking have accepted the objection in principle.

(ii) Under the provisions of the Income-tax Act, 1961 (as it stood prior to 1-4-1976) an assessee is required to pay tax on self assessment within thirty days of furnishing the return if the net tax payable on the basis of such return exceeds five hundred rupees. Failure to comply with this requirement makes him liable to pay penalty upto a maximum of fifty per cent of such tax.

A registered firm did not pay tax on self assessment as aforesaid on its returned income of Rs. 6,11,840 for the assessment year 1972-73. It was, therefore, liable to penalty which the Department did not levy. No reasons were found on record for such non-levy of penalty.

The Department of Revenue and Banking have accepted the objection.

(iii) Under the provisions of the Income-tax Act, 1961, penal proceedings that could have been taken against the deceased can be taken against his legal representative.

As a result of a raid conducted on the premises of an income-tax assessee in August, 1971 unaccounted income in the shape of unexplained investments in two firms, cash credits and jewellery, were detected. The assessee died in April, 1972. The concealed income was quantified as Rs. 2,79,450 and was ordered to be spread over equally for inclusion in the assessment years 1964-65 to 1970-71. While completing the re-assessments for these years in March, 1973 on this basis, penal proceedings were not taken against the legal representative. The minimum penalty that could be levied was Rs. 2,79,450.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

Other topics of interest

70. *Inadequate steps to recover large tax arrears*

In paragraphs 11.9 and 11.25 of their 186th Report, the Public Accounts Committee recalled their repeated recommendations on the question of taking concentrated action in the relatively small number of cases involving large tax arrears. In that context a few typical cases are given below:—

(i) The Income-tax Act, 1961, provides that where 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, 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 or his arrest and detention in prison and the appointment of a receiver for the management of his property, as may be considered necessary.

In the case of a Hindu undivided family eighty seven certificate cases for the recovery of arrear demands aggregating Rs. 90,90,883 for the assessment years 1957-58 to 1968-69 were instituted during the month of March, 1971. The first notice issued on 30-3-1973 could not be served upon the certificate debtor as he was not available at the address given by the Income-tax Officer. Notices served subsequently on 2-6-1973 and 20-3-1974 on other adult members of the Hindu undivided family were contested on the ground that no part of the assets of the certificate debtor was in their possession. The suggestion of the Income-tax Officer to attach the properties of two adult members of the Hindu undivided family was not acted upon by the Tax Recovery Officer on the ground that he was not supplied with details of assets to be attached. Although information was available that one of the members of the Hindu undivided family was carrying on business elsewhere, the Tax Recovery Officer pleaded inability to serve any notice on him on the ground of lack of his jurisdiction. Due to lack of co-ordination between the Income-tax Officer and the Tax Recovery Officer and inadequate steps taken to realise Government dues, the entire demand of Rs. 90,90,883 remained outstanding up to the date of audit (December, 1975).

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

(ii) A non-resident company engaged in the business of operating airlines with its headquarters at Aden was assessed to tax in the status of an association of persons. The business of the assessee which commenced in 1969 came to an end in September, 1970 and the concern was nationalised by the foreign Government. "Best judgement" assessments under Section 144 of the Income-tax Act, 1961 were completed in October, 1976 for the assessment years 1969-70 to 1971-72. Arrears of tax aggregating Rs. 40.40 lakhs were outstanding against the assessee. However, the assessee sent monthly remittances to Aden with the permission

of the Reserve Bank of India, reportedly on the basis of certificates furnished by the assessee "that they have sufficient funds in India available for meeting the income-tax liabilities". In fact sufficient funds were not kept in India nor did the Reserve Bank of India verify the position with the Income-tax authorities before giving permission for effecting remittances. Further, there is no provision in the Income-tax Act, 1961, enjoining on such assessees to obtain income-tax clearance certificate before remitting money outside India. The arrears of tax of Rs. 40.40 lakhs have remained unrecovered.

The Department of Revenue and Banking have accepted the objection in principle (January, 1977).

(iii) According to the provisions contained in the Second Schedule to the Income-tax Act, 1961, when the movable property of an assessee who defaults in paying the taxes demanded, is required to be attached for realisation of tax dues, the attachment is to be done by actual seizure and an inventory of the seized movables is to be kept either in the custody of the Tax Recovery Officer or an officer authorised by him, till the proceedings of auction sale etc.., are completed.

In the case of an assessee, a proprietor of a motor and lorry driving school, whose tax arrears amounted to Rs. 3.50 lakhs, the Department decided to seize the movable property of the assessee *viz.*, motor vehicles owned by the assessee.

Instead of seizing the entire property at one and the same time and informing the Regional Transport Officer, so that the assessee could not alienate these assets, the Department attached the properties piecemeal on four different occasions between 1968 and 1972. The inventories prepared also were defective in that the Department did not have a record of all the vehicles owned by the assessee nor was any attempt made to get the details from the depreciation statement filed with the income-tax records of

the assessee. Only two and a half years later (*viz.*, in December, 1970), the Regional Transport Officer was intimated to stop transfer and that too in the case of 38 vehicles only, though in the original attachment, a total of 55 vehicles had been listed. In the meanwhile, the assessee could dispose of a number of vehicles so that the Department was ultimately successful in seizing only four vehicles.

The defaulting assessee was allowed to pay the arrears in instalments to be decided after an initial deposit of Rs. 25,000. But when he failed to pay according to his commitment, the Department did not take immediate action to seize the remaining vehicles belonging to the assessee and auction them. Failure on the part of the Department to take prompt action, enabled the assessee to dismantle the remaining vehicles and dispose them of as spares and scrap and then plead his inability to pay the arrears.

It is only after it came to light that the vehicles had been sold away that proceedings, for criminal breach of trust, under Sections 405 and 409 of the Criminal Procedure Code were initiated by the Department. The Department also attached some other movable and immovable properties belonging to the assessee through which they could realise Rs. 1,21,520.

Failure on the part of the Department to take effective attachment action in time, seize the property and auction it, led to a loss of revenue to the extent of Rs. 2.28 lakhs.

The Department of Revenue and Banking have stated that a further sum of Rs. 62,000 has been collected. They have added that it could not be anticipated that the party would commit breach of trust.

(iv) In March, 1974, arrears of income-tax of Rs. 1,72,044 due from an assessee were written off by the Department as irrecoverable.

The assessee, a Government Officer who retired in 1957, had been apprehended by Air Customs in 1959, while trying to smuggle Rs. 1.9 lakhs of Indian currency abroad. Over and above the confiscation and penalty levied by Customs under the Foreign Exchange Regulations Act, 1947, the Income-tax Department held this amount to be his income from undisclosed sources and levied tax and penalty totalling Rs. 1,76,362 in March, 1964. This was confirmed in appeal. Even though the assessee was stated to be in possession of fixed deposit receipts of the value of Rs. 2,50,000 (in 1959) and was in regular employment with one of the premier groups of companies from 1966 onwards and earning salary and pension totalling more than Rs. 26,000 per annum, the Department did not enforce any recovery till October, 1973. Even thereafter, a sum of Rs. 9,375 only was recovered in instalments of Rs. 375 per month between November, 1973 and November, 1975. An amount of Rs. 1,72,004 was written off in March, 1974 as irrecoverable, reportedly considering the age of the assessee and in view of his having then "no source of income other than salary and pension". The amount written off could have been substantially reduced if the Department had taken action to recover the tax due from the salary from 1966 to October, 1973. Further, he had earned about Rs. 42,000 even after October, 1973 from which only 9,375 had been recovered.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated in February, 1977 that the audit objection is under active consideration.

71. *Inordinate delay in taking action on appellate orders*

(i) In the case of an assessee doing Abkari Contract business, the assessments for the year 1951-52 and 1952-53 were completed in February, 1955 on total incomes of Rs. 1,39,756 and Rs. 1,18,566 against losses of Rs. 61,544 and Rs. 12,045 respectively, returned by the assessee. No penalty proceedings were, however, initiated for concealment of income. The assessee appealed to

the Appellate Assistant Commissioner against the assessment orders. While approving the defence report prepared by the Income-tax Officer, the Commissioner of Income-tax had noticed the omission to initiate penalty proceedings and had directed that the Income-tax Officer should press for the initiation of penalty proceedings by the Appellate Assistant Commissioner or the assessments should be got set aside by the Appellate Assistant Commissioner so that the entire question could be examined *de novo* by pursuing the investigation.

The assessments were set aside in September/October, 1958 by the Appellate Assistant Commissioner on the ground that the two witnesses on whose statements the Income-tax Officer had relied for making the additions had not been examined in the presence of the assessee or his authorised representative and no opportunity had been given to the assessee to rebut the evidence tendered by the witnesses. In January, 1971, *i.e.*, after a delay of over 12 years, the Income-tax Officer reported that the two witnesses had expired and that the directions of the Appellate Assistant Commissioner about providing an opportunity to the assessee to rebut the evidence could not be complied with and that, therefore, the material gathered on which the original assessments were based had lost all evidential value and could not be taken into account for re-assessment purposes.

The Department decided to estimate the income at Rs. 75,000 for the assessment year 1951-52 and Rs. 60,000 for the year 1952-53 on the basis of results in similar businesses with reference to the number of trees tapped, to which the assessee agreed with a clear understanding that there would not be any penal proceedings. The assessments were accordingly completed by the Income-tax Officer in March, 1971 under the directions of the Inspecting Assistant Commissioner. The non-initiation of penalty proceedings again was contrary to the directions of the Commissioner of Income-tax, though concealment still persisted. The minimum

penalty leviable for these two assessment years was Rs. 2,08,589. Thus the Department's failure to initiate penalty proceedings resulted in loss of revenue of Rs. 2,08,589.

The delay of over 12 years on the part of the Department and consequent failure to complete re-assessments before the death of the two witnesses, on whose statements the Department had relied while making the original assessments also resulted in reduction in the taxable income by nearly fifty per cent.

The Department of Revenue and Banking have accepted the objection in principle (February, 1977).

(ii) An Appellate Assistant Commissioner, in October, 1968, set aside a re-assessment of an individual assessee for the assessment year 1958-59 to 1961-62, on the ground that the provisions of re-assessment proceedings of Section 147 (a) of the Income-tax Act, 1961, were not applicable in this case. The Appellate Tribunal upheld the orders of the Appellate Assistant Commissioner in June, 1971. The re-assessment of the same assessee for the assessment years 1962-63, 1963-64 and 1966-67 were also set aside by the Appellate Assistant Commissioner in September, 1967, March, 1969 and September, 1971 respectively.

In November, 1975 it was noticed that no action had been taken to complete the set aside assessments, and this had resulted in non-creation of a demand of tax of Rs. 1,22,870.

The Department of Revenue and Banking have accepted the objection.

72. *Non-assessment of lottery winnings*

Under the provisions of the Income-tax Act, 1961, as applicable from 1-4-1972, winnings from lottery are charged to tax.

A test check of the winners of prizes of over Rs. 1,000 in the draw of lotteries held between 1-4-1972 and 31-5-1972 in a State revealed that one winner of Rs. 3 lakhs prize and eight winners

of Rs. 1 lakh prizes, who had not been assessed to income-tax previously, did not file their returns for 1973-74 in respect of the income from prize winnings. The Department also did not initiate any steps to collect information regarding the prize winners from the Director of State Lotteries and issue notices to these prize winners in order to bring to tax such income.

This resulted in a total short levy of tax to the tune of Rs. 2,78,300 in addition to penal interest and penalties imposable.

The Department of Revenue and Banking have accepted the objection in seven cases; their reply in one case is awaited (February, 1977).

73. *Premature refund of advance tax*

Under the Income-tax Act, 1961 there is no provision to refund the advance tax paid by an assessee in the same financial year. But in the case of an assessee who filed an estimate of income of Rs. 37,465 for the assessment year 1973-74 (previous year ending 30-6-1972, tax liability Rs. 12,181) and paid advance tax of Rs. 10,066 on 14-12-1972 and followed it by a revised estimate of income with a tax liability of Rs. 3,873 on 24-12-1972, the Department irregularly refunded a sum of Rs. 8,308 (Rs. 12,181 —Rs. 3,873) on 12-1-1973. The assessment was, however, completed only on 24-7-1973.

The Department of Revenue and Banking have accepted the objection in principle (December, 1976).

74. *Allowance of extra legal concession*

The Central Board of Direct Taxes, New Delhi have issued executive instructions to the effect that the sale of goods brought by repatriates from Zanzibar, Mozambique and Uganda, upto a sum of Rs. 50,000 may be treated as capital and only the sale proceeds in excess of Rs. 50,000 may be considered for determining capital gains. The assessing officers have also been instructed

not to insist on the repatriates producing documentary evidence to establish their claims regarding capital gains being long-term ones. This is an extra legal concession allowed by the Board as the Income-tax Act, 1961 does not contain any provision in this regard.

Audit suggested to the Board that the matter could be regularised by amendment of law.

The Department of Revenue and Banking have stated that the instructions are covered by the powers given by the Act to issue general instructions for the administration of the Act and further that such a provision in the Act is capable of being misused (November, 1976).

In the case of an assessee, a repatriate from Zanzibar, a capital gain of Rs. 3,82,071 arising on the sale of cloves and casalia brought by him was treated as long-term capital gain in the assessment for 1967-68 made on 14-2-1975. No attempt had been made by the assessing officer to ascertain the date of purchase of the goods to decide whether the capital gain was long-term or short-term. There would be a short levy of tax of Rs. 2,65,716 in case the particulars of the date of purchase of the goods establish that they were held by the assessee for not more than 12 months.

75. *Over-assessments*

(i) Under the provisions of the Income-tax Act, 1961, where the total income of an assessee, being a partner of an unregistered firm, includes his share in the profits and gains of such unregistered firm, no tax shall be payable by the assessee on that portion of the share income on which income-tax is payable by the firm.

In the case of six individual assessees, who were partners of certain unregistered firms, the Department did not allow proportionate rebate of tax on the respective shares of income from the unregistered firms included in their total income for the assessment year 1972-73. This resulted in overcharge of tax

to the extent of Rs. 94,020 and consequent excess levy of interest of Rs. 29,485 for late submission of returns in two cases and non-payment of full advance tax as required by law in four cases.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(*ii*) The total income of a Hindu undivided family for the assessment year 1972-73 was computed at Rs. 1,85,410 and tax payable determined at Rs. 1,38,377. While arriving at the said tax demand, the Department omitted to allow credit for the tax paid on self assessment and also for the tax deducted at source from dividend income, resulting in overcharge of tax to the extent of Rs. 38,166.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(*iii*) Under the Income-tax Act, 1961, where an assessee does not submit an estimate of his current income and pay advance tax accordingly, if his current income is likely to exceed the income on which advance tax has been demanded by the Department by more than $33\frac{1}{3}$ per cent, he is liable to be charged with interest calculated on the amount by which the advance tax paid by him falls short of the assessed tax.

(*a*) Although the current incomes for the assessment year 1972-73 as returned by a Hindu undivided family and an individual assessee were less than the incomes on which the Department had demanded advance tax, the Department incorrectly levied interest of Rs. 41,162 and Rs. 28,974 respectively on the two assessees. This led to a total overcharge of interest of Rs. 70,136 for both the assessees.

The Department of Revenue and Banking have accepted the objection (November, 1976).

(*b*) The Act further provides that income chargeable under the head 'capital gains' is not to be taken into account for purposes of determining the advance tax due or payable or the assessed tax.

In the case of two individual assessees for the assessment years 1971-72 and 1972-73, the Department erroneously took into account the amount of capital gains included in their returned income for purposes of determining their liability to pay interest for short payment of advance tax. In one case, the income returned by the assessee excluding capital gains, was less than the income on which the Department had demanded advance tax from the assessee. In the other case, the Department did not issue any demand for advance tax under the provisions of the Act and the assessee only returned a loss, excluding his income under the head 'capital gains'. As such the assessees were not liable to pay the interest of Rs. 32,236 and Rs. 50,610 that was charged by the Department for the assessment years 1971-72 and 1972-73.

The Department of Revenue and Banking have accepted the objection (December, 1976).

CHAPTER IV

OTHER DIRECT TAXES

A—GIFT-TAX

76. 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 other valuable rights and interests.

77. In paragraph 3·10 of their 50th Report (Fifth 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 carried out to ascertain the extent of non-levy of tax on such gifts in the past. A limited review conducted by the Department 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 (Fifth Lok Sabha), 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". Thereafter, only in February, 1976, the Ministry sent the following results of the review received upto that period:

No. of cases reviewed (above Rs. 5,000 or Rs. 10,000 as the case may be)—assessment years 1965-66 to 1972-73	82,301
No. of cases in which gift-tax proceedings had not been initiated	26,595
No. of cases completed with tax effect . . .	24,741 involving gifts valued at Rs. 22.86 crores and gift-tax of Rs. 96.83 lakhs.

Results of the complete review are awaited from the Department of Revenue and Banking (March, 1977).

78. In paragraph 1.29 of their 103rd Report (Fifth Lok Sabha), the Committee further desired to know the system evolved for exchange of information with the State Government authorities which might be useful for levy of gift-tax on agricultural lands. Though the Ministry of Finance initially stated in November, 1974 that a suggestion to incorporate in the Gift-tax Act provisions making it obligatory on the part of the registering officers to send periodical statements to the Commissioners of Income-tax regarding gifts of immovable property was under their active consideration, they intimated later in February, 1976 that insertion of such a provision in the Gift-Tax Act would not be a practicable proposition in view of the fact that, considering the workload devolving on the registering officers, a provision in Section 269P of the Income-tax Act, 1961 requiring the registering officers to send to the income-tax authorities statements of transfers of immovable properties by sale or exchange had to be amended from Ist January, 1974 to confine this requirement to cases where the apparent consideration exceeds Rs. 10,000. The Ministry of

Finance added that, with the introduction of aggregation of agricultural income with other income for rate purposes with effect from 1973-74, tax payers deriving agricultural income were required to furnish details of such income in their returns, and from details so furnished, it would be possible for the assessing officers to ascertain, on an intelligent scrutiny, whether any agricultural land had been transferred which might attract gift-tax liability.

The check envisaged by the Ministry would be available only in cases where non-agricultural income exceeds the minimum income on which no tax is levied, as aggregation would arise only in such cases. In other cases, whatever be the quantum of agricultural income, this check would not be available. The returns required to be sent by the registering officers to the income-tax authorities under Section 269P of the Income-tax Act would cover only cases of sale or exchange with apparent consideration above Rs. 10,000. The introduction of a suitable procedure for collection of information from the State Government agencies in respect of other cases where the apparent consideration is not an adequate consideration and in respect of gift deeds, settlement deeds, trust deeds and deeds where the transferors purport to distribute their individual properties, designating the deeds as instruments of partition, appears necessary to provide for an effective counter-check against evasion of gift-tax.

79. During the test audit of assessments made under the Gift-tax Act, 1958, conducted during the period from Ist April, 1975 to 31st March, 1976, the following types of mistakes resulting in under-assessment of tax were noticed:—

(*i*) Gifts escaping assessment.

(*ii*) Incorrect valuation of gifts.

(*iii*) Irregular/excessive exemptions and reliefs.

(*iv*) Mistakes in calculation of tax.

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

80. *Non-levy of tax on deemed gifts*

Under the provisions of the Gift-tax Act, 1958, where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property as on the date of transfer exceeds the value of consideration, is deemed to be a gift chargeable to gift-tax.

A case where such a deemed gift was not assessed to gift-tax was commented upon in paragraph 48(iii) of the Audit Report, 1971-72. While considering that paragraph, the Public Accounts Committee, in paragraph 1.48 of their 193rd Report (Fifth Lok Sabha), desired that a review of all such cases in which capital assets had been transferred for inadequate consideration during the past eight years should be conducted by the Central Board of Direct Taxes with a view to determining whether gift-tax had been levied in these cases. The Department of Revenue and Banking stated in September, 1976 that such a review of the cases would cause serious dislocation in the normal functioning of the Department, as the Department had not kept a separate register or list of cases of levy of capital gains tax under Section 52 of the Income-tax Act which would indicate cases of omission to apply the provisions of the Gift-tax Act in this regard. After consideration of the Department's reply, the Public Accounts Committee, in paragraph 1.23 of their 233rd Report (Fifth Lok Sabha), reiterated their earlier recommendations in this regard and urged the Department to initiate necessary action to conduct the review without further loss of time. Results of this review are awaited (March, 1977).

Further, in paragraph 1.49 of their 193rd Report, the Public Accounts Committee noted that the question of issuing instructions that where the provisions of Section 52 of the Income-tax Act, 1961 are involved, gift-tax must be levied on the deemed gift, was under consideration of the Central Board of Direct Taxes and wished to know the decision in this regard. In July, 1976, the Board issued instructions on this point. These instructions directed the Income-tax Officers to consider the applicability of the provisions of the Gift-tax Act whenever the provisions of Section 52 of the Income-tax Act were applied. As the instructions were not clear, Audit requested the Board in October, 1976 to consider the desirability of issuing clear instructions about the levy of both capital gains tax under Section 52 of the Income-tax Act, 1961 and gift-tax under Section 4(1)(a) of the Gift-tax Act, where a transfer of a capital asset is made at a declared consideration which is less than its fair market value.

It was noticed in audit that, in the meanwhile, the omission to levy gift-tax on such deemed gifts persists. A few instances (some of which also show lack of correlation of assessments under different direct taxes) are given below :—

(*i*) In July, 1972, a private company sold to its holding company (which was also a private company) a major part of an urban building belonging to it for a consideration of Rs. 2,02,755, being its proportionate depreciated value. The vending company had been realising a gross annual rental income of Rs. 2,69,646 from the building, the net annual value, after making allowable deductions for municipal taxes, repairs, etc., being Rs. 1,91,541. Capitalising this net annual letting value at twenty years' purchase, the market value of the portion of the building sold worked out to Rs. 28,17,600. As the fair market value of the property sold exceeded the declared consideration, there was a deemed gift to the extent of

Rs. 26,14,845 on which a gift-tax of Rs. 11,63,884 was leviable in the assessment year 1973-74. The Department did not, however, initiate any gift-tax proceedings.

The Department of Revenue and Banking have accepted the objection and stated that action under the Gift-tax Act has been initiated.

(*ii*) In the wealth-tax assessment of an individual, assessed for the first time in February, 1975 for the assessment year 1970-71, her net wealth was determined as Rs. 9,23,000 as against the returned wealth of Rs. 9,25,117. In explaining the source of her wealth, the assessee had stated that, in October, 1968, she had bought an estate jointly with her husband for Rs. 3 lakhs from a company in which they were directors and that they had realised Rs. 3 lakhs from the sale of cardamom crop from the estate and Rs. 16 lakhs from the sale of the estate itself in August, 1969. The company had thus sold the estate along with standing crops for a total consideration of Rs. 3 lakhs, while, within a span of one year, standing crop was sold for Rs. 3 lakhs and the estate itself for Rs. 16 lakhs. The sale by the company to the assessee and her husband was without adequate consideration. The difference of Rs. 16 lakhs between the consideration declared on original purchase and the value realised shortly thereafter was liable to gift-tax. No gift-tax proceedings were, however, initiated by the Department. The resultant non-levy of tax was Rs. 4,91,500.

The paragraph was sent to the Department of Revenue and Banking in September, 1976. They have stated (January, 1977) that the objection is under consideration.

(*iii*) During the previous year relevant to the assessment year 1973-74, a private limited company sold a house property to nine individuals, who were all connected with it, at a declared consideration of Rs. 18 lakhs. The market value of the property was determined by the departmental Valuer at Rs. 25,83,420

and tax was levied on the capital gains computed on the basis of this value. Although the amount of Rs. 7,83,420 being the excess of fair market value of the property over the declared consideration was a 'deemed gift' liable to gift-tax, no gift-tax proceedings were initiated by the Department. This resulted in non-levy of gift-tax of Rs. 1,90,026.

The Department of Revenue and Banking have accepted the objection.

(*iv*) Income-tax records of a partnership firm disclosed that one of its partners had, at the time of his admission to the firm as partner on 11th February, 1970, transferred to the firm as his contribution to the capital of the firm, land purchased by him on 11th June, 1969 at a declared consideration of Rs. 8,000. This land, along with godowns, etc., constructed over it by the firm, was later acquired by the State Government. The compensation awarded for the land on 23rd May, 1970 by the Land Acquisition Officer of the State was Rs. 1,02,066. As the land could not have appreciated in value from Rs. 8,000 to Rs. 1,02,066 in less than a year, the difference of Rs. 94,066 between the fair market value and the declared value was liable, as 'deemed gift', to a gift-tax of Rs. 7,157. No gift-tax proceedings were, however, initiated by the Department.

The paragraph was sent to the Department of Revenue and Banking in September, 1976. They have stated (February, 1977) that the objection is under consideration.

(*v*) In the income-tax assessment of an individual for the assessment year 1973-74, completed in December, 1973, the Department accepted the declared value of 1064 shares of a public limited company sold by him at Rs. 60 per share. As the value of the shares quoted in the stock exchange was Rs. 100 per shares, the excess of the market value over the value declared by the assessee constituted a 'deemed gift' liable to be assessed to gift-tax. The Department did not, however, levy gift-tax of Rs. 3,256 on such gift valued at Rs. 42,560.

The omission has been accepted by the Department of Revenue and Banking.

81. *Gifts escaping assessment*

(*i*) The Income-tax Act, 1961 lays down that, if the main purpose of the transfer of an asset directly or indirectly to the assessee was considered by the assessing officer to be the reduction of liability to income-tax by way of claiming higher depreciation on the enhanced cost, the assessing officer may determine the actual cost of the asset to the assessee having regard to all the circumstances of the case.

An assessee acquired an electric motor with accessories at a cost of Rs. 2,87,775 during the previous year relevant to the assessment year 1972-73. The actual price was determined by the Department at Rs. 74,000 after being satisfied that the main purpose of the transfer of such assets to the assessee was to reduce liability to income-tax. The amount of Rs. 2,13,775, being the excess of the amount paid by the assessee to the transferor over the actual value of the assets, attracted levy of gift-tax as a deemed gift. As no gift-tax proceedings were initiated, there was escapement of gift amounting to Rs. 2,13,775 with consequent tax undercharge of Rs. 33,695 for the assessment year 1972-73.

The Department of Revenue and Banking have accepted the objection in principle.

(*ii*) If a partnership firm is reconstituted either with the same old partners or on retirement of one or more partners or due to the addition of new partners, resulting in a revision of the profit-sharing ratio of the partners, the part of the interest which is surrendered or relinquished by one or more partners in favour of the other partners would constitute 'transfer of property', attracting levy of gift-tax.

(*a*) An individual, who was carrying on a business of money-lending and yarn brokerage as a sole proprietor till the previous year relevant to the assessment year 1971-72, converted his business in April, 1971 into a partnership by admitting his wife, two sons and daughter-in-law as partners and a minor son to the benefits of partnership. The entire movable property and goodwill of the proprietary concern valued at Rs. 3,03,060 was left in the new firm as capital. The capital contributed by the others was Rs. 101 each. The conversion involved a gift attracting levy of gift-tax of Rs. 56,015 but no gift-tax proceedings were initiated.

The Department of Revenue and Banking have accepted the objection.

(*b*) According to the deed of dissolution of a partnership, two of the five partners retired from the firm with effect from 30th June, 1971. They were paid the amounts standing to their credit in their current and capital accounts as well as their shares in the development rebate reserve of the firm as reflected in its balance sheet. As the amounts received by the retiring partners did not include their shares in the goodwill of the firm, they were to be deemed to have relinquished such shares in favour of the continuing partners thereby attracting levy of gift-tax. The shares in goodwill so relinquished by the two partners valued at Rs. 2,10,864 were not assessed to gift-tax, the tax leviable being Rs. 23,170.

The paragraph was sent to the Department of Revenue and Banking in August, 1976. They have stated (January, 1977) that the objection is under consideration.

(*c*) In three other cases in different Commissioners' charges, such surrender of interest on reconstitution of partnership firms, on admission of minors to benefits of partnership, retirement of

partners and conversion of a sole proprietorship into partnership, was not brought to gift-tax. The omissions led to non-levy of gift-tax of Rs. 16,042 (approximately) in the assessment year 1973-74.

The Department of Revenue and Banking have accepted the objection in all the cases.

(*iii*) As mentioned in paragraph 4.12 of their 186th Report (Fifth Lok Sabha), the Public Accounts Committee have repeatedly emphasised the need for a proper co-ordination among the assessment records pertaining to different direct taxes. The default, however, continues. A few illustrative cases where escapement of gifts took place due to lack of such co-ordination are given below:—

(*a*) The income-tax assessment records of an individual for the assessment year 1972-73 disclosed that he had transferred a total sum of Rs. 1,20,000 to his minor son and daughter on 12th June, 1971 without consideration. The transfers were in the nature of gifts and attracted levy of gift-tax in the assessment year 1972-73. It was, however, noticed in audit that neither the donor filed any gift-tax return nor did the Department initiate any proceedings for gift-tax assessment. There was thus an escapement of gift valuing Rs. 1,20,000 with resultant non-levy of tax of Rs. 14,500.

The Department of Revenue and Banking have accepted the objection.

(*b*) Under the provisions of the Gift-tax Act, 1958, gift-tax shall not be leviable in respect of gifts made by an assessee to his or her spouse subject to a maximum of Rs. 50,000 in value, in the aggregate, in one or more previous years.

A scrutiny of the income-tax assessment records of an assessee disclosed that the assessee had, apart from making gifts to the spouse by way of annual payments of life insurance premia

from 1965 onwards, made a cash gift of Rs. 50,000 to the spouse in the previous year 1970-71. The total insurance premia paid upto 31st December, 1969 had exceeded the exemption limit of Rs. 50,000 and hence the premia paid thereafter and the cash gift of Rs. 50,000 were liable to gift-tax in the assessment years 1971-72 to 1974-75. It was, however, noticed in audit that the assessee had not filed any gift-tax returns for the assessment years 1971-72 and 1972-73 and had not returned the gifts to the spouse in the gift-tax returns filed for the assessment years 1973-74 and 1974-75 in respect of certain gifts made to minor children. The omission on the part of the assessing officer to correlate gift-tax and income-tax assessments resulted in escapement of gifts aggregating Rs. 89,510 in the assessment years 1971-72 to 1974-75 with short levy of tax of Rs. 6,769.

The Department of Revenue and Banking have accepted the omission. Additional demand of Rs. 6,769 is stated to have been raised.

(*c*) The value of certain house properties gifted by an assessee during the previous year relevant to the assessment year 1970-71 was determined by the Department at 8 times the rental income of Rs. 11,812 though, for wealth-tax purposes, the said properties had been valued at 12 times the rental income during the earlier assessment years (1968-69 and 1969-70). The adoption of the lower valuation resulted in undervaluation of gift by Rs. 47,248 with consequent tax undercharge of Rs. 6,811 for the assessment year 1970-71.

The Department of Revenue and Banking have accepted the mistake. An additional demand of Rs. 6,811 is stated to have been raised.

(*d*) It was seen from the wealth-tax return of an individual that he had made a gift of Rs. 61,818 during the previous year relevant to the assessment year 1971-72. No gift-tax return had, however, been filed by the assessee nor had the Department

initiated gift-tax proceedings to assess the gift to tax. The omission led to non-levy of tax to the extent of Rs. 5,023 for the assessment year 1971-72.

The paragraph was sent to the Department of Revenue and Banking in August, 1976. They have stated (November, 1976) that the objection is under examination.

(*e*) In four other cases in different Commissioners' charges, similar omissions to correlate assessment records under different direct taxes were noticed by Audit. In these cases, gifts valuing Rs. 1,96,000 escaped assessment to gift-tax of Rs. 12,050 in the assessment years 1964-65, 1965-66, 1967-68 to 1969-70 and 1973-74. Rectification of assessments relating to the years 1964-65 and 1965-66 involving non-levy of tax of Rs. 1,700 had become time-barred.

The Department of Revenue and Banking have accepted the omissions in all the cases.

(*iv*) Under the provisions of the Gift-tax Act, 1958, any release or surrender of any interest in property is deemed to be a gift chargeable to gift-tax.

An assessee, who purchased a plot of land jointly with her son, relinquished her right in the land in favour of her son on 29th December, 1970. The value of the plot was taken at Rs. 1,79,000 in the wealth-tax assessment of the son for the assessment year 1974-75. The gift involved in the relinquishment was, however, not brought to tax; the assessee did not file any gift-tax return nor did the Department initiate any gift-tax proceedings. Taking the value of the interest of the donor in the plot on the date of relinquishment to be half of the value as adopted in the wealth-tax assessment of the donee for the assessment year 1974-75, a gift of Rs. 89,500 escaped assessment during the assessment year 1971-72 on which gift-tax leviable was Rs. 9,175.

The Department of Revenue and Banking have accepted the objection.

(*v*) Under the provisions of the Gift-tax Act, 1958, as applicable from the assessment year 1971-72 onwards, where a member of a Hindu undivided family converts his separate property into joint family property, he shall be deemed to have made a gift in favour of the family of so much of that property as the other members of the family would be entitled to, if a partition of the converted property had taken place immediately after such conversion.

In the case of a Hindu undivided family comprising father and his son as coparceners, the father impressed the balance of Rs. 1,71,373 held in his individual capacity in the capital account of a firm with the character of joint family property on 20th October, 1971 (after the close of the accounts on 18th October, 1971 relevant to the assessment year 1972-73). Though such conversion involved a deemed gift, no gift-tax proceedings were initiated.

The Department of Revenue and Banking have accepted the objection and stated that the omission has been rectified and an additional demand of Rs. 14,349 raised.

(*vi*) In two cases in different Commissioners' charges, gifts of house property valuing Rs. 51,000 and relinquishment of right of the releasors valuing Rs. 1,60,521 in certain house property, securities and deposits together valuing Rs. 4,41,434 were omitted to be brought to gift-tax of Rs. 10,700.

The Department of Revenue and Banking have accepted the objection in both the cases.

82. *Incorrect valuation of gifts*

(*i*) According to the executive instructions issued under the Gift-tax Rules, the value of shares of a private limited company is to be ascertained on the basis of market value of the assets of the company as on the date of gift.

(*a*) An assessee gifted 33,000 shares of a private limited company on 30th March, 1970 and the value of the shares was taken at Rs. 14.85 per share on the basis of book value of the assets shown in the balance-sheet of the company as on 31st March, 1969. Though the market value of the various assets including goodwill as on the date of gift, *i.e.*, 30th March, 1970, was not on record, the value of assets even as per the books of the company on 31st March, 1970 indicated a value of Rs. 19.63 per share. This value was adopted in the wealth-tax assessment of the assessee for the assessment year 1970-71. Even if the same value had been adopted in the gift-tax asssessment done in the same assessment year 1970-71, an under-assessment of the value of gift by Rs. 1,57,740 leading to a short levy of gift-tax of Rs. 47,322 could have been avoided.

The Department of Revenue and Banking have accepted the objection.

(*b*) In another case, an assessee gifted on 2nd March, 1973 300 equity shares held by him in a private limited company. The Gift-tax Officer valued the shares at Rs. 246.80 per share as against the value of Rs. 315.22 per share on the basis of even the book value of net assets of the company as reflected in its balance-sheet. Had the market value of the assets of the company been adopted, the break-up value would have been still higher. The undervaluation of the shares by Rs. 68.42 per share resulted in under-assessment of gift by Rs. 20,526, leading to short levy of tax of Rs. 3,080 for the assessment year 1973-74.

The Department of Revenue and Banking have accepted the objection partly.

(*ii*) Gift-tax assessments for the assessment year 1973-74 in respect of three assessees were completed on 31st January, 1974, after obtaining survey reports of the Income-tax Inspector

in which the value of land gifted was determined as Rs. 2,000 per hectare. In the assessment of one of these assessees, the assessing officer valued the gifted land at Rs. 2,000 per hectare whereas, in the case of the remaining two assessees, the value of land was taken at Rs. 1,000 per hectare without assigning any reason for the lower valuation. The lower valuation of the gifted land in these two cases resulted in an under-assessment of gifts by Rs. 37,000 and a total short levy of tax of Rs. 3,200.

The Department of Revenue and Banking have accepted the mistake.

83. *Irregular/excessive exemptions and reliefs*

Under the provisions of the Gift-tax Act, 1958, gifts subject to a maximum of Rs. 10,000 made by any person to any relative dependent upon him for support and maintenance, on the occasion of the marriage of the relative, are exempt from gift-tax.

An assessee made, apart from other gifts, total cash gifts of Rs. 20,000 (Rs. 5,000 to each of his four minor daughters) towards marriage expenses. As the gifts were not made on the occasion of marriage, no exemption was admissible and the total gift of Rs. 20,000 attracted levy of gift-tax. However, the exemption claimed by the assessee was allowed by the Department resulting in a short levy of tax of Rs. 2,500.

The Department of Revenue and Banking have accepted the objection and stated that the additional tax of Rs. 2,500 has been collected.

84. *Mistakes in calculation of tax*

(*i*) On a total gift of Rs. 1,47,407 made by an assessee during the previous year relevant to the assessment year 1973-74, gift-tax leviable, after allowing rebate of Rs. 6,750 towards stamp

duty, worked out to Rs. 13,232. However, the Department levied a tax of Rs. 712 only. There was thus an under-assessment of tax of Rs. 12,520.

The Department of Revenue and Banking have accepted the objection and stated that an additional tax of Rs. 12,520 has been collected.

(ii) In three other cases in different Commissioners' charges, under-assessment of gift-tax aggregating Rs. 12,725, resulting from errors in calculation of tax, was noticed.

The Department of Revenue and Banking have accepted the mistakes in all the three cases and stated that the additional tax of Rs. 12,725 has been collected.

85. *Over-assessment*

Under the provisions of the Gift-tax Act, 1958, where any stamp duty has been paid on an instrument of gift attracting levy of gift-tax in excess of 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 exceeds Rs. 1,000, whichever is less.

In six cases, relief in respect of stamp duty paid on the instruments of gifts was not given. In two other cases, stamp duty paid was not considered to the extent admissible. This resulted in over-assessment of gift-tax of Rs. 12,469.

The Department of Revenue and Banking have accepted the objection in four cases ; they have stated that the objections in the remaining two cases is under consideration.

B. WEALTH-TAX

86. 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 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 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.

87. 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 Budgets for the years 1973-74, 1974-75 and 1975-76, no provision on this account was made for payment of grants-in-aid to States as the disbursements made in 1971-72 exceeded the actual collections in these later years.

88. During the test audit of assessments made under the Wealth-tax Act, 1957, conducted during the period from 1st April, 1975 to 31st March, 1976, the following types of mistakes resulting in under-assessment of tax were noticed:—

(i) Wealth escaping assessment.

(ii) Incorrect valuation of assets.

(iii) Mistakes in computation of net wealth.

(iv) Irregular/excessive exemptions and reliefs.

(v) Mistakes in application of rates of tax.

(vi) Mistakes in calculation.

(vii) Non-levy of additional wealth-tax.

(viii) Non-levy or incorrect levy of penalty and non-levy of interest.

(ix) Avoidable payment of interest by Government.

(x) Incorrect status adopted in assessments.

A few instances of these mistakes are given in the following paragraphs.

89. *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 cases of evasion of wealth-tax. In paragraph 69(i) of the Audit Report 1974-75, instances of escapement of wealth resulting from lack of co-ordination were pointed out. Following illustrative cases would show that information available in the assessment records of direct taxes was not used to initiate action under the Wealth-tax Act and the lack of co-ordination persists.

(*a*) In determining the net wealth of an individual for the assessment year 1971-72 at Rs. 16,75,652, an amount of Rs. 91,466, representing income-tax refunds due to the assessee on account of excess tax deposited with the Department, was not included. The omission resulted in under-assessment of wealth by Rs. 91,466, and a short levy of tax of Rs. 3,516. Similar omission in the assessment years 1972-73 and 1973-74 resulted in a further under-assessment of tax of Rs. 6,848.

In the wealth-tax assessments of the Hindu undivided family, of which the same assessee was *Karta*, similar omission to include income-tax refunds of Rs. 15,005 resulted in short levy of tax of Rs. 4,044 in the assessment years 1973-74 and 1974-75.

The total short levy of tax was thus Rs. 14,408 for the three years in the cases of the 'individual' and the 'Hindu undivided family'.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they stated (January, 1977) that the objection was under consideration in both the cases.

(*b*) It was evident from the income-tax assessment records of four individuals for the assessment year 1972-73 that they had taxable wealth amounting to Rs. 3,48,559, Rs. 2,83,401, Rs. 3,07,098 and Rs. 3,07,569 respectively on the relevant valuation date. They had not, however, filed wealth-tax returns for the year nor had the Department initiated any wealth-tax proceedings. As a result, there was non-levy of wealth-tax of Rs. 10,931 on all the four assessees for the assessment year 1972-73.

The Deparrtment of Revenue and Banking have accepted the objection and stated that additional demands of Rs. 10,931 have been raised.

(*c*) In the wealth-tax assessments for the assessment years 1970-71 to 1972-73, an assessee returned the value of 11.33 acres of land in an urban area as Rs. 1,31,690 on the basis of a valuation report of an approved valuer given in September, 1970. The valuation thus done at Rs. 11,600 per acre was accepted by the Department. In June, 1972, the assessee sold a portion of the land to the Central Government at Rs. 80,000 per acre. This rate was adopted in the wealth-tax assessment for the year 1973-74 for valuing the remaining land. In the income-tax assessment for the assessment year 1973-74, while computing the capital gains arising from the sale of land to Government, the assessee claimed and the Department accepted that the fair market value of the land in 1954 was Rs. 10,000 per acre. It was pointed out by Audit in August, 1975 that the the large variation in the valuation of the land from Rs. 11,600

per acre for the assessment year 1972-73 to Rs. 80,000 per acre for the assessment year 1973-74 and the assessee's claim that the value was Rs. 10,000 per acre in 1954 itself indicated gross undervaluation in the assessments for the years earlier than 1973-74. In respect of the assessment year 1972-73 alone, the undervaluation involved a short levy of tax of Rs. 10,000 (approximate), even if valuation was made at Rs. 60,000 per acre.

The Department of Revenue and Banking have accepted the objection in principle.

(*d*) The wealth-tax assessments of an assessee for the assessment years 1971-72 to 1974-75 were completed between July, 1973 and December, 1974, accepting the value of agricultural land in an urban area at the returned rate of about Rs. 10,000 per acre. During the financial year 1973-74, the assessee sold a portion of the land at Rs. 40,000 per acre and claimed, in computing the capital gains arising from the sale, that the fair market value of the land, as on 1st January, 1954 itself was Rs. 10,000 per acre. The claim was accepted in the assessment proceedings for levy of capital gains tax for the assessment year 1974-75 made in January, 1975. The assessee also made a gift of another portion of the land in February, 1974 and estimated the value of the land gifted at Rs. 12,500 per acre. This too was accepted in the gift-tax assessment for the assessment year 1974-75 completed in December, 1974.

As the assessee himself had estimated the fair market value of the land in 1954 at Rs. 10,000 per acre and as it was sold at Rs. 40,000 per acre during the year 1973-74 the valuation of the land at about Rs. 10,000 per acre for wealth-tax purposes for the assessment years 1971-72 to 1974-75 involved under-assessment of wealth. The rate of Rs. 12,500 per acre adopted in the gift-tax assessment for the assessment year 1974-75 was itself much less than the rate of Rs. 40,000 per acre at which another portion of the land was sold in the same year. Even on the basis

of the lower rate of Rs. 12,500 per acre, the tax effect of under-valuation of the land in the wealth-tax assessments would be about Rs. 9,545.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated (January, 1977) that the objection is under consideration.

(*e*) In three cases, information was available in the assessment records that the assessees were having assessable wealth. One assessee had acquired a cinema theatre with equipment for a sum of Rs. 3,00,000 in October, 1966. Another assessee had realised a sum of Rs. 4,26,166 by sale of jewellery during the account year 1962-63. The third assessee had sold a cinema theatre with equipment for a sum of Rs. 4,00,000 in January, 1971. There was, however, nothing on record to indicate that they were assessed to wealth-tax for any or all of the relevant assessment years 1963-64 to 1974-75 and the earlier assessment years, according as they possessed or did not possess net wealth above Rs. 1 lakh on the relevant valuation dates.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated (January, 1977) that the objection is under consideration.

(*f*) The income-tax records of an individual, assessed to income-tax but not to wealth-tax for the assessment years 1972-73 to 1974-75, indicated that he owned a house property which was partly let out and partly self-occupied. The let out portion yielded a gross rent of Rs. 26,520 per annum while the annual letting value of the self-occupied portion was Rs. 2,400. Allowing for reasonable outgoings like municipal taxes, repairs and collection charges, the net annual value of the property would work out to Rs. 19,910 per annum. Capitalising this amount at 6 per cent, the value of the property would work out to Rs. 3,31,900. On this basis, the net wealth of the individual worked out to Rs. 1,89,850, Rs. 1,95,900 and

Rs. 2,03,760 for the three assessment years 1972-73 to 1974-75 indicating *prima facie* his liability to wealth-tax. The Department, however, did not consider the levy of wealth-tax. The omission resulted in under-assessment of wealth aggregating Rs. 5,89,510 with a consequent non-levy of tax of Rs. 5,835.

The Department of Revenue and Banking have accepted the objection.

(*g*) In six other cases in different Commissioners' charges, information available in the income-tax records was not used by the Wealth-tax Officers with the result that wealth totalling Rs. 13,65,981 escaped wealth-tax of Rs. 17,185 in the assessment years 1963-64, 1969-70 and 1971-72 to 1974-75.

The Department of Revenue and Banking have accepted the objection in three cases, while in three cases they have stated (February, 1977) that the objection is under consideration.

(*ii*) An individual, who was assessed to tax on a net wealth of Rs. 5,41,700 upto the assessment year 1967-68, did not file his wealth-tax returns for any of the subsequent years. The Department also did not call for the returns nor were these shown as pending in the departmental records. When the omission was pointed out by Audit in January, 1975, the Department initiated action in September, 1975. As a result, the assessments for the years 1968-69 to 1970-71 were completed on 6th January, 1976 raising a total tax demand of Rs. 11,835 on the assessed net wealth of Rs. 6,94,500 in each of the three assessment years. The Department also initiated penalty proceedings for non-submission of returns within the prescribed time.

The Department of Revenue and Banking have accepted the objection.

(*iii*) In paragraph 53(ii) of the Audit Report 1972-73, paragraph 56(B) of the Audit Report 1973-74 and paragraph 69(iii)

of the Audit Report 1974-75, 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. Further instances were noticed where the value of personal jewellery was not included in the net wealth either in the original or revised assessments.

(*a*) In the case of an individual, the Wealth-tax Officer commenced reassessment proceedings by serving a notice on the assessee on 22nd February, 1974 for re-including, under the amended provisions, personal jewellery worth Rs. 1,51,930 in her net wealth for the assessment years 1966-67 to 1968-69 which had previously been excluded under appellate orders on 29th March 1971. The revised assessment had, however, not been made till the omission was pointed out by Audit on 22nd January, 1975. The omission was not rectified even in the revision made on 29th March, 1975 to give effect to certain appellate orders. As rectification ultimately became time-barred, personal jewellery of the assessee worth Rs. 1,51, 930 escaped assessment in each of the three assessment years resulting in a total loss of revenue of Rs. 2,655.

The Department of Revenue and Banking have accepted the lapse of the Wealth-tax Officer in not requesting the Appellate Assistant Commissioner to pass rectificatory orders to include jewellery.

(*b*) An assessee voluntarily submitted her wealth-tax returns for the assessment years 1964-65 onwards on 31st March, 1969. These returns disclosed existence of net wealth including jewellery

valuing Rs. 5 lakhs even for the assessment year 1963-64. The assessments were taken up by the Department for the first time only in November, 1974 by which time remedial action for the assessment year 1963-64 had become time-barred. This resulted in a loss of revenue of Rs. 4,965.

The Department of Revenue and Banking have accepted the objection in principle.

(*c*) In two other cases in different Commissioners' charges, personal jewellery belonging to a Hindu undivided family and an individual was not brought to tax in the assessment years 1965-66 to 1970-71. The value of jewellery escaping assessment in all these assessment years was Rs. 3,70,740 in the aggregate with total short levy of tax of Rs. 7,184. Rectification of the assessments is time-barred.

The Department of Revenue and Banking have accepted the objection in both the cases.

(*iv*) An individual, owning a house property and having a share interest in a partnership firm, was assessed to wealth-tax on the net wealth of Rs. 1,34,638 for the first time in November, 1974 for the assessment year 1974-75. The assets were owned by him even in earlier years and his net wealth exceeded the limit of Rs. 1 lakh for the assessment years 1971-72 to 1973-74 on which total wealth-tax of Rs. 6,410 was leviable. The Department did not, however, levy wealth-tax for any of these three years.

The Department of Revenue and Banking have accepted the objection.

(*v*) An individual assessee held silver utensils weighing 318 kilograms and valuing Rs. 1,79,412 on the valuation dates relevant to the assessment years 1964-65 to 1969-70 but claimed them to be exempt from the levy of wealth-tax on the ground that they were household utensils. When the Department included their value in the net wealth of the assessee for the

year 1969-70, the assessee went in appeal which was dismissed by the appellate authority. The Department, however, did not include the value of silver utensils in the net wealth of the assessee for the assessment years 1964-65 to 1968-69. The omission resulted in under-assessment of tax of Rs. 4,815 for all these assessment years.

The Department of Revenue and Banking have accepted the objection in principle and stated that rectification for the assessment year 1968-69 will be made, rectification for the remaining assessment years being time-barred.

(*vi*) In the wealth-tax assessment of an individual for the assessment year 1974-75, debts amounting to Rs. 58,860 due to the assessee and returned by her in her wealth-tax return were omitted to be included in her net wealth. The omission resulted in a short levy of wealth-tax of Rs. 4,705.

The Department of Revenue and Banking have accepted the objection and stated that additional tax of Rs. 4,705 has been collected.

90. *Incorrect valuation of assets*

(*i*) The Rules framed under the Wealth-tax Act, 1957 prescribe the manner in which the value of the interest of an assessee in a firm of which he is a partner should be determined.

While computing the value of the interest of each of the three partners of a firm having equal shares in it, for the assessment years 1958-59 to 1964-65, the value of certain house properties was taken at their book value of Rs. 3 lakhs, although the same house properties had been valued at Rs. 7,25,000 in an estate duty assessment for the assessment year 1957-58. Further, the value of another house property purchased by the firm in 1959 for Rs. 3,17,000 was omitted altogether. The value of the interest of each of the three assessees in the firm was thus under-assessed by Rs. 1,41,666 in the assessment years 1958-59 and 1959-60 and by Rs. 2,47,333 in the assessment years 1960-61

to 1964-65. The resultant short levy of tax was Rs. 43,470 in the aggregate for all the assessment years.

The Department of Revenue and Banking have accepted the objection and stated that no remedial action is possible due to time-bar.

(*ii*) For the purpose of assessment to wealth-tax, the value of unquoted shares in companies, other than investment and managing companies, is calculated on the basis of the net assets of the company.

(*a*) In the case of an assessee, holding 6,021 and 15,827 unquoted equity shares of a company on the valuation datesr elevant to the assessment years 1968-69 and 1969-70, the market value of these shares was calculated as Rs. 209 and Rs. 92 per share, as against the correct value of Rs. 275 and Rs. 129 per share respectively. The undervaluation of shares was caused by irregular or excessive deduction, from the book value of the assets of the company, of the amount of depreciation not written off in the books of account and adoption of incorrect amount of dividend and miscellaneous expenses. The incorrect valuation of shares resulted in under-assessment of wealth by Rs, 3,97,386 and Rs. 5,85,599 in the assessment years 1968-69 and 1969-70 respectively, with short levy of wealth-tax of Rs. 22,588 for both the assessment years.

The Department of Revenue and Banking have accepted the objection and stated that additional tax of Rs. 22,588 has been collected.

(*b*) In computing the net assets of a company for the valuation of its unquoted equity shares, reserves, by whatever name called, other than those set apart towards depreciation, are not to be treated as liabilities and deducted from the value of the assets of the company.

In the case of an assessee, however, while computing the value of unquoted equity shares for the assessment years 1971-72 to 1973-74, the credit balances in development reserve and capital reserve were incorrectly treated as liabilities and deducted from the value of assets. This resulted in undervaluation of shares and consequent under-assessment of the net wealth of the assessee by Rs. 8,98,340 in the aggregate, leading to a short levy of wealth-tax of Rs. 17,966 in the assessment years 1971-72 to 1973-74.

The Department of Revenue and Banking have accepted the objection and stated that the assessments are being revised.

(*iii*) The value of a residential flat in Bombay fetching a rent of Rs. 22,562 per annum was adopted as Rs. 1,02,260 in the wealth-tax assessments for the assessment years 1972-73 to 1974-75, as returned. The value of the property on the basis of the net annual value capitalised at 20 years' purchase worked out to Rs. 3,06,000. The value of the flat was neither estimated by the Department independently nor was it supported by the certificate of an approved valuer. Under-valuation of the property resulted in under-assessment of wealth by Rs. 2,03,740 for each of the three assessment years with aggregate short levy of wealth-tax of Rs. 20,160.

This case was seen by the Internal Audit Party but this omission was not pointed out by them.

The paragraph was sent to the Department of Revenue and Banking in September 1976. They have stated (November, 1976) that the objection is under consideration.

(iv) In the case of an assessee, it was noticed that an approved valuer, in valuing a house property in Delhi on 'income-capitalisation' method, determined the net annual letting value of the rented portion of the house after making deductions on account of various charges on estimated basis. The estimates exceeded

the corresponding deductions on actual basis adopted in the income-tax assessments of the same assessee by Rs. 8,465 and Rs. 5,741 for the assessment years 1968-69 and 1969-70. The rented portion of the house, and hence also the property, was undervalued by Rs. 1,01,580 and Rs. 68,892 for the assessment years 1968-69 and 1969-70 respectively. As the value of the house property, Rs. 4,14,000, so certified by the approved valuer, was less than even its assessed value of Rs. 5,30,000 in the assessment years 1964-65 to 1967-68, the case was referred to the departmental Valuation Officer for valuation. The Valuation Officer, instead of valuing the property independently, endorsed the value certified by the approved valuer. The resultant undervaluation of the property was Rs. 1,01,580 and Rs. 68,892 in the assessment years 1968-69 and 1969-70 with short levy of tax of Rs. 1,705 for both these years.

The Department of Revenue and Banking have stated that the objection is not acceptable on the ground that the Wealth-tax Officer adopted the value of the property estimated by an approved valuer and accepted by the departmental Valuation Cell, which was binding on him.

91. *Mistakes in computation of net wealth.*

(*i*) Under the provisions of the Wealth-tax Act, 1957 as amended with effect from 1st April, 1965, the net wealth of the estate of a deceased person continues to be subjected to levy of wealth-tax in the hands of the executors of the estate in the status of an 'individual' till its complete distribution.

In the wealth-tax assessments of the estate of a deceased person for the assessment years 1965-66 to 1973-74, the status of the executors was adopted as 'Hindu undivided family' instead of their correct status as 'body of individuals'. In the same assessments the valuation of house properties was done at 17 times the net rental value as against 20 times such value

adopted in the assessments for the earlier years and confirmed by an appellate authority. Further, in respect of one house property, the net annual letting value adopted in the valuation was in respect of one-half of the premises only; an equal value for the other portion occupied by the executors for their residential use was not included. The cumulative effect of these mistakes was a tax undercharge of Rs. 79,404 for the nine assessment years from 1965-66 to 1973-74.

The Department of Revenue and Banking have accepted the mistakes.

(*ii*) In computing the net wealth of an assessee for the assessment years 1971-72 and 1972-73, the value of the investments in shares was taken by the Department as Rs. 6,29,072 and Rs. 6,20,240 respectively, while as per details in the assessment records, the value worked out to Rs. 9,33,606 and Rs. 8,45,504. This resulted in under-assessment of wealth by Rs. 3,04,534 and Rs. 2,25,264 in the assessment years 1971-72 and 1972-73 respectively with consequent short levy of tax of Rs. 4,893.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated (January, 1977) that the objection is under examination.

(*iii*) Net wealth of an assessee means the aggregate value of all his assets minus the aggregate value of debts owed by him on the valuation date. Debts which are secured on, or 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.

(*a*) In nine cases in five Commissioners' charges, incorrect deductions for debts owed by the assessees were allowed even when these were secured on life insurance policies and bank deposits which were not included in their net wealth. The incorrect allowance of these deductions totalling Rs. 13,43,823

in various assessment years from 1962-63 to 1974-75 resulted in short levy of wealth-tax of Rs. 23,568 in these years.

The Department of Revenue and Banking have accepted the mistakes in eight cases; in the remaining one case they have stated (January, 1977) the objection is under examination.

(*b*) In another case, loans aggregating Rs. 1,57,000 secured on growing crops, an exempt asset, were allowed as a deduction in the three assessment years 1971-72 to 1973-74. In the same case, value of certain assets was taken in the assessment year 1973-74 as Rs. 1,68,806 against the correct value of Rs. 2,22,886. These mistakes resulted in a total under-assessment of wealth of Rs. 2,11,080 and short levy of tax of Rs. 4,054 for the assessment years 1971-72 to 1973-74.

(iv) Interest levied by the Department for short payment/ non-payment of advance tax or for belated filing of income-tax returns is levied from a date on or after the first day of April of the assessment year, and hence no liability on this account would exist on the valuation date relevant to that assessment year, which would qualify for deduction in computing the net wealth.

In the case of an individual, liabllities of Rs. 90,922, Rs. 1,57,873 and Rs. 64,816 towards interest for belated filing of income-tax returns and short payment of advance tax for the assessment years 1972-73, 1973-74 and 1974-75 respectively, were allowed as deduction in computing the net wealth for the respective assessment years. This resulted in total short demand of wealth-tax of Rs. 11,180.

The Department of Revenue and Banking have accepted the objection in principle.

92. *Irregular/excessive exemptions in respect of investments*

As an incentive for savings, the Wealth-tax Act, 1957 allows, with effect from the assessment year 1971-72, exemption from levy of wealth-tax to bank deposits and investments in securities, shares, etc., upto an aggregate amount of Rs. 1,50,000. Where, however, the aggregate value of specified investments of the nature of ten-year savings deposit certificates, fifteen-year annuity 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.

(*i*) In paragraph 53(i) of the Audit Report 1972-73, paragraph 56(c)(iii) of the Audit Report 1973-74, and paragraph 71(iv) of the Audit Report 1974-75, instances of excessive exemption allowed in this regard were pointed out. Similar mistakes were again noticed in the case of four assessees in three Commissioners' charges where 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 value of the specified investments, in itself, did not exceed Rs. 1.50 lakhs in each case. The incorrect exemption of Rs. 8,94,462 so allowed in the aggregate resulted in short levy of wealth-tax of Rs. 17,704 in all the assessment years.

The mistakes have been accepted by the Department of Revenue and Banking in all the four cases. Additional tax of Rs. 10,254 in three cases is stated to have been collected.

(*ii*) In the case of an individual, deposits in post office and investments in national plan certificates and national defence certificates, which were held, not by him but by his minor

children, were exempted in his assessments. The incorrect exemption so allowed to the extent of Rs. 1,84,600 in the assessment year 1966-67 and Rs. 1,18,200 in each of the assessment years 1967-68 and 1968-69 resulted in an aggregate short levy of tax of Rs. 10,525.

In another case, exemption of Rs. 1.50 lakhs in respect of shares and securities was allowed in each of the assessment years 1971-72 to 1973-74, though the investments were held, not by the assessee but by the trustee of a private family trust of which the assessee was a beneficiary. The irregular exemption so allowed resulted in under-assessment of wealth-tax of Rs. 6,395.

The Department of Revenue and Banking have accepted the objection in one case, while in the other case, they have stated (January, 1977) that the objection is under examination.

(*iii*) The exemption in respect of bank deposits is admissible only where such deposits are held in a banking company to which the Banking Regulations Act, 1949 applies. In the case of branches situated outside India of banks operating in India, the Banking Regulations Act, 1949 does not apply as the branches are governed by the regulations relating to banks in the respective countries.

In the wealth-tax assessments of a Hindu undivided family for the assessment years 1971-72 to 1973-74, exemption from tax was incorrectly allowed in respect of a sum of Rs. 1,27,000 deposited by the assessee in the Ceylon branch of a nationalised Indian bank. This resulted in short levy of wealth-tax of Rs. 5,415.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated (February, 1977) that the objection is under examination of the Department.

(iv) In another case, exemption of Rs. 1.50 lakhs for shares and securities was given in the assessment year 1970-71 though the amendment to the Act allowing such exemption took effect from the assessment year 1971-72 only. The short levy of tax resulting from the incorrect exemption was Rs. 3,115.

The Department of Revenue and Banking have accepted the mistake and stated that the additional tax has been collected.

(v) The investments covered by this exemption include also assets forming part of an industrial undertaking.

In computing the net wealth of an assessee for the assessment years 1973-74 and 1974-75, exemption of Rs. 1,50,000 was allowed in respect of value of assets forming part of a 'poultry farm' treating it as an 'industrial undertaking'. Further exemption of the same amount was allowed for fixed deposits with banks instead of restricting the total exemption to Rs. 1,50,000. This resulted in under-assessment of wealth by Rs. 1,50,000 for each of the assessment years 1973-74 and 1974-75, involving short levy of tax of Rs. 4,330.

The Department of Revenue and Banking have accepted the objection and stated that additional tax of Rs. 4,330 has been collected.

(vi) The exemption of Rs. 1.50 lakhs in respect of certain financial assets held by an assessee is not available to private family trusts in which shares of the beneficiaries are not known or are indeterminate.

In the assessment of a private family trust for the assessment years 1972-73 and 1973-74, the net wealth of the trust was determined after giving this exemption of Rs. 1.50 lakhs for certain financial assets. The mistake resulted in an under-assessment

of wealth by a like amount in each of the two assessment years with a total short levy of tax of Rs. 4,323.

The Department of Revenue and Banking have accepted the objection.

93. *Irregular/excessive exemptions and reliefs in other cases*

(*i*) Under the provisions of the Wealth-tax Act, 1957, the value of one house or part of a house belonging to an assessee is exempt up to a limit of Rs. 1 lakh. However, the exemptions in respect of agricultural land and a house or part of a house together cannot exceed Rs. 1.50 lakhs for the assessment years 1970-71 to 1974-75.

(*a*) The term "house" in the ordinary sense includes a reasonable area of vacant land appurtenant to the house. In compliance with the recommendations of the Public Accounts Committee contained in paragraph 4.40 of their 50th Report (Fifth Lok Sabha), the Central Board of Direct Taxes, in their executive instructions issued in September, 1974, have clarified that where the land surrounding a house exceeds the minimum land required to be left vacant according to the municipal bye-laws in force in that place and a separate tenantable unit can be constructed on that vacant land, such land is considered as not appurtenant to the house and the matter regarding its valuation may be referred to the departmental Valuation Cell.

An assessee returned the value of a house and land surrounding it at Rs. 1,10 000 supported by a valuation report dated 12th November, 1972 given by an approved valuer and claimed exemption of Rs. 1 lakh in respect of it for the assessment years 1973-74 and 1974-75. The assessing officer accepted the assessee's claim and allowed exemption of Rs. 1 lakh for each of these two years. According to the valuer's report, the house had a built-in area of 6,500 sq. ft. on land

measuring 1,08,900 sq. ft. According to the rules in force, construction could be done on one-third area of a plot and two-third area was to be left open. The value of the house together with the value of 19,500 sq. ft. of the land was Rs. 20,000. The value of the remaining land measuring 89,400 sq. ft. valued by the approved valuer at Rs. 90,000 did not qualify for exemption. The excessive exemption of Rs. 80,000 allowed in each of the assessment years 1973-74 and 1974-75 resulted in under-assessment of wealth by a like amount, leading to short levy of tax of Rs. 2,010 for both the years.

The Department did not also get the property valued by reference to the departmental Valuation Cell.

The Department of Revenue and Banking have accepted the objection.

(*b*) Upto and including the assessment year 1971-72, exemption in respect of a house or part thereof belonging to the assessee was allowed only if it was exclusively used by him for residential purposes. As a trust being a juridical entity, cannot occupy the buildings owned by it, this exemption was not allowable to it. It was, however, noticed that exemption of Rs. 1 lakh in respect of a house property in an urban area was allowed to a trust in its wealth-tax assessment for the year 1971-72. The incorrect exemption so allowed resulted in short levy of wealth-tax and additional wealth-tax of Rs. 1,576.

The Department of Revenue and Banking have accepted the objection.

(*c*) Where there are a number of independent flats in a building, each flat is to be regarded as a house and exemption is available in respect of the value of one flat subject to the limit of Rs. 1 lakh. In the case of an individual, however, the

full exemption of Rs. 1 lakh was allowed, while it was to be restricted to Rs. 79,200, being the value of one flat. The incorrect allowance so made resulted in an undercharge of wealth-tax of Rs. 3,133 in the assessment years 1972-73 and 1973-74.

The paragraph was sent to the Department of Revenue and Banking in August, 1976; they have stated (February, 1977) that the objection is under examintion of the Department.

(*d*) In the case of two assessees, exemption in respect of house property was allowed over and above the exemption of Rs. 1.50 lakhs for agricultural land instead of restricting them together to Rs. 1.50 lakhs. This mistake along with double allowance of initial exemption of Rs. 2 lakhs in one case, led to a total short levy of wealth-tax of Rs. 10,485 for the assessment years 1970-71 to 1973-74.

The Department of Revenue and Banking have accepted the objection in both the cases and stated that additional demands of Rs. 9,735 have been raised, out of which an amount of Rs. 2,985 has been collected.

(*ii*) Under the provisions of the Wealth-tax Act, 1957, certain assets, though not belonging to the assessee, are treated as assets belonging to him and are included in his net wealth, if they are transferred by him to his wife otherwise than for adequate consideration or in connection with an agreement to live apart. In such a case, as clarified by the Central Board of Direct Taxes under executive instructions issued in October, 1966, exemption in respect of a house or part thereof, otherwise admissible, is not allowable as the house does not belong to the assessee.

(*a*) An individual transferred to his wife in May, 1959, a plot of land and building materials valued at Rs. 1,30,000. As the transfer was made by the assessee without consideration

or in connection with an agreement to live apart, the value of the transferred assets was included in his net wealth by the Department upto the assessment year 1963-64. For the assessment years 1964-65 to 1974-75, however, the the Department did not do so. As a result, there was an under-assessment of wealth of not less than Rs. 1,30,000 in each of these assessment years, with a short levy of tax of Rs. 9,750.

The Department of Revenue and Banking have accepted the objection and stated that rectificaion for the assessment years 1964-65 to 1968-69 is time-barred and that for the years 1969-70 to 1974-75 is being done (February, 1977).

(*b*) In two other cases in different Commissioners' charges, value of house properties transferred by the assessees to their wives otherwise than for adequate consideration or in connection with agreements to live apart, was included in their net wealth, but exemption in respect of them totalling Rs. 11,74,000 for various assessment years form 1966-67 to 1973-74 was incorrectly allowed, resulting in under-assessment of tax of Rs. 14,525.

The Department of Revenue and Banking have accepted the mistakes in both the cases and stated that additional demands of Rs. 14,525 have been raised.

(iii) Under the provisions of the Wealth-tax Act, 1957, any property held by an assessee under trust or other legal obligation for any public purpose of a charitable or religious nature in India is exempt from wealth-tax.

A property comprising urban land and building was settled on a trust in 1923 for the purpose of entertainment, theatricals and meetings, public as well as private, for which the trustees were empowered to charge rent. The property was used for running a cinema theatre and the income of the trust consisted of profits therefrom after meeting the expenditure for its maintenance. As the object of the trust involved the carrying on of an

activity for profit, it would not constitute a charitable trust and the exemption provided in the Wealth-tax Act would not be available to the trust. The trust was not, however, assessed to wealth-tax for any of the assessment years on the ground that it was exempt. The wealth-tax leviable for the assessment years 1971-72 to 1973-74 alone was Rs. 4,576 (the tax leviable for the years 1967-68 to 1970-71 could not be computed for want of details and assessments for the years earlier than 1967-68 had become time-barred).

The Department of Revenue and Banking have accepted the objection.

94. *Mistakes in application of rates of tax*

(i) In paragraph 53(i) of this Report, mention is made of cases in which the prescribed higher rates of income-tax were not applied to certain Hindu undivided families. For wealth-tax also, higher rates were prescribed by the Finance Act, 1973 with effect from 1st April, 1974 in the case of every Hindu undivided family which has at least one member whose net wealth assessable for the assessment year 1974-75 onwards exceeds Rs. 1 lakh.

In the case of forty-one such Hindu undivided families in sixteen Commissioners' charges, it was, however, noticed that the prescribed higher rates were not applied in the assessment years 1974-75 and 1975-76 and this resulted in undercharge of tax of Rs. 1,67,180 in these cases.

The Department of Revenue and Banking have accepted the mistakes in thirty-five cases and stated that additional demands aggregating Rs. 1,48,989 have been raised, out of which an amount of Rs. 1,20,620 in respect of twenty-eight cases has been collected. They have further stated (January, 1977) that the objection in respect of six cases is under consideration.

(ii) By an amendment to the Wealth-tax Act, 1957, made by the Finance Act, 1971 (effective from the assessment year 1972-73), the initial exemptions of Rs. 1 lakh in the case of an individual and Rs. 2 lakhs in the case of a Hindu undivided family were withdrawn. Instances of irregular allowance of initial exemptions in the case of assessees having net wealth above these limits for the assessment years 1972-73 and 1973-74 were pointed out in paragraph 52(a)(iii)(c) of the Audit Report 1972-73, paragraph 52(b) (i) of the Audit Report 1973-74 and paragraph 73(iv) of the Audit Report 1974-75. Similar mistakes continue to be noticed in audit.

(a) In the cases of three individuals, the Department allowed the initial exemption in the assessment years 1972-73 to 1974-75, resulting in total short levy of wealth-tax of Rs. 6,000.

The Department of Revenue and Banking have accepted the mistakes in all the three cases and stated that additional demand of Rs. 6,000 has been raised, out of which a sum of Rs. 3,000 in respect two cases has been collected.

(b) In the wealth-tax assessments of a Hindu undivided family for the assessment years 1970-71 and 1971-72, exemption of Rs. 2 lakhs was given twice, once in the regular assessments completed in February, 1973 and again in revisions made in September, 1974 to give effect to the orders of the Commissioner. In the case of the same assessee, the net wealth for the assessment year 1973-74 was determined as Rs. 3,83,044 in November, 1973 but tax was levied on Rs. 1,83,044 after incorrectly allowing initial exemption of Rs. 2 lakhs from the net wealth. The under-assessment of the net wealth of the assessee by Rs. 6 lakhs in these three assessment years resulted in short levy of tax of Rs. 3,925.

The Department of Revenue and Banking have accepted the mistakes.

(c) In four other cases in three Commissioners' charges, inadmissible initial exemption aggregating Rs. 10 lakhs was allowed in the assessment years 1972-73 and 1973-74. The consequent undercharge of wealth-tax was Rs. 10,928.

The mistakes have been accepted by the Department of Revenue and Banking in all the four cases. Additional tax of Rs. 10,928 is stated to have been collected.

(iii) Under the provisions of the Wealth-tax Act, 1957, in the case of a trust where the shares of the persons, on whose behalf or for whose benefit the assets are held, are indeterminate or unknown, wealth-tax is to be levied at a flat rate of $1\frac{1}{2}$ per cent or at the rates applicable in the case of an individual, whichever is higher.

In the case of two such family trusts assessed in different Commissioners' charges, tax was incorrectly charged at the rates applicable to individuals instead of at the flat rate of $1\frac{1}{2}$ per cent which was higher. This resulted in a total short levy of wealth-tax of Rs. 9,009 in the assessment years 1971-72 to 1974-75 (including tax effect of erroneous allowance of exemption of Rs. 1 lakh in the assessment year 1971-72 in one case).

The Department of Revenue and Banking have accepted the mistakes in both the cases. Additional tax of Rs. 9,009 is stated to have been collected.

95. *Mistakes in calculation*

(i) In paragraph 34(vi) of this Report, mention is made of the comments of the Public Accounts Committee upon the continuance of a very common mistake involving the dropping of one lakh of rupees from a substantial amount, resulting in under-assessment of income-tax in big income cases. Similar mistakes were also noticed in the wealth-tax assessments.

(a) The net wealth of an assessee for the assessment year 1968-69 was determined as Rs. 24,05,739 instead of Rs. 25,05,739. This led to under-assessment of wealth by Rs. 1 lakh. Besides, in determining the tax payable, the Department applied a rate of 2 per cent instead of the correct rate of 2½ per cent on the net wealth in excess of Rs. 20 lakhs. These mistakes together resulted in an undercharge of wealth-tax of Rs. 4,419 in the assessment year 1968-69.

Further, while revising the assessment for the assessment year 1959-60 in August, 1973 to give effect to an appellate order, the net wealth was recomputed by starting with the figure of Rs. 23,18,144, being the total value of shares, instead of with the figure of the net wealth of Rs. 26,43,326 as originally assessed. As a result, wealth of Rs. 3,25,182 escaped assessment. In addition, wealth-tax liability of Rs. 10,505 was allowed as deduction in such recomputation without reducing the liability by Rs. 4,361 already allowed as deduction in the original assessment. These mistakes in the reassessment for the assessment year 1959-60 led to under-assessment of wealth by Rs. 3,29,543 and of wealth-tax by Rs. 4,873. The total short levy of tax was thus Rs. 9,292.

The Department of Revenue and Banking have accepted the mistakes.

(b) In two other cases in different Commissioners' charges, mistakes of dropping an amount of Rs. 1 lakh in each case along with non-allowance of wealth-tax liability of Rs. 24,680 in one case resulted in undercharge of wealth-tax of Rs. 4,374.

The Department of Revenue and Banking have accepted the mistakes in both the cases. Additional demand of Rs. 2,373 is stated to have been raised in one case.

(ii) In thirteen other cases in ten Commissioners' charges, under-assessment of wealth-tax of Rs. 46,100, caused by arithmetical mistakes in the assessments for various assessment years from 1968-69 to 1974-75, was noticed in audit.

The Department of Revenue and Banking have accepted the mistakes in twelve cases. Mistakes are stated to have been rectified in these cases creating an additional demand of Rs. 41,743 out of which an amount of Rs. 29,071 has been collected in nine cases. In the remaining one case, the Department have stated (February, 1977) that the objection is under consideration.

96. *Non-levy of additional wealth-tax*

Under the Wealth-tax Act, 1957, before its amendment by the Finance Act, 1976, where the net wealth of an individual or Hindu undivided family included buildings or lands (other than business premises used throughout the previous year for the purpose of his or its business or profession) or any rights therein, situated in an urban area, additional wealth-tax was leviable on the value of such urban assets.

In the case of an individual, the assessing officer omitted to levy additional wealth-tax on such urban immovable property for the assessment years 1970-71 to 1973-74. This together with a mistake in calculation of wealth-tax for the assessment year 1970-71 resulted in short levy of tax of Rs. 51,384 for the four assessment years.

The Department of Revenue and Banking have accepted the objection.

97. *Non-levy or incorrect levy of penalty and non-levy of interest*

The Wealth-tax Act, 1957 provides for levy of penalty, *inter alia*, if an assessee has without reasonable cause, failed to furnish the wealth-tax return within the prescribed time or concealed assets or facts relating thereto.

(i) An assessee filed his wealth-tax returns for the assessment years 1966-67 and 1967-68 (due on 30th June, 1966 and 30th June, 1967) on 31st December, 1970 and for the assessment years 1968-69 and 1969-70 (due on 31st August, 1968 and 30th June, 1969) on 15th June, 1971. A minimum penalty of Rs. 2,62,413 was leviable for the delayed filing of returns. The Wealth-tax Officer, however, computed the penalty leviable as Rs. 69,171. The mistake occurred as the penalty was calculated on the amount of assessed net wealth in excess of Rs. 4,00,000, whereas it should have been calculated on the net wealth in excess of Rs. 2,00,000, *i.e.*, the initial exemption. This resulted in short levy of penalty of Rs. 1,93,242.

The Department of Revenue and Banking have accepted the mistake. They have also stated that penalty is to be re-calculated as the original assessments have been set aside by the Appellate Tribunal.

(ii) In their executive instructions issued in July, 1969, the Central Board of Direct Taxes 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. Instances of failure in this regard were pointed out in para 57 of the Audit Report 1972-73, para 59 of the Audit Report 1973-74 and para 75(i) of the Audit Report 1974-75. The default, however, persists.

(a) According to the Wealth-tax Act, where the net wealth returned by an assessee is less than 75 per cent of the assessed wealth or if the value of any asset returned is less than 75 per cent of the value determined in the assessment, the assessee shall, unless he proves that the failure to return the correct value did not arise from any fraud or gross or wilful neglect on his part, be deemed to have furnished inaccurate particulars of his wealth and be subject to a penalty which shall not be less than the value

of assets in respect of which inaccurate particulars have been furnished. In five cases, the value of gold and silver returned by the assessees for the assessment year 1973-74 or 1974-75 was much below 75 per cent of the value determined in assessment. This attracted the levy of a minimum penalty of Rs. 1,33,674. No penal proceedings were, however, initiated nor were there any reasons on record for not invoking the penalty provisions.

The Department of Revenue and Banking have accepted the procedural lapse on the part of the Wealthtax-Officer in not recording the reasons for non-issue of notices for levy of penalty.

(b) Under the Wealth-tax Act, 1957, where an assessee has filed a return of his wealth and tax payable on the basis of that return exceeds five hundred rupees, he is required to pay the tax due within thirty days of furnishing the return, unless a provisional or a regular assessment had been completed in the meantime. If the assessee fails to pay the tax or any part thereof within the specified period, he is liable to pay penalty subject to a maximum of fifty per cent of the amount of such tax remaining unpaid.

Six assessees furnished their returns of wealth for different assessment years from 1971-72 to 1974-75 and tax payable by each of them on the basis of their returned wealth for the respective assessment years exceeded Rs. 500. As none of the assessees paid any tax within the prescribed period, they became liable to penalty under the provisions of the Act. The Department, however, neither levied any penalty in any case nor recorded any reasons for the non-levy. A maximum penalty amounting to Rs. 15,131 could have been levied in respect of the six assessees.

The Department of Revenue and Banking have accepted the objection in respect of failure on the part of the Wealth-tax Officer to record a note giving reasons for non-levy of penalty.

(c) In the case of eleven other assessees in three Commissioners' charges, similar omission to levy penalty or to record reasons for non-levy was noticed in audit. The maximum penalty leviable in these cases for various assessment years from 1968-69 to 1974-75 was Rs. 30,327.

The Department of Revenue and Banking have accepted the objection in all the cases.

(iii) During the course of income-tax assessment proceedings in the case of an assessee, the Wealth-tax Officer discovered, in November, 1969, that the assessee was in possession of net wealth in excess of the prescribed limit for charge to wealth-tax and issued notices to the assessee calling upon him to submit wealth-tax returns for the assessment years 1960-61 and 1961-62. Returns of wealth for the assessment years 1962-63 to 1969-70 were also then due, but notices calling for the returns for these years were not issued.

In July, 1970, the Commissioner received an application from the assessee stating that, as he had not filed wealth-tax returns for the years 1962-63 to 1969-70, he was liable to penalty and, therefore, it might be waived in advance. The Commissioner thereupon directed the Wealth-tax Officer in December, 1970 to issue notices to the assessee appropriate to cases of escapement of wealth. However, no action to issue notices for these assessment years was taken by the Wealth-tax Officer. The assessee actually filed these returns in February, 1972. The Wealth-tax Officer levied penalty of Rs. 84,843 for the assessment years 1964-65 to 1969-70 (no penalty was levied for the assessment years 1962-63 and 1963-64 as net wealth was below the prescribed limit) on 19th March, 1975 for belated submission of returns. He simultaneously submitted his recommendations to the Commissioner for waiver of penalty under the provisions for voluntary disclosure of wealth and the penalty of Rs. 84,843 was reduced by the Commissioner in June, 1976 to Rs. 2,540, which was equal

to the gross wealth-tax leviable for all these eight years. As the returns for the years 1962-63 to 1969-70 were filed in consequence of original notices issued for the years 1960-61 and 1961-62, the returns for these eight years could not be treated as having been filed voluntarily.

The Department of Revenue and Banking have stated that since no notice was issued to the assessee for filing the wealth-tax returns under audit objection, the disclosure made by the assessee in July, 1970 was voluntary.

(iv) The Wealth-tax Act, 1957, as amended with effect from 1st April, 1971, provides that the order imposing a penalty should be passed within two years from the end of the financial year in which the proceedings in the course of which action for imposition of penalty has been initiated, are completed.

Three individual assessees submitted their wealth-tax returns for the assessment years 1965-66 to 1968-69 long after the due dates specified in the Act. The minimum penalty leviable in these cases amounted to Rs. 1,42,876 in the aggregate. Though, in the course of making assessments, the Department initiated penalty proceedings for delayed submission of returns, no orders imposing penalty were passed within the period of limitation (expiring on 31st March, 1972 in one case and on 31st March, 1973 in the other two cases). The omission resulted in avoidable loss of revenue of a minimum of Rs. 1,42,876.

The Department of Revenue and Banking have accepted the objection in principle.

(v) A Hindu undivided family was required, by notice served on 4th May, 1971 issued under Section 17 of the Wealth-tax Act, to furnish wealth-tax returns within 35 days (*i.e.* before 10th June, 1971) for the assessment years 1964-65 to 1970-71. The returns which the assessee should have filed before the due date of 30th June of each of these assessment years were actually filed on 15th June, 1971. The assessee was liable to a total minimum penalty

of Rs. 44,809 for all these seven assessment years for failure to file returns voluntarily on or before the prescribed dates. Instead of levying penalty for belated submission of returns or recording reasons for non-levy of penalty, the Wealth-tax Officer charged an interest of Rs. 396 for delay in submission of returns, for which there is no provision in the Wealth-tax Act.

On the omission being pointed out by Audit in December, 1972, the Department issued a notice on 16th October, 1974 for initiating penalty proceedings for the belated submission of returns, but the proceedings were later on not concluded.

The Department of Revenue and Banking have accepted the non-levy of penalty in principle and also incorrect levy of interest.

(vi) The Wealth-tax Act provides that, if an assessee fails to pay any amount of wealth-tax within thirty-five days of the service of the relevant notice of demand, he is liable to pay simple interest at 12 per cent per annum for the period of default.

Failure to enforce this provision was noticed in the case of three assessees, in the same Commissioner's charge, from whom a total amount of Rs. 7,122 due towards penal interest was not charged for the belated payment of demands raised for various assessment years falling between 1968-69 and 1972-73.

The omission has been accepted by the Department of Revenue and Banking in all the three cases. Additional tax of Rs. 5,132 in respect of two cases is stated to have been collected.

98. *Avoidable payment of interest by Government*

The Wealth-tax Act, 1957, provides for payment of interest by the Central Government to an assessee where refund of tax due, in consequence of an appellate or any other order passed under the Act, is not paid within six months.

(i) In one case, the Appellate Assitstant Commissioner passed orders on 26th November, 1968 allowing deduction on account

of income-tax and wealth-tax liablities of Rs. 1,92,267 and Rs. 54,946 for the assessment years 1966-67 and 1967-68. It was seen in audit in November, 1975 that no action to give effect to the orders had been taken. Tax relief admissible to the assessee being Rs. 4,940, avoidable interest becoming payable was Rs. 3,430.

In the same case, as per the assessments made by the Wealth-tax Officer in January, 1973 for the assessment years 1968-69 to 1970-71, the assessee was entitled to a refund of Rs. 14,300 because of excess tax paid on self-assessment. Till the date of audit in November, 1975, refund had not been made to the assessee. The omission entailed further avoidable payment of interest of Rs. 4,000.

The total liability for avoidable interest thus incurred by the Department was Rs. 7,430.

The Department of Revenue and Banking have accepted the objection.

(ii) Consequent upon the revision of assessment for the assessment year 1958-59 on 28th April, 1967 in the case of a company, reducing its assessed net wealth by Rs. 12,80,000 under orders of the Commissioner of Wealth-tax, a refund of tax of Rs. 6,173 became due to the company. The Department granted the refund only on 30th September, 1974, *i.e.*, after a lapse of 89 months from the date of the revised assessment order. Due to the delay, Government had to make the assessee company an avoidable payment of interest of Rs. 4,305.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated (February, 1977) that the objection is under examination.

99. *Incorrect status adopted in assessments*

(i) Under the provisions of the Schedule to the Wealth-tax Act, 19 57, wealth-tax payable by an individual, who is not a citizen of India and who is a non-resident, in respect of any assess-

ment year, computed in accordance with the rates specified in the Schedule, shall be reduced by an amount equal to 50 per cent thereof.

(a) In the case of an assessee, a foreign citizen, who had declared his status as 'resident but not ordinarily resident' for the assessment years 1970-71 to 1972-73, assessments were finalised by treating him as 'non-resident' and allowing him rebate of 50 per cent in tax payable. The adoption of incorrect status resulted in short levy of tax of Rs. 46,518 for the assessment years 1970-71 to 1972-73.

The Department of Revenue and Banking have accepted the mistake and stated that additional tax of Rs. 46,518 has been collected.

(b) In another case, an assessee was treated as a non-resident and non-citizen and assessments were made for the assessment years 1972-73 and 1973-74, allowing 50 per cent rebate in the wealth-tax payable by him, though he was actually a 'resident' and citizen of India for the assessment year 1972-73 and 'non-resident' and citizen of India for the assessment year 1973-74. The adoption of incorrect status resulted in allowance of inadmissible rebate in wealth-tax of Rs. 7,231 for the two years.

The Department of Revenue and Banking have accepted the objection and stated that additional tax of Rs. 7,231 has been collected.

(ii) An Indian citizen, who held a share in an estate (*Paigah*), migrated to Pakistan in 1948, leaving his wife and son in India. He was declared as an evacuee in October, 1949. On his being declared an evacuee, he lost all his rights and interests in the *Paigah* and the *Paigah* was under the supervision of the Court of Wards appointed by the erstwhile Government of Hyderabad from August, 1950. The Custodian of Evacuee Property, who had been authorised by the Government of India to deal with the divested interest of the evacuee according to law, received, in May, 1971, immovable assets valuing Rs. 6,22,411 from the

Officer-in-charge of the *Paigah* and handed over the same to the wife and son of the evacuee. The assets, which thus devolved on the wife and son of the migrant from the date of his being declared as an evacuee, were assessable in the hands of these beneficiaries or in the hands of the Officer-in-charge of the *Paigah* as their agent, in the status of a 'resident' individual. It was, however, noticed in audit that wealth-tax assessments for the assessment years 1958-59 to 1971-72 were made in the hands of the Officer-in-charge as agent of the evacuee in the status of a 'non-resident' and non-citizen and the rebate of 50 per cent in the tax payable was allowed. The adoption of incorrect status in the assessments resulted in short levy of tax of Rs. 33,983 for all the assessment years.

The paragraph was sent to the Department of Revenue and Banking in August, 1976. They have stated (January, 1977) that the objection is under consideration.

(iii) An individual belonging to the Dayabhaga School of Hindu Law owned various assets in his individual capacity after partition of the family assets on 15th March, 1963. The assessments for the years 1965-66 to 1971-72, were, however, erroneously completed in the status of 'Hindu undivided family'. Other mistakes noticed in these assessments were, (a) the value of assets owned by him after partition and assessed at Rs. 2,87,620 for the assessment year 1965-66 was omitted to be included in the net wealth for the assessment years 1963-64 and 1964-65; (b) the value of one house (Rs. 45,300) was not included in all the assessment years; (c) another house property was undervalued by Rs. 22,230 and (d) a deposit of Rs. 1,000 was not included in the assessment year 1967-68. The combined effect of these mistakes was escapement of wealth of Rs. 10,06,170 in the assessment years 1963-64 to 1966-67 and 1968-69 to 1971-72 and short levy of tax of Rs. 8,415.

The Department of Revenue and Banking have accepted the mistakes and stated that additional demand of Rs. 5,934 has been

raised for the assessment years 1965-66 to 1971-72, rectification of assessments for the years 1963-64 and 1964-65 having become time-barred.

Other topics of interest

100. *Incorrect valuation of shares in investment companies*

The Central Board of Direct Taxes, in their circular dated the 31st October, 1967, prescribed a special method of valuation of unquoted equity shares of investment companies. According to this method, the average of (i) the break-up value of the shares based on the book value of the assets and liabilities disclosed in the balance sheet of the company and (ii) the capitalised value arrived at by applying a yield rate of 9 per cent to the maintainable profits of the company should be taken as the fair market value of its shares.

Under the provisions of the Wealth-tax Act, 1957, the value of any asset, other than cash, shall be estimated to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date. Where, therefore, the balance sheet of an investment company does not reflect the true market value of its investments but the market value of the investments is available or can be ascertained, the computation of break-up value on the basis of book value of the assets disclosed in the balance sheet, or where the break-up value itself is more than the average value computed under the special method, the adoption of average value, under the executive instructions of 31st October, 1967, would be detrimental to revenue.

(*i*) In the wealth-tax assessments of an individual done in November, 1973 and January, 1975 for the assessment years 1965-66 to 1969-70, the value of 4,040 unquoted equity shares held by him in an investment company was computed under

the special method mentioned above at Rs. 161.90, Rs, 163.08, Rs. 189.63, Rs. 126.80 and Rs. 126.17 per share respectively. The relevant balance sheets of the investment company did not, however, reflect the true value of its assets. The value of bonus shares held by it during these years (except for the first two years) was not disclosed and the unquoted equity shares held by it in two companies were considerably undervalued as revealed by the higher market values of those shares worked out by the assessee himself in his wealth-tax returns. That the market value of the shares of the investment company was higher than the value as assessed was also evident from the fact that the assessee derived a capital gain of Rs. 5,51,177 by selling all the 4,040 shares in the assessment year 1970-71 at the rate of Rs. 236.43 per share. The incorrect valuation of shares led to under-assessment of wealth ranging between Rs. 2,62,640 and Rs. 8,06,950 in each of the five assessment years, with consequent total tax undercharge of Rs. 71,115.

The paragraph was sent to the Department of Revenue and Banking in September, 1976; they have stated (January, 1977) that the objection is under examination.

(ii) In the wealth-tax assessment of the estate of a deceased person for the assessment year 1973-74, the valuation of unquoted equity shares in three investment companies was done on the basis of the average rate prescribed in the executive instructions of 31st October, 1967, even when the break-up value of the shares itself was higher than the average value. The incorrect valuation so done resulted in under-assessment of wealth by Rs. 1,85,482 and of wealth-tax by Rs. 3,636.

The Department of Revenue and Banking have stated that the shares were valued in accordance with the Board's instructions of October, 1967.

101. *Exemption in respect of buildings used for non-residential purposes*

The Wealth-tax Act, 1957, as it stood prior to its amendment by the Finance (No. 2) Act, 1971 provided that the value of a house or a part of a house belonging to the assessee and exclusively used by him for residential purposes was not includible in his net wealth upto a limit of Rs. 1,00,000. The legislative intent of the amendment made by the Finance (No. 2) Act, 1971 by deleting the words " and exclusively used by him for residential purposes" was to remove the restriction of self-occupation for residential purposes. Consequently, with effect from the assessment year 1972-73, the exemption is admissible even in respect of a house or part of a house let out for residential purposes.

However, the Central Board of Direct Taxes gave wider meanings to the term 'house' and issued executive instructions in July, 1973 to the effect that such exemption would be available also in respect of buildings used for commercial purposes. Cases were pointed out in paragraph 71(v) of the Audit Report 1974-75, where incorrect allowance of exemption in respect of buildings used as business and commercial premises, shops, cinemas, factories, etc., led to non-levy of wealth-tax of Rs.17,542. Similar non-levy was noticed in as many as thirty-nine cases in nine Commissioners' charges, where exemption in respect of buildings used for non-residential purposes was allowed in the assessment years 1972-73 to 1974-75, with under-assessment of wealth-tax of Rs. 1,20,279.

102. *Over-assessments*

(i) Where the net wealth of an assessee, who is a citizen of India, includes any assets located outside India, wealth-tax payable on such foreign wealth is to be reduced by an amount calculated at one-half of the average rate of wealth-tax.

In the case of an individual, who was a citizen of India, the rebate on foreign wealth was omitted to be given for the assessment years 1964-65 to 1973-74. This resulted in an excess levy of wealth-tax of Rs. 18,497.

The Department of Revenue and Banking have accepted the omission.

(ii) Although, under the provisions of the Wealth-tax Act, 1957, as applicable from the assessment year 1971-72, an individual assessee was entitled to exemption upto a maximum amount of Rs. 1.50 lakhs in respect of deposits held by him with banks on the valuation dates relevant to the assessment years 1971-72 to 1973-74, the same was not allowed by the Department in computing his net wealth for the said assessment years.

Further, the net wealth of the assessee for both the assessment years 1972-73 and 1973-74 was over-assessed by Rs. 24,000 due to inclusion of the value of a particular asset twice in the computation made by the Department. Besides, due to an arithmetical mistake, the net wealth of the assessee for the assessment year 1972-73 was under-assessed by Rs. 808.

The errors resulted in cumulative over-assessment of wealth to the extent of Rs. 1,50,000, Rs. 1,73,192 and Rs. 1,74,000 respectively for the assessment years 1971-72 to 1973-74, with an aggregate tax overcharge of Rs. 9,753.

The Department of Revenue and Banking have accepted the mistakes and stated that the tax overcharged has been refunded.

(*iii*) Under the provisions of the Wealth-tax Act, 1957, penalty for belated filing of return is leviable at one-half per cent on the net wealth calculated in the prescribed manner for each month of delay.

In the case of an assessee, penalty for three months' delay in submission of the return for the assessment year 1969-70 was levied at 2 per cent instead of at one-half per cent, resulting in an excess charge of penalty of Rs. 9,608.

The Department of Revenue and Banking have accepted the objection.

(iv) In another case, where the Appellate Assistant Commissioner passed orders on 16th July, 1968, allowing a reduction in the value of certain shares from the net wealth of Rs. 19,46,454, assessed to tax on 26th February, 1964 for the assessment year 1963-64 (net wealth returned was Rs. 13,78,855) action to give effect to the appellate orders was not taken by the Department. It was not taken even at the time of a subsequent revision of the said assessment on 29th March, 1974 when the taxable net wealth was raised to Rs. 58,03,481.

The omission, when pointed out by Audit in March, 1975, was rectified in December, 1975 allowing a relief of Rs.1, 77,880 in the net wealth and of Rs. 4,447 in wealth-tax.

The Department of Revenue and Banking have accepted the omission.

(v) In yet another case of a Hindu undivided family for the assessment years 1970-71 and 1971-72, wealth-tax on net wealth of Rs. 3,36,733 and Rs, 3,45,545 was calculated as Rs. 3,267 and Rs. 3,455 respectively, as against Rs. 696 and Rs. 1,455 correctly leviable. The mistake in calculation led to an excess levy of wealth-tax of Rs. 2,571 and Rs. 2,000 for these assessment years.

The mistake has been accepted by the Department of Revenue and Banking and the excess tax is stated to have been refunded.

C—ESTATE DUTY

103. 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.

104. During the test audit of assessments made under the Estate Duty Act, 1953, conducted during the period 1st April, 1975 to 31st March, 1976, the following types of mistakes resulting in under-assessment of duty were noticed:—

(i) Estate escaping assessment.

(ii) Incorrect valuation of certain assets.

(iii) Other mistakes in computing the principal value of the estate.

(iv) Irregular/excessive allowances, exemptions and reliefs.

(v) Mistakes in giving effect to appellate orders.

(vi) Short levy of interest.

A few instances of these mistakes are given in the following paragraphs.

105. *Assessments of an ex-ruler*

105.01. The ex-ruler of a former princely State died on 24th February, 1967. The accountable person filed a return on 9th September, 1967 declaring the principal value

of the estate of the deceased at Rs. 1,73,14,235. A provisional demand, based on this return, for payment of estate duty of Rs. 1,36,89,099 was raised on 12th September, 1967. The Central Board of Direct Taxes appointed the Income-tax Officer who was dealing with income-tax and wealth-tax assessments of the deceased as Additional Assistant Controller of Estate Duty exclusively for this estate duty assessment from the initial stages itself. In the assessment completed on 25th January, 1973, the value of the estate was assessed at Rs. 3,68,77,715. Out of the net addition of Rs. 1,95,63,480 made, an addition of Rs. 1,13,84,517 was not disputed by the accountable person. The final demand of estate duty was Rs. 3,03,18,056 as against the provisional demand of Rs. 1,36,89,099.

105.02. Though the audit was programmed first in May, 1974, one year and four months after finalisation of the assessment, and again in September, 1974 and in January, 1975, the records were not made available on the ground that they were with the Appellate Controller. After protracted correspondence, the Department agreed to obtain the records from the Appellate Controller and to make them available for audit scrutiny. The audit was eventually taken up on 17th February, 1975 and completed on 29th March, 1975.

105.03. According to the instructions issued by the Board for the conduct of internal audit of estate duty assessments, this case was required to be checked by Internal Audit in February, 1973 itself. Internal audit was, however, arranged only after the final programme of statutory audit was communicated to the Department and the Internal Audit party consisting of one Inspector and two Upper Division Clerks completed the audit just before the commencement of statutory audit. Omissions pointed out by the Internal Audit party in its note dated 14th February, 1975, involving short demand of

Rs. 71,16,571 and excess demand of Rs. 2,48,167, had not been attended to by the Assistant Controller of Estate Duty till January, 1976.

105.04. *Escapement of settled property passing on death*

The deceased created a number of trusts for the benefit of his family members, namely, sons, grandsons, wife, daughter and granddaughters. The settled properties included jewellery, ornaments, securities and house properties. In all the major trusts the deceased settlor had constituted himself as a trustee for administering the trust property and their funds and retained full control over the disposition and safe custody of properties settled on trusts. In fact, the securities and properties were held by the settlor in his own name during his life-time. There was also no specific provision in the trust deeds under which the settlor would have been divested of his power of disposition and control over settled properties, if settlor's successor-in-title had become the trustee during the settlor's life-time. The settlor's consent was necessary for disposal of the trust property or for altering its destination during his life-time. Even after the deceased had relinquished his right to receive remuneration from the trust income during his life-time, through a release deed executed in 1956, control over the trust properties continued to vest in him. The properties settled on trusts, which was thus subject to his power of disposition, passed on his death under the provisions of the Estate Duty Act for the purpose of levy of estate duty. The value of these properties was, however, omitted to be included in the principal value of the estate. Value of the estate thus escaping assessment was Rs.3,37,40,540 resulting in short levy of duty of Rs. 2,86,79,459.

105.05. *Escapement of trust funds*

The deceased held, since 1948, one million pounds in a London bank, which was frozen by that bank as the legal title thereto was in dispute. The Central Board of Direct Taxes informed

the Commissioner of Income-tax in April, 1972, that, according to the Ministry of Home Affairs, the funds really belonged to the State Government and not to the deceased, and the deceased had also assigned the funds to the Government of India by a deed of assignment executed by him in 1965. The Board, therefore, advised the Commissioner that "this item would not come up for consideration in the estate duty assessment". Accordingly, the amount was not included in the estate.

However, while considering the assessability of the funds to wealth-tax, the Board found that, in 1963, the deceased had created a trust out of these funds (which had by then accumulated to £1,554, 606), and in consequence of this earlier trust deed, the assignment made in 1965 was of no use. The trust deed contained a specific provision whereby the deceased, as settlor, retained power of revocation, either wholly or partly, of the trust funds or any part thereof, including any accretions thereto, and this power of revocation had not been relinquished by him during his life-time. The funds were, accordingly, includible in his estate. Their exclusion resulted in an under-assessment of the estate to the extent of Rs. 3,10,92,120 and short levy of duty of Rs. 2,64,28,302.

105.06. *Incorrect valuation of shares and interest of the deceased in controlled companies*

The Estate Duty Act provides that, where the deceased has transferred any property to a controlled company and any benefits have accrued to him from the company during the three years ending with his death, proportionate value of the assets of the company, computed in the prescribed manner, shall be deemed as property passing on his death. The Act defines a controlled company as one which is under the control of not more than five persons and is neither a subsidiary company nor a company in which the public are substantially interested.

The deceased held 3 lakh equity shares of Rs. 10 each in one private company (Rs. 5 paid-up per share) and 4,997 equity shares of Rs. 100 each (fully paid - up) in another private compnay. After taking into consideration the objections/replies of the companies and the representation of the accountable person, and after calling for statements of accounts from these two companies, the Department decided to treat the two companies as controlled companies and to include appropriate proportion of the assets of these two companies in the estate of the deceased. But finally, while completing the estate duty assessment, the Department concluded that, when Rule 9 of the Estate Duty (Controlled Companies) Rules, 1953, was applied, it was found that there was no excess which could be charged in respect of the two companies. Rule 9 was, however, not relevant as it provides only for determination of net income of the companies. The relevant rule was Rule 11 for the application of which the Department did not gather necessary details, namely, the exact periods during which the various investments of the deceased in each of two companies were held and the aggregate of all the benefits derived from these investments from the earliest periods up to the year of his death. The decision to drop these proceedings without collecting necessary details was not, therefore, in order. The value of estate escaping assessment on this account is estimated at Rs. 36,55,409, the short levy of duty working out to Rs. 31,07,098.

Further, the value of the shares in the first company was taken as 'Nil', accepting the plea of the accountable person that the value of the net assets available for payment in respect of the company was only Rs. 43,69,456, as against the preference share-capital of Rs. 50 lakhs, which would not leave any surplus for payment to the equity shareholders. The value of the shares of the second company was taken at their face value of Rs. 4,99,700, on the ground that "the net value of

the assets of the company is just sufficient to pay the equity shareholders to the extent of the face value of shares subscribed by them". On appeal by the accountable person, the Appellate Controller held that the value should have been computed in accordance with the Weath-tax Rules, which would result in reduction in value by Rs. 64,941.

Unlike the method of valuation prescribed under the Wealth-tax Rules, the special rules prescribed for valuation of shares in controlled companies envisage that no allowance should be made in respect of shares in or debentures of the company. The value of shares, calculated in the manner prescribed for controlled companies, correctly worked out to Rs. 9,79,412 and Rs. 16,86,600 as against Rs. 4,99,700 and 'Nil' respectively adopted by the Department.

It is felt that if these facts were brought to the notice of the appellate authority, there would not have been under-assessment of the principal value of the estate by Rs. 21,66,312 and short levy of duty by Rs. 18,41,365.

105.07. *Undervaluation of personal jewellery*

The deceased had declared in his wealth-tax return for the assessment year 1957-58, value of his personal jewellery at Rs. 43.50 lakhs on the basis of certificates furnished by four approved valuers. The Wealth-tax Officer rejected this value and determined the value at Rs. 87 lakhs, for the assessment year 1957-58, based on the value of the jewellery reported by the deceased himself to the Government of India at the time of merger of the State with the Indian Union in 1949. The assessment was contested in appeal before the Tribunal who, before giving their final decision, directed that the jewellery should be valued by valuers nominated both by the Department and

by the assessee. Accordingly, in March, 1969, the departmental valuer and the assessee's valuer fixed the value at Rs. 52.10 lakhs and Rs. 49 lakhs respectively. Since what was required for purposes of wealth-tax assessment was the value as on the relevant valuation date (31st March, 1957), the valuers were directed by the Tribunal to report the value as on that date. The value was reported at Rs. 31,21,360 by the departmental valuer and at Rs. 24,95,682 by the assessee's valuers. But before the Tribunal gave their final decision, the Department and the representative of the accountable person agreed to adopt the value of personal jewellery at Rs. 52.10 lakhs, which was adopted in the wealth-tax assessments from 1957-58 to 1963-64.

The Estate Duty Act provides that the principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death. Instead of determining the value of personal jewellery of the deceased under these provisions, the Depatment adopted the value of Rs. 52.10 lakhs in the estate duty assessment as well. Based on the value of Rs. 43.50 lakhs as on 31st March, 1957, certified by four approved valuers and returned by the deceased for wealth-tax assessments, and adopting the minimum rate of 10 per cent, being the annual appreciation in the value of jewellery, as determined by the assessee's valuers, the value of personal jewellery as on the date of death of the deceased worked out to Rs. 112 lakhs. There was thus an undervaluation of personal jewellery by Rs. 60 lakhs and short levy of duty of Rs. 51 lakhs.

105.08. *Omission to include the value of gold in the possession of the deceased*

During the course of the wealth-tax assessment for the assessment year 1961-62, the deceased had filed a copy of the declaration

made by him in 1963 before the Government of India under the Defence of India (Amendment) Rules, 1963, which indicated the quantity of gold in his possession as 8,032 grams. Value of gold so declared was included in the net wealth of the deceased for the assessment years 1958-59 to 1962-63 (Rs.81,200 for the assessment years 1958-59 and 1959-60, Rs. 90,390 for the assessment year 1960-61 and Rs. 97,980 for the assessment years 1961-62 and 1962-63). No addition was made for the assessment years 1957-58 and 1963-64. Even the addition made for the six years was deleted on second appeal preferred by the assessee, as the Appellate Tribunal accepted the assessee's contention that the gold in question stood included in the value of personal jewellery. It was, however, noticed that the description of gold given in the declaration did not tally with the description given for the personal jewellery by the approved valuers. This was not brought to the notice of the Appellate Tribunal by the Department. Further, it was ascertained by Audit that the quanity of gold actually declared was 9,744 grams. Since this gold was not claimed by the accountable person as having been sold before the death of the deceased and could not also have formed part of the personal jewellery of the assessee (in view of the difference in description mentioned above), its value was includible in the principal value of the estate of the deceased. The omission to include it resulted in under-assessment of the estate by about Rs. 1,00,000 and short levy of duty of about Rs. 85,000. Failure on the part of the accountable person to return the value of this gold in the account filed would also attract penalty for concealment.

105.09. *Incorrect valuation of gold bonds*

The total value of securities and bonds was returned by the accountable person at Rs. 42,17,893 which included the value of Gold Bonds, 1980 amounting to Rs. 31,75,483. This was accepted by the Department and, after allowing Rs. 4,42,950

as exemption admissible on value of gold bonds upto 50 kilograms, an amount of Rs. 27,32,533 was included in the estate as the value of gold bonds. According to the Ministry of Home Affairs, the deceased had tendered in January, 1966, gold coins weighing 4,11,613.800 grams for investment in National Defence Gold Bonds, 1980. Based on this quantity the value of gold bonds at the rate of Rs. 82.50 per 10 grams includible in the estate, after allowing the prescribed exemption, would work out to Rs. 29,83,313. There was thus an under-valuation to the extent of Rs. 2,50,780, resulting in short levy of duty of Rs. 2,13,163.

105.10. *Incorrect valuation of immovable properties*

(i) It was seen from the wealth-tax records of the decease . that he had spent a sum of Rs. 54,48,943 towards construction of additional structures during the years 1957-58 to 1966-67 on the properties stated to have been gifted by him. In addition, the deceased had incurred an expenditure of Rs. 16,25,000 during these years towards municipal taxes, electricity and water charges, maintenance of watch and ward personnel, etc.

Treating the expenditure incurred by the deceased as gifts, the Department invoked the provisions of Section 9 of the Estate Duty Act and included only the value of construction and service charges (Rs. 19,24,065) met by the deceased during the last two years before his death. Since the gift deed was registered only in 1969, after the death of the deceased, no effective gift could have taken place before his death. The entire cost of construction and other charges met by the deceased would, therefore, be includible in the estate of the deceased. Omission to include the full amount of the expenses incurred by the deceased resulted in under-assessment of the estate by Rs. 51,49,878 and short levy of duty of Rs. 43,77,396.

(ii) The *nazool* (non-agricultural) lands belonging to the deceased were valued for purposes of wealth-tax assessments for the assessment years 1958-59 to 1963-64 at Rs. 2,82,100 which was also confirmed in appeal. For purposes of estate duty however, the value of the lands was taken as Rs. 1,50,000 only, resulting in under-assessment of the estate by Rs. 1,32,100 and short levy of duty by Rs. 1,12,285.

(iii) The value of Rs. 1,01,840 adopted for one of the properties did not include cost of land. Adopting a rate of Rs. 8 per sq. yard uniformly adopted for similar lands, cost of land which escaped assessment worked out to Rs. 28,288. The resultant short levy of duty was Rs. 24,045.

(iv) According to the instructions issued by the Central Board of Direct Taxes in 1971, all cases relating to estate duty, where the value of any individual immovable property has been returned at less than Rs. 5 lakhs but where the Assistant Controller estimates the undervaluation to be at least 20 per cent with a monetary minimum of Rs. 50,000, should be referred to the departmental Valuation Cell and the values fixed by the Cell adopted for purposes of assessment. Four properties included in the estate of the deceased were, however, not so referred to the Valuation Cell although the undervaluation in these cases ranged from 26 to 250 per cent and was in excess of Rs. 50,000 in each case.

105.11. *Omissions to include investments*

(i) The deceased had invested in eleven Government securities but their value was not included in the principal value of the estate, accepting the plea of the accountable person that these securities were not held personally by the deceased but were held by him on behalf of others for safe custody. However, it was noticed that, in the income-tax assessment of the deceased for the assessment year 1967-68, income from five out of the eleven above-mentioned securities was included in the income of the deceased and the inclusion was upheld in appeal by the Appellate

Assistant Commissioner. The Internal Audit Party had pointed out the omission of the Department to include the value of some of these securities in the estate. Still there were six more securities valuing Rs. 2,09,300 which were not included in the estate, resulting in short levy of duty of Rs. 1,77,905.

(ii) The deceased had sold certain debentures of and shares in certain companies to a trust created by him for the benefit of his relatives and dependents for inadequate consideration. The inadequate consideration was determined as Rs. 2,50,000, whereas in the estate of the deceased, only a sum of Rs. 2 lakhs was included, thus resulting in under-assessment of the estate by Rs. 50,000 and short levy of duty of Rs. 42,500.

(iii) The Wealth-tax assessment order for the assessment year 1963-64 disclosed the investment of the deceased in a paper mill as Rs. 19,37,994 in shares and Rs. 50 lakhs as loan. The wealth-tax assessments for subsequent years had not yet been completed. However, in the wealth-tax returns for the assessment years 1965-66 and 1966-67, the assessee had not declared any value of shares in this company, but had declared investment as loan of Rs. 1 crore and Rs. 80 lakhs respectively. The investment was neither returned by the accountable person nor included by the Department in the estate duty assessment. Only an addition of Rs. 22,342 towards interest due from the mill was made. In the absence of details of repayment of loan and its disposal by the deceased before his death, it could not have been ensured that no portion of the loan had escaped assessment and that the addition of Rs. 22,342 made towards interest was correct.

(iv) In the course of the wealth-tax proceedings of the deceased in 1965 for the assessment year 1957-58, his representative had stated that the deceased had sold certain government securities and, after clearing his overdraft with the State Bank of India, deposited Rs. 1 crore with a company (name of the company was not disclosed). He had further stated that, according to

the agreement entered into with that company, the latter had to repay the deposit in monthly instalments of Rs. 10 lakhs each, commencing from January, 1966. Information as to whether the assessee had realised the deposit in whole or in part was not available in the assessment records. The portion of the deposit that remained with the company on the date of death was includible in the principal value of the estate of the deceased.

(v) In the income-tax assessments of the deceased for the assessment years 1966-67 and 1967-68, additions of Rs. 82,124 and Rs. 88,300 respectively had been made towards dividend income in respect of shares in three companies. The value of these shares was, however, not included in the estate of the deceased.

(vi) The principal value of the estate of the deceased, as finally determined, included a sum of Rs. 7,56,000, being the amount due from a Bombay theatre towards loan (Rs. 5,75,000) and interest (Rs. 1,81,000) as on the date of death. However, in the wealth-tax assessment of the deceased for the assessment year 1963-64, the amount of loan due to the deceased, as on the valuation date (31st March, 1963), had been shown as Rs. 15,50,000. The accountable person informed the Department in 1970 that the loan had been repaid to the extent of Rs. 8,62,000, out of which a sum of Rs. 5 lakhs had been credited in the Central Bank of India in the name of a trust created by the deceased. Still, the balance of loan should work out to more than Rs. 5.75 lakhs. It was also not known whether the sum of Rs. 5 lakhs had been transferred to the deceased's account from the trust's account. The correct amount due to the deceased from the theatre and the trust as on the date of death, together with accrued interest thereon, had to be ascertained and the under-assessment, if any, of the estate rectified.

105.12. *Deposits with State Government*

When the private estate of the deceased was taken over by the State Government in 1949, a sum of Rs. 40,41,119 became

due to him, from which sums of Rs. 4,61,458, Rs. 13,11,319 and Rs. 3,32,436 were set off respectively towards electricity and water charges due to the State Government, and towards other admitted liabilities of the deceased, thus leaving a sum of Rs. 19,35,906 as payable to the legal representative of the deceased. Out of this, a sum of Rs. 5 lakhs was allowed to be retained by the State Government for settling other pressing claims and the balance of Rs. 14,35,906 was adjusted to the credit of Central Government towards estate duty. The amount of Rs. 13,11,319, representing liability of the deceased for water charges, was kept in deposit account on 31st March, 1969, till the matter was settled by the representatives of the deceased with the State Public Works Department. As the entire amount was deducted as liability while computing the principal value of the estate of the deceased, the exact amount due towards water charges had to be ascertained and the balance, if any, out of Rs. 13,11,319 included in the estate.

105.13. Interest on certain short-term deposits with banks totalling Rs. 10 lakhs was taken as Rs. 752 in the estate duty assessment instead of the correct figure of Rs. 6,230, leading to an under-assessment of the estate by Rs. 5,480 and undercharge of duty by Rs. 4,658.

105.14. The paragraph was sent to the Department of Revenue and Banking in June, 1976. They have stated (January, 1977) that the matter is under consideration.

106. *Estate escaping assessment*

(i) Under the provisions of the Estate Duty Act, 1953, a disposition made to relatives is treated as a 'gift' and charged to duty, where the deceased donor had not been entirely excluded from the enjoyment of the gifted property. A unilateral declaration throwing self-acquired property of a coparcener into the joint family hotchpot amounts to a 'disposition' within the meanings of Sections 27(1) and 2(15) of the Estate Duty Act.

In the estate duty assessments of five deceased persons in three Commissioners' charges, it was noticed that, even though they had thrown their self-acquired properties into the joint family hotchpot, and thus made 'dispositions' in respect of them chargeable to duty, these were omitted to be so charged. The omission resulted in an aggregate short levy of estate duty of Rs. 2,00,540.

The Department of Revenue and Banking have accepted the objection in all the cases.

(ii) Refund of tax due to a deceased person is includible in the principal value of the estate. In one case, while computing the value of the estate of a deceased person, who died on 8th August, 1967, a gift-tax refund of Rs. 26,156 due to the deceased in respect of gift-tax paid by him before his death was omitted to be included, resulting in under-assessment of his estate by Rs. 26,516 and short levy of duty of Rs. 22,538.

Though the case was seen by Internal Audit, the mistake was not pointed out by them.

The Department of Revenue and Banking have accepted the omission.

(iii) While computing the principal value of the estate of a deceased person, finalised in December, 1971, the value of a plot measuring 4,600 sq. yards, in which the deceased had one-fourth share, was omitted to be considered. Omission to include the share of the deceased resulted in under-assessment of the principal value of the estate by Rs. 70,150 and short levy of duty of Rs. 17,500.

Though the case was seen by Internal Audit, the mistake was not noticed.

The Department of Revenue and Banking have accepted the objection and stated that an additional demand of Rs. 17,500 has been raised.

(a) In the estate duty assessment of a person who died in February, 1974, the value of eight urban immovable properties was adopted as Rs. 3,56,500, being the average of the values of Rs. 1,90,572 determined under the 'income-capitalisation' method and Rs. 5,21,153 under the 'land and building' method. The properties being located in urban areas where the land values were high and the procedure of averaging the values determined under the two methods not being an authorised one, the adoption of the average values instead of the values under the 'land and building' method resulted in under-assessment of the estate by Rs. 1,64,653 with consequent short levy of estate duty of Rs. 65,860.

The paragraph was sent to the Department of Revenue and Banking in September, 1976. They have stated (February, 1977) that the objection is under consideration.

(b) In the case of another person, who died in November, 1969, the value of two house properties was adopted as Rs. 1,20,000 and Rs. 40,000 on the basis of the average of the values of Rs. 1,52,270 and Rs. 64,272 determined under 'land and building' method and Rs. 77,476 and Rs. 25,200 computed under the 'income-capitalisation' method. Considering the location of the properties and the large extent of the urban lands forming part thereof, it would have been appropriate to adopt the values of Rs. 1,52,270 and Rs. 64,272 computed under 'land and building' method. The mistake resulted in under-assessment of Rs. 56,542 in the principal value of the estate, with consequent short levy of estate duty of Rs. 14,000 (approximately).

The paragraph was sent to the Department of Revenue and Banking in September, 1976. They have stated (February, 1977) that the objection is under consideration.

(ii) In the estate duty assessment of a person who died on 3rd May, 1969, certain lands were undervalued to the extent of Rs. 10,38,800 due to the following omissions:

(a) The value of 12 *cottahs* of land appurtenant to a house was worked out at Rs. 6232.50 per *cottah*, though similar lands owned by the deceased in respect of properties situated nearby were valued at Rs. 15,000 per *cottah*. The undervaluation amounted to Rs. 1,05,200.

(b) In respect of two other house properties, the land areas were adopted as 40 *cottahs* and 60 *cottahs* though, according to the details in the income-tax files of the legal heir of the deceased, the land areas were 50 *cottahs* and 65 *cottahs*, 8 *chataks* respectively. Value of 15 *cottahs*, 8 *chataks* (Rs. 2,32,500) thus escaped assessment.

(c) In respect of certain other properties, the total land area was adopted as 419 *cottahs*, 11 *chataks* on the basis of the reports of the departmental Valuation Officer/approved valuer, though title deeds available with the Department clearly indicated the actual extent of land area to be 490 *cottahs*, 2 *chataks*. The resultant undervaluation of land was Rs. 7,01,000.

As a result of the foregoing omissions, there was a total undercharge of duty of Rs. 8,82,895.

The paragraph was sent to the Department of Revenue and Banking in August, 1976. They have stated (January, 1977) that the objection is under consideration.

(iii) *Nazool* land (land meant for development for non-agricultural purposes) measuring 20.30 acres in an urban area, which passed on the death (on 20th October, 1961) of a deceased person was valued, in June, 1964, at Rs. 5,77,531 by the Subdivisional Officer of the District on a reference to him by the Estate Duty Officer. As the accountable person contended that the value was on the high side, the Estate Duty Officer again referred the case in September, 1965 to the District Collector for valuation. The District Collector confirmed in July, 1967, the earlier valuation stating also that the same represented

the market price. The Estate Duty Officer, however, while completing the assessment in November, 1974, adopted the value of the land at Rs. 3,24,800 as recommended by the Inspector of Estate Duty. Neither any details for arriving at the value of Rs. 3,24,800 nor any reasons for rejecting the value reported by the Revenue Officers were available on the records. Thus, the land was undervalued by Rs. 2,52,731, resulting in short levy of estate duty of Rs. 52,838.

The Department of Revenue and Banking have accepted the objection.

(iv) In the estate duty assessment, completed in March, 1975, of a deceased person, who died in September, 1971, a sum of Rs. 4,500 was added to the principal value of the estate as the difference between the market value of Rs. 79,500 and the declared consideration of Rs. 75,000 of 750 unquoted shares in a company, transferred by the deceased in March, 1971 to his five brothers. The break-up value of these 750 unquoted shares, computed even on the basis of the book value of assets shown in the balance sheet of the company as on 30th April, 1970, worked out to Rs. 1,60,500. The addition to be made was thus of Rs. 85,500 instead of Rs. 4,500. The incorrect valuation of shares resulted in under-computation of the value of the estate by Rs. 81,000 with a short levy of duty of Rs. 16,640.

The Department of Revenue and Banking have accepted the objection.

108. *Other mistakes in computing the principal value of the estate.*

(i) The estate of a deceased person, who expired on 24th March, 1973, included agricultural land measuring 17 *pacca bighas*, 10 *biswas*, as recorded in the relevant record of rights

maintained by the revenue authorities. While determining the value of the land, the Estate Duty Officer, however, incorrectly took the area as having been measured in *kacha bighas*. The mistake resulted in under-computation of the principal value of the estate by Rs. 1,76,180 and a short levy of estate duty of Rs. 23,903.

The Department of Revenue and Banking have accepted the mistake and stated that an additional demand of Rs. 23,903 has been raised.

(ii) In six other cases in five different Commissioners' charges, mistakes in computing the principal value of the estate of the deceased persons were noticed in audit, leading to under-assessment of the estates by Rs. 2,06,624 and short levy of duty of Rs. 39,293. The mistakes, which were caused by treatment of individual property of the deceased as joint family property and trust property, or under-assessment/non-inclusion of the value of certain assets, have been accepted by the Department of Revenue and Banking in four cases. In one case, where the mistake occurred due to non-inclusion of the value of the right to receive remuneration from a company relinquished by the deceased within two years before the date of death, the Department have stated that the matter is not free from doubt but the Assistant Controller of Estate Duty has been directed to re-open the assessment. In the remaining one case the Department have stated (February, 1977) that the objection is under consideration.

109. *Irregular/excessive allowances, exemptions and reliefs*

(i) Under the provisions of the Estate Duty Act, 1953, where any fees have been paid under any law relating to court fees for obtaining probate in respect of any property on which estate duty is payable, the amount of estate duty payable shall be reduced by an amount equal to the court fees so paid. In the case of a deceased person, it was noticed that relief was allowed on

fees paid for obtaining probate in respect of bonus shares which were issued after the date of death of the deceased and hence not included in the principal value of the estate. The excessive allowance of the relief resulted in short levy of estate duty of Rs. 7,938.

Though the case was seen by Internal Audit, this mistake was not noticed by them.

The Department of Revenue and Banking have accepted the objection and stated that an additional demand of Rs. 7,938 has been raised.

(ii) The Estate Duty Act allows exemption in respect of one house or part thereof belonging to the deceased provided that it had been exclusively used by the deceased for his residence.

In the estate duty assessment of a deceased person who died on 5th January, 1973, the value of a portion of a property used by the deceased as business premises was exempted along with the portion used by him for residential purposes. This resulted in under-computation of the value of estate by Rs. 51,660 involving short levy of duty of Rs. 12,915.

Though the Internal Audit Party had seen the case, the mistake was not pointed out by them.

The Department of Revenue and Banking have accepted the mistake.

(iii) Under the provisions of the Estate Duty Act, liabilities on account of income-tax and wealth-tax outstanding on the date of death are deductible in computing the principal value of the estate.

In the estate duty assessment, made in March, 1971, of a deceased person who died on 3rd February, 1967, the Department allowed deductions of Rs. 30,000 and Rs. 53, 444 towards

income-tax and wealth-tax liabilities respectively for the assessment years 1965-66 to 1967-68. The income-tax liability of Rs. 12,143 for the assessment year 1965-66 was, however, not allowable, since it had been vacated by the appellate authority in December, 1970, *i.e.*, prior to the completion of assessment. Even the liabilities for the assessment years 1966-67 and 1967-68 were subsequently reduced in March, 1971 and March, 1972, at the time of regular income-tax and wealth-tax assessments, but the reduced liabilities were not adopted at the time of revisions of estate duty assessments made subsequently in November, 1972 and February, 1974. The principal value of the estate was consequently under-assessed by Rs. 23,630 resulting in short levy of duty of Rs. 9,437.

In another case, the original assessment made in February, 1970 was set aside by the Appellate Controller in April, 1973, with directions to re-assess the principal value of the estate, after ascertaining, *inter alia*, the exact tax liabilities of the deceased. In the re-assessment made in February, 1974, the liabilities as claimed by the accountable person were allowed instead of adopting the actual liabilities reported by the Income-tax Officer in September, 1973. This resulted in under-assessment of the principal value of the estate by Rs. 62,026 and short levy of duty of Rs. 9,300.

The Department of Revenue and Banking have accepted the objections in both the cases.

110. *Mistakes in giving effect to appellate orders*

(i) The estate duty assessment of a deceased person was rectified on 4th August, 1972 for giving effect to appellate orders dated 20th July, 1972, allowing reduction in the principal value of the estate by Rs. 44,000. The assessment was rectified again on 27th July, 1974 for giving effect to the same appellate orders. This resulted is an under-assessment of the principal value of the estate by Rs. 44,000 and a short levy of estate duty of Rs. 4,343.

The Department of Revenue and Banking have accepted the objection and stated that the additional demand of Rs. 4,343 has been raised and collected.

(ii) The estate duty assessment of a deceased person was rectified on 6th September, 1969 to give effect to Appellate Controller's orders allowing a reduction of Rs. 71,500 in the value of an immovable property included in the estate. The accountable person filed a second appeal to the Appellate Tribunal. While giving effect to the Appellate Tribunal's orders on another point on 28th June, 1974, the assessing officer once again allowed the said reduction of Rs. 71,500 in respect of the value of the same immovable property, resulting in an under-assessment of the principal value of the estate by Rs. 71,500, leading to short levy of duty of Rs. 4,216.

The Department of Revenue and Banking have accepted the mistake and stated that an additional duty of Rs. 4,216 has been collected.

111. *Short levy of interest*

Under the provisions of the Estate Duty Act, 1953, every person accountable for estate duty is required to submit the return for estate duty within six months from the death of the deceased. The Controller of Estate Duty may extend the time-limit subject to payment of interest by the accountable person as the prescribed rate.

In the case of a deceased person, whose date of death was 15th November, 1969, extension of time for submission of return was granted to the accountable person upto 29th November, 1971. As a result, an interest of Rs. 7,330 was leviable against which the Department levied interest of only Rs. 4,059. This resulted in a short levy of interest of Rs. 3,687.

Though the case was seen by Internal Audit, this mistake was not noticed by them.

The Department of Revenue and Banking have accepted the objection and stated that an additional demand of Rs. 3,687 has been raised and collected.

Other topics of interest

112. *Incorrect valuation of shares*

In paragraph 72 of the Audit Report, 1972-73, it was pointed out that, despite the clear difference in the phraseology of the Estate Duty Act and the Wealth-tax Act, the Board extended, by executive instructions issued in March, 1968, the application of a Rule for valuation of unquoted equity shares framed under the Wealth-tax Act to the valuation of such shares under the Estate Duty Act. While, according to the Estate Duty Act, the value of such shares is to be ascertained 'by reference to the value of the total assets of the company' that under the Wealth-tax Act is to be determined by reference to the 'net value of the assets of the business as a whole, having regard to the balance sheet of such business'.

In the same instructions of March 1968, the Board also extended a special method prescribed by them in October, 1967 for the valuation of unquoted equity shares of investment companies for wealth-tax purposes, to the valuation of such shares for estate duty. Under this method, the value of such shares was to be taken as the average of (i) the break-up value of the shares based on the book value of the assests and liabilities disclosed in the balance sheet and (ii) the value arrived at by capitalising adjusted maintainable profits of the company at 9 per cent per annum.

In consequence of the said audit paragraph, the Board cancelled their instructions of March, 1968 in October, 1974, so as to restore the earlier instructions of 1965, according to which valuation of unquoted shares in companies for estate duty purposes was to be based on the market value and not on the

book value of the assets of the company. The Board issued further instructions in May, 1975 to clarify that assets of the company would include goodwill also, whether or not shown as such in the balance sheet. Where, however, market value of an individual asset of the company is not ascertainable, the same is to be taken at its book value in the balance sheet of the company nearest to the date of death.

(i) In the case of a deceased person, who died on 16th August, 1971, valuation of unquoted equity shares held by him in a private limited company was made in March, 1974 by taking the value of the assets of the company at their book values apparently under the Board's instructions of March, 1968. The value of the goodwill of the company was also not included. Valuation of unquoted equity shares in yet another company (an investment company) was then made on 'yield basis' alone. It was noticed in audit in April, 1976 that, despite the issue of executive instructions in October, 1974 and May, 1975, which indicated clearly the correct manner of valuation of unquoted shares under the Estate Duty Act, the original assessment had not been re-opened so as to recompute the value of the shares by taking assets at market value instead of at book value and by including the value of goodwill. The omission involved a short levy of estate duty of Rs. 1,80,90,526.

The paragraph was sent to the Department of Revenue and Banking on 4th December, 1976. They have stated (January, 1977) that the objection is under consideration.

(ii) In the estate duty assessment of a person who died on 24th June, 1969, the unquoted shares held by him in certain investment companies were valued in November, 1973 on the basis of average value computed under the executive instructions of October, 1967. After withdrawal, in October, 1974, of the executive instructions of March, 1968, the original assessment was not re-opened so as to recompute the value of the

shares by taking the assets at market value and including the value of goodwill. The adoption of average value resulted in an undervaluation of the estate by Rs. 3,36,278 (average value compared even with break-up value based even on book value of assets shown in the balance sheet) leading to a short levy of duty of Rs. 2,37,497.

Though the case was seen by Internal Audit, this mistake was not noticed by them.

The paragraph was sent to the Department of Revenue and Banking on 4th December, 1976. They have stated (January, 1977) that the objection is under consideration.

113. *Omission to appeal against an order*

A male who, for the time being, is the sole surviving coparcener in a Hindu undivided family governed by the *Mitakshara School* of Hindu Law, is competent to alienate the coparcenary property in the same way and to the same extent as his separate property and the alienation cannot be questioned by the female members of the family or by a son, if any, born to or adopted by him subsequent to alienation. On the death of such a sole coparcener, the whole of his property including the coparcenary property, passes by succession to his heirs and, as such, the whole of his estate is assessable to estate duty. This well-settled position at law was laid down also in the Board's circular instructions issued in October, 1959.

In the case of a deceased sole coparcener, who died on 20th January, 1965, it was noticed in audit, however, that, where an Appellate Controller had held in September, 1974 that only half of the estate passed and was subject to levy of estate duty, the circular instructions of October, 1959 were not kept in view and the appellate decision was accepted. The incorrect acceptance of the decision resulted in under-assessment of the principal

value of the estate of the deceased by Rs. 10,57,602 (including an incorrect relief of Rs. 4 lakhs made in the appellate order for maintenance and marriage expenses of two daughters of the deceased, who were themselves heirs to the deceased's estate), involving a loss of revenue of Rs. 3,92,952.

The incorrect acceptance of the appellate decision was pointed out to the Ministry of Finance in September, 1975. The Ministry accepted in May, 1976 that the decision was incorrectly accepted and stated that fresh instructions were being issued reiterating the earlier instructions for the guidance of the field offices.

In reply to the audit paragraph sent in December, 1976, the Department of Revenue and Banking have, however, stated in January, 1977 that no remedial action is possible in this case.

(V. GAURI SHANKER)

NEW DELHI *Director Of Receipt Audit.*

The 31 MAR 1977

Countersigned

(A. BAKSI)

NEW DELHI *Comptroller & Auditor General of India.*

The 31 MAR 1977