

AUDIT REPORT (CIVIL) REVENUE RECEIPTS 1969

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AUDIT REPORT

(CIVIL)

REVENUE RECEIPTS

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REVENUE RECEIPTS



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**AUDIT REPORT (CIVIL),
REVENUE RECEIPTS,
1969**

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ON

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PREFATORY REMARKS

This report presents mainly the results of audit of the seven major revenue heads, namely, Customs, Union Excise, Corporation Tax, Income-Tax, Wealth-Tax, Gift-Tax and Estate Duty. The report has been arranged in the following order :

- (i) Chapter I sets out the revenue position and the main heads of revenue, classifying them broadly under tax revenues and non-tax revenues. The variations between the Budget Estimates and the Actuals in respect of major heads of revenue are discussed in this Chapter.
- (ii) Chapters II to V mention points of interest which came to notice in the audit of Customs, Union Excise, Income-tax, Wealth-Tax, Gift-Tax and Estate Duty receipts.
- (iii) Chapter VI deals with other revenue receipts.

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 Departments concerned.

AUDIT REPORT, 1969

ON

REVENUE RECEIPTS

CHAPTER I

GENERAL

REVENUE POSITION AND MAIN HEADS OF REVENUE

The total revenue receipts of the Government of India for the year 1967-68 amounted to Rs. 3,001.31 crores against the anticipated revenue of Rs. 3,146.25 crores showing a shortfall of Rs. 144.94 crores from the Budget estimates. The total revenue realised during the year has registered an increase of Rs. 128.63 crores over that of 1966-67. Of the total receipts of Rs. 3,001.31 crores, Rs. 2,346.37 crores represent receipts under "Tax Revenues"; the balance from "Non-Tax Revenues".

2. An analysis of the Actuals by major heads for the year 1967-68 and the four preceding years is given below:—

(Figures in crores of rupees)

Major heads	1963-64	1964-65	1965-66	1966-67	1967-68	Increase or decrease with reference to 1963-64
I	2	3	4	5	6	7
<i>Tax Revenues</i>						
I. Customs	334.75	397.50	538.97	585.37	513.35	178.60
II. Union Excise Duties	729.58	801.51	897.92	1033.77	1148.25	418.67
III. Corporation Tax	287.30	313.64	304.84	330.80	310.51	23.21
IV. Taxes on income other than Corporation Tax	245.58	266.93	271.80	306.63	325.89	80.31

I	2	3	4	5	6	7
V. Estate Duty	4.65	5.43	6.66	6.26	6.37	1.72
VI. Taxes on Wealth	10.50	10.52	12.06	10.73	10.70	0.20
VII. Expenditure Tax	0.13	0.44	0.42	0.08	...	(-)0.13
VIII. Gift Tax	1.13	2.22	2.27	1.75	1.30	0.17
X. State Excise Duties	1.62	1.44	1.67	2.49	3.74	2.12
XII. Sales Tax	9.01	11.23	12.54	15.97	19.07	10.06
XIII. Other Taxes and Duties	3.22	3.52	4.62	5.19	5.51	2.29
Other items	1.42	1.32	1.52	1.55	1.68	0.26
TOTAL (TAX REVENUES)	1628.89	1815.70	2055.29	2300.59	2346.37	717.48
<i>Non-Tax Revenues</i>						
XIV. Stamps	4.81	4.85	5.24	5.73	6.15	1.34
XVI. Interest	243.56	257.29	307.67	377.48	425.38	181.82
XX. Supplies and Disposals	5.91	6.16	6.65	7.39	6.73	0.82
XXI. Miscellaneous Departments	1.49	1.87	1.61	2.16	1.92	0.43
XXV. Agriculture	1.61	1.80	1.99	1.80	2.66	1.05
XXIX. Industries	16.05	12.72	6.51	4.12	2.96	(-)13.09
XXX. Broadcasting	5.55	6.27	3.52	6.99	13.40	7.85
XXXII. Miscellaneous Social and Developmental Organisations	4.68	4.81	5.08	6.42	7.96	3.28
XXXVII. Public Works	4.46	4.93	4.58	5.62	6.24	1.78
XLI. Light Houses and Light-ships	1.11	1.33	1.23	1.50	1.46	0.35
XLII. Aviation	1.75	2.12	2.52	3.33	3.93	2.18
XLIV. Overseas Communications Service	2.34	3.39	3.47	3.51	3.85	1.51
XLV. Currency and Coinage	53.82	51.86	61.02	65.11	76.39	22.57
XLVIA. Kolar Gold Mines	1.93	1.58	2.49	2.61	2.21	0.28

	1	2	3	4	5	6	7
XLVIII. Contributions and recoveries towards Pensions and other Retirement benefits .	1.14	2.39	0.97	1.09	1.19	0.05	
L. Opium .	3.52	3.64	3.36	5.03	4.63	1.11	
LI. Forest .	2.24	2.22	2.01	2.03	2.46	0.22	
LII. Miscellaneous .	13.30	14.84	19.90	16.25	21.98	8.68	
LIII. Contribution from Railways .	24.82	23.25	25.90	30.76	30.30	5.48	
LIV. Contribution from Posts and Telegraphs .	1.22	1.44	1.15	...	5.55	4.33	
LVIII. Dividends, etc., from Commercial and other Undertakings	4.37	6.89	6.65	7.86	10.13	5.76	
LX. Extraordinary Receipts	63.20	122.46	60.64	5.50	6.26	(—)56.94	
LXIA. Receipts connected with the National Emergency	31.37	0.56	26.02	2.73	1.87	(—)29.50	
Other items	5.28	5.26	4.98	7.07	9.33	4.05	
TOTAL (NON-TAX REVENUES).	499.53	543.93	565.16	572.09	654.94	155.41	
TOTAL—GROSS REVENUE .	2128.42	2359.63	2620.45	2872.68	3001.31	872.89	
<i>Deduct—States Share :</i>							
Income-tax	119.29	123.77	123.34	137.10	174.52	55.23	
Estate Duty	4.23	6.78	6.79	4.54	6.58	2.35	
NET REVENUE	2004.90	2229.08	2490.32	2731.04	2820.21	815.31	

3. Variations between the Budget Estimates and the Actuals.

The variation of Rs. 144.94 crores between the Budget estimates and the Actuals is made up of a shortfall of Rs. 186.97 crores in Tax Revenues and an excess of Rs. 42.03 crores in Non-Tax Revenues. The comparative figures for the five years ending with 1967-68 are shown below:

(In crores of rupees)

A. Tax Revenues

Year	Budget	Actuals	Variation	Percentage
1963-64	1466.99	1628.89	161.90	11.03
1964-65	1688.66	1815.70	127.04	7.52
1965-66	1941.25	2055.29	114.04	5.88
1966-67	2290.66	2300.59	9.93	0.43
1967-68	2533.34	2346.37	(-)186.97	(-)7.38

B. Non-Tax Revenues

Year	Budget	Actuals	Variation	Percentage
1963-64	479.85	499.53	19.68	4.11
1964-65	550.74	543.93	(-)6.81	(-)1.24
1965-66	528.04	565.16	37.12	7.03
1966-67	568.74	572.09	3.35	0.59
1967-68	612.91	654.94	42.03	6.86

4. Reasons for the variations between the Budget Estimates and the Actuals (Tax Revenues).

Though the total net variation between the Budget estimates and the Actuals of all revenues realised by way of taxes and duties is Rs. 186.97 crores, the actual variation between the Budget estimates and the Actuals in so far as the principal heads of Tax Revenues of Customs Union Excise, Corporation Tax and Taxes on Income other

than Corporation Tax only are concerned, works out to Rs. 187.61 crores. The figures are as follows:—

	(In crores of rupees)			
	Budget Estimates	Actuals	Variation	Percentage.
I. Customs	640.13	513.35	(—)126.78	(—)19.81
II. Union Excise Duties	1205.48	1148.25	(—)57.23	(—)4.75
III. Corporation Tax	350.00	310.51	(—)39.49	(—)11.28
IV. Taxes on income other than Corporation Tax	290.00	325.89	35.89	12.38

I. Customs

The margin of difference between the Budget estimates and the Actuals for 1967-68 has considerably increased when compared with the previous years' figures. The differences between the Budget estimates and the Actuals for the period from 1962-64 to 1967-68 are given below:—

Year	(In crores of rupees)			
	Budget Estimates	Actuals	Variation	Percentage
1963-64	301.20	334.75	33.55	11.14
1964-65	336.37	397.50	61.13	18.17
1965-66	419.50	538.97	119.47	28.48
1966-67	560.20	585.37	25.17	4.49
1967-68]	640.13	513.35	(—)126.78	[(—)19.81

The Ministry have stated that the fall in Actuals is due to the reduction in the quantity of actual imports when compared with the imports estimated at the time of framing the Budget estimates. The reduction in actual imports is attributed to general recession in industry and import substitution because of higher cost of imports due to devaluation.

II. Union Excise Duties

The total Budget estimates under the Head "II—Union Excise Duties" was Rs. 1,205.48 crores. Against this the Actuals came to Rs. 1,148.25 crores showing a decrease of Rs. 57.23 crores. This works

out to 4.75 per cent. The figures of the Budget estimates and the Actuals for the years 1963-64 to 1967-68 are as under:—

Year	(In crores of rupees)			
	Budget Estimates	Actuals	Variation	Percentage
1963-64	696.34	729.58	33.24	4.77
1964-65	769.93	801.51	31.58	4.10
1965-66	840.09	897.92	57.83	6.88
1966-67	1020.36	1033.77	13.41	1.31
1967-68	1205.48	1148.25	(—)57.23	(—)4.75

The Ministry have stated that the variations between the Budget estimates and the Actuals are mainly attributable to shortfall in revenue under 'sugar', 'iron and steel products' and 'cotton yarn and fabrics':

(1) In the case of sugar (including khandsari), the shortfall occurred as the clearances did not come up to expectations in the wake of fall in the production of sugarcane and also due to the reduction of basic duty from 1st October, 1967.

(2) Shortfall under iron and steel products together with tin plates, was attributed to:—

- (a) general recessionary conditions particularly in the engineering industry,
- (b) labour troubles and operational difficulties in the two plants at Rourkela and Durgapur of Hindustan Steel Limited,
- (c) slashing of production at Bhilai due to cut back in expenditure of the Government departments on development projects.

(3) The shortfall on cotton yarn and fabrics was due to:—

- (a) the shortage of raw cotton following the two consecutive draughts and poor crops during 1965-66 and 1966-67, and
- (b) low annual production against expectations since resumption of the normal working by the mills after the cut during recession, viz., compulsory closure for one day in a week from December, 1966 to April, 1967 and one day in a fortnight thereafter upto August, 1967.
- (c) in the case of yarn, duty on superfine and fine sized yarn and yarn used in making fine fabrics was reduced from 1st March, 1968.

III. Corporation Tax and IV. Taxes on income, etc.

The Actuals for the year 1967-68 under the Head "III. Corporation Tax" is less than the Budget estimates whereas the Actuals under "IV. Taxes on income, etc." has exceeded the Budget estimates. The figures for the period from 1963-64 to 1967-68 under the above heads are given below:—

(In crores of rupees)

Year	Budget Estimates		Actuals		Variation		Percentage	
	III. Corporation Tax	IV. Taxes on income*	'A'	'B'	'A'	'B'	'A'	'B'
1963-64	222.00	218.00	287.30	245.58	65.30	27.58	29.41	12.65
1964-65	296.67	247.28	313.64	266.93	16.97	19.65	5.72	7.95
1965-66	371.60	291.50	304.84	271.80	(—)66.76	(—)19.70	(—)17.97	(—)6.76
1966-67	372.07	292.90	330.80	306.63	(—)41.27	13.73	(—)11.09	4.69
1967-68	350.00	290.00	310.51	325.89	(—)39.49	35.89	(—)11.28	12.38

*Gross figures have been taken.

'A' indicates figures under "III. Corporation Tax".

'B' indicates figures under "IV. Taxes on income" including share assigned to States.

The details of the variations under the various minor heads for the years 1966-67 and 1967-68 are indicated in the following statement:—

(Figures in lakhs of rupees)

	1966-67			Percentage of variation	1967-68			Percentage of variation
	Budget Estimates	Actuals	Increase(+) Shortfall(—)		Budget Estimates	Actuals	Increase(+) Shortfall(—)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
III Corporation Tax—								
(i) Ordinary collections*	3,62,72	3,16,60	(—)46,12	(—)12.72	3,30,60	2,97,25	(—)33,35	(—)10.09
(ii) Excess Profits tax . . . . .	..	3	(+)3	..	..	(—)8	(—)8	..
(iii) Business Profits Tax . . . . .	..	..	..	..	..	13	(+)13	..
(iv) Sur-tax	8,85	12,59	(+)3,74	42.26	18,00	12,30	(—)5,70	(—)31.67
(v) Super Profits Tax	50	1,58	(+)1,08	216.00	60	38	(—)22	(—)36.67
(vi) Miscellaneous . . . . .	..	..	..	..	80	53	(—)27	(—)33.75
TOTAL	3,72,07	3,30,80	(—)41,27	(—)11.09	3,50,00	3,10,51	(—)39,49	(—)11.28
IV Taxes on income other than Corporation Tax—								
(i) Ordinary collections@	2,59,80	2,94,70	(+)34,90	13.43	2,69,82	3,04,16	(+)34,34	(+)12.73
(ii) Surcharge (Union)	31,60	6,47	(—)25,13	(—)79.53	12,00	8,13	(—)3,87	(—)32.25
(iii) Surcharge (Special)	50	3,69	(+)3,19	638.00	2,00	6,15	(+)4,15	(+)208.00
(iv) Additional Surcharge (Union)	1,00	1,66	(+)66	66.00	2,65	1,76	(—)89	(—)33.58
(v) Excess Profits Tax . . . . .	..	7	(+)7	..	3	1	(—)2	(—)66.67
(vi) Business Profits Tax . . . . .	..	4	(+)4	..	..	..	(+ )2,18	(+)62.29
(vii) Miscellaneous . . . . .	..	..	..	..	3,50	5,68	(+)2,18	(+)62.29
Share of net proceeds assigned to States	(—) 1,30,45	(—)1,37,10	(—)6,65	5.09	(—)1,31,58	(—)1,74,52	(—)42,94	(+)32.63
TOTAL	1,62,45	1,69,53	(+)7,08	4.36	1,58,42	1,51,37	(—)7,05	(—)4.45

* The Actuals against "Ordinary collections" includes receipts under the minor head "Miscellaneous" during 1966-67.

@ The Actuals against "Ordinary collections" includes receipts under the minor head "Miscellaneous" and "Charges in England", for 1966-67 and charges in England for 1967-68.

The Ministry have furnished the following reasons for the variations under the various minor heads:

(i) The shortfall in collections under the minor head 'Ordinary collections' under the major head 'III-Corporation Tax' has occurred due to:

- (a) slump in engineering and jute industries, which was reflected in the fall of gross collections of advance tax in one charge,
- (b) general recession in industrial sector which affected the collection against arrear and current dues from companies,
- (c) the increase in expenses by way of payment of large sums by manufacturing industries as salary and wages, thereby increasing the deductible expenses and reducing the taxable income.

(ii) The short-fall in the collection of sur-tax has been due to slump in engineering and jute industries despite completion of larger number of assessments in 1967-68 than in 1966-67.

(iii) The increase in collections under the minor head 'Ordinary collections' under the major head 'IV-Taxes on income other than Corporation Tax' has been attributed to:

- (a) larger deductions at source from salaries,
- (b) deductions of tax at source from income other than salaries, and
- (c) improvement in the collection out of arrear demand effected by the tightening of the collection machinery.

5. Variations between the Budget Estimates and the Actuals (Other Tax Revenues).

The Actuals for the year 1967-68 under the heads "V—Estate Duty", "VI—Taxes on Wealth" and "VIII—Gift Tax" are less than the Budget estimates. The figures for the period from 1963-64 to 1967-68 are given below:—

Year	Budget Estimates	Actuals	(In crores of rupees)	
			Variation	Percentage
<i>Estate Duty*</i>				
1963-64	4.00	4.65	(+)0.65	16.25
1964-65	7.40	5.43	(-)1.97	(-)26.62
1965-66	7.40	6.66	(-)0.74	(-)10.00
1966-67	8.10	6.26	(-)1.84	(-)22.72
1967-68	7.25	6.37	(-)0.88	(-)12.28

*Gross figures have been taken.

(In crores of rupees)

Year	Budget Estimates	Actuals	Variation	Percentage
<i>Wealth-Tax</i>				
1963-64	9.40	10.50	1.10	11.70
1964-65	10.20	10.52	0.32	3.14
1965-66	13.50	12.06	(-)1.44	(-)10.67
1966-67	14.00	10.73	(-)3.27	(-)23.36
1967-68	12.50	10.70	(-)1.80	(-)14.40
<i>Gift-Tax</i>				
1963-64	0.95	1.13	0.18	18.95
1964-65	3.10	2.22	(-)0.88	(-)28.39
1965-66	3.10	2.27	(-)0.83	(-)26.77
1966-67	1.29	1.75	0.46	35.66
1967-68	1.50	1.30	(-)0.20	(-)13.33

The reasons for the variations have been explained by the Ministry as follows :

(a) Estate Duty : The actual collections made in the case of two assesseees were much lower than the anticipated collections because the assessments could not be finalised before the end of the year.

(b) Wealth-Tax :

- (1) The Wealth-Tax (Amendment) Rules, 1967, which came into force on 6th October, 1967, provided that the market value of unquoted shares should be calculated on the basis of the book value of the assets of the company and allowed liberal discounts from the break-up value, which led to the shortfall in collections.
- (2) The enlarged concept of debt deductible while computing the net wealth outlined in two Supreme Court decisions was applied by the Tribunals and the High Courts in the pending appeals and references before them.
- (3) Statutory corporations also got exempted from Wealth-Tax with the introduction of Section 2(h) (iia) which enabled them to be declared as companies for the said exemption.

(c) Gift-Tax: Due to the adverse decisions of the Mysore and Kerala High Courts in two cases holding that the act of throwing a self-acquired property into the common hotch-pot of a Hindu Undivided family does not amount to any gift taxable under the Gift Tax Act, which, though appealed to the Supreme Court, rendered the enforcement of collection in respect thereof impossible. A sum of Rs. 24.23 lakhs has been kept in abeyance pending the decision of appellate authorities.

6. *Variation between the Budget Estimates and the Actuals of Non-Tax Revenues.*

The variation between the Budget estimates and the Actuals for the year 1967-68 under some of the Heads of Non-tax Revenues and the reasons therefor are indicated below :—

(In crores of rupees)				
Major head	Budget Estimates	Actuals	Variation	Reasons for variation
1. Interest	409.00	425.38	+16.38	Mainly, due to (i) growing volume of loans advanced to the States and Union Territories, (ii) increased receipts from local bodies, public sector companies, etc.
2. Broadcasting	8.45	13.40	+4.95	Mainly, due to progressively increasing receipts from Radio licence fees and starting of Commercial broadcasting during the year.
3. Miscellaneous Social and Developmental Organisations	6.50	7.96	+1.46	The increase is mainly due to (i) Recovery of Rs. 120 lakhs from the Uranium Corporation of India and Electronic Corporation of India. (ii) Export of large quantity of Berylore produced by the Department of Atomic Energy. (iii) More receipts from Film Division (Exhibition Branch) and Central Water Power Commission

(In crores of rupees)

Major head	Budget Estimates	Actuals	Variation	Reasons for variation
4. Public Works	4.60	6.24	+1.64	Mainly, on account of recoveries of rent from Punjab and Haryana Governments for accommodation occupied by those Governments in Chandigarh.
5. Port and Pilotage	1.75	0.87	(-)0.88	Decrease is mainly due to the setting up of Port Trust for the Paradip Port with effect from 1-11-1967.
6. Contribution from Posts and Telegraphs	4.06	5.55	(+)1.49	The increase is mainly due to recoveries of arrears of dividend relating to previous years.
7. Dividends, etc. from Commercial and other Undertakings	6.47	10.13	(+)3.66	The increase is mainly due to recovery of dividend from Indian Oil Corporation.

CHAPTER II

CUSTOMS RECEIPTS

7. The total receipts from Customs Revenue during the years 1966-67 and 1967-68 are given below:—

	1966-67	1967-68
	Rs.	Rs.
(a) Customs imports	4,79,20,30,873	4,08,07,54,401
(b) Customs exports.	1,22,91,33,435	1,00,42,28,825
(c) Miscellaneous	4,90,69,182	6,87,52,748
	<hr/>	<hr/>
Gross Revenue	6,07,02,33,490	5,45,37,35,974
Deduct—Refunds and Drawback	21,65,80,160	32,02,58,101
	<hr/>	<hr/>
Net Revenue	5,85,36,53,330	5,13,34,77,873

The bulk of the Customs Revenue is collected from imports. Compared to 1966-67 the receipts from imports fell by Rs. 71.13 crores during 1967-68. Refunds and drawback have registered an increase of Rs. 10.37 crores over the corresponding figures of last year.

8. As a result of the test audit of various customs stations, short levy of customs duty amounting to Rs. 32.36 lakhs and excess levy of customs duty amounting to Rs. 3.32 lakhs were brought to light.

The short levy of Rs. 32.36 lakhs has been categorised as under:—

	Rs.
(i) Assessment at rates lower than those prescribed	27,01,846
(ii) Non levy of additional duty	79,454
(iii) Wrong classification of goods under the Tariff	1,00,260
(iv) Excess refund of duty	79,593
(v) Other reasons	2,74,985
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	32,36,138
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Some instances of the types of irregularities noted above are mentioned in the following paragraphs:

9. *Assessment at rates lower than those prescribed.*

Two dumpers imported in May, 1965 were assessed to basic customs duty by a Custom House at the concessional rate of 30 per cent *ad valorem* under the foot note to item 75 Indian Customs Tariff together with surcharge on customs duty, regulatory duty and countervailing duty. The dumpers were correctly chargeable to basic customs duty at the standard rate of 50 per cent under the main item 75 Indian Customs Tariff together with surcharge, regulatory duty, etc. The consequent short-levy of Rs. 28,424 was pointed out in August, 1965. The Custom House have replied (September, 1968) that they have, following this, scrutinised similar cases and in all a total demand for a short levy of Rs. 24,98,817 in 23 cases including the two cases pointed out in August, 1965 has been raised and the amount is pending recovery. This has been confirmed by the Ministry (January, 1969).

10. *Non-levy of additional duty.*

Stereoflong, a special type of paper board for printing machinery was chargeable to customs duty under item 72(2) Indian Customs Tariff and also to additional duty under item 17(4) Central Excise Tariff. In a Custom House, imports of stereoflong were not subjected to levy of the additional duty even though this irregularity was pointed out in February, 1966. However, when the Central Board of Excise and Customs to whom the matter of levy of additional duty on imported stereoflong was referred by another Custom House in April, 1965 gave a ruling in January, 1967 that additional duty was leviable, the Custom House raised demands for Rs. 17,119 only on 28 consignments imported from January, 1966, the recovery in relation to which was within the time limit. The loss to revenue due to non-levy of additional duty on imports prior to January, 1966 has not been intimated.

The Ministry in reply have stated that the correct position is that though stereoflong was classifiable under item 17(4) Central Excise Tariff, no countervailing duty was leviable on them in view of an exemption notification of 10th May, 1958. The exemption notification of 10th May, 1958 was issued at a time when no countervailing duty was leviable on stereoflong and all the effect of the notification was to reduce the basic customs duty on stereoflong to that leviable on printing and lithographic material under item 72(2) of the Indian Customs Tariff. Having therefore correctly decided in January, 1967 that countervailing duty is leviable on

stereoflong under item 17(4) of the Central Excise Tariff, it is not understood how it is now contended that no countervailing duty is leviable thereon.

11. *Wrong classification of goods under the Indian Customs Tariff.*

(i) In a Custom House, a consignment of "stainless steel clad plates of 3/8" (stainless coated)" imported in September, 1967 was assessed to duty at the concessional rate of 15 per cent *ad valorem* applicable to stainless steel plates under item 63(20A) Indian Customs Tariff. It was pointed out that according to instructions issued by the Board in May, 1957, stainless steel clad plates should be assessed to duty at 50 per cent *ad valorem* under item 63(28) of the Indian Customs Tariff. The short levy of Rs. 64,248 on this account is pending recovery by the Custom House. The Ministry have replied that if an over-assessment on account of additional duty of Rs. 4595 is taken into account, the net under-assessment is Rs. 59,653 only.

(ii) "Repairing tools" and "Dielectric strength testing equipment" imported in a consignment with other articles in October, 1966 were assessed to duty under item 71(b) Indian Customs Tariff at 100 per cent *ad valorem* and under item 77 Indian Customs Tariff at 50 per cent *ad valorem* respectively by a Custom House. It was pointed out that the repairing tools were correctly assessable to duty at 50 per cent *ad valorem* under item 71(a) and the testing equipment if operated by electricity, at 60 per cent *ad valorem* under item 73 Indian Customs Tariff. The Custom House admitted the excess levy of Rs. 9268 and the short levy of Rs. 618 respectively on the said articles. They, however, found on a re-examination of the documents pertaining to the consignment that apart from the item "Dielectric strength testing equipment" there were 8 other items in the consignment correctly assessable to duty at 60 per cent *ad valorem* under item 73 Indian Customs Tariff instead of under item 77 Indian Customs Tariff as assessed earlier by them. The short levy on account of the reclassification of these 8 items worked out to Rs. 23,026.

All the items in question were reassessed accordingly and a sum of Rs. 14,376 recovered in June, 1968 after adjusting the excess levy of Rs. 9,268.

12. *Excess refund of duty.*

The rate of duty applicable to imported goods is the rate in force on the date on which the bill of entry is presented but where a bill

of entry is presented prior to the date on which the vessel enters the port, the date of presentation of the bill of entry is deemed under the Act to be the date on which the entry inwards order is given to the vessel.

In the case of a vessel for which bills of entry had been delivered in a Custom House prior to its entry, the entry inwards order was granted by the Assistant Collector on 2nd March 1964. The goods covered by the bills of entry filed prior to this date were assessed correctly by the Custom House at the rates prevailing on 2nd March, 1964. However, on a representation from two importers that the goods concerned should have been assessed at the rates in force prior to 1st March, 1964 on the ground that the vessel was allowed by the Preventive Officer on board the ship to unload the goods on 29th February, 1964 itself, the Custom House refunded two sums of Rs. 29,445 and Rs. 6,127 to the parties. It was pointed out that the refund was irregular because the date of the order of entry inwards was given only on 2nd March, 1964 and that the permission given to the vessel to unload the goods on 29th February, 1964 itself was not in order and accordingly duty was leviable only at the rate in force on 2nd March, 1964. A demand for recovery of the excess refund of Rs. 29,445 has been issued and for the excess refund of Rs. 6,127 a request for voluntary repayment has been made but the particulars of recovery have not been intimated (March, 1969). Particulars of other goods imported by the same vessel which were assessed at the rate of duty prevalent on 29th February, 1964 are awaited from the Custom House.

13. *Other reasons.*

(i) *Loss of revenue due to wrong admission of agency commission.*—According to instructions issued in September, 1955 and August, 1956 for valuation of goods for assessment to customs duty the agency commission allowed to sole importers of agency products should be excluded from the assessable value of goods imported by the sole agent. The deduction on account of agency commission is not, however, admissible if the imports by independent parties exceed 10 per cent of the value of imports made by the agents. For this purpose, the books of accounts of the agents should be examined at periodic intervals and a watch also kept of importations by third parties to see that the exclusion of the agency commission from the assessable value continued to be admissible.

In March, 1963, it was observed that the valuation of imports made by a particular firm in December, 1962 had been arrived at by a Custom House after deducting the agency commission from the

gross invoice values. The admissibility of the deduction was decided after examination of their books of accounts conducted in December, 1955. The next revision initiated in 1961 was completed in March, 1963. The failure to conduct the investigation at earlier intervals as prescribed had resulted in loss of revenue of Rs. 1,74,456 from 1959 to 1962 as the agency commission allowed to this firm during the period was found to be inadmissible.

The Ministry have stated that it was only from 1959 onwards that imports by independent parties exceeded 10 per cent of the value of the imports made by the agents and therefore, the review, if it was undertaken during 1958, when it was actually due, would not have disclosed the change in the channel of imports and there would have been no occasion to disallow the agency commission. The next review which was undertaken in March, 1961 could not be completed till December, 1962 as the Custom House had to enter into lengthy correspondence with the firm. As the importers were delaying the submission of the information, an *ad hoc* decision was taken in March, 1963 to disallow the agency commission. They have added that if the scrutiny had been completed after the usual few months near about the end of 1961, the only loss that would have been averted would have been in respect of the year, 1962.

The periodicity for reviewing the books of importers in India having special relationship with suppliers abroad has been fixed under executive instructions as a matter of convenience having no statutory backing. A review conducted in 1959 would have revealed that the sole agency commission was inadmissible and the further loss of revenue would have been avoided.

(ii) *Loss of revenue due to wrong interpretation of overtime rules*.—According to the overtime rules applicable at the ports under the Central Excise Collectorates of Cochin and Bangalore, merchants requiring the services of Customs Officers on holidays and beyond free hours on working days, should pay fees at the prescribed hourly rates subject to a minimum fee fixed for the different grades of officials posted for duty. It was noticed that though overtime fees were being recovered at hourly rates, the prescribed minimum fees where necessary were not being recovered by these ports. The short recovery on this account during the period from April, 1964 to June 1966 in the two Collectorates has been intimated as Rs. 50,591 of

which a sum of Rs. 6,851 has been recovered. These do not include particulars for eleven months in the period April 1964 to June, 1966 in respect of ports in the Alleppey Circle of Cochin Collectorate which are reported to be not available.

14. *Excess levy of Customs duty.*

(i) 540.056 kilo litres of Transformer Oil imported in April, 1966 were charged to customs duty by a Custom House at 40 per cent on the basis of value of Rs. 4,72,650 determined by them as the assessable value of the consignment. The consignment was correctly chargeable to duty on a tariff value of Rs. 640 per kilo litre at 27 per cent *ad valorem* only. The resultant excess levy of Rs. 1,31,985 was refunded to the party in July, 1968 when the error was pointed out.

(ii) Under a notification of the Government of India issued in July, 1967 the exemption limit of the additional duty of customs on 'Superior Kerosene' falling under item 27 (4) of the Indian Customs Tariff was raised from Rs. 19.65 to Rs. 23.10 per kilo litre with effect from 27th April, 1967. This was, however, not given effect to in a Custom House in 11 cases of clearance from bond of a total quantity of 8,826 kilo litres of the commodity. On this being pointed out, the department refunded the excess collection of Rs. 30,448 (May 1968).

(iii) According to a tariff ruling issued by the Government of India in April, 1965 "Fork-lift trucks" are not liable to Central excise duty being considered outside the purview of item 34 of the Central Excise Tariff (Motor Vehicles). In September, 1965, the Central Board of Revenue clarified that 'platform trucks' like 'fork-lift trucks' were also outside the purview of item 34 *ibid*. But in a major Custom House, the above rulings were given effect to only in February, 1967 on the ground that the Board's orders of April, 1965 and September, 1965 were not endorsed to the Custom House. This resulted in an excess collection of countervailing duty amounting to Rs. 56,917 on consignments of seven fork-lift trucks and two platform trucks imported in June, 1965, and January, 1966 respectively.

The incorrect levy was detected by the department in December, 1966 and April, 1967 by which time the refund had become time barred.

15. *Other topics of interest.*

Non-realisation of Customs duty on motor vehicles imported under Triptyque system.—Motor vehicles imported by members of an automobile club or association belonging to the Federation Internationale De L' Automobile or the Alliance Internationale de Tourisme visiting India for a temporary stay are exempted from the payment of customs duty provided (1) they are covered by a Triptyque or Carnet issued by the automobile association concerned in the approved form and duly guaranteed by the Western India Automobile Association and (2) they are re-exported out of India within six months from the date of import. The period of retention of the vehicles in India can be extended for a further period not exceeding six months by the Collectors of Customs under certain circumstances. Where the vehicles are not re-exported within the period so allowed, the Customs duty leviable thereon becomes recoverable from the importers or from the guaranteeing associations by the issue of a demand for the duty within a year of the date of expiry of the period upto which retention of the vehicles has been allowed.

It was noticed that even though six motor vehicles imported under the system during 1950 to 1956 were not re-exported within the specified period, the duty leviable thereon was not recovered by a Custom House. The guaranteeing associations did not also pay the duty as the Custom House failed to demand the same from them within the stipulated period.

Particulars of similar other cases in the Custom Houses where the cars imported under the Triptyque/Carnet system have not been re-exported within the period allowed and the duty leviable thereon due to such non-reexport have been called for from the department and are awaited (March, 1969).

16. *Arrears of Customs duty.*

The total amount of customs duty remaining unrealised for the period upto 31st March, 1968 was Rs. 88.52 lakhs on 31st October, 1968 as against Rs. 71.52 lakhs for the corresponding period in the previous year. Out of the sum of Rs. 88.52 lakhs, Rs. 51.24 lakhs have been outstanding for more than one year.

In addition, the department have requested for voluntary payments of Customs duty amounting to Rs. 30.84 lakhs in cases where regular demands have become time barred. This amount is also pending realisation.

17. Remissions and Abandonments of Customs Revenue.

The total amount of customs revenue remitted, written off or abandoned during the year 1967-68 is Rs. 19,93,573.

CHAPTER III

UNION EXCISE DUTIES

18. The receipts under Union Excise duties during the year 1967-68 were Rs. 1,148·25 crores registering an increase of Rs. 114·48 crores over that of the previous year. The receipts for the last five years along with the corresponding number of commodities on which excise duty was leviable are given below:—

Year	Receipts under Union Excise duties (in crores)	Number of commodities on which the duties were leviable
	Rs.	
1963-64	729·58	65
1964-65	801·51	66
1965-66	897·92	67
1966-67	1033·77	69
1967-68	1148·25	69

19. The realisation of Central Excise duty according to broad categories of assesseees during the year 1967-68 is shown below:—

Assesseees	Gross revenue* (in crores)-
I. Central Governmen Departments	Rs.
(a) Defence Department	·02
(b) Railways	·01
(c) Commercial Departments	·13
(d) Other non-Commercial Departments	·05
	21
II. State Government Departments	1·58
III. Statutory Corporations	173·28
IV. Government Companies	76·14
V. Others	888·27
TOTAL	1139·48

*Figures furnished by the Ministry of Finance.

20. Of the 69 commodities, the following eleven commodities have each yielded revenue exceeding Rs. 30 crores:

Commodity	(rupees in crores)
Refined diesel oils	174·15
Tobacco	154·64
Motor spirit	108·39
Sugar	74·47
Kerosene	64·14
Iron or steel products	63·77
Cotton fabrics	50·09
Rayon and synthetic fibres and yarn	40·01
Tyres	37·54
Cotton twist, yarn and thread	36·23
Cement	32·12

21. Results of test audit in general

A test audit of the records maintained in the offices of the Chief Accounts Officers of the Central Excise collectorates and in the Range offices revealed the following types of irregularities, involving under-assessments and loss of revenue to the extent of Rs. 848·63 lakhs and over-assessment to the extent of Rs. 1·35 lakhs.

	Amount in lakhs of rupees
<i>Under-assessment</i>	
(i) Omission to levy duty	16·53
(ii) Incorrect classification and application of incorrect rates of duty	97·46
(iii) Incorrect determination of assessable value	2·72
(iv) Irregular exemptions and concessions	641·37
(v) Loss of revenue due to delay in taking remedial action	74·39
(vi) Irregular or unauthorised refund	00·44
(vii) Other omissions or failures	15·72

Over-assessment

Application of incorrect rates of duty.

I.35

Some instances of the types of defects noticed in respect of some of the commodities are detailed below:

22. Sugar (Tariff item 1)

Sanction of excess rebate under the scheme of incentive for excess sugar production.

To maximise sugar production during the 1963-64 season the Government of India announced certain rebates in respect of excess production of sugar from the standard duty leviable thereon depending upon the State in which the factory was situated. Under that scheme factories in Maharashtra were allowed a rebate of 50 per cent of excise duty on the quantity of sugar produced during November, 1963 in excess over the basic quantity prescribed. Subsequently in December, 1963, the earlier notification was amended to reduce the concessional rate on the excess production during November, 1963 to 20 per cent.

In the case of one such sugar factory, the rebate in excise duty for the excess production of sugar in November, 1963 was allowed at 50 per cent instead of at 20 per cent, resulting in excess rebate amounting to Rs. 1,94,433.

23. Unmanufactured tobacco (Tariff item 4)

(i) *Loss of revenue due to withdrawal of supplementary demands in respect of tobacco.*

Rule 9A of the Central Excise Rules prior to its amendment in December, 1965 provided *inter alia* that the rate of duty applicable to goods was the rate in force on the date of payment of duty. Under Rule 25 *ibid* if a curer of tobacco wishes to clear his products on payment of duty, he should apply to the proper officer who will issue a demand notice for the duty due on them, which is to be paid into the treasury within ten days. It was noticed that in a number of cases the duty was not paid by the curers within the stipulated period and due to enhancement in the rates of duties in the interval supplementary demands were issued to them for the differential duty from 1957 to 1965 without ascertaining whether the goods were physically available with the curers. In September, 1965 Government clarified that the supplementary demands were valid only in respect of tobacco that was lying with the curers at the time of issue of the demands and since there was then no means of ascertaining

whether the tobacco was available with the curers on the dates of issue of the supplementary demands, all the supplementary demands issued as a result of enhancement in the rate of duty should be withdrawn. The total amount of the supplementary demands thus withdrawn was Rs. 18,22,070. The Ministry have replied that while the major part of tobacco grown in concentrated growing areas finds its way into the warehouses, tobacco grown in sparse growing areas is generally assessed to duty on verification of crop wherever available and by summary assessment where it has already been disposed of by the curer.

(ii) *Loss of revenue due to inadequacy of bonds.*

Under para 137(b) of the Tobacco Excise Manual licensees of warehouses having a floor area upto 5000 sq. ft. are required to execute a bond for Rs. 2,000 or for such smaller sum as the Circle Officer considers will cover the duty on the tobacco normally to be stored in the warehouse.

In the course of audit of tobacco ranges in one collectorate it was noticed that excise duty of Rs. 3,03,003 had remained unrealised in respect of 11 licensees against whom certificate action had been instituted. In all the cases the bond amounts were inadequate to cover the duty liability involved. A substantial portion of duty forgone could have been recovered had fresh bond or additional security as provided in Rule 140 of the Central Excise Rules been demanded.

24. Motor Spirit (Tariff item 6)

Under-assessment of J. P.-4 Fuel Oil.

According to the special order issued by the Board in November, 1965 under Rule 8(2) of the Central Excise Rules J.P.-4 fuel manufactured by specified refineries and consumed as such by the aircraft of the Indian Air Force was to be assessed at concessional rates of duties. During the period from 1st January, 1967 to 31st December, 1967 an oil refinery delivered 562·584 K.L. of J.P.-4 fuel at different defence installations on payment of duty at the concessional rates. Though the defence installations did not use it as J.P.-4 fuel, but utilised it as motor spirit, differential duty amounting to Rs. 2,34,821 was not charged. The matter was brought to the notice of the Ministry in December, 1968. Their reply is awaited (March, 1969).

25. Glycerine (Tariff item 14C)

Incorrect levy of duty in respect of glycerine.

(a) Glycerine became assessable to Central excise duty under tariff item 14C from 1st March, 1961. In August, 1961, the then

Central Board of Revenue issued instructions that glycerine at the crude stage should be considered as "manufactured" and that duty should be levied at that stage. However, on the ground that most of the crude was cleared after refining, it was also ordered that duty should be collected at the refining stage. As a result of these orders there was short levy of duty to the extent of Rs. 2,12,946 for the period upto 31st August, 1965 in respect of two factories in one collectorate.

(b) In the case of manufacture of medicinal glycerine from commercial glycerine duty was leviable at the first stage as glycerine under tariff item 14C and again at the second stage as "Patent or Proprietary medicines" under tariff item 14E if the medicinal glycerine satisfied the tariff definition under that item.

It was noticed in one factory that the glycerine used in the manufacture of medicinal glycerine was not levied to duty under tariff item 14C and duty was levied only on the medicinal glycerine under tariff item 14E resulting in loss of revenue of Rs. 30,490. In another factory duty was being levied at both the stages, but on the basis of orders passed by Government in June, 1967 on revision petition of the licensee, duty of Rs. 17,248 paid under tariff item 14E from April, 1962 to July, 1965 was refunded to the licensee.

In the absence of a notification under Rule 8(1) of the Central Excise Rules exempting raw glycerine used in the manufacture of medicinal glycerine from payment of duty, the collection of duty at only one of the two stages was incorrect and had resulted in loss of revenue of Rs. 47,738 in the two cases mentioned above.

26. Patent or Proprietary Medicines (Tariff item 14 E)

Excess refund of duty due to adoption of incorrect assessable value.

Cosmetic preparations are assessable at 25 per cent *ad valorem* and patent or proprietary medicines are assessable at 7½ per cent *ad valorem*. By issue of a notification in May, 1962 a special procedure was prescribed by Government for assessment of patent or proprietary medicines with reference to the trade or retail prices after allowing *ad hoc* discount of 10 or 25 per cent as the case may be.

In a collectorate, a product manufactured by a factory was initially assessed as "cosmetics" during the period from April, 1964 to July, 1966. However, on a revision application filed by the factory against this classification, Government ordered in October, 1966 that the product should be assessed as "patent or proprietary medicines". As a result of this decision refund to the extent of Rs. 2,43,041

for the above period was granted to the factory in June, 1967. However, while working out the amount of refund admissible to the party, the wholesale price of Rs. 3 per pack was adopted by the department instead of the retail price of Rs. 3.75 per pack and the *ad hoc* discount of 25 per cent was applied on the wholesale price for working out the duty liability as medicine. This incorrect adoption of value resulted in an excess refund of Rs. 14,021 and it has since been recovered (November, 1967).

27. Gases (Tariff item 14H)

Non-levy of duty on oxygen

Oxygen is assessable under tariff item 14H(i) at 10 per cent on tariff values fixed by Government from 24th April, 1962. It was noticed in December, 1963 that in an iron and steel factory demand had been raised by the department in August, 1963 for Rs. 5.92 lakhs for oxygen supplied by the factory from 24th April, 1962 to 30th June, 1963 and that no demand had been raised for the gas supplied from July, 1963 onwards. When the non-levy of duty from July, 1963 was pointed out in December, 1963 a revised demand for Rs. 7.00 lakhs was raised (October, 1964) for the period from April, 1962 to February, 1964. Particulars of recovery are awaited (August, 1968).

28. Paper (Tariff item 17)

(i) *Double concession given for paper boards cleared in the year 1963-64*

Under notifications issued by Government in April, 1960 and March, 1963, pulp board, not otherwise specified, and straw board other than corrugated board were allowed slab concessions upto a limit of 3000 metric tonnes each in respect of clearances for home consumption during each financial year. These notifications were superseded by a notification issued on 1st March, 1964 under which all pulp boards and straw boards were allowed slab concessions upto a reduced consolidated limit of 2,500 metric tonnes from the financial year beginning from 1st April, 1964 and concession for a quantity of 200 metric tonnes was laid down for clearances during March, 1964. As the notification omitted to stipulate that the manufacturer who had already availed of the full slab concessions under the earlier notifications would not again be eligible for the additional concession of 200 metric tonnes, during March, 1964, the

additional concession was given even to such units. The extra concession thus given to three units in two collectorates during the year 1963-64 was Rs. 66,000.

(ii) *Under-assessment of wrapper paper used in reel cores.*

Reel cores used in some paper mills to prepare paper rolls were made of wrapper paper liable to excise duty at 35 paise per kg. (basic) plus 20 per cent (special excise duty). The reel cores were used for winding writing paper which was assessable to duty at the rate of 22 paise per kg. plus special excise duty of 20 per cent of basic duty upto 29th February, 1964 and at the rate of 22 paise per kg. thereafter. The wrapper paper used in the manufacture of reel cores was incorrectly assessed to duty at the same lower rates as the writing paper. As a result of assessment of the wrapper paper at the lower rates of duty applicable to the paper wound on it, a sum of Rs. 21,325 had been short collected for the period from March, 1963 to February, 1966 in three collectorates, out of which sum of Rs. 9,458 has been realised in two collectorates.

(iii) *Under-assessment in respect of packing and wrapping paper used for packing newsprint.*

The former Central Board of Revenue issued executive instructions in September, 1955, that packing and wrapping paper should be charged to duty at the same rate as the paper packed in such wrapping paper. Printing and writing paper used in the publication of daily newspapers and conforming to certain specifications was assessable to duty at the concessional rate of 5 paise per kg. upto 20th July, 1967 and thereafter were fully exempted from duty. Certain other varieties of printing paper were also exempted from duty from 28th February, 1965 if used in the printing of newspapers.

It was noticed in a collectorate that the packing paper used to wrap such printing and writing paper was also assessed to duty at the concessional or nil rate of duty on the strength of the Board's executive instructions. As the levy at the concessional or nil rate of duty was conditional on the paper being actually used for printing of newspapers and as the wrapping paper was not being put to such end use, it was pointed out in January, 1966 that the wrapping paper was not eligible for these concessions. This was subsequently upheld by the Board in their revised instructions of June, 1967, wherein they have stated that the exemption under the notification of 28th February, 1965 is conditional on such paper being used in the printing of dailies.

The under-assessment in respect of such packing paper in this collectorate and in six other collectorates was Rs. 7.01 lakhs from November, 1962 to March, 1963. Out of this a sum of Rs. 530 has been recovered in one collectorate, and a demand for Rs. 7,300 raised in another collectorate had to be withdrawn due to operation of time-bar.

(iv) *Irregular grant of concessions in respect of paper boards*

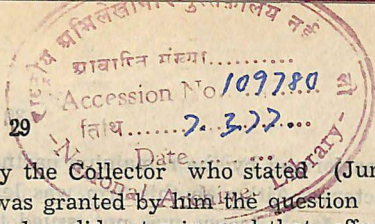
According to an exemption notification issued by Government in March, 1964 certain varieties of paper boards falling under the tariff item 17 were eligible for slab concessions in respect of clearances during each financial year. As a measure to prevent fragmentation of the units manufacturing these boards, Government provided in the notification as follows:—

- (1) These concessions would be admissible only to manufacturers holding Central Excise licence on 9th November, 1963 and would not be available to units set up after that date.
- (2) The manufacturer who applies for fresh Central Excise licence on or after 9th November, 1963 would not be eligible for the concession unless he owned the factory for which the licence was applied on 9th November, 1963.

Irregular grant of these concessions was noticed in the following cases:

1. A paper and straw-board factory, in a collectorate, licensed on 24th April, 1964 was permitted the slab concessions on the owner producing in support of his ownership of the factory on 9th November, 1963 copies of the registration deed of the building and invoices dated 22nd October, 1963 for purchase of machinery. Those invoices, however, were in the name of the National Small Industries Corporation Limited, New Delhi, through whom the machinery was obtained on hire-purchase. Since all the instalments had not been paid under that hire-purchase agreement, ownership of the machinery had not legally passed on to the owner on 9th November, 1963. Besides, production trials were started in the factory only in April, 1964 and cutting and weighing machines had not been installed till then. Thus on 9th November, 1963, the assessee neither owned the factory nor had the machines and plant been properly erected to constitute a factory. Hence the licensee was not entitled to the concessions.

The irregular concession to the factory resulted in loss of revenue of Rs. 1,04,240 during the period from April, 1964 to June, 1966. The



loss of revenue was accepted by the Collector who stated (June, 1968) that since the exemption was granted by him the question of raising any demand to rectify the loss did not arise and that efforts to persuade the licensee to make voluntary payments had failed.

2. A licensee, in a collectorate, who commenced manufacture of paper boards from December, 1964 applied for the slab concessions in March, 1965; but the request was rejected by the Collector in May, 1965 on the ground that the factory was not completely installed with the machinery and was not capable of producing the boards on the crucial date *viz.* 9th November, 1963. However, on the licensee's appeal the Board ordered that the concession should be allowed. Consequently, refund of duty of Rs. 3,29,693 collected from January, 1965 to April, 1966 was paid to him. Government have stated (December, 1968) *inter alia* that "there being no provision at present for the Government to review such cases", it was not possible for them to go into the merits of the case and necessary powers for review are being taken in the new Central Excise Bill under preparation.

3. A partnership firm, in a collectorate, running a factory for the manufacture of grey paper boards availing itself of the slab concession was dissolved in July, 1964 and the factory was taken over by a company in October, 1964 and a fresh licence was issued to the company in February, 1965. Since the company did not own the factory on 9th November, 1963, it was not eligible for the concession, but was allowed the concession incorrectly. In August, 1965, realizing the error the department withdrew the concession and raised demand for Rs. 3,12,176 for the differential duty recoverable from October, 1964 to August, 1965. In August, 1967, by issue of a special order under Rule 8(2) of the Central Excise Rules, the Board restored the concession to the company retrospectively from 1st April, 1964. Consequently the demand was withdrawn and refund of duty of Rs. 1,09,627 paid for the period from September, 1965 during which the concession was not allowed initially. Under Rule 8(2), the Board is empowered to issue exemption orders only in circumstances of an exceptional nature.

4. A partnership firm constituted in February, 1961 was running a factory for the manufacture of paper-boards, availing itself of the concession. One of the partners died in September, 1964 and five others separated themselves from the firm and since there was no clause in the partnership deed to continue the firm in the event of death of a partner, it stood thereby dissolved. A fresh partnership

was formed by the remaining partners in November, 1964 to run the factory. Although this firm was legally different from the previous one, fresh licence was not issued to it by the department and the licence held by the previous firm was allowed to be continued with amendment. Under the Central Excise Rules the new firm should have been required to take out fresh licence and the concession disallowed as for new licensees. The incorrect concession granted to the new firm from November, 1964 to February, 1966 was Rs. 1,83,418. Government have stated (December, 1968) that the new firm has been asked to take out fresh licence. Information regarding action taken for rectifying the incorrect grant of concession is awaited (February, 1969).

5. In a collectorate, a paper-board factory working under a licence issued prior to 9th November, 1963 was purchased by a person in January, 1965 and the factory functioned under a fresh licence and a different name thereafter. As the condition of ownership of the factory on the crucial date *viz.* 9th November, 1963 was not fulfilled by the licensee, the department disallowed the concession to him, but in appeal, the Board ordered in June, 1966 that the concession should be allowed. Consequently refund of duty of Rs. 2,02,559 recovered in respect of the period from 29th January, 1965 to March, 1966 was paid to him. It was explained by Government that the Board's order-in-appeal was in accordance with a policy decision taken by them in April, 1966 to remove the restriction with regard to ownership for availing of the concession. This decision which was made effective by amending the relevant notification on 30th April, 1966 deleting the ownership clause does not apply to the assessments made prior to that date.

29. Rayon and Synthetic Fibres and Yarn (Tariff item 18)

Under-assessment of duty due to improper application of exemption order.

Three specific types of waste of rayon yarn, *viz.* "godet waste", "under size cake waste" and "reeling and coning waste" have been partially exempted from payment of duty under notifications issued by Government under tariff item 18 from time to time. In a factory manufacturing rayon and synthetic fibres and yarn, it was noticed that this concession was allowed to other types of yarn wastes as well instead of being limited to only three types mentioned above. It was stated by the department that the concession had been allowed on the basis of executive instructions issued by the Central Board of Excise and Customs on 1st October, 1964.

In the absence of a notification of Government specifically allowing concessional rates of duty for other types of wastes, such an assessment on the basis of executive instructions was not in order. The revenue foregone on this account during the period from 1959 to 1966 was Rs. 2,73,467, of which Rs. 2.27 lakhs (approx.) related to the period prior to 1st October, 1964 when the executive instruction was issued.

30. Woollen Yarn (Tariff item 18B)

Loss of revenue in respect of hair belting yarn.

Hair-belting yarn is assessable as woollen yarn under tariff item 18B(1) as clarified by the Board in November, 1962. In this order the Board clarified that since hair-belting yarn was manufactured in the same manner as "worsted yarn", assessment of the former should be made on the same basis as that of the latter under sub-item (1) of tariff item 18B.

In a factory manufacturing hair-belting yarn under the description of "grey belting yarn and union belting yarn", it was noticed that duty was levied on such yarn, not as worsted yarn, but as "others" under sub-item (2) of tariff item 18B at lower rate for the period from 1st March, 1961 to 8th January, 1963. Subsequently, differential duty was realised by the department with effect from the date of issue of the Board's clarificatory orders i.e. November, 1962, holding that the order of the Board was in the nature of tariff ruling and hence enforceable from the date of issue of the order.

Hair-belting yarn belonged to the category of worsted yarn *ab initio*, and the Board's order only reiterated this position. This order, being a clarificatory one, should apply to all clearances from 1st March, 1961 i.e. the date of imposition of duty. Non-realisation of duty for the period from 1st March, 1961 to 6th November, 1962 had resulted in loss of revenue of about Rs. 2,96,461. Government stated (October, 1963) that the matter was under investigation to determine the actual loss of revenue and to fix responsibility.

31. (a) Cotton Fabrics (Tariff item 19)

(i) *Under-assessment due to incorrect application of rates.*

A limited concern which was running a powerloom factory and paying duty under the compounded levy scheme, was dissolved in August, 1964. The factory was taken over by a partnership firm from 1st September, 1964. Consequently, the Central Excise licence held by the concern became invalid. The newly formed partnership firm,

however, did not take out a fresh licence till 5th March, 1964 but continued to pay duty at the compounded levy rates from 1st September, 1964 on the basis of licence held by the previous owner. As the partnership firm was not holding a valid licence under the Central Excise law from 1st September, 1964 it was not eligible for the benefit of compounded levy scheme from that date and the firm's production from 1st September, 1964 to 4th March, 1968 should have been assessed to duty under the normal procedure. The under-assessment during the period was Rs. 2,09,829. No action has been taken to rectify the under-assessment (February, 1969).

Mention was made of a similar irregularity in para 27 (c) of Audit Report, 1967, involving an under-assessment of Rs. 7.82 lakhs. The Ministry have stated (October, 1968) that no demands could be raised due to operation of time-bar.

(ii) *Loss of revenue due to grant of concessional rates of duty in respect of certain cotton fabrics treating them incorrectly as "controlled cloth".*

(a) Government in their notification issued in February, 1965 have laid down special concessional rates of duty for certain varieties of cotton fabrics known as "controlled cloth" which answered to the description of "dhoti", "saree", "long cloth", "shirting" or "drill" as defined by the Textile Commissioner under the Cotton Textile (control) Order, 1948 and for which maximum ex-factory prices had been specified by him under the Order. In pursuance of this Control Order, the Textile Commissioner had notified from time to time definitions of these fabrics, prescribing detailed specifications for each category.

In respect of certain varieties manufactured by a few textile mills, which were not according to the notified definitions, individual deviation orders were issued permitting them to be treated as "controlled cloth" on the strength of which the special concession in duty as for "controlled cloth" was allowed by the department. In November, 1967, it was decided by Government that such deviation orders were not valid under the Control Order and that concession as for "controlled cloth" should not be allowed to the fabrics governed by the deviation orders.

The total short levy on such fabrics covered by deviation orders in six collectorates was Rs. 15.41 lakhs out of which recovery of Rs. 7.45 lakhs has become time-barred and demands have been raised for the balance.

(b) It was noticed in a collectorate that sarees which neither conformed to the definition of "controlled variety" prescribed by the Textile Commissioner nor were covered by his deviation orders were also cleared at the concessional rate of duty during the period from 1st March, 1965 to 25th October, 1967. When the department discovered this in October, 1967, demand for the differential duty for the period from 26th July, 1967 to 25th October, 1967 was raised. No action was taken to rectify the under-assessment for the period from 1st March, 1965 to 25th July, 1967. On this being pointed out the department levied additional duty of Rs. 2,03,600 for the period in January 1968.

(b) Woollen Fabrics (Tariff item 21)

Loss of revenue due to incorrect application of exemption formula.

Under a notification issued in 1956 woollen fabrics produced in four of the total number of powerlooms engaged by or on behalf of the same person in one or more factories in which not less than five powerlooms in all are installed are exempted from payment of excise duty. In a case where two mills worked under the same management, the department had allowed exemption of duty on the production of eight looms instead of four, which resulted in a short levy of Rs. 71,882.

The error was noticed by the department in October, 1959 and a demand was raised in March, 1960 for the amount short assessed. The management paid the demand in July, 1960 under protest and preferred an appeal on the ground that differential duty was payable by them only for a period of 3 months prior to the date of the demand under Rule 10 of the Central Excise Rules. This appeal was rejected by the Collector of Central Excise but on a revision petition to the Government of India, the assessee was allowed in January, 1962 a refund of Rs. 67,181.

This loss of revenue could have been avoided if the formula prescribing the exemption had been correctly applied by the department in the first instance. Further, had the department taken immediate remedial action in October, 1959 when the mistake came to light instead of postponing the same till March, 1960, the refund of at least a sum of Rs. 20,144 could have been avoided.

32. Jute Manufactures (Tariff item 22A)

Under-assessment due to non-inclusion of the weight of valve in cement bags.

According to the Central Excise Tariff duty on jute products is leviable on the basis of actual weight. However the assessment is

made on the basis of "contract weight" which is followed by the jute trade. The contract weight is a predetermined weight based on certain standard specification. From a table containing predetermined weights of standard size and other details of the jute products the weight of jute product of any given size and type is calculated. While calculating the contract weight of the cement bags, the standard weight relevant to the specification and type of the bag including the weight of the inside patch valve is to be arrived at.

In the course of local audit of a few jute mills, manufacturing cement bags it was noticed that the weight of the jute cloth utilised in the manufacture of the valves contained in the cement bags had not been taken into account, while arriving at the contract weight resulting in under-declaration of the weight of the cement bags and consequential under-assessment of Central excise duty.

This having been pointed out, the department raised demands for Rs. 1,00,112 on this account, for clearances of bags since inception of Central excise duty to September, 1965 and they have since been realised.

33. Chinaware and Porcelainware (Tariff item 23B)

Loss of revenue due to grant of inadmissible discounts.

A licensee manufacturing chinaware and porcelainware from October, 1962 was selling these goods through distributors and recognized stockists. The value for the purpose of assessment of these goods was approved in December, 1964 by the department under section 4 of the Central Excises Act on the basis of the listed prices of the stockists. While determining the value deductions were allowed on carriage discount and bonus discounts by the department. The direct carriage discount was in consideration of collection of goods direct from the factory and the bonus discount was allowed on the basis of off-take by the wholesale dealers and was paid at the end of the year. Both these discounts thus relate to the marketing operations and have no relation to the determination of the value under section 4. The grant of these inadmissible discounts resulted in short assessment of duty of Rs. 1.32 lakhs from October, 1962 to May, 1965. The Ministry have stated (March, 1967) that the circumstances in which the deductions were made are being verified.

34. Steel Ingots (Tariff item 26)

Non-levy of duty on skulls

Steel melting scraps are assessable to Central excise duty under tariff item 26 with effect from 1st March, 1964. In a collectorate, a

factory cleared skulls obtained in the process of manufacture of steel ingots without payment of duty. The amount of duty not charged came to Rs. 67,569 for the period between 1st March, 1964 and 4th July, 1966. Particulars of recovery of the amount are awaited.

35. Aluminium (Tariff item 27)

Non-levy of duty on aluminium ingots.

Excise duty on aluminium was imposed with effect from 1st March, 1960. Aluminium ingots produced out of old aluminium scrap or scrap obtained from virgin metal on which appropriate excise duty has been paid is exempt from payment of excise duty leviable thereon.

It was noticed that in a few factories, manufacturing aluminium ingots, no duty was levied on the aluminium ingots made out of aluminium dross on which excise duty had not been paid.

The department has issued demands for Rs. 42,272 out of which Rs. 2,375 have been realised (February, 1969).

36. Tin Plate and Tinned Sheets (Tariff item 28)

Loss of revenue due to incorrect assessment of tin plates and sheets.

Excise duty on tin plates and tinned sheets is Rs. 375 per metric tonne under tariff item 28. By issue of a notification in February, 1965 (as amended in May, 1965) Government gave certain concessions in the rates of duty if the tin plates or sheets were manufactured from duty paid steel plates or sheets. A factory in a collectorate was manufacturing tin plates and sheets and the goods were assessed to duty at the concessional rates, although proof of payment of duty on the steel plates and sheets used in their manufacture was not produced. On 13th October, 1965 the department, realising the error, raised a demand for the period of preceding three months for the differential duty of Rs. 2.94 lakhs. The differential duty recoverable for the period from March, 1965 to 12th July, 1965 falling prior to the period of three months, for which no demand has been raised, is Rs. 8.54 lakhs. The omission to raise the demand for this period was brought to the notice of the department in April, 1966 and the departmental reply is awaited (August, 1968).

The factory has since closed down and the plants are stated to have been removed.

37. Refrigerating and Air Conditioning Appliances (Tariff item 29A)

Shortages in the stock of dutiable parts of refrigerators.

According to the Central Excise Rules, stock-taking of excisable goods should be conducted every year and action taken in respect of shortages and excesses noticed.

In respect of a factory manufacturing refrigerators and component parts it was noticed that no stock-taking of component parts was done from 1962 and that no proper accounts were maintained for the parts taken to assembling unit. At the instance of audit, a special stock-taking was conducted in June, 1967 which revealed shortages and excesses in certain excisable parts. The duty involved on the shortages noticed works out to Rs. 1,55,457 approximately. The department has since issued a show cause notice for the shortages of evaporators, cabinets and compressors to the licensee (September, 1967) and the case is pending with the Collector (February, 1968). Penal action for the excesses noticed after investigation has also been initiated by the department (February, 1968).

38. Motor Vehicles (Tariff item 34)

Non-realisation of duty on tractors for which end-use certificates were not produced within the prescribed period.

Under a notification issued by Government in April, 1960, tractors were exempted from payment of duty provided the Collector of Central Excise was satisfied that such tractors were used solely for agricultural purposes. For this purpose, the former Central Board of Revenue, prescribed in April, 1963 that a certificate regarding the end-use be produced within one year from date of clearance of tractors.

It was observed in a collectorate that the production of this certificate at the end of the year was not being insisted upon. When this was pointed out, demands for Rs. 70,581 were raised of which sum of Rs. 48,747 has been realised (February, 1969) and in respect of the balance necessary certificates were stated to have been produced.

39. Matches (Tariff item 38)

Short levy of duty on matches.

According to the notification issued by Government in April, 1964 the categorisation of a match factory for purposes of assessment of the matches cleared by it from the 1st April, 1964 was to be determined with reference to the output of the factory in the preceding

financial year. This notification provided that factories having production not exceeding 75 million matches in the preceding financial year were to pay duty at the lowest rate *viz.*, Rs. 3.75 per gross boxes of 50 matches. Eighteen match factories in a collectorate which commenced production after 1st April, 1964 were categorised under the lowest category in terms of the notification, treating the output of the previous year as "not exceeding 75 million matches". Since the notification would apply only in the case of factories which had some output during the preceding financial year and not to new factories, it was pointed out that these factories would not be eligible for the concession in duty under the notification. The short assessment due to the incorrect application of concessional rates works out to Rs. 6,33,287 during the period 1964—67 in respect of four collectorates out of which a sum of Rs. 15,485 has been recovered in one collectorate.

40. Over-assessment

Over-assessment of mill board and straw board owing to denial of adequate concession.

By issue of a notification in April, 1966 Government prescribed slab exemptions in respect of straw board and mill board subject to certain conditions specified in the notification. The conditions *inter alia* prescribed that in respect of mill board the process of drying of the wet board should be carried out without the aid of the same machine on which the board is formed. This condition was withdrawn from 19th September, 1966 and as a result, machine-dried mill board was also eligible for assessment at the revised concessional rate from that day provided it satisfied the specifications enjoined in the relevant notification.

It was, however, noticed that the quantities of such paper boards cleared by the manufacturer on payment of duty at the tariff rates during the period from 30th April, 1966 to 18th September, 1966 were also taken into account in arriving at the quantity of mill board and straw board qualifying for assessment at the concessional rates although these were not treated as will boards for the purpose of assessment in terms of the earlier notification of April, 1966.

The inclusion of the quantities of such paper boards cleared during 30th April, 1966 to 18th September, 1966 was irregular and resulted in overassessment of Rs. 1,27,517.

41. Other topics of interest

(i) *Irregular proforma credit allowed under Rule 56A procedure.*

Rule 56A of the Central Excise Rules lays down a procedure for adjustment of duty paid on the raw materials or components used in the manufacture of specified excisable goods, from the duty payable on the finished goods.

A manufacturer of electric wires and cables was permitted with effect from 20th February, 1967 under this Rule to receive duty paid aluminium in his factory for the manufacture of electric wires and cables. According to sub-rule (2) of this Rule, no credit for duty shall be allowed unless (a) duty has been paid for such material or component parts under the same item or sub-item as the finished excisable goods or (b) remission or adjustment of duty paid for such materials or component parts has been specifically sanctioned by the Central Government. It was noticed during audit that proforma credit amounting to Rs. 81,217 had been allowed during the period from 20th February, 1967 to 24th April, 1967 in respect of duty paid aluminium falling under tariff item 27 and used by the licensee in the manufacture of electric wires and cables falling under tariff item 33-B.

The proforma credit allowed was irregular since the tariff item under which duty was paid on aluminium was different from that of finished excisable goods, i.e., electric wires and cables and there was no notification specifically permitting remission or adjustment of duty paid on aluminium used in manufacture of electric wires and cables. The department have since withdrawn the proforma credit facility and have issued orders for recovery of the amount erroneously credited. A sum of Rs. 28,000 has been recovered so far (May, 1968).

(ii) *Unauthorised concession in respect of tea drier oil.*

(a) A variety of mineral oil known as "tea drier oil" answering the tariff description of "diesel oil, not otherwise specified" (tariff item 9) was allowed by Government to be assessed at the lower rate applicable to "furnace oil" (tariff item 10) during the period from December, 1963 to February, 1964 by issue of a notification in December, 1963. The concession was revived by Government in December, 1964 and was continued by issue of notifications from time to time. As the mineral oil did not answer the tariff description of

furnace oil as laid down by Parliament, the concession allowed under the notifications was irregular. If this concession was given as a matter of public policy, it would have been appropriate to issue a notification under Rule 8 of the Central Excise Rules under the relevant tariff item without relating it to another tariff item. The revenue foregone due to this concession for the period from 30th December, 1963 to 31st March, 1967 was Rs. 2.24 crores.

(b) It was noticed that even during the periods not covered by the notifications mentioned in sub-para (a) above, the concession was allowed by the department on the basis of executive instructions issued by the Board in May, 1958 and November, 1962. The amount involved in this irregular concession allowed during such periods *viz.* March, 1965 to November, 1965 and March, 1966 to 22nd July, 1966 in respect of two refineries was Rs. 2.80 crores. The revenue foregone due to the irregular concession allowed in respect of one of these two refineries from June, 1962 to 29th December, 1963 was Rs. 81.84 lakhs.

(iii) *Loss of revenue due to misclassification of mineral oil.*

Mineral oil having a flame height of eighteen millimetres or more and used as illuminant is leviable to duty under tariff item 7 and mineral oil having flashing point above 76°F and flame height of ten millimetres or more but less than eighteen millimetres is leviable to duty under tariff item 8. The oils falling under tariff item 8 are not generally used as illuminants.

Under notification issued on 20th April, 1961, as amended from time to time, Government laid down concessional rate of basic excise duty in respect of mineral oil produced in the areas of Assam and Bihar provided such oil conformed to certain specifications, one of which was that the flame height of the oil must not be less than 13 millimetres. The notification did not expressly mention the item under which such mineral oil was classifiable, but on the basis of flame height and flashing point it was classifiable under tariff item 8. It was, however, noticed that such oils which had a flame height of 13 to 14 millimetres and flashing point above 76°F were classified under tariff item 7. The misclassification resulted in loss of revenue of Rs. 67,80,918 in respect of mineral oils produced in two refineries during the period from November, 1962 to June, 1966.

(iv) *Revenue foregone by executive instructions of Government.*

Under the orders in force upto 27th February, 1965 unprocessed cotton fabrics manufactured in units with less than five installed powerlooms were exempt from payment of duty. The exemption

was not applicable to those manufacturers who commenced production of the said fabrics for the first time on or after 1st April, 1961 by acquiring powerlooms from other persons who were or had been licensees of powerloom factories.

In the course of audit of factories in one collectorate, it was noticed that no excise duty was levied on cotton fabrics cleared from the factories which had changed ownership as well as commenced production after 1st April, 1961. Non-levy of excise duty was stated to be in accordance with instructions issued by Government in December, 1963 directing that *status quo* should be maintained in respect of cases where the provisions in this regard were not enforced earlier.

This resulted in loss of revenue of Rs. 4,00,652 during the period from 1st July, 1962 to 27th February, 1965.

(v) *Incorrect stage of accounting of cotton fabrics.*

Under section 3 of the Central Excises and Salt Act, goods are liable to **duty as soon as they are manufactured**. Under the Central Excise Rules, every licensee of excisable goods has to maintain a production account showing the excisable goods manufactured by him daily, quantity of goods deposited by him in the bonded store room and **goods removed after payment of duty**. In textile mills manufacturing cotton fabrics there was no uniformity regarding the stage at which the production was recorded in the statutory production register. Some mills were accounting for the production at the "off-loom stage", *i.e.*, as soon as the fabrics came out of the looms and some mills at the "finished stage", *i.e.*, after the fabrics had undergone the subsequent processes. A sub-committee was constituted by Government in 1959 to examine, among other things, the accounting procedure followed by the textile industry and to recommend the stage at which accounting should commence. In its recommendation made in February, 1960 the sub-committee after taking note of the divergent practices in maintenance of production registers in various textile units, recommended that the production account should be maintained at the off-loom stage for the following reasons:—

- (1) It would be in conformity with the principle that accounting should commence from the stage where the charge to excise duty arises;
- (2) It would facilitate correlation of the fabrics produced from the off-loom stage to the finished stage;

- (3) It would provide for cross check or verification with the private accounts maintained by the mills.

However, Government issued instruction in July, 1965 permitting the mills to maintain accounts at the finished stage or off-loom stage according to their option.

The practice of maintaining account in the mills at the finished stage which has been allowed to be continued, has resulted in postponing bringing into account the excisable fabrics until they are subjected to all processes. Thus considerable quantity of cloth which has been woven on the looms but not subjected to further processing has remained outside the statutory account of production involving risk to revenue. In the absence of any account showing the quantity of cloth at the loom-stage, it was not verifiable in audit whether the entire quantity was ultimately brought in the production register in such mills and cleared on payment of duty.

- (vi) *Loss of revenue arising from duty free removal of samples for trade purposes.*

Under the Central Excise and Salt Act and Rules made thereunder, excise duty is payable on all goods as set forth in the First Schedule to the Act except where the Government of India by notification in the official gazette authorises exemption from duty. The Central Board of Excise and Customs are not competent to permit duty free clearances of excisable goods by executive instructions.

It was, however, noticed that a number of excisable commodities in the shape of samples for trade purposes were removed free of duty under certain executive instructions of the Board. The duty foregone by Government in respect of samples of cotton fabrics alone, was Rs. 9,93,455 from April, 1965 to March, 1967 in five collectorates.

- (vii) *Delay in revision of tariff value and consequent loss of revenue.*

Copper winding wires were assessed to duty on the basis of tariff values fixed by the Government of India in August, 1965.

Consequent on the devaluation of Indian currency in June, 1966 the prices of copper had gone up as a result of which the selling prices of winding wires were also duly raised. However, till March, 1968 the tariff value remained unchanged resulting in loss of revenue of approximately Rs. 52.17 lakhs, between July, 1966 and February, 1968 in respect of a few factories alone in one collectorate.

42. *Loss of revenue due to operation of time-bar.*

The total amount of revenue foregone by Government due to operation of time-bar in respect of Central Excise assessments during 1967-68 was Rs. 12,60,957 as detailed below:—

	No. of cases	Loss of revenue involved Rs.
(a) Demands not issued due to operation of time-bar	144	6,75,432
(b) Demands withdrawn due to operation of time-bar	52	5,85,525
	<u>196</u>	<u>12,60,957</u>

43. *Arrears of Union Excise duties.*

The total amount of demands outstanding as on 31st March, 1968 in respect of Union Excise duties was Rs. 2129.45 lakhs as given below* :—

Commodity	Pending for more than one year	Pending for more than a month but not more than a year	Total
	(In lakhs of rupees)		
Unmanufactured tobacco	297.10	87.18	384.28
Motor spirit	52.48	19.36	71.84
Diesel oils N.O.S.	121.60	4.04	125.64
Furnace oil	32.67	6.03	38.70
Petroleum Products N.O.S.	20.10	18.85	38.95
Gases	28.60	3.56	32.16
Plastics	98.55	63.30	161.85
Paper	16.09	19.50	35.59
Rayon and Synthetic fibres and yarn	318.16	15.06	333.22
Cotton fabrics	270.80	102.19	372.99
Iron or Steel Products	37.35	12.76	50.11
Tin Plates and Tinned Sheets	2.93	138.51	141.44
Refrigerating and Air Conditioning appliances and machinery	48.20	13.28	61.48
All other commodities	165.22	115.98	281.20
	<u>1509.85</u>	<u>619.60</u>	<u>2129.45</u>

*Provisional figures furnished by the Ministry of Finance

44. *Remissions and abandonment of claims to revenue.**

The total amount remitted, abandoned or written-off during 1967-68 was Rs. 7,22,009. The reasons for remission and writes off are as follows:—

I. Remissions of revenue due to loss by:

	No. of cases	Amount Rs.
(a) Fire	78	4,29,592
(b) Flood	5	1,118
(c) Theft	8	2,578

II. Abandonment or writes off on account of:

	No. of cases	Amount Rs.
(a) Assesseees having died leaving behind no assets	45	7,840
(b) Assesseees being untraceable	102	43,200
(c) Assesseees having left India	6	834
(d) Assesseees being alive but incapable of paying duty	339	1,60,044
(e) Other reasons	87	76,803

45. *Frauds and evasions**

The following statement gives the position relating to the number of cases prosecuted for offences under the Central Excise law for frauds and evasions, together with the amount of penalties imposed and the value of goods confiscated:

(1) Total number of offences under the Central Excise law prosecuted in courts		10
(2) Total number of cases resulting in convictions		6
(3) Total value of goods seized	Rs.	79,23,564
(4) Total value of goods confiscated	Rs.	16,662
(5) Total amount of penalties imposed	Rs.	3,49,304
(6) Total amount of duty assessed to be paid in respect of confiscated goods	Rs.	53,50,886
(7) Total amount of fine adjudged in lieu of confiscation	Rs.	4,47,386
(8) Total amount settled in composition	Rs.	1,02,221
(9) Total value of goods destroyed after confiscation	Rs.	37,366
(10) Total value of goods sold after confiscation	Rs.	53,066

*Figures furnished by the Ministry of Finance.

CHAPTER IV

CORPORATION TAX AND TAXES ON INCOME OTHER THAN CORPORATION TAX

46. (a) The total proceeds from both Corporation Tax and Taxes on income other than Corporation Tax (excluding the portion of Income Tax which was assigned to the State Governments) for the year 1967-68 amounted to Rs. 461.88 crores. The figures for the three years 1965-66, 1966-67 and 1967-68 are as follows:

	(In crores of rupees)		
	1965-66	1966-67	1967-68
Taxes on income other than Corporation Tax (Gross proceeds)	271.80	306.63	325.89
<i>Deduct</i> share of net proceeds assigned to States.	123.34	137.10	174.52
Net	148.46	169.53	151.37
<i>Add</i> Corporation Tax	304.84	330.80	310.51
TOTAL	453.30	500.33	461.88

(b) The total number of assesseees in the books of the department as on 31st March 1968 is 27,08,464. The corresponding figure as on 31st March 1967 was 27,02,282. The number of assesseees status-wise for the two periods is as follows:—

	As on 31st March 1967	As on 31st March 1968
Individuals	22,34,417	22,14,093
Firms	2,86,266	3,10,821
Companies	26,787	26,525
Hindu Undivided Family	1,40,203	1,42,180
Others	14,609	14,845
TOTAL	27,02,282	27,08,464

47. Results of test audit in general.

(i) In the course of test-audit during the period from 1st September 1967 to 31st August 1968 a total under-assessment of tax of Rs. 1062.52* lakhs was noticed in 10,980 cases. Over-assessment of tax of Rs. 85.25 lakhs was also noticed in 2,872 cases. Besides these, various defects in following the prescribed procedure also came to the notice of audit.

*This includes a sum of Rs. 4.03 crores in the case of two Corporations on account of incorrect deduction of interest paid, in the assessments. The legality of the issue involved is under examination of the Attorney-General of India.

Of the total 10,980 cases of under-assessment, short-levy of tax of Rs. 934.99 lakhs was noticed in 689 cases alone. The remaining cases accounted for an under-assessment of tax of Rs. 127.53 lakhs.

(ii) The under-assessment of tax of Rs. 1062.52 lakhs has been the result of the following lapses:

	Amount in lakhs of rupees
(1) Errors and omission attributable to negligence or failure to apply the correct rates of tax	52.21
(2) Under-assessment of tax due to incorrect determination of status of assessee	33.16
(3) Incorrect determination of income under the head "salary"	2.81
(4) Incorrect determination of income under the head "house-property"	9.18
(5) Incorrect computation of income from business	492.28*
(6) Mistakes in computing depreciation and development rebate	93.80
(7) Incorrect computation of capital gains and levy of tax thereon	7.72
(8) Irregular exemptions or excess reliefs given	77.62
(9) Incorrect computation of tax payable by companies	49.88
(10) Omission to levy tax on Section 23A/104 companies	8.46
(11) Income escaping assessment	25.80
(12) Omission to levy penalty correctly	1.35
(13) Non-levy/incorrect levy of penal interest	63.56
(14) Incorrect determination of Super-profits tax or Sur-tax payable by companies	11.84
(15) Other lapses	132.85

48. *Errors and omissions attributable to carelessness and negligence and failure to apply the correct rates of tax.*

Under-assessments on account of errors and omissions attributable to carelessness and negligence and failure to apply the correct rates of tax have been commented upon in the Audit Reports on Revenue Receipts from 1964 onwards. The figures for the years 1965 to 1969 are as follows:

Year of Audit Report	No. of cases	Amount of under-assessment (in lakhs of rupees)
1965	1786	38.57
1966	1059	41.86
1967	1455	35.81
1968	2612	33.99
1969	2650	52.21

* *Vide* foot note at page 44.

A few instances which are only illustrative are given below:

(a) In terms of the Finance Act, 1962 an individual was required to pay income-tax on the first Rs. 20,000 of his total income at various slab rates and on the balance of his total income above Rs. 20,000 at the rate of 25 per cent. As regards super-tax, the assessee was required to pay the same on the first Rs. 70,000 of his total income at various slab rates and on the balance of his total income above Rs. 70,000 at the rate of 47.5 per cent.

(i) In the case of an assessee whose assessment for the year 1962-63 was completed on 23rd March, 1967 the total income was determined at Rs. 3,52,699. While arriving at the tax payable by the assessee, the Income-tax Officer calculated the income-tax and super-tax on the total income of Rs. 1,00,000 and multiplied the same by three in order to arrive at the tax on the first Rs. 3,00,000 of his total income. To this amount was added the tax payable on the next Rs. 52,699 in order to arrive at the total tax payable on the total income of Rs. 3,52,699. The incorrect method of calculation adopted by the department resulted in an under-charge of tax of Rs. 49,648 for the assessment year 1962-63. The Ministry have stated that an additional demand of Rs. 49,648 has been raised (December, 1968). Report regarding recovery is awaited.

(ii) In another case, which was also completed on 23rd March, 1967 by the same Income-tax Officer an assessee was assessed for the assessment year 1962-63 on a total income of Rs. 3,00,258. In this case also the incorrect method of calculation mentioned above was adopted by the department, resulting in an under-charge of tax of Rs. 48,335. An additional demand of Rs. 48,335 has since been raised. Report regarding recovery is awaited.

(b) While determining the total income of a company for the assessment year 1962-63, the assessing officer decided to disallow various items of expenses which aggregated to Rs. 2,93,975. In the assessment completed on 31st March 1967, it was noticed that a sum of Rs. 1,93,975 only was disallowed and added back to income. The arithmetical mistake resulted in under-assessment of income by Rs. 1,00,000. Consequently, an amount of Rs. 55,024 by way of tax and interest was under-assessed. Though the assessment was revised on 29th April, 1967 on some other grounds, the mistake in totalling remained undetected by the department.

(c) A sum of Rs. 1,25,000 representing bogus hundi loans shown in the books of account of a registered firm for the assessment year 1962-63 which was to be added back to the total income of the firm was, at the time of computing the total assessable income on 28th February, 1967, omitted to be added back to the total income. As a result, the sum of Rs. 1,25,000 escaped assessment. Besides the tax calculated by the department on the total income assessed was under-charged by Rs. 10,000 due to a mistake in totalling. As a result of these two mistakes tax was under-charged to the extent of Rs. 1,15,034.

(d) For the assessment year 1966-67 a non-resident association of persons was assessed on a total income of Rs. 35,75,912. Though, according to the provisions of the Finance Act 1966, surcharges on income-tax were leviable, the Income-tax Officer charged only income-tax and did not levy any surcharge on income-tax. As a result a sum of Rs. 2,64,754 was under-charged for the assessment year 1966-67. The Ministry have accepted the audit objection but they have stated that retrospective recognition of the status of the assessee as a company is under consideration (March 1969).

49. *Under-assessment of tax due to incorrect determination of status of assessees.*

Under the Income-tax Act, 1961 a company being a manufacturing company would be deemed to be a company in which the public are substantially interested if not less than 40 per cent. of its shares are held by the public.

In the case of a manufacturing company it was noticed that the department treated the assessee as one in which the public were substantially interested despite the fact that in the previous year relevant to the assessment year 1964-65 less than 40 per cent of the equity share capital was held by the public. The mistake resulted in an under-charge of tax of Rs. 23,06,458.

50. *Incorrect determination of income under the head 'salary'.*

For the assessment year 1966-67 and the earlier years the annual Finance Acts provided that "income from salary" assessable for any year shall be taxed at the rates prescribed for the preceding year. However, in so far as the computation of total income is concerned, such a computation shall be made according to the provisions of the Income-tax Act in force in the assessment year. The Finance Act of 1965, while abolishing super-tax had made certain amendments to the Income-tax Act, 1961 deleting provisions which had a bearing on

the liability to super-tax. Accordingly, while taxing income from salaries for the year 1965-66 even though the rates as prescribed in the preceding Finance Act of 1964 were applicable, the assessee would not be entitled to any rebate from super-tax on account of contributions to the general provident fund, life insurance premia or on account of expenses on education of children. However, it was noticed in a circle that in 58 cases of assesseees whose income from salaries was taxable for the assessment year 1965-66 rebate from super-tax was allowed resulting in an under-assessment of tax of Rs. 44,841. The cases were brought to the notice of the Ministry in December 1968 and their reply is awaited (March 1969).

51. *Incorrect determination of income under the head "house property".*

(a) (i) Income from house property assessable under the Income-tax Act is computed with reference to the annual value of the property which, for this purpose is deemed to be the sum for which the property might reasonably be expected to let from year to year. Under departmental instructions, either the rent receivable in respect of the property or its annual letting value fixed by the municipality, whichever is higher, is to be adopted as the annual value for such computation. The income from property belonging to a company was worked out with reference to the municipal valuation which was far lower than the rent receivable resulting in an under-assessment of the property income of Rs. 1,96,536 for the assessment years 1966-67 and 1967-68. The resultant under-assessment of tax is Rs. 1,27,747 for the two assessment years. The Ministry have stated that the mistake is being rectified (February 1969).

(ii) In another case, it was noticed that although the municipal valuation of the property was substantially higher than the rental value, the department calculated the income from house property with reference to the rental value. The under-charge of tax on this account was Rs. 48,559 for the assessment years 1962-63 to 1965-66.

(b) If the income from house property is computed on the basis of municipal rateable value, the amount spent by the assessee on providing amenities to tenants is not allowable as a deduction as the municipal rateable value is itself determined taking this factor into consideration. Further, only the amount actually spent for collecting the rent from property is allowable as a deduction subject to the limit laid down in the Act.

In the case of a company, the expenditure on amenities and collection charges was incorrectly allowed as a deduction from property income in the assessments for the years 1957-58 to 1965-66, though the computation was based on municipal rateable value and nothing was actually expended by the company for collection of rent from its tenants. This led to an under-assessment of tax of Rs. 59,996 for the assessment years 1957-58 to 1965-66 out of which an amount of Rs. 38,198 pertaining to the assessment years 1957-58 to 1962-63 would be a revenue loss because of time-bar.

52. *Incorrect computation of income from 'business'.*

(a) An oil company incorporated in India in February, 1959 started its operations after taking over a part of the oil business of an existing oil company. At the initial stages the major part of the operations was being carried on conjointly by the two companies and the expenditure incurred by the old company was reimbursed by the new company on a proportionate basis. For the previous year relevant to the assessment year 1960-61 the old company paid a sum of £ 2,50,000 to its holding company in London as management fee charged by the latter. Out of this expenditure, £ 82,707 was allocated by the old company to the new company as share of its expenditure and the balance, £ 1,67,293, was borne by the old company itself. The sum of £ 82,707 was subsequently reimbursed by the new company to the old company.

In the assessment of the old company for the assessment year 1960-61, the Income-tax Officer did not accept the management charges of £ 2,50,000 to be reasonable. According to his finding, a sum of £ 1,00,000 only was reasonable out of which £ 66,667 was allowed in the assessment of the old company for the assessment year 1960-61 and in consequence the balance £ 33,333 was to be allowed in the assessment of the new company. However, it was noticed that the sum of £ 82,707 which was reimbursed by the new company to the old company calculated on the basis of one-third share of £ 2,50,000 was allowed by the Income-tax Officer in full in the assessment of the new company for the year 1960-61. This has resulted in under-assessment of income of £ 49,374 (i.e. Rs. 6,58,320) in the assessment of the new company and the tax involved is Rs. 2,96,244. The Ministry have stated that the payment by the new company cannot be construed to be of a collusive nature and hence the allowance is in order. The Income-tax Officer did not limit the admissible expenditure on the ground of collusion but on the ground that the

amount paid was excessive and unreasonable. As a logical corollary of this finding, only £ 33,333 was to be allowed.

(b) In the Balance Sheet of an assessee as on 30th June, 1961 the assessment relating to which was completed on 1st January, 1966 a sum of Rs. 1,51,828 appeared as 'Cane Development Reserve' without any corresponding distinct debit entry in the Profit and Loss account. It was pointed out that the debit on this account might have been included in Cane Development expenses of Rs. 2,46,891 and was therefore, not an admissible expense. The department while admitting the omission have intimated that the mistake has been rectified by the Appellate Assistant Commissioner of Income-tax.

(c) Any expenditure which is of a capital nature is not allowable as deduction in computing the total income of an assessee. During the previous year relevant to the assessment year 1964-65 an assessee incurred an expenditure of Rs. 1,12,084 as prospecting expenses on certain cement works. In preparing the Income-tax return for the assessment year 1964-65 the assessee himself did not claim any relief on this account. In spite of this, the Income-tax Officer allowed the expenditure as a deduction against the total income for the assessment year 1964-65 leading to an under-charge of tax of Rs. 56,042. Report regarding rectification and recovery of the tax is awaited.

(d) Under the Income-tax Act, 1961 as amended by the Finance Act, 1965, any expenditure incurred by a company after the 29th February, 1964 in providing any benefit, amenity or perquisite to its employees in receipt of salary in excess of Rs. 7,500 per annum is to be disallowed in the assessment of the company to the extent such expenditure exceeds 20 per cent. of the salary of the employee concerned. In the assessments of a company for the assessment years 1965-66 to 1967-68, instead of ascertaining the actual expenditure incurred on the amenities provided to each employee for the purpose of disallowing the amounts in excess of one-fifth of his salary, the Income-tax Officer estimated the value of the benefits and disallowed a lesser figure. This resulted in under-assessment of income of Rs. 20,512 and consequential short-levy of tax of Rs. 14,538 for the assessment year 1966-67 alone. In the absence of relevant details in the assessment records for the assessment years 1965-66 and 1967-68 the under-assessment of tax relatable thereto could not be ascertained.

53. *Mistakes in computing depreciation and development rebate.*

(a) For the purpose of allowing depreciation on plant and machinery in assessing the income of a business under the Income-tax Act,

1961, the term 'actual cost' has been defined as the actual cost of the asset to the assessee, reduced by any amount met directly or indirectly by any other person or authority. In the case of an Electric Supply Company, however, it was noticed that the depreciation allowance had been allowed on the entire cost of the additional meters, mains and service connections provided during the assessment years 1962-63 to 1966-67, without deducting a portion of the cost met out of the contributions made by the consumers. The written down value of the meters, mains and service connections, carried forward from the assessment year 1961-62 to the assessment year 1962-63 for assessment under the Act of 1961, was also not reduced by the amount contributed by the subscribers. An additional demand of Rs. 1,73,857 has since been created against the company in respect of the assessment years 1962-63 to 1966-67. Of this, a sum of Rs. 1,51,632 is reported to have been recovered by adjustment. Report of recovery of the balance amount of Rs. 22,225 is awaited (March 1969).

(b) In the case of an assessee engaged in the manufacture of blades, it was noticed that for the assessment years 1962-63 and 1963-64, the department allowed depreciation allowance on the plant and machinery owned by the assessee at the rate of 10 per cent. In the Income Tax Rules, 1962, no special rate was prescribed in respect of blade manufacturing concerns and in the absence of such a special rate, the general rate of 7 per cent. was applicable in this case. As a result of the allowance of depreciation at a higher rate than admissible, there was under-assessment of income of Rs. 2,52,478 for the assessment years 1962-63 and 1963-64. The undercharge of tax on this account was Rs. 1,26,239 for both the assessment years. Report regarding rectification and recovery of the tax is awaited (March 1969).

(c) The following mistakes were noticed in the assessments of a certain company for the assessment years 1954-55 to 1962-63.

- (i) The company purchased certain lease-hold land alongwith the old cinema house standing thereon. The consideration paid by the company on account of the cost of the land and incidental charges amounted to Rs. 13,48,268, on which no depreciation of any kind would be admissible. But initial, additional and normal depreciation was allowed on this expenditure along with that on the construction of the new cinema building. The total amount of inadmissible depreciation amounted to Rs. 5,78,772 for the assessment years 1954-55 to 1962-63.

- (ii) For the purposes of depreciation allowance the cost of the new cinema house was adopted as Rs. 22,65,653 instead of Rs. 17,23,653 shown in the certified accounts of the company, leading to the grant of depreciation in excess to the extent of Rs. 2,32,663 for the assessment years 1954-55 to 1962-63.

These two mistakes together with certain other discrepancies led to a total under-assessment of tax of Rs. 5,25,419 for the assessment years 1956-57 to 1962-63.

- (d) Under the Income-tax Act, an allowance by way of development rebate at the rate of 25 per cent is admissible in respect of new plant and machinery installed prior to 1st April, 1961 and used for the purpose of business.

In one case, it was noticed that development rebate of Rs. 60,61,702 was allowed in the assessment year 1958-59 completed in 1963 without ascertaining whether all the plant and machinery had actually been purchased and installed during the previous year. A review of the case by the department revealed that the development rebate admissible to the assessee was only Rs. 33,80,825 and the excess development rebate of Rs. 26,80,877 allowed to the assessee was withdrawn. Since the assessee was assessed on loss for the year 1958-59, the withdrawal of excess development rebate for this year, reduced the carry forward loss to the extent of Rs. 26,80,877 and the actual under-assessment on account of the above mistake would be reflected when the company is assessed to a positive income in a subsequent year. The Ministry have replied that there cannot be a total withdrawal of the development rebate but only a shifting of the claim from this year to the earlier year. While it may be that it would be more equitable to try and shift the claim to an earlier year, there appears to be no provision under the existing law to enable when the Ministry feels in equity should be allowed.

- (e) The Income-tax Act, 1961, provides for higher allowance of development rebate on plant or machinery installed for the purposes of business of mining coal at 35 per cent of the actual cost of such machinery or plant. Where the plant or machinery is installed for purposes other than the business of mining coal, the development rebate is admissible at the rate of 20 per cent.

In one case it was noticed that a contractor employed for erecting a coal washery by a public Corporation was treated as having been engaged in the business of mining coal. The allowance of development rebate at the higher rate of 35 per cent instead of at

20 per cent to the contractor who was only engaged in the erection job and who was not engaged in the business of production of coal resulted in excess allowance of development rebate to the extent of Rs. 51,790 for the assessment year 1966-67 resulting in under-assessment of tax of Rs. 33,664. Report regarding rectification and recovery of the tax is awaited (March 1969).

54. *Incorrect computation of capital gains and levy of tax thereon.*

(a) Certain companies which ran jute mills were members of the Indian Jute Mills Association. To protect themselves against loss resulting from over-production, the members of the association entered into an agreement imposing restrictions upon the hours of work of the members. The number of hours of working, called loom-hours, allotted to the different mills depended upon the loomage capacity and the agreement provided that where a mill was unable to utilise the loom-hours allotted to it, the surplus loom-hours available could be transferred by it to another mill. The loom-hours being capital assets, any profit or gain arising from their transfer was liable to be taxed as capital gain under the Income-tax Act in the hands of the transferor. As the loom-hours allotted to a mill remained operative for only a year and as surplus loom-hours of one year could not be carried forward to the next year, these were, by their nature, short-term capital assets, held by a mill for not more than twelve months immediately preceding the date of their transfer.

During the previous years relevant to the assessment years 1963-64 and 1964-65, four companies transferred surplus loom-hours allotted to them. The profits arising from the transfer were taxed by the department as long-term capital gain instead of as short-term gain. This incorrect treatment of the capital gain resulted in a total undercharge of tax of Rs. 4,55,272 for the assessment years 1963-64 and 1964-65.

(b) According to the Income-tax Act, 1961, where an assessee incurs a loss on transfer of long-term capital assets such loss in any previous year can be set off only against the income, if any, from the transfer of any other long-term capital assets in the same previous year.

In one case, an assessee incurred in the previous year relevant to the assessment year 1962-63 a loss of Rs. 74,828 on sale of certain shares held by the assessee as long-term capital assets. The loss was erroneously set-off against the income from the sale of certain short-term capital assets in the same previous year. As a result of this incorrect set-off of loss, the short-term capital gain of the

assessee was under-assessed to the extent of Rs. 74,828. The under-charge of tax on this account for the assessment year 1962-63 amounted to Rs. 37,414. Report regarding rectification and recovery of the tax is awaited (March, 1969).

55. *Irregular exemptions or reliefs given.*

(a) Under the provisions of the Income-tax Act, 1922, income from property held under trust wholly or partly for charitable or religious purpose is exempt from tax. If the paramount and dominant object of a trust is relief of the settlor's poor relatives, it is not to be considered a public charitable trust and, therefore, cannot claim exemption. However, a Wakf the income of which was to be spent on such objects as payment of a monthly sum to the brother of the settlor, rendering monetary help to poor and deserving relations of the settlor, repairs to the property of trust etc. was treated as income spent on charitable purposes and exemption given. The irregular grant of exemption resulted in a loss of revenue of Rs. 31,132 for the assessment years 1953-54 to 1960-61 and short-levy of tax of Rs. 4,322 for the assessment year, 1961-62. The Ministry have replied that factually no part of the trust income was spent on non-charitable purposes during the years 1953-54 to 1960-61. Under the Act, however, exemption is governed by the objects of the trust and not on how the funds are utilised.

(b) Out of the total dividend of Rs. 13,56,764 received by a company in the year relevant to the assessment year 1965-66, an expenditure of Rs. 1,70,929 incurred in earning the dividend was allowed as deduction and the income by way of dividend was taken at the net figure of Rs. 11,85,835. This intercorporate dividend income was entitled to rebate under the Income-tax Act, 1961. It was noticed that the rebate was calculated with reference to the gross amount of Rs. 13,56,764 instead of the net amount of Rs. 11,85,835. This led to an excess allowance of rebate of Rs. 59,825 with consequent under-charge of tax by an equivalent sum for the assessment year 1965-66. An additional demand of tax of Rs. 59,825 has since been created by the department. Report regarding recovery is awaited.

(c) An assessee engaged in the manufacture and export of certain prescribed articles is entitled to a rebate of tax at the average rate on an amount equal to two per cent of the sale proceeds receivable by him in respect of such exports.

It was noticed that this rebate had been allowed to five assesseees for the export of goods which were not manufactured by them. The assessments of two assesseees have been revised raising an ad-

ditional demand of Rs. 19,090 for the assessment years 1964-65 and 1965-66. Action has been initiated for revision of the assessments in respect of the remaining three assessees.

(d) The income from interest on Government securities held by or on behalf of erstwhile ruling Chiefs and Princes of India as their private property was exempted from income-tax and super-tax by a Government notification issued on 21st December, 1930. The above exemption was subsequently withdrawn by the Government by a notification dated 25th June, 1963 with effect from 1st April, 1963. It was specifically mentioned in the explanatory note below the notification that the concession has been withdrawn with effect from the assessment year 1963-64.

In the case of an ex-ruler it was noticed that a sum of Rs. 1,84,793 derived as income from interest on Government securities during the previous year relevant to the assessment year 1963-64 was erroneously excluded from the total income for that assessment year resulting in under-assessment of tax of Rs. 1,63,179 (approximately). Report regarding rectification and recovery of the tax is awaited (March, 1969).

(e) Under the Income-tax Act, when a domestic company pays dividends wholly or partly out of the profits which have actually been charged to income-tax in assessment year 1959-60 or an earlier year, credit shall be given to it of an amount equal to 10 per cent of so much of such dividends as are paid out of such taxed profits. Incorrect determination of the amount of dividends deemed to have come out of past taxed profits in the case of a company for the assessment year 1961-62, resulted in excess allowance of relief to the extent of Rs. 26,75,971. This was brought to the notice of the Ministry in July, 1968 and reply is awaited (March, 1969).

56. *Incorrect computation of tax payable by companies.*

(a) Under the Finance Acts, 1964 and 1965, a company is entitled to a higher rate of rebate of tax if it is engaged, *inter alia*, in the production or manufacture of "Aluminium (Metal)".

It was noticed that a company engaged in the manufacture of aluminium products from aluminium ingots, was treated by the department as one engaged in the production of "aluminium (metal)" and was accordingly allowed higher rate of rebate for the assessment years 1964-65 and 1965-66. Application of the higher rate of rebate resulted in an under-charge of tax of Rs. 1,39,016 for the assessment years 1964-65 and 1965-66. Report regarding rectification and recovery of the tax is awaited.

(b) Under the Finance Act, 1962, a rebate of super-tax at 50 per cent was admissible on dividends received by a non-resident company from a subsidiary Indian Company as against 45 per cent/30 per cent (as the case may be) on other dividends. For this purpose the Act has laid down that a company shall be deemed to be a subsidiary of another company if that other company holds more than half in nominal value of the equity share capital of the first mentioned company. In the assessment for 1962-63 of a non-resident company which held less than 50 per cent of the equity shares in an Indian company, the dividend income received from the latter company was erroneously treated as dividends from a subsidiary company and higher super-tax rebate of 50 per cent was allowed instead of 30 per cent as correctly admissible. This led to under-charge of tax of Rs. 4,40,016 for the assessment year 1962-63.

(c) The Finance Act, 1964 provides that super-tax is to be charged at the effective rate of 35 per cent on the income of a company provided (i) the company's income exceeds rupees five lakhs, (ii) the company is one in which the public are not substantially interested and (iii) the company has made the prescribed arrangements for the declaration and payment within India of the dividends payable out of its profits liable to tax under the Income-tax Act, 1961. A lower rate of tax at 29 per cent is to be applied if such a company is engaged in any one of the priority industries specified in the Finance Act, 1964 itself.

It was noticed that in the case of a company the department incorrectly treated the company as engaged in priority industry and levied super tax at 29 per cent. Further, though the assessee's non-business income of Rs. 44,045 for the same assessment year was chargeable to super-tax at 35 per cent under the provisions of the Finance Act, super-tax was charged by the department at 25 per cent. The total under-charge of tax for the assessment year 1964-65 was Rs. 8,83,738. Report regarding rectification and recovery of the tax is awaited (March, 1969).

(d) Under the provisions of the Finance Acts, a company in which the public are substantially interested is liable for an additional levy of tax at 7.5 per cent of the amount of equity dividends declared or distributed by it during the previous year. This levy takes the form of reduction of the rebate of tax admissible to the company under the respective Acts. In case the company did not have assessable profits, the amount of additional tax chargeable is to be carried forward and set off against the tax rebate admissible for the subsequent assessment years. It was noticed that in

7 cases the additional tax amount of Rs. 2,86,801 was omitted to be levied. The Ministry have accepted the under-assessment in six cases involving a tax of Rs. 2,75,551. Reply regarding the remaining case is awaited (March, 1969).

(e) Under the Finance Act, 1961 and of later years, non-resident companies are entitled to the higher rebate of tax at 25 per cent for assessment year 1961-62, at 30 per cent for later assessment years upto 1965-66 and reduced rate of taxation for the assessment years 1966-67 and 1967-68 on their income from royalties received from an Indian concern in pursuance of an agreement made by them on or after 1st April, 1961 and which has been approved by the Government of India. In the case of a non-resident company, even though it entered into an agreement for collaboration with an Indian concern on 6th April, 1961 the agreement did not have the approval of the Government of India after 1st April, 1961 and as such the assessee company was not entitled to the higher rebate referred to above. Omission to consider this aspect resulted in excess allowance of rebate of tax with consequent short-levy of tax of Rs. 2,45,467 for the assessment years 1963-64 to 1967-68. Report regarding rectification and recovery of the tax is awaited.

57. *Omission to levy additional tax on section 23A/104 companies.*

(a) In the case of two companies in which the public were not substantially interested, it was noticed that no additional super tax was levied by the department, even though such additional super tax was leviable. In the case of one company, a demand for additional super-tax for a total sum of Rs. 1,52,183 has since been created by the department for the assessment years 1956-57 and 1958-59. In the case of the other company, no action can be taken by the department, as action to levy additional super-tax for the assessment year 1962-63 has already become time-barred under the Income-tax Act, 1961 resulting in a loss of revenue of Rs. 61,656.

(b) In the case of a company, the dividends declared by it in respect of the previous years relevant to the assessment years 1962-63 and 1963-64 fell short of the prescribed statutory percentage, viz. 90 per cent. But action for the levy of additional super-tax for the assessment year 1962-63 was not initiated within the time limit fixed by the Act, while that for the assessment year 1963-64 was incorrectly dropped taking the statutory percentage as 60 instead of 90. In this case also time to rectify the mistake is barred by limitation. The loss of revenue resulting from the omission to complete in time the action for the levy of additional tax amounted to Rs. 41,783 for the two assessment years.

58. *Income escaping assessment.*

(a) On the death of his wife in 1958, an assessee inherited two house properties the values of which were declared in the wealth-tax returns of his wife at Rs. 1,80,000 and Rs. 1,00,000 respectively. Of the two properties, one was purchased by an University for a sum of Rs. 10 lakhs while the other was acquired by the State Government for a sum of Rs. 21,28,219 during the previous year relevant to the assessment year 1961-62. As a result of these transactions the assessee derived a capital gain of Rs. 28,48,218 which was omitted to be taxed as capital gains resulting in under-assessment of tax of Rs. 7,12,055. The Ministry have accepted the under-assessment (March, 1969). Report regarding rectification and recovery is awaited.

(b) An association of jute and hessian dealers received interest on bank deposits made by its members. The bank deposits were withdrawn by the members from time to time but the interest earned on the deposits was retained by the assessee association. The amounts of interest which was the assessee's income from other sources under the Income-tax Act was not brought to tax by the department. As a result, there was a total under-charge of tax of Rs. 90,415 for the assessment years 1961-62, 1962-63, 1965-66 and 1966-67. Report regarding rectification and recovery of the tax is awaited.

(c) Cash credits of Rs. 2,75,000 in the shape of Hundi Loans introduced by three assessees (a firm and two of its partners) in their returns for the assessment years 1963-64 and 1964-65 were considered as genuine and the assessments were finalised accordingly in March, 1965. It was pointed out that the names of some of creditors had appeared in the list of "Bogus Hundi dealers" published by the Central Board of Direct Taxes in their circular dated 12th May, 1964 and the credits should have to be treated as concealed income and the tax levied accordingly. When the cases were scrutinised again by the Income-tax Officer regarding the genuineness of the Hundi Loans after the above mistake was pointed out, it was found that cash credits worth Rs. 3,36,500 introduced by the assessees for the assessment years 1961-62 to 1964-65 required to be taxed and the additional demand on the above account would be Rs. 1,40,000. The case was brought to the notice of the Ministry in August, 1968 and a reply is awaited (March, 1969).

59. *Omission to levy penalty correctly.*

(a) Under the Income-tax Act, 1961, assessees who fail to furnish returns of income before the prescribed date without reasonable

cause are liable to pay penalty equal to a sum calculated at 2 per cent of the tax payable by them for every month during which the default continued. If such default is on the part of a registered firm, then the penalty leviable is on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm.

In three cases it was noticed the amount of penalty was incorrectly based on the tax payable by the assesseees in their capacity as registered firms resulting in short-levy of penalty of Rs. 34,953.

In six other cases penalty leviable was not correctly calculated resulting in short-levy of penalty of Rs. 52,619.

The mistakes have been accepted by the department. Report regarding rectification and recovery of the tax is awaited (March, 1969).

(b) Under section 275 of the Income-tax Act, 1961 the penalty proceedings should be finalised within a period of two years from the date of the completion of the assessment or other proceedings in the course of which the penalty proceedings have been initiated. It was noticed that in the following twenty-two cases relating to two Commissioners' charges a sum of Rs. 51,487 was foregone.

Levy of penalty proposed for	No. of cases	Penalty foregone
(1) Failure to furnish a return of income voluntarily or in response to a notice or to furnish it within the prescribed time or in the prescribed manner	13	Rs. 34,238
(2) Failure to comply with a notice for production of accounts or documents of evidence, etc.	4	4,641
(3) Failure to divulge the particulars of income or furnishing inaccurate particulars of income	5	12,608
	<u>22</u>	<u>51,487</u>

The Ministry have accepted the omission in all the cases.

60. Non-levy of penal interest.

Instances of omission to levy penal interest under the provisions of the Income-tax Act have been pointed out in the Audit Reports on Revenue Receipts from 1963 onwards. During the period under review it was noticed that in 2,566 cases an interest of Rs. 63.56 lakhs

was omitted to be levied. The figures as pointed out in the earlier Audit Reports are as follows:

Year of Audit Report	No. of cases	Amount of interest omitted to be levied (Rs. in lakhs.)
1963	327	5.00
1964	632	6.64
1965	523	9.08
1966	1297	17.72
1967	1834	32.60
1968	2064	40.48

A few types of cases are discussed below:

(a) When the tax (other than advance tax) demanded is not paid within 35 days from the date of service of the notice of demand, simple interest is payable by the assessee on the belated payment at 4 per cent per annum till 31st March, 1965, at 6 per cent per annum from 1st April, 1965 to 30th September, 1967 and at 9 per cent thereafter. The omission to levy the above statutory interest in nine cases in five Commissioners' charges resulted in non-realisation of interest of Rs. 3,79,634. The omission in all the cases has been accepted by the Ministry.

(b) When the return of income is not filed by an assessee on or before the stipulated date viz. 30th September, or 31st December of the assessment year as the case may be (depending on the accounting year and the nature of business of the assessee) simple interest is leviable at 6 per cent per annum on the net amount of tax payable by the assessee on final assessment irrespective of the fact whether the delay has been permitted by the department or not. It was noticed that in 14 cases (assessed in five Commissioners' charges) where the returns were filed after the stipulated dates, the statutory interest remained to be levied leading to total non-levy of interest of Rs. 3,21,912. The omission in nine cases involving an interest of Rs. 1,08,847 has been accepted by the Ministry. Reply regarding the remaining five cases is awaited (March, 1969).

(c) Every new assessee who pays advance-tax based on self-estimate or every other assessee who pays advance-tax in accordance with his own estimate as against the demand issued by the department is liable for payment of statutory interest at 4 per cent upto 31st March, 1965 and at 6 per cent from 1st April, 1965 to 30th September, 1967 and at 9 per cent from 1st October, 1967 if the tax so paid falls short of 80 per cent (75 per cent under the 1961 Act) of the tax determined on the basis of regular assessment. In the case of seven assessees assessed by various Income-tax Officers under the control of five different Commissioners' of Income Tax, such interest leviable was not actually levied/short-levied, resulting in a short-realisation of interest to the extent of Rs. 1,42,039. The omission in three cases involving an interest of Rs. 36,849 has been accepted by the Ministry. Reply regarding other items is awaited (March, 1969).

61. *Incorrect determination of Super-profits Tax or Sur-tax payable by companies.*

(a) Under the Super Profits Tax Act, 1963 which was in force for 1963-64, a company was liable to pay super profits tax in respect of its chargeable profits exceeding six per cent of the capital of the company as computed in the prescribed manner, or an amount of fifty thousand rupees, whichever was greater. According to the rules for computing the chargeable profits, ten per cent of the total income determined for the assessment under the Income-tax Act was to be allowed as a deduction; but if the total income included any capital gain, the amount of the capital gain should be excluded for allowing the 10 per cent deduction. As a corollary thereto, tax on capital gains should also not be allowed as a deduction in the super-profits tax assessment.

In one case, the total income of a company for the assessment year 1963-64 included a capital gain of Rs. 6,79,071. In computing the chargeable profits, the aforesaid provisions of the Act were not considered by the department, as a result of which the chargeable profits of the company were under-cast to the extent of Rs. 2,71,628. The under-charge of super profits tax on this account was Rs. 1,35,814 for the assessment year 1963-64. Report regarding rectification and recovery of the tax is awaited.

(b) Under the Companies (Profits) Sur-tax Act, 1964, sur-tax is payable on the amount by which the profits of the company exceed the amount of the statutory deduction. The statutory deduction is the amount equal to 10 per cent of the capital computed in the

manner laid down in the Act or an amount of Rs. 2 lakhs whichever is greater. The "capital" for this purpose comprises the following:

- (i) paid-up share capital;
- (ii) reserves;
- (iii) debentures; and
- (iv) long term loans obtained by the company from Government or the specified financial institutions.

A company issued 6½ per cent 'debentures' for a sum of Rs. 75 lakhs and lodged them with its bankers as security to facilitate overdrawal of funds from time to time. These debentures were not issued for cash and to the public at large; all the debentures of Rs. 75 lakhs were issued in favour of the bank; there was no attached liability for their eventual repayment at a future date and they did not also figure as such in the Balance Sheet. Having regard to these factors, the sum of Rs. 75 lakhs did not qualify to be treated as 'capital' for purposes of the Act. The assessing officer, however, incorrectly allowed the sum as 'Capital' thus over-stating the statutory deduction by Rs. 7.5 lakhs with corresponding reduction in chargeable profits.

Further a sum of Rs. 15 lakhs intended for meeting tax liability and shown as 'Provision for taxation' in the Balance Sheet of the company as on 31st October, 1962 (i.e. on the first day of the previous year relevant to assessment year 1964-65) was incorrectly taken as 'capital', thus over-stating the statutory deduction by Rs. 1.5 lakhs with corresponding reduction in chargeable profits.

The two mistakes have resulted in under-assessment of sur-tax of Rs. 3.60 lakhs.

As regards treatment of the sum of Rs. 75 lakhs as debentures the Ministry have accepted that to the extent of Rs. 34.48 lakhs being the excess of the pledged security over the actual amount overdrawn did not qualify as capital for the purposes of the Act. They have maintained that the balance of Rs. 40.52 lakhs actually overdrawn, the security pledged could be treated as "debentures". It was pointed out that the entire sum of Rs. 75 lakhs however has to be excluded from the capital computation for the following reasons:

- (1) The value of the debentures issued as per the accounts of the company was Rs. 75 lakhs and not the amount of the overdraft in the bank, which could vary from day to day.

- (2) It appears to be the scheme of the Act that only long-term borrowals intended for creation of capital assets and payment of which would arise after seven years should be taken as 'capital', thereby excluding short-term loans, bank overdrafts, etc.

The Ministry have stated in reply (March 1969) that the matter will have to be examined further and the Sur-tax rules or the Act amended with a view to making the intention clear. The mistake regarding the claim of Rs. 15 lakhs relating to 'Provision for taxation' has been accepted by the Ministry.

62. *Other lapses.*

(a) Under Section 230 of the Income-tax Act, 1961 a person who is not domiciled in India is not allowed to leave the territory of India unless he obtains a certificate from the competent authority stating that he had no liabilities under the Income-tax Act or that satisfactory arrangements have been made for the payment of all or any of taxes which are or may become payable by him. The department issued an exemption certificate under this section to a British Citizen after obtaining a guarantee letter from his employer-company and the assessee left India on 1st April, 1963. As the assessee did not return to India and as he left no asset in India, the demand to the extent of Rs. 9,06,546 due from the assessee for the assessment years 1958-59 to 1961-62 could not be recovered from him. The employer company refused to bear the tax liability of the assessee other than the liability in respect of salary income of the assessee for which tax had been duly deducted and credited to Central Government by them. The solicitor to the Central Government also opined that no suit, civil or criminal, could be instituted against the employer-company on the basis of the guarantee letters furnished by them as the same were not legally enforceable documents since they were not in favour of the President of India and have not been accepted by an officer authorised to do so. The demand of Rs. 9,06,546 outstanding against the assessee for the assessment years 1958-59 to 1961-62 became irrecoverable as a result of the department's omission to obtain a guarantee letter properly framed.

(b) An assessee received a sum of Rs. 34,800 annually as cash annuity from a State Government in consideration for the surrender of certain superior proprietary rights known as "Zamindar" rights. The annuity is tax-free and the tax payable by the assessee is to be borne by the State Government. The cash annuity is to be grossed up as in the case of tax-free salary income in order to determine the tax payable by the Government.

For the year 1961-62 the amount was correctly grossed up at Rs. 62,811 and the tax was raised on Rs. 62,811. But for the subsequent years instead of grossing up separately for each year taking into account the rates applicable to the particular assessment year, the amount of Rs. 62,811 was taken as the grossed figure and taxed. The correct grossed up figures that should have been adopted were as follows:—

1962-63	Rs. 76,120
1963-64	Rs. 96,760
1964-65	Rs. 77,380

The adoption of the incorrect figures resulted in a short-levy of tax of Rs. 59,037 for the assessment years 1962-63 to 1964-65.

The assessee was also liable to pay penal interest for the delay in the submission of return. The interest leviable would correspondingly increase as a result of increase in the total tax payable by the assessee. The additional interest leviable worked out to Rs. 8,260. The total short-levy amounted to Rs. 67,297. Report regarding rectification and recovery of the tax under-charged is awaited.

63. *Over-assessment.*

(a) The Central Government is required to pay simple interest to assesseees at the rate of 4 per cent upto 31st March, 1965 and 6 per cent from 1st April, 1965 on the amounts by which the total advance tax paid during any financial year in which they are payable exceeds the amount of tax determined on regular assessment from the 1st day of April following the said financial year to the date of the assessment.

It was noticed that in the case of a firm and its two partners interest aggregating Rs. 6,56,546 on the amounts of excess advance tax deposited by these assesseees during the financial years relevant to the assessment years 1961-62 and 1962-63 was not paid resulting in over-assessment to the same extent. Report regarding rectification and payment of the interest due to the assessee is awaited.

(b) Every assessee has to file his return of income by the date prescribed therein. The filing of returns belatedly makes the assessee liable to penal interest. According to these stipulations, penal interest at 6 per cent of the net amount of tax determined as payable finally is to be levied from 1st January of the assessment year to the date of furnishing the return, in the case of an assessee whose total income includes any income from business or profession the previous

year in respect of which expired after the 31st day of December. It was noticed that in respect of two such assesseees, the penal interest was levied from 1st October of the previous calendar year instead of from 1st January as required under the Act. This resulted in excess-levy of interest by Rs. 52,844 in the assessment years 1962-63 and 1965-66. Report regarding rectification and refund of the interest excess-levied is awaited.

(c) A company is liable to pay for the assessment year 1961-62 income-tax at the rate of twenty per cent of its total income assessed. In the case of a company it was noticed that the department charged income-tax at the rate of thirty per cent instead of at the rate of twenty per cent of its total income for the assessment year 1961-62. The mistake in the calculation resulted in an over-charge of tax of Rs. 1,62,683. Report regarding rectification and refund of the tax is awaited.

(d) Under the Finance Acts for 1964 and 1965 an Indian Company in which the public are substantially interested, is liable to pay tax at 7.5 per cent on dividends, other than dividends on preference shares, declared or distributed by the company during the previous year and under Finance Act, 1966 such a company will pay tax at the above rate on such dividends as exceed ten per cent of its paid-up equity share capital as on the 1st day of the relevant previous year.

In the case of an Indian Company in which the public are substantially interested it was noticed that for the assessment years 1964-65 and 1965-66 the department charged tax at the rate of 7.5 per cent on the proposed dividends as per Profit and Loss accounts of the relevant previous years instead of on the dividends actually declared during the previous years. In the assessment year 1966-67, 10 per cent of paid-up equity share capital as on the 1st day of the previous year exceeded the dividend declared and the tax was not leviable at all. The erroneous application of the provisions regarding charging of tax on dividends led to a total over-charge of tax of Rs. 98,796 for the assessment years 1964-65 to 1966-67. Report regarding rectification and recovery of the tax is awaited.

(e) Under the Companies (Profits) Surtax Act, 1964 the statutory deduction of 10 per cent of capital or rupees two lakhs, whichever is higher, to be effected from the profits chargeable to tax for arriving

at the surtax payable, will have to be increased or decreased proportionately according as the previous year of the company is more or less than the period of twelve months. It was noticed in the case of a company that the previous year relevant to the assessment year 1965-66 was twenty-one months and a tax of Rs. 57,580 was demanded applying the ceiling of Rs. two lakhs instead of the proportionate amount of Rs. 3.75 lakhs resulting in over-assessment of surtax to the extent of Rs. 57,400. The department has agreed to rectify the error. Report of rectification and refund of the tax excess-charged is awaited.

(f) While giving effect to Appellate Tribunal's orders on 15th April, 1966 in regard to an assessee for the assessment year 1962-63, a sum of Rs. 1,32,813 which has been declared to be capital gains derived on sale of land, was included in total income of Rs. 5,63,828 and tax of Rs. 4,59,136 was levied on the entire total income at the rates specified in the Finance Act. As capital gains are chargeable to tax separately under the Income-tax Act at a maximum rate of 25 per cent only, the tax leviable on the total income correctly worked out to Rs. 3,76,248 thus resulting in over-charge of tax of Rs. 82,888 for the assessment year 1962-63.

(g) A foreigner, assessed in the status of a 'Resident but not, ordinarily resident' was in receipt of a tax-free salary of \$ 36,000 in the year 1966. For the purpose of levying the income-tax which was the liability of the employer, the gross total income of the assessee was to be calculated on 'tax on tax' basis so that he received a net amount of Rs. 2,27,530 (rupee equivalent of \$36,000) after payment of the tax. The gross total income so calculated worked out to Rs. 10,50,312 against Rs. 11,62,830 calculated by the department. Consequently, there was an over-charge of tax of Rs. 92,500 for the assessment year 1967-68. The Ministry have accepted the mistake and rectified the assessment.

(h) An assessee who pays donations to approved funds and institutions is entitled to rebate on the tax payable by him to the extent prescribed in the Act.

It was noticed that a company contributed in the previous year relevant to the assessment year 1963-64, a total sum of Rs. 1,71,066 as donation to certain recognised funds. While arriving at the tax payable, the department did not allow any rebate on the sum so contributed. This led to an over-assessment of tax by Rs. 42,767 for the

assessment year 1963-64. Report regarding rectification and refund of the tax is awaited.

(i) An assessee and her eight minor children were partners in a registered firm in the previous year relevant to the assessment year 1961-62. While completing the assessment of the mother for 1961-62, the Income-tax Officer clubbed the share income of the minor children with that of the mother. The clubbing of the income of minor children with that of the mother was not permissible under the 1922 Act. The incorrect clubbing of income resulted in an over-assessment of tax of Rs. 53,446. Report regarding rectification and refund of the tax is awaited.

64. *Other topics of interest.*

(a) Profits of newly established industrial undertaking to the extent of six per cent of the capital employed therein are exempt from tax. To secure this 'Tax holiday' benefit, the building, machinery or plant employed in the undertaking should not have been previously used in any other business. Likewise, an assessee introducing new plant and machinery in his business is entitled for development rebate to the prescribed extent. No development rebate was admissible on second hand plant and machinery.

The Income-tax Act, 1961 which takes effect from 1st April, 1962, amended the provisions relating to 'Tax holiday' benefit providing that the benefit can also be given in cases where second hand plant and machinery of the value not exceeding 20 per cent of the value of the total assets, is used in a newly established industrial undertaking; but the value of such second hand plant and machinery should be excluded while computing the capital for purposes of calculating the relief admissible. The conditions in the Act relating to grant of development rebate were also amended prospectively from the assessment year 1965-66, and not retrospectively, providing that newly imported second hand plant and machinery are also entitled to development rebate subject to certain conditions.

The erstwhile Central Board of Revenue issued instructions in December, 1962 that second hand machinery and plant which had been imported into India from abroad by an assessee for whom it is a fresh installation might be treated as new for purposes of the grant of development rebate and 'Tax holiday' relief. The value of such second hand imported plant and machinery is also included in the capital employed for calculating the quantum of tax holiday benefit

under the said instructions. In the absence of statutory provisions the tax concession by way of development rebate upto the assessment year 1964-65 and by way of 'Tax holiday' benefit from the date of issue of the executive instructions to date, on second hand imported plant and machinery is extra legal in nature.

(b) Where an assessee receives a perquisite by way of rent-free accommodation provided to him by his employer, the value of such perquisite is taxable as part of the assessee's income from salary. The value of the rent-free accommodation to be included in the assessment is calculated at prescribed percentage of the salary received by the assessee and the term 'salary' for this purpose includes bonus or commission payable to the assessee monthly or otherwise.

According to the instructions issued in 1956 and 1960 by the Central Board of Revenue, bonus or commission which was variable and which was less than 50 per cent of the salary was required to be excluded for the purpose of computing the value of rent-free accommodation. These instructions being in conflict with the definition of 'salary' for the purpose of calculating the value of rent-free accommodation as given in the Income-tax Rules, the Central Board of Direct Taxes issued in 1965 instructions withdrawing the earlier circulars of 1956 and 1960 with effect from the assessment year 1965-66 but directing that assessments for 1964-65 and earlier years should be completed on the basis of the instructions contained in the circulars of 1956 and 1960. The circular of the Board issued in 1965, thus permitted continuance of the procedure which was otherwise irregular upto the assessment year 1964-65 without giving the assessing officers any opportunity to follow the correct procedure even where such action was possible after issue of the Board's circular.

A test check in six charges of Commissioners of Income-tax revealed that 116 cases could have been rectified immediately after the issue of the Board's circular of 1965 but these were not rectified and rectification subsequently became time-barred. The under-charge of tax involved in these cases was Rs. 1,60,209. In 19 cases involving under-charge of tax of Rs. 13,481 it has been noticed that rectification is still possible under the law but the same has not been carried out.

(c) If an asset is used partly for business purposes and partly for non-business purposes, the assessee under the provisions of the Income-tax Act is entitled only to the fair proportion of the full depreciation which would be allowable if the asset was wholly so

used. The allowance is to be calculated on the asset as a whole. Further as per the statute, written down value is to be arrived at by deducting from the actual cost of an asset to an assessee, all depreciation actually allowed to him under the Act. It was judicially decided in a number of cases that while arriving at the written down value of an asset, only the depreciation actually allowed to the assessee should be taken into account and not any notional depreciation allowance permissible under the Income-tax Act.

As it was found that the correct procedure of the allowance of depreciation in respect of partly used assets was not being followed by the department, the issue was taken up with the Board in March, 1966. Though the Board's attention to the correct legal position was specifically drawn in March, 1966, the Board issued a circular in October, 1967 for the guidance of the assessing officers that in respect of partly used assets, only proportionate cost of the asset should be taken as the actual cost for purposes of allowing depreciation or alternatively the full depreciation allowable (not depreciation actually allowed) should be taken into account for the purposes of computing the written down value for the next year.

While these circular instructions of the Board to the assessing officers may indicate the true intention, they are not in consonance with the law as worded or judicially interpreted.

65. Arrears of assessments*

(a) As on 31st March 1968, 23.30 lakhs cases were outstanding with Income-tax officers pending assessment. The approximate tax involved in these cases is stated by the Ministry to be Rs. 185.16 crores. The position of pendency of assessments for the last three years is indicated below:—

Year	As on 31-3-1966	As on 31-3-1967	As on 31-3-1968
1963-64 and earlier years	3,60,283	1,93,101	37,928
1964-65	6,01,100	3,14,037	2,17,397
1965-66	12,08,146	6,38,623	3,02,572
1966-67 . . . . .	..	12,01,752	5,64,555
1967-68 . . . . .	..	..	12,07,198
TOTAL	21,69,529	23,47,513	23,29,650

* Figures are as furnished by the Ministry.

Category-wise break-up of the pending cases is as follows:—

	As on 31-3-1967	As on 31-3-1968
(i) Business cases having income over Rs. 25,000	1,41,277	1,64,810
(ii) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,36,498	1,62,337
(iii) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	3,35,866	3,96,989
(iv) All other cases except those mentioned in category (v) and refund cases	13,58,222	12,38,023
(v) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	3,75,650	3,67,491
	<u>23,47,513</u>	<u>23,29,650</u>

The number of assessments completed out of the arrear assessments and out of current assessments during the past five years are given below:—

Financial year	Number of assessments for disposal	Number of assessments completed				Number of assessments pending at the end of the year
		Out of current	Out of arrears	Total	%	
1	2	3	4	5	6	7
1963-64 .	27,09,107	9,22,670	5,60,031	14,82,701	54.7	12,26,406
1964-65 .	36,26,144	11,54,834	6,86,795	18,41,629	50.8	17,84,515
1965-66 .	45,58,556	14,59,776	9,29,251	23,89,027	52.4	21,69,529
1966-67 .	47,65,607	13,32,672	10,85,422	24,18,094	50.7	23,47,513
1967-68 .	48,86,204	13,31,493	12,25,061	25,56,554	52.3	23,29,650

(The percentage in column 6 represents cases disposed of to total number of assessments for disposal).

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

The position regarding disposal of Super Profits Tax assessments

*Figures are as furnished by the Ministry.

and Sur Tax assessments during 1967-68 and the assessments pending as on 31st March, 1968 are as follows:

	Super Profits Tax	Sur-tax
(1) No. of cases for disposal during 1967-68	1087	4374
(2) No. of cases disposed of provisionally	4	387
(3) No. of cases disposed of finally	571	936
(4) Amount of demand raised on provisional assessments	Rs. 23.81 lakhs	Rs. 12.11 crores.
(5) Amount of demand collected on provisional assessments	Rs. 7.56 lakhs	Rs. 11.23 crores.
(6) Amount of demand raised on final assessments	Rs. 5.58 lakhs	Rs. 7.62 crores.
(7) Amount of demand collected on final assessments	Rs. 2.51 lakhs	Rs. 5.34 crores.
(8) No. of cases pending as on 31st March, 1968	516	3438

(c) *Pendency of Excess Profits Tax and Business Profits Tax assessments.**

The number of assessments disposed of during the period from 1st April, 1967 to 31st July 1968 and of those pending on 31st July, 1968 under the Excess Profits Tax Act, 1940 and Business Profits Tax Act, 1947 are shown below:

	Excess Profits Tax	Business Profits Tax
(1) Total number of cases pending for disposal by way of final assessments on 1-4-1967	100	30
(2) Total number of cases out of (1) in which provisional assessments have been made	..	..
(3) Number of cases in which re-assessment proceedings, if any, started during the period 1-4-1967 to 31-7-1968 (Excess Profits Tax Act, 1940 i.e. number of cases added during the period)	..	..
(4) Total number out of (1) and (3) disposed of during the period from 1-4-1967 to 31-7-1968	49	10
(5) Total number pending on 31-7-1968	51	20
(6) The amount of tax (approximate) involved in (5)	Rs. 28.60 lakhs	Rs. 5.00 lakhs.

*Figures are as furnished by the Ministry.

The Excess Profits Tax Act, 1940 and Business Profits Tax Act, 1947 have ceased to be in force in the years 1947 and 1950 respectively.

66. *Arrears of tax demands.**

(a) (i) The total effective demand of tax outstanding on 31st March, 1968 was Rs. 468·86 crores (which excludes a demand of Rs. 153·75 crores, the collection of which had not fallen due as on 31st March, 1968). Of this, the net effective arrears representing recoverable demands was Rs. 410·05 crores. The balance Rs. 58·81 crores comprised the following:

(Rs. in crores)

1. Reduction expected on account of:—

(a) D.I.T. relief	3·79
(b) Appellate relief	112·94
(c) Protective assessments	<u>5·93</u>

22·66

2. Irrecoverable dues which will be written off ultimately :

(a) from persons who have left India	9·98
(b) from companies in liquidation	4·68
(c) from cases pending before certificate officers	<u>21·49</u>

36·15

58·81

The net effective arrears of Rs. 410·05 crores included Rs. 56·30 crores being the amount of advance tax relating to the demands included in the gross demand.

* Figures are as furnished by the Ministry.

(ii) The following table shows the net effective arrears pending without recovery as at the close of five years ending 31st March, 1968.

Net effective arrears

(Rs. in crores).

As on 31st March, 1964	161.41
As on 31st March, 1965	184.85
As on 31st March, 1966	244.67
As on 31st March, 1967	337.70
As on 31st March, 1968	410.05

(iii) The figures of corporation tax, income-tax and interest comprised in the gross arrears of Rs. 622.61 crores and the years to which they relate are shown below:

(Figures in crores of rupees)

	Corporation Tax	Income Tax	Interest	Total
(i) Arrears of 1957-58 and earlier years	5.01	51.61	1.79	58.41
(ii) 1958-59 to 1965-66	28.33	122.12	7.26	157.71
(iii) 1966-67	32.12	80.57	6.83	119.52
(iv) 1967-68	110.15	163.23	13.59	286.97
TOTAL	175.61	417.53	29.47	622.61

(iv) The table below shows the number of cases from whom gross arrears of Rs. 622.61 crores are due together with the dues involved range-wise.

Arrear demand	No. of cases	Total arrears (in crores of Rs.)
Upto Rs. 1 lakh in each case	11,83,488	338.23
Over Rs. 1 lakh upto Rs. 5 lakhs in each case	4,467	98.29
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case	737	50.09
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case	474	53.37
Over Rs. 25 lakhs in each case	147	82.63
TOTAL	11,89,313	622.61

(b) Appeals pending on 30th June, 1968.*

	Income-tax appeals with Appellate Assistant Commissioners	Income-tax revision petitions with Commissioners
(a) Number of appeals/revision petitions	2,00,928	7,342
(b) Out of appeals/revision petitions instituted during 1967-68	1,12,479	3,348
(c) Out of appeals/revision petitions instituted in earlier years	27,971	2,384

Year-wise break-up of appeal cases and revision petitions pending with the Appellate Assistant Commissioners and Commissioners of Income-tax respectively for the periods ending 30th June, 1967 and

*Figures are as furnished by the Ministry.

30th June, 1968 respectively with reference to the year of institution are indicated below:—

Year of institution	Appeals with Appellate Assistant Commissioners		Revision petitions with Commissioners of Income-tax	
	30-6-1967	30-6-1968	30-6-1967	30-6-1968
1953-54	1	...	...	...
1954-55	1	...	1	1
1955-56	8	1	5	3
1956-57	14	7	3	2
1957-58	17	8	10	3
1958-59	27	1	27	15
1959-60	50	31	34	18
1960-61	60	26	53	38
1961-62	162	88	37	28
1962-63	486	234	127	62
1963-64	1,301	517	299	165
1964-65	4,621	1,887	465	271
1965-66	16,744	5,088	1,126	512
1966-67	90,086	20,083	3,100	1,266
1967-68	53,934	1,12,479	1,257	3,348
1968-69 . . . . .	...	60,478	...	1,610
TOTAL	<u>1,67,512</u>	<u>2,00,928</u>	<u>6,544</u>	<u>7,342</u>

67. *Income-tax demands written off by the Revenue Department during the year 1967-68.**

A demand of Rs. 33.66 lakhs in 1,522 cases was written off by the Income-tax department during the year 1967-68. Of this, a sum of Rs. 1.94 lakhs relates to 27 company assesseees and Rs. 31.72 lakhs to 1,495 non-company assesseees. The reasons for write-off as furnished by the Ministry, in the case of both companies and non-companies are indicated in the statement overleaf.

*Figures are as furnished by the Ministry.

	Companies		Non-companies		Total	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
I. Assessee having died leaving behind no assets or have gone into liquidation or become insolvent :						
(a) Assessee having died leaving behind no assets	2	10,283	38	16,32,144	40	16,42,427
(b) Assessee having gone into liquidation	16	1,25,941	..	..	16	1,25,941
(c) Assessee having become insolvent . . . . .	..	..	13	64,351	13	64,351
TOTAL	18	1,36,224	51	16,96,495	69	18,32,719
II. Assessee being untraceable	5	6,046	146	2,71,784	151	2,77,830
III. Assessee having left India . . . . .	..	..	74	1,33,128	74	1,33,128
IV. For other reasons :						
(i) Assessee who are alive but have no attachable assets	3	2,491	132	3,30,328	135	3,32,819
(ii) Amount being petty etc. . . . .	..	..	1079	13,960	1079	13,960
(iii) Amount written off as a result of settlement with assessee	1	49,650	12	7,25,391	13	7,75,041
(iv) Demands rendered unenforceable by subsequent developments such as duplicated demands, demands wrongly made, demands being protective etc. . . . .	..	..	1	867	1	867
TOTAL IV	4	52,141	1224	10,70,546	1228	11,22,687
V. Amount written off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount of recovery . . . . .	..	..	..	..	..	..
GRAND TOTAL	27	1,94,411	1495	31,71,953	1522	33,66,364

68. *Deduction of tax at source by companies on dividends distributed.**

1. No. of company assesseees as on 1-4-1967	26,395
No. of company assesseees as on 1-4-1968	25,203
2. No. of companies which had made the prescribed arrangements for declaration and payment of dividends within India:	
As on 1-4-1967	19,783
As on 1-4-1968	18,922
3. No. of companies which have distributed dividends during 1967-68	6,705
4. Amount involved in (3) above	Rs. 9,329 lakhs.
5. No. of cases out of (3) in which the statement prescribed in Rule 37(2) was received	6,573
6. Amount of deduction shown in the statement in (5) above	Rs. 2,830 lakhs.
7. No. of cases out of (5) in which the tax deducted was remitted into banks	6,481
8. Amount involved in (7) above	Rs. 2,782 lakhs.
9. No. of cases out of (7) in which the tax deducted was remitted after one week of date of deduction or receipt of challan	550
10. No. of cases out of (5) above where the returns prescribed in Section 286 were not received, when the dividend paid in case of a company exceeds Re. 1 and in the case of others Rs. 5,000	35
11. No. of companies out of (3) above which have neither deducted tax at source nor furnished the statement prescribed in Rule 37(2)	13

69. *Outstanding cases in which penal Super-tax/Income-tax under Section 23A/104 of Income Tax Act, 1922/1961 is to be levied for failure to distribute the statutory percentage of dividends.**

(a) Number of cases pending as on 1-4-1967	3,059
(b) Number of cases added during 1967-68	4,676
(c) Number of cases disposed of during 1967-68	5,258
(d) Number of cases pending on 31-3-1968	2,477
(e) Approximate amount of additional tax involved	Rs. 302 lakhs.

*Figures are as furnished by the Ministry.

70. *Frauds and evasions.**

(1) No. of cases in which penalty under section 28(1)(c)/271(1)(c) was levied in 1967-68	32,951
(2) No. of cases in which prosecution for concealment of income was launched	6 (7 complaints)
(3) No. of cases in which composition was effected without launching prosecution	5
(4) Concealed income involved in (1)	Rs. 40,19,11,000
(5) Total amount of penalty levied on (1)	Rs. 10,05,57,000
(6) Extra tax demanded on concealed income in item (4)	Rs. 17,40,35,000
(7) Cases out of (2) in which convictions were obtained	1
(8) Composition money levied in respect of cases in (3)	Rs. 2,000
(9) Nature of punishment in respect of (7)	The Court ordered on 27th November, 1968 to pay fine of Rs. 500.

71. *Refunds.**(a) *Refunds under section 243.*

	No. of applications	Amount in Rs. (000)
(1) Number and amount of refund applications pending on 1st April 1967	5,252	85,40
(2) Number and amount for which refund applications are received during the year 1967-68	59,214	2,47,47
(3) Number and amount of refunds made during 1967-68—		
Out of (1)	5,027	50,11
Out of (2)	56,046	1,89,57
(4) Number of cases and amount of interest paid on refunds made during 1967-68 :		
Out of (1)	...	...
Out of (2)	...	...

*Figures are as furnished by the Ministry.

No. of applications Amount in Rs. (000)

(5) Number of cases and amount of refund made on which no interest was paid	61,073	2,39,68
(6) Number and amount of applications pending on 31st March, 1968	3,393	93,19
(7) Break-up of cases mentioned at (6) above		
(i) Refunds outstanding for less than a year as on 31st March, 1968	3,209	61,94
(ii) Refunds outstanding between 1 year and 2 years as on 31st March, 1968	103	20,99
(iii) Refunds outstanding for 2 years and more as on 31st March, 1968	81	10,26

(b) *Refunds under section 244.*

(1) Number of cases in which revision of assessments were pending as on 1-4-1967	5,993	
(2) Number of cases in which assessments were revised during 1967-68 in respect of cases :		
(i) pending as on 1st April, 1967	5,843	
(ii) that arose during 1st April, 1967 to 31st March, 1968	52,129	
(3) Number of cases and amount of refund made in respect of cases at serial number 2(i) and 2(ii) above :		
2(i) Number of cases	5,335	
Amount in Rs. (000)	84,71	
2(ii) Number of cases	44,081	
Amount in Rs. (000)	11,73,21	
(4) Number of cases and amount of interest paid in respect of cases at serial number 2(i) and 2(ii) above :		
2(i) Number of cases	14	
Amount in Rs. (000)	56	
2(ii) Number of cases	3	
Amount in Rs. (000)	5	

(5) Number of cases pending revision as on 1st April 1968 :

(i) Out of cases pending as on 1st April, 1967.	150
(ii) Out of cases that arose during 1st April, 1967 to 31st March, 1968	4,927

(6) Year-wise particulars of item (5) :

1960-61	67
1961-62	63
1962-63	78
1963-64	104
1964-65	166
1965-66	264
1966-67	495
1967-68	3,840

CHAPTER V

WEALTH-TAX, GIFT-TAX AND ESTATE DUTY

72. The total receipts from Wealth-Tax, Gift-Tax and Estate Duty for the year 1967-68 and the four preceding years are as follows:

(Figures in crores of rupees)

	1963-64	1964-65	1965-66	1966-67	1967-68
Wealth-tax	10.50	10.52	12.06	10.73	10.70
Gift-tax	1.13	2.22	2.27	1.75	1.30
Estate duty	4.65	5.43	6.66	6.26	6.37
TOTAL	<u>16.28</u>	<u>18.17</u>	<u>20.99</u>	<u>18.74</u>	<u>18.37</u>

73. General.

As recommended by the Public Accounts Committee in their Fortysixth Report (Third Lok Sabha) on Audit Report Civil on Revenue Receipts, 1965, the audit of the receipts from Wealth-Tax, Gift-Tax and Estate Duty was entrusted by the Government of India to the Comptroller and Auditor-General in May, 1967. A test audit of these receipts was conducted for the first time in 12 Wealth-Tax cum Gift-Tax offices and 11 Estate duty offices during December, 1967 to April, 1968. Some of the points of interest which came to notice are detailed in paragraphs from 74 to 81.

Assessments under the Wealth-Tax Act, 1957

74. Mistakes in computation of net wealth.

(a) Even though an assessee returned a value of Rs. 58,000 for his immovable properties excluding the value of 9½ grounds of vacant plot, the Wealth-tax Officer valued them at Rs. 1,01,080 in both the assessment years 1964-65 and 1965-66. For the assessment year 1966-67, however, the value of the same properties was adopted as Rs. 58,000 as returned by the assessee, resulting in under-assessment of wealth by Rs. 43,080. The mistake has been accepted by the Ministry and the assessment has also been revised. Report regarding recovery of the additional tax is awaited.

(b) An assessee owned 11 grounds and 1,074 sq. ft. of land on 1st April, 1965 out of which he sold 4 grounds and 701 sq. ft. on 31st March, 1966. In computing the net wealth of the assessee as on 31st March, 1966, the value of 4 grounds and 701 sq. ft. sold was taken instead of the value of the residual land 7 grounds and 373 sq. ft. resulting in under-assessment of net wealth by Rs. 28,364 for the assessment year 1966-67. The mistake has been accepted by the Ministry. Report regarding rectification and recovery of the tax is awaited.

75. *Incorrect exemption from wealth-tax.*

(a) The Unit Trust of India Act, 1963 provides for exemption from the payment of income-tax to the extent provided therein but does not permit any exemption from wealth-tax. In the case of two assesseees the value of unit certificates of Rs. 20,000 was incorrectly exempted from wealth-tax for the assessment year 1965-66. The mistake has been accepted by the Ministry. Report regarding rectification and recovery of the additional tax is awaited.

(b) Under the Wealth-tax Act, prior to the amendment by the Finance Act, 1963 jewellery upto a value of Rs. 25,000 was exempt from wealth-tax. From the assessment year 1963-64, the exemption was withdrawn and jewellery irrespective of value is chargeable to wealth-tax. In three assessments relating to the assessment years 1963-64 and 1965-66, value of jewellery of Rs. 38,000 remained to be added to the net wealth and charged to tax. The omission has been accepted by the Ministry. Report regarding rectification and recovery of the additional tax involved is awaited.

76. *Wealth escaping assessment.*

(a) A person making an annuity deposit under the Income-Tax Act is entitled to receive annuities in respect of the deposit over a period of 10 years commencing after the expiry of 12 months from the date on which the deposit was made. As the annuity receivable is an 'asset' the same is to be included in the net wealth of the individual for levy of wealth-tax. It was noticed in six wealth-tax assessments for the assessment years 1965-66 and 1966-67, annuity deposit of Rs. 76,971 was incorrectly omitted to be added to the net wealth charged to tax. The mistake has been accepted by the Ministry in all the cases. Report regarding rectification and recovery of the tax involved is awaited.

(b) An assessee's share of wealth from a firm in which he was a partner was not taken into account pending ascertainment for the assessment year 1962-63. On a scrutiny of the assessment records, it was found that the share of wealth was ascertained in April, 1964 as Rs. 67,059. But no action was taken to assess the wealth of Rs. 67,059 to tax till the omission was pointed out in January, 1968.

In another case the share of wealth from a firm provisionally taken as Rs. 21,154 for the assessment year 1962-63 was not revised till January 1968 though the final share of wealth was ascertained in April, 1964 as Rs. 27,028.

The omission in the two cases has been accepted by the Ministry and the assessments have also been revised. Report regarding recovery of the tax involved is awaited.

(c) An assessee advanced a sum of Rs. 5,33,200 to an industrialist in Burma in 1953. From the assessment records it was found that the loan was to be repaid to the assessee in India and was to be added to the assessee's wealth in India. The assessee did not disclose this asset in his wealth-tax returns in any of the years. The omission was detected by the assessing officer in 1965-66. The assessing officer added back the sum of Rs. 5,33,200 to the net wealth of the assessee in the assessment year 1965-66 completed on 31st March, 1967. But no action was taken to reopen the assessments 1957-58 to 1964-65 to assess the escaped wealth of Rs. 5,33,200 in each of these eight years. The Ministry while accepting the omission have stated that remedial action has been taken for the assessment years 1960-61 onwards and for the years 1957-58 to 1959-60, action has become time-barred. Report regarding rectification and recovery of the additional tax for the assessment years 1960-61 onwards is awaited.

77. Other lapses.

Incorrect valuation of unquoted shares.

An assessee owned 459 shares of a company and these shares were not quoted in the market. The assessee therefore valued these shares on the basis of the Balance-sheet figures of the company as on 31st October, 1965 relevant to the assessment year 1966-67 and the value of each share worked out at Rs. 2,069.34 by the assessee was accepted by the Wealth-tax Officer. From the Balance-sheet of the company it was noticed that the company had some investments in other limited companies and the value of such investments was shown at cost price in the Balance-sheet of the company. But a note was

appended to the Balance-sheet that the market value of these investments would be Rs. 5,19,274 as against the cost price of Rs. 2,46,320 shown in the Balance-sheet. The market-value of the investments is to be taken into account for arriving at the value of each share as was done in the earlier assessments. The market value of each share worked out to Rs. 2,387.70 against Rs. 2,069.34 adopted in the wealth-tax assessment. This has resulted in under-valuation of shares and consequent under-assessment of wealth of Rs. 1,46,127 for the assessment year 1966-67. The mistake has been accepted by the Ministry and the assessment has since been revised. Report of recovery is awaited.

78. Over-assessment of net wealth.

Under the Wealth-tax Act, debts owed by an assessee other than the prescribed categories, on the valuation date, are to be deducted from total wealth to arrive at the net wealth. In computing the net wealth of an assessee as on 24th October, 1965 debts owed by him to the extent of Rs. 1,68,964 had not been allowed with the result that the net wealth of the assessee was determined as Rs. 18,79,195 as against the correct amount of Rs. 17,10,231. This has resulted in over-assessment of net wealth by Rs. 1,68,964. The Ministry have accepted the mistake and rectified the assessment. Report regarding refund of the tax excess-assessed is awaited.

Assessments under the Estate Duty Act, 1953

79. Incorrect allowance in computing the value of the estate.

A deduction of Rs. 2,64,618 claimed as debt owed by a deceased was allowed under section 44 of the Estate Duty Act from her estate. The debt represented the debit balance in the name of her late husband with a firm in which he was a partner till 10 April, 1944, when he expired. No interest was charged on the debit balance by the surviving partner who took over the business of the firm, for the reason, that the deceased partner's share of goodwill as also the assets and liabilities of the firm were not distributed to his wife as his legal heir. Under the circumstances it was pointed out that the debt in question could not be considered as incurred by the wife of the deceased partner for consideration of money or money's worth and would not therefore qualify for deduction in her estate duty assessment. The allowance of the debt in computing the value of her estate chargeable to duty resulted in short-levy of duty amounting to Rs. 2,19,200.

The Ministry have justified the allowance of the debt on the basis of

- (a) certain observations occurring in Dymond's Death Duties; and
- (b) the legal disability in claiming the share of goodwill owing to limitation of time.

The observations in Dymond's Death Duties referred to by the Ministry relate to an incumbrance created not by the deceased but by a predecessor in title. In this case, neither the deceased was predecessor in title; nor was any incumbrance created. As regards the legal disability to claim the share of goodwill, the same legal disability protected the deceased against any claim arising from any settlement of accounts of her husband.

80. Under-assessment of duty due to incorrect valuation of property.

Under the Estate Duty Act the value of a property chargeable to duty is to be determined with reference to the price which it would fetch, if sold in the open market at the time of death of the deceased. As per the Rules framed under the Act, if the property has actually been sold out within a short time after the death of the deceased under open market conditions, the gross sum realised shall be taken as the principal value of the property.

In an assessment completed in September, 1964 the value of Rs. 24.48 lakhs returned by the accountable person in respect of one of the properties included in the estate, was accepted by the Controller. According to an agreement of sale entered by the accountable person on 4th September, 1963 the value of the property was Rs. 50.74 lakhs at which price it was actually sold. When the accountable person submitted his return of income for purposes of assessment of capital gain on the sale of this property, availing himself of the option to substitute the value of property as on 1st January, 1954, he declared the value as Rs. 28.31 lakhs.

The Ministry have stated in reply that when the property was sold in September, 1963, the property was in vacant possession and therefore commanded an appreciably higher value. For working out capital gains, the value as on 1st January, 1954 was calculated at Rs. 28.31 lakhs assuming that it would have been in vacant possession.

81. *Over-assessment.**Excess demand of interest for late filing of estate duty returns*

Under the Estate Duty Act, an account of the Estate of a deceased person is required to be filed by the accountable person within six months of the death of the deceased. The Controller may, however, allow extension of the time limit, subject to levy of interest, for the period of extension on the amount of duty finally determined as chargeable on the estate, as reduced by duty if any already paid on the basis of the provisional estimate of duty, made by him.

It was noticed that in a case where extension of time was allowed for filing the estate duty accounts, interest was incorrectly levied for the period from the date of death to the date of filing return instead of the same being restricted to the period of extension allowed.

In another case duty already paid on the basis of the provisional estimate of the Controller was not deducted from that as finally determined before calculating the amount of interest leviable for the delay in filing the accounts of the estate.

The mistake resulted in excess-levy of interest aggregating Rs. 32,209. The Ministry have accepted the mistake in both the cases.

82. *Arrears of demands.**

The following table shows the yearwise arrears of demands pending without recovery under the three direct taxes, Wealth-tax, Gift-tax and Estate Duty as on 31st March, 1968.

	(In lakhs of rupees)		
	Wealth-tax	Gift-tax	Estate Duty
Arrears of 1964-65 and earlier years	209	14	225
Arrears of 1965-66	68	22	62
Arrears of 1966-67	115	32	223
Arrears of 1967-68	366	58	463
TOTAL	758	126	973

*Figures are as furnished by the Ministry.

83. Arrears of assessments.*

The table below shows the year-wise details of assessments pending and the approximate amount of tax involved in those assessments as on 31st March, 1968.

Year	No. of assessments pending			Approximate amount of tax involved (in thousands of rupees)		
	Wealth tax	Gift tax @	Estate duty @	Wealth tax	Gift tax @	Estate duty @
1963-64 & earlier years	6,299			6,250		
1964-65	6,249			6,834		
1965-66	11,866			10,989		
1966-67	22,927			16,904		
1967-68	44,141			32,976		
TOTAL	<u>91,482</u>			<u>73,953</u>		

84. (a) Appeals pending on 31st March, 1968 (Wealth-tax) *

	Appeals with Appellate Assistant Commissioners	Revision petitions with Commissioners
Number of appeals pending with Appellate Assistant Commissioners revision petitions	5402	950
(i) Out of appeals/revision petitions instituted during 1967-68	3788	500
(ii) Out of appeals/revision petitions instituted in earlier years	1614	450

*Figures are as furnished by the Ministry.

@ Particulars are awaited from the Ministry (March 1969).

Year-wise break-up of the pending appeals and revision petitions is shown below:

Year of institution	Appeals with Appellate Assistant Commissioners	Revision petitions with Commissioners
1959-60	1	5
1960-61	3	1
1961-62	21	6
1962-63	31	13
1963-64	74	56
1964-65	185	69
1965-66	311	95
1966-67	988	205
1967-68	3788	500
TOTAL	5402	950

(b) Appeals pending on 30th June 1968 (Gift Tax)*

Number of pending appeals/revision petitions	Appeals with Appellate Assistant Commissioners	Revision petitions with Commissioners
934	934	62
(i) Out of appeals/revision petitions instituted during 1967-68	664	26
(ii) Out of appeals/revision petitions instituted in earlier years	270	36

Year-wise break-up of the pending appeals and revision petitions is shown below:

Year of institution	Appeals with Appellate Assistant Commissioners	Revision petitions with Commissioners
1962-63 and earlier years	7	6
1963-64	9	1
1964-65	25	6
1965-66	56	18
1966-67	173	5
1967-68	664	26
TOTAL	934	62

*Figures are as furnished by the Ministry.

(c) Appeals pending on 31st March 1968 (Estate Duty).*

Number of appeals pending with Appellate Controller of Estate Duty	1595
(i) Out of appeals instituted during 1967-68	1195
(ii) Out of appeals instituted in earlier years	400

Year-wise break-up of the pending appeals is shown below:

Year of institution	Number of appeals
1962-63	3
1963-64	17
1964-65	26
1965-66	72
1966-67	282
1967-68	1195
TOTAL	<u>1595</u>

*Figures are as furnished by the Ministry.

CHAPTER VI

OTHER REVENUE RECEIPTS MINISTRY OF HOME AFFAIRS

Sales tax receipts of the Union Territory of Delhi.

85. Variation between the Budget Estimates and the Actuals.

Against the Budget Estimates of Rs. 16·88 crores for the year 1967-68 the actuals went up by Rs. 1·11 crores to stand at Rs. 17·99 crores. In the year 1966-67 also the actuals exceeded the Budget Estimates by Rs. 2·50 crores.

An analysis of the variations is given below:—

(In lakhs of rupees)

	1966-67			1967-68		
	Budget Estimates	Actuals	+Increase —Decrease	Budget Estimates	Actuals	+Increase —Decrease
1. Receipts under local Sales Tax Act . . .	885·00	1092·10	+207·10	1200·00	1230·97	+30·97
2. Receipts under Central Sales Tax Act . . .	425·00	467·36	+42·36	490·00	573·09	+83·09
3. Deduct—Refunds . . .	2·50	1·66	—0·84	2·50	4·62	+2·12
	1307·50	1557·80	+250·30	1687·50	1799·44	+111·94

The reasons for variations between Budget Estimates and Actuals as furnished by the department are indicated below:

- (i) In 1966-67 the increase was mainly due to increase in the rates of local and Central sales tax.
- (ii) In 1967-68 Budget Estimates were based keeping in view the market trend and the fact that revenue was increasing year after year. The increase in actuals is the result of intensive efforts towards the end of the financial year to effect the recovery of outstanding arrears.

86. Cost of Collection.

The expenditure incurred on collecting the sales tax during the three years ending 1967-68 is indicated below:

Year	Gross collection	Expenditure on collection	Percentage of expenditure
	(In lakhs of rupees)		
1965-66	1247.82	18.29	1.47
1966-67	1559.46	24.15	1.57
1967-68	1804.06	31.44	1.74

87. Underassessment of sales tax in respect of rexine.

Under entry No. 17 of the Second Schedule to the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, "All varieties of cotton, woollen, rayon or artificial silk fabrics but not including real silk fabrics" are exempt from sales tax.

During test-check it was noticed that the sale of rexine was not taxed by the department treating it as cotton fabrics covered by entry No. 17. Rexine is manufactured with cloth as base and given coatings of polyvinyl chloride and it loses its character as pure cotton fabric after this treatment. Hence it is not covered by entry No. 17. The underassessment in respect of five rexine dealers on their sale during the years 1962-63, 1963-64 and 1964-65 was Rs. 8.95 lakhs.

On this being pointed out, the department issued instructions that with effect from 22nd August, 1968 sales tax should be levied on sales of rexine. Report of the action taken for the periods prior to that date is awaited (January, 1969).

88. Loss of Revenue due to incorrect determination of taxable turnover.

Under Section 2(h) of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, the cost of freight or delivery, if not separately charged forms part of the sale price.

It was, however, noticed (November, 1964) that a brick kiln dealer who did not show the cartage charges separately in the bills or cash memos during 1960-61 was not assessed to tax on the cost of cartage to the extent of about Rs. 64,266. The loss on this account during the earlier years is not known.

89. *Other topics of interest: Non-realisation of tax owing to dissolution of a firm.*

A partnership firm is a legal entity for tax laws. Such a firm on dissolution ceases to have a legal existence. The Supreme Court has also held (November, 1965) that a firm which has lost its character as an assessable entity due to its dissolution cannot be assessed to tax after its dissolution unless there is an express provision in the statute.

A firm registered as a dealer was assessed to a tax of Rs. 61,946 for the year 1960-61. On appeal, the assessment was set aside (May, 1965) and the case was remanded for framing fresh orders. The firm was, however, dissolved in April, 1965. In the absence of a statutory provision, the firm could not be reassessed. No assessment was also possible for the years 1961-62 to 1965-66. The matter was reported to the Ministry in November, 1966. The Ministry replied (March, 1967) that the Delhi Administration had referred to the Government of India as early as in 1962 the difficulty in the assessment of a dissolved firm in the absence of a specific provision in the Delhi Sales tax law and it was decided by Government (April, 1964) that instead of going before the Parliament for a piecemeal legislation to amend the law only for the purpose of enabling sales tax authorities to assess the partners of a dissolved firm, the amendment might be included in the comprehensive legislation to replace the existing sales tax law. Information on final action taken is awaited (January, 1969). Particulars of tax involved in the cases of dissolved firms that could not be assessed to tax in the absence of the statutory provision are also awaited (January, 1969).

90. *Arrears of assessments.**

67154 cases were outstanding with the Sales Tax Offices pending assessment on 31st March, 1968, as against 68389 cases outstanding as on 31st March, 1967 as reported in para 75 of the Civil Audit Report on Revenue Receipts, 1968.

The approximate tax involved in these cases could not be ascertained. The year to which these outstanding cases related and the number of assessments completed and pendency thereof during the past three years are given overleaf.

* Figures furnished by the department.

Financial Year	No. of assessments for disposal				Total cases for disposal	No. of assessments completed		Total disposal	Percentage disposal	Balance at the end of the year	
	Arrears	Addition due to physical verification	Current	Addition due to physical verification		No. of assessments completed					
						Arrears	Current				
1965-66	Local	24308	..	24420	..	48728	13956	6597	20553	42.18	28175
	Central	19789	..	18771	..	38560	10717	3999	14716	38.16	23844
1966-67	Local	28175	..	24426	..	52601	11755	4091	15846	30.12	36755
	Central	23844	..	19493	..	43337	8944	2516	11460	26.44	31877
1967-68	Local	36755	+895	27327	+3190	68167	23740	7852	31592	46.35	36575
	Central	31877	-1138	22151	+1202	54092	18554	4959	23513	43.47	30579

Year-wise break-up of the arrears :

(as on 31st March, 1969)

Year	Local	Central	Total
1964-65	4574	3800	8374
1965-66	10,858	9058	19916
1966-67	21143	17721	38864
TOTAL			67154

91. (a) *Frauds and evasions during 1965-66 to 1967-68 (upto 31-8-1967).**

1. Number of cases which were detected under Sections 11(2) & 11(A) of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi:

	1965-66	1966-67	1967-68
(1) Section 11(2)	608	1407	782
(2) Section 11(A)	76	4	11

2. Number of cases in which prosecutions were launched for non-registration: Nil.

3. Cases out of (2) in which convictions were obtained with action and punishment: Nil.

(b) *Searches and seizures during 1964-65 to 1967-68 (upto August, 1967).**

Out of 820 cases in which searches and seizures were made during 1964-65 to 1967-68 (upto August, 1967) assessments were completed in 541 cases which also include cases detected prior to 1964-65. The following table shows the year-wise details:

1. Number of cases in which seizures of books were made during 1964-65 to 1967-68 (upto August 1967):

1964-65	1965-66	1966-67	1967-68
111	127	360	222

2. Number of cases in which assessments have been completed out of those detected prior to 1964-65 and also those mentioned at Sl. No. 1 above:

1964-65	1965-66	1966-67	1967-68
165	138	126	112

3. Number of cases in which prosecution was launched and the result of such prosecution:

Year	Number of cases	Results
1964-65	1	Rs. 150/- fine imposed by the Court.
1965-66	Nil	Nil
1966-67	16 (against one dealer)	Prosecution withdrawn. Cases compounded for Rs. 50/-.

*Figures furnished by the department.

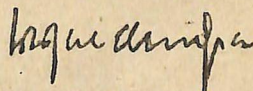
Receipts of the Central Government under the Central Sales Tax Act in the Union Territory of Goa, Daman and Diu:

92. *Non-levy of penalty on unauthorised inter-State transactions.*

Under the Central Sales Tax Act, 1956, a registered dealer can effect purchases from dealers in other States at a concessional rate of tax by issuing declarations in Form C provided the goods so purchased are for certain specified purposes. One of these purposes is mining. Under the judicial decisions, vehicles and parts thereof used for transporting ore after mining, cannot be said to be used in mining. If a mining concern has effected such purchases on C forms it is liable for penalty for breach of recitals of the declaration, under section 10A of the Act.

(a) In the Union Territory of Goa, Daman and Diu, the Central Sales Tax Act, 1956 was brought into force by order dated 21st January, 1963. However, under section 6 of the Act, the inter-State sales in the Union Territory were made taxable only with effect from 1st November, 1964. Though the other provisions of the Act were applicable even prior to 1st November, 1964, the department did not take cognizance of them, with the result the penalty leviable under section 10A of the Act was not levied at all till 31st December, 1964. The Goa Administration intimated in November, 1968 that in 7 cases, penalty of Rs. 58,158 had been imposed out of which a sum of Rs. 34,385 was recovered.

(b) It was noticed that even after November, 1964, the penalty remained to be considered in the case of one dealer in respect of his purchases on Form C of goods which were not used by him for any of the specified purposes. The amount of tax which the dealer had evaded by the misuse of Form C amounted to Rs. 23,295. The department stated (November, 1968) that necessary action was being taken.



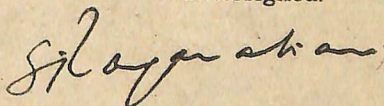
(D. D. DHINGRA)

Accountant General, Central Revenues.

Countersigned.

NEW DELHI;

The 25th April, 1969



(S. RANGANATHAN)

Comptroller and Auditor-General of India.

NEW DELHI;

The 25th April, 1969

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