REPORT

OF THE

COMPTROLLER

AND

AUDITOR GENERAL

OF INDIA

FOR THE YEAR

1972-73

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME II

DIRECT TAXES

ERRATA

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TABLE OF CONTENTS

PREFATORY REMARKS

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

(*i*) Chapter I sets out statistical and other information relating to Direct Taxes. It also gives results of test-audit in general.

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

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

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

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

VOLUME II

CHAPTER I

GENERAL

The total proceeds from Direct Taxes for the year 1972-73 amounted to Rs. 1233.07 crores out of which a sum of Rs. 495.11 crores was assigned to the States. The figures for the three years 1970-71, 1971-72 and 1972-73 are as follows:—

(In crores of rupees)

	1970-71	1971-72	1972-73
III. Corporation Tax	370.52	472.08	557.86
IV. Taxes on income other than Corporation Tax	473.17	534.39	625.47
V. Estate Duty	7.86	9.03	9.78
VI. Taxes on Wealth	15.31	25.14	35.94
VII. Expenditure Tax	(—)0.01	(—)0.01	..
VIII. Gift Tax	2.45	3.52	4.02
Gross Total	869.30	1044.15	1233.07
Less share of net proceeds assigned to States.			
Income-tax	*359.09*	*459.86*	*487.92*
Estate Duty	*6.30*	*7.64*	*7.19*
Net receipt	503.91	576.65	737.96

The gross receipts under Direct Taxes during 1972-73 went up by Rs. 188.92 crores when compared with the receipts during 1971-72. The collections under corporation tax during the same period registered an increase of Rs. 85.78 crores.

The break up of total collection of Corporation tax and Taxes on income other than Corporation tax, as furnished by the Ministry of Finance, during 1972-73 is as under:—

Pre-assessment and post-assessment collection of tax during 1972-73 :— (In crores)

	Rs.
(a) Deduction at Source	249.95
(b) Advance Tax (net)	644.95
(c) Self assessment	120.48
(d) Regular assessment	157.40
	1,172.78

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

Demand raised (i.e. notices issued) and collected by way of advance tax during 1972-73 :—

(i)	No. of cases.....	562246
	Amount.....Rs.	725.12 crores
(ii) Demand collected out of (i)	No. of cases.....	Not available
	Amount.....Rs.	699.48 crores
(iii) Arrears under advance tax on 31-3-1973	No. of cases.....	Not available
	Amount.....Rs.	25.64 crores

(c) *Deduction of Tax at Source by Companies on Dividends Distributed**

1.	No. of company assessees as on 1-4-1972		29,619
	No. of company assessees as on 1-4-1973		30,072
2.	No. of companies which had made the prescribed arrangements for declaration and payment of dividends within India:—		
	As on 1-4-1972		18,456
	As on 1-4-1973		18,017
3.	No. of companies which have distributed dividends during 1972-73		4,517
4.	Amount involved in (3) above (In 000)	Rs.	16,63,708
5.	No. of cases out of (3) in which the statement prescribed in Rule 37(2) was received		4,328
6.	Amount of deduction shown in the statement in (5) above (In 000)	Rs.	3,95,133
7.	No. of cases out of (5) in which the tax deducted was remitted into banks		4,314
8.	Amount involved in (7) above (In 000)	Rs.	3,94,953
9.	No. of cases out of (7) in which tax deducted was remitted after one week of date of deduction or receipt of challan		118
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 company exceeds Re. 1 and in the case of others Rs. 5,000.		156
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2. *Variations between the Budget estimates and the actuals*

(i) The actuals for the year 1972-73 under the Major Heads 'III—Corporation Tax', 'IV—Taxes on Income other than Corporation Tax', 'V—Estate Duty' and 'VIII—Gift Tax' exceeded the Budget estimates; whereas those under 'VI—Taxes on Wealth' were less

*Figures furnished by the Ministry of Finance.

than the Budget estimates. The figures for the years from 1968-69 to 1972-73 under the above heads are given below:—

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

(In crores of rupees)

Year	Budget estimates	Actuals	Variation	Percentage of variation
III.—Corporation Tax				
1968-69	320.35	299.77	(—)20.58	(—)6.42
1969-70	326.20	353.39	27.19	8.34
1970-71	342.00	370.52	28.52	8.34
1971-72	411.00	472.08	61.08	14.86
1972-73	493.50	557.86	64.36	13.04
IV.—Taxes on* Income etc.				
1968-69	319.65	378.47	58.82	18.40
1969-70	362.30	448.45	86.15	23.78
1970-71	436.75	473.17	36.42	8.34
1971-72	491.00	534.39	43.39	8.84
1972-73	583.00	625.47	42.47	7.28

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

Estate Duty*				
1968-69	7.50	6.74	(—)0.76	(—)10.13
1969-70	7.50	6.94	(—)0.56	(—)7.47
1970-71	7.50	7.86	0.36	4.80
1971-72	7.00	9.03	2.03	29.00
1972-73	8.00	9.78	1.78	22.25
Wealth Tax				
1968-69	11.00	11.11	0.11	1.00
1969-70	12.00	15.62	3.62	30.17
1970-71	18.00	15.31	(—)2.69	(—)14.94
1971-72	30.00	25.14	(—)4.86	(—)16.20
1972-73	43.00	35.94	(—)7.06	(—)16.42
Gift Tax				
1968-69	1.75	1.51	(—)0.24	(—)13.71
1969-70	1.50	2.02	0.52	34.67
1970-71	1.50	2.45	0.95	63.33
1971-72	2.00	3.52	1.52	76.00
1972-73	2.50	4.02	1.52	60.80

*Gross figures have been taken.

(*ii*) The details of variations under the Minor Heads of the Major Heads III and IV for the year 1972-73 are given below:—

(In lakhs of rupees)

	Budget estimates	Actuals	Increase(+) Short-fall (—)	Percentage of variation
III—Corporation Tax.				
(*i*) Ordinary Collections	4,73,50	5,43,21	69,71	14.72
(*ii*) Excess Profits Tax	..	(—)01	(—) 01	..
(*iii*) Super Profits Tax	..	64	64	..
(*iv*) Business Profits Tax	..	01	01	..
(*v*) Surtax	18,50	13,79	(—)4,71	(—)25.46
(*vi*) Miscellaneous	1,50	22	(—)1,28	(—)85.33
Total	4,93,50	5,57,86	64,36	13.04
IV—Taxes on Income Other than Corporation Tax				
(*i*) Ordinary Collection%	5,44,00	5,81,78	37,78	6.94
(*ii*) Surcharge (Union)	25,00	28,96	3,96	15.84
(*iii*) Surcharge (Special)	7,00	3,82	(—)3,18	(—)45.43
(*iv*) Additional Surcharge (Union)	50	18	(—)32	(—)64.00
(*v*) Excess Profits Tax	10	(—)1	(—)11	(—)110.00
(*vi*) Business Profits Tax	..	5	5	..
(*vii*) Super Tax	..	6,21	6,21	..
(*viii*) Miscellaneous@	6,40	4,48	(—)1,92	(—)30.00
Deduct Share of net proceeds assigned to States	*4,62,52*	*4,87,92*	*25,40*	*5.49*
Total	1,20,48	1,37,55	17,07	13.17

3. *Cost of Collection*

The expenditure incurred during the year 1972-73 in collecting Corporation Tax and Taxes on Income other than Corporation Tax, together with the corresponding figures for the preceding three years, is shown under:—

(In crores of rupees)

	Gross collections	Expenditure on collections
III—Corporation Tax		
1969-70	353.39	3.15
1970-71	370.52	2.36
1971-72	472.08	2.59
1972-73	557.86	2.82

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

@Includes Taxes on Agriculture Income.

	Gross collections	(In crores of rupees) Expenditure on collections
IV. Taxes on Income etc.		
1969-70	448.45	12.62
1970-71	473.17	16.53
1971-72	534.39	18.12
1972-73	625.47	19.72

4. (i) The total number of income-tax paying assessees (including companies) in the books of the department as on 31st March, 1973 was 33,88,259. As compared to the previous year ending 31st March, 1972 there was a rise of 1,79,743 cases. The figures status-wise showing the amount of tax collected from each category are given below :—

	Number of assessees		Amount of tax collected (in crores)	
	As on 31st March, 1972	As on 31st March, 1973	As on 31st March, 1972	As on 31st March, 1973
Individuals	25,68,937	26,92,169	398.45	490.85
Hindu Undivided Family	1,65,340	1,84,373	36.22	39.14
Firms	4,21,412	4,55,558	107.24	86.07
Companies	30,128	30,805	515.70	635.53
Others	22,699	25,354	12.64	9.82
TOTAL	32,08,516	33,88,259	1,070.25	1,261.41*

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

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

	Number of assessees As on 31st March, 1972	As on 31st March, 1973	Tax collected during 1971-72 (in crores)	Tax collected during 1972-73
(a) Business cases having income over Rs. 25,000	2,18,065	2,42,553	710.37	809.76
(b) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	2,26,569	2,66,284	114.25	125.09
(c) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	5,00,769	6,22,084	68.56	74.72
(d) All other cases except those mentioned in category below and refund cases	14,27,952	14,67,955	124.63	145.91
(e) Government Salary cases and non-Government salary cases below Rs. 18,000	8,35,161	7,89,383	52.44	105.93
TOTAL	32,08,516	33, 88,259	1,070.25	1,261.41

Figures appearing in paragraphs 4 to 10 have been furnished by the Ministry of Finance.

(iii) The total number of wealth-tax assessees in the books of the department as on 31st March, 1972 and 31st March, 1973 was as follows :—

	As on 31st March, 1972	As on 31st March, 1973
Individuals	1,77,870	1,83,168
Hindu Undivided Family	25, 750	27,700
Others	35	310
TOTAL	2,03,655	2,11,178

(iv) The total number of gift-tax assessees in the books of the department as on 31st March, 1972 and 31st March, 1973 was as follows :—

	As on 31st March, 1972	As on 31st March, 1973
Individuals	53,978	62,199
Hindu Undivided Family	761	1,112
Others	102	131
TOTAL	54,841	63,442

(v) The total number of estate duty assessment cases in the books of the department as on 31st March, 1972 and 31st March, 1973 was as follows:—

As on 31st March, 1972	27,341
As on 31st March, 1973	29,456

(vi) The number of estate duty assessments completed during 1972-73 was as follows :—

Principal value of Property	No. of assessments completed
(i) Exceeded Rs. 20 lakhs	18
(ii) Between Rs. 10 lakhs and Rs. 20 lakhs	30
(iii) Between Rs. 5 lakhs and Rs. 10 lakhs	246
(iv) Between Rs. 1 lakh and Rs. 5 lakhs	4,475
(v) Between Rs. 50,000 and Rs. 1 lakh	4,272
	9,041

5. *Arrears of tax demands*

(a) *Corporation Tax and Income-Tax*

(i) The total demand of tax raised and remaining uncollected as on 31st March, 1973 was Rs. 630.14 crores as furnished by the Ministry. This does not include Rs. 159.88 crores the collection of which had not fallen due on that date.

(ii) The figures of Corporation Tax, Income-tax, interest and penalty comprised in the gross arrears of Rs. 790.02 crores and the years to which they relate are shown below :—

(In crores of rupees)

	Corporation Tax	Income Tax	Interest	Penalty	Total
Arrears of 1961-62 and earlier years . .	10.64	42.13	2.77	3.05	58.59
1962-63 to 1969-70 .	34.93	140.88	22.81	25.35	223.97
1970-71 . . .	13.69	49.42	12.90	11.63	87.64
1971-72 . . .	26.33	103.12	24.13	17.44	171.02
1972-73 . . .	61.75	134.62	35.42	17.01	248.80
TOTAL .	147.34	470.17	98.03	74.48	790.02

(iii) The table below shows the number of assessees from whom gross arrears of Rs. 790.02 crores are due :—

Arrear Demands	No. of assessees	Total arrears of tax (in crores of rupees)
Up to Rs. 1 lakh in each case	17,17,085	414.05
Over Rs. 1 lakh up to Rs. 5 lakhs in each case . . .	4,434	106.15
Over Rs. 5 lakhs up to Rs. 10 lakhs in each case . . .	823	60.03
Over Rs. 10 lakhs up to Rs. 25 lakhs in each case . .	500	83.82
Over Rs. 25 lakhs in each case	213	125.97
TOTAL . .	17,23,055	790.02

(iv) Tax demand certified to Tax Recovery Officers and State Government Officers for recovery and its year-wise particulars to the end of 1972-73 are as follows :—

Year	Amount Certified	Amount Recovered	Balance
1966-67	62,60,04,000	7,58,27,000	55,01,77,000
1967-68	84,45,31,000	12,08,39,000	72,36,92,000
1968-69	1,43,00,75,000	17,66,91,000	1,25,33,84,000
1969-70	1,11,49,70,580	34,63,75,274	76,85,95,306
1970-71	1,88,42,38,797	1,13,96,68,395	74,45,70,402
1971-72	4,07,89,35,252	1,02,25,56,206	2,05,63,79,046
1972-73	7,83,68,31,000	1,18,08,16,000	6,65,60,15,000

(v) Arrears of Sur-tax demands outstanding on 31st March, 1973 are as follows :—

Relating to demands raised in	Amount outstanding (in lakhs of rupees)
1965-66	0.74
1966-67	.
1967-68	1.17
1968-69	6.74
1969-70	26.00
1970-71	68.27
1971-72	112.99
1972-73	348.17
TOTAL . . .	564.08

(Demands that have not fallen due on 31st March, 1973 have been excluded).

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

The following table shows the year-wise arrears of demands outstanding and the number of cases relating thereto under the three direct taxes, Wealth-tax, Gift-tax and Estate Duty as on 31st March, 1973 :—

(Amount in lakhs of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	No. of cases	Amount Rs.	No. of cases	Amount Rs.	No. of cases	Amount Rs.
1970-71 and earlier years . . .	20,028	496.47	5,632	108.17	3,925	583.04
1971-72 . . .	19,051	496.40	3,683	54.18	2,177	204.07
1972-73 . . .	62,221	1,553.41	13,819	199.02	3,826	742.81
TOTAL . .	1,01,300	2,546.28	23,134	361.37	9,928	1,529.92

6. *Arrears of assessments*

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

The number of assessment cases which are to be finalised as on 31st March, 1973 has increased as compared to that at the close of the previous year. The position of assessments pending as on 31-3-1973 was 13.93 lakhs as compared to 11.24 lakhs as on 31-3-1972 and 12.39 lakhs as on 31-3-1971. Of 13.93 lakhs of pending cases as many as 6.39 lakhs cases relate to summary assessments.

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

Number of assessments completed

Financial Year	No. of assessments for disposal	Out of current	Out of arrears	Total	Percentage	No. of assessments pending at the end of the year
1	2	3	4	5	6	7
1968-69 .	49,99,237	16,73,474	17,47,808	34,21,282	68.4	15,77,955
1969-70 .	48,79,697	21,34,814	14,23,076	35,57,890	72.9	13,21,807
1970-71 .	47,30,992	22,48,534	12,43,629	34,92,163	73.8	12,38,829
1971-72 .	49,67,924	23,56,949	14,87,270	38,44,219	77.4	11,23,705
1972-73 .	49,90,722	25,07,241	10,90,816	35,98,057	72.1	13,92,665

It may be seen that in 1972-73, the rising trend of disposals has been reversed and there is a shortfall in the disposals by 2,46,162 when compared to the performance in 1971-72.

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

Year	As on 31-3-1971	As on 31-3-1972	As on 31-3-1973
1968-69 and earlier years	2,46,340	27,745	20,070
1969-70	2,65,296	20,988	16,543
1970-71	7,27,193	2,82,131	32,674
1971-72	..	7,92,841	3,35,410
1972-73	..	..	9,87,968
TOTAL	12,38,829	11,23,705	13,92,665

(iv) Category-wise break-up of pending Income-tax assessments as on 31-3-1972 and 31-3-1973 is as under:—

	As on 31-3-1972	As on 31-3-1973
(a) Business cases having income over Rs. 25,000	1,24,149	1,45,773
(b) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	81,750	98,438
(c) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	1,32,474	1,46,767
(d) All other cases except those mentioned in category (e) below and refund cases	3,00,946	3,14,954
(e) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	43,245	47,867
(f) Summary Assessments	4,41,141	6,38,866
TOTAL	11,23,705	13,92,665

(v) Status-wise and year-wise break-up of pendency of income-tax assessments as on 31-3-1973 :—

Status	1968-69 and earlier years	1969-70	1970-71	1971-72	1972-73	Total
Individuals	13,814	13,212	26,005	2,57,085	7,80,069	10,90,185
Hindu Undivided Families	1,664	1,639	2,438	18,047	52,535	76,323
Companies	1,802	284	282	5,850	12,366	20,584
Firms	2,387	1,289	3,363	49,608	1,32,635	1,89,282
Association of Persons	403	119	586	4,820	10,363	16,291
TOTAL	20,070	16,543	32,674	3,35,410	9,87,968	13,92,665

(vi) The number of assessments completed and demand raised month-wise during 1971-72 and 1972-73 are as below :—

Month	1971–72		1972–73	
	No. of assessments completed	Demand raised (Rs. in crores)	No. of assessments completed.	Demand raised (Rs. in crores)
April	57,408	13.78	47,876	13.32
May	75,737	13.66	57,536	16.67
June	1,23,129	22.12	81,454	13.08
July	2,78,207	37.61	1,59,201	21.89
August	3,56,852	53.94	2,76,159	36.12
September	3,81,693	53.86	3,49,981	43.57
October	3,79,267	68.41	3,49,573	63.26
November	4,13,938	91.21	3,69,681	83.92
December	4,28,061	158.91	4,85,231	95.68
January	4,28,075	139.25	4,41,391	113.00
February	4,27,741	185.64	4,55,613	119.65
March	4,94,111	329.00	5,24,361	239.73
TOTAL	38,44,219	1,167.39	35,98,057	859.89

It may be seen from the above figures that (i) there is a sudden fall in the demand raised by Rs. 307.50 crores as compared to the previous year, (ii) the rush of assessments during the last quarter of the year continues unregulated and (iii) bulk of demand is raised in the last quarter leading to large carry forward of uncollected demands.

(vii) *Reopened cases and set-aside cases which are pending*

(1) Year-wise details of cases of assessments cancelled under section 146 of Income-tax Act, 1961 (or under the corresponding provisions of the old Act) and which are pending finalization on 31-3-1973 are as follows :-

Assessment year	No. of cases
1966-67 and earlier years	1,819
1967-68	697
1968-69	773
1969-70	1,125
1970-71	1,224
1971-72	741
1972-73	691
TOTAL	7,070

(2) Year-wise details of cases of assessments cancelled under section 263 of Income-tax Act, 1961 (or under the corresponding provisions of the old Act) which are pending finalization on 31-3-1973 are as follows :—

Assessment year	No. of cases
1966–67 and earlier years	222
1967–68	60
1968–69	68
1969–70	51
1970–71	30
1971–72	32
1972–73	24
TOTAL	487

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

Tribunal under Section 254 of Income-tax Act, 1961 (or under the corresponding provisions of the old Act), where fresh assessments have not been completed as on 31-3-1973 :—

Set-aside by A.A.Cs.		Set-aside by Appellate Tribunal	
Asstt. year	No. of case	Asstt. year	No. of cases
1966-67 and earlier years . .	5,434	1966-67 and earlier years .	636
1967-68	966	1967-68	77
1968-69	1,090	1968-69	71
1969-70	1,284	1969-70	76
1970-71	834	1970-71	50
1971-72	604	1971-72	43
1972-73	561	1972-73	47
TOTAL. .	10,773	TOTAL . . .	1,000

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

The position of pendency as on 31st March, 1973 as furnished by the Ministry is given below :—

	Super Profits Tax	Sur Tax
(i) Total number of cases for disposal during 1972-73	55	3,856
(ii) Number of cases disposed of provisionally	—	278
(iii) Number of cases disposed of finally .	28	1,904
(iv) Amount of demand raised on provisional assessments	—	Rs. 1407.32 lakhs
(v) Amount of demand collected on provisional assessments	—	Rs. 1147.50 lakhs
(vi) Amount of demand raised on final assessments	Rs. 105.01 lakhs	Rs. 2445.11 lakhs
(vii) Amount of demand collected on final assessments	Rs. 92.56 lakhs	Rs. 2014.17 lakhs
(viii) Number of cases pending as on 31st March, 1973	27	1952
(ix) Approximate amount of tax involved in (viii)	Rs. 2.44 lakhs	Rs. 1235.12 lakhs

Year-wise details of assessments under Sur-tax Act pending as on 31-3-1973 :—

Year	Number of assessments
1964–65 and earlier years	1
1965–66	4
1966–67	54
1967–68	56
1968–69	79
1969–70	105
1970–71	260
1971–72	493
1972–73	900
TOTAL	1952

(c) The table below shows the years-wise details of wealth-tax, gift-tax and estate duty assessments pending without finalisation on 31st March, 1973 and the approximate amount of tax/duty involved therein.

Year	No. of assessments pending			Approximate amount of tax involved (in lakhs of rupees)		
	Wealth-tax	Gift-tax	Estate duty	Wealth-tax	Gift-tax	Estate duty
1967–68 and earlier years	13077	576	1300	235.88	7.91	53.08
1968–69	8443	354	444	133.46	1.57	58.01
1969–70	13057	696	801	174.55	6.49	62.37
1970–71	24526	1788	1413	353.52	13.28	184.02
1971–72	44373	3618	2406	632.73	31.63	108.88
1972–73	95201	9954	7044	1210.83	63.24	555.91
TOTAL	198677	16986	13408	2740.97	124.12	1022.27

7. *Revenue demands written-off by the department during the year* 1972-73.

(a) A demand of Rs. 266.76 lakhs in 13,636 cases was written-off by the Revenue Department during the year 1972-73. Of this

a sum of Rs. 9.31 lakhs relates to 39 company assessees and Rs. 257.45 lakhs to 13597 non-company assessees.

(Rupees in lakhs)

	Companies		Non-Companies		Total	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
1	2	3	4	5	6	7
I. Assessees having died leaving behind no assets or have gone into liquidation or become insolvent:						
(a) Assessees having died leaving behind no assets . . .	..	..	172	143.45	172	143.45
(b) Assessees having gone into liquidation	25	7.43	..	..	25	7.43
(c) Assessees having become insolvent	..	..	33	20.14	33	20.14
(d) companies which are defunct though not gone into liquidation	2	0.23	..	..	2	0.23
TOTAL	27	7.66	205	163.59	232	171.25
II. Assessees being untraceable .	3	0.10	4245	29.15	4248	29.25
III. Assessees having left India .	1	0.01	170	35.90	171	35.91
IV. For other reasons:						
(i) Assessees who are alive but have no attachable assets . .	6	1.08	632	15.67	638	16.75
(ii) Amount being petty etc . .	..	..	8230	2.11	8230	2.11
(iii) Amount written-off as a result of settlement with assessees .	2	0.46	2	7.52	4	7.98
(iv) Demands rendered unenforceable by subsequent development such as duplicate demands, demands wrongly made, demands being protective etc.	..	..	16	3.45	16	3.45
TOTAL IV	8	1.54	8880	28.75	8888	30.29
V. Amount written-off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involving in legal remedies for realisation are considered disproportionate to the amount of recovery	..	..	97	0.06	97	0.06
GRAND TOTAL . . .	39	9.31	13597	257.45	13636	266.76

(b) The demands written-off by the Revenue Department during 1972-73 of Wealth-tax, Gift-tax and Estate Duty are given below :—

	Wealth-tax		Gift-tax		Estate Duty	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
1	2	3	4	5	6	7
I. Assessees having died leaving behind no assets or having gone in liquidation or become insolvent						
(a) Assessees having died leaving behind no assets . .	..	..	..	..	..	..
(b) Assessees having gone in liquidation	1	9,000	..	..	..	..
(c) Assessees having become insolvent	..	..	..	..	..	..
TOTAL	1	9,000	..	..	..	..
II. Assessees being untraceable .	..	..	1	698	..	..
III. Assessees having left India .	..	..	..	..	..	..
IV. For other reasons:						
(a) Assessees who are alive but have no attachable assets .	1	1,012	..	..	..	..
(b) Amount being pet. etc . .	..	..	1	66	..	..
(c) Amount written-off as a result of settlement with assessees .	..	..	..	..	..	..
(d) Demands rendered unenforceable by subsequent development such as duplicate demands, demands wrongly made, demands being protective etc. .	..	..	..	..	..	..
V. Amount written-off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involving in legal remedies for realisations are considered disproportionate to the amount of recovery	..	..	..	..	..	..
TOTAL	2	10,012	2	764	..	..

8. *Frauds and evasions*

(a) *Income-tax*

(*i*) No. of cases in which penalty under Section 28(1)(c)/271(1)(c) was levied in 1972-73	12,544
(*ii*) No. of cases in which prosecution for concealment of income was launched	30
(*iii*) No. of cases in which composition was effected without launching prosecution	3
(*iv*) Concealed income involved in (i)	Rs. 25,48,27,000
(*v*) Total amount of penalty levied on (i)	Rs. 12,18,73,000
(*vi*) Extra tax demanded on concealed income in item (iv)	Rs. 12,42,61,000
(*vii*) Cases out of (ii) in which convictions were obtained	2
(*viii*) Composition money levied in respect of (iii)	Rs. 73,000
(*ix*) Nature of punishment in respect of (vii)—	
(*a*) Partners convicted to imprisonment till rising of court	One case
(*b*) Convicted to imprisonment till rising of court and fine of Rs. 1,000	One case

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

	Wealth-tax	Gift-tax
(*i*) No. of cases in which penalty u/s 18(1)(c)/17(1)(c) was levied	368	49
(*ii*) No. of cases in which prosecution for concealment was launched	Nil	Nil
(*iii*) No. of cases in which composition was effected without launching prosecution	Nil	Nil
(*iv*) Concealment of net-wealth/value of gift involved in (i)	Rs. 3,64,67,000	Rs. 2,41,000
(*v*) Total amount of penalty levied	Rs. 1,69,23,000	Rs. 1,38,000
(*vi*) Extra-tax demanded on concealment	Rs. 6,78,000	Rs. 2,34,000
(*vii*) Cases out of (ii) in which convictions were obtained	Nil	Nil
(*viii*) Composition fees levied in respect of cases in (iii)	Nil	Nil
(*ix*) Nature of punishment in respect of (vii)	Nil	Nil

9. *Voluntary disclosures under section* 271(4-A)

With a view to encourage voluntary disclosure of undisclosed income, Section 271(4-A) was inserted in the Income-tax Act, 1961 by the Income-tax (Amendment) Act, 1965. This sub-section empowers amount of minimum penalty imposable in the case of persons who have voluntarily and in good faith made full and true disclosure of their concealed income. The follo wing table shows the number of persons who have voluntarily disclosed co rcealed

income during 1972-73, assessments completed during the year and the total number of cases outstanding without finalisation as on 31st March, 1973.

(*i*)	No. of cases outstanding on 1-4-1972	2,941
(*ii*)	No. of declarants who gave voluntary disclosures during 1972-73	3,691
(*iii*)	Amount of income declared	Rs. 27,00 lakhs
	in respect of item (i)...Rs. 18,61 lakhs	
	in respect of item (ii)...Rs. 8,39 lakhs	
(*iv*)	No. of cases in which the disclosed income was held—already detected	225
(*v*)	Income involved in (iv) above	Rs. 301 lakhs
(*vi*)	No. of cases in which the assessments have been completed	1,378
(*vii*)	Amount of income involved in cases in (vi) above	Rs. 6,12 lakhs
(*viii*)	Amount of tax levied in cases in (vii) above	Rs. 2,12 lakhs
(*ix*)	Amount recovered out of (viii) above	Rs. 92 lakhs
(*x*)	No. of cases in which levy of penalty was waived or reduced	906
(*xi*)	Amount of income involved in (x) above	Rs. 67 lakhs
(*xii*)	No. of cases in which full amount of penalty was levied	157
(*xiii*)	Amount involved in cases in (xii) above	Rs. 6 lakhs
(*xiv*)	No. of cases outstanding without finalisation on 31-3-1973	5,029
(*xv*)	Year-wise details of (xiv) above—	
	1965–66	164
	1966–67	182
	1967–68	149
	1968–69	123
	1969–70	174
	1970–71	351
	1971–72	974
	1972–73	2912
	TOTAL	5029

NOTE :—The difference of 33 between the closing Balance as on 31-3-1972 (2974) and opening balance as on 1-4-1972 (2941) is due to the reason that the petitions filed and rejected have been excluded.

10. *Arrears of penalty proceedings*

There are still (as on 31-3-1973), 656 cases in which penalty proceedings under the Income-tax Act, 1922 are pending. The year-wise analysis of these pending cases as furnished by the Ministry of Finance is as follows :—

Year of assessment	No. of cases	Approximate amount of penalty involved (Rs. in thousands)
1952–53 and earlier years	263	6,384
1953–54	35	2,679
1954–55	42	2,491
1955–56	48	1,402
1956–57	67	1,110
1957–58	72	5,488
1958–59	51	151
1959–60	37	137
1960–61	25	107
1961–62	16	36
	656	19,985

11. *Results of test-audit in general*

(i) *Corporation tax and Income-tax*

During the period from 1st September, 1972 to 31st August, 1973 test-audit of the documents of the income-tax offices revealed total under assessment of tax of Rs. 1296.96 lakhs in 15,291 cases and over-assessment of tax of Rs. 188 lakhs in 4,617 cases. Besides these, various defects in following the prescribed procedure also came to the notice of Audit.

Of the total 15,291 cases of under assessment, short-levy of tax of Rs. 1112.64 lakhs was noticed in 1,094 cases alone. The remaining 14,197 cases accounted for under-assessment of tax of Rs. 184.32 lakhs.

The under-assessment of tax of Rs. 1296.96 lakhs is due to mistakes categorised broadly under the following heads :—

		No. of items	Amount (in lakhs of Rs.)
1.	Avoidable mistakes involving considerable revenue	2193	36.43
2.	Failure to observe the provisions of the Finance Acts	144	21.70
3.	Incorrect status adopted in the assessments	101	78.52
4.	Incorrect computation of salary income	266	4.34
5.	Incorrect computation of income from house property	556	13.06
6.	Incorrect computation of dividend income	95	4.03
7.	Incorrect computation of business income	1853	157.25
8.	Irregularities in allowing depreciation & development rebate	866	457.80
9.	Irregular exemption and excess reliefs given	761	71.90
10.	Irregularities in connection with export incentives	9	11.64
11.	Irregular computation of capital gains	123	10.36
12.	Mistakes in assessment of firms and partners	280	16.35
13.	Omission to include income of spouse/minor child etc.,	30	3.11
14.	Irregular set-off of losses	73	14.29
15.	Mistakes in assessments while giving effect to appellate orders	86	12.74
16.	Income escaping assessment	1387	25.01
17.	Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.,	2527	63.43
18.	Avoidable or incorrect payment of interest by Government	49	42.24
19.	Omission/short-levy of penalty	79	32.59
20.	Excess or irregular refunds	388	4.96
21.	Under-assessment due to adoption of incorrect procedure	43	14.53
22.	Other topics of interest/miscellaneous	3230	70.16
23.	Under-assessment of Sur-tax/Super-Profits tax	152	130.52
		15,291	1296.96

(ii) *Wealth-tax*

During test-audit of assessments made under the Wealth-tax Act, 1957 short-levy of tax of Rs. 46.57 lakhs was noticed in 2652 cases. The number of cases in which over-assessment was noticed was 861 and tax involved was 10.97 lakhs.

The under-assessment of tax of Rs. 46.57 lakhs was due to mistakes categorised broadly under the following heads :—

	No. of items	Tax (Rupees in lakhs)
1. Mistakes in calculation of tax, computation of wealth	750	5.67
2. Wealth escaping assessment	400	4.92
3. Incorrect valuation of assets	200	2.94
4. Incorrect reliefs and exemptions	632	9.50
5. Omission or incorrect levy of additional wealth-tax	50	2.57
6. Non-levy or incorrect levy of penalty	350	16.22
7. Other lapses	270	4.75
TOTAL	2652	46.57

(iii) *Gift-tax*

During the test-audit of gift-tax assessments it was noticed that in 436 cases there was short-levy of tax of Rs. 12.64 lakhs and in 152 cases there was over-charge of tax of Rs. 0.96 lakhs.

(iv) *Estate Duty*

In test-audit of estate duty assessments, it was noticed that in 351 cases there was short-levy of estate duty of Rs. 16.06 lakhs and in 113 cases there was over-charge of duty of Rs. 1.55 lakhs.

CHAPTER II

CORPORATION TAX

12. As on 30th September, 1972 there were 33,768 Joint Stock Companies limited by shares with an aggregate paid-up capital of Rs. 4,998 crores in the various States and Union Territories of India. These 33,768 companies comprised 368 Government companies and 33,400 non-Government companies having paid-up capital of Rs. 2,680 crores and Rs. 2,318 crores respectively. Out of these, nearly 80 per cent were private limited companies*

'Company' would now (with effect from 1-4-1971) include a foreign company and an institution or body assessed as a company for any assessment year up to and inclusive of assessment year 1970-71. The Central Board of Direct Taxes have also been given powers to declare in relation to any past assessment year an institution as a company. The definition of 'Indian Company' in the Income-tax Act has been amended to include a corporation established by Central, State or Provincial Act and any other institution, association or body which is declared by the Board to be a company. The Ministry of Finance have intimated that the following number of associations have been declared as 'companies' :—

Year	No. of Associations declared as companies
1971–72	33
1972–73	2

According to the information furnished by the Ministry of Finance (Department of Revenue), number of company assessees as on 1st April, 1972 and 1st April, 1973 were 28,675 and 28,924 respectively.

The numbers of company assessments completed and assessments pending at the close of the year 1972-73 are furnished below :—

(*i*) Total number of company assessments pending at the beginning of the year 1972–73 *i.e.* pending on 1-4-1972	22,817
(*ii*) Number of assessments out of (i) completed during 1972-73 . . .	14,437
(*iii*) Total number of current assessments required to be completed during 1972-73	29,820
(*iv*) Number of assessments out of (iii) completed during 1972-73 . .	17,609
(*v*) Number of assessments pending as on 31-3-1973	20,591

*Figures taken from the Report, 1972-73 of the Ministry of Law, Justice and Company Affairs, New Delhi

In respect of assessments of the companies, some instances of the mistakes under the headings mentioned in para 11(i) are given in the following paragraphs.

13. *Mistakes involving considerable revenues*

(*a*) In computing the business income of a company for the assessment year 1968-69, the Department added back to the net profit a sum of Rs. 20,93,532 instead of Rs. 22,93,532 actually debited to the Profit and Loss Account in respect of "depreciation" resulting in under-assessment of income by Rs. 2,00,000. Further, an expenditure of Rs. 98,946 on "scientific research" debited to the Profit and Loss Account was not added back to the net profit. But an equal amount was allowed to be deducted from the net profit causing under-assessment of income by Rs. 98,946. The total under-assessment of income by Rs. 2,98,946 led to consequential tax under-charge of Rs. 1,64,420 for the assessment year 1968-69.

(*b*) In its return for the assessment year 1968-69, a company deducted Rs. 1,36,680 from its total income on account of exemption from profits of new industrial undertakings. While making the assessment, the Income-tax Officer allowed the sum of Rs. 1,36,680 once over again, which resulted in under-assessment of Rs. 1,36,680 with a consequent short-levy of tax of Rs. 86,220.

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

(*a*) Under the Finance Acts 1964 to 1968, certain categories of companies, declaring or distributing dividends on equity shares in excess of specified percentage of their paid-up equity share capital as on the first day of the relevant previous year are to pay additional tax at prescribed rate on such excess dividends.

(*i*) One such company which had paid-up equity share capital of Rs. 8 crores on the first day of he previous year relevant to the assessment year 1967-68 issued bonus shares of the value of Rs.2 crores towards the end of the previous year. It distributed during the previous year, equity dividends amounting to Rs. 1.4 crores. The additional tax leviable on excess dividends was calculated by the Department with reference to the company's equity capital of Rs. 10 crores as at the end of the previous year instead of the capital of Rs. 8 crores as on the first day thereof. This resulted in short-levy of tax by Rs. 1.5 lakhs for the assessment year 1967-68. The same company doclared/distributed equity dividends amounting to Rs. 1.75 crores during the previous year relevant to the assessment year 1968-69, for which additional tax of Rs. 5,62,500 was not levied by the Department.

(*ii*) Another company (a banking concern declared and distributed dividends of Rs. 24,56,062 on its paid-up equity capital during the previous year relevant to the assessment year 1964-65. The Department, however, did not levy additional tax thereon. Further, though the company declared and distributed dividend of Rs. 53,20,000 on its paid-up equity capital during the previous year relevant to the assessment year 1967-68, the Department levied additional income-tax on .Rs. 36,40,000. These errors caused tax under-charge of Rs. 3,10,205 for the assessment years 1964-65 and 1967-68.

In the cases referred to at (*i*) and (*ii*) above, the Ministry have stated that the assessments in question have been rectified and the additional demands of Rs. 7,12,500 and Rs. 3,10,205 respectively raised. Report regarding collection of these demands is awaited.

(*b*) According to the Finance Act, 1970, a domestic company in which the public are not substantially interested and which is mainly engaged in industrial activity, is charged to tax on its total income at 55 per cent on so much of the total income as does not exceed Rs. 10 lakhs and at 60 per cent on the balance.

The total income for the assessment year 1970-71 of an industrial company in which the public were not substantially interested was worked out at Rs. 18,67,594 on which tax of Rs. 10,70,557 was leviable in terms of the provisions of Finance Act, 1970. But the Department charged total tax of Rs. 10,27,177 calculated at 55 per cent on the entire total income. This had resulted in tax under-charge of Rs. 43,380 for the assessment year 1970–71.

In the case of another company assessed in a different Commissioner's charge, the same mistake was found to have been committed involving an under-assessment of tax of Rs. 68,013.

The Ministry have accepted the facts and have stated that the assessments have been rectified by creating a demand of Rs. 30,210 in the first case and Rs. 68,013 in the other.

15. *Incorrect status adopted in assessments*

(*a*) Under the provisions of the Income-tax Act, 1961, an Indian company deriving any income by way of fees from a foreign company for providing technical know-how or technical services under an approved agreement is entitled to a deduction of such fees in the computation of its taxable income. As per the relevant provisions of the Income-tax Act, the foreign company should be declared as a "company" by a general or special order of the Board, if the concession is to be availed of by the Indian company.

An Indian company received such fees amounting to Rs. 1,70,394 in the assessment year 1969-70 from its overseas subsidiary, which was allowed a deduction. As the foreign subsidiary had not been declared as a "company" by the Board, deduction is not admissible in law. The short-levy of tax on this account in the assessment year 1969-70 amounted to Rs. 93,716.

The Ministry have replied that the remedial action is being taken.

(*b*) For purposes of levy of income-tax, different tax rates are prescribed by the Finance Acts for industrial companies and other companies. A concessional rate of 55 per cent is leviable on the total income of an industrial company whereas for non-industrial companies it is 65 per cent.

In the case of a non-industrial company assessed in a central circle, the Income-tax Officer classified the company as an industrial company and levied tax at the concessional rate of 55 per cent. In the same case, Rs. 22,325 was allowed as entertainment expenditure whereas Rs. 5,000 only is admissible. Both these mistakes led to a short-levy of tax of Rs. 97,190. The Ministry have replied (February, 1974) that the assessment in question has been rectified and an additional demand of Rs. 1,04,265 raised and collected by adjustment.

16. *Incorrect computation of income from house property*

(*i*) Under the provisions of the Income-tax Act, 1961, in computing income under the head "House Property", a statutory deduction equal to 1/6th of the annual rental value of the property will ordinarily be allowed, except where the tenant has undertaken to bear the cost of repairs to the house property. Where the tenant bears the cost of repairs, the annual rental value is estimated by adding the cost so incurred to the actual rent received. In such a case, the assessee is not entitled to the deduction of 1/6th of the annual rental value but only to an amount equal to the expenditure incurred by the tenant and included in the annual value.

A company, which had let out its house property to three persons, did not undertake repairs for quite some time. As the building was in a dilapidated condition the assessee wanted the tenants to vacate in order to undertake major structural repairs. However, the tenants, not being in a position to vacate, offered to carry out necessary repairs and alterations which would keep the building intact so as to enable them to continue as tenants. The cost of such repairs amounted to Rs. 10,18,000 over a period of 4 years. In the assessment of this company relating to the previous years during which

these major repairs were undertaken and completed, the statutory deduction equal to 1/6th of the annual rental value was also allowed in computing house property income. This erroneous deduction amounting to Rs. 4,00,883 in assessment years 1967-68 to 1972-73 led to a short-levy of tax of Rs. 2,61,733 in these assessment years.

(*ii*) Under the provisions of Income-tax Act, 1961, the income from house property is assessed on the annual income from property which is deemed to be the sum for which the property might reasonably be expected to be let from year to year reduced by the amount of taxes levied on the property by any local authority. Taxes levied by any local authority for any particular year only are therefore deductible from the annual value of the house property as determined for that year. Taxes paid for earlier years or for any subsequent year are not, therefore, deductible in determining the annual value of a particular year.

In the case of a company, while determining income from property for the assessment years 1965-66 and 1966-67 (assessments completed in May, 1969 and December, 1969 and revised in February, 1972) the assessing officer allowed deduction of municipal taxes of Rs. 97,518 and Rs. 1,13,367 which included taxes leviable for the earlier years also amounting to Rs. 80,000. As the municipal taxes of the earlier years are not deductible in determining the annual value of the property, the deduction of the arrear taxes of Rs. 80,000 resulted in under-assessment of house property income by Rs. 64,892 with consequent undercharge of tax amounting to Rs. 41,019 for the assessment years 1965-66 and 1966-67.

The Ministry have replied that no remedial action is possible as the time for action under Section 154/147 of Income-tax Act has expired.

17. *Incorrect computation of business income of companies*

(*a*) Companies manufacturing articles listed in the sixth schedule to the Income-tax Act, 1961, are allowed deduction in respect of profits and gains attributable to such industry of an amount equal to eight per cent thereof in computing the total income of the companies.

In para 50(b) of the Audit Report on Revenue Receipts for 1970-71 as well as in para 19(1)(b) of the Audit Report on Revenue Receipts for 1971-72 it was pointed out that the Department allowed tax concession admissible to industries set up in the priority sector in respect of radio receivers, loud-speakers and radio parts, deeming them incorrectly to fall under the category of 'electrical communication equipment' mentioned in the Schedule VI of the Income-tax Act. In the following cases similar mistake was noticed.

(*i*) A company engaged in the manufacture of "radio receivers" was treated by the Department as engaged in such a priority industry and was allowed eight per cent deduction in respect of profits and gains in assessment years 1967-68 to 1970-71. This incorrect deduction allowed in computing the total income of the company led to under-charge of income-tax of Rs. 10,28,716 for assessment years 1967-68 to 1970-71.

The same company was allowed development rebate at the higher rate of 35 per cent instead of 20 per cent. This resulted in under-assessment of income-tax of Rs. 3,06,947 for assessment years 1967-68 to 1970-71.

(*ii*) In the case of another company deriving income from manufacture of radio receivers, the tax rebate available to the priority industries for the assessment years 1968-69 and 1969-70 was incorrectly allowed resulting in short-levy of tax of Rs. 6,30,262.

The same company was also allowed development rebate at the higher rate of 35 per cent instead of 20 per cent. This resulted in under-assessment of tax of Rs. 1,09,922 for assessment years 1968-69 and 1969-70.

The mistakes mentioned in (i) and (ii) above in computing total income led to under-compution of chargeable profits resulting in short-levy of sur-tax of Rs. 2,74,516 and Rs. 1,94,925 respectively. There was, thus, a total under-assessment of tax aggregating Rs. 25,45,288.

The Ministry have replied that the assessments in both the cases are being rectified (January, 1974). Further report is awaited (March, 1974).

(b) In the assessment of an Indian subsidiary of a foreign company, for the assessment year 1967-68 the Income-tax Officer allowed a deduction on account of the subsidiary's share of holding company's expenses, by converting the dollar expenses for the whole of the calender year 1966 at the post-devaluation rate instead of apportioning the expenses to pre-devaluation and post-devaluation periods and then applying the exchange rate prevailing for the respective periods. This resulted in an excess allowance of expenses in the assessment of the Indian subsidiary amounting to Rs. 7,46,282 resulting in a short-levy of tax of Rs. 5,22,402 for the assessment year 1967-68.

The Ministry while not agreeing to the above, have replied : "In the instant case the liability on account of over-head expenses incurred by Head Office crystalises yearly at the end of the accounting period and not on different dates during the accounting period and that deduction had, therefore, to be allowed for a sum calculated at the rates prevailing at the end of accounting period." However, it is understood that the adjustments (between

a foreign company and its Indian branch) of the over-head expenses of the head office are settled periodically and not at the end of the accounting year.

(*c*) In the assessment of a non-resident banking company, the Department allowed sums of Rs. 2,81,132 and Rs. 680 being proportionate expenses and interest payments to earn dividend income and income from interest on securities. But while computing the business income the Department did not add these back. Failure to do this resulted in under-assessment of tax of Rs. 1,97,750 for the assessment year 1969-70.

The Ministry have replied (January, 1974) that the assessment in question has been rectified and an additional demand of Rs. 1,97,750 raised. Report regarding recovery of the demand is awaited (March, 1974).

(*d*) Under Income-tax Act, 1961, any expenditure incurred wholly or exclusively for business purposes is an allowable item provided it is an ascertained liability and not a mere provision.

A resident banking company made provision of Rs. 14,80,670 for cancellation of certain disputed foreign exchange contracts, and this amount was charged against the devaluation profit derived by it and the net amount of devaluation profit was assessed to tax. As the amount of Rs. 14,80,670 was a mere provision for loss in a contract about which there was a dispute, it could not be treated as an item of ascertained liability. Omission to add back this provision, therefore, resulted in under-assessment of income by Rs. 14,80,670 for the assessment year 1968-69.

The Ministry have replied (January, 1974) that immediately on receipt of the audit objection the Income-tax Officer issued a notice under Section 154 of the Income-tax Act for revision of the assessment. The assessee explained in letter dated 7-12-1973 'that the word provision used in the enclosure to our letter No. 21726 of 26th November, 1971 in respect of the item £ 3,15,000 was erroneously used." The Ministry have added that though the assessee was disputing the claim of the Reserve Bank, the liability of the bank to pay the sum of Rs. 14,80,670 for cancellation of certain foreign exchange contract did not cease to be a liability.

(*e*) A company contributed Rs. 3 lakhs to the National Defence Fund in the previous year relevant to the assessment year 1966-67. In its Profit and Loss Account, half of this amount was shown under 'Contribution to National Defence Fund' and the balance amount of Rs. 1.5 lakhs was booked under th head 'miscellaneous' as part of a lump sum of Rs. 2,84,898. The Income--tax Officer added back the sum of Rs. 2,84,898 and allowed rebate on the contribution accordingly. The other part of Rs. 1.5 lakhs

booked under "Contribution to National Defence Fund" was not however, added back to the net profit of the company. This led to an under-charge of tax of Rs. 41,250.

The Ministry have replied that the assessment has been revised and additional demand raised. Report regarding realisation of the additional tax is awaited (February, 1974).

(*f*) Under the Income-tax Act, 1961, expenditure which results directly or indirectly in the provision to an employee of any benefit or amenity or perquisite, whether or not convertible into money, should not be allowed as deduction from the business income of the employer to the extent such expenditure or allowance exceeds one-fifth of the salary payable to the employee. In several cases during test-audit it was found that the assessing officers have not been following the provisions of law in this regard. Three instances are given below :—

(*i*) In determining the income of a company for the assessment years 1965-66 to 1971-72, the Department allowed the entire amount of commission paid to an employee in excess of the limit of one-fifth of the salary for each of these years. The resultant total under-assessment of Rs. 2,12,532 led to tax under-charge aggregating Rs. 1,24,206 for these assessment years.

(*ii*) In another case, for the assessment year 1966-67, expenses incurred by the assessee in excess of one-fifth of the salary of the employee was not disallowed resulting in an under-charge of tax of Rs. 84,308.

In the case (i) mentioned above, the Ministry have replied (January, 1974) that the commission was paid to the employee as a part of his salary and not as a bounty attracting the provisions of the Act and such terms of employment were also reduced to writing by executing a deed of agreement on 31-1-1972 at the time of renewal of contract of service. In respect of the case mentioned at (ii) above, the Ministry have replied (March, 1974) that the mistake is partly acceptable and that a further report will follow.

(*iii*) In Finance Act, 1971, certain restraints were imposed on business expenses. As a result, the amount of expenditure and allowance (such as depreciation allowance) in respect of assets owned by an assessee but used by an employee of the assessee for his own purposes or benefit, are not to be allowed as a deduction in computing the profits of the business, to the extent such expenditure exceeds the limits prescribed in the Income-tax Act.

In the assessment of a company, an amount of Rs. 82,142 relating to the write-off of the book-cost of soft furnishings provided in the employee's residence was allowed by the Income-tax Officer, apparently under the provisions of section 32(1) (iii) of Income-tax Act, 1961, over-looking the fact

that this allowance, under the provision of Section 40(A)(5), was required to be treated as "perquisite" for the assessment year 1972-73. Since the employee was already in receipt of perquisite in excess of the prescribed limits, this allowance amounting to Rs. 82,142 should not have been permitted. Omission to do so resulted in an under-assessment of the income of the company by Rs. 82,142 involving a short-levy of tax of Rs. 46,306.

The Ministry have accepted the above position (February, 1974). Further reply regarding rectification of the assessment is awaited.

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

A company purchased technical documents for Rs. 11,06,166 during the previous years relating to the assessment years 1961-62 to 1965-66 and amortization at the rate of 1/14th of the purchase price was allowed by the Department. Since these expenses are not in the nature of patents and trade marks and as amortization cannot be allowed as an alternative to depreciation, the deduction made by the Department is incorrect in law and has resulted in under-assessment of income amounting to Rs. 73,212 and Rs. 79,012 during the assessment years 1964-65 and 1965-66 respectively involving a tax effect of Rs. 76,112.

The Ministry while accepting the position as stated above, have replied that the case is under examination of the Ministry and that a further report will follow. (March '74).

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

(*a*) A private limited company was manufacturing and selling nylon yarn. The nylon yarn was manufactured from 'caprolactum' which was imported from abroad. Till the assessment year 1969-70 the company claimed that manufacture of nylon yarn was petrochemical industry and on that basis claimed development rebate at the higher rate of 35 per cent and also claimed tax-relief admissible for priority industries. These were allowed by the assessing officer for the assessment years 1967-68 to 1969-70.

In the assessment order for the assessment year 1970-71 the assessing officer, however, held that nylon yarn manufactured by the company, or caprolactum from which it was manufactured, could not be classified as petrochemicals and as such it was not a priority industry eligible to get the benefits of higher development rebate or the relief aforesaid. These benefits

and reliefs which were claimed by the company were accordingly correctly disallowed in the assessment year 1970-71. The irregular allowances for the earlier years resulted in wrong allowance of development rebate of Rs. 96,69,008 for these years, and incorrect relief of Rs. 37,07,636 for the years 1967-68 and 1968-69. This resulted in short-charge of tax by Rs. 73,57,151 for the three assessment years.

This company filed its return of income for the assessment year 1968-69 on 22-11-1968 *i.e.* late by 53 days for which it was liable to pay interest amounting to Rs. 1,55,192 under Section 139 of the Income-tax Act, 1961. The Department, however, levied interest of Rs. 1,04,874 only resulting in short-levy of interest of Rs. 50,318.

(*b*) The Government of India entered into an agreement with a shipping company on 31-10-1967 for acquiring a fleet tanker on their behalf. According to the terms of agreement, the Government was to advance an interest-free loan to the intermediary shipping company to enable it to meet the full cost of construction of the vessel and to discharge the debts and liabilities incurred by it in this respect. The payments on account of cost of the tanker and financial charges etc. were to be made to the builders (a foreign concern) in 20 half-yearly instalments. The intermediary shipping company was to be paid a sum of Rs. 7.5 lakhs for the services rendered by it in ten annual instalments of Rs. 75,000 each. The vessel was delivered to the shipping company on 20-11-1967 and was chartered by the Government on the same day. The tanker was proposed to be transferred to the Indian Navy at the end of 10 years from the date of delivery of the vessel. at a price equal to the total amount of interest-free loan advanced by the Government to the company.

The arrangement for payments to the shipping company as suggested by the Managing Director of the company in his letter dated 22-6-1966 was as follows:—

(1) The Government will advance to the shipping company an interest-free loan equal to the total cost of the value, inclusive of spare parts, interest, stores, etc.

(2) The shipping company will not claim any development rebate in respect of its tanker nor they will claim any depreciation.

After obtaining the loan from the Government on the above conditions, the shipping company claimed depreciation/development rebate in respect of the tanker and this was allowed by the Income-tax Department. Tax benefit obtained by this allowance was Rs. 74.42 lakhs. The action of the company in claiming this allowance was against the assurance given to Government while negotiating for interest-free loan. Further, the substance of the

transaction is that it is the Government which is the real owner of the tanker and not the shipping company and hence the company is not entitled to claim depreciation allowance and development rebate on the tanker.

(*c*) A non-resident company carrying on its business in India, with its assets situated in India, filed its accounts in sterling pounds showing also the corresponding rupee figures. The depreciation schedule of fixed assets furnished by the company was all along kept in sterling. While the company actually reduced the sterling value of the fixed assets in its books of accounts to give effect to devaluation of the 'Rupee' on 6th June, 1966 and of the 'Pound sterling' on 18th November, 1967, similar reduction in their written down value in sterling in the depreciation schedule for income-tax purposes was not done. The assessing officer did not notice this omission and allowed depreciation accordingly for the assessment years 1967-68, 1968-69 and 1969-70. There was, thus, an excess allowance of depreciation to the extent of Rs. 2.19 crores leading to an underassessment of tax of Rs.1,53,31,000 (approximately) for these three years. There was corresponding excess payment of interest of Rs. 48,56,849 for the three assessment years.

The Ministry have accepted (February, 1974) the above position and intimated that a further report regarding rectification of the assessments and collection of demand will follow.

(*d*) Under the Income-tax Act, 1961, development rebate is not admissible on office appliances or machinery installed in office premises.

In the case of the banking company mentioned in paragraph 17(d), the Department allowed development rebate of Rs. 10,58,362 on typewriters in the assessment year 1968-69, although this was not admissible under the law. Income was therefore, further under-assessed by Rs. 10,58,362 resulting in total undercharge of tax of Rs. 13,96,471 for the assessment year 1968-69.

The Ministry have replied that the above mistake has been rectified and an additional demand of Rs. 5,82,099 raised. Report regarding realisation of the demand is awaited.

(*e*) Under the provisions of the Income-tax Act, 1961 where, as a result of a change in the rate of exchange in the relevant previous year, there is an increase in the liability of an assessee in terms of Indian rupees, to pay the price of any asset, payable in foreign exchange or to repay money borrowed in foreign currency specifically for the purpose of acquiring the asset, the amount of such increased rupee liability shall be treated as an addition to the actual cost of the asset for the purposes of calculating the depreciation allowance.

In the case of three companies, for the assessment years 1970-71 and 1971-72, depreciation was allowed on the assets, after increasing their actual cost by amounts representing additional liability in rupees incurred by the assessees as a consequence of change in the rate of foreign exchange which took place in March, 1961. Such adjustment of the actual cost of the assets was not in order, as the devaluation of the rupee in relation to the foreign currency took place in years much earlier and not in the previous years relevant to the assessment years 1970-71 or 1971-72. Consequently, such additional liability did not arise to the assessees for consideration in these assessment years. The incorrect add-back of the additional liability resulted in an excess allowance of depreciation, leading to a short-levy of income-tax of Rs. 3,29,641.

The Ministry have replied that the assessments in question of the three companies have been rectified and additional demand collected.

(*f*) Under the provisions of the Income-tax Act, 1961, development rebate is admissible at 35 per cent on the cost of plant and machinery installed in any of the industries specified in the relevant schedule to the Income-tax Act and at 20 per cent in other cases. In the case of a company for the assessment year 1971-72, development rebate was allowed at the higher rate of 35 per cent on helicopters and aircraft equipment, though these items of machinery were not used for construction, manufacture or production of any of the articles specified in the relevant schedule. This resulted in an excess allowance of development rebate of Rs. 1,45,141 involving a short-levy of income-tax of Rs. 79,827.

(*g*) The business income for the year 1957-58 returned by an assessee was Rs. 15,97,699 which was arrived at after debiting to the profit an amount of Rs. 2,77,763 on account of depreciation allowance (Rs. 2,20,981) and development rebate (Rs. 56,782). The Income-tax Officer, for the purpose of computation of taxable income adopted the returned income of Rs. 15,97,699 as basis, and deducted therefrom a sum of Rs. 2,39,774 being the amount of depreciation allowance (Rs. 1,83,464) and development rebate (Rs. 56,310) actually admissible. But the Income-tax Officer failed to add back the sum of Rs. 2,77,763. This mistake led to an under-assessment of tax of Rs. 1,38,380. The mistake was not corrected even when the assessment was re-opened on 12-2-1968 to give effect to the orders of the appellate authority enhancing the quantum of depreciation allowance and development rebate.

The Ministry have replied (February, 1974) that no remedial action was possible even at the time Audit pointed out the omission and have further added that the Department is considering the question of reducing the written-down-value of the machinery by the excess depreciation allowed in the 1957-58 assessment, and rectifying the assessments for the subsequent years wherever possible.

19. *Irregular exemptions or excess reliefs given*

(*a*) A resident banking company was assessed in India on its foreign income of Rs. 37,81,160 including an amount of Rs. 28,56,666 on account of profit arising from devaluation of the rupee. However, the devaluation profit was not assessed to tax by the Income-tax authorities in the foreign country which took the total income as Rs. 14,98,034. Therefore, income subjected to tax in both the countries for purposes of double-taxation relief is Rs. 9,24,494 i.e. foreign income of Rs. 37,81,160 assessed in India less the devaluation profit of Rs. 28,56,666 which has not been taxed in the other country. The Department, however, allowed double taxation relief on the entire income of Rs. 14,98,034 assessed in the other country. This resulted in excess relief of Rs. 2,49,031 for the assessment year 1967-68.

The Ministry have replied (January, 74) that the assessment has been rectified and the additional demand of Rs. 2,49,031 raised. Report regarding collection of the demand is awaited.

(*b*) To aid industrial development, assessees engaged in production of goods in the priority sector are allowed a deduction from business income equivalent to 8 per cent of the profits and gains therefrom.

In the absence of separate accounts for the processes involved in a composite chemical manufacturing company, the Income-tax Officer determined that 91.07 per cent of the business of the assessee related to "priority industry", manufacturing the scheduled articles, eligible for the aforesaid deduction. However, in computing the income for the assessment years 1967-68 to 1971-72, the Income-tax Officer applied the same percentage to the other incomes such as miscellaneous receipts, devaluation receipts and power supply receipts. This resulted in an excess deduction from income leading to an under-assessment of income and a total short-levy of income-tax of Rs. 5,09,873 for all these years.

The Ministry have replied that the mistake has been partly accepted and that a further report will follow (January, 1974).

(*c*) Under the Income-tax Act, one of the incentives for establishment of new industrial undertakings is provision of exemption of tax on the profits derived from the new industrial undertaking up to 6 per cent of the capital employed.

The Act, however, prohibits such exemption to an industrial undertaking which is formed by splitting up or reconstruction of a business already in existence. It was noticed that this exemption was allowed to a company for the assessment year 1970-71 though the industrial undertaking was established by reconstruction of a business already in existence. On account of this wrong exemption, income was under-assessed by Rs. 60,62,832.

(*d*) The exemption in respect of profits derived by a newly established industrial undertaking referred to in para (c) *supra* is available only for the year in which the undertaking begins manufacture and four immediately succeeding years.

A company having commenced its manufacturing operation in the previous year relevant to the assessment year 1964-65 was, however, allowed a deduction of Rs. 4,78,359 in the assessment year 1969-70, after the expiry of five years. The incorrect allowance of the deduction after setting off certain other minor over-assessments resulted in net under-assessment of business income of Rs. 4,75,801 with consequent under-charge of tax to the extent of Rs. 2,61,691.

(*e*) The reliefs in the form of rebates to which assessees were formerly entitled in respect of interest on securities, inter-corporate dividends etc. are now available as straight deductions of certain percentage of the relevant items of income from the gross total income. But it is specifically mentioned in the Income-tax Act that the aggregate amount of the deductions is not to exceed the gross total income. It follows, from this that if an assessee's 'gross total income' is a loss, the question of further deduction does not arise.

In the case of a company, the assessment for the years 1971-72 and 1972-73 resulted in loss. In spite of the specific provisions of the law, the company was incorrectly allowed relief on amount of interest account etc., thereby inflating quantum of loss by Rs. 31,746 in 1971-72 and by Rs. 41,020 in 1972-73.

The Ministry have replied that the assessment for 1971-72 in question is being revised (January, 1974). Further report from the Ministry is awaited (March, 1974).

20. *Incorrect grant of Tax Credit Certificates and irregular grant of export incentives*

(*a*) Under Section 280 ZB of the Income-tax Act 1961, any company engaged in the manufacture or production of any of the articles mentioned in the first schedule to the Industries (Development and Regulation) Act, 1951 is eligible for the grant of Tax Credit Certificate in respect of the tax payable on the profits and gains attributable to such manufacture or production. A company manufacturing cellulose film claimed and obtained Tax Credit Certificates for Rs. 8,61,870 on such film representing them to be "paper" coming under item (24) of the said schedule. The same company, however, for income-tax purpose claimed the depreciation allowance at a higher rate of 15 per cent applicable to cellulose film plant instead of 10 per cent for paper machinery. As the cellulose film is not paper, the Tax Credit Certificate was wrongly given.

(*b*) As an export incentive, the Income-tax Act has a provision to allow a weighted deduction from the business income of an amount equal to 1⅓ of the expenditure incurred on development of export markets. In the case of two companies engaged in exports of engineering goods and cotton textiles, such deduction was allowed in respect of commission of Rs. 1,74,661 and Rs. 18,41,080 paid to foreign agents on such exports in the assessment year 1971-72, even though this expenditure cannot be treated as having been incurred on the development of export-markets as such but as merely expenditure incurred in the normal course of trade. The erroneous allowance resulted in under-assessment of income involving short-levy of tax of Rs. 3,72,462.

The Ministry have replied that the payments made to the foreign agents were on account of commission on export sales which expenditure falls within the scope of the provisions of the Income-tax Act.

21. *Non-levy of Interest*

(*a*) Under the provisions of the Income-tax Act, 1961, where an assessee pays advance-tax in accordance with his own estimate as against the demand issued by the Department and the advance-tax so paid falls short of 75 per cent of the tax determined on the basis of rugular assessment, he shall be charged statutory interest at the prescribed rates on the amount by which the advance-tax paid falls short of assessed tax for the assessment year.

In the case of a company, notice for payment of advance-tax of Rs. 5,45,688 was issued. The assessee filed an estimate for 'nil' amount and paid no advance-tax. The tax determined on regular assessment was Rs. 7,86,778. The assessee was, therefore, liable to pay interest amounting to Rs. 1,95,680 which was not levied for the assessment year 1970-71.

(*b*) Under the Income-tax Act, 1961, every assessee, if he finds that the advance-tax payable by him on the basis of his own estimate exceeds the amount of advance-tax demanded from him by the Department by 33⅓ per cent, is required to submit his estimate and pay the advance-tax. Failure to do so renders him liable for payment of interest at the prescribed rate calculated on the difference between the tax determined on regular assessment and the advance-tax paid from the 1st April of the assessment year to the date of regular assessment.

In the case of a private company although the advance-tax payable by it during the financial year 1969-70 exceeded the advance-tax demanded from it by 33⅓ per cent, no interest as required under the Act, was levied.

The Ministry have replied (January, 1974) that the mistake has been rectified and that the additional demand of Rs. 55,364 raised has been collected.

(*c*) Under the Income-tax Act, 1961, the sum specified as payable in any notice of demand is to be paid within 35 days, failing which interest at prescribed rate is to be levied for delay in payment of tax. For the assessment years 1967-68 and 1969-70, the Department raised demands on completion of provisional assessment of an Indian company. The assessee did not pay the demand within the stipulated period, and became liable to levy of interest amounting to Rs. 1,03,724. This interest was not levied.

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

The Board issued instructions in April, 1966 directing the Income-tax Officers to complete regular assessments as soon as possible after receipt of the returns so that excess of advance-tax paid could either be adjusted against the demand or refunded to the assessee. In 1968, the Act has been amended so as to provide for provisional assessment for grant of refund

of advance-tax paid in excess. The purpose of the instruction and the amendment is to avoid situations where Government may have to pay interest to the assessee.

(*a*) A company submitted its income returns for the assessment years 1967-68 and 1968-69 on 15th November, 1967 and 26th September, 1968 respectively, showing Rs. 1,74,24,840 and Rs. 42,04,722 as incomes for the respective previous years. The company had paid advance-tax of Rs. 2,12,08,655 and Rs. 80,00,000 in respect of these assessment years and the advance-tax so paid exceeded the taxes payable on the basis of the incomes returned. The first hearing for the assessment year 1967-68 was taken up on 24th January, 1972 and that for the assessment year 1968-69 on 2nd February, 1972 i.e. after a period of about 4 years from the dates of submission of the returns. On completion of regular assessments, interest of Rs. 18,74,837 and Rs. 21,55,053 was paid on account of excess payment of advance-tax. Had regular/provisional assessment for refund of excess payment of advance-tax been made by the Department promptly after receipt of the returns, payment of interest on the excess advance-tax paid could have been avoided.

The Ministry in their reply (February, 1974) have accepted the omission so far as it relates to the assessment year 1968-69 and for the assessment year 1967-68, they have stated that as Section 141-A relating to the provisional assessment was introduced with effect from 1-4-1968 only it was not applicable for the assessment year 1967-68. However, under the Board's instructions in 1966, regular assessment itself should have been completed expeditiously.

(*b*) In another case (a banking company), the Department completed the provisional assessment for the assessment year 1969-70 on 21st August, 1969 and determined a refund of Rs. 35,50,583 out of which amount of Rs. 27,66,810 was adjusted against the demand outstanding for earlier years and the balance amount of Rs. 7,83,773 was allowed to be paid in cash. A cash refund order for the amount was accordingly prepared, but the order was not issued. On completion of the regular assessment in March, 1972, the Government had to pay interest of Rs. 1,15,391 on a portion of the refund of Rs. 7,83,773 which was not made to the assessee on completion of the provisional assessment. Failure to issue the refund order in time, therefore, resulted in avoidable payment of interest of Rs. 1,15,391 for the assessment year 1969-70.

(*c*) A company initially filed an estimate of 'Nil' income on 25-5-1968 for assessment year 1969-70, in response to a notice of demand to pay

advance-tax of Rs. 10,27,144 served by the Department on 23-5-1968. However, on 13-3-1969 it paid an amount of Rs. 10,27,144 as shown in the demand notice, followed by another deposit of Rs. 3,00,000 on 28-3-1969. On completion of regular assessment the assessee was paid interest amounting to Rs. 1,20,385 treating the total amouunt of Rs. 13,27,144 paid as advance-tax. This was not in order as interest amounting to Rs. 70,950 attributable to the latter deposit of Rs. 3,00,000 made on 28-3-1969, was not admissible, as it was made after the expiry of the last date prescribed under the Act for filing the estimate and depositing advance-tax. The erroneous procedure followed by the Department resulted in incorrect payment of interest of Rs. 70,950.

23. *Mistakes committed while giving effect to Applellate orders*

(*a*) The regular assessment of a company for assessment year 1966-67 was completed on 21-7-1967 and reassessment was done on 20-8-1971 after reopening the original assessment. On an appeal filed by the assessee against the re-assessment, the Appellate Assistant Commissioner set aside the Income-tax Officer's order of re-assessment giving certain directions to re-do the assessment.

While giving effect to the Appellate Assistant Commissioner's order, the assessing officer refunded the entire amount of tax of Rs. 4,05,678 paid in pursuance of the original assessment instead of refunding Rs. 62,341 only, being the refund due to the assessee as a consequence of Appellate Assistant Commissioner's decision. This resulted in an irregular refund of Rs. 3,43,337.

The Ministry have replied (January, 1974) that the mistake has been rectified and an additional demand of Rs. 3,43,259 raised. Report regarding collection of the demand is awaited (February, 1974).

(*b*) In the matter of appeal preferred by a banking company for the assessment year 1964-65, the appellate authority decided to admit certain bad debts amounting to Rs. 6,47,854. As, however, Rs. 40,000 of the bad debts included therein had already been allowed in the assessment year 1967-68, the appellate authority directed, in August, 1972, that the relief should be reduced by Rs. 40,000. The Income-tax Officer while giving effect to the appellate orders in October, 1972 added the amount of Rs. 40,000 instead of deducting it from the amount of Rs. 6,47,854. Income was, thus, under-assessed by Rs. 80,000 leading in turn, to tax undercharge of Rs. 40,147 for the assessment year 1964-65.

(c) In the original assessment of a company for the assessment year 1966-67 completed on 3-1-1969 a deduction of Rs. 1,31,811 was allowed. But this deduction was withdrawn and added to the total income in a subsequent reassessment done on 15th November, 1971. This addition was confirmed by the Appelate Assistant Commissioner on an appeal filed by the assessee against the reassessment. Meanwhile, on the assessee's appeal against the original assessment dated 3-1-1969 on certain other grounds, the Tribunal in its order dated 25-10-1972, allowed certain reductions in the total income. While giving effect to the Tribunal's order, the Income-tax Officer determined the revised total income by allowing the reduction ordered by the Appellate Tribunal from the total income as determined in his original order dated 3-1-1969 instead of on the basis of the reassessment order of 15-11-1971. Thus, the addition of Rs. 1,31,811 made in the latter order was lost sight of resulting in an underassessment of income of Rs. 1,21,287 (taking into account 80-E deduction) involving a short-levy of tax of Rs. 66,710.

The Ministry have replied (January, 1974) that the mistake has been rectified and an additional demand of Rs. 66,709 raised. Report regarding the collection of the demand is awaited.

24. *Tax under-charge due to adoption of incorrect procedure*

Under the Income-tax Act, 1961, as applicable for the assessment year 1966-67, dividend income received by a company from an Indian company is eligible for concessional tax-rate. The procedure according to the Act was to charge tax on the total income including the dividend income and allow a tax rebate which is equal to the amount of tax on the dividend income calculated at a rate equivalent to the difference of the average rate of tax and 25 per cent.

A company's total income for the assessment year 1966-67 was determined at Rs. 38,68,534 on which the average tax rate leviable worked out to 62.4 per cent. The total income included dividend income of Rs. 24,02,250 from an Indian company. As such, a tax-rebate at 37.4 per cent (i.e. 62.4 per cent *minus* 25 per cent) on the dividend income of Rs. 24,02,250 is to be allowed from the gross tax. Instead, the Department has levied tax straightway at 25 per cent on the dividend income and at the prescribed rate on the balance of the total income. Adoption of this incorrect procedure resulted in tax under-charge of Rs.1,82,571 for the assessment year 1966-67.

The Ministry have replied (March, 1974) that the assessment in question has been rectified and an additional demand of Rs. 1,82,571 raised.

SUR TAX

25. All companies which earn huge profits disproportionate to the capital employed are liable for levy of Sur-tax. This tax was introduced in 1964 as a disincentive to excessive profits and to keep down the prices. The Public Accounts Committee have felt that in case Sur-tax is going to be a permanent measure, it would be helpful both to the Department and the assessees if it is integrated into the general tax structure. They have accordingly recommended in para 1.2 of their fiftieth Report (1972-73) as a step towards simplification and rationalisation that there could be a separate Corporate Tax Act incorporating therein the provisions relating to Sur-tax. Action taken by the Government with reference to this recommendation is awaited.

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

In paragraphs 68(i) of the Audit Report for the year 1970-71 on Revenue Receipts, it was mentioned that while arriving at chargeable profits for purposes of levy of Sur-tax, the amount of profits and gains derived from new industrial undertakings on which no income-tax is payable has to be excluded from the total income computed under the Income-tax Act and that as per the Sur-tax Act where a part of the income of a company is not includible in its total income computed under the Income-tax Act, its capital should be reduced proportionately. Even though the Ministry of Finance had not agreed to this view initially, they have agreed to it subsequently after obtaining the legal opinion.

During the period under review under-assessment of sur-tax of Rs. 1.31 crores was noticed in 152 cases due to non-observance of the above mentioned provisions of the law and due to other omissions. A few such cases of under-assessment of Sur-tax are mentioned in the following paragraphs :

27. (*a*) (*i*) In the income-tax assessment of a company for the assessment years 1966-67, 1970-71, 1971-72 and 1972-73, Rs. 5,25,582, Rs. 11,79,990, Rs. 1,61,47,836 and Rs. 1,26,93,891 were allowed as deductions from the respective total income, with consequent relief in the tax chargeable on the income in those assessment years. But the capital computed

under the Sur-tax Act for the aforesaid assessment years was not reduced proportionately. This resulted in excess computation of capital by Rs. 10,66,33,049 with consequent short-levy of sur-tax by Rs. 26,88,138 for the assessment years 1966-67, 1970-71, 1971-72 and 1972-73.

The Ministry have replied (January, 1974) that the assessments in question are being rectified for the assessment years 1970-71 to 1972-73 and that no action is possible for the assessment year 1966-67 as the same has already become time-barred. Further report from the Ministry is awaited (March, 1974).

(*ii*) In another case, a company was allowed deduction of Rs. 12,43,584 and Rs. 11,63,759 respectively from its gross income for the assessment years 1966-67 and 1967-68 to arrive at the total income chargeable to income-tax. For determining the profits chargeable to sur-tax for these assessment years, the capital of the company should, therefore, have been reduced proportionately. This having not been done by the Department, there was an under-charge of sur-tax of Rs. 3,26,328 for the assessment years 1966-67 and 1967-68.

The Ministry have replied (October, 1973) that the assessments of the company are being revised. Further report is awaited (February, 1974).

(*iii*) A company was allowed deduction of Rs. 9,79,740 from its gross income for the assessment year 1966-67 to arrive at the total income chargeable to income-tax. For determining the profits chargeable to sur-tax for this assessment year, the capital of the company should, therefore, have been reduced proportionately. This having not been done by the Department, there was an undercharge of sur-tax of Rs. 1,19,910 for the assessment year 1966-67.

The Ministry have replied (January, 1974) that the assessment in question has been revised and that an additional demand of Rs. 1,19,910 raised. Report regarding collection of the demand is awaited (March, 1974).

(*iv*) In the income-tax assessments of a company for the assessment years 1966-67 and 1967-68, Rs. 12,43,584 and Rs. 11,70,756 were allowed as deductions from the total income leading to appropriate relief in the income-tax levid. But the capital of the company computed under the Sur-tax Act for the aforesaid assessment years were not reduced proportionately. This resulted in excess computation of capital by Rs. 41,53,690 and Rs. 43,84,100 with consequent short-levy of sur-tax by Rs. 1,45,379 and Rs. 1,53,444 for the assessment years 1966-67 and 1967-68 respectively.

The Ministry have replied (February, 1974) that the assessments in question have been rectified raising an additional demand of Rs. 4,79,151. Report regarding collection of the demand is awaited (February, 1974).

(*v*) An Indian company had part of its income from a priority industry which was not included in its total income as computed for income-tax purpose, in assessment years 1966-67 to 1969-70. While determining the company's capital for sur-tax in the relevant assessment years, the Department did not exclude proportionate amount of capital with reference to income not so included in the total income. This resulted in total undercharge of sur-tax by Rs. 3,10,335 in these assessment years.

The Ministry have replied (January, 1974) that the assessments in question are being revised. Further report is awaited (February, 1974).

(*vi*) In the Sur-tax assessments of two other companies, for assessment years 1967-68 to 1971-72, though income arising from a priority industry, Tax-holiday profits, and part of income from dividends were correctly excluded from the chargeable profits, the capital of the companies was not proportionately reduced. This led to a total short-levy of sur-tax of Rs. 3,49,578.

The Ministry have replied (January, 1974) that the assessments in question in respect of one company have been revised raising a demand of Rs. 1,31,237 and that in respect of the other company the relevant assessments are being rectified. Further report is awaited (February, 1974).

(*vii*) In the sur-tax assessments of a company, for assessment years 1966-67, 1967-68 and 1968-69, though 'Tax-holiday profits' derived by the company from a new industrial undertaking were excluded from the chargeable profits, proportionate reduction in capital was not made, leading to shortlevy of sur-tax of Rs. 61,504.

The Ministry have replied (January, 1974) that no action is possible at this stage as action under Sections 8(b) and 13 of the Sur-tax Act has already got time barred for all the three years.

(*viii*) In sur-tax assessments of two companies for the assessment years 1966-67 to 1970-71, though profits arising from new priority industries were excluded from chargeable profits, a proportionate reduction in the capital was not made, leading to a short-levy of sur-tax of Rs. 7,48,110.

The Ministry have replied (January, 1974) that the assessments in respect of one company for two assessment years 1968-69 and 1969-70 have been revised and that in respect of the other company the concerned assessments are being revised. Further report is awaited (February, 1974).

(*b*) Companies (Profits) Sur-tax Act, 1964 and rules thereunder provide that where a paid-up capital or reserve is brought into existence by creating or increasing (by revaluation or otherwise) any book asset such portion of paid up capital or reserve is to be excluded from the capital computation for the purpose of levy of sur-tax. Further, the determination on the basis of the reserves has to be worked as on the first day of the previous year corresponding to the assessment year.

(*i*) During the previous year relevant to the assessment year 1969-70, a company had increased its general reserve by transfer of Rs. 15,15,505 from Revaluation Reserve created by revaluation of assets. This increased amount in General Reserve was not includible in the capital computation. As the said sum of Rs. 15,15,505 arising out of the revaluation of the asset was not excluded from the capital base, there was excess allowance of statutory deduction by Rs. 1,51,550 for each of the assessment years 1970-71, 1971-72 and 1972-73. This led to a total under-charge of sur-tax of Rs. 1,13,663 for the assessment years 1970-71, 1971-72 and 1973-74.

The Ministry have replied (January, 1974) that the assessments in question are being rectified. Further report is awaited (February, 1974).

(*ii*) In one case, the Department calculated the capital by taking into account the 'Development Rebate Reserve' as on the last day instead of as on the first day of the previous years in the assessments for 1964-65 to 1966-67. This mistake led to excess allowance of statutory deductions by Rs. 69,187, Rs. 70,000 and Rs. 85,000 respectively with consequential under-charge of sur-tax to the extent of Rs. 85,425.

The Ministry have replied that the assessments in question have been rectified and an additional demand of Rs. 85,425 has been adjusted against the refunds due to the company.

(*c*) Again, amounts standing to the credit of any account in the books of a company, which are of the nature of liabilities or provisions are not to be treated as reserves and cannot be taken into account in the computation of capital. In a case, a company was not making any separate provision for taxation but was paying the taxes out of 'Contingency Reserve'. This reserve was, therefore, only a provision which should be excluded from the

calculations. Similarly, the company used to pay dividends out of 'Dividend Reserve' which should also be excluded likewise. But the Department included both these reserves in the sur-tax assessments for 1966-67 and 1967-68, which resulted in total under-tcharge of sur-tax of Rs. 37,451.

The Ministry have replied that the remedial action is barred by limitation.

(*d*) When a portion of the general reserve is utilised for issuing bonus shares, the increase in the paid-up share capital is preceded by an equivalent reduction in the reserves. In other words, the capitalisation of the general reserve means only a mutually compensating readjustment as between two elements both forming part of the capital of the company and does not result in any increase in the capital of the company for the purpose of sur-tax assessment.

In a case, a company issued bonus shares of Rs. 2.50 crores during the previous year relevant to the assessment year 1967-68 by utilising a part (Rs. 1,50,68,493) of the accumulation of its general reserve. While computing the statutory deduction allowable in the sur-tax assessment of the company for 1967-68, a sum of Rs. 1,50,68,493 was, however, added to the capital of the company as on the first day of the previous year. This resulted in excess computation of the amount of statutory deduction by Rs. 15,06,849 and consequent short-levy of sur-tax of Rs. 5,27,397.

(*e*) The Income-tax assessments of a company for the assessment years 1967-68 to 1969-70 were revised in December, 1971 for adopting the correct exchange rate for Ceylon Rupees, but no action was taken to revise the corresponding sur-tax assessments for these years even though the Central Board of Direct Taxes had issued instructions in their circular letter of January, 1971 that whenever income-tax assessments are revised, the corresponding sur-tax assessments are also to be revised simultaneously. Sur-tax assessments, if revised, could fetch an additional tax of Rs. 3,33,513.

The Ministry have replied (January, 1974) that the assessments in question have been revised and that an additional demand of Rs. 3,33,513 raised. Report regarding collection of the demand is awaited (February, 1974).

OVERASSESSMENT

28. (*a*) According to Finance Act, 1967, the tax rate applicable to a company in which public are substantially interested is lower than that applicable to a closely held company. One of the tests of determining the status of a company, as laid down in the Income-tax Act, 1961, is that if not less

than 40 per cent of the shares of a company are held by the Government, the company should be teated as one in which public are substantially interested. Though 50 per cent shares of a corporation (treated as a company) were held by the Government, the Department treated it as one in which public are not substantially interested and accordingly denied the concessional tax rate applicable to such a widely held company. Moreover, as against an allowable loss of Rs. 55,615 carried forward from earlier years, the Department allowed a loss of Rs. 74,273 to be set off against the income for the assessment year 1967-68 resulting in under-assessment of income by Rs. 18,658 leading to net overcharge of tax of Rs. 42,449 for the assessment year 1967-68. Further, interest for delay in submission of income return was not calculated correctly in this case. After considering the tax overcharge there had been excess-levy of interest of Rs. 15,589 for delay in filing the income return. Again, though the assessee did not file any estimate of advance-tax, the Department levied interest of Rs. 60,600 for non-payment of estimated advance-tax which resulted in excess-levy of interest of Rs. 60,600 for the assessment year 1967-68. The net result, thus, was overcharge of tax and interest of Rs. 1,18,638.

The Ministry have replied (February, 1974) that the assessment has been rectified and that the amount of overcharge has been adjusted against other demands against the assessee.

(*b*) The Income-tax Act provides that where a refund is issued beyond a period of six months from the date on which the claim for refund is made, the assessee is entitled to interest at the prescribed rate, from the date immediately following the expiry of six months to the date of refund. A company filed a claim for refund in the prescribed form in respect of two Tax Credit Certificates for Rs. 3,46,013 and Rs. 8,45,669 on 21st September, 1970. According to the provisions applicable to Tax Credit Certificates, the amount shown in the Tax Credit Certificates shall be deemed to be refunds due to the persons on the date of production of such certificates, when no other income-tax liability exists on that date. However, the amounts included in the above Tax Credits Certificates were actually refunded only on 19th October, 1971. The interest admissible on the amounts of refund for the period from 21st March, 1971 to 19th October, 1971, amounting to Rs. 62,560 was not considered at the time of refunding the amounts.

The Ministry have replied (January, 1974) that interest has since been allowed to the assessee.

(*c*) Under the provisions of the Income-tax Act, 1961, net loss under the head 'Profits and gains of business or profession' (other than speculation

business) relating to an assessment year can be carried forward for set-off in subsequent assessment year against profits and gains of business or profession carried on by the assessee and assessable for that assessment year.

In the assessment of a company for assessment year 1969-70, the set-off was omitted to be given in respect of the business loss of Rs. 2,07,387 determined for assessment year 1968-69 and carried forward. This resulted in over-assessment of income-tax of Rs. 1,14,063 in assessment year 1969-70.

The Ministry have replied (January, 1974) that the assessment has been rectified and an amount of Rs. 1,04,533 has been refunded (the difference in tax effect is stated to be due to a correction made in giving effect to an appellate order).

(*d*) The written down value of plant and machinery in a factory owned by a company was Rs. 87,75,320 for the assessment year 1968-69. Deducting the depreciation of Rs. 17,55,064 allowed for the assessment year 1968-69 the written down value for the assessment year 1969-70 (assessment completed in March, 1972) was arrived at Rs. 60,20,256 instead of Rs. 70,20,256. The mistake resulted in grant of depreciation and extra-shift allowance short by Rs. 2,00,000 (rate of depreciation 20 per cent) for the assessment year 1969-70. This led to excess-levy of tax of Rs. 1,10,000.

(*e*) According to the Finance Act, 1971, a domestic company in which the public are not substantially interested and which is mainly engaged in manufacturing or industrial activity is liable to pay tax on its total income not exceeding Rs. 10 lakhs, at a lower rate which is also applicable to a non-industrial domestic company in which the public are substantially interested and which has a total income exceeding Rs. 50,000.

During the assessment year 1971-72, on the total income of Rs. 3,90,734 of a domestic manufacturing company, tax was levied by the Department at 65 per cent instead of 55 per cent chargeable in terms of the Finance Act, 1971. The application of the incorrect tax rate resulted in tax overcharge of Rs. 30,973 for the assessment year 1971-72.

(*f*) Under Income-tax Act, 1961, where the gross total income of an assessee, being a company, includes any income by way of dividends from a domestic company, deduction from such income of an amount calculated at the prescribed rate may be allowed in computing the total income.

An assessee had income of Rs. 95,822, Rs. 76,595 and Rs. 2,20,844 from dividends from Indian companies during the previous years corresponding to the assessment years 1968-69, 1969-70 and 1970-71 respectively.

But in computing the total income, no deduction was allowed by the Department on account of such dividend income, causing total tax overcharge of Rs. 1,30,105 during the three assessment years 1968-69, 1969-70 and 1970-71.

The Ministry have replied (January, 1974) that the mistake has been rectified and that an amount of Rs. 1,30,105 is being refunded/adjusted.

(*g*) A domestic company, which was not a company in which the public are substantially interested or a subsidiary of such a company, was engaged in the business of mining coal during the previous years relevant to its assessments for each of the years from 1966-67 to 1972-73 and was, therefore, entitled to deduct from its gross total income, 5 per cent of such income as determined in its assessment for 1972-73 and 8 per cent of such income as determined in its assessments for each of the other years. As the deductions were not allowed, its total income was over-assessed in these assessments by sums totalling Rs. 75,299 leading to an aggregate excess-levy of tax by Rs. 40,389. As a consequence, the interest due from the assessee under Section 215 in respect of assessment years from 1966-67 to 1969-70 was also levied in excess by Rs. 6,214.

The Ministry have replied (February, 1974) that the assessments have been rectified and an amount of Rs. 14,125 found refundable to the assessee. The difference in tax effect is stated to be due to a correction in the assessee's income made as a result of the orders of the Appellate Tribunal.

(*h*) Under the Finance Act, 1967, domestic companies in which the public are not substantially interested but which are mainly engaged in the manufacture or processing of goods or in any industrial activity are charged to tax at 55 per cent on the first Rs. 10 lakhs of the total income and at 60 per cent on the balance income. Further, such companies are liable to additional tax at 7½ per cent in respect of the declaration or distribution, during the relevant previous year, of dividend in excess of 10 per cent of the equity share capital.

During the assessment year 1967-68, such a company was charged to tax on its total income of Rs. 6,93,771 including business income of Rs. 6,65,547 from industrial activity, at 65 per cent and no tax was levied in respect of the excess distribution of equity dividend. This resulted in tax overcharge of Rs. 57,609 for the assessment year 1967-68.

The Ministry have replied (January, 1974) that the assessment has been rectified and that an amount of Rs. 62,941 has been found refundable (the difference in tax effect is stated to be due to a correction made on the basis of decision of Appellate Tribunal).

CHAPTER III

INCOME TAX

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

A test-check of records relating to assessments of persons other than companies has revealed mistakes involving under-assessment of tax indicated in paragraph 10(i). Some instances of these various types of mistakes are given in the following paragraphs 30 to 49.

30. *Mistakes involving considerable revenues*

(*a*) An individual was assessed on a total income of Rs. 2,39,443 for the assessment year 1963-64. Tax payable in this case has to be worked out by applying the slab rates of tax prescribed by the Finance Act, 1963. The Department, however, applied such slab rates only upto Rs. 1 lakh of such income and multiplied the amount of tax so arrived at by two and took the product as the tax liability for Rs. 2 lakhs, resulting in tax under-charge of Rs. 52,952 for the assessment year 1963-64. Consequently interest for belated submission of income return by the assessee and for his failure to submit estimate of income was short-levied by Rs. 51,566 and Rs. 14,286 respectively.

The Ministry have replied that the assessment in question has been rectified and an additional demand of Rs. 1,18,804 raised. Report regarding collection of additional demand is awaited.

(*b*) On the net assessed income of Rs. 13,18,890 of an individual (film star) for the assessment year 1970-71, due to a mistake in calculation income-tax of Rs. 10,11,107 was levied as against Rs. 10,49,595 correctly chargeable, leading to a short-levy of income-tax of Rs. 38,488 in assessment year 1970-71, and an under-charge of interest of Rs. 4,158.

The Ministry have replied (January 1974) that the Appellate Assistant Commissioner by his order dated 14-10-1973 has reduced the total income of the assessee to Rs. 2,01,140 and therefore the question of collection of any additional demand as a result of the above mistake does not arise.

(*c*) In the case of an assessee there has been an under assessment of income-tax to the tune of Rs. 90,715 in respect of the assessment years 1967-68 and 1968-69 due to the following mistakes in computation of total income as well as tax payable.

(*i*) A sum of Rs. 61,531 was not included in the total income, even though the assessee in his letter dated 12-2-1972 requested to include this sum.

(*ii*) Adjusted total income was computed without deduction of the Annuity receivable.

(*iii*) Interest on Government security was wrongly treated as earned income.

The Ministry while accepting the mistakes have replied (February, 1974) that the assessments in question have been set aside by the Appellate Assistant Commissioner.

31. *Incorrect status adopted in assessments*

(*a*) An individual carried on a business in advertising as a sole proprietor up to 31st March, 1965. His wife, who was a salaried employee in the same business till then, was taken as a partner converting the business into a partnership firm from 1-4-1965. The assessee died on 2nd September, 1965, leaving a will making the wife the executor of his estate.

While assessing the income of the firm for the assessment year 1966-67, the Income-tax Officer assessed the firm up to 2nd September, 1965. For the period after 2-9-1967 he treated the business as belonging to an 'Association of Persons' consisting of two members, the surviving partner acting in a dual capacity as an individual, and also as the executor of the estate of the deceased. Consequently, only 50 per cent of the profits were assessed in the hands of the surviving partner, the other 50 per cent being assessed as the income of the estate of the deceased. Assessments for subsequent years were also made similarly.

On the death of the individual on 2nd September, 1965 the sole surviving partner succeeded to the business as an individual and it was incorrect to treat the 'Individual' as 'Association of Persons'. The assessment made

by splitting up the income of the business in two parts for assessment in the hands of two separate entities resulted in an under-assessment of tax of Rs. 1,45,533 for the assessment years 1966-67 to 1971-72.

The Ministry have replied (January, 1974) that as the assessee has filed an appeal against the order under section 263, the assessments in question have not been revised so far.

(*b*) The assessments for 1968-69 and 1969-70 of an assessee in the status of a 'Body of Individuals' were closed as 'Nil Assessments' and the total income was apportioned among six members thereof. Inasmuch as a 'Body of Individuals' is an assessable entity under the Income-Tax Act, 1961 and the Finance Acts for the respective years provide separate rates of tax leviable for 'Body of Individuals', tax at the appropriate rates was leviable in the hands of the 'Body of Individuals' itself. This was not done resulting in an under-assessment of tax of Rs. 1,00,290.

The Ministry have replied (January, 1974) that the assessments have been rectified raising an additional demand of Rs. 1,00,290.

32. *Incorrect computation of salary income*

Where income is received free of tax, the amount of tax should be regarded as part of such income and the gross income included in the total income of the recipient i.e. the ultimate tax should be determined on 'tax-on-tax' basis. In the course of test-check it was noticed that for assessment year 1970-71, the salary of nearly one hundred foreign assessees was not correctly grossed up by the Department. This has resulted in undercharge of tax to the tune of Rs. 1,19,601.

The Ministry have replied (February, 1974) that the assessments in question have been rectified and an additional demand of Rs. 1,19,601 raised. Report regarding recovery of this additional demand is awaited.

33. *Incorrect computation of income from house property*

The annual value of a house property, which is assessable to tax under income from house property, is the sum for which the property can reasonably be expected to be let from year to year. In the case of an assessee, the income from the self-occupied house was determined at Rs. 1,000 in the year 1957-58, when it had been valued at Rs. 21,500 for wealth-tax purposes. Due to large scale additions made to the property and the general accretion in the value of such assets, the value of the self-occupied property was stepped up each year in the wealth-tax assessments of the assessee for the years subsequent to 1957-58 and was adopted as Rs. 6,03,844 in the

year 1966-67. The value was further raised to Rs. 6,09,389 in 1968-69. But the house property income assessable to income-tax which should have been raised proportionately, continued to be taken at Rs. 1,000 up to the year 1967-68 and was nominally raised to Rs. 2,000 thereafter. The house property income which was not assessed during the eleven assessment years from 1962-63 to 1972-73 would work out to Rs. 2,19,200, even if the minimum value of income as equivalent to six per cent of the property was taken. The tax-effect involved is Rs. 1,85,670.

The Ministry while accepting the above mistake in principle, have replied (February, 1974) that a further report will follow.

34. *Incorrect computation of business income*

(*a*) Sales tax refunds aggregating Rs. 64,788 and Rs. 1,07,818 shown as receipts in the Trading and Profit & Loss Account of a registered firm for the previous years relevant to the assessment years 1968-69 and 1969-70 were not treated as income on the ground that the amounts were repayable to the State Government in pursuance of an amendment to the Central Sales Tax Act introduced in June, 1969. It was, however, noticed that only Rs. 10,688 relating to assessment year 1968-69 related to a refund under the Central Sales Tax Act. The remaining sums were refunds of purchase-tax obtained under the State Sales Tax Act and were not affected by the amendment to the Central Sales Tax Act. There was consequently an under-assessment of income by Rs. 54,100 and Rs. 1,07,818 respectively for the assessment years 1968-69 and 1969-70. This resulted in a short-levy of tax of Rs. 96,873 (excluding interest payments to the firm aggregating Rs. 3,480 made under section 214 of the Income-tax Act.).

The Ministry have replied (January, 1974) that time-limit for rectificatory action for the assessment year 1968-69 had expired on 31-3-1973. The Ministry have further intimated (March, 1974) that the reassessment proceedings for the assessment year 1969-70 has been completed and an additional demand of Rs. 23,499 raised against the firm. Further report is awaited from the Ministry.

(*b*) During the previous year corresponding to the assessment year 1969-70 an assessee derived income from business as a contractor. While computing the taxable income, the Department estimated the net income at 11 per cent of the gross turnover on the basis of the certificates of payments issued by the paying authorities. The estimated income was, however, subsequently revised in appeal as 7½ per cent of the gross turnover. While the gross turnover on the basis of the accounts was found to be Rs. 31,54,776

the Department mistook the gross turnoever at Rs. 25,59,776. The total income was under-assessed by Rs. 44,625 resulting in undercharge of tax of Rs. 11,671 for the assessment year 1969-70.

The Ministry have replied that the mistake has been rectified and an additional demand of Rs. 11,671 raised. Further report regarding collection of the demand is awaited (February 1974).

35. *Irregularities in allowing development rebate and depreciation*

Under the Income-tax Act, an assessee is entitled to development rebate on new ships acquired after 31-3-1954 and wholly used for purposes of business carried on by him. If the ship is acquired before 1-1-1958 the rate of development rebate is 25 per cent of the actual cost of the ship and a ship acquired on or after that date is entitled to development rebate at the rate of 40 per cent. The rate of development rebate was increased from 25 per cent to 40 per cent with a view to giving further concession for the shipping industry. Trawlers, boats, etc. engaged in industries other than shipping are entitled to lower rate of development rebate of 25 per cent which was subsequently reduced to 20 per cent.

A firm dealing in the business of deep sea fishing and in export of sea-foods was acquiring and maintaining marine boats. The assessee claimed development rebate at the rate of 40 per cent in regard to the marine boats engaged in the fishing industry for the assessment years 1965-66 to 1970-71 (except assessment year 1968-69) and this was allowed by the Department in the five assessments. As the boats were engaged in fishing industry, they are entitled to development rebate only at the reduced rate of 20 per cent. The incorrect grant of development rebate at the enhanced rate for the five years resulted in total short-levy of tax of Rs. 1,78,617 in the hands of the firm and its partners.

36. *Incorrect computation of dividend income*

Under the provisions of Income-tax Act, 1961 any payment by way of loan or advance by a company, in which public are not substantially interested, to a share-holder who has shares carrying 20 per cent or more of the voting power, is to be treated as dividend for the purpose of Income-tax Act subject to certain conditions.

It was observed that an assessee having substantial interest in two companies in which public are not substantially interested, took loans of

Rs. 92,710 and Rs. 75,215 respectively during the assessment years 1968-69 and 1969-70. As the company has accumulated profits which are more than the amount advanced to the assessees, these loans were to be treated as dividends and subjected to income-tax, but this was not done by the Department. This omission has resulted in short-levy of tax amounting to Rs. 1,40,770 (approximately).

Ministry have replied (February, 1974) that the assessments in question are being rectified. Further reply from the Ministry is awaited.

37. *Irregular exemptions or excess relief given*

(*a*) Under the provisions of the Income-tax Act, 1961, income from property held under trust wholly for charitable purposes is exempt to the extent to which the income is applied for such purposes in India. Under executive instructions issued in 1963 (which have since been grafted on the statute with retrospective effect from the date of commencement of the Act) capital gains accruing to a charitable trust on transfer of trust assets shall not be exempt from tax as income applied for charitable purposes, unless such capital gains are utilised in acquiring a new capital asset. The amount of the capital gains so utilised should be regarded as having been applied for the charitable purposes.

In the case of a charitable trust, for the assessment year 1970-71, the capital gains of Rs. 5,81,921 realised on sale of trust assets were not applied to acquire any new capital asset but were kept as fixed deposits with a bank. Nevertheless no tax was charged by the Income-tax Officer on the amount of capital gains. The incorrect exemption allowed by the assessing officer resulted in short levy of income-tax of Rs. 1,51,978.

Ministry have replied (February, 1974) that the case is under consideration of the Ministry. Further report is awaited.

(*b*) According to the provisions made in the Income-tax Act in 1968, domestic companies which incur any expenditure outside India after 29-2-1968 under certain specified categories for the promotion of sales of their goods outside India, are allowed a deduction from the business income of an amount equal to one and one-third times the amount of such expenditure. In the assessment made in March, 1972 for the assessment year 1969-70 a registered firm was allowed export markets development allowance of Rs. 2,01,657 representing sales commission paid in rupees to

three parties stationed in India. This deduction was not admissible as the expenditure was incurred *in* India and this had resulted in under-assessment of income-tax of Rs. 58,000.

The Ministry have replied (January, 1974) that the firm's assessment has been revised and an additional demand of Rs. 17,746 raised. The difference in the tax-effect is due to the fact that more reliefs have since been allowed by the Appellate Assistant Commissioner in Partners' cases.

(*c*) Under the Income-tax Act, 1961 as applicable for the assessment years 1966-67 and 1967-68, if a citizen of India gets any remuneration from any notified University, educational institution or such other association situated outside India, he is entitled to a deduction of 50 per cent of such remuneration as 'tax-relief'. During the previous years relevant to the assessment years 1966-67 and 1967-68, an Indian citizen received remuneration amounting to Rs. 25,000 and Rs. 63,750 respectively for services rendered to a foreign cultural organisation which was not notified by the Central Government in this behalf. Hence the deduction of 50 per cent thereof was not admissible in the computation of his total income. This was, however, allowed by the Department with a consequent tax undercharge of Rs. 26,730 for the two assessment years.

The Ministry have replied that the position is not acceptable to them and that a further report will follow (March, 1974).

38. *Mistakes in making assessments of firms and their partners*

(*a*) The assessment of an unregistered firm for the assessment year 1963-64 was cancelled on 24-9-1965 by a Commissioner of Income-tax, under Section 263(1) of the Income-tax Act, 1961 and the Income-tax Officer was directed to make re-assessment. On 12-10-1966 the Income-tax Officer cancelled the original assessment and the tax of Rs. 48,494 originally collected from the firm was refunded. But the re-assessment was not made up to July, 1972. It is learnt that the firm was dissolved on 7-1-1967.

The Ministry replied (March,1974) that the mistake involved a loss of revenue of Rs. 64,822 and that a further report would follow.

(*b*) It is laid down in the Income-tax Act that any payment of interest made by the firm to any partner of the firm is not deductible as a business expenditure while computing the income chargeable under the head "profits and gains of business". The fact whether the partner is a partner in his individual capacity or he represents a Hindu Undivided Family as Karta makes no difference in this connection so far as the firm is concerned, as

it pays interest to its partner in his individual capacity and therefore, interest paid by a firm to its partners is not deductible as business expenditure.

(*i*) In one case for the assessment years 1969-70 to 1971-72 interest of Rs. 60,388 paid by a firm to a partner was not disallowed while computing the income of the firm on the ground that the Hindu Undivided Family represented by its Karta was the partner and the interest was not paid to the partner in his individual capacity. The omission to disallow the interest resulted in short-levy of tax of Rs. 11,624 for the said three assessment years.

The Ministry have replied (February, 1974) that the assessments in question have been rectified raising an additional demand of Rs. 11,624.

(*ii*) In another case, for the assessment years 1968-69 to 1971-72, a firm paid Rs. 60,076 by way of interest to two partners of the firm, and this interest was not disallowed on the plea that the interest was paid to the Hindu Undivided Families of which the two partners were kartas and that the partners were partners in their individual capacity. The incorrect allowance resulted in short-levy of tax of Rs. 14,700.

39. *Omission to include income of spouse*

The share incomes of the wives of an assessee, in a firm in which the assessee was also a partner were included in the income of the assessee in computing his taxable income under section 64(1) of the Income-tax Act. According to the explanation below section 64, the share income of the spouse has to be included in the income of the husband or wife whose total income (exluding the income from the firm in which both of them are partners) is greater. For the assessment years 1967-68, 1968-69 and 1969-70, the total income of the assessee excluding his share income from the firm in which the wives were also partners, was a loss. Since the income of the assessee for the three assessment years mentioned above was less than that of his spouses, his share income should have been assessed in the hands of that spouse whose other income was greater. Income that has escaped assessment for the three assessment years is Rs. 3,85,668 and consequent short-demand of tax is Rs. 2,22,000.

The Ministry have not accepted the position stated above and have contended that section 64 is applicable only where an individual has only one wife (January, 1974). The language of Section 64 is not, in Audit's view, limited to cases where the assessee has only one wife.

40. *Irregular set off of losses*

Under the Income-tax Act, losses under the head "Profits and Gains of Business' can be carried forward and set-off against income under the same head in the subsequent year and if the loss cannot be fully set-off for want of sufficient income under this head in the subsequent year, the amount of loss not so set-off can be carried forward to the following assessment year for adjustment against that year's business income and so on for eight years.

In the case of two partners of a firm it was noticed that the statutory provisions as above were not observed and their share of the business loss of the firm relevant to assessment year 1967-68 aggregating Rs. 3,20,707 which had been carried forward, was erroneously set-off against their income from sources other than business in the absence of business profits assessable in assessment year 1968-69. This led to an under-assessment of tax of Rs. 2,74,491 in assessment year 1968-69.

The Ministry have replied (January, 1974) that the assessments in question have been rectified and a total demand of Rs. 2,74,491 raised against the two partners. Against this demand, a sum of Rs. 1,75,525 has been recovered. Further report is awaited.

41. *Mistake committed in assessments while giving effect to appellate orders*

(*a*) The remuneration and sitting fees received by the Managing Director of a company, who was a 'Karta' of a Hindu Undivided Family, in the previous years relevant to the assessment years 1965-66 to 1968-69 were considered in his assessment both as 'Individual' and as 'Hindu Undivided Family' by way of protective assessments. On an appeal by the assessee the Appellate Assistant Commissioner directed that the remuneration and sitting fees should not be assessed in the hands of the 'Hindu Undivided Family'.

While revising the assessment orders passed in the case of the 'Hindu Undivided Family' to give effect to Appellate Assistant Commissioner's orders dated 1-8-1972, the Income-tax Officer deleted the additions made in respect of remuneration and sitting fees in the relevant assessment years but omitted to withdraw tax-credits aggregating Rs. 48,449 allowed in original assessments for assessment years 1965-66 to 1968-69 in respect of tax deducted at source on the remuneration, resulting in an excess credit of tax of Rs. 48,449. Further, while rectifying the assessment for the assessment year

1967-68 on 27-9-1972, though the assessee had paid advance tax and self-assessment tax amounting to Rs. 21,761 only, credit for the tax paid was allowed for Rs. 48,205 resulting in an allowance of excess credit for tax of Rs. 26,444.

These mistakes resulted in an aggregate short levy of tax of Rs. 72,059.

The Ministry have replied (February, 1974) that the assessments in question have been rectified and an additional demand of Rs. 72,059 created.

(*b*) Prior to 1968-69, the income from a new industrial undertaking is first included in total income and relief towards income-tax and super-tax allowed theareafter on such income at average rates of tax.

In the revised assessment of a firm made for the assessment year 1962-63 in August, 1968 to give effect to the orders of May, 1968 of the Appellate Assistant Commissioner, the Income-tax Officer, instead of allowing relief on income of Rs. 2,70,530 attributable to new industrial undertaking at average rates of tax, made an outright deduction from the income of the firm. This resulted in under-assessment of income of Rs. 2,70,530 in the hands of the firm and its two partners., The tax under-charged in the assessment of the firm and the two partners was Rs. 1,57,530.

The Ministry have replied (February, 1974) that the mistake in question has been rectified and an additional demand of Rs. 56,944 raised in the case of the two partners. Further report regarding collection of additional demand from the firm is awaited.

42. *Non-levy/incorrect-levy of interest for delayed submission of returns, for delay in payment of tax-etc.*

Under the Income-tax Act, every person having income above the taxable limits has to render a return of income in the prescribed form verified in the prescribed manner and setting forth such other particulars as may be prescribed. In the returns of income to be filed by assessees deriving income from business, it is laid down that if the accounts are kept by the assessee on the mercantile system of accounting, a copy of the Manufacturing Account or Trading account, the Profit and Loss account, and the Balance sheet or Trial Balances must be attached to the return. If the accounts are audited, a copy of the Auditor's report/statement of audited accounts should also accompany the return. If the prescribed particulars

are not furnished, the return has to be treated as incomplete and invalid. The statutory levy of interest for belated submission of returns of income becomes chargeable in cases in which incomplete and invalid returns are furnished, up to the date on which the complete particulars are made available and not up to the date on which such returns of income were actually filed. During test-check it was found that in three such cases mentioned below, interest was not levied and the amount involved was Rs. 4,16,312. The details of of the cases are given below:—

(*i*) A registered firm filed its return of income for the assessment year 1967-68 on 10th March, 1968 showing income of Rs. 1,90,000 without the supporting statements of accounts. Treating the return as not in proper form the Income-tax Officer asked the assessee on 20th August, 1968 to render a proper return of income. The statements of accounts like Trading and Profit and Loss Account, etc. and the statement of adjusted income showing total income of Rs. 2,06,870 were received from the assessee only on 15th October, 1970. The assessment was completed by the Income-tax Officer in December, 1970 on a total income of Rs. 2,17,320. Interest of Rs. 3,082 for the period up to 10th March, 1968 only, instead of Rs. 35,144 for the period up to 15-10-1970, for belated submission of return of income was levied by the Department. There was thus a short-leavy of interest of Rs. 32,062.

(*ii*) An assessee filed its return showing income of Rs. 14,17,210 for the assessment year 1968-69 on 14th October, 1968 without the supporting documents like Trading, Profit and Loss Account etc. The supporting details were filed by the assessee on 13th September, 1971. The Income-tax Officer completed the assessment in March, 1972 on an income of Rs. 39,86,276 and did not levy the statutory interest. As the supporting documents were received only in September, 1971, the statutory interest of Rs. 3,72,000 for the period up to September, 1971 was leviable.

(*iii*) A registered firm filed a return for the assessment year 1969-70 showing income of Rs. 66,000 on 3rd January, 1970. The return was not accompanied by Trading and Profit & Loss Accounts. On 9th December, 1971 the assessee filed a revised return showing income of Rs. 33,935 along with the necessary supporting documents. Based on the income returned on 9th December, 1971, the assessment was completed in March, 1972 on total income of Rs. 1,23,430. The assessing officer levied interest for the belated submission of return of income only for two days instead of the period from 1st January, 1970 to 8th December, 1971. The under-charge of interest was Rs. 12,250.

The Ministry have replied (March, 1974) that assessments in the case of two assessees have been rectified and additional demands raised. Report regarding collection of demand in these cases and regarding rectification of the assessment in the third case is awaited.

43. *Payment of interest by Government*

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

(*a*) In the case of five assessees, provisional assessments were not completed by the Income-tax Officers in spite of request from the assessees and there was inordinate delay in the completion of regular assessments. This led to avoidable payment of interest of Rs. 24,633 to five assessees for assessment years 1968-69 and 1969-70.

(*b*) In the case of another assessee, the Department paid interest of Rs. 6,25,687 for the assessment years 1964-65 to 1969-70, on the excess of advance-taxes paid by the assessee over the taxes calculated to be payable by it on completion of regular assessments. All these assessments were finalised towards the end of the statutory limit allowed for completion of such assessments. Had the assessments been completed earlier keeping in view the instructions contained in the Board's Circular of April, 1966 the payment of interest could have been avoided or interest liability reduced.

The Ministry have replied (February, 1974) that this being a complicated case, assessment orders for all the assessment years had been passed after giving several hearings and that consequently the completion of assessments took longer time.

44. *Non-levy or short-levy of penalty for delayed/non-submission of Income returns.*

Under the Income-tax Act, 1961, an assessee who without reasonable cause failed to submit income tax return within the prescribed date is liable to penalty at the specified rate for every month of default subject to maximum of fifty per cent of the tax payable by him.

The original assessment of an individual, completed *ex parte* due to non-submission of income-tax return for the assessment year 1963-64, was subsequently reopened and reassessed for total income of Rs. 1,61,748 including an income which had originally escaped assessment. Although proceedings for levy of penalty for non-submission of income-tax return were initiated, no further action was taken in this case. The minimum amount of penalty leviable in this case was Rs. 53,484.

The Ministry in their reply (February, 1974) have accepted the failure of the Income-tax Officer regarding non-completion of penalty proceedings.

45. *Excess or irregular refund of tax*

In the case of an assessee (a film star) the Income-tax Officer considered the self-assessment tax of Rs. 26,512 paid on 21-7-1969 by another person, as tax paid by the assessee himself, resulting in an excess refund of Rs. 26,512 for the assessment year 1968-69.

The Ministry have replied (January, 1974) that the assessment in question has been rectified and that the additional demand of Rs. 26,512 raised has been collected by adjustment.

46. *Loss of Revenue due to avoidable delay in taking corrective action in respect of mistakes pointed out by Revenue Audit*

According to the provisions of Sections 147(b) and 154 of the Income-tax Act, 1961, no re-assessment or rectification of an assessment shall be made after the expiry of the periods laid down therein.

In respect of 1732 cases in ten Commissioners' charges involving under-assessments pointed out in Audit up to 31-8-1971, corrective action was not taken by the Department within the prescribed period. Consequently, rectificatory action became time-barred resulting in a loss of revenue of nearly Rs. 115 lakhs.

47. *Over assessments*

(a) The Income-Tax Appellate Tribunal, in their orders of 26-11-1972, allowed relief of Rs. 59,255 to an assessee for the assessment year 1964-65. While giving effect to these orders on 29-3-1973 under Section 255 of the Act, the last assessed income was taken to be Rs. 3,16,932 assessed on 22-12-1970 under section 250 of the Act, though it was actually Rs. 2,71,976 assessed on 29-7-1972 under Section 154 of the Act. Due to this error, the income of the assessee was over-assessed in the orders passed on 29-3-1973 by Rs. 45,006 resulting in excess-levy of tax of Rs. 43,990.

The Ministry have replied (January, 1974) that the assessment has been rectified.

(*b*) The amendment of Rule 5 of the Income-tax Rules, 1962 effected from the 1st April, 1970 by the Income-tax (Sixth Amendment) Rules, 1962, brought in, *inter alia*, the following changes:—

(*i*) de-linked the quantum of depreciation allowance on assets used in business or profession from the period of their use and made available the allowance at full rate on all assets irrespective of the duration of their use in the previous year;

(*ii*) enhanced the rate of depreciation allowance on motor trucks to 30 per cent of their written-down value.

While making assessments of taxable income of two assessees (registered firms), the above changes were not kept in view and depreciation allowance on trucks was incorrectly allowed at half of the pre-amended rate of 25 per cent on the ground that the period of use was less than 180 days. This resulted in the denial of depreciation allwance of Rs. 68,375 to one assessee and of Rs. 15,422 to the other. Taxable income of the assessees was thus over-assessed by Rs. 83,797 involving excess-levy of tax of Rs. 41,210 (Rs. 29,930 plus Rs. 11,280).

The Ministry have replied (February, 1974) that the assessments of the firms have been rectified and the amount of over-charge adjusted against the outstanding demands.

(*c*) According to the provisions of the Income-tax Act, 1961 the income from house property, which is owned and occupied by the assessee, is required to be limited to 10 per cent of the assessee's other income. In the case of an assessee, income from self-occupied house property was not so limited for assessment years 1969-70 to 1971-72 resulting in an over-assessment of income of Rs. 47,561. This led to an excess levy of income-tax of Rs. 36,549 for these three years.

The Ministry have replied (January, 1974) that the assessments in question have been rectified and an amount of Rs. 22,731 refunded.

(*d*) Under the provisions of the Income-tax Act, where a return of income has been filed and the tax payable on the basis of that return as reduced by any tax already paid exceeds five hundred rupees, the assessee shall pay the tax so payable within 30 days of furnishing the return, on self-assessment basis. For the assessment year 1968-69 an individual paid a sum

of Rs. 16,475 as tax on self-assessment. At the time of completion of assessment, credit for the above payment was not considered and the balance of tax, without deducting the above remittance, was demanded by the Department and this demand was also met by the assessee. This resulted in excess-levy of tax of Rs. 16,475.

The Ministry have replied that the assessment has been rectified and the amount of overcharge refunded to the assessee.

(*e*) In the case of an assessee, the total amount refundable was Rs. 33,037 for assessment year 1969-70. But the Department, due to an error in calculation, actually refunded only Rs. 23,037 to the assessee, resulting in a short-payment of Rs. 10,000.

In another case of an individual, the assessment for the year 1969-70 was revised on 25-9-1971 which resulted in refund of Rs. 39,451. After adjusting the tax due from the assessee for earlier years against this refund, the balance amount of tax refundable was Rs. 19,199 which was incorrectly adopted as Rs. 9,199.

The Ministry have replied that assessments in both the cases have been rectified and the balance amounts due to the assessees refunded or adjusted against demands.

48. *Other topics of interest*

(*a*) According to the Merged States (Taxation Concessions) Order, 1949 and the Part II B States (Taxation Concession) Order, 1950 the *bona fide* annual value of the palaces of ex-Rulers of Indian States which were declared by the Central Government as the official residences of such ex-Rulers was exempt from income-tax. When a palace ceased to be the official residence, the exemption used to be withdrawn and the property income attributable to such building was charged to tax.

The assessment records of an ex-Ruler revealed that he let out his palace (declared by the Central Government as his official residence) to the Survey Department of the Government of India with effect from 1-12-1958. As the official residence was let out for non-residential purposes, the exemption should have been withdrawn by the Government and the income derived from property should have been taxed. This was not done resulting in the assessing authority continuing to exempt the income from taxation. Non-withdrawal of exemption resulted in loss of Rs. 10,735 for the assessment years 1959-60 to 1970-71.

(b) *Collection of tax, without demand followed by immediate refund*

The Public Accounts Committee while considering para 55(d) of the Audit Report, 1967 took serious note of the practice adopted by the Income-tax Officers in collecting 'tax' without demand at the close of the financial year and refunding the same at the beginning of immediately following financial year in order to make good the shortfall in the budget estimates of collection *vide* Public Accounts Committee's recommendation in paragraphs 2.145 to 2.147 of Public Accounts Committee's (1967-68) 29th Report. The Ministry of Finance (Deptt. of Revenue) have also issued instructions in December, 1967 that such irregular collections should not be resorted to.

(*i*) During the local audit in May-June, 1973 it was noticed that collection of tax aggregating Rs. 1,47,530 was made from 12 assessees towards the end of the financial year 1971-72, without valid demands. The sums so collected were refunded to the assessees within a few days after collection.

(*ii*) A challan for Rs. 25,000 was issued on 28-3-1972 to an assessee for payment of tax for 1971-72 on provisional basis, though the regular assessment for this year had been completed on 23-12-1971 as a result of which, a sum of Rs. 3,183 became refundable to the assessee. In another case, a challan was issued (in March, 1972) requiring an assessee to pay tax of Rs. 50,000 for the year 1971-72 under section 140-A of the Act, even though the assessee had paid (before 31-3-1971) advance-tax of Rs. 70,620 against tax of Rs. 65,234 payable on the returned income of Rs. 3,06,596 (return filed on 21-11-1971). In both the cases taxes aggregating Rs. 75,000 were paid on 29-3-1972. In the first case, the Income-tax Officer refunded the money after six days (on 4-4-1972) and in the second case, after twelve days (on 10-4-1972).

As these collections of revenue and their refund took place in different financial years, separated only by a few days, the assessees were apparently required to pay the taxes only to swell the revenue figures with a view to reaching the estimates made in the budget.

The Ministry have accepted the position in all the cases.

(c) *Inordinate delay in finalising assessments and consequent non-realisation of income-tax over Rs. 50 lakhs from an individual*

An assessee (individual) was being assessed in a particular Commissioner's charge up to the year 1947-48. For the assessment years 1948-49 to 1950-51, the assessee submitted his return of income on 6-1-1949, 28-12-1949 and 22-2-1951 respectively. By an order of the Central Board

of Revenue (notification dated 18-8-1952) the income-tax files of the assessee for these three years were transferred to a different charge. The Income-tax Officer to whom the files were transferred made *ex parte* assessments on 16-3-1953, 17-12-1953 and 24-3-1955 respectively in respect of the three assessment years raising a total demand of Rs. 44 lakhs approximately. These assessments were declared illegal by the order of the Supreme Court (passed in August, 1962) as change of jurisdiction was regarded as an infringement of the assessee's fundamental rights. Accordingly, assessments for these three years were re-opened by the Income-tax Officer who had finalised the assessments upto 1947-48, on 20-9-1962 and a revised demand of over 58 lakhs was raised. The assessee did not pay the tax and challenged the applicability of the section under which re-assessments were made and ultimately the Supreme Court declared (Judgement dated 10-10-1963) after setting asise the assessments, that the Income-tax Officer should re-do the assessments within the period of limitation. The Supreme Court further directed as follows:

> "And this court doth further order that this order be punctually observed and carried into execution by all concerned."

In spite of the orders of the Supreme Court, notice for taking up fresh assessments was, however, issued on 1-5-1968 i.e. after about 4½ years from the date of the above orders of the Supreme Court. The assessee on receipt of the notice challenged the proposal of fresh proceedings in the court of Munsif as being time-barred and these proceedings are still pending.

The Ministry have replied that the Supreme Court passed its order on 10-10-1963 and it took about a year for the Patna High Court to communicate the order of the Supreme Court. The order was communicated on 8-12-1964 to the Income-tax Officer concerned who entertained doubts about some of the legal issues involved. He accordingly made a reference to the Commissioner who referred the matter to Central Board of Direct Taxes on 8-11-1965 for their opinion. After careful consideration, the Board gave their opinion that the proceedings should be completed by the Income-tax Officer and accordingly the Income-tax Officer was intimated on 20-11-1967 to proceed with the case. The Income-tax Officer thereafter issued a letter on 1-5-1968 calling upon the assessee to appear on 15-5-1968 with necessary papers and documents in connection with the assessment year 1948-49, and at that stage the assessee had foiled the attempt by instituting a suit in Munsif's court.

By not taking action quickly in compliance with the Supreme Court order coupled with the dilatory tactics adopted by the assessee, the Department had landed itself into difficulties and it is highly doubtful whether the

Department will be in a position to realise the tax of over Rs. 50 lakhs due from the assessee.

(d) *Non completion of set-aside assessment*

In the case of an assessee, the Income-tax Officer brought to tax, inter-alia, an amount of Rs. 31,40,715 as income from money lending business for the assessment year 1955-56. The Appellate Assistant Commissioner under his orders of 28th March, 1959 set aside the assessment and directed the Income-tax Officer to make the assessment *de novo* in accordance with law and after considering all the submissions of the assessee. On receipt of this order, the demand of Rs. 30,65,740 raised against the assessee was with-drawn and a sum of Rs. 91,000, which the assessee had paid in the meantime, was refunded to him in May, 1959. It was seen during audit in June, 1973 that the set-aside assessment has yet to be redone.

(e) *Non-deduction of tax from salary income*

In a case of S. K. Dutta, and others *Vs.* Ingty, the Supreme Court in its judgement on 7-11-1967 held that exemption of income-tax given in favour of Scheduled Tribes other than Government servants under Section 4(3) (xii) of the Income-tax Act, 1922 and Section 10(26) of the Income-tax Act, 1961 was discriminatory. The Central Board of Direct Taxes had considered the effect of the above judgment and decided in June, 1968 that under the Income-tax Act, 1961 except for the dividend and interest on securities, the exemption is available only where the source of income is in the areas specified in the Act.

Annual Return showing the income chargeable under the head 'salaries' and tax deducted at source in respect of ten officers belonging to Scheduled Tribes as furnished by the Treasury Officer, Shillong revealed that no tax on income earned outside the areas so specified was paid by nine officers for assessment years 1969-70 to 1971-72 and by one officer for assessment years 1964-65 to 1967-68 nor was any demand for tax of Rs. 50,000 (estimated) raised by the Department. Of this amount, assessments of income-tax in these cases up to the year 1969-70 became time-barred resulting in a loss of revenue of Rs. 20,000 (approximately).

49. *Write-off*

(*a*) Tax arrears amounting to Rs. 16,615 and Rs. 80 for assessment years 1944-45 and 1949-50 respectively outstanding against an assessee were written-off in March, 1971 by a Commissioner of Income-tax on the recommendation of the Regional Write-off Committee who concluded that in view of the non-availability of the relevant records (which were stated to be missing) and there being no prospects of any recovery of tax due from the assessee, whose address was not known and who had left no assets, the tax arrears should be written-off as irrecoverable.

(*b*) An assessee firm, against which income-tax and other taxes to the extent of Rs. 66,906 were outstanding for the 3 years ending assessment year 1952-53 was declared insolvent in 1953. After a lapse of 17 years, the Department lodged a claim for recovery of the amount. On the Official Assignee informing the Department in Feburary, 1970 that no assets were available for distribution among claimants, the Commissioner of Income-tax sanctioned the write-off of tax arrears of Rs. 66,906 in February, 1971.

(*c*) A demand of income-tax of Rs. 53,635 outstanding against an assessee for the assessment year 1954-55 was written-off on 16-1-1971 on the ground that the assessee owned no property which could be used for recovery of tax. The relevant notices for payment of demand were issued on 30-3-1959 (for Rs. 46,835) on 30-6-1959 (for Rs. 300) and on 28-3-1962 (for Rs. 6,500). Within one month from the receipt of the first notice, the assessee sold (on 23-4-1959) his house to an Income-tax practitioner for Rs. 43,000. The assessee also disposed of (on 3-7-1959) a plot of land for Rs. 2,000 within a few days of the receipt of the second notice. The Department did not take legal action (up to 22-4-1965) to counter such precipitate and swift action of the assessee to divest himself of his known immovable properties even though the Income-tax Officer expressed his apprehension, once in May, 1959 and again in June, 1964 that the motive of sale of properties was to defeat recovery proceedings.

The Senior Standing Counsel to Income-tax Department, to whom the case was referred in April, 1970 expressed the opinion that the transactions (sale of properties) were suspicious and appeared to have been made with the idea of defeating recovery of income-tax, but the remedial action had become time-barred on 23-4-1965.

CHAPTER IV

OTHER DIRECT TAXES

WEALTH-TAX

50. Wealth-tax is levied on the net wealth of Hindu Undivided families and individuals which expression includes groups of individuals functioning as a unit e.g. Registered Societies (Co-operative societies have been exempted retrospectively from 1957-58 by the Finance Act, 1972). With effect from the assessment year 1960-61, wealth-tax on companies remains withdrawn. Up to the assessment year 1969-70, agricultural land had been specifically excluded from the definition of 'assets' in the Wealth-tax Act and did not, therefore, suffer tax. From 1970-71, however, the definition was amended so as to bring the agricultural lands also within the purview of the levy. The net proceeds of the levy were to be passed on to the States as grants-in-aid, and a provision of Rs. 4 crores on this account was made in the Budget for 1970-71. However, as no collections were anticipated in that year, the provision was deleted in the Revised Estimates. Similarly, a provision for Rs. 7.25 crores was made in the Budget for 1971-72, which was reduced to Rs. 3.50 crores in the Revised Estimates. The provision for 1972-73 was Rs. 9.25 crores, but it was deleted in the Revised Estimates in view of the small collections. No provision was made in the Budget for 1973-74 because disbursements made in 1971-72 were expected to cover States' entitlement during 1972-73 and 1973-74. The actual collection in 1972-73 was Rs. 0.72 crores.

51. During the test-audit of assessments made under the Wealth-tax Act, 1957, conducted during the period 1st September, 1972 to 31st August, 1973, the following types of under-assessment of tax and over-assessment of tax were noticed.

1. Under-assessment due to mistakes in calculation of tax and in the computation of net wealth.
2. Under-assessment due to irregular/excessive allowances and exemptions.
3. Under-assessment due to incorrect valuation of assets.
4. Omission to levy additional wealth-tax.
5. Wealth escaping assessment.
6. Non-levy or incorrect levy of penalty for late filing of returns.

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

52. (*A*) *Under-assessment due to mistakes in calculation of tax.*

(*i*) Under the Wealth-tax Act, 1957, as it stood before amendment by Finance (No. 2) Act, 1971, no tax is leviable on the first Rs. 1 lakh of net wealth of an individual and on Rs. 2 lakhs of net wealth of a Hindu Undivided family. Mistakes in the allowance of initial exemption limit were reported through para 62(iii)(a)(i) of Audit Report, 1969-70 and para 39(i) of Audit Report, 1971-72. Some more cases of similar nature have come to notice in the year under report.

(*a*) In one case initial exemption was allowed twice in the rectificatory orders passed in February, 1973 for assessment years 1970-71 and 1971-72. This resulted in total short-levy of tax of Rs. 10,601. The Ministry have accepted the mistake.

(*b*) In five other cases where the initial exemption was allowed twice, once at the time of arriving at the net wealth and again at the time of calculating the tax, there was short-levy of tax of Rs. 8,758. The Ministry have accepted the mistakes in all cases.

(*ii*) Cases were reported through para 70(a) of Audit Report, 1970-71 and para 39(iii) of Audit Report 1971-72, where, despite a revision in the rates of tax for the relevant assessment year the tax was calculated at the rates applicable to earlier years. Similar cases have been noticed in the year under report. Brief particulars of a few cases are given below :—

(*a*) From the assessment year 1969-70 the rates of wealth-tax were stepped up by 0.5 per cent in respect of all the slabs of net wealth over Rs. 10 lakhs. In two cases, where, for the assessment year 1969-70, tax was levied at the lower rates applicale for the earlier assessment year, there was total short-levy of tax of Rs. 12,265. The Ministry have accepted the mistakes.

(*b*) In two other cases for the assessment year 1971-72, tax was calculated at the rates applicable to assessment year 1970-71, instead of at the rates applicable to assessment year 1971-72. This resulted in short-levy of tax of Rs. 4,015. The Ministry have accepted the mistakes.

(*iii*) Some instances in which the schedule of rates of tax was not applied correctly, are given below :—

(*a*) In one case, for the assessment years 1961-62 to 1963-64 on net wealth of Rs. 6,54,000 for each of the years, the basic exemption was wrongly allowed as Rs. 1 lakh, instead of Rs. 2 lakhs. Despite allowing lower basic exemption the tax levied amounted to Rs. 2,540 as against Rs. 4,540 correctly chargeable. This resulted in under-charge of tax of Rs. 2,000 for each year aggregating to total under charge of Rs. 6,000. The Ministry have accepted the mistake.

(*b*) In two cases, for both the assessment years 1970-71 and 1971-72 (net wealth exceeding Rs. 5 lakhs in each assessment year) tax was charged by applying a flat rate of 0.5 per cent for the assessment year 1970-71 and of one percent for 1971-72 instead of at the slab rates.

In three other cases assessed in one ward, tax for 1970-71 was charged at a uniform rate of 0.5 per cent instead of at the slab rates.

The total short-levy of tax in these five cases was Rs. 28,560. The Ministry have accepted the mistakes in two cases; assessments in the three remaining cases are reported to have been set aside in appeal.

(*c*) From the assessment year 1972-73 a unified rate structure has been introduced which is applicable to individuals and Hindu Undivided families alike; the initial exemption of Rs. 1 lakh and Rs. 2 lakhs in the case of individuals and Hindu Undivided families respectively, has also ceased to be available in cases where the net wealth exceeds these limits.

In seven cases spread over six Commissioners' charges, for the assessment year 1972-73 there was short levy of tax of Rs. 8,332 due to allowance of initial exemption. The Ministry have accepted the mistake in all the cases.

(*B*) *Mistakes in the computation of net wealth*

(*i*) Due to a mistake in totalling the net taxable wealth of an assessee for 1967-68 was shown in the return as Rs. 6.95 lakhs instead of Rs. 8.10 lakhs. In the same case, for assessment year 1968-69 two items of Rs. 2,63,000 and Rs. 11,487 respectively were omitted by the assessee while

striking the total. This led to under-charge of wealth-tax of Rs. 3,894 for the two years. The Ministry have accepted the omission to check the totals and have reported that additional demand of Rs. 3,894 has been collected

(*ii*) For the assessment year 1970-71 the total wealth returned by an assessee included a sum of Rs. 9,07,274 being half share in a joint property. However, in the assessment order half of this *viz* Rs. 4,53,637 was brought to tax.

(*iii*) In one case, due to a totalling mistake in the assessment order for assessment year 1969-70, immovable property valued at Rs. 3,51,900 was omitted to be included in the total net wealth. The Ministry have accepted the omission and have initimated that the additional demand of Rs. 6,580 has been collected.

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

(*i*) Under the provisions of the Wealth-tax Act, 1957 (as amended by Finance Act, 1970), the value of investments in shares and securities upto a limit of Rs. 1.50 lakhs is not included in assessable wealth. Where, however, the aggregate value of treasury savings deposit certificates, fifteen year annuity certificates, and twelve year national defence certificates etc. held by an assessee continuously from a date prior to 1st March, 1970, is itself in excess of Rs. 1.50 lakhs, the exemption limit is to be raised to the extent of the value of such certificates.

(*a*) In one case where the investments of the specified nature were of the value of Rs. 1,66,856 and the assessee also held other investments exceeding Rs. 1.50 lakhs in value, the exemption was allowed on Rs. 3,15,100 instead of restricting it to Rs. 1,66,856. This resulted in under-assessment of wealth of Rs. 1,48,244 involving short-levy of tax of Rs. 5,850. The Ministry have accepted the mistake and have reported that the additional demand of Rs. 5,580 has been raised. Report regarding recovery is awaited.

In three other cases, the exemption on the value of such investment was allowed in addition to the admissible exemption of Rs. 1.50 lakhs, instead of limiting it to the value of the specified investments or Rs. 1.50 lakhs whichever is higher. This resulted in under-assessment of wealth of Rs. 4,49,875 with a short-levy of tax of Rs. 11,121. The Ministry have accepted the mistakes in all the three cases and have reported that the additional demand of Rs. 9,923 in two cases has been raised. Report regarding recovery is awaited.

(*b*) In one case, for assessment years 1971-72 and 1972-73 exemption in respect of investments amounting respectively to Rs. 3,38,747 and Rs. 3,86,627 was allowed, instead of limiting the exemption to Rs. 1,90,000 which was the total value of specified investments held continuously from a date prior to Ist March 1970. This resulted in under-assessment of wealth of Rs. 1,48,747 in assessment year 1971-72 and Rs. 1,96,627 in assessment year 1972-73 leading to a total short-levy of tax of Rs. 3,397. The Ministry have accepted the mistake. Report regarding recovery of tax is awaited.

(*ii*) Section 32 of Finance (No. 2) Act, 1971 amended Section 5(1)(viii) of Wealth-tax Act, 1957, retrospectively with effect from 1st April, 1963 and the value of personal jewellery which had been exempt from wealth-tax under a Supreme Court decision, became includible in net wealth. The Central Board of Direct Taxes, in their executive instructions issued in October, 1971, directed the assessing officers to reopen all assessments from assessment year 1963-64 onwards where jewellery had been excluded from the total wealth of the assessee either by the Wealth-tax Officer himself while making assessment or under orders of appellate authorities, prior to the amendment of Wealth Tax Act. During test-audit, a number of cases where these instructions were not followed, were noticed. A few instances are given below:—

(*a*) The net wealth of an individual for the assessment year 1968-69 and 1969-70 included jewellery valued at Rs. 4,50,000. The assessments were revised on Ist March, 1971 following the Supreme Court decision to exclude the value of jewellery from the net wealth, and the resultant refund of Rs. 4,160 was made to the assessee on 30th March 1971. The exemption should have been withdrawn after the amendment of the Act by rectifying the assessments, which however, was not done. This resulted in short-levy of tax of Rs. 4,160.

The Ministry have accepted the mistake and have reported that additional demand of Rs. 4,160 has been raised. Report regarding collection is awaited.

(*b*) In another case where the assessments for the assessment years 1968-69, 1970-71 and 1971-72 were made even after the coming into force of the Finance (No. 2) Act, 1971, the exemption on personal jewellery valued at Rs. 81,488 was allowed by the Wealth-tax Officer in all the assessments. This resulted in short-levy of tax of Rs. 2,385. The Ministry have accepted the mistake and have reported that the assessments have been re-opened. Report regarding rectification and recovery is awaited.

In four Commissioners' charges, 57 other cases were noticed where the exemption was not withdrawn leading to an under-change of Rs. 21,232. The Ministry have accepted the mistake in 21 cases and have reported that additional demand of Rs. 10,332 has been raised; mistake in the remaining 36 cases also has been accepted in principle.

(*iii*) Under the Wealth-tax Act, 1957, the value of shares of new industrial companies which formed part of the initial issue of equity share capital made between 1st April, 1964 and 31st May, 1971, is exempt from wealth tax for a period of five successive assessment years commencing with the assessment year next following the date on which the company commences its operations.

(*a*) In one case the exemption was allowed for seven assessment years resulting in under-asessment of wealth of Rs. 1,25,000 for the sixth assessment year (1970-71) and Rs. 1,37,750 for the seventh assessment year (1971-72). The short-levy of tax was Rs. 8,955. The Ministry have accepted the mistake and have reported that additional demand of Rs. 8,955 has been raised.

(*b*) In another case, where a company having made the initial issue on 4th September, 1961 made a further issue on 22nd October, 1964, exemption on further isssues was allowed to an assessee for the assessment years 1966-67 to 1970-71. This irregular exemption led to under-assessment of wealth by Rs. 14,72,050 resulting in short-levy of tax of Rs. 13,426. The Ministry have accepted the mistake.

(*c*) In seventeen other cases the exemption was allowed even though the initial issue of equity share capital had been made prior to 31st March, 1964. This resulted in short-levy of tax of Rs. 3,59,369. The Ministry have the mistke in one case and have stated that the remaining 16 cases are under examination.

(*iv*) Under the Wealth-tax Act, 1957, as it stood prior to its amendment from 1st April, 1971, exemption in respect of a house or part of a house used by the assessee exclusively as his residence was available to the extent of full value of the house if the house was situated in a place with a population not exceeding 10,000 and to the extent of Rs. 1 lakh only if situated in an urban locality. This distinction was, however, abolished with effect from assessment year 1971-72 and the exemption now available is only Rs. 1 lakh irrespective of the population of the place. Further, though a separate exemption to the extent of Rs. 1.50 lakhs is available in respect of agricultural land,

(ii) In one case, for assessment year 1968-69 the value of immovable property was taken as Rs. 2,46,500 on the basis of the valuation report. For assessment years 1965-66 to 1967-68, however, the value of the same property was adopted as Rs. 1 lakh only even though the assessments were finalised on the same date. This resulted in under-assessment of wealth of Rs. 1,46,500 in each of the assessment years 1965-66 to 1967-68 leading to a short-levy of tax of Rs. 3,999. The Ministry have accepted the mistake and have reported that additional demand for Rs. 3,999 has been raised. Report regarding recovery is awaited.

(iii) Under Rule 1-D of the Wealth-tax Rules, which lays down the manner of ascertaining the break up value of an unquoted equity share, a contingent liability is to be ignored while computing the surplus of assets over liabilities. In one case, while determining the value of unquoted shares of a company, the provision for gratuity appearing in the balance sheets of the company relevant for the assessment years 1966-67 and 1968-69 was treated as a liability and deducted from the value of the assets. As the liability of an employer to pay gratuity to his employees is not an existing liability but is merely a contingent liability to mature on the happening of certain events, it was not deductible. The incorrect valuation of the shares made by the Wealth-tax Officer resulted in under-assessment of net wealth by Rs. 5,66,185 with consequent short-levy of tax of Rs. 11,155 for the two assessment years 1966-67 and 1968-69.

The Ministry have stated that the matter is being examined.

55. *Omission to levy additional wealth-tax.*

Under the Wealth-tax Act, 1957 where the net wealth of an individual or a Hindu undivided family includes buildings or lands (other than business premises) or any rights therein, situated in an urban area, additional wealth-tax is leviable on the value of urban assets. The purpose of the levy was to curb excessive investment in urban property. Finding that Government had not undertaken any review to find out how far this objective had been achieved, the Public Accounts Committee had desired in para 2.60 of their 88th Report (Fifth Lok Sabha) that such a review should be conducted after ascertaining the revenue realised through the additional wealth-tax and the number of cases involved from year to year. As reported by the Ministry to the Committee, the matter was referred by them to the Chief Economic Adviser who is of the view that the review may be deferred till the urban immovable property ceiling laws are enacted and their impact on additional wealth-tax on such property is known.

(i) A few cases where there was omission to levy the additional wealth-tax are given below:—

(a) In the case of an assessee who owned certain house properties at Delhi, additional wealth-tax was omitted to be levied in respect of the properties for the assessment years 1965-66 to 1969-70 resulting in non-levy of tax of Rs. 95,164. The Ministry have accepted the mistake and have reported that the assessments have been rectified raising additional demand of Rs. 95,164 out of which an amount of Rs. 59,164 has been collected.

(b) In another case where urban property valued at Rs. 11,30,000 was located at Bombay, no additional wealth-tax was levied on the assessee for the assessment years 1968-69 and 1969-70 which resulted in non-levy of tax of Rs. 8,600. The Ministry have accepted the mistake and have reported that the additional demand has been raised and collected.

(c) In another charge the net wealth of an assessee included urban property valued at Rs. 10.36 lakhs in the assessment year 1965-66 and at Rs. 10.52 lakhs in the assessment years 1966-67 to 1968-69. Addditional wealth-tax of Rs. 9,938 was leviable on the urban property, which was omitted to be levied. The Ministry have accepted the mistake.

(ii) Upto the assessment year 1970-71, for the purpose of the levy of additional wealth-tax the full market value of the urban property included in net wealth is to be taken into account without allowing any deduction on account of debt or liability pertaining thereto, unless the debt is charged on the property in which case the encumbrance would be reflected in the market value itself.

In one case, where, in the assessment year 1968-69 there was a liability of Rs. 4.15 lakhs relating to an urban property valued at Rs. 10.56 lakhs situated in a category 'A' city, no additional wealth-tax was levied taking the view that the net value of urban property after taking into account the initial exemption of Rs. 2 lakhs fell below the exemption limit (Rs. 5 lakhs). Similarly, no tax was levied on this property for 1969-70. The under-assessment of tax for the two years was Rs. 7,126.

The Ministry have not accepted the objection stating that the case is covered by the Central Board of Direct Taxes instructions of 15th April, 1972. These instructions, however, only say that in the case of an encumbered property its redemption value is to be taken as the market value.

56. *Wealth escaping assessment*

(*i*) Under the provisions of the Wealth-tax Act, in the case of assets held under trust for a purpose other than a public charitable or religious object, wealth-tax is to be levied upon the trustee who holds the assets.

For the assessment years 1957-58 to 1971-72, no wealth-tax had been levied on the assets of a trust the objects of which were not charitable, although its income had been duly subjected to income-tax. On the omission having been pointed out, returns of wealth were called for and assessments completed (May, 1972) creating an additional demand of Rs. 40,543. The Ministry have intimated that the additional demand of Rs. 40,543 has been collected.

(ii) Wealth-tax is leviable on net wealth of every individual and Hindu Undivided family. Companies are not assessable to wealth-tax from assessment year 1960-61 but in the case of a company incorporated outside India, the exemption is available only if it has a place of business in India. A foreign company not having a place of business in India is assessable in the status of 'individual' which term has judicially been interpreted to include a group of persons forming a unit.

A non-resident company held 4,000 shares of Rs. 100 each in an Indian company. Though it was assessed in the status of 'company' for the purpose of Income-tax Act, this status was not available to it for the purpose of wealth-tax as it had no place of business in India. The department, however, did not consider the levy of wealth-tax, in the status of 'individual', on the value of shares held by the assessee in India. The omission led to total wealth of Rs. 58,49,800 escaping tax in assessment years 1965-66 to 1969-70 involving wealth-tax of Rs. 26,975. Similar omission was also noticed for the assessment years 1964-65 and 1970-71. The Ministry have stated (February, 1974) that the question of incorrect adoption of status of the company is under consideration.

(iii) According to a disclosure made by an assessee, he had received two gifts of Rs. 2 lakhs and Rs. 1 lakh on 22nd March, 1948 and 19th September, 1949 respectively, and had earned on these gifted amounts an interest of Rs. 1 lakh upto 31st March, 1960. The total amount of Rs. 4 lakhs was stated to have been deposited with two parties. On the basis of this disclosure the assessee was, for the first time, assessed to wealth-tax for the assessment year 1963-64, but no action was taken to initiate proceedings for earlier years though the wealth owned by him in these years was also liable to tax. This led to undercharge of tax by Rs. 10,000 for the assessment years from 1957-58 to 1962-63.

The Ministry have accepted the omission and have intimated that additional tax of Rs. 4,278 for 1961-62 and 1962-63 has been collected. No action is, however, possible for 1957-58 to 1960-61 because of the operation of time-bar.

(iv) An assessee was charged to wealth-tax for the first time for the assessment year 1971-72. Though the net wealth of the assessee for the earlier three assessment years attracted the levy of tax, neither the assessee had filed the returns nor were they called for by the Department.

The Ministry have accepted the omission and have intimated that assessments for 1968-69 to 1970-71 have been completed and tax of Rs. 1,606 collected.

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

Penalty is leviable if an assessee has, without reasonable cause, failed to furnish the wealth-tax returns within the time prescribed in the Act. Emphasising the need for levying the penalty promptly, the Central Board of Direct Taxes had laid down in their executive instructions issued in July, 1969 that where the Wealth-tax Officer has decided not to levy any penalty having regard to the circumstances of the case, a note should be recorded in the order sheet giving detailed reasons for not invoking the penalty provisions. The rate of penalty upto 31st March, 1969 was 2 per cent of the tax for every month of default which was enhanced from 1st April, 1969 to 0.5 per cent of net wealth for every month of default. The Supreme Court held in November, 1969 that the crucial date for the imposition of penalty was the date of completion of assessment and, accordingly, in all cases where returns were filed and assessments completed after 1st April, 1969, penalty is leviable at the enhanced rates effective from 1st April, 1969.

(*a*) In three cases where returns were filed after 1st April, 1969, instead of charging penalty at the enhanced rates for the entire period, penalty up to 31st March, 1969 was calculated at the old rates prevailing prior to 1st April, 1969; also there were mistakes in the calculation of amount of penalty even according to the rates adopted by the department. These mistakes resulted in short-levy of penalty of Rs. 2,82,524.

The Ministry have reported that penalty of Rs. 57,314 only is leviable in these cases, calculaed at old rates up to 31st March, 1969 and at enhanced rates thereafter.

(*b*) In two other cases where no penalty proceedings were initiated there was no indication that the Wealth-tax Officer had decided against the levy of penalty. The minimum penalty leviable was Rs. 50,236. The Minis try have accepted the omisson in both the cases.

In yet another case where penalty was levied only for one month as against the actual period of delay of four months, there was short-levy of Rs. 5,457. The Ministry have accepted the mistake and have reported that additional demand for Rs. 5,457 has been raised.

58. *Other topics of interest—Irregular collection of tax*

An assessee filed her return of wealth for the assessment year 1971-72 on 27th December, 1971 showing a total wealth of Rs. 6,66,447 and paid a sum of Rs. 7,150 on 1st February, 1972 towards tax due on the basis of self-assessment. The Wealth-tax Officer issued her a challan for Rs. 25,000 on 28th March, 1972, the amount demanded purporting to be in respect of tax due on self-assessment basis. The tax demanded was paid on the following day. The assessment was completed on 30th March, 1972 on a total wealth of Rs. 6,66,500 and a sum of Rs. 24,969 was determined as refundable to the assessee. The refund order was issued on 12th April, 1972.

In another ward three assessees deposited on 30th March, 1971 as directed by the Wealth-tax Officer, a total amount of Rs. 28,000 when no tax was due from them. The entire amount was refunded on 2nd April, 1971.

The issue of challans and collection of Rs. 53,000 towards the close of the financial year, when no demand was actually due, was apparently made with the intention of inflating the figures of collection.

The Ministry have admitted that there were no dues outstanding against the assessees at the time of making the payments.

59. *Over-assessment*

(i) For the assessment year 1971-72 an assessee returned the value of movable properties as Rs. 4,11,300 inclusive of the value of shares amounting to Rs. 1,62,916. While completing the assessment, however, in addition to the value of shares of Rs. 1,62,916 as returned, the entire sum of Rs. 4,11,300 was taken as the value of other assets resulting in over-assessment of wealth by Rs. 1,62,916. The excess levy of tax was Rs. 6,268. The Ministry have accepted the mistake and have reported that the tax overcharged has been adjusted against the outstanding demand.

(ii) In one case the Appellate Tribunal passed orders on 7th December, 1965 allowing reduction of Rs. 5,69,420 from the wealth brought to tax for the year 1957-58. Reduction of Rs. 2,01,000 in the valuation of immovable property was also allowed by the Appellate Asstt. Commissioner in his orders passed on 15th June, 1966 for each of the three years 1958-59, 1959-60 and 1960-61. It was seen at the time of Audit in May 1973 that no action to give effect to the orders of appellate authorities had been taken, nor were

the cases shown as pending in any of the records of the Wealth tax Officer. The relief admissible to the assessee was Rs. 14,449. The Ministry have accepted the mistake and have reported that an amount of Rs. 14,449 has been refunded to the assessee.

(iii) In 6 cases credit was not given for tax paid on self assessment or on provisional assessment, resulting in excess levy of tax of Rs. 31,387. The Ministry have accepted the mistake in all the 6 cases and have reported that the amount of Rs. 31,387 has been refunded either in cash or by adjustment against the outstanding demand.

GIFT-TAX

60. Gift-tax is leviable on the aggregate value of all gifts made by a person during the year. All transfers of property which are made without adequate consideration in money or money's worth are liable to tax unless specifically exempted by the Act. The term 'Property' for the purpose of Gift-tax Act has been given a very wide meaning and connotes not only tangible movable and immovable property including agricultural land, but also includes other valuable rights and interests. The purpose of the levy is to plug the loophole in other tax statutes as it was felt that "the transfer of property through gifts to one's near relations or associates was one of the commonest forms of avoidance of not only the Estate Duty but also of income-tax, and wealth-tax*.

The Public Accounts Committee in the course of their deliberations on the Audit Reports 1970 and 1969-70 felt that the Board had not taken steps to ensure that all cases of gifts of agricutural lands had been brought to tax, and urged a review of the position. A limited review of gifts registered in the months of September and October in the years 1969-70 and 1970-71 was, accordingly, made by the Government and it was found that out of 10,544 cases of gifts of agricultural lands exceeding Rs. 5,000 in value, no proceedings had been initiated in as many as 4,590 cases. A review of all gifts of agricultural lands made in 1970-71 to 1972-73 is stated to have been ordered.

61. During the test audit of assessments made under the Gift-tax Act, 1958, conducted during the period 1st September, 1972 to 31st August, 1973, the following types of under-assessment of tax and over-assessment of tax were noticed:

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

*Para 55 of Budget Speech for 1958-59.

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

62. *Incorrect calculation of tax*

Gifts made by a person during a year are chargeable to tax at the rates laid down in the Schedule to the Gift-tax Act, 1958. In para 63(a) of Audit Report, 1969-70 and para 51 of Audit Report, 1971-72 a few cases of incorrect calculation of tax were reported. Some instances noticed during the period under review are given below:—

(i) In one case, for the assessment year 1966-67 on a gift of Rs. 3 lakhs made by an assessee, tax of Rs. 25,900 only was levied instead of Rs. 44,000 correctly chargeable according to the rates laid down in the Schedule. Similarly, in the same assessee's case, for the assessment year 1967-68 on a gift of Rs. 76,500 tax levied was Rs. 4,900 instead of Rs. 5,400. These mistakes resulted in under charge of tax of Rs. 18,600. The Ministry have accepted the mistake and have reported that the assessments have been rectified and additional tax of Rs. 18,600 collected.

(ii) From the assessment year 1971-72 the basic exemption on gifts was reduced from Rs. 10,000 to Rs. 5,000; further the rate of tax and slabs of value of gift to which they were applicable were also made more progressive. In one case, for assessment year 1971-72, where on a gift of Rs. 62,500 the tax was charged at the old rates alpplicable to assessment year 1970-71, there was a short levy of tax of Rs. 1,125.

The Ministry have accepted the mistake and have reported that additional demand of Rs. 1,125 has been collected.

63. *Incorrect valuation of gifts*

Cases of under-assessment of tax due to failure to co-ordinate the assessments made under one direct tax Act with assessments made under another direct tax Act, were reported through para 71(v) of Audit Report, 1970, para 73(ii) of Audit Report 1970-71 and para 40 of Audit Report, 1971-72. Some more cases have been noticed in the year under report.

(i) Three cases where the value of property as adopted for gift-tax was considerably lower than the value adopted for wealth-tax assessment, are detailed below :—

(*a*) Interest in certain properties received by a Mohammedan assessee from his father in 1953 was termed as life-estate in the settlement deed. However, since the creation of life-estate in the corpus is invalid under the Mohammedan law and the donee gets absolute title to the corpus, the assessee was himself showing the properties in his wealth-tax returns as being in his full ownership. This fact of absolute ownership was also narrated in

the deed of settlement made on 4th January, 1969 whereby the properties were further gifted by him.

In the gift-tax assessment, however, the gift was treated as of life-estate in the property and was valued at Rs. 89.241, although the value of full ownerhship of properties (Rs. 1,96,800) was included in the wealth-tax assessment of the donor. This resulted in short-levy of gift-tax of Rs. 15,553.

The Ministry have accepted the mistake and have reported that an additional demand of Rs. 15,553 has been raised.

(*b*) An assessee gifted on 7th April, 1969 (Assessment Year 1970-71). 62 shares held by her in a private limited company. The Gift-tax Officer valued the shares at Rs. 1901 per share as returned by the assessee. However, in the wealth-tax assessment for the assessment year 1969-70 (valuation date 31st March, 1969) the same shares were valued at Rs. 2,633 each. The adoption of incorrect value of shares resulted in under assessment of gift by Rs. 45,384 leading to short-levy of tax of Rs. 7,138.

In the case of the same assessee, interest of Rs. 8,600 was omitted to be charged for belated payment of tax demand of Rs. 78,345 for the assessment year 1969-70. The Ministry have accepted both the mistakes. Out of additional tax of Rs. 15,738 a sum of Rs. 14,000 is reported to have been collected.

(*c*) In another case, gift of 43 acres of land was valued at Rs. 64,500 in the gift-tax assessment for the assessment year 1972-73, whereas the value of the same property was adopted as Rs. 86,000 in the wealth-tax assessment for the year 1971-72. This under-valuation of gift by Rs. 21,500 resulted in short-levy of tax of Rs. 3,225. The Ministry have accepted the mistake.

(ii) The aggregate value of all gifts made by an assessee during a previous year is chargeable to gift-tax in the relevant assessment year. In cases where an assessee has only one source of income, the previous year is the same as adopted for the purpose of assessment under the Income-tax Act. Further, the previous year for the purpose of Income-tax Act cannot be changed except with the prior consent of the Income-tax Officer.

The only source of income of an assessee was interest receipts and the previous year for the income-tax assessments was, up to the assessment year 1969-70, the period of 12 months ending on 30th June each year. As no application for change of previous year was made by the assessee nor had the income-tax officer accorded consent to change, the previous year for the purpose of Gift-tax should also, therefore, be the period of 12 months ending on 30th June.

The assessee made two gifts—one of Rs. 45,000 on 15th December, 1969 and the other of Rs. 15,000 on 30th June, 1970. Although both the

gifts falling in one span of 12 months ending on 30th June, 1970 were assessable in the assessment year 1971-72, the assessee, filed two returns of gift-tax indicating her previous year as ending on 31st March, and accordingly, the gifts were assessed in two different assessment years *i.e.* 1970-71 in relation to the gift made on 15th December, 1969 and 1971-72 in relation to the gift made on 30th June, 1970. This resulted in short levy of tax of Rs. 1,900

The Ministry have accepted the mistake and have reported that additional tax of Rs. 1,900 has been collected.

64. *Non-levy of Gift-tax*

(i) Gift-tax is leviable on transfer of property made without consideration in money or money's worth. The term 'transfer of property' includes any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person. As held by Supreme Court in 1963 (49 ITR 107) if two transfers are interconnected or are parts of the same transaction in such a way that it can be said that the circuitous method has been adopted as a device to evade tax, they can be regarded as a single transaction.

A non-resident individual entered into a collaboration agreement with a company in India in 1963. Under the agreement he was to supply imported machinery worth Rs. 5.50 lakhs to be provided out of his funds held abroad, and in consideration for this supply the Indian company was to issue shares worth Rs. 5.50 lakhs to his nominees who are permanently resident in India. An order for the machinery was placed by the non-resident individual with the manufacturers in West Germany. However, when the machinery was in transit on high seas, he gifted it on 23rd October, 1964 to his two sons and two nephews by executing a declaration of gift at Dar-es-salam; the gift was made by delivery of the shipping documents to the constituted attorney of the donees and was accepted by the attorney on their behalf. The documents were then sent by post to the donees on 20th April, 1965. On the machinery having been supplied, the company issued shares worth of Rs. 5.50 lakhs to the donees. Though the transaction which resulted in the acquisition of shares by the nominees without any consideration, was completed in India, it was not subjected to gift-tax on the ground that as the subject matter of gift (machinery) was situated outside India at the time of gift, no tax was leviable under Section 5(1)(ii) of the Gift-tax Act, 1958. The irregular exemption resulted in non-levy of tax of Rs. 1,09,500.

The Ministry have stated that in their opinion the gift being of movable property situated outside India, and made by a non-resident person who was not a citizen of India, the exemption had been correctly allowed.

(ii) Under the Gift-tax Act, 1958, gifts made by a person to his or her spouse are exempt from tax, subject to the prescribed maximum limit (Rs. 1 lakh up to assessment year 1963-64, and Rs. 50,000 thereafter) that can be availed of in the life-time of the donor.

A lady first made a gift of Rs. 1 lakh in 1960 to her then husband, which was exempted from gift-tax. She remarried after divorcing her husband and made another gift of Rs. 50,000 in the previous year relevant to the assessment year 1971-72 to her second husband. The latter gift was also exempted from tax. The exemption of Rs. 50,000 in the assessment year 1971-72 was not in order in view of the fact that the assessee had already availed of the maximum exemption admissible in her life time. The incorrect exemption resulted in short levy of gift-tax of Rs. 8,800. The Ministry have tentatively accepted the omission.

(iii) Cases were reported through para 63(b)(ii)(4) of Audit Report, 1969-70 and para 49 of Audit Report, 1971-72 where contributions paid by companies to political parties were not subjected to gift-tax. In two similar cases contributions totalling Rs. 72,200 made in the year relevant to the assessment year 1969-70 were found not to have been subjected to tax.

In another case two contributions of Rs. 20,000 each made by a company in the years 1962-63 and 1967-68 and in yet another case a contribution of Rs. 12,750 made in 1963-64 were not subjected to tax.

The Ministry have accepted the omission in all the four cases and have intimated that in the first two cases tax of Rs. 4,328 has since been collected. In the remaining two cases no action is possible for assessment years 1962-63 and 1963-64 because of the operation of time bar; but action for 1967-68 has been initiated.

65. *Gifts escaping assessment*

(i) An assessee whose dower was fixed at Rs. 11,111 at the time of his marriage in 1936 enhanced it to Rs. 2 lakhs by an agreement dated 31st December, 1959, which provided, *inter alia*, that the said dower shall become due on dissolution of the marriage by death of either of the parties, or otherwise by law, though the husband could, at his option, pay and discharge it earlier. In partial satisfaction of the dower, the assessee transferred to his wife fifteen acres of land in November, 1960 and October, 1961 indicating its value as Rs. 75,000. A portion of this land measuring about 1.5 acres (approximately one-tenth of the total gift) was sold by the assessee's wife at rupees four per square yard during the previous years relevant to assessment

years 1961-62 and 1962-63 *i.e.* in the same years in which the lands were transferred to her by her husband. At this rate, the value of lands transferred by the husband in November, 1960 and October, 1961 works out to Rs. 2,90,400 as against the value of Rs. 75,000 mentioned in the transfer deeds.

In the Wealth-tax assessment of this very assessee, the High Court of Andhra Pradesh, taking the view that this being a deferred dower was only a contingent debt to be discharged in the event of death or dissolution of marriage, held that transfer of lands to wife was otherwise than for adequate consideration. In view of this legal position, the transfer of lands claimed to be in partial discharge of the dower debt was actually made without consideration in money or money's worth and amounted to gift. The omission to treat this transaction as gift resulted in non-levy of tax of Rs. 9,424. The Ministry have stated that the omission to levy gift-tax is under examination.

(ii) From the Wealth-tax records of an assessee it was noticed that on 9th January, 1965 he made a settlement of certain house properties of the value of Rs. 76,250 in favour of his wife. During the same financial year he purchased one house for Rs. 16,000 in the name of his wife and another for Rs. 12,500 in the name of his minor sons. Though these transactions attracted gift-tax, no proceedings in this respect were initiated and this omission resulted in non-levy of tax of Rs. 5,113. The Ministry have accepted the mistake and have reported that additional demand of Rs. 5,113 has been raised. Report regarding recovery is awaited.

(iii) Gifts made to any Institution or Fund established for a charitable purpose, are exempt only if the Institution or Fund satisfies the conditions laid down in Section 80G of Income-tax Act; one of these conditions is that the income of the Fund is exempt from income-tax.

During the accounting year relevant to the assessment year 1970-71 an assessee made a gift of Rs. 1,21,000 for creating a trust. No gift-tax was levied on this gift, although the income of the trust was not exempt from income-tax. The omission to levy gift-tax resulted in non-levy of tax of Rs. 10,750.

The Ministry have stated that the matter is under consideration.

(iv) When any transaction is entered into by any person with intent thereby to diminish, directly or indirectly the value of his own property and to increase the value of the property of another person, it amounts to transfer of property within the meaning of Section 2 (xxiv)(d) of the Gift-tax Act, 1958; such a transfer if made without consideration in money or money's worth is a gift attracting the levy of gift-tax. Accordingly, when a new

member who does not bring in any capital is admitted to a partnership and is allocated a share by realigning the profit sharing ratio between the existing partners, the value of the share so allocated to the new partner should be deemed to have been gifted to him by the existing partners whose shares are thereby reduced.

A registered firm, which had two partners, each with 50 per cent share, was reconstituted on 9th April, 1966 by admitting to the partnership two persons who did not bring in any capital. Both were allocated a share of 22 per cent each correspondingly reducing the shares of the two existing partners to 28 percent each. No proceedings were initiated for charging gift-tax on the gifts made by the existing partners. Computed at 22 per cent of three times the average profit earned by the firm in the five preceding years' the value of gift made by each partner worked out to Rs. 22,860 and the omission to bring the gifts to tax resulted in non-levy of tax of Rs. 1,286.

The Ministry have accepted the mistake in principle only.

(v) Gift of policies of Insurance to any person, other than wife, who is dependent on the donor, is exempt up to a maximum of Rs. 10,000 in value. In one case, a policy of Rs. 1 lakh taken by a person for marriage of his daughter was assigned to her on its maturity on 2nd February, 1968. Though the gift of Rs. 90,000 was taxable, neither the assessee had submitted the gift-tax return, nor were any proceedings taken by the department, despite the fact that this information was available in the wealth-tax records of the donee. This resulted in non-levy of gift-tax amounting to Rs. 6,750. The Ministry have accepted the mistake. Report regarding rectification and recovery of tax is awaited.

66. *Over-assessment*

The gift-tax assessments of three individuals for the gifts made during the previous year relevant to the assessment year 1971-72 were completed in October, 1971 and the resultant demand of Rs. 5,500 paid by them in November, 1971. Overlooking the payments made by the assessees in all the three cases, the gift-tax demands were again collected in December, 1971 by adjustment of the refund amounts due to them in their Income-tax assessments.

The Ministry have accepted the mistakes and have reported that the refunds have since been granted.

ESTATE DUTY

67. Estate Duty is levied on all property passing on death; certain properties though not actually passing are deemed to pass on death, such as interests

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

68. During the test-audit of assessments made under the Estate Duty Act, 1953 conducted during the period 1st September, 1972 to 31st August, 1973 the following types of under-assessment of duty and over-assessment of duty were noticed.

1. Incorrect valuation of estate.
2. Irregular reliefs and exemptions.
3. Estate escaping assessment.

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

69. *Incorrect valuation of estate*

(i) If the deceased was a partner in a firm the value of his interest including his share in the goodwill of the firm is property passing on death. In one case where the death occured on 25th March, 1969, the goodwill of the firm was valued at twice the average profits for the three preceding years. As the average worked out to Rs. 59,762 the value of 36 per cent share of the deceased in twice this average comes to Rs. 43,000 against which the amount actually included in the estate was Rs. 28,000 only. This resulted in under-assessment of estate by Rs. 15,000 involving short-levy of duty of Rs. 1,500.

The Ministry have accepted the mistake and have intimated that additional demand of Rs. 1,500 has been raised.

(ii) Section 36 of the Estate Duty Act, 1953, stipulates that the principal value of any property chargeable to duty should be that which it would fetch if sold in the open market at the time of the death of the deceased. As clarified by the Central Board of Direct Taxes, in the case of unquoted shares the market value is the break up value of the shares. The estate left by a deceased consisted, *inter alia*, of 4,212 unquoted equity shares of a company.

For inclusion in the principal value of the estate, the shares were taken at their face value of Rs. 50 each, whereas the break up value of the shares was Rs. 110 per share on the basis of the balance sheet of the company as on 31st December, 1957. The department itself had valued the shares of this company at 2.2 times the face value (*i.e.* Rs. 110 per share) in the case of the wealth-tax assessment of another assessee. The shares were thus under-valued by Rs. 2,52,720 resulting in short levy of duty of Rs. 75,716.

The Ministry have intimated that the matter is under examination.

70 *Irregular reliefs and exemptions*

(i) Under the Estate Duty Act, 1953, drawings, paintings, works of art etc. which are retained in the family of the deceased and are dealt with or disposed of in accordance with the conditions prescribed by the Board, are exempt from estate duty. The estate duty Rules provide that necessary undertaking to observe the conditions be obtained from such persons as the Central Board of Direct Taxes may think appropriate in the circumstances of the case.

In the estate duty assessment of an unmarried person who died on 17th February, 1970, exemption from duty was allowed on drawings, paintings, etc. valued at Rs. 4,04,950 although all his property was bequeathed to a married woman who is not a member of the family of the deceased. As the works of art were thus not retained in the family of the deceased, the exemption granted in this case was not admissible. The irregular exemption resulted in short-levy of estate duty of Rs. 1,40,573.

(ii) Under the Estate Duty Act, 1953, a house or part thereof exclusively used by the deceased for his residence is exempt from duty up to Rs. 1 lakh of its value if it is situated in a place with a population exceeding ten thousand, but if it is situated in any other place it is fully exempt from estate duty. This exemption is, however, admissible only in respect of a house property belonging to the deceased and passing on his death and not in respect of any interest or right in a property.

In one case, the deceased had paid Rs. 1,63,630 to a firm of builders for the purchase of two flats which he occupied in 1967. According to the agreement between the firm and the deceased, the flats were to be transferred by the firm to a co-operative society on its formation. As the society was registered in April, 1970 the flats till that time continued to be the property of the firm. Thus on the date of death (June, 1969) the property

belonged neither to the deceased nor to the society. What was, therefore to be included in the estate was not the house property but the value of the right to purchase the flats. The Asstt. Controller of Estate Duty included the value of the flats in the assessment and at the same time allowed exemption of Rs. 1 lakh treating the property as having been used as residence of the deceased. This resulted in short-levay of duty of Rs. 50,000 The Ministry have not accepted the objection stating that if ihe deceased had intereat in the flat which was includible in the estable then the exemption could not be denied.

71. *Estate escaping assessment*

(i) Under Estate Duty Act, 1953, property in which the deceased or any other person had an interest ceasing on death, is deemed to pass on death to the extent to which a benefit accrues or arises by the cessation of such interest.

A person, who died in May, 1969 had life interest in the income from the estate of her predeceased husband and this interest was valued at Rs. 6,11,845 for wealth-tax purposes. The interst, however, was omitted to be included in the principal value of the estate, which resulted in short-levy of duty of Rs. 1,85,888. The Ministry have stated that the matter is under examination.

(ii) In the Estate Duty assessment of a deceased person (who died on 8-4-1964) the value of his proprietary business for which the deceased had entered into an agreement of sale in his life-time was taken as Rs. 4,26,192 on the basis of the assets and liabilities of the business. According to the Arbitrator's Award dated 4th November, 1966 on the agreement for sale, the value of the business was Rs. 4,96,710. Though the estate duty assessment was rectified thrice after the award was given, to give effect to appellate orders, the revised value of the business as per Arbitrator's Award was not considered despite the fact that the accountable person had given an undertaking that if the amount realised on the sale-agreement was more than the amount shown in the return, he would pay estate duty on the difference. This resulted in estate of Rs. 70,518 escaping assessment (Rs. 4,96,710—Rs. 4,26,192) and consequent short-levy of duty of Rs. 28,207.

The Ministry have intimated that the matter is under consideration.

(iii) A person who died on 15th February, 1967 had one eighth share in a firm. The firm owned immovable property which was acquired by Government in 1964 and compensation of Rs. 13,51,081 was paid to the

firm on 16th November, 1966. The share of the deceased in the compensation amount was not included in the net principal value of the estate. This mistake together with a totalling error of Rs. 1,200 resulted in under-assessment of principal value of estate by Rs. 1,70,085 with a short-levy of duty of Rs. 50,725.

The Ministry have stated that the question of including the share in the compensation is under examination as the accountable persons have pleaded that the money had been received and spent by the deceased in his life-time.

(iv) The principal value of the estate of a deceased person who died on 17th February, 1966, was declared as Rs. 7,50,943 by the accountable person. The deceased had also taken Insurance Policies for Rs. 84,139, which were assigned under the Married Women's Property Act. These policies were to be assessed as a separate estate passing on death. Provisional assessment was duly made on these two estates , but in the regular assessment, though the value of the estate was computed as Rs. 8,41,665 and Rs. 84,139 respectively, the estate of Rs. 84.139 was omitted to be charged to duty. This resulted in under-charge of duty by Rs. 1,366.

The Ministry have accepted the omission and have reported that additional demand has been collected.

72. *Other topics of interest*

Section 37 of the Estate Duty Act, 1953, lays down that the value of shares in a private company where alienation is restricted, is to be ascertained "by reference to the value of the total assets of the company". It is only when the value cannot be so ascertained that the said section prescribes the value being estimated to be what the shares would fetch if sold in the open market. "The value by reference to the total assets of the company" has been explained by the Central Board of Direct Taxes to mean the break up value *i.e.* the surplus of the assets over the liabilities divided by the paid up capital. It was also clarified by the Board in 1965 that it is the market value of the assets of the company and not the book value thereof that would be taken into account in determining the value of the shares by the break up value method.

In 1967, the Board framed a new rule under the Wealth-tax Act for the valuation of unquoted equity shares. This rule contemplated the determination of the break up value of the shares on the basis of the book value, and not the market value of the assets of the company. The rule apparently,

derived authority from the wealth-tax Act which provides for making a rule for the determination of "the net value of the assets of the busines as a whole having regard to the balance sheet of such business....." Despite the clear difference in the relevant ,phraseology of the two Acts as quoted above, the Board, in March, 1968, extended by executive instructions, tne application of the said Rule framed under the Wealth-tax Act to the valuation of such shares for pruposes of Estate Duty under the Estate Duty Act.

It was pointed out in audit in April, 1972 that the relevant language of the Estate Duty Act being altogether different from that of the Wealth-tax Act, the extension of the Rule framed under the Wealth-tax Act, by executive instructions, tc the Estate Duty Act would not appear to be legal. The value on the basis of the book value of the assets, instead of the market value thereof, can lead to anomalous results leading some times to under-valuation and hence loss of revenue.

It was also pointed out that in a case where two private companies hold shares of each other the valuation of such shares by the break up value method would create a problem, as the break up value of the appropriate shares of one company would depend upon the break up value of the other which would drive the Controller of Estate Duty to find out break up value of the first company which again is not possible as that value in turn depends on the value of the shares of the second company. It was suggested that in view of these difficulties the Board should evolve an equitable formula under the Estate Duty Act.

No formula has so far been devised. The Ministry have stated that the matter is being examined.

73. *Over-assessment*

Under the Estate Duty Act, 1953, any amount paid towards provisional assessment is deemed to have been paid towards the regular assessment and credit is to be given at the time of raising final demand.

In one case, where the entire provisional demand of Rs. 1,57,782 had been paid by the accountable person, the credit given in regular assessment was only for Rs. 1,38,256 .

The Ministry have accepted the mistake and have intimated that further credit for Rs. 19,526 has been given.

(V. GAURI SHANKAR)
Director of Receipt Audit

NEW DELHI :
the 17 April, 1974

Countersigned

(A. BAKSI)
Comptroller and Auditor General of India

NEW DELHI :
the 17 April, 1974

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