REPORT OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR

1981-82

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME-II

DIRECT TAXES

ERRATA

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5	1.04	1 from bottom	72.32	2.32
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REPORT OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

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VOLUME II

DIRECT TAXES

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 this separate volume. The Report is arranged in the following order :—

(*i*) Chapter I sets out statistical and other information relating to Direct Taxes.

(*ii*) Chapter 2 mentions the results of audit of Corporation Tax.

(*iii*) Chapter 3 deals, similarly, with the points that arose in the audit of Income-tax receipts.

(*iv*) Chapter 4 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

1.01 *Receipts under various Direct Taxes*

The total proceeds from Direct Taxes for the year 1981-82 amounted to Rs. 3,785.62* crores out of which a sum of Rs. 1,034.20 crores was assigned to the States. The figures for the three years 1979-80, 1980-81 and 1981-82 are given below :—

(In crores of rupees)

		1979-80	1980-81	1981-82
020	Corporation Tax . . .	1391.90	1377.45	1969.96
021	Taxes on Income other than Corporation Tax . . .	1340.31	1439.93	1475.50
023	Hotel Receipt Tax . .	..	(—)0.09†	2.32
028	Other Taxes on Income and Expenditure . . .	0.01	89.59	£ 231.67
031	Estate Duty	14.05	16.31	20.31
032	Taxes on Wealth . . .	64.47	67.43	78.12
033	Gift Tax	6.83	6.51	7.74
	GROSS TOTAL . .	2817.57	2997.13	3785.62
Less share of net proceeds assigned to the States :				
	Income-tax	864.88	1001.97	1016.88
	Estate Duty	10.94	12.38	16.50
	Hotel Receipts Tax . .	..	..	0.82
	TOTAL . . .	875.82	1014.35	1034.20
	NET RECEIPTS . . .	1941.75	1982.78	2751.42

*Figures furnished by the Controller General of Accounts are provisional.

†Rs. 30.69 lakhs received under this Major Head "023—Hotel Receipt Tax" was to be shared with states. Provisional allocation for sharing was made for Rs. 40.01 lakhs of estimated receipts which gave rise to a negative figure of Rs. 0.09 crore.

£Includes Rs. 231.63 crores on account of receipts under Interest-tax. This tax was discontinued with effect from 28 February 1978 but re-imposed with effect from 30 June 1980.

The gross receipts under Direct Taxes during 1981-82 went up by Rs. 788.49 crores when compared with the receipts during 1980-81 as against an increase of Rs. 179.56 crores in 1980-81 over those for 1979-80. Receipts under Corporation Tax registered an increase of Rs. 592.51 crores while receipts under "Taxes on income other than Corporation Tax" accounted for an increase of Rs. 35.57 crores.

1.02 *Variations between budget estimates and actuals*

(*i*) The actuals for the year 1981-82 under the Major heads '020—Corporation Tax', '031—Estate Duty', '032—Taxes on Wealth' and '033—Gift Tax' exceeded the budget estimates.

The figures for the years from 1977-78 to 1981-82 under the various heads are given below :—

Year	Budget estimates	Actuals	Variation	Percentage of variation
1	2	3	4	5
	(In crores of rupees)			
020—Corporation Tax				
1977-78	1298.20	1220.77	(—)77.43	(—)5.96
1978-79	1441.90	1251.47	(—)190.43	(—)13.20
1979-80	1529.50	1391.90	(—)137.60	(—)8.99
1980-81	1515.00	1377.45	(—)137.55	(—)9.08
1981-82	1690.00	1969.96	279.96	16.56
021—Taxes on Income etc.				
1977-78	1038.20	1002.02	(—)36.18	(—)3.48
1978-79	1134.80	1177.39	42.59	3.75
1979-80	1247.10	1340.31	93.21	7.47
1980-81	1426.00	1439.93	13.93	0.98
1981-82	1559.00	1475.50	(—)83.50	(—)5.36
031—Estate Duty				
1977-78	10.75	12.30	1.55	14.42
1978-79	11.00	13.08	2.08	18.91
1979-80	12.00	14.05	2.05	17.08
1980-81	13.00	16.31	3.31	25.46
1981-82	15.00	20.31	5.31	35.04

032—Taxes on Wealth				
1977-78 . .	54.90	48.46	(—)6.44	(—)11.73
1978-79 . .	55.00	55.41	0.41	0.75
1979-80 . .	60.00	64.47	4.47	7.45
1980-81 . .	65.00	67.43	2.43	3.74
1981-82 . .	66.00	78.12	12.12	18.36
033—Gift Tax				
1977-78 . .	5.50	5.55	0.05	0.91
1978-79 . .	5.75	5.85	0.10	0.18
1979-80 . .	5.75	6.83	1.08	18.78
1980-81 . .	6.25	6.51	0.26	4.16
1981-82 . .	6.25	7.74	1.49	23.84

(*ii*) The details of variations under the heads subordinate to the Major Heads 020 and 021 for the year 1981-82 are given below :—

	Budget	Actuals	Increase (+)/ short fall (—)	Percentage of variation
1	2	3	4	5
	(In crores of rupees)			
020—Corporation Tax				
(*i*) Income-tax on companies .	1648.00	1849.00	201.00	12.20
(*ii*) Surtax	38.00	48.73	10.73	28.24
(*iii*) Surcharge . . .	..	67.26	67.26	..
(*iv*) Receipts awaiting transfer to other minor heads .	..	0.01	0.01	..
(*v*) Other receipts . . .	4.00	4.96	0.96	24.00
TOTAL	1690.00	1969.96	279.96	16.56
021—Taxes on income other than Corporation Tax				
(*i*) Income-tax . . .	1405.00	1353.12	(—)51.88	(—)3.69
(*ii*) Surcharge . . .	141.00	107.95	(—)33.05	(—)23.44
(*iii*) Receipts awaiting transfer to other minor heads .	..	0.53	0.53	..
(*iv*) Other receipts . . .	13.00	13.90	0.90	6.92
(*v*) Deduct share of proceeds assigned to States . .	1114.72	1016.88	(—)97.84	(—)8.79
TOTAL	444.28	458.62	14.34	3.23

1.03 *Analysis of collections*

Under the provisions of the Income-tax Act, 1961, income-tax is chargeable for any assessment year in respect of the total income of the previous year at the rates prescribed in the annual Finance Act. The Act, however, provides for pre-assessment collection by way of deduction of tax at source, advance tax and payment of tax on self-assessment. The post-assessment collection is of residuary taxes not so paid.

(*i*) The break-up of total collections of Corporation Tax and Taxes on income other than Corporation Tax, during 1981-82 as furnished by the Ministry of Finance, is as under :—

Pre-assessment and post-assessment collection of tax* during 1981-82 :—

(In crores of rupees)

(*i*) Deduction at source	£845.18
(*ii*) Advance tax	2288.38
(*iii*) Self-assessment	333.05
(*iv*) Regular assessment	326.90

Besides, the Ministry of Finance have intimated tax collection of Rs. 80.39 crores representing Surtax, Other Receipts and Receipts awaiting transfer to other Minor Heads, and Refunds of Rs. 428.44 crores.

(*ii*) The details of deduction at source under broad categories are as under :—

(In crores of rupees)

1. Salaries	233.58
2. Interest on securities	148.42
3. Dividends	88.41
4. Lottery or cross-word puzzles	4.14
5. Horse races	2.00
6. Payment to contractors & sub-contractors	124.70
7. Insurance Commission	4.84
8. Other items	239.09

*Figures furnished by the Ministry of Finance are provisional.

£Includes surcharge.

(*iii*) Advance Tax—Demand raised and collected by way of advance tax during 1981-82 :

(Amount in crores of rupees)

(*i*) Tax payable by way of advance tax during 1981-82 as per statements received, self estimates or revised estimates filed and notices issued	2338
(*ii*) Demand collected out of (i)	2046
(*iii*) Arrears out of (i) on 31 March 1982	292

1.04 *Interest*

The Act provides for payment of interest by the assessees for certain defaults such as delayed submission of returns, delayed payment of taxes etc. In some cases such as those where advance tax has been paid in excess or where a refund due to the assessee is delayed, Government have also to pay interest.

The particulars of interest levied and interest paid by Government under different provisions of the Act are given below :—

(In crores of rupees)

(*a*) The total amount of interest levied under various provisions of the Income-tax Act during the year 1981-82	191.30
(*b*) Of the amount of interest levied, the amount :	
(1) Completely waived by the department . . .	11.55
(2) Reduced by the department	93.97
(3) Collected by the department	17.91*
(*c*) The total amount of interest paid :	
(1) On advance tax paid in excess of assessed tax .	12.53
(2) On delayed refunds	0.23
(3) Where no claim is needed for refund . . .	72.32

*Figure furnished by the Ministry of Finance is provisional.

1.05 *Cost of collection*

(*i*) The expenditure incurred during the year 1981-82 in collecting Corporation Tax and Taxes on Income other than Corporation Tax, together with the corresponding figures for the preceding three years is as under :—

(In crores of rupees)

	Gross collections	Expenditure on collections
020—Corporation Tax		
1978-79	1251.47	5.68
1979-80	1391.90	5.93
1980-81	1377.45	6.78
1981-82*	1969.96	7.64
021—Taxes on income etc.		
1978-79	1177.39	47.59
1979-80	1340.31	41.48
1980-81	1439.93	47.50
1981-82*	1475.50	53.48

(*ii*) The expenditure incurred during the year 1981-82 in collecting other direct taxes *i.e.* Taxes on Wealth, Gift-tax and Estate Duty and the corresponding figures for the preceding two years are as under :—

(In crores of rupees)

	Gross collections	Expenditure on collections
031—Estate Duty		
1979-80	14.05	1.05
1980-81	16.31	1.21
1981-82*	20.31	1.36
032—Taxes on Wealth		
1979-80	64.47	3.69
1980-81	67.43	4.22
1981-82*	78.12	4.75
033—Gift Tax		
1979-80	6.83	0.53
1980-81	6.51	0.60
1981-82*	7.74	0.68

*Figures furnished by the Controller General of Accounts are provisional.

1.06 *Number of assessees*

(i) *Income Tax*

Under the provisions of the Income-tax Act, 1961, tax is chargeable on the total income of the previous year of every person. The term 'person' includes an individual, a Hindu undivided family, a company, a firm, an association of persons or a body of individuals, a local authority and an artificial juridical person.

For the assessment year 1981-82, no income-tax was payable on a total income not exceeding Rs. 12,000 except in the case of registered firms, co-operative societies, local authorities and companies.

(*a*) The total number of assessees in the books of the department was 46,60,865 as on 31 March 1982 as against 45,94,425 as on 31 March 1981. The break-up of the assessees on the said two dates was as under :—

	As on 31 March 1981	As on 31 March 1982
Individuals	34,89,377	35,21,156
Hindu undivided families	2,34,483	2,32,521
Firms	7,53,718	7,86,321
Companies	44,125	46,335
Others	72,722	74,532
TOTAL	45,94,425	46,60,865*

(*b*) The numbers* of trust assessees in the books of the department as on 31 March 1981 and 31 March 1982 were as follows :—

	As on 31 March 1981	As on 31 March 1982
(*i*) Public Charitable trusts	29,737	30,467
(*ii*) Discretionary trusts	2,486	2,786
(*iii*) Specific trusts (where beneficiaries' shares are determinate and known)	8,464	10,502
TOTAL	40,687	43,755

*Figures furnished by the Ministry of Finance are provisional.

(c) The following table indicates the break-up of the assessees according to slabs of income :—

	Individuals	Hindu undivided families	Firms	Companies	Others	Total
(a) Below taxable limit	9,22,190	51,352	1,10,003	23,023	37,793	11,44,361
(b) Above taxable limit but upto Rs. 25,000	17,51,912	1,17,591	3,01,916	10,575	23,032	22,05,026
(c) Rs. 25,001 to Rs. 50,000 . . .	6,77,820	47,610	2,17,781	3,713	9,749	9,56,673
(d) Rs. 50,001 to Rs. 1,00,000 . .	1,51,886	14,254	1,18,617	2,780	2,882	2,90,419
(e) Rs. 1,00,001 to Rs. 5,00,000 . .	16,448	1,671	36,353	3,427	960	58,859
(f) Above Rs. 5,00,000	900	43	1,651	2,817	116	5,527
TOTAL .	35,21,156	2,32,521	7,86,321	46,335£	74,532	46,60,865*

*Figures furnished by the Ministry of Finance are provisional.

£Includes private discretionary trusts and public charitable trusts.

(*ii*) *Wealth Tax*

Under the provisions of the Wealth-tax Act, 1957, wealth-tax is levied for every assessment year on the net wealth of every individual and Hindu undivided family according to the rates specified in the schedule to the Act. No wealth-tax is levied on companies with effect from 1 April 1960.

For the assessment year 1981-82 no wealth-tax was payable where the net wealth is less than Rs. 1.50 lakhs.

The numbers of wealth-tax assessees in the books of the department as on 31 March 1981 and 31 March 1982 were as follows :—

	As on 31 March 1981	As on 31 March 1982
Individuals	3,38,763	3,57,652
Hindu undivided families	51,420	53,649
Others	143	86
TOTAL	3,90,326	4,11,387

(*iii*) *Gift Tax*

Under the provisions of the Gift-tax Act, 1958, gift-tax is levied according to the rates specified in the schedule for every assessment year in respect of gifts of movable or immovable properties made by a person to another person (including Hindu undivided family or a company or an association of persons or body of individuals whether incorporated or not) during the previous year.

During the assessment year 1981-82 no gift-tax was payable where the value of taxable gifts did not exceed Rs. 5,000.

The numbers of gift-tax assessment cases for the years 1980-81 and 1981-82 were as follows :—

1980–81	59,123
1981–82	70,049*

(*iv*) *Estate Duty*

Under the provisions of the Estate Duty Act, 1953, in the case of every person dying after 15 October 1953, estate duty at rates fixed in accordance with Section 35 of the Act is levied upon the principal value of the estate comprised of all property settled or not settled including agricultural land which passes on the death of such person.

During the assessment year 1981-82, no estate duty was chargeable where the principal value of the estate passing on death, did not exceed Rs. 50,000

The numbers of estate duty assessment cases for the years 1980-81 and 1981-82 were as follows :—

1980 81	33,889
1981–82	36,295*

1.07 *Public Sector Undertakings*

	Central Govt. undertakings	State Govt. undertakings
(1) No. of Public Sector undertakings (including nationalised banks) out of the companies assessees, assessed to tax during the financial year 1981-82	189	472
(2) Tax paid by these undertakings during the financial year 1981-82	(In crores of rupees)	
(*i*) Advance tax	721.09	27.51
(*ii*) Self assessment tax . . .	96.80	3.42
(*iii*) Regular tax paid in 1981-82 out of arrear and current demands . .	50.65	5.63
(*iv*) Surtax	15.08	1.03
(*v*) Interest tax	268.65	0.73
TOTAL	1152.27	38.32

* Figures furnished by the Ministry of Finance are provisional,

1.08 *Foreign company assessees*

(*i*) Cases where returns had been filed for the assessment year 1981-82 and assessments completed, as on 31 March 1982 :—

	Number	Amount In crores of rupees)
(*i*) No of foreign companies . . .	209	
(*ii*) Income returned		25
(*iii*) Income assessed		28
(*iv*) Gross demand		9
(*v*) Demand outstanding out of (iv) as on 31 March 1982		—
(*vi*) Tax paid upto 31 March 1982(iv—v) .		9

(*ii*) Cases where returns had been filed for the assessment year 1981-82 but assessments were pending as on 31 March 1982.

	Number	Amount (In crores of rupees)
(*i*) No. of foreign companies . . .	426	
(*ii*. Income returned		12 (—)6
(*iii*) Gross demand, being tax due on income returned		45
(*iv*) Demand outstanding out of (iii) as on 31 March 1982		1
(*v*) Tax paid upto 31 March 1982 (iii—iv) .		44

(*iii*) Cases where no returns had been filed for the assessment year 1981-82, as on 31 March 1982 :—

Number of foreign companies	401

1.09 *Arrears of assessments*

The limitation period for completion of assessments is 2 years in the case of Income-tax, 4 years in the case of Wealth-tax and Gift-tax and 5 years in the case of Estate Duty.

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

(*a*) The numbers of assessments completed out of arrear assessments and out of current assessments during the past five years are given below :—

Financial year	Number of assessments for disposal	Number of assessments completed				Number of assessments pending at the end of the year
		Out of current	Out of arrears	Total	Percentage	
1977–78	55,81,355	25,72,678	14,71,135	40,43,813	72.5	15,37,542
1978–79	52,35,891	21,07,544	12,02,783	33,10,327	63.2	19,25,564
1979-80	57,89,055	18,97,276	15,92,514	34,89,790	60.0	22,99,265
1980-81	65,91,180	18,12,511	22,22,702	40,35,213	61.2	25,55,967
1981-82	72,08,405	20,05,194	25,42,522	45,47,716	63.0	26,60,689

(b) Category-wise break-up of the total number of assessments completed during the years 1980-81 and 1981-82 was as under :—

	1980-81	1981-82
Scrutiny assessments	9,53,757	10,89,620
Summary assessments	30,81,456	34,58,096
TOTAL	40,35,213	45,47,716

(c) Status-wise break-up of income-tax assessments completed during the years 1980-81 and 1981-82 was as under :—

	1980-81	1981-82
(*i*) Individuals	30,58,611	35,04,796
(*ii*) Hindu undivided families	2,06,836	2,11,264
(*iii*) Firms	6,70,533	7,29,501
(*iv*) Companies	44,937	47,238
(*v*) Association of persons etc.	54,296	54,917
TOTAL	40,35,213	45,47,716

(d) Assessment year-wise position of pendency of income-tax assessments at the end of the last two years was as under :—

	As on 31 March 1981	As on 31 March 1982
1977-78 and earlier years	43,668	26,481
1978-79	94,465	30,278
1979-80	6,20,980	1,68,843
1980-81	17,96,854	7,46,916
1981-82	..	16,88,171
TOTAL	25,55,967	26,60,689

(e) Category-wise break-up of pending income-tax assessments as on 31 March 1981 and 31 March 1982 was as under :—

	As on 31 March 1981	As on 31 March 1982
Scrutiny assessments	8,80,128	9,88,100
Summary assessments	16,75,839	16,72,589
TOTAL	25,55,967	26,60,689

(f) Status-wise and year-wise break-up of pendency of income tax assessments in respect of various assessment years as on 31 March 1982 was as under :—

Status	1977-78 and earlier years	1978-79	1979-80	1980-81	1981-82	Total
(*a*) Company assessments	3,074	1,315	4,010	19,145	28,317	55,861
(*b*) Non-company assessments	23,407	28,963	1,64,833	7,27,771	16,59,854	26,04,828
TOTAL	26,481	30,278	1,68,843	7,46,916	16,88,171	26,60,689

The number of assessment cases to be finalised as on 31 March 1982 has increased as compared to that at the close of the previous year. The number of assessments pending as on 31 March 1982 was 26.61 lakhs as compared to 25.56 lakhs as on 31 March 1981 and 22.99 lakhs as on 31 March 1980. Of the 26.61 lakhs of pending cases as many as 16.73 lakhs cases related to summary assessments.

(ii) Wealth-tax, Gift-tax and Estate duty

(a) The total numbers of wealth-tax assessments completed during the years 1980-81 and 1981-82 were as under :—

	1980-81	1981-82
Individuals	2,58,461	3,37,255
Hindu undivided families	39,143	50,917
Others	72	9,039
TOTAL	*2,97,676	3,97,211

(b) The numbers of gift-tax assessments completed during the years 1980-81 and 1981-82 were as follows :—

	1980-81	1981-82
Individuals	58,904	67,095
Hind undivided families	1,550	1,660
Others	108	209
TOTAL	60,562	68,964

(c) The number of estate duty assessments completed during the years 1980-81 and 1981-82 were as under :—

1980-81	32,428
1981-82	35,257

*Figures furnished by the Ministry of Finance are provisional,

The break-up of the estate duty assessments completed during the year 1981-82 according to certain slabs of principal value of estate is given below:—

Principal value of property	Number of assessments completed
(1) Exceeding Rs. 20 lakhs	21
(2) Between Rs. 10 lakhs and Rs. 20 lakhs	82
(3) Between Rs. 5 lakhs and Rs. 10 lakhs.	548
(4) Between Rs. 1 lakh and Rs. 5 lakhs	6,897
(5) Between Rs. 50,000 and Rs. 1 lakh	6,918
(6) Below Rs. 50,000	20,791
TOTAL	35,257

(d) Assessment year-wise details of wealth-tax, gift-tax and estate duty assessments pending as on 31 March 1982 are given below :—

	Number of assessments pending		
	Wealth-tax	Gift-tax	Estate duty
1977-78 and earlier years	13,712	3,079	7,886
1978-79	73,713	5,462	3,810
1979-80	96,086	8,939	5,857
1980-81	1,28,513	15,493	6,778
1981-82	2,55,357	20,127	12,250
TOTAL	5,67,381	53,100	36,581

1.10 *Arrears of tax demands*

The Income-tax Act, 1961 provides that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, a notice of demand shall be served upon the assessee. The amount specified as payable in the notice of demand has to be paid within 35 days unless the time for payment is extended by the Income-tax Officer on application made by the assessee. The Act has been amended with effect from 1 October 1975 to provide that an appeal against an assessment order would be barred unless the admitted portion of the tax has been paid before filing the appeal.

(*i*) *Corporation Tax and Income-tax*

(a) The total demand of tax raised and remaining uncollected as on 31 March 1982 was Rs. 1239.33 crores including Rs. 262.49 crores in respect of which the permissible period of 35 days had not expired as on 31 March and Rs. 8.70 crores claimed to have been paid but remaining to be verified/adjusted, Rs. 211.41 crores stayed/kept in abeyance and Rs. 15.64 crores for which instalments had been granted by the department and the Courts.

(b) Demands of Income-tax (including Corporation Tax) stayed as on 31 March 1982 on account of appeals and revision petitions were as under :—

	(In crores of rupees)
(1) By Courts	16.03
(2) Under Section 245F(2) (applications to Settlement Commission)	18.43
(3) By Tribunal	8.54
(4) By income-tax authorities due to :—	
(*i*) Appeals and revisions	119.90
(*ii*) Double income-tax claims	3.55
(*iii*) Restriction on remittances—Section 220(7)	2.95
(*iv*) Other reasons	42.01
TOTAL	211.41*

*Figures furnished by the Ministry of Finance are Provisional. Figures for two Commissioners charges are awaited.

(c) The amounts of Corporation Tax, Income-tax, interest and penalty making up the gross arrears and the year-wise details thereof are given below :—

(In crores of rupees)

	Corporation tax	Income-tax	Interest	Penalty	Total
Arrears of 1971-72 and earlier years .	16.39	44.02	12.75	12.76	85.92
1972-73 to 1978-79 .	30.28	134.70	62.74	39.46	267.18
1979-80 . .	25.09	53.81	28.52	13.93	121.35
1980-81 . .	50.51	86.91	55.26	18.94	211.62
1981-82 . .	189.47	194.51	114.16	18.87	517.01
TOTAL . .	311.74	513.95	273.43	103.96	1203.08*

(d) The following table gives the break up of the gross arrears of Rs. 1239.33 crores by certain slabs of income.

	Number of assessees (entries)	Total arrears of tax (in crores of rupees)
Upto Rs. 1 lakh in each case	27,30,788	601.51
Over Rs. 1 lakh upto Rs. 5 lakhs in each case . .	7,173	122.88
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case .	1,062	71.71
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case .	552	86.44
Over Rs. 25 lakhs in each case	399	356.79
TOTAL	27,39,974	1239.33

*Figures furnished by the Ministry of Finance are provisional. The discripancy in the figures in under verification by the Ministry of Finance.

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

The following table gives the year-wise arrears of demands outstanding and the number of cases relating thereto under the three other direct taxes *i.e.* wealth-tax, gift-tax and estate duty as on 31 March 1982 :—

(In crores of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
1977-78 and earlier years .	66,706	24.42	14,748	3.46	8,053	6.43
1978-79	38,001	37.63	8,200	4.33	2,560	2.09
1979-80	47,864	31.11	7,682	2.13	2,684	3.78
1980-81	61,243	66.68	9,551	16.09	3,684	5.08
1981-82	90,543	49.08	18,443	5.15	8,717	13.35
TOTAL	3,04,357	208.92	58,624	31.16	25,698	30.73

1.11 *Working of Tax Recovery Offices*

1.11.1 Under the provisions of the Income-tax Act, 1961 every demand of tax, interest, penalty or fine payable under the Act should be paid within thirty five days of the service of notice of demand. On the default of an assessee in this respect, the Income-tax Officer may forward a certificate specifying the demand in arrears to the Tax Recovery Officer for recovery of the demand. The Tax Recovery Officer will serve a notice on the defaulter requiring him to pay the demand within fifteen days. If the demand is not paid within the specified period the Tax Recovery Officer will proceed to recover the amount by attachment and sale of the defaulter's property, his arrest and detention in prison, appointment of a receiver for the management of his property, as may be considered necessary.

1.11.2 The following table indicates the tax demands certified to the Tax Recovery Officers and State Government Officers and the progress of recovery to the end of 1981-82. The balance demand has been constantly on the increase :

	Demand certified			Demand recovered	Balance
	At the beginning of the year	During the year	Total		
				(In crores of rupees)	
1	2	3	4	5	6
1969-70 . .	359.52	183.55	543.07	116.45	426.62
1970-71 . .	425.25	181.36	606.61	145.37	461.24
1971-72 . .	483.53	208.79	692.32	167.52	524.80
1972-73 . .	530.57	264.98	795.55	189.06	606.49
1973-74 . .	598.15	192.62	790.77	161.93	628.84
1974-75 . .	616.07	188.16	804.23	176.29	627.94
1975-76 . .	616.35	333.92	950.27	290.56	659.71
1976-77 . .	678.72	330.30	1009.02	370.67	638.35
1977-78 . .	638.00	258.00	896.00	244.00	652.00
1978-79 . .	655.00	309.00	964.00	267.00	697.00
1979-80 . .	703.96	323.65	1027.61	287.61	740.00
1980-81 . .	752.07	301.70	1053.77	258.58	795.19
1981-82** . .	861.58	400.24	1261.82	273.33	988.49

NOTE : No. of certificates issued during the year 1981-82—6,90,681*.

1.11.3 The working of Tax Recovery Offices was commented upon in paragraph 15 of the Audit Report, 1974-75. The Ministry of Finance had apprised the Public Accounts Committee of the steps taken by them to set right the irregularities pointed out in the Audit Report and to improve the working of the Tax Recovery Offices. Taking note of the remedial steps taken, the Public Accounts Committee recommended in para 115 of their 79th Report (1977-78; Sixth Lok Sabha) that the department should so organise the work among the existing staff that the tax recovery work is given as much attention as the work of completion of assessments.

*Does not include the figures of Cs.I.T. Bombay (Central), Kanpur, Kanpur (Central), Bihar and Ranchi Charges.

**Figures furnished by the Ministry of Finance are provisional.

1.11.4 The working of the Tax Recovery Offices in some of Commissioners, charges was reviewed again during the years 1979-80 to 1981-82. The defects and irregularities noticed are mentioned in the following paragraphs.

1.11.5 *Planning of work in the Income-tax Offices*

According to the instructions laid down, the Income-tax Officer should scrutinise his Demand and Collection Register in the first week of every month and review each case in which demand has fallen due. If an assessee had not paid the demand and if there seems to be no probability of his making the payment in the opinion of the Income-tax Officer, a recovery certificate should be issued straightway. A judicious examination of the arrear demand would enable the Income-tax Officer to spot many cases in which it would be no use waiting till the end of the year because the assessee in any case would not make the payment. In such cases the immediate issue of recovery certificate would ensure even flow of work to the Tax Recovery Officers who would have more time to make efforts towards recovery before the close of the year. The Income-tax Officer would also be spared of the rush of such work in the closing months of the year.

These salutary instructions were still not being followed; most of the certificates were issued only in the closing month of the year. In 15 Commissioners' charges, the position of certificates issued was found to be as under :

Year	No. of certificates issued during the year	No. of certificates issued during the month of March	Percentage of Col. 3 to Col. 2
(1)	(2)	(3)	(4)
1979-80	92,213	56,749	61
1980-81	88,394	61,045	69
1981-82	89,453	72,995	82

1.11.6 *Infructuous issue of certificates*

The Central Board of Direct Taxes issued instructions in July 1972, August 1976, December 1978, February 1979 and September 1981 emphasising that recovery certificates should be issued only where demands were outstanding and raising of infructuous certificates should be avoided.

A test check in 9 charges, showed that in 4,753 cases, involving total arrears of Rs. 79.24 lakhs certificates were issued to the Tax Recovery Officers though the demands had already been paid by the assessees.

1.11.7 *Defective maintenance of Tax-recovery Register*

Every Tax Recovery Officer is to maintain a register called Tax-recovery Register in the prescribed form for recording the particulars of recovery certificates received from the Income-tax Officers. The register is an important basic record to enable the Tax Recovery Officer to keep watch over the progress of the tax recovery work. The following defects were noticed in the registers maintained in some of the charges :—

(a) Cases where action was pending were not carried forward from the old register to the new register opened for a subsequent year. In the Tax Recovery Offices in Karnataka, the pending items were not carried forward from the register of 1977-78 to that of 1978-79. In the offices in Haryana, 34 recovery certificates were either not carried forward or incorrectly carried over to the register of the following year. Omission to carry forward the pending items in the old register to the new register in the subsequent year was noticed in the Tax Recovery Offices in Rajasthan. As the pending cases as per the earlier register were not brought forward to the new register in the Tax Recovery Offices in West Bengal, the outstanding demands could not be ascertained.

(b) Particulars of recovery certificates received from the Income-tax Officers were not found recorded in the Tax-recovery Register. In the offices in Himachal Pradesh out of 2546 recovery certificates received during March 1982, 1845 certificates involving

a demand of Rs. 32.90 lakhs were not entered in the register (May 1982). A Tax Recovery Officer in Uttar Pradesh transferred 80 cases involving a demand of Rs. 12.01 lakhs to another Tax Recovery Officer in February 1980 due to change in jurisdiction. The latter Tax Recovery Officer did not enter them in the register on the ground that he had not received the recovery certificates. As a result no action was taken by either Tax Recovery Officer to realise the Government dues. In another Tax Recovery Office in Delhi charge 1336 certificates of recovery relating to the year 1980-81 received on transfer in June/July 1981 were not entered in the register and no action was taken for recovery of the demand.

1.11.8 *Lack of Coordination between Income-tax Officers and Tax Recovery Officers*

The efficiency of the Tax Recovery Officer depends upon the completeness and correctness of the particulars contained in the certificate issued by the Income-tax Officer. Further, to ensure expeditious clearance of arrears of tax demand there should be close coordination between the Income-tax Officers certifying the demands for recovery and the Tax Recovery Officers initiating action for recovery. Such coordination was, however, generally found lacking.

(a) In 46 Tax Recovery Offices in West Bengal charges, Rs. 59.06 crores were lying without any action for want of information, such as correct addresses of the assessees, demands outstanding, assets owned etc. from the relevant assessing officers.

(b) In 69 Tax Recovery Offices in Bombay and Pune charges, recovery proceedings in respect of arrears of Rs. 15.44 crores in 41,035 cases (as on 31 March 1981) could not be pursued due to non-receipt of particulars called for from the Income-tax Officers.

(c) In six Commissioners' charges in Tamil Nadu, in respect of 76 cases involving a total demand of Rs. 86.78 lakhs certified for recovery during 1978-79 to 1980-81, Income-tax Officers did not enclose lists of assets which could be attached in case of the defaulters' failure to pay.

(d) In a Tax Recovery Office in Rajasthan out of 4244 recovery certificates involving a demand of Rs. 1.46 crores (as on 31-3-1982), in 1097 cases (Rs. 9.5 lakhs), notices could not be issued for want of correct particulars from the Income-tax Officers. In about 2,000 cases, the particulars called for by the Tax Recovery Officers from the Income-tax Officers were not forthcoming.

(e) In Andhra Pradesh charge a recovery certificate was received from Bombay Tax Recovery Office in March 1960 showing an arrear demand of Rs. 10.34 lakhs from an unregistered firm stated to be located at Hyderabad. Between 1960 and 1971, correspondence was carried on between the Income tax Officer and the Tax Recovery Officer regarding the correct names and addresses of partners, and their properties. In September 1981, the Tax Recovery Officer found that no such unregistered firm existed. The certificate was returned to the Income-tax Officer Bombay in 1982 for issue of fresh certificates in the names of the partners of the defunct unregistered firm with particulars of assets.

(f) In a Tax Recovery Office in Delhi charge 148 cases involving a sum of Rs. 2.93 lakhs were kept pending without any action for want of information from the Income-tax Officers.

(g) In Uttar Pradesh charge, Tax Recovery Officers requested the Income-tax Officers to intimate complete addresses of 18 defaulters involving a demand of Rs. 2.32 lakhs. Although a period of 3 to 10 years had lapsed, no reply was received and the cases were not pursued.

(h) In 1974, the Central Board of Direct Taxes directed the Commissioners of Income-tax

(i) to issue instructions to the Income-tax Officers and Tax Recovery Officers to promptly intimate to each other any collection/reduction of certified demand;

(ii) to arrange for half-yearly reconciliation of the registers of the Income-tax Officers and Tax Recovery Officers as on 30 March and 30 September every year; and

(*iii*) to obtain a certificate of reconciliation from the concerned Income-tax Officers/Tax Recovery Officers by 30 April and 31 October every year.

In Karnataka, Himachal Pradesh and Chandigarh, Jammu & Kashmir, Gujarat, Andhra Pradesh and Bombay, charges, the contemplated half-yearly reconciliation was not effected.

1.11.9 *Non-issue/delay in the issue and service of demand notices*

Under Rule 2 of the Second Schedule to the Income-tax Act, 1961, the Tax Recovery Officer should serve a notice on the defaulter within 15 days of the receipt of the certificate. The issue of this demand notice is mandatory and cannot be dispensed with.

(a) In 27 Commissioners' charges there were delays in the issue of this initial demand notice to the following extent:

Extent of Delay	Number of cases	Amount of demand involved (Rs. in lakhs)
Upto 6 months	48,668	117.48
6 to 12 months	496	38.76
1 to 3 years	39	14.29
Over 3 years	4	5.91

Besides in 31,438 cases, demand notices involving demand of Rs. 115.74 lakhs, were not issued or were not served.

(b) The reasons adduced by the Tax Recovery Officers for these delays in the issue of notices or for such non-issue of notices were as under :

(*i*) Bulk receipt of certificates during March

(*ii*) Inadequate staff

(*iii*) Want of complete and correct addresses of the assessees in the certificates

(*iv*) Refusal of the assessees to receive notices.

1.11.10 *Pursuit of recovery proceedings*

The following are some of the examples of inadequate recovery proceedings :

(*a*) In the case of a defaulter in Andhra Pradesh charge a demand of Rs. 1,95,842 pertaining to the assessment year 1972-73 was certified to the Tax Recovery Officer in November 1973. The Tax Recovery Officer attached one acre of land of the assessee in March 1976. Though the reserve price of the property was determined at Rs. 50,000 the property was not put to sale. Subsequently the Tax Recovery Officer submitted proposals for write off of Rs. 1,45,841. Though the Tax Recovery Officer had intimated the possibility of recovery of Rs. 50,000 from the attached property, the Commissioner of Income-tax ordered in March 1980 writing off the entire demand of Rs. 1,95,841.

When the non-disposal of the asset and non-realisation of Government dues for about six years was brought to notice (May 1981), the Tax Recovery Officer contended that no action was pending at his level as the entire demand had been written off by the Commissioner of Income-tax. It was, however, mentioned in the write-off order that the write-off would not debar the department from taking all possible steps for recovery.

(*b*) In Bombay charge, the bank lockers of a defaulter against whom recovery certificates for more than Rs. 14 lakhs were pending on account of very old tax arrears, were attached by the department in 1958-59. The lockers were opened in 1972 and a panchnama of their contents was made. In January 1980, when the Tax Recovery Officer received a letter from the Bank asking for payment of rent for the period from 28-10-1975 to 28-10-1979, the Tax Recovery Officer wrote to the Commissioner that at the time of taking over charge in 1977 or thereafter he was, at no stage, informed by his predecessor or any body about the bank locker. The Tax Recovery Officer further informed the C.I.T. that on payment of rent (sanction to be accorded by the Commissioner of Income-tax) he would open the lockers. In the absence of any details in the records it was not known as to

how the department was keeping a watch over the lockers attached in 1958 and their contents. The case had been pending so long and the department could not even state as to how many files were there, what were the details of attachments and sales, or of the exact amounts of taxes and interest yet to be recovered.

(*c*) In Bombay charge also a proprietor of a business owed a demand of tax of Rs. 8,10,158 out of which the demand for the assessment year 1960-61 amounted to Rs. 2,41,079. The Income-tax Officer issued recovery certificate in March 1966 for recovery of the demand. A second recovery certificate for recovery of the same demand was issued by another Income-tax Officer in January 1971. However, the co-parcenary interest of the defaulter in the Hindu undivided family of which he was a member, was attached by the Tax Recovery Officer on 28 July 1976, only. The defaulter had ceased to be a member of the Hindu undivided family just two days before this date *i.e.* on 26 July 1976 by a partition deed dated 26 July 1976 leaving a debit balance of Rs. 75,585 in the Hindu undivided family. Nothing could, therefore, be recovered. The capital of the Hindu undivided family as on 30 June 1974 was Rs. 2,21,272 and the defaulters 1/3rd share in the amount was Rs. 73,757. Had the attachment been done prior to 1 July 1974, especially when the second recovery Certificate was issued as early as in January 1971, tax to the extent of Rs. 73,757 could have been recovered. During the period from 1 July 1974 to 27 July 1976 the defaulter withdrew a sum of Rs. 75,585 from the Hindu undivided family and ultimately left the Hindu undivided family as mentioned above. Taxes to the extent of Rs. 7.10 lakhs including taxes for the assessment year 1960-61 were written off on 29 March 1979.

(*d*) In Tamil Nadu charge an assessee, in the capacity of Karta of a Hindu undivided family and as individual, owed a sum of Rs. 9.64 lakhs as tax dues for the assessment years 1963-64 to 1974-75. Tax Recovery certificates were issued by the Income-tax Officer to the Tax Recovery Officer on different dates between March 1969 and March 1980.

The assessee who was a major share-holder in textile mills, in investment companies, etc. and who owned several immovable properties in various places in the State frequently changed his place of residence rendering service of notice impossible. The notices had to be served by affixure. The assessee did not pay the tax dues. In 1976 the department tried to auction some of the properties of the assessee but the sale had to be adjourned due to absence of bidders. Even in regard to the properties attached by the department, the son and daughters of the assessee lodged counter-petitions contending that the properties belonged to them. In respect of a property attached by the department, the State Bank of Mysore claimed that it had advanced a loan of Rs. 77 lakhs to the assessee on mortgage. Only one of the immovable properties was found to be free from encumbrances and even in regard to this property, the Tax Recovery Officer reported to the Commissioner in January 1977 that the building could not be valued as it had always been kept locked. Meanwhile the jurisdiction of the Tax Recovery Officer was changed and fresh demand notices had to be served in April 1979.

The department had not revived the auction of properties which were postponed in December 1976. No action had also been taken to verify various claims preferred on the properties attached by the department, to value the buildings by a departmental valuer and to bring them to sale. The defaulter and his family members had also several immovable properties in another place in the State but the department had not taken any steps to attach the properties and bring them to sale.

1.11.11 *Incorrect closure of certificate cases*

(*a*) In Karnataka charges, in one case, a certificate demand (Rs. 77,248) was outstanding against an assessee in the status of Hindu undivided family. This was wrongly closed when the assessee's auditors furnished particulars of payment (Rs. 74,111) by the person in individual status. In another case outstanding demand (Rs. 1,32,378) was reduced on the basis of appeal orders cited by the assessee, but the appeal orders did not apply to the assessment year for which the demand was outstanding.

In three Tax Recovery Offices, 724 cases involving Rs. 19.23 lakhs were closed on the ground that the addresses of the defaulters given by the Income-tax Officers in the certificates were either incorrect or incomplete. It was contended by one Tax Recovery Officer that for want of full/correct addresses, recovery proceedings were not possible and, therefore the certificates were returned.

1.11.12 *Defects in maintenance of cash book and remittance of collections to Government account*

The following defects and irregularities were noticed in the maintenance of cash book, remittance of collections made into Government account and their accounting:—

(*a*) In some Tax Recovery Offices in Madhya Pradesh, Uttar Pradesh and West Bengal, cash books were not maintained by the Tax Recovery Officers.

(*b*) In some of the Tax Recovery Offices in Orissa, entries in the cash books were made after delays ranging upto 11 months.

(*c*) In some of the Tax Recovery Offices in Delhi, Orissa, Maharashtra, Gujarat and Punjab the cash books were not closed periodically and reconciled with the bank records to ensure that all collections accounted for in the cash books had been remitted into Government account.

(*d*) In 80 cases in Delhi charge, cheques received for Rs. 2.41 lakhs were not encashed as no dates of encashment were noted in the cash book. In Tamil Nadu Offices, cash collections of Rs. 40,481 in 11 cases, and cheques/drafts totalling Rs. 1,25,250 were not entered in the cash book and challans in support of their remittance to Government account were not produced for verification. In 55 cases in Haryana offices cheques/bank drafts for Rs. 70,577 were not accounted for in the cash book.

(*e*) In 20 cases relating to Delhi charges cheques for Rs. 1.75 lakhs sent for realisation were dishonoured and were returned to the assessees. Fresh cheques were not obtained from the defaulters.

1.11.13 The results of this review were sent to the Ministry of Finance in September 1982; their remarks are awaited (December 1982).

1.12 *Appeals, Revision petitions and writs*

Under the provisions of the Income-tax Act, 1961, if an assessee is dissatisfied with an assessment, a Refund Order, etc. he can file an appeal to the Appellate Assistant Commissioner. The Act also provides for appeal by the assessee direct to the Commissioner (Appeals).

A second appeal can be taken to the Income-tax Appellate Tribunal. After the Tribunal's decision a reference on a point of law can be taken to the High Court from which an appeal lies to the Supreme Court. The assessee can also initiate writ proceedings under Article 226 of the Constitution.

A tax payer can approach the Commissioner of Income-tax to revise an order passed by an Income-tax Officer or by an Appellate Assistant Commissioner within one year from the date of such orders. The Commissioner can also take up for revision an order which in his view is prejudicial to the interest of revenue.

(*i*) Particulars of Income-tax appeals and revision petitions pending as on 31 March 1982 were as under:—

	Income-tax appeals with Appellate Assistant Commissioners/ Cs.I.T. (Appeals)	Income-tax revision petitions with Commissioners of Income-tax
Number of appeals/revision petitions	2,57,828	10,644
(*a*) Out of appeals/revision petitions instituted durng 1981-82 .	1,30,910	4,941
(*b*) Out of appeals/revision petitions instituted in earlier years .	1,26,918	5,703

(*ii*) Particulars of wealth-tax, gift-tax and estate duty appeals and revision petitions pending as on 31 March 1982 were as under:—

	Appeals with Asstt. Appellate Commissioners/ Cs.I.T. (Appeals)			Revision petitions with Commissioners of Income-tax		
	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.
(*a*) No. of appeals/ revision petitions pending . .	86,712	4,426	4,773	3,065	105	Nil
(*b*) Out of appeals/ revision petitions instituted during 1981-82 . .	36,633	1,891	1,656	1,259	27	Nil
(*c*) Out of appeals/ revision petitions instituted in earlier years .	50,079	2,535	3,117	1,806	78	Nil

(*iii*) Year-wise break-up of income-tax appeals cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax (Appeals), and Commissioners of Income--tax as on 31 March 1981 and 31 March 1982 respectively with reference to the year of their institution was as under:—

Years of Institution	Appeals pending with Appellate Assistant Commissioners/ Cs.I.T. (Appeals)		Revision petitions pending with Commissioners of Income-tax	
	31 March 1981	31 March 1982	31 March 1981	31 March 1982
1973-74 and earlier years .	1,400	939	310	262
1974-75	2,116	930	110	91
1975-76	3,536	1,875	193	157
1976-77	5,448	3,484	333	233
1977-78	11,031	9,069	700	490
1978-79	35,270	16,328	1,274	915
1979-80	74,550	32,715	2,024	1226
1980-81	1,30,486	61,578	4,694	2367
1981-82	—	1,30,910	—	4903
TOTAL	2,63,837	2,57,828	9638	10,644

(*iv*) Year-wise break-up of wealth-tax, gift-tax and estate duty appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax as on 31 March 1982, with reference to the year of their institution was as under:—

Years of Institution	Appeals pending with Appellate Asstt. Commissioners/Cs.I.T. (Appeals)			Revision petitions pending with Commissioners of Income-tax		
	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.
1973-74 and earlier years	58	4	14	68	1	..
1974-75 . . .	80	3	13	44	2	..
1975-76 . . .	465	40	101	42	3	..
1976-77 . . .	1,088	71	275	78	4	..
1977-78 . . .	1,992	92	424	163	3	..
1978-79 . . .	8,073	326	696	190	11	..
1979-80 . . .	20,418	930	812	605	21	..
1980-81 . . .	17,905	1,069	782	616	33	..
1981-82 . . .	36,633	1,891	1,656	1,259	27	..
TOTAL . . .	86,712	4,426	4,773	3,065	105	..

(*v*) The following table gives details of appeals/references disposed of during the years 1979-80, 1980-81 and 1981-82:—

	1979-80	1980-81	1981-82
(*a*) (1) No. of appeals filed before Appellate Assistant Commissioners/ Cs.I.T. (Appeals) . . .	2,08,778	2,19,062	2,31,574
(2) No. of appeals disposed of during 1981-82 by AACs/Cs.I.T. (Appeals)	1,55,319	2,08,744	*
(*b*) No. of appeals filed before income-tax Appellate Tribunals during 1981-82			
(1) by the assessees . . .	24,478	24,999	24,850
(2) by the department . . .	18,354	18,899	21,577
(*c*) No. of assessee's appeals decided by the Tribunal in favour of the assessees fully out of (b) (1) above. .	11,321	11,519	10,560

*Information awaited from the Ministry of Finance.

1	2	3	4
(*d*) No. of departmental appeals decided by the Tribunals in favour of the department fully out of (b) (2) above	3,245	4,284	4,491
(*e*) No. of references, filed to the High Courts :			
(1) by the assessees . . .	1,634	1,763	1,890
(2) by the department . . .	4,262	4,598	4,146
(*f*) No. of references in the High Courts disposed of in favour of the			
(1) assessees	228	357	202
(2) department	566	428	490
(*g*) No. of appeals filed to the Supreme Court			
(1) by the assessees . . .	46	11	68
(2) by the department . . .	60	218	219
(*h*) No. of appeals disposed of by the Supreme Court in favour of the			
(1) assessees	2	31	4
(2) department	1	4	12

(*vi*) Writ petitions pending:—

1	In Supreme Court 2	In High Courts 3	Total 4
(*a*) No. of writ petitions pending as on 31-3-1982	326	3445	3771
(*b*) Out of (a) above : . . .			
(*i*) Pending for over 5 years . .	20	164	184
(*ii*) Pending for 3 to 5 years . .	63	556	619
(*iii*) Pending for 1 to 3 years . .	104	1583	1687
(*iv*) Pending upto 1 year . .	139	1142	1281

1.13 *Completion of reopened and set aside assessments*

(*i*) Income-tax.

(*a*) The year-wise details of assessments cancelled under Section 146 of Income-tax Act, 1961 (or under the corresponding provisions of the old Act) and pending finalisation on 31 March 1982 were as follows :—

Assessment year	Number of cases
1973-74 and earlier years	2,336
1974-75	559
1975-76	839
1976-77	1,359
1977-78	2,376
1978-79	5,290
1979-80	5,449
1980-81	2,765
1981-82	2,561
TOTAL	23,534

(*b*) The year-wise details of assessments cancelled under Section 263 of Income-tax Act, 1961 (or under the corresponding provisions of the old Act) and pending finalisation on 31 March 1982 were as follows :—

Assessment year	Number of cases
1973-74 and earlier years	153
1974-75	43
1975-76	66
1976-77	109
1977-78	179
1978-79	196
1979-80	96
1980-81	74
1981-82	35
TOTAL	951

(*c*) The year-wise details of assessments set-aside by the Appellate Assistant Commissioner under Section 251 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act), by the Appellate Tribunal under Section 254 of Income-tax Act, 1961 (or under the corresponding provisions of the old Act), where fresh assessments had not been completed as on 31 March 1982 were as under:—

Assessment year	Set aside by Appellate Assistant Commissioners No. of cases	Set aside by Appellate Tribunal No. of cases
1973-74 and earlier years	2,120	349
1974-75	551	96
1975-76	805	118
1976-77	1,158	112
1977-78	1,500	111
1978-79	1,395	68
1979-80	705	59
1980-81	368	41
1981-82	397	24
TOTAL	8,999	978

(*ii*) Wealth Tax and Gift Tax

(*a*) The year-wise details of assessments cancelled under Section 25 of the Wealth-tax Act, 1957 and under Secton 24(2) of the Gift-tax Act, 1958 which were pending finalisation as on 31 March 1982 were as follows :—

Assessment year	No. of cases W.T.	G.T.
1973-74 and earlier years	447	15
1974-75	99	29
1975-76	113	10
1976-77	49	20
1977-78	35	3
1978-79	39	1
1979-80	21	1
1980-81	5	..
1981-82	13	..
TOTAL	821	79

(*b*) The year-wise details of assessments set aside by the Appeallate Assistant Commissioner/Appeallate Tribunal under Section 23(5)/24(5) of Wealth-tax Act, 1957, Section 22(5)/23(5) of the Gift-tax Act, 1958 and Section 62(5)/63(5) of the Estate Duty Act, 1953 where fresh assessments had not been completed as on 31 March 1982 were as under:—

Assessment years	Set aside by AACs			Set aside by Appellate Tribunal		
	No. of cases			No. of cases		
	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.
1973-74 and earlier years	2,470	47	26	277	5	5
1974-75 . . .	659	11	6	70	..	2
1975-76 . .	574	9	2	51	1	1
1976-77 . . .	419	20	9	24	1	2
1977-78 . . .	217	20	5	7	..	3
1978-79 . . .	179	7	5	5	..	3
1979-80 . . .	110	3	13	4	..	4
1980-81 . . .	77	..	14	3	..	8
1981-82 . . .	295	2	10	12	..	10
TOTAL . . .	5,000	119	90	453	7	38

*1.14 Reliefs and Refunds

Refunds

Where the amount of tax paid exceeds the amount of tax payable, the assessee is entitled to a refund of the excess. If the refund is not granted by the department within three months from the end of the month in which the claim is made,

*Figures furnished by the Ministry of Finance are provisional and do not include Bombay (C) charges.

simple interest at the prescribed rate becomes payable to the assessee on the amount of such refund.

(i) Refunds under Section 237 :—

(*a*)	No. of applications pending on 1-4-1981 . . .	17,506*
(*b*)	No. of refunds applicatons received during the year 1981-82	1,91,587
(*c*)	No. and amount of refunds made during 1981-82 Out of (a) above:	
(1)	(*i*) Number	17,484
	(*ii*) Amount (in thousands of rupees) . . . Out of (b) above:	33,308
(2)	(*i*) Number	1,76,176
	(*ii*) Amount (in thousand of rupees) . . .	1,59,657
(*d*)	No. of refund cases in which interest was paid under Section 243, the amount of such interest, and the amount of refund on which such interest was paid during 1981-82 Out of (a) above:	
(1)	(*i*) Number	16
	(*ii*) Amount of refund (in thousands of rupees) .	49
	(*iii*) Amount of interest paid (in thousands of rupees) Out of (b) above:	12
(2)	(*i*) Number	322
	(*ii*) Amount of refund (in thousands of rupees) .	6,698
	(*iii*) Amount of interest paid (in thousands of rupees)	2,305
(*e*)	No. and amount of refunds made during 1981-82 on which no interest was paid:—	
	(*a*) Number	1,93,322
	(*b*) Amount (in thousands of rupees) . . .	1,86,218
(*f*)	No. of refund applicatons pending as on 31-3-1982 .	15,433
(*g*)	Break-up of applications mentioned at (f) above:	
	(1) Refund applications for less than a year . .	15,411
	(2) Between 1 year and 2 years	22
	(3) For 2 years and more.	..

(*ii*) The Act also provides for refund of any amount which may become due to an assessee as a result of any order passed in appeal or other proceedings without his having to make any claim in that behalf. Simple interest at the prescribed rate is payable to the assessee in such cases too.

*The Ministry of Finance have revised the closing balance of 17,290 furnished for the year 1980-81.

The particulars of appeal/revision etc. effects, refunds under Section 240 and payment of interest under Section 244, as furnished by the Ministry of Finance for the year 1981-82 are given below :—

(*a*)	No. of assessments which were pending revision on account of appellate/revision etc. orders as on 1-4-1981		6,930*
(*b*)	No. of assessments which arose for similar revision in 1981-82		1,03,998
(*c*)	No. of assessments which were revised during 1981-82 :		
	(1) Out of those pending as on 1-4-1981		6,906
	(2) Out of those arising during 1-4-1981 to 31-3-1982		98,275
(*d*)	No. of assessments which resulted in refunds as a result of revision and total amount of refund given :—		
		Number	Amount of refund (In thousands of rupees)
	(1) Under item (c)(1) above	1,672	18,694
	(2) Under item (c) (2) above	18,944	3,97,181
(*e*)	No. of assessments in which interest became payable under Section 244 and amount of interest :		
	(1) Under item (d) (1) above	191	673
	(2) Under item (d) (2) above	4,599	22,252
(*f*)	No. of assessments pending revision as on 31-3-1982 :		
	(1) Out of (a) above	24	
	(2) Out of (b) above	5,723	
(*g*)	Break-up of assessments mentioned at (f) above :		
	(1) Pending for less than 1 year	5,723	
	(2) Pending for more than 1 year and less than 2 years	16	
	(3) Pending for more than 2 years	8	

*Ministry of Finance have revised the closing balance of 6,837 furnished by the Ministry for the year 1980-81.

1.15 *Cases settled by Settlement Commission*

Under the provisions of the Income-tax Act, 1961 and the Wealth-tax Act, 1957, an assessee may at any stage of a case relating to him, make an application to the Settlement Commission to have the case settled. The powers and procedures of the Settlement Commission are specified in the Acts. Every order of settlement passed by the Settlement Commission is conclusive as to the matter stated therein.

An analysis of cases settled by the Settlement Commission during the years 1977-78 to 1981-82 is given below :—

(*i*) *Income-tax*

	1977-78	1978-79	1979-80	1980-81	1981-82	Total
1	2	3	4	5	6	7
(*a*) No. of cases with the Commission on 1-4-1981 (with year-wise details)	172	264	268	277	..	981
(*b*) No. of cases filed with the Commission during 1981-82 . .	..	..	..	..	249	249
(*c*) No. of cases disposed of by the Commission (with year-wise details)						
(a) disposed of by issue of orders under Section 245-D (4) . .	11	21	17	40	..	89
(b) Applications rejected .	6	21	23	18	2	70
(*d*) No. of cases pending on 31-3-1982 (with year-wise details) . .	155	222	228	219	247	1071
(*e*) No. of assessment years involved in (c) (a) above .	..	..	..	..	..	228

1	2	3	4	5
(f) Total income determined in (c) (a) and details thereof :				

(In lakhs of rupees)

	No. of cases	No. of assessment years	Amount
Income below Rs. 1 lakh . . .	24	45	10.17
Between Rs. 1 lakh and 5 lakhs . .	46	100	108.95
Rs. 5 lakhs and above	19	83	137.68
TOTAL	89	228	256.80

(g) Tax on (f) above 120.68

(h) Penalty & Interest

	No. of cases	Amount (in lakhs of rupees)
(a) Penalties under section 271(1)(c) .	..	..
(b) Other penalties	10	1.30
(c) Interest levied	17	2.92
(i) Recovery of tax, penalty and interest upto 31-5-1982 .		86.95
(j) Balance of tax outstanding as on 1-6-1982 . .		37.95

(ii) *Wealth-tax*

	1977-78	1978-79	1979-80	1980-81	1981-82	Total
(a) No. of cases with the Commission on 1-4-81 (with year-wise details)	124	168	75	62	..	429
(b) No. of cases filed with the Commission during 1981-82	..	..	..	..	78	78

1	2	3	4	5	6	7
(c) No. of cases disposed of by the Commission (with year-wise details) :						
(1) Disposed of by issue of an order under section 22D(4)	34	11	2	1	..	48
(2) No. of cases where applications have been rejected	4	20	6	7	1	38
(d) No. of cases pending on 31-3-82 (with year-wise details) . .	86	137	67	54	77	421
(e) No. of assessment years involved in (c) (1) above .	..	..	..	..	..	101

	No. of cases	No. of assessment years	Amount (In lakhs of rupees)
(f) Total wealth determined in (c)(1) and details thereof :			
Wealth below Rs. 5 lakhs . . .	22	30	52.15
Between Rs. 5 lakhs & 10 lakhs .	17	31	123.77
10 lakhs and above	9	40	288.24
TOTAL	48	101	464.16
(g) Tax on (f) above	..	..	6.87
(h) Penalty			
(a) Penalties u/s 18(1)(c) . . .	..	..	..
(b) Other penalties	2	..	0.05
(i) Recovery of tax, penalty and interest upto 31-5-82			6.31
(j) Balance of tax outstanding as on 1-6-1982			0.61

1.16 *Penalties and prosecution*

Failure to furnish return of income/wealth/gift or filing a false return invites penalties under the relevant tax law. It also constitutes an offence for which the tax payer can be prosecuted. The tax laws also provide for levy of penalty and prosecution for failure to produce accounts and documents, failure to deduct or pay tax, etc.

(*i*) *Income-tax*

A. *Penalties*

(*a*)	No. of penalty orders passed under Section 271(1)(c) during 1981-82	28,142	
(*b*)	Concealed income involved in (*a*) above .	Rs. 11.62	crores
(*c*)	Total amount of penalty levied in (a) above .	Rs. 8.29	crores
(*d*)	No. of penalty orders passed under other Sections of the Act during 1981-82 . . .	4,02,012	
(*e*)	Total amount of penalty levied in d above .	Rs. 13.03	crores

B. Prosecutions

(*a*)	No. of prosecutions pending before the courts on 1-4-1981	2,350
(*b*)	No. of prosecution complaints filed during 1981-82 under Section 276-C (Substituted with effect from 1-10-1975), 276CC, 276(I), 277 and 278	415
(*c*)	No. of prosecutions decided during 1981-82 .	99
(*d*)	No. of convictions obtained in (c) above .	30
(*e*)	No. of cases which were compounded before launching prosecutions.	30
(*f*)	Composition money levied in such cases (e) above (Amount in thousands) . . .	220

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

A. Penalties

	Wealth tax (In lakhs of Rs.)	Gift tax
(*a*) No. of penalty orders passed under Section 18(1)(c)/17(1)(c) during 1981-82 . . .	5,846	609
(*b*) Amount of concealed net wealth/value of gift involved in (a) above	6,462	3
(*c*) Total amount of penalty levied in (a) above .	2,674	0.16
(*d*) No. of penalty orders passed under other Sections during 1981-82	46,190	4,005
(*e*) Total amount of penalty levied in (d) above	911	8

B. Prosecutions

(*a*) No. of prosecutions pending before the courts on 1-4-1981	152
(*b*) No. of prosecution complaints filed during 1981-82 under Section 35A, 35B, 35C 35D and 35F	61
(*c*) No. of prosecutions decided during 1981-82 .	16
(*d*) No. of convictions obtained in (c) above .	1
(*e*) No. of cases which were compounded before launching prosecutions.	—
(*f*) Composition money levied in such cases (e) above	—

1.17 **Searches, Seizures and Rewards*

Sections 132, 132-A and 132-B of the Income-tax Act, 1961 provide for search and seizure operations. A search has to be authorised by a Director of Inspection, Commissioner of Income-tax or a specifie d Dy. Director of Inspection or Inspecting Assistant Commissioner. Where any money, bullion, jewellery or other valuable article or thing is seized, the Income-tax Officer

*Figures furnished by Ministry of Finance are provisional.

has, after necessary investigations, to make an order with the approval of the I.A.C. within 90 days of the seizure, estimating the undisclosed income in a summary manner on the basis of the material available with him and calculating the amount of tax on the income so estimated, specifying the amount that will be required to satisfy any existing liability and retain in his custody such assets as are, in his opinion sufficient to satisfy the aggregate of the tax demands and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized. The books of account and other documents cannot be retained by the authorised officer for more than 180 days from the date of seizure unless the Commissioner approves of the retention for a longer period.

(*i*) *Searches and Seizures*

(*a*) No. of cases in which search and seizure were conducted during the last two years :

	No. of assessees	No. of assessments
1980-81	2,105	4,102
1981-82	1,683	4,434

(*b*) No. of search cases in which assessments were awaiting completion at the beginning of the year 1981-82.

(1) Number of assessees	4,503
(2) Number of assessments . . .	9,804

(*c*) Number of search cases in which assessments were completed during the year.

(1) Number of assessees	2,261
(2) Number of assessments . . .	4,168

(*d*) (A) Number of search cases in which assessments are awaiting to be completed at the end of the year :

(1) Number of assessees	4,843
(2) Number of assessments . . .	10,086

	(B) Number out of (A) above, which are pending for more than 2 years after the date of search :	
	(1) Number of assessees	1,291
	(2) Number of assessments . . .	2,918
(*e*)	Total concealed income assessed in cases referred to in item (c) above :	
	(*a*) Number of cases	805
	(*b*) Amount	Rs. 14.44 crores
(*f*)	Penalty levied for concealment of income in search cases during the year (irrespective of whether assessments completed in this year or earlier) .	
	(*a*) Number of cases	134
	(*b*) Amount	Rs. 1.73 crores
(*g*)	Number of search cases in respect of which prosecution was launched in the Court during the year (irrespective of whether assessments completed in this year or earlier)	77
(*h*)	Number of convictions obtained during the year	—
(*i*)	Number of cases where no concealment or tax evasion found on completion of assessments	1,456
(*j*)	Total amount of cash, jewellery bullion and other assets seized during the year (approximate value) :	
	(1) Cash	Rs. 7.20 crores
	(2) Bullion & jewellery	Rs. 16.45 crores
	(3) Others	Rs. 7.01 crores
	TOTAL	Rs. 30.66 crores
(*k*)	Number of search cases in respect of which summary assessment orders under section 132(5) of the Income-tax Act were passed during the year	868
(*l*)	Amount of undisclosed income determined in the orders under section 132(5) referred to in item (k)	Rs. 45.52 crores
(*m*)	(*a*) Value of assets retained as a result of orders passed under section 132(5) referred to in item (k) above	Rs. 17.54 crores
	(*b*) Value of assets returned as a result of orders passed under section 132(5) referred to in item (k) above	Rs. 16.28 crores

(*n*) Amount of cash, jewellery, bullion and other assets held on 31-3-1982 irrespective of the year of search :

(1) Cash	Rs. 12.18 crores
(2) Bullion & Jewellery	Rs. 18.96 crores
(3) Others	Rs. 6.84 crores
TOTAL	Rs. 37.98 crores

(*o*) Arrangements made for the safe custody of the assets still held and for their physical verification . . . . . Cash is deposited in the Personal Deposit Account of the Commissioners of Income-tax in the Reserve Bank of India. Other valuables are kept either in well guarded strong rooms in the office buildng or in the treasuries or in Bank Vaults etc.

(*ii*) *Rewards to informers*

(*a*) Number of informants to whom rewards were paid (including interim) during the years:

1979–80	180
1980–81	170
1981–82	165

(*b*) Total amount of rewards (including interim) paid :

1979–80	Rs. 8.29 lakhs
1980–81	Rs. 13.66 lakhs
1981–82	Rs. 20.87 lakhs

(*c*) Amount of additional income assessed as a result of action taken on the informers' information :

1979–80	Rs. 1.54 crores
1980–81	Rs. 1.68 crores
1981–82	Rs. 3.36 crores

(*d*) Amount of extra gain (additional tax, penalty, interest etc.) received by the department on account of the information furnished by informants at (1) above for the years :

1979–80	Rs. 45.68 lakhs
1980–81	Rs. 95.82 lakhs
1981–82	Rs. 138.77 lakhs

1.18 *Acquisition of Immovable Properties*

1.18.01 Chapter XXA of the Income-tax Act, 1961, introduced with effect from 15 November 1972, empowers the Central Government to acquire an immovable property, where such property is transferred by sale or exchange and the true consideration for such transfer is concealed with the object of evading tax. The scope of these provisions has been extended through the Income-tax (Amendment) Act, 1981 with effect from 1 July 1982, to cover :

(*a*) transfers of flats or premises owned through the medium of co-operative societies and companies;

(*b*) agreements of sale followed by part performance *viz.* by actual physical possession of the property by the *de facto* buyer, and

(*c*) long term leases i.e. leases for a period of 12 years or more.

1.18.02 Acquisition proceedings under these provisions can be initiated where an immovable property of fair market value exceeding Rs. 25,000 is transferred for an apparent monetary consideration, which is less than the fair market value by more than 15 per cent of the apparent monetary consideration. The compensation payable on acquisition is the amount of the monetary consideration shown in the transfer document plus 15 per cent of such amount.

1.18.03 According to the Annual Report 1981-82 of the Ministry of Finance there were 34 Inspecting Assistant Commissioners (Acquisition) functioning as on 31 October 1981.

1.18.04 A study of the records maintained in 25 acquisition ranges indicated the following position :—

(*i*) Number of cases where notices of acquisition were issued from 1-4-1979 to 31-3-1982	15,755
(*ii*) Number of cases out of (i) above where notices were withdrawn/dropped	6,211
(*iii*) Number of cases where acquisition orders were made pursuant to the notices	26
(*iv*) Value of apparent consideration in respect of properties in (iii)	Rs. 40.01 lakhs
(*v*) No. of properties actually taken over . . .	1
(*vi*) Cases where acquisition notices were pending finalisation	9,518

Proceedings dropped (6,211 cases) accounted for 39 per cent of the total number of notices issued for acquisition. Pendency made up for another 60 per cent. The cases finalised were a negligible proportion of the total.

1.18.05 A test check conducted in a few acquisition ranges indicated that the following were typical reasons for the dropping of proceedings :

(*i*) In Bihar, out of 234 acquisition notices issued, 55 were withdrawn for the reason that the order sheets of the case-files were not signed by the competent authority and the proceedings had became void *ab initio* or the acquisition proceedings had been initiated before obtaining valuation reports from the Valuation Officers.

(*ii*) In Maharashtra, in 41 cases, acquisition proceedings were dropped as the difference between the apparent consideration and the fair market value did not exceed 15 per cent or exceeded it only marginally.

(*iii*) In Madhya Pradesh, in 56 cases, acquisition proceedings were dropped as reasons for initiating the proceedings were not on record. In 8 such cases the fair market values were substantially in excess of the apparent considerations (Rs. 25.60 lakhs as against Rs. 8.84 lakhs).

1.18.06 The acquisition proceedings have to be initiated by issue of notices to that effect published in the official gazette. No such proceedings can be initiated after the expiry of a period of 9 months from the end of the month in which the instrument of transfer in respect of the property is registered under the Registration Act, 1908. While giving evidences before the Public Accounts Committee in November 1976, the Ministry of Finance had informed the Committee that the statutory provision for the publications of the notice in the gazette was a little cumbersome and that the law was being amended retrospectively. In para 3.9 of their 7th Report (6th Lok Sabha) the Public Accounts Committee recommended that Government should take early action to bring forward an amendment to enable all cases which had become time-barred being reopened. The Ministry apprised the Committee in December 1978 and in December 1980 that the proposed amendment was under consideration. Final action is still pending.

1.18.07 A few instances where acquisition proceedings could not be initiated because of the departments inability to publish the notice within the prescribed time are mentioned below:—

(*i*) In Haryana, agricultural lands and buildings having consideration value of Rs. 1,25,000 were transferred by an assessee to a firm on 27 December 1978. On a reference made on 5 July 1979, the departmental Valuer determined the fair market value as Rs. 2,38,800 on 17 September 1979. Due to the inability of the press to publish the notice in the official gazette before 30 September 1979, the proceedings had to be dropped.

(*ii*) In Haryana again, a building comprising godown and office block having apparent consideration value of Rs. 70,000 was transferred as per sale deeds dated 22 February 1977 and 1 April 1977. The fair market value determined by the Valuation Officer on 14 November 1977 was Rs. 1,48,500. The proceedings had to be dropped as notice was not published within the statutory time limit.

(*iii*) In Orissa, a property having apparent consideration of Rs. 45,000 and sold on 12 May 1980 was referred to the Valuation Officer for ascertaining the fair market value on 30 October 1980. The fair market value of the property was determined at Rs. 3,90,000 on 4 November 1980. The proceedings had to be dropped as the notice could not be published in the official gazette by 28 February 1981.

(*iv*) In Orissa also, land with building having apparent consideration of Rs. 32,500 (sold on 7 May 1980) was referred to the Valuation Cell on 28 May 1980 for ascertaining the fair market value. The valuation report affixing the fair market value at Rs. 1,45,000 was received on 7 January, 1981. The proceedings had to be dropped as the notice could not be published in the official gazette.

1.18.08 For the purpose of initiating proceedings for the acquisition of any immovable property the competent authority may require a Valuation Officer to determine the fair market value of such property and report to him. Under the analogus provisions of the Wealth-tax Act, and the Gift-tax Act, such valuation by a Valuation Officer is binding on the assessing authority who cannot reject or vary it. That is not so in respect of the valuation for acquisition proceedings. The Act, however, provides that the decision of the competent authority in respect of objections heard against a proposed acquisition shall be in writing and shall state the reasons for the decision with respect to each objection.

(*a*) In Haryana, in 11 cases, the difference between the fair market value (Rs. 16.53 lakhs) and the apparent consideration (Rs. 10.03 lakhs) was more than 25 per cent of the latter, but the acquisition proceedings were dropped without recording any reasons and without giving any opportunity to the concerned Valuation Officer who had determined the fair market values. The department accepted that in certain cases the reasons might not have been on record but held that the dropping of proceedings is entirely discretionary and cannot be challenged. The fact remains that the legal requirements had not been complied with.

(*b*) In 35 other cases, the acquisition proceedings were dropped even though the fair market values determined by the departmental Valuation Officer exceeded the apparent consideration by more than 25 per cent in each case. The percentage of variation in these cases ranged from 25 per cent to 182 per cent but the department deemed the Valuation Officers' reports as incorrect/erroneous and dropped the proceedings on the basis of valuation reports of approved valuers.

1.18.09 The Income-tax Act does not provide any time limit for finalisation of the acquisition proceedings. Inordinate delay was noticed in finalisation of cases after issue of notices. A few cases in Bombay where the difference between the fair market value and the apparent consideration was over Rs. 20 lakhs each and the notices were issued prior to 1 April 1979, but the cases were still pending finalisation (August 1982) are indicated below:

(*a*) A property constructed on an area of 4233.33 sq. mtrs. transferred at an apparent consideration of Rs. 20.25 lakhs had fair market value of Rs. 45 lakhs. The acquisition notice was served on the transferor on 6 March 1976. Subsequently, the Inspecting Assistant Commissioner wrote to the Commissioner of Income-tax on 21 March 1979 regarding the matter. No further action was taken.

(*b*) A property having a fair market value of Rs. 60.70 lakhs held by a private company was transferred at an apparent consideration of Rs. 35.84 lakhs. The notices of acquisition were

served on 11 April 1977 and also affixed on the property on 17 April 1978 when a panchnama was also made. No action was taken thereafter.

(*c*) An assessee transferred property which had an apparent consideration of Rs. 88.35 lakhs. The fair market value of the property was estimated at Rs. 2 crores. Acquisition proceedings were initiated by issue of notice on 13 December 1977. The Counsels attended on 23 March 1979 and copy of the reasons recorded were given to them for comments. No further developments were noticed in the case.

(*d*) A property situated on an area of 4521.79 sq. metres transferred by a private company at an apparent consideration of Rs. 22.08 lakhs was estimated to have a fair market value of Rs. 50 lakhs. Notice of acquisition was issued on 14 November 1971.

The Deputy Director of Investigation Circle I—Settlement Commission, Bombay returned the acquisition papers of the transferee on 6 January 1979. No further action was taken in the matter.

(*e*) An assessee transferred a building situated on an area of 6249 sq. yards at an apparent consideration of Rs. 2.40 lakhs. The fair market value was estimated at Rs. 48.22 lakhs. The notice of acquisition was issued on 15 June 1977. A notice for hearing objections was issued to the transferee on 19 February 1979. There was no further action.

(*f*) A property having an apparent consideration of Rs. 80.51 lakhs was transferred by an individual. The fair market value of the property was estimated at Rs. 145.50 lakhs. The notice of acquisition was served on 30 July 1977. The transferee responded to the notice and requested for adjournment of hearing in his letter dated 26 February 1977. No further developments were known.

1.18.10 The results of the review were sent to the Ministry of Finance in September 1982; their remarks are awaited December 1982).

1.19 *Functioning of Valuation Cells*

The Central Government established, October 1968, a departmental valuation Cell manned by engineering officers taken on deputation from the Central Public Works Department to assist the assessing officers under various direct tax laws. Certain details about the functioning of the Valuation Units under the Cell are given in the following sub-paragraphs :

(*i*) Number of Valuation Units/Districts :

Year	No. of Units	No. of Districts
1979-80	80	10
1980-81	80	10
1981-82	80	11

(*ii*) Number of cases referred to the Valuation Cell excluding cases brought forward from previous years:—

Year	Income-tax	Wealth-tax	Gift-tax	Estate Duty
1979-80	1,180	11,853	117	214
1980-81	1,146	10,836	85	302
1981-82	1,428	13,045	88	356

(*iii*) Number of cases decided by the Valuation Cell and the total amount of valuation made by the Cell compared with the returned value in the decided cases:—

(In lakhs of rupees)

Year	Income-tax			Wealth-tax		
	No. of cases	Value returned	Value determined	No. of cases	Value returned	Value determined
1	2	3	4	5	6	7
1979-80	1,341	2,585.79	3,499.33	12,045	13,600.81	37,109.51
1980-81	1,170	3,377.00	4,503.00	10,655	13,128.00	41,854.00
1981-82	1,376	2,991.00	4,555.00	12,671	14,855.00	45,470.00

Year	Gift-tax			Estate duty		
	No. of cases	Value returned	Value determined	No. of cases	Value returned	Value determied
1	2	3	4	5	6	7
1979-80	92	65.87	212.92	331	554.41	1,085.66
1990-81	100	59.00	132.00	341	603.00	1,192.00
1981-82	67	45.94	103.24	293	506.02	1,012.60

(iv) Expenditure incurred on the Valuation Cell

Year	Amount of expenditure Rs.
1979-80	88,74,613
1980-81 .	93,36,262
1981-82	94,08,800*

1.20 *Revenue demands written off by the Department*

(*i*) A demand of Rs. 870.25 lakhs in 30,404 cases was written off by the department during the year 1981-82. Of this a sum of Rs. 191.80 lakhs relate to 81 company assessee and Rs. 678.45 lakhs to 30,323 non-company assessees.

(In lakhs of rupees)

		Companies		Non-companies		Total	
		No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
1	2	3	4	5	6	7	8
I. (*a*)	Assessee having died leaving behind no assets or have become insolvent . . .	..	..	1,202	67.32	1,202	67.32
(*b*)	Companies which have gone into liquidation and are defunct	23	118.88	113	2.44	136	121.32
	TOTAL	23	118.88	1,315	69.76	1,338	188.64

*The figure furnished by the Ministry of Finance is provisional and do not include Patna and Gujarat Charges.

II. Assessees being untraceable	4	00.14	13,840	267.17	13,844	267.31
III. Assessees having left India	20	4.63	203	13.51	228	18.14
IV. Other reasons :						
(*a*) Assessees having no attachable assets .	18	65.08	1,494	184.53	1,512	249.61
(*b*) Amount being petty etc.	14	2.78	10,204	82.72	10,218	85.50
(*c*) Amount written off as a result of scaling down of demands	..	..	2,922	56.63	2,922	56.63
TOTAL	32	67.86	14,620	323.88	14,652	391.74
V. Amount written off on grounds of equity or as a matter of international courtesy or where time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount of recovery	2	0.29	340	4.13	342	4.42
GRAND TOTAL	81	191.80	30,323	678.45	30,404	870.25

(*ii*) Wealth-tax, Gift-tax and Estate Duty demands written off by the department during the year 1981-82 are given below categorywise:

(In lakhs of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	No.	Amount	No.	Amount	No.	Amount
1 2	3	4	5	6	7	8
I. Assessee having died leaving behind no assets or have gone in liquidation or become insolvent .	..	..	40	00.08	..	..
(*a*) Assessees having died leaving behind no asset	..	..	..	..	..	..
(*b*) Assessees having gone in liquidation .	..	..	..	..	..	..
(*c*) Assessees having become innsolvent . .	..	..	..	..	..	..
TOTAL	..	..	40	00.08	..	..
II. Assessees being untraceable	1	0.01	5	00.09	..	..
III. Assessees having left India	..	..	..	..	..	..
IV. Other reasons :						
(*a*) Assessees who are alive but have no attachable assets	..	..	..	..	..	..

(*b*) Amount being petty etc.	234	4.83	..	..	..	..
(*c*) Amount written off as a result of scaling down	5	16.21	..	..	..	..
(*d*) Demands rendered unenforceable by subsequent developments such as duplicate demands, wrongly made demands, being protective etc.	..	..	..	..	..	..
TOTAL	239	21.04	..	..	..	..
V. Amount written off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount of recovery . . .	..	..	..	..	..	..
GRAND TOTAL	240	21.05	45	00.17	..	..

1.21 *Results of test audit in general*

(*i*) Corporation Tax and Income-tax

During the period from 1 April 1981 to 31 March 1982 test audit of the documents of the income-tax offices revealed total under-assessment of tax of Rs. 3305.66 lakhs in 17,798 cases. Besides these, various defects in following the prescribed procedures also came to the notice of Audit.

Of the total 17,798 cases of under-assessment, short levy of tax of Rs. 2765.12 lakhs was noticed in 1337 cases alone. The remaining 16461 cases accounted for under-assessment of tax of Rs. 540.54 lakhs.

The under-assessment of tax of Rs. 3305.66 lakhs is due to mistakes categorised broadly under the following heads:—

	No. of items	Amount (in lakhs of rupees)
1	2	3
1. Avoidable mistakes in computation of tax .	1,133	71.92
2. Failure to observe the provisions of the Finance Acts	302	46.49
3. Incorrect status adopted in assessments .	300	42.23
4. Incorrect computation of salary income .	534	28.62
5. Incorrect computation of income from house Property	804	31.34
6. Incorrect computation of business income .	3,041	1,090.48
7. Irregularities in allowing depreciation and development rebate	1,108	415.93
8. Irregular computation of capital gains .	216	75.28
9. Mistakes in assessment of firms and partners	574	78.76
10. Omission to include income of spouse/minor child etc.	208	14.55
11. Income escaping assessment . . .	1,616	264.08
12. Irregular set off of losses. . . .	173	42.56
13. Mistakes in assessments while giving effect to appellate orders	80	14.63

1	2	3
14. Irregular exemptions and excess relief given	1,707	251.78
15. Excess or irregular refunds . . .	613	112.67
16. Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.	1467	163.18
17. Avoidable or incorrect payment of interest by Govrnment	889	164.69
18. Omission/short levy of penalty . .	800	159.56
19. Other topics of interest/miscellaneous .	2,075	128.37
20. Under-assessment of Surtax/Super Profits Tax	158	108.54
TOTAL	17,798	3305.66

(ii) Wealth-tax

During test audit of assessments made under the Wealth-tax Act, 1957, short levy of Rs. 347.89 lakhs was noticed in 3,754 cases.

The under-assessment of tax of Rs. 347.89 lakhs was due to mistakes categorised broadly under the following heads:—

1	No. of cases 2	Amount (In lakhs of rupees) 3
1. Wealth escaping assessment . . .	683	92.78
2. Incorrect valuation of assets . . .	815	67.33
3. Mistakes in computation of net wealth .	494	20.70
4. Incorrect status adopted in assessments .	134	8.94
5. Irregular-excessive allowances and exemptions	488	45.62
6. Mistakes in calculation of tax . . .	537	26.60
7. Non-levy or incorrect levy of additional wealth-tax	259	43.02
8. Non-levy or incorrect levy of penalty and non-levy of interest	194	27.48
9. Miscellaneous	150	15.42
TOTAL	3,754	347.89

(*iii*) Gift-tax

During the test audit of gift-tax assessments it was noticed that in 773 cases there was short levy of tax of Rs. 115.80 lakhs.

(*iv*) Estate Duty

In the test audit of estate duty assessments it was noticed that in 429 cases there was short levy of estate duty of Rs. 118.28 lakhs.

CHAPTER 2

CORPORATION TAX

2.01 The trend of recovery of corporation tax *i.e.* the income-tax payable by companies during the last five years was as follows :

Year	Amount (In crores of rupees)
1977–78	1220.77
1978–79	1251.47
1979–80	1391.90
1980–81	1377.45
1981–82	1969.96

*2.02 According to the Department of Company Affairs, Ministry of Law, Justice and Company Affairs, there were 73,715 companies as on 31st March 1982. These included 311 foreign companies and 1,496 associations "not for profit" registered as companies limited by guarantee and 219 companies with unlimited liability. The remaining 71,689 companies comprised 894 Government companies and 70,795 non-Govrnment companies with paid up capitals of Rs. 12,879 crores and Rs. 4,083 crores respectively. Among non-Government companies, over 86 per cent were private limited companies.

2.03 The number of companies on the books of the income-tax department during the last five years was as follows:—

As on 31st March	Number
1978	42,084
1979	41,532
1980	42,581
1981	44,125
1982	46.355**

*Figures furnished by the Department of Company Affairs, Ministry of Law, Justice and Company Affairs are provisional.

**Figures furnished by the Ministry of Finance are provisional.

2.04 The following table indicates the progress in the completion of assessments and the collection of demand under corporation tax during the last five years:—

Year	No. of assessments		Amount of demands	
	Completed during the year	Pending at the close of the year	Collected during the year	In arrear at the close of the year
			(In crores of rupees)	
1977–78 . . .	41,533	34,864	1220.77	185.96
1978–79 . . .	39,982	40,563	1251.47	168.04
1979–80 . . .	38,033	43,886	1391.90	190.34
1980–81 . . .	44,937	52,250	1377.45	290.95
1981–82 . . .	47,238	55,861	1969.96	311.74*

2.05 Some instances of mistakes noticed in the assessments of companies under the Income-tax Act are given in the following paragraphs.

2.06 *Avoidable mistakes in the computation of tax*

Under assessment of tax on account of mistakes in the computation of total income or in the determination of tax attributable to carelessness or negligence have been noticed frequently in audit and these mistakes involving substantial revenue to Government have been reported every year.

The Public Accounts Committee in paragraph 5.21 of their 186th Report (sixth Lok Sabha) had observed that the commonest mistake regularly featured in the Audit Reports, is the dropping of digits, generally one lakh of rupees either from the assessed total income or from the amount of tax payable.

The Committee in paragraphs 5.24 and 5.25 of their 51st Report (7th Lok Sabha) had again observed that under assessment of taxes of substantial amounts had been noticed year after year, on account of mistakes due to carelessness or negligence, which could have been avoided had the assessing officers and their staff been a little more vigilant.

*Figures furnished by the Ministry of Finance are provisional

Following this, the Central Board of Direct Taxes, in their instructions issued in December 1968, May 1969, October 1970, October 1972, August 1973, January 1974 and the Directorate of Inspection (Income-tax) in their circular issued in July 1981 emphasised the need for ensuring arithmetical accuracy in the computation of income and tax, carry forward of figures etc. Inspite of these repeated instructions such mitakes continue to occur. A few important cases are given in the following paragraphs.

(i) While computing income, the Income-tax Officer usually proceeds from the net profit or loss as per the profit and loss account as the starting point. He adds back the amount of depreciation already charged to the account. The amount of depreciation admissible under the Income-tax Act, 1961 is thereafter allowed as deduction.

In computing the business income of a company for the assessment year 1978-79 in March 1981, the Income-tax Officer instead of adding back a sum of Rs. 6,70,836 actually debited to the profit and loss account on account of depreciation added back to the reported net profit, a sum of Rs. 70,836 only on account of depreciation. The depreciation admissible under the Act, was however, duly allowed. The mistake resulted in under-assessment of income by Rs. 6,00,000 with consequent under-charge of tax of Rs. 4,09,500.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified raising additional demand of Rs. 4,09,500.

(ii) A company claimed depreciation allowance of Rs. 13,16,215 in respect of the previous year relevant to the assessment year 1975-76. In the assessment made in February 1978 the department incorrectly made an allowance of Rs. 33,16,215 instead of Rs. 13,16,215. The mistake resulted in excess allowance of depreciation of Rs. 20 lakhs and in excess computation and carry-forward of loss of the same amount with a potential tax effect of Rs. 11,55,000.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified.

(*iii*) A company returned a business loss of Rs. 10,29,192 for the assessment year 1979-80. While completing the assessment in February 1981, the Income-tax Officer disallowed bad debts and expenditure incurred by way of interest on deposits received by the company, amounting to Rs. 19,116. The net loss was computed by him at Rs. 14,10,076, whereas the loss correctly worked out to Rs. 10,10,076. The mistake in calculation led to excess carry forward of loss of Rs. 4,00,000 for the assessment year 1979-80.

The case was seen by the Special Audit Party of the department but the mistake was not noticed.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified.

(*iv*) Under the provisions of the Income-tax Act, 1961, in computing the income from business, an allowance by way of initial depreciation at the rate of twenty per cent of the actual cost of the new plant or machinery installed and used for the purpose of business is available to an assessee in addition to the normal depreciation, in respect of new plant or machinery installed for the manufacture or production of articles or things specified in the Ninth Schedule to the Act.

In the assessment proceedings of a public limited company for the assessment year 1976-77, the initial depreciation of Rs. 5,47,898 claimed by the company was considered as not admissible as no details had been furnished by the assessee. In the actual assessment completed in May 1980, however, while determining a loss of Rs. 59,99,888, total depreciation of Rs. 25,22,817 including the aforesaid inadmissible claim of initial depreciation of Rs. 5,47,898, was allowed. This resulted in excess computation of loss by Rs. 5,47,898 with a potential undercharge of tax of Rs. 3,16,410.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified.

(*v*) Under the Income-tax Act, 1961 development rebate on plant and machinery installed and used for the purpose of business carried on by the assessees is allowable as a deduction.

For the assessment year 1973-74, the development rebate admissible to a company in which the public were substantially interested was determined (June 1977) as Rs. 1,87,110, which, for want of profits in that year, was carried forward and adjusted (August 1977) against the profits of the succeeding assessment year 1974-75. Subsequently, in May 1979,the quantum of development rebate admissible for the assessment year 1973-74 was re-determined by the department as Rs. 1,90,345. While making the consequential revision in the assessment order for the assessment year 1974-75, the department reduced (August 1979) the total income already determined by Rs. 1,90,345, overlooking the fact that deduction to the extent of Rs. 1,87,110 had already been made. The excess deduction resulted in short levy of tax of Rs. 1,31,770.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified.

(*vi*) The assessment of a company for the assessment year 1974-75 was completed in December 1976, on a total income of Rs. 6,98,940. The assessment was revised in January 1978 to rectify a mistake in the rate of tax and a tax of Rs. 4,77,027 was determined in the revised assessment. The advance tax paid by the assessee and tax deducted at source amounted to Rs. 5,59,377. The tax of Rs. 82,350 paid in excess was adjusted against surtax demands for the assessment years 1971-72 and 1972-73 to the extent of Rs. 34,755; the balance Rs. 47,595 together with interest of Rs. 26,346 on excess advance tax paid was refunded to the asseessee.

Later, the assessment made in December 1976 was set aside in appeal in October 1978 and a fresh assessment was made in February 1981. This assessment was again revised in April 1981

to rectify a totalling mistake and the income was determined at Rs. 8,54,940 with tax demand of Rs. 5,83,496. After adjusting Rs. 5,59,377 already paid by the asseessee, net demand of Rs. 24,119 was raised and adjusted against the income tax refund due for the assessment year 1972-73. While determining the final tax liability in April 1981, the Income-tax Officer did not, however, consider the refund of Rs. 1,08,696 already made. The omission resulted in excess refund of Rs. 1,08,696.

The Ministry of Finance have accepted the mistake and have reported tht the assessment has been rectified raising additional demand of Rs. 1,08,696.

(*vii*) The regular assessment of a company for the assessment year 1978-79 was completed in June 1980 on total income of Rs. 7,46,475. In completing this assessment, business losses of Rs. 89,621 and Rs. 1,00,942 carried forward from the assessment years 1973-74 and 1974-75 were not set off. The assessment was revised in September 1980 to allow the set off of carried forward losses. At this stage a set off of Rs. 2,99,563 was allowed against the admissible amount of Rs. 1,90,563. This resulted in under assessment of income of Rs. 1,09,000 and short levy of tax of Rs. 93,521 including short levy of interest for failure to send the estimate of advance-tax.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified and additional tax demand of Rs. 93,521 recovered.

(*viii*) A company filed its return for the assessment year 1978-79 in September 1978 disclosing an income of Rs. 6,20,286. The assessee filed a revised return subsequently for Rs. 6,60,886 for the same assessment year in January 1980 stating that an expenditure of Rs. 60,600 was claimed in excess in the original return through oversight and the same was written back in the succeeding accounting year.

The assessment for the assessment year 1978-79 was completed in March 1981 on the basis of the original return and the Income-tax Officer did not take into account the revised return filed by

the assessee in January 1980. This resulted in under assessment of income to that extent and short levy of tax of Rs. 51,513 including excess payment of interest of Rs. 13,335 on the refund of advance-tax.

Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified.

2.07 *Failure to observe the provisions of the Finance Acts*

(i) Under the provisions of the Finance Act, as applicable to the assessment year 1977-78 an industrial company in which public are not substantially interested is charged to tax at the rate of fifty-five per cent if its total income does not exceed rupees two lakhs and at the rate of sixty per cent if the total income exceeds Rs. 2 lakhs.

(*a*) In the assessment of an industrial company in which the public were not substantially interested for the assessment year 1977-78 (completed in March/June 1980) the department levied tax applying the rate of 55 per cent on its total income of Rs. 33,51,860 instead of at 60 per cent leading to undercharge of tax of Rs. 1,76,558 including interest on the belated submission of the return of income.

The assessment was checked in internal audit but the mistake escaped their notice.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified.

(*b*) In the case of another industrial company in an another charge for the assessment year 1977-78 (assessed in September 1980) the total income was determined at Rs. 8,59,800 and income tax was charged at the rate of 55 per cent instead of at 60 per cent. The mistake led to short levy of tax of Rs. 66,749 including penal interest for short payment of advance tax and late filing of return.

The Ministry of Finance have accepted and rectified the mistake

(*ii*) From the assessment year 1980-81 the rate of surcharge on income-tax has been increased from 5 per cent to $7^1/_2$ per-cent.

In the case of a company, the provisional assessment for the assessment year 1980-81 was completed in September 1980 on the returned income of Rs. 5,63,77,320 and a tax of Rs. 3,25,57,902 was levied by the department, refunding Rs. 5,14,08,616 paid in excess towards advance-tax. While arriving at the amount of refund, surcharge was levied at the rate of 5 per cent instead of at $7^1/_2$ per cent. The mistake resulted in excess refund of Rs. 7,75,188.

The Ministry of Finance have accepted the mistake and have stated that a demand has been created for the amount.

(*iii*) A domestic company in which the public are not substantially interested and which is mainly engaged in industrial activity is charged to tax at 55 per cent on the first Rs. 2 lakhs of its total income and at 60 per cent on the excess over Rs. 2 lakhs. In the case of such a company which is not engaged in industrial activity, however, the rate of tax is 65 per cent of the total income.

A company in which the public were not substantially interested and which was mainly engaged in the trading of ore, automobile accessories etc., was treated as a non-industrial company in the assessment years 1974-75 and 1976-77. For the assessment year 1975-76, however, the company was treated as an industrial company and charged to tax at 55 per cent on the income upto Rs.2 lakhs and at 60 per cent on the excess of income over Rs. 2 lakhs. Since the assessee was not an industrial company, income tax was chargeable at the rate of 65 per cent on the total income of Rs. 1,49,11,060 computed for the assessment year 1975-76 in January 1981. The mistake led to short levy of tax of Rs. 9,58,166 including penal interest for belated filing of the return of income and interest allowed on refund consequent on appellate orders.

The paragraph was sent to the Ministry of Finance in August 1982; their reply is awaited (December 1982).

Incorrect computation of business income

Under the provisions of the Income-tax Act, 1961, any expenditure laid out or expended wholly and exclusively for the purposes of business is allowable as deduction in computing the business income of an assessee, provided the expenditure is not in the nature of capital expenditure or personal expenses of the assessee.

2.08 *Misclassification of capital expenditure as revenue expenditure*

(*i*) Where an assessee has acquired a capital asset out of loans taken in foreign currency and at the time of repayment of loan, a change in rate of exchange occurs, there is an increase or decrease in the liability in terms of domestic currency for repayment of the whole or part of the moneys borrowed. As the increase or decrease partakes the character of capital expenditure, it has to be added or reduced from the cost of the asset and not accounted for as revenue expenditure or receipt in computing the income of business.

In the assessment for the assessment year 1976-77 of a public sector company, a debit of Rs. 30,30,047 in the profit and loss account towards loss in exchange, was allowed (September 1980) by the department in computing the business income. It was noticed that the loss arose on account of fluctuation of exchange rates in respect of the out-standing portion of a loan of 23 million dollars taken by the assessee for acquiring plant and machinery from foreign countries and that it was not an admissible deduction. The mistake resulted in excess carry forward of loss for adjustment against future years' income.

The Ministry of Finance have accepted the omission and have reported that the assessment is being revised.

(*ii*) An assessee obtained a loan of Rs. 24,12,142 equivalent to Rs. 49,43,030 from a company in West Germany for purchase of plant and machinery. While paying the instalment of loan, the company incurred an additional liability of Rs. 12,14,904 for the assessment year 1978-79 owing to fluctuation in foreign exchange rates. This was allowed by the Inspecting Assistant Commissioner, as revenue expenditure in the assessment completed in November 1980.

The incorrect allowance resulted in total under-assessment of income by Rs. 10,93,414 and undercharge of tax of Rs. 6,31,445 for the assessment year 1978-79.

Similar under-assessment of income and short levy of tax thereon for the same reasons for the assessment years 1976-77 and 1977-78 in respect of this assessee were reported in paragraph 2.09 (a)(ii) of the Revenue Receipts Audit Report (Volume II) for the year 1980-81 and the mistakes were accepted by the Ministry of Finance.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*iii*) In the assessment of a Sugar Mill for the assessment year 1977-78 completed by an Inspecting Assistant Commissioner in March 1980, it was held that a sum of Rs. 9,86,066 debited by the assessee in the sugar account on account of "provision for sugar excess price payable" was to be added back to the total income. However while computing the total income, the addition was not made.

The assessee had also debited a sum of Rs. 90,800 to the profit and loss account on account of contribution towards Storage Fund for molasses tanks as required under the Molasses Control (Amendment) Order 1972/1975. In determining the total income,

this amount was allowed as a deduction. The deduction was not admissible as the assessee had only made a provision for meeting capital expenditure.

The mistakes resulted in total under-assessment of income of Rs. 10,76,866 involving short-levy of tax of Rs. 7,78,030.

The Ministry of Finance have accepted the mistakes.

2.09 *Mistakes in the allowance of head office expenses*

In the case of foreign companies doing business in India, a portion of the administrative expenses of their head offices becomes an allowable deduction. Till 1975 the checks exercised by the department on allowing claims towards head office expenses were, inadequate. Pursuant to the recommendations made by the Public Accounts Committee in paragraph 9.13 of their 176th Report (Fifth Lok Sabha) and paragraph 3.38 of their 187th Report (Fifth Lok Sabha) detailed guidelines on the subject were issued by the Central Board of Direct Taxes in June 1975 and the law was also amended with effect from 1 June 1976. The law as amended fixed a ceiling limit on the deduction on account of head office expenses as the least of the following items:—

(*a*) an amount equal to five percent of the adjusted total income; or

(*b*) an amount equal to three years average head office expenditure; or

(*c*) an amount equal to so much of the expenditure in the nature of head office expenditure as is attributable to the business or profession of the assessee in India.

It has been judicially held that the law to be applied to an assessment is that in force, in the assessment year though the

income relates to the previous year and any amendment which is inforce at the beginning of the relevant assessment year must govern the case though the amendment is made after the income under assessment is earned. Accordingly the aforesaid amendment made from 1 June 1976 was applicable to the income assessable for the assessment year 1977-78. This position was explained also in the explanatory note on the Finance Act, 1976 which stated that although the aforesaid provision for limiting the head office expenses of the now resident assessees came into operation with effect from 1 June 1976, it would apply in respect of the assessment year 1977-78 and subsequent assessments.

(*i*) In the case of 14 non-resident companies it was noticed that while limiting the head office expenses of the companies for the purpose of computation of their business income for the previous year ending December 1976 relevant to the assessment year 1977-78, the department allowed actual expenses incurred upto May 1976 in full as in (c) above, and for the period from June 1976 the proportionate expenses incurred thereafter were limited as per the new provision. As the amended law applies to the whole assessment year 1977-78 the expenses incurred for the full year were required to be limited to the extent prescribed in the Act. The omission led to undercharge of tax of Rs. 13,99,326 in the assessment year 1977-78 in the hands of the 14 non resident companies.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*ii*) In the assessment of an another non-resident company for the assessment year 1978-79, completed in November 1980, a sum of Rs. 11,54,126, being 5 per cent of the adjusted total income of Rs. 2,30,82,512 was allowed as deduction towards head office expenses in the computation of business income. Subsequently, the assessee pointed out that a sum of Rs. 43,12,347 was erroneously included in the total income. Therefore, the assessment was rectified in March 1981 reducing the adjusted

total income by Rs. 43,12,347. No corresponding reduction in the deduction allowed towards head office expenses was however made. There was thus an under-assessment of business income by Rs. 2,15,617 in the assessment year 1978-79 leading to undercharge of tax of Rs. 1,61,650.

The Ministry of Finance have accepted the mistake and have stated that additional demand of Rs. 1,61,650 has been collected.

2.10 *Incorrect allowance of provision for gratuity*

Under the Income-tax Act, 1961 no deduction shall be allowed in respect of any provision made by an assessee for the payment of gratuity to his employees on their retirement or on termination of their employment, subject to the exceptions provided in the Act. However, a provision made during the previous year relevant to any assessment year commencing on or after 1 April 1973 but before 1 April 1976 is admissible upto the prescribed limit if the provision is made on the basis of an actuarial valuation of the ascertainable liability for payment of gratuity, and an approved fund is created for the benefit of the employees and at least 50 per cent of the admissible amount is paid by the assessee as contribution to the approved gratuity fund before 1 April 1976 and the balance before 1 April 1977. The deduction would be admissible to the extent of actual provision made in each assessment year.

(*i*) A company was allowed in the assessment year 1975-76 (assessment completed in September 1977) a deduction of Rs. 55,000 on account of provision made in the profit and loss account, towards gratuity liability to its employees. The company claimed in appeal, a deduction of Rs. 1,52,524 being the accrued liability for payment of gratuity on the basis of actuarial valuation. It was ordered by the Appellate Assistant Commissioner that the claim should be allowed, if admissible under the rules.

The assessment was thereupon revised in March 1979 to give effect to the appellate orders and an amount of Rs. 1,52,524 was deducted instead of Rs. 55,000. Since deduction is admissible only to the extent of actual provision made in the year, the deduction of Rs. 1,52,524 against the actual provision of Rs. 55,000 was incorrect. The excess deduction of Rs. 97,524 resulted in short levy of tax of Rs. 73,211.

The Ministry of Finance have accepted the mistake.

(ii) In the assessment of a company for the assessment year 1977-78 completed in August 1980, a sum of Rs. 39,32,564 debited to the profit and loss account as contribution to gratuity fund, including arrear contribution of Rs. 25,03,449 was allowed as deduction. The arrear contribution of Rs. 25,03,449 related to the gratuity liability accrued upto the assessment year 1973-74. It was, however, noticed in audit that the assessee's claim for gratuity liability of Rs. 21,90,191 made in the assessment for the assessment year 1972-73 and disallowed by the department had been allowed in appeal in January 1977; the appeal effect had been given by the department in March 1977. Accordingly an amount of Rs. 21,90,191 ought to have been reduced from the arrear contribution of Rs. 25,03,449 allowed in the assessment year 1977-78. The omission resulted in under-assessment of business income by Rs. 21,90,191 with consequent undercharge of tax of Rs. 12,64,835 in the assessment year 1977-78.

The Ministry of Finance have accepted the omission.

(iii) A company had been charging gratuity payments to its employees in the accounts of the year in which the payments were made. During the financial year 1976-77 relevant to the assessment year 1977-78, the company paid a sum of Rs. 88,36,591 on account of gratuity and debited the same in the accounts for the year 1976-77. While completing the assessment in June 1980 the Income-tax Officer allowed the payment in

full. Actually, out of the gratuity payment of Rs. 88,36,591 a sum of Rs. 66,78,295 had been appropriated out of past provisions, made prior to nationalisation of sick mills and allowed as deduction in the income computation in the respective years. This amount should not have been allowed again while computing the business income for the assessment year 1977-78. The double allowance resulted in excess carry-forward of loss to the extent of Rs. 66,78,295 with a potential tax effect of Rs. 38,56,714.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified in November 1981.

2.11 *Mistakes in the allowance of contributions to provident funds*

(*i*) Under the Income-tax Act, 1961, any sum paid by an assessee as an employer by way of contribution towards a recognised provident fund is allowable as deduction in the computation of its business income. The Income-tax Act and the Rules framed there-under contain terms and conditions under which a provident fund may be recognised by the Commissioner. These terms and conditions include, *inter alia*, the setting up of the fund under an irrevocable trust, the pattern of investment to be followed by the fund, the maintenance of accounts and statements of the fund and the submission thereof to the Income-tax authorities. Thus, if the provident fund is not settled upon trust but merely comprises sums set apart in the books of the employer, the employer would not be parting with his proprietary rights in such sum (s) and no expenditure can be said to have been incurred to claim revenue deduction.

In the assessments of a private company for the assessment years 1977-78 and 1978-79 (completed in April 1978 and February 1979 respectively) sums of Rs. 1,08,628 and Rs. 1,05,362 debited to the respective accounts on account of employer's contribution to the provident fund was deducted as claimed by

the company. It was noticed in audit that the employer's contribution to the provident fund was not transferred to an irrevocable trust or to the proper authority but was kept by the employer as evidenced from the comments of the company's Auditors, incorporated in their report. As the employer's contribution to the fund was not actually remitted, though debited in the accounts, the deduction allowed was incorrect leading to undercharge of tax of Rs. 74,140 in the assessment year 1977-78 and excess carry forward of loss of Rs. 1,05,362 in the assessment year 1978-79, the assessment for this year having resulted in a loss.

The Ministry of Finance have, however, justified the assessment pleading that the assessee is following mercantile system of accounting and under the law any sums actually paid or incurred are allowable.

The Public Accounts Committee, in paragraph 125 of their 110th Report (Sixth Lok Sabha) on a similar case, observed that it could never have been the intention of Parliament that employers who hold back contributions payable to the trustees under the law, should, instead of being taken to task for such default be afforded tax relief on such unpaid contributions and recommended that the matter might closely be examined by Government and if there is a lacuna in the law which permits an interpretation leading to such an irrational deduction from gross income for tax purposes, it should be removed forthwith. Accepting the recommendation of the Committee, in August 1979 the Ministry had agreed to amend the law. The amendment has not been made so far.

(*ii*) Under the Income-tax Act, 1961, any expenditure not laid out or expended wholly and exclusively for the purpose of business is not allowable in computing business income. It has been judicially held that expenditure which was incurred in connection with proceedings relating to breach of law was not due to any exigency of the business carried on by an assessee,

and would not be deductible even if incurred for the purpose of business.

In the accounts of a company relevant to the assessment year 1978-79 (completed by an Inspecting Assistant Commissioner in January 1981) a sum of Rs. 1,36,143 was debited to the profit and loss account as interest on account of the payment made to the Commissioner of Provident Fund for failure to deposit the contributions to provident fund, in time. This expenditure was deducted by the Income-tax Officer in computing the company's total income. As the payment was made for infringement of statutory orders and it was not due to any exigency of the business, it would not constitute admissible expenditure. The incorrect deduction allowed on this account led to excess computation and carry forward of loss of Rs. 1,36,143 with a potential tax effect of Rs. 78,621.

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for recovery of damages "not exceeding the amount of arrears" in the case of employers who make defaults in the payments of any contribution to the fund. As this provision conferred too wide a discretion on the departmental officers in the matter of extent of damages that can be levied, the Public Accounts Committee in para 124 of their 110th Report (Sixth Lok Sabha) felt that the discretion should be limited by prescribing either in the statute itself or in the executive instructions norms for exercise of discretion. In their Action Taken Note dated 28 September 1979 the Ministry of Labour, stated that it was proposed to modify the existing provision contained in Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 so as to fix in the Act itself the percentage of penal interest to be recovered in proportion to the period of delay and the amount of provident fund arrears.

The Public Accounts Committee in para 114 of their 21st Report (7th Lok Sabha) further observed that the proposed

amendments to Section 14 and 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 should be finalised without delay.

No amendment to these provisions seem to have been made so far.

While not accepting the objection, the Ministry of Finnce have stated that in the absence of any modification to Section 14-B of the Employee's Provident Fund Act, the present provisions, as they stand, cannot be construed to mean that the assessee had paid a penalty voilating any statutory provisions.

2.12 *Incorrect allowance of interest-tax liability*

According to the provisions of the Interest Tax Act, 1974, in computing the income of a scheduled bank chargeable to income tax under the head "Profits and gains of business or profession", the interest tax payable by the schedule bank for any assessment year shall be deductible from the profits and gains of the bank assessable for that assessment year.

(*i*) In the income tax assessment of a scheduled bank for the assessment year 1975-76 completed on 21 March 1977 it was seen in audit (March 1979) that a deduction of Rs. 28 lakhs towards interest tax payable was allowed. However, according to the interest tax assessment for the year 1975-76 completed in October 1977 and subsequently revised in March 1978, the interest tax payable was determined as Rs. 26,11,665 only. Consequently the income-tax assessment for the assessment year 1975-76 required revision withdrawing the excess deduction of Rs. 1,88,335 on account of interest tax liability. The omission resulted in short-levy of tax of Rs. 1,08,760.

The Ministry of Finance have accepted the omission and have rectified the assessment and collected the demand of Rs. 1,08,760.

(*ii*) In the case of two other banking companies for the assessment years 1975-76 and 1976-77 completed in March 1978, April 1978 and March 1979 a sum of Rs. 2,52,53,816 was allowed towards interest-tax liability. Due to acceptance of a portion of liability disputed by one of the banks by the department and reduction of interest-tax liability in appeal in both the cases, the interest tax liability of the companies was reduced to Rs. 2,42,14,332 for the two assessment years. Consequently the income-tax assessments for the assessment years 1975-76 and 1976-77 required revision withdrawing the excess deduction of Rs. 10,39,484 from the taxable profits. This was not done leading to short-levy of tax of Rs. 6,00,300.

The paragraphs were forwarded to the Ministry of Finance in July 1982; their reply is awaited (December 1982).

2.13 *Computation mistakes*

(*i*) For the previous year relevant to the assessment year 1974-75, the regular assessment of a public company was completed in September 1977. In the revision order passed in May 1978 (to disallow excess depreciation allowed earlier) the total income was determined as Rs. 6,52,80,871. In the subsequent revision made in March 1980 to assess escaped income of Rs.7,78,201 the total income was re-determined as Rs. 6,59,81,252. While further revising the assessments in November 1980 and February 1981 to compute the correct relief allowable, the assessing officer, instead of adopting the revised total income of Rs. 6,59,81,252 determined in March 1980, incorrectly adopted the income of Rs. 6,52,80,871 determined in May 1978. The incorrect adoption resulted in excess carry forward of unabsorbed development rebate by Rs. 7,00,381 resulting in a short levy of tax of Rs. 4,04,470 for the assessment year 1977-78, in which year the carried forward of deficiencies of earlier years were finally set off.

The Ministry of Finance have accepted the mistake and stated that the assessment has been rectified and additional demand of Rs. 4,04,470 collected.

(*ii*) In the case of a company the Income-tax Officer did not accept the value of closing stock as shown by the company in its accounts for the assessment year 1976-77 and made addition of Rs. 35,95,900 on account of its under-valuation. In the assessment year 1977-78 (assessment made on 23 September 1980), however, the value of opening stock was reduced by Rs. 40,00,000, instead of by Rs. 35,95,900. The excess deduction resulted in an under-assessment of income of Rs. 4,04,100. As the income computed for the assessment year 1977-78 was a loss, the under-assessment resulted in excess carry forward of loss with potential undercharge of tax of Rs. 2,54,583 in the year in which the carried forward loss was adjusted against positive income.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified.

(*iii*) Under the provisions of the Income-tax Act, 1961, total income of a non-resident shall be computed with reference to income received or accruing or arising in India. Income accruing or arising outside India is not assessable at the hands of the non-resident.

In the previous year relevant to the assessment year 1978-79 completed in December 1980 a non-resident company deriving business income in India submitted two accounts—one termed "Nepalye Account" and the other "Indian Account". The latter contained particulars of income derived in India. While framing the assessment the department computed the total income with reference to the particulars furnished in the Nepalye Account. The mistake in not computing the income with reference to the Indian Accounts resulted in short assessment of income by Rs. 1,16,870 in the assessment year 1978-79 with consequent short levy of tax of Rs. 92,772 in that year including interest of Rs. 6,872 for late submission of return.

The Ministry of Finance have accepted the mistake and have reported that the assessment is being revised.

2.14 *Other cases*

(*i*) The Central Board of Direct Taxes issued instructions in January 1973 that the amount of discount granted when issuing bonds by State Financial Corporations becomes an ascertained liability in the year of issue itself and the loss representing the amount of discount should be allowed as a deduction in the year of issue. It was, however, judicially held in November 1979 in the case of a Financial Corporation that discount allowed at the time of issue of debentures did not constitute expenditure. According to the decision, before there could be any expendiiure, there had to be some payment out and in issuing debentures at a discount, there was no question of payment to any one so as to constitute "expenditure".

(*a*) In the assessment of State Financial Corporation (institution) for the assessment years 1976-77, 1977-78 and 1978-79, the assessee claimed and was allowed deductions from the total income, of Rs. 94,875, Rs. 12,650 and Rs. 94,875 respectively representing discount at Rs. 11.50 per bond, on 6¼ per cent bonds issued by the corporation. The incorrect deduction resulted in under-assessment of business income by Rs. 2,02,400 involving short levy of tax of Rs. 1,16,880.

(*b*) In the assessment, for the assessment year 1977-78 (June 1980), of another financial institution under the same Commissioner's charge a deduction of Rs. 1,26,500 representing discount at Rs. 11.50 per bond on 6¼ per cent bonds, issued by it was allowed. The mistake resulted in under-assessment of business income by Rs. 1,26,500 involving short levy of tax by Rs. 73,053.

The mistakes in the two cases led to short levy of tax of Rs. 1,89,933.

The Ministry of Finance have accepted the mistake and stated in the first case that the assessment for the assessment year 1978-79 is being cancelled. In the second case action has been initiated to revise the assessment. Report regarding action taken in respect of remaining assessment years and collection of demand is awaited (November 1982).

(*ii*) Under the Income-tax Act, 1961 where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.

A private industrial company had obtained loans from two other companies. The total amount payable by the assessee was Rs. 20,36,743 including interest of Rs. 2,22,533 which had been debited in the accounts and allowed as reduction. In accordance with a settlement between the parties, the assessee paid during the previous year relevant to the assessment year 1980-81 a sum of Rs. 15 lakhs in full and final settlement of the claim of the other two companies. The interest amount, claimed and allowed as expenditure in earlier years had finally ceased to be payable in the assessment year 1980-81 on the settlement mentioned above and was accordingly chargeable to income-tax. The omission to bring it to charge resulted in under-assessment of income by Rs. 2,22,533 with a potential tax effect of Rs. 1,31,454 (for the assessment year 1980-81, the assessee company was assessed to a loss of Rs. 45.58 lakhs).

The paragraph was sent to the Ministry of Finance in September, 1982; their reply is awaited (December 1982).

(*iii*) A Public limited company, incorporated in February 1976, took over a Government Electric Factory from 1 August 1976 on "as is where is basis". In the assessment for the assessment year 1977-78, completed in June 1980, the company was allowed deduction to the extent of Rs. 1,71,300 towards *ex gratia* remuneration paid to employees of the erstwhile Government factory to maintain harmonious industrial relations. The State

Government decided in May 1977 that the expenditure towards the payment of *ex gratia* remuneration would form part of purchase consideration. As such the expenditure was in the nature of capital expenditure. In the circumstances deduction allowed towards this expenditure which was in the nature of capital expenditure was not correct. The incorrect deduction led to short computation of income of Rs. 1,71,300 for the assessment year involving undercharge of tax of Rs. 98,926.

The Ministry of Finance have not accepted the audit objection stating that the exgratia payment was made as an incentive for the beneficial running of the concern. They have not commented on the fact that the state Government had clearly stated in May 1977 that this payment should be adjusted in the purchase consideration.

(*iv*) In computing business income a liability for expenditure is allowable as a deduction if it is an ascertained liability and not merely a contingent liability.

In the previous years relevant to the assessment years 1975-76 and 1976-77 a company debited Rs. 1,43,034 and Rs. 3,11,619 respectively in its accounts towards provision for penalty for late supply of materials to different state Electricity Boards. These amounts were allowed as admissible business expenses. As the company had provided only for a possible imposition of penalty at later dates the liability was only a contingent one and not an ascertained liability. The amounts were not allowable as a deduction in the relevant previous years. The incorrect allowance of deductions in the assessment yeats 1975-76 and 1976-77 resulted in aggregate under-assessment of income of Rs. 4,54,653 with consequent undercharge of tax of Rs. 2,62,560.

The paragraph was forwarded to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*v*) In the computation of taxable income of a company, the department had been regularly disallowing the provision made by the company for payment of bonus and allowing deduction on actual payment basis.

In computing the taxable income of the company for the assessment year 1977-78 in May 1978, the department allowed the provision of Rs. 7,89,969 made for bonus for the current year in addition to the actual payment of Rs. 6,38,320 relating to an earlier year but made during the year. This irregular deduction of Rs. 7,89,969 involved a short demand of tax of Rs. 4,56,206.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

Irregularities in Allowing Depreciation and Development Rebate

In computing income from business, the Income-tax Act, 1961 provides for the grant of depreciation at the prescribed rates on buildings, plant and machinery and furniture owned by an assessee and used for the purpose of business. The Act provides for development rebate on plant and machinery installed after 31 March 1970 used for the purpose of business carried on by the assessee at the rate of 15 per cent of the cost of plant and machinery. This rebate was discontinued from 1 June 1974. The Act also provides for investment allowance at 25 per cent of the actual cost of new machinery or plant installed after 31 March 1976 for the purpose of construction, manufacture or production of one or more items specified in the Ninth Schedule to the Act. From 1 April 1978, this allowance is admissible to a small scale industrial undertaking or to an undertaking engaged in manufacture of articles not included in the Eleventh Schedule to the Act.

2.15 *Incorrect allowance of depreciation*

(*i*) Under the Income-tax Rules, 1962 a general rate of 10 per cent is prescribed for depreciation in respect of machinery and plant for which no special rate of depreciation has been prescribed therein, special rates ranging from 15 per cent to 100 per cent are, however, prescribed for certain specified items of machinery and plant.

A company was assessed for the assessment year 1977-78 by an Inspecting Assistant Commissioner (Asstt.) in December 1975 on a loss of Rs. 2,68,72,020.

Depreciation amounting to Rs. 66,82,098 was allowed on plant and machinery, factory building, furniture and other assets at the rates of 15 per cent instead of 10 per cent excepting in two cases, where the depreciation was admissible at 15 and 20 per cent. Also the amount of depreciation was determined erroneously by adopting the written down value of the assets at Rs. 3,34,89,047 instead of the correct amount of Rs. 3,60,66,882.

Similar mistakes had been noticed in September 1979 in the assessment for the assessment year 1976-77. That assessment was rectified in September 1980 but the written down values of assets as arrived at in the revised assessment order had not been adopted for assessment year 1977-78.

These mistakes led to excess allowance of depreciation to the extent of Rs. 17,04,947 in the assessment year 1977-78 with excess computation of loss to the same extent.

The paragraph was sent to the Ministry of Finance in July 1982; their reply is awaited (December 1982).

(*ii*) In the case of an another company, the department, while completing the assessment for the assessment year 1974-75 in May 1981, allowed a total depreciation of Rs. 86,75,371 as against Rs. 80,75,371 by erroneously allowing depreciation amounting to Rs. 24,72,985 in respect of motor cycle and scooter division Plant II instead of the correct amount of Rs. 18,72,985. The excess allowance of depreciation by Rs. 6 lakhs resulted in under-charge of tax by Rs. 3,46,500.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*iii*) Under the Income-tax Rules, 1962, depreciation on ocean-going ships purchased second-hand is admissible based on the expectation of life of the vessel on the date of purchase.

A public limited shipping company was allowed depreciation amounting to Rs. 1,90,13,986 on its fleet, for the assessment year 1977-78 (assessment made in September 1980) as against the admissible depreciation of Rs. 1,87,93,646. The excess allowance of depreciation of Rs. 2,20,340 due to non-adoption of the correct actual cost and expectation of life of the ships resulted in excess carry forward of loss by this amount having a potential tax effect of Rs. 1,04,110.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*iv*) Under the Income-tax Act, 1961, in determining the written down value of assets for purposes of allowance of depreciation, both normal depreciation and extra shift allowance allowed, are required to be taken into account and not normal depreciation alone.

(*a*) In the case of a company, although extra shift allowance of Rs. 7,00,337 and Rs. 11,41,913 was allowed in the assessment years 1974-75 and 1976-77 respectively, the same was not taken into account in determining the written down value of the assets in the succeeding assessment years *viz.* 1975-76 and 1977-78 (assessments completed in July 1981). The mistake resulted in excess allowance of depreciation of an aggregate sum of Rs.1,84,225 in the two assessment years. As both the assessments resulted in carry forward of unabsorbed development rebate, there was excess carry forward of allowance of depreciation by Rs. 1,84,225.

The Ministry of Finance have accepted the mistake and rectified the assessments.

(*b*) In the case of a company, although extra shift allowance amounting to Rs. 3,48,080 was allowed on plant and machinery in the assessment year 1973-74 the same was not taken into account in determining the written down value of the assets in the assessment year 1974-75. As a result, there was excess allowance of depreciation of Rs. 69,616 and Rs. 55,676 in the assessment years 1974-75 and 1975-76 respectively (assessment completed in August and September 1980) leading to total undercharge of tax of Rs. 72,356 in the two years.

The Ministry of Finance have accepted the mistake.

(*v*) Under the Income-tax Act, 1961 the aggregate of all deductions in respect of depreciation made under the various provisions of the Act, shall in no case exceed the actual cost to the assessee of the relevant asset.

In the assessment of a company for the assessment year 1975-76 completed in September 1978 initial depreciation to the extent of Rs. 4,92,414 was allowed on meters, as claimed by the assessee, in addition to normal depreciation allowed at hundred per cent on the cost of the same. As the entire actual cost of the asset was allowed as deduction by way of normal depreciation, no further depreciation was admissible to the assessee. The incorrect allowance of initial depreciation resulted in an under-assessment of business income by Rs. 4,92,414 with consequent undercharge of tax of Rs. 2,95,742 including penal interest for delayed submission of return.

The Ministry of Finance have accepted the mistake.

(*vi*) The Income-tax Rules, 1962 provides for grant of additional depreciation for extra shift working of the plant and machinery depending upon the number of days of double and triple shift working of the concern. For claiming the deduction, the assessee shall furnish the particulars prescribed in the Income-tax Rules.

In the case of a company there was no evidence that it had worked extra shift during the previous years relevant to the assessment years 1976-77 and 1977-78 and the assessee had also not furnished the prescribed particulars to substantiate the claim. The department granted extra shift allowance on account of triple shift working to the extent of Rs. 3,62,999 and Rs. 7,00,132 during the assessment years 1976-77 and 1977-78 (assessments completed in September 1979 and November 1979 respectively). The incorrect allowance resulted in excess carry-forward of loss of Rs. 10,63,131 for the two assessment years.

The Ministry of Finance have accepted the mistake and have stated that the assessments are being revised.

(*vii*) Depreciation is allowed at the prescribed rates on the actual cost or the written down value of the assets as the case may be. Under the Income-tax Act, 1961, the term 'actual cost' for the purpose of allowance of depreciation means the actual cost of the assets to the assesssee reduced by that portion of the cost, if any, as has been met directly or indirectly by any other person or authority.

(*a*) In the case of a company, a part of the cost of machinery was met by subsidy amounting to Rs. 6,19,927 received from a state financial corporation in the previous year relevant to the assessment year 1977-78. Accordingly, in computing depreciation on machinery, the said sum of Rs. 6,19,927 (not incurred by the assessee) was required to be deducted from the cost of the asset to the assessee. Omission to make this deduction in the assessments for the years 1977-78 to 1979-80 made in April 1978 and July 1980 resulted in excess allowance of depreciation of Rs. 4,01,817 with consequent undercharge of tax of Rs. 2,32,049 in the said three assessment years.

The Ministry of Finance have accepted the mistake and have stated that the assessments have been rectified.

(*b*) A company was to receive a cash subsidy of Rs. 6,00,687 from a State Government towards the cost of plant and machinery installed by it in the previous year relevant to the assessment year 1979-80. This amount was required to be reduced to arrive at the 'actual cost' for purpose of allowing depreciation and investment allowance. The omission to do so resulted in excess allowance of depreciation of Rs. 60,068 and investment allowance of Rs. 1,50,172 and consequent excess carry forward of loss of Rs. 2,10,240 with a potential tax effect of Rs. 1,21,414.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified.

(*c*) In the case of another company a subsidy of Rs. 15 lakhs was received from the Central Government towards the cost of the assets in two instalments of Rs. 7,15,000 and Rs. 7,85,000. The amounts were received in the previous years relevant to assessment years 1976-77 and 1977-78 respectively. In computing depreciation on plant and machinery for these two years, (assessment completed in April 1980 and August 1980) the sum of Rs. 15,00,000 was required to be deducted from the cost of the assets to the assessee. Omission to do so, resulted in excess allowance of depreciation of Rs. 2,51,035 (including extra shift allowance of Rs. 36,685 for the assessment year 1977-78) in the assessment years 1976-77 and 1977-78 (assessments completed in April and July 1980) and corresponding excess carry forward of business loss with a potential tax effect of Rs. 1,44,972.

While accepting the mistake the Ministry of Finance have stated (December 1982), that the assessments have been rectified.

(*viii*) The total income of a company for the assessment year 1971-72 was initially computed in February 1974 at Rs. 26,50,000 on best judgement basis against a returned income of Rs. 23,24,814. On an appeal by the assessee, the Appellate Tribunal in its orders of August 1976 estimated the income at Rs. 24,00,000 and directed

the Income-tax Officer to allow depreciation as per rules after adding back the amount of depreciation already claimed by the assessee in the return of income. The total income was accordingly computed at Rs. 21,35,825 in January 1978 after allowing depreciation of Rs. 2,64,175 as per rules. The depreciation of Rs. 1,97,351 already claimed by the assessee in the return was, however, omitted to be added back to the total income. The mistake resulted in undercharge of tax of Rs. 2,49,701 including excess payment of interest on delayed refund.

The Ministry of Finance have accepted the mistake and stated that the assessment has been rectified raising additional demand of Rs. 2,49,701. Report regarding recovery is awaited (December 1982).

(*ix*) A company showed a loss of Rs. 7,57,732 in the profit and loss account of the previous year relevant to the assessment year 1977-78. The loss was arrived at after charging depreciation of Rs. 2,95,241 on various items. While computing the loss for the assessment year 1977-78 in August 1979, the assessing officer allowed depreciation of Rs. 2,95,241 again and this resulted in double deduction leading to excess carry forward of loss of Rs. 2,95,241.

The paragraph was sent to the Ministry of Finance in May 1982 ; their reply is awaited (December 1982).

2.16 *Irregular grant of development rebate*

Under the Income-tax Act, 1961 ,development rebate on plant and machinery installed after 31 March 1970 used for the purpose of business carried on by an assessee is allowable at the rate of 15 per cent of such cost of plant and machinery. By the Finance Act, 1974, development rebate was abolished from 1 June 1974. If any machinery or plant on which development rebate was allowed in any earlier assessment year is sold or transferred

before the expiry of eight years from the end of the previous year in which it was installed, the development rebate so granted is to be withdrawn.

(i) For the assessment year 1973-74, a company was allowed development rebate of Rs. 1,68,946 on plant and machinery installed in one of its units in the relevant previous year. The business assets and liabilities of this unit were transferred in September 1976 to a subsidiary company formed earlier in May 1976. The latter company ceased to be the subsidiary of the assessee company on and from 4 October 1976. As the plant and machinery were transferred within the period of eight years, the income of the assessment year 1973-74 was required to be recomputed withdrawing the development rebate earlier allowed. The omission to do so resulted in under-assessment of income by Rs. 1,68,946 with consequent undercharge of tax of Rs. 97,566.

The Ministry of Finance have accepted the omission and stated that remedial action is barred by limitation of time.

(ii) In the assessment of a company for the assessment year 1976-77 (assessment completed in August 1980), it was noticed in audit that the company had sold its entire textile machinery, building, land, other installations etc. to another concern during the previous year relevant to the assessment year 1976-77. Development rebate to the extent of Rs. 8,13,098 had been allowed on the machinery in the assessment years 1972-73 to 1974-75. As the machinery was sold within the period of eight years, the development rebate of Rs. 8,13,098 allowed earlier ought to have been withdrawn and income of the relevant years recomputed. As a result of the omission the income of the company for the assessment years 1972-73 to 1974-75 was under assessed to the extent of Rs. 8,13,098 with consequent short-levy of tax of Rs. 5,12,247.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(iii) During the previous year relevant to the assessment year 1978-79, a private company (assessment made in March 1981) transferred gas cylinders owned by it to a firm which showed the market price of the cylinders as the capital contributed by the company. The assessee company had been allowed development rebate aggregating to Rs. 11,93,162 on these cylinders during the assessment years 1970-71 to 1975-76. As the assets on which this development rebate was allowed were transferred within eight years of their being put to use, the development rebate allowed ought to have been withdrawn. The omission resulted in under-assessment of income of Rs. 11,93,162 involving short levy of tax of Rs. 8,06,387.

The Ministry of Finance have accepted the mistake and have reported that the assessment is being rectified.

2.17 *Incorrect grant of investment allowance*

(i) Under the Income-tax Act in respect of a machinery owned by an assessee and used for purposes of business carried on by him, a deduction shall be allowed in the previous year of installation or in the previous year of first usage, of a sum by way of investment allowance, equal to 25 per cent of the actual cost of the machinery to the assessee. The section as it stood prior to 1 April 1978 provided that the machinery used in an industrial undertaking other than a small scale undertaking and eligible for the investment allowance shall be for purpose of manufacturing any article specified in the Ninth Schedule to the Act. Item 21 of the Ninth Schedule read as "Textile (including those dyed, printed or otherwise processed) made wholly or mainly of cotton including cotton yarn, hosiery and rope".

In the case of a company an investment allowance of Rs. 3,86,673 was allowed for the assessment year 1977-78. The company was mainly producing synthetic fibre; its production of

cotton yarn in the relevant previous year was only to the extent of 3.8 per cent of the total production of yarn by weight. Since synthetic fibre is not an item specified in the Ninth Schedule, the investment allowance was not admissible.

The incorrect allowance resulted in excess carry forward of loss of Rs. 3,86,673 in the assessment year 1977-78 with a potential tax effect of Rs. 2,23,300.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified.

(ii) The investment allowance is allowed subject to the condition that an amount equal to seventy five per cent of the sum so allowed has been debited to the profit and loss account of the relevant previous year and credited to a reserve account.

During the previous year relevant to the assessment year 1977-78, a company created investment allowance reserve of Rs. 26,00,000. The amount of investment allowance admissible on the basis of the reserve worked out to Rs. 34,66,664. The department, however, granted investment allowance of Rs. 36,84,260 in the assessment for the assessment year 1977-78 completed in September 1980. Investment allowance thus allowed in excess by Rs. 2,17,596 led to excess carry forward of loss by an identical amount involving a potential tax undercharge of Rs. 1,19,677.

The Ministry of Finance have accepted the mistake and stated that the assessment is being revised.

Irregular Exemptions and Reliefs

2.18 *Mistakes in allowing deductions under Chapter VI-A.*

Chapter VI-A of the Income-tax Act, 1961 provides for certain deductions to be made from the gross total income to arrive at

the net income chargeable to tax. The overriding condition is that the total deduction should not exceed the gross total income of the assessee. "Gross total income" has been defined as the total income computed in accordance with the provision of the Act before making deductions under chapter VI-A. Where set off of unabsorbed loss of earlier years, being an anterior stage, results in reducing the total income to 'nil' or to 'loss' no deduction under Chapter VI-A is admissible.

(i) For the assessment years 1978-79, 1979-80 and 1980-81, the gross total incomes of a company were Rs. 1,02,721, Rs. 55, 573 (loss) and Rs. 68,826 respectively. The department allowed deductions of Rs. 1,26,072, Rs. 1,14,865 and Rs. 1,14,865 respectively. For the two years 1978-79 and 1980-81, the deduction should have been restricted to the gross total income. For the assessment year 1979-80, as there was no positive income, no deduction was admissible. The incorrect deductions resulted in excess carry forward of business loss of Rs. 1,84,255 with a potential tax undercharge of Rs. 1,25,757.

The Ministry of Finance have accepted the mistake and stated that the assessments have been rectified.

(ii) In the assessment of another company for the assessment year 1975-76 (completed in February 1978), the department allowed deduction of Rs. 2,34,000 in respect of income by way of inter-corporate dividends received from domestic companies, although the income computed before allowing this deduction worked out only to a loss. The incorrect deduction led to excess carry forward of loss/depreciation to the extent of Rs. 2,34,000.

The paragraph was sent to the Ministry of Finance in May 1982; their reply is awaited (December 1982).

(iii) The gross total income of a company for the assessment year 1977-78 was computed (March 1980) at a loss. Accordingly, no deduction under Chapter VIA was admissible to

the assessee. The department, however, allowed a total deduction of Rs. 1,38,077 in respect of inter-corporate dividend and royalties received from an Indian concern. The mistake resulted in excess computation and excess carry forward of loss of Rs. 1,38,077.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified and the loss of Rs. 1,38,077 has been withdrawn.

2.19 *Incorrect allowance of relief in respect of newly established undertaking*

(i) Under the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains from a newly established industrial undertaking, the assessee is entitled to tax relief in respect of such profits and gains upto six per cent per annum of the capital employed (7 $\frac{1}{2}$ per cent from 1 April 1976) in the undertaking in the assessment year in which it begins to manufacture or produce articles and also in each of the following four assessment years. Under the rules prescribed for computing capital employed in the unit, the values of assets and liabilities as on the first day of the computation period are to be considered.

(a) In the assessment of a company for the assessment year 1976-77, the department computed the relief in respect of its new industrial undertaking at Rs. 1,12,995 adopting the value of the asset as on the last day of the previous year and carried forward the same for adjustment in the succeeding years. On the basis of the capital computed on the values of the assets and liabilities as on the first day of the relevant computation period as enjoined in the Rules, no relief was allowable to the assessee. The incorrect computation of capital resulted in excess allowance and carry forward of relief of Rs. 1,12,995 for the assessment year 1976-77.

The Ministry of Finance have accepted the mistake and stated that the assessment has been rectified.

(b) In the assessment of another company, the relief computed by the department on the basis of capital employed at the beginning of the accounting period was Rs. 2,77,520 for the assessment year 1977-78. While working out the net value of the assets of the business, fictitious assets of miscellaneous expenses and debit in profit and loss account amounting to Rs. 63,04,522 were also incorrectly considered as assets. On excluding the two items, the value of liabilities exceeded the value of assets and the relief allowed was, therefore, not admissible. The mistake resulted in incorrect grant of relief of Rs. 2,77,520 which was allowed to be carried forward for adjustment against future years' income.

The Ministry of Finance have accepted the mistake and stated that the assessment has been rectified.

(ii) Where the profits and gains of the new industrial unit fall short of the relevant amount of capital employed or where there is no such profits and gains, the relief allowable is carried forward and set off against the profits and gains of the unit as prescribed under the Act. The statute further provides that any borrowed money or debt due to the assessee carrying on the business shall be deducted from the value of the assets in computing the capital for this purpose.

In the case of a company the relief allowable to its new industrial undertaking for the four assessment years from 1972-73 to 1975-76 amounted to Rs. 5,43,818. While computing the capital employed in the unit for the purpose of the relief, money borrowed for the unit was not deducted.

In the assessment year 1975-76 the actual cost of a machinery was not reduced by the amount of subsidy of Rs. 62,445 received in respect of the asset, as the cost of asset would be the actual cost to the assessee as reduced by the cost met directly or indirectly by others.

The mistakes led to excess computation and carry forward of the relief by Rs. 3,61,544 in the aforesaid four assessments.

In the same case for the assessment year 1976-77 profits and gains of the unit were computed at Rs. 5,96,625 and the aforesaid deficiency of Rs. 5,43,818 on account of tax holiday relief and part of the relief admissible for the assessment year 1976-77 were set off against the profits of the year. The income was, however, incorrectly computed at Rs. 5,96,625 instead of Rs, 4,26,569 due to short allowance of depreciation of Rs. 1,42,541 and non-deduction of development rebate of Rs. 27,515.

The unabsorbed depreciation and development rebate of the new unit amounting to Rs. 4,58,493 in aggregate for the assessment years 1972-73 to 1975-76 which could not be set off in earlier years from other income of the company were set off against the total income of the assessee instead of against the profits of Rs. 4,26,569, relating to the new unit in the assessment year 1976-77. Further, this set off was to have been made against the profits of the new unit for the assessment year 1976-77 before adjusting the carried forward tax holiday relief. The incorrect allowance of the relief led to under-assessment of business income of the assessee by Rs. 5,96,625 involving under charge of tax of Rs. 3,44,552 in the assessment year 1976-77.

The Ministry of Finance have accepted the mistakes and stated that the assessments have been rectified raising additional demand of Rs. 3,44,552. Report regarding collection is awaited (December 1982).

(iii) In the case of a company, it was seen that for the assessment year 1977-78 (assessment completed in September 1980) a set-off of Rs. 2,54,886, being the tax holiday relief for the assessment year 1976-77, was allowed. It was, however, noticed that the assessee was not entitled to any relief for the assessment year 1976-77 as in the relevant previous year, the total of liabilities were 1,60,27,577 as against the total of assets valued at

Rs. 1,57,53,918. The incorrect computation of relief in the assessment year 1976-77 and carried forward for set off against the income of the assessment year 1977-78 resulted in excess allowance of relief of Rs. 2,54,886 and short levy of tax of Rs. 1,47,197.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(iv) The Income-tax Rules prescribe the method of arriving at the capital employed which *inter-alia* states that in case of depreciable assets, the written down value as at the beginning of the previous year after deducting the depreciation allowable on the cost of assets would be taken into account. The cost of assets will be the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

In the case of a company, cash subsidy of Rs. 15 lakhs received from Central Government towards cost of assets, in two instalments of Rs. 6,61,900 and Rs. 8,38,100 in the previous years relevant to assessment years 1977-78 and 1978-79 was not reduced from the cost of assets while taking the cost of assets for working out the deduction admissible for the assessment year 1979-80. This resulted in excess carry-over of the deduction allowable on account of tax holiday relief to the extent of Rs. 1,12,500 (7½ per cent of Rs. 15 lakhs) with a potential tax effect of Rs. 64,969.

The Ministry of Finance have accepted the mistake.

(v) A successor concern will be entitled to the benefit for the unexpired period of five years provided the undertaking is taken over as a running concern.

A company, which had taken over the business of manufacturing packing material from a partnership firm was assessed for the first time in the assessment year 1974-75. The firm which had come into being on 1 January 1970 had been assessed for the first time for the assessment year 1971-72. The relief for the newly established industrial undertaking was admissible to

the original firm and later to the successor upto the assessment year 1975-76 only. However, the department allowed deductions of Rs. 92,931 and Rs. 75,519 respectively for a further period of two years i.e. in the assessments for the assessment years 1976-77 and 1977-78 (completed in April 1980). This resulted in under assessment of income by Rs. 1,68,450 with a consequent short levy of tax of Rs. 1,38,709 including interest of Rs. 41,430 on short fall in the advance tax paid.

The Ministry of Finance have accepted the mistake.

(vi) Under the provisions of the Income-tax Act 1961, where the gross total income of an assessee includes any profits and gains derived from a ship brought into use after 31 March 1976 the assessee becomes entitled to a tax relief in respect of such profits and gains, upto seven and half per cent of the capital employed in the ship, in the assessment year in which the ship is first brought into use and also in each of the four succeeding assessment years. The Act also provides that where there is no profit from the ship the relief can be carried forward to the next assessment year.

In the assessment of a company for the assessment year 1977-78 made in August 1980, the total relief admissible to the assessee on four ships was determined as Rs. 9,68,437. This amount included a sum of Rs. 5,17,795 on account of relief relating to the fourth ship. While calculating the amount of relief to be carried forward the Income-tax Officer mistook the total figure of Rs. 9,68,437 as that of relief admissible for the fourth ship and added thereto an amount of Rs. 4,50,642 by way of relief in respect of the other three ships. As a result the amount to be carried forward was computed in excess by Rs. 4,50,642 involving a potential tax effect of Rs. 2,60,267.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified.

2.20 *Incorrect deduction in respect of inter-corporate dividends*

Under the Income-tax Act, 1961 as amended by the Finance Act (2) 1980 effective from 1 April 1968 the deduction admissible to a company on account of the inter-corporate dividends included in its total income has to be allowed with reference to the net amount of dividend income computed in accordance with the provisions of the Act and not with reference to the gross amount of such dividends.

(i) In the assessment of a public Company for the assessment year 1977-78 (completed in August 1980) a deduction of Rs. 3,36,097 was allowed from the gross dividend of Rs. 6,30,168 by the assessing officers. After setting off an expenditure of Rs. 6,16,000 towards interest attributable to dividend income, the deduction admissible for inter-corporate dividends actually worked out to only Rs. 8,496. Owing to the mistake in allowing the deduction from the gross dividend income instead of the net amount of dividend, there was under-assessment of income of Rs. 3,27,601 with consequent short levy of tax of Rs. 1,75,137.

The Ministry of Finance have accepted the mistake and stated that the assessment has been rectified raising additional demand of Rs. 1,75,137. Report regarding collection is awaited (December 1982).

(ii) In the case of another company in which public are substantially interested for the assessment year 1976-77 (assessment completed in November 1978), deduction in respect of inter-corporate dividends amounting to Rs. 1,16,516 was not allowed by the Income-tax Officer on the ground that there was no positive income to set off this deduction after considering the unabsorbed depreciation and losses. On appeal, the Commissioner allowed (October 1979) deduction of Rs. 1,16,516 on the basis of gross dividend income and the appeal orders were given effect to by the Income-tax Officer in December 1979.

Consequent upon the amendment of the Income-tax Act re-trospectively from 1 April 1968 the appellate orders of October 1979 and the assessment made in December 1979 in consequence

thereof, required revision but no action was taken by the department in this regard. Omission to do so, resulted in excess carry forward of loss of Rs. 1,16,516 for the assessment year 1976-77.

The Ministry of Finance have accepted the omission and stated that the assessment has been rectified reducing the carry forward loss of Rs. 1,16,516.

(iii) In the assessment of an Indian domestic company for the assessment year 1977-78 completed in September 1980 deduction was allowed with reference to the amount of the gross dividend income instead of on the net dividend income. Even after the amendment of the law in 1980 the mistake was not rectified by the assessing officer. As a result an excess allowance of deduction of Rs. 10,54,045 with an under-assessment of income by the same amount and undercharge of tax of Rs. 7,29,386 persisted.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

2.21 *Mistakes in the grant of Export Markets Development Allowance*

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

(i) In the assessment of a company for the assessment years 1976-77 to 1978-79 (completed between March 1979 and September 1979) a total weighted deduction of Rs. 58,21,851 equal to

one-third of the total expenditure of Rs. 1,74,65,553 incurred by the company towards the development of export markets was allowed by the department. The aforesaid expenditure included expenditure of Rs. 1,38,59,359 on freight and insurance on which no weighted deduction was admissible. The incorrect allowance of deduction of Rs. 46,19,782 led to excess carry forward of loss by Rs. 1,81,510 in the assessment year 1976-77, a total under-charge of tax of Rs. 7,92,894 in the assessment years from 1977-78 to 1979-80 and excess carry forward of loss of Rs. 33,39,250 in the assessment year 1979-80.

The Ministry of Finance have accepted the mistake and stated that assessment for the year 1976-77 has been rectified. Report regarding rectification of assessments for the remaining years and collection of additional demand is awaited (December 1982).

(ii) In the case of a domestic banking company a specified proportion of the aggregate expenditure incurred on its foreign branches is deemed to be incurred in deriving income from investments, such as government securities, debentures, etc., assessable under the head of income "interest from securities" and the balance expenditure is allowed as a deduction under the head "profits and gains of business or profession". Consequently, the assessee, can be allowed the weighted allowance only in respect of such balance expenditure and not on the total expenses incurred by the foreign branches.

In the income-tax assessment of a nationalised bank having overseas branches, for the assessment year 1977-78, completed in January 1980, the income from interest on Government securities etc. was determined, after deducting the proportionate interest payments and overhead expenses (including those incurred in the foreign branches), but in allowing the weighted export markets development allowance, the entire expenditure incurred in the foreign branches, (without reducing it by the amount already deducted against the interest on securities) was taken into account. As a result the business income of the bank was under assessed by Rs. 7,87,200 involving short levy of tax of Rs. 4,54,608.

The Ministry of Finance have accepted the mistake and have re-opened the assessment.

2.22 *Incorrect deduction allowed in the case of a priority industry.*

Under the Income-tax Act, 1961, as it stood prior to April 1968, relief at 8 per cent was allowable in the case of domestic companies on the profits and gains attributable to priority industries in the computation of their total income.

An assessee's claim for the relief for the assessment year 1966-67 on manufacture and sale of P.V.C. resin was rejected by the Income-tax Officer in the assessment finalised in March 1971 for the reason that the end product manufactured by the assessee was not the same as mentioned in the Fifth Schedule to the Income-tax Act. In the appeal filed by the assessee against the decision of the Income-tax Officer, the Appellate Assistant Commissioner directed the Income-tax Officer in September 1975 to allow the relief on the profits arising from the sales of PVC resin amounting to Rs. 86,25,218. The decision of the Appellate Assistant Commissioner was upheld by the Income-tax Tribunal in March 1977.

The Income-tax Officer while giving effect to the appellate orders of September 1975 in November 1975 allowed the relief at 8 per cent on the total sales of Rs. 86,25,218 instead of allowing it on the profits arising from the sales. In the absence of details of profits, even if the relief were calculated on the total income including the other income of Rs. 59,56,940 as returned by the assessee, the excess relief would be Rs. 2,13,461 with short levy of tax of Rs. 1,17,403. If the actual profits from sale of resins were found, the short levey would be more.

While accepting the mistake, the Ministry of Finance have stated that since there is no remedial action available, the impunged order cannot be rectified.

When the mistake was pointed out in audit in July 1979, time was available for rectification till November 1979. Instead of initiating the action to retrieve the revenue, the department questioned the jurisdiction of audit to look into the assessments. Meanwhile the rectification became time-barred resulting in loss of revenue of Rs. 1,17,403.

2.23 *Mistakes in the computation of income from capital gains*

Under the Income-tax Act, the income chargeable under the head 'capital gains' should be computed by deducting from the full value of the consideration for the transfer of the capital asset, the expenditure incurred wholly and exclusively in connection with the transfer and the cost of acquisition of the capital asset, including the cost of improvements, if any, to the asset.

(i) The term 'cost of acquisition' normally means the amount actually spent by the assessee in acquiring the asset. However, if he had acquired the asset before 1 January 1954 (1 January 1964 from the assesment year 1978-79), he is given the option of substituting the fair market value of the property on 1 January 1954 as its cost of acquisition. This option is not available in the case of an asset used in business and in respect of which depreciation has been allowed to the assessee in the assessment of earlier years. In the case of such depreciable assets, the capital gain is not also determined with reference to the actual cost but is required to be computed only with reference to the written down value of the asset, after making certain adjustments specified in the Act.

During the previous year ended 31 December 1973 relevant to the assessment year 1974-75, a non-resident company sold its land and buildings situated in India, for a total consideration of Rs. 12,00,000. (land Rs. 11,00,000 and building Rs. 1,00,000). In the regular assessment made in December 1975 for the relevant year, the capital gains arising from the sale of the building portion of the property was determined by the department as loss of Rs. 3,38,498, taking the fair market value of the building at Rs. 4,38,498 as on 1 January 1954 as the cost of acquisition.

The adoption of the fair market value as the cost of acquisition was not correct, as the building had been treated as a business asset and was allowed depreciation in the earlier assessments. The adjusted written down value of the asset was required to be taken as the cost of acquisition.

On this being pointed out in audit (October 1976), the assessment was set aside in December 1977 by the Commissioner with a direction to the Income-tax Officer to frame a fresh assessment. In the fresh assessment made in August 1980, the capital gain was determined by adopting the cost of acquisition of the building as Rs. 2,52,617.

It was noticed in Audit in June 1981 that the cost of acquisition of Rs. 2,52,617 adopted in the fresh order also was erroneous, as it represented the actual cost of acquisition of the property by the assessee, whereas, only a sum of Rs. 1 lakh, being the adjusted written down value of the building, should have been adopted. Since the sale price was also Rs. 1,00,000 there was no capital gain or loss in the sale of the building. As a result of this mistake a capital loss of Rs. 1,52,617 was erroneously included in the net capital gain of Rs. 10,65,307.

The incorrect computation resulted in under-assessment of capital gains by Rs. 1,52,617 with a consequential short levy of tax of Rs. 68,677.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been revised raising additional demand of Rs. 68,677. Report regarding collection is awaited (December 1982).

(ii) For the purpose of computation of capital gain, the term transfer has been defined to include 'sale, exchange or relinquishment of the asset or extinguishment of any rights therein'. It has been judicially held that when a person brings his assets into a firm in which he is a partner as his capital contribution, it

amounts to a transfer of capital assets and hence is liable to capital gain tax.

During the previous year relevant to the assessment year 1977-78, a company transferred certain shares, held by it, to a firm in which it had become a partner towards capital contribution and its account in the firm's books was credited with Rs. 4,00,500. The shares were acquired by the company during the previous year relevant to the assessment year 1975-76 and the cost of the shares to the company, as per company's Balance Sheet as at 31 May 1974 relevant to the assessment year 1975-76 was Rs. 3,00,600. While completing the assessment in August 1980 the Income-tax Officer did not treat the transaction as a 'transfer' as a result of which the short-term capital gains amounting to Rs. 99,900, escaped assessment resulting in short levy of tax of Rs. 68,181.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been reopened.

2.24 *Income escapting assessment*

(*i*) Under the provisions of the Income-tax Act, 1961, where any depreciable asset is sold, the difference between the sale price and the written down value is chargeable to tax as income in the year in which such surplus arises.

In the assessment of a company for the assessment year 1977-78, completed in July 1980, the profit on sale of a ship was determined after taking into account depreciation of Rs. 58,59,409 allowed on the ship. The depreciation actually allowed on the ship, however, was Rs. 63,21,235. The profit on the sale was, therefore, computed short by Rs. 4,61,826 (Rs. 63,21,235—Rs. 58,59,409). This resulted in under-assessment of income of Rs. 4,61,826 and excess carry forward of loss to the same amount involving a potential tax effect of Rs. 2,90,946.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified computing correctly the amount of loss actually to be carried forward.

(*ii*) In the assessment of a public limited company, for the assessment year 1975-76 made in March 1981, the department computed the profit on sale of a ship at Rs. 52,55,555. According to the details of cost and depreciation allowed upto the assessment year 1974-75 and the compensation received, by the assessee, the actual profit worked out to Rs. 54,84,255. The business profit was thus short computed by Rs. 2,28,700 resulting in short levy of tax by Rs. 1,41,923 including interest for late filing of returns.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified raising additional demand of Rs. 1,41,923.

(*iii*) The Income-tax Act, 1961, provides that income from business shall be computed in accordance with the method of accounting regularly employed by the assessee.

A company used to credit in its profit and loss accounts "Interest on securities" on accrual basis but offer such income for taxation on receipt basis. The mode of assessment of this income was changed from receipt to accrual basis in the assessment years 1972-73 to 1974-75 by the assessing officer. On an appeal by the assessee the Commissioner (Appeals) in his orders of February 1979, in respect of the assessment year 1973-74, held, that taxation of such income on receipt basis was correct and that it should not have been disturbed by the Income-tax Officer. Accordingly, the assessments for the assessment years 1972-73 and 1973-74 were revised in August 1979 and 1981 respectively. But the assessment for the assessment year 1974-75 was not so revised from accrual to receipt basis. As a result there was escapement

of income by way of "Interest on securities" to the extent of Rs. 3,48,393 in the assessment year 1974-75 leading to undercharge of tax of Rs. 2,09,245 (including penal interest for late filing of returns) in the assessment year 1975-76 when the company had positive income.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*iv*) The assessment of a company for the assessment year 1978-79 was completed in a Central Circle in March 1980 at a loss of Rs. 1,81,069. During the previous year relevant to the assessment year, the assessee had received a sum of Rs. 1,35,300 being power subsidy granted by the State Industrial Development Corporation towards consumption of electricity by the company. It was noticed in audit that instead of crediting the subsidy to the profit and loss account and treating it as income, the assessee credited it to general revenue. The assessing officer also did not consider the receipt as income in the assessment of the company. The omission resulted in the income of the company escaping assessment and in excess carry forward of loss of Rs. 1,35,300 in the assessment year 1978-79 with a potential tax effect of Rs. 78,135.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been revised.

2.25 *Excess carry forward of loss*

Under the Income-tax Act, 1961, when for any assessment year, the loss under the head "profits and gains of business or profession" cannot be set off against any other income, such loss shall be carried forward to the following assessment year and shall be set off against the profits and gains of any other business.

(*i*) The total income of a company for the assessment year 1978-79 was computed in November 1980 at a loss of Rs. 5,17,515

after setting of the unabsorbed business loss of Rs. 7,36,910 determined for the assessment year 1977-78 in June 1979.

It was noticed in audit that the assessment for the assessment year 1977-78 had been revised in July 1979 wherein the said unabsorbed business loss, had been reduced to Rs. 5,26,964. The action of the department in setting off, in the assessment for the assessment year 1978-79, (November 1980) a sum of Rs. 7,36,910 instead of Rs. 5,26,964 resulted in excess set off of unabsorbed loss of Rs. 2,09,946 and excess carry forward of loss by the same amount with a potential tax effect of Rs. 99,202.

The Ministry of Finance have accepted the mistake in principle and have stated that the assessment has been rectified.

(*ii*) The total income of a non-resident banking company for the assessment year 1979-80 was computed in September 1979 at Rs. 1,56,210 after adjusting unabsorbed business loss of Rs. 73,893 relating to the assessment year 1977-78. The assessment for the assessment year 1977-78 had in fact, been revised in August 1979 resulting in no business loss to be carried forward for adjustment against future years' income. The incorrect set off of loss of Rs. 73,894 in the assessment for the assessment year 1979-80 led to under-assessment of business income by the same amount with consequent undercharge of tax of Rs. 62,070

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified.

2.26 *Mistake in assessments while giving effect to appellate orders*

(*i*) A company was allowed development rebate of Rs. 25,53,598 in the assessment year 1975-76 (assessment completed in July 1978). As the income assessed was not sufficient to absorb the rebate in full, development rebate to the extent of Rs. 15,76,001 was carried forward and adjusted in the subsequent assessment year 1976-77 in the assessment made in August 1979.

On giving effect to the appellate orders of the Tribunal, in October 1980 the income for the assessment year 1975-76 was enhanced to Rs. 17,67,712 and development rebate to this extent was adjusted leaving a balance of Rs. 7,85,886 only to be carried forward for adjustment in subsequent years. At this stage the department did not rectify the assessment for the assessment year 1976-77 so as to suitably reduce the development rebate of Rs. 15,76,001 already adjusted in that assessment. This resulted in excess adjustment of Rs. 7,90,115 in the assessment year 1976-77 leading to short-levy of tax of Rs. 4,56,290.

The paragraph was forwarded to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*ii*) Under the provisions of the Income-tax Act, 1961, in computing the total income of an assessee, a deduction of an amount equal to fifty per cent of donations to certain funds, charitable institutions etc., is allowed, subject to the condition that such sums paid as donations do not exceed 10 per cent of the gross total income.

The assessment of a Government company for the assessment year 1976-77 was finalised in May 1979, allowing a deduction of Rs. 1,00,000 towards donations to charitable institutions. As a result of appellate orders, the assessment for that assessment year was revised in March 1981, computing the income as "NIL" after allowing the deduction for the donation and setting off of unabsorbed development rebate and other relief of earlier years. The omission to withdraw the relief for donation when the revised income happened to be nil resulted in under-assessment of income by Rs. 1,00,000 for the assessment year 1976-77 and corresponding excess carry forward of unabsorbed development rebate, involving a short levy of tax of Rs. 57,750 for the assessment year 1977-78.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified.

(*iii*) A company in which the public were substantially interested was entitled to a tax holiday relief of Rs. 1,70,59,636 for the assessment year 1969-70.

The original assessment for that year made in October 1972 was revsied in September 1976 when an amount of Rs. 27,25,748 was allowed on account of tax holiday relief and the balance relief of Rs. 1,43,33,888 was carried forward. The assessment was further revised in March 1978 to give effect to the orders of the Appellate Tribunal. In this second revision, tax holiday relief was allowed to the extent of Rs. 44,85,101. The carried forward relief for adjustment against future years income was not, however, reduced to Rs. 1,25,74,535. This resulted in excess carry forward of loss to the extent of Rs. 17,59,353 with a potential undercharge of tax of Rs. 9,67,643.

The Ministry of Finance have accepted the mistake in principle and stated that the assessment thas been rectified.

2.27 *Excess refund*

Under the Income-tax Act, 1961, where a return has been furnished by an assessee and the assessee claims that the tax paid by him exceeds the tax payable on the basis of the return and the Income-tax Officer is of the opinion that the regular assessment is not likely to be made within six months from the date of filing of the return, he shall make a provisional assessment within the said six months and refund the tax, if any, paid in excess after making adjustments to the income returned with reference, *inter alia*, to the records of assessment, if any, of past years.

A public limited company filed the income tax return for the assessment year 1979-80 in November 1979 declaring an income of Rs. 15,05,249. A provisional assessment was made in March 1980 by the Income-tax Officer at the request of the assessee company allowing the assessee's claim for the set off of business loss of Rs. 7,69,249 relating to the assessment year 1976-77.

The loss relating to the assessment year 1976-77 was already set off in the provsional assessment for the assessment year 1978-79 made in February 1980. The double set off of business loss resulted in excess refund of Rs. 2,64,050 in the assessment year 1979-80.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified and additional demand of Rs. 2,64,050 collected.

2.28 *Non-levy or short levy of interest*

(*i*) Under the Income-tax Act, 1961, where the return for an assessmet year is furnished after the specified due date, the assessee shall be liable to pay simple interest at 12 per cent per annum from the day immediately following the date to the date of furnishing of the return on the amount of tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid and any tax deducted at source.

The total income of a company for the assessment year 1977-78 was computed in March 1980 at Rs. 6,52,310 and a tax demand of Rs. 4,42,849 was raised. The company had filed its return of income in October 1978 *i.e.* after the expiry of 18 months from the due date for filling the return *i.e.* June 1977. For the delay, the assessee was liable to pay interest amounting to Rs. 66,427. The department, however, levied interest of Rs. 2,024 only. The mistake resulted in short levy of interest of Rs. 64,403.

The Ministry of Finance have accepted the mistake and have stated that the assessments have been rectified and the additional demand raised.

(*ii*) Under the Income-tax Rules, 1962, the period of calculation of interest is to be rounded off to a whole month or months and for this purpose any fraction of a month shall be ignored. Such rounding off of month, however, is to be made once only

and not at every stages of intermediary payment of taxes. The Income-tax Act, 1961 also provides for levy of interest for short payment of advance tax on estimate.

In the assessment of a company for the assessment year, 1976-77 completed in September 1979, interest on short payment of advance tax of Rs. 2,19,33,596 was to be calculated from 1 April 1976 to 31 August 1979 omitting the fraction of a month in September 1979. The assessee paid tax of Rs. 2,02,00,000 on 11 April 1977 and interest was chargeable for the period from 1 April 1976 to 10 April 1977 on Rs. 2,19,33,596 and for the balance period upto end of August 1979 on Rs. 17,33,596. However, the department levied interest from 1 April 1976 to 31 March 1977 on Rs. 2,19,33,596 and from 1 May 1977 to 31 August 1979 on Rs. 17,33,596 omitting the entire month of April 1977. The omission resulted in non-levy of interest of Rs. 84,669.

Similarly, for the assessment year, 1978-79 (assessment completed in September 1980), interest on short fall of advance tax of Rs. 3,72,89,830 was leviable from 1 April 1978 to 31 August 1980. The assessee paid a tax of Rs. 1,24,90,000 on 24 October 1978 and accordingly interest was leviable from 1 April 1978 to 23 October 1978 on Rs. 3,72,89,830 and for the remaining period upto 31 August 1980 on Rs. 2,47,99,830. However, interest on Rs. 3,72,89,830 was levied from 1 April 1978 to 30 September 1978 and on the balance of Rs. 2,47,99,830 from 1 November 1978 to 31 August 1980 ignoring the month of October 1978 from levy of interest. The omission resulted in non-levy of interest amounting to Rs. 3,40,665.

The total short levy for the two assessment years was Rs. 4,25,334.

The Ministry of Finance have accepted the mistake and have stated that the assessments have been rectified and the additional demand of Rs. 4,25,334 collected.

(*iii*) Under the provisions of the Income-tax Act, 1961, where the amount specified in a notice of demand is not paid within thirty-five days of the service of the notice, the assessee is liable to pay interest at the prescribed rates from the day commencing after the end of the period of thirty-five days to the date on which such payment is made. Further, under the Income-tax Rules, 1962, interest chargeable has to be calculated at the end of each financial year and fresh demand raised.

For the assessment year 1975-76, completed in March 1978 a company was served with a notice of demand on 28 March 1978, to pay tax of Rs. 19,15,010. This demand was subsequently reduced to Rs. 9,54,363 on 25 March 1979 and further reduced to Rs. 9,34,458 on 30 April 1981 as a result of rectificatory orders. The demand of Rs. 9,34,458 was paid by the assessee in two instalments *viz.* Rs. 9,24,363 on 28 April 1979 and Rs. 10,095 on 16 July 1979. Since the demand was not paid within the prescribed period, the assessee was liable to pay interest amounting to Rs. 1,03,073. The interest was not however levied by the department.

While accepting the omission, the Ministry of Finance have stated that the assessment has been rectified and additional demand of Rs. 1,03,073 collected.

(*iv*) Under the Income-tax Act, 1961, where an assessee has paid advance tax on his own estimate for any financial year and the advance tax so paid falls short of seventy-five per cent of the tax determined on regular assessment, interest at the prescribed rate is payable by the assessee on the amount by which the advance tax paid falls short of the assessed tax from the first day of the next financial year to the date of regular assessment.

In the assessment of a company for the assessment year 1977-78, completed by Inspecting Assistant Commissioner in February 1981 and revised in October 1981, interest of Rs. 11,80,743 was levied, the advance tax paid by the company on

the basis of its own estimate having been less than seventy five per cent of the assessed tax. The amount of interest was subsequently reduced (October 1981) to Rs 10,18,912 as a result of appellate orders, reducing the total income of the assessee. The amount of interest for the shortfall in the payment of advance tax however, worked out to Rs. 13,01,675 and not Rs. 10,18,912. The short levy was due to the reasons that the department had incorrectly worked out the interest from 1 April 1976 instead of from 1 April 1977 and levied it on the difference between 75 per cent of the assessed tax and the advance tax paid instead of on the difference between the assessed tax and the advance tax paid. The mistake resulted in short levy of interest of Rs. 2,82,763.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified. Report regarding realisation of demand is awaited (December 1982).

(v) Under the provisions of the Income-tax Act 1961, an assessee who has not previously been assessed by way of regular assessment, is required to file an estimate of his current income and to pay advance tax accordingly. Failure to file the estimate and pay the tax within the due date renders the assessee liable to pay interest at the rate of 12 per cent per annum from 1 April next following the financial year in which advance tax was payable upto the date of regular assessment.

A company (assessment for the first assessment year, 1976-77 completed in October 1977) failed to furnish an estimate of its current income for the previous year relevant to the assessment year 1977-78 and to pay advance tax on that basis. Therefore interest was levided for non-payment of advance tax in the assessment completed in April 1979. The assessment was set aside by the Commissioner of income-tax (Appeals) in September 1979. Subsequently, re-assessment was made in August 1980 on the basis of which income was determined at Rs. 1,49,44,840. On further appeal, the Commissioner of

Income-tax (Appeal), in his order of March 1981, allowed reduction of income to the extent of Rs. 1,23,67,851 on various grounds. Income was accordongly worked out to Rs. 25,76,989 in the reassessment made by the Inspecting Assistant Commissioner in July 1981. But, interest on account of non-submission of estimate and non-payment of advance tax, was not levied. The omission resulted in short levy of interest of Rs. 3,63,385 including short levy of interest of Rs. 53,036 for delay in recovery of tax upto February 1982.

The Ministry of Finance have accepted the mistake.

(*vi*) Any person not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income chargeable under the head "interest on securities" shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque whichever is earlier, deduct income tax thereon at the rates in force and deposit the same to the credit of the Government. Failure to deduct tax at source renders the assessee liable to pay interest at the prescribed rates on the amount of such tax.

A company which made a total payment of Rs. 13,12,593 by way of interest to its loan creditor during the previous years relevant to the assessment years 1973-74 to 1976-77 did not deduct tax of Rs. 2,37,139 from such payments and deposit the same to the credit of Government. The company was liable to charge of interest to the extent of Rs. 63,418 which was not, however, levied by the department.

The Ministry of Finance have accepted the omission and have stated that the assesment has been rectified and additional demand of Rs. 63,418 collected by way of adjustment of refund due to the party. Report regarding realisation of tax of Rs. 2,37,139 is awaited.

2.29 *Non-levy of additional Income-tax*

Under the provisions of the Income-tax Act, 1961, where the profits and gains of any previous year distributed as dividends within the twelve months immediately following the expiry of the previous year by a company not being one in which the public are substantially interested or a hundred per cent subsidiary of any such company, are less than the statutory percentage of the distributable income of that previous year, the company is liable to pay additional income-tax at the rates given below on the distributable income as reduced by the amount of dividends actually distributed, if any :—

(1) Investment company . . .	50 per cent.
(2) Trading company . . .	37 per cent.
(3) Any other company . . .	25 per cent.

(*i*) A trading company which was not a company in which the public were substantially interested declared a dividend of Rs. 3,20,000 only against the statutory sum of Rs. 3,77,376 being 60 per cent of the distributable income of Rs. 6,28,960 for the previous year relevant to the assessment year 1977-78. As the dividend distributed fell short of the statutory percentage of the distributable income, additional income-tax of Rs. 1,14,315 was leviable. This additional tax was not levied by the department in the assessment made in April 1980.

The Ministry of Finance have accepted the omission and have stated that the assessment has been rectified raising additional demand of Rs. 1,14,315. Report regarding realisation is awaited (November 1982).

(*ii*) On the basis of the income-tax assessment of a private industrial company for the year 1976-77 completed in March 1979, its distributable income for the year ended 30 September

1975 relevant to the assessment year 1976-77 amounted to Rs. 2,24,656. The company should have declared a dividend of Rs. 1,01,095 as required under the Act. In the profit and loss appropriation accounts for the year, there was a provision of Rs. 1,22,500 towards proposed dividends, but there was no evidence to confirm that the proposed dividends were actually distributed. Failure to declare the dividend attracted levy of additional income-tax amounting to Rs. 56,160.

The Ministry of Finance have accepted the omission and have stated that the assessment is being rectified. Further report is awaited (November 1982).

(*iii*) In the assessment of a private company for the assessment year 1977-78 originally made in June 1978, it was seen in audit that on a distributable income of Rs. 2,08,423, additional tax of Rs. 52,103 was levied. Consequent on a decision of the Appellate Tribunal in April 1980 granting increased allowance for tax holiday relief in respect of the newly established industry in a backward area the asssessment was rectified in June 1980 and the total income was reduced to 'nil'. On an application made by the assessee to the Income-tax Officer in October 1980, stating that the levy of additional income-tax for the year was incorrect in view of the total income having been reduced to nil, the Income-tax Officer rectified the assessment and cancelled the levy of additional income-tax. It was pointed out in audit (November 1981) that though the total assessable income of the assessee was reduced to nil by the Tribunal's order the distributable income (commercial profits) on which the levy of additional income-tax was attracted had in fact increased to Rs. 3,23,998 from Rs. 2,08,423 and that the assessee was liable to additional income-tax of Rs. 81,000 for non-declaration of dividends. Failure to comply with the provisions of the Act led to non-levy of additional income-tax of Rs. 81,000.

The Ministry of Finance have accepted the mistake and have stated that remedial action is being processed. Further report is awaited (November 1982).

(*iv*) The distributable income has been defined in the Act as the gross total income of a company as reduced *inter alia*, by the amount of income-tax (including surcharge) payable by the company in respect of its total income.

Further under the Finance Act, 1976 where a company makes any deposit with the Industrial Development Bank of India, during the financial year commencing on the 1st day of April 1976, the liability towards payment of surcharge by the company for the assessment year 1977-78 will stand reduced by the amount of deposit. The surcharge payable in such a case will therefore be 5 per cent of the Income-tax as reduced by the deposit made with the Industrial Development Bank of India.

The surcharge payable in respect of a company for the assessment year 1977-78 worked out to Rs 3,00,046 (5 per cent on income-tax of Rs. 60,00,930) and the net surcharge liability was calculated by the department as Rs. 25,646 after deducting Rs. 2,74,400 being the deposit made by the company with the Industrial Development Bank of India. While computing the distributable income for purposes of levy of additional tax, the department took the income-tax payable as Rs. 63,00,976 (including gross surcharge of Rs. 3,00,046) instead of Rs. 60,26,576 (including net surcharge payable of Rs. 25,646). This resulted in under assessment of distributable income by Rs. 2,74,400 with consequent short-levy of additional income-tax of Rs. 68,600.

While not accepting the audit objection, the Ministry of Finance have stated that the amount deposited with the Bank would not be available with the assessee for distribution. The contention is not valid as the law does not provide for the exclusion of amounts deposited with banks.

Other Topics of Interest

Excess allowance of double taxation relief.

2.30 Under the Income tax Act, 1961, a resident person is entitled to a relief in respect of his foreign income, taxed both in India and in a foreign country. The quantum of relief is governed by agreements entered into by the two countries.

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

(*i*) In the assessment of a company engaged in business of banking for the assessment year 1976-77, completed by an Inspecting Assistant Commissioner in March 1979, it was seen that the company had paid tax of Rs. 20,62,353 on foreign income of Rs. 32,30,658 earned in Frankfurt. The said income, in the Indian assessment, was assessed at Rs. 37,63,624 on which tax payable amounted to Rs. 21,73,492. The former tax of Rs. 20,62,353 being the lower of the two was allowed as double income-tax relief. As per agreement for avoidance of double taxation between India and Federal German Republic, the income that attracted tax in Federal German Republic would qualify for double taxation relief in India. Since the income which actually suffered taxation in Federal German Republic amounted to Rs. 32,30,658 on which tax payable at Indian rate worked out to Rs. 18,65,706 the said sum being tax at lower of the two rates was to be allowed as double taxation relief. The excess allowance of relief to the extent of Rs. 1,96,647 resulted in consequent tax undercharge of identical amount.

The Ministry of Finance have accepted the mistake and have stated that the assessment is being rectified. Report regarding rectification and collection of additiodal demand is awaited (November 1982).

(*ii*) In the assessment of the same assessee for the assessment year 1974-75, completed by the Inspecting Assistant Commissioner on 20 August 1977, in respect of its income from Sri Lanka, U.K. and U.S.A. double income-tax relief was allowed for a total

amount of Rs. 58,55,622 including reliefs of Rs. 27,09,558 and Rs. 29,81,555 on incomes of Rs. 55,29,509 and Rs. 51,62,868 in U.K. and U.S.A. respectively. A scrutiny of the assessment records, however, revealed that incomes of Rs. 54,30,807 and Rs. 39,95,832 only had actually suffered tax in U.K. and U.S.A. respectively. Accordingly, in the absence of an agreement for double Income-tax relief, the amount of allowable relief on these two foreign incomes would work out to Rs. 26,61,095 and Rs. 23,07,593 respectively on the basis of income actually doubly taxed. The mistake in not correctly determining the relief resulted in short levy of tax of Rs. 9,82,487 by way of excess allowance of tax relief with consequent payment of interest on excess payment of advance tax.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified and additional demand of Rs. 9,82,487 collected.

SURTAX

2.31 *Surtax*

As a disincentive to excessive profits, a special tax called super profits tax was imposed on companies making excessive profits during the assessment year 1963-64 under the Super Profits Tax Act, 1963. This tax was replaced, from the assessment year 1964-65, by surtax levied under the Companies (Profits) Surtax Act, 1964. Surtax is levied on the 'chargeable profits' of a company in so far as they exceed the statutory deduction, which is an amount equal to 10 per cent (15 per cent from 1 April 1977) of the capital of the company or Rs. 2 lakhs, which ever is greater.

During the period under review, under assessment of super profits tax/surtax of Rs. 99.52 lakhs was noticed in 134 cases. A few illustrative cases are given in the following paragraphs.

2.32 *Incorrect computation of capital*

Under the Companies (Profits) Surtax Act, 1964, profits chargeable to surtax are computed by deducting from the total income, *inter alia*, an amount calculated at the prescribed percentage of capital base as on the first day of the previous year relevant to the assessment year. The Act further provides that where after the first day of the previous year the capital of the company is increased by any amount during that year on account of increase of paid-up share capital or by issue of debentures or borrowing of any moneys or is reduced by any amount on account of reduction of paid-up share capital or redemption of such debentures or repayment of such moneys such capital shall be increased or reduced proportionately according to enhancement or reduction of capital during the relevant previous year.

In the surtax assessment of a company for the assessment year 1965-66 as revised in November 1977 and January 1978, a sum of Rs. 72,57,782 being the opening balance of the bank loan as on the first day of the previous year was included in the capital base. The amount of the bank loan, had, however decreased to Rs. 1,83,006 at the end of the previous year. The proportionate decrease in loan due to repayment made during the year amounted to Rs. 62,21,946 as per computation filed by the assessee along with the surtax return and this amount was required to be deducted from the capital base. As this was not deducted, there was excess computation of capital of Rs. 62,21,946 leading to undercharge of surtax of Rs. 1,99,102.

The Ministry of Finance have accepted the mistake and stated that the assessment has been rectified. Further report regarding collection of demand is awaited.

2.33 *Incorrect application of rates*

Under the provisions of the Companies (Profits) Surtax Act, 1964, as amended with effect from 1-4-75, surtax is chargeable at 25 per cent of so much of the excess of chargeable profits over

the statutory deduction, as does not exceed 5 per cent of the amount of capital and at 40 per cent of the balance amount, if any.

The chargeable profits of a company for the assessment year 1975-76 were determined by the department in February 1981 at Rs. 1,03,30,697 on which surtax of Rs. 30,27,798 was levied. The surtax on chargeable profits in excess of 5 per cent of capital was, however, calculated by the department at a rate of 30 per cent as against the correct rate of 40 per cent. This resulted in undercharge of surtax of Rs. 8,90,249.

The Ministry of Finance have accepted the mistake and stated that the assessment has been rectified and additional demand of Rs. 8,90,249 collected.

2.34 *Incorrect computation of chargeable profits*

The chargeable profits of any year are computed with reference to the total income assessed for the levy of income-tax for that year after making certain prescribed adjustments. The following mistakes were noticed in June 1981 in the computation of chargeable profits of a company for the assessment years 1974-75 and 1975-76 (assessments completed in October 1980).

(1) For the two years, a sum of Rs. 75,000 representing dividend income was deducted from the income computed under the Income-tax Act though the said income was completely exempt and hence was not included in total income.

(2) Export market development allowance of Rs. 1,98,196 was deducted from total income while arriving at the chargeable profits, though the said amount was already deducted while computing income under the Income-tax Act.

(3) Though the income-tax assessment for the assessment year 1975-76 was revised upwards in December 1980, the surtax assessment was not correspondingly amended.

(4) Entertainment expenditure of Rs. 66,633 disallowed and added back while computing income under the Income-tax Act, was again incorrectly added back while computing chargeable profits.

The mistakes resulted in short-assessment of chargeable profits of Rs. 2,10,624 involving short levy of surtax of Rs. 75,286 for the two years.

The Ministry of Finance have accepted the mistakes and stated that the assessments have been rectified raising additional demand of Rs. 75,286. Report regarding collection is awaited (November 1982).

2.35 *Omission to make surtax assessments*

Under the Companies (Profits) Surtax Act, 1964 there is no statutory time limit for completion of surtax assessments. Pursuant to the recommendation of the Public Accounts Committee in para 6.7 of their 128th Report (Fifth Lok Sabha) the Central Board of Direct Taxes issued instructions in October 1974 that surtax assessment proceedings should be initiated along with the income-tax assessments. The Board further laid down that the surtax assessments should not be kept pending on the ground that the additions made in the income-tax assessments were disputed in appeal and the time lag between the date of completion of income-tax assessments and surtax assessments should not ordinarily, exceed a month unless there are special reasons justifying the delay.

The Public Accounts Committee reiterated their recommendations in paragraphs 3.3 to 3.10 of their 85th Report (Seventh Lok Sabha), suggesting *inter alia* the prescription of a time limit for completion of assessments under the Surtax Act.

In the absence of a statutory time limit for completion of surtax assessments, instances of delay in the completion of such assessments with consequent postponement of realisation of revenue continue to be noticed in many charges.

(*i*) The Income-tax assessments in respect of a domestic industrial company in which public were substantially interested for the assessment years 1976-77 and 1977-78 were completed in September 1979 and September 1980 on total incomes of Rs. 2,84,25,680 and Rs. 3,78,75,590 respectively. Based on these assessments, the assessee was liable to pay surtax of Rs. 21,99,216 and Rs. 31,12,587 for the two assessment years. The department had earlier (February 1978) made provisional surtax assessments raising demands of Rs. 18,68,643 and Rs. 18,08,295 for the said two assessment years. After completing the income tax assessments in September 1979 and September 1980 the department had not taken any action to make regular surtax assessments which would have resulted in a total additional demand of Rs. 15,27,744. The omission was pointed out in audit in October 1981.

The Ministry of Finance have accepted the objections and stated that the assessments are still pending (November 1982).

(*ii*) In another Commissioner's charge, a public company filed its surtax returns for the assessment years 1973-74 to 1975-76 between September 1973 and September 1975. The department framed provisional assessments after the expiry of five to seven years in September—November 1980 raising a total demand of Rs. 18,80,366. By then, the regular income-tax assessments of the company for the said years had been finalised in May 1976, December 1976 and August 1978 and with reference to those assessments; additional demands of surtax aggregating Rs. 3,27,515 could have been raised. The department, however, did not take note of this while making the provisional surtax assessments. Regular surtax assessments had not been made till the date of audit (September 1981).

For the assessment year 1976-77, the assessee filed surtax return in 1976. No provisional surtax assessment was made. The regular income-tax assessment was completed in September 1979 and on the basis of that the assessee was liable to pay surtax of Rs. 12,03,583. The surtax assessment had not, however, been

made till the date of audit (September 1981). The total demand of surtax of Rs. 12,03,583 for the assessment year 1976-77 thus remained uncollected.

The Ministry of Finance have accepted the omission and stated that the assessments are pending (November 1982).

(*iii*) In yet another Commissioner's charge, provisional surtax assessments of a company for the assessment years 1975-76 and 1976-77 were made by the department in March 1978. Regular income tax assessments for the said two years were made in April 1979 and July 1980 respectively. No action was taken by the department to revise the provisional surtax assessments or to make regular surtax assessments till the date of audit (September 1981). The omission led to non-levy of surtax of Rs. 2,12,418 for the two assessment years 1975-76 and 1976-77.

The Ministry of Finance have accepted the omission in principle (November, 1982) and have stated that the assessment has since been completed.

(*iv*) In the case of a company the Income-tax assessments for the assessment years 1974-75, 1977-78 and 1978-79 were completed in September 1977 and December 1979. Although the company was liable to pay surtax also, provisional assessment of surtax was made in respect of the assessment year 1974-75 only and no surtax assessments were made for the remaining two years.

The omission to finalise the surtax assessments for the assessment year 1974-75 and to complete the assessments for the assessment years 1977-78 and 1978-79 resulted in non-levy of tax of Rs. 5,70,790.

The Ministry of Finance have accepted the omission and stated that the surtax assessments have been completed in January 1982.

(*v*) In another Commissioner's charge the Income-tax assessment of a company in which public were substantially interested for the assessment year 1979-80 was completed in January 1981 on a total income of Rs. 18,72,540, which attracted levy of surtax

of Rs. 1,11,254. Till December 1981 (date of audit), neither had the company filed any return of the chargeable profits nor had the Income-tax Officer initiated proceedings under the Surtax Act. This resulted in non-levy of surtax of Rs. 1,11,254 for the assessment year 1979-80.

The Ministry of Finance have accepted the omission in principle.

(*vi*) In the case of a public limited company income-tax assessments for the assessment years 1977-78 and 1978-79 were finally completed in December 1980/September 1980 and the net chargeable profits as per the income-tax assessments worked out to Rs. 2,26,286 and Rs. 1,71,159 with surtax liability of Rs. 76,360 and Rs. 33,244 for the assessment years 1977-78 and 1978-79 respectively. However, surtax proceedings were not initiated/completed concurrently and the omission resulted in non-levy of tax of Rs. 1,09,604.

The Ministry of Finance have accepted the omission and stated that notices for initiating remedial action have been issued in July 1982 and the assessments have not yet been completed.

(*vii*) The income-tax assessment of a company for the assessment year 1977-78 was finalised in September 1980 computing the taxable income and tax payable thereon at Rs. 61,69,120 and Rs. 38,86,546 respectively. On that basis, the chargeable profits of the company worked out to Rs. 22,82,574 which exceeded the amount of statutory deduction by Rs. 15,35,895. It was noticed in audit in December 1981 that the company had not filed a surtax return and no action had also been initiated by the department to call for the same. The chargeable profits of Rs. 15,35,895 for the assessment year 1977-78 thus remained to be assessed resulting in non-levy of surtax of Rs. 4,09,021.

The Ministry of Finance have accepted the omission.

(*viii*) In the case of a company, for the assessment year 1977-78, provisional assessment was made in November 1977 on the basis of the return filed by the assessee. The income-tax

assessment was finalised in July 1980 and subsequently modified in December 1980 and March 1981, computing the taxable income and tax payable thereon at Rs. 12,81,76,360 and Rs. 7,07,12,136 respectively. On the basis of the revised income, surtax leviable worked out to Rs. 31,94,126 as against Rs. 23,43,352 paid on provisional assessment.

Omission to revise the surtax assessment resulted in non-levy of additional demand of Rs. 8,50,774.

The Ministry of Finance have accepted the objection in principle and stated that the surtax assessment in question has been completed in August 1982.

(*ix*) Although the regular income-tax assessments of a company for the assessment years 1976-77 to 1979-80 were completed in September 1979, June 1980, September 1980 and March 1981 respectively, the provisional surtax assessments made in March, June and October 1978 and November 1979 respectively were not revised upto the date of audit (May 1981). The omission resulted in total short-levy of surtax of Rs. 4,59,140 for the four assessment years.

The Ministry of Finance have accepted the objection in principle and stated that there will, however, be no tax effect as there is no statutory time limit for completion of final assessment.

CHAPTER 3

INCOME TAX

3.01 Income-tax collected from persons other than companies is booked under the Major Head "021—Taxes on Income other than Corporation-tax". Under Article 270 of the Constitution, 85 per cent of the net proceeds of this tax, except in so far as these are attributable to Union emoluments, Union Territories and Union surcharges, is assigned to the states in accordance with the recommendations of the Seventh Finance Commission.

3.02 Some instances of mistake noticed in the assessments of persons other than companies are given in the following paragraphs.

3.03 *Avoidable mistakes in the computation of tax*

Under-assessment of taxes of substantial amount have been noticed year after year on account of avoidable mistakes resulting from carelessness or negligence. Such mistakes continue to occur in spite of repeated instructions by the department.

A few cases are given in the following paragraphs.

(*i*) A co-operative society furnished return of income for the assessment year 1976-77 in June 1976 declaring a loss of Rs. 18,84,842 and claimed refund of Rs. 3,47,600 paid as advance tax. The department made a provisional assessment in March 1978 and refunded the entire advance tax of Rs. 3,47,600 by adjusting the same towards advance tax in respect of the assessment year 1978-79. The regular assessment for the assessment year 1976-77 was completed in September 1980 on a total income of Rs. 21,60,770 and a tax demand of Rs. 9,46,338 was raised

after adjusting the entire advance tax of Rs. 3,47,600 ignoring the fact that the advance tax of Rs. 3,47,600 had already been refunded to the assessee in the provisional assessment made in march 1978. As a result there was an undercharge of tax of Rs. 3,47,600 for the assessment year 1976-77.

Though the internal audit party of the department pointed out the non-availability of chalan for Rs. 3,47,600 in support of credit given for advance tax payment, it did not point out the irregularity in affording the credit of Rs. 3,47,600 for the second time in the assessment concluded in September 1980.

The Ministry of Finance have accepted the mistake and stated that the additional demand of Rs. 3,47,000 has been collected.

(*ii*) A shipping agent assessed in the status of a firm, for the assessment year 1979-80, assessment (completed in May 1980) returned freight earnings of six ships at U.S. $ 5,59,395, which amounted to Rs. 48,60,633. In the assessments, however, freight earnings of Rs. 48,607 only were considered omitting the last two digits. This led to under-assessment of income of Rs. 48,12,026 involving short levy of tax of Rs. 90,514.

The case was seen by the internal audit party of the department but the mistake was not detected by it.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified and the additional demand of Rs. 90,514 collected.

(*iii*) The assessment of a specified Hindu undivided family for the assessment year 1975-76 was originally completed (August 1978) on a taxable income of Rs. 8,87,580. On appeal by the assessee, the Commissioner of Income-tax (Appeals), in his orders issued in March 1979, deleted certain additions made in the assessment and, in the summing up portion of the order indicated the total income as Rs. 15,270. It was seen in audit that the appellate authority had upheld the addition of capital gains of Rs. 1,14,000 made by the Income-tax Officer but had not included it in the revised total income indicated in the summing up portion of the appellate orders. The Income-tax

Officer did not bring the omission to the notice of the appellate authority but simply gave effect to the appellate order by adopting the total income as Rs. 15,270. This resulted in under-assessment of income of Rs. 1,14,000 involving short levy of tax and interest of Rs. 83,330.

The Ministry of Finance have accepted the mistake and stated that the assessment has been revised.

(*iv*) In the re-assessment of a co-operative society for the assessment year 1974-75, completed in March 1981, it was noticed that the provisions of Rs. 1,25,000 and Rs. 2,25,000, made in the profit and loss account on account of building fund and income tax respectively were disallowed by the Income-tax Officer but in computing total income additions were made only to the extent of Rs. 25,000 and Rs. 2,24,000. Similarly, provision for bad debts of Rs. 60,000 disallowed was added to the extent of Rs. 16,000 only. The mistakes resulted in under assessment of income by Rs. 1,45,000 involving short levy of tax by Rs. 91,379 including interest on account of short payment of advance tax and belated submission of returns.

The assessment was seen by internal audit party of the department, but the mistakes were not noticed by it.

The Ministry of Finance have accepted the mistakes and have reported revision of the assessment.

(*v*) The income of an individual for the assessment year 1970-71 was originally assessed in a Central Circle on best judgment basis in March 1973 at Rs. 16,54,520. The assessment was subsequently revised in March 1974 and September 1980 to rectify a tax calculation mistake and to assess share income of the firm. The assessment was again revised in February 1981 to give effect to the orders of the Commissioner of Income-tax (Appeals) and the net income of the assessee was determined as Rs. 7,19,409. While calculating the tax on this income, tax amounting to Rs. 1,52,750 payable on slab income of Rs. 2.50 lakhs was omitted to be included and an amount of Rs. 34,990 was also erroneously deducted from the tax calculated on the

slab income exceeding Rs. 2.50 lakhs. As a result of the mistakes, as against a tax of Rs. 5,55,286 correctly chargeable, tax of Rs. 3,48,774 only was levied leading to undercharge of tax of Rs. 2,06,251.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified raising additional demand of Rs. 2,06,251.

(*vi*) Under the provisions of the Income-tax Act, 1961, any expenditure laid out or expended wholly or exclusively for the purpose of the business is allowable as a deduction.

An unregistered firm, debited Rs. 81,715 in its profit and loss account for the assessment year 1977-78 on account of loss from a picture. The department however determined the loss from the picture at Rs. 8,06,359 in September 1980 against the loss of Rs. 81,715 claimed by the assessee. As the net result of the profit and loss account was a loss, the department should have deducted the amount of Rs. 81,715 and added the determined loss of Rs. 8,06,359 to the net loss as per profit and loss account. Instead of this, both the amounts of Rs. 81,715 and Rs. 8,06,359 were added to the loss as per profit and loss account. This resulted in excess computation of loss by Rs. 1,63,430 with a potential tax effect of Rs. 84,983 when adjusted against income in subsequent years.

The assessment was checked by the internal audit party of the department, but it did not notice the mistake.

The Ministry of Finance have accepted the mistake and rectified the assessment.

3.04 *Incorrect application of rate of tax*

While completing (August 1980) the provisional assessment of an individual for the assessment year 1980-81, the Income-tax Officer incorrectly determined the tax due on the returned income of Rs. 3,86,700 as Rs. 94,568, applying the tax rates applicable to registered firms and refunded a sum of Rs. 1,84,460 out of advance-tax of Rs. 2,79,028 paid by him alongwith a sum of Rs. 7,376 as interest. The tax payable on the returned income

however correctly worked out to Rs. 2,53,464 and the assessee was entitled to a refund of Rs. 25,564 only on account of excess paid tax. The refund made by the Income-tax Officer was in excess by Rs. 1,66,272 (including interest). Further while making a provisional assessment interest on the excess advance tax paid is not admissible.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified and the additional demand of Rs. 1,66,272 collected.

3.05 *Incorrect computation of salary income*

(i) Under the provisions of the Income-tax Act, 1961, income in the nature of salaries received by an assessee from his employer is chargeable under the head salaries. The Act also provides that any salary paid or due or allowed in the previous year is taxed in the assessment year relevant to the previous year in which it was paid or was due or was allowed by the employer.

The salary certificate issued by an employer, showed that sums of Rs. 1,23,588 and Rs. 1,08,884 were paid by the employer to two employees as salary during the previous year relevant to the assessment year 1980-81. Tax of Rs. 59,856 and Rs. 48,192 was deducted and certificates of tax deducted at source were also issued to the employees. However, in the assessments, completed in July 1980 the amounts of salary were taken as Rs. 77,389 and Rs. 62,684 respectively instead of the actual amounts shown and paid by the employer in the salary certificate. The omission resulted in a total under assessment of income of Rs. 92,399 involving short levy of tax of Rs. 65,855.

The Ministry of Finance have accepted the mistake and have reported that the assessments have been rectified and the additional demand of Rs. 65,855 collected.

(ii) Under the provisions of the Income-tax Act, 1961 where gross total income of an individual who is a citizen of India includes any remuneration received by him in foreign currency from any employer (from a foreign employer only upto the assessment year 1977-78) in respect of his continuous service outside

India, for a period not exceeding thirty six months, the individual becomes entitled to tax relief in respect of such remuneration up to fifty percent thereof provided the individual is a technician and the terms and conditions of his services outside India are approved by the Central Government or the prescribed authority.

In the case of an assessee, relief to the extent of fifty percent of the remuneration received by him in Canada in Canadian dollars was allowed for the assessment year 1978-79 though the terms and conditions of his services were not approved by the prescribed authority. The incorrect relief resulted in short-computation of income to the extent of Rs. 55,197 involving a short levy of tax of Rs. 36,856.

Further, for the period from December 1976 to September 1977 when the assessee was in Canada, the assessee returned income of Rs. 1,43,429 equivalent to 16,898 Canadian dollars for the assessment years 1977-78 and 1978-79. However, as seen from the copies of two income tax returns filed by him with the Canadian taxation authorities, the assessee returned total income of 21,445 Canadian dollars for the two assessment years. The income of 4,547 Canadian dollars equivalent to Rs. 36,376 which was not considered by the department escaped assessment. If this income is assessed for the assessment year 1978-79, there would be an additional levy of tax of Rs. 23,870.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

3.06 *Incorrect computation in the case of foreign technicians*

Under the Income-tax Act, 1961, certain portion of remuneration paid to foreign technicians in the employment of Government, or a local authority or a statutory corporation or any other business carried on in India, is exempted from tax, subject to fulfilment of certain conditions. The exemption is admissible for a period of 24 months from the date of arrival in India in the case of technicians whose services commenced from a date on or after 1 April 1971. If a technician continues in employment, in India, beyond the said period of 24 months

without the approval of the Central Government and the tax on his remuneration is paid by the employer, the same is treated as perquisite in the hands of the technician for a further period of two years and taxed on "tax-on-tax" basis.

(i) In the cases of two foreign technicians employed by a Government company, for the assessment year 1977-78, it was noticed in audit that the contracts of service were approved by the Central Government for a period of 24 months. The contracts were extended for eight months in one case and for nine months in the other, with effect from 1 April 1976, but the approval of the Central Government required to be obtained before the 1 October of the relevant assessment year under the Income-tax Act was not on record. In the assessments completed in March 1980, the department erroneously allowed exemption of salary for the extended period of eight/nine months, beyond the period of 24 months instead of treating the tax payable by the employer on their taxable incomes as perquisites in their hands. The omission resulted in short computation of taxable salary incomes by Rs. 1,58,534 and Rs. 1,86,990 respectively, leading to an undercharge of tax aggregating Rs. 2,24,866.

The Ministry of Finance have accepted the mistake and have reported that the assessments have been rectified and additional demand of tax of Rs. 2,24,866 raised.

(ii) Upto the period 31 May 1979, the term "technician" as defined in the Act included a person having specialised knowledge and experience in constructional or manufacturing operation or in mining or in generation of electricity or any other form of power or in agriculture, animal husbandry, dairy farming, deep sea fishing or ship building. Industrial and business management experts were excluded from the purview of the term 'technician'.

(*a*) In the case of a foreigner who arrived in India in 1976 and was employed by a company as Manager/Supervisor, Contracts and Cost Control, exemption was allowed wrongly treating him as a "technician" on remuneration upto Rs. 4,000 per month

and on the tax paid on remuneration by the employer. This resulted in short computation of salary income to the extent of Rs. 39,640, Rs. 1,76,322 and Rs. 1,64,835 for the assessment years 1977-78, 1978-79 and 1979-80 respectively involving undercharge of tax of Rs. 2,49,379. For the assessment years 1980-81 and 1981-82 (assessment concluded in December 1980) tax paid by the employer to the extent of Rs. 1,81,550 and Rs. 1,72,380 had not been brought to tax as perquisite resulting in short levy of tax of Rs. 2,44,486.

The total tax undercharged for the five assessment years 1977-78 to 1981-82 amounted to Rs. 4,93,865.

(*b*) In another case of a foreigner who arrived in India in March 1977 and was employed by the company as Assistant Manager Accounting, exemption was allowed wrongly treating him as a "technician". This resulted in short computation of income to the extent of Rs. 2,03,736 involving undercharge of Rs. 1,41,267 for the assessment year 1978-79.

The Ministry of Finance have accepted the mistake.

3.07 *Failure to deduct tax at source on salaries*

The Income-tax Act, 1961, provides for deduction of tax at source from salaries paid by any person. All sums deducted at source by private employers towards tax should be paid to the credit of the Central Government within one week from the date of such deduction or from the date of receipt of chalan from the department by the employer. Under the Income-tax Rules, 1962, private employers are required to furnish to the Income-tax department a monthly statement showing particulars of employees, salaries paid, taxes deducted at source, dates on which taxes credited to Government etc. Further annual returns in the prescribed form should also be rendered by the private employers within 30 days from 31 March in each year. Under the Act, if an employer does not deduct tax or after deducting it fails to remit the sum into Government account, he should be treated as an assessee in default, and penal provisions as laid down in the Act should be invoked in such cases.

In order to ensure that tax is deducted and deposited in all cases and also to see that the annual and monthly returns are submitted in time, departmental instructions provide for the maintenance of a Register of Employers. On receipt of the annual return, the Income-tax Officer should check that the total tax shown as deducted during the financial year in respect of each employee is correct, that the entire amount deducted has been credited to Government account by each employer and in cases of default, take penal action.

The Public Accounts Committee in their 78th Report (Sixth Lok Sabha), on a review of working of Salary circles, stressed the need for

(*a*) the proper maintenance of the Register of Employers,
(*b*) receipt in time of the annual returns from the employers; and
(*c*) invoking the punitive provisions of the law in cases of non-compliance with the statutory responsibilities by the employees.

A test-check conducted between January and March 1982 in five Income-tax wards dealing with deduction of tax at source from salaries paid by non-Government employers in 1979-80 in West Bengal revealed the following :

(1) The Register of Employers was not maintained properly and consequently the department did not exercise any control over the receipt of returns, correct deduction of tax at source and remittance of the tax collected into Government account.

(2) The alphabetical register was not being maintained in the wards.

(3) Out of the 6579 annual returns due from employers, returns from 3655 employers only were received and 2924 employers did not furnish the returns. More than 44 per cent of the employers had not filed the annual returns. No follow-up action calling for returns from the employers was taken by the department.

(4) For failure to deduct or pay the tax no prosecution as laid down in the Act had been initiated during the last five years against the defaulting employers, inspite of instructions of the Central Board of Direct Taxes to this effect.

(5) In 541 cases, the annual returns were received late by periods ranging from one month to 15 months. The defaulters were liable to a penalty not exceeding Rs. 5,06,690 (at the rate of Rs. 10 for every day of default). No penalty was, however, levied.

(6) In 50 cases the employers failed to deduct the full amount of tax payable by employees on the basis of salary drawn by them. The short deduction of tax amounted to Rs. 1,41,121.

(7) The annual returns were not correlated with the chalans received in support of payments to Government account.

(8) In 104 cases, payments of tax deducted at source amounting to Rs. 16,63,856 were credited to the Government account beyond the period prescribed in the Act. The penal interest leviable in these cases amounting to Rs. 3,62,217 was not levied.

The Ministry of Finance have given an interim reply (December 1982) stating interalia that the control registers were given up because of 'a proposal to computerise the annual returns' and the levy of penalty 'in actual practice' may not be feasible.

3.08 *Incorrect computation of income from house property*

Under the Income-tax Act, 1961, the annual letting value of a house property, owned by an assessee, is assessable as income from house property, irrespective of the fact whether he is actually in receipt of income or not. Where a property is let out and falls vacant during a part of the year, a vacancy allowance in the shape of proportionate deduction from the annual value is admissible. It was held by the Supreme Court in April 1980 that where property is not let out at all during a particular year the assessee would not be entitled to a deduction on account of vacancy allowance.

(i) The wealth-tax and income-tax assessment records of an individual indicated that she owned a house property in a city valued at Rs. 4,06,700 and that no income from the property was returned for the two assessment years 1978-79 and 1979-80 on the ground that it was vacant throughout the relevant previous years, having been in need of extensive repairs. This claim of the assessee was accepted by the department. As the property was not let out even for a day in the relevant previous years, no vacancy allowance was admissible to the assessee for the two assessment years. The incorrect allowance resulted in under-assessment of income of Rs. 48,804 involving short levy of tax and interest, amounting to Rs. 27,272.

The Ministry of Finance have accepted the mistake.

(ii) An assessee did not return any rental income for the assessment year 1980-81 in respect of the first floor of a building belonging to him, on the ground that it was vacant for the entire year relevant to the assessment year 1980-81. While concluding the assessment in July 1980, the assessee's claim was accepted by the department and a deduction of Rs. 66,000 was allowed. As the property was not let out at all for the entire year, the assessee was not entitled to the vacancy allowance. The incorrect deduction resulted in escapement of income from property by Rs. 66,000 leading to short levy of tax of Rs. 48,633.

The Ministry of Finance have accepted the mistake and have reported that the assessment has been rectified and additional demand raised.

3.09 *Incorrect computation of business income*

(i) Under the provisions of the Income-tax Act, 1961, any expenditure not being in the nature of capital expenditure or personal expenses of an assessee which is wholly and exclusively incurred for the purpose of business is allowable in computing the business income of the assessee. It has been judicially held that a payment made to a political party is not an expenditure incurred solely and exclusively for earning profits and as such would not be an allowable deduction.

In the assessment of a registered firm for the assessment year 1978-79, completed in April 1979, a sum of Rs. 2,00,000 debited to its accounts towards payment to a political party was incorrectly deducted in computing its business income. The mistake resulted in under-assessment of business income by Rs. 2,00,000 with consequent total undercharge of tax of Rs. 1,25,431 in the hands of the firm and its four partners.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been reopened.

(ii) Under the Income-tax Act, 1961, any payment made by a closely-held company by way of advance or loan to a shareholder who is substantially interested in the company is deemed to be dividend received by the shareholder, to the extent to which the company possesses accumulated profits. The Supreme Court held in April 1977 that even if the advance or loan ceases to be outstanding at the end of the previous year in which the loan or advance was taken, it will still be deemed to be "dividend".

(a) At the beginning of the previous year relevant to the assessment year 1977-78, the managing director of a closely-held company who was also substantially interested in it, owed it an amount of Rs. 3,41,010 drawn for meeting her personal expenses. During the year, she drew sums aggregating Rs. 4,61,936 and repaid a total amount of Rs. 1,64,281. In her income-tax assessment for the assessment year 1977-78, completed in August 1980 an amount of Rs. 2,97,655 representing the net amount received by her during the year was deemed as dividends and charged to income tax. The total amount actually advanced to her during the year was Rs. 4,61,936 and that amount ought to have been deemed as dividend, according to the aforesaid decision of the Supreme Court. The department's action in deeming the net payment of Rs. 2,97,655 only as dividend resulted in under assessment of income of Rs. 1,64,281.

During the next accounting year relevant to the assessment year 1978-79 the total amount of Rs. 2,46,952 drawn by the assessee from the company was less than the amount of

Rs. 9,64,571 repaid by the assessee during the year and the department did not tax any amount as deemed dividend in the relevant assessment. However, during this year also, the amount drawn by her on every occasion was an advance and the bulk of the repayment, *i.e.*, Rs. 6,07,654 out of Rs. 9,64,571 was made only on the last date. The department's omission in deeming the amounts paid by the company during the year as dividend resulted in under assessment of income of Rs. 2,46,952. There was thus a total under-assessment of income of Rs. 4,11,233 involving short-levy of tax of Rs. 2,62,299.

The paragraph was forwarded to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(b) During the previous year relevant to the assessment year 1977-78, two individuals, who were having running accounts with a closely-held company, had overdrawn their accounts by Rs. 76,622 and Rs. 43,221 respectively. As the company had accumulated profits to cover the overdrawal and as the two persons were substantially interested in the company, the amounts of overdrawal were to be treated as deemed dividends and charged to income-tax. Failure to do so in the income-tax assessments for the relevant year finalised in October 1979/ January 1980, resulted in short levy of tax of Rs. 79,604.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified and the additional demand of Rs. 79,604 collected.

(iii) In computing the business income of an assessee, the amount of income-tax payable by him is not an admissible deduction.

For the assessment year 1978-79, a registered firm filed a return admitting an income of Rs. 3,48,707 which was accepted by the department (February 1981). While arriving at the income of Rs. 3,48,707, the firm had erroneously deducted a sum of Rs. 1,10,694 on account of the income-tax payable by it. The incorrect deduction resulted in an under-assessment of income of Rs. 1,10,694 and short levy of tax of Rs. 55,150 in the assessment of the firm and its partners.

The Ministry of Finance have accepted the mistake and have stated that assessment has been rectified.

(iv) In computing the business income of a registered firm for the assessment year 1976-77, (assessment completed in August 1979) the deduction allowed towards purchase tax included a provision of Rs. 2,57,836 for additional purchase tax not relating to the previous year relevant to the assessment year. The above deduction was, however, not admissible as the liability did not relate to the income chargeable to tax during the previous year relevant to the assessment year concerned or to any actual payment made during that previous year. The incorrect deduction of Rs .2,57,836 allowed in the computation of the business income of the firm resulted in undercharge of tax of Rs. 2,14,000 in the case of firm and its partners.

The Ministry of Finance have accepted the mistake and have reported that the mistake has been rectified.

(v) Under the Income-tax Act, 1961 income chargeable to tax is computed in accordance with the method of accounting regularly employed by the assessee.

An assessee's method of arriving at the amount for claiming deduction towards sales tax liability was by adding up the actual cheque payments made during the accounting period towards sales tax to the Sales Tax department and the outstanding liabilities towards sales tax at the end of the accounting period and deducting therefrom the outstanding liability towards sales tax as at the beginning of the accounting period. For the assessment years 1979-80 and 1980-81, (assessments completed in February 1981), however, the outstanding liabilities towards sales tax as at the beginning of the relevant accounting years amounting to Rs.6,28,257 and Rs. 5,43,729 respectively were not deducted by the assessee to arrive at the liabilities towards sales tax. The allowance of sales tax liabilities based on the assessee's calculation resulted in short-computation of income to the extent of Rs. 6,28,257 and Rs. 5,43,729 for the assessment years 1979-80 and 1980-81 involving short levy of tax of Rs. 1,73,399 (firm only)

for the assessment year 1979-80 and excess carry forward of loss of Rs. 5,43,729 in the hands of the partners for the assessment year 1980-81.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(vi) Under the Income-tax Act, 1961, any payment of interest, salary, bonus, commission or remuneration made by a firm to any partner of the firm is not an allowable deduction in computing the income of the firm under the head "Profits and gains" of business or profession.

A registered firm paid a salary of $ 24,000 equivalent to Rs.1,90,800 to the partners during the previous year relevant to the assessment year 1980-81. While completing the provisional assessment of the firm in June 1981, the salary paid to the partners was allowed as deduction, resulting in excess refund of advance tax of Rs. 54,940.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982)

(vii) The income of a co-operative society engaged in processing and marketing of agricultural produce and affording credit facility to its members, was determined as Rs. 27,800 for the assessment year 1977-78 and Rs. 70,000 for the assessment year 1978-79. The entire amount of gross interest received by the assessee in providing credit facilities to its members was exempted without deducting the expenditure attributable to this activity. Since no separate accounts of different trading activities were kept by the assessee, the proportionate expenditure relating to provision of credit facilities to members, at Rs. 48,800 for the assessment year 1977-78 and Rs. 41,000 for the assessment year 1978-79, was to have been deducted to arrive at the exempted income. Besides this, the expenditure aggregating to Rs. 44,265 on account of dividends and gifts to members debited to profit and loss account relevant to the assessment year 1977-78, was

not disallowed. As a result, income was under-assessed by Rs. 93,065 for the assessment year 1977-78 and Rs. 41,000 for the assessment year 1978-79, leading to total short levy of tax of Rs. 59,806.

The Ministry of Finance have accepted the mistake.

3.10 *Incorrect allowances of depreciation, development rebate and investment allowances*

(i) The Income-tax Act, 1961 provides for grant of depreciation allowance on buildings, plant and machinery owned by an assessee and used for the purpose of the business. The Rules prescribed under the Act provide for specific rates of depreciation for certain items of plant and machinery and a general rate of 10 per cent for the remaining items calculated on the written down value of the asset.

While computing the income of a registered firm for the assessment year 1978-79 in September 1981, depreciation amounting to Rs. 4,58,084 was allowed by the Inspecting Assistant Commissioner of Income-tax (Assessment) as against the admissible amount of Rs. 3,76,871. The mistake occurred due to striking the total wrongly and calculating the amount of depreciation incorrectly in respect of the cold storage plant of the assessee. This resulted in under-assessment of income by Rs. 81,213 involving short levy of tax of Rs. 75,335 in the hands of the firm and its partners.

The paragraph was sent to the Ministry of Finance in May 1982; their reply is awaited (December 1982).

(ii) In the computation of business income of an assessee, the Income-tax Act, 1961 provided (upto 31 May 1974/May 1977) for the grant of development rebate in respect of plant and machinery installed for use in his business, at the rates specified in the Act. However, if the total income assessable before deduction of the development rebate was less than the full amount of the admissible amount, the rebate allowable should be only

such amount as to reduce the total income to nil and the unabsorbed rebate should be carried forward for adjustment in the next assessment year. The Act does not provide for any exception in the application of this method to registered firms.

In the income-tax assessment of a registered firm, running a cotton mill, for the assessment year 1975-76, the department determined (March 1981) the income as Rs. 25,325 before deduction of the admissible development rebate of Rs. 1,64,109 and allocated the unabsorbed rebate of Rs. 1,38,784 among the four partners for set off against their personal income for the same assessment year. This is not in conformity with the provisions of law as the unabsorbed rebate ought to have been carried forward in the firm's assessment itself for adjustment in the next assessment year. The incorrect allocation of the unabsorbed development rebate resulted in short demand of tax of Rs. 1,06,876 from the partners for the assessment year 1975-76.

The Ministry of Finance have accepted the mistake and have stated that the assessments have been revised raising additional demand of Rs. 1,06,876.

(iii) In the computation of business income, an assessee is entitled to deduction of an investment allowance at twenty five per cent of the actual cost of plant and machinery installed/put to use in the relevant accounting year. In respect of assessment year 1977-78, the allowance was admissible only if the plant and machinery was used for the purpose of business of generating or distributing power or production of the articles specified in the Ninth Schedule to the Act or in a small-scale industrial undertaking for the production of any article. A small-scale industrial undertaking is one in which the aggregate actual cost of plant and machinery installed on the last day of the accounting year did not exceed Rs. ten lakhs.

In respect of the assessment year 1977-78, a partnership firm engaged in the business of printing and selling stationery, claimed an investment allowance of Rs. 1,09,736 in respect of plant and machinery installed in the relevant previous year. The claim

was allowed by the department (December 1979) However, as the actual cost of plant and machinery as on 31 March 1977 exceeded Rs. 10 lakhs, the firm was not a small-scale industrial undertaking. Nor was the assessee angaged in the business of production/distribution of electricity or production of any of the articles specified in the Ninth Schedule to the Act. The incorrect allowance resulted in under-assessment of income of Rs. 1,09,736 involving short levy of tax of Rs. 53,530 in the hands of the firm and its three partners.

The Ministry of Finance have accepted the mistake and have revised the assessment raising additional demand of Rs. 53,530.

Irregular Exemptions and Reliefs

The Income-tax Act, 1961 provides for various deductions and reliefs while computing total income. Mistakes in their allowance results in under charge of tax. A few interesting cases are given in the following paragraphs.

3.11 *Incorrect allowance of relief in respect of newly established undertakings*

Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee included any profits and gains derived from a newly established industrial undertaking, the assessee becomes entitled to tax relief in respect of such profits and gains upto six per cent per annum of the capital employed in the industrial undertaking, in the assessment year in which the undertaking begins to manufacture or produce articles and also in each of the four assessment years (six assessment years in the case of a co-operative society) immediately succeeding the initial assessment year. For this purpose, it has been provided that in the computation of the value of capital employed in the industrial undertaking, the value of depreciable assets should be taken at their written-down value as on the first day of the computation period and that the aggregate of the monies borrowed and debts owed by the assessee, should be deducted from the gross value of the assets.

(i) In the case of an industrial co-operative tea factory the Income-tax Officer allowed for the assessment years 1976-77, 1977-78 and 1978-79 (assessments completed in March 1979, February 1980 and November 1980 respectively) the relief in respect of its new industrial undertaking amounting to Rs. 68,548, Rs. 1,33,918 and Rs. 1,82,847 respectively. While computing the relief, the Income-tax Officer incorrectly adopted the cost of depreciable assets instead of their written-down value and also did not deduct certain debts owed by the assessee, from the gross value of the assets. These resulted in the relief being computed in excess by Rs. 46,717 for the assessment year 1977-78, Rs. 92,869 for the assessment year 1977-78 and Rs. 1,15,276 for the assessment year 1978-79.

The total excess relief amounting to Rs. 2,54,862 resulted in short levy of tax of Rs. 1,26,291.

The Ministry of Finance have accepted the mistake and have reported that the assessments have been rectified raising an additional demand of Rs. 1,26,291.

(ii) In the case of another co-operative society, for the assessment years 1978-79 and 1979-80, (assessments completed in August 1980 and March 1981), in determining the capital employed by the society, the assessing officer took the value of depreciable assets at the value shown in the balance sheet as on the first day instead of adopting their written-down value. This resulted in excess carry forward of relief of Rs. 1,44,464 and Rs. 3,02,047 for the assessment years 1978-79 and 1979-80 respectively involving a potential tax effect of Rs. 2,00,830.

The Ministry of Finance have accepted the mistake and have reported that the assessments have been set aside to carry out necessary re-computation.

(iii) In the assessments of a firm for the assessment years 1977-78, 1978-79 and 1979-80, completed in March 1980, January 1981 and March 1981 respectively, the Inspecting Assistant Commissioner allowed the reliefs as claimed by the assessee

with reference to capital computed on the basis of original cost of depreciable assets of the industrial undertaking as on the last day of the accounting year instead of on their written-down value on the first day of the accounting year. The erroneous computation resulted in excess deduction amounting to Rs. 2,84,475 involving an aggregate short-charge of tax of Rs. 1,51,400 for the three years.

In the assessment of the same firm for the assessment year 1976-77 (completed in January 1980), the assessee claimed the tax holiday relief amounting to Rs. 80,258 admissible in respect of a branch unit for adjustment against the business income from other sources. The claim of the assessee for adjustment against other business income was rejected by the assessing officer and the relief of Rs. 80,258 was allowed to be carried forward. On appeal, the commissioner of Income-tax, while upholding the Income-tax Officer's action in carrying forward the relief for adjustment in future years enhanced the admissible relief from Rs. 80,258 to Rs. 1,45,878. While giving effect to the appellate orders in May 1980, the difference of Rs. 65,620 (between Rs. 1,45,878 and Rs. 80,258), was incorrectly deducted from other business income of the assessee instead of carrying forward for adjustment against the profits of the units in the subsequent years. This resulted in short levy of tax amounting to Rs. 54,500.

These mistakes resulted in total under charge of tax of Rs. 2,05,900.

The assessment for the year 1977-78 was checked by the internal audit party of the department who did not notice the mistake.

The paragraph was sent to the Ministry of Finance in August 1982; their reply is awaited (December 1982).

(iv) In the case of a registered firm the capital in respect of its new industrial undertaking for the assessment years1976-77 and 1977-78 (assessments completed in May 1979 and November 1978) was computed by averaging the value of the assets and liabilities as on the first and the last days of the relevant previous

years although the rule for computation of capital at their average value was done away with effect from 1 April 1968. Further, the bank loans and other outstanding liabilities were not also taken into account in the capital computation. These mistakes resulted in allowance of excess relief by Rs. 1,02,977 and Rs. 1,15,014 in the two assessment years with aggregate tax undercharge of Rs. 1,67,429 in the hands of the firm and its partners. There was also short levy of penal interest for late filing of returns and for non-furnishing of estimates of advance tax amounting to Rs. 17,867 in the hands of the firm.

The Ministry of Finance have accepted the mistake.

(v) Where such profits and gains of a newly established undertaking fall short of the relevant amount of capital employed during the previous year, the amount of such short-fall or deficiency may be carried forward and set off against future profits but not beyond the seventh assessment year in the case of co-operative societies as reckoned from the end of the initial assessment year.

In the case of an industrial co-operative society which commenced production during the previous year relevant to the assessment year 1967-68, relief in respect of new industrial undertaking was admissible from the assessment year 1967-68. As the profits and gains derived by the society were insufficient to absorb the relief, it was allowed to be carried forward to subsequent assessment years. The carry forward ought to have been restricted to the assessment year 1974-75, being the seventh assessment year from the end of the initial assessment year, 1967-68. The Income-tax Officer, however, adjusted the deficiency of relief relating to the assessment year 1967-68 to the extent of Rs. 1,44,680, in the assessment for the assessment year 1975-76, completed in February 1978. Similar adjustments of relief had also been allowed to the extent of Rs. 8,729 and Rs. 1,52,481 in the assessments for the assessment years 1976-77 and 1977-78. The incorrect adjustments resulted in a total short levy of tax of Rs. 1,27,050

The Ministry of Finance have accepted the mistake and have stated that the assessments have been rectified.

3.12 *Mistakes in the grant of export market development allowance*

Under the Income-tax Act, 1961, domestic companies and resident non-corporate assessees engaged in the business of export of goods outside India or providing services or facilities outside India are entitled to an export market development allowance equal to the actual amount of expenditure plus an extra amount of one third thereof. Expenditure on distribution and supply of goods in India and expenditure wherever incurred on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit do not qualify for the above allowance.

(i) While making the assessment of a firm for the assessment year 1977-78 in March 1980, the Inspecting Assistant Commissioner rejected the assessee's claim for export markets development allowance on the expenditure of Rs. 5,21,365 relating to insurance and freightas similar claim by the assessee for the assessment years 1974-75 to 1976-77 was already rejected by the Commissioner of Income-tax (Appeals). The assessee also admitted before the Commissioner that it was not entitled to the relief for the assessment year 1975-76. On an appeal filed by the assessee for the assessment year 1977-78, the Commissioner of Income-tax (Appeals) directed the assessing officer to re-examine the claim with reference to the orders passed in the case of this assessee by the Appellate Tribunal (Nagpur Branch) for the assessment year 1973-74 wherein the assessee's claim for similar relief was allowed. The assessing officer revised the assessment for the assessment year, 1977-78 in January 1981 and allowed the relief on Rs. 5,21,365.

In February 1981 in an appeal preferred by the assessee for the assessment year 1976-77, the Appellate Tribunal (Nagpur Branch), relying on a decision of June 1978 of the (Appellate Tribunal Full Bench Bombay) which had disapproved the Nagpur

Bench ruling for the assessment year 1973-74, ordered that the assessee was not entitled to the relief.

In the assessments for the assessment years 1978-79 and 1979-80 (assessment completed in March 1981), however, the Inspecting Assistant Commissioner allowed relief on account of export market development allowance on Rs. 8,54,073 and Rs. 5,37,366 over-looking the Appellate Tribunals' decisions on the issue.

The omission to withdraw the relief allowed in January 1981 for the assessment year 1977-78 and incorrect grant of relief for the assessment years 1978-79 and 1979-80 resulted in short levy of tax of Rs. 11,93,900 in the hands of the firm and partners.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

3.13 *Incorrect relief to Hindu undivided families*

In order to encourage long term savings, the Income-tax Act allows, in the case of individuals and Hindu undivided families a deduction in respect of payments made out of income chargeable to tax by way of life insurance premia, contributions to provident fund etc. In the Central Government notified Public Provident Fund established under the Public Provident Fund Scheme 1968 so as to make contributions to this fund also eligible for this deduction. This benefit was, however, confined to individuals and contributions made by Hindu undivided families to the Public Provident Fund were not made eligible for the deduction.

In the assessments of four Hindu undivided families for the assessment years 1977-78 to 1980-81, completed in February 1980, November 1980 and March 1981, contribution amounting to Rs. 50,713 made by the families to the Public Providend Fund were taken into account in allowing the deduction. The incorrect deduction resulted in short levy of tax of Rs. 33,579.

The Ministry of Finance have accepted the mistake and have reported that remedial action has been initiated in all the cases.

3.14 *Incorrect deduction under double taxation relief*

Under the provisions of the Income-tax Act, 1961, as effective from 1 April 1975, if the gross total income of an individual, who is a citizen of India, includes remuneration received by him from a foreign employer for any service rendered outside India, a deduction of fifty per cent of such remuneration is allowed in computing the total income of the individual subject to certain conditions. Further, if a person who was resident in the previous year, proves that in respect of income which accrued or arose during the previous year outside India he had paid tax in a country which is not covered under a bilateral agreement for relief or avoidance of double taxation, he is entitled to the deduction from the Indian income-tax, payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country whichever is lower.

While computing the total income of five individuals for the assessment years 1976-77 and 1977-78 in December 1978, February 1979 and March 1979, fifty per cent of the remuneration received by each of them from a foreign employer for services rendered outside India was allowed as deduction and only 50 per cent was charged to tax in India. However, double taxation relief in respect of tax paid in the foreign country was not restricted to the sum calculated on the portion of foreign income charged to tax in India. Failure to do so, resulted in short levy of tax of Rs. 59,102 including interest for late filing of return.

The paragraph was forwarded to the Ministry of Finance in August 1982; their reply is awaited (December 1982).

3.15 *Income escaping assessment*

(i) The Income-tax Act, 1961, provides for an allowance or deduction from the income of an assessee in respect of expenditure incurred for the purpose of business carried on by the assessee. Where, on a subsequent date, the assessee receives a refund of an amount in respect of which deduction has been allowed earlier in the assessment year for any year, the refund is

chargeable to income-tax as the income of the year in which the refund is received.

A registered firm received a refund of Rs. 1,11,395 on account of excise duty paid by it, in earlier years. The receipt was shown in the balance sheet of the firm as at 31 March 1980 relevant to the assessment year 1980-81. The amount was chargeable to income-tax as the income of the assessmet year 1980-81. However, the receipt of Rs. 1,11,395 was neither offered to taxation by the assessee nor was it assessed to tax by the department, even though the amount debited to the profit and loss account as revenue expenditure earlier was allowed. Non-assessment of Rs. 1,11,395 resulted in short levy of tax of Rs. 63,979 (Rs. 32,375 in the hands of the registered firm and Rs. 31,604 in the hands of the partners) for the assessment year 1980-81.

The Ministry of Finance have accepted the mistake and have stated that the assessment of the firm has been revised and additional demand of Rs. 32,375 collected. Report regarding revision of partners assessment and collection of demand is awaited (December 1982).

(ii) All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferer and shall be included in his total income.

Two individuals created private trusts in October 1969 and December 1971 respectively, the department held these trusts to be revocable and added the value of assets belonging to the trusts in the net wealth of the settlors for charging wealth-tax. Consistent with this decision, the income derived by the trusts amounting to Rs. 65,805 for the assessment years 1977-78 and 1978-79 (assessments completed in January 1980 and January 1981 respectively) should have been charged to tax in the hands of the

settlors. This was not done. The omission resulted in short levy of income tax of Rs. 53,040.

The Ministry of Finance have accepted the mistake, rectified the assessment and collected the additional demand.

3.16 *Unexplained investment*

Under the Income-tax Act, 1961 where, in a financial year immediately preceding the assessment year the assessee had made investments and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not in the opinion of the Income-tax Officer satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

While completing the assessment of a registered firm for the assessment year 1978-79 in November 1980, the assessing officer observed in the assessment order that investment amounting to Rs. 2,12,332 made by certain creditors and by partners of the firm could not be explained properly. In the absence of satisfactory explanation, the credit of Rs. 2,12,332 in the books of the firm was assessable to tax as deemed income. The unexplained credits were, however, neither added to the income of the firm nor suitable findings recorded for their exclusion, as a result of which, the income of Rs. 2,12,332 escaped assessment involving short levy of tax (including interest for short deposit of advance tax) of Rs. 1,86,902 in the case of the firm and partners. The assessee was also liable for penalty for concealment of income.

The Ministry of Finance have accepted the mistake (October 1982).

3.17 *Unexplained money*

Under the Income-tax Act, where, in a financial year, an assessee is found to be the owner of any money not recorded in the books of account, if any, maintained by him for any source

of income and the assessee offers no satisfactory explanation about the nature and source of acquisition of the money, the unexplained money is deemed to be the income of the assessee for such financial year.

In the course of the wealth-tax assessments for the asessment year 1973-74, four brothers, each assessed in the status of a Hindu undivided family, filed a statement (March 1979) admitting a cash balance of Rs. 1,00,000 each on 31 March 1973, which was not recorded in the books of account. While charging the cash balance to wealth-tax in March 1979, the department did not note that the source of acquisition of the amount remained unexplained and that consequently the income-tax assessements of the four brothers for the assessment year 1973-74, already completed in December 1978, required revision to charge the unexplained money of Rs. 4,00,000 to income-tax. The omission resulted in short levy of income-tax of Rs. 3,91,000.

The Ministry of Finance have stated that additional demand has been raised and collected in August 1982.

3.18 *Omission to levy capital Gains tax*

Under the provisions of the Income-tax Act, 1961, any gain arising on transfer of a capital asset is chargeable to tax as income. For the purpose of computation of capital gains, the term 'transfer' has been defined to include 'sale, exchange or relinquishment of the asset or extinguishment of any rights therein'. It has been judicially held that, when a person brings his assets into a firm in which he is a partner as his capital contribution, his erstwhile sole title in respect of the assets would stand extinguished from the point of time when it is introduced as a capital asset in the firm in which he is a partner and this would constitute "transfer" within the meaning of the term under the Act.

(*i*) Wealth-tax return of an assessee for the assessment year 1979-80 (assessment completed in November 1980) showed that the assessee had contributed half share of his land to a partnership firm from 1 December 1975 as his capital contribution.

The share of the assessee was valued at Rs. 2,50,000 and the amount was credited to his capital account in the firm as against the original cost of the land of Rs. 39,223. The income by way of capital gains of Rs. 2,10,777 for the assessment year 1977-78 was not brought to assessment leading to non-levy of tax of Rs. 95,415.

The Ministry of Finance have accepted the mistake and have stated that the assessment is being revised.

(*ii*) Four individuals transferred their movable (company shares) and immovable property to three firms in which they became partners, in the previous years relevant to the assessment years 1975-76, 1976-77 and 1977-78. The cost of acquisition of the assets was Rs. 4,16,543 and the consideration for which they were transferred was Rs. 12,27,000. Capital gains tax was not levied on the difference. The omission led to non-assessment of income of Rs. 8,10,457 involving non-levy of tax of Rs. 3,57,908.

The Ministry of Finance have accepted the omission in one case and stated that the assessment is being revised. Reply in respect of other cases, reported to the Ministry in August 1982 is awaited (December 1982).

3.19 *Incorrect computation of capital Gains*

Under the provisions of the Income-tax Act, 1961, capital gain on the transfer of a capital asset is computed with reference to the cost of acquisition of the asset or where the capital asset became the property of the assessee before Ist January 1964, at the option of the assessee, fair market value of the asset as on that date.

In the assessment of an individual for the assessment year 1977-78 completed in March 1981, a capital loss of Rs. 25,000 was determined in respect of sale of nine buildings during the relevant previous year. The loss was arrived at by taking the aggregate fair market value as on Ist January 1964 at Rs. 5,25,000 as shown by the assessee and deducting therefrom the aggregate

sale value of the buildings of Rs. 5,00,000. However, in the wealth-tax assessments for the assessment years 1963-64 and 1964-65 (valuation dates being 31 March 1963 and 31 March 1964 respectively) the aggregate value of the said buildings was taken at Rs. 3,29,560 as shown by the assessee. Accordingly, in working out the amount of capital gain or loss arising on the transaction, the fair market value as on Ist January 1964 was to be taken at Rs. 3,29,560. On that basis a capital gain of Rs. 1,70,440 ought to have been assessed instead of a capital loss of Rs. 25,000. The incorrect substitution of the fair market value resulted in non-levy of tax of Rs. 85,617.

The Ministry of Finance have accepted the mistake.

3.20 *Mistakes in assessment of partners of firm*

Under the Income-tax Act, 1961, where, at the time of completion of assessments of partners of a firm, the assessment of the firm has not been completed and the final share income of the partners is not known, the assessments of partners are to be completed by taking their share incomes from the firm on a provisional basis. In such cases, the assessments of the partners are to be revised subsequently to include the final share incomes when the assessment of the firm is completed. For this purpose, the Income-tax Officers are required, under instructions of the Central Board of Direct Taxes issued in March 1973, to maintain a register of cases of provisional share income so that timely action may be taken to revise the partners assessments and to ensure that such cases are not omitted to be rectified. Instances of default in the revision of partners' assessments in such cases have been commented upon in paragraph 61(1) of the Audit Report 1975-76, paragraph 59 of the Audit Report 1976-77, paragraph 53(b)(ii) of the Audit Report 1977-78, paragraph 54 of the Audit Report 1978-79, paragraph 3.11 of the Audit Report 1979-80 and paragraph 3.18 of the Audit Report 1980-81.

The Public Accounts Committee, have from time to time expressed their concern at the delay in the revision of provisional assessments of partners' share income after completion of the

firms' assesments and have taken serious note of the failure to keep a proper watch over such cases in their recommendations made in paragraph 65 of their 21st Report (Third Lok Sabha), paragraph 45 of their 28th Report (Third Lok Sabha) and paragraph 2.224 of their 186th Report (Fifth Lok Sabha).

While considering paragraph 3.11 of the Audit Report 1979-80, the Public Accounts Committee in paragraph 5.7 of their 85th Report (Seventh Lok Sabha) observed that they were distressed to note that despite their earlier recommendations and the action taken in pursuance thereof the situation had not improved.

Inspite of the remedial action taken by the department in the light of the recommendation of the Committee, instances have come to the notice of audit where the default continued to occur, as given in the following paragraphs.

(*i*) For the assessment years 1973-74, 1978-79 and 1979-80, the assessment of an individual, who was a partner in a registered firm along with his minor sons, was completed adopting his share income provisionally as Rs. 39,886 Rs. (—) 10,254 (loss) and Rs. 34,767 respectively. The assessing officer did not make an entry of the provisional share income adopted, in the register of cases of provisional share incomes. The correct share incomes of the assessee and his minor sons were determined subsequently (in the firm's assessment order passed by the same assessing officer) as Rs. 90,916 for the assessment year 1973-74, Rs. 28,703 for the assessment year 1978-79 and Rs. 54,961 for the assessment year 1979-80. Failure to amend the partner's original assessments to adopt the correct share incomes resulted in short levy of tax of Rs. 72,634. The department accepted the omission.

(*ii*) In the case of another individual, who was also a partner in the same firm, assessed by the same assessing officer, the share of incomes for the assessment years 1973-74 and 1979-80

were adopted provisionally as Rs. 53,182 and Rs. 46,354 respectively. No entries were made by the Income-tax Officer in the register prescribed by the Central Board of Direct Taxes to ensure revision of the original assessment for adopting the correct share income. In the firms's assessment orders passed subsequently for the assessment years 1973-74 and 1979-80, the correct share of incomes of the assessee was determined as Rs. 1,21,221 and Rs. 73,280 respectively. The omission to revise the assessments of the partner on completion of firms' assessment resulted in short levy of tax of Rs. 77,191.

The Ministry of Finance have accepted the omission and have stated that the assessments have been rectified.

3.21 *Omission to include income of spouse/minor children*

Under the provisions of the Income-tax Act, 1961, in computing the total income of an individual, there shall be included all such income as arises directly or indirectly to the spouse/minor child of such individual from the membership of the spouse/minor child in a firm carrying on a business in which such individual is a partner. The provision does not apply in the case of a profession.

(*i*) It has been judicially held that even where an individual represents a joint family, the partnership is not between the family and the other partners but between the individual personally and the other partners. In such cases the kartha may be accountable to the family for the income received but the partnership is exclusively one between the contracting members. It follows that even in such cases, the clubbing provisions of the Act are attracted.

In the assessments of an individual for the assessment years 1977-78 to 1979-80, completed in January 1981, February 1979 and May 1981 share incomes of his spouse and of his minor son arising from their membership in the firm in which the individual

was a partner in the capacity of kartha of Hindu undivided family were not included in his individual total income resulting in short computation of income of Rs. 1,10,214 leading to a short levy of tax of Rs. 67,246.

The Ministry of Finance have accepted the omission and have reported that the assessments are being rectified.

(*ii*) An individual and his wife, both being doctors, were partners with equal shares in a registered firm which was running a hospital. The income of the registered firm was subjected to tax at higher rates as applicable to firms carrying on business. For the assessment year 1974-75 the firm was also allowed development rebate which was admissible in the computation of business income only and not in the computation of income from a profession. The firm had also obtained deposits exceeding Rs. 2 lakhs from the public for the expansion of business. Since the firm was thus accepted as one carrying on business and not profession, the income of the spouse was required to be clubbed in the hands of the huband. Failure to do so resulted in aggregate short levy of tax of Rs. 43,581 for the assessment years 1975-76 to 1978-79.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*iii*) The Act as amended from Ist April 1976 provides that in computing the total income of an individual there shall be included all such income as arises directly or indirectly to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm, even if that individual is not a partner in the firm.

In computing the total income of an individual for the assessment years 1977-78, 1978-79 and 1979-80, the incomes of his two minor sons amounting to Rs. 49,531, Rs. 51,374 and Rs. 47,098

arising to them in the respective previous years from their admission to the benefits of partnership in a firm, were not clubbed with his income. Consequently tax of Rs. 62,088 in the aggregate was short levied for the three years.

The paragraph was sent to the Ministry of Finance in August 1982; their reply is awaited (December 1982)

3.22 *Avoidable payment of interest due to delay in implementing appellate orders*

Under the provisions of the Income-tax Act, 1961, where refund of any amount paid by an assessee before 1st April 1975 becomes due to him as a result of any orders passed in appeal or other proceedings under the Act and the Income-tax Officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee interest at 12 per cent per annum, on the amount of refund due to the assessee from the date immediately following the expiry of three months aforesaid to the date on which the refund is granted.

The Public Accounts Committee has observed on a number of occasions that inordinate delays in payment of refunds cause avoidable harassment to the assessees apart from loss to the exchequer by way of interest. The Central Board of Direct Taxes had also issued instructions that the Income-tax Officers should dispose of such refund cases within a fortnight of the receipt of the appellate orders. Never-less instances of inordinate delays in making refunds continue to be noticed.

(*i*) The assessments of an individual for the assessment years 1955-56 to 1971-72 (except for the assessment years 1957-58 to 1959-60) were revised by the Income-tax Officer in a central circle in May 1979 to give effect to certain orders passed in favour of the assessee by the Income-tax Appellate Tribunal in July 1973 to June 1976. The revisions resulted in total refund

of tax of Rs. 3,00,650 to the assessee. As the Tribunal's orders passed in July 1973 to June 1976 were given effect to by the department only in May 1979, the department had to pay a sum of Rs. 1,43,266 towards interest on the refund of tax of Rs. 3,00,650.

Further, while calculating the total amount of refund due to the assessee, the department did not take into account a refund of Rs. 46,899 made to the assessee earlier in July 1969 in respect of the assessment year 1961-62. This resulted in excess refund, with a consequential inadmissible interest payment of Rs. 29,495.

The paragraph was sent to the Ministry of Finance in August 1982; their reply is awaited (December 1982).

(*ii*) An assessee firm went in appeal against the assessments completed by the Income-tax Officer for twelve assessment years, 1957-58 to 1960-61, 1962-63 to 1967-68, 1971-72 and 1973-74. The appeallate authority passed orders there-on in 1962, 1964, 1966, 1967, 1968, 1970, 1974, 1975 and 1977. On the basis of those orders a refund of Rs. 39,781 became due to the assessee. This refund was allowed by the department only in 1981. As a result of delay ranging from 3 to 18 years in giving effect to the aforesaid appellate orders, the assessee was paid interest of Rs. 40,315.

One of the partners of the above mentioned firm, went in appeal against the assessments completed by the Income-tax Officer in his case for nine assessment years 1958-59, 1960-61, 1963-64 to 1967-68, 1970-71 and 1973-74. The appellate authority passed orders thereon in 1964, 1968, 1974 and 1977. On the basis of those orders a refund of Rs. 20,687 became due to the assessee. The refund was allowed by the department only in 1981. As a result of delay ranging from 3 to 16 years in this case in giving effect to the aforesaid appellate orders, the assessee was paid interest of Rs. 23,765.

(*iii*) Another assessee firm went in appeal against the assessments completed by the Income-tax Officer for eight assessment years 1945-46 to 1950-51, 1954-55 and 1957-58. The appellate authority passed orders thereon in 1955, 1956, 1957, 1963 and 1968. Consequent upon those orders a refund of Rs. 1,08,273 became due to the assessee.

This refund was allowed by the department only in 1976. As a result of delay ranging between 7 and 14 years in giving effect to the aforesaid appellate orders, the assessee was paid interest of Rs. 1,02,180.

The total avoidable payment of interest by Government in these cases was Rs. 1,66,260.

The Ministry of Finance have accepted the mistake.

3.23 *Non-levy or incorrect levy of interest*

(*i*) Under the Income-tax Act, 1961, where the return for an assessment year is furnished after the specified date, the assessee is liable to pay simple interest at 12 per cent per annum from the day immediately following the specified date to the date of furnishing of the return.

A registered firm filed its return of income for the assessment year 1977-78 in December 1980 *i.e.* after the expiry of 41 months from the due date *i.e.* June 1977. For the delay in furnishing the return interest of Rs. 62,746 was payable by the assessee. The department, however, did not levy interest in the assessment made in March 1981. The mistake resulted in non-levy of interest of Rs. 63,418.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been revised raising additional demand of tax of Rs. 63,418.

(*ii*) Under the Income-tax Act, 1961, where on making regular assessment, the Income-tax Officer finds that any person has not sent a statement of advance-tax payable by him, computed in the manner laid down in the Act or has not sent an estimate of his current income and the advance-tax payable by him on the current income if he has not been previously assessed by way of regular assessment, simple interest at the rate of 12 per cent per annum from the Ist day of April next following the financial year upto the date of regular assessment is payable by the assessee.

An assessee filed his income-tax return for the assessment year 1978-79 in April 1979 declaring his income as Rs. 10,880 stating that he was a salaried employee. His tax consultant, had, however, filed another return in favour of the assessee in a business ward stating, the assessee was dealing in textile trade and money lending business. The Income-tax Officer assessed the income of the assessee to the best of his judgement for the assessment year 1978-79 on 31 March 1981 at Rs. 6,00,000 including income of Rs. 10,880 and levied a tax of Rs. 3,90,080. The assessee had paid self-assessment tax of Rs. 445 and tax deducted at source of Rs. 100 totalling to Rs. 545. No advance-tax was paid by him.

For failure to send the estimate of advance-tax, interest amounting to Rs. 1,40,220 was chargeable against which interest of Rs. 35,090 only was levied. This resulted in short levy of interest of Rs. 1,05,130.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been revised raising additional demand of Rs. 1,05,130.

3.24 *Irregular set off of loss*

Under the provisions of the Income-tax Act, 1961, unabsorbed business loss brought forward from an earlier assessment years can be set off in subsequent assessment years only against business income.

In the case of an assessee, for the assessment year 1980-81 brought forward business loss of Rs. 86,274 was set off against income from capital gains, resulting in a short demand of tax of Rs. 40,634 including interest leviable for the delayed filing of the return.

The Ministry of Finance have accepted the mistake.

3.25 *Mistakes in giving effect to appellate orders*

(*i*) Under the Income-tax Act, 1961, as applicable with effect from the assessment year 1969-70, a domestic company or a non-corporate tax payer, resident in India, incurring expenditure after 29 February 1968 wholly and exclusively on any of the items specified in the Act in connection with the development of export markets is entitled to a weighted deduction from the taxable income at the rate of one and one-third times the amount of such expenditure incurred by him during the previous year.

In its income-tax assessments for assessment years 1976-77 and 1977-78 completed in May 1977 and November 1977 respectively, a registered firm claimed the benefit of export market development allowance in respect of expenditure of Rs. 52,350 and Rs. 2,52,671 incurred in the respective previous years. On the department allowing only the normal deduction the assessee preferred an appeal, which was allowed by the Appellate Tribunal. While re-determining the income pursuant to the appellate order in July 1979 the department deducted the entire expenditure of Rs. 52,350 and Rs. 2,52,671 instead of only one-third thereof. The incorrect deduction resulted in under-assessment of income of Rs. 2,03,367 involving short levy of tax of Rs. 1,38,732 both in the hands of the firm and its partners.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified.

(*ii*) In computing the income of an assessee firm for the assessment year 1976-77 (assessment done in December 1976) claim for deduction towards certain items of expenditure to the

extent of Rs. 1,97,277 was disallowed by the Income-tax Officer. The assessment was amended in May 1977 as a result of orders of the Appellate Assistant Commissioner, allowing the claim of the assessee towards the deduction. The department preferred a further appeal to the Appellate Tribunal which in its orders of December 1978 upheld the disallowance to the extent of Rs. 1,33,277. Orders of the Appellate Tribunal were, however, not given effect to till Audit pointed out the omission in October 1981. This resulted in non-collection of tax of Rs. 95,010 in the hands of the firm and partners.

The Ministry of Finance have accepted the omission.

Other Topics of Interest

3.26 *Short levy of tax on lottery winnings*

According to an amendment made to the Income-tax Act, in 1972, winnings from lotteries are subject to income tax under the head "Income from other sources".

An individual who won a prize amount of Rs. 11.25 lakhs in a State Lottery conducted in January 1978 received a sum of Rs. 7,36,875 on 31 March 1978 by cheque, after deduction of Rs. 3,88,125 towards tax deductible at source. The cheque was encashed in April 1978. He filed a return of income for the assessment year 1979-80, in which he declared only five-twentieth of the prize money of Rs. 11.25 lakhs as his income, claiming that, under an agreement entered into in April 1977 and reduced to writing in January 1978, his parents and three sisters were entitled to the balance prize money at three-twentieth each. The claim was accepted by the department in his income-tax assessment for the assessment year 1979-80 completed in May 1980. The assessments of the other five persons were also completed levying tax on their respective shares. The agreement had not, however, been witnessed by any one. There was no evidence in support of the claim that the individual who won the prize was under a contractual obligation to share the prize money with the five relatives. The department ought to have therefore assessed the entire winnings in his hands and this would have resulted in

a net additional demand of tax of Rs. 1,21,830. Also, as the prize amount has been paid in March 1978 itself (by cheque), the correct assessment year for charging the relevant income was 1978-79 and not 1979-80.

In another case, an individual won Rs. 5,00,000 in another State Lottery in April 1978 and claimed that, under an agreement entered into with twenty six others five days before the draw, six of them were entitled to two shares each and the remaining twenty one persons to one share each. Accepting the claim, the department assessed (June 1979) only a sum of Rs. 15,150 in his hands. Others were also assessed separately on their respective shares of the prize amount. As the twenty seven persons had joined in a common purpose with the object of producing income, they constituted an association of persons, on whom the entire prize money of Rs. 5,00,000 should have been assessed in a single assessment. The department's action in making separate assessments in the hands of the twenty seven persons in respect of their respective shares resulted in short levy of tax of Rs. 1,46,885.

The total short levy of tax in the two cases was Rs. 2,68,715.

The Ministry of Finance have stated that the issue is not free from doubt and it could not be said with certainty whether the income in such a case is to be assessed in the status of an individual or as association of persons/body of individuals.

3.27 *Mistake in reopening the assessment*

An assessee did not file the income-tax return for the assessment year 1977-78 inspite of notices issued to him under the Income-tax Act. The assessment was there upon completed by the Income-tax Officer to the best of his judgement in December 1979 determining the income at Rs. 2,04,250. A notice of demand was served on the assessee for an amount of Rs. 1,43,257 including a sum of Rs. 31,332 on account of interest for non-submission of return. The assessee applied for reopening of the assessment in February 1980 and the application was rejected by the Income-tax Officer in April 1980 and the intimation to

this effect was acknowledged by the assessee in May 1980. However, the Income-tax Officer reopened the assessment in June 1980 on the ground that the notice of demand relating to the original assessment made in December 1979 was not signed by him and therefore, was not valid. The mere fact that the notice of demand was not signed by the Income-tax Officer did not nullify the assessment order passed by him in December 1979 and the mistake in re-opening the assessment, resulted in non-recovery of tax of Rs. 1,43,257.

The Ministry of Finance have accepted the mistake and have stated that the assessment has been rectified raising a demand of Rs. 1,43,257.

CHAPTER 4

OTHER DIRECT TAXES

A. WEALTH-TAX

4.01 In the financial years 1977-78 to 1981-82, wealth-tax receipts *vis-a-vis* the budget estimates were as given below :—

Year	Budget Estimates	Actual
	(Rupees in crores)	
1977–78	54.90	48.46
1978–79	55.00	55.41
1979–80	60.00	64.47
1980–81	65.00	67.43*
1981–82	66.00	78.12*

(*Provisional).

4.02 The arrears of demand pending collection and number of cases pending assessment as at the end of the years 1977-78 to 1981-82 are given below :—

Year	No. of cases pending assessment at the end of	Arrears of demand pending collection at the end of
		(Rupees in crores)
1977–78	3,14,224	56.41
1978–79	3,31,561	184.08
1979–80	4,32,988	180.54
1980–81	4,99,903	217.11
1981–82	5,67,381	208.92

4.03 During the test audit of assessments made under the Wealth-tax Act, 1957 conducted during the period from 1 April 1981 to 31 March 1982, the following types of mistakes were noticed:—

(*i*) Wealth escaping assessment.

(*ii*) Incorrect valuation of immovable properties.

(*iii*) Incorrect valuation of partners' interest in partnership firms, jewellery, etc.

(*iv*) incorrect computation of net wealth.

(*v*) Incorrect exemptions and reliefs.

(*vi*) Mistakes in application of rates and calculation of tax.

(*vii*) Non-levy of additional wealth-tax.

(*viii*) Short levy of penalty.

(*ix*) Delay in remedial action leading to loss of revenue.

(*x*) Delay in action on internal audit objections.

(*xi*) Mistakes in giving effect to appellate orders.

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

4.04 *Wealth escaping assessment*

(*i*) From the income-tax records of an assessee, an ex-ruler, for the assessment year 1977-78, it was noticed that he had gifted 9066 sq. ft. of land situated outside the compound of his palace during the relevant previous year. The value of the gifted land was determined by the departmental valuer in March 1980 at Rs. 2,26,650. The assessee had not shown this land in the returns of his wealth for the assessment years 1973-74 to 1976-77 nor was it assessed to wealth-tax by the department in those years.

Taking the value of land at Rs. 1,80,000, Rs. 1,95,000, Rs. 2,10,000 and Rs. 2,25,000 on the respective valuation date, relevant to the assessment years 1973-74 to 1976-77, wealth aggregating Rs. 8,10,000 escaped assessment due to the failure of the assessing officer to correlate assessment records of the assessee under various direct taxes. The consequent non-levy of wealth-tax was of Rs. 44,430 and of additional wealth-tax of Rs. 53,100 in these years, besides non-levy of penalty for concealment of wealth.

The Ministry of Finance have accepted the audit objection and stated (October 1982) that the assessments have been reopened for rectification.

(*ii*) Under the provisions of the Wealth-tax Act, assets comprising the estate of a deceased person held by any specific legatee on any valuation date are to be included in the wealth of such specific legatee on that valuation date.

In computing the net wealth of a female assessee for the assessment years 1975-76, 1976-77 and 1977-78 in December 1977 and March 1980, certain properties comprised in the estate of her deceased husband (who had died in May 1974), held by her on the relevant valuation dates as sole legatee under his 'will' of March 1968, were not included in her wealth but were assessed separately in her hands as legal heir of her husband. Non-aggregation of the value of the estate with her net wealth resulted in short computation of her separate wealth by Rs. 9,13,300 with consequent undercharge of tax of Rs. 43,143 for the three assessment years.

The Ministry of Finance have accepted the mistake and have stated that re-assessment proceeding have been initiated.

(*iii*) Under the provisions of the Wealth-tax Act, 1957, wealth-tax is chargeable in respect of each assessment year on the net wealth of the assessee as on the valuation date (which has

been defined in the Act as the last date of the 'previous year', as defined in the Income-tax Act) corresponding to that assessment year. Date of commencement of previous year once chosen and used by the assessee cannot be changed except with the consent of the Income-tax Officer and the change may be allowed by him upon such condition as he may think fit. Since wealth-tax is chargeable on net wealth, as on a particular date, the Board had issued executive instructions in 1968, 1976 and 1980 to the effect that Income-tax Officers, while agreeing to any request of an assessee for a change in the 'previous year', should ensure that liability to wealth-tax would not be adversely affected.

In the case of three individuals, the department allowed in March 1979 a change of 'previous year' from 31st March to 31st May in respect of the income derived from an asset which was valued at Rs. 3,33,333 for the assessment year 1976-77 in each case (the three individuals were co-owners of the asset). Consequently, there was no previous year relevant to the assessment year 1976-77 for the income-tax assessment in respect of its income and therefore no valuation date for this asset relevant to the assessment year 1976-77. But for the change, the value of the asset would have been assessed to wealth-tax for the assessment year 1976-77 in all the three cases. The omission to consider the implication of the assessees' request for a change in the previous year in disregard to the standing instructions of the Board resulted in total undercharge of tax of Rs. 62,713 for the assessment year 1976-77 in these three cases.

On being pointed out (February 1982) by Audit, the department enhanced the assessment under section 25(2) of the Act in all the three cases.

The paragraph was sent to the Ministry of Finance in August and September 1982; their reply is awaited (December 1982).

4.05 *Under-assessments in the cases of members of an industrial family group*

(*i*) Unquoted equity shares in a number of private limited companies, controlled by a large industrial house, were held, among others, by members of the family group, private family trusts created by them and partnership firms within the group, in which a number of such trusts had joined as partners. A test check (November 1981) of wealth-tax assessments of thirteen such private discretionary trusts for the assessment year 1976-77, completed in March 1981, showed that the department had valued these shares at their fair market value while valuing them as an asset of the members of the family or corpus of the trusts, but only at their book value reflected in the relevant balance-sheets of the partnership firms while valuing the share interests of the trusts in them as partners. Omission to adopt market value of the unquoted equity shares in the cases of these partner-trusts as well resulted in under-assessment of wealth-tax of Rs. 4,57,384 for the assessment year 1976-77.

The Ministry of Finance have accepted the audit objection in principle.

(*ii*) With a view to facilitating co-ordination, the assessment of individuals and Hindu undivided families belonging to a family group owning several industries were centralised in a particular income-tax ward (Ward A). The assessment of one Hindu undivided family belonging to the group was, however, left in a different ward (Ward B). In the income-tax records of that family for the assessment year 1972-73, the Range Inspecting Assistant Commissioner remarked that the assessments should not have been dealt with within Ward B as there were a number of inter-connected transactions within the family group and valuation of shares in private companies of the family group was an intricate matter. The Inspecting Assistant Commissioner asked for "proposal" for transferring the case to another ward. The proposal for transfer of the case was submitted by the Income-

tax Officer in May 1973 but no further action was taken in the matter.

While computing the net wealth in the case of the Hindu undivided family, belonging to this well-known industrial family group in respect of the assessment years 1972-73 to 1978-79 (assessments completed in February 1979 and March 1980), the Wealth-tax Officer B-ward valued the unquoted equity shares held by the assessee in two private limited companies on the basis of the valuation reports of a registered valuer. The registered valuer had valued the shares of the first company at Rs. 2,253, Rs. 2,668, Rs. 2,456, Rs. 1,642 and Rs. 1,572 per share in respect of the assessment years 1972-73 to 1976-77 respectively and of the second company at Rs. 63 and Rs. 53 per share for the assessment years 1977-78 and 1978-79 respectively. The valuation of the shares of the first company had, however, been referred in Ward A to the departmental valuer in the case of another assessee belonging to same family group in October 1976 and he, in his report of February 1977, had determined their market value as Rs. 7,400 per share as on 31st December 1973. Further, in the case of the second company which came into being from 1st January 1974, as a result of amalgamation of the first company with another company belonging to the same family group on the basis of particulars available, the value of each share as on 31st March 1974 would work out to Rs. 343. The failure of the Wealth-tax Officer (Ward B) to get the shares of the above companies valued by the departmental valuer or to ascertain the valuation adopted in respect of these shares by the assessing officer of Ward A, dealing exclusively with assessment of the other members of the family group of the assessee, resulted in considerable undervaluation of wealth and consequent short levy of wealth-tax. Taking the value of Rs. 7,400 per share determined by the departmental valuer, as on 31st December 1973, for each share of the first company and adopting a value of Rs. 343, being the value worked out as on 31st March 1974 on the basis of available particulars for each share of the second company, there was a total under-assessment of

wealth of Rs. 70.15 lakhs with a total short levy of wealth-tax of Rs. 2.32 lakhs for the assessment years 1972-73 to 1978-79.

The Ministry of Finance have accepted the mistakes for the assessment years 1974-75 to 1978-79 but have stated that no remedial action is possible. For the assessment years 1972-73 and 1973-74, the Ministry have not accepted, stating that the valuation was done as per wealth-tax rules.

4.06 *Incorrect valuation of partners' share interest in partnership firms*

(*i*) It has been judicially held that 'goodwill' of a business, as a going concern, is a valuable asset. Consequently, it is a chargeable asset according to the provisions of the Wealth-tax Act.

A rule in the Wealth-tax Rules, 1957 lays down the method of valuation of share interest of an assessee in the assets of a business, as a going concern. It provides that "in the case of goodwill purchased by the assessee for a price, its market value or the price actually paid by him, whichever is less, is to be taken to be its value." A residuary provision in the said rule also provides that "in the case of any other asset, not disclosed in the balance-sheet of the business, its market value, as on the valuation date, is to be adopted". It was pointed out to the Ministry of Finance in March, 1975 that if the value of goodwill, not purchased or not disclosed in the balance-sheet of the partnership, is not included in the assets of the firm under the aforesaid residuary provision, a valuable asset chargeable under the substantive provisions of the wealth-tax Act, 1957 would escape assessment. This was again pointed out in paragraphs 64(ii) of the Audit Report, 1977-78, when the Ministry of Finance replied (May 1978), "The matter has been examined in consultation with the Ministry of Law on whose advice the amendment to the rules is under consideration of the Board". Further action is awaited (December 1982).

(*ii*) In the case of partners of a partnership firm, the value of goodwill of the firm was omitted to be considered in computing their share interest in the firm for the assessment year 1976-77. The omission resulted in under-assessment of wealth of Rs. 94,65,122, in the aggregate, leading to a total tax under-charge of Rs. 5,70,469 in one year alone.

Further, the partnership firm, manufacturing *bidis*, had created reserve accounts by crediting thereto, purportedly, provisions for bonus, provisions under the *Bidis* and Cigar Acts, etc. These reserves stood at Rs. 69,72,048 and Rs. 80,85,990, as on the balance-sheet dates relevant to the assessment years 1975-76 and 1976-77 respectively. The Wealth-tax Officer found that the firm had no liabilities corresponding to these provisions as on the relevant balance-sheet date and hence decided to include these amounts in the share interest of the partners for levy of wealth-tax for these assessment years. Such inclusion for the assessment year 1975-76 was also approved by the Commissioner of Income-tax (Appeals). It was, however, noticed in audit (January 1982) that, in the case of three partners, the Wealth-tax Officer had omitted to include the proportionate part of the reserves in their net wealth and, in the case of three other partners, he had computed their shares in the reserves short by Rs. 6,64,274. These mistakes had resulted in short levy of wealth-tax of Rs. 52,380 in these six cases for the assessment year 1975-76. For the assessment year 1976-77, the reserve account credit was incorrectly taken as Rs. 70,85,990 as against the correct figure of Rs. 80,85,990. This mistake led to an under-assessment of wealth of Rs. 9,30,000 in the hands of ten partners of the firm and a short levy of wealth-tax of Rs. 35,915 for the assessment year 1976-77.

The combined effect of these mistakes was, thus, an under-assessment of tax of Rs. 6,58,764 for the assessment years 1975-76 and 1976-77.

The paragraph was sent to the Ministry of Finance in September 1982. They have accepted the mistake in the second part of the paragraph; the reply to the first part is awaited (December 1982).

4.07 *Incorrect Valuation of immovable properties*

(i) The total value of wealth of a Hindu undivided family was Rs. 8 lakhs. In March, 1979, a partial partition was effected as a result of which the Hindu undivided family was left with a part of land and a building complex, consisting of residential houses, offices etc. constructed thereon valued at Rs. 3 lakhs. The departmental Valuation cell fixed the value of the entire property before partition as Rs. 13,36,000 (land Rs. 6,91,100 and buildings Rs.6,44,984).The Wealth-tax assessments of the assessee, the Hindu undivided family, for the assessment years 1970-71 to 1976-77 were finalised by the department between September 1977 and March 1981, taking the value of the share of the assessee in the property as Rs. 5,01,000 representing 3/8th of the value of Rs. 13,36,000 fixed by the Valuation Cell. The following mistakes were noticed in the assessments :—

(1) The value of Rs. 5,01,000 adopted in the assessments for 1970-71 to 1975-76 was not correct. The value of the buildings and *pro rata* value of land retained by the assessee family amounted to Rs. 7,83,120.

(2) For the assessment year 1976-77, the value of the entire building complex, including office etc. was frozen at Rs. 5,01,000, the same value as adopted for the assessment year 1971-72. According to the law, the value frozen should have been restricted to the value of one residential building only.

The total short levy of tax was Rs. 2,13,000 for all the seven assessment years 1970-71 to 1976-77.

The Ministry of Finance have accepted the mistakes and stated (November 1982) that rectification for the assessment years 1970-71 to 1972-73 has become time-barred and for the assessment years 1973-74 onwards, action is being taken.

(*ii*) Two specified Hindu undivided families, as co-owners, had one-eighth share each in a "chincona estate" which was sold for Rs. 36.30 lakhs in February 1980. Taking the sale into account, the values of their interests in the estate for purposes of wealth-tax assessment for the assessment year 1975-76 were fixed (March 1980) by the department as Rs. 3,67,865 and Rs. 3,67,440 respectively as against Rs. 83,572 and Rs. 79,376 returned by them. However, in the wealth-tax assessments of one of these families for the subsequent assessment years 1976-77 to 1978-79, the department did not adopt the enhanced value; instead the values of Rs. 1,04,753, Rs. 1,59,142 and Rs. 1,80,552 as returned were accepted (January——March 1981), resulting in under-assessment of net wealth of Rs. 6,59,148.

In the wealth-tax assessment of the other family for the assessment year 1976-77, completed in March 1981, a similar omission was made and the returned value of Rs. 1,04,755 was accepted as against the value of Rs. 3,67,440 adopted for the earlier assessment year.

The total short levy of wealth-tax in the two cases was of Rs. 42,206.

The Ministry of Finance have accepted the mistakes in both the cases and have stated that action is being taken for rectification (November 1982).

(*iii*) Five assessees (specified Hindu undivided families) were co-owners of a house property with equal shares. The value of the property as on 31 March 1972 was arrived at Rs. 16,14,000

by the departmental Valuation Officer. The valuer had adopted a rate of 260 per sq.metre for lands comprised in the property. The valuation report also indicated that the rate per sq. meter of land as on 31st March 1975 was Rs. 420.

While, in the assessment for the assessment year 1976-77, the Wealth-tax Officer adopted the value of land at Rs. 462 per sq. metre (Rs. 420 as on 31st March 1975 plus 10 per cent for appreciation in its value in one year), for the assessment year 1975-76 (both the assessments were completed in March 1980) he adopted the value of land as Rs. 260 only. The omission to adopt the correct value of land for the assessment year 1975-76, as indicated in the valuation report, resulted in under-assessment of wealth by Rs. 7,43,900 with a total short levy of tax of Rs. 55,100.

The paragraph was sent to the Ministry of Finance in August 1982; their reply is awaited (December 1982).

(*iv*) The net wealth of an assessee, computed in December 1978 for the assessment year 1977-78, included 240 acres of rubber plantation. This was valued at Rs. 1,80,000 at the rate of Rs.750 per acre on the basis of the report of an approved valuer. This report had been prepared three years earlier when the approved valuer had stated that the rubber plants were only four years old and were not mature for tapping. With the expiry of three years as on the relevant valuation date (31st March 1977), the rubber trees had, however, fully grown and were ready for tapping. Further, according to the Rubber Board, the cost of raising a full grown rubber plantation from the planting stage to yield stage (seven years) in the state was not less than Rs. 6,000 per acre. The adoption of the rate of Rs. 750 per acre instead of Rs. 6,000 per acre resulted in short levy of wealth-tax of Rs. 28,882.

The Ministry of finance have accepted the mistake and have stated that additional demand of Rs. 28,882 has been raised.

4.08 *Non-reference of cases for valuation to Valuation Cell*

(*i*) While pursuing certain objections noticed in the assessment of wealth of an assessee for the assessment years 1972-73 to 1974-75, it was suggested by Audit in September, 1977 that the value of buildings owned by the assessee being in excess of rupees five lakhs (as valued by an approved valuer), the properties might be got revalued by the departmental Valuation Officer. The suggestion was not accepted. In the assessments for the assessment years 1975-76 to 1978-79 also, the valuation of those properties was not referred to the departmental Valuation Officer (assessments finalised in February 1979) although such a reference was mandatory under the Wealth-tax Act read with instructions of the Central Board of Direct Taxes of December 1971. On the omission again being pointed out in audit (November 1979), the properties were got valued by the departmental Valuation Officer, who deteremined the value of the properties for the assessment years 1975-76 to 1978-79 at Rs. 9,34,000, Rs. 13,31,500, Rs. 1354,900 and Rs. 14,09,400, as against Rs. 5,57,400, Rs. 5,60,000, Rs. 7,20,000 and Rs. 8,67,000 included in the net wealth of the assessee in the respective years in the assessments completed in February 1979.

The Ministry of Finance have accepted the omission and have stated that the assessment have been revised raising additional demand of tax of Rs. 1,18,985.

(*ii*) The wealth-tax assessments of two Hindu undivided families for the assessment years 1972-73 to 1977-78 and 1972-73 to 1975-76 respectively were completed between September 1972 and March 1978 in which value of 1761 sq. yds. of land, owned by each of them in an industrial city, was assessed, as returned, at Rs. 1,25,000 and Rs. 1,30,000 respectively on the basis of certificate (March 1972) of an approved valuer. The land had been given on lease for fifty years at Rs. 25,000 per annum in each case, with option of renewal for the next fifty years. The approved valuer valued the land at Rs. 71 per sq. yd. As the

property had been rented out, the valuation was required to be done more appropriately under the "income-capitalisation" method under the relevant instructions of the Board. When this requirement was pointed out in audit (October 1979) in one of these cases, the department did not accept the views of Audit.

In the subsequent audit (February 1982), however, it was noticed that a reference was made (February 1980) by the Wealth-tax Officer to the departmental Valuation Officer who valued (June 1980) these properties under the "income-capitalisation method" as Rs. 4,08,300 for the assessment years 1972-73 to 1975-76 and Rs. 3,50,000 for the assessment years 1976-77 to 1977-78. Based on these values, the wealth of the assessees had been under-assessed by Rs. 15,83,110 for the assessment years 1972-73 to 1977-78 in one case and Rs. 11,18,170 for the assesment years 1972-73 to 1975-76 in the other case, in the aggregate, involving total short levy of tax of Rs. 74,254.

The Ministry of Finance have accepted the audit objection in one case; their reply is awaited in the other (December 1982).

4.09 *Incorrect valuation of jewellery*

(*i*) The value of gold jewellery, weighing 14300 grams owned by an individual was assessed at Rs. 5,80,200, Rs. 5,70,200, Rs. 6,30,200, Rs. 6,30,200 and Rs. 7,75,000 for the assessment years 1975-76 to 1979-80 respectively. Applying the value of gold per 10 grams of Rs. 526, Rs. 531, Rs. 561, Rs. 665 and Rs. 850 respectively as on 31st March 1975, 31st March 1976, 31st March 1977, 31st March 1978 and 31st March 1979, the value of jewellery on valuation dates relevant to the assessment years 1975-76, 1976-77, 1977-78, 1978-79, and 1979-80 would be Rs. 7,52,180, Rs. 7,59,330, Rs. 8,02,230, Rs. 9,50,950 and Rs. 12,15,500 respectively. The undervluation of jewellery resulted in an aggregate under-assessment of wealth of Rs. 12,93,490 with consequent short levy of tax of Rs. 39,796 for the assessment years 1975-76 to 1979-80.

The case was required to be checked in the internal audit under the standing instructions of the Board; however, it was not so checked.

The Ministry of Finance have accepted the audit objection and stated (September 1982) that additional tax collected on rectification of the assessment is of Rs. 39,796.

(*ii*) In the wealth-tax assessments of an individual for the assessment years 1975-76 and 1976-77, completed in March, 1980 and February 1981 respectively, the following omissions were noticed:—

(*a*) The value of jewellery as returned by the assessee for the assessment years 1971-72 to 1974-75 was Rs. 32,000 with a plea also that a part of the jewellery had been lost. Rejecting the plea, the Wealth-tax Officer assessed the value of jewellery owned by the assessee as Rs. 3,80,000 for the assessment year 1974-75. Having regard to that assessment, the jewellery received by the assessee on the death of a relative and appreciation in its value, the value of jewellery chargeable for the assessment years 1975-76 and 1976-77 would be Rs. 4,32,000 and Rs. 4,64,800. The value charged was, however, Rs. 32,000 and Rs. 70,000 respectively. The value of jewllery was, thus, under-assessed by Rs. 4,00,000 and Rs. 3,94,800 respectively.

(*b*) The balance of Rs. 13,221 standing to the credit of the assessee with a trust and assessed in earlier years was not assessed to wealth during the assessment years.

(*c*) In the assessment year 1976-77, the wealth in the form of loans receivable, inherited by the assessee, was taken at Rs. 1,57,322 as returned. As per the assessment for the assessment year 1975-76, the correct value of these loans was Rs. 2,57,322.

The cumulative effect of these mistakes was under-assessment of wealth by Rs. 9,08,021 with consequent short levy of wealth-tax of Rs. 56,586.

The Ministry of Finance have accepted the mistakes in principle. Report regarding rectification and recovery of the demand is awaited. (December 1982)

4.10 *Incorrect computation of net wealth*

The net wealth of an assessee amounts to the aggregate value of all his assets reduced by the aggregate value of all debts owned by him on the valuation date.

(*i*) In computing the net wealth of an individual belonging to a big industrial family and assessed in a central circle for the assessment year 1976-77 at Rs. 24,75,521 in November 1976, deposits of Rs. 4,20,073 of the assessee with a family-banker and his interest worth Rs. 4,25,000 in a family business concern, though returned by the assessee, were not included in his net wealth for that year. The omission led to short levy of wealth-tax of Rs. 62,337.

The paragraph was forwarded to the Ministry in September 1982 and their reply is awaited (December 1982).

(*ii*) An assessee claimed to own 50 per cent share of a property, the balance 50 per cent share remaining with her two sons. It was also claimed by the assessee that, as per agreement of November 1964, she with her two sons had formed a partnership firm transforming the ownership of the property in the three partners into partnership property. Registration under the Income-tax Act was not granted to the firm by Income-tax Officer. The Appellate Tribunal, on appeal by the assessee, also held in August 1976 that the whole property belonged to the assessee. The Wealth-tax Officer

accordingly finalised the wealth-tax assessments for the assessment years 1973-74 to 1975-76 in November 1979 and March 1980 including the full value of the property in her net wealth. However, in doing so, deduction on account of certain liabilities on account of investments made by her two sons and not belonging to the assessee, as depicted in the balance-sheet of the firm, being Rs. 1,99,200, Rs. 2,08,646 and Rs. 2,23,300 for the assessment years 1973-74, 1974-75 and 1975-76 respectively, were incorrectly allowed.

The incorrect allowance led to short levy of wealth-tax of Rs. 47,059.

The Ministry of Finance have accepted the mistake and have reported that additional demand of Rs. 47,059 had been raised in March 1982.

(*iii*) In computing the net wealth of an assessee for the assessment year 1977-78 in March 1980, provision for gratuity amounting to Rs. 10,90,420 which was only a 'contingent' liability was incorrectly treated as 'debts owed' by the assessee and allowed as deduction. The mistake led to short levy of wealth-tax of Rs. 34,259.

The Ministry of Finance have accepted the mistake and have reported that it has been rectified and additional tax of Rs. 34,259 collected.

(*iv*) In his wealth-tax returns for the assessment years 1958-59 to 1973-74, an assessee (individual) disclosed his life-interest in a *waqf* at Rs. 11,581, Rs. 11,718, Rs. 14,886, Rs. 11,917, Rs. 14,690 and Rs. 8,595 and the same was adopted in the assessments completed in March 1979. For the assessment year 1975-76, such interest returned at Rs. 8,500 was, however, redetermined at Rs. 3,65,300 in the assessment made in February 1980 and was

confirmed in appeal. However, the value of the life-interest shown and assessed in the earlier assessment years 1968-69 to 1973-74 was not revised, there being no beneficial interest for the assessment year 1974-75. The omission resulted in short levy of wealth-tax of Rs. 3,42,243.

The paragraph was sent to the Ministry of Finance in July 1982; their reply is awaited (December 1982).

(*v*) The wealth-tax assessments for the the assessment years 1975-76 to 1979-80 in respect of the estates of two deceased assessees (husband and wife) were completed through executors (their two sons). One of the assessees had died in April 1974 and the other in November 1974 and their valuation date was 31st December each year. As per the will executed by the assessees, the two sons would be full owners of their estates after their death. No other person would have any right, title or interest in the property which had come to their shares. As the will came into operation after their death and as the entire property and its income devolved on the sons as per the will, the wealth-tax assessments for the assessment years 1975-76 to 1979-80, completed by the department separately in the hands of the executors of the estate of the deceased persons, were not in order. The entire estate was chargeable to tax in the hands of the two sons in equal shares alongwith the sons' wealth. The omission resulted in total short levy of wealth-tax of Rs. 1,91,320 for the assessment years 1975-76 to 1979-80.

The Ministry of Finance have accepted the omission in each case and have stated (November 1982) that notices for rectification have been issued.

(*vi*) In the wealth-tax assessment of a specified Hindu undivided family (a big industrial group) for the assessment years 1975-76 and 1976-77, completed on 31st March 1980 and 23rd March 1981, the values of assessee's 1/4th share interest in two trusts were taken at Rs. 2,62,353 and Rs. 2,96,525 respectively. However, in the case of another beneficiary of these trusts, having similarly 1/4th interest in them, the values assessed were

Rs. 9,63,716 and Rs. 12,87,710 for the assessment years 1975-76 and 1976-77 respectively. Omission to adopt the higher values in the case of the assessee resulted in under-assessment of wealth of Rs. 7,01,363 and Rs. 9,91,185 with consequent total short levy of wealth-tax of Rs. 75,241 for the two assessment years.

Identical mistake in the case of another Hindu undivided family within the group led to under-assessment of wealth of Rs. 7,01,363 and of tax of Rs. 27,353 for the assessment year 1975-76.

The combined effect of the mistakes in the two cases was short levy of tax of Rs. 1,02,594.

The Ministry of Finance have accepted the mistake in both the cases and have stated (November 1982) that the assessments have been set aside to be done again after including the assessees' interest in the corpus of the trusts.

4.11 *Incorrect allowances and exemptions*

Under the provisions of the Wealth-tax Act, 1957, exemption is admissible from wealth-tax in respect of any one building, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was the official residence of a ruler by virtue of appropriate declarations by the Central Government. The exemption ceases on the death of the ex-ruler.

In the case of the estate of a deceased ex-ruler (date of death 17th August, 1957), wealth-tax assessments for the assessment years 1965-66 to 1975-76 were finalised in March 1979, February 1980, and June 1980 in the hands of its executrix. Earlier assessments could not be done due to a lacunae in the Act which was rectified by an amendment with effect from the assessment year 1965-66. In these assessments, the aforesaid exemption in respect of one house property known as "New Palace including Nazar *bhag*" was allowed, as claimed. Since, however, the ex-ruler had died and the residence ceased to be official residence of an ex-ruler, the exemption was not admissible. The incorrect exemption of the property valued at Rs. 5,50,000 resulted in under-assessment of wealth to that extent in respect of each year and

a total short levy of wealth-tax of Rs. 3,98,919, including additional wealth-tax on this urban immovable property for the assessment years 1965-66 to 1975-76.

The case was not checked in the internal audit.

The Ministry of Finance have accepted the mistake and have stated (November 1982) that remedial action has been initiated.

4.12 *Incorrect application of rates and calculation of tax*

(*i*) Under the provisions of section 21(4) of the Wealth-tax Act, 1957, where shares of beneficiaries in a private trust are indeterminate or unknown, wealth-tax is levied as if the persons on whose behalf or for whose benefit the assets are held, are an 'individual', at the rates specified in the Schedule to the Act or at the flat rate of one and one-half per cent, whichever is more beneficial to revenue. Further such private trusts, under certain specified circumstances, are not entitled to exemption in respect of specified investments which is admissible to other assessees upto a ceiling limit of Rs. 1.50 lakhs in regard to their investments in company shares, assets of industrial undertakings, etc.

Five private family trusts were created by members of an industrial family group in favour of unborn sons or would-be wife of members of the family (including minors) as per deeds executed in 1973-74, by transferring to each trust as corpus, 60,000 equity shares in a reputed company belonging to that family group. According to the deeds of the trust, the sole beneficiary could be any one of the many specified persons depending on the occurrence of alternate contingent events. As such, the beneficiaries for whom the assets were held were themselves not known or determinate on the relevant valuation dates in any of these trusts. Further, the net wealth assessed for the assessment years 1973-74 to 1978-79 in January 1978 and October 1979 in the status of 'individual' included investments in shares and deposits in banks which were not entitled to exemption. However, while assessing the trusts in respect of these assessment years, the department incorrectly allowed exemption of Rs. 1.50

lakhs in respect of each assessment year in each case. The department also charged wealth-tax at the rate prescribed in the Schedule to the Act applicable to 'individuals', although tax at the flat rate of one and one-half per cent would have been more beneficial to revenue. The incorrect allowance of exemption in respect of shares in companies and incorrect application of tax rate resulted in short levy of tax of Rs. 99,900 in respect of the six assessment years.

While not accepting the audit objection, the Ministry of Finance stated that the share of the beneficiary in each trust was definite and known. It has been pointed out to them that the beneficiaries being unborn persons or would be wives were unknown on the relevant valuation dates.

(*ii*) The net wealth assessable in the hands of an individual for the assessment year 1977-78 was determined at Rs. 34,04,400 in October 1979. The assessing officer, while computing the wealth-tax leviable, incorrectly applied the rates of tax applicable for the assessment year 1976-77 and calculated the tax at Rs. 65,960 instead of the correct amount of Rs. 91,252. The assessee was also *karta* of his Hindu undivided family. The net wealth of the family for the assessment year 1977-78 was determined at Rs. 24,92,948 in September 1979. A similar incorrect application of rates of 1976-77 to this assessment of the Hindu undivided family (specified) for the assessment year 1977-78 led to calculation of tax as Rs. 53,485 against the correct amount of Rs. 71,344. Further, in the assessment in the status of 'individual', the value of a car being Rs. 44,000 above the exemption limit of Rs. 30,000 was omitted to be included.

These mistakes had the combined tax effect of short levy of total wealth-tax of Rs. 43,151 in the two cases.

Both the assessments were required to be checked in internal audit.

The Ministry of Finance have accepted the mistakes and have stated (November 1982) that amount of additional demand raised is Rs. 43,151 on rectification).

(*iii*) From the assessment year 1974-75, the Schedule to the Wealth-tax Act, 1957 was amended to provide for a higher rate of tax for every Hindu undivided family having at least one member with assessable net wealth exceeding Rs. one lakh.

In three cases of such specified Hindu undivided families, non-application of the higher rates of tax led to undercharge of tax of Rs. 86,783 for different assessment years between 1974-75 and 1976-77.

The Ministry of Finance have accepted the mistakes.

(*iv*) As per the Schedule to the Wealth-tax Act, 1957, applicable to the assessment year 1976-77, where the net wealth of an individual exceeds Rs. 15,00,000, tax leviable is Rs. 40,000 plus 8 per cent of amount by which the net wealth exceeds Rs. 15,00,000.

In assessing an individual having wealth of Rs. 23,88,969, the sum of Rs. 40,000 was not included in the tax but only 8 per cent of Rs. 8,88,969 was computed as tax in the assessment made on 31st March 1981. This resulted in undercharge of tax of Rs. 40,000.

The case was not checked by the internal audit.

The Ministry of Finance have accepted the mistake and have stated that additional demand of Rs. 40,000 has been raised.

4.13 *Non-levy of additional wealth-tax*

Under the Wealth-tax Act, 1957, before its amendment by the Finance Act, 1976, where the net wealth of an individual or a Hindu undivided family included building or lands (other than business premises) or any rights therein, situated in an urban area, additional wealth-tax was leviable on the value of such urban assets exceeding rupees five lakhs.

(*i*) The net wealth of an individual for the assessment year 1976-77, assessed on 30 March 1981, included *inter alia* urban immovable properties valued at Rs. 23,48,200 on which

additional wealth-tax of Rs. 1,12,374 was leviable. The department did not levy any such tax. The omission resulted in undercharge of wealth-tax of Rs. 1,85,823 including a mistake in calculation of tax for the assessment year 1976-77.

The case was not checked in internal audit.

The Ministry of Finance have accepted the omission and have stated (October 1982) that additional tax demand of Rs. 1,85,823 has been raised.

(*ii*) The net wealth of an individual for the assessment years 1972-73 to 1976-77, included urban immovable assets valued at Rs. 8,78,200, Rs. 9,12,424, Rs. 9,38,454, Rs. 9,11,454 and Rs. 10,50,000 respectively. Additional wealth-tax of Rs. 1,36,048 was not, however, levied.

The case was checked in internal audit but the omission was not noticed.

The Ministry of Finance have accepted the omission and have stated that additional tax demand of Rs. 1,36,048 has been raised.

(*iii*) The net wealth of an individual for the assessment year 1976-77, assessed on 30th March, 1981, included urban immovable properties valued at Rs. 23,78,250 on which additional wealth-tax of Rs. 1,21,478 was leviable. The department did not levy this tax.

The Ministry of Finance have accepted the omission and have stated (October 1982) that additional wealth-tax of Rs. 1,21,478 has been charged on rectification.

(*iv*) In pursuance of an audit objection, the assessment of an assessee for the assessment year 1976-77 was revised in August 1980 to adopt a higher value, as determined by the departmental Valuer in March 1979, in respect of urban lands owned by the assessee. However, the Wealth-tax Officer did not levy additional wealth-tax on the value of urban property. Similarly, in the revised assessments for the assessment years 1971-72

to 1976-77, completed in March 1980 adopting higher value for the property, the additional wealth-tax was not levied. Thus, total tax not levied amounted to Rs. 75,052.

The case was not checked in the internal audit.

The Ministry of Finance have accepted the omission and have stated (September 1982) that additional demand of Rs. 75,052 has been raised.

(*v*) The net wealth of a Hindu undivided family for the assessment years 1971-72 to 1974-75, assessed in November 1978, included urban immovable properties valued at more than the exemption limit of Rs. 5 lakhs on which additional wealth-tax was leviable. The department, however, did not levy the tax. The omission resulted in non-levy of additional wealth-tax of Rs. 1,05,523 for the four assessment years.

The paragraph was sent to the Ministry of Finance in June 1982; their reply is awaited (December 1982).

(*vi*) Non-levy of additional wealth-tax was also noticed in audit in many other cases. Of these, in eight cases in six Commissioners' charges, the under-assessment of tax was of over Rs. 20,000 each for various assessment years between 1965-66 and 1976-77. The aggregate short levy of tax in these eight cases was of the order of Rs. 3,61,541.

The paragraphs were sent to the Ministry of Finance between June 1982 and September 1982. They have accepted the short levy in three cases ; their reply is awaited in the remaining five cases (December 1982).

4.14 *Non-levy/short levy of penalty*

Under the provisions of the Wealth-tax Act, 1957, penalty is leviable where the assessing officer is satisfied that an assessee has, without reasonable cause, failed to furnish the wealth-tax return within the prescribed time or has concealed the particulars of any asset or debts. Upto March 31, 1976, the penalty leviable

was a sum for every month, during which the default continued, equal to half per cent of the net wealth assessed, as reduced by the amount of initial exemption but subject to a maximum of equal to 100 per cent of the net wealth assessed. The Act was amended with effect from April 1, 1976 to provide that the penalty should be equal to two per cent per month of the assessed tax for every month during which the default continued. As regards cases where the default took place prior to the amendment and continued after the amendment, the Central Board of Direct Taxes issued instructions (February 1977) that such default being a continuous one, the penalty should be imposed for every month during which the default continued, by applying the unamended provisions for the period prior to 1 April 1976 and the amended provisions thereafter. However, in April 1981, the Supreme Court held that:

(*a*) the default was not continuous but was a single default, committed on the last date on which the return had to be filed and that

(*b*) the penalty should be imposed in accordance with the law in force on that day.

In view of the judgement, the aforesaid instructions of February 1977 were withdrawn by the Board in October 1981.

(*i*) An assessee, a Hindu undivided family, filed its returns of net wealth for the assessment years 1971-72 to 1974-75 in February 1978, much later than the respective due dates (31st July of the assessment year) or dates extended by the Wealth-tax Officer. The periods of delay ranged between 43 months and 71 months. While completing the assessments, the Wealth-tax Officer ordered initiation of proceedings for levy of penalty for delay in filing returns. These proceedings were concluded on 30th March 1981, levying penalties of Rs. 155, Rs. 1,135, Rs. 1,150 and Rs. 1,198 (in total Rs. 3,638). The penalties levied were, however, incorrectly computed by reference to the assessed tax under the amended provisions introduced with effect from 1st April, 1976 for the entire period of delay. Under instructions

of the Board issued in February 1977, the default was a continuing one and the penalty leviable by reference to the assessed net wealth for the period from due dates of filing of returns to 31st March 1976 under law then in force and by reference to the assessed tax from 1st April 1976 to the dates of filing the returns would amount to Rs. 28,541.

But as per the law enunciated by the Supreme Court in April 1981, the penalty leviable on the basis of assessed net wealth for the entire period to the date of filing of returns would amount to Rs. 2,72,436. The omission to rectify the levy of penalty led to short levy of minimum penalty of Rs. 2,68,798 for the assessment years 1971-72 to 1974-75.

The Ministry of Finance have accepted the omission and have stated (December 1982) that proceedings to enhance the penalty have been initiated.

(*ii*) For the assessment year 1972-73, an individual did not file his wealth-tax return (due on 31 July 1972) despite issue of notices by the department. The assessment was completed (March 1979) *ex parte* on a net wealth of Rs. 7,82,115, raising a demand of tax of Rs. 10,642. A penalty of Rs. 16,814 was also imposed (March 1981) by the department for failure to file the return, but it was calculated in accordance with the provisions introduced after 31st March, 1976 and in force in March 1979, when the wealth-tax assessment was completed. On the basis of the principle laid down by the Supreme Court in its decision in April 1981, the penalty leviable would work out to Rs. 2,69,434.

There was thus short levy of penalty of Rs. 2,52,620 resulting from failure to rectify the penalty order after the aforesaid decision of the Supreme Court of April 1981.

The Ministry of Finance have accepted the audit objection in part.

(*iii*) In the case of an individual, the wealth-tax assessment for the assessment year 1972-73 was completed in December 1974 but was subsequently reopened and redone (March 1979)

to include concealed wealth of Rs. 1,53,935. The Wealth-tax Officer levied in March 1981, as part of the revised proceedings, a penalty of Rs. 4,060 for the concealment, apparently applying the penalty provisions prevailing on the date of passing the penalty order. As the concealment of wealth in the case was made when the relevant wealth-tax return was filed *i.e.*, before the amendment of the penalty provisions with effect from 1 April 1976, the correct amount of minimum penalty leviable was Rs. 1,53,935.

The Ministry of Finance while accepting the mistake have stated (October 1982) that the exigibility of penalty itself is before the appellate authorities.

(*iv*) No order imposing a penalty can be passed after the expiry of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed.

For the assessment years 1969-70 to 1975-76, a resident individual filed wealth-tax returns in September 1977, long after they were due. For the three earlier assessment years 1966-67 to 1968-69, he filed returns even much later in January 1979. While completing the assessments of all these ten assessment years in March 1979, the Wealth-tax Officer noted in the records that action would be taken for levy of penalty for the belated filing of the returns and, in respect of the assessment years 1970-71 to 1975-76, for concealment of wealth and made the necessary entries in his Register of penalties to watch due completion of the penalty proceedings. However, no further steps were taken by the department to impose penalty, the minimum leviable being Rs. 9,14,169.

The Ministry of Finance while accepting the omission have stated that remedial action has become time-barred.

4.15 *Mistake in giving effect to appellate orders*

(*i*) An assessee owned several house properties including one used for self-occupation, which were included in the assessments for the assessment years 1964-65 to 1973-74 concluded

in March 1974. The assessee disputed the basis of valuation of rented properties and went in appeal. The appellate authority set aside (February 1979) the assessments for being redone on the basis of certain guidelines. While revising the assessments, as per the directions of the appellate authority, in March 1981, the Wealth-tax Officer did not include the value of the self-occupied property in his net wealth for the assessment years 1964-65 to 1973-74 and made a refund of Rs. 1,64,412 to the assessee. This omission resulted in under-assessment of wealth of Rs. 19,64,700, in the aggregate, with a total short levy of tax of Rs. 60,054.

The Ministry of Finance have accepted the omission and have stated (October 1982) that additional demand of Rs. 60,054 was raised and collected.

(*ii*) In the wealth-tax assessment of a Hindu undivided family for the assessment year 1974-75, revised in February, 1979 to give effect to certain Appellate orders and, in the assessment for the assessment year 1975-76 completed in March, 1980, the assessing officer incorrectly allowed deduction towards wealth-tax liability of Rs. 2,60,774 as relating to the assessment year 1973-74 and Rs. 4,94,287 as relating to the assessment years 1973-74 and 1974-75 instead of Rs. 16,340 and Rs. 60,767 respectively payable after appeal revision. This resulted in under-assessment of wealth by Rs. 2,28,858 and Rs. 4,01,950 in respect of the assessment years 1974-75 and 1975-76 respectively with short levy of tax of Rs. 48,039, in the aggregate, in respect of the two assessment years.

The case was required to be checked in internal audit under the standing instructions of the Board; it was, however, not so checked.

The Ministry of Finance have accepted the mistakes and stated (October 1982) that the same alongwith certain others have been rectified and additional tax of Rs. 41,921 collected.

4.16 *Undue delay in remedial action on internal audit objection*

According to the executive instructions issued in 1977, mistakes pointed out by internal audit parties of the department should be rectified by the assessing authorities promptly; the remedial action should be initiated within a month and completed, as far as possible, within three months of the report of internal audit.

In the wealth-tax assessments of a Hindu undivided family for the assessment years 1974-75 and 1975-76, completed in September 1975 and May 1976, the department valued certain foreign immovable properties owned by the family making addition of 50 per cent to their book value and charged wealth-tax at the lower rates of tax applicable to Hindu undivided families having no member with individual net wealth of over Rs. 1,00,000. A member of the family (mother of the *kartha*), whose net wealth for the assessment year 1974-75 was determined in April 1976 as not assessable, being below Rs. 1 lakh, owned similar immovable properties in the foreign country. In her case the department had accepted the book value and made no addition of 50 per cent similar to that made in respect of the family itself. The internal audit party of the department pointed out in August and December 1976 that on a similar revaluation of the properties, the net wealth of the lady member for the assessment year 1974-75 would exceed Rs. 1,00,000 and that, in consequence, the net wealth of the family would attract the higher rates applicable to specified Hindu undivided families. The short levy/non-levy of tax totalled Rs. 59,905.

Acting on the internal audit notes, the department issued a notice to the female member in April 1977 for the assessment year 1974-75. No notice was issued for the assessment year 1975-76. Even the notice issued for the assessment year 1974-75 was not followed up by the department. No action was also taken to re-open the assessment of the Hindu undivided family for either of the two assessment years.

The omissions to complete the remedial action in these cases were pointed out in audit in November 1979. Thereafter, the department completed the assessment proceedings in respect of the female member in February-March 1980, and those in respect of the Hindu undivided family for the assessment years 1974-75 and 1975-76. The additional demand raised in the case of the Hindu undivided family for the assessment year 1974-75 was Rs. 27,714. The details of additional demand raised in the case of the lady member and for the assessment year 1975-76 in respect of the Hindu undivided family are awaited (July 1982).

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

B — Gift Tax

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

4.18 The receipts under gift-tax in the financial years 1977-78 to 1981-82 compared as under with the budget estimates of these years :—

Year	Budget Estimate (in crores of rupees)	Actual
1977–78	5.50	5.55
1978–79	5.75	5.85
1979–80	5.75	6.83
1980–81	6.25	6.51*
1981–82	6.25	7.74*

(*Provisional).

4.19 Number of cases pending assessment and the arrears of demand are given below :—

Year	No. of pending assessments	Arrears of demand at the end of (In crores of rupees)
1977-78	22,925	6.97
1978-79	21,807	17.72
1979-80	27,403	15.77
1980-81	38,226	29.52
1981-82	53,100	31.16

4.20 During the test audit of assessments made under the Gift—tax Act, 1958, conducted during the period from 1 April 1981 to 31 March 1982, the following types of mistakes were noticed :

(i) Gifts escaping assessment.

(ii) Non-levy of tax on deemed gifts.

(iii) Incorrect calculation of gifts, and

(iv) Mistakes in calculation of tax.

A few important cases of these mistakes are given in the following paragraphs :

4.21 *Gift escaping assessment.*

(*i*) Under the provisions of the Gift—tax Act, 1958, a non-resident individual is liable to be charged to tax on the value of property gifted by him if the property is situated in India. The Board of Direct Taxes issued instructions in May 1981, laying down guidelines for the determination whether a remittance of foreign exchange or foreign currency from abroad to a donee in India would constitute gift of property situated in India or otherwise, for the levy of gift—tax. According to the instructions, where the property in such foreign exchange or currency is delivered to

the donee in India, *i.e.* where the cheque or bank draft is sent by the donor to the donee in India on his own by post or otherwise, the gift would attract liability to gift—tax. Earlier, the Bombay High Court, following the principles laid down by the Supreme Court in a case, had held (July 1975) that in such cases the receipt would be at the place where the cheque is delivered to the addressee. On the same principles, if the donor makes transfers or remittances through the agency of banks, on his own *i.e.* without prior request of the donee, the remittance would constitute gifts for the purposes of levy of gift—tax.

A non-resident individual had made remittances of Rs. 18,00,000 to his wife and minor children residing in India. He was assessed to wealth-tax as a 'resident but not ordinarily resident' person. The remittance were, however, not assessed to gift-tax. Escapement of the gift from tax resulted in non-levy of gift-tax of Rs. 6,04,000 for the assessment year 1978-79.

In another case in the same ward, a non-resident individual remitted an amount of Rs. 12,00,000 to his relatives residing in India through a bank. This amount was credited to donees' bank accounts in India. The remittance were not assessed to gift-tax for the assessment year 1976-77. The omission resulted in non-levy of gift—tax of Rs. 3,34,500.

In yet another case an assessee gifted Rs. 1,15,800 and Rs. 92,536, in the previous years relevant to the assessment years 1978-79 and 1979-80, to his married daughter, wife and grandchildren by making remittances of foreign currency through a bank in Washington for credit to the donees' account in a bank in India. These gifts were not, however, charged to gift—tax. The omission led to non-levy of total gift—tax of Rs. 50,436 (including the effect of aggregation of gifts under the provisions of the Act) for the assessment years 1978-79 and 1979-80.

The Ministry of Finance have accepted the mistake in the first case; their reply is awaited in the remaining two cases (December 1982).

(ii) Under section 2(xii) of the Gift-tax Act, 1958 ,gift is a transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth.

It was seen from income-tax assessment records of an individual that he transferred unquoted equity shares in a private limited company, jewellery and silver utensils to his would-be wife before his marriage on 20th December 1974. In response to a notice to levy gift-tax, the assessee claimed in his reply on 6th July 1978 and the assessing officer accepted (February 1981) that no gift-tax would be leviable as the transfer was in consideration of consent of the would-be wife to marry the assessee. As, however, there was no consideration in money or money's worth for the transfer of these assets, valuing Rs. 4,51,437, the transfer attracted levy of gift-tax of Rs. 93,109 for the assessment year 1976-77. The incorrect acceptance of the claim of the assessee led to escapement of gift—tax of Rs. 93,109.

The case was required to be checked in the internal audit under the standing instructions of the Board; however, it was not so checked.

The Ministry of Finance have accepted the mistake.

(iii) An assessee filed his wealth-tax return for the assessment year 1976-77 in September 1976, declaring a net wealth of Rs. 6,46,136, including a sum of Rs. 3,86,430 being the value of 1500 unquoted equity shares of a private limited company. The assessee filed a revised return for the same assessment year in September 1977, declaring a net wealth of only Rs. 3,50,881, including a sum of Rs. 1,28,810 as the value of 500 unquoted equity shares of the aforesaid private limited company. This assessment was done on 12th March 1981. A scrutiny by Audit (August, 1981) of the wealth-tax returns filed by the assessee for the subsequent assessment years revealed that the assessee had gifted the remaining 1000 such shares of the returned value of Rs. 2,57,620 to a private family trust which subsisted for the

sole benefit of his minor son. The gift-tax leviable on these shares settled on trust was of Rs. 44,655. However, no gift-tax return was filed by the assessee nor any proceedings for levy of gift-tax had been taken by the ward by making use of the information available in the wealth-tax assessments of the assessee. The omission on the part of the assessing officer to correlate assessment records of the assessee under different direct taxes led to escapement of tax of Rs. 44,655.

The Ministry of Finance have accepted the omission and stated (October 1982) that notice under section 16(1) of Act was issued on 17th November 1981.

4.22 *Non-levy of tax on deemed gifts*

Under the Gift-tax Act, 1958, where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property on the date of the transfer exceeds the declared consideration shall be deemed to be a gift made by the transferor.

(i) The value of any property transferred by way of gift is the price which it would fetch if sold in the open market on the date on which the gift is made. The value of unquoted equity shares in a company, where such shares are not saleable in the open market, may be determined under one of the two recognised methods *viz.* the 'yield method', by reference to the profit earning capacity, maintainable profits, dividends, etc. and the 'break-up value' method, by reference to the total assets of the company. Under the later method, the Board in their instructions of May, 1975 laid down that assets, for the computation of the value of net assets of the company, would be taken at their market value, including also the value of its goodwill and this later method is prescribed in the Gift-tax Rules, 1958.

An assessee sold in September 1976, 7810 unquoted equity shares of a private limited company at a declared consideration

of Rs. 562 per share. The assessing Officer did not independently determine the fair market value of these shares on the date of gift under the Gift-tax Rules. In the absence of market value of the assets of the company, including the value of its goodwill, ascertained and kept on record by the assessing officer, the 'break-up value' based on the book value of the assets, as disclosed in the balance-sheet of the company, would not give the correct value of the shares. Therefore, the market value of these shares on the basis of the 'yield method' by reference to average maintainable profits of the company was computed by Audit which worked out to Rs. 924 per share. Though the excess of this market value over the declared sale consideration would attract levy of gift-tax as deemed gift, the assessee did not file any gift-tax return. The department also did not initiate any gift-tax proceedings. The omission led to escapement of deemed gift of Rs. 28,27,220 and gift-tax of Rs. 13,23,165 for the assessment year 1977-78.

The Ministry of Finance have accepted the omission and have stated (November 1982) that notice to bring the escaped gift to tax has been issued.

(ii) An assessee, a Hindu undivided family, sold in the previous year relevant to the assessment year 1977-78, land measuring 10401 square ft. to a partnership firm for Rs. 83,500 (valued by a registered valuer at Rs. 80,000). Wife and son of the *kartha* of the family were two of the three partners of the firm. The market value of the land was determined at Rs. 3,73,930 on a reference for valuation to the departmental Valuer. While the capital gains by reference to the market value so determined were computed on the sale and subjected to tax, no action was taken by the department to levy gift-tax as required under the Gift-tax Act. The assessee also did not file a return. There was, thus, an escapement of deemed gift of Rs. 2,90,430 i.e., the excess of the market value over the declared consideration, involving non-levy of gift—tax of Rs. 52,857, besides penalty leviable for non-filing of return.

The Ministry of Finance have accepted the omission in principle.

(iii) A building situated in a commercial area in a big city and used as a hotel was jointly owned by two individuals. The property was sold in October, 1975 for a declared consideration of Rs. 12,10,000. On a reference by the Income-tax Officer, the departmental Valuer estimated the value of the property at Rs. 15,64,000 on the date of sale. Accordingly, capital gains tax was levied but assessment proceedings were not initiated for levy of gift—tax on the deemed gift of Rs. 3,54,000. The omission resulted in non-levy of gift-tax of Rs. 51,800 for the assessment year 1976-77.

The case was required to be checked in internal audit but was not checked.

The Ministry of Finance have accepted the audit objection in principle and have stated that the assessee had preferred an appeal against the income-tax assessment.

4.23 *Incorrect valuation of unquoted equity shares*

Under the Gift-tax Act, 1958, the value of a gifted property shall be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market. The Gift-tax Rules lay down that the value of unquoted equity shares in private limited companies should be ascertained with reference to the value of total assets of the company. As the provisions of the Gift-tax Act are *pari meteria* with those of the Estate Duty Act, 1953, in regard to the valuation of unquoted equity shares, the instructions, issued by the Board under the Estate Duty Act for valuation of such shares, are equally applicable to gift-tax cases. Under the Estate Duty Act, the Board had issued instructions in May 1965 and July 1965 that the value of

unquoted equity shares should be determined on the basis of market value and not the book value of the assets of the company.

The provisions on valuation of unquoted equity shares in the Wealth-tax Act, 1957 and rules framed thereunder are different from those in the Gift-tax Act and the Estate Duty Act. Even then the Board, in their executive instructions issued in March 1968, extended the wealth-tax instructions for the valuation of unquoted equity shares to the estate duty and gift-tax cases. The incorrect extension of these instructions to estate duty cases was commented upon in paragraph 72 of the Audit Report 1972-73 and, in consequence of recommendations of the Public Accounts Committee in paragraphs 5.51 of their 211th Report (Fifth Lok Sabha) in relation to this audit paragraph, these instructions were withdrawn by the Board in October 1974 both for estate duty and gift-tax cases. It was then stated that the valuation should be done in accordance with the instructions of May 1965 and July 1965. It was further clarified in May 1975 that the value of the total assets of a company would also include the value of goodwill of the company whether or not shown as such in its balance-sheet.

Instances, however, continue to be noticed where incorrect valuation of unquoted equity shares in companies made in disregard of the aforesaid provisions of the Act and rules and instructions of the Board resulted in undercharge of gift-tax. Cases of such under-assessments have continuously been commented upon in the past Audit Reports.

(i) In paragraph 4.05 of this Audit Report, instances of under-assessment of wealth-tax in cases of members of an industrial family group have been given. A few cases of under-assessments of gifts made by members of the same industrial group are given below:—

(a) In paragraph 4.05(ii) of this Report, failure to transfer wealth-tax cases of a Hindu undivided family within the industrial group from a ward (Ward B) to the ward in which other cases

of individuals, Hindu undivided families, trusts etc. belonging to the industrial group were centralised (Ward A) has been mentioned. A similar case relating to short levy of gift-tax is mentioned below:—

The Hindu undivided family which was being assessed in Ward B gifted 75 unquoted equity shares of a private limited company on 29th and 30th March, 1973 to two family trusts. The Gift-tax Officer assessed the gifts for the assessment year 1974-75 in March 1980 valuing each share at Rs. 2,668 as determined by an approved valuer. In Ward A where the other Hindu undivided families and individuals of family group were assessed, the shares of the same company were valued at Rs. 7,035 per share (as against Rs. 7,400 determined by the departmental Valuer in February, 1977) in the gift-tax re-assessment (July, 1978) of another family in respect of gift made by it on 30th March, 1973. The adoption of the lower value in the assessment made in Ward B in March, 1980 (Rs. 2,668 as against Rs. 7,035) led to undervaluation of gift by Rs. 3,27,525 which resulted in undercharge of tax of Rs. 82,767 for the assessment year 1974-75.

The Ministry of Finance have accepted the mistake. Report of rectification is awaited (December 1982).

(b) Three assessees, being private family trusts contributed as their capital in different firms, on their being taken as partners in the previous year relevant to the assessment year 1974-75, unquoted equity shares of three different private limited companies controlled by the family group creating these trusts. The values of these shares, credited to the capital accounts of the assessees in the firm were Rs. 1,800, Rs. 1,404 and Rs. 122 per share as against the market values of Rs. 7,730, Rs. 3,650 and Rs. 219 respectively per share, as determined by the departmental Valuer and adopted by the Income-tax Officer in various income-tax assessments. Another assessee, also a private family trust of the group, introduced as capital in the firm on its entry as a partner in the previous year relevant to the assessment year 1976-77, unquoted equity shares of a family private limited company and the value of the share was credited to its capital account in the firm

at Rs. 1,713 per share, as against the fair market value of Rs 7,200 per share. In the case of the first three assessees, the excess market value of the shares over the amounts credited to their capital accounts in the firm was of Rs. 15,94,209, Rs. 14,72,873 and Rs. 2,62,707 and in the case of the fourth assessee, the excess was of Rs. 6,03,570. These amounts attracted levy of gift-tax as deemed gifts. However, they were not subjected to gift-tax. The omission resulted in non-levy of gift-tax of Rs. 9,90,709 in the assessment year 1974-75 in the case of the first three assessees and Rs. 1,36,071 for the assessment year 1976-77 in the case of the fourth assessee. The aggregate non-levy of gift-tax was of Rs. 11,26,780.

The Ministry of Finance have accepted the omission in principle.

(c) Another assessee belonging to the same industrial house returned the value of gift of 188 unquoted equity shares of a private limited company controlled by the family, made during the previous year relevant to assessment year 1973-74, as Rs. 5,01,584 computed at Rs. 2,668 per share. The Gift-tax Officer, while finalising the assessment in March 1979, determined the value of the shares as Rs. 13,22,580, computed at Rs. 7,035 per share. The departmental valuation Officer had, however, valued the shares at Rs. 7,400 each. This value had been adopted in the gift-tax assessments of two other assessees within the family group for the assessment year 1973-74. Had the rate of Rs. 7,400 per share been adopted in this case, the gift would be more by Rs. 68,620 and gift-tax leviable would have been more by Rs. 27,448.

The case was required to be checked by the internal audit under standing instructions of the Board; it was, however, not so checked.

The Ministry of Finance have accepted the audit objection in principle.

(d) In the gift-tax return for the assessment year 1971-72 filed by an assessee belonging to the same industrial house,

the value of 59 unquoted equity shares in a private limited company (within the family group) gifted by him was shown as Rs. 1,51,158 at Rs. 2,568 per share. The Gift-tax Officer adopted (March 1979) the value of these shares at Rs. 2,652 per share and assessed the gift at Rs. 1,56,409. However, in the case of another assessee within the family group, the value per share of the same company for the assessment year 1971-72 had been adopted as Rs. 5,124. Adopting this value, the value of 59 shares gifted by the assessee would be Rs. 3,02,316, as against the value of Rs. 1,56,409 adopted by the Gift-tax Officer. The undervaluation of these shares, thus, resulted in under-assessment of taxable gift by Rs. 1,45,907 with consequent short levy of gift-tax of Rs. 36,477.

The case was required to be checked in internal audit under the standing instructions of the board; however, it was not so checked.

The Ministry of Finance have accepted the undervaluation.

(ii) Thirty members (individuals, Hindu undivided families and private family trusts) of another industrial family group together sold in February 1978, 4,436 unquoted equity shares of a private limited company controlled by the family, to a partnership firm at a declared consideration of Rs. 3,450 per share. The firm was also owned by members of the family group. The value of the shares as on 31st March, 1978 was determined under the Wealth-tax Rules at Rs. 3,813 per share. This value was based on the book value of assets with a deduction of 15 per cent for non-declaration of dividends. Under the Gift-tax Rules, value was to be computed on the basis of the market value of assets and without any deduction. The market values of assets were not ascertained. The disallowance of the inadmissible deduction of 15 per cent alone would raise the value to Rs. 4,486 per share and even on that basis there would be a deemed gift of Rs. 45,95,636 attracting levy of gift-tax. No gift-tax proceedings were, however, initiated. The omission led to non-levy

of gift-tax of Rs. 7,31,938 for the assessment year 1978-79. The under-assessment would be more, if the value of shares is correctly determined under the Gift-tax Rules.

The Ministry of Finance have accepted the omission and have stated that notices have been issued for rectification.

(iii) Gift-tax assessments of an individual for the assessment years 1976-77 and 1978-79, completed in January 1981, revealed that he had gifted 403 unquoted equity shares of a private limited company to his son in October 1975 and 1750 such shares of the same company, alongwith cash and jewellery, to his spouse in December 1977. While valuing the shares, the assessing officer incorrectly adopted the break-up value method as prescribed under the Wealth-tax Rules allowing 15 per cent discount to arrive at the market value of the gifts. In this case also the market values of the assets of the company were not ascertained. The disallowance of the inadmissible deduction of 15 per cent alone would raise the value of shares from Rs. 296 each to Rs. 348 each. The adoption of incorrect method of valuation led to undervaluation of gifts to the extent of Rs. 62,062 and Rs. 5,95,350 for the assessment years 1976-77 and 1978-79 respectively. The assessing officer did not also aggregate these gifts for rate purposes as required under the provisions of the Act.

The cumulative effect of these mistakes was an undercharge of tax of Rs. 2,16,729 for the assessment years 1976-77 and 1978-79. The under-assessment would be more if the shares were correctly valued under the Gift-tax Rules on the basis of market value of assets of the company, including the value of its goodwill.

The Ministry of Finance have accepted the mistakes and have stated (December 1982) that action is being taken for revision.

(iv) During the previous year relevant to the assessment year 1976-77, three assessees (private family trusts) sold 3,855 unquoted equity shares of a company at Rs. 250 per share. It was noticed that the fair market value of these shares (as disclosed from the wealth-tax return of a shareholder of the company)

was Rs. 544 per share as on 31st March 1975. As the declared consideration on these sales was less than the fair market value of the shares, there was a deemed gift on which gift-tax was leviable. No gift-tax proceedings were, however, initiated.

For gift-tax purposes, the shares would have to be valued under the Gift-tax Rules based on the market value of assets of the company, including the value of its goodwill. Even on the basis of the value of Rs. 544 per share determined for wealth-tax purposes, there was a deemed gift of Rs. 11,33,370 on which a gift-tax of Rs. 2,24,090 was leviable. The under-assessment of gift-tax would be more if the shares were correctly valued under the Gift-tax Rules.

The Ministry of Finance have accepted the mistakes and have stated that, on rectification of the assessment the amount of additional tax raised is Rs. 2,24,090.

4.24 *Incorrect valuation of other gifts*

An individual made a gift of agricultural land to his three sons in January 1970 but did not file the gift-tax return in spite of notices issued by the department. The Gift-tax Officer (Ward A) determined the value of gift as Rs. 1,83,760 (at Rs. 4,000 per *bigha*) and made the assessment for the assessment year 1970-71 in December 1977. Omission to include 10 *bighas* of land and incorrect valuation of land at Rs. 4,000 per *bigha*, when compared to the rates of Rs. 6,500 and Rs. 8,800 per *bigha* in the same area adopted in two other assessments, was pointed out in audit in May, 1978. The assessment was revised in November, 1979, rectifying the mistake in regard to the extent of land not included in the assessment under Commissioner's reviewing powers.

It was noticed in audit in September, 1979 that—

(*a*) The assessee filed his wealth-tax return with Wealth-tax Officer (Ward 'B') for the assessment year 1970-71, showing wealth of Rs. 26,000 including the agricultural lands already gifted. The Wealth-tax Officer completed the assessment in March, 1972 in the status of Hindu undivided family estimating the value of the agricultural

land as Rs. 3,57,000 at Rs. 10,218 per *bigha*, after obtaining the approval of the Inspecting Assistant Commissioner and Commissioner for the valuation. The assessment was also confirmed in appeal in December 1974. The assessment was, however, revised in December 1977 to nil wealth on the ground that the land had been gifted away in January 1970;

(*b*) The assessee filed a gift-tax return for the assessment year 1970-71 for the same gift in October 1978 with the Gift-tax Officer (Ward C) in the same district showing the value of land at Rs. 16,000. The assessment was completed in December, 1978 fixing the value of the gift at Rs. 1,83,000.

(*c*) The omission to correlate the gift-tax assessment made in December 1978 taking the value of land at Rs. 1,83,000 with the wealth-tax assessment made earlier in 1972, wherein the value of land adopted as Rs. 3,57,000 had secured the approval of the appellate authority in December, 1974 and non-adoption of this higher value, resulted in short levy of gift-tax of Rs. 34,725.

On being pointed out (May 1978) in audit, the Commissioner of Gift-tax in his orders of December, 1980 cancelled the gift-tax assessment made in December, 1978 upholding the status of the assessee as individual, as adopted in the assessment made in December, 1977 and revised in November, 1979. Action for the revision of the value of the gift to Rs. 3,57,000 involving short levy of tax of Rs. 34,725 is awaited (December 1982).

The paragraph was sent to the Ministry of Finance in August 1982; their reply is awaited (December 1982).

4.25 *Incorrect calculation of tax*

On a taxable gift of Rs. 8,51,000 for the assessment year 1976-77, tax was levied incorrectly at Rs. 1,61,700 against Rs. 2,11,800 chargeable. The mistake arising from a calculation

error in working out the chargeable tax resulted in short charge amounting to Rs. 50,100.

The case was required to be checked in the internal audit but it was not checked.

The Ministry of Finance have accepted the mistake and have stated that additional demand of Rs. 50,100 has been raised.

C—ESTATE DUTY

4.26 The receipt under estate duty in the financial years 1977-78 to 1981-82 compared as under with the budget estimates of these years:—

Year	Budget Estimate	Actuals
		(In crores of rupees)
1977–78	10.75	12.30
1978–79	11.00	13.08
1979–80	12.00	14.05
1980–81	13.00	16.31*
1981–82	15.00	20.31*

(*Provisional).

4.27 The arrears of demand and the number of assessments pending as at the end of various assessment years were as follows:

Year	No. of assessments pending	Arrears of demand (In crores of rupees)
1977–78	28,287	17.52
1978–79	28,278	17.11
1979–80	34,891	17.23
1980–81	35,862	27.65
1981–82	36,581	30.73

4.28 During the test audit of assessments made under the Estate Duty Act 1953, conducted during the period from 1 April 1981 to 31 March 1982, the following types of mistakes resulting in under-assessment of duty were noticed:—

(*i*) Estates escaping assessment.

(*ii*) Incorrect valuation of assets comprising estates.

(*iii*) Incorrect exemptions and reliefs.

(*iv*) Mistakes in computation of the principal value of the estate.

(*v*) Non-levy of interest and

(*vi*) Mistakes in giving effect to appellate orders.

A few instances of these mistakes are given in the following paragraphs.

4.29 *Estates escaping assessment*

(i) From the income-tax/wealth-tax assessment records of an assessee, it was noticed that the assessee, who had died in June 1970, held deposits of Rs. 4,00,000 in a firm and owned immovable property valued at Rs. 1,00,000. This information was not passed on by the assessing officer to the Assistant Controller of Estate Duty for initiation of estate duty proceedings on coming to know of the death. The accountable person of the deceased also did not file any account of his estate with the Assistant Controller. Failure on the part of the assessing officer to act upon repeated instructions of the Board of Direct Taxes issued on 10th January 1973, 15th November 1973 and 11th April 1977 for co-ordination of assessments under different direct taxes and non-initiation of estate duty proceedings resulted in escapement of estate duty of Rs. 72,000.

The Ministry of Finance have accepted the omission. Report regarding duty demand raised is awaited (November 1982).

(ii) The estate duty account of a person (died in August 1977) filed by the accountable person in February 1978 included a book debt of Rs. 1,02,187, comprising his individual estate

and a sum of Rs. 2,050 being 50 per cent share in the balance on compulsory deposit forming part of the estate of his late father. However, while computing the principal value of the estate in January 1980, the assets along with 40 per cent share in the development rebate reserve fund of a registered firm, in which the deceased had been a partner during his life—time, were not included. The omission resulted in under-assessment of estate by Rs. 1,32,061 and short levy of duty of Rs. 50,270.

The case was required to be checked in internal audit, but was not so checked.

The Ministry of Finance have accepted the omission. Report regarding demand raised and recovered is awaited (December 1982).

(iii) The principal value of the estate of a deceased person was provisionally taken as Rs. 6,41,240 in the assessment completed in August 1980. According to the details returned by the accountable person in June 1980, the net principal value of his estate worked out to Rs. 10,02,072. No reasons were recorded by the assessing officer for taking the value of the estate in the assessment below the returned value. The short computation of the principal value of the estate by Rs. 3,60,834 resulted in escapement of duty of Rs. 55,197.

The paragraph was sent to the Ministry of Finance in June 1982; their reply is awaited (December 1982).

4.30 *Incorrect exemptions and reliefs*

(i) Under the Estate Duty Act, 1953 where gift-tax has been paid in respect of a property and that property is deemed to pass for levy of estate duty also, the estate duty payable under the Act shall be reduced by an amount equal to the amount of gift-tax paid in respect of it. When, however, the gift-tax paid happened to be more than the estate duty payable, reduction has to be confined to the amount of estate duty payable.

The principal value of the estate of a person, who died in April 1971, was determined as Rs. 9,59,164 in April, 1979. As a result of appellate orders of September 1979, the principal value of the estate was re-determined as Rs. 4,10,606 in January 1981, on which the estate duty payable was Rs. 49,470. The estate included a property in respect of which gift-tax of Rs. 1,05,250 had been paid (March 1971) on a gift of Rs. 5,00,000. Instead of reducing the estate duty by Rs. 49,470 and bringing the liability of duty to nil, the Estate Duty Officer incorrectly set off the entire gift-tax and allowed a refund of Rs. 55,780 in January, 1981. This mistake resulted in incorrect refund of Rs. 55,780 to the Accountable person.

The Ministry of Finance have accepted the mistake and have stated (September 1982) that additional duty of Rs. 55,788 had been raised and collected.

(ii) Under the Estate Duty Act, the movable property of a deceased person, situated outside India, shall be included in the principal value of his estate, if, at the time of his death, he was domiciled in India and excluded if his domicile was in a foreign country. The domicile shall be determined in accordance with the provisions of the Indian Succession Act, 1925. According to that Act, the domicile of origin of a person prevails, until a new domicile is acquired, which is done by taking up a fixed habitation in a country other than that of the domicile of origin.

The estate duty assessment order made in February 1980 in respect of a deceased person showed that he was domiciled in India at the time of his death in November 1977. Moveable property valuing Rs. 1,97,000 situated outside India was, thus, not exempt from estate duty. However, its value was not included in the principal value of the estate passing on his death. The omission led to under-assessment of the estate by Rs. 1,97,000 with short levy of estate duty of Rs. 49,000.

The case was required to be checked in internal audit; however, it was not so checked.

The Ministry of Finance, while accepting the audit objection have stated (November 1982) that remedial action is being initiated.

4.31 *Mistakes in computation of principal value of estates*

(*i*) Under the Estate Duty Act, 1953, the estate of a deceased person shall include the value of cesser of his coparcenery interest in the common property of a Hindu undivided family of which he is a member. The Act further provides that the shares of lineal descendants in such common property are also to be included in his estate for rate purposes but not for levy of duty. According to the Board's clarification issued as early as in October 1959 and reiterated in July 1976, since a sole surviving coparcener enjoys absolute powers to dispose of or alienate the entire coparcenery property, the property, which passes on the death of such a coparcener, is the entire common property of the family.

(*a*) While determining (October and December 1977) the principal value of the estate of two deceased persons who were sole surviving coparceners of their respective Hindu undivided families, governed by Mitakshara School of Hindu Law, only a part of the value of the undivided family properties was added to the principal value of their respective estates and not the whole of it. The incorrect computation of the principal value of the estate in the two cases resulted in undervaluation of the estates by Rs. 3,74,932 and short levy of duty of Rs. 65,844 in the aggregate.

Both the assessments were checked by the Special Audit (Internal Audit) Party, but the mistake was not noticed.

The Ministry of Finance have accepted the mistake in both the cases and have stated (September 1982 and October 1982) that assessments are being re-opened for rectification.

(*b*) A *karta* of a Hindu undivided family (died in October 1979) was its sole surviving coparcener. The value of the family property was computed at Rs. 4,50,438 and in the estate duty assessment made in September 1980 only half the value of the property *i.e.* Rs. 2,25,219, was included. Non-inclusion of the full value of this property led to short computation of the principal value of the estate by Rs. 2,25,219 and consequent short levy of duty of Rs. 43,574.

The case was not checked in the internal audit.

The paragraph was sent to the Ministry of Finance in June 1982; their reply is awaited (December 1982).

(*c*) In the case of a person, who expired in April 1978, the principal value of the estate passing on his death, inclusive of his one-fourth share in the properties of a Hindu undivided family of which he was karta, was taken provisionally at Rs. 4,98,700 (July 1980). Three-fourth share of his three lineal descendants, being his sons, in the properties of the Hindu undivided family, amounting to Rs. 2,80,308, was, however, not included in the principal value of his estate for rate purposes. The mistake resulted in short levy of duty amounting to Rs. 28,002.

The paragraph was forwarded to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(*ii*) In the determination (December 1980) of the principal value of the estate of a person (died in September 1978) the following mistakes were noticed :—

(*a*) One-third share of the property belonging to a Hindu undivided family comprising the deceased, his wife and his nephew was included in the net principal value of the estate of the deceased. As wife takes a share on a partition between father and his sons and not otherwise, the deceased's share interest in the above Hindu undivided family was 50 per cent and not one-third.

(*b*) Half of the common property of a smaller Hindu undivided family, in which the deceased was the sole coparcener governed by Mitakshara School of Hindu Law, was included in the principal value of the estate. Since the deceased was the sole surviving coparcener enjoying absolute power to dispose of or alienate the entire common property, the entire value of the property of this smaller family passed on his death and was includible in the principal value of his estate.

(*c*) The value of a business concern in Bombay which had been taken as individual property of the deceased in his wealth-tax assessment for the assessment year 1978-79 was not included in his estate.

As a result of the mistakes, the estate of the deceased was under-assessed by Rs. 2,50,696 with consequent duty effect of Rs. 72,725.

The case was required to be checked in internal audit but it was not checked.

The Ministry of Finance have accepted the mistake and have stated (December 1982) that proceedings have been initiated for rectifying them.

4.32 *Incorrect valuation of unquoted equity shares in private companies*

According to the provisions of the Estate Duty Act, 1953 and executive instructions issued by Central Board of Direct Taxes in October 1974 and May 1975 unquoted equity shares in a private limited company are to be valued for the purpose of levy of estate duty by reference to market value of the assets of the company as on the date of death. Where the market value of the various assets cannot be readily ascertainable, the value of assets as shown in the balance-sheet of the company, as on the date nearest to the death, is to be taken allowing suitable

appreciation to provide for the increase in value of the assets. The provisions relating to the valuation of shares under the Wealth-tax Act, 1957 and rules thereunder are not applicable to valuation under the Estate Duty Act.

(*i*) In the estate duty assessment (completed in April 1980) in respect of the estate of a person, who died in June 1976, the assessing officer adopted the value of unquoted equity shares in a private company, incorrectly by taking the value of shares at their face value of Rs. 100 each, as returned, instead of working out the value as per market value of assets of the company. The valuation was not done even under the break-up value method under the wealth-tax rules by reference to book value of the assets of the company, as reflected in its balance-sheet as on 31st March 1976. Even on this basis (without allowing discount for non-declaration of dividend), the value per share would be Rs. 240.50 and not Rs. 100 adopted as returned. The under-valuation of the shares, computed by reference to the value of Rs. 240.50 per share, resulted in under-assessment of the principal value of the estate by Rs. 1,56,892 (Rs. 1,47,525 in individual assets and Rs. 9,367 in Hindu undivided family assets) leading to short levy of estate duty of Rs. 47,032. Under-assessment of estate duty would be more if valuation were correctly done under the Estate Duty law.

In their reply the Ministry of Finance have justified the asessment on the basis of book value of assets after allowing depreciation as per I.T. Rules. Their attention has been invited (March 1982) to Board's instructions to the effect that valuation for purposes of estate duty has to be determined on the basis of market value of assets.

(*ii*) While making estate duty assessment in December 1980 in respect of the estate of a person, who died in September 1978, the market value of 1193 unquoted equity shares held by the deceased in a private company was estimated by the department

at Rs. 1,24,300 by adding Rs. 5,000 to the face value of these shares of Rs. 1,19,300. The market value of the shares was, however, computed under the break-up value method under the Wealth-tax Rules, 1957 at Rs. 3,24,937 for his wealth-tax assessment for the assessment year 1978-79. As the break-up value of unquoted equity shares for estate duty was to be based on the market value of the assets of the company, including its goodwill, instead of only on their book value as reflected in its balance-sheet, the market value of these shares for levy of estate duty could not be less than Rs. 3,24,937 adopted in the wealth-tax assessment. In the absence of particulars regarding the market value of the assets, based even on the value of Rs. 3,24,937 itself, there was under-assessment of the estate by Rs.2,00,637. This, alongwith an incorrect allowance of deduction of Rs. 40,000 meant for a residential house for a letout house property, led to total under-assessment of estate by Rs. 2,40,637, involving duty of Rs. 46,352.

The case was required to be checked in internal audit, but it was not checked.

The Ministry of Finance have accepted the mistakes and have stated (December 1982) that the assessment is being rectified.

(*iii*) In the estate duty assessment in respect of another person, who died in September 1971, the provisions of law were not kept in view by the Estate Duty Officer while completing the assessment in December 1980. The valuation of 7,600 unquoted equity shares of a private limited company was incorrectly done under the break-up value method under the Wealth-tax Rules. Even in doing so, the following mistakes were committed : —

(*a*) In computing the net assets of the company, the value of equity share capital of the company was incorrectly deducted as an allowance for liability.

(*b*) The value of net assets was divided by the number of shares as 4,40,000 (as on 31st December 1971) instead of 2,20,000 (as on 31st December 1970).

Consequently, the value of each share was worked out as Rs. 14.39 as against Rs. 38.75. The resultant under-assessment of net principal value of the estate was Rs. 1,85,136 with short levy of duty of Rs. 28,344. Under-assessment of duty would be more if valuation were done correctly under the estate duty law.

The Ministry of Finance have accepted the mistake and have stated (November 1982) that remedial action has been initiated.

4.33 *Non-levy of interest*

The Estate Duty Act, 1953 provides that every person accountable for estate duty chargeable under the Act shall, within six months of the death of the deceased, deliver to the Controller an account in the prescribed form of all properties in respect of which duty is chargeable. The period of six months can be extended by the Controller on such terms as are prescribed in the Estate Duty Rules which include payment of interest at six per cent per annum. Delay beyond the period of extension in filing the account of the estate entails penalty at the discretion of the Controller.

A person died in July 1973. On an application filed by the accountable person, time was allowed for filing the return on or before 30th November 1974. The return was actually filed only on 16th January 1975. It was noticed (October 1981) that interest of Rs. 26,865 for the extended period from January 1974 to November 1974 was not charged. Moreover, probate fee of Rs. 2,063 paid in respect of certain shares in a private limited company valued at Rs. 62,000 for the purpose of probate application was incorrectly allowed to be deducted from estate duty even when the value of these shares was returned and

accepted by the Controller as nil and no estate duty was payable in respect of them.

Thus, besides penalty not levied, there was a short levy of estate duty and interest of Rs. 28,928.

The case was required to be checked in internal audit but it was not checked.

The Ministry of Finance have accepted the omission and have stated (September 1982) that on rectification additional tax demand raised is of Rs. 28,928.

4.34 *Mistakes in giving effect to appellate orders*

While giving effect to appellate orders in the estate duty case of a deceased person (died in February 1967), the following mistakes were committed :

(*a*) Income-tax liability of Rs. 10,96,562 for the assessment year 1966-67 which included Rs. 1,76,491 , being interest under the Income-tax Act, 1961 upto February 1971 for short-payment and non-payment of advance tax, was allowed in full instead of being restricted to the amount chargeable upto the date of death in February 1967. Excess liability so allowed to be deducted was Rs. 1,46,734.

(*b*) In allowing the wealth-tax liability of Rs. 15,98,668 for the assessment year 1963-64, interest of Rs. 82,333, charged under the Act for the period of delay in its payment after the date of death, was incorrectly allowed as liability. Further, tax of Rs. 1,50,000 which had been paid by the deceased on 31-3-1964 (prior to his death) was not taken into account while computing the allowable tax liability. Excessive liability allowed for outstanding tax, thus, totalled Rs. 2,32,333.

(*c*) While giving effect to the reduction in value of shares of a company ordered by the Income-tax Appellate Tribunal, an excess deduction of Rs. 40,000 was made.

The mistakes led to under-computation of the estate by Rs. 4,19,067 resulting in short levy of estate duty of Rs. 3,56,207.

The paragraph was sent to the Ministry of Finance in September 1982; their reply is awaited (December 1982).

(R. S. GUPTA)
Director of Receipt Audit

NEW DELHI
The 21-2-1983 1983

Countersigned

(GIAN PRAKASH)
Comptroller and Auditor General of India

NEW DELHI
The 21-2-1983 1983