AUDIT REPORT (CIVIL) REVENUE RECEIPTS 1966

CENTRAL GOVERNMENT

AUDIT REPORT (CIVIL)

ON REVENUE RECEIPTS

1966

ERRATA

Page		*For*	*Read*
6	Last line, last column	"13·3."	"13·93"
10	12th line	"Super-tax	"Sur-tax"
11	10th line	"duo"	"due"
12	Statement, Column (3), against I—Customs	"·14"	"4·14"
	„ II—Union Excise	"—"	"8·95"
30	19th line	"Traiff"	"Tariff"
70	Item IV (*i*), Total column	"12,1,905"	"12,11,905"
70	Item V, last line	"or"	"for"

AUDIT REPORT (CIVIL), 1966
ON
REVENUE RECEIPTS

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ON

REVENUE RECEIPTS

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PREFATORY REMARKS

This report presents mainly the results of audit of the four major revenue heads, namely, Customs, Union Excise, Corporation Tax and Income-tax. The report has been arranged in the following order :—

(i) Chapter I sets out the revenue position and the main heads of revenue, classifying them broadly under tax revenues and non-tax revenues. The variations between the Budget Estimates and the Actuals in respect of major heads of revenue are discussed in this Chapter.

(ii) Chapters II to IV mention points of interest which came to notice in the audit of Customs, Union Excise and Income-tax receipts.

(iii) Chapter V deals with other revenue receipts. The Government of India have conveyed in May, 1964 the formal consent of the President to conduct audit of Sales Tax receipts and refunds of the Union Territory of Delhi by the Comptroller & Auditor-General. After giving adequate training to the requisite staff, arrangements have been made to conduct this audit on a regular basis from November, 1964. Certain cases of interest which came to notice in the audit of Sales Tax receipts are dealt with in this Chapter.

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, and are not to be understood as conveying any general reflection on the working of the Departments concerned.

AUDIT REPORT, 1966

On Revenue Receipts

CHAPTER I

General

Revenue Position and Main Heads of Revenue

The total revenue receipts of the Government of India for the year 1964-65 amounted to Rs. 2229·08 crores against an anticipated revenue of Rs. 2124·30 crores, showing an excess of Rs. 104·78 crores over the budget estimates. The total revenue realised this year has registered an increase of Rs. 224·18 crores over that of 1963-64 and is nearly twice the amount realised in 1961-62. Of the total receipts of Rs. 2229·08 crores for 1964-65, Rs. 1685·15 crores represent receipts under Customs, Union Excise, Corporation Tax, Taxes on income other than Corporation Tax, Gift Tax, Land Revenue, State Excise Duties, Taxes on Vehicles, Sales Tax and other taxes and duties and the balance represents receipts from non-tax heads.

2. An analysis of the actuals by major heads for the year 1964-65 and the two preceding years is given below :—

Major Heads	1962-63	1963-64	1964-65	Total increase during three years
1	2	3	4	5
		(In crores of rupees)		
Tax Revenues :				
I. Customs	245·96	334·75	397·50	151·54
II. Union Excise Duties	598·83	729·58	801·51	202·68
III. Corporation Tax	220·06	287·30	313·64	93·58
IV. Taxes on Income other than Corporation Tax	92·13	126·29	143·16	51·03
V. Estate Duty	0·06	0·42	—1·35	—1·41
VI. Taxes on Wealth	9·54	10·50	10·52	0·98
VII. Expenditure Tax	0·20	0·13	0·44	0·24
VIII. Gift Tax	0·97	1·13	2·22	1·25
X State Excise Duties	2·26	1·62	1·44	—0·82
XII. Sales Tax	6·65	9·01	11·23	4·58
XIII. Other Taxes and Duties	2·96	3·22	3·52	0·56
Other items	1·27	1·42	1·32	0·05
TOTAL	1180·89	1505·37	1685·15	504·26

	Major Heads	1962-63	1963-64	1964-65	Total increase during three years
1		2	3	4	5
	Non-Tax Revenues :			(In crores of rupees)	
XIV.	Stamps	4·84	4·81	4·85	0·01
XVI.	Interest	153·23	243·56	257·29	104·06
XX.	Supplies and Disposals . .	4·03	5·91	6·16	2·13
XXI.	Miscellaneous Departments .	1·70	1·49	1·87	0·17
XXV.	Agriculture	1·55	1·61	1·80	0·25
XXIX.	Industries	35·04	16·05	12·72	—22·32
XXX.	Broadcasting	4·01	5·55	6·27	2·26
XXXII.	Miscellaneous Social and Developmental Organisations .	4·63	4·68	4·81	0·18
XXXVII.	Public Works	3·75	4·46	4·93	1·18
XLI.	Lighthouses and Lightships .	1·01	1·11	1·33	0·32
XLII.	Aviation	1·55	1·75	2·12	0·57
XLIV.	Overseas Communication Service	2·51	2·34	3·39	0·88
XLV.	Currency and Coinage . .	53·46	53·82	51·86	—1·60
XLVIII.	Contributions and Recoveries towards pensions and other retirement benefits . . .	1·95	1·14	2·39	0·44
L.	Opium	3·57	3·52	3·64	0·07
LI.	Forest	4·42	2·24	2·22	—2·20
LII.	Miscellaneous . . .	17·18	13·30	14·84	—2·34
LIII.	Contributions from Railways .	20·37	24·82	23·25	2·88
LIV.	Contributions from Posts and Telegraphs	0·77	1·22	1·44	0·67
LVIII.	Dividends, etc. from Commercial and other undertakings .	3·74	4·37	6·89	3·15
LX.	Extraordinary Receipts . .	54·86	63·20	122·46	67·60
LXIA.	Receipts connected with the National Emergency, 1962 . .	19·25	31·37	0·56	—18·69
	Other items	6·99	7·21	6·84	—0·15
	TOTAL .	404·41	499·53	543·93	139·52
	Total Receipts . .	1585·30	2004·90	2229·08	643·78

3. Variations between the Budget Estimates and the Actuals.

The variation of Rs. 104·78 crores between the Budget Estimates and the Actuals is made up of an excess of Rs. 111·59 crores in Tax Revenues reduced by a shortfall of Rs. 6·81 crores in Non-Tax Revenues :—

(In crores of rupees)

Year	Budget	Actuals	Variations	Percentage.
(A) *Tax Revenues*				
1962-63	998·75	1180·89	+182·14	18·24
1963-64	1356·33	1505·37	+149·04	10·99
1964-65	1573·56	1685·15	+111·59	7·09
(B) *Non-Tax Revenues*				
1962-63	382·18	404·41	+22·23	5·82
1963-64	479·85	499·53	+19·68	4·11
1964-65	550·74	543·93	—6·81	1·24

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

Though the total net variation between the Budget Estimates and the Actuals of all revenues realised by way of taxes and duties is Rs. 111·59 crores, the variation between the Budget Estimates and the Actuals in so far as the principal heads of tax revenues of Customs, Central Excise, Corporation Tax and Taxes on income other than Corporation Tax only are concerned, it works out to Rs. 113·44 crores. The figures are as follows:—

(In crores of rupees)

	Budget Estimate	Actuals	Variation	Percentage
I. Customs	336·37	397·50	+61·13	18·17
II. Union Excise Duties	769·54	801·51	+31·97	4·15
III. Corporation Tax	296·67	313·64	+16·97	5·72
IV. Taxes on income other than Corporation Tax	*139·79	*143·16	+3·37	2·41

(* Exclude the shares of net proceeds assignable to States)

I. *Customs.*—The amount of the difference between the Budget Estimates and the Actuals for this year is the highest recorded over

the past five years. The figures for the period 1960-61 to 1964-65 are given below :—

(In crores of rupees)

Year	Budget Estimate	Actuals	Variation	Percentage
1960-61 . . .	162·50	170·03	+7·53	4·6
1961-62 . . .	189·64	212·25	+22·61	11·9
1962-63 . . .	207·82	245·96	+38·14	18·3
1963-64 . . .	301·20	334·75	+33·55	11·14
1964-65 . . .	336·37	397·50	+61·13	18·17

The Ministry of Finance have explained that the main reasons for the variation between the Estimates and the Actuals during 1964-65 are : (i) increase in additional duty of Excise, (ii) increased imports generally and under Export Promotion Schemes, (iii) imposition of regulatory duty, and (iv) adjustment of Note Pass cases.

A break-up of the Budget Estimates and the Actuals in respect of the minor heads for the year 1964-65 is set out with comparative figures for the previous year :—

(In lakhs of rupees)

	1963-64			Percentage	1964-65			Percentage
	Budget	Actuals	Variations		Budget	Actuals	Variations	
Imports .	3,03,05	3,38,53	+35,48	11·71	3,39,36	4,04,64	+65,28	19·24
Exports .	3,95	3,37	—58	14·68	2,96	2,43	—53	17·90
Miscellaneous .	2,70	3,73	+1,03	38·15	2,75	4,22	+1,47	53·45
Deduct—Refunds and Drawbacks	—8,50	—10,88	—2,38	28	—8,70	—13,79	—5,09	58·51
TOTAL .	3,01,20	3,34,75	33,55	11·14	3,36,37	3,97,50	61,13	18·17

II. *Union Excise.*—The total Budget Estimates under the head "II-Union Excise Duties" were Rs. 769·54 crores. Against this, the Actuals came to Rs. 801·51 crores showing an increase of Rs. 31·97 crores. This works out to 4·15 per cent as against 5 per cent last year (1963-64). Though the overall percentage of variation has, thus, shown a decrease, large variations persist in some of the minor heads. The following statement gives a list of such items :—

(In lakhs of rupees)

Commodities	1963-64 Budget Estimates	1963-64 Actuals Basic Duties	1963-64 Actuals Special Duties	1963-64 Actuals Total	Variation	Percentage	1964-65 Budget Estimates Basic Duties	1964-65 Budget Estimates Special Duties	1964-65 Budget Estimates Total	1964-65 Actuals Basic Duties	1964-65 Actuals Special Duties	1964-65 Actuals Total	Variation	Percentage
1. Plastics	1,50	2,06	42	2,48	98	65·33	2,00	40	2,40	4,51	90	5,41	3,01	125·42
2. Sodium Silicate	..	5	..	5	5	..	40	..	40	69	..	69	29	72·50
3. Woollen Yarn	2,67	2,87	65	3,52	85	31·84	3,69	1,23	4,92	2,02	50	2,52	—2,40	48·78
4. Electric Wire and Cables	2,25	3,59	..	3,59	1,34	59·55	3,40	..	3,40	4,94	..	4,94	1,54	45·29
5. Cosmetics	1,50	1,42	28	1,70	20	13·33	1,25	25	1,50	1,73	35	2,08	58	38·67
6. Synthetic Organic Dye Stuff	2,48	1,76	17	1,93	—55	22·18	1,82	..	1,82	2,50	1	2,51	69	37·91
7. Vegetable Non-essential Oil	75	1,42	..	1,42	67	89·33	1,70	..	1,70	1,08	..	1,08	—62	36·46
8. Electric Motor	1,44	1,61	30	1,91	47	32·64	1,42	28	1,70	1,93	39	2,32	62	36·47
9. Asbestos Cement Products	90	1,30	..	1,30	40	44·44	1,20	..	1,20	1,62	..	1,62	42	35
10. Caustic Soda	55	65	..	65	10	18·18	60	..	60	79	..	79	19	31·66
11. Rubber Products	1,02	58	18	76	—26	25·49	1,35	27	1,62	82	26	1,08	—54	33·33
12. Wireless Receiving sets	1,67	1,46	46	1,92	25	14·97	1,30	43	1,73	1,75	55	2,30	57	32·95

(In lakhs of rupees)

Commodities	1963-64						1964-65					
	Budget Estimates	Actuals		Total	Variation	Percentage	Budget Estimates		Total	Actuals		Total	Variation	Percentage
		Basic Duties	Special Duties				Basic Duties	Special Duties		Basic Duties	Special Duties			
13. Motor Vehicles	13,60	12,46	2,40	14,86	1,26	9·26	11,00	2,60	13,60	14,38	3,65	18,03	4,43	32·57
14. Woollen Fabrics	1,80	1,76	34	2,10	30	16·67	1,80	36	2,16	1,24	24	1,48	—68	31·48
15. Footwear	2,15	2,43	..	2,43	28	13·02	3,20	..	3,20	2,23	..	2,23	—97	30·31
16. Artificial Silk Fabrics	1,02	1,55	26	1,81	79	77·45	1,15	23	1,38	1,56	20	1,76	38	27·54
17. Refined Diesel Oil and Vaporising Oil	59,06	61,52	5,71	67,23	8,17	13·83	59,00	5,30	64,30	75,32	6,75	82,07	17,77	27·64
18. Cotton Yarn	9,20	10,28	2,39	12,67	3,47	37·72	18,16	1,94	20,10	22,91	2,21	25,12	5,02	24·97
19. Nitric Acids, etc.	85	1,08	..	1,08	23	27·06	81	..	81	·99	..	99	18	22·22
20. Refrigerators and Airconditioning machines	1,33	1,28	49	1,77	44	33·08	1,40	47	1,87	1,67	60	2,27	40	21·39
21. Patent and Proprietary medicines	5,40	5,62	..	5,62	22	4·07	5,55	..	5,55	6,50	..	6,50	95	17·12
22. Vegetable products	13,44	12,34	2,24	14,58	1,14	8·48	12,50	2,50	15,00	10,86	2,06	12,92	—2,08	13·87
23. Cycles and parts thereof	1,65	1,72	..	1,72	7	4·24	1,65	..	1,65	1,88	..	1,88	23	13·3

24. Jute Manufactures	4,40	5,93	57	6,50	2,10	47·73	5,50	55	6,05	6,32	56	6,88	83	13·72
25. Sugar	63,80	52,11	..	52,11	—11,69	18·32	58,25	..	58,25	51,04	..	51,04	—7,21	12·38
26. Diesel Oil	18,90	15,28	1,45	16,73	—2,17	11·48	16,40	1,50	17,90	13,89	1,23	15,12	—2,78	15·53
27. Iron and Steel products	20,50	38,13	..	38,13	17,63	8·6	50,41	..	50,41	46,19	..	46,19	—4,22	8·37
28. Rubber Cess	..	92	..	92	92	..	..	..	..	1,64	..	1,64	1,64	..
29. Other items Collectively	4,19,15	3,96,03	36,51	4,32,54	13,39	..	4,02,45	39,74	4,42,19	4,22,76	40,11	4,62,87	20,68	..
TOTAL	652,98	639,21	54,82	694,03	41,05	..	669,36	58,05	727,41	705,76	60,57	766,33	38,92	
Deduct—Refunds and Drawbacks	*4,50*	*7,47*	*8*	*7,55*	*3,05*	..	*5,77*	..	*5,77*	*9,07*	*23*	*9,30*	*3,53*	
TOTAL	648,48	631,74	54,74	686,48	38,00	..	663,59	58,05	721,64	696,69	60,34	757,03	35,39	
Additional excise duties	47,86	..	..	43,34	—4,52	..	..	..	48,13	..	..	44,71	—3,42	
Deduct—Refunds and Drawbacks	..	..	..	*24*	*24*	..	..	..	*23*	..	..	*23*	..	
TOTAL—NET REVENUE	696,34	..	..	729,58	33,24	..	..	..	769,54	..	..	801,51	31,97	4·15

In this connection, the Ministry of Finance have stated as follows :—

"The increased yields from duties on various mineral oils, paper, plastics, tyres, Rayon and Cotton yarn, motor vehicles, matches and electric wires are due to increased production and clearances. A part of the increase under mineral oils is due to the enhancement of additional duties levied on them during the year. Levy of regulatory duty on mineral oils with effect from 17-2-65 has also contributed for an increase in the revenue."

III. *Corporation Tax and IV-Taxes on Income etc.*—The total amount of difference between the Budget Estimates and the Actuals for 1964-65 is as follows:—

(In crores of rupees)

	Buget Estimates	Actuals	Variation	Percentage
Corporation Tax	296·67	313·64	+16·97	5·72
Taxes on income other than Corporation Tax	139·79*	143·16*	+3·37*	2·41

(*Excluding the share assignable to States).

The above percentages of variations show an improvement from the position relating to 1963-64. The details of the variations under the various minor heads are indicated in the following statement:—

(In lakhs of rupees)

	1963-64				1964-65			
	Budget Estimates	Actuals	Increase(+) Shortfall(—)	Percentage of variation	Budget Estimates	Actuals	Increase(+) Shortfall(—)	Percentage of variation
III. Corporation Tax								
(*i*) Ordinary Collections@	2,02,00	2,65,20	(+)63,20	31.19	2,89,17	2,97,73	+8,56	2·96
(*ii*) Excess Profits Tax	..	(*a*)1	(+)1	..	..	(—)11	(—)11	..
(*iii*) Business Profits Tax	..	(—)1	(—) 1	..	..	(*b*)1	+1	..
(*iv*) Sur-Tax	..	..	..	..	6,50	13,26	(+)6,76	104·15
(*v*) Super Profits Tax	20,00	22,10	(+)2,10	10·5	1,00	2,75	(+)1,75	175
TOTAL	2,22,00	2,87,30*	(+)65,30	29·41	2,96,67	3,13,64	(+)16,97	5·72
IV. Taxes on Income other than Corporation Tax								
(*vi*) Ordinary Collections@@	1,91,05	2,25,70	(+)34,65	16·03	2,30,65	2,52,58	(+)21,93	9·51
(*vii*) Surcharge (Central)	5,00	7,40	(+)2,40	48	6,53	6,26	(—)29	4·43
(*viii*) Surcharge (Special)	3,95	4,83	(+) 88	22·28	3,08	2,86	(—)22	7·14
(*ix*) Additional Surcharge (Union)	18,00	7,47	—10,53	58·5	7,00	5,41	(—)1,59	22·71
(*x*) Excess Profits Tax	..	19	(+)19	..	..	(—)1	(—)1	..
(*xi*) Business Profits Tax	..	(*c*)(—)1	(—)1	..	..	(—)17	(—)17	
Shares of net proceeds Assigned to States	(—)97.95	(—)119,29	(—)21,34	21·78	(—)1,07,49	(—)1,23,77	(—)16,28	15·14
TOTAL	1,20,05	1,26,29*	(+)6,24	5·19	1,39,79	1,43,16	(+)3,37	2·41

@The actuals against 'Ordinary Collections' include receipts under the minor head 'Miscellaneous'.

@@The actuals against 'Ordinary Collections' include receipts under the minor heads 'Miscellaneous' and 'Charges in ngland.'

*Differs from figure shown in 1965 Audit Report due to certain adjustments since made.

(*a*) The actual amount is Rs. 33,000.

(*b*) The actual amount is Rs. 49,115.

(*c*) The actual amount is Rs. (—)23,622.

The Ministry's explanation regarding the overall variations between the budget estimates and the actual collections of Corporation Tax and Income Tax is as follows:

(i) Larger profits in the Corporate Sector.

(ii) Measures taken to improve the tax collection by tightening the assessment and collection measures.

(iii) Completion of larger number of assessments.

As regards the variation under the head "Super Profit Tax", the Ministry of Finance (Deptt. of Rev.) have stated that since "Super Profit Tax" was abolished in 1964-65, it was anticipated that only a small collection would be made under this head. With regard to "Super Tax', the Ministry have stated that the variation is due to (i) increase in the level of corporate earnings in the relevant year which could not be anticipated, and (ii) inadequate data available in the first year of its levy.

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

The reasons for the variations between the Budget estimates and the Actuals for the year 1964-65 under some of the heads of non-tax revenues are indicated below :—

Major Head	Budget 1964-65	Actuals 1964-65	Variations	Reasons for variations
(1)	(2)	(3)	(4)	(5)
	(In crores of rupees)			
1. Interest	252·14	257·29	+5·15	The increase was mainly duo to higher capital at charge of the Railways and also P.&T.— due to larger expendture both in 1963-64 and 1964-65— than originally anticipated. The rate of interest adopted at the Budget stage was 3·82 per cent, which was increased to 3·84 per cent for adjustment during the year.
2. Industries	14·84	12·72	—2·12	Mainly, lesser adjustment due to abolition of surcharge on iron and steel with effect from March, 1964.
3. Broadcasting	4·36	6·27	+1·91	Mainly, due to realisation of more radio licence fees. A part of the increase is due to the adjustment of previous years' receipts in 1964-65.
4. Kolar Gold Mines	2·02	1·59	—0·43	Mainly, because a part of the gold received from the Kolar Gold Mines could not be refined in the Mints and taken to Government stock before the close of the financial year.
5. Extraordinary Receipts	140·31	122·46	—17·85	Mainly, due to receipt of lesser grants from the U. S. Government under P.L. 480 Aid Programme than originally anticipated.
6. Miscellaneous	9·42	14·84	+5·42	Mainly, due to refund of unutilised grants by the State Governments, gain by exchange on dollar transactions and writing off of unclaimed deposits to revenue.

6. Cost of Collection.

The expenditure during the year 1964-65 incurred in collecting the principal items of tax receipts together with the corresponding figures for 1963-64 are shown below :—

(In crores of rupees)

Head of Revenues	1963-64			1964-65		
	Gross collections.	Expenditure incurred on collections	Percentage of expenditure on revenue collections	Gross collections	Expenditure incurred on collections	Percentage of expenditure on the revenue collections
(1)	(2)	(3)	(4)	(5)	(6)	(7)
I. Customs	334·75	·14	1·2	397·50	4·62	1·2
II. Union Excise	729·58		1·2	801·51	9·77	1·2
III. Income Tax and IV. Corporation Tax	532·88	6·72	1·3	580·57	7·75	1·3

Though the cost of collection in terms of percentage has remained almost the same as that of the last year, the actual amount of expenditure for collection of custom duty has increased by 48 lakhs; Income-Tax and Corporation Tax has increased by 1·03 crores and in the case of Central Excise by 82 lakhs.

The increase of Rs. 48 lakhs in the cost of collection of Customs revenue was stated to be mainly due to (i) sanctioning of additional posts for Bombay and Calcutta Customs House, (ii) expenditure for newly taken over Customs administration in Goa for the whole year 1964-65 (the date of taking over the Customs administration in Goa, Daman and Diu is 19th December, 1963), and (iii) enhancement of the rate of dearness allowance during the year 1964-65.

The increase of Rs. 82 lakhs in the cost of collection of Union Excise Duties was stated to be mainly due to (i) accrual of annual increments as well as sanction of new posts in 1964, and (ii) revision of dearness allowance, house rent and City Compensatory allowance in 1964.

The increase of Rs. 1·03 crores in the cost of collection of Income-Tax (including Corporation Tax) was stated to be mainly due to (i) a large number of posts created in 1964 and (ii) revision of dearness allowance, house rent and City Compensatory allowances in 1964-65.

7. Annuity Deposit

Under the Finance Act of 1964, every person who is resident in India (excepting individuals of foreign nationality, registered firms, co-operative societies and companies) and whose total income exceeds Rs. 15,000, is required to make an annuity deposit at specified rates. The amount of annuity deposit is deducted from the total income for the purpose of assessment to tax, but repayment of the annuity is taxable in the year in which the annuity is received.

For the year 1964-65 it had been estimated in the Budget of the Central Government that Rs. 67 crores would be realised by way of annuity deposit. The actual realisation, however, fell short of this estimate by Rs. 27 crores, that is, by more than 40 per cent. The amount collected and accounted for was Rs. 40·28 crores.

CHAPTER II

Customs Receipts

8. The total receipts from Customs Revenue during the year 1964-65 were Rs. 397·50 crores, derived as under :—

	Rs.
(*a*) Customs imports	404,64,02,584
(*b*) Customs exports	2,42,58,360
(*c*) Miscellaneous	4,22,00,768
Gross revenue	411,28,61,712
(—) *Deduct* Refunds and drawbacks	13,78,51,407
Total net revenue	397,50,10,305

It will be seen from the above that the bulk of the collections is from Customs imports.

9. A test audit of the various customs stations revealed a total short levy of customs duty to the extent of Rs. 8·11 lakhs and an excess levy of Rs. 94,866. Besides this, other defects and lacunae in customs procedure and two cases of loss of customs duty due to fraudulent alterations of Bills of Entry were noticed.

10. The short levy of duty of Rs. 8,11,172 has arisen on account of the following reasons :—

(*a*) Wrong classification of goods	Rs.	3,57,188
(*b*) Non-levy of countervailing duty	Rs.	1,69,373
(*c*) Mistakes in calculations	Rs.	99,033
(*d*) Duty levied at rates lower than those prescribed	Rs.	71,788
(*e*) Other reasons	Rs.	1,13,790
	Rs.	8,11,172

Under-assessments arising out of wrong classification of goods [Category (a) above] have shown a striking increase over those detected and reported in the Audit Reports of previous years :—

	Rs.
1962-63	88,918
1963-64	87,532
1964-65	3,57,188

Some instances of the types of defects categorised above are mentioned in the paragraphs that follow.

11. **Short levy due to wrong classification of goods under the Indian Customs Tariff.**

(i) 'Michigan Tractor' Model 175 imported in May, 1963, was assessed by a custom house to duty at the concessional rate of 15 per cent. *ad valorem* applicable to "Earth shifting machinery" under item 72 Indian Customs Tariff. The relevant catalogue, invoice and other documents were called for in audit to verify the correctness of the assessment. On a re-examination of the relevant documents as a result of this audit query, the Custom House itself decided that the Tractor was correctly assessable to duty as a 'Conveyance' under item 75 Indian Customs Tariff @ 50 per cent. *ad valorem* with countervailing duty @ 12½ per cent. *ad valorem* under item 34(4) Central Excise Tariff. The consignment was re-assessed accordingly and the consequential difference in duty of Rs. 1,11,165 recovered from the importer. Report regarding re-assessment of similar cases of tractors is awaited.

(ii) In a major Custom House, 'Pig Tin Grade G' imported in January, 1964 was allowed clearance without payment of duty classifying it as 'Tin scrap and Tin plate scrap' under item 69(1) Indian Customs Tariff. However, as the Custom House had some doubts regarding the correctness of the classification under item 69(1), the matter was referred to the Central Board of Customs and Central Excise for a ruling. According to general instructions of the Board, the Collector should, in such cases, assess the goods at the rate most favourable to Government. This, however, was not done. In their ruling dated 6th February, 1965 the Board ordered that the goods should be assessed under item 70(1) Indian Customs Tariff as a result of which a sum of Rs. 89,796 became recoverable in this case. Action to this end has not yet been taken.

12. **Non-levy of countervailing duty.**

(i) A consignment of "Cementing aggregate mounted on automobile and spare parts" valued at Rs. 1,53,499 and imported in September, 1963 was assessed to duty by a Custom House as "conveyances not otherwise specified" under item 75 Indian Customs Tariff at 55 per cent. *ad valorem*, whereas a similar equipment of the same assessable value imported by the same party was assessed to duty at the composite rate of 78·25 per cent. *ad valorem* comprising the basic customs duty under item 75 Indian Customs Tariff,

surcharge thereon and countervailing duty for "motor vehicles, not otherwise specified" under item 34(4) Central Excise Tariff. On this discrepancy being pointed out, the short levy of Rs. 35,689 being the countervailing duty in the former case was recovered by the Custom House

(ii) "Armatures" (component parts of Electric D.C. Motors) were assessed by a Custom House in June 1961, as component parts of machinery over ¼ H.P. at 15 per cent. *ad valorem* under item 72 (3) Indian Customs Tariff without levying the countervailing duty assessable on 'Rotor' under item 30(4) Central Excise Tariff.

On the omission being pointed out, the Custom House replied that as the term "Rotor" was technically applicable only to squirrel cage A.C. Motors, no countervailing duty was leviable on armatures for D.C. Motors. Since the practice obtaining in this regard in other Custom Houses was different, the Custom House was required to obtain a ruling of the Central Board in the matter. As, however, the Custom House maintained that their practice of not levying countervailing duty on armatures was quite in order, the matter was referred to the Board by Audit in September, 1962. The Board agreed with Audit and ordered in January, 1963 that armatures of D.C. Motor should be charged to countervailing duty under item 30 (4) Central Excise Tariff. As a result, the short levy of Rs. 37,348 in six cases has been recovered.

13. **Mistakes in calculation of duty.**

Countervailing duty of 11 per cent. leviable on a consignment of Fire-proof Fireclay wares (Porcelain) imported in August, 1963, was wrongly worked out in a Custom House as Rs. 6,997·60 P instead of Rs. 69,976·00 P resulting in a short collection of Rs. 62,978.

On the mistake being pointed out, the difference was recovered from the importers.

14. **Duty levied at rates lower than those prescribed.**

A consignment of "under ground telephone cables" imported in March, 63 was assessed to duty by a Custom House under item 73(1) Indian Customs Tariff read with item 33-B Central Excise Tariff at the composite rate of 62·75 per cent. (basic Customs duty 50 per cent. *ad valorem*, 10 per cent. surcharge on duty and Countervailing duty at 5 per cent. on the assessable value *plus* duty, *i.e.* 155 per cent.) in vogue prior to 1st March, 1963. As the basic customs duty under

item 73(1) was raised to 60 per cent. *ad valorem* with effect from 1st March, 1963 the correct duty leviable on the consignment was at the composite rate of 74·3 per cent. On being pointed out, the short levy of Rs. 14,495 was recovered.

15. Other reasons.

(a) *Loss of revenue due to a procedure not in accordance with statutory provisions.*

Any special commission or rebate on the invoice value of goods allowed to an importer by the foreign supplier under a special arrangement between them which is not allowed to other importers of the same or similar goods should be included in the value of the goods for purposes of assessment to duty. The quantum of addition to the assessable value of goods on account of such special commission or rebate is usually determined by the Department after scrutiny of the importers' books. As the scrutiny of the account books involves time, the Central Board of Revenue in a circular letter of November, 1956 had permitted the issue of a special demand under section 39 of the Sea Customs Act, 1878 pending the scrutiny of the books, for an amount estimated by the Customs authorities to be payable as a result of the examination of account books. Accordingly, the practice in the Custom Houses had been to assess such goods on the declared value and to load that value with an *ad hoc* addition of 20 to 25 per cent. of such value for purposes of issuing demand.

A particular importer questioned the legality of such a demand amounting to Rs. 5 lakhs made by a Custom House, through a writ petition filed in 1960 in a High Court. The Court held that since *ad hoc* demands were not capable of being substantiated at the time of importation/assessement of the goods, the demand notices issued under section 39 of the Sea Customs Act, 1878 were not legal. The demands had, therefore, to be withdrawn even though a sum of about Rs. 62,500 was recoverable from the importer as a result of the investigation of his books. This loss of revenue could have been averted had the Custom House assessed the goods provisionally under section 29-B of the Sea Customs Act, 1878 even at the initial stage pending investigation of the books.

The Ministry while confirming the aforesaid facts have, however, replied that the demands in this case were issued at a time when the practice of resorting to section 39 of the Sea Customs Act, 1878 was in vogue and hence application of section 29-B of the said Act

could not be contemplated then. They have, however, added that revised instructions were, issued in October, 1960 pointing out the correct procedure.

(b) *Irregularities in payment of overtime fees.*

In the course of test audit of payments of overtime fees to the Appraising and Examining officers of the Appraising Department of a major Custom House, the following irregularities resulting in over-payments to the extent of about Rs. 6,013 were noticed.

(i) Double and treble payment of overtime fees for the same piece of work, by utilising the same documents and credit particulars in preparing the bills for different months;

(ii) Over-payments resulting from errors in totalling the individual entries in respect of each official in preparing the bill for a particular month;

(iii) Double payment of overtime fees for the same spell of overtime work for different parties.

The irregularity at item (i) above was rendered possible by the omission on the part of Custom House to keep a note of the payment of overtime fees to the officers, on the original documents. The irregularity mentioned at serial No. (iii) was mainly due to the fact that no proper care was exercised in endorsing overtime vouchers with particulars of amounts creditable to the Government.

Of the sum of Rs. 6,013, Rs. 5,972 have since been recovered. The Department has been requested to examine all the records relating to payment of overtime fees during the past years so that the amount of such irregular payments to each official, the frequency of overpayments and the total quantum of overpayments could be assessed. The Ministry while confirming the above facts have stated that disciplinary action has been initiated against the officials responsible.

16. **Loss of revenue due to fraudulent alterations in Bills of Entry.**

(a) The Internal Audit Department of a Custom House found that on a consignment of 18 cases of art silk yarn imported in October, 1964, a sum of Rs. 7,305·30 only had been collected as duty instead of Rs. 27,305·30 which was the correct amount of duty payable on the consignment. The Internal audit branch raised an objection for the short realisation of Rs. 20,000. As no reply to this objection was received from the Accounts Departments, enquiries

were made which revealed that the objection along with the original Bill of Entry had neither reached the Accounts Department nor was it traceable in the Custom House. The duplicate copy of the Bill of Entry was also found missing from the Internal audit after it was received there.

As the loss of both the copies of the Bills of Entry appeared suspicious, departmental investigations were made which revealed that only a sum of Rs. 7,305·30 had been shown as paid in the pay-in-slip of the Cash Department, whereas the triplicate copy of the Bill of Entry obtained from the Custom House agent showed the amount of Rs. 27,305·30. On interrogation, an employee of the Custom House agent admitted having made fraudulent alterations in the amount of the duty stamp both on duplicate and triplicate copies. In his statement he also implicated a clerk in the Internal Audit Department of having conspired with him to defraud Government revenues to the extent of Rs. 20,000 on this consignment. A demand for Rs. 20,000 has been issued to the concerned importers and the Custom House clearing agents. The clearing agents, it is stated, have informally promised to make the payment. The amount has not yet been paid. (December, 1965).

Further investigations carried out so far have revealed four more cases of fraudulent alterations of Bills of Entry by the same clearing agent involving an amount of Rs. 44,725·98. In two of these four cases, a lower amount of duty has been paid by manipulating the figure of duty entered in the duty stamp and in the rest of the two cases, no duty at all had been paid and the goods were cleared by affixing forged duty-paid stamps.

A final report regarding completion of the investigation is awaited.

(b) A case of loss of revenue in a particular Custom House on account of fraudulent alterations in Bills of Entry was reported in para 21 of the Audit Report (civil) on Revenue Receipts, 1965. A similar case was reported from another Custom House in March, 1965. The facts are as under :—

Since 1961 a group of persons two of whom possessed customs passes issued to them as clerks of licensed Dalals were unauthorisedly operating as clearing agents in collusion with some Custom House Agents and Dalals, and were defrauding customs duties by tampering with the quantities declared in the Bills of Entry, for

goods like art silk yarn and unexposed cinematograph films assessable at specific rates of duty. The duty defrauded in 38 consignments worked out to Rs. 1,70,381. The full extent of the fraud on all the consignments cleared by the group is reported to be still under investigation.

17. **Short levy due to omission to revise incorrect assessment on receipt of a tariff ruling.**

According to executive instructions issued by the Central Board of Revenue in 1924, when a ruling issued by the Central Board of Revenue or the Government of India in the interpretation of the Customs Tariff shows that the practice of any Custom House in the assessment of goods has been incorrect, ordinarily no proceedings shall be taken under section 39 of the Sea Customs Act, 1878 if it appears that duty has been short levied previous to the receipt of the ruling in the Custom House.

Aircraft materials of special shape or quality are assessable to duty at a concessional rate under an exemption notification dated 21st December, 1957 of the Government of India. In a tariff ruling issued by the Central Board of Revenue in February, 1961 it was ordered that items like paints, varnishes, thinners, adhesive cement etc. are general purpose articles and could not be regarded as Aircraft materials qualifying for assessment at the concessional rate. In a Custom House, such articles were being assessed wrongly as Aircraft materials prior to the receipt of the tariff ruling. The Board's ruling of February, 1961 was given effect to in that Custom House with effect from May, 1961, the date on which the ruling was received in that Custom House. However, no action was taken to recover the differential duty on paints, varnishes, etc. imported and assessed as aircraft materials at the concessional rate prior to that date, but on which no duty had been paid at the time of receipt of the tariff ruling.

It was pointed out in audit (June, 1962) that the Board's instructions of 1924 would only apply to cases where duty had already been actually short levied prior to the receipt of the tariff ruling and not in cases where only the assessment had been made without the duty thereon having been paid by the parties. The Custom House did not agree and referred the matter to the Board in November, 1963. The Board agreeing with the views of Audit clarified in October, 1964 that all assessments on which duty had not been paid as on the date of receipt of a Tariff Ruling in a Custom House should be subjected to the higher duty as per the ruling.

The Ministry have replied that on a review of the past importations it was found that 20 cases involving a total duty of Rs. 31,947 required revision on the basis of the tariff ruling and 30 more cases relating to the year 1961 remained to be reviewed. (December, 1965).

18. Delay in the disposal of confiscated goods.

Confiscated lead pencils worth about Rs. 1,83,000 were lying undisposed of since 1958 onwards in a Land Customs Collectorate. In 1961, Audit suggested that in order to avoid damage or depreciation in the value of the goods, the goods might be utilised departmentally in accordance with the Board's general instructions. In reply to an audit query in 1964 regarding utilisation as suggested, the department furnished the following particulars :—

	Rs.
(1) Total value of pencils supplied to —	
(*a*) Railways	30,244·36
(*b*) Other Govt. Departments	8,941·73
(2) Total credits received so far from Railways and other Govt. Departments	28,755·02
(3) Undisposed of penc	1,44,161·62

The pencils remaining undisposed of have been sent to another Custom House for disposal. These pencils along with other stocks of confiscated pencils received from different Custom Houses are remaining stacked in the Custom House godowns for a long period awaiting their disposal by the Controller, Stationery and Printing. Further delay in their disposal is likely to damage and deteriorate the pencils. The Ministry have reported that the representative of the Stationery Office had inspected the pencils and sorted them out in April, 1965 and that efforts are being made to dispose of the balance by the Collector of Customs.

19. Other topics of interest.

During scrutiny of the records of a major Custom House it was observed that there had been no proper co-ordination between the Port Trust and the Custom House in the matter of landed goods. As a result, duty was not recovered on certain packages landed but subsequently found missing. The total number of such packages and the amount of customs duty involved, during the period 1st April, 1956 to 31st March, 1965 as estimated by the Custom House were 2867 packages and Rs. 7,52,286 respectively. The Custom House could not intimate the value of missing goods.

Particulars of similar instances in other ports are awaited.

The Ministry have replied that the duty on 749 packages amounting to Rs. 3,74,500 (arrived on a notional estimate) could not be recovered in the absence of a specific provision in the Sea Customs Act, 1878 and as regards the remaining cases dealt with after 1st February, 1963 they had the power to forego the revenue under the Customs Act, 1962.

20. Arrears.

The total amount of customs duty remaining unrealised as on 31st October, 1965 was Rs. 47·46 lakhs as against Rs. 112·08 lakhs for the corresponding period last year. Out of the sum of Rs. 47·46 lakhs, Rs. 22·16 lakhs have been outstanding for more than one year.

21. Remissions and abandonments of revenue.

The total amount of Customs Revenue remitted, written off or abandoned during the year 1964-65 is Rs. 14,93,046.

CHAPTER III

Union Excise Duties

22. The receipts under the Union Excise Duties during the year 1964-65 were Rs. 801·51 crores, registering an increase of Rs. 71·93 crores over that of the previous year. This increase has occurred mainly in respect of the following commodities:—

(1) Refined Diesel Oils and Vaporising Oil.
(2) Cotton Yarn.
(3) Tobacco.
(4) Iron and Steel Products.
(5) Motor Spirit.
(6) Rayon and Synthetic Fibres and Yarn.
(7) Kerosene.
(8) Motor Vehicles.
(9) Artificial or Synthetic resins and plastic materials.
(10) Iron in any crude form.

23. Results of test audit in general.

A test audit of the documents and records maintained in the offices of the Chief Accounts Officers and in 1439 out of 2323 Central Excise ranges, revealed under-assessment and loss of revenue to the extent of Rs. 5·83 crores, as summarised in the following table :—

Name of the commodity	Total amount of under-assessment (Rs. in lakhs)
Tobacco	199·75
V. N. E. Oils	12·81
Paints	12·20
Tyres	26·00
Cotton Yarn	36·91
Cotton Fabrics	228·33
Refrigeration and Air-Conditioning appliances	14·75
Other Commodities	52·90
TOTAL	583·65

The under-assessments/losses of revenue have arisen mainly on account of the following:—

	(Rs. in lakhs)
(*a*) Wrong fixation of assessable values . . .	41·12
(*b*) Non-levy of duty on goods cleared as pre-excise stock	1·45
(*c*) Under assessment/loss of revenue arising from misclassification	66·51
(*d*) Incorrect application of exemption orders .	58·17
(*e*) Assessment at lower rates of duty	194·89
(*f*) Other failures to apply the provisions of the Act correctly and promptly	221·51
TOTAL .	583.65

The more important cases of the under-assessments and losses of revenue are discussed in the following paragraphs:—

24. Under-assessment/loss of revenue arising from wrong fixation of assessable values.

(a) In terms of 'Explanation' under section 4 of the Central Excises and Salt Act, 1944, "no abatement or reduction of declared ex-factory price" shall be allowed except in respect of 'trade discount' and "the amount of duty payable" for the purpose of ascertaining the assessable value of an article subjected to *ad valorem* assessment. Where, however, the declared price includes elements which are attributable to post-factory processes and thereby referable to the sales organisation, as distinct from the manufacturing unit proper, the Board in a clarification issued in November, 1957 instructed that such elements should first be excluded from the declared price to arrive at the ex-factory price.

In the case of a foot-wear manufacturer whose declared price was inclusive of (i) sales organisational expenses, (ii) trade discount, and (iii) Central Excise duty element, it was noticed in Audit that a "flat discount" on account of (a) their expenses like distribution charges, travelling expenses, advertisement expenses, etc. which were referable to sales organisation and (b) trade discount, both being at a stated percentage of the declared price, was allowed to be deducted from the declared price of the footwear for the purpose of ascertaining the Central Excise duty element included therein. But in terms of the provisions of aforesaid Act and also Board's orders of November. 1957, referred to above, ex-factory price should have first been ascertained by deducting the sales

organisational expenses (at the stated percentage of the declared price) from the declared price. Trade discount is one of the elements of ex-factory price and is calculated at the stated percentage of the ex-factory price and not of the declared price if such declared price includes sales organisational expenses. The deduction of the 'flat discount' from the declared price thus resulted in lowering the ex-factory price and thereby the assessable value. This resulted in a loss of revenue to the extent of Rs. 9,60,821 for the period from March, 1964 to October, 1964.

The draft para was sent to the Ministry on 10th November, 1965 and the Ministry replied in February, 1966 that the method of working out the assessable value is being ascertained.

(b) The duty on patent or proprietary medicines was levied by the Finance Act of 1961 under Tariff item 14-E. The duty is on *ad valorem* basis and statutorily the assessable value is to be fixed in accordance with the provisions of section 4 of the Central Excises and Salt Act, by finding out the wholesale cash price. However, the Central Board of Revenue issued instructions in April, 1961 stating that where a manufacturer voluntarily agreed to declare his wholesale price at a rate which was not less than 25 per cent. lower than the published retail price for medicine, the assessing officer might accept such price for the purpose of assessment without insisting on production of evidence for verifying the wholesale price. This 25 per cent is towards discounts allowed on the consumer's list price. In another circular issued in September, 1961, the Board confirmed that if the actual discount ascertainable in any case was less than 25 per cent only the actual discount should be taken and not the higher percentage of 25. The ingredients of the Board's order were thus :—

(1) that the value declared should be not less than 25 per cent. lower than the published retail prices ;

(2) that the acceptance of this was discretionary with the Collector who was not prevented from verifying the actual figures in any particular case ;

(3) that if the actual discounts were lower than 25 per cent, only the lower discounts should be allowed.

In September, 1961, however, the then Secretary, Revenue Department, during his visit to one of the Collectorates issued verbal instructions that the intention of the orders issued in April, 1961 was "to accept the assessable prices strictly within Section 4 or the publicised retail prices less 25 per cent or nett trade prices less 10 per cent *whichever may be in favour of the assessee* and that there was no intention to verify whether the actual discounts granted worked out

to the above percentages". Following the verbal instructions, the Collector allowed the higher discounts of 25 per cent or 10 per cent, without verifying the actual discounts and asked the Board to confirm specifically, Secretary's verbal instructions in this regard. The Board did not confirm these instructions but on the contrary clarified in a letter issued in March, 1962 that the percentages of 25 and 10 were the maximum admissible and that if a manufacturer declared a lower discount, the assessable value should be determined only with reference to such lower discounts. Even after the receipt of this clarification, the wrong procedure of allowing the maximum discounts was continued in some cases till 19th May, 1962. Thus, as a result of Secretary's verbal instructions which were illegal and which he subsequently failed to confirm in writing, Government lost a revenue and manufacturers in a particular region gained an advantage of Rs. 1,97,570 during the period from 26th April, 1961 to 18th May, 1962. Further, in Audit's view, it is doubtful if the instructions issued regarding determination of assessable value in this case, by allowing discounts with reference to the consumer's price or the retailer's price are in accordance with the provisions of Section 4 of the Central Excises and Salt Act, 1944.

(c) Central Excise duties are leviable on refrigerators on an *ad valorem* basis. Under section 4 of the Central Excises and Salt Act, 1944, the value for purposes of assessment shall be the wholesale cash price for delivery at the place of manufacture or the nearest wholesale market. From this wholesale price, no abatement or reduction shall be allowed in determining the assessable value except in respect of trade discount.

According to the orders of the Government of India, any discount which has been allowed only under a particular contract and is not generally available to any independent wholesale purchaser is not admissible for deduction in ascertaining the assessable value of the article. The Government of India had further clarified that any price charged to a sole selling agent or distributor is not an acceptable price for purposes of assessment.

A factory manufacturing refrigerators in one of the Collectorates was, under an agreement, allowing to its sole selling agents a trade discount of 10 per cent. This trade discount was not allowed to any independent dealer other than the sole selling agents. The factory was deducting this trade discount even in respect of the refrigerators cleared from the factory premises to its own show-rooms. The factory was paying excise duty on the assessable value arrived at, after deducting this discount in respect of the sales to sole selling agents and the clearances for the show-room.

On account of this irregular deduction of trade discount in the case of the sales to sole selling agents and clearances to the show-room, there had occurred a short levy of duty to the extent of Rs. 8,71,541 for the period from March, 1961 to March, 1964. On this being pointed out, a supplementary demand has been issued by the Department.

(d) In one Collectorate, the assessable values of chinaware and porcelainware, in the case of a particular manufacture, were fixed in December, 1964 for the quarterly periods from October, 1962 to December, 1964 at amounts higher than those declared by the manufacturer. The prices fixed for the subsequent quarterly periods were also higher. The manufacturer represented against the fixation of the higher prices and the goods manufactured by him were allowed clearance, on the execution of a bond, at the prices declared by him. It was, however, seen that the manufacturer, while selling the goods to his dealers, recovered from them the excise duty applicable to the higher assessable values as determined by the Department for the period from 1st January, 1965 to 31st May, 1965 and retained with him the differential duty amounting to Rs. 77,739 so recovered.

The Department has issued a demand for the recovery of this amount as well as for the recovery of the differential duty from October, 1962 to December, 1964, amounting to Rs. 2·75 lakhs.

(e) Iron and steel products are assessable at 5 per cent *ad valorem*. It was noticed that in two factories the wholesale cash price, on the basis of which assessable value was fixed, had been determined incorrectly. Consequently, there was an under assessment of Rs. 78,100 in both these cases for the period December, 1962 to February, 1964. On this being pointed out, necessary demands were raised and the amounts recovered.

(f) For the determination of the assessable value, deduction is allowed from the declared price (inclusive of duty) to the extent of the amount of duty payable by the manufacturer. It was, however, noticed that in the case of two tyre manufacturers, deduction on account of basic and special excise duties in one case and special excise duty in another, was allowed at the full rates notwithstanding the fact that one of these factories did not pay any special excise duty at all and paid basic duty at a concessional rate, and the other factory had paid special excise duty, at less than full rate, under an exemption notification.

This irregularity in assessment has resulted in an under-assessment to the extent of Rs. 5,69,650 for the period from 1st March, 1964 to 31st May, 1965. On this being pointed out, the Department has so far raised demands to the extent of Rs. 2,48,752.

(g) The price of certain refrigeration and air-conditioning machinery was approved by the department for the purpose of levy of excise duty on *ad valorem* basis during the period from March, 1962 to February, 1965. However, the manufacturer was charging from the wholesale dealers, warranty, packing, forwarding and publicity charges in addition to this. Since these charges form part of the wholesale price, the Department was requested in June, 1964 to review the assessable value of the machinery. The assessable value was revised upward with effect from 22nd February, 1965 after taking into account the above-mentioned charges. A demand for differential duty amounting to Rs. 64,920 for the period from 20th November, 1964 to 21st February, 1965 was raised against the manufacturer and realised.

The Department has been requested to work out the loss of revenue for the period from March, 1962 to 19th November, 1964 as the claim on this account has become time-barred. The Ministry have stated that the figure of loss of revenue is being ascertained and steps are being taken to fix responsibility for the lapse.

25. **Non-levy of excise duty on goods cleared as pre-excise stock.**

Electric wires and cables became dutiable with effect from 24th April, 1962. The Central Board of Revenue issued instructions that stocks of electric wires and cables which were in a fully manufactured condition and ready for delivery on the midnight of 23/24, April, 1962 were to be treated as pre-excise stock.

In one factory in a Collectorate, it was noticed that a number of drums of cables had been allowed clearance without payment of duty as pre-excise stock after 24th April, 1962 even though these articles had not been included in the pre-excise stock declaration filed by the manufacturer. On this being pointed out, demands for Rs. 30,605 were raised and recovered.

The Ministry have stated that the circumstances in which irregular clearance was given without payment of duty are being enquired into.

26. **Under-assessment/loss of revenue arising from misclassification.**

(a) The Tariff definition of Patent or Proprietary medicines was revised with effect from 24th April, 1962 to include under this item, such preparations which had on themselves or their containers a name, mark, symbol, monogram or a label indicating the connection between the medicines and the person who had the right to use the name or mark. In December, 1962, the Board clarified that if a label was used

so as to highlight the name of the manufacturer to a greater extent than that of the name of the medicine, the preparation would fall within the revised definition of the Tariff item and attract levy of duty. It has come to notice that there were delays even upto August, 1963 in examining the labels of medicines to determine whether they fall within the revised definition. Recovery of duty in respect of these cases was not made until the date of communication of the results of scrutiny of the labels to the manufacturers. In some of the cases that have come to notice, the loss of revenue on account of such delays amounted to Rs. 1,94,148.

(b) Tablewares are chargeable to duty at 15 per cent *ad valorem* while other articles of chinaware and porcelainware under category "not otherwise specified" are to pay duty at 10 per cent *ad valorem*. Conventional items of tableware like vegetable dish, bogithala, Kashmiri bowls, tumblers, etc. which are generally associated with dinner sets in Indian homes were assessed in one Collectorate at 10 per cent *ad valorem* instead of at 15 per cent. Audit pointed out in September, 1963 that these items should be properly classified as tablewares but no action was taken by the Collectorate to rectify the assessment until the Central Board of Excise and Customs pointed out the same misclassification in February, 1964. On account of the wrong classification, there had occurred a loss of revenue to the extent of Rs. 30,702 for the period August, 1962 to February, 1964.

Similar misclassification relating to Kashmiri bowls in another Collectorate also came to the notice of Audit resulting in a loss of revenue to the extent of Rs. 17,036.

(c) Offset paper weighing 85 grammes and above per square metre is not used for printing or writing but for drawing as reported by the Tariff Commission in 1959. Having regard to this, the Central Board of Revenue clarified in August, 1963 that such paper should be assessed under Tariff item 17(1). However, it was noticed in Audit that such paper cleared by a factory during the period August 1963 to April, 1965 was assessed at a lower rate of duty treating it as falling under item 17(3) instead of at the higher rate applicable. This incorrect classification has resulted in a short-levy of Rs. 1,49,409. The department has since raised a demand in May, 1965. Report of recovery is awaited.

The Ministry, while admitting the audit objection, have replied that the initial misclassification arose because the local Central Excise officers misinterpreted the Board's ruling of August, 1963.

(d) Tractors are assessable as motor vehicles with effect from 1st March, 1960. Tyres for tractors should also, therefore, be classified and assessed as tyres for motor vehicles under Tariff item 16(1). The rate of duty for tyres of motor vehicles is 40 per cent *ad valorem.*

It was, however, noticed in one factory that tyres for tractors were assessed at the lower rate of 15 per cent treating them as "all other tyres" instead of at the correct rate of 40 per cent. Consequently, there has been an under-assessment to the extent of Rs. 20,27,722 during the period from 1st January, 1963 to 30th June, 1964. On this being pointed out by Audit in August, 1964, the Government of India, issued a notification on 3rd April, 1965, exempting tractor tyres from so much of the Central Excise duty as was in excess of 15 per cent, in order to regularise the under-assessment. Recoveries of past arrears have been avoided by giving retrospective effect to the notification from 1st March, 1960.

(e) According to an order issued by a Collector of Central Excise on the 17th January, 1964, only glass tubings of 4 to 10 mm bore and 1 mm wall thickness, if made from neutral glass, were to be assessed at 5 per cent *ad valorem* as "laboratory glassware" under Traiff item 23A(2). As this order was to take retrospective effect subject to rules of limitation, glass tubings of the above size not made from neutral glass and those of other sizes were to be assessed under Tariff item 23A(4) at 15 per cent *ad valorem* with retrospective effect. It was however, noticed in the case of one glass factory that glass tubings of sizes other than 4 to 10 mm bore and 1 mm wall thickness made from neutral glass were assessed to duty at the rates of 5 per cent and 10 per cent *ad valorem* respectively instead of at 15 per cent *ad valorem.* Besides, no demand for special excise duty leviable prior to the 1st March, 1964 had also been raised. On these omissions, being pointed out, the Department raised demand for Rs. 32,327 for the period from 1st March, 1961 to 30th November, 1964.

27. **Incorrect application of exemption orders.**

(a) Under a notification issued in April, 1962 by the Government of India, which was amended in June, 1962, the first 20,000 sq. metres of cotton fabrics cleared in a month for home consumption from any processing factory are exempt from payment of duty in excess of the duty leviable on such fabrics at the time of the entry into the factory. While auditing the assessments of some of the processing/dye works, it was noticed that cotton fabrics bleached in one factory and cleared

under bond to an independent processor for dyeing/printing were cleared free of duty from the second factory applying the exemption relating to 20,000 sq. metres referred to above. It was noticed that the clearances were not counted against the 20,000 sq. metres quota of the first factory. As only that much duty as is in excess of that leviable at the time of entry of the fabrics into the factory could be exempted, it was held in Audit that in such cases the duty payable at the time of removal of fabrics from the first factory should be recovered in full at the time of their final clearance from the second factory and only that portion of the duty as is in excess of the amount payable at the time of entry of the fabrics in the second factory could be exempted while computing the 20,000 sq. metres quota of the second processor. The procedure followed by the Collectorate amounted really to an evasion of duty. Accepting the views of Audit, the Collector reviewed all such clearances from 24th April, 1962 and has raised demand of differential duty amounting to Rs. 23,925.

(b) According to a notification issued in November, 1963, sugar produced in any factory in the States of Madras, Mysore and Kerala during the period beginning from any date after the 30th June, 1963 and ending with 31st October, 1963, which is in excess of the quantity produced by the factory during the corresponding period in 1962, is entitled to a concessional rate of duty at half the standard rate. Audit noticed that in the case of two sugar factories, this concession was allowed on the entire quantity of sugar produced by them in 1963 even though there was no production of sugar by these factories during the corresponding period in 1962. Audit pointed out that under the notification the concessional rate would be admissible only on the quantity of sugar produced by a factory which was in excess of the normal quantity produced by it during the corresponding period of 1962 and cannot apply to a factory which did not produce any sugar at all in 1962. The department did not agree with this view and held that in the case of a factory where no sugar was produced in 1962, the entire quantity of sugar production of 1963 should be deemed to be the excess production attracting the concessional rate. It may be mentioned that such an interpretation would be unrealistic, because:—

(i) the notification extending the concession does not apply to a factory which did not produce any quantity of sugar during 1962.

(ii) extending the concession to a factory which did not produce any sugar at all would result in an anamoly of a

higher rebate being given to a smaller quantity of production in the case of such a factory as compared to a factory which produced a much larger quantity of sugar in 1963 and had also produced sugar in 1962.

The total amount of concession incorrectly given to all such sugar factories has not been ascertained, but in respect of two factories mentioned above, there was a loss of revenue of Rs. 2,71,182.

(c) The rates of duty under the compounded levy scheme for vegetable non-essential oils were laid down by the Government on the basis of the normal production of expellers and were related to the dimensions of such expellers with reference to the length and diameter of the chamber of the expellers. If the dimensions were higher, the rates were also correspondingly higher. In a number of units in a Collectorate, the manufacturers declared reduced lengths of the chambers of the expellers by omitting the space occupied by certain blocks which they had inserted at the ends of the chambers. These lengths were also accepted by the departmental officers and duty was charged accordingly.

In April, 1962, the error was realised by the Department and in September, 1962, the Collector issued instructions for re-assessment of duty on the basis of the original dimensions of the expellers. Duty was charged accordingly, disregarding the reduction in length earlier allowed and demands were issued for short-levy of duty of Rs. 11·32 lakhs till September, 1962 in respect of 141 units. The Collector also reported the matter to the Central Board of Revenue stating *inter alia* that the short-levy was due to erroneous action on the part of the officers and not due to mis-statement of facts by the manufacturers. The demands for Rs. 11·32 lakhs were subsequently withdrawn by the Collector under instructions of the Board, the grounds for withdrawal *inter alia* being;

(i) the reduction was initially accepted by the local Central Excise officers; and

(ii) the demands were partially time-barred.

(d) Yarn in plain (straight) reel issued in 'hanks' was exempted from duty under a notification issued in February, 1963. In the case of two factories manufacturing cotton yarn, exemption was, however, allowed on clearances of cotton yarn issued in 'hanks' without ascertaining whether the yarn was of cross reel or plain (straight) reel. On this being pointed in Audit, the records of the factories were examined in detail by the departmental authorities and as a

result, it was found that yarn in cross reel was being irregularly exempted from Central Excise duty. The amount short levied came to Rs. 75,780 in two Collectorates. This amount has since been realised. The Ministry have replied that the circumstances in which the local Central Excise officials failed to assess cross-reeled yarn, are being looked into and such action, as may be warranted, will be taken.

(e) Under instructions issued by Government relating to levy of tobacco excise duty, the assessment of tobacco must be based on the condition in which it is presented for assessment and the tobacco must be physically identifiable as such for assessment under the relevant Tariff. Stalks of tobacco are entitled to preferential rates of duty. Accordingly, they should be assessed as stalks only when they are identifiable as such. Stalks when broken into bits or crushed into powder cannot be assessed as stalks but should be assessed at a higher rate applicable thereto. It was noticed in a Collectorate that during the period 1st April, 1963 to November, 1964, crushed stalks were assessed at the incorrect preferential rates. On account of this, there had occurred a loss of revenue of Rs. 26,72,463 for this period. This practice was continued even after the Central Board of Excise and Customs clarified in a letter issued in December, 1964 that crushed stalks should be charged at higher rates. The under-assessment due to collection of duty at a lower rate after the issue of the clarificatory letter worked out to Rs. 3,97,532.

(f) Under a notification issued in October, 1960, manufacturers producing water-paints, oil-paints and enamels whose total output taken together did not exceed 150 metric tonnes in a financial year were granted exemption from duty in respect of the first 50 metric tonnes of their clearances in a year. The Government clarified in February, 1964 that this concession was applicable only to manufactures who produced both water-paints and oil-paints and enamels and not to those who produced water-paints alone or oil-paints and enamels alone in a year. It was noticed in Audit that several manufacturers, who produced only one of these items, namely oil paints and enamels or water-paints, were given the benefits of the concession, even though the notification was clear that it should be applied only to cases of manufacturers who produced both these items. By extending the concession contrary to the notification, the Department has lost a total duty of Rs. 7,63,085 in four Collectorates alone. After the draft para had been sent to them, the Ministry have issued a notification (on 18th December, 1965) with retrospective effect from 1st October, 1960 extending concession to manufacturers producing only one of these items.

(g) Motor vehicles fitted with duty paid internal combustion engines are exempt from so much of the duty (including countervailing duty) leviable thereon as is equivalent to the amount of duty already paid on such engines. It was subsequently clarified by the Board that the exemption granted to the internal combustion engines going into the manufacture of a motor vehicle would include every thing that the internal combustion engine is made of. It is apparent that the Board's clarification will not apply in respect of accessories not fitted to internal combustion engines as an integral part of such engines.

A manufacturer imported unidirectional dyna-starters (electric motors) and paid countervailing duty at the rates applicable to electric motors. These starters were fitted as accessories to the internal combustion engines, which were fitted to the motor vehicles cleared by the manufacturer. The incorrect exemption granted towards countervailing duty on these dyna-starters fitted only as accessories, resulted in a loss of revenue of Rs. 78,874 (approximate) for the financial years 1963-64 and 1964-65.

In their comments, the Ministry have stated that the Collector of Central Excise is being advised to raise demands for duty.

28. **Assessment at lower rates of duty.**

Specific rates of duty have been prescribed for cotton fabrics depending on the average count of yarn used in such fabrics. By a notification issued in June, 1962, the Central Government made the levy applicable at two stages :—

(1) at the grey stage ; and

(2) at the processed stage.

The rate at the processed stage is an additional levy depending on the type of processed cloth and is payable on the duty-paid or exempted grey cloth used for processing. Duty is thus, leviable firstly on the full quantity of grey cloth produced at the rates prescribed and a further duty is recoverable on the processed fabrics cleared as such at the rates appropriate thereto.

It was seen in Audit that in certain factories which had the facilities of clearing the grey cloth for processing in bond, the duty finally levied and recovered on the grey cloth so cleared was based on the quantity of processed cloth actually produced therefrom and not on the larger quantity of grey cloth which had been removed in bond. This was because a portion of grey cloth got converted into fents, rags and chindies at the time of processing. As under the terms

of the notification issued in June, 1962, duty recoverable was on the full quantity of grey cloth issued in bond, the Government has lost revenue to the extent of Rs. 1,93,50,840 in seven Collectorates only.

The Ministry have replied that it was not the intention that the grey stage duty should first be recovered and only should the duty-paid cotton fabrics allowed to move to a processing unit. The Law Ministry, however, expressed the view that the language of the notification issued in June, 1962, points to the conclusion that the intention is that the duty should be calculated at each stage, *viz.*, (i) grey stage and (ii) processed stage, whether such processing takes place in a composite mill or in a separate unit to which the grey fabrics might have been removed in bond. It is interesting to note that although the language of the notification issued in June, 1962 was thus clear and specific, the Collectorates continued to violate its terms which has resulted in the loss of revenue mentioned above.

29. Other Omissions and Irregularities.

(a) *Under assessment of tobacco cured in whole leaf form and used for the manufacture of biris.*

The Finance Act of 1959 amended item 4(I)(5) of the First Schedule to the Central Excises and Salt Act, 1944, and prescribed that non-flue-cured tobacco of certain physical specifications if not actually used for the manufacture of cigarettes, smoking mixtures for pipes and cigarettes and biris would be subject to duty at 50 P per lb. An explanation was also inserted under the Tariff item to the effect that such varieties of unmanufactured tobacco used in the manufacture of biris as the Central Government, by a notification in the official gazette, may specify in that behalf, shall not be deemed to fall within sub-item (5) of item 4(I), but shall be subjected to the higher rate of duty as specified in sub-item (6) of item 4(I).

Thus, under the substantive part of the Tariff item 4(I)(5) as amended in 1959, tobacco cured in whole leaf form and packed or tied in bundles, hooks or bunches or in the form of twists or coils is to be subjected to the lower rate of duty if two conditions are satisfied; (a) it had to conform to the physical specification prescribed and (b) it was not actually used for the manufacture of biris. If tobacco cured in whole leaf form was actually used in the manufacture of biris it would be subject to the higher rate of duty under item 4(I)(6), since such tobacco would fall outside the scope of item 4(I)(5)(iv).

It was, however, noticed in Audit that in some of the Collectorates, the higher rate of duty was not levied in respect of the tobacco cured in whole leaf form, even though it was known that the tobacco was cleared for use in the manufacture of biris. It has been explained that the higher rate of duty could not be imposed in such cases till a notification was issued by the Government specifying the variety as a variety used for the manufacture of biris. No such notification has been issued by the Government so far.

The omission to levy higher duty on the tobacco cured in whole leaf form but used in the manufacture of biris has resulted in loss of revenue of Rs. 1,68,49,359 during the years 1963 and 1964, in seven Collectorates.

(b) *Failure to draw periodical samples and failure to act promptly on chemical test reports.*

A duty of 25P per kilogram was imposed on shoddy yarn from 24th April, 1962. The Central Board of Revenue in a letter issued in April, 1961 had defined shoddy woollen yarn as yarn containing 95 per cent. or more of shoddy wool and having upto 5 per cent. of virgin wool or other fibres. It was noticed that in a Collectorate no attempt was made to draw samples of shoddy yarn manufactured by a factory till March, 1962. A sample was drawn by the Sector Officer only on 29th March, 1962 and sent for analysis to the Deputy Chief Chemist. The Deputy Chief Chemist after analysis intimated the results on the 1st May, 1962 to the effect that the sample contained 89·9 per cent. of wool (mainly shoddy) and 10·1 per cent. of other fibres (regenerated cellulose). No action was, however, taken on the test report although the sample did not conform to the definition of shoddy yarn. Subsequently, in June, 1962, the Board issued a letter revising the definition of shoddy woollen yarn as yarn containing 80 per cent or more of shoddy wool. This definition was given retrospective effect and no demands were raised in this case.

The loss of revenue in this case on account of non-levy of duty on the basis of the test report is estimated at Rs. 2,71,122 for the period from 1st March, 1961 to 22nd June, 1962.

(c) *Incorrect levy of duty based on weight instead of by volume.*

Prior to 1st March, 1963, Central Excise duty on liquid paint could be levied on the basis of weight, if sold by weight, and on the basis of volume, if sold by volume. The duty on the basis of weight was, however, less than the duty leviable if assessment was made

on the basis of equivalent volume measure. In one State, liquid paint could only be sold by volume with effect from 1st January, 1962, as the State Government prohibited the sale of such liquid paint by weight from that date.

Notwithstanding the above prohibitory orders of the State, liquid paints were cleared by weight, instead of by volume, in certain factories under two collectorates within that State and assessment was also made on the basis of weight. Since the licensee could sell the paint only by volume after 1st January, 1962, the Central Excise duty should have been levied on that basis under Tariff item 14(1)(4)(iii) instead of by weight. By not doing so, the Government lost a revenue of Rs. 1,47,756 for the period from 1st January, 1962 to 28th February, 1963.

The Ministry have replied that the Central Excise Department was not aware of the prohibitory orders in question issued by the State Government as no copy of the notification was received in any Central Excise formation upto 8th June, 1965 when a copy of the notification was obtained from the State Government by the Collector of Customs and Central Excise. In seven cases, verification conducted has since revealed that the paints had been sold by volume. In these seven cases, the differential duty amounting to Rs. 10,420 has since been realised. As regards the other cases, the legal position is stated to be under examination.

(d) *Non-recovery of special excise duty.*

One of the paper mills was clearing white pulp board on payment of the concessional rate of Central Excise duty contemplated in the Government of India, notification issued in March, 1964. However, special excise duty at 20 per cent. of the basic excise duty prescribed in Tariff item 17 was omitted to be levied on such clearances. This has resulted in a loss of revenue of Rs. 73,362 for five months. The Ministry have stated that instructions have been issued to recover the amount.

(e) *Under-assessment of excise duty on iron and steel products.*

The rate of excise duty on iron and steel products was Rs. 110 per metric tonne with effect from 1st March, 1964. This rate was to be reduced by Rs. 22 per metric tonne if the products had been manufactured from old and used scraps, thus bringing the effective rate on such products to Rs. 88 per metric tonne with effect from 1st March, 1964.

In one Collectorate, the excise duty on the products was recovered at Rs. 38 per metric tonne from 1st March, 1964 to 30th September, 1965 after allowing a further rebate of Rs. 50 per metric tonne which was admissible if the product had been manufactured from ingots. The additional rebate of Rs. 50 per metric tonne was not allowable as the product had been manufactured out of old and used scrap and not from ingots. The duty short recovered on this account works out to Rs. 2,03,584.

(f) *Loss of revenue due to withdrawal of demands.*

During 1960-61, a licensee received under bond, five consignments of tobacco coming under the Tariff description 4 I(6). These consignments were subsequently cleared (without subjecting the tobacco to any processing within the warehouse) during the period November, 1960 to April, 1961. The description of the tobacco shown in the assessment documents, however, was "tobacco other than flue-cured in whole leaf form for biris—4 I(5)(iv)" which carried a lower rate of duty than 4 I(6). The clearance at the lower rate of duty was permitted by the Department without verifying the physical form of the tobacco presented for assessment as required under departmental instructions. Subsequently, the Department raised demands for differential duty to the extent of Rs. 22,942. However, on a revision petition filed by the party, out of the sum of Rs. 22,942, demands amounting to Rs. 16,675 were cancelled on the ground that they were time-barred. The failure on the part of the Department to verify the correctness of the description noted by the licensee in the assessment documents and to ensure beyond doubt the physical form of tobacco, at the time of clearance, has resulted in the loss of revenue of Rs. 16,675.

(g) *Irregular refund of duty.*

With effect from 24th April, 1962 duty was payable on copper and copper alloys (containing not less than 50 per cent. by weight of copper). A factory manufactured 1099·496 metric tonnes of copper rods out of copper bars imported prior to 24th April, 1962 and on which no countervailing duty had been paid. Initially, duty was charged at Rs. 100 per metric tonne on these rods but the entire duty of Rs. 1,09,950 was subsequently refunded to the factory on the ground that the copper rods were rolled from pre-excise copper bars and that these were already in the market. The rods were fresh product and were cleared from the factory after introduction of duty and as such, duty was payable. The refund of Rs. 1·10 lakhs was thus, irregular.

From 1st March, 1963 the duty on copper in crude stage (which includes bars and rods) was raised from Rs. 100 to Rs. 300 per metric tonne. The same factory manufactured 2267·978 metric tonnes of copper rods out of copper bars imported prior to 1st March, 1963 on which countervailing duty at Rs. 100 per metric tonne had been paid. When these rods were cleared from the factory on or after 1st March, 1963 differential duty at Rs. 200 per metric tonne was assessed and realised. But subsequently, the entire amount of duty *viz.* Rs. 4,53,595 was refunded to the factory on instructions from the Central Board of Revenue. The refund here was also irregular as the copper bars were processed into copper rods and were cleared after the duty had been raised by Rs. 200 per metric tonne and therefore, the differential duty was chargeable on the quantity cleared as copper rods.

The Ministry have replied that the amount of duty of Rs. 1,09,950 referred to in the first paragraph has since been recovered by adjustment in the account current of the party.

As regards the amount of Rs. 4·54 lakhs, the Ministry's contention is that the copper rods produced out of bars having paid duty at Rs. 100 per metric tonne prior to 1st March, 1963, should not be subjected to duty again after 1st March, 1963, specially when the secondary producers manufacturing goods from another crude form were not subjected to licensing control.

30. Other Topics of Interest.

(a) *Delay in withdrawing exemption in the case of mixed yarns.*

Rayon and synthetic fibres and yarn are assessable to duty under Tariff item 18 at Rs. 9 per Kg. However, by a notification issued in December 1956, the duty on staple fibre yarn was reduced to 2 annas per lb., and by subsequent notifications issued between 1957 and 1962, staple fibre yarn was completely exempt from duty. In the case of manufacture of mixed yarn spun out of terylene fibre and cotton fibre or terylene fibre and woollen fibre, the Central Board of Revenue issued instructions in April 1963, that they should be assessed as cotton yarn or woollen yarn if the mixtures contained not less than 10 per cent. by weight of cotton or wool, as the case may be. That is, even if the mixed yarn contained 90 per cent. staple fibre and only 10 per cent. cotton or woollen fibre they would be assessed as cotton or woollen yarn. Subsequently, in October 1964, the exemption given to staple fibre yarn was withdrawn and the Government of India, by a fresh notification introduced higher rates

in respect of both staple fibre yarn and mixed yarn where the content of the natural fibre is not more than 40 per cent.

The Ministry have explained that the change could have been made only in October, 1964 after the exemption from duty in respect of staple fibre yarn was withdrawn. If this is so, it is not clear why the change made in October, 1964, could not have been made in April, 1963 itself by withdrawing the exemption in respect of staple fibre yarn to the extent it was used for mixing with cotton and wool. If this had been done, the Government would have gained in revenue to the extent of Rs. 35·12 lakhs during the period between 1st April, 1963 to 15th October, 1964 in three Collectorates alone.

(b) Electric wires and cables are assessable to duty at 15 per cent *ad valorem*. Some varieties of the wires and cables had no wholesale market and were sold only at rate contract prices. Where there is no wholesale market for a product, for purposes of determining the assessable value the price at which articles of the like kind and quality are sold or are capable of being sold has to be ascertained.

It was noticed in two Collectorates that the Department accepted for the purpose of assessment different rate contract prices contracted by the manufacturers with the different parties for articles of the like kind and quality at the same time and not the highest price at which the goods were capable of being sold as contemplated in the Act. By thus departing from the provisions relating to the fixation of assessable values, a loss of revenue of Rs. 2,67,293 has occurred during the period 12th June, 1961 to 30th June, 1963.

(c) *Incorrect exemption given under Khadi and other Handloom Industries Development (Additional Excise duty on cloth) Act*, 1953.

An additional excise duty in the form of 'handloom cess' is leviable on all cloth woven from any material including silk, artificial silk, staple fibre and wool, under the provisions of the Khadi and other Handloom Industries Development (Additional Excise duty on cloth) Act, 1953. Under that Act, the Government are given the power to exempt by notification, from the whole or any part of the additional excise duty, any variety of cloth which is for the time being exempt from the duty of excise imposed under the Central Excises and Salt Act, 1944. Thus, exemption, partial or whole, can be given from the handloom cess only on those varieties of cloth which are exempt from the duty imposed under the Central Excises and Salt Act, 1944.

Cut pieces of cotton fabrics known as fents were wholly exempt from basic duty till 29th February, 1960 after which date, this exemption was withdrawn and specific rates of duty were imposed.

However, the Government of India issued executive instructions in February, 1960 that handloom cess would not be leviable on fents even after 1st March, 1960. The instructions were followed by a notification issued on 22nd April, 1960 exempting cut pieces of cotton fabrics from levy of handloom cess. The instructions issued by the Government of India and the notification which followed it, are *ultra vires* the provisions of the Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953. As this variety of cloth pays excise duty under the Central Excises and Salt Act, whatever be the rate of that excise duty, the Government of India have no powers to exempt it from the payment of the handloom cess.

From 24th April, 1962, fabrics of cotton, wool and silk manufactured on handloom (when processed) were subjected to excise duty under the Central Excises and Salt Act, 1944. No additional excise duty in the form of 'handloom cess' was, however, levied and recovered on such fabrics.

The amount involved in this run to well over Rs. 30 lakhs and it is extraordinary that the exemptions should have been granted without even verifying whether the Government had power to do so.

(d) *Arrears of Union Excise Duties.**

The total amount of demands outstanding as on 1st April, 1965 in respect of Union Excise Duties was Rs. 1109·84 lakhs as given below:—

Commodity	Pending for more than one year	Pending for more than one month but not more than one year	Total
Unmanufactured tobacco	239·09	73·45	312·54
Refined Diesel Oils	11·90	107·39	119·29
V. N. E. oils	20·38	3·16	23·54
Vegetable product	30·79	·30	31·09
Paints and Varnishes	13·69	4·31	18·00
Soap	13·81	2·07	15·88
Paper	19·41	12·25	31·66
Cotton fabrics	24·75	108·54	133·29
Iron and Steel products	9·45	4·02	13·47
All other commodities	263·55	147·53	411·08
TOTAL	646·82	463·02	1109·84

*Figures were furnished by the Ministry of Finance.

(e) *Remissions and abandonments of claims to revenue**

The total amount remitted, abandoned or written-off during 1964-65 was Rs. 2,65,923. The reasons for remissions and writes-off are as follows:—

	No. of cases	*Amount* Rs.
I. *Remission of revenue due to loss by*		
(*a*) Fire	58	31852
(*b*) Flood	57	25923
(*c*) Theft	13	4879
II. *Abandonment or write-off on account of*		
(*a*) Assessees having died leaving behind no assets	62	16390
(*b*) Assessees being untraceble	32	68681
(*c*) Assessees having left India	12	1704
(*d*) Assessees being alive but incapable of paying duty	180	101279
(*e*) Other reasons	42	15215
TOTAL	456	265,923

(f) *Frauds and evasions**

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

(i)	Total number of offences under the Central Excise Law prosecuted in courts	25
(ii)	Total number of cases resulting in conviction	11
(iii)	Total value of goods seized	Not available
(iv)	Total value of goods confiscated	Rs. 11,680
(v)	Total amount of penalties imposed	Rs. 6,22,455
(vi)	Total amount of duty assessed to be paid in cases where levy of duty was adjudged	Rs. 31,33,276
(vii)	Total amount of fine adjudged in lieu of confiscation	Rs. 5,75,622
(viii)	Total amount settled in composition	Rs. 1,10,312
(ix)	Total value of goods destroyed after confiscation	Rs. 63,239
(x)	Total value of goods sold after confiscation	Not available

*Figures were furnished by the Ministry of Finance.

CHAPTER IV

CORPORATION TAX AND TAXES ON INCOME OTHER THAN CORPORATION TAX

31. The total proceeds from both Corporation Tax and Taxes on income other than Corporation Tax (excluding the portion of income-tax which was assigned to the State Governments) reached a high peak for the year 1964-65. It amounted to Rs. 456·80 crores, the highest ever recorded. Of this amount, Rs. 313·27 crores and Rs. 2·74 crores were accounted for by Sur-tax and Super-profits tax collections respectively. The figures for the three years, 1962-63, 1963-64 and 1964-65 are as under:

	(In crores of rupees)		
	1962-63	1963-64	1964-65
Corporation Tax	220·06	287·30	313·64
Taxes on income other than Corporation Tax	92·13	126·29	143·16

32. Results of test audit in general.

During the period from 1st September, 1964 to 31st August, 1965, a test audit of the documents of the Income-tax offices revealed a total under-assessment of tax of Rs. 864·48 lakhs in 9141 cases and over-assessment of tax of Rs. 36·88 lakhs in 1408 cases. Besides this, several defects in following the prescribed procedure also came to the notice of Audit.

Of the total of 9141 cases of under-assessment, there was a short levy of tax of Rs. 768·67 lakhs in 653 cases alone. The remaining 8488 cases accounted for an under-assessment of tax of Rs. 95·81 lakhs.

The position regarding the rectification of the cases of under-assessment and over-assessment mentioned above is indicated below:—

	No. of cases	Amount of tax (In lakhs of Rs.)
Under-assessment :		
(a) Cases since rectified or being rectified by the Department of Revenue at the instance of Audit	6806	480·86
(b) Cases where no rectification is possible because of time-bar resulting in loss of Revenue	155	12·73
(c) Cases where proper action has still to be taken by the Deptt. of Revenue	2022	244·26
(d) Cases which are not accepted by the Ministry and are under verification and examination in audit	158	126·63
Over-assessment :		
(a) Cases since rectified or being rectified by the Department of Revenue at the instance of Audit	1200	29·58
(b) Cases where no rectification action is possible because of time-bar	10	0·42
(c) Cases where proper action has still to be taken by the Deptt. of Revenue	198	6·88

33. The under-assessment of Rs. 864·48 lakhs has been the result of the following lapses:—

	(In lakhs of Rs.)
(1) Errors and Omissions attributable to carelessness and negligence and failure to apply the correct rate of tax	41·86
(2) Incorrect determination of income under the head 'Salaries'	5·97
(3) Incorrect determination of income under the head 'House property'	11·86
(4) Failure to compute the income from business properly	87.60
(5) Failure to compute the income from dividends and interest on securities properly	8·46
(6) Under-assessment arising from wrong computation of development rebate and depreciation, and failure to withdraw the rebate in cases of breach of the conditions prescribed in the law	368·42
(7) Incorrect computation of income under capital gains and omission to levy tax on capital gains	3·73
(8) Irregular set-off of losses	5·14
(9) Irregularities committed while making assessments of firms and partners	18·05
(10) Irregular exemptions and excess reliefs given	118·93
(11) Failure to levy super-tax on companies correctly	22·57
(12) Failure to levy additional super-tax in the case of companies	34·04
(13) Irregular grant of refunds	6·23
(14) Non-levy of penal interest	17 72
(15) Mistakes committed while giving effect to appellate orders	1·07
(16) Income escaping assessment	27·52
(17) Incorrect determination of super profits tax and sur-tax	24·20
(18) Other lapses	61·11

Some instances of the types mentioned above are discussed in the following paragraphs:

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

(a) A non-resident who had not opted to be assessed at the rates applicable to the world income, is required to pay income-tax at the

maximum rate, and super-tax at a flat rate of 19 per cent or at the rates applicable to the total income whichever is higher.

In six cases of non-residents it was noticed that the flat rate of 19 per cent of super-tax was applied even though the tax payable at the rates applicable to the total income were higher. This resulted in an under-assessment of tax to the extent of Rs. 1·71 lakhs.

The Ministry have stated that action is being taken to rectify the assessments.

(b) A company while returning its total income for the assessment year 1959-60 included a share income of Rs. 40,19,611 from a registered firm in which it was a partner. In working out the total income of the company the Income-tax Officer first deducted from the total income a share income of Rs. 44,19,611 instead of the correct figure of Rs. 40,19,611 as returned by the assessee and added the correct share income as ascertained from the firm's assessment.

The total income was, thus, under-assessed by Rs. 4 lakhs resulting in a short levy of tax of Rs. 2,13,983. The Ministry have accepted the mistake. Report regarding rectification and recovery is awaited.

(c) The total income of a non-resident banking company for the assessment year 1961-62 was computed on the basis of its Profit and Loss Account in which the assessee had debited an amount of Rs. 98,247 as bad debts. The Income-tax Officer held that out of this amount, only Rs. 61,509 was admissible as deduction, the balance of Rs. 36,738 being inadmissible. This inadmissible amount should have been added back to the net amount.

However, while computing the income, the Income-tax Officer instead of adding Rs. 36,738 to the net profits returned, wrongly deducted the sum of Rs. 61,509 resulting in an under-assessment of income by Rs. 98,247. The consequent short levy of tax amounted to Rs. 61,896. The Ministry have accepted the mistake. Report regarding rectification and recovery of tax is awaited.

(d) The income returned by a company for the assessment year 1959-60 was not accepted by the Department. The Income-tax Officer estimated the income and determined that a sum of Rs. 1,25,153 was to be added to the income returned. But while computing the income, only a sum of Rs. 12,515 was actually added, resulting in a short levy of tax of Rs. 58,007. The Ministry have reported that the mistake is under rectification.

In another case, the income for assessment year 1959-60 was determined at Rs. 3,37,230, but while calculating tax it was taken as Rs. 2,37,230 with the result that tax was short levied to the extent of Rs. 73,500. The Ministry have accepted the mistake. Report regarding rectification and recovery is awaited.

(e) With effect from the assessment year 1962-63, 'not ordinarily residents' were equated to 'non-residents' for the purpose of working out the tax liability on their Indian income. Consequently, a 'not ordinarily resident' under the new Act had to pay income-tax at the maximum rate and super-tax at 19 per cent unless he opted to be taxed at the rates applicable to his world income. This important change in the Income-tax Act was overlooked by one Income-tax Officer with the result that 93 cases test-checked by Audit in his circle, revealed an under-assessment of tax amounting to Rs. 20,76,480 for the assessment year 1962-63. Even for the subsequent assessment year, these mistakes were found by Audit in three cases involving a tax of Rs. 19,073. The Department have been requested to review the remaining cases and the result of the review is awaited.

The Ministry, while accepting the mistakes, have stated that in 26 cases involving a tax of Rs. 1,68,919, no recovery could be effected as the assessees had already left the country and that in the remaining 70 cases, involving a tax of Rs. 19,26,634, steps are being taken to recover.

35. **Incorrect determination of income under the head 'Salaries'.**

(a) Under the Income-tax Act, an employee who has income from salaries is entitled to deduct from that income a portion of his expenditure in maintaining a car owned by him if that car is used for the purpose of his employment. He is also entitled to proportionate allowance representing the normal wear and tear from such use. The amount to be allowed on both these counts is to be determined by the Income-tax Officer.

The Central Board of Revenue issued instructions in 1956 that the expenses for maintenance might be taken roundly from 25 to 50 per cent of the total expenditure incurred during the year on the maintenance of the conveyance subject to a maximum of Rs. 1200 per annum. As regards the allowance for wear and tear, the rates of depreciation prescribed for purposes of computing income from business might be taken as the guide but the actual amount to be allowed was to be limited to the same proportion as adopted for maintenance, subject here again to a maximum of Rs. 1,200. In

1957, the Board issued further instructions that as it had been represented to the Board that in the case of very senior officers these allowances were not adequate, claims for higher amounts, if made by these senior officers, should be referred to the Commissioner of Income-tax who would decide the amount to be allowed on the facts of each case. However, neither in practice nor in law, the whole of the expenditure incurred on the maintenance of a conveyance or the wear and tear relatable thereto could be allowed as expenditure admissible under the head 'Salaries'.

A random check of assessments of some very senior officers in one Commissioner's charge revealed that in a number of cases, the maximum limit of 50 per cent or the monetary limit of Rs. 1,200 has not been observed and the claims in excess of these limits have been allowed without getting the sanction of the Commissioner of Income-tax as instructed in the letter of the Central Board of Revenue. It was noticed that one senior officer of Govermnent had claimed that his private car had been used 100 per cent for official purposes and that this was admitted. The same assessee for an earlier assessment claimed car expenses of Rs. 4375 which included repair charges amounting to Rs. 2,100. As he did not furnish any details either of the car expenses or of the nature of the repairs done, the repairs were presumed to be of a capital nature not connected with the normal maintenance expenditure of the car and hence were disallowed by the Income-tax Officer. Of the remaining amount of Rs. 2,275, 75 per cent was allowed by the Income-tax Officer in his assessment order passed on 22nd February, 1960. Subsequently, the Income-tax Officer's orders were revised by the Commissioner of Income-tax under his special powers under section 33-A of the Income-tax Act, 1922, so as to give the assessee the advantage of higher maintenance allowance exceeding the permissible limit of Rs. 1,200 by more than 100 per cent.

The Draft paragraph was sent to the Ministry in November 1965 and no reply has so far been received (February, 1966).

(b) While determining the income from salary, entertainment allowance received by an employee is added to the income but a deduction is allowed under certain conditions in the case of non-Government employees of the actual amount of the allowance received or 1/5th of his salary or Rs. 7,500 whichever is the least. An important condition imposed in this respect is that the employee must be continuously in receipt of such allowance regularly from the

same employer from a date prior to 1st April, 1955. This condition was over-looked in two cases resulting in an under-assessment of tax of Rs. 14,400 for the years 1962-63 to 1964-65.

36. Incorrect determination of income under the head 'House property'.

An assessee and his wife owned several house properties in a city, the income from which was assessed in the hands of the assessee as income from property upto the assessment year 1955-56. In the previous year relevant to the assessment year 1956-57, the house properties which fetched an annual rent of more than Rs. 50,000 were transferred on lease on a monthly rent of Rs. 1,750 to a private Limited Company in which the assessee and his wife were the sole shareholders. The Income-tax Officer while making assessments for 1956-57 and 1957-58 held that the lease rental as stated in the deed, had been deliberately understated. He accordingly assessed the income from the properties on the basis of the gross rental which the assessee used to receive from his properties. However, for the subsequent years 1958-59 and 1959-60 the Income-tax Officer failed to do this and took the income from property on the basis of the rent noted in the lease-deed. This resulted in an under-assessment of tax of Rs. 74,942.

The Ministry have replied that action has been taken to rectify the mistake. The result of the action is awaited.

37. Failure to compute income from business properly.

(a) While determining the income of a registered firm for the assessment year 1955-56 the Income-tax Officer took the value of the opening stock of certain shares held by the firm at Rs. 28,02,209 against Rs. 25,96,374 which was the value adopted for the very same shares as the closing stock for the assessment year 1954-55. This resulted in an under-assessment of tax of Rs. 1,84,126 in the hands of the six partners of the firm. This paragraph was sent to the Ministry in November, 1965 but no reply has been received so far (February, 1966).

(b) A registered firm, the income of which was estimated for the assessment year 1960-61 had wrongly debited a sum of Rs. 4,12,273 to the purchase account of the year although the amount pertained to purchases in the preceding year. The Income-tax Officer made a note of this fact in the assessment order also. However, while computing the taxable income from the net loss returned by the assessee

for the subsequent year the Income-tax Officer did not disallow this wrong debit. Thus, the taxable income was short assessed by Rs. 4,12,273 resulting in an under-assessment of tax of Rs. 3,54,554. The mistake has since been rectified but report regarding recovery is awaited.

(c) Under the provisions of the Income-tax Act, only expenditure of a revenue nature incurred for the purpose of carrying on the business is allowed as a deduction but not capital expenditure.

It was noticed that payments made by a non-resident company to its subsidiaries as subvention during the assessment years 1957-58 to 1962-63 were allowed by the Department as revenue expenditure even though these payments were clearly of a capital nature. This resulted in an under-charge of tax of Rs. 58,427. The Ministry have replied that the mistake is being rectified.

(d) Two Directors of a private Limited Company held more than 60 per cent of the shares of the company. During the previous year relevant to the assessment years 1962-63 and 1963-64, they were paid a total commission of Rs. 41,427 besides remuneration, for services rendered.

Under the Income-tax Act, no bonus or commission for services rendered would be an admissible expenditure if such sum would have been payable as profits or dividends. It was accordingly pointed out in audit that sums paid as commission to these two shareholders would have reached them as dividends if it had not been paid as commission. The Ministry have accepted the view and have stated that action has been taken to revise the assessments. The additional tax comes to Rs. 20,714. The report regarding rectification and recovery of the tax amount is still awaited.

(e) Contributions by an employer to an unrecognised provident fund and unapproved gratuity fund are not admissible as deductions from the income of the employer.

It was noticed that in one case, contributions made to an unrecognised provident fund were actually allowed as deductions involving an under-assessment of tax to the extent of Rs. 27,510. The Ministry have accepted the mistake and the additional demand of Rs. 27,510 has also been recovered.

In four other cases, contributions made to an unapproved gratuity fund were allowed for the assessment years 1962-63 and 1963-64 involving a short assessment of tax to the extent of Rs. 1,10,197.

(f) For working out the incomes from Construction contracts, the gross payments received by contractors should be taken as the basis without allowing deduction for amounts withheld as security deposit. Further, the cost of any materials supplied to the contractor should also be added to ascertain the gross receipts.

While auditing a project circle it was found that in the case of 13 contractors, only the net payments received by them after deduction of security deposit were taken as the basis for determining their total incomes for the years 1963-64 and 1964-65. In one of these cases, the total income for these assessment years was taken on the basis of the payment received after deduction of cost of materials supplied to the contractor. These omissions resulted in an under-assessment of tax to the extent of Rs. 51,243.

This paragraph was sent to the Ministry in October 1965 but no reply has been received so far (February 1966).

(g) A Financial Corporation which is engaged in providing long term finance for industrial development in India is entitled to an allowance not exceeding 1/10th of its total income in respect of any special reserve created by the Corporation. As the percentage is to be applied to the total income excluding the special reserve, the amount to be allowed has to be taken at 1/11th of the total income as computed before making deduction for such a reserve. It was, however, noticed in audit that in two cases the allowance was allowed at 1/10th of the total income before deduction of the reserve which resulted in short-levy of tax of Rs. 2·94 lakhs, for the assessment years 1961-62 to 1964-65.

(h) A company borrowed a sum of Rs. 44·5 lakhs in the previous year relevant to the assessment year 1960-61 and invested the entire amount for the purchase of shares of its two subsidiary companies of which the assessee was the managing agent. The interest paid by the company on this borrowing was allowed by the Income-tax Officer as a deduction from its business income instead of from its dividend income derived from the shares in which the borrowed capital was invested.

The same procedure was adopted for the subsequent years 1961-62 to 1963-64. By this method, the business income of the company

which was liable to a higher effective rate of super-tax than the inter-corporate dividend income got reduced and consequently the company's super-tax liability was reduced by Rs. 1,10,000 (approximately) for the four years 1960-61 to 1963-64.

This paragraph was sent to the Ministry in June 1965 but no reply has been received so far (February, 1966).

38. **Failure to compute the income from Dividends correctly.**

Under the Income-tax Act, if a person transfers shares before the declaration of dividend, thus shifting the right to receive the dividend to another person, the dividend attributable to the period upto the date of transfer should be assessed as the income of the transferor, even though on the date the dividend is declared, the transferee is the owner of the shares. This provision is aimed at preventing avoidance of tax by selling shares on the eve of declaration of dividend and repurchasing them later. In computing the dividend income in such cases, the credit on account of tax deducted at source from dividends should not be given to the transferor.

In certain cases of assessees belonging to three different groups, in assessing the dividend income for the assessment years 1958-59 and 1959-60 in the hands of the persons who made such transfer the department grossed up the dividend income and gave credit for the tax deemed to have been deducted at source The grossing up of the dividend income and the grant of tax credit in these cases of transferors was illegal. The erroneous assessments have resulted in excess refund of Rs. 1,05,709 in all these cases of three groups. The Ministry have replied that instructions have been issued for rectifying the mistakes.

39. **Under-assessment arising from wrong computation of depreciation and development rebate and failure to withdraw development rebate in cases of breach of the conditions prescribed in the law.**

Under-assessments arising from incorrect computation of depreciation and development rebate in cases where tax-payers have committed breach of the conditions prescribed under the Act, were noticed in 979 cases involving an amount of Rs. 368·42 lakhs.

(a) According to the rules framed under the Income-tax Act, extra shift allowance admissible at the rate of 50 per cent of the normal allowance should be proportionate to the number of days during which the machinery or plant worked double/multiple shift taking the number of days in a year as 300 for the purpose. In

eleven cases of companies for the assessment years 1956-57 and 1958-59 to 1964-65 this provision was overlooked and the extra shift allowance was granted at the maximum of 50 per cent of the normal allowance, without restricting it proportionately to the number of days during which there was double/multiple shift. This resulted in an under-assessment of tax of Rs. 8·93 lakhs in the 11 cases.

The Ministry have accepted the mistakes in all the cases involving the under-assessment of Rs. 8·93 lakhs of which Rs. 1·04 lakh was recovered and Rs. 9,338 was lost to Government as the rectification has become time-barred.

(b) One of the conditions for the grant of depreciation is that the total amount of depreciation shall not exceed the original cost of the asset. This condition was over-looked in the assessment of two cases (a firm and a company), resulting in a total under-assessment of tax of Rs. 31,240 while making the assessments for the years 1962-63 and 1963-64.

An amount of Rs. 19,197 has since been recovered as a result of rectification action taken in the case of the company. The details of recovery action in the other case are awaited.

(c) Under the provisions of the Income-tax Act, 1922, the special concession by way of additional depreciation on plant and machinery installed after 1st April, 1948 was admissible only upto the assessment year 1958-59. An instance where this special concession was wrongly allowed in the assessment year 1959-60 was reported in the Audit Report on Revenue Receipts, 1963. Similar irregularity was found during test check of assessments of five companies for the assessment year 1959-60 resulting in under-assessment of tax of Rs. 3·88 lakhs. The mistakes in all the cases have been accepted by the Department. Out of Rs. 3·88 lakhs, a sum of Rs. 3·47 lakhs has so far been recovered in three cases. Intimation regarding recovery in the remaining two cases is awaited (February, 1966).

(d) For the assessment year 1962-63 a company was allowed a development rebate of Rs. 2,70,535 on various assets although the particulars thereof were not furnished by the assessee, as required under the rules.

At the instance of Audit, the Income-tax Officer obtained the particulars of the various assets which disclosed that the assets included second hand machinery on which development rebate was not

admissible at that time. The irregular grant of development rebate without ascertaining the particulars of the assets resulted in a short levy of tax of Rs. 11,000 which has since been recovered.

(e) Under the Income-tax Act, 1961, development rebate is admissible on new machinery or plant wholly used for the purpose of business in respect of the previous year in which it is installed, or if first put to use in the immediately succeeding year, then, in respect of that previous year. Development rebate is not admissible if the machinery or plant is first put to use later than the year immediately succeeding the year of its installation. In three cases, where the assets were not used in the year of installation, or even in the immediately succeeding year, development rebate was incorrectly allowed in the year of installation itself. The incorrect allowance of development rebate in the cases led to short-levy of tax to the extent of Rs. 50,352.

(f) Development rebate is admissible only where an assessee debits an amount equal to 75 per cent. of the rebate claimed, to the Profit and Loss Account and credits a corresponding portion to a reserve account.

In 12 cases it was noticed that development rebate was allowed even though the reserve created fell short of the 75 per cent. prescribed. The under-assessment in these cases worked out to Rs. 3·07 lakhs.

The Ministry have accepted the mistake in 11 cases involving a tax of Rs. 2·13 lakhs. For the remaining case, the Ministry's reply has not yet been received.

(g) Two essential conditions prescribed by the Income-tax Act for admissibility of development rebate are that—

(i) the development rebate reserve must not be utilised for distribution by way of profits or dividends or remittance out of India within a period of 8 years next following the year in which the reserve is created ; and

(ii) the assets in respect of which the development rebate was given, should not be sold or transferred within a period of eight years except when such sales or transfers are made to Government, local authority or a statutory corporation or in connection with amalgamation of companies or conversion of a firm into a company.

(1) In the case of three companies it was noticed that a part of the development rebate reserve was withdrawn and credited back to the Profit and Loss Account. Thereafter, the amount was utilised for distribution of dividends during the previous years relevant to the assessment years 1960-61, 1961-62 and 1962-63. Accordingly, under the provisions of section 35(11) of the Income-tax Act, 1922/section 155(5) of the Income-tax Act, 1961 read with the instructions of the Central Board of Direct Taxes issued in July, 1964 the entire development rebate of Rs. 5·93 crores allowed during the assessment years 1959-60 to 1962-63 in these three cases should have been deemed to be wrongly allowed and the concerned assessments rectified withdrawing the rebate.

In one of these three cases, the Ministry have replied that though the development rebate reserve created was utilised for declaration of dividend, on account of a subsequent appellate order the total income turned out to be a loss. The Ministry have accepted the mistake in another case and an additional tax of Rs. 49,596 has since been recovered.

In the third case, the assessments for two years 1960-61 and 1961-62 have since been rectified by the department raising an additional demand of Rs. 2·53 crores. Action taken for the assessment year 1962-63 involving a tax of Rs. 14·40 lakhs in this case is awaited.

(2) In 11 cases where the assets were transferred or sold within the period of 8 years, the development rebate granted was not withdrawn, resulting in a total under-assessment of tax of Rs. 2·82 lakhs.

40. **Incorrect computation of income under capital gains and omission to levy tax on capital gains.**

In the previous year relevant to the assessment year 1960-61, an assessee made a capital gain of Rs. 91,032 by selling away his house property for a sum of Rs. 2,51,032. The Assessing Officer allowed the capital gain to be adjusted in full towards the cost of a new residential building constructed by the assessee and hence no tax on capital gains was levied. Under the Income-tax Act, such adjustment is permissible only when the assessee 'purchased' a new property for the purpose of his own residence and not for 'construction' of residential building. The wrong adjustment of capital gain by the department had resulted in under-assessment of tax of Rs. 28,828. The Ministry have accepted the mistake and reported that action is being taken for rectification.

41. Irregular set-off of losses.

In the case of a company, a loss of Rs. 64,748 relating to the years 1950-51 to 1956-57 was carried forward for set-off in the year 1959-60, but while completing the assessment for 1959-60, the Income-tax Officer set-off a sum of Rs. 2,09,248 with the result that there was an under-assessment of income by Rs. 1,44,500 on which the tax payable was Rs. 74,417.

The Ministry have replied that the necessary demands have been raised to recover the sum of Rs. 74,417.

42. Irregularities committed while making assessments of firms and partners.

(a) For the assessment year 1959-60, a firm claimed grant of registration although it did not file the prescribed application for registration with the Income-tax Officer having jurisdiction to assess it. The Income-tax Officer refused registration and assessed the firm in February, 1961 in the status of an unregistered firm. No appeal was filed by the assessee against the refusal of the Income-tax Officer to register it; however, on appeal filed against the assessment order on other grounds, the assessment was set aside and the Income-tax Officer was directed to make a fresh assessment after examination of accounts. The Income-tax Officer, while reassessing the firm in February 1964, treated it as a registered firm admitting an alleged duplicate copy of the original application which was stated to have been filed by the assessee in 1959 before an Income-tax Officer in a different Commissioner's charge. On account of this irregularity, there has resulted an under-assessment of tax of Rs. 34,990 in the hands of the firm for the assessment year 1959-60.

(b) A firm was carrying on business of running crossword prize competitions and publication of a weekly paper. It was allowed registration for the years 1955-56 and 1956-57 notwithstanding the fact that according to a Supreme Court judgment crossword prize competitions through the medium of newspapers is in the nature of gambling and cannot be considered as 'trade and commerce'. According to the ex-Madhya Bharat Gambling Act No. 51 of 1949 as well, gambling in any form was prohibited. Therefore, under the law, a firm engaged in an illegal activity cannot be considered as a partnership.

The registration granted to another firm consisting of the same partners and carrying on the same business in another Commissioner's charge was cancelled and the decision was upheld by the High Court. This information was also available on the file at the time the registration was allowed by the Income-tax Officer.

By allowing registration wrongly there has been a loss of revenue of over a lakh of rupees. The Ministry while accepting the mistake have stated that the assessment cannot be rectified as it has become time-barred.

43. **Irregular exemptions and excessive reliefs given.**

(a) The rebate from tax admissible under the scheme of 'tax holiday' to a new industrial undertaking depends upon the capital employed in the undertaking. The rules for computation of the capital employed provide that in the case of depreciable assets acquired by purchase prior to the computation period, their value for the purpose should be taken to be the written down value of the assets, as per definition in the Income-tax Act. The term 'written down value' has been defined as the actual cost of the assets reduced by all depreciation actually allowed under the Act. In three cases assessed in one Income-tax Officer's ward and in two cases assessed in different wards the initial depreciation allowed in the year of installation on the assets acquired prior to 1st April, 1956, was not deducted while arriving at the written down value, with the result that there was an under-assessment of tax to the extent of Rs. 9,22,342. Out of this, recovery of Rs. 25,334 has become time-barred. The Ministry have stated that the mistakes in other cases are under rectification.

(b) If an Indian company pays dividend deducting tax therefrom in respect of any previous year relevant to the assessment year 1960-61 and later, wholly or partly out of its profits actually charged to income-tax in any assessment year previous to 1960-61, it is entitled to a rebate of 10 per cent. of the amount of dividend attributable to the income actually charged to tax in the earlier assessment years. For this purpose, the dividend declared in respect of any previous year is considered first to have come out of the distributable income of that year and the balance, if any, out of the undistributed part of the income of one or more prior years.

A dividend of Rs. 1·68 crores declared by a Company in September 1961 was incorrectly taken in its assessment as relating to the previous year relevant to the assessment year 1961-62 instead of to the previous year relevant to the assessment year 1962-63. This

eventually resulted in the computation of Rs. 1,06,48,953 as the dividend attributable to the previous year relevant to the assessment year prior to 1960-61 on which a tax relief of Rs. 10,64,895 was obtained. Had the dividend of Rs. 1·68 crores been correctly regarded as declared in respect of the previous year relevant to the assessment year 1962-63, no part of the dividend of Rs. 1·68 crores could have been attributed to the distributable income of the previous year relevant to the assessment year prior to 1960-61. Taking into account a further dividend of Rs. 1·20 crores declared by the company on 18th December, 1961 in respect of the previous year relevant to the assessment year 1962-63, the company was actually entitled to a relief of income-tax to the extent of Rs. 9,26,541 in the assessment year 1963-64. The incorrect method followed in this case had resulted in a net excess allowance of income-tax relief of Rs. 83,303 and consequent to the relief of Rs. 9,26,541 having been granted in 1962-63 itself instead of in 1963-64 the chargeable profits for Super Profits Tax were reduced to that extent with consequent tax effect of Rs. 5,55,925. This paragraph was sent to the Ministry in November, 1965 but no reply has been received so far (February, 1966).

In two other cases, two companies were allowed rebate of 10 per cent. though no such relief was admissible firstly because the dividend had not been paid in the relevant previous years and secondly because the dividends were entirely attributable to the profits and gains arising after the assessment year 1959-60. This resulted in an under-assesment of tax to the extent of Rs. 42,523. The Ministry have accepted the mistakes. Report regarding rectification and recovery is awaited.

(c) In paragraph 75(a) of the Audit Report, 1965, three cases were cited where on account of erroneous grossing up of dividends an under-assessment of more than Rs. 3 lakhs had occurred, of which a sum of Rs. 98,439 had become time-barred.

Similar mistakes came to the notice of Audit in two other cases during the test-check of assessment documents of an Income-tax ward. The Income-tax Officer grossed up the net dividends received by the two companies at 100 per cent. taxable profit although the certificate issued by the company paying the dividends showed a much smaller percentage. This resulted in an excess tax credit of Rs. 56,704 which was refunded to the two companies.

The Ministry while accepting the mistake have stated that rectification is not possible due to the operation of time bar. Thus, a loss of Rs. 56,704 has occurred to the Government in these two cases.

44. Failure to levy super-tax on companies correctly.

(a) The Finance Acts of 1956 to 1959 provided for the levy of additional super-tax on companies distributing dividend on ordinary shares in excess of 6 per cent. of the paid up capital. This additional super-tax was levied by way of reduction of the rebate from super-tax admissible to the companies, and if in any year the amount of rebate due was insufficient to absorb the reduction on account of the excess distribution of dividend, the unabsorbed portion of reduction in rebate should be carried forward for being set off against the reliefs available for subsequent years. These provisions were overlooked while assessing a company with the result that an unabsorbed reduction in rebate of Rs. 2,18,950 was omitted to be set-off against the super-tax rebate of Rs. 4,97,429 of a subsequent year. This resulted in a short levy of tax to the extent of Rs 2,18,950.

The Ministry have stated that the mistake is being rectified. The report of completion of the rectification and recovery of the amount is awaited.

Three more of such cases were noticed in another charge involving a short levy of tax of Rs. 70,252 of which Rs. 23,560 cannot be recovered, having become time-barred.

(b) The Finance Act, 1963 provides for reduction of rebate on super-tax allowable to companies in the event of companies issuing bonus shares.

In the case of a company which issued bonus shares of Rs. 9 lakhs during the previous year relevant to the assessment year 1963-64, no reduction in rebate was made resulting in a short-levy of tax to the extent of Rs. 1,12,500.

The Ministry have accepted the objection and stated that the mistake has been rectified, raising an additional demand of Rs. 1,12,500.

45. Non-levy of additional super-tax on companies in which the public are not substantially interested.

(a) Prior to 1965, a company was regarded as a company in which the public were not substantially interested if the affairs of the company or shares carrying more than 50 per cent. of the total voting power were at any time during the previous year controlled or held by less than six persons. This would be so even if the persons who held the shares are public limited companies, unless the parent company being a public limited company holds the entire share capital of the subsidiary company.

In two cases, Audit came across an omission on the part of the Income-tax Department to correctly classify companies the bulk of the shares of which were held by less than six persons including public limited companies. Consequently, there was a failure to levy additional super-tax on the undistributed income of these companies to the extent of Rs. 6·99 lakhs. On this being pointed out, the Ministry have replied that rectification action has been taken. The Ministry have been requested to initiate action in all similar cases where this omission had occurred. Their report is awaited.

(b) Companies in which the public are not substantially interested should distribute within 12 months of the close of the previous year a statutory minimum percentage of their distributable income to their shareholders. Failure to observe this requirement of law makes the company liable to the levy of additional super-tax at the rate of 37 per cent. of the distributable surplus.

It was noticed in one Income-tax ward that this additional super-tax had not been levied in the case of two assessees who had failed to make the distribution in spite of the fact that substantial surplus was available with them for the relevant previous years. The under-assessment of super-tax on account of the non-levy came to Rs. 88,381. The Ministry have replied that necessary demands have been raised, out of which a sum of Rs. 56,916 has been collected.

46. **Irregular grant of refunds.**

Many cases of excess refunds allowed by the Department erroneously have come to notice. Of these, wrong or double credit for advance tax had formed a good part.

(a) In working out the net demand payable by a company, a sum of Rs. 92,500 was deducted on account of advance tax payment for the assessment year 1959-60. Actually the company had paid a sum of Rs. 15,000 only as advance tax in respect of this year, of which Rs. 10,000 were paid within the due date and Rs. 5,000 later. This resulted in an excess tax credit of Rs. 77,500. The Ministry have replied that the mistake has been rectified. Report regarding recovery is awaited.

(b) An assessee paid an advance tax of Rs. 30,300 for the assessment year 1963-64. She did not pay any advance tax for the assessment year 1962-63, but the Income-tax Officer while completing assessments for 1962-63 and 1963-64 in June, 1963 and March 1964 respectively, allowed a deduction of Rs. 30,300 for each of these two years, from the tax payable and refunded in July 1963 an amount of Rs. 16,246 inclusive of interest, for the assessment year 1962-63.

On this being pointed out, the Department have rectified the mistake and collected the excess payment of Rs. 31,024 inclusive of interest wrongly allowed in October, 1964.

(c) An order under section 35 of the Income-tax Act, 1922 granting a refund of Rs. 45,749 was passed by an Assessing Officer, in June 1962, for the assessment year 1951-52 while giving effect to a Tribunal's decision in the case of the firm in which the assessee was a partner. This refund was adjusted against the demands of Rs. 16,993 and Rs. 28,756 due from the assessee for the assessment years 1956-57 and 1957-58 respectively. Again another rectification order was passed in September, 1964 in respect of the same assessment granting a refund of Rs. 49,882 ignoring the refund already granted by way of adjustment in June, 1962. This resulted in an excess refund of Rs. 45,749. The Ministry have accepted the mistake and the excess refund has also since been recovered.

47. **Non-levy of penal interest.**

In paragraphs 65 and 75(b), (c) and (d) of the Audit Reports 1964 and 1965 respectively, cases were cited where the Income-tax Department failed to levy interest prescribed by law. Short recovery of interest on account of this failure is on the increase.

During this year, a total amount of Rs. 17·72 lakhs towards non-levy of interest has been noticed in audit.

A new company which failed to pay advance tax in respect of the assessment year 1952-53 was assessed to a tax of Rs. 80,750 for that year. At the time of the assessment the Income-tax Officer should have issued a demand notice for penal interest of Rs. 9,973 for the assessee's failure to pay the advance tax. This was not done with the result that the rectification has now become time-barred.

48. **Mistakes committed while giving effect to appellate orders.**

In his appellate decision of the assessment order for assessment year 1958-59 in the case of a company; the Appellate Assistant Commissioner held, *inter alia*, that an amount of Rs. 1,94,552 being expenditure incurred on repairs to a ship prior to its sale should be treated as expenses of sale and hence permissible as a deduction in the computation of capital gains. The effect of this decision was to increase the business income of the assessee by Rs. 1,94,552 with a corresponding reduction in its capital gains. This observation of the Appellate Assistant Commissioner was confirmed by the Appellate Tribunal in further appeal. While giving effect to the Tribunal's orders, the Income-tax Officer omitted to increase the business

income and reduce the capital gains by Rs. 1,94,552. As no super-tax was leviable on capital gains, the omission resulted in an under-assessment of tax to the extent of Rs. 27,537. The Ministry have stated in reply that the assessment has since been rectified and the additional demand raised.

49. **Income escaping assessment.**

(a) In terms of the definition of 'Dividend' under the Income-tax Act, 1922, the amounts paid by a private company as advance to its shareholders will form part of the taxable income of the shareholder. An individual who was the Managing Director of a private limited company received a sum of Rs. 30,696 as advance from the company during the previous year ended 16th August, 1958. While computing his total income for the assessment year 1959-60, the Income-tax Officer omitted to include this amount in his taxable income for the year. Though the mistake had been pointed out in audit as early as November, 1961, no timely action was taken by the Department with the result that rectification became time-barred on 1st April, 1964. The revenue lost to Government on this account works out to Rs. 20,316 (approximately). The Ministry have accepted the mistake and have stated that recovery is time-barred.

(b) A Hindu Undivided Family consisting of two brothers had income from house property. From 1962-63, the Income-tax Officer failed to consider the income of one of the houses in the hands of the family. In his assessment order dated 30th September, 1961 for the assessment year 1961-62 the Income-tax officer held that the ownership of the entire property vested in the mother in 1943 itself when her husband died and that the property was transferred to her two daughters-in-law under a will after her death. The house property said to have been vested in the mother in 1943 was however actually constructed during the period from 1950-51 to 1954-55 at a cost of Rs. 1,32,170 from the funds of the Hindu Undivided Family as recorded by the assessee in Part VI of the Return of Income for the assessment years 1953-54 and 1954-55. It was also found that the Income-tax Officer himself appended a note dated 31st May, 1956 in the assessment order for 1954-55 to the effect that the property in question was constructed at a cost of Rs. 1,00,300, debited to the accounts of the Hindu Undivided Family. Thus, it was clear that the property was owned by the Hindu Undivided Family and not by the mother. By over-looking all these facts, there has resulted

an under-assessment of tax amounting to Rs. 21,324 during the assessment years 1961-62 to 1964-65. This paragraph was sent to the Ministry in November 1965 but no reply has been received so far (February 1966).

(c) The assessment records of an individual revealed that he had received a sum of Rs. 17,976 as interest from a company which was utilised by him for purchase of shares in another company. The assessee, however, failed to disclose this interest income in his return. The Department failed to notice the omission resulting in an undercharge of tax to the extent of Rs. 14,534. The Ministry have replied that the mistake has been rectified. Report of recovery of tax is awaited.

50. **Other lapses.**

(a) *Incorrect adoption of 'previous year'.*

According to the provisions of the Income-tax Act, share income of a partner from a registered firm is assessable in the hands of the partner for the same previous year as adopted in the firm's case. A company which closed its accounts on 30th June, 1959 included therein its share incomes from several registered firms which closed their accounts on 30th September, 1958/31st March, 1959 and the entire share income was charged to tax in the assessment year 1960-61 instead of in the assessment year 1959-60. Thus the contravention of the provisions of the Act had, not only resulted in postponement of the demand by a year but also resulted in short-levy of tax of Rs. 4,23,161 as the company rates of taxation for the assessment year 1960-61 were lower than those for the assessment year 1959-60.

Similarly, due to the assessment of share incomes of Rs. 6,79,098, in the hands of the same assessee-company from two firms, in the assessment year 1957-58 instead of in the assessment year 1956-57, an under-assessment of tax of Rs. 21,647 had resulted.

In reply the Ministry have stated that

(a) the Income-tax Officer had followed the practice of his predecessors;

(b) the procedure adopted by the Income-tax Officer was examined and approved by higher authorities;

and (c) that though there was an under-assessment of Rs. 4·45 lakhs for the two years as pointed out by Audit, there has been an over-assessment in the assessment years 1962-63, 1963-64 and 1964-65 resulting in extra revenue of Rs. 10·5 lakhs and thus there was no loss of Revenue.

It is not clear how an over-assessment can justify an under-assessment when both are against the provisions of the law.

(b) *Failure to take timely action leading to loss of revenue.*

In order to protect themselves against the loss resulting from over-production, the Jute Mill owners under a mutual agreement imposed some restrictions upon their working time, according to which the weaving capacity of the jute mills was curtailed on an agreed basis and a percentage of the looms was sealed. The surplus loom hours available in a jute mill which does not utilise the loom hours allotted to it are transferable for monetary consideration to other Jute Mills which can utilise it.

One Jute Mill owned by an unregistered firm purchased the surplus loom hours of another mill during the previous year relevant to the assessment year 1957-58 on payment of Rs. 1,43,328. This expenditure was debited to the Profit and Loss Account of the firm and was also allowed by the Income-tax Department in the assessment (completed on 26th March, 1962) as admissible expenditure. As the expenditure was of a capital nature, this irregular allowance was pointed out to the Department on 7th October, 1963 by audit. On the 29th January, 1964 instructions were issued by the Central Board of Direct Taxes for disallowing such expenditure in the hands of the purchaser of loom hours. Under the provisions of the Income-tax Act, a Commissioner of Income-tax is empowered to revise order of an Income-tax Officer prejudicial to revenue within a period of two years from the date of the assessment order. Even though the time left after the receipt of instructions of the Central Board of Direct Taxes was sufficient for revision of the assessment by the Commissioner (i.e. within 25th March, 1964), no action was taken in this case, leading to a loss of revenue of Rs. 1,20,396, demand for which cannot be raised now because of the operation of time-bar.

The Ministry have, however, stated in reply that necessary action has been taken to request the Appellate Assistant Commissioner before whom an appeal is pending against the assessment, for a suitable enhancement on this account.

51. **Over-Assessments.**

(a) During the previous year relevant to the assessment year 1961-62, a statutory corporation received from the Government grant-in-aid of Rs. 2·50 lakhs which was credited to the Profit and Loss Account, and as such was included in the net profit returned for income-tax purposes. At the time of the assessment proceedings the Corporation claimed that the amount of Rs. 2·50 lakhs should not be brought to tax. The Income-tax Officer rejected the claim and added the amount of Rs. 2·50 lakhs to the net profit which had already included this amount. Thus, there was an over-charge of tax by Rs. 1·25 lakhs. The Ministry have stated that the mistake has been rectified under section 154 of the Income-tax Act, 1961.

(b) Under an agreement entered into between the Government of India and a foreign Foundation, taxes on the salary income of the Foreign Advisers attached to that Foundation in India are borne by the Central Government. For this purpose, the Ministries concerned send to the Income-tax Department statements showing the salaries paid to these advisers and the tax leviable thereon.

For the assessment year 1960-61, the assessment of income of 5 Foreign Advisers was made once on 10th July, 1961 on the basis of the salary statements sent by the Ministry of Food and Agriculture and again on 7th August, 1961 on receipt of similar statements sent by the Ministry of Finance (Department of Economic Affairs). This resulted in double assessment of tax on the salary income of these advisers. The tax collected in excess amounted to Rs. 2·84 lakhs. The Ministry have stated that action is being taken to rectify the mistake.

(c) Certain income of co-operative societies, exempt from taxation, is to be included in the total income for rate purposes and rebate is to be allowed on such exempt income at average rates.

In the case of 7 co-operative societies assessed in one charge, the Income-tax Officer allowed a rebate of special surcharge on that part of the income which he classified as unearned income and on another part of the income classified by him as earned income exceeding Rs. 1 lakh included in the exempt income. Due to this incorrect procedure followed, there was an over-assessment of Rs. 1,27,057 for the assessment years 1957-58 to 1963-64. The Ministry have accepted the mistakes in six cases. In the remaining case, Ministry's reply for the assessment years 1957-58 to 1961-62 is awaited. (February, 1966).

52. Defects in following the prescribed procedure involving risk of loss of revenue.

The Income tax Act provides for deduction of tax at source from the 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. The private employers, under the Income-tax Rules, must also furnish the Income-tax Department a monthly statement showing particulars of employees, salaries paid, tax deducted at source, date on which tax credited to Government etc. Further, an annual return in the prescribed form should also be rendered by the private employers within 30 days from 31st March in each year. Under the Act, if an employer does not deduct or after deducting fails to remit the sum into Government account, he should be treated as an assessee in default, and relevant penal provisions in the Act 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 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.

During test-check conducted in a few Income-tax Offices in 10 Commissioners' charges, the following irregularities were noticed in this regard:—

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

(2) From the information available in the income-tax offices it was noticed that the monthly and annual returns are still due from the employers to the extent indicated below:—

	1963-64	1964-65
Monthly returns	1614	1521
Annual returns	4206	6677

(3) In the cases where returns were received the Department had failed to check the correctness of tax deducted at source and raise demands for balance of tax due. The following short deduction of tax was noticed in audit.

Year	No. of cases	Amount Rs.
1963-64	218	1,71,624
1964-65	246	1,13,116

(4) According to the rules if the tax deducted at source is not credited to Government account within one week from the date of deduction, penal action has to be taken on the employers. In the following cases of (i) delay in remittances (delay ranging upto sixteen months) and (ii) non-remittance of tax deducted at source, no such penal action was taken by the Department.

(i) Delay in remittance :

Year	No. of cases	Amount Rs.
1963-64	227	18,52,862
1964-65	191	16,72,735

(ii) Non-remittance of tax collected into treasury :

Year	No. of cases	Amount Rs.
1963-64	36	68,756
1964-65	40	1,03,697

(5) The statutory provisions relating to deduction of tax at source from payments of salaries are not being complied with by most of the foreign Missions in India. A test-check of the records sent by ten Missions revealed that only one Mission was deducting tax at source and was sending the prescribed annual statements to the Department. Three Missions did not deduct tax at source but sent the prescribed statements. The remaining six Missions neither furnished the statements nor deducted the tax at source.

53. **Other topics of interest.**

(a) Companies which derive dividends from Indian companies formed and registered after 31st March 1952 and are engaged in an industry for the manufacture or production of any of the articles specified in a schedule attached to the Income-tax Act, need not pay super-tax on the dividend so received.

A company was mainly engaged in the manufacture of an optical bleaching agent with a particular trade name. It secured a licence from the Government in August, 1955 under the Industries (Development) Regulation Act by claiming that the product manufactured by it was a dye-stuff falling under item 20 of the list of articles specified in section 56A of the Income-tax Act, 1922.

The company accordingly made a claim for the purpose of income-tax assessment that the product manufactured by it was a dye-stuff and therefore the dividend declared by it must be exempt from super-tax in the hands of the companies holding its shares. This was accepted and the companies receiving dividends from this company have been getting exemption of super-tax on the dividend income.

Before the Central Excise authorities it was however, claimed by the assessee that the product was not a dye-stuff in the practical sense since it was not used for dyeing cloth. On a chemical analysis by the Central Excise authorities this product was found to be neither a dye-stuff nor a synthetic organic derivative used in a dyeing process and accordingly, it was exempted from payment of duty.

As, on the result of a chemical analysis, the bleaching agent manufactured by this company had been proved to be not a dye-stuff and on that score the company also has been enjoying exemption from Central Excise Duty, a contrary decision for the purpose of Income-tax Act has resulted in a wrong exemption being given to the dividends declared by this company. The amount of tax lost due to non-levy of Super-tax on dividends received by six companies from the said company for the years 1958-59 to 1963-64 comes to Rs. 24·16 lakhs.

In their reply, the Ministry have stated that the Directorate General of Technical Development (Dyes and Explosives etc.) had classified the bleaching agent as a dye-stuff. It is not clear how this was done even though the Company itself has stated before the Central Excise Department that it is not a dye-stuff in the practical sense and that even the Customs Department does not treat it as such.

The Ministry have added that the phraseologies used in the Income-tax Act and in the Central Excise tariff are not identical and it is unfair to interpret the one in the light of the other. It is not clear on what grounds of fairness the different phraseologies which mean the same thing entitle the Company to get exemption from one Department on the claim that it is only a whitening agent and not a dye-stuff and from another a rebate on the claim that it is actually a dye-stuff.

(b) Under the provisions of the Income-tax Act, relief from tax is admissible to newly established industrial undertakings on their profits and gains to the extent of 6 per cent. of the capital employed for a period of five years from the year in which they begin to manufacture goods or produce articles. This concession was extended to shipping companies also under executive instructions issued in 1951 and relief allowed to them on the basis of the capital outlay of the ships. As one of the primary conditions to be fulfilled for the grant of the relief under the Act is that the industrial undertaking must manufacture or produce articles, the extension of the relief to ships which do not manufacture or produce articles amounts to an extra legal concession.

In four cases falling in one Commissioner's charge, the tax exempted on account of this extra legal concession came to Rs. 53·85 lakhs.

(c) Under the provisions of the Income-tax Act depreciation and development rebate are admissible on assets owned by an assessee. In the case of assets acquired through hire purchase system, the transfer of ownership thereof in favour of the hirers, happens only after the last instalment of hire charges are paid to the vendors. Since the assets do not become the property of the hirers, no depreciation and development rebate are allowable to them, while computing the taxable income. This view was upheld in February 1962 by the Madhya Pradesh High Court in a case. The Supreme Court also in a judgment delivered in November, 1964 held that in the case of hire purchase agreement, sale fructifies only when option is exercised by the intending purchaser after fulfilling all the terms of the agreement. Only when all the terms of the agreement are satisfied and the option is exercised, a sale takes place of the goods which till then had been hired.

The Central Board of Revenue in their circular of March, 1943 reiterated in July, 1963 issued instructions that depreciation and development rebate are allowable in the case of assets acquired through hire purchase system. These instructions are contrary to the provisions of the Act and the judicial pronouncements. During test check, it was found that in 24 cases where the Income-tax Officers followed the Board's instructions and wrongly allowed depreciation and development rebate, the under-assessment of tax amounted to Rs. 6,79,221.

The Draft paragraph was sent to the Ministry in November, 1965 but no reply has so far been received (February, 1966).

54. Super Profits Tax

Short levy of super profits tax due to erroneous computation of chargeable profits.

Under the Super Profits Tax Act 1963 the tax is payable on the amount by which the chargeable profits of a company exceed the amount of standard deduction. As per First Schedule of the Act, the chargeable profits shall be computed after excluding the items mentioned in rule 1 and the income-tax and super tax payable by the company in respect of its total income under the provisions of Rule 2. In one case, in excluding the dividend income under rule 1, the gross dividend which included the tax deducted at source was taken as the sum deductible and the net chargeable profit was arrived at after deducting therefrom the gross income-tax and super-tax payable by the company. Thus the tax paid on the dividend was deducted twice. This resulted in an under-assessment of tax of Rs. 96,300 for the assessment year 1963-64.

This paragraph was sent to the Ministry in October 1965 but no reply has been received so far (February, 1966).

55. Income-tax demands written off by the Revenue Department during the year 1964-65.

During the year 1964-65, the Income-tax department have written off a demand of Rs. 97,47,072 of which Rs. 11,92,533 relate to Companies and the balance relates to assessees other than Companies. The reasons for write off, as furnished by the Ministry, in the case of both companies and non-companies are as follows:

	Companies		Non-companies		Total	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
I. Assessees having died leaving behind no assets, or have gone into liquidation or become insolvent :						
(*a*) Assessees having died leaving behind no assets	..	..	24	1,93,719	24	1,93,719
(*b*) Assessees having gone into liquidation	39	8,01,268	..	..	39	8,01,268
(*c*) Assessees having become insolvent	..	..	10	90,160	10	90,160
	39	8,01,268	34	2,83,879	73	10,85,147
II. Assessees being untraceable	25	3,91,265	123	2,00,356	148	5,91,621
III. Assessees having left India	..	..	21	2,84,960	21	2,84,960
IV. For other reasons :						
(*i*) Assessees who are alive but have no attachable assets	..	..	113	12,11,905	113	12,11,905
(*ii*) Amount being petty etc.	..	..	17	97	17	97
(*iii*) Amount written off as a result of settlement with assessees	..	..	18	63,65,630	18	63,65,630
(*iv*) Demands rendered unserviceable by subsequent developments such as duplicate demands wrongly made, demands being protective etc.	..	..	3	2,07,712	3	2,07,712
	..	..	151	77,85,344	151	77,85,344
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 or recovery	..	..	..	..	..	..
	64	11,92,533	329	85,54,539	393	97,47,072

56. **Arrears of Tax Demands.***

At the end of 31st March 1965. the total outstanding demand of Corporation Tax and Income-tax amounted to Rs. 341·70 crores. Separate figures for Corporation Tax and Taxes on income other than Corporation tax are not available as the Ministry have stated that no separate statistics are kept for this purpose. The amount of Rs. 341·70 crores as compared to actual realisation during 1964-65, works out to 75 per cent. The corresponding figures for the years ending March 1963 and March 1964 are as follows:—

	Rs. in crores.	% of total realisation
Year ending March 1963	270·43	87
Year ending March 1964	282·37	68

The years to which the arrear demand of Rs. 341·70 crores related are as follows:—

Year	Rs. in crores
Arrears of 1954-55 and earlier years	46·61
Arrears of 1955-56 to 1962-63	106·94
Arrears relating to 1963-64	42·52
Arrears relating to 1964-65	145·63
TOTAL	341·70

One of the reasons for the amounts remaining outstanding is stay of collections of tax granted by the various appellate authorities on appeals and revision petitions. The figures relating to the number of cases in which the tax has been stayed together with the amount of tax stayed as on 30th June, 1965, are given below. The corresponding position as on 30th June, 1964 is also indicated below.

	Number of cases in which tax was stayed		Amount of tax stayed (In crores of Rs.)	
	30-6-65	30-6-64	30-6-65	30-6-64
(a) Before Appellate Asstt. Commissioners	6593	3785	17·47	12·37
(b) Before Tribunals	868	480	2·78	3·90
(c) Before High Courts	212	357	3·67	3·44
(d) Before Supreme Court	36	22	0·77	0·44
(e) Revision petitions before Commissioners	623	252	0·44	0·23
	8332	4896	25·13	20.38

The number of cases pending with the Appellate Assistant Commissioners, as on 30th June, 1965, is 1,20,736, the corresponding figure for the last year being 84,736. The number of revision petitions pending with the Commissioners of Income-tax as on 30th June 1965, is 4,760. The year-wise break-up of the pending appeals/revision

*As furnished by the Ministry.

petitions as on 30th June, 1965 with reference to the year of institution of appeals is given below.

Year of institution.	Appeals with Appellate Asst. Commissioners.	Revision Petitions with Commissioners of Income-tax
1953-54	2	..
1954-55	2	1
1955-56	11	6
1956-57	24	5
1957-58	36	19
1958-59	104	47
1959-60	182	73
1960-61	253	106
1961-62	786	146
1962-63	2,948	314
1963-64	10,433	931
1964-65	66,242	2,236
1965-66	39,713	876
TOTAL	1,20,736	4,760

57. Arrears of Assessments*

(a) As on 31st March, 1965 17·85 lakhs cases were outstanding with Income-tax Officers pending assessment. The number of cases pending for the corresponding period last year was 12·26 lakhs. The yearwise breakup of the outstanding cases is shown below:—

Year	No. of assessments.
1960-61 and earlier years	28,900
1961-62	73,488
1962-63	1,52,440
1963-64	3,86,556
1964-65	11,43,131
TOTAL	17,84,515

Categorywise break-up of the cases that are pending is as follows:—

(*i*) Business cases having income over Rs. 25,000	97,657
(*ii*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	95,941
(*iii*) Business cases having income of over Rs. 7,500 but not exceeding Rs. 15,000	2,53,457
(*iv*) All other cases except those mentioned in category (*v*) and refund cases	9,72,451
(*v*) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	3,65,009
TOTAL	17,84,515

*The figures given in this paragraph were furnished by the Ministry of Finance.

Status-wise break-up of the pending cases is indicated below :—

(*i*) Individuals	13,83,648
(*ii*) Hindu undivided Families	1,27,811
(*iii*) Firms	2,27,030
(*iv*) Companies	28,094
(*v*) Other Association of persons	17,932
TOTAL	17,84,515

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

Financial year.	No. of assessments for disposal	Number of assessments completed: Out of current	Out of arrears	Total		Number of assessments pending at the end of the year
(1)	(2)	(3)	(4)	(5)		(6)
1960-61	18,26,012	7,32,248	4,74,647	12,06,895	(66·1%)	6,19,117
1961-62	20,21,330	8,06,265	5,02,658	13,08,923	(64·8%)	7,12,407
1962-63	22,18,376	7,96,815	5,12,902	13,09,717	(59·4%)	9,08,659
1963-64	27,09,107	9,22,670	5,60,031	14,82,701	(54·7%)	12,26,406
1964-65	36,26,144	11,54,834	6,86,795	18,41,629	(50·8%)	17,84,515

(Figures in brackets in column 5 represent percentage of cases disposed of to total number of assessments for disposal).

Arrears continue to increase both in absolute terms and in percentage.

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

The figures relating to the disposal of the Super Profits Tax assessments and Sur Tax Assessments as on 1st April, 1965 are as under:—

	Super Profits tax.	Sur-tax
(1) Number of cases for disposal during 1964-65	2243	1247
(2) No. of cases disposed of provisionally	68	426
(3) No. of cases disposed of finally	767	221
(4) Amount of demand raised on provisional assessments	Rs. 76·35 (lakhs)	12·20 (crores)
(5) Amount collected on provisional assessments	Rs. 56·38 (lakhs)	11·46 (crores)
(6) Amount of demand raised on final assessments	Rs. 256·08 (lakhs)	3·46 (crores)
(7) Amount of demand collected out of (6)	Rs. 194·49 (lakhs)	3·08 (crores)
(8) Number of cases pending as on 31-3-1965	1476	1026

*The figures in this paragraph were furnished by the Ministry.

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

The number of assessments disposed of during 1964-65 and of those pending on 31st March 1965 under the Excess Profits Tax Act, 1940 and Business Profits Tax Act, 1947 are indicated below :—

	E.P.T.	B.P.T
(1) Total number of cases pending for disposal by way of final assessment as on 1-4-64	116	26
(2) Total No. of cases of (1) in which provisional assessments had been completed	awaited	awaited
(3) No. of cases in which re-assessment proceedings if any started during 1964-65 (Excess Profits Tax Act) (i.e., number of cases added during the year)	22	nil
(4) Total number out of (1) and (3) disposed of during the year	21	6
(5) Total number pending as on 31st March, 1965	117	20
(6) The amount of tax (approximately) involved in 5	awaited	awaited

As the Excess Profits Tax Act, 1940 and Business Profits Tax Act, 1947 have ceased to be in force in the years 1947 and 1950 respectively the need for completion of these pending assessments is obvious. Although the Excess Profits Tax Act does not prescribe a time-limit for completion of assessments, it is obviously unfair both to Government and to the assessees that assessments should remain uncompleted for about 20 years.

58. **Refunds***

The number of refund applications outstanding as on 31st March, 1965 is 7,225 involving an amount of Rs. 88·80 lakhs. The figure for the corresponding period ending 31st March 1964 was 7195 involving an amount Rs. 32·51 lakhs. The break-up of the refund applications with reference to the period of pendency is as follows :

	No. of cases	Amount involved (in thousands of Rs.)
(*i*) Refunds outstanding for less than a year as on 31st March, 1965	6629	7562
(*ii*) Refunds outstanding between 1 and 2 years as on 31st March, 1965	483	731
(*iii*) Refunds outstanding for 2 years and more as on 31st March, 1965	113	587
(*iv*) Interest paid to assessees for delayed refunds	4	4

Under Section 243(1) of the Income Tax Act 1961, the Central Government have to pay interest at 6 per cent. per annum on all refund claims outstanding for more than six months.

*The figures in this paragraph are as furnished by the Ministry.

59. Scheme of voluntary disclosure *

The Finance Act, 1965 introduced a scheme of voluntary disclosure of income. According to this scheme, if an assessee who has omitted to return any part of the income, filed a voluntary disclosure prior to 31st May 1965, he would be entitled to have the income disclosed assessed at a flat rate of 60 per cent. If this disclosure was made prior to 31st March, 1965, and tax was also paid thereon on or before that date, a concession of 3 per cent. in tax was given. The following table shows the number of assessees who gave voluntary disclosures, the total amount of income declared, the total amount of tax collected and outstanding upto 31st August, 1965.

(1) No. of assessees who gave voluntary disclosures	2001
(2) Total amount of income declared	Rs. 52,18,81,496
(3) Tax payable on the income declared	Rs. 30,80,33,220
(4) Tax collected	Rs. 21,97,02,148
(5) Balance of tax outstanding	Rs. 8,83,31,072

The total tax levied as a result of the Scheme is less than 10 percent of one year's revenue.

60. Frauds and evasions *

(a)	(1) No. of cases in which penalty under [section 28(1)(c)/ 271 (1) (c) was levied in 1964-65	13,666
	(2) No. of cases in which prosecution for concealment of income was launched	28*
	(3) No. of cases in which composition was effected without launching prosecution	Nil
	(4) Concealed income involved in (1) to (3)	Rs. 34,27,67,602
	(5) Total amount of penalty levied on (1)	Rs. 4,03,70,610
	(6) Extra tax demanded on concealed income in item 4.	Rs. 5,05,24,538
	(7) Cases out of (2) in which convictions were obtained	Nil
	(8) Composition money levied in respect of cases in (3)	Nil
	(9) Nature of punishment in respect of (7)	Nil

(*Figures are provisional)

(b) The following table shows the number of searches ordered by the department during 1964-65 and 1965-66 (upto 31st August, 1965), the total value of jewellery, cash, etc. seized, the number of assess-

*The figures in this paragraph are as furnished by the Ministry.

ments completed and the amount of concealed income involved.

	1964-65	1965-66 (upto 31-8-65)
(1) Total No. of cases in which searches and seizures were made	399	157
(2) Total value of jewellery cash, currency notes, negotiable instruments, valuable articles, etc seized.	147 lakhs	56 lakhs
(3) Total number of cases in which assessments were completed	48	21
(4) Amounts concealed in cases referred to in item (3)	Rs. 235 lakhs	6 lakhs
(5) Tax involved in item (4)	Rs. 101 lakhs	3 lakhs
(6) Penalty levied in cases in which assessments were completed	Rs. 69,337	Rs. 1,32,592
(7) No. of cases in which prosecutions were launched out of the cases in item (3)	Nil	Nil
(8) Results of prosecutions	Nil	Nil

It will be seen that searches and seizures were resorted to for assessees from whom no more than valuables worth Rs. 36,000 on an average could be seized. A penalty of only Rs. 69,337 was levied on an assessment of 'concealed' income of over Rs. 235 lakhs in 1964-65 and no prosecution has been launched.

CHAPTER V

OTHER REVENUE RECEIPTS

Ministry of Home Affairs

Sales Tax Receipts of Delhi Administration.

61. The audit of the Sales Tax Receipts of the Union Territory of Delhi was commenced in November, 1964, the Government of India having given its consent in this behalf in May, 1964.

62. Delay in finalisation of assessment leading to loss of revenue.

(i) During 1956, assessments amounting to Rs. 4,785 and Rs. 1·02 lakhs and relating to 1952-53 and 1953-54 respectively in the case of a certain dealer were set aside by the appellate authority for being re-framed on certain grounds. No action, however, was taken in this direction till December, 1965 when, in reply to the audit objection raised in August, 1965, the Department stated that action to make reassessment in these cases was being taken. The Ministry stated (in January 1966) that there has been gross delay in finalising the re-assessments and that steps are being taken to finalise them early. The assessments for the years 1954-55 and 1955-56 could not be made within the prescribed period of 4 years also and these have now become time barred.

(ii) Another dealer was granted registration certificate on 6th April, 1962 (actually delivered in January, 1964) though he had applied for it on 23rd May, 1960. It was decided, however, to determine the tax liability at a later date. But this was not taken up till Audit pointed it out in August, 1965 ; the tax liability was fixed with effect from 23rd May, 1960 on 30th September, 1965. This delay in fixing the tax liability led to the assessment for 1960-61 becoming barred by time.

In regard to the assessments for the years 1954-55 and 1955-56 mentioned in case (i) and also in case (ii), the assessees deposited the tax in advance on the basis of the returns filed by them. The Department has held that as tax recoverable according to the returns filed has already been credited to Government, no loss of revenue is involved in these cases. This contention does not appear to be correct as unless the assessments are actually made, it cannot be said whether the amounts of tax deposited in advance were the amounts actually recoverable under the Act from the assessees. This position has been accepted by the Ministry (January 1966).

63. Non-recovery of Sales Tax and ultimate write off.

A sum of Rs. 5·88 lakhs representing sales tax recoverable from a certain dealer for the period from 16th January, 1953 to 5th March, 1956 was written off by Government in November, 1964 due to the fact that the dealer was reported (on 14th October, 1955) by the Collector, Delhi as untraceable either at his shop or at his residential address.

The dealer filed an appeal against the assessments of tax amounting to Rs. 1·42 lakhs from 16th January, 1953 to 31st March, 1954. On 23rd January, 1956, the date fixed for hearing of the appeal, he sought an adjournment of the case through his Counsel on medical grounds but this request was rejected by the appellate authority and the assessments were confirmed by it on 31st January, 1956, ex-parte. Sales returns for the months of May to August, 1955 duly signed by him were also filed with the Department on 17th November, 1955. The Department also noticed in February, 1956 that he was doing business in an another locality of Delhi. The circumstances under which his whereabouts were not ascertained by the Department directly through him or through his Counsel or otherwise to enforce the above recovery of tax are not known.

The tax amounting to Rs. 4·46 lakhs (assessed ex-parte) for the subsequent two years *viz.*, 1954-55 and 1955-56 also remained unrecovered. This recovery was reported to the Collector after 3/2 years of the completion of the assessments.

It has also been noticed that while reporting the case to the Collector, Delhi for making recovery of the outstanding amounts, incomplete address of the dealer was furnished to him inasmuch as the address given did not indicate the exact location of the shop and only the street in which the shop was located was intimated.

According to the departmental inquiry reports of October, 1953, February, 1954 and February, 1956, the dealer had been shifting his business premises from time to time without informing the Department, as required under Section 16 of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi. He also furnished certain evidence supporting the deductions claimed by him for having sold certain goods outside Delhi but the same, on verification made in July, 1954, were found to be inadmissible because the transport companies through which the goods were stated to have been sent were not in existence. However, no steps were taken by the Department to proceed against him in terms of Section

22 of the Act. Incidentally, it may be mentioned that according to the inquiry report of October, 1953, the dealer had a very bad reputation and he was reported to be defrauding the Government on a very large scale. He finally appeared in person before the Department in January, 1955.

The Department stated in January, 1966 that the assessments in question might have been far less if the dealer had attended the hearings and produced proof in support of the deductions claimed by him on account of goods sent to places outside Delhi, etc., instead of allowing the assessments to be made ex-parte. The basis of this contention is not clear as the evidence produced by the dealer was found to be incorrect on verification conducted by the Department and he, on being requested on several occasions, refused to produce any other evidence in support

64. **Non-production of declarations or production of defective declarations towards sales.**

(i) Under the Central Sales Tax Act, 1956, sales tax at concessional rates on inter-state sales to registered dealers is leviable provided declarations in the prescribed form giving the particulars of the dealers to whom the sales have been made are furnished by the assessees. Similar concession is also permissible in respect of sales made to Government departments if the prescribed form indicating the full particulars are furnished.

The declarations for sales amounting to Rs. 10·65 crores were not made available to Audit as these were kept in gunny bags or in heaps and it was not possible for the Department to link them with the respective sales. Consequently, Audit has not been able to verify whether sales tax has been correctly charged in respect of these sales.

(ii) In a number of cases, it was noticed that the declarations did not show the number and date of registration of the dealers to whom the goods have been sold by charging sales tax at concessional rates. The declarations also bore additions and alterations which were not attested by the purchasing dealers. In view of this, it is not known how the Department satisfied itself that the sales have been made only to the genuine registered dealers.

(iii) According to rule 26 of the Delhi Sales Tax Rules, 1951, sales made to local registered dealers can be deducted from the amount of gross turnover for the purpose of determining the assessable amount and dealers claiming this reduction are required to file a

complete list of such sales along with the registration numbers of the dealers to whom the sales have been made. It was noticed that these lists have also not properly been filed with the result that the correctness of the deductions allowed on account of such sales could not be verified. The amount of such sales worked out to Rs. 10·76 crores.

In January 1966, the Department in reply stated that the declarations and lists of sales mentioned in sub-paras (i) and (iii) had not been preserved systematically because of shortage of staff and accommodation. Reply to the points raised in sub-para (ii) is however still (February, 1966) awaited.

65. **Shortfall in Survey Work.**

In a ward, survey of dealers (both registered or otherwise) is required to be conducted annually in such a way that all the shops are surveyed at least once a year. Against 20136 registered dealers as on 1st April, 1964 only 16,176 cases were surveyed during 1964-65. Failure to survey the remaining 3960 cases is reported (January, 1966) to be due to shortage of staff. The number of new cases surveyed during the same year is not known.

66. **Arrears of assessment.**

It was noticed in audit that 84092 cases were outstanding on 1st April, 1965 with the Sales Tax Office pending assessment. The approximate tax involved in these cases could not be ascertained. These outstanding cases related to the years indicated below:—

The number of assessments completed and pendency thereof during the past three years is given below:—

Financial year		No. of assessments for disposal	No. of assessments completed		% of the cases disposed of	No. of assessments pending
1962-63	Local	32,507	15,747	48·44%	47·33	16,760
	Central	24,515	11,247	45·87%		13,268
1963-64	Local	38,273	16,634	43·46%	42·32	21,639
	Central	29,208	11,923	40·82%		17,285
1964-65	Local	44,226	19,918	45%	43·50	24,308
	Central	33,831	14,042	41·5%		19,789

Year-wise breakup of arrears

Position as on 1-4-65 = 84,092	Year	Local	Central	Total
	1961-62	2,855	2,382	5,237
	1962-63	21,453	17,407	38,860
	1963-64			
	1964-65	22,357	17,638	39,995
	TOTAL			84,092

(Figures in brackets in Column 3 represent percentage of cases disposed of to the total number of assessments for disposal).

67. **Other topics of interest.**

Irregular exclusion of sales tax collections from turnover.

(a) *Under the Central Sales Tax Act,* 1956.

According to rule 11(2) of the Central Sales Tax (Registration and turnover) Rules, 1957, Central sales tax collected by a dealer is to be deducted from the gross turnover for determining the taxable turnover. This concession was withdrawn with effect from 1st October, 1958 but re-introduced with effect from 10th June 1961. It has, however, been observed during local audit that the deduction on account of the tax was continued to be allowed from 1st October, 1958 to 1st June, 1961 resulting in under assessment of tax of Rs. 3·30 lakhs (approximately).

The Ministry have replied that while modifying the Rule in 1958, it was not the intention of the Government of India that deduction in respect of the tax element should be discontinued. It has further been stated that the Rule was modified because the same purpose will be achieved by section 9-A (of the Central Sales Tax Act) which was newly incorporated, and that to clear certain doubts in the matter, Rule 11 was amended. Section 9-A merely prohibits any dealer other than a Registered dealer from collecting sales tax. It does not state that the sales tax so collected shall not form part of the turnover. According to the Central Sales Tax Act, 'turnover' means the aggregate of the sale prices received and 'sale-price' means amount payable to a dealer as consideration for sale of any goods less any sum allowed as cash discount. Therefore, the sales tax collected by a dealer being part of sale consideration must be included in turnover unless specifically exempted, as has been done with effect from 10th June, 1961.

(b) *Under the Local Sales Tax Act.*

Prior to 1st October, 1959, the amount of tax included in the amount of turnover was deducted from the gross turnover to arrive at the taxable turnover under section 5(2) of the Bengal Finance (Sales Tax) Act, 1941 (as extended to the Union Territory of Delhi). With the deletion of sub-clause (b) under section 5(2) with effect from 1st October, 1959, such a deduction was not contemplated under the Statute.

It was, however, noticed in Audit that the Department continued to assess Sales Tax after allowing the deduction. This resulted in under assessment of tax to the extent of Rs. 1·45 crores (approximately) from October, 1959 to September, 1965.

The Ministry have replied that the deletion of section 5 (2) (b) did not change the position in law having regard to the simultaneous insertion of section 10A of the Act. This, however, does not appear to be the correct legal position because section 10A does no more than specify that sales tax shall not be collected by a person other than a registered dealer. Such a prohibition does not imply that sales tax collections shall not form part of the consideration which is subject to tax.

Ministry of Health

68. **Non receipt of Income declarations from patients.**

Under Government orders issued in January, 1959, all patients (other than those covered by the C.G.H.S. Scheme) who get treatment from O.P.D. and whose income exceeds Rs. 250 per mensem are required to pay certain fees in respect of various medical examinations, laboratory tests, use of ambulance etc. Before being examined or getting ambulance facilities, such patients are required to sign a declaration of their income in a prescribed form. No such declarations were, however, actually being obtained from the patients by the Safdarjang Hospital except in the case of anti-rabic treatment and ambulance services. However, fees for medical examinations etc., voluntarily paid by the patients during the three years ending 1964-65, amounted to Rs. 9,379. In the Willingdon Hospital, where such declarations were being obtained the receipts amounted to Rs. 20,697. In the absence of income declaration forms, the extent to which there had been leakage of revenue in the Safdarjang Hospital could not be verified.

NEW DELHI;
The 7th April, 1966.

Accountant General, Central Revenues.

Countersigned.

NEW DELHI;
Date 8th April, 1966

Comptroller and Auditor General of India.

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