REPORT

OF THE

COMPTROLLER

AND

AUDITOR GENERAL

OF INDIA

FOR THE YEAR

1971-72

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME II

DIRECT TAXES

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TABLE OF CONTENTS

	Reference to Paragraph	Reference to Page
Prefatory Remarks		(iii)
CHAPTER I General	1—13	1—22
CHAPTER II Corporation Tax	14—24	23—41
CHAPTER III Income-tax	25—37	42—58
CHAPTER IV Wealth-tax, Gift-tax and Estate Duty . . .	38—59	59—79

PREFATORY REMARKS

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

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

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

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

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

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

VOLUME II

CHAPTER I

GENERAL

The total proceeds from the Direct Taxes for the year 1971-72 amounted to Rs. 1044.15 crores out of which a sum of Rs. 467.50 crores was assigned to States. The figures for the three years 1969-70, 1970-71 and 1971-72 are as follows :

(In crores of rupees)

	1969-70	1970-71	1971-72
III. Corporation Tax . . .	353.39	370.52	472.08
IV. Taxes on income other than Corporation Tax	448.45	473.17	534.39
V. Estate Duty	6.94	7.86	9.03
VI. Taxes on Wealth . . .	15.62	15.31	25.14
VII. Expenditure Tax . . .	..	(—)0.01	(—)0.01
VIII Gift Tax	2.02	2.45	3.52
GROSS TOTAL .	826.42	869.30	1044.15
Less share of net proceeds assigned to States .			
Income-tax	293.18	359.09	459.86
Estate Duty	6.98	6.30	7.64
Net receipt .	526.26	503.91	576.65

The gross receipts under the Direct Taxes during 1971-72 went up by Rs. 174.85 crores when compared with the receipts during 1970-71. The collections of Corporation Tax during the same period registered an increase of Rs. 101.56 crores.

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

(*i*) The actuals for the year 1971-72 under the Major Heads 'III. Corporation Tax', 'IV. Taxes on Income other than Corporation Tax', 'V. Estate Duty' and 'VIII. Gift Tax' exceeded the Budget estimates; whereas under 'VI. Taxes on Wealth', the actuals were less than

the Budget estimates. The figures for the period from 1967-68 to 1971-72 under the above heads are given below :—

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

(In crores of rupees)

Year	Budget estimates	Actuals	Variation	Percentage of variation
III.—Corporation Tax				
1967-68	350.00	310.51	(—)39.49	(—)11.28
1968-69	320.35	299.77	(—)20.58	(—)6.42
1969-70	326.20	353.39	27.19	8.34
1970-71	342.00	370.52	28.52	8.34
1971-72	411.00	472.08	61.08	14.86
IV.—Taxes on* Income etc.				
1967-68	290.00	325.89	35.89	12.38
1968-69	319.65	378.47	58.82	18.40
1969-70	362.30	448.45	86.15	23.78
1970-71	436.75	473.17	36.42	8.34
1971-72	491.00	534.39	43.39	8.84

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

Year	Budget estimates	Actuals	Variation	Percentage of variation
Estate Duty*				
1967-68	7.25	6.37	(—)0.88	(—)12.14
1968-69	7.50	6.74	(—)0.76	(—)10.13
1969-70	7.50	6.94	(—)0.56	(—)7.47
1970-71	7.50	7.86	0.36	4.80
1971-72	7.00	9.03	2.03	29.00
Wealth Tax				
1967-68	12.50	10.70	(—)1.80	(—)14.40
1968-69	11.00	11.11	0.11	1.00
1969-70	12.00	15.62	3.62	30.17
1970-71	18.00	15.31	(—)2.69	(—)14.94
1971-72	30.00	25.14	(—)4.86	(—)16.20
Gift Tax				
1967-68	1.50	1.30	(—)0.20	(—)13.33
1968-69	1.75	1.51	(—)0.24	(—)13.71
1969-70	1.50	2.02	0.52	34.67
1970-71	1.50	2.45	0.95	63.33
1971-72	2.00	3.52	1.52	76.00

*Gross figures have been taken.

(*ii*) The details of variations under the various Minor Heads for the year 1971-72 are given below :—

(In lakhs of rupees)

	Budget estimates	Actuals	Incerase (+) Shortfall (—)	Percentage of variation
III. Corporation Tax				
(*i*) Ordinary Collections .	3,94,25	4,53,06	58,81	14.92
(*ii*) Excess Profits Tax .	..	43	43	..
(*iii*) Super Profits Tax .	1,00	16	(—)84	(—)84.00
(*iv*) Business Profits Tax .	..	1	1	..
(*v*) Surtax	15,00	17,67	2,67	17.80
(*vi*) Miscellaneous . . .	75	75	..	..
TOTAL .	4,11,00	4,72,08	61,08	14.86
IV. Taxes on Income other than Corporation Tax				
(*i*) Ordinary Collections % .	4,55,40	5,01,78	46,38	10.18
(*ii*) Surcharge (Union) .	23,00	20,27	(—)2,73	(—)11.87
(*iii*) Surcharge (Special) .	6,00	5,00	(—)1,00	(—)16.67
(*iv*) Additional Surcharge (Union)	50	29	(—)21	(—)42.00
(*v*) Excess Profits Tax .	10	3	(—)7	(—)70.00
(*vi*) Business Profits Tax .	..	6	6	..
(*vii*) Super-tax . . .	..	83	83	..
(*viii*) Miscellaneous . . .	6,00	6,13	13	2.17
Share of net proceeds assigned to States	(—)4,20,77	(—)4,59,86	(—)39,09	(—)9.29
TOTAL .	70,23	74,53	4,30	6.12

%The actuals against ordinary collections include receipts under minor head "Receipt in England".

3. *Cost of Collection*

The expenditure during the year 1971-72 incurred in collecting Corporation Tax and Taxes on Income other than Corporation Tax together with the corresponding figures for the preceding three years is shown below :—

(In crores of rupees)

	Gross collections	Expenditure on collections	Percentage
III. Corporation tax			
1968-69	299.77	2.68	0.89
1969-70	353.39	3.15	0.89
1970-71	370.52	2.36	0.64
1971-72	472.08	2.59	0.55
IV. Taxes on Income etc.			
1968-69	378.47	10.72	2.83
1969-70	448.45	12.62	2.81
1970-71	473.17	16.53	3.49
1971-72	534.39	18.12	3.39

4. (*i*) The total number of income-tax paying assessees (including companies) in the books of the department as on 31st March, 1972 was 32,08,516. As compared to the previous year ending 31st March, 1971 there was a rise of 1,95,946 cases. The figures status-wise are :

	As on 31st March, 1971	As on 31st March, 1972
Individuals	24,25,769	25,68,937
Hindu Undivided Family	1,51,695	1,65,340
Firms	3,87,433	4,21,412
Companies	28,221	30,128
Others	19,452	22,699
TOTAL	30,12,570	32,08,516

(*ii*) Category-wise number of income-tax paying assesses is indicated in the following table :—

	As on 31st March, 1971	As on 31st March, 1972
Business cases having income over Rs. 25,000 . . .	1,77,553	2,18,065
Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,68,187	2,26,569
Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	3,86,517	5,00,769
All other cases except those mentioned in category below and refund cases	12,64,091	14,27,952
Government salary cases and non-Government salary cases below Rs. 18,000	10,16,222	8,35,161
TOTAL .	30,12,570	32,08,516

(*iii*) The total number of wealth-tax assessees in the books of the department as on 31st March, 1971 and 31st March, 1972 was as follows :—

	As on 31st March, 1971	As on 31st March, 1972
Individuals	1,53,924	1,77,870
H.U.F.	19,303	25,750
Others	28	35
TOTAL .	1,73,255	2,03,655

(*iv*) The total number of gift-tax assessees in the books of the department as on 31st March, 1971 and 31st March, 1972 was as follows :—

	As on 31st March, 1971	As on 31st March, 1972
Individuals	42,223	53,978
H.U.F.	475	761
Others	115	102
TOTAL .	42,813	54,841

(*v*) The total number of estate duty assessment cases in the books of the department as on 31st March, 1971 and 31st March, 1972 was as follows :—

As on 31st March, 1971 : 24,543

As on 31st March, 1972 : 27,341

5. *Arrears of tax demands*

(a) *Corporation Tax and Income Tax*

(i) The total effective demand of tax raised and remaining uncollected as on 31st March, 1972 was Rs. 582.59 crores as furnished by the Ministry. This does not include Rs. 222.78 crores the collection of which had not fallen due on that date. Of the sum of Rs. 582.59 crores, the Ministry have informed Audit that the net effective arrears representing recoverable demands was Rs. 431.26 crores. The balance of Rs. 151.33 crores comprised the following :

		(In crores of rupees)
1. Reduction expected on account of :		
(*a*) D.I.T. relief	5.49	
(*b*) Appellate relief	25.15	
(*c*) Protective assessments	81.44	112.08
2. Irrecoverable dues which will be written-off ultimately :		
(*a*) from persons who have left India . . .	26.22	
(*b*) from companies in liquidation . . .	13.03	
		39.25

(ii) The figures of Corporation Tax, Income-tax, interest and penalty comprised in the gross arrears of Rs. 805.37 crores and the years to which they relate are shown below :—

(In crores of rupees)

	Corporation Tax	Income Tax	Interest	Penalty	Total
(a) Arrears of 1960-61 and earlier years	6.10	38.82	1.61	2.97	49.50
(b) 1961-62 to 1968-69 . .	36.09	133.05	17.65	27.44	214.23
(c) 1969-70	12.33	50.57	9.76	11.89	84.55
(d) 1970-71	25.01	63.61	15.48	15.37	119.47
(e) 1971-72	83.27	196.21	38.60	19.54	337.62
TOTAL .	162.80	482.26	83.10	77.21	805.37

(iii) The table below shows the number of assessees from whom gross arrears of Rs. 805.37 crores are due, classified on the basis of assessed income :—

Arrear demands	No. of assessees	Total arrears (in crores of rupees)
Up to Rs. 1 lakh in each case	21,30,338	446.71
Over Rs. 1 lakh up to Rs. 5 lakhs in each case	9,753	99.77
Over Rs. 5 lakhs up to Rs. 10 lakhs in each case	832	59.70
Over Rs. 10 lakhs up to Rs. 25 lakhs in each case	495	77.67
Over Rs. 25 lakhs in each case	220	121.52
TOTAL	21,41,638	805.37

(iv) Arrears of Sur-tax demands outstanding on 31st March, 1972 are as follows :—

Relating to demands raised in	Amount out-standing (in lakhs of rupees)
1965-66	4.56
1966-67	0.10
1967-68	6.73
1968-69	31.87
1969-70	61.86
1970-71	142.01
1971-72	203.64
TOTAL	450.77

(Demands that have not fallen due on 31st March, 1972 have been excluded)

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

The following table shows the year-wise arrears of demands outstanding and the number of cases relating thereto under the three direct taxes, Wealth-tax, Gift-tax and Estate-duty as on 31st March, 1972 :

(Amount in lakhs of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	No. of cases	Amount Rs.	No. of cases	Amount Rs.	No. of cases	Amount Rs.
1966-67 and earlier years . . .	2,628	65.46	525	7.82	891	191.35
1967-68 . . .	3,200	59.14	839	12.40	530	108.79
1968-69 . . .	3,824	98.96	1,047	23.43	560	141.46
1969-70 . . .	11,566	188.32	2,040	44.39	1,177	147.20
1970-71 . . .	17,332	255.76	3,600	50.29	2,213	463.14
1971-72 . . .	46,275	934.12	9,571	121.41	3,621	410.71
TOTAL .	84,825	1,601.76	17,622	259.74	8,992	1,462.65

6. (i) The table below shows the number of cases and the amount of income-tax stayed on appeals and revision petitions as on 30th June, 1971 and 30th June, 1972 :

(In lakhs of rupees)

	No. of cases in which tax was stayed		Amount of tax stayed	
	30-6-71	30-6-72	30-6-71	30-6-72
(a) Before AACs.	7,693	9,530	3,847	4,956
(b) Before Tribunals	1,019	2,012	1,126	1,642
(c) Before High Courts	445	576	1,898	2,204
(d) Before Supreme Court . . .	24	4	59	4
(e) Revision petitions before Commissioners of Income Tax	193	455	297	510

(ii) *Appeals Pending*

Appeals relating to Income-tax including Corporation Tax pending on 30th June, 1972.

	Income-tax appeals with Appellate Assistant Commissioners	Income-tax revision petitions with Commissioner
(a) Number of appeals/revision petitions	2,77,314	7,104
(b) Out of appeals/revision petitions instituted during 1971-72	1,18,387	3,113
(c) Out of appeals/revision petitions instituted in earlier years	68,569	2,146

Year-wise break-up of appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax respectively for the periods ending 30th June, 1971 and 30th June, 1972 with reference to the year of institution are indicated below :—

Year of institution	Appeals with Appellate Assistant Commissioners		Revision petitions with Commissioners of Income-tax	
	30-6-1971	30-6-1972	30-6-1971	30-6-1972
1962-63 and earlier years	89	37	82	75
1963-64	72	42	67	54
1964-65	196	143	79	69
1965-66	469	301	72	65
1966-67	1,504	888	116	54
1967-68	4,972	2,863	184	93
1968-69	15,000	7,906	553	278
1969-70	37,932	16,071	1,110	465
1970-71	1,07,239	40,318	3,253	993
1971-72	61,070	1,18,387	1,958	3,113
1972-73	—	90,358	—	1,845
TOTAL	2,28,543	2,77,314	7,474	7,104

(iii) The number of assessments in which the amount of wealth-tax, gift-tax and estate duty was stayed on appeals and revision petitions as on 31st March, 1972 is indicated below :—

(Amount in lakhs of rupees)

	Wealth-tax		Gift-tax		Estate-Duty	
	No. of cases	Amount Rs.	No. of cases	Amount Rs.	No. of cases	Amount Rs.
Before A.A.Cs.	1,500	120.83	93	10.89	410	173.59
Before Tribunal	173	40.51	17	20.44	154	46.97
Before High Courts	14	8.89	13	15.25	21	19.54
Before Supreme Court	8	3.73	—	—	1	0.60
Revision petitions before Commissioners	41	5.53	2	0.51	—	—
TOTAL	1,736	179.49	125	47.09	586	240.70

(iv) Pendency of Appeals and Revision Petitions in respect of Wealth-tax, Gift-tax and Estate Duty.

The following table shows the number of appeals and revision petitions pending as on 31st March, 1972 :—

	Appeals with A.A.Cs.			Revision petitions with Commissioners/Controllers		
	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.
(i) Out of appeals/revision petitions instituted during 1971-72	14,894	1,073	1,782	684	34	—
(ii) Out of appeals/revision petitions instituted in earlier years	4,365	284	974	620	24	—
TOTAL	19,259	1,357	2,756	1,304	58	—

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

Year	Wealth-tax		Gift-tax		Estate Duty
	No. of appeals pending	Revision petitions	No. of appeals pending	Revision petitions	No. of appeals pending
1962-63 and earlier years	17	7	—	1	—
1963-64	15	28	—	—	—
1964-65	43	10	1	2	—
1965-66	15	25	1	5	2
1966-67	56	32	3	1	15
1967-68	185	165	16	4	21
1968-69	288	74	17	2	27
1969-70	1 006	76	65	—	110
1970-71	2,740	203	181	9	799
1971-72	14,894	684	1,073	34	1,782
TOTAL	19,259	1,304	1,357	58	2,756

7. *Arrears of assessments*

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

The number of assessment cases which are to be finalised as on 31st March, 1972 has shown a decline as compared to that at the close of previous years. The position of assessments pending as on 31-3-72 was 11.24 lakhs as compared to 12.39 lakhs as on 31-3-71 and 13.22 lakhs as on 31-3-70. Of 11.24 lakhs of pending cases as many as 4.41 lakhs cases relate to 'summary assessments'.

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

Financial year	No. of assessments for disposal	No. of assessments completed: Out of current	Out of arrears	Total	Percentage	No. of assess-ments pending at the end of the year
1	2	3	4	5	6	7
1967-68 . . .	48,86,204	12,42,688	13,13,866	25,56,554	52.3	23,29,650
1968-69 . . .	49,99,237	16,73,474	17,47,808	34,21,282	68.4	15,77,955
1969-70 . . .	48,79,697	21,34,814	14,23,076	35,57,890	72.9	13,21,807
1970-71 . . .	47,30,992	22,48,534	12,43,629	34,92,163	73.8	12,38,829
1971-72 . . .	49,67,924	23,56,949	14,87,270	38,44,219	77.4	11,23,705

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

(iii) Category-wise break-up of the total number of assessments completed during the years 1970-71 and 1971-72 is given below :—

	1970-71	1971-72
(a) Business cases having income over Rs. 25,000.	2,42,522	2,72,799
(b) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	2,21,817	1,69,465
(c) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	4,93,821	2,83,185
(d) All other cases except those in category (e), (f) and refund cases	16,79,708	6,79,487
(e) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	8,54,295	1,26,936
(f) Summary assessments	..	23,12,347
	*34,92,163	*38,44,219

*These figures include 6,90,617 for 1970-71 and 7,51,129 for 1971-72 as N.A. and filed cases.

(iv) The number of assessments completed and demand raised monthwise during 1970-71 and 1971-72 are as below :—

Month	1970-71		1971-72	
	No. of assessments completed	Demand raised (Rs. in crores)	No. of assessments completed	Demand raised (Rs. in crores)
April	59,688	17.39	57,408	13.78
May	75,078	12.97	75,737	13.66
June	1,17,916	14.89	1,23,129	22.12
July	2,06,447	29.18	2,78,207	37.61
August	2,71,013	36.99	3,56,852	53.94
September	3,06,022	47.21	3,81,693	53.86
October	3,03,343	49.60	3,79,267	68.41
November	3,54,274	72.43	4,13,938	91.21
December	3,88,274	68.87	4,28,061	158.91
January	4,22,521	88.35	4,28,075	139.25
February	4,50,298	114.28	4,27,741	185.64
March	5,37,289	219.56	4,94,111	329.00
TOTAL	34,92,163	771.72	38,44,219	1,167.39

It may be seen from the above figures that about fifty per cent of the total assessment cases was completed, and more than fifty per cent of the total demand of tax was raised, during the last four months of the assessment year.

(b) Pendency of Excess Profits Tax and Business Profits Tax assessments.

The position of pendency as on 31st March, 1972 as furnished by the Ministry is given below :—

	Excess Profits Tax	Business Profits Tax
(1) Total number of cases pending for disposal by way of final assessments on 1-4-1971	33	4
(2) Total number of cases out of (1) in which provisional assessments have been made	6	2
(3) Number of cases in which re-assessment proceedings, if any, started during the period 1-4-1971 to 31-3-1972 (Excess Profits Tax Act, 1940 i.e. number of cases added during the period)	1	—
(4) Total number out of (1) and (3) disposed of during the period from 1-4-1971 to 31-3-1972	21	—
(5) Total number pending on 31-3-1972	13	4
(6) The amount of tax (Approximate) involved in (5)	Rs. 97.30 Lakhs	Rs. 23.53 Lakhs

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

(c) The table below shows the year-wise details of wealth-tax, gift-tax and estate duty assessments pending without finalisation on 31st March, 1972 and the approximate amount of tax/duty involved therein.

Year	No. of assessments pending			Approximate amount of tax involved (in lakhs of rupees)		
	Wealth tax	Gift tax	Estate duty	Wealth tax Rs.	Gift tax Rs.	Estate duty Rs.
1966-67 and earlier years	8,713	494	1,076	136.35	8.38	38.42
1967-68	8,086	380	494	119.76	6.04	112.52
1968-69	10,727	482	704	215.58	9.80	87.08
1969-70	20,167	1,138	1,435	307.76	23.46	112.03
1970-71	43,863	3,941	2,294	1,024.18	55.43	305.09
1971-72	81,590	7,390	5,556	1,707.62	127.70	424.53
TOTAL	1,73,146	13,825	11,559	3,511.25	230.81	1,079.67

8. Outstanding cases in which penal super-tax/income-tax is leviable for failure to distribute the statutory percentage of dividends.

(a) No. of cases pending on 1st April, 1971........1,808

(b) No. of cases added during 1971-72............6,316

(c) No. of cases disposed of during 1971-72........5,687

(d) No. of cases pending on 31st March, 1972......2,437

(e) Approximate amount of additional tax involved Rs. 217.03 lakhs.

Assessment year-wise details of the cases pending on 31st March, 1972 together with the amount of tax involved are shown below :—

Assessment year	No. of cases	Amount of tax (Rs. in '000)
1949-50	1	23
1955-56	3	2,02
1956-57	6	5,41
1957-58	8	9,25
1958-59	6	12,26
1959-60	13	14,57
1960-61	12	19,28
1961-62	8	11,32
1962-63	3	6
1963-64	2	31
1964-65	2	34
1965-66	3	15
1966-67	7	37
1967-68	67	25,29
1968-69	2 78	41,97
1969-70	4 14	52,00
1970-71	5 34	10,42
1971-72	1,070	11,78
TOTAL	2,437	2,17,03

9. *Revenue demands written-off by the department during the year* 1971–72.

(*a*) A demand of Rs 475.38 lakhs in 13,776 cases was written-off by the Revenue department during the year 1971-72. Of this a sum of Rs. 10.92 lakhs relates to 54 company assessees and Rs. 464.46 lakhs to to 13,722 non-company assessees.

(Rupees in lakhs)

	Companies		Non-Companies		Total	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
1	2	3	4	5	6	7
I. Assessees having died leaving behind no assets or have gone into liquidation or become insolvent :						
(*a*) Assessees having died leaving behind no assets .	—	—	410	132.89	410	132.89
(*b*) Assessees having gone into liquidation . .	42	10.56	—	—	42	10.56
(*c*) Assessees having become insolvent . .	—	—	51	3.86	51	3.86
TOTAL .	42	10.56	461	136.75	503	147.31

1	2	3	4	5	6	7
II. Assessees being untraceable .	9	0.30	5289	19.43	5298	19.73
III. Assessees having left India . .	—	—	1457	219.05	1457	219.05
IV. For other reasons :						
(*i*) Assessees who are alive but have no attachable assets .	2	0.05	781	71.32	783	71.37
(*ii*) Amount being petty etc. . .	—	—	5683	2.43	5683	2.43
(*iii*) Amount written-off as a result of settlement with assessees . .	—	—	3	13.40	3	13.40
(*iv*) Demands rendered unenforceable by subsequent development such as duplicate demands, demands wrongly made, demands being protective etc. . .	1	0.01	48	2.08	49	2.09
TOTAL IV .	3	0.06	6515	89.23	6518	89.29
V. Amount written-off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involving in legal remedies for realisations are considered disproportionate to the amount of recovery . .	—	—	—	—	—	—
GRAND TOTAL .	54	10.92	13,722	464.46	13,776	475.38

(*b*) The demands written-off by the Revenue Department during 1971-72 of Wealth-tax, Gift-tax and Estate Duty are given below :—

	Wealth-tax		Gift-tax		Estate Duty	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
1	2	3	4	5	6	7
I. Assessees having died leaving behind no assets or have gone in liquidation or become insolvent .						
(*a*) Assessees having died leaving behind no assets . .	1	12,787	—	—	—	—
(*b*) Assessees having gone in liquidation . .	—	—	—	—	—	—
(*c*) Assessees having become insolvent . .	—	—	—	—	—	—
TOTAL .	1	12,787	—	—	—	—
II. Assessees being untraceable .	—	—	—	—	—	—
III. Assessees having left India . .	1	1,599	—	—	—	—
IV. For other reasons :						
(*a*) Assessees who are alive but have no attachable assets .	—	—	—	—	—	—
(*b*) Amount being petty etc. . .	—	—	—	—	—	—
(*c*) Amount written-off as a result of settlement with assessees	—	—	—	—	—	—

1	2	3	4	5	6	7
(*d*) Demands rendered unenforceable by subsequent development such as duplicate demands, demands wrongly made, demands being protective etc. . .	—	—	—	—	—	—
V. Amount written-off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involving in legal remedies for realisations are considered disproportionate to the amount of recovery . .	—	—	—	—	—	—
TOTAL .	2	14,386	—	—	—	—

10. The Income-tax Act contains several provisions in Chapter VI-A, affording reliefs to tax-payers either for the purpose of providing an incentive for saving or development or for the purpose of relieving hardship arising from certain types of obligatory expenditure. The Ministry were requested to furnish information regarding the number of cases where these tax benefits were actually availed of by the assessees and the following table gives the information as furnished by the Ministry. The figures represent reliefs afforded for the assessment year 1971-72 for the whole of India :

(*i*) Relief on account of expenditure on medical treatment of handicapped dependents :

	No. of cases	Amount of relief allowed
Individuals	66	Rs. 99,000
Hindu Undivided family	4	Rs. 4,000

(*ii*) Relief in respect of payments for securing retirement benefits :

Number of cases	16
Total relief allowed	Rs. 71,000

(*iii*) Relief in respect of income earned by Indian teachers, research workers working in foreign universities and educational institutions :

Number of cases	2
Amount of relief allowed	Rs. 21,000

(*iv*) Relief for newly established industrial undertakings and hotels :—

	Hotels	Companies, other than hotels	Persons other than Companies
No. of cases .	3	83	54
Amount of relief allowed .	Rs. 1,72,000	Rs. 4,40,12,000	Rs. 1,99,58,000

(*v*) Relief for expenditure incurred on education abroad of children of foreigners :

No. of cases .	—	—	55
Amount of relief	—	—	1,41,000

(*vi*) Relief for industrial undertakings which provide employment for displaced persons : .. .. Nil

11. *Frauds and evasions*

(*a*) Income-tax.

(*i*) No. of cases in which penalty under section 28(1)(c)/271(i)(c) was levied in 1971-72 . .		18,051
(*ii*) No. of cases in which prosecution for concealment of income was launched		12
(*iii*) No. of cases in which composition was effected without launching prosecution		2
(*iv*) Concealed income involved in (i) . . .	Rs.	33,93,46,000
(*v*) Total amount of penalty levied on (i) . .	Rs.	9,57,24,000
(*vi*) Extra tax demanded on concealed income in item (iv)	Rs.	11,57,80,000
(*vii*) Cases out of (ii) in which convictions were obtained		—
(*viii*) Composition money levied in respect of (iii) .	Rs.	1,70,000
(*ix*) Nature of punishment in respect of (vii) . .		—

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

	Wealth-tax	Gift-tax
(*i*) No. of cases in which penalty u/s. 18(1)(c)/17(1)(c) was levied . .	593	18
(*ii*) No. of cases in which prosecution for concealment was launched .	1	—
(*iii*) No. of cases in which composition was effected without launching prosecution	1	—
(*iv*) Concealment of net-wealth/value of gift invloved in (i) . . .	Rs. 795.89 lakhs	Rs. 5 lakhs
(*v*) Total amount of penalty levied .	Rs. 144.37 lakhs	Rs. 24,000
(*vi*) Extra-tax demanded on concealment	Rs. 58.21 lakhs	Rs. 70,000
(*vii*) Cases out of (ii) in which convictions were obtained . . .	—	—
(*viii*) Composition fees levied in respect of cases in (iii)	—	—
(*ix*) Nature of punishment in respect of (vii)	—	—

12. *Voluntary desclosures under section 271 (4A)*

With a view to encourage voluntary disclosure of undisclosed income, Section 271(4A) was inserted in the Income-tax Act, 1961 by the Income Tax (Amendment) Act, 1965. This sub-section empowers amount of minimum penalty imposable in the case of persons who have voluntarily and in good faith made full and true disclosure of their concealed income. The following table shows the number of persons who have voluntarily disclosed concealed income during 1971-72 assessments completed during the year and the total number of cases outstanding without finalisation as on 31st March, 1972.

(*i*) No. of declarants who gave voluntary disclosures during 1971–72	2,209
(*ii*) Amount of income declared	Rs. 26,40 lakhs
(*iii*) No. of cases in which the disclosed income was held-already detected	421

(*iv*)	Income involved in (iii) above . . .	Rs.	4,08 lakhs
(*v*)	No. of cases in which the assessments have been completed		1,199
(*vi*)	Amount of tax involved in cases in (v) above .	Rs.	5,57 lakhs
(*vii*)	Amount of tax levied in cases in (vi) above .	Rs.	1,33 lakhs
(*viii*)	Amount recovered out of (vii) above . .	Rs.	66 lakhs
(*ix*)	No. of cases in which levy of penalty was waived or reduced		7,77
(*x*)	Amount of income involved in (ix) above .	Rs.	41 lakhs
(*xi*)	No. of cases in which full amount of penalty was levied		195
(*xii*)	Amount involved in cases in (xi) above . .	Rs.	12 lakhs
(*xiii*)	No. of cases outstanding without finalisation on 31-3-1972		2,974

(*xiv*) Year-wise details of (xiii) above :

Year	Cases
1965–66	186
1966–67	209
1967–68	173
1968–69	166
1969–70	283
1970–71	547
1971–72	1,410
TOTAL	2,974

13. *Results of test-audit in general*

(*i*) Corporation Tax and Income Tax.

During the period from 1st September, 1971 to 31st August, 1972, test-audit of the documents of the income-tax offices revealed total under-assessment of tax of Rs. 1,116.31 lakhs in 13,042 cases and over-assessment of tax of Rs. 159.25 lakhs in 4,656 cases. Besides these, various defects in following the prescribed procedure also came to the notice of Audit.

Of the total 13,042 cases of under-assessment, short-levy of tax of Rs. 947.53 lakhs was noticed in 950 cases alone. The remaining 12,092 cases accounted for under-assessment of tax of Rs. 168.78 lakhs.

The under-assessment of tax of Rs. 1,116.31 lakhs is due to mistakes categorised broadly under the following heads :—

	No. of items	Amount (in lakhs of rupees)
1. Avoidable mistakes involving considerable revenues .	2,300	60.48
2. Incorrect assessment of income under 'salaries' . .	166	2.00
3. Incorrect computation of income from business .	1,438	253.32
4. Mistakes in computing depreciation and development rebate	797	102.77
5. Incorrect levy of tax on capital gains	97	13.75
6. Irregular exemptions or excess reliefs given . . .	563	52.09
7. Income escaping assessment	1,094	81.68
8. Non-levy/incorrect levy of penal interest . . .	2,012	54.52
9. Non-levy of penalty	71	33.22
10. Other lapses	4,412	427.21
11. Omissions in levy of Surtax/Super Profits tax .	92	35.27
	13,042	1,116.31

(*ii*) Super Profits Tax and Sur Tax

During the period under review, under-assessment of Super Profits Tax/Sur Tax of Rs. 35.27 lakhs was noticed in 92 cases and over-assessment of tax of Rs. 26.11 lakhs was noticed in 30 cases.

(*iii*) Wealth-tax

During test-audit of assessments made under the Wealth-tax Act, 1957 short-levy of tax of Rs. 53.31 lakhs was noticed in 2,288 cases. The number of cases in which over-assessment was noticed was 801 and tax involved was 5.79 lakhs.

The under-assessment of tax of Rs. 53.31 lakhs was due to mistakes categorised broadly under the following heads :—

	No. of items	Tax (Rupees in lakhs)
1. Mistake in calculation of tax, computation of wealth or mistake in allowance of initial exemption limits .	703	5.17
2. Failure to correlate wealth-tax assessments with assessments under other Direct taxes	31	0.22
3. Wealth escaping assessment	297	4.83

4. Incorrect valuation of assets	227	5.55
5. Incorrect reliefs and exemptions	360	3.51
6. Incorrect levy of additional wealth-tax	56	3.40
7. Non-levy of penalty	355	26.51
8. Other lapses	259	4.12
Total	2,288	53.31

(*iv*) Gift-tax

During test-audit of gift-tax assessments it was noticed that in 358 cases there was short-levy of tax of Rs. 11.00 lakhs and in 148 cases there was over charge of tax of Rs. 0.92 lakh.

(*v*) Estate Duty

In test-audit of estate duty assessments, it was noticed that in 358 cases there was short-levy of estate duty of Rs. 22.91 lakhs and in 109 cases there was over-charge of duty of Rs. 1.41 lakhs.

CHAPTER II

CORPORATION TAX

14. In respect of the assessment of the companies, some instances of the mistakes under the headings mentioned in paragraphs 13 (i) and 13 (ii) are given in the following paragraphs:

15. *Avoidable mistakes involving considerable revenues*

(*i*) Under the Income-tax Rules, the income derived from the sale of tea grown and manufactured in India is to be computed as income derived from business and only 40 per cent of this income is to be subjected to tax under the Income-tax Act.

An Indian company derived an income of Rs. 4,55,899 from tea business during the previous year relevant to the assessment year 1967-68, and an amount of Rs. 1,82,360 being 40 per cent of this income was liable to income-tax. However, while computing income, the department took Rs. 1,82,360 as the total income derived from tea business and worked out 40 per cent thereof as the amount chargeable to income-tax. As a result of this, tax was under-assessed to the extent of Rs. 55,972 and there was also an excess payment of interest of Rs. 5,709 to the assessee company.

The Ministry have replied that the assessment has been revised and additional demand of Rs. 58,519 raised. Report of recovery is awaited (February, 1973).

(*ii*) Under Section 235 of the Income-tax Act, where a company receives dividends out of the profits of another company assessed to agricultural income-tax, such dividend income is eligible for a reduction in tax. Up to and including the assessment year 1964-65 this reduction was allowed at the rate of 20 per cent of such income. But this rate was increased to 25 per cent by an amendment made in the Finance Act, 1965.

A company derived dividend income of Rs. 3,23,964 and Rs. 3,22,062 for the assessment years 1963-64 and 1964-65 respectively and these incomes were eligible for the reduction in tax at 20 per cent. The department, however, allowed income-tax deduction at 25 per cent. This resulted in under-assessment of tax of Rs. 32,301 for the two assessment years, and consequential excess payment of interest of Rs. 4,555 to the company.

The Ministry have replied (November, 1972) that the mistakes have been rectified and the additional demand raised. Report of recovery is awaited.

16. *Incorrect computation of Corporation Tax*

(i) Under the Finance Act, 1968, certain categories of domestic companies were liable to pay tax at 7.5 per cent on that part of dividends distributed during the relevant previous year, which exceeded 10 per cent of the paid-up equity share capital of the company as on the first day of the previous year. In the following two instances there was a failure to levy this tax correctly.

(a) A company, falling in one of such categories, which had a paid-up equity share capital of Rs. 5,02,000 as on the first day of the previous year relevant to the assessment year 1968-69 distributed equity dividend totalling Rs. 28,11,200. The dividends distributed in excess of 10 per cent of the equity share capital thus amounted to Rs. 27,61,000 on which the additional tax leviable worked out to Rs. 2,07,075. But the department computed the excess dividends at Rs. 17,97,200 and levied an additional tax of Rs. 1,34,790 resulting in under-assessment of tax of Rs. 72,285.

(b) In the case of another company it was liable to pay the excess dividend tax at Rs. 1,12,500 for the assessment year 1968-69. But the department did not levy it. There was, thus, an under-charge of tax to the extent of Rs. 1,12,500 in respect of the assessment year 1968-69. In the same case, for the assessment year 1967-68 while an amount of Rs. 50,000 only was leviable, the department levied the tax at Rs. 1,12,500.

The Ministry have replied that the omissions in the assessments of the two companies mentioned above for the assessment year 1968-69 have been rectified raising additional demands of Rs. 72,285 and Rs. 1,12,500 respectively.

(ii) Under the Finance Act, 1964, a company which was mainly engaged in the manufacture of processing of goods, was eligible for a rebate in super-tax at the rate of 30 per cent; in other cases the rebate admissible was 20 per cent.

A company which was not a manufacturing company in which public were not substantially interested, was erroneously allowed super-tax rebate at the rate of 30 per cent on its total income of Rs. 1,66,028 (mainly consisting of commission receipts) for the assessment year 1964-65 instead of at the correct rate of 20 per cent, resulting in short-levy of tax of Rs. 16,603.

The Ministry have replied in November, 1972 that the Internal Audit Party pointed out this mistake on 17-12-1970 but the rectificatory action had not been completed when the Revenue Audit checked the case on 27-11-1971.

(iii) Under Chapter VI-A of the Income-tax Act, 1961, certain reliefs by way of deduction from the gross total income of the assessee are provided subject to the condition that the aggregate amount of such deductions should, in no case, exceed the gross total income. Audit came across instances where this important condition was overlooked.

In the case of one company, for the assessment year 1968-69, the total income was assessed at a loss of Rs. 6,29,970. Accordingly, no deduction under Chapter VI-A was admissible. However, the department allowed a deduction of Rs. 1,03,110 to the company in respect of dividend received by it from an Indian company and this led to an excess allowance of business loss to the company amounting to Rs. 1,03,110. The Ministry have stated that rectificatory action has been taken in this case.

(iv) Under the Income-tax Act, 1961 any deduction of tax made at source and paid to the Central Government is treated as a payment of tax on behalf of the person from whose income the deduction was made and credit should be given to him for the amount so duducted on the basis of the certificate of deduction.

An assessee company received amounts of Rs. 1,13,291 and Rs. 97,955 during the previous years relevant to the assessment years 1968-69 and 1969-70 respectively on account of interest on deposits which did not belong to it, and which were not assessed to tax as its income. The department, however, allowed credit to it for tax deducted at source from such interest payments. The incorrect deduction of tax credit resulted in under-charge of tax amounting to Rs. 42,248 for the assessment years 1968-69 and 1969-70.

The Ministry have replied (December, 1972) that the assessments have been revised, and that a sum of Rs. 29,980 has been collected.

(v) Under the provisions of the Income-tax Act, 1961 certain categories of income were allowed rebate of tax at the average rate of tax applicable to the total income. In the case of a company for the assessment year 1965-66 the department took into account only the tax levied on the income other than long-term capital gains of the assessee for arriving at the average rate.

Since the long-term capital gains are eligible for a concessional rate of tax, the average rate arrived at by the department was higher than the correct rate and as a result, the rebate allowed by the department at the average rate was in excess of the rebate correctly admissible. This mistake in the computation of the average rate of tax resulted in excess allowance of rebate of tax of Rs. 30,305.

The Ministry have replied (November, 1972) that the mistake has been rectified. Report of recovery is awaited.

(vi) According to the provisions of Finance Acts, 1964 and 1965, a public limited company was entitled to super-tax rebate of Rs. 81,048 in the assessment year 1964-65 which was to be reduced by Rs. 2,14,021 on account of issue of bonus shares and declaration of dividend by the company. As the amount to be deducted exceeded the rebate, deduction was to be limited to the extent of the rebate so as to make it nil and the balance amount was to be carried forward for deduction from the income-tax rebate admissible to the company in the subsequent assessment year 1965-66. While the deduction of Rs. 81,048 was correctly made in assessment year 1964-65 the balance of Rs. 1,32,973 was not carried forward for deduction from income tax rebate in assessment year 1965-66. This resulted in short charge of tax of Rs. 1,32,973 in the assessment year 1965-66.

The Ministry have replied (November, 1972) that the mistake has been rectified. Report of recovery is awaited.

(vii) Under Section 23-A of the Income-tax Act, 1922 a company in which the public are not substantially interested was liable to pay additional super-tax, when the profits and gains distributed as dividends were less than the statutory percentage specified in the Act. For the assessment year 1959-60, a company was incorrectly classified as one in which the public were substantially interested and the levy of additional super-tax was not considered, even though the dividends distributed fell considerably short of the specified statutory percentage. When it was pointed out by Audit that the correct status of the company would be one in which the public were not substantially interested and hence there would be liability for the levy of additional super-tax under Section 23-A of the Act, the department re-examined the case and levied an additional super-tax of Rs. 8,78,867.

The Ministry have stated that the assessment has been revised. Report of recovery is awaited (February, 1973).

17. *Incorrect computation of income from business* :

(i) An Indian company incurred expenses amounting to Rs. 3,98,000 on account of 'new second preference' shares issued during the previous year corresponding to the assessment year 1967-68. Under the Income-tax Act, 1961 expenses incurred wholly and exclusively for the purpose of business are allowable as deduction from income provided such expenses are not capital in nature. The expense of Rs. 3, 98, 000 being one of capital in nature, was not an admissible item to be allowed as deduction from income. The department, however, allowed the entire expense of Rs. 3,98,000 as deduction in the assessment year 1967-68, resulting in under-assessment of income of same amount in that year with consequential under-charge of tax to the extent of Rs. 2,18,900.

The Ministry have stated (November, 1972) that the assessment has been revised and the additional demand raised.

(ii) The Income-tax Act, 1961 provides for an allowance or deduction from the income of an assessee in respect of loss, expenditure or a trading liability as may be incurred for the purpose of business, carried on by the assessee. If, however, on a subsequent date, the assessee obtains any benefit in respect of such loss, expenditure or the trading liability allowed earlier, either by way of remission or cessation thereof, the benefit that accrues thereby shall be deemed to be the profits and gains of business or profession, and the same charged to income-tax as the income of the previous year in which such remission or cessation takes place.

In one case, a sum of Rs. 39,969 which was written back in the accounts of an assessee company for the year corresponding to the assessment year 1966-67 on account of excess liability allowed in the previous assessments was not considered as income of that assessment year. This resulted in under-charge of tax amounting to Rs. 23,981.

The Ministry have replied (October, 1972) that the assessment has been revised and the additional demand raised. Report of recovery is awaited.

(iii) In the assessment of a company, for the assessment year 1969-70, the Income-tax Officer did not accept the accounts relating to certain contract works, and estimated the gross profit from such contract works as Rs.22,301 as against loss of Rs. 9,71,883 actually debited in accounts. In framing the assessment order, however, the Income-tax Officr failed to add

back the aforesaid losses to the net profits disclosed in Profit and Loss accounts. This resulted in an under-assessment of income of Rs. 6,13,900 together with a short levy of penal interest of Rs. 1,00,510.

The Ministry have accepted the mistake (February, 1973). Report regarding rectificatory action and recovery of tax is awaited.

(iv) While a company used to account for its income arising from managing agency remuneration on 'receipt basis', the department treated such receipts for assessments on 'accrual basis'. The amount so assessed on 'accrual basis' in one year was deducted from the income of the succeeding year and the amount accrued in the latter year was included in the income of that year.

The department assessed the managing agency remuneration at Rs. 48,477 and Rs. 89,970 for the assessment years 1964-65 and 1965-66 respectively. But it deducted from the incomes of the succeeding assessment years 1965-66 and 1966-67 amounts of Rs. 1,48,266 and Rs. 1,18,807 as having been assessed in the earlier assessment years. The under-assessment of incomes for 1965-66 and 1966-67 by Rs. 99,789 and Rs. 28,837 respectively caused tax under-charge of Rs. 89,744 including sur-tax.

The Ministry have replied (January, 1973) that the mistake is being rectified. Report of recovery of additional tax is awaited.

(v) Under the Finance Act, 1965, companies deriving income from the manufacture of certain specified articles are entitled to a concessional rate of income-tax on such income for the assessment year 1965-66. From the assessment year 1966-67 onwards, under the provisions of the Income-tax Act, 1961 a deduction of 8 per cent is allowed from such income and only the balance is charged to tax. The income so eligible for concessional tax rate or deduction, as the case may be, is to be determined after taking into account the allowances and deductions otherwise admissible under the Act.

An Indian company was allowed development rebate on the plant and machinery amounting to Rs. 5,50,040, Rs. 20,84,038 and Rs. 41,28,700 for the assessment years 1965-66, 1966-67 and 1967-68 respectively. The department, however, worked out the income without taking into account the development rebate so allowed. As a result, the income from which 8 per cent thereof had to be allowed deduction, was in excess by the amount of the development rebate allowed with a consequential under-charge of tax aggregating Rs. 3,00,862.

The Ministry have replied (January, 1973) that the mistake has not been rectified as the proceedings initiated under section 154 have been stayed by the High Court till disposal of writ petition.

(vi) A company which was raising sugarcane in its own farm and using it, along with cane purchased from the market, as raw material for producing sugar was entitled under the provisions of the Income-tax Act and the rules made thereunder, to deduct from its total income the market value of the sugarcane produced in its farm and used by it in the manufacture of sugar. The market price of sugarcane in the working seasons of 1958-59 and 1959-60 was raised retrospectively by 31 paise and 21 paise respectively per maund by an order made on 24th December 1964 by the Sugarcane (Additional) Price Fixation Authority. As a result, the amounts deductible in respect of the sugarcane raised and utilised by the company in the previous years relevant to its assessments for 1960-61 and 1961-62 increased by Rs. 3,02,825 and Rs. 2,09,465 respectively, and the total incomes as previously assessed in these years were correspondingly reduced in revised assessments made on 14th March, 1968. These amounts were again deducted erroneously from the income assessable in 1966-67, and as a result, the loss which the assessee was entitled to carryforward, was over assessed by Rs. 5,12,290.

The Ministry have stated that rectificatory action has been taken (January, 1973).

(vii) A company received 14,340 bonus shares of the face value of Rs. 10 each from another company and debited its revenue account with Rs. 1,43,400 representing the cost of these shares. As the acquisition of bonus shares was only an accretion to the capital value of its investments and not a revenue expenditure, the debit should have been disallowed by the Income-tax Officer. In this case when the return for the concerned assessment year (1959-60) was submitted in November, 1963, the sum of Rs. 1,43,400 was included in the return but subsequently in December, 1963 the assessee submitted a revised return reducing the income by taking into account the debit of Rs. 1,43,400 purporting to follow a High Court judgment delivered in its case. However, in March, 1964 the said High Court's judgment was reversed by the Supreme Court which clearly stated that there could not be any separate debit for the bonus shares in the accounts. On 28th March, 1964 the assessment of the case was completed after the Supreme Court judgment; however, the Supreme Court judgment was not given effect to. Even subsequently, when the assessment was revised in August, 1969 to give effect to the order dated 25th April, 1969 of the Appellate Tribunal, the inclusion of the debit of Rs. 1,43,400 was not rectified with the result that there was an under-charge of tax of Rs. 73,851.

The Ministry have reported (February, 1973) that the assessee has been persuaded to accept rectification even though it is time-barred. The rectification was accordingly carried out with the result that the business income of 1959-60 has been increased by a sum of Rs. 1,43,000 and the entire amount has been set-off against the business loss of earlier year.

(viii) Under the Income-tax Act, exemption is admissible to the profits and gains derived from a newly established industrial undertaking as do not exceed 6 per cent of the capital employed in such undertaking. Where such profits and gains fall short of 6 per cent of the capital employed, such short-fall or deficiency can be carried forward to a prescribed number of succeeding years for set-off against profits and gains of those years. This carry-forward of deficiency, however, was admissible for assessment year 1967-68 and subsequent assessment years and was not available for profits assessable in the assessment year 1966-67.

The department, however, allowed the carry-forward of a profit deficiency of Rs. 2,58,318 in respect of a newly established undertaking of an assessee company for 1966-67 for set-off against the profits and gains of the subsequent assessment years 1967-68 to 1969-70. The incorrect carry-forward of profit deficiency resulted in a total under-charge of tax of Rs. 1,42,074 for the assessment years 1967-68 to 1969-70.

The Ministry have replied (December, 1972) that the mistake has been rectified. Report of recovery of the additional demand of tax is awaited.

18. *Mistakes in computing depreciation and development rebate*

The Public Accounts Committee had repeatedly drawn the attention of the Ministry to the need to avoid mistakes in computation of depreciation allowance and development rebate. The mistakes have continued to occur involving considerable revenue. During the year under report, 797 cases (both companies and non-companies assessments) of under-assessment of tax due to incorrect allowance of depreciation and development rebate involving Rs. 102.77 lakhs were noticed in test-check. A few instances relating to companies are mentioned below :—

(i) Under the provisions of the Income-tax Act the grant of development rebate is, among others, subject to the following two conditions :—

(1) The plant and machinery should be new.

(2) Development Rebate is admissible only in respect of the year of installation.

A company was incorporated on 18th February, 1959 after taking over all the assets and liabilities of an existing company. The plant and machinery so taken over had been installed by the latter company long before the incorporation of the former company. So, the two conditions referred to above were not satisfied and the former company was not eligible for development rebate in respect of the plant and machinery so taken over. But the department allowed development rebate to the former company to the extent of Rs. 33,04,401 for the assessment year 1960-61. This irregular allowance of development rebate resulted in undercharge of tax of Rs. 14,86,980 for the said assessment year.

The Ministry have replied (February, 1973) that the audit objection does not appear to be acceptable to them in view of an agreement dated 27th June, 1971 between the Government of India and the companies concerned, and a subsequent clarification by the Board in respect of the said agreement. They have, however, added that the matter is being examined further.

(ii) Under the Income-tax Act, 1961 two separate allowances are admissible, *viz.* development rebate on new plant and machinery and initial depreciation on new buildings—subject to certain conditions.

In the case of a company, in the assessment year 1969-70, initial depreciation of Rs. 96,818 was admissible for new buildings and Rs. 7,18,198 for new plant and machinery. The assessee was correctly allowed initial depreciation, but, while allowing development rebate a sum of Rs. 96,818 was allowed once again resulting in under-assessment of tax of Rs. 53,250.

The Ministry have replied (November, 1972) that the mistake has been rectified and the additional demand of tax raised. Report regarding recovery of the demand is awaited.

(iii) Under the provisions of the Income-tax Act, grant of development rebate on new plant and machinery owned by an assessee and used for the purpose of business is subject to the condition *inter alia* that not less than an amount equal to seventy five per cent of the development rebate to be actually allowed is debited to the Profit and Loss account of the relevant previous year and credited to a reserve account. Two instances where these provisions were not followed are given below :—

(a) For the assessment year 1968-69, in the case of a company, development rebate on new plant and machinery was allowed at the prescribed rate on the cost of the plant and machinery brought into use in the previous year relevant to the assessment year 1968-69 even though the development rebate

reserve fell short of seventy five per cent of the development rebate allowed, by Rs. 5,55,171 resulting in excess allowance of development rebate of Rs. 7,40,228. Consequently, the income of the company was under-assessed by Rs. 6,81,010 (taking into account the deduction of Rs. 59,218 admissible to priority industries) involving short levy of tax of Rs. 4,09,046.

(b) In the case of another company, it was seen that the development rebate was similarly allowed though the reserve created by the assessee company fell short of the prescribed minimum. The incorrect allowance of development rebate for assessment years 1963-64 and 1964-65 resulted in a short computation of income of Rs. 11.67 lakhs with a consequential short demand of tax of Rs. 5.25 lakhs.

The Ministry have replied (January, 1973) that the mistake has been rectified and additional demand of tax raised with reference to item (a) above. Regarding the second case, report of revision of assessment is awaited (February, 1973).

(iv) Under the Income-tax Act, an assessee who avails himself of the concession of development rebate should keep 75 per cent of the development rebate in a separate reserve account and should not utilise the same for distribution as dividends or for remittance outside India as profits for a period of eight years. If this direction is not followed the development rebate already granted, should be withdrawn.

Company 'A' was allowed development rebate for the assessment years 1959-60 to 1967-68 and 1969-70. Another company 'B' was allowed development rebate for the assessment years 1967-68 and 1968-69. But the development rebate reserves created by them for the relevant years were transferred within eight years to general reserves and utilised either for distribution of dividends or issue of bonus shares or for setting-off against debit balances of the Profit and Loss accounts. The development rebate reserves having thus been utilised for prohibited purposes within the prescribed period of eight years, the development rebate originally given should have been withdrawn and charged to tax in the respective assessment years in which it was allowed.

This having not been done, there had been an under-charge of tax amounting to Rs. 5,04,102 for the assessment years 1959-60 to 1966-67 and also an excess computation of business loss of Rs. 2,72,105 for the assessment years 1967-68 and 1969-70 in respect of company 'A'. In the case of

company 'B', tax was undercharged by Rs. 3,77,394 for the assessment year 1967-68 and business loss was excess calculated by Rs. 3,58,487 for the assessment year 1968-69.

The Ministry have replied (January, 1973) that the assessment in respect of company 'B' has been revised and the additional demand raised. Regarding company 'A' report of rectification of the mistake is awaited.

(v) According to the provisions of the Income-tax Act, the actual cost of any asset acquired by an assessee from abroad could be increased by the amount of the enhanced liability that had accrued on account of devaluation of rupee. However, the grant of development rebate on such increased liability was specifically prohibited.

In the assessments of three companies for 1967-68, the department, however, allowed development rebate on the increase in cost of assets of plant and machinery consequent on the change in the exchange rate. This resulted in the grant of excess of development rebate in the three cases aggregating Rs. 5,99,166 in the assessment year 1967-68, with consequential under-charge of tax by Rs. 2,83,637 in two cases and excess carry-forward of unabsorbed development rebate by Rs. 83,462 in the third case.

The Ministry have replied (January, 1973) that the assessments have been revised and additional demand raised. Report regarding collection of the demand is awaited.

(vi) The Income-tax Act, 1961, as also the Rules framed thereunder provide for the grant of normal and an additional depreciation called extra-shift allowance in respect of the plant and machinery working more than one shift. For double-shift working, the extra-shift allowance is subject to the maximum of 50 per cent of the normal depreciation calculated with reference to the actual number of days for which the concern worked double-shift. For triple-shift working, however, the extra-shift allowance is subject to the overall limit of 100 per cent, including 50 per cent for double-shift working of the normal depreciation.

For the assessment year 1966-67, the department granted to a company Rs. 2,50,801 as normal depreciation, on certain items of machinery, as also Rs. 1,25,401 and Rs. 2,50,801 for double and triple-shift working respectively. The total extra-shift allowance exceeded the prescribed ceiling of 100 per cent of the normal depreciation by Rs. 1,25,401 which led to a tax under-charge of Rs. 68,971.

In another case, for the assessment year 1964-65, extra-shift allowance on machinery for double-shift working was granted at 100 per cent of normal depreciation instead of at the admissible rate of 50 per cent. This resulted in excess extra-shift allowance of Rs. 2,04,017 with consequential tax undercharge of Rs. 1,02,008.

In respect of the same assessee for the assessment year 1966-67, a net excess allowance of Rs. 29,632 was granted and thus, in respect of these two assessments there was a short levy of tax of Rs. 1,18,306.

The Ministry have replied (January, 1973) that the mistakes in the above cases have been rectified and that the additional demand totalling Rs. 1,87,277 raised.

19. *Irregular exemptions or excess reliefs given*

(i) In para 50(b) of the Audit Report on Revenue Receipts 1970-71, it was pointed out that the department allowed concessional tax admissible to industries set up in the priority sector in respect of radio receivers, loudspeakers and radio parts, deeming them incorrectly to fall under the category of 'electrical communication equipment' mentioned in the Schedule VI of the Income-tax Act. In the following two cases, similar mistake was noticed while conducting audit early in 1972.

(a) The tax concession meant for priority industries was given to a company manufacturing resins and fabrication of water-treatment equipment which are not listed as the priority industries. The Ministry, after consulting the Ministry of Industrial Development, have accepted the audit objection and have stated that the department would be taking necessary rectificatory action.

(b) In another case, a company deriving income from manufacture of radio receivers was incorrectly allowed the tax rebate available to the priority industries for the assessment years 1966-67 and 1967-68 resulting in short-levy of tax of Rs. 2,30,758.

In this case also, the Ministry have accepted the audit objection and reported that the mistake has been rectified. Report regarding recovery of the tax is awaited.

(ii) A newly established industrial unit operated by an Indian company during the previous years corresponding to the assessment years 1968-69 and 1969-70 did not earn any income. Since the gross income of the company did not include any profit and gain from this unit, no deductions in respect

of profits from newly established industrial undertakings from the gross income were admissible in both the years under the Income-tax Act, 1961. Nevertheless, the department incorrectly allowed deductions of Rs. 1,61,572 and Rs. 2,30,561 respectively from the gross incomes of the years in question. The tax under-charge arising from this action amounted to Rs. 2,06,945.

The Ministry have replied (January, 1973) that the assessments have been revised and the additional demand of tax raised. Report regarding recovery of tax is awaited.

(iii) With a view to providing incentives for exports, the Income-tax Act and the Finance Acts provide the following reliefs :

(1) a rebate of 1/10th of the average rate of income-tax on the profits made by an assessee out of such exports;

(2) a rebate at the average rate of income-tax on 2 per cent of the sale proceeds manufactured by an assessee which were exported by him direct or through an exporter;

(3) with effect from 1st April, 1968 domestic companies in India which incur any expenditure under specified heads to promote sales outside India, are allowed an 'export-market development allowance' of an amount equal to $1\frac{1}{3}$ times the amount of qualifying expenditure.

Audit had come across many instances in which the provisions relating to these rebates and deductions particularly conditions limiting those rebates and deductions, have been overlooked by the department. Two instances are given below :—

(a) In respect of the deduction mentioned at item (3) above, the expenditure incurred in India on the carriage of goods outside India is not to be considered. In the assessment of a company for assessment year 1969-70 finalised on 29th January, 1971 an amount of Rs. 1,16,170 incurred on shipping freight was incorrectly considered for 'export-market development allowance'. This resulted in under-assessment of income of Rs. 38,723 involving a short-levy of tax of Rs. 21,296. Though the case was looked into by Internal Audit yet this mistake was not pointed out.

The Ministry have replied (January, 1973) that the assessment has been rectified and additional demand raised.

(b) The Finance (No. 2) Act, 1967 provided that the rebates of tax mentioned at items (1) and (2) above should be in respect of exports of goods prior to 6th June, 1966.

A company claimed tax relief for the assessment year 1967-68 on export sales and profit with reference to figure of sales which included cash subsidy and excise drawbacks amounting to Rs. 19,39,592 and Rs. 9,13,239 respectively. While allowing tax relief to the assessee, the department omitted to exclude the sum of Rs. 19,39,592 and Rs. 9,13,239 included in the sales and allowed rebate on the value of sales enhanced in this manner. This resulted in the grant of excess rebate of tax to the extent of Rs. 39,255.

The Ministry have replied (December, 1972) that the mistake has been rectified and that the assessee has, however, filed an appeal against the rectification order.

(iv) Under the provisions of the Finance (No. 2) Act, 1967 an assessee manufacturing certain specified articles and exporting them prior to the 6th day of June, 1966 is eligible for rebate of Income-tax at the average rate of such tax calculated on an amount equal to two per cent of the sale proceeds receivable by him in respect of such export. But exports effected after the 5th day of June, 1966 are not entitled to such concession.

In one case, it was seen that an Indian company manufactured and exported the specified articles during the previous year 1969-70 relevant to assessment year 1970-71. As the export was effected by the company after the 5th day of June, 1966 no rebate on export sale was due to the assessee. The department, however, allowed export rebate amounting to Rs. 53,409 in the assessment year 1970-71 which resulted in under-charge of tax of Rs. 53,409.

The Ministry have replied that the assessment in question has been rectified raising additional tax of Rs. 53,409 . Report regarding recovery of this tax is awaited.

20. *Income escaping assessment*

(i) During its previous year relevant to the assessment year 1962-63, a non-resident company received from an Indian company payment in foreign currency equivalent of Rs. 24,37,950, as part payment for 'know-how', in accordance with an agreement in terms of which its Indian tax liability on this account was also to be borne by the Indian company. In the light of appellate orders on a similar payment for the assessment year 1964-65, the amount in foreign currency equivalent of Rs. 12,43,355 was to be treated as the post-tax-net income accruing to the non-resident company in India. The gross income would, thus, amount to Rs. 33,60,417 which should have

been taxed as business income for the assessment year 1962-63. But this income was not returned by the non-resident company nor was it taxed by the department. The result was tax under-charge of Rs. 21,17,063 and short-levy of interest of Rs. 8,00,250.

During the previous year corresponding to the assessment year 1964-65, the same non-resident company received payment in foreign currency equivalent of Rs. 39,00,720 on the same account from the Indian company. The gross income accruing in India to the former as a result of this payment would amount to Rs. 56,83,905 which should have been taxed at 65 per cent, *i.e.* tax rate leviable on business income for that assessment year. But the department treated this income as one from royalty, and charged tax at 50 per cent, which was the tax rate for royalty. This is found to be not in order, as it has been held judicially that income from the sale of 'know-how' is business income and not of the nature of royalty. The tax under-charge and short-levy of penal interest for the assessment year 1964-65 work out to Rs. 17,05,171 and Rs. 5,36,404 respectively.

For the assessment years 1962-63 and 1964-65 the under-assessment of revenue in this case thus aggregates to Rs. 51.59 lakhs (tax under-charge of Rs. 38.22 lakhs and short-levy of penal interest of Rs. 13.37 lakhs).

The Ministry have intimated (February, 1973) that they are examining the case in detail and a further report will follow in due course.

(ii) An assessee company engaged in Chit Fund business was subscribing to vacant chits according to the rules of the Fund. The dividend earned by the company on the vacant chits so subscribed to by the company was not treated as income earned by the company but was being exhibited in the balance sheet. The department also did not include the same under total income for levy of income-tax on the ground that the income earned was only notional. According to the rules of the Fund, when the vacant chits are subscribed or allotted to a new member, the new allottee is not entitled to past dividends. Further, the dividends accrued resulting from the discount paid by the successful bidder at the auctions are payable to each and every chit including those held by the Fund. Thus, the dividend earned by the Fund in respect of chits subscribed to by it is not notional but real income. The short assessment noticed for assessment years 1967-68 to 1970-71 was Rs. 55,078 with a consequential short demand of tax of Rs. 35,801. The Ministry have reported (February, 1973) that as a precautionary step, the department is being asked to take remedial measures.

21. *Non-levy/incorrect levy of Penal interest*

(i) Under the Income-tax Act, 1961, as applicable for the assessment year 1970-71, where advance tax was demanded from an assessee, but the assessee, finding that the advance tax payable by him on the estimated income would exceed the advance-tax so demanded by more than 33⅓ per cent should submit an estimate of his income and pay advance tax due thereon within the relevant financial year. Failure to do so would render the assessee liable to penal interest calculated at the prescribed rate on the difference between the tax determined on regular assessment and the advance tax actually paid.

Advance tax amounting to Rs. 14,97,932 and Rs. 66,466 respectively was demanded from two assessees for the financial year corresponding to the assessment year 1970-71. Tax levied on them on regular assessment amounted to Rs. 21,22,452 and Rs. 4,52,393 respectively which exceeded the advance tax demanded by more than 33⅓ per cent. The assessees were, therefore, liable to submit estimates of their income and pay advance taxes due thereon within the relevant financial year, which they failed to do. Consequently, they became liable to pay penal interest, as stated above, but this was not levied by the department. The penal interest so leviable, but not charged, amounted to Rs. 65,980 in the two cases. While accepting the objection in principle, the Ministry have stated (January, 1973) that the assessments were set aside by the Additional Commissioner of Income-tax and that the chargeability of interest will be considered while framing the fresh assessments.

(ii) Under the provisions of the Income-tax Act, an assessee, whose previous year ends on or before 31st December, may file his return of income by 30th September of the relevant assessment year, without liability to pay interest. If the return is filed after that date, penal interest is chargeable from 1st October of the assessment year up to the date of the furnishing of the return.

(a) A company whose previous year ended on 30th April, 1967 submitted its return of income for the assessment year 1968-69 on 31st January, 1969. The company was, therefore, liable to pay penal interest for 4 months from 1st October, 1968 to 31st January, 1969, amounting to Rs. 34,178. The Ministry have accepted the position. Further progress of the case is awaited.

(b) Another company, whose previous year ended on 31st December, submitted its income-returns for the assessment years 1968-69 and 1969-70

on 23rd December, 1970 and was, therefore, liable to pay penal interest amounting to Rs. 1,04,390 and Rs. 57,590 respectively.

21. *Other lapses*

An assessee paid a sum of Rs. 20,000 on 15th June, 1964 as advance tax. The credit for this amount was given to the assessee in the asseessment year 1964-65 in March, 1969 on the basis of original chalan as well as in the assessment year 1965-66, in February, 1970 on the basis of a copy of the chalan. This resulted in an excess refund of Rs. 20,000 to the assessee. The Ministry have accepted the objection and reported that the additional demand of Rs. 20,000 has been adjusted against the refund due to the assessee for assessment year 1959-60

22. *Omission in levy of Sur-tax and Super-Profits Tax*

(i) A company whose chargeable profits for an assessment year exceed the statutory deductions, is liable to pay sur-tax under the Companies (Profits) Sur-tax Act, 1964. Income-tax assessments of a company for the assessment years 1966-67 and 1967-68 were completed but there was omission to levy sur-tax of Rs. 52,773, on the chargeable profits of the company exceeding the statutory deductions by Rs. 1,65,760 during these two years.

The Ministry have reported (November, 1972) that the assessments in question have been revised and the additional tax collected.

(ii) Under the provisions of the Companies (Profits) Sur-tax Act, 1964, a company becomes liable to sur-tax when its chargeable profits exceed 10 per cent of its paid up capital or Rs. 2 lakhs, whichever is greater; the rate of tax being 40 per cent for the assessment year 1964-65 and 1965-66. Even though, a company had chargeable profit, on the basis of the assessed income, exceeding Rs. 2 lakhs for the assessment years 1964-65 and 1965-66 the department did not consider the levy of sur-tax on the company. The department has since framed the assessments under Sur-tax Act and levied tax amounting to Rs. 2,44,000 for the two years. The report regarding recovery of the demand is awaited (February, 1973).

(iii) In assessing a company for the assessment year 1965-66, the department committed the following mistakes due to non-observance of the provisions of the Companies (Sur-tax) Act, 1964 :—

(1) Interest amounting to Rs. 2,84,655 on a foreign loan taken by the company was not included in the chargeable profit.

(2) Rebate of tax amounting to Rs. 22,695 was not taken into account in computing the net tax to be deducted from the total income for computing the chargeable profit, contrary to the relevant provision in the Companies (Profits) Sur-tax Act, 1964.

(3) Although capital gain is not allowed as deduction from total income in calculating the chargeable profit, such tax amounting to Rs. 39,783 was deducted.

The chargeable profit was consequently under-assessed by Rs. 3,47,133 leading to under-charge of tax of Rs. 1,38,853.

In the same case, the department deducted dividend tax of Rs. 2,47,500 from the gross-tax of Rs. 1,23,68,396 to arrive at the amount of tax to be deducted from the total income for determining the chargeable profit. However, the gross-tax of Rs. 1,23,68,396 did not include the dividend tax of Rs. 2,47,500 which should not, therefore, have been deducted from the gross-tax. This action resulted in over-assessment of chargeable profit by Rs. 2,47,500 with consequential over-charge of tax of Rs. 99,000.

The Ministry have replied (January, 1973) that the assessments have been revised and the net demand of tax collected by adjustments.

23. *Over-assessment*

(i) Under the provisions of the Finance Act, 1968, an industrial company is entitled to concessional rate of tax. To decide whether a company is an industrial company or a non-industrial company, its income from manufacturing activities has to be worked out on the basis of its gross total income before allowing any deductions of income from newly established industrial undertakings.

In the assessment of a company for the assessment year 1968-69, the above provisions were overlooked and the company was treated incorrectly as a non-industrial company and the higher rate of tax applicable to such a company was adopted in working out the tax due from it. This resulted in over-assessment of tax to the tune of Rs. 2,51,000.

On this being pointed out the department revised the assessment on 30-8-1971 and reduced the demand by Rs. 2,51,000.

(ii) Under the Finance Acts, 1965 and 1966 domestic companies in which the public are not substantially interested but which are mainly engaged in the manufacture or processing of goods or in any industrial activity, are

charged to tax at rates lower than those applicable to companies which are not so engaged. The former are charged to tax at 55 per cent on the first ten lakhs of rupees of their income and at 60 per cent on the balance, whereas the rate in case of the latter is 65 per cent on their entire income. A company is considered as mainly engaged in manufacturing or industrial activity if not less than 51 per cent of the total income is attributable to such activity.

A company in which the public were not substantially interested but which was mainly engaged in manufacturing activity was charged to tax for the assessment year 1966-67 at 65 per cent on its whole income instead of at the lower rates applicable to it. This resulted in over-charge of tax amounting to Rs. 1,26,177. The Ministry have replied (November, 1972) that the assessment has been revised.

(iii) During the previous years corresponding to the assessment years 1964-65 and 1965-66, an assessee company derived income from house property besides income from business. While arriving at the taxable income for these assessment years, the department disallowed certain expenditure twice : once at the time of computing income from business on the basis of the Profit and Loss account and again at the time of apportionment of expenses against the income from property. As a result of such double disallowance, the taxable income in this case was over-assessed by Rs. 86,893 with consequential overcharge of tax aggregating to Rs. 52,136 for the two assessment years in question.

The Ministry have replied (November, 1972) that the assessments have been revised.

24. *Other Topics of Interest*

The computation of insurance business income is governed by special provisions of the Income-tax Act, 1961 under which dividend income included in the insurance business income loses its identity as dividend, and is treated as business income irrespective of its source, and the concessional rate of tax for inter-corporate dividends is not admissible.

However, concessional rate of tax was changed in respect of dividend income included in business income in 75 assessments involving 26 insurance companies, resulting in aggregate under-charge of tax of the order of Rs. 23,98,510 for the assessment years 1964-65 to 1970-71.

CHAPTER III

INCOME TAX

25. In respect of assessments of the Income-tax other than Corporation Tax, some instances of the mistakes under the headings mentioned in paragraph 13(i) are given in the following paragraphs :—

26. *Avoidable mistakes involving considerable revenues*

(i) The total income of a film star for the assessment year 1967-68 (assessment completed on 13-1-1972) was computed at Rs. 1,56,264 instead of at Rs. 2,56,264. This resulted in under-assessment of income of Rs. 1 lakh involving a short-levy of tax and interest of Rs. 1,05,362. Though the case was checked by departmental internal audit party, the mistake was not noticed.

The Ministry have reported (December, 1972) that the mistake has been rectified and the additional demand of tax of Rs. 1,05,362 has been raised. Report regarding the recovery of tax is awaited (February, 1973).

(ii) The income of a registered firm for the assessment year 1966-67 was to be allocated in the hands of its three partners. In doing so, the income actually included in the partners' assessments was Rs. 17,12,331 instead of Rs. 18,02,712. Further, in the case of one partner, due to a totalling error, the interest received by him from two firms was taken less by Rs. 1,00,000. These mistakes resulted in aggregate under-charge of tax and interest of Rs. 1,40,010 in the hands of three partners.

The Ministry, while accepting (February, 1973) the under-charge of tax, have stated that the assessment of the firm for the assessment year 1966-67 has been set aside in appeal and that rectificatory action in cases of the partners will be taken after fresh assessment is made in the firm's case.

(iii) According to the terms of settlement between the department and an assessee, certain sums including an amount of Rs. 1,00,000 representing moneys received by the assessee from outsiders towards commission, were to be brought to tax during the assessment year 1965-66. Though this sum of Rs. 1,00,000 was shown in the assessment order dated 23rd March, 1970 as income to be assessed, it was omitted to be included in the total income.

This omission resulted in short-levy of tax to the extent of Rs. 88,652 (including Rs. 19,880 on account of short-levy of interest). On this being pointed out, the department revised the assessment on 11th January, 1971 raising an additional demand of tax of Rs. 68,772 only as the rectification for short-levy of penal interest is not provided for under the Act. Report regarding recovery of the additional demand is awaited (January, 1973).

(iv) Under the Income-tax Act, prior to assessment year 1968-69, capital gains in the hands of non-corporate assessees were charged to tax at concessional rate. From the assessment year 1968-69, a straight deduction of a specified proportion of the long-term capital gains included in the gross total income of the assessee is allowed while working out the total income. In the case of a film star for the assessment year 1968-69 (assessment completed on 17-6-1971), though the deduction of a specified proportion of capital gains was correctly allowed, tax on capital gain included in the total income was charged at the concessional rate as applicable to earlier assessment years instead of calculating the tax on the total income as reduced, at the rates prescribed in the Finance Act, 1968. This resulted in short-levy of tax of Rs. 2,02,141.

The Ministry have reported (December, 1972) that the mistake has been rectified and the additional tax demanded. Report of recovery of the additional demand of tax is awaited.

(v) Under the Finance Act, 1957 where the total income of an individual exceeded Rs. 20,000 the super-tax and surcharge thereon were leviable at the rates prescribed in the Finance Act in addition to income-tax and surcharge thereon. The assessment of an individual, for the assessment year 1957-58, was reopened to assess certain fictitious hundi loans. In the re-assessment completed on 31st January 1970, super-tax and surcharge were omitted to be levied though the total income assessed was Rs. 3,08,999. This omission resulted in under-assessment of tax to the extent of Rs. 1,31,574.

The Ministry have reported (October, 1972) that the omission has been rectified and the additional demand of tax of Rs. 1,31,574 raised. Report regarding recovery of this demand is awaited.

27. *Irregular computation of income from Salaries*

An assessee who was provided with rent-free quarters by Government under the rules governing the conditions of his appointment claimed a deduction of a sum of Rs. 1,700 under Section 16(v) of the Income-tax Act, from

The Ministry have stated (January, 1973) that the audit objection has been accepted. Further report is awaited.

(iii) Long-term capital gains relating to lands and buildings were taxable for the assessment year 1966-67 at three-fourth of the average rate applicable to other income. During the previous year corresponding to the assessment year 1966-67, an unregistered firm derived a long-term capital gain of Rs. 4,75,850 from sale of landed property. The department charged capital gains tax at one-half of the average rate instead of at three-fourth, resulting in an undercharge of tax to the extent of Rs. 87,573.

The Ministry have reported (November, 1972) that the assessment in question has been rectified.

(iv) An assessee constructed a house for Rs. 78,000 by borrowing Rs.65,000 from his Provident Fund account as a non-refundable advance and added to it Rs. 13,000 from his own savings. He sold the house for Rs. 1,25,000 and as he did not obtain prior permission of the Government for this sale, under the provisions of the relevant Provident Fund Rules, he had to pay back to the Provident Fund the entire amount withdrawn together with interest thereon, amounting to Rs. 27,932. While returning his income from capital gains on the sale of the house, the assessee deducted from the sale price of Rs. 1,25,000 not only the cost of construction of Rs. 78,000 but also the interest of Rs. 27,932 which he had paid to his own Provident Fund account. This claim was accepted by the Income-tax Officer who taxed him for capital gains only on an amount of Rs. 19,068. There is no provision in law for allowing the deduction of interest on money borrowed for investment in a capital asset from capital gain accruing on the sale of that asset. Further, the interest paid in this particular case was an interest paid to the assessee's own provident fund account and not to any third party. The deduction of interest claimed and allowed was, therefore, irregular.

The Ministry have replied that action has been taken to rectify the assessment.

30. *Irregular reliefs and exemptions given*

(i) Under the provisions of the Income-tax Act, a percentage of the profits of a new industrial undertaking is exempt from tax and that portion of dividend which is deemed to have been paid out of the exempted portion of the profits of the company is exempt from tax in the hands of the shareholders. Under the provisions of the Incme-tax Rules, it is necessary to indicate specifically in the certificates tc be given by the Income- tax Officers the percentage or that part of the dividend qualifying

for the exemption. These requirements have not been observed in the following cases noticed in audit.

(a) For the assessment year 1967-68, the portion of profits of the business of a company exempt under the relevant provision of the Act was determined as Rs. 6,69,290 and the percentage of dividend qualifying for exemption was notified as 21.41 per cent. There was a revision of the assessment of the company which resulted in the reduction of the exempted portion of the profits to Rs. 2,48,832 and the percentage of dividend qualifying for exemption to 7.96 per cent. But the revised certificates indicating the reduced percentage of dividend income that would qualify for exemption was omitted to be issued. When this omission was pointed out, the revised certificates were issued on 10th August, 1971 as a result of which a sum of Rs. 4,20,458 became taxable in the hands of the shareholders. The correct amount of additional demand due to the issue of revised certificates could not be ascertained in view of the large number of share-holders all over India.

The Ministry have stated (January, 1973) that the revised percentage has been communicated to all the concerned Income-tax Officers and the tax-effect can be determined in the assessment cases of share-holders.

(b) In the cases of two companies, it was observed that the Income-tax Officer issued the exemption certificate in respect of dividends distributed out of the profits of new undertakings ranging between 8½ per cent and 100 per cent in the case of one company for the assessment years 1965-66 to 1968-69, and between 20 per cent and 25 per cent in the case of other company for the assessment years 1965-66 and 1966-67. Accordingly, no tax was deducted at source from such exempted portion of the dividends paid to the shareholders by the two companies. Subsequently the Income-tax Officer at the time of making regular assessments for the respective assessment years held that the profits of the assessee companies were not entitled to aforesaid exemptions from tax except in the case of one company for the assessment year 1968-69 where the profits were exempted to the extent of 69.6 per cent. However, no steps were taken by the department to cancel or modify the exemption certificates with the result that dividend income to the extent of Rs. 17.22 lakhs escaped income-tax in the hands of shareholders. A test-check of the Income-tax assessments of 31 shareholders of the aforesaid two companies revealed that the Income-tax to the extent of Rs. 2.36 lakhs was undercharged from them during the relevant assessment years. The Ministry have stated (January, 1973) that the action for re-opening the assessments of the shareholders is being taken.

(ii) The exemption referred to in paragraph (i) above which is available to the shareholders is not admissible in cases where the dividend income of the shareholders is taxed in the hands of another person under the provisions of the Income-tax Act which provide for such clubbing of incomes. The exemption was, however, allowed in two cases where dividend income arising out of the assets transferred to the assessee's wife in one case and to a minor child in the other, was included in the total income of the assessees. This resulted in an irregular relief by way of income-tax and super-tax amounting to Rs. 1,00,749 for the assessment years 1963-64 to 1966-67.

The Ministry have replied that in the case of one assessee rectificatory action for the assessment years 1963-64 and 1964-65 had already become time-barred (resulting in loss of revenue of Rs. 34,767) and that the assessments for the remaining two years have been revised and total additional demand of tax of Rs. 45,877 raised. In the case of the other assessee, the Ministry have stated that the assessments have been revised and a total additional demand of Rs. 20,105 raised.

(iii) In the following cases, irregular exemptions were given in respect of assessments of trusts :

(a) Under the Income-tax Act, income of a charitable or religious institution in excess of the amount applied to religious or charitable purposes would be eligible for exemption only if the entire amount of such accumulated income is invested in the Government or other approved securities. In respect of four trusts, where only part of such accumulated income was invested, exemption was allowed though the statutory requirement was not satisfied. This resulted in short demand of tax of Rs. 4,06,464. The Ministry have replied (November, 1972) that the assessments in question have been revised under Section 263 of the Income-tax Act, 1961 and the additional demand of Rs. 4,30,467 (includes Rs. 24,003 as penal interest) raised.

(b) In the case of another charitable trust, although the entire income of Rs. 85,262 for the previous year relevant to the assessment year 1969-70 was accumulated, only 75 per cent thereof was invested in approved securities. As a result, the whole of its income became disentitled to the exemption. In the assessment (finalised in January, 1972), however, the entire income of the trust was treated as exempt resulting in short-levy of tax to the extent of Rs. 41,700.

The Ministry have stated (December, 1972) that the assessments in question are being revised.

(iv) In determining the total income of a person deduction subject to prescribed limits is admissible under the Income-tax Act in respect of contributions to any provident fund set up by the Central Government and sums deposited in a ten-year or fifteen-year account under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959. This deduction is available only to individuals and not to other categories of assessees. In the assessments for 1969-70 and 1970-71 in five cases assessed in the status of Hindu Undivided Family, deduction in respect of such contributions and deposits was incorrectly allowed which resulted in under-assessment of income by Rs. 29,072 and consequential short-levy of tax of Rs. 21,026.

The Ministry have replied (November, 1972) that the assessments have been revised and the additional tax collected.

(v) Under Section 176(4) of the Income-tax Act where any profession is discontinued in any year for any reason, any amount received in respect of income earned by such profession, after such discontinuance is deemed to be the income of that person in the year of its receipt and shall be charged to tax accordingly. An assessee was practising as a lawyer and he realised in the previous year for the assessment year 1970-71, after the cessation of his profession, fees relating to the period when he carried on the profession. Under the provisions of the Act aforesaid, the amount fell to be assessed in the assessment for the year 1970-71. However, the assessee claimed that as the amount received by him was 'due long ago and was time-barred at the time of receipt', the said provisions of the Act did not apply and, therefore, he was not including it in the total income assessable to tax. This claim was accepted by the department.

Section 176(4) of the Income-tax Act, taxes such fees as and when they are received even after the discontinuance of the profession and the presence or absence of right of recovery thereof is not a relevant consideration.

The matter was taken up with the Ministry in August, 1972 and a reply has been received that the matter has been referred to the Law Ministry.

31. *Income escaping assessment*

(i) A registered firm dealing in diamonds opened an office in a foreign country with the permission of the Government of India. The profits derived from the foreign office were, however, not included in the firm's total income,

but the partners were assessed to income-tax directly on their respective shares of the branch profits as reduced by a part of the profits required to be reserved under the regulations of the foreign country. The department took the view that inasmuch as the foreign branch was treated as a private company for purposes of foreign income-tax, the same was to be considered as an entity independent of the registered firm. The material on record in the form of correspondence with the Government of India by the firm which made the application for opening a branch office, absence of any evidence suggesting principal to principal relationship and the manner in which transactions were recorded in the books indicated that the office in the foreign country was merely a limb of the Indian firm. The status of the foreign office for purpose of taxation in that country was in this case neither material nor determinative of the distribution of income for purposes of Indian income-tax. Omission to assess the profits of the foreign office in the hands of the firm, apart from the partners, led to an aggregate under assessment of income of Rs. 4,39,061 in the hands of the firm in assessment years 1967-68 to 1969-70. Further, as the entire profits earned by the foreign concern were not credited to the partners but only the net amount after reserving a portion of the profits under the rules existing in the foreign country as aforesaid, the profits so reserved in accounts were also not brought to charge to Indian income-tax subject to double income-tax relief in the hands of the firm or its partners. This led to under-assessment of income of Rs. 67,207 in assessment years 1967-68 to 1969-70. The aggregate short-levy of tax in the hands of the firm and the partners amounted to Rs. 56,916.

The Ministry have replied that the two partners have floated a 'company' in the foreign country and so the assessee firm has nothing to do with the company. In Audit's view, the assessee firm is liable to pay tax on its income including deemed income whatever be the channel of income.

(ii) By a deed dated 8th January, 1969 an assessee, the Karta of a Hindu Undivided Family, assigned and impressed 50 per cent of his interest in the firm in which he was a partner with the character of joint family property. The assessee's share of the income of the registered firm for assessment years 1970-71 and 1971-72 was equally divided and a moiety each was assessed directly in the hands of the assessee as individual and the Hindu Undivided Family with the assessee as Karta. As the assignment of the individual interest in favour of the joint family did not create an over-riding title for diversion of income at source, as judicially interpreted, the assessment of the share income separately in the hands of the assessee and the Hindu Undivided Family was not in order.

Similar assignments were made by the assessee's two relatives who were the other partners in the same firm and their share incomes were similarly bifurcated and separately assessed in their hands as individuals and on their respective joint families. The resultant under-assessment of tax in all the three cases for assessment years 1970-71 and 1971-72 amounted to Rs. 41,416.

The Ministry of Finance have replied (February, 1973) that the assessments in question have been revised. Report regarding recovery of tax is awaited.

(iii) The Income-tax Act provides that where a deduction was granted to an assessee in any year towards a loss or expenditure and the same is recouped by him subsequently, the amount so received is chargeable as business profits of the 'previous year' in which the recoupment was obtained. In one case, the claim of a registered firm for exempting a sales tax refund of Rs. 50,726 was allowed in its assessment for the assessment year 1970-71 on the ground that the department of sales tax has issued notice claiming back the amount. On a verification by audit with reference to the sales tax assessment records, it was found that there was no question of the amount being paid back to Government as stated by the Income-tax Officer Due to non-inclusion of the sales tax refund in the assessee's income, there was an under-charge of tax by Rs. 22,270.

The Ministry have replied (November, 1972) that rectificatory action has been initiated as a protective measure.

(iv) Under the Income-tax Act, 1961, where any sum is credited in the books of an assessee for any previous year and he offers no explanation as to the nature and the source thereof or the explanation given by him is not to the satisfaction of the department, the amount so credited may be deemed to be his income for the relevant previous year and charged to tax accordingly.

In the case of a registered firm, the total income of Rs. 2,68,667 as computed by the department for the assessment year 1965-66 included a sum of Rs. 1,08,891 representing introduction of fresh capital into the business out of income from undisclosed sources. The amount of Rs. 1,08,891 was arrived at on a consideration of the credits appearing in the books during the previous years relevant to the assessment years 1964-65 and 1965-66. The department did not, however, take into account the opening balance of Rs. 4,55,231 for the previous year corresponding to the assessment year

1965-66. This omission caused under-assessment of income by Rs. 4,55,231 with consequential under-charge of tax of Rs. 4,14,654 in the hands of the firm and its two partners. The Ministry have replied (January, 1973) that the assessments in question have been rectified and additional tax charged is Rs. 3,23,544.

32. *Non-levy/incorrect-levy of penal interest*

(i) During the period under review, omission to levy or incorrect levy of penal interest was noticed in 2,012 cases involving revenue of Rs. 54.52 lakhs as indicated below :—

	No. of cases	Amount (in lakhs of Rupees)
(*i*) For short/non-payment of advance-tax * . .	885	33.34
(*ii*) For delay in submission of return of income .	818	14.47
(*iii*) For non-payment of tax by the due dates. .	309	6.71
TOTAL	2,012	54.52

(ii) (a) In the case of an assessee, tax demand of Rs. 4,12,289 as a result of provisional assessment for the assessment year 1963-64, was payable by 12th October, 1964, out of which the assessee deposited Rs. 50,000 on 2nd December, 1964 and Rs. 10,124 on 20th January, 1965, thereby leaving the major portion of the tax demand un-paid till 22nd March, 1968, the date of regular assessment. But the interest for non-payment of tax for the period from 13-10-1964 to 22-3-1968 was omitted to be levied.

The Ministry have replied (January 1973) that the assessment has been revised and a demand of Rs. 74,867 raised. Report regarding recovery of the demand is awaited.

(b) An individual was assessed to tax for the first time for the year 1958-59 on 21st December, 1970, the total income having been arrived at Rs. 16,54,856. According to the Income-tax Act, the assessee should have filed an estimate of his income and advance-tax due thereon and paid such advance-tax. By not doing so he became liable to penal interest amounting to Rs. 7,73,335. But the department did not levy it. The Ministry have replied that the assessment was completed *ex-parte* and it has been re-opened under section 146. Further report from the Ministry is awaited.

33. *Failure to levy penalty*

(i) According to the Income-tax Act, in cases of assessments made on or after 1-4-1968, if the total income returned by any person is less than 80 per cent of the correct income as assessed, such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have furnished inaccurate particulars of his income and be subjected to a penalty which shall not be less than the amount of income in respect of which inaccurate particulars had been furnished.

(a) In two cases the assessments were completed after 1-4-1968 and the returned incomes were far short of 80 per cent of the income assessed, the difference between the returned and assessed incomes being due to additions made to disclosed gross profits on the ground that the latter were unreasonably low. Nevertheless, proceedings for levying penalty under the relevant provision of the Act had not been initiated nor had the reasons for not doing so been placed on record as prescribed in departmental instructions. The minimum penalties leviable would have totalled Rs. 55,222.

(b) In eight other cases, proceedings for levying such penalties were not initiated at all although the incomes returned were far short of 80 per cent of the incomes assessed. The reasons for not initiating the proceedings had not also been recorded although the assessing officer was required to record them. Had the proceedings been initiated, the total amount of minimum penalty leviable would have amounted to Rs. 1,85,205.

The Ministry have replied (August, 1972) that the audit objection regarding the failure of assessing officers to record reasons for non-levy of penalty has been accepted.

(ii) Having received prior information, the premises of a firm and its partners were searched in January, 1967 and thereafter the firm submitted a 'disclosure petition' in February, 1967 to the Commissioner of Income-tax showing concealed income of Rs. 4,34,275 covering assessment years, 1961-62 to 1966-67. Another amount of Rs. 28,392 attributable to a mistake in the assessee's accounts was also disclosed.

The firm was constituted in May, 1960 with ten partners on the dissolution of another firm having eleven partners. Nine partners of the defunct firm also disclosed unaccounted income of Rs. 4,82,000 for the assessment years, 1955-56 to 1960-61.

According to the terms of settlement arrived at between the assessee and the department, the concealed income was determined at Rs. 5,48,000 (including the amount attributable to mistake in assessee's accounts) for the firm and at Rs. 5,52,000 for the partners of the defunct firm and assessed to tax. In addition, a penalty of Rs. 88,636 at 10 per cent of the tax sought to be evaded was also levied under Section 271(4A) of the Income-tax Act, 1961.

A sum of Rs. 30,000 being 7½ per cent of the additional tax levied was paid to an informer as a reward for furnishing information which led to the detection of the concealed income.

As the disclosure was made only after a search of the premises of this firm and its partners, it would not be a voluntary disclosure made in good faith. As such the conditions laid down for the reduction or waiver of penalty under Section 271(4A) of the Income-tax Act, 1961 having not been fulfilled in this case, the minimum penalty leviable was 20 per cent of the tax sought to be evaded under Section 271 (i)(c). This irregular reduction resulted in short-levy of penalty of Rs. 88,636.

34. *Other lapses*

(i) In para 58(d) of the Audit Report on Revenue Receipts, 1970 instances of under-assessment of tax on account of failure to convert foreign currency to Indian rupees were given. While conducting the audit of another income-tax charge, a similar failure to convert foreign income into Indian currency was noticed in respect of two assessees who returned foreign income in Ceylon rupees. This resulted in an under-charge of tax of Rs. 1,30,600.

The Ministry have replied (November, 1972) that the assessments have been revised and that the actual amount of additional tax liability on this account would be only Rs. 69,491, the difference being mainly due to double income-tax relief, to which the assessees were eligible. Having regard to the frequent changes in exchange rates, particularly after 1966, it would appear appropriate if the Ministry were to conduct a review of such cases where substantial tax is involved.

(ii) The assessments of a registered firm for the assessment years 1958-59 and 1959-60 were re-opened to assess the income of the firm from undisclosed sources and the reassessments were completed in January, 1971. The share income of the partners for these two assessment years as per the re-assessments was neither worked out nor was any entry made in the miscellaneous records of either the firm or its partners regarding the revision of the share income. This resulted in short-levy of tax of Rs. 53,300.

The Ministry have reported (November, 1972) that the assessments of the three partners have been revised raising total tax demand of Rs. 30,278 and the rectificatory action in respect of two other partners has to be completed.

(iii) Under the Income-tax Act, 1961 where the advance-tax paid by an assessee exceeds the amount of tax payable as determined on regular assessment, refund of the excess is to be granted within a period of six months from the date of assessment, failing which the Central Government has to pay interest at the prescribed rate on the amount refundable for the period of delay in granting refund. In a case, refund of Rs. 5,31,840 due to an assessee relating to the assessment years 1963-64 to 1964-65 was granted after the expiry of the prescribed time-limit of six months resulting in payment of avoidable interest of Rs. 31,091.

(iv) Under the provisions of Income-tax Act, 1961 an assessee who has once been assessed to tax in respect of a particular source of income, shall not in respect of that source, be entitled to change the 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose.

An assessee was getting a regular income once in four years, for a period of 12 months from November to October, and was assessed to income-tax for the income earned during the 'previous years' ending October. But in respect of his income for the period from November, 1968 to October, 1969 the assessee returned the income relating to the period from November, 1968 to March, 1969 for the assessment year 1969-70 and that relating to the period from April, 1969 to October, 1969 for the assessment year 1970-71. Thus the previous year was changed to 'November 1968 to March, 1969' for assessment year 1969-70 and 'April, 1969 to October, 1969', for assessment year 1970-71. There was neither any request form the assessee to change the previous year nor was any order passed by the Income-tax Officer to that effect. As a result of the irregular change of the previous year, the income received by the assessee during a period of twelve months was split up as relating to two assessment years with a reduction of tax liability of Rs. 44,100 (approximately).

The Ministry have replied (February, 1973) that the assessments have been revised under Section 263 of the Income-tax Act.

(v) Under the Annuity Deposit Scheme introduced from 1-4-1964 assessees over seventy years of age could opt out of the scheme without attracting additional liability. The option was to be exercised, in the case of persons who became liable to the scheme for the assessment year 1964-65 by 30th September, 1964 and this date could be extended with the prior approval of Inspecting Assistant Commissioner. Option once exercised applied to all succeeding assessment years.

An assessee who became liable to make an annuity deposit for the assessment year 1964-65 neither made the deposit nor opted out of the scheme. She wrote to the assessing officer on 8-10-1967 requesting him to exempt her from making the deposit. The assessing officer ignored this letter and in the original assessment for 1964-65 allowed a deduction of Rs. 2,03,860 on account of the annuity deposit required to be made by her. For the assessment year 1965-66 she made an annuity deposit of Rs. 2,50,000 on 20-3-1965 and in the original assessment completed on 1-1-1968, a deduction of Rs. 2,53,634 was allowed on account of the deposit required to be made by her. Subsequently, she represented that being over seventy years old when the Annuity Deposit Scheme became applicable to her, she wanted to opt out of the scheme and requested that the delay in making the declaration be condoned. The declaration was accepted with the prior approval of the Inspecting Assistant Commissioner and the deductions of Rs. 2,03,860 and Rs. 2,53,634 allowed in the assessments for 1964-65 and 1965-66 were withdrawn on 25-3-1969. The assessee applied on 15-4-1969 for the refund of the deposit of Rs. 2,50,000 for assessment year 1965-66 which had been made by mistake. Instead of refunding the deposit, the Income-tax Officer restored the deduction of Rs. 2,53,634 by revising the assessment for 1965-66 again on 24-5-1969, which resulted in under-assessment of income by Rs. 2,53,634 and the consequent short-levy of tax of Rs. 1,89,077.

The Ministry have replied that the mistake has been rectified. Report of collection of the tax is awaited (February, 1973).

35. *Other Topics of Interest.*

(i) The Public Accounts Committee in para 1.32 of their 51st Report (5th Lok Sabha) pointed out that in many professions, people may try to evade tax especially the professional lawyers, doctors, engineers, contractors etc. The Committee enquired whether any concerted efforts had been made in this regard by the department. The department promised to collect the information with regard to the total number of the doctors, lawyers etc. in three or four selected centres.

A test check was conducted in one Commissioner's charge in the year 1972, and it revealed that against 2,700 lawyers who were enrolled and practising only 327 lawyers were assessed to income-tax.

(ii) In para 2.145 of their 29th Report (4th Lok Sabha), the Public Accounts Committee have taken a serious view of the device adopted by some Income Tax Officers in making irregular collection of amounts from assessees to make good the shortfall of budget estimates. Again, in para 2.18 of their 76th Report (4th Lok Sabha) the Public Accounts Committee have advised the Central Board of Direct Taxes to keep a special watch in this connection.

During the local audit of an income-tax office in May, 1972 it was seen that a sum of Rs. 50,000 was collected from each of the two assessees on 30-3-1971 and refunded to them on 2-4-1971 although their regular assessments for the years to which the payments purported to relate had been completed before 30-3-1971 and no tax was due on that date in respect of those assessment years. It appears that the amounts were got deposited only for the purpose of inflating figures of tax collected for statistical and budgetary purposes in view of the fact that a sum of rupees one lakh was collected and refunded in different financial years, but within a period of three days.

36. *Write-off.*

The case of an assessee who was prosecuted for holding gold worth Rs. 66,300 without satisfactory explanation was brought to the notice of an Income-tax Officer in September, 1954 by the Director of Inspection (Investigation). A report regarding concealment of income and its assessment to tax was called for by the Commissioner of Income-tax in December, 1954. The Income-tax Officer, however, completed the investigation to initiate action under Section 147 of the Income-tax Act and sought permission to start proceedings under Section 147 only in March, 1964. The assessment was completed in December, 1964 and demand raised in February, 1965. But tax could not be realised as the assessee had by then disposed of the confiscated gold returned to him in 1959 by the Customs Department. The Commissioner ultimately sanctioned the write-off of tax arrears of Rs. 68,944 in October, 1970.

There was a delay of over ten years in the income-tax office for taking action as per the directions of the Commissioner and in finalising the assessment which led to the irrecoverability of the arrears.

The Ministry have replied that owing to the difficulties in finding the real owner of the gold, the assessment proceedings were delayed and that there was excusable delay till February, 1961.

37. *Over-assessments*

(i) In the case of an assessee, on a regular assessment for assessment year 1970-71 completed in March, 1972, credit for tax of Rs. 20,000 paid under self-assessment in November, 1970 was not given. This resulted in raising excess demand of income-tax of Rs. 20,000 with consequential excess charge of penal interest of Rs. 2,383. Though the case was seen by Internal Audit, the mistake was not pointed out.

(ii) In computing the total income of an assessee for assessment years 1968-69 and 1969-70, the Income-tax Officer determined the amount of interest income independently and added the same to the aassessee's professional income over-looking the fact that the interest income already stood included in her professional income. This resulted in an over-assessment of income of Rs. 32,535 in assessment year 1968-69 and Rs. 40,245 in assessment year 1969-70 leading to aggregate excess-levy of Income-tax of Rs. 55,444.

The Ministry have accepted the objection and stated that the assessment in question has been rectified resulting in refund of Rs. 49,775.

(iii) The Income-tax Act provides that an assessee not having been assessed previously, shall, if his total income of the previous year corresponding to the assessment year immediately following exceeds the prescribed limit send estimate of his total income, on the basis of which he shall pay advance-tax. Failure to do so renders him liable to penal interest calculated in the manner laid down in the Act.

In the assessment for 1950-51, completed on 30th March, 1971, a person was assessed to tax amounting to Rs. 1,57,250 including a sum of Rs. 66,099 levied as penal interest by treating him as a new assessee. Actually, he had already been assessed for 1946-47 in 1947. The levy of penal interest was, thus, an overcharge to the extent of Rs. 66,099.

The Ministry have accepted the objection. The assessment in question is stated to have been rectified and amount of demand reduced by Rs. 66,000.

CHAPTER IV

OTHER DIRECT TAXES

WEALTH-TAX

38. During the test-audit of assessments made under the Wealth-tax Act, 1957 conducted during 1st September, 1971 to 31st August, 1972 the following types of under-assessment of tax and over-assessment of tax were noticed:—

(1) Mistake in calculation of tax/computation of wealth or mistake in allowance of initial exemption limit.

(2) Failure to correlate wealth-tax assessments with assessments under other direct taxes.

(3) Wealth escaping assessment.

(4) Incorrect valuation of assets.

(5) Incorrect reliefs and exemptions.

(6) Incorrect levy of additional wealth-tax.

(7) Non-levy of penalty.

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

39. *Mistakes in computation of wealth and in calculating tax liability*

(i) Under the Wealth Tax Act, 1957, as it stood before amendment by Finance Act, 1971, no tax is leviable on the first Rs. 1 lakh of net wealth of an individual and on Rs. 2 lakhs of net-wealth of a Hindu undivided family.

In the case of eight assessees in four Commissioners' charges, for the assessment years 1966-67 to 1970-71 the initial exemption was allowed twice—once while arriving at the net wealth and again at the time of calculation of tax—resulting in under-assessment of wealth of Rs. 15 lakhs and consequent short-levy of tax of Rs. 16,796.

While accepting the mistakes in all the cases, the Ministry have stated that assessments have been rectified; report regarding recovery of tax is awaited.

(ii) In one case for 1971-72, even though the assessee had already deducted the basic exemption of Rs. 1 lakh in his wealth-tax return, the deduction was again allowed by the Wealth-tax Officer.

In this case there was also a totalling mistake of Rs. 1 lakh in the return submitted by the assessee which the department failed to notice. These mistakes resulted in under-assessment of wealth by Rs. 2 lakhs.

The Ministry have accepted the mistakes and rectified the assessment; report regarding recovery is awaited.

(iii) The rates of wealth-tax chargeable on the net wealth in excess of Rs. 10 lakhs were enhanced from 2 per cent to 2½ per cent with effect from assessment year 1969-70.

In seven Commissioners' charges, in the wealth-tax assessments of nine assessees whose net-wealth exceeded Rs. 10 lakhs for the assessment year 1969-70, the tax was erroneously levied at the rates in force prior to 1969-70. This resulted in under-charge of tax of Rs. 35,458.

The Ministry have accepted the mistakes in all the cases and assessments are reported to have been rectified. Out of the above additional demand, Rs. 1,321 have been collected; report regarding recovery of the balance is awaited.

(iv) In five cases in five Commissioners' charges, due to mistakes in calculation of tax the tax charged was Rs. 2,53,391 as against the correct amount of Rs. 2,78,562, thus resulting in short-levy of tax of Rs. 25,171. In one of these cases (net wealth Rs. 38.19 lakhs), the rates applied (for 1969-70) by the department do not fit in any of the rates schedules prescribed from time to time.

While accepting the mistakes in all the cases the Ministry have stated that the assessments have been rectified, and an additional demand of Rs. 18,092 collected; report regarding recovery of the balance is awaited.

(v) For the assessment year 1970-71, net wealth of an assessee was determined as Rs. 30,36,162 after allowing deduction of Rs. 4,41,855 on account of income-tax and wealth tax liabilities. The assessee went in appeal and was allowed a relief of Rs. 9,60,394. While giving effect to the appellate order, the Wealth-tax Officer started with the net wealth of Rs. 30,36,162 and allowed further deduction of Rs. 2,90,381 on account of recomputed income-tax and wealth-tax liabilities. This resulted in under-assessment of wealth by Rs. 4,41,855 with a consequent short-levy of tax of Rs. 11,828.

The Ministry have accepted the mistake and have reported that an additional demand of Rs. 11,828 has been raised; report of recovery is awaited.

40. *Failure to correlate with assessments under other direct tax Acts*

In para 73(ii) of the Audit Report, 1970-71 cases of failure to correlate the wealth-tax assessments with assessments for the purposes of other direct taxes, were pointed out. During the period under review, similar omissions have again been noticed where, apart from the failure to correlate the assessments under different taxes, there was also omission to compare the value of assets adopted in the wealth-tax assessment itself, for one assessment year with the value adopted in other years.

(i) Land owned by an assessee in a metropolitan city since 1942 was acquired by Government in the previous year relevant to the assessment year 1962-63 for Rs. 6.71 lakhs and the capital gains arising from this transfer were duly assessed to tax. It was, however, noticed that neither the assessee returned the value of the land in his wealth-tax returns for the assessment years 1958-59 to 1961-62 nor the value was added to the net-wealth by the Wealth-tax Officer while completing the assessments in February, 1968. This resulted in total under-assessment of wealth of Rs. 21,52,807 with consequential short-levy of tax of Rs. 19,238.

The Ministry have accepted the mistake and raised an additional demand of Rs. 19,238.

(ii) In one case, for the assessment year 1965-66 the value of the estate which devolved on the assessee was omitted to be included. This resulted in wealth of Rs. 6,87,514 escaping assessment.

The Ministry while accepting the omission have reported that the assessment has been revised and additional tax of Rs. 5,481 collected.

(iii) The value of the immovable properties of an assessee who expired in August, 1962 was taken as Rs. 1,40,000 for the purpose of Estate Duty. However, in the wealth-tax assessments of the deceased for the assessment year 1962-63 and of the executor from the assessment years 1963-64 to 1965-66 the value of the same immovable properties was taken as Rs. 92,000. This resulted in total under-assessment of wealth by Rs. 1,92,000 and consequent short levy of tax of Rs. 1,278.

The Ministry while accepting the omission have reported that the assessments for 1964-65 and 1965-66 have been re-opened and that the assessments for 1962-63 and 1963-64 have become time-barred.

(iv) In the case of an assessee certain immovable and moveable properties were valued for the purpose of wealth-tax for the assessment years 1965-66 to 1967-68 at Rs. 7,29,000, Rs. 5,91,550 and Rs. 5,20,101 respectively. For the assessment year 1968-69, however, the assessee returned the value of the assets as Rs. 12,22,944. Despite the wide variation in valuation between the assessment year 1968-69 and earlier years, the department did not investigate the matter and no action was taken to re-open the earlier assessments.

The Ministry have stated that the assessments have been revised; the additional demand raised and collected was Rs. 23,642.

41. *Wealth escaping assessment*

(i) In the case of an assessee who owned 10 acres of land in a city, the department treated it as non-agricultural land and brought it to tax for assessment years 1957-58 to 1959-60. On appeal, the Assistant Appellate Commissioner upheld the assessments but reduced the value from Rs. 85,000 to Rs. 25,000. Action, however, was not taken to revise the assessments for the years 1960-61 to 1967-68 to bring the value of land to tax.

In addition, the value of debts of Rs. 2,36,985 owed to the assessee, was omitted to be included in his net wealth for assessment years 1966-67 and 1967-68, even though in the assessment proceedings the Wealth-tax Officer had rejected the assessee's claim for treating the same as bad debts. The total wealth escaping assessment for all the eight years was Rs. 6.74 lakhs.

In another similar case, 6.29 acres of land owned by an assessee valued at Rs. 1.50 lakhs was treated by the department for the assessment year 1968-69 as non-agricultural property and charged to wealth-tax. The assessment was also upheld in appeal but the value of the property was reduced to Rs. 1 lakh. Even though the land was in the possession of the assessee from the year 1943 and was never put to agricultural use, the department did not re-open the assessments for earlier years to bring the value of the land to tax. The wealth which escaped assessment for the assessment years 1963-64 to 1967-68 is Rs. 5 lakhs.

The Ministry have accepted the omission in both the cases and have reported that the assessments have been revised. The additional demand raised is Rs. 16,599 and Rs. 9,959 respectively; report regarding recovery is awaited.

(ii) In the assessment of net-wealth of an individual for assessment years 1964-65 and 1965-66, completed on 29th January, 1969, the value of an immovable property was taken as Rs. 2,07,020 and Rs. 2,35,400 respectively. However in the assessments for 1966-67 and 1967-68 which were made only a day later (on 30th January, 1969) the value of this property was adopted as Rs. 6,10,600.

This resulted in short levy of tax of Rs. 5,538 in the years 1964-65 and 1965-66.

The Ministry while accepting the mistake have stated that the assessments have been set aside under the revisionary powers of the Commissioner.

(iii) A case was reported in para 73(i) of Audit Report 1970-71 of under-assessment of wealth because of failure to revise the assessment of a trust consequent upon relief granted under appellate orders to the beneficiaries. A similar case which was noticed during the period under review is mentioned below:—

Two assessees are beneficiaries to the extent of one-twelfth each in a trust which was assessed to wealth-tax up to the assessment year 1964-65. In March, 1967 the Income-tax Officer assessing the trust intimated to the Wealth-tax Officer assessing the beneficiaries that, pursuant to the direction of the Board of Direct Taxes (March, 1964) assessment was not being made in the hands of the trustees for the assessment year 1965-66 onwards and that the beneficiaries were to be assessed on their entire wealth including their share in the trust estate. It was noticed (February, 1970) that despite this intimation shares of the two beneficiaries in the trust estate were not included in the wealth of the beneficiaries for the assessment years 1965-66 to 1968-69 which resulted in wealth of Rs. 64.14 lakhs escaping assessment with a consequent short levy of tax of Rs. 89,500.

(iv) Right to receive compensation for resumption of estates is an asset includible in net-wealth. In one case, where an assessee was entitled to compensation of Rs. 2.78 lakhs, the value of this right was omitted to be

included in wealth for the assessment years 1963-64 to 1969-70, thus resulting in total wealth of Rs. 14.10 lakhs escaping tax. Further, though the value of agricultural lands became taxable from 1970-71. such properties valued at Rs. 80,000 were omitted to be included in this assessee's case in the assessment year 1970-71. Also, for the same assessment year, shares were under-valued by Rs. 1.62 lakhs and a deposit of Rs. 30,000 in a company was omitted to be taken into account.

Final reply from the Ministry is awaited, although the draft para was sent to them on 14th November, 1972.

(v) Under the Wealth-tax Act, 1957, any interest in property may be excluded from the wealth chargeable to tax only when it is available to the assessee for a period not exceeding 6 years from the date the interest vests in him. For the assessment years 1968-69 and 1969-70, an assessee claimed and was allowed exemption in respect of two houses on the ground that the un-expired portion of the lease of these premises was only 6 years. But, since the original period of the lease exceeded 6 years no exemption in respect of these properties was admissible. In the same case there was omission to levy additional wealth tax for the assessment years 1967-68 to 1969-70. Also, exemption in respect of one house had been allowed although the property was not used as residence by the assessee. The under-charge of tax due to these mistakes was Rs. 29,503.

The Ministry while accepting the mistakes have intimated that tax of Rs. 11,436 has since been collected. The rectificatory action for including the value of interest in the two houses, is, however, pending.

(vi) Certain lands owned by an assessee were acquired by Government in 1961 and 1962 and compensation of Rs. 2,36,680 was awarded. The assessee appealed against the quantum of compensation and the appellate authority, by orders dated 13th Jujy, 1965 and 25th September 1968, enhanced the amount to Rs. 12,58,682 and allowed interest of Rs. 2,94,264 calculated from the respective dates of acquisition.

The department, however, initiated action to include the difference of compensation and the amount of interest from assessment year 1966-67 only and the assessments for earlier years were not re-opened.

This resulted in wealth of Rs. 53.13 lakhs escaping tax with consequent short levy tax of Rs. 60,000.

The Ministry have not accepted the objection and have stated that the claim for enhanced compensation is only a matter of mere chance.

42. *Incorrect valuation of assets*

(i) In computing the break-up value of unquoted equity shares of a company for the purpose of wealth-tax assessment of the shareholder, proposed dividends are not deductible from the assets as a liability, unless such liability actually accrues by declaration of dividends in a General Body meeting of the company held before the relevant valuation date of the share-holder.

In the case of eleven assessees, for the assessment years 1965-66 to 1969-70, proposed dividends were allowed as deduction in the valuation of shares of a company treating them as 'liability', though the General Body meetings were held after the relevant valuation dates. The resultant under-assessment of wealth for the assessment years 1965-66 to 1969-70 was Rs. 16,98,772 with the consequent short levy of tax of Rs. 10,839.

The Ministry have accepted the omission. Report regarding recovery of additional demand is awaited.

(ii) According to the instructions of October, 1967 issued by the Central Board of Direct Taxes, the market value of unquoted equity shares of a managing agency company is to be taken to be the higher amount arrived at (a) according to the break-up value method based on book-value of assets and liabilities disclosed in the balance sheet and (b) the capitalisation of income method. The provisions of Wealth-tax Rules under which the market value of the unquoted equity shares of other companies is to be determined, are not applicable to the valuation of the shares of a managing agency company.

In two cases for the assessment years 1966-67 to 1969-70 the market value of the shares of a managing agency company was arrived at after incorrectly allowing 15 per cent reduction from the break-up value of these shares by applying the provisions of Wealth-tax Rules. This resulted in under-assessment of the value of these shares by Rs. 2,15,531 with aggregate short levy of tax of Rs. 4,876.

The Ministry have accepted the mistakes in part only and have stated that some of the companies were investment companies and the Wealth Tax Officer had valued the shares in accordance with the instructions of the Board issued on 31st October, 1967. It has also been reported by the Ministry that action for rectification for 1966-67 and 1967-68 is time-barred.

It is, however, seen that the circular dated 31st October, 1967 does not mention that the break-up value on the basis of book value of assets and liabilities is to be reduced in accordance with the provisions of Wealth-tax Rules. Further, it has also been pointed to the Board that consequent upon the deletion of the definition of 'unearned income' from the Finance Act of 1969 onwards, the definition of investment company as given in the Wealth-tax Rules has become in-operative.

43. *Incorrect reliefs and exemptions*

(i) (a) Under the Wealth-tax Act, 1957, before its amendment by Finance Act, 1971, the value of shares held by an assessee in a company established with the object of carrying on an industrial undertaking in India, is exempt from Wealth-tax if such shares formed part of the initial issue of equity share capital made by the company after 31st March, 1964. The exemption is available for a period of five years commencing with the assessment year next following the date on which such company commences operations for which it has been established.

A private limited company incorporated in October 1963 with an authorised share capital of Rs. 10 lakhs made up of 10,000 shares of Rs. 100 each, issued initially 200 shares only by 31st March, 1964 to 4 members related or closely associated with the promoters. Since the issue and allotment of 200 shares was made before 1st April, 1964 and the subsequent block of 7800 shares issued in January, 1965 was not the initial issue of equity capital, none of the shares of the company qualified for the above exemption.

In the assessment of twelve persons for the assessment years 1966-67 to 1969-70 the value of 3,700 shares held by them in the above company was incorrectly exempted from wealth-tax, resulting in under-assessment of wealth of Rs. 11,91,716.

The Ministry have replied that the initial issue comprised not only the shares allotted to promoters but also those allotted in January, 1965 to other members of this group. In Audit's view, the provisions of Section 5(1)(xx) of Wealth-tax Act are applicable only to a public limited company and do not apply to a private company. As such, the exemption given in this and other cases would be irregular.

(b) Under the Wealth-tax Act as amended by Finance Act, 1970, the value of shares in Indian companies and of other investments is exempt up to a maximum limit of Rs. 1,50,000. In five cases where exemption was allowed in excess of this limit, the wealth under-assessed was Rs. 4,82,280 with consequent short-levy of tax of Rs. 12,327.

The Ministry, while accepting the mistakes, have reported that assessments in three cases have been rectified raising an additional demand of Rs. 5,760. In the remaining two cases, rectificatory action has not yet been completed.

(ii) Under the Wealth-tax Act 1957, fixed deposits under any scheme framed by the Central Government to the extent to which the amount of such deposits does not exceed the maximum amount permitted to be deposited therein, is exempt from tax.

In the case of an assessee, in the assessments for the years 1968-69 to 1970-71 (completed in September 1970), the aforesaid exemption was incorrectly allowed on fixed deposits in a non-resident account and in National Defence Remittance Scheme Special Account. The incorrect exemption led to under-charge of wealth of Rs. 13,34,210.

The Ministry have stated that the assessment has been rectified and the additional demand of Rs. 6,543 collected.

(iii) Under the Wealth-tax Act, 1957 in determining the net-wealth of an assessee, deduction is to be allowed on account of tax liabilities provided that the tax outstanding on the valuation date is not disputed in appeal. In the case of an assessee, for assessment year 1959-60, deduction of Rs. 77,000 on account of income-tax liability was allowed though the assessee had contested the liability before the Appellate Tribunal. Further, for the assessment years 1961-62 to 1963-64 the wealth-tax liability was computed erroneously inasmuch as the rebate admissible on foreign assets was not reduced while estimating the tax payable. These mistakes resulted in aggregate under-assessment of wealth of Rs. 3,29,000 resulting in a short-levy of tax of Rs. 6,799.

The Ministry have accepted the mistake and have reported that the additional demand of Rs. 6,799 has been collected.

(iv) From the assessment year 1970-71, agricultural land belonging to an assessee became liable to wealth-tax. The value of such land up to Rs. 1.50 lakhs is not includible in the net wealth, but if the assessee is also entitled to exemption on self-occupied residential house, the sum total

of the exemption in respect of agricultural land and the house should not exceed Rs. 1.50 lakhs.

For the assessment year 1970-71, a Hindu undivided family returned a net wealth of Rs. 4,74,742 after exclusion of Rs. 1,50,000 towards agricultural lands and Rs. 50,000 towards house used as residence as against the maximum admissible exemption of Rs. 1,50,000. In the assessment completed in March, 1971 the Wealth-tax Officer allowed a further deduction of Rs. 1,50,000 which resulted in under-assessment of wealth by Rs. 2 lakhs.

The Ministry have accepted the mistake and have stated that rectificatory action has been taken.

(v) In the case of five assessees for the assessment years 1965-66 to 1970-71 the value of shares amounting to Rs. 2,88,300 for each of the years, which were held by them in a company running an agricultural and stud farm was excluded from the net wealth of assessees on the incorrect view that the shares constituted agricultural property. This resulted in under-charge of tax of Rs. 12,632.

The Ministry have accepted the omission and have intimated that the assessments are being revised.

(vi) Debts which have been incurred in relation to any property in respect of which wealth-tax is not chargeable as well as the debts which are secured on such exempted assets, are not deductible from net wealth.

In four cases, for the assessment years 1964-65 to 1970-71, debts owed by the assessees had been deducted while computing the net wealth, although these debts had been obtained on the security of Gold Bonds which were exempt from tax. The net wealth thus under-assessed was Rs. 24,17,092 resulting in short levy of tax of Rs. 44,324.

While accepting the omission in three cases the Ministry have stated that the Wealth-tax Officer has been asked to take rectificatory action wherever feasible.

44. Incorrect levy of or omission to levy additional wealth-tax

Under the provisions of the Wealth-tax Act, 1957, in addition to the wealth-tax chargeable at the prescribed rates, where the net wealth of an individual or Hindu undivided family includes buildings or lands (or any rights therein), situated in any urban area falling in specified categories, additional wealth tax is also leviable on the value of urban assets.

From the assessment year 1971-72, the scheme of categorisation of urban areas was abolished and additional wealth-tax became chargeable on properties situated in urban areas having population of 10,000 or more, after allowing a basic exemption of Rs. 5,00,000. The rates of additional wealth-tax were also revised from the assessment year 1971-72.

During the period under review, some cases of omission to levy the additional tax or incorrect levy of tax have come to notice. A few illustrative cases are given below :—

(i) In 24 cases in 13 Commissioners' charges additional wealth-tax on urban assets valued at Rs. 391.36 lakhs was omitted to be levied. This resulted in under-assessment of tax of Rs. 2,50,179.

The Ministry have accepted the omission in all the cases; out of the above demand an additional tax of Rs. 23,156 has since been collected. Report regarding recovery of the balance is awaited.

(ii) For the assessment years 1965-66 to 1968-69, the total wealth of an assessee included the value of life interest in certain trust holdings, which in turn comprised house properties. The house properties held by the assessee both individually and through the trust were located in catgory 'D' area and as the value of total urban wealth in each year exceeded Rs. 4 lakhs, it attracted additional wealth-tax, which was, however, not levied. The omission resulted in under-charge of tax of Rs. 2,428.

The Ministry have accepted the mistake.

45. *Non-levy of penalty*

Under the provisions of Wealth-tax Act 1957, penalty is leviable on an assessee who has, without reasonable cause, failed to furnish the wealth-tax return within the time prescribed.

An assessee filed his wealth-tax returns for the assessment years 1968-69 and 1969-70 (due on 30th October, 1968 and 30th June, 1969) only in September, 1970 after a delay of 22 months and 14 months respectively for which penalty of Rs. 22,411 was leviable. No penalty for the late submission of returns was, however, levied.

While accepting the omission, Ministry have reported that penalty proceedings have been initiated.

46. *Over-assessment*

Where the net-wealth of a resident assessee who is a citizen of India, includes any assets located outside India, wealth-tax payable is to be reduced by an amount calculated at one half of the average rate of tax on such foreign wealth; however, in the cases of assessees who are not citizens of India, the foreign assets are not included at all in the net-wealth.

(i) In the case of three resident assessees who were citizens of India, on a total wealth of Rs. 20,06,353 representing assets located outside India, the rebate of tax was not given for the assessment years 1967-68 to 1970-71. This resulted in excess levy of tax of Rs. 6,558.

(ii) In another case, where the assessee was not a citizen of India, the value of assets outside India was wrongly included in the net-wealth for assessment years 1967-68 and 1968-69 resulting in over-assessment of wealth of Rs. 6,77,275 and excess demand of tax of Rs. 2,329.

Consequent on the incorrect inclusion of the value of these assets there was also excess-levy of penalty of Rs. 7,328 and Rs. 10,268 respectively for these assessment years for delay in filing the returns of wealth.

The Ministry have accepted the mistakes in all the cases. The assessments have been rectified.

GIFT-TAX

47. During the test-audit of assessments made under the Gift-tax Act, 1958 conducted during 1st September, 1971 to 31st August, 1972 the following types of under-assessment of tax and over-assessment of tax were noticed:—

1. Gift escaping tax.
2. Incorrect valuation of shares.
3. Application of incorrect rates.

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

48. *Gift escaping tax*

(i) For the purpose of Gift-tax Act, if a person releases, discharges, surrenders or abandons any interest in property, such release, discharge, surrender etc. is deemed to be a gift to the extent to which it is not found to the satisfaction of the Gift-tax Officer to have been made *bonafide*.

An individual made a gift of Rs. 50,000 to each of his two minor sons in November, 1964 by transferring the amount from his capital account in the books of a firm in which he was a partner to separate capital accounts opened in their names. The Gift-tax Officer found that the amount thus gifted had not been really acted upon and, therefore, the amounts purported to have been gifted continued to be treated as belonging to the father. The father died intestate in June, 1966 and thereupon his net capital in the firm amounting to Rs. 1,86,300 was divided equally between the two sons, to the exclusion of their mother although the widow being one of the legal heirs of the deceased was entitled to one-third share in his capital in the firm amounting to Rs. 2,86,300. The omission to treat the relinquishment or surrender by the mother as gift resulted in a short levy of tax of Rs. 7,290.

While accepting the mistake, the Ministry have intimated that the tax has since been collected.

(ii) Gifts of agricultural land have never been exempt from the levy of Gift-tax and this legal position was confirmed by Supreme Court in their decision of 2nd April, 1970. It was noticed from the wealth-tax assessment records of an assessee that she had gifted during the assessment year 1970-71, agricultural lands valued at Rs. 1,31,825 to her minor sons. No action was taken to bring the gift to tax, which resulted in non-levy of tax of Rs. 12,524.

The Ministry have accepted the omission.

(iii) Under the Gift-tax Act, if a property is transferred otherwise than for adequate consideration the amount by which the market value of the property on the date of transfer exceeds the value of consideration shall be deemed to be a gift.

A private limited company transferred its holding of 500 shares to two individuals for a consideration of Rs. 2,00,000 during the previous year corresponding to the assessment year 1970-71. The market value of the shares was determined in the income tax assessment of the assessee company at Rs. 3,52,000 and the difference of Rs. 1,52,000 was treated as capital gains. This difference which was a deemed gift under the Gift-tax Act, was however not subjected to Gift-tax which resulted in non-levy of tax of Rs. 15,600.

The Ministry have accepted the omission and have stated that action s being taken to tax the gift.

(iv) Under the Gift-tax Act, 1958, grant of partnership or interest in property without adequate consideration amounts to gift.

An assessee converted his proprietary business into a partnership firm in April, 1966 granting without adequate consideration 50 per cent of his interest in the firm to his children who were admitted as partners. Again, on 1st April, 1968 the assessee made a further reduction in his share in the firm by 25 per cent in favour of the other partners. No action was, however, taken by the department to assess to tax the gifts involved in these transfers.

While accepting the omission the Ministry have intimated that the gift-tax of Rs. 8,221 has since been collected.

(v) For the purpose of Gift-tax Act, transfer of property includes creation of trust in property and if a trust is created otherwise than for adequate consideration, it attracts gift-tax. During the previous year relevant to assessment year 1970-71, a Registered Firm and its two partners transferred properties of the aggregate value of Rs. 1,47,900 to a trust created for the benefit of the partners' children and this gift was duly brought to tax. On appeal, however, the assessments were set aside on the ground that the status adopted for the purpose of gift-tax was 'Hindu undivided family,' whereas the status adopted in the income-tax assessments was 'individual'. In the revised assessments the Gift-tax Officer held that the status of the donors was that of Hindu undivided family and as such no gift tax was leviable as the beneficiaries of the gifts were only the members of the family. The gift made by the firm was also held to be not taxable on the ground that transfer of joint family property to the co-parceners did not amount to a gift.

It was pointed out that as the transfer had been made not to the members of the joint family but to the trust which is a separate legal entity, it could not be treated as a case of transfer of property by Hindu undivided family to its co-parceners.

The Ministry have accepted the omission and have intimated that a demand of Rs. 22,768 has been raised.

49. *Incorrect exemption of donation made to political parties*

A case was reported in para 63(b)(ii)(4) of the Audit Report, 1969-70, where no tax was levied on a gift made to a political party. A similar case was noticed during the period under review.

In the case of a company for the assessment years 1962-63 and 1963-64 donations totalling Rs. 2,11,801 made to a political party were not subjected to gift-tax and were treated as donations made for *bonafide* business purposes. The omission resulted in non-levy of tax of Rs. 10,120.

50. *Under-assessment due to incorrect valuation of shares*

In the previous year relevant to the assessment year 1963-64 an assessee transferred certain shares without adequate consideration. The Gift-tax Officer valued the gift on the basis of break-up value method but on appeal it was held that the shares should be valued on the same basis as was adopted for wealth-tax assessment. It was, however, noticed that the value of equity shares of two companies, which had not declared dividends for six years or more, was taken at 65 per cent of the break-up value as against 75 per cent prescribed under the Wealth-tax Rules, due to a printing error in the Wealth-tax Manual of the department. This resulted in under-valuation of gift to the extent of Rs. 6,57,233.

The Ministry have accepted the mistake and have intimated that additional demand of Rs. 2,44,716 has been raised. Report of recovery is awaited.

51. *Under-assessment due to application of incorrect rates*

An assessee made taxable gifts of Rs. 7.29 lakhs and Rs. 8.09 lakhs in the assessment years 1968-69 and 1969-70 respectively. The tax leviable on the gifts was Rs. 1,63,200 and Rs. 1,87,410 against which the tax as calculated and demanded by the department was Rs. 1,18,000 and Rs. 1,34,139 resulting in total short-levy of Rs. 98,471.

The Ministry have accepted the mistake; a sum of Rs. 74,286 is stated to have been adjusted against the refund of income-tax. Report regarding the recovery of the balance amount of Rs. 24,185 is awaited.

52. *Over-assessment*

(i) The Gift Tax Act provides that if stamp duty paid on an instrument of gift exceeds Rs. 1,000 the assessee would be entitled to a rebate from the gift tax payable, of an amount equal to the stamp duty so paid or one half of the sum by which the gift tax payable exceeds Rs. 1,000, whichever is less.

In two cases, where the assessees had paid appropriate stamp duty no rebate on this account was allowed by the Gift-tax Officers, which resulted in over-assessment of tax of Rs. 3,445.

The Ministry, while accepting the mistake, have intimated that the amount over-charged has been refunded.

(ii) An assessee made a gift of Rs. 77,685 during the previous year relevant to the assessment year 1970-71. While computing the gift tax in March, 1971 the following mistakes were committed:—

(a) The amount of Rs. 10,000 allowable as deduction from the total value of the gift was not reduced for arriving at the value of the taxable gift.

(b) The first slab chargeable to tax at 5 per cent was taken as Rs. 5,000 instead of Rs. 15,000.

(c) The gift tax chargeable on Rs. 5,000 at 5 per cent was taken as Rs. 2,500 instead of Rs. 250, while striking the totals.

(d) The tax on the second slab of Rs. 25,000 was charged at 16 per cent instead of the correct rate of 8 per cent.

Due to the above mistakes gift tax of Rs. 10,269 was charged instead of the correct amount of Rs. 5,518.

The Ministry have accepted the mistakes and have intimated that the demand has been reduced by Rs. 4,751.

ESTATE DUTY

53. During the test-audit of assessments made under the Estate Duty Act, 1953, conducted during 1st September, 1971 to 31st August, 1972 the following types of under-assessment and over-assessment of duty were noticed:—

(1) Incorrect computation of principal value of estate.
(2) Estate escaping assessment.
(3) Incorrect allowance of exemption.
(4) Incorrect computation of the value of benefits from a controlled company.

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

54. *Incorrect computation of the principal value of the estate*

(i) A deceased partner's interest in the goodwill of the firm passes on his death, and is assessable to estate duty.

In one case, while valuing the share of deceased partner in the goodwill of the firm on the basis of average profit, the total of the profit was

wrongly taken as Rs. 2,73,943 instead of Rs. 3,73,943. This resulted in under-assessment of the value of the estate by Rs. 26,750 and short-levy of duty of Rs. 6,711.

The Ministry while accepting the mistake, have intimated that additional demand has been raised.

(ii) Income-tax and wealth-tax liabilities outstanding on the date of death being 'debts' are deductible from the principal value of the estate.

In five cases, where this liability had not been correctly worked out, and in one case where the liability was deducted twice over, there was under-assessment of principal value to the extent of Rs. 1,15,298 with consequent short-levy of duty of Rs. 19,575.

The Ministry have accepted the mistakes in all the cases, and have intimated that demands in four cases have been raised and that assessment in the remaining case is being rectified.

(iii) Under the Estate Duty Act, the value of any property included in the estate, is the estimated price which it would fetch if sold in the open market at the time of death of the deceased person.

In one case, even though in the wealth-tax assessment of the deceased for assessment year 1967-68, an addition of Rs. 49,395 was made to his share of the interest in the firm in which he was a partner, corresponding addition was not made while including this interest in the net principal value of the estate for the purpose of estate duty. This resulted in under-assessment of the estate by Rs. 49,395 leading to short-levy of duty of Rs. 14,818.

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

(iv) In the estate duty assessment of a person who died on 29th March, 1968, the value of certain shares held by the deceased in foreign companies was taken as Rs. 1,16,713 against the correct value of Rs. 1,51,620 due to adoption of incorrect rate of exchange. This resulted in under-assessment of estate by Rs. 34,907 leading to short-levy of duty of Rs. 10,472.

The Ministry have accepted the omission and have stated that notice has been issued to the accountable person; report regarding rectification and recovery is awaited.

(v) Gifts made by a person within two years prior to his death are includible in the estate as property deemed to pass on death.

In one case, where premia aggregating Rs. 18,490 were paid on an insurance policy under the Married Women's Property Act, by a deceased

person within two years preceding his death, the amount included in the estate was Rs. 4,623 only. This resulted in under-assessment of estate by Rs. 13,867 involving short-levy of duty of Rs. 4,160.

The Ministry have accepted the mistake.

(vi) The estate of a deceased person, included a seven-storey house property, out of which one floor was used as residence by the deceased. In the estate duty assessment the assessing officer took the capital value of the property as Rs. 5,49,030 being 16⅔ times the net annual return of the rented out property (Gross : Rs. 59,364 minus outgoings), and after reducing the 1efrom Rs. 78,432 (being 1/7th capital value as exempt for self-occupation), included the balance of Rs. 4,70,598 in the principal value of the estate. In arriving at the net annual return of the property, the assessing officer had erroneously deducted an amount of Rs. 1,171 being expenditure relating to self-occupied portion thereby reducing the capital value of the let out portion by Rs. 19,509 (1171 × 16.66). Further, the deduction of Rs. 78,432 as aforesaid, was not in order as the captialised value of Rs. 5,49,030 was based on annual rental income of the portion let out.

Thus, the principal value was under-assessed by a total amount of Rs. 97,941 (78,432+19,509) leading to short-levy of estate duty of Rs. 29,383.

The Ministry have stated that the valuer in March, 1972 explained that there was a typing error in the original valuation report and the rent of Rs. 59,364 was in respect of the entire building including the self-occupied portion

55. *Estate escaping assessment*

(i)(a) Refund of tax due to the deceased is includible in the estate. In one case, while computing the value of the estate of a person who died on 25th October, 1966, income-tax refunds received after the date of death, (pertaining to earlier assessment years) were omitted to be included.

In the same case, a deduction of Rs. 21,260 was allowed treating the Annuity Deposit payable for the assessment year 1967-68 as a debt. Since payment of Annuity Deposit was made voluntary from assessment year 1967-68, it was not a statutory liability and no deduction on this account was admissible. Further, the interest of the deceased in a firm was under-valued by Rs. 59,683 due to a variety of mistakes. As a result of these errors and omissions, the principal value of the estate was under-assessed by Rs. 5,85,973 resulting in short-levy of duty of Rs. 4,27,413.

While accepting the mistakes the Ministry have intimated that the assessment is being revised.

(b) Though a person died in the previous year relevant to the asesessment year 1969-70, his income-tax liability amounting to Rs. 41,000 pertaining to the assessment year 1970-71 was allowed as deduction from the gross principal value of the estate. This led to under-valuation of the estate by Rs. 32,802 with consequential undercharge of duty of Rs. 7,339.

The Ministry have accepted the mistake and have replied that as a result of rectification a refund of Rs. 3,617 became due to the accountable person, because certain other mistakes in wealth-tax assessments for the year 1957-58 to 1966-67 had also been rectified.

(ii) The principal value of the estate of a deceased person who died on 7th June, 1964, was determined as Rs. 38,38,864 in July, 1967 and was subsequently reduced to Rs. 21,95,768 in August, 1971 due to appellate and rectificatory orders. The estate *inter alia* included shares from various companies. A comparison of the list of shares attached to the assessment order with the intimations received from the principal officers of certain companies regarding share-holdings of the deceased, revealed (February, 1972) that the value of 720 shares held by the deceased in a company had been omitted from the principal value of the estate. The omission resulted in under-charge of estate by Rs. 17,381 with a consequent short-levy of duty of Rs. 14,938.

The Ministry have accepted the omission and have intimated that additional demand has been raised and adjusted.

56. *Incorrect allowance of exemption*

A case was reported in para 82(iii)(a) of Audit Report, 1970-71 where exemption for self-occupation had been allowed even though the house had been transferred to a trust. A similar case has been noticed during the period under review.

In the case of a person who died in November 1969, exemption was allowed for a house property which belonged to a trust and not to the deceased and the deceased had only life interest therein. The incorrect exemption resulted in under-assessment of estate by Rs. 1 lakh, leading to a short-levy of duty of Rs. 30,000.

While accepting the mistake, the Ministry have stated that action for re-assessment has been initiated; further report is awaited.

57. *Incorrect computation of the value of benefits from a controlled company*

Under the Estate Duty Act, if the deceased had transferred any property to a controlled company and a benefit had accrued to him from that company

in the three years preceding his death, a proportion of the net assets of the company is deemed to be his property passing on death. This proportion is ascertained by comparing the aggregate value of the benefits accruing to him in the last three years with the aggregate amount of the net income of the company in the relevant period. Further, in working out the aggregate income for this purpose no deduction is admissible in respect of payment of interest on debentures in the company and correspondingly, no deduction is to be made for liabilities in respect of these debentures while computing the net assets of the company.

In one case, where the Assistant Controller had allowed deduction of certain liabilities and also of interest on them in computing the assets and the income respectively, it was held on appeal that the liabilities were in the nature of debentures, and accordingly, the expenditure on interest was not to be deducted from income. However, while giving effect to the Appellate Order, whereas the payment of interest was added back to income, no corresponding addition was made in respect of the liabilities to which the interest related. Further, although a sum of Rs. 1,06,817 was already included in the amount of interest added back it was added once again to the income. These mistakes resulted, on the one hand, in decreasing the proportion by inflating the income by Rs. 1,06,817 and on the other in understating the value of assets. Consequently, the principal value of estate was under-assessed by Rs. 8,14,976 and the duty short-levied was Rs. 1,81,615. The mistake has been accepted by the Ministry. Report regarding rectification and recovery is awaited.

58. *Other topics of interest*

In an estate duty assessment of a person who died in October, 1968, there were two valuation reports in respect of a house property by the same valuer bearing the same number and date. The fair rent of the property was estimated at Rs. 1,850 per month in one report and at Rs. 1,550 per month in the other. In the wealth-tax assessments of the deceased for the assessment years 1968-69 and 1969-70, the property had been valued on the basis of the fair rent of Rs. 1,850 per month, but in the estate duty assessment, fair rent was taken at the lower figure of Rs. 1,550 per month. Due to lack of co-ordination between the wealth-tax and the estate duty assessments adoption of lower figure of fair rent in the estae duty assessment resulted in under-valuation of estate by Rs. 48,900.

This under-valuation was however, partly off-set by over-valuation of the estate to the extent of Rs. 12,880 because of certain arithmetical errors. The net under-valuation of the estate was thus Rs. 36,020 with consequential under-charge of estate duty of Rs. 10,756.

The Ministry have accepted the over-assessment, but as regards under-assessment it has been stated that because of compensating errors there was no under-charge of duty.

59. *Over-assessment*

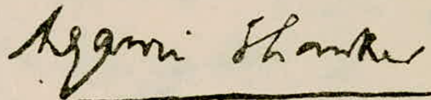
(i) Agricultural lands, situated in West Bengal are not subject to estate duty. In one case, such property valued at Rs. 1,53,200 was subjected to duty on the assumption that it was non-agricultural land. This resulted in over-charge of estate duty of Rs. 11,996.

The Ministry have accepted the mistake and have intimated that refund has since been allowed.

(ii) Gifts made by a deceased person within two years prior to his death are added back to his estate as 'property deemed to pass on death'.

While computing the principal value of the estate of a person who died in March, 1969, a gift of Rs. 50,000 made in December, 1966, more than two years prior to his death was also included in estate. This resulted in the principal value of the estate being over-assessed by Rs. 50,000 leading to excess levy of duty of Rs. 14,617.

The Ministry have accepted the omission and have stated that the assessment is being rectified.



(V. GAURI SHANKAR)
Director of Receipt Audit

NewDelhi
the April, 1973

8th April, 1973

Countersigned

(A. BAKSI)
Comptroller and Auditor General of India

New Delhi
the April, 1973
8th April, 1973

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