REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR

1977-78

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME II

DIRECT TAXES

ERRATA

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		12th from top	(—) 1.05	(—) 9.13
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36	14(6)	11th from top	84,00,000	Rs. 84,00,000
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118	61.3	9th from bottom	9,29 lakhs	9.29 lakhs
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Report

Of The

Comptroller

And

Auditor General

Of India

For The Year

1977-78

Union Government (Civil)

Revenue Receipts

Volume II

Direct Taxes

TABLE OF CONTENTS

PREFATORY REMARKS

As mentioned in the prefatory remarks of volume I of the Audit Report on Revenue Receipts of the Union Government, the results of audit of receipts under Direct Taxes are presented in a separate volume. In this volume, points arising from the audit of Corporation Tax, Income-tax and Other Direct Taxes, *i.e.* 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.

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

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

(*iv*) Chapter IV relates to Wealth-tax.

(*v*) Chapter V covers points relating to Gift-tax and Estate Duty.

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

Volume II

CHAPTER I

GENERAL

The total proceeds from Direct Taxes for the year 1977-78 amounted to Rs. 2,404.94* crores out of which a sum of Rs. 684.82 crores was assigned to the States. The figures for the three years 1975-76, 1976-77 and 1977-78 are given below :—

(In crores of rupees)

	1975-76	1976-77	1977-78
020 Corporation Tax	861.70	984.23	1220.77
021 Taxes on Income other than Corporation Tax	1214.36	1194.40	1002.02
028 Other Taxes on Income and Expenditure	58.38	71.27	115.84
031 Estate Duty	11.65	11.73	12.30
032 Taxes on Wealth	53.73	60.44	48.46
033 Gift Tax	5.11	5.67	5.55
Gross Total	2204.93	2327.74	2404.94
Less share of net proceeds assigned to the States			
Income-tax	734.10	652.24	675.44
Estate Duty	8.21	9.52	9.38
TOTAL	742.31	661.76	684.82
Net receipts	1462.62	1665.98	1720.12

The gross receipts under Direct Taxes during 1977-78 went up by Rs. 77.20 crores when compared with the receipts during 1976-77 as against an increase of Rs. 122.81 crores in 1976-77 over those for 1975-76. Receipts under Corporation tax accounted for an increase of Rs. 236.54 crores while taxes on income other than Corporation tax registered a decrease of Rs. 192.38 crores.

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

(a) The break-up of total collections of Corporation tax and Taxes on income other than Corporation tax, during 1977-78, as furnished by the Ministry of Finance, is as under :—

Pre-assessment and post-assessment collection of tax during 1977-78 :—

	(In crores of rupees)
(i) Deduction at source	441.48
(ii) Advance tax (net)	1398.76
(iii) Self assessment	248.73
(iv) Regular assessment	133.80
	2222.77

(b) The details of deductions at source under broad categories are as under :—

	(In crores of rupees)
(i) Dividends distributed by companies	71.76
(ii) Salaries	176.93
(iii) Payments to contractors	46.51
(iv) Winnings from Lotteries and Crossword Puzzles	3.01

(c) Deduction of tax at source by companies on dividends distributed*:—

(1)	(*i*) No. of company assessees as on 1-4-1977	40,237
	(*ii*) No. of company assessees as on 1-4-1978	42,084
	(*a*) No. of foreign company assessees as on 1-4-1977 (included in (i) above].	1,136**
	(*b*) No. of foreign company assessees as on 1-4-1978 (included in (ii) above].	1,028
(2)	No. of foreign companies which had made the prescribed arrangements for declaration and payment of dividends within India :—	
	As on 1-4-1977	10
	As on 1-4-1978	3

*rnished by the Min. of Finance.

include 7 foreign companies in Andhra Pradesh which could imated last year.

(3) No. of companies which have distributed dividends during 1977-78 and amount of dividend :—

	Number	Amount of dividend (in thousands of rupees)
(*a*) Indian companies	4,594	1,99,67,86
(*b*) Foreign companies	1	70

(4) No. of companies out of (3) from whom the statement prescribed in Rule 37(2) was received:—

(*a*) Indian companies	4,547
(*b*) Foreign companies	1

(5) No. of companies and amount of deduction of tax shown in the statements in (4) above:—

	No. of companies	Amount (in thousands of rupees)
(*a*) Indian companies	4,539	40,46,45
(*b*) Foreign companies	1	9

(6) No. of companies out of (4) in which the tax deducted was remitted to banks within a week:

(*a*) Indian companies	4,466
(*b*) Foreign companies	1

(7) Amount involved in (6) above :—

(*a*) Indian companies	39,26,53
(*b*) Foreign companies	9

(8) No. of companies out of (4) which remitted the tax deducted, after one week of date of deduction on receipt of challan :

(*a*) Indian companies	73
(*b*) Foreign companies	..

(9) No. of companies out of (4) above from whom the returns prescribed in Section 286 were not received, when the dividends paid to a company exceeded Re. 1 and to any other share holder Rs. 5,000:

(*a*) Indian companies	19
(*b*) Foreign comapnies	..

(10) No. of companies out of (3) above which have (a) not deducted tax at source and (b) not furnished the statement prescribed in Rule 37(2):

	Tax not deducted at source	Statement not furnished under Rule 37(2)
(*a*) Indian companies	55	47
(*b*) Foreign companies	..	..

(d) Advance Tax.—Demand and Collection.* Demand raised (*i.e.* notices issued) and collected by way of advance tax during 1977-78 :—

	Number of cases	Amount (in crores of rupees)
(i) Demand raised	Not furnished	1511.49
(ii) Demand collected out of (i)	8,73,547	1447.89
(*iii*) Arrears under advance tax as on 31st March, 1978	3,09,574	63.60

2. *Variations between Budget estimates and actuals*

(i) The actuals for the year 1977-78 under the Major heads '031—Estate Duty', and '033—Gift-tax' exceeded the Budget estimates. The figures for the years from 1973-74 to 1977-78 under the above heads are given below :—

Year	Budget estimates	Actuals	Variation	Percentage of variation
			(In crores of rupees)	
(1)	(2)	(3)	(4)	(5)
020—Corporation Tax				
1973-74	608.00	582.60	(—)25.40	(—)4.18
1974-75	661.00	709.48	48.48	7.33
1975-76	780.50	861.70	81.20	10.40
1976-77	1025.00	984.23	(—)40.77	(—)3.98
1977-78	1298.20	1220.77**	(—)77.43	(—)5.96

*Figures furnished by the Ministry of Finance.

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

(1)	(2)	(3)	(4)	(5)
021—Taxes on Income etc.*				
1973-74	650.60	741.37	90.77	13.95
1974-75	709.00	878.25	169.25	23.87
1975-76	791.00	1214.36	423.36	53.52
1976-77	957.00	1194.40	237.40	24.81
1977-78	1038.20	1002.02**	(—)36.18	(—)3.48
031—Estate Duty*				
1973-74	9.25	10.53	1.28	13.84
1974-75	9.00	10.94	1.94	21.55
1975-76	9.25	11.65	2.40	25.95
1976-77	8.75	11.73	2.98	34.06
1977-78	10.75	12.30**	1.55	14.42
032—Taxes on wealth				
1973-74	43.00	35.78	(—)7.22	(—)16.79
1974-75	40.00	39.23	(—)0.77	(—)1.92
1975-76	43.00	53.73	10.73	24.95
1976-77	52.00	60.44	8.44	16.23
1977-78	54.90	48.46**	(—)6.44	(—)11.73
033—Gift-tax				
1973-74	3.50	4.79	1.29	36.86
1974-75	4.00	5.06	1.06	26.50
1975-76	4.50	5.11	0.61	13.55
1976-77	4.75	5.67	0.92	19.37
1977-78	5.50	5.55**	.05	0.91

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

*Gross figures have been taken.

(ii) The details of variations under the heads subordinate to the Major heads 020 and 021 for the year 1977-78 are given below :—

	Budget	Actuals	Increase(+) Shortfall(—)	Percentage of variation
			(In crores of rupees)	
020—Corporation Tax				
(*i*) Income-tax on companies	1237.20	1124.22	(—)112.98	(—)1.05
(*ii*) Super Tax on companies		.41	.41	
(*iii*) Excess Profits Tax		.04	.04	
(*iv*) Super Profits Tax		**—	—	
(*v*) Business Profits Tax		—	—	
(*vi*) Surtax	55.00	55.79	.79	1.44
(*vii*) Surcharge		36.31	36.31	
(*viii*) Other receipts*	6.00	4.00	(—)2.00	(—)33.33
	1298.20	1220.77	(—)77.43	(—)5.96
021—Taxes on Income other than Corporation Tax				
(*i*) Income-tax	924.95	858.62	(—)36.33	(—)3.93
(*ii*) Super Tax		.07	.07	
(*iii*) Surcharge	98.25	74.76	(—)23.49	(—)23.91
(*iv*) Excess Profits Tax		.03	.03	
(*v*) Business Profits Tax		—	—	
(*vi*) Receipts awaiting transfer to other minor-heads		21.96	21.96	
(vii) Other receipts*	15.00	16.58	1.58	10.53
Deduct share of Proceeds assigned to States	684.80	675.44	(—)9.36	1.37
	353.40	326.58	(—)26.82	(—)7.59

*Budget provision under "other receipts" has been shown as against "Miscellaneous receipts".

**Actual figure under this head was Rs. 47,000.

3. *Cost of collection*

The expenditure incurred during the year 1977-78 in collecting Corporation tax and Taxes on Income other than Corporation Tax, together with the corresponding figures for the preceding three years is as under :—

(In crores of rupees)

	Gross collection	Expenditure on Collections
020—Corporation Tax		
1974-75	709.48	3.90
1975-76	861.70	4.85
1976-77	984.23	4.91
1977-78*	1220.77	5.18
021—Taxes on Income etc.		
1974-75	878.25	27.31
1975-76	1214.36	33.96
1976-77	1194.40	34.38
1977-78*	1002.02	36.28

**4. (i) The total number of assessees (including companies) in the books of the Department as on 31st March, 1978 was 39,55,244. As compared to the previous year ending 31st March, 1977 there was an increase of 1,96,491 assessees. The number of assessees status-wise as on 31st March, 1977 and 31st March, 1978 was as under :—

	As on 31st March, 1977	As on 31st March, 1978
Individuals	28,76,971	30,37,778
Hindu undivided families	1,97,734	2,02,349
Firms	5,96,750	6,20,499
Companies	40,237	42,084
Others	47,061	52,534
TOTAL	37,58,753	39,55,244

**Figurs furnished by the Controller General of Accounts are provisional.
*Information supplied by Min. of Finance.

(ii) Category-wise number of income-tax paying assessees during the years 1976-77 and 1977-78 is indicated in the following table :—

	As on 31st March, 1977	As on 31st March, 1978
(*a*) Business cases having income over Rs. 25,000 .	3,10,976	2,85,852
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000 . . .	2,72,791	2,63,728
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000 . . .	4,08,210	3,83,606
(*d*) All other cases (including refund cases) except those mentioned in categories (e) and (f) below	4,22,126	3,42,248
(*e*) Government salary cases and non-Government salary cases below Rs. 18,000 . . .	4,30,521	3,73,657
(*f*) Summary assessment cases	19,14,129	23,06,153
*TOTAL	37,58,753	39,55,244

(iii) (a) The total number of wealth-tax assessees in the books of the Department as on 31st March, 1977 and 31st March, 1978 was as follows :—

	As on 31st March 1977	As on 31st March, 1978
Individuals	2,16,479	2,44,929
Hindu undivided families	30,949	35,857
Others	1,878	2,078
TOTAL	2,49,306	2,82,864

(b) The total number of wealth-tax assessments completed during 1976-77 and 1977-78 was as under :—

	1976-77	1977-78
Individuals	2,48,089	2,79,743
H.U.F.	30,829	37,447
Others	1,009	1,375
	2,79,927	3,18,565

*Information supplied by Min. of Finance.

(iv) (a) The total number of gift-tax assessees in the books of the Department as on 31st March, 1977 and 31st March, 1978 was as follows :—

	As on 31st March, 1977*	As on 31st March, 1978*
Individuals	94,931	89,694
Hindu undivided families	1,223	1,196
Others	278	270
TOTAL	96,432	91,160

(b) The number of gift-tax assessments completed during 1976-77 and 1977-78 was as follows :—

	1976-77	1977-78
Individuals	74,524	69,924
H.U.F.	1,409	1,360
Others	316	339
TOTAL	76,249	71,623

(v) (a) The total number of estate duty assessment cases in the books of the Department as on 31st March, 1977 and 31st March, 1978 was as follows :—

As on 31st March, 1977	40,695*
As on 31st March, 1978	39,079*

(b) The total number of estate duty assessments of individuals completed during 1976-77 and 1977-78 was as under :—

1976-77	37,853
1977-78	39,602

*Information supplied by Min. of Finance.

(vi) The number of estate duty assessments completed during 1977-78 was as follows :—

Principal value of property	Number of assessments completed
(*i*) Exceeding Rs. 20 lakhs	8
(*ii*) Between Rs. 10 lakhs and Rs. 20 lakhs	56
(*iii*) Between Rs. 5 lakhs and Rs. 10 lakhs	377
(*iv*) Between Rs. 1 lakh and Rs. 5 lakhs	6,387
(*v*) Between Rs. 50,000 and Rs. 1 lakh	10,159
TOTAL	16,987

5. (i) Information in respect of foreign companies, including companies which have declared their Indian income on the basis of apportionment of their global income, is given below :—

A. Cases where returns have been filed and assessments completed as on 31-3-1978:—

	Number	Amount (In crores of rupees)*
(*i*) No. of foreign companies	369	
(*ii*) Income returned		39.2698
(*iii*) Income assessed		94.6183
(*iv*) Gross demand		27.6296
(*v*) Demand outstanding out of (iv) as on 31-3-1978		4.1235
(*vi*) Tax paid upto 31-3-1978 [(iv)-(v)]		23.5061

B. Cases where returns have been filed but assessments were pending as on 31-3-1978:—

	Number	Amount (In crores of rupees)
(*i*) No. of foreign companies	469	
(*ii*) Income returned		127.5612
(*iii*) Gross demand being tax due on income returned		92.3338
(*iv*) Demand outstanding out of (iii) as on 31-3-1978		9.0370
(*v*) Tax paid upto 31-3-1978 [(iii)—(iv)]		83.2968

C. Cases where no returns have been filed as on 31-3-1978:—

Number of foreign companies 190

*Information supplied by Ministry of Finance.

(ii) Information in respect of only those foreign companies which have declared their Indian income on the basis of apportionment of their global income is as under :—

A. Cases where returns have been filed and assessments completed as on 31-3-1978:—

	Number	Amount (in crores of rupees)
(*i*) Number of foreign companies . . .	3	
(*ii*) Global income shown		0.0679
(*iii*) Income returned		0.0254
iv) Income assessed		0.0442
(*v*) Gross demand		0.0294
(*vi*) Demand outstanding out of (v) as on 31-3-1978		0.0137
(*vii*) Tax paid upto 31-3-1978 [(v)-(vi)] . .		0.0157

B. Cases where returns have been filed but assessments were pending as on 31-3-1978:—

	Number	Amount (In crores of rupees)
(*i*) Number of foreign companies . . .	19	
(*ii*) Global income shown		371.5505
(*iii*) Income returned		0.2415
(*vi*) Gross demand being tax due on income returned		0.3863
(*v*) Demand outstanding out of (iv) as on 31-3-1978		..
(*vi*) Tax paid upto 31-3-1978		0.3863

C. Cases where no returns have been filed as on 31-3-1978:—

No. of foreign companies 14

6. *Arrears of tax demands*

(a) *Corporation Tax and Income-tax*

(i) The total demand of tax raised and remaining uncollected as on 31st March, 1978 was Rs. 809.31 crores. This did not include Rs. 180.56 crores, the collection of which had not fallen due on that date but includes Rs. 8.81 crores not fallen due, Rs. 136.33 crores stayed/kept in abeyance and Rs. 30.64 crores for which instalments have been granted.

*Information supplied by Min. of Finance.

(ii) The figures of Corporation tax, Income-tax, interest and penalty comprised in the gross arrears of Rs. 989.87 crores and the years to which they relate are shown below :—

	Corporation tax	Income tax	Interest	Penalty	Total (in crores of rupees)*
Arrears of 1967-68 and earlier years. .	19.75	47.52	6.78	7.53	81.58
1968-69 to 1974-75 .	35.05	165.51	49.41	35.48	285.45
1975-76 . .	12.86	49.33	21.64	11.36	95.19
1976-77 . .	20.99	85.99	38.11	21.08	166.17
1977-78 . .	97.31	149.09	87.99	27.09	361.48
TOTAL .	185.96	497.44	203.93	102.54	989.87

(iii) The table below shows the number of assessees from whom gross arrears of *Rs. 990 crores are due :—

Arrear demands	Number of assessees	Total arrears of tax (in crores of rupees)*
Upto Rs. 1 lakh in each case	31,38,447	480
Over Rs. 1 lakh upto Rs. 5 lakhs in each case . .	8,533	137
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case .	840	57
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case .	505	79
Over Rs. 25 lakhs in each case	305	237
TOTAL	31,48,630	990

*Figure furnished by the Ministry of Finance is provisional.

(iv) Tax demand certified to Tax Recovery Officers and State Government Officers for recovery and its year-wise particulars to the end of 1977-78 are as under :—

	Demand certified			Demand recovered	Balance*
	At the beginning of the year	During the year	Total		
				(In crores of rupees)	
1968-69 . .	278.75	151.44	430.19	78.04	352.15
1969-70 . .	359.52	183.55	543.07	116.45	426.62
1970-71 . .	425.25	181.36	606.61	145.37	461.24
1971-72 . .	483.53	208.79	692.32	167.52	524.80
1972-73 . .	530.57	264.98	795.55	189.06	606.49
1973-74 . .	598.15	192.62	790.77	161.93	628.84
1974-75 . .	616.07	188.16	804.23	176.29	627.94
1975-76 . .	616.35	333.92	950.27	290.56	659.71
1976-77 . .	678.72	330.30	1009.02	370.67	638.35
1977-78 . .	638.00	258.00	896.00	244.00	652.00

(v) Demands of Income-tax (including Corporation-tax) stayed as on 31st March, 1978 on account of appeals and revision petitions were as under :—

	(In crores of rupees)*
(*a*) By courts	22.33
(*b*) Under Section 243F(2) (applications to Settlement Commission)	7.09
(*c*) By Tribunal	4.09
(*d*) By Income-tax authorities due to :—	
(*i*) Appeals and revisions	73.18
(*ii*) D.I.T. Claims	4.02
(*iii*) Restriction on remittances—Section 220(7) . .	0.69
(*iv*) Other reasons	24.93
TOTAL	136.33

*Figures furnished by Min. of Finance.

(vi) Arrears of Sur-tax demands outstanding as on 31st March, 1978 were as follows :—

Relating to demands raised in	Amount outstanding (In thousands of rupees)*
1968-69 and earlier years	2,31
1969-70	2,47
1970-71	2,58
1971-72	6,71
1972-73	11,40
1973-74	8,88
1974-75	1,05,94
1975-76	63,97
1976-77	1,22,42
1977-78	9,31,75
TOTAL	12,58,43

(vii) The following table shows the position of arrears of Annuity Deposits for the last three years :—

	As on 31st March, 1976	As on 31st March 1977	As on 31st March 1978
	(In lakhs of rupees)*		
(*i*) Arrears out of Advance Annuity Deposits	0.72	..	..
(*ii*) Arrears out of self and provisional Annuity Deposits	3.07	0.02	..
(*iii*) Arrears out of Regular Annuity Deposits	1395.90	1284.02	1075.11
TOTAL	1399.69	1284.04	1075.11

*Information supplied by Min. of Finance.

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

(i) The following table shows the year-wise arrears of demands outstanding and the number of cases relating thereto under the three other direct taxes *i.e.*, wealth-tax, gift-tax and estate duty as on 31st March, 1978 :—

(In crores of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	Number of cases	Amount Rs.	Number of cases	Amount Rs.	Number of cases	Amount Rs.
1973-74 and earlier years.	23,945	7.55	7,139	1.15	3,505	5.24
1974-75	13,059	4.82	3,333	1.09	1,014	1.80
1975-76	21,299	8.81	5,214	0.67	1,679	1.98
1976-77	32,216	11.58	9,362	1.11	3,152	2.73
1977-78	64,083	23.75	18,604	2.95	7,039	5.77
TOTAL	1,54,602	56.51	43,652	6.97	16,389	17.52

(ii) Demands of tax/duty stayed on appeals and revision petitions for Wealth-tax, Gift-tax and Estate Duty, as on 31st March, 1978 were as under :—

(In lakhs of rupees)

	Wealth-tax	Gift-tax	Estate Duty
(*a*) By Courts	130.15	6.68	46.58
(*b*) By Wealth-tax/Gift-tax/Estate Duty authorities:			
(*i*) Pending disposal of appeals etc. (including amounts under protective assessments)	594.41	23.25	252.50
(*ii*) Pending disposal of settlement petitions	7.38	..	95.05
(*iii*) For other reasons . . .	54.88	44.94	124.15

7. **Arrears of assessments*

(a) *Income-tax including Corporation tax*

(i) The number of assessment cases to be finalised as on 31st March, 1978 has decreased as compared to that at the close of the previous year. The number of assessments pending as

*Information supplied by Min. of Finance.

on 31st March, 1978 was 15.38 lakhs as compared to 17.42 lakhs as on 31st March, 1977 and 17.27 lakhs as on 31st March, 1976. Of the 15.38 lakhs of pending cases as many as 7.13 lakhs cases related to small income and summary assessments.

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

Financial year	Number of assessments for disposal	Out of current	Out of arrears	Total	Percentage	Number of assessments pending at the end of the year
		Number of assessments completed				
1973-74	51,55,600	22,27,807	12,08,196	34,36,003	66.6	17,19,597
1974-75	55,18,327	24,23,575	14,17,271	38,40,846	69.6	16,77,481
1975-76	57,34,327	25,08,108	14,99,536	40,07,644	69.9	17,26,683
1976-77	56,90,717	24,88,743	14,60,136	39,48,879	69.4	17,41,838
1977-78	55,81,355	25,72,678	14,71,135	40,43,813	72.5	15,37,542

(iii) Category-wise break-up of the total number of assessments completed during the years 1976-77 and 1977-78 is as under :—

	1976-77	1977-78
(*a*) Business cases having income over Rs. 25,000 .	3,27,195	2,75,248
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,83,244	1,50,733
(*c*) Business cases having income over Rs. 7,500 but not exceeding over Rs. 15,000	2,80,511	2,19,303
(*d*) All other cases (including refund cases) except those mentioned in categories (e) and (f) . .	4,91,046	3,49,871
(*e*) Small income scheme cases, Government salary and non-Government salary cases below Rs. 18,000	62,877	60,731
(*f*) Summary assessments	26,04,006	29,87,927
TOTAL	39,48,879	40,43,813

(iv) Status-wise break-up of income-tax assessments completed during the years 1976-77 and 1977-78 is as under :—

	1976-77	1977-78
(*i*) Individuals	31,07,646	31,85,228
(*ii*) Hindu Undivided Families	1,96,265	1,94,186
(*iii*) Firms	5,66,091	5,84,815
(*iv*) Companies	41,878	41,533
(*v*) Associations of persons	36,999	38,051
TOTAL	39,48,879	40,43,813

(v) The position of assessments completed under Summary Assessment Scheme is as under :—

1. Total number of assessments completed under Section 143(1) of the Act.	29,87,927
2. Assessments made under Section 143(2) (a) of the Act. (where an assessment having been made under Section 143(1) and assessee makes within one month an application objecting to the assessment).	1,474
3. Assessments made under Section 143(2)(b) that is where the Income-tax Officer considers it necessary to verify the correctness of the return by requiring the presence of the assesee	1,616

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

	As on 31st March 1976	As on 31st March 1977	As on 31st March 1978
1973-74 and earlier years.	83,315	44,667	22,252
1974-75	4,22,143	47,103	15,174
1975-76	12,21,225	4,07,231	37,797
1976-77	..	12,42,837	3,84,814
1977-78	..	..	10,77,505
TOTAL	17,26,683	17,41,838	15,37,542

(vii) Category-wise break-up of pending income-tax assessments as on 31st March, 1977 and 31st March, 1978 is as under :—

	As on 31st March, 1977	As on 31st March, 1978
(*a*) Business cases having income over Rs. 25,000	1,90,539	1,64,340
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,82,783	1,59,232
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	2,59,123	2,07,908
(*d*) All other cases (including refund cases) except those mentioned in categories (e) and (f) below .	4,25,655	2,93,088
(*e*) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	67,824	50,567
(*f*) Summary assessments	6,15,914	6,62,407
TOTAL	17,41,838	15,37,542

(viii) Status-wise and year-wise break-up of pendency of income-tax assessments as on 31st March, 1978 is as under :—

Status	1973-74 and earlier years	1974-75	1975-76	1976-77	1977-78	Total
Individuals .	13,719	11,180	26,530	2,56,706	7,92,322	11,00,457
Hindu undivided families .	1,600	890	2,525	24,651	60,313	89,979
Companies .	2,722	771	2,081	10,094	19,196	34,864
Firms	3,323	1,855	5,398	83,014	1,85,353	2,78,943
Associations of persons	888	478	1,263	10,349	20,321	33,299
TOTAL .	22,252	15,174	37,797	3,84,814	10,77,505	15,37,542

(ix) Re-opened assessments and set aside assessments which are pending.

(1) Year-wise details of assessments cancelled under Section 146 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act) and which are pending finalisation on 31st March, 1978 are as follows :—

Assessment year	Number of assess-ments
1969-70 and earlier years	1,512
1970-71	368
1971-72	431
1972-73	687
1973-74	1,163
1974-75	1,890
1975-76	1,899
1976-77	1,239
1977-78	1,618
TOTAL	10,807

(2) Year-wise details of assessments cancelled under Section 263 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act) which are pending finalisation on 31st March, 1978 are as follows :—

Assessment year	Number of assess-ments
1969-70 and earlier years	356
1970-71	29
1971-72	32
1972-73	74
1973-74	106
1974-75	86
1975-76	78
1976-77	63
1977-78	153
TOTAL	977

(3) Year-wise details of assessments set aside by the Appellate Assistant Commissioners under Section 251 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act) or by the Appellate Tribunals under Section 254 of the Income-tax Act, 1961 (or under the corresponding provisions of the old Act), where fresh assessments have not been completed as on 31st March, 1978 :—

Set aside by Appellate Assistant Commissioners		Set aside by Appellate Tribunals	
Assessment year	Number of cases	Assessment year	Number of cases
1969-70 and earlier years	2,738	1969-70 and earlier years	576
1970-71	606	1970-71	105
1971-72	591	1971-72	86
1972-73	821	1972-73	127
1973-74	1,056	1973-74	122
1974-75	1,106	1974-75	95
1975-76	820	1975-76	102
1976-77	650	1976-77	108
1977-78	948	1977-78	215
TOTAL	9,336		1,536

(b) *Pendency of Super Profits Tax and Surtax assessments*

The position of pendency as on 31st March, 1978 is given below :—

(Figures in thousands of rupees)

	Super Profits tax	Surtax
(*i*) Total number of cases for disposal during 1977-78	12	4,838
(*ii*) Number of cases disposed of provisionally	..	650
(*iii*) Number of cases disposed of finally	1	1,192
(*iv*) Amount of demand raised on provisional assessments	..	55,50,17
(*v*) Amount of demand collected on provisional assessments	..	51,79,53
(*vi*) Amount of demand raised on final assessments	92	14,91,72
(*vii*) Amount of demand collected on final assessments	..	14,17,13
(*viii*) Number of cases pending as on 31st March 1978	11	3,646
(*ix*) Approximate amount of tax involved in (viii)	124	43,90,54

Year-wise details of assessments under Companies (Profits) Surtax Act, 1964, pending as on 31st March, 1978 are as under :—

Year	Number of assessments
1968-69 and earlier years	57*
1969-70	13
1970-71	22
1971-72	40
1972-73	75
1973-74	154
1974-75	330
1975-76	680
1976-77	980
1977-78	1306
TOTAL	3657

(c) Year-wise details of Wealth-tax, Gift-tax and Estate Duty assessments pending on 31st March, 1978 are given below. The approximate amount of tax/duty involved therein has not been furnished by the Ministry of Finance :—

	Number of assessments pending		
	Wealth-tax	Gift-tax	Estate duty
1973-74 and earlier years	40,108	5,187	3,553
1974-75	22,543	2,193	2,244
1975-76	40,020	2,567	4,631
1976-77	67,439	4,524	7,360
1977-78	1,44,114	8,454	10,499
TOTAL	3,14,224	22,925	28,287

*Includes 11 cases relating to Super Profit Tax.

8. Figures of interest levied under the various provisions of the Income-tax Act, 1961 are given below :—

	(In crores of rupees)*
(*i*) The total amount of interest levied under the various provisions of the Income-tax Act during the year 1977-78 .	127.24
(*ii*) Of the amount of interest levied, the amount	
(*a*) Completely waived by the Department . .	2.72
(*b*) Reduced by the Department	13.17

9. *Appeals pending on* 31*st March,* 1978

(i) (a) Particulars in respect of Income-tax appeals pending on 31st March, 1978 are as under :—

	Income-tax appeals with Appellate Assistant Commissioners	Income-tax revision petitions with Commissioners*
(*a*) Number of appeals/revision petitions . . .	1,84,431	9,193
(*b*) Out of appeals/revision petitions instituted during 1977-78	1,22,884	6,403
(*c*) Out of appeals/revision petitions instituted in in earlier years	61,547	2,790

(b) Particulars in respect of Wealth-tax, Gift-tax and Estate Duty appeals and Revision petitions pending on 31st March, 1978 are as under :—

	Appeals with Asstt. Appellate Commissioners			Revision petitions with Commissioners of of Income-tax		
	W.T.	G.T'	E.D.	W.T.	G.T.	E.D.
(*a*) No. of appeals/ revision petition pending . .	32,124	1,960	3,928	1,836	80	..
(*b*) Out of appeals/ revision petitions instituted during 1977-78 . .	21,521	1,472	2,391	1,145	59	..
(*c*) Out of appeals/ revision petitions instituted in earlier years . .	10,603	488	1,537	691	21	..

*Information supplied by Ministry Finance.

(ii) (a) Year-wise break-up of Income-Tax appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax for the periods ending 31st March, 1977 and 31st March, 1978 respectively with reference to the year of institution is as under :—

Year of institution	Appeals pending with Appellate Assistant Commissioners		Revision petitions pending with Commissioners of Income-tax*	
	31st March 1977	31st March 1978	31st March 1977	31st March 1978
1968-69 and earlier years	70	45	49	40
1969-70	86	53	26	15
1970-71	166	85	66	57
1971-72	501	195	143	119
1972-73	1,449	689	163	124
1973-74	2,548	999	246	179
1974-75	11,239	2,755	442	275
1975-76	41,461	12,461	840	481
1976-77	1,44,429	44,265	3,972	1,500
1977-78	..	1,22,884	..	6,403
TOTAL	2,01,949	1,84,431	5,947	9,193

(b) Year-wise break-up of Wealth-tax, Gift-tax and Estate Duty appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax for the period ending 31st March, 1978, with reference to the year of institution, is as under :—

Year of Institution	Appeals pending with Appellate Asstt. Commissioners			Revision petitions pending with commissioners of Income-tax.		
	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.
1968-69 and earlier years	11	..	3	58	..	..
1969-70	8	..	..	11	..	..
1970-71	5	..	..	7	..	..
1971-72	36	..	22	20	..	..
1972-73	37	1	21	32	..	..
1973-74	226	4	27	72	..	..
1974-75	541	22	82	100	..	..
1975-76	2671	114	344	133	4	..
1976-77	7068	347	1037	258	17	..
1977-78	21521	1472	2391	1145	59	..
TOTAL	32124	1960	3927	1836	80	..

*Information supplied by Min. of Finance.

(iii) The following table gives details of appeals/references disposed of during 1975-76, 1976-77 and 1977-78 :—

	1975-76	1976-77	1977-78
(*i*) (*a*) No. of appeals filed before Appellate Assistant Commissioners.	2,01,168	2,13,612	1,87,173
(*b*) No. of appeals disposed of by 31-3-1978	1,88,707	1,69,347	64,289
(*ii*) No. of appeals filed before Income-tax Appeallate Tribunals . .			
(*a*) by the assessees . . .	31,223	31,067	30,429
b) by the department. . .	17,564	17,532	16,981
(*iii*) No. of assessees' appeals decided by the Tribunals in favour of the assessees	25,056	12,995	11,560
(*iv*) No. of departmental appeals decided by the Tribunals in favour of the Department	9,289	4,468	3,396
(*v*) No. of references' filed to the High Courts			
(*a*) by the assessees . .	1,560	1,868	1,569
(*b*) by the Department . .	3,456	3,705	3,925
(*vi*) No. of references in the High Courts disposed of in favour of the			
(*a*) assessees	475	635	99
(*b*) Department	419	113	293
(*vii*) No. of appeals filed to the Supreme Court			
(*a*) by the assessees . .	14	36	26
(*b*) by the Department . .	46	115	146
(*viii*) No. of appeals disposed of by the Supreme Court in favour of the			
(*a*) assessees .	12	..	..
(*b*) Department	13	11	2

10. *Reliefs and Refunds*

(a) *Reliefs*

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 of Finance was 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 them for the year 1976-77 :—

	No. of assess-ments	Amount of relief allowed
		(In thousands of rupees)
(*i*) Relief on account of expenditure on medical treatment of handicapped dependants . .	339	1,03
(*ii*) Relief in respect of payments for securing retirement benefits	133	99
(*iii*) Relief in respect of incomes earned by Indian teachers, research workers working in foreign universities and educational institutions .	140	1,53
(*iv*) Relief for newly established industrial undertakings or ships or hotels	427	2,08,71
(*v*) Relief for expenditure incurred on education abroad of children of foreigners . . .	162	1,37
(*vi*) Relief for industrial undertakings which provide employment for displaced persons .	278	1,84

(b) *Refunds*

(i) Refunds under Section 237 :—

1. No. of applications pending on 1-4-1977	4,354
2. No. of refund applications received during the year 1977-78	99,295
3. No. and amount of refunds made during 1977-78	
(*a*) Out of (1) above	
(*i*) Number	4,109
(*ii*) Amount (in thousands of rupees)	16,38

(*b*) Out of (2) above . . . . . .
(*i*) Number 93,880
(*ii*) Amount (in thousands of rupees) 10,74,05

*4. No. of refund cases in which interest was paid under Section 243, the amount of such interest, and the amount of refund, on which such interest was paid during 1977-78.

(*a*) Out of (1) above :
(*i*) Number 1
(*ii*) Amount of refund (in thousands of rupees) . . 2
(*iii*) Amount of interest paid . . . .

(*b*) Out of (2) above . . . . . .
(*i*) Number . . . .
(*ii*) Amount of refund. . . . . ..
(*iii*) Amount of interest paid . . . .

5. No. and amount of refunds made during 1977-78 on which no interest was paid : . . . . . .
(*i*) Number 97,988
(*ii*) Amount (in thousands of rupees) 10,90,41

6. No. of refund applications pending as on 31-3-1978 . . 5,660

7. Break-up of applications mentioned at (6) above :
(*i*) Refund applications for less than a year . . . 5,415
(*ii*) between 1 year and 2 years 245
(*iii*) for 2 years and more . . . . . —

(ii) Appeal/Revision etc. effects and Refunds under Section 240 and payment of interest under Section 244.

1. No. of assessments which were pending revision on account of appellate/revision etc. orders 5,732

2. No. of assessments which arose for similar revision in 1977-78 1,24,607

3. No. of assessments which were revised during 1977-78 :
(*i*) Out of those pending as on 1-4-77 5,215
(*ii*) Out of those that arose during 1-4-77 to 31-3-1978 . . 1,17,598

4. No. of assessments which resulted in refunds as a result of revision and total amount of refund given :

	Number	Amount of refund (In thousands of rupees)
(*i*) Under item 3(i) above	3,379	46,64
(*ii*) Under item 3(ii) above . .	56,390	36,92,84

*Information furnished by Ministry of Finance.

5. No. of assessments in which interest became payable under Section 244 and amount of interest :		
(*i*) Under item 4(i) above	242	7,61
(*ii*) Under item 4(ii) above	2,761	66,83
6. No. of assessments pending revision on 1-4-1978 :		
(*i*) Out of (1) above	517	
(*ii*) Out of (2) above	7,009	
7. Break-up of assessments mentioned at (6) above :		
(*i*) Pending for less than 1 year	7,009	
(*ii*) Pending for more than 1 year and less than 2 years	512	
(*iii*) Pending for more than 2 years . . .	5	

11. (a) *Searches and Seizures**

	1975-76	1976-77	1977-78
(*i*) Total number of searches and seizure operations conducted .	2,635	3,571	617
		(In lakhs of rupees)	
(*ii*) Total amount each of money, bullion and jewellery or other valuable articles or things seized :			
Cash	334	352	101
Jewellery and bullion . . .	1,306	1,031	119
Other assets	495	661	133
TOTAL	2,135	2,044	353
(*iii*) Total amount each of money bullion and jewellery or other valuable articles or things released by 31-3-1978 :			
Cash			23
Jewellery and bullion . . .			31
Other assets			11
TOTAL . . .	(Rs. in lakhs)		65
(*iv*) Total amount of money, bullion and jewellery or other valuable articles or things held as on 31-3-78 irrespective of the year of search :			
Cash			410
Bullion and jewellery . . .			1004
Other assets			640
TOTAL . . .			2054

*Information furnished by Min. of Finance.

(*ix*) Nature of punishment in respect of (vii) . . .	Imprisonment till the rising of the Court and fine of Rs. 100/- and in default of payment of fine, rigorous Imprisonment for 7 days U/s 256 of Cr. P.C.

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

	Wealth-tax	Gift-tax
	(In thousands of rupees)	
(*i*) No. of cases in which penalty under Section 18(1)(c)/17(1)(c) was levied during 1977-78	586	35
(*ii*) No. of cases in which prosecution for concealment was launched . . .	4	..
(*iii*) No. of cases in which composition was effected with-out launching prosecution .	Nil	Nil
	(In thousands of Rs.)	
(*iv*) Concealment of net wealth/ value of gift involved in (i) above	3,02,82	7,51
(*v*) Total amount of penalty levied . .	2,37,22	58
(*vi*) Extra tax demand on concealment . .	6,80	67
(*vii*) Cases out of (ii)i n which convictions were obtained	Nil	Nil
(*viii*) Composition fees levied in respect of cases in (iii)	Nil	Nil
(*ix*) Nature of punishment in respect of (vii) .	Does not arise	

(c) Penalties which could not be imposed due to time bar under Section 275 of the Act.

Year	No. of cases	Amou
		Rs.
1975-76	1	8,14
1976-77	Nil	Nil
1977-78	1	157

13. (a) *Stastical information in respect of Settlement Commission.*

	1976-77	1977-78	Total
1. No. of cases disposed of by the Settlement Commission during the years 1976-77 and 1977-78. . . .			
Income Tax	12	83	95
Wealth Tax	2	13	15
2. Amount of Income in dispute which is the subject matter of applications .	Rs. 9.90 crores for 77 cases out of 95 cases*		
3. Out of (2) above, the amount of income offered for settlement. . . .	Rs. 4.62 crores.		
4. Out of (2) above, the actual income determined by the Settlement Commission	Rs. 7.70 crores.		
5. Tax on (4) above	Information could not be furnished by the Ministry.		

	No. of cases	Amount
6. Penalty and interest on (4) above :		Rs.
(a) Penalties under section 271(1)(c)	3	2,45,226
(b) Other Penalties . . .	1	Amount not quantified
(c) Interest levied . . .	10	
7. Recovery of tax, penalty and Interest on (4) above.	Information could not be furnished by the Ministry of Finance.	
8. Balance of tax outstanding.		

*The balance 12 cases not capable of quantification, as intimated by the Ministry of Finance.

13. (b) *Revenue demands written off by the Department during the year* 1977-78*

(a) A demand of Rs. 1166.26 lakhs in 95,444 cases was written off by the Department during the year 1977-78. Of this, a sum of Rs. 171.73 lakhs relates to 252 company assessees and Rs. 994.53 lakhs to 95,192 non-company assessees.

	Companies		Non-companies		Total	
	No.	Amount Rs.	No.	Amount Rs.	No.	Amount Rs.
(1) (2)	(3)	(4)	(5)	(6)	(7)	(8)
I. Assessees having died leaving behind no assets or gone into liquidation or become insolvent :						
(*a*) Assessees having died leaving behind no assets .	9	8,11,683	2,207	2,08,99,035	2,216	2,17,10,718
(*b*) Assessees having gone into liquidation ..	79	1,14,27,849	8	3,56,393	87	1,17,84,242
(*c*) Assessees having become insolvent	2	11,986	79	39,86,137	81	39,98,123
(*d*) Assessees which are defunct though not gone into liquidation	40	42,17,570	..	..	40	42,17,570
TOTAL	130	1,64,69,088	2,294	2,52,41,565	2,424	4,17,10,653
II. Assessees being untraceable	40	3,45,109	38,862	2,70,84,538	38,902	2,74,29,647
III. Assessees having left India	..	..	17	47,58,733	17	47,58,733

*Figures furnished by the Min. of Finance.

IV. For other reasons :						
(*i*) Assessees who are alive but have no attachable assets	5	10,035	7,644	2,75,40,852	7,649	2,75,50,887
(*ii*) Amount being petty etc.	75	40,623	44,782	1,13,13,592	44,857	1,13,54,215
(*iii*) Amount written off as a result of settlement (cases of scaling down of demand)	..	..	162	21,14,752	162	21,14,752
(*iv*) Demands rendered unenforceable by subsequent developments such as duplicate demands wrongly made demands being protective etc	..	..	25	8,63,426	25	8,63,426
TOTAL	80	50,658	52,613	4,18,32,622	52,693	4,18,83,280
V. Amount written off on grounds of equity or as a matter of International courtesy or where time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount or recovery	2	3,08,000	1,406	5,36,150	1,408	8,44,150
GRAND TOTAL	252	1,71,72,855	95,192	9,94,53,608	95,444	11,66,26,463

14. The results of functioning of the Valuation Cells are detailed below* :—

(1) No. of Valuation Units/Districts :

Year	No. of valuation Units	No. of valuation Districts functioning
1975-76	80	10
1976-77	80	10
1977-78	80	10

(2) No. of Cases referred to the Valuation Cells :

Year	Income-tax	Wealth-tax	Gift-tax	Estate duty
1975-76 and earlier years .	**2,502	26,259@	205@	834@
1976-77	1,641	14,980	111	393
1977-78	1,571	16,755	137	585

(3) Total amount of Valuation declared by the assessees :

(In lakhs of rupees)

Year	Income-tax	Wealth-tax	Gift-tax	Estate duty
1975-76	2912.47	19811.84	111.06	752.93
1976-77	2929.25	17132.89	108.69	1033.64
1977-78				

*Information given by the Min. of Finance.

**These figures are commulative for the years 1974-75 and 1975-76.

@These figures are cummulative for the years 1972-73 to 1975-76.

NOTE.—The figures shown against 1976-77 and 1977-78 relate to the particular year only (i.e. No. brought forward from previous year).

(4) No. of cases decided by the Valuation Cells and the total amount of valuation made by the Cells :

(In lakhs of rupees)

Year	Income-tax		Wealth-tax		Gift-tax		Estate duty	
	No. of cases	Total amount	No. of Cases	Total amount	No. of cases	Total amount	No. of caes	Total amount
1975-76 and earlier years .	2216*	54,72.52*	19495@	715,85.34@	154@	3,88.91@	831@	30,69.74@
1976-77	1659	40,63.54	13850	365,04.51	91	2,15.61	272	28,79.35
1977-78	1516	46,05.94	15340	479,02.78	129	2,59.36	635	16,16.59

*These figures are cummulative for the years 1974-75 and 1975-76.

@These figures are cummulative for the years 1972-73 to 1975-76.

NOTE.—The figures shown against 1976-77 and 1977-78 relate to the particular year only (*i.e.* no brought-forward from previous year).

(5) No. of cases pending in the Valuation Cells on 31-3-1978 :

	Number*
Income-tax	
Wealth-tax	
Gift-tax	
Estate Duty	

(6) Expenditure incurred on Valuation Cells during 1975-76, 1976-77 and 1977-78 :

Year	Expenditure
1975-76	Rs. 84,29,546
1976-77	84,00,000 (estimated)
1977-78*	

15. *Results of test audit in general*

(i) *Corporation tax and Income-tax*

During the period from 1st April, 1977 to 31st March 1978, test audit of the documents of the income-tax offices revealed total under-assessment of tax of Rs. 1897.56 lakhs in 30,759 cases and over-assessment of tax Rs. 1.86 lakhs in 6 cases. Besides these, various defects in following the prescribed procedures also came to the notice of Audit.

Of the total 30,759 cases of under-assessment, short levy of tax of Rs. 1504.60 lakhs was noticed in 2222 cases alone. The remaining 28,537 cases accounted for under-assessment of tax of Rs. 392.96 lakhs.

*Information awaited from the Ministry of Finance (April, 1979).

The under-assessment of tax of Rs. 1897.56 lakhs is due to mistakes categorised broadly under the following heads :—

	No. of items	Amount (In lakhs of rupees)
(1)	(2)	(3)
1. Avoidable Mistakes in computation of tax	3008	79.14
2. Failure to observe the provisions of the Finance Acts	530	8.61
3. Incorrect status adopted in assessments.	440	64.44
4. Incorrect computation of salary income	791	22.46
5. Incorrect computation of income from house property	1216	40.86
6. Incorrect computation of dividend income	108	2.31
7. Incorrect computation of business income	4148	172.17
8. Irregularities in allowing depreciation and development rebate	1425	184.58
9. Irregularities in connection with export incentives	21	28.59
10. Irregular exemptions and excess reliefs given	2479	212.49
11. Irregular computation of capital gains	268	53.70
12. Mistakes in assessment of firms and partners	629	123.19
13. Omission to include income of spouse/minor child etc	169	16.01
14. Income escaping assessment	2186	181.10
15. Irregular set off of losses	153	15.47
16. Under-assessment due to adoption of incorrect procedure	43	12.62
17. Mistakes in assessments while giving effect to appellate orders	94	7.99
18. Excess or irregular refunds	1150	26.75
19. Non-levy/incorrect evy of interest for delay in submission of returns, delay in payment of tax etc.	3537	115.89
20. Avoidable or incorrect payment of interest by Government	78	41.40
21. Omission/shortlevy of penalty	44	31.24
22. Other topics of interest/miscellaneous	8150	386.98
23. Under-assessment of Surtax/Super Tax	92	69.57
Total	30,759	1,897.56

(ii) *Wealth-tax*

During test audit of assessments made under the Weath-tax Act, 1957, short levy of tax of Rs. 241.52 lakhs was noticed in 4485 cases.

The under-assessment of tax of Rs. 241.52 lakhs was due to mistakes categorised broadly under the following heads :—

	No. of items	Amount (in lakhs of tupees)
1. Wealth escaping assessment	674	35.53
2. Incorrect valution of assesets	597	36.36
3. Mistakes in computation of net wealth	625	41.21
4. Irregular/Excessive allowances and exemptions	1095	39.55
5. Mistakes in calculation of tax	544	11.85
6. Non-levy or incorrect levy of additional wealth-tax	75	5.60
7. Non-levy or incorrect levy of penalty and non-levy of interest	335	36.00
8. Incorrect status adopted in assessments	67	4.92
9. Mistakes in refunds	38	.79
10. Miscellaneous	435	29.71
TOTAL	4485	241.52

(iii) *Gift-tax*

During the test audit of gift-tax assessments it was noticed that in 1261 cases there was short levy of tax of Rs. 61.56 lakhs.

(iv) *Estate Duty*

In the test audit of estate duty assessments, it was noticed that in 585 cases there was short levy of estate duty of Rs. 32.91 lakhs.

CHAPTER II

CORPORATION TAX

16. The Corporation tax is the major source of proceeds under the Direct Taxes. The trend of recovery of Corporation tax during the last five years has been as follows :—

Year	Amount (in crores of rupees)
1973-74	582.60
1974-75	709.48
1975-76	861.70
1976-77	984.23
1977-78	1220.77

The number of companies in the books of the Department for the last five years has been as follows :—

As on 31st March	Number
1974	31,821
1975	35,911
1976	40,055
1977	40,237
1978	42,084

The figures of arrears outstanding under Corporation tax during the last five years, together with the number of assessments pending at the end of each year have been as follows :—

Year	No. of assessments		Amount of demands	
	completed during the year	pending at the close of the year	collected during the year	in arrears at the close of the year
			(in crores of rupees)	
1973-74	29,466	25,657	582.60	149.85
1974-75	36,574	28,438	709.48	179.63
1975-76	40,327	31,613	861.70	192.11
1976-77	41,878	34,008	984.23	146.38
1977-78	41,533	34,864	1220.77	185.96

17. A test audit of the assessment records of the Income-tax offices relating to Corporation tax revealed that the following types of defects have been common in almost all the charges. The mistakes noticed in audit could generally have been avoided, if the Internal Audit Organisation of the Department had been strengthened in acordance with the recommendations made by the Public Accounts Committee from time to time and reviewed in paragraphs 12.8 to 12.15 of their 186th Report (Fifth Lok Sabha).

(1) Avoidable mistakes in computation of tax.

(2) Failure to observe the provisions of the Finance Acts.

(3) Incorrect computation of business income.

(4) Irregularities in allowing depreciation and development rebate.

(5) Irregular exemptions and excess reliefs given.

(6) Irregular set off of losses.

(7) Mistakes in assessments while giving effect to appellate orders.

(8) Excess or irregular refunds.

(9) Non-levy/incorrect levy of interest.

(10) Avoidable/incorrect payment of interest by Government.

(11) Under-assessment of Surtax.

18. Some instances of important irregularities noticed in the assessment of Corporation tax are given in the following paragraphs.

19. *Avoidable mistakes in computation of tax*

As already pointed out in paragraph 15(i) of Chapter I, 3,008 cases of avoidable mistakes involving short levy of tax of Rs. 79.14 lakhs were noticed in test audit during the year 1977-78 under Corporation tax and Income-tax. These include very common mistakes like the dropping of one lakh of rupees or wrong transcription of a digit from a substantial amount resulting in under-assessment of income or tax in big income cases. The Public Accounts Committee have, almost year after year, commented upon the continuance of these types of mistakes as mentioned in paragraphs 5.2 and 5.3 of their 186th Report (Fifth Lok Sabha). Some of the important mistakes relating to Corporation tax are given below :—

(i) While computing the total income of an assessee-company for the assessment year 1973-74 completed in September 1976, the income arrived at, before allowing depreciation, was Rs. 48,51,386 instead of Rs. 50,87,088 due to an arithmetical mistake. This resulted in excess carry forward of unabsorbed depreciation of Rs. 2,35,702, which was set off in the assessment year 1974-75. This resulted in under-assessment of income of Rs. 2,35,702 for the assessment year 1974-75 with tax effect of Rs. 1,60,866 (excluding interest).

The Ministry of Finance have accepted the objection and have stated that the assessment in question has been revised. In meeting the objection pointed out by audit, the unabsorbed

depreciation of Rs. 5,80,018, which had been incorrectly allowed in the assessment year 1974-75, has also been withdrawn resulting in raising of total additional demand of Rs. 3,01,727.

(ii) Due to an arithmetical mistake the total income of another company for the assessment year 1975-76 was under-stated by Rs. 1,00,000. As per assessment, the total income correctly worked out to Rs. 23,03,966 but it was wrongly computed at Rs. 22,03,966. Further, although a sum of Rs. 6,487 was added back as inadmissible entertainment expenses in the return of income furnished by the assessee for this year, the sum was omitted to be taken into account in the computation of total income. These mistakes led to under-assessment of income of Rs. 1,06,487 for the assessment year 1975-76.

Similarly, in the computation of total income for the assessment year 1976-77, the net profit of Rs. 22,64,361 as per profit and loss account was taken as the starting point, and a sum of Rs. 62,226 representing income from house property and other sources was deducted therefrom for separate consideration. Such income was determined separately at Rs. 62,226 which, instead of being added to the business income, was incorrectly deducted therefrom. This led to under-assessment of total income by Rs. 1,24,452 for the assessment year 1976-77. There was a total tax undercharge of Rs. 1,45,501 for the two assessment years, 1975-76 and 1976-77.

While accepting the objection the Ministry of Finance have stated that the assessments in question have been revised raising an additional demand of Rs. 1,45,501.

(iii) In still another case, the total income of a company for the assessment year 1973-74 was wrongly computed at Rs. 6,04,612 instead of Rs. 7,04,612. The arithmetical mistake in this respect led to under-assessment of income by Rs. 1,00,000 with tax undercharge of Rs. 57,750. There was also consequent short levy of interest of Rs. 22,522 for short payment of advance tax on estimate.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised raising an additional demand of Rs. 80,272.

(iv) In one more case, the total income of a company for the assessment year 1974-75, as computed, was under-assessed by Rs. 1,000 due to a mistake in totalling. Further, an amount of Rs. 35,250 was determined as the company's profit on sale of assets which instead of being added to the total income was erroneously deducted therefrom, causing further under-assessment of income by Rs. 70,500. The total under-assessment of income of Rs. 71,500 led to tax undercharge of Rs.48,797.

The Ministry of Finance while accepting the objection have stated that the assessment in question has been rectified and that the additional demand of Rs. 48,787 has been raised and collected.

(v) Cases have also been noticed wherein incorrect rate of exchange for conversion of foreign currency into Indian currency was applied or where the application of rate of exchange was not necessary.

(a) Under the provisions of the Income-tax Act, 1961, as applicable for the assessment year 1976-77, the income accruing to foreign shipping companies having occasional shipping business in India has to be determined at seven and a half per cent of the amount paid or payable on account of carriage of passengers, live-stock, mail or goods shipped at a port in India. Where the amounts paid or payable in respect of such carriage by ships are expressed in terms of Pound Sterling, the Rules made under the Act stipulate that the rate of exchange to be adopted for determining the income chargeable to tax shall be Rs. 18 per Pound.

In six cases of ships belonging to non-residents which touched Indian ports during the year 1976-77, in assessing the income at 7.5 per cent of the freight earnings expressed in Pound Sterling, the rate of exchange was not adopted at Rs. 18 per Pound as prescribed under the Rules. The adoption of the incorrect rate of conversion led to a total tax undercharge of Rs. 73,746 for the assessment year 1976-77.

The Ministry of Finance have accepted the objection in principle.

(b) In the case of a foreign non-resident shipping company, the freight earnings realised in respect of aluminium ingots and iron ore during the previous years relevant to the assessment years 1975-76 and 1976-77 shipped from an Indian Port, were returned by their local agents and expressed in U.S. dollars as well as Indian Currency, Rs. 10,04,007 and Rs. 22,21,047 respectively. While completing the assessments of the assessee-company, the freight income was computed by converting the U.S. dollars into Indian currency at exchange rates. However, as the Indian shippers had paid the freight charges in India in Indian currency, the question of application of exchange rates for conversion did not arise.

This resulted in under-assessment of income by Rs. 44,259 with tax undercharge of Rs. 28,532

The Ministry of Finance have accepted the objection.

20. *Failure to observe the provisions of the Finance Acts*

Under the provisions of the Finance Acts 1975 and 1976, a domestic company in which the public are not substantially interested and which is mainly engaged in industrial activity is charged to tax at 55 per cent on the first two lakh of rupees of its total income and at 60 per cent on the excess over Rs. 2 lakhs, and in the case of such a company as is not engaged in industrial activity, the rate of tax is 65 per cent of the total income. However, in the case of a domestic company in which the public are substantially interested, the tax liability is less *i.e.* 45 per cent of total income upto Rs. 1 lakh and 55 per cent if the income exceeds Rs. 1 lakh.

(i) The total income of a company for the assessment year 1975-76 was computed at Rs. 12,92,050 and income-tax was charged at a flat rate of 55 per cent on the entire total income. Since, however, the assessee was an industrial company in which the public were not substantially interested, income-tax should

have been charged at the slab rate of 60 per cent on the excess of income over Rs. 2 lakhs as provided in the Finance Act, 1975. The mistake led to tax undercharge of Rs. 57,332 in the assessment year 1975-76.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and an additional demand of Rs. 57,332 raised.

(ii) In the case of another company in which the public were not substantially interested and which was not engaged in industrial activity, the income-tax for the assessment year 1976-77 was computed at the rate of 60 per cent instead of 65 per cent. This resulted in short levy of tax of Rs. 55,813.

The Ministry of Finance have accepted the objection. The assessment in question is stated to have been revised.

(iii) In still another case, an assessee-company was assessed upto the assessment year 1975-76, as a company in which the public were not substantially interested as its shares were not freely transferable as per Articles of Association of the company during the relevant previous years. The restrictive clause regarding the transfer of shares was, however, deleted from the Articles of Association with effect from 22-8-1975 and the shares became freely transferable thereafter. The assessment for the assessment year 1976-77, was, however, completed treating the company as a company in which the public were substantially interested. Since in the previous year (Calendar year 1975) relevant to the assessment year 1976-77 *i.e.* for a major part of the previous year, the shares were not freely transferable, the assessment of the company for the assessment year 1976-77 should have been completed treating the assessee as a company in which the public were not substantially interested. The incorrect determination of the status of the assessee-company during the assessment year 1976-77 resulted in short levy of tax of Rs. 4,85,733.

The Ministry of Finance have replied that even though the expression "during" has been judicially interpreted to mean "throughout the whole continuance" and also "in the course of"

or "at any time", credence should be given to the meaning as "at any time" as this "casts lighter tax burden on the assessee". This view of the Ministry does not appear to be in consonance with the deliberate change made by the Parliament when it made the amendment in 1970 to the definition of a company in which public are not substantially interested by substituting the words "during the relevant previous year" for the then existing words "at any time during the relevant previous year". The reason for substitution is obvious as otherwise under the old definition it was possible to manipulate a company's status for income-tax purposes by keeping shares transferable for only one day by appropriate alterations in the Articles of Association which are easily made by private companies.

21. *Incorrect computation of dividend income*

Under the Income-tax Act, 1961, any payment by a private company to a shareholder who has a substantial interest in it is deemed to be dividend in the hands of the shareholder to the extent to which the company possesses accumulated profits.

A private company during the previous year relevant to the assessment year 1968-69 distributed Rs. 1,95,000 among the shareholders by way of payment of Rs. 30 per share on 6,500 partly paid equity shares at Rs. 70 per share. The amount was met from general reserve and was capitalised. The payment of Rs. 1,95,000 by the company on behalf of the shareholders was to be treated as dividend. The omission to do so resulted in non-levy of tax of about Rs. 1,06,789 on income of Rs. 1,95,000 in the hands of the shareholders.

Final reply from the Ministry of Finance is awaited (April 1979).

22. *Incorrect computation of business income*

(i) In computing income from business, deduction is allowed for any sum paid by an assessee as employer towards contribution to an approved gratuity fund created by him under an irrevocable trust for the benefit of employees. As amended by the Finance

Act, 1975, the statute specially permitted provision for gratuity as an allowable deduction subject to fulfilment of certain conditions for the assessment years 1973-74 to 1975-76. The deduction admissible would be to the extent of actual provision made in each assessment year. If the conditions are not fulfilled, the contribution to the gratuity fund should be disallowed but subsequently if the assessee fulfils the conditions, the disallowance originally made is to be rectified.

During test audit 11 cases of irregularities of this type involving undercharge of tax of Rs. 14.90 lakhs were noticed during the year. Some of the important irregularities are given below :—

(a) In the assessment of a public limited company for the assessment year 1973-74 completed in February 1975, a sum of Rs. 8,67,984 representing "provision for gratuity" was disallowed on the ground that it represented only a 'provision' and not actual payment to a gratuity fund. The deduction for the amount was, however, allowed in the assessment year 1974-75 on the basis of the actual payment to the gratuity fund. The gratuity fund constituted by the concern was approved by the Commissioner of Income-tax in February, 1973 effective from December, 1972. The assessments for the assessment years 1973-74 and 1974-75 were revised in February 1977, allowing the provision made for gratuity in the accounts of the assessee. Accordingly, the provision of Rs. 8,67,984 towards gratuity was allowed as a deduction in the assessment year 1973-74. The deduction already allowed for the gratuity payment in the assessment year 1974-75 was, however, not withdrawn resulting in double allowance for the same amount in the two assessment years, 1973-74 and 1974-75. resulting in short levy of tax of Rs. 5,01,259 in the assessment year 1974-75.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and the additional demand of Rs. 5,01,259 has been raised and collected

(b) In the case of another company, liability on account of gratuity amounting to Rs. 8,71,000 was allowed in the assessment years 1973-74 to 1975-76, even though the assessee-company

had not made effectively any provision for the same amount in its books of accounts in the relevant previous years. So the deduction allowed resulted in under-assessment of income of Rs. 8,20,710 in the assessment years 1973-74 to 1975-76 with consequent short levy of tax of Rs. 4,83,368.

The Ministry of Finance have accepted the objection.

(c) Still in the case of another company which had not set up an approved gratuity fund, the provision for gratuity of Rs. 1,75,000 made in the accounts relevant to the assessment year 1972-73 was erroneously allowed as deduction. The assessee-company reversed the above provision made in the accounts relevant to the assessment year 1973-74 by making corresponding credit to its revenue accounts. Despite this, the assessing officer again allowed the amount to be deducted in the assessment for that year on the ground that this provision had already been disallowed in the earlier year even though it had not been so disallowed. This resulted in under-assessment of income of Rs. 1,75,000 leading to short levy of tax of Rs. 1,10,250.

The Ministry of Finance have accepted the objection.

(d) The assessment for the year 1972-73, in the case of an assessee-company was reopened under Section 148 of the Income-tax Act, 1961. While completing the reopened assessment in March 1976, the Income-tax Officer did not disallow the deduction of Rs. 1,15,942 representing provision for gratuity allowed during the original assessment made in June 1972. The deduction of Rs. 1,15,942 was not admissible for the following reasons :—

(1) The previous year relevant to the assessment year 1972-73 covered the period from 1st July, 1970 to 30th June, 1971. Out of Rs. 1,15,942 allowed as deduction, the amount of Rs. 96,722 pertained to the period prior to 1st July, 1970 and hence, was not allowable as deduction from the income of the year 1972-73.

(2) Even the deduction of Rs. 19,220 relating to the current year was not admissible because the provisions of Section 36(1)(v) of the Act were not satisfied in this case.

The deduction of Rs. 1,15,942 was thus incorrectly allowed resulting in tax undercharge of Rs. 77,250.

The Ministry of Finance have accepted the objection.

(e) In the case of still another company in which the public were not substantially interested, a gratuity provision of Rs. 74,043 made in the assessment year 1973-74 was erroneously allowed as deduction in the assessment completed in February 1976, even though the assessee—company had not taken any steps to set up an approved gratuity fund and satisfy the prescribed conditions. No action was taken to withdraw the deduction initially allowed in the rectification of the assessment made in October 1976. Failure to do so resulted in under-assessment of income of Rs. 74,043 with tax undercharge of Rs. 54,559.

The Ministry of Finance have stated that the law was amended by the Finance Act, 1975 with effect from the assessment year 1973-74 and that the Income-tax Officer would have *suo motu* reviewed his own decision in this regard before the expiry of the time limit which was available under Section 147(b) of the Act upto 31-3-1978. The fact however remains that the point was lost sight of by the Department even at the time of rectification made in October 1976.

(ii) Under the provisions of the Income-tax Act, 1961, any expenditure laid out or expended wholly or exclusively for the purposes of the business is allowable as deduction in computing the business income provided it is an ascertainable liability and not a mere provision.

Instead of allowing the actual payment of Rs. 20,846 made by an assessee-company in the previous year relevant to the assessment year 1973-74 on account of bonus to labour, a sum of Rs. 2,62,582 representing provisions made and disallowed earlier in this regard, was incorrectly allowed in the assessment

of the company. This led to under-assessment of business income and consequent excess carry forward of business loss of Rs. 2,41,736 for the assessment year 1973-74.

The Ministry of Finance have accepted the objection.

(iii) A case of short demand of tax arising from excess allowance of deduction in respect of a special reserve allowable to a financial institution providing long-term finance for industrial development, was pointed out in paragraph 25(iii) of the Audit Report 1975-76, and was accepted by the Ministry of Finance. A similar failure was noticed in the assessment of the same financial corporation for the assessment year 1975-76. It was observed that the deduction admissible to the State Financial Corporation was worked out at 40 per cent (revised from 25 per cent with effect from 1-4-1975) of the income of the corporation before deducting this allowance resulting in short computation of income by Rs. 7,99,619 with consequent short levy of tax of Rs. 4,61,778.

It was also seen from the assessment relating to the same corporation that relief under Section 80M of the Income-tax Act, 1961, in respect of gross dividends had been allowed without apportioning the expenditure attributable to the earning of dividend income. This resulted in excess relief of Rs. 45,331 for the assessment year 1974-75 and Rs. 28,938 for the assessment year 1975-76 resulting in short levy of tax of Rs. 26,196 and Rs. 16,708 for the assessment years 1974-75 and 1975-76 respectively. Total short levy of tax amounted to Rs. 5,04,682.

Final reply of the Ministry of Finance is awaited (April 1979).

(iv) Under the Income-tax Act, 1961, any expenditure incurred by a company which results directly or indirectly in the provision of any remuneration, benefit or amenity to a director or to a person who has a substantial interest in the company or to a relative of the director or of such person, as the case may be, is not allowable as deduction from the business income to the extent such expenditure or allowance is in excess of Rs. 72,000 during a previous year comprising more than eleven months or

where such expenditure relates to a period not exceeding eleven months, an amount calculated at the rate of Rs. 6,000 for each month or part thereof comprised in that period.

(a) In the case of an assessee-company for the assessment year 1974-75 completed on a total income of Rs. 93,68,520 in December 1976, the entire commission paid to two directors at Rs. 1,41,835 each for the year was allowed as deduction in computation of income instead of limiting the deduction to Rs. 72,000 for each director. The excess allowance of Rs. 1,39,670 resulted in short levy of tax of Rs. 80,660.

The Ministry of Finance have accepted the objection.

(b) In the computation of business income of other ten assessee-companies for the assessment years 1972-73 to 1976-77 the deductions on account of expenditure incurred on payment of secretarial remuneration, commission, salaries, fees, service charges and interest on borrowed capital was not restricted to the allowable limit of Rs. 72,000 although the persons receiving these amounts had substantial interest in the assessee-companies. As a result, there was under-assessment of business income by Rs. 84,33,004 with resultant total undercharge of income-tax Rs. 48,90,464, surtax Rs. 4,97,501, interest Rs. 4,54,732 and excess carry forward of loss of Rs. 3,87,794.

The Ministry of Finance have stated that the provisions mentioned in the Section can apply only to a natural person who could have a relative and have added that a company or a firm cannot come within the provision. In Audit's view, Section 40(c) of the Act is one of the provisions in the Income-Act, 1961, inserted with a view to preventing tax avoidance The company could be controlled not only by natural persons but by other companies or by firms. That is the reason why the expression "person" and not "individual" is used in Section 40(c). The expression "person" as defined in the Income-tax Act, 1961, includes companies and firms. The Board's view is not only contrary to the language of the law but also its spirit and would encourage tax avoidance.

(v) Under the provisions of the Income-tax Act, 1961, the amount of any debt or part thereof, which is established to have become a bad debt in the previous year, shall be allowed as a deduction in computing the income chargeable to income-tax under the head "Profits and gains of business or profession".

(a) In the course of its business transactions with a textile mill an assessee-company was to receive a sum of Rs. 42,12,497 as principal amount and Rs. 14,69,327 as interest from the textile mill. The textile mill was declared a 'sick mill' and was taken over by the Government under the Sick Textile Mills Undertakings (Nationalisation) Act, 1974. As the compensation recoverable by the textile mill under the Nationalisation Act was not sufficient to meet the demands of even the secured creditors and as the assessee-company was only an unsecured creditor, the dues from the textile mill were written off by the assessee as "irrecoverable debts" and the same were allowed by the Department considering the financial standing of the textile mill. Since the debts had not become finally "bad", the deduction was not admissible under the Act.

The case had been seen by the Internal Audit Party and it had objected to the write off of the principal amount of Rs. 42,12,497 only and not the interest of Rs. 14,69,327 accrued on the debts due. The consequent excess carry forward of loss was Rs. 14,69,327.

The Ministry of Finance have replied that the assessee-company being a sick mill and previously having been awarded a compensation of Rs. 75.65 lakhs, the Income-tax Officer found that the compensation fixed by the Government was not enough even to meet the liability of priority category and secured creditors. Therefore, he examined the claim sympathetically and allowed it under Section 36(i)(vii). In this action, he was supported by the Board's Instruction issued in January 1972.

In the view of Audit if the law is clear and unambiguous, it has to be followed without any discrimination. The provisions of Section 36(i)(vii) apply only to bad debts and not to doubtful debts, a clear departure having been made in this respect from the provisions of the Indian Income-tax Act, 1922.

(b) In another case, a domestic company claimed and was allowed a sum of Rs. 3,48,927 in the assessment year 1974-75 on account of export benefit considered as not receivable by the assessee-company. Although this amount was taken into account in computing the income of the company in the earlier assessments, the same was not written off in the accounts of the previous year relevant to the assessment year 1974-75. Moreover, a suit in respect of the amount was pending with the court of law. Therefore, the allowance of debt which was not bad and had also not been written off in the accounts led to tax undercharge of Rs. 2,54,105 in the assessment years 1974-75 and 1975-76.

The Ministry of Finance have accepted the objection in this case.

Incorrect allowance of depreciation and development rebate

23. *Depreciation*

(i) The Income-tax Act, 1961 provides for grant of depreciation on buildings, plant and machinery owned by the assessee and used for the purpose of business in computing the income from business. The Rules prescribed in this regard, provide for specified rates of depreciation for certain items of plants and machinery and a general rate of 10 per cent for the remaining items of plant and machinery. The Rules also provide for additional depreciation for extra shift working of plant and machinery depending upon the number of days they have worked double or triple shift.

In the case of an assessee-company dealing with manufacture of chemicals, the Income-tax Appellate Tribunal held that the assessee was entitled to development rebate and depreciation on

the cost of "process know-how" amounting to Rs. 10,18,057 treated as a plant. The Department has gone in appeal to the High Court against the order of the Tribunal. But apart from this, while giving effect to the appellate orders in the year 1976-77 the assessing officer treated that plant (the process know-how) as part of the machinery and plant coming into contact with corrosive chemicals and allowed not only depreciation at the special rate of 15 per cent as against 10 per cent admissible for general plant and machinery, but also extra shift allowance for triple shift working. The erroneous manner of giving appeal effect alone resulted in excess allowance of depreciation amounting to Rs. 4,20,262 involving short levy of income-tax of Rs. 2,32,052 for the assessment years 1969-70 to 1974-75.

The Ministry of Finance have accepted the objection.

(ii) Further, the Income-tax Rules, 1962, specify certain items of plant and machinery in respect of which no extra shift allowance is admissible. Over-head cables and wires, switch gear and instrument, transformer and other stationary plant and machinery and wiring and fittings of electric light and fan installation described under "Electrical Machinery" are such specified items of plant and machinery.

For the assessment years 1970-71 to 1974-75, a company dealing in distribution of electricity, was allowed extra shift depreciation amounting to Rs. 1,25,598, Rs. 1,26,371, Rs. 1,28,217, Rs. 1,33,785 and Rs. 1,46,994 respectively on the entire plant and machinery comprising transformer, switchgear, tower, poles etc., under-ground cables, service lines and miscellaneous equipments for public lighting. As no extra shift deprecition was admissible on such assets in view of specific prohibition in the Income-tax Rules, 1962, the allowance thereof was irregular leading to total tax undercharge of Rs. 2,24,894 for the assessment years 1970-71 to 1973-74 and also excess carry forward of loss of Rs. 95,596 for the assessment year 1974-75.

While accepting the objection for the assessment years 1972-73 to 1974-75 the Ministry of Finance have stated that the remedial action for the assessment years 1970-71 and 1971-72 had become barred by limitation. In Audit's view, the Ministry of Finance could have taken action in time to detect the irregularities through their Internal Audit and recovered the amount.

(iii) Under the provisions of the Income-tax Rules, 1962, depreciation on Speed Boats is admissible at higher rate of 20 per cent, while the normal depreciation admissible on all other vessels (not being ships) is 10 per cent.

In the case of an assessee-company, depreciation on Barges as distinct from Speed Boats, used for the transport of mineral ores was allowed at 20 per cent instead of 10 per cent. This resulted in excessive allowance of depreciation of Rs. 3,35,000 for the assessment year 1974-75 and carry forward of equal amount to the succeeding assessment years as the company had large amount of unabsorbed depreciation and development rebate.

The Ministry of Finance have accepted the objection.

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

In the case of an assessee-company for the assessment year 1973-74, depreciation of Rs. 2,07,406 already charged to the account for the relevant previous year was omitted to be added back although depreciation for the same amount as admissible under the Act was allowed separately. The mistake led to excess allowance of depreciation of Rs. 2,07,406 with consequent tax undercharge of Rs. 1,19,776 for the assessment year 1973-74.

The Ministry of Finance have accepted the objection.

(v) Further, the Income-tax Rules, 1962 also provide for additional depreciation for extra shift working of the plant and machinery depending upon the number of days of double and triple shifts. The Central Board of Direct Taxes in their circulars of September 1966 and December 1967 issued necessary instructions in the matter in consultation with Audit.

However, in September 1970, the Central Board of Direct Taxes issued revised instructions that the extra shift allowance could be granted with reference to the number of days the concern worked without making any attempt for determining the number of days for which each machine worked, double or triple shift. These instructions of the Board are not in accordance with the provisions of the Income-tax Act.

Since the Act provides for allowance for normal depreciation in respect of each item of machinery and plant, the Rules framed thereunder should also apply to such machinery and plant. However, extra shift allowance has been allowed even in respect of machinery which has not worked at all during the previous year or in excess of actual number of days it has worked. Such irregularities were pointed out in the past also. Mention in this respect is made to paragraph 61(i) of the Audit Report 1975-76.

Some of the important irregularities of the type noticed during the course of audit are given below :—

(a) In the case of four companies, extra shift working had been allowed at 100 per cent of the normal depreciation in respect of machinery installed during the later part of the previous year relevant to the assessment year 1975-76. Since the machinery had been utilised for a part of the year only, the allowance should have been restricted to the proportionate amount on the basis of the number of days during which the machinery stood installed as campared to the normal number of days the concern worked.

The excess depreciation allowed in the four cases amounted to Rs. 1,98,934 with consequent short levy of tax of Rs. 1,15,324.

(b) In the case of another company whose 25 per cent of the actual cost of the machinery had hardly worked in the relevant extra shift, the extra depreciation to the extent of Rs. 13,32,012 was allowed in the assessment years 1971-72 to 1975-76 on its entire machinery without restricting the allowance to the machinery which had worked double/triple shift. This resulted in excessive allowance to the extent of Rs. 9,89,106, with consequent short levy of tax of Rs. 7,30,575.

(c) In the case of other twelve companies, extra shift allowance was granted in various assessment years from 1970-71 to 1976-77 on the basis of the instructions issued by the Board in September 1970 resulting in excess allowance of depreciation of Rs. 13,62,269 and consequent short levy of tax of Rs. 8,22,942.

The Ministry of Finance have replied that the allowance has been made as a result of the instructions issued in 1970 which, according to them, are in conformity with the law. However, in Audit's view, when normal depreciation itself is applicable only to units of machinery and not to a concern as a whole, the extra shift allowance cannot apply to the concern without regard to each individual machinery.

24. *Development rebate*

(i) Under the Income-tax Act, 1961, development rebate was allowable in respect of new plant and machinery owned by the assessee and wholly used for the purpose of the business carried on by him. If the plant and machinery was installed for the purpose of manufacture or production of any or more of the articles or things specified in the Fifth Schedule to the Act, development rebate was admissible at a higher rate. Accordingly, development rebate at a higher rate was admissible to an assessee engaged in the manufacture of "textiles

(including those dyed, printed or otherwise processed) made wholly or mainly of cotton including cotton yarn, hosiery and rope" vide item 32 of the Fifth Schedule to the Act.

The Board had occasion to consider the interpretation of the word "mainly" used in an identical item in the Ninth Schedule to the Income-tax Act, 1961 and had clarified that if the cotton content in any of the fabrics produced is less than 51 per cent, the machinery installed cannot be said to be for the purpose of production of textiles made wholly or mainly of cotton.

In the case of three companies manufacturing cotton textiles including fabrics containing synthetic yarn, wherein the cotton content would be less than 51 per cent, development rebate at the higher rate was allowed in respect of machinery installed during the previous years relevant to the assessment years 1971-72 and 1972-73. As the condition that the cotton content in any of the fabrics produced should not be less than 51 per cent had not been fulfilled, the companies were eligible for development rebate at the normal rate only and not the higher rate. The excess development rebate allowed in the case of the three companies in the assessment years 1971-72 and 1972-73 was Rs. 14,47,690 with consequent short levy of tax of Rs. 8,06,830.

Final reply from the Ministry of Finance is awaited (April 1979).

(ii) Under the provisions of the Income-tax Act, 1961, development rebate at a specified percentage of the cost of ships acquired during the relevant previous year is an admissible deduction provided the assessee has credited an amount equal to 75 per cent of the development rebate allowable, to a separate reserve account.

During the previous year relevant to the assessment year 1971-72, an assessee-company acquired a ship on which development rebate of Rs. 26,50,686 was admissible. Instead of allowing this amount as deduction, the entire amount of

Rs. 1,03,00,000 credited to the development rebate reserve account was allowed, resulting in excess allowance of development rebate of Rs. 76,49,314 and corresponding excess carry forward of unabsorbed development rebate relating to earlier years by an equal amount.

The Ministry of Finance have accepted the objection.

Irregular exemptions and excess reliefs given

25. *Irregular allowance of relief in respect of newly established undertakings*

(i) Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a newly established industrial undertaking, the assessee becomes entitled to tax relief in respect of such profits and gains upto six per cent per annum of the capital employed in the industrial undertaking, in the assessment year in which the undertaking begins to manufacture or produce articles and also in each of the four assessment years immediately succeeding the initial assessment year. Under the Rules framed under the Act, the cost of depreciable assets should be taken into account having regard to the period of their use in business at the written down value. Accordingly, as pointed out in paragraph 46(a) of the Audit Report 1968, paragraph 19(i) of the Audit Report 1973-74 and paragraph 27(i) of the Audit Report 1974-75, the value of fixed assets under construction, machniery awaiting installation and equipment in transit would not constitute capital employed and should be excluded from capital computation.

In the case of two assessee-companies for the assessment years 1969-70 to 1972-73 the Department, in computing the capital for the purpose of allowance of tax holiday relief, incorrectly included therein the capital works-in-progress and expenditure incurred during construction. As a result, there was excess computation of capital and under-assessment of income by Rs. 36,84,456 with resultant tax undercharge of Rs. 4,04,167.

The Ministry of Finance have accepted the objection in one case and partly accepted in the other case.

(ii) In another case, an assessee-company had two units of industrial undertakings *viz.* (1) bottling unit for manufacture of coca-cola etc., and (2) bakery unit for manufacture of bread etc. The bottling unit started production in April 1969 and was allowed relief in respect of newly established undertakings for five assessment years *i.e.* from 1970-71 to 1974-75. The bakery unit of that company commenced operation in March 1973 and was allowed tax relief in respect of this unit for three assessment years *i.e.*, from 1974-75 to 1976-77. The operation of the bakery unit, however, resulted in loss for these assessment years and as such the relief admissible for that unit could only be carried forward to be set off against the profit of that unit in future years.

The relief admissible in respect of bakery unit, which was allowed against the profit of another unit *viz.* bottling unit, resulted in irregular grant of relief of total sum of Rs. 1,55,431 in the three assessment years 1974-75 to 1976-77, with undercharge of tax of Rs. 97,920.

While accepting the objection the Ministry of Finance have stated that the assessments in question have been revised and the additional demand of Rs. 97,920 has been raised and collected.

(iii) Further, the amount of capital for working out the tax holiday relief upto the assessment year 1967-68 is computable in the manner prescribed in Rule 19 of the Income-tax Rules, 1962 while for the later assessment years it is computable under Rule 19A.

In the case of an assessee-company the relief for the assessment year 1967-68 was allowed at Rs. 6,57,669 being six per cent of the capital computed under Rule 19A, instead of the correct amount of Rs. 3,07,387 calculated at six per cent of the capital computable under Rule 19. This led to excess allowance of relief to the extent of Rs. 3,50,282 with consequent undercharge of tax of Rs. 1,92,655 in the assessment year

1971-72, in which assessment year the carried forward deficiency was set off.

The Ministry of Finance have stated that the deficiency for the assessment year 1967-68 was worked out while setting it off against the profit of the new industrial undertaking in the assessment year 1971-72 and that therefore Rule 19A was applicable while making the assessment for the assessment year 1971-72. For the assessment year 1967-68 the relevant section was Section 84 of the Income-tax Act, 1961 with the corresponding Rule 19 and not Rule 19A of the Income-tax Rules, 1962.

(iv) The amount of the relief to be allowed at six per cent per annum of the capital employed is to be worked out proportionately on time basis, depending upon the whole or part of the previous year for which the capital was employed. Capital for this purpose is to be computed under the Income-tax Rules, 1962 which provide, *inter alia*, that any borrowed money and debt due by the assessee should be deducted from the value of assets.

An assessee-company started production in its new unit towards the middle of the previous year relevant to the assessment year 1967-68. Tax holiday relief was, therefore, admissible in the same proportion as the period of six months bore to the full year. Tax holiday relief calculated at six per cent of the capital was, however, allowed to the assessee-company for the full year. The capital was also not correctly computed as per rules applicable thereto. These mistakes resulted in excess allowance of relief of Rs. 5,21,806 and consequent under-assessment of income by the same amount in the assessment year 1968-69 in which year the aforesaid deficiency was set off.

Further, while computing capital for allowing relief in the assessment years 1969-70 and 1970-71, the Department did not deduct from the value of assets, the proportionate amounts of borrowed money and debts due by the assessee. As a result, there was excess allowance of relief of Rs. 1,06,047 and Rs. 1,99,344 in the assessment years 1969-70 and 1970-71 respectively.

The above mistakes led to total tax undercharge of Rs. 4,54,958 for the assessment years 1968-69 to 1970-71.

Final reply of the Ministry of Finance is awaited (April 1979).

26. *Irregular exemptions given*

Under the provisions of the Income-tax Act, 1961 a company was entitled in the assessment year 1971-72, to relief on its dividend income where such dividend had been paid out of profits and gains assessed to agricultural income-tax by a State Government. The relief admissible is a reduction from the tax payable by the company of a sum equal to that proportion of net agricultural income-tax paid by the company distributing the dividend as the amount of the dividend attributable to the profits assessed to agricultural income-tax bears to the total profits of the company distributing dividend, or the amount of income-tax payable on such dividend income, whichever is less.

An assessee-company received dividend of Rs. 8,25,000 in the previous year relevant to the assessment year 1971-72. The dividend was paid out of profits and gains attributable to agricultural income which suffered such tax at 45 per cent in the hands of the company distributing the dividend. The relief admissible to the company on the divident income of Rs. 8,25,000 was, however, incorrectly allowed at 70 per cent of the rate of income-tax payable by it, instead of at the lower rate of 45 per cent. This led to excess allowance of tax relief of Rs. 2,06,250.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and that the amount of additional tax raised and collected is Rs. 2,06,250.

27. *Irregular computation of capital gains*

(i) Under the provisions of the Income-tax Act, 1961, any profit or gain arising from the transfer of a capital asset effected in the previous year is chargeable to income-tax under the head "Capital gains". The capital gain is determined by deducting the cost of acquisition of the asset and any improvement thereto, from the value of the consideration received or accruing on transfer.

In the profit and loss account of a company for the previous year relevant to the assessment year 1974-75, a sum of Rs. 5,27,538 was credited as the profit on fixed assets arising on account of money received from the insurance company due to damages by fire of the assessee's factory building and machinery. In computing the total income the assessing officer added Rs. 94,012 and Rs. 1,03,492 only which represented profit to the extent depreciation had already been allowed on building and machinery respectively. But the surplus profits amounting to Rs. 1,48,714 in respect of building and Rs. 1,81,320 in respect of machinery were not considered for taxation as capital gains. As a result, there was under-assessment of capital gains with resultant tax undercharge of Rs. 1,25,308 in the assessment year 1974-75.

The Ministry of Finance have accepted the objection.

(ii) The Income-tax Act, 1961, further provides that if, in the opinion of the Income-tax Officer the fair market value of a capital asset transferred by an assessee as on date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than fifteen per cent of the value so declared, the capital gain in respect of such asset is computed with reference to the fair market value. The difference between the fair market value and the declared consideration received or accrued also attracts levy of gift-tax.

During the previous year relevant to the assessment year 1974-75, a company in which the public were substantially interested sold 20,000 shares held in another public company at the rate of Rs. 18.50 per share returning a short-term capital gain of Rs. 1,70,000, which was accepted by the Department. However, the shares were quoted in the stock exchange at Rs. 23 each during the relevant period. As the fair market value of Rs. 23 per share exceeded the rate of consideration by more than fifteen per cent, the capital gain was to be computed after taking into consideration the fair market value of the

shares and not the value of the consideration received. The omission in this regard resulted in under-assessment of capital gain by Rs. 90,000 involving short levy of tax of Rs. 52,000.

Gift-tax of Rs. 9,250 on the deemed gift of Rs. 90,000, being the excess of fair market value over the declared consideration, was also not levied.

The Ministry of Finance have stated that the rate quoted in the stock exchange cannot be taken to be the fair market value and that in the present case the price obtained is less than the closing rate quoted in the market because of the bulk unloading of shares.

28. *Income escaping assessment*

(i) Any profits or gains arising from the transfer of a capital asset are chargeable to income-tax under "Capital gains" and are deemed to be the income of the previous year in which the transfer took place.

In the case of an assessee-company the balance sheet for the previous year relevant to the assessment year 1975-76 indicated that the company received additional compensation of Rs. 2,52,929 in respect of land sold during an earlier year, which was credited to the capital reserve. However, no profit had been returned or brought to tax under the head "capital gains" in the assessment year 1975-76 or earlier year and no data was on record to indicate that the transaction had not resulted in capital gain. On this fact being brought to the notice of the assessing officer in October 1976 during local audit, the position was examined and it was noticed that the additional compensation received was in respect of land sold during the previous year relevant to the assessment year 1972-73. The assessment for the assessment year 1972-73 was also rectified in November 1976 and net additional capital gain of Rs. 2,50,801 was included in taxable income. The additional demand raised was Rs. 1,06,282.

While accepting the objection the Ministry of Finance have stated that the additional demand of Rs. 1,06,282 has been collected.

(ii) In computing the total income of a non-resident company for the assessment year 1971-72 the Department omitted to assess £ 9 and £ 6,755 representing 'Investment revenue' (quoted) and 'Interest receivable' respectively appearing as receipts in the profit and loss account for the relevant previous year. As a result, income of Rs. 1,21,752 equivalent to £ 6,764 escaped assessment leading to tax undercharge of Rs. 85,226. The assessment was revised subsequently in May 1977 under Section 154 of the Income-tax Act, 1961, but the above mistake was still not rectified.

The Ministry of Finance have accepted the objection.

(iii) Under the provisions of the Income-tax Act, 1961, if an assessee receives a refund of expenditure in respect of which deduction has already been made in the assessment for any year, the refund is chargeable to income-tax as the income of the year in which the refund is received. A case of non-disclosure of refunds of Central Excise duty was earlier examined by the Public Accounts Committee and their recommendations are contained in para 1.44 of their 51st Report (Sixth Lok Sabha).

An assessee-company which had been allowed in the assessment year 1973-74 deduction in respect of payment of Customs duty, received a refund of Customs duty of Rs. 1,28,577 during the previous year relevant to the assessment year 1975-76 but the amount of refund was not included in the income assessable to tax. This resulted in undercharge of tax of Rs. 74,250.

The Ministry of Finance have accepted the objection.

(iv) The assessment of a banking company for the assessment year 1967-68 was reopened to bring to tax perquisites to employees amounting to Rs. 1,69,646 and capital expenditure of Rs. 1,34,775 which were not allowable under the Act. The assessment was further revised to include certain profits on account of devaluation under the order of the appellate tribunal.

In the revised assessment, however, the inadmissible items of Rs. 1,69,646 and Rs. 1,34,775 were not taken into account. The income of Rs. 3,04,421 thus escaped assessment and resulted in undercharge of tax of Rs. 1,67,431 in the assessment year 1967-68.

The Ministry of Finance have accepted the objection.

29. *Irregular set off of losses*

(i) Under the Income-tax Act, 1961, only those losses which fall under the head "Profits and gains of business or profession" and "Capital gains" do not lapse under specified conditions and are permited to be carried forward to the following assessment year for set off against income under the same head in that assessment year. This is not the position in the case of losses falling under other heads of incomes.

In the case of a banking company deduction of Rs. 37,33,133 on account of provision for gratuity was allowed for the assessment year 1973-74 under Section 40A(7) of the Act. The assessee-company had no positive income in that assessment year. The entire amount of Rs. 37,33,133 was claimed by the company as business loss and was permitted by the assessing officer to be carried forward for set off against the profits of subsequent years. It was noticed in Audit that out of Rs. 37,33,133 an amount of Rs. 6,08,779 was attributable to the earning of income under the head "Interest on securities" which could not be carried forward for adjustment against the profits of subsequent years. Due to this erroneous adjustment, the assessee was given irregular relief of Rs. 3,51,570 in payment of tax in the subsequent year(s).

While accepting the objection the Ministry of Finance have stated that the assessment in question has been set aside by the Commissioner of Income-tax.

(ii) In another case, a company in its return of income for the previous year relevant to the assessment year 1973-74 had shown business loss of Rs. 55,04,528 after taking into account

the bonus of Rs. 9,25,746 paid during the year. Although in computing the business loss, the loss of Rs. 55,04,528 returned by the assessee-company was taken as the starting point, the bonus of Rs. 9,25,746 was allowed again as deduction. This led to an excess computation and excess carry forward of business loss of Rs. 9,25,746.

The Ministry of Finance have accepted the objection and the mistake is stated to have been rectified.

(iii) In the case of still another assessee-company, business loss pertaining to the assessment year 1974-75 to be carried forward for set off in the assessment year 1975-76, was incorrectly determined by the Income-tax Officer as Rs. 1,39,390 instead of the correct amount of Rs. 879. The mistake was due to the fact that the loss incorrectly worked out by the assessee in the return for 1974-75 was adopted in assessment as the loss disclosed in the profit and loss account. On this being pointed out in audit, the assessment was rectified in October 1977 and the business loss to be carried forward was computed as Rs. 18,196 after taking into account relief of Rs. 17,317 allowed in appeal. The actual incorrect amount of excess loss carried forward thus worked out to Rs. 1,21,194.

The Ministry of Finance have accepted the objection.

(iv) Under the provisions of the Income-tax Act, 1961, the profits and gains of regular shipping business in the case of non-residents are determined from the assessment year 1976-77 at seven and a half per cent of the specified amounts received by an assessee. Further, whereas the set off of business losses of earlier years is allowable under the Act, carry forward and set off of unabsorbed depreciation is not admissible.

(a) The total income of Rs. 31,94,558 computed in respect of a non-resident shipping company for the assessment year 1976-77 was reduced to nil after adjustment of unabsorbed business losses for the equal amount pertaining to the assessment years 1968-69 to 1972-73 and a further amount of Rs. 35,54,858

was allowed to be carried forward as unabsorbed loss for the assessment year 1972-73. It was, however, noticed that total business losses and depreciation remaining unadjusted at the end of the assessment year 1975-76 were to the extent of Rs. 25,54,298 and Rs. 45,41,857 respectively. Accordingly, following the relevant provisions of the Act, only the business losses of Rs. 25,54,298 could be adjusted against the total income of Rs. 31,94,558 for the assessment year 1976-77. If this were done, there would remain a balance of taxable income of Rs. 6,40,260. This amount was, however, not subjected to tax by the Department. The incorrect adjustment of unabsorbed depreciation of earlier years, therefore, resulted in under-assessment of income by Rs. 6,40,260 with consequent tax undercharge of Rs. 4,70,591 for the assessment year 1976-77. The carry forward of a further loss of Rs. 35,54,858 for adjustment against future years' profits was also irregular.

The Ministry of Finance have accepted the objection in respect of set off of unabsorbed depreciation for the assessment years 1968-69 and 1970-71; their reply in respect of assessment years 1971-72 and 1972-73 is awaited (April 1979).

(b) In another case, an assessee-company, engaged in the business of manufacture and sale of yarn and cloth, sold away the entire land, building and machinery during the previous year relevant to the assessment year 1973-74 and this business was discontinued during the subsequent period. The business carried on by the assessee during the previous years relevant to the assessment years 1974-75 and 1975-76 comprised of only purchase and sale of cotton. Hence the assessee was not entitled to carry forward and set off of the business income for the assessment years 1974-75 and 1975-76. However, business loss for the assessment year 1972-73 was wrongly set off as under :—

Assessment year	1974-75	Rs. 5,23,456
Assessment year	1975-76	Rs. 1,03,976

Final reply of the Ministry of Finance is awaited (April 1979).

30. *Mistakes in assessments while giving effect to appellate orders*

(i) Under the provisions of the Finance Act, 1964, an Indian company in which the public are substantially interested is liable to payment of additional tax at 7.5 per cent of the amount of equity dividends declared or distributed by it during the previous year.

While giving effect to the appellate orders for the assessment year 1964-65 in the case of a company which was treated as a company in which the public were substantially interested, the additional tax at 7.5 per cent of the equity dividends amounting to Rs. 1,06,12,000 paid by it during the previous year relevant to the assessment year 1964-65 was not levied. This resulted in short levy of tax of Rs. 7,95,900.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised raising an additional demand of Rs. 7,95,000.

(ii) Under the Income-tax Rules, 1962, 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 Rules.

An assessee-company started a new line of business in tea and purchased two tea estates on loan. Interest on the loan amounting to Rs. 2,60,000 in each of the assessment years 1971-72 to 1973-74 was disallowed by the Department, treating it as capital expenditure. The appellate authorities, however, allowed it as revenue expenditure. While giving effect to the appellate orders, the Department allowed the said interest in full against the general department of the business of the assessee instead of allowing only 40 per cent thereof against the tea business, as the interest actually related to the capital employed for the tea estates. The mistake resulted in excess carry forward of loss aggregating Rs. 4,68,000 for the assessment years 1971-72 to 1973-74.

The Ministry of Finance have accepted the objection and have stated that the assessment in question has been revised.

(iii) In the original assessment for the assessment year 1966-67, an assessee-company was allowed normal depreciation at 10 per cent on 500 cylinders for Acetylene Factory purchased for Rs. 1,45,244 (in June 1965) and on 1,000 cylinders for Oxygen Factory purchased for Rs. 1,94,040 (in March 1965). The appellate authority allowed (June 1974) 100 per cent depreciation on the cylinders with directions to withdraw normal depreciation already allowed in the subsequent assessment years from 1967-68 to 1970-71. While giving affect to the appellate orders, the depreciation already allowed was not withdrawn. This resulted in under-assessment of income to the extent of Rs. 2,91,768 for the assessment years 1967-68 to 1970-71 with tax undercharge of Rs. 1,62,662.

Further, as the assessable income for the above assessment years increased, the chargeable profits also increased correspondingly and became liable to surtax. The undercharge of surtax was Rs. 13,796.

The Ministry of Finance have accepted the objection and the assessments in question are stated to have been revised and additional demands raised.

(iv) According to the provisions of the Income-tax Act, 1961 as amended by the Finance Act, 1975, no deduction would be admissible in the computation of taxable profits in respect of mere "provisions" made by assessees for payment of gratuity to their employees on their retirement or on termination of their employment for any reason. With a view to mitigating hardship to assessees, the Act further provides that provisions already made by assessees for the previous years relating to the assessment years 1973-74 to 1975-76 would be allowed upto a maximum limit of 8⅓ per cent of the salary of each employee entitled to the payment of such gratuity for each year of his service subject to fulfilment of certain conditions *viz.* (i) the provision made is in accordance with an acturial valuation of the ascertainable liability of the assessee, (ii) the assessee creates an approved gratuity fund under an irrevocable trust, and

(iii) the amount of such provision is transferred to the fund in two equal instalments before 1st April, 1976 and 1st April, 1977 respectively.

A provision of Rs. 17,33,039 made by an assessee-company for the assessment year 1973-74 was disallowed initially. On appeal, the Assistant Commissioner of Income-tax directed that the provision should be allowed if the assessee satisfied the provisions of the Act. In the order giving effect to the orders of the Appellate Assistant Commissioner of Income-tax, the entire amount of the provision was allowed without restricting it to the maximum limit of 8⅓ per cent of salary of the eligible employees for that year. This resulted in allowance of excess deduction to the extent of Rs. 9,18,000 with consequent short levy of tax of Rs. 5,30,145. This also led to short levy of surtax.

Final reply of the Ministry of Finance is awaited (April 1979).

(v) Under the provisions of the Income-tax Act, 1961, development rebate is allowable on ships in the year in which the ships are acquired, subject to creation of the specified reserve.

In the case of an assessee-company, its claim for development rebate aggregating Rs. 3,11,28,709 in respect of four ships was originally not allowed for the assessment year 1970-71 on the ground that the necessary reserve had not been created. Subsequently, while giving effect to the appellate orders directing the Income-tax Officer to consider the claim, the entire amount of Rs. 3,11,28,709 was considered and allowed to be carried forward as unabsorbed development rebate, ignoring the fact that development rebate of Rs. 2,60,01,022 relating to two of the four ships had already been considered and allowed in the assessments for the assessment years 1966-67 and 1967-68. Thus, development rebate of 2,60,01,022 was considered twice, resulting in excess determination of carried forward unabsorbed development rebate of equal amount for the assessment year 1970-71.

The Ministry of Finance have accepted the objection.

31. *Excess or irregular refunds*

Under the provisions of the Income-tax Act, 1961, the Income-tax Officer is authorised to make provisional assessment of the sum refundable to the assessee when tax paid in advance and collected at source exceeds the tax payable on the basis of the return, accounts and documents accompanying it. The Act further provides that such provisional assessment is to be made after, *inter alia,* disallowing any deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts and documents is, *prima facie,* inadmissible.

In the case of an assessee-company, a refund of tax of Rs. 12,31,622 was made on 8th December, 1976 for the assessment year 1975-76 on the basis of the income returned by the assessee. It was noticed that the income returned by assessee had been worked out after claiming a liability on account of gratuity amounting to Rs. 13,61,904 which was not provided for in the accounts of the relevant previous year. This deduction would be admissible only if the provision were made in the accounts and certain conditions prescribed in the Act were fulfilled. As the primary condition of making a provision in the accounts was not fulfilled, the claim of the assessee should have been disallowed while granting the refund. The omission to do so resulted in excess refund of Rs. 7,86,502.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and that the amount of additional tax of Rs. 7,86,502 has been raised and collected.

32. *Non-levy/short levy of interest*

(i) Under the provisions of the Income-tax Act, 1961, and the Companies (Profits) Surtax Act, 1964, where the amount specified in a notice of demand is not paid within thirty-five days of the service of the notice, the assessee is liable to pay interest at prescribed rates from the day commencing after the end of the said period of thirty-five days to the date of payment of tax. Further, the said interest is required to be calculated at the end

of each financial year if the amount of tax or other sum in respect of which such interest is payable has not been paid in full before the end of any such financial year.

(a) An assessee-company was served on 16th September, 1976 with a notice of demand for taxes and other sums amounting to Rs. 31,16,899 in respect of the assessment year 1973-74 which was not paid upto the financial year ended 31st March, 1977. The assessee was, therefore, liable to pay interest for non-payment of tax.

The Department, however, did not charge the interest. The omission to do so resulted in non-levy of interest of Rs. 1,55,840.

The Ministry of Finance have accepted the objection.

(b) In the case of another assessee-company which was served with a notice of demand for Rs. 45,54,660 on 12th March, 1976 in respect of its provisional assessment for surtax for the year 1975-76, was allowed to make payment in four equal instalments of Rs. 11,38,665 each on 17th April, 1976, 14th May, 1976, 15th July, 1976 and 12th August, 1976. As the payments were made beyond the prescribed period of 35 days, the assessee was liable to pay interest of Rs. 68,316 which was not levied.

The Ministry of Finance have accepted the objection in principle.

(ii) The Income-tax Act, 1961 provides that where, on making the regular assessment, the assessing officer finds that any assessee has under-estimated the advance tax payable by him and has thereby reduced the amount payable in either of the first two instalments, he may direct that the assessee shall pay simple interest at the specified rate for the period during which the payment was deficient.

In the case of a company notice for payment of advance tax of Rs. 47,99,235 was issued for the assessment year 1974-75. The assessee filed an estimate for nil amount on 15th September,

1973 and paid no advance tax. Thereafter, the assessee filed on 14th March, 1974 a revised estimate for advance tax of Rs. 19,63,500 which was paid through a cheque drawn on bank on 14th March, 1974. The reasons advanced by the assessee in support of submission of the original nil estimate were not found to be justifiable, as total income of Rs. 87,78,910 was computed for the assessment year 1973-74 and as per Directors' Report, the productivity level for the assessment year 1974-75 "was maintained almost on the same level as that of last year with increased speed of the machines resulting from equipments added". The first estimate submitted by the assessee was, therefore, to be treated as an untrue estimate and by such filing, the assessee might well be treated to have under-estimated the advance tax payable by him and thereby reduced the amount payable in the first two instalments. Penal provision would, therefore, be attracted and the assessee would be liable to pay interest amounting to Rs. 52,360. This was, however, not levied by the Department.

The Ministry of Finance have stated that the question of charging of penal interest in this case would arise only if the nil estimate filed by the assessee could be established as wrong. In Audit's view, the fact that the nil estimate was followed by a revised estimate of advance tax of Rs. 19,63,500 shows that the nil estimate was not a true estimate.

(iii) Under the privisions of the Income-tax Act, 1961, an Indian company responsible for making any payment or issuing any warrant in respect of any dividend declared by it shall deduct income-tax thereon at the rates in force and pay the tax so deducted to the credit of the Central Government within a week from the date of deduction. Any delay in such payment entails levy of interest at the prescribed rates.

An Indian company deducted from the dividends declared by it, tax at source amounting to Rs. 7,91,357, Rs, 57,70,749 and Rs. 40,60,497 in the previous years relevant to the assessment years 1972-73, 1973-74 and 1974-75 respectively. The amounts of tax deducted were, however, not credited to

the Government account within the prescribed period. Delay on the part of the assessee to pay to Government account the amounts of tax so deducted rendered it liable to charge of interest. But interest in this regard was not levied by the Department. This resulted in non-levy of interest aggregating Rs. 75,436 in the above three assessment years.

While accepting the objection the Ministry of Finance have stated that the assessments in question have been revised.

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

(i) Under the Income-tax Act, 1961, where the advance tax paid by an assessee during a financial year exceeds the amount of tax determined on regular assessment, the Government is liable to pay interest at the prescribed rate on the amount of advance tax paid in excess for the period from the 1st April next following the financial year to the date of regular assessment, provided the advance tax is paid according to the notice of demand issued by the Department or in accordance with the estimate filed by the assessee, as the case may be. Where a notice of advance tax has been issued by the Department, the estimate is required to be filed by the assessee before the specified date, if the advance tax payable on the current income is estimated by him to exceed by more than 33⅓ per cent of the advance tax demanded by the Department. The estimate may also be filed by the assessee where the advance tax payable is likely to be less than the advance tax so demanded. Further, advance tax paid by an assessee beyond the last date for payment of advace tax shall not qualify for payment as confirmed by the Central Board of Direct Taxes in their instruction issued in October 1975.

(a) In the case of a company such interest was paid on the basis of advance tax paid in accordance with an estimate filed by the assessee, though the assessee was under no obligation/ entitled to file a higher estimate, as the advance tax demanded was not short to the extent of the percentage prescribed calling for a revised estimate by the assessee nor was the advance tax payable less than the amount so demanded. Further, the estimate was filed by the assessee only on 18th March, 1971 *viz.*, beyond

the last date statutorily prescribed for filing such an estimate *viz.*, 15th March, 1971 and was thus not a legally valid estimate. Despite this, the excess amount of advance tax of Rs. 16,83,987 paid in excess of the statutory requirements was taken into account by the assessing officer for payment of interest to the assessee. This resulted in incorrect payment of interest to the extent of Rs. 5,26,226.

The Ministry of Finance have accepted the objection in principle.

(b) In the assessment of another assessee-company for the year 1974-75, an interest of Rs. 3,59,126 was allowed on the excess of advance tax of Rs. 27,94,650 paid by the assessee over the tax determined on regular assessment. Since, however, out of the total advance tax of Rs. 5,76,34,500, an instalment of Rs. 94,16,341 was paid beyond the financial year ending 31st March, 1974, the latter sum should not have been considered as advance tax for the purpose of allowing the interest. The balance amount of advance tax not having exceeded the tax determined as payable on regular assessment, the assessee was not entitled to any interest. The payment of interest of Rs. 3,59,126 was, therefore, irregular.

The Ministry of Finance have accepted the objection.

(ii) The Act further provides that in respect of any amount refunded on a provisional assessment, no interest shall be paid for the period after the date of such provisional assessment.

The Central Board of Direct Taxes had issued instructions from time to time making it obligatory for the assessing authorities to complete provisional assessments within six months of the receipt of returns, in cases where the regular assessments are likely to be delayed, so as to refund the excess tax paid and avoid unnecessary payment of interest by Government.

(a) An assessee-company which had paid amounts of advance tax of Rs. 5,35,498 and Rs. 4,54,296 for the assessment years 1971-72 and 1972-73, filed its returns of income for these assessment years on 18th October, 1972 and 19th April,

1973, declaring loss of Rs. 25,17,796 and Rs. 41,40,098. A refund was, therefore, *prima facie,* due and provisional assessments were required to be made within a period of six months in case delay was anticipated in completing regular assessments. No provisional assessments were made and the regular assessments were completed only on 31st January, 1974 and 29th November, 1975 *i.e.* more than 15 months and 31 months after the date of submission of returns. Consequently, interest of Rs. 1,66,005 for the assessment year 1971-72 and Rs. 1,94,860 for the assessment year 1972-73 were determined as payable on account of excess payment of advance tax. This could have been avoided if the Department had taken action to refund the excess deposit of advance tax by making provisional assessments.

The Ministry of Finance have accepted the objection.

(b) In another case, an assessee-company furnished its return of income for the assessment year 1970-71 on 29th September, 1970 declaring an income of Rs. 35,36,900. As the assessee had earlier paid advance tax of Rs. 22,33,624, which together with tax deducted at source amounting to Rs. 6,43,690 far exceeded the tax payable on the basis of income returned, it made a claim for refund of the excess advance tax paid by it. The Department, however, did not proceed to make a provisional assessment for refund forthwith or at least within six months from the date of filing of the return as provided in the Act. The regular assessment was completed on 18th February, 1973 only with tax liability of Rs. 10,04,352 and was later revised on 2nd June, 1977 with reduced tax liability of Rs. 9,01,311. Interest amounting to Rs. 3,81,042 was paid to the assessee on account of excess advance tax paid. Had a provisional assessment for refund been made within six months of the filing of the return, payment of interest to the extent of Rs. 2,57,506 could have been avoided.

The Ministry of Finance have accepted the objection.

(iii) Under the Income-tax Act, 1961, the Central Government shall pay simple interest at the prescribed rate on

the amount of refund due to the assessee in pursuance of an order passed in appeal or other proceedings under the Act, if the payment thereof is not made within a period of six/three months (prior to 1st April, 1971/on or after 1st April, 1971) from the end of the month in which such order is passed. In order to avoid payment of unnecessary interest, the Board issued instructions in their Circular No. 20 (LXXVI-42) D of 1962, dated 18th July, 1962 that, in such cases, the Income-tax Officer should dispose of the refund case within a fortnight of the date of receipt of the appellate order. Such refunds may, however, be withheld by the Income-tax Officer in the circumstances stipulated in Section 241 of the Act with the prior approval of the Commissioner till such time as the Commissioner may determine.

(a) A non-resident company became entitled to refunds of Rs. 5,19,199 and Rs. 2,02,644 in respect of the assessment years 1968-69 and 1969-70 respectively as a result of appellate orders passed in August 1974. As the effect to these orders was given on 18th September, 1976 *i.e.*, two years after receipt of the appellate orders, the Department had to pay interest of Rs. 1,44,369 to the assessee-company. Prior approval of the Commissioner to withhold refund had also not been obtained by the Income-tax Officer.

Had the Department taken timely action to make the refunds, the payment of Rs. 1,44,369 on account of interest could have been avoided.

The Ministry of Finance have accepted the objection.

(b) In the case of another company, the assessment for the assessment year 1949-50 was completed under the Indian Income-tax Act, 1922. On reference, the High Court passed order in favour of the assessee on 16th October, 1967 under Section 66(i) of the Act. A consequential order was passed by the appellate tribunal on 24th August, 1968. This order was given effect to by the Department on 8th February, 1971 resulting in a refund of Rs. 33,37,754. The refund was not granted till

8th January, 1973, pending disposal of the appeal filed by the Department in the Supreme Court. The Department, however, did not pass any orders to withhold the refund in accordance with the law. In the meantime the Supreme Court rejected the departmental appeal on 29th August, 1972 and interest of Rs. 12,37,888 became due to the assessee-company and was accordingly paid. Had prompt action been taken by the Department to withhold the refund pending the disposal of the appeals, the amount of interest payable would have amounted to Rs. 41,990 from 1st December, 1972 to 8th January, 1973 against Rs. 12,37,888 actually paid.

The Ministry of Finance have stated that there was no delay on the part of the Income-tax Officer in submitting the proposals regarding withholding of refund and, thereafter, pursuing the matter and have given the following chronology of events :—

(i) Income-tax Appellate Tribunal's order dated 24th August, 1968 was received in Commissioner of Income-tax's office on 11th September, 1968 and was forwarded to the Income-tax Officer on 17th April, 1969.

(ii) The Income-tax Officer submitted his first proposals for withholding the refund under Section 241 on 29th September, 1969.

(iii) The proposals were pursued and the Commissioner of Income-tax desired a further report as per letter dated 30th April, 1970.

(iv) A further report was sent by the Income-tax Officer on 5th May, 1970 reiterating his earlier suggestion that the refund ought to be withheld under Section 241.

(v) On 18th March, 1971, the Income-tax Officer sent a further report soliciting Commissioner of Income-tax's order under Section 241.

(vi) The assessee-company wrote to the Secretary, Finance Ministry on 4th October, 1971.

(vii) Income-tax Officer's report to the Inspecting Assistant Commissioner submitted on 10th October, 1971.

(viii) Additional Commissioner of Income-tax's reference to the Board dated 25th November, 1971.

(ix) Board's letter dated 19th February, 1972, informing the Additional Commissioner of Income-tax that refund could be granted only after a bank guarantee is submitted by the assessee-company and only after satisfying that the bank guarantee is adequate.

(x) Additional Commissioner of Income-tax's reference to the Solicitor to the Central Government under his letter dated 3rd March, 1972 for approval of the form of bank guarantee to be obtained from the company.

However, it will be observed from the above that there has been delay at almost all stages.

Other topics of interest

34. *Incorrect computation of taxable income*

A non-resident company entered into an agreement on 2nd May, 1961 for 10 years starting from 1st September, 1961 to render technical and administrative services to an Indian company. In consideration of these services, the Indian company was to pay a fee equal to 3 per cent of the net sale price of all products manufactured by its plants in India during the effective period of the agreement.

The assessments of the non-resident company for the assessment years 1962-63 to 1965-66 were completed by the Income-tax Officer treating the entire amount of fees received by it from the Indian company as royalty income accrued in

India and tax was levied at the rates applicable to royalty income for each year. In these assessments, the Income-tax Officer did not allow the assessee's claim for expenses for earning income on account of fees. On an appeal filed by the assessee, the Appellate Assistant Commissioner held that a part of services were rendered outside India and apportioned 40 per cent of the income received by the assessee as pertaining to these services and hence accrued outside India. Of the remaining 60 per cent of the income, he allowed 50 per cent as expenses, the balance income being brought to tax as royalty. The Department as well as the assessee went in appeal to the Tribunal against this order. While both the appeals were pending before the Tribunal, the assessee submitted an application to the Central Board of Direct Taxes that assessments should be made on compromise basis. The Board arrived at a settlement with the assessee's representative on 18th June, 1969 to the effect that 45 per cent of the gross receipts should be taxed as royalty income for all the assessment years 1962-63 to 1972-73. Looking to the nature of services rendered and non-production of acceptable evidence by the assessee regarding the quantum of actual expenditure incurred by it for earning the fees, there was no basis for the Board to agree to an *ad hoc* deduction of 55 per cent of the gross receipts. Besides, treatment of the gross receipts as royalty by the Board was irregular in view of the Government of India, Ministry of Commerce, New Delhi letter dated 2nd July, 1960 in which the gross receipts were treated as fees at the instance of the Indian company, and the specific provision for payment of fees in the agreement between the assessee and the Indian company. The incorrect levy of tax at the lower rate of 50 per cent applicable to royalty income as against higher rate applicable to "other income" coupled with the Board's agreeing to an *ad hoc* deduction of 55 per cent in the absence of any acceptable evidence produced by the assessee regarding the quantum of actual expenditure incurred by it for earning fees resulted in undue tax concession of Rs. 1,84,23,969.

The paragraph was sent to the Ministry of Finance in August 1978; they have stated in March 1979 that the audit objection is under consideration.

35. *Incorrect computation of additional tax under Section* 104 *of the Income-tax Act*

Under the provisions of the Income-tax Act, 1961, an investment company has to distribute ninety per cent of its distributable income as dividends to its shareholders and omission to comply with this requirement of the law would entail levy of additional tax at the rate of fifty per cent of the distributable income as reduced by the amount of dividends actually distributed.

An investment company deriving income mainly from other sources distributed dividends of Rs. 1,20,000, Rs. 40,000 and Rs. 2,50,000 for the periods relevant to the assessment years 1972-73 to 1974-75 respectively as against the distributable income of Rs. 6,50,322, Rs. 4,85,896 and Rs. 9,89,275 for the three years. As the dividends distributed fell short of ninety per cent of the distributable income, additional income-tax was levied in March 1977. The tax was, however, computed by reducing the dividends from ninety per cent of distributable income instead of from the full distributable income, resulting in short levy of tax of Rs. 1,06,277.

The Ministry of Finance have accepted the objection.

36. *Inordinate delay in refunds*

In pursuance of different appellate orders received by the assessing officer in February 1972, August 1972 and September 1973, various refunds of taxes totalling Rs. 1,87,351 became due to an assessee. None of the refunds have so far been made to the assessee although more than four years have passed since the refunds became due. By not getting the refunds on account of delay on the part of the Department the assessee became entitled to receive interest of Rs. 1,24,260 (uptil 31st March, 1978) on the total amount of the refunds.

The Ministry of Finance have accepted the objection.

37. *Irregular collection of tax to inflate the amount of collection*

Under the provisions of the Income-tax Act, 1961, the Income-tax Officer has to serve upon the assessee a notice of demand, in the prescribed form, when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act. In case of tax deducted at source, the employer is required to pay the amount to the credit of the Central Government within one week from the date of such deduction.

An Income-tax Officer in a salary Circle collected a sum of Rs. 3,38,297 in excess of the amount of tax payable by an employer for the financial year 1974-75, while a sum of Rs. 3,50,000, representing income-tax deducted from the pay roll of the employees for the month of March 1975 was collected from another employer, during the close of the financial year 1974-75, which was adjustable in the next financial year's account of tax payable. These amounts, though not forming part of the demand, were collected irregularly in advance. Thus a total sum of Rs. 6,88,297 was collected from the employers in excess of total demand at the end of the financial year 1974-75. The amount of collection of that year got inflated.

The Ministry of Finance have stated that the deposits in question were made by the companies voluntarily.

SURTAX

38. *Surtax*

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

During the period under review, under-assessment of super profits tax/surtax of Rs. 69.57 lakhs was noticed in 92 cases. A few illustrative cases are given in the following paragraphs.

39. *Incorrect computation of chargeable profits*

Under the Companies (Profits) Surtax Act, 1964, surtax is leviable on the amount by which the chargeable profits of a company exceed the statutory deduction which is an amount equal to ten per cent (15 per cent from 1-4-1977) of the capital of the company or Rs. 2 lakhs, whichever is greater. Where, however, the previous year is longer or shorter than a period of twelve months, the aforesaid amount of ten per cent (15 per cent from 1-4-1977) of capital, or Rs. 2 lakhs, as the case may be, shall be increased or decreased proportionately.

In the surtax assessment of a company for the assessment year 1973-74, statutory deduction was allowed for Rs. 24,61,188 calculated at 10 per cent of the capital. Since the period of the relevant previous year was reduced from 12 months to 10 months, the amount of statutory deduction should have been decreased proportionately. This not having been done, there was excess allowance of statutory deduction of Rs. 4,10,198 leading to under-assessment of the chargeable profits by the same amount with resultant surtax undercharge of Rs. 1,23,059.

The Ministry of Finance have accepted the objection.

40. *Incorrect computation of capital*

(i) Under the provisions of the Companies (Profits) Surtax Act, 1964, an amount standing to the credit of any account in the books of a company, if it is of the nature of liability or provision, shall not be regarded as reserve for the purposes of computation of capital. Further, funds created to meet a known liability arising in the future is only a provision and not a reserve. Where the balance in the general reserve as on the 1st day of the relevant previous year includes any sum proposed to be appropriated for distribution of dividend, the general reserve balance as reduced by such sum alone is to be included in the computation of capital for the purpose of levy of surtax.

(a) In one case, the assessee-company made payments of dividend amounting to Rs. 29,99,857, Rs. 29,99,857 and Rs. 34,00,000 in the assessment years 1971-72, 1972-73 and 1974-75 respectively, out of the general reserve. Under the provisions of Surtax Act, the amounts of dividend paid out of general reserve, were required to be deducted from capital while working out the statutory deduction which was not done. This resulted in excess allowance of statutory deduction to the extent of Rs. 9,39,972 with tax effect of Rs. 2,49,992.

Further, the company was allowed deduction under Section 80 J from the chargeable profits in the assessment years 1971-72 and 1972-73, but the capital employed was not reduced proportionately while working out the statutory deduction as required under Rule 4 to Second Schedule of the Companies (Profits) Surtax Act, 1964. This resulted in excess allowance of deduction by Rs. 21,70,333 with tax effect of Rs. 5,79,349.

There was total undercharge of surtax of Rs. 8,29,341.

The Ministry of Finance have partly accepted the objection.

(b) In the case of another assessee-company, the balance in the general reserve appearing in the balance sheet as on the last day of the accounting years ending 30th November, 1969 and 30th November, 1970 included proposed dividends, which were paid in the succeeding years by transferring an equal amount from the general reserve to the profit and loss account. The above general reserve balance as reduced by the sums re-appropriated out of such reserve in the following years for payment of dividends should, therefore, have been treated as the amounts of general reserve as at the beginning of the relevant previous years and considered in the computation of capital for purposes of surtax assessments for the assessment years 1971-72 and 1972-73. Omission to do so resulted in under-assessment of chargeable profits to the extent of Rs. 60,00,000 in the aggregate and short levy of surtax of Rs. 1,72,500 for the assessment years 1971-72 and 1972-73.

The Ministry of Finance have stated that the introduction of new Rule 1A in the Second Schedule of the Companies (Profits)

Surtax Act, 1964 with effect from the assessment year 1975-76 indicates that there was a lacuna earlier which had to be plugged by an amendment.

(c) In still another case, an assessee-company included an amount of Rs. 20.50 lakhs on account of Debenture Redemption Reserve in the computation of capital in the assessment year 1969-70. This amount was not to be regarded as reserve for the computation of capital, as it was a provision for meeting a known liability. The inclusion of this amount in the capital resulted in excess statutory deduction of Rs. 2.50 lakhs with undercharge of surtax of Rs. 51,250.

The Ministry of Finance have accepted the objection.

(ii) In the case of an assessee-company, the amount of proposed dividends, which was included in the general reserve appearing in the balance sheet of the company, was treated in the assessments made by the Income-tax Officer as capital for determining the chargeable amounts for the purpose of levy of surtax for the assessment years 1965-66 to 1974-75. The assessing officer reopened (January 1976) the assessment in pursuance of an objection of the Internal Audit who pointed out (October 1975) that the inclusion of proposed dividends in capital was incorrect. The proceedings were subsequently (December 1976) dropped on the ground that the inclusion was correctly made.

However, as held by the Supreme Court in August, 1968 and clarified by the Central Board of Direct Taxes in November 1974, proposed dividend was only provision for expenditure and hence its inclusion in general reserve did not materially alter its character. Dividend being an ascertained liability could not thus be reckoned as capital. The inclusion of proposed dividend in capital was, therefore, incorrect and this resulted in short levy of surtax amounting to Rs. 1,96,850 in the above years.

In another case, an assessee-company paid a sum of Rs. 22 lakhs as dividends from its general reserve in the previous year relevant to the assessment years 1969-70 and 1970-71. However, in computing the capital as on the first day of the previous years relevant to the assessment years, the balance of the general reserve

was taken into account in full without deducting the amount of dividends paid therefrom. This resulted in short levy of surtax of Rs. 1,06,494.

In the surtax assessments of still another assessee-company for the years 1972-73 and 1973-74, the Department, while computing the capital base, took the general reserve at Rs. 22,17,213 and Rs. 22,39,623 respectively as on the first day of the relevant previous years. Since, however, the sums of Rs. 7,92,390 and Rs. 7,92,590 were recommended by the directors to be paid as dividends out of the general reserves vide their reports on the accounts of the company for the accounting years ending 31-12-1970 and 31-12-1971 respectively, the general reserve as on the first day of the previous years relevant to the assessment years 1972-73 and 1973-74 should have been reduced by the said sums of Rs. 7,92,390 and Rs. 7,92,590. The omission to do so resulted in excess allowance of statutory deduction of Rs. 79,239 and Rs. 79,259 with consequent short levy of surtax to the extent of Rs. 46,466 for the two assessment years.

The Ministry of Finance have stated that in all the three cases no amount was credited to the account of the proposed dividend as on the first day of the previous year in the balance sheet and that such a case occurring after 1-4-1975 will be taken care of under Rule 1A introduced in the Second Schedule of the Surtax Act with effect from 1-4-1975. The fact remains that the audit objections relate to the earlier periods and the amendment of law is not applicable to the cases in question. Further, the objections are covered by the Board's instructions of November 1974.

(iii) Under Rule 4 of the Second Schedule of the Companies (Profits) Surtax Act, 1964, where a part of income, profits and gains of a company is not includible in its total income, its capital shall be the sum ascertained in acordance with the said rules diminished by an amount which bears to that sum the same proportion as the amount of the aforesaid income, profits and gains bear to the total amount of its income, profits and gains.

In the case of an assessee-company, deductions from chargeable profits to the tune of Rs. 7,51,080 for the assessment year 1972-73 were allowed under the various provisions of Section 80 of the Act. In accordance with the above Rule, the capital of the company should have been reduced proportionately when a part of the income of the company was not includible in the chargeable profits. Failure to do so resulted in excess computation of capital by Rs. 17,13,720 in the assessment year 1972-73 with undercharge of surtax of Rs. 51,412.

The Ministry of Finance have accepted the objection.

41. *Non-levy of surtax*

Pursuant to the recommendations of the Public Accounts Committee contained in paragraph 6.7 of their 128th Report (Fifth Lok Sabha) the Central Board of Direct Taxes issued instructions in October 1974, that surtax assessment proceedings should be initiated along with the income-tax proceedings and the surtax assessments finalised within a month of the completion of the relevant income-tax assessments.

(a) The taxable income of an assessee-company for the assessment year 1974-75 was determined as Rs. 26,93,944 in February 1977 and was revised to Rs. 27,49,804 in March 1977. As the chargeable profits of Rs. 10,27,926 exceeded the statutory deduction of Rs. 2 lakhs, the company was assessable to surtax on the net chargeable profits of Rs. 8,27,926 under the Companies (Profits) Sutax Act, 1964. However, the assessee did not furnish any return of chargeable profits, nor did the assessing officer initiate necessary proceedings to levy the surtax. The Register of Pending Action maintained by the assessing officer also did not show any pendency in this respect. The chargeable profits of the company, therefore, escaped assessment to surtax amounting to Rs. 2,46,530.

The Ministry of Finance have accepted the objection.

(b) The income-tax assessment of another assessee-company for the assessment year 1974-75 was completed in February 1977 and was subsequently revised in November 1977, recomputing

the taxable income as Rs. 38,84,210 and the income-tax as Rs. 22,43,132. But the Department neither proceeded to make any provisional surtax assessment as per provisions contained in the Companies (Profits) Surtax Act, 1964 on the basis of the said assessed income or on the basis of the returned income of Rs. 37,80,320 nor started any proceedings to complete the regular surtax assessment for the above assessment year as required under the Board's instructions. As a result, there was non-levy of surtax to the extent of Rs. 25,310 in the assessment year 1974-75.

The Ministry of Finance have accepted the objection.

(c) In the case of still another assessee-company, the chargeable profits for the assessment year 1973-74 were determined as Rs. 11,12,000 and tax thereon was worked out as Rs. 6,48,060. Although the chargeable profits exceeded the statutory deduction, no surtax assessment was made. This resulted in under-assessment of surtax of Rs. 75,697.

The Ministry of Finance have accepted the objection.

(d) Still in the case of another assessee-company, the chargeable profits for the assessment year 1975-76 exceeded the amount of statutory deduction and were liable to levy of surtax. No action was, however, taken by the Department in this regard.

On this being pointed out in audit (December 1977), the Department initiated action under the Companies (Profits) Surtax Act, 1964 and made provisional assessment (February 1978) raising a demand of surtax of Rs. 50,310.

The Ministry of Finance have accepted the objection.

CHAPTER III

INCOME TAX

42. Income-tax collected from persons other than companies is booked under the Major Head "021-Taxes on income other than Corporation Tax". Under Article 270 of the Constitution, 80 per cent of the net proceeds of this tax, except in so far as these are attributable to Union emoluments, Union Territories and Union Surcharges, is assigned to the States in accordance with the recommendations of the Sixth Finance Commission.

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

44. *Administration of Section* 139*A*

44.1 In order of provide for easy and proper identification of the tax payers for purposes of linking papers relating to them, including challans of payment of tax, for which credit is given to the tax payers, as also to cross check information received with the information furnished by the tax payers in respect of transactions relating to business, investments etc., Section 139A was inserted in the Income-tax Act, 1961 by the Taxation Laws (Amendment Act), 1975 with effect from 1-4-1976. Under the provisions of this Section, every person whose total income is assessable to tax, or who is carrying on any business whose total sales, turnover or gross receipts exceed or is likely to exceed fifty thousand rupees in any accounting year, shall apply to the Income-tax Officer for the allotment of a permanent account number. The applications for allotment of permanent account numbers were to be made before 31-7-1976 (extended from 31-5-1976). All permanent account numbers allotted to assessees before 1-4-1976 were by a notification issued by the Central

Board of Direct Taxes on 1-4-1976 deemed to have been allotted to them under the provisions of the Act. Further, where a permanent account number has been allotted or is deemed to have been allotted, the person concerned is under obligation to quote such number in all challans for the payment of taxes, returns, correspondence, documents etc. Failure to comply with the provisions of Section 139A would entail penalty of a sum which may extend to five hundred rupees.

44.2 A test check carried out in some Commissioners' charges revealed the following irregularities :—

(i) *Allotment of permanent account numbers to assessees already on general index registers*

In 226 wards in 38 Commissioners' charges in Andhra Pradesh, Bihar, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal, 6,31,702 assessees were borne on the General Index Registers as on 31-3-1976. Out of these, permanent account numbers had already been allotted to 4,94,640 assessees before 31-3-1976 and 72,502 persons were allotted permanent account numbers during the year 1976-77. Upto 31-3-1977 permanent account numbers had not been allotted to a large number of assessees (64,560) borne on the General Index Registers as on 31-3-1976. Further, in 135 wards in 19 Commissioners' charges, after taking into account 41,117 assessees to whom permanent account numbers were allotted during the year 1977-78, the total figure of 2,79,154 assessees (2,06,982 allotted before 31-3-1976 plus 30,995 and 41,177 allotted during the years 1976-77 and 1977-78 respectively) did not compare favourably even with the figure of 3,19,464 assessees borne on the General Index Registers as on 31-3-1977. In Bombay charges, the number of assessees to whom permanent account numbers had been allotted by 31-3-1976, 31-3-1977 and 31-3-1978 were 6,53,398, 6,82,118 and 6,93,719 as against 5,59,525, 6,04,108 and 6,16,340 respectively as per General Index Registers and Blue Books. The numbers of assessees to whom permanent account number had not been allotted in 224 wards till 31-3-1978 stood at 57,274.

(ii) *Failure to file applications for allotment of permanent account numbers in time*

Applications for allotment of permanent account numbers were, under the Income-tax Rules, 1962, required to be filed with the Income-tax Officer before 31-7-1976. It was observed in test check that in Andhra Pradesh, Bihar, Gujarat, Kerala, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamil Nadu and Uttar Pradesh, applications for allotment of permanent account numbers were received by the Department in 1,45,538 cases after 31-7-1976. No record of such applications was maintained in Bombay and Haryana charges. Penal action in this regard was taken by the Department in 245 cases in Uttar Pradesh, 38 cases (out of which penalty proceedings in 31 cases were dropped) in Bihar and 52 cases in Madhya Pradesh. No penal action was taken in the remaining 1,45,203 cases, wherein the amount of maximum penalty involved under the Act, in the event of cases being successful, could be substantial at the rate of Rs. 500 per case.

(iii) *Omission to quote permanent account numbers in challans*

Where a permanent account number has been allotted to any person, he is required under the statute to quote such number in all his returns, correspondence, challans for the payment of taxes etc. It was noticed during test check that the permanent account numbers had not been quoted in several cases ; 9,058 in Punjab, 2,174 in Uttar Pradesh, 175 in Haryana, 85 in Rajasthan and 6 in West Bengal. In 7 cases in West Bengal, permanent account numbers were wrongly quoted in the returns, correspondence, challans etc.

(iv) *Permanent account numbers allotted twice over*

A test check in Bihar, Madhya Pradesh and West Bengal revealed that in 58 cases in West Bengal, 3 cases in Madhya Pradesh and one case in Bihar, permanent account numbers were allotted twice to one and the same assessee.

(v) *Non-cancellation of permanent account numbers standing against dead and infructuous cases*

Under Board's instructions of 30-8-1972, cases which are not "live" and in which no proceedings are pending, prompt action is required to be taken for their cancellation. It was noticed in test check that in West Bengal alone, in 54 cases where no proceedings were apparently pending, no action appeared to have been taken for their cancellation.

(vi) *Non-maintenance of registers of permanent account numbers*

The Board had issued instructions in December 1972 that a register to be called the "Register of Permanent Account Numbers" should be maintained with effect from 1-4-1973. No such register was maintained in most of the wards in Madhya Pradesh and West Bengal.

Final reply of the Ministry of Finance is awaited (April 1979).

45. *Income escaping assessment*

(i) Under the provisions of the Income-tax Act, 1961, if expenditure allowed in any assessment year is subsequently recouped, the amount so recouped is deemed to be profits and gains of business or profession and accordingly chargeable as income of the previous year in which it is received and is assessed to tax.

An assessee-bank whose business was taken over by the Custodian under the Goa, Daman and Diu (Bank Reconstruction) Regulations, 1962, received subsidies amounting to Rs. 56,36,575 and Rs. 7,50,000 from the Government of India towards interest paid by the assessee on the loans due to the Government of India, during the previous years relevant to the assessment years 1970-71 and 1972-73 respectively. While the interest paid by the assessee to the Government was allowed as business expense in the computation of income, the amounts of subsidy received and credited to a separate account were not included in the total income for

the respective assessment years. This resulted in short levy of tax aggregating Rs. 40,06,732.

The Ministry of Finance have accepted the objection.

(ii) According to the provisions of the Income-tax Act, 1961, while computing the total income of a person any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government shall not be included in total income. Under the pension rules of the Central Government, commutation of pension is permissible upto a maximum of one-third only. However, under executive instructions, in the case of a permanent civil servant who opts for service in a Public Undertaking and chooses to receive lump sum amount in lieu of pension, the commuted value of one-third of pension will be exempt from tax, whereas the terminal benefit equivalent to capital value of two-third of pension payable in consideration of the optee's surrendering the right for drawing the two-third pension will be chargeable to tax as income of the year in which it is due.

In the case of a Civil Government servant who opted to serve in a Public Undertaking and received lump sum amount in lieu of two-third of pension, the above provisions of the law were not followed. This resulted in under-assessment of income of Rs. 88,254 in the assessment year 1976-77, leading to short levy of tax of Rs. 55,749.

Further, in the case of three employees of the Defence Department who opted to serve in Public Undertakings and received lump sum amounts in lieu of two-third of pension, their assessments for the assessment year 1976-77 were not completed in accordance with the above provisions of law even though tax was deducted at source, treating the lump sum payments as not exempt from tax. This resulted in under-assessment of income of Rs. 1,61,264 in these three cases with short levy of tax of Rs. 84,396. There was total undercharge of tax of Rs. 1,40,145.

The Ministry of Finance have accepted the objection.

46. *Failure to observe the provisions of the Finance Act*

The Finance Act, 1974, as applicable for the assessment year 1974-75, prescribes levy of surcharge on income-tax in respect of an individual assessee at 10 per cent where total income does not exceed Rs. 15,000 and at 15 per cent in any other case.

In the case of an individual assessee, the Department levied surcharge at the lower rate of 10 per cent instead of 15 per cent leviable on the assessed income-tax of Rs. 12,41,250 for the assessment year 1974-75. Application of incorrect rate of surcharge led to tax undercharge of Rs. 62,063 with consequent short levy of interest of Rs. 25,767 and Rs. 13,975 respectively on account of delayed submission of return and non-payment of advance tax.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and additional demand of Rs. 1,01,805 has been raised.

47. *Incorrect computation of dividend income*

Under the provisions of the Income-tax Act, 1961, any payment by a private company of any sum by way of advance or loan to a shareholder, being a person who has substantial interest in the company, to the extent to which the company possesses accumulated profits, is deemed to be dividends in the hands of the shareholder and taxed. The development rebate reserve created by a company duly charging the profit and loss account, constitutes accumulated profits for this purpose.

A company in which the public were not substantially interested held development rebate reserve of Rs. 20,62,732 as on the last day of the previous year relevant to the assessment year 1973-74. It was noticed that on the last day of the previous year relevant to the assessment year 1973-74, the company had advanced a sum of Rs. 1,16,260 to a shareholder who had substantial interest in the company. The sum of Rs. 1,16,260 advanced to the shareholder was chargeable to tax as deemed dividend and the

tax involved was Rs. 78,760. Similar omission was noticed in not taxing Rs. 1,76,061 for the assessment year 1974-75 also.

The Ministry of Finance have accepted the objection in principle.

48. *Incorrect computation of business income*

(i) Under the Income-tax Act, 1961, income chargeable to tax is computed in accordance with the method of accounting regularly employed by the assessee. Where an assessee maintains accounts on the mercantile system of accounting, the income computed for assessment should include amounts due, though not actually received during the year.

An individual assessee having income from jewellery business, followed upto the assessment year 1972-73, the method of valuation of closing stock of 22 carat gold at the average cost price. However, in the assessment years 1973-74 and 1974-75 he adopted a different method of valuation of closing stock. The Department having accepted it in assessment, there was under-assessment of income of Rs. 13,418 and Rs. 41,923 for the assessment years 1973-74 and 1974-75 respectively leading to tax undercharge of Rs. 57,801.

While accepting the objection the Ministry of Finance have stated that the assessments in question have been revised raising an additional demand of Rs. 57,801.

(ii) An assessee-firm received Rs. 64,741 and Rs. 57,620 during the previous years relevant to the assessment years 1974-75 and 1975-76 respectively as subsidy from the State Government for investment in plant and machinery. While these subsidies constituted capital receipts and were not includible in the total income of the assessee for the relevant assessment years, these amounts should have been deducted from the value of machinery in determining the cost of the machinery to the assessee for the purpose of grant of depreciation allowance, development rebate and deduction allowable for new industrial undertakings. The

omission to do so resulted in under-assessment of income of Rs. 52,000 with consequent short levy of tax of Rs. 45,000 in the hands of the firm and the partners.

The Ministry of Finance have accepted the objection.

(iii) Under the provisions of the Income-tax Act, 1961, any expenditure paid out or expended wholly and exclusively for the purposes of business is allowable as deduction in computing the business income of an assessee. However, any expenditure in the nature of entertainment expenditure incurred within India by an assessee after 28th February, 1970 but before 1st April, 1977, is not allowable in the computation of income. Further, it has also been judicially held that the expenditure in the nature of *langer* expenses incurred by an assessee for entertainment of business constituents is in the nature of entertainment expenditure and is not an admissible deduction in computing income from business.

In the case of 19 assessees *langer* expenses claimed as deductions in assessments relating to the assessment years from 1971-72 to 1976-77 were allowed by the Income-tax Officer in the computation of taxable income. This resulted in total tax undercharge of Rs. 35,260.

The Ministry of Finance have accepted the objection.

(iv) Income-tax is chargeable for every assessment year in respect of the total income of the previous year of every person. The previous year is the financial year immediately preceding the assessment year but if the accounts of the assessee are made upto a date within the said financial year, the previous year may, at the option of the assessee, be the twelve months ending on such date.

Under the provisions of the Income-tax Act, 1961, as it stood prior to its amendment in 1972, winnings from betting in horse racing were exempt as receipts of a casual and non-recurring nature. This provision was amended with effect from the assessment year 1973-74 to make casual and non-recurring receipts

taxable if such receipts in the previous year exceeded Rs. 1,000 in the aggregate.

An individual accounted for his winnings from horse races regularly in his accounts made up and closed for the *Samvat* year (ending in October/November every year) and accordingly for the previous year ended 5th November, 1972, a sum of Rs. 60,087 being the dividend on jackpot winning tickets was accounted for in his current account with the firm in which he was a partner. The amount was received by the assessee in January, 1972. This amount was, however, not considered as income for the assessment year 1973-74 on the ground that only amounts received after April 1972 were taxable. This was not correct as the previous year relevant to the assessment year 1973-74 ended on 5th November, 1972. The omission to bring the dividend amounting Rs. 60,087 to tax resulted in short levy of tax of Rs. 54,470.

The Ministry of Finance have stated that the winnings from horse races in January 1972 can be taken as income only for the financial year 1971-72 relevant to the assessment year 1972-73 and are, therefore, not taxable. However, the fact remains that the assessee had returned the income from horse races in the previous year ending 5th November, 1972 in accordance with the method of accounting regularly followed by him in the past.

Incorrect allowance of depreciation and development rebate

49. *Depreciation*

Under the Income-tax Act, 1961 and the Rules framed thereunder, depreciation on buildings, plant and machinery is allowable at the prescribed rates calculated on the written down value each year.

In the assessment for the assessment years 1971-72 to 1973-74 a registered firm was allowed depreciation at the rate of 30 per cent on "Hoarding Structures" and "Kiosk Frames" against the admissible rate of 10 per cent. In addition, depreciation allowance of Rs. 21,731 carried forward from the assessment

year 1970-71 was wrongly set off twice against the positive income of the assessment year 1972-73. The mistakes led to tax undercharge of Rs. 90,767 for the assessment years 1972-73 and 1973-74.

The Ministry of Finance have accepted the objection.

50. *Development rebate*

Under the Income-tax Act, 1961, development rebate at 25 per cent is admissible in respect of plant and machinery used for manufacture of vegetable oils and oil-cakes by the solvent-extraction-process from seeds other than cotton seeds.

In the case of a firm, which was engaged in extraction of oil from rice bran, *mahuva* cake, *neem* cake and groundnut cake by the solvent-extraction-process, development rebate at 25 per cent was allowed. As oil was extracted from rice bran and oil cakes and not from seeds direct, development rebate was allowable at 15 per cent and not 25 per cent. The allowance of development rebate at incorrect rate resulted in short computation of total income by Rs. 40,350 and Rs. 47,339 for the assessment years 1973-74 and 1974-75 respectively. Further, extra shift allowance was allowed on electrical installation not entitled to such allowance. The short demand for the assessment years 1973-74 and 1974-75 due to these mistakes amounted to Rs. 55,310 in the case of the firm and its three partners.

The Ministry of Finance have accepted the objection.

51. *Irregular exemptions and excess reliefs given*

Under the provisions of the Income-tax Act, 1961, in the case of an assessee being a co-operative society, if the gross total income includes any income derived from certain activities specified in the Act, such income is allowed as deduction from the gross total income of the assessee. One of the activities, income from which is exempt, is marketing of agricultural produce of its members and this produce must be direct produce from agriculture. Income from a finished product is not exempt.

In the case of a co-operative society, deduction for income earned by way of commission received from the State Government on the monopoly procurement of cotton was allowed as deduction though income from monopoly procurement of cotton does not fall within the scope of the activities specified in the Income-tax Act, 1961. This resulted in under-assessment of income of Rs. 8,43,908 leading to short levy of Rs. 3,74,000.

The Ministry of Finance have accepted the objection.

52. *Irregular computation of capital gains*

(i) Any profits or gains arising from the transfer of a capital asset are chargeable to income-tax as capital gains. The difference between the full value of consideration and the cost of acquisition constitutes capital gains. In case where the capital asset became the property of the assessee before Ist January, 1954, the fair market value as on 1st January, 1954 is taken as the cost of acquisition. Further, if the asset represents a gift to the assessee, the cost of acquisition. by the previous owner together with improvements is relevant in determining the capital gains.

(a) Two individuals who were minor daughters and members of a Hindu undivided family purchased portions of a coffee estate in September 1971 from their father who was the Karta of the Hindu undivided family, for a consideration of Rs. 93,000 and Rs. 91,000 respectively. The purchase consideration did not, however, include the value of standing rose wood trees. The Hindu undivided family declared the value of the trees as gifts made to the two individuals and the gifts were also charged to gift-tax.

The two individuals sold the trees in the previous years relevant to the assessment years 1974-75 and 1975-76 and returned capital gains to tax. Instead of determining the cost of acquisition and deducting it from sale proceeds to arrive at the capital gains, the Income-tax Officer estimated the capital gains at 25 per cent of the sale proceeds for the assessment year 1974-75

and at 50 per cent for the assessment year 1975-76 and charged the capital gains to tax in the assessments completed in February 1975 and February 1976 respectively.

It was noticed in audit in December 1976 that the previous owner acquired the property through a family partition during the assessment year 1970-71 and the value of a tree was adopted at Rs. 600 for the purpose of the partition. The fair market value of the property as on Ist January, 1954 should have been far less. Even adopting the value of Rs. 600 per tree as cost of acquisition, the income from capital gains was under-assessed to the extent of Rs. 1,73,790 for the two years resulting in short levy of tax of Rs. 1,40,916.

The Ministry of Finance have accepted the objection.

(b) The assets of an assessee, a registered firm, doing business of supplying electricity to a town were taken over by the Electricity Board during the previous year relevant to the assessment year 1974-75. In the return of income for the assessment year 1974-75, the assessee returned business profit of Rs. 3,34,600 under Section 41(2) of the Income-tax Act, 1961 and long-term capital loss of Rs. 1,25,375 on account of sale of assets. While the profit of Rs. 3,34,600 was included in the assessed income, no orders were passed as regards capital loss of Rs. 1,25,375. However, the details of net capital loss enclosed with the return of income disclosed that the amount was arrived at by deducting the original cost of acquisition of the assets from the sale proceeds, whereas, since the assets had been allowed depreciation, the written down value of the assets as increased by the amount of profit brought to tax under Section 41(2) of the Act, should have been taken as the cost of these assets. If the correct method had been followed, there would have been capital gain of Rs. 2,03,972 instead of capital loss and it would have been short-term capital gains as the assets had been acquired within a period of five years of their sale. Consequently, the income was under--assessed by Rs. 2,03,972 resulting in undercharge of tax of Rs. 1,70,510.

The Ministry of Finance have accepted the objection.

(c) Three partners of a firm carrying on business of purchase and sale or development of plots of land and construction of buildings etc., contributed to the firm their plots of land purchased in August 1972, valuing Rs. 2,85,831, Rs. 50,385 and Rs. 49,250 respectively and in lieu, the firm afforded credits of Rs. 7,49,400, Rs. 1,32,240 and Rs. 1,29,120 in their capital accounts in April 1973. Of the three partners, two partners were assessable in one State while the third was being assessed in the Union Territory. These plots were further sold by the firm at the total cost of Rs. 11,49,276 in November 1973. These partners were not charged to any capital gain on the difference between the cost price and the amount credited to their capital accounts on the plea that no sale or transfer of land was involved as this was only a case of contribution of assets to a partnership firm.

The transfer of land by partners to the firm would constitute 'sale' because partners were given credit in the books of the firm as capital contribution. The assessing officer of the firm also conveyed to the respective Income-tax Officers assessing the partners that the transaction of conversion of land by the partners into stock-in-trade of the firm was not a genuine transaction and that the profit arising on the sale of the land was individual profit of the partners and assessable as capital gain in their hands. On this being pointed out, the Department intimated that an additional demand of Rs. 1,74,846 had been raised in the case of the two partners.

The Ministry of Finance have accepted the obove position.

(ii) The Act further provides that in cases where the fair market value of the asset on the date of transfer exceeds the declared value of consideration received, by an amount of not less than fifteen per cent of the value so declared, then the fair market value in place of the declared value shall be taken into account for determining the capital gain arising out of the transfer of the capital asset. The difference between the market value and the value declared for transfer is also liable to be assessed to gift-tax.

(a) In the case of an individual assessee the total income of Rs. 32,435 computed for the assessment year 1971-72 included long-term capital gains of Rs. 25,596 relating to land and buildings arising from sale of one-half portion thereof to his son and wife for a consideration of Rs. 1,38,000. However, in wealth-tax assessments for the years 1967-68 to 1969-70, the value of the entire property was adopted at Rs. 7,00,000 as determined in the appellate orders. Accordingly, for computing the capital gains, the market value of half of the property sold by the assessee to his son and wife should have been adopted at Rs. 3,50,000 in place of the sale price of Rs. 1,38,000. The under-valuation of the property in this respect resulted in under-assessment of long term capital gains by Rs. 1,63,677 with consequent tax undercharge of Rs. 1,33,834 in the assessment year 1971-72.

The Ministry of Finance have accepted the objection.

(b) In another case, an individual assessee sold his immovable properties for a declared consideration of Rs. 81,000 on 9th May, 1972 against the cost of acquisition of the properties estimated by the assessing officer at Rs. 45,256. Considering the sale price below the fair market value on the date of sale, the assessing officer estimated the value of the properties sold, at Rs. 1,40,000 on the basis of the value which had been adopted for levying stamp duty. The capital gains after allowing admissible deductions was accordingly determined at Rs. 54,848 for the assessment year 1973-74.

For wealth-tax assessment, the market value of these properties as on 31st March, 1972 had been returned and accepted at Rs. 2,45,240 and this value could reasonably have been adopted for determining the capital gains as against Rs. 1,40,000 considered by the Department for the purpose. Failure to do so resulted in under-assessment of capital gains by Rs. 68,406 with tax undercharge of Rs. 59,141 for the assessment year 1973-74.

The Ministry of Finance have accepted the objection.

(c) The amounts of capital gains arising from the sale of two properties, in the previous years relevant to the assessment years 1973-74 and 1974-75, were determined with reference to their

sale price of Rs. 35,000 and Rs. 1,60,000 respectively. However, according to the wealth-tax return of the assessee for the assessment year 1972-73 the market value of those properties before sale, was Rs. 70,000 and Rs. 2,06,440 respectively. Therefore, under the provisions of the Income-tax Act, 1961, the sale price was to be substituted by the fair market value of the properties and the amounts of capital gains determined with reference to the fair market value. The omission to do so, resulted in under-assessment of capital gains by Rs. 52,960 and short levy of tax to the extent of Rs. 38,440.

The Ministry of Finance have accepted the objection.

(d) The wealth-tax assessment records of an assessee—Hindu undivided faimly for the assessment year 1970-71 disclosed that the family was one of the four co-owners having equal share in a house property and each family occupied a specified part thereof. At the close of the previous year relevant to assessment year 1970-71 the assessee and the two other owners transferred their share in the property to the fourth party, each receiving consideration of Rs. 90,000 on the estimated value of the property amounting to Rs. 3,60,000. During the course of the wealth-tax assessments of the assessee for the assessment year 1968-69 onwards, the Wealth-tax Officer did not accept the value of the property as returned by the assessee and referred the case to the departmental Valuation Officer for valuation in January 1977. According to the report of the Valuation Officer dated 25th February, 1977, the market value of the property as on 31st March, 1970 was Rs. 9,37,809. Since during the same period the assessee had transferred his share in the property estimating the value of the property at Rs. 3.60 lakhs only, the capital gain derived on sale of the property should have been determined by taking the market value of his share in the property as the full value of consideration received on transfer. However, no capital gain was either returned or brought to tax in the income-tax assessment for the assessment year 1970-71. Taking the actual cost of acquisition of the property, to be Rs. 2.80 lakhs, as valued for the wealth-tax assessment for the assessment year 1963-64 and assessee's share valued at Rs. 70,000, the amount of capital gain omitted to be taxed in the hand of the assessee amounted to Rs. 1,64,450

Consequently, the income of the assessee was under-assessed by Rs. 87,697 resulting in undercharge of tax of Rs. 52,305.

Besides, gift-tax of Rs. 14,417 on the 'deemed gift' of Rs. 1,44,452 being ¼th of the excess of fair market value of Rs. 9,37,809 over the declared consideration of Rs. 3,60,000, was not levied. Similar under-assessments of income-tax and gift-tax could arise in the case of the two other co-owners also.

The Ministry of Finance have accepted the objection in principle.

53. *Mistakes in assessments of firms and partners*

(i) Under the provisions of the Income-tax Act, 1961, a partnership firm once allowed registration for the purpose of income-tax is entitled to renewal of registration for every subsequent year provided there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted. For getting the registration renewed, the firm has to submit each year to the Income-tax Officer a declaration in the prescribed form. In the case of any change in the constitution of the firm or the shares of the partners, a fresh application for registration has to be submitted by the firm.

(a) The accounts of a firm, assessed in a ward, showed that the profits of the firm were not distributed in the ratio indicated in the partnership deed. In spite of this departure from the provision in the deed and in the absence of a fresh application for registration, the Income-tax Officer continued to allow registration to the firm instead of treating it as an unregistered firm. This led to short levy of tax to the extent of Rs. 3,59,213 for the assessment years 1967-68 to 1975-76

The Ministry of Finance have accepted the objection.

(b) A firm already in existence, neither filed the return of income nor furnished a declaration for its continuance for the assessment year 1966-67. In their order of January 1970, the Department determined that there was no taxable income for the assessment year.

A scrutiny of the records revealed that for the assessment year 1965-66, the original assessment completed in March 1970 on a taxable income of Rs. 13,59,681 was subsequently revised in August 1976 to give effect to appellate orders deleting income of Rs. 3,08,890 and holding it as taxable in the next assessment year viz., 1966-67. The assessment for the assessment year 1966-67 was not, however, reopened to consider this aspect. This resulted in non-levy of tax of Rs. 2,13,286.

The Ministry of Finance have accepted the objection.

(ii) Under the Income-tax Act, 1961, firms are classified into two categories; registered firms and unregistered firms. A registered firm pays only a small amount of tax on its income; the rest of the income is apportioned among the partners and included in their individual assessments. Where at the time of completion of the assessments of the partners, the assessment of the firm has not been completed, the share income from the firm is included in the assessments of the partners on a provisional basis. In such cases, the assessments of the partners are revised later to include the final share income when the assessment of the firm is completed and for this purpose, the Income-tax Officers are required to maintain register of cases of provisional share income so that these cases are not omitted to be rectified.

(a) In the course of local audit conducted during 1977-78, it was noticed that in 50 cases involving tax effect of Rs. 1,03,792, no action was taken to rectify the provisional assessments of the partners. Further, these cases were not even noted in the register prescribed for the purpose, with the result that there was no check against non-rectification of these cases.

The Ministry of Finance have accepted the objection. The assessments in question are stated to have been revised raising an additional demand of Rs. 1,03,792.

(b) The assessment of a registered firm for the assessment year 1968-69 was reopened under Section 147(a) of the Income-tax Act, 1961 and the reassessment was finalised on the 23rd March, 1976. However, assessments of the partners of the firm were not rectified including the revised share of income from the firm till September 1977. No note of pending action had

been kept either in the assessment records of the partners or in some other record. This resulted in total under-assessment of income of Rs. 87,429 and short levy of tax of Rs. 72,943 in the hands of the three partners for the assessment year 1968-69.

The Ministry of Finance have accepted the objection.

(iii) In their instructions of September 1972 the Central Board of Direct Taxes laid down that where the cost of production of a cinema film is below Rs. 10 lakhs, the entire cost thereof may be allowed as a deduction in the very first year of production if the film is released in the first half of the accounting year. According to the Board's instructions, in case the film is released in the later half of the accounting year, the value of the film should be taken at 50 per cent of the cost of production at the end of that accounting year and the balance 50 per cent should be adjusted in the second year.

A firm engaged in film production incurred an expenditure of Rs. 2,65,000 in production of a feature film during the assessment year 1970-71. In the assessment for the assessment year 1971-72, the assessing officer allowed 50 per cent of the expenditure *viz.* Rs. 1,32,500 as a deduction and allowed the balance 50 per cent of production expenditure in the assessment year 1971-72. On an appeal preferred by the assessee for the assessment year 1970-71, the Appellate Assistant Commissioner passed orders that in the first year 70 per cent of the total cost of production *viz.* Rs. 1.85 lakhs should be allowed and the assessment was accordingly revised in May 1974. Though the assessment for the year 1971-72 was rectified later in September 1975, the original allowance of 50 per cent of the expenditure was not revised to 30 per cent resulting in excess allowance of Rs. 53,000, and resultant excess carry forward of loss of Rs. 53,000.

The Ministry of Finance have accepted the objection.

54. *Omission to include income of spouse/minor children*

(i) Under the provisions of the income-tax Act, 1961, in computing the total income of an individual there shall be included all such income as arises directly or indirectly to the

spouse/minor child of such individual from the membership of the spouse/minor child in a firm carrying on a business in which such individual is a partner. Further, it has been judicially held that even where an individual represents a joint family the partnership is not between the family and the other partners but between the individual personally and the other partners. In such cases, the Karta may be accountable to the family for the income received but the partnership is exclusively one between the contracting members. It follows that even in such cases the clubbing provisions of the Act are attracted.

In 8 cases in 6 Commissioners' charges, spread over the assessment years 1962-63 to 1976-77, such incomes of spouse/minor children were not included in the total income of the assessees concerned resulting in tax undercharge of Rs. 4,61,055.

(ii) The Act, as amended from 1st April, 1976, further provides that the income arising to a minor child of an individual from the admission of the minor to the benefit of partnership in any firm is also to be included in computing the income of that individual.

In 3 cases in 3 Commissioners' charges, such incomes of minor children for the assessment year 1976-77 were not included in the total income of the assessees concerned. The omission to do so resulted in tax undercharge of Rs. 50,826.

(iii) Further, according to an amendment made from 1st April, 1976, in computing the total income of an individual, income arising directly or indirectly to the spouse of such individual by way of salary, commission, fees or other form of remuneration whether in cash or in kind from a concern in which the individual has substantial interest, is to be included in his total income.

In 2 cases in 2 Commissioners' charges, such income was not so included in the total income of the assessee concerned for the assessment year 1976-77 resulting in tax undercharge of Rs. 47,202.

(iv) Under the provisions of the Act, income arising from assets transferred to the spouse and the son's wife (on or after 1st June, 1973) otherwise than for adequate consideration has to be clubbed with the income of the transferor.

In 2 cases in 2 Commissioners' charges, such income was not included in the total income of the assessees concerned during the assessment years ranging from 1967-68 to 1977-78 resulting in tax undercharge of Rs. 33,069.

The total tax undercharge on account of the above mistakes amounted to Rs. 5,92,152.

The Ministry of Finance have accepted the objection in 11 cases; their reply is awaited in 4 cases (April 1979).

55. *Non-levy/incorrect levy of interest*

(i) Under the provisions of the Income-tax Act, 1961, where an assessee fails to pay the amount otherwise than by way of advance tax, specified in any notice of demand within thirty-five days of the service of the notice, he shall be liable to pay interest at the prescribed rates commencing after the end of the period of thirty-five days to the date on which such payment is made. Further, under the Income-tax Rules, 1962, interest chargeable has to be calculated at the end of each financial year and fresh demand raised.

In 55 cases in 4 Commissioners' charges, interest amounting to Rs. 1,73,984 on belated/non-payment of amounts mentioned in the notices of demand had not been levied against the assessees concerned.

The Ministry of Finance have accepted the objection.

(ii) The regular assessment for the assessment year 1971-72 of an assessee was completed on 29th March, 1974 at an income of Rs. 5,85,122 creating a demand of Rs. 5,21,409 (income-tax Rs. 5,05,289, interest Rs. 11,080 for belated filing of return and interest of Rs. 5,040

for short fall in payment of advance tax). Thereafter, the assessment was revised under Section 154 of the Income-tax Act, 1961 on 25th November, 1976 and the income was determined at Rs. 5,14,053 creating a demand of Rs. 4,54,959 which included interest demands of Rs. 11,080 and Rs. 5,040. The interest chargeable from the assessee under the prosions of the Act, however, correctly works out to Rs. 11,587 and Rs. 1,10,954 respectively. Due to wrong calculation, interest amounting to Rs. 1,06,421 was undercharged.

Final reply of the Ministry of Finance is awaited (April 1979).

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

Under the provisions of the Income-tax, 1961, interest is payable to an assessee where refund of tax due in consequence of appelate orders is not made within three months from the end of the month in which the order is passed.

(a) An individual assessee was entitled to refunds of tax and penalty of Rs. 2,37,723 and Rs. 58,500 respectively for the assessment year 1960-61 arising out of appellate orders passed on 30th March, 1972 and 6th January 1972. Refund orders were issued only on 4th November, 1976 and 20th October, 1976 respectively, *i.e.* after more than four years and the assessee was paid interest of Rs. 1,23,615 and Rs. 31,590 on account of delay in making the refunds. Had the Income-tax Officer taken action within the period of three months allowed in the Act, the payment of interest to the extent of Rs. 1,55,205 could have been avoided.

The Ministry of Finance have accepted the objection.

(b) In another case, an individual assessee was entitled to refund arising out of appellate orders dated 29th November, 1973, 28th February, 1974 and 22nd January, 1974 for the assessment years 1967-68 to 1972-73. The Department issued the refund only in March 1976 and consequently interest of

Rs. 94,857 had to be paid to the assessee for delayed refunds under the provisions of the Act. Had the Department taken action within the period of three months, the payment of interest of Rs. 94,857 could have been avoided.

The Ministry of Finance have accepted the objection.

(c) Still in another case of an assessee, the assessments for the assessment years 1971-72 and 1972-73 concluded in the status of body of individuals were set aside by the Income-tax Appellate Tribunal in February 1974 and April 1974 respectively. Refunds due were ordered only on 3rd November, 1976, and the refunds included interest of Rs. 56,876. If the refunds were made within the prescribed period, payment of interest of Rs. 56,876 could have been avoided.

The Ministry of Finance have accepted the objection.

57. *Non-production of records to Revenue Audit for scrutiny*

According to the Board's instructions of October 1968, reiterated in April 1970, the records when requisitioned in revenue audit, are to be made available by the Income-tax Officers on the same day and if any particular record is not made available to them, the reason for the same should be stated specifically in a note and the records should on no account be withheld by the Income-tax Officers on flimsy grounds. It was pointed out in paragraph 46 of the Audit Report for 1973-74 that non-production of records resulted in not carrying out in audit its statutory duty.

During the audit for 1975-76 of a ward from 9th August, 1976 to 7th September, 1976, the assessing officer did not produce the records, *inter alia,* of an assessee, even though these records were actually available with him, on the ground that he needed the records for passing urgent orders. It was noticed subsequently (during next audit in December 1977) that the Income-tax Officer had actually disposed of the case on 20th August, 1976 and had yet withheld the file till the last day of audit (7th September, 1976).

It was seen during the next audit (December 1977) of the same ward, that in the case of the above assessee whose records were not produced to audit earlier, the Income-tax Officer had passed various orders during 1975-76 which resulted in extending to the assessee irregular refunds and incorrect tax concessions aggregating Rs 58,240. The witholding of the case records from Audit kept the irregularities undetected till December 1977 and enabled the assessee to retain undue financial benefits for more than a year.

Final reply of the Ministry of Finance is awaited (April 1979).

58. *Incorrect dropping of acquisition proceedings*

Under the provisions of the Income-tax Act, 1961 where an immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred for an apparent consideration which is less than the fair market value, the competent authority may initiate proceedings for the acquisition of such property if he has reason to believe that the consideration shown in the transfer deed has not been truly stated (the fair market value of the property being in excess of the apparent consideration by more than 15 per cent of such consideration) with a view to reducing or evading the transferor's tax liability or with a view to concealing any income or any moneys or other assests of the transferee. Cases of transfers will, however, be saved from any such acquisition proceedings under the Act where the consideration shown in the transfer deed was already agreed upon in an agreement for sale, and such agreement was registered under the Indian Registration Act. 1908.

(i) An assessee-firm transferred, in September, 1974, by means of a registered sale deed, immovable properties consisting of land, bungalow, factory building etc. to five persons for a consideration of Rs. 1,85,000. The departmental Valuation Officer to whom the case was referred, determined (May 1975) the market value of the property, as on the date of sale, at Rs. 3,55,000. The competent authority started proceedings

for the acquisition of the property, but these were dropped in August 1975 although;

(a) the fair market value of the property exceeded the apparent consideration by more than 15 per cent of the latter;

(b) the under-statement of value in the sale deed resulted in undue reduction of tax on capital gains;

(c) immediately after the sale, the rental value of the property increased by 250 per cent, indicating that, before the transfer, the amount of income from the property was not shown correctly; and

(d) as the difference between the market value and the apparent consideration was more than 25 per cent of the latter, the consideration of the transfer was not truly stated in the instrument of transfer.

The provisions of Sections 269C and 269F(6) of the Income-tax Act, 1961, which were fully satisfied in this case, required the competent authority to acquire the properties worth Rs. 3,55,000 on payment of Rs. 2,13,250 (apparent consideration increased by 15 per cent thereof). The dropping of the proceedings, was not in consonance with law and resulted in forgoing of revenue to the extent of Rs. 1,41,750.

The Ministry of Finance have accepted the objection.

(ii)(a) During the audit of two acquisition ranges, it was noticed that in eight cases where the apparent consideration (aggregating Rs. 7,73,000) relating to certain properties transferred was considerably less than their fair market value (Rs. 12,48,976), the Department dropped the acquisition proceedings accepting the claim that the consideration shown in the transfer deed was truly stated as it was supported by agreements of sale. As under the Act, the consideration for the transfer of property can be taken as truly stated in the sale deed only if the sale agreements are duly registered under the Indian Registration Act, 1908, the dropping of the proceedings was not in order.

(b) In another Commissioner's charge, a house property, the fair market value of which, as in July 1974, was determined by the departmental Valuation Officer at Rs. 2,17,775, was transferred twice, first in December 1973 for consideration of Rs. 42,000 and then in July 1974 for consideration of Rs. 45,000. No proceedings for the acquisition of the property were initiated after the first sale, nor reasons therefor were recorded, although the conditions laid down in the Act, for the acquisition of the property, were fully satisfied. After the second transfer, the proceedings, though started (February 1975) were dropped (December 1975) on the ground that the transfer did not attract the provisions of the Act, because, it being a sale with the condition of re-transfer after three years to the transferer, was in essence a mortgage. However :—

(a) as there was no mention in the registered sale deed that the transfer was conditional, the transfer could not legally be held so under the Transfer of Property Act;

(b) a sale, even if there was a condition for re-sale, could not be treated as mortgage;

(c) no re-sale of the property actually took place after the expiry of three years;

(d) the difference between the fair-market value and the apparent consideration was several times more than the limit prescribed in the Act;

(e) the under-statement of value in the sale deed resulted in the undue reduction of tax on capital gains; and

(f) because the difference between the market value and the apparent consideration was more than 25 per cent of the latter, the consideration of the transfer was not truly stated in the instrument of transfer.

The provisions of the Act, which were fully satisfied in this case, required the competent authority to acquire the property worth Rs. 2,17,775 on payment of Rs. 51,750 (apparent consideration increased by 15 per cent thereof). The dropping of the proceedings was irregular and resulted in forgoing of revenue to the extent of Rs. 1,66,020.

(c) In another Commissioner's charge, in the case of properties in 3 cases, the value of properties were shown in the instruments of transfer as registered on 10th January, 1973, 28th February, 1973, and 13th December, 1973 as Rs. 32,251, Rs. 25,000 and Rs. 30,000 respectively. In the two cases, fair market value was estimated at Rs. 65,900 and Rs. 50,500 on the basis of reports of the departmental Valuation Cell on the date of registration. In the third case, on the basis of information received, the Inspecting Assistant Commissioner informed the Commissioner of Income-tax, that the fair market vlaue of the land would be around Rs. 90,000. The acquisition proceedings in these cases were initiated. But subsequently on the basis of objections raised by the transferees who contended that the agreements to buy the properties were reached in 1969, 1968 and 1972 respectively and that the valuation of the properties as on those dates should be taken into account, the Inspecting Assistant Commissioner agreed to consider the lower prices prevalent in 1969, 1968 and 1972 respectively and accordingly dropped the acquisition proceedings.

Final reply of the Ministry of Finance is awaited (April 1979).

CHAPTER IV

WEALTH-TAX

59. The actual receipts under wealth-tax in the financial years 1973-74 to 1977-78 compared with the budget estimates of these years, thus :—

Year	Budget estimates	Actuals
	(Rupees in crores)	
1973-74	43	35.78
1974-75	40	39.23
1975-76	43	53.73
1976-77	52	60.44
1977-78	54.90	48.46 (prov)

The arrears of demand and cases pending assessment as on 31st March, 1978 were Rs. 56.51 crores and 3,14,224 respectively.

60. During the test audit of assessments made under the Wealth-tax Act, 1957, conducted during the period from 1st April, 1977 to 31st March, 1978, the following types of mistakes resulting in under-assessment of tax were noticed :—

(i) Mistakes in calculation of tax.
(ii) Wealth escaping assessment.
(iii) Incorrect valuation of assets.
(iv) Mistakes in the computation of net wealth.
(v) Irregular/excessive exemptions and reliefs.
(vi) Non-levy/short levy of additional wealth-tax.
(vii) Non-levy/incorrect levy of penalty and interest.
(viii) Incorrect status adopted in assessments.
(ix) Mistakes in giving effect to appellate orders.
(x) Avoidable losses of revenue.

A few cases illustrating such mistakes are given in the following paragraphs.

61. *Mistakes in calculation of tax.*

61.1 In test check by Audit, mistakes in calculation of tax resulting from arithmetical errors, application of incorrect rates, allowance of initial or other exemptions twice over, etc. continue to be noticed in various wards. These mistakes could generally have been avoided, if the Internal Audit Organization of the Department had been strengthened in accordance with the recommendations made by the Public Accounts Committee from time to time and reviewed in paragraphs 12.8 to 12.15 of their 186th Report (Fifth Lok Sabha).

61.2 *Application of incorrect rates.*

(i) The Schedule to the Income-tax Act, 1961 and to the Wealth-tax Act, 1957, as amended by the Finance Act, 1973, prescribe a higher rate of tax (income-tax as well as wealth-tax) for every Hindu undivided family having at least one member with assessable income and/or net wealth, with effect from the assessment year 1974-75. As indicated below, a number of test cases were pointed out in the previous Audit Reports where, in the cases of such specified Hindu undivided families, higher rates of tax were omitted to be applied :—

Audit Report.	*Paragraphs.*	*Under-assesement.*	
		Income-tax Rs.	Wealth-tax Rs.
1975-76	53(i)	2,18,624	
	94(i)		1,67,180
1976-77	53(iii)	52,111	
	80(i)		1,92,967

Such mistakes came to be noticed in test audit, in the period from April, 1977 to March, 1978 also, in seventy cases of specified Hindu undivided families in thirty-two Commissioners' charges, where under-assessment of wealth-tax of Rs. 5,30,575 resulted from omission to adopt higher rates of tax applicable for such families in the assessment years 1974-75 to 1976-77. Similar mistakes occurred in twenty-seven cases of income-tax assessments in one Commissioner's charge, involving short levy of income-tax of Rs. 27,226.

The Ministry of Finance have accepted the objection in all the cases of wealth-tax and of income-tax. Additional wealth-tax raised in these accepted cases is of Rs. 4,60,938 out of which additional tax collected is Rs. 3,79,101.

61.3 The Central Board of Direct Taxes issued instructions in November, 1977, directing that assessments be reviewed from the assessment years 1974-75 onwards with a view to finding out mistakes in the application of rates of taxes in the case of specified Hindu undivided families and that a note be recorded in the assessment records that these calculations had been reviewed. Having regard to widespread and heavy under-assessments due to application of incorrect rates in the case of specified Hindu undivided families noticed in test audit, the Ministry of Finance was approached in August, 1978 to consider the desirability of getting a review conducted by the Board, of income-tax and wealth-tax assessments of Hindu undivided families for the assessment years 1974-75 onwards to locate other similar cases of under-assessment. Thereupon, the Ministry of Finance reiterated in January, 1979 their earlier instructions of October, 1976 and December, 1976 for conducting a general review of all cases of Hindu undivided families assessed for the assessment year 1974-75 onwards. The results of an incomplete review conducted by the Department (as reported by the Ministry of Finance in March, 1979) indicated under-assessments in 1,041 cases of income-tax and 132 cases of wealth-tax of tax of Rs. 9,29 lakhs and Rs. 3.93 lakhs respectively.

61.4 The Department raised tax demand of Rs. 19,239 only on the net wealth computed at Rs. 11,41,316 in the assessment year 1975-76 in the case of an individual assessee whereas tax of Rs. 25,175 was correctly leviable. The mistake in calculation of tax which resulted from adoption of rates of tax for the assessment year 1974-75 in the assessment year 1975-76 led to undercharge of tax of Rs. 5,936. The fact that the assessee

had paid self-assessment tax of Rs. 25,265 as against the tax demanded of Rs. 19,239 showed that the assessee had adopted the correct rate.

The Ministry of Finance have accepted the objection; additional tax of Rs. 5,936 has been collected by adjustment.

In three other cases in as many Commissioners' charges, test-check, conducted between May, 1977 and December, 1977, revealed the application of lower rate of tax of the assessment year 1974-75 in the wealth-tax assessments for the assessment years 1975-76 and 1976-77. This mistake in not applying the correct rates resulted in under-assessment of wealth-tax of Rs. 18,528 in these three cases.

The Ministry of Finance, while accepting the objection have stated that additional tax of Rs. 18,528 has been collected.

Incorrect allowance of initial exemption.

61.5 Upto the assessment year 1971-72, net wealth upto Rs. one lakh in the case of an individual and Rs. two lakhs in the case of a Hindu undivided family was not subjected to any wealth-tax and wealth in excess of these limits was subjected to tax on a graded scale. With effect from the assessment year 1972-73, the initial exemption was withdrawn with the result that, where the assessed net wealth is above the no-tax limit of Rs. one lakh or Rs. two lakhs, wealth-tax is leviable on the whole of the net wealth.

(i) While computing the net wealth of an assessee Hindu undivided family for each of the assessment years 1970-71 and 1971-72, deduction for initial exemption of Rs. two lakhs was made and its net wealth was determined as Rs. 1,99,000 which was taxable. It was, however, not taxed by incorrectly treating it to be below the no-tax limit of Rs. two lakhs. In wealth-tax assessments for the assessment years 1972-73 to 1975-76, initial exemption of Rs. two lakhs was incorrectly allowed. These mistakes resulted in under-assessment of wealth by Rs. two lakhs for each of these assessment years with consequent short levy of tax of Rs. 30,915 for the assessment years 1970-71 to 1975-76.

While accepting the objection, the Ministry of Finance have stated (December 1978) that the assessments are being revised.

(ii) In the case of an individual, initial exemption of Rs. one lakh was given twice in the wealth-tax assessments for the assessment years 1967-68 to 1971-72. Initial exemption of Rs. one lakh was not allowable in the assessment year 1975-76 but it was incorrectly allowed. Further, in the same case, investments in specific securities not, in themselves, valuing above Rs. 1.50 lakhs were exempted over and above the value of shares in companies, while exemption for these investments and shares was to be limited to Rs. 1.50 lakhs. Incorrect exemption so allowed was for Rs. 97,600 in the assessment year 1972-73, for Rs. 1,04,471 in the assessment year 1973-74, for Rs. 97,600 in the assessment years 1974-75 and 1975-76 and for Rs. 79,000 in the assessment year 1976-77. The combined effect of these mistakes was total undercharge of tax of Rs. 19,060 in all these assessment years.

The Ministry of Finance have accepted the objection.

(iii) In the wealth-tax cases of another individual and of another Hindu undivided family, such incorrect allowance of initial exemption of Rs. one lakh and Rs. two lakhs respectively was made in the assessment years between 1971-72 and 1976-77, leading to undercharge of tax of Rs. 11,664.

The Ministry of Finance, while accepting the objection, have stated (January, 1979) that assessments are being rectified.

(iv) In the wealth-tax assessment of a Hindu undivided family for the assessment year 1971-72, the value of certain immovable properties was determined after allowing the statutory exemption of Rs. one lakh in respect of a house comprising these properties. The Department adopted this value as the basis for valuation of these properties for the assessment years 1972-73 to 1974-75 but, in so doing, allowed this exemption again. Due to the exemption, thus, allowed twice, there was under-assessment of wealth by Rs. 1,00,000 in each of the three assessment years from 1972-73 to 1974-75 with consequent total undercharge of tax of Rs. 16,695 (including

additional wealth-tax leviable on correct net value of these properties as urban assets).

The Ministry of Finance have accepted the objection and stated that due to variation in assessed net wealth the additional demand raised is Rs. 59,523. Further particulars are awaited (April, 1979).

Mistake in totalling.

61.6 A member of large family group filed his wealth-tax return for the assessment year 1974-75 on 6th September, 1974, declaring the value of his movable assets as Rs. 12,04,032 and of his liabilities as Rs. 3,55,298. His returned net wealth, thus, worked out to Rs. 8,48,734. The Wealth-tax Officer did not make provisional assessment under Section 15C of the Wealth-tax Act, 1957 on receipt of the wealth-tax return. It was noticed in audit on 20th December, 1977 that the market value alone of quoted shares in certain companies, comprised in the movable assets, was Rs. 18,15,742, as was determined by the Wealth-tax Officer on completion of regular assessment on 21st March, 1977. In this regular assessment, the aggregate value of his assets was taken as Rs. 20,75,938 as against their correct value of Rs. 21,76,038. The arithmetical mistake in the dropping of one lakh of rupees, thus, resulted in under-assessment of wealth of Rs. 1,00,100 and in undercharge of tax of Rs. 7,219 in the assessment year 1974-75.

In the same case, against the self-assessment tax paid of Rs. 12,621, the tax demanded on regular assessment on 21st March, 1977 (notice of demand was served on 13th May, 1977) was Rs. 70,636. Though, the additional tax so demanded had not been paid up to 20th December, 1977, the date of audit, no interest under section 35(2) of the Wealth-tax Act, 1957 had been charged.

The Ministry of Finance have accepted the objection; additional tax raised is Rs. 7,219.

62. *Assessment of private family trusts.*

In the case of private family trusts, Income-tax Act, 1961 and Wealth-tax Act, 1957 provide for clubbing of income and

wealth with the income and net wealth of the settlors and application of minimum rates of tax. Failure to apply these provisions has been noticed in test audit; a few illustrative cases are given below :—

(i) A created a private trust X on 29th November, 1969 by initial settlement of Rs. 10,000 for the equal benefit of five minor children of his brother B and constituted B's wife as its sole trustee. B, on the same day, also created another private trust Y with initial settlement of Rs. 9,999 for the equal benefit of three minor children of A and constituted A's wife its sole trustee. Thus, these two identical trusts were created by two brothers through inter-connected and cross transactions for the benefit of their own minor children. Trust X through its trustee, B's wife, was the only other partner of A in a firm. Similarly, trust Y through its trustee, A's wife, was the only other partner of B in another firm. Applying Supreme Court's decision in C.I.T. V. Kothari (49 ITR 107), the share income of trusts X and Y in the respective firms was clubbable with the income of the transferors A and B under the provisions of the Income-tax Act, 1961. It was, however, noticed in audit (February, 1977) that share income of these trusts was allocated to their beneficiaries and assessed to income-tax in their hands for the assessment year 1976-77. The omission to club the income of the trusts with the income of A and B resulted in under-assessment of income-tax of Rs. 55,474 in the assessment year 1976-77.

The Ministry of Finance have accepted the objection; they have stated that additional demand of Rs. 55,474 has been raised.

(ii) A lady created three trusts in 1957 by settling certain shares in companies, each for the benefit of each one of her three sons who was a sole beneficiary of the corpus of one of the these three trusts. Thus, the inclusion of the corpus of these trusts in the net wealth of the respective sole beneficiary was the proper course which the Wealth-tax Officer was required to adopt in these cases under Section 21(2) of the Wealth-tax Act, 1957.

As this was not done, the net wealth of the three sole beneficiaries for a number of years was found to be 'not assessable'. A test check of these cases by Audit in February, 1977 showed that the beneficiary in one trust was assessed to wealth-tax for the assessment years 1972-73 and 1973-74 and the beneficiaries of the other two trusts were assessed for the assessment year 1974-75. The escapement of wealth and under-assessment of wealth-tax due to omission to club the corpus of the trust with the net wealth of the respective beneficiaries could not be computed due to want of details in the assessment records.

The Ministry of Finance, while accepting the objection, have stated (March, 1979) that notices for bringing the escaped wealth to tax have been issued in all the three cases.

(iii) A private discretionary trust was created on 30th November, 1968 with a cash settlement of Rs. 1,001 and subsequently with donations of Rs. 30,000 by settlor's wife (December, 1968) and of Rs. 35,000 in May, 1969 and Rs. 42,546 in April, 1970 by others. The trust was declared for the benefit of the male members of the branches in the family of the settlor after they attained the age of 50. Each such member would be paid Rs. 6,000 per annum or such sum as makes up Rs. 6,000 in a year if he had separate income. It was noticed in audit that the trustees had paid Rs. 6,000 in each of the previous years relevant to the assessment years 1970-71 and 1972-73 to 1975-76 and Rs. 3,000 in the previous year 1970-71 to the father of the settlor who could not be a beneficiary of the trust. Further, in the assessment years 1972-73 to 1975-76, the yearly payment of Rs. 6,000 was incorrectly allowed as a deduction from the assessable income of the trust.

The trust was assessable as 'association of persons' at the minimum rate of 65 per cent for income-tax and 1½ per cent for wealth-tax on its income and corpus respectively from the assessment year 1971-72. These minimum rates were, however, not applied.

The combined effect of these mistakes led to under-assessment of income-tax and wealth-tax respectively of Rs. 28,117 and Rs. 5,925 for the assessment years 1971-72 to 1975-76.

The Ministry of Finance have accepted the objection.

(iv) In three other private family trusts wherein the shares of the beneficiaries were indeterminate and unknown, under-assessment of wealth-tax of Rs. 16,560 in various assessment years between 1971-72 and 1976-77 were noticed in test audit. This under-assessment was caused by non-application of the minimum rate of 1½ per cent.

The Ministry of Finance have accepted the objection in all the three cases.

(v) Trustees of a private family trust, created in May, 1967, disclosed wealth in October 1975 under the Voluntary Disclosure of Income and Wealth Act, 1976 and they also filed, in January 1976, income-tax returns for the assessment years 1967-68 to 1975-76. The income-tax assessment for the assessment year 1973-74 was completed in March, 1976 and action was initiated in respect of earlier assessment years but the Income-tax Officer omitted to bring to gift-tax the value of the properties settled on this trust comprising buildings and lands in cities, agricultural lands and shares in a company. The settlor of this trust was borne on the register (blue book) of the ward as a wealth-tax assessee when the trust was created in May 1967. There had, thus, been omission to levy the gift-tax at that stage also. The gift-tax leviable in this case, on the basis of disclosed wealth of Rs. 3,10,000, was Rs. 57,750 which escaped assessment.

The Ministry of Finance have accepted the omission and stated (January, 1979) that action to bring the gift to tax has been initiated.

63. *Wealth escaping assessments due to lack of correlation with records of other direct taxes.*

The need for a proper co-ordination among the assessment records pertaining to different direct taxes to ensure an overall improvement in the administration of these taxes has been

emphasised by the Public Accounts Committee. The Committee has also laid stress on a critical examination of income-tax cases with a view to finding out cases of evasion of wealth-tax. The test audit, however, still revealed many cases where information already available in the assessment records of certain direct taxes was not made use of by the assessing officers of the Department to initiate action under the Wealth-tax Act, 1957. Some of the more costly instances are given below :—

(i) The income-tax assessment of an assessee, who was a shareholder in a company, disclosed that an *interim* dividend on certain shares arose to her before the valuation date 31st March, 1974, the *interim* dividend having been declared on 20th March, 1974 (dividend warrant issued on 25th March, 1974). As the valuation date adopted by her for wealth-tax assessment was 31st March of a year, this *interim* dividend of Rs. 1.50 lakhs was includible in her net wealth for the assessment year 1974-75. The dividend amount was, however, not so included. In the case of the same assessee, Audit had pointed out (July 1970) that the value of certain shares in companies (Rs. 3,47,360) held by her was included in her net wealth for the assessment years 1966-67 and 1968-69 but was omitted to be included in her net wealth for the assessment year 1967-68. This omission was accepted by the Department in June, 1978. The combined effect of these omissions resulting from lack of correlation with various assessments in the case of the same assessee led to under-assessment of wealth-tax of Rs. 20,656.

The Ministry of Finance have accepted the objection and stated that additional tax demand raised is of Rs. 20,656.

(ii) The income-tax assessment records of registered firm as well as its partners revealed that, although the three partners sharing profits equally were assessable to wealth-tax in their individual capacity in respect of the value of their share interest in the partnership firm (along with the value of net assets in a proprietorship business in the case of one of the partners) with effect from the assessment year 1971-72, neither was any wealth-tax return submitted by any one of them in any of the assessment years

nor did the Department issue any notice calling for wealth-tax returns. The escapement of wealth led to total undercharge of tax of Rs. 15,478 in the hands of three partners from the assessment years 1971-72 to 1976-77.

Besides, penalties under Section 18(1) (a) & (c) of the Wealth-tax Act, 1957 were leviable for delay in filing the returns and concealment of wealth.

The Ministry of Finance have accepted the objection and stated that additional tax of Rs. 15,478 has been collected.

(iii) The income-tax assessment records of a Hindu undivided family indicated that it owned two immovable properties which were let out. The net annual letting value of these two properties amounted to Rs. 23,759, Rs. 23,827 and Rs. 21,515 for the assessment years 1973-74, 1974-75 and 1975-76 respectively. This value capitalised under the 'income-capitalisation method' showed that the assessee was liable to wealth-tax also. The assessee did not, however, file returns of wealth. The Department also omitted to correlate the assessment and call for the wealth-tax returns. Total tax chargeable in respect of the two properties alone was Rs. 10,713 for the three assessment years. Penalties for delay in filing returns and concealment of wealth were also leviable under the provisions of the Wealth-tax Act, 1957.

The Ministry of Finance have accepted the objection in principle and added (January 1979) that assessments are being made.

(iv) A Hindu undivided family was deriving income by way of interest on loans, rental receipts and agricultural income and was assessed to income-tax for the first time for the assessment years 1975-76 and 1976-77. A scrutiny of these assessment records revealed that the assessee had total wealth of Rs. 3,16,400 and Rs. 3,10,900 for the assessment years 1975-76 and 1976-77 respectively and it was, therefore, liable to wealth-tax as well. However, it neither submitted its return of wealth nor did the Wealth-tax Officer initiate wealth-tax proceedings. The omission

on the part of the Wealth-tax Officer to act on the basis of information available in the income-tax assessment records resulted in non-levy of wealth-tax of Rs. 18,224 or Rs. 6,211, according as the family had or had not at least one member with taxable wealth.

Besides, penalties for non-filing of returns and concealment of wealth were leviable.

The Ministry of Finance have accepted the objection in principle and stated (November 1978) that report about completion of remedial action be awaited.

(v) In seven cases in as many Commissioners' charges, escapement of wealth occurred due to lack of correlation with assessment records of direct taxes resulting in non-levy of wealth-tax of Rs. 45,343 in various assessment years from 1970-71 to 1976-77.

The Ministry of Finance have accepted the omission in six cases; their final reply is awaited in the seventh case (April, 1979).

64. *Incorrect valuation of partners' share interest in partnership firms.*

(i) Under the provisions of the Wealth-tax Act, 1957, where the assessee is a partner in a firm, his share interest in such partnership, determined on the basis of the net assets of the firm as a going concern, is includible in his net wealth. For this purpose, the Wealth-tax Rules provide that, where the market value of any asset exceeds its book value by more than 20 per cent, its market value is includible in the assets of the firm instead of its book value.

(a) The book value of two buildings belonging to a partnership firm, as shown in its balance-sheets relevant to the assessment years 1972-73 to 1975-76, varied from Rs. 20,80,409 to Rs. 21,26,904. These book values were adopted by the Department for computation of the value of net assets of the firm for working out share interest of its five partners in it for the levy of wealth-tax. On a reference, the departmental Valuation Officer

valued these properties at Rs. 30,79,000, as on 31-3-1972. This value was considered for computation of net assets of the firm for the assessment year 1976-77 for computing share interest of these five assessee-partners in it. No action was, however, taken to re-open the wealth-tax assessments of these assessees for the assessment years 1972-73 to 1975-76 for considering the correct value of these buildings, as determined by the Valuation Officer. Further, an expenditure of Rs. 1,01,030 was incurred by the firm on additions to the buildings during the year ended 30th June, 1973. In completing the wealth-tax assessments of the partners for the assessment year 1976-77 also, the value of this addition was not included. Re-assessment of all the five partners adopting the departmental valuation of these buildings for various assessment years 1972-73 to 1976-77, including also the value of additions made thereto, would result in bringing to tax an additional wealth of Rs. 41,88,375, in the aggregate, and an additional levy of tax of Rs. 68,614.

The Ministry of Finance have accepted the objection in principle.

(b) In the balance-sheet of a partnership firm relevant to the assessment years 1975-76 and 1976-77, the original value of factory and godown buildings and of plant and machinery were shown on the asset side and the depreciation written off them was exhibited on the liability side under 'depreciation reserve fund'. The Wealth-tax Officer, while computing the share interest of six partners in this firm for levy of wealth-tax for the assessment years 1975-76 and 1976-77, adopted the replacement value (market value) of these assets instead of their original book value. In doing so, however, the assessing officer incorrectly deducted therefrom the original book value instead of the excess of the original book value over the balance under the 'depreciation reserve fund'. Further, the advance income-tax of Rs. 1,20,560 paid by the firm for the assessment year 1976-77 in the financial year 1975-76 and debited to the profit and loss account of the relevant previous year was not added back as an asset. The combined effect of these mistakes was an under-assessment of

wealth by Rs. 2,40,783 and Rs. 4,29,848 for the assessment years 1975-76 and 1976-77 respectively and total undercharge of wealth-tax of Rs. 17,965 in these six cases.

While accepting the objection, the Ministry of Finance have stated that additional tax demanded on rectification is Rs. 17,965.

(ii) It has been judicially held that 'goodwill' of a business, as a going concern, is a valuable asset. Consequently it is a chargeable asset according to the provisions of the Wealth-tax Act. A rule, in the Wealth-tax Rules, 1957, lays down the method of valuation of share interest of an assessee in the assets of a business, as a going concern. It provides that "in the case of goodwill purchased by the assessee for a price, its market value, or the price actually paid by him, whichever is less, is to be taken to be its value". A residuary provision in the said rule also provides that "in the case of any other asset", not disclosed in the balance-sheet of the business, "its market value, as on the valuation date", is to be adopted. It was pointed out in a reference to the Ministry of Finance in March, 1975 that if the value of goodwill not purchased or not disclosed in the balance-sheet of a partnership is not included in the assets of the firm under the aforesaid residuary provision, a valuable asset chargeable under the substantive provisions of the Wealth-tax Act, 1957 would escape assessment. Their final reply is awaited (April, 1979). In the meantime, it is felt that the value of the 'self-generated' goodwill and 'undisclosed' goodwill is escaping assessment to wealth-tax.

In the case of four equal partners of a partnership firm, established since 1960, the value of its goodwill was omitted to be considered in computing their share interest in the firm. The undervaluation due to non-inclusion of the value of goodwill in the value of the net assets of the firm resulted in under-assessment of wealth of Rs. 3,15,250 in the hands of each of the assessees for the assessment year 1972-73, leading to total tax undercharge of Rs. 93,456.

65. *Incorrect valuation of other assets.*

Under the Wealth-tax Act, 1957, the value of any property is to be estimated to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

(i) In the wealth-tax assessment for the assessment years 1969-70 to 1972-73 (made on 31-3-1977), the value of one-fourth share owned by an individual in a house property was adopted by the Department at Rs. 30.09 per sq. ft. of the carpet area. The income-tax assessment records of the assessee, however, revealed that during the previous year relevant to the assessment year 1969-70, some flats in the same building had been sold in the open market at Rs. 70 per sq. ft. The undervaluation of the property caused by lack of correlation with the income-tax assessment records resulted in total undercharge of tax of Rs. 1,30,382 (including additional wealth-tax leviable on the revised net value of urban assets) for all the four assessment years from 1969-70 to 1972-73.

The Ministry of Finance have accepted the objection.

(ii) The wealth-tax assessments of an individual for the assessment years 1970-71 to 1974-75 were completed in March 1977, accepting the value of 24.58 acres of agricultural lands at Rs. 1,32,860 (Rs. 5,405 per acre), as returned by him. A scrutiny of the records revealed that, during the previous year relevant to the assessment year 1975-76, the assessee sold 4.5 acres of these lands for Rs. 1.50 lakhs *i.e.* at Rs. 33,333 per acre and also claimed, for the purpose of computing the capital gains arising from the sale, the assumed cost of the lands to him, as on 1-1-1954, at Rs. 15,000 per acre. Considering that the assessee himself had estimated the fair market value of a portion of the land in 1954 at Rs. 15,000 per acre and that it was sold at Rs. 33,333 per acre in the financial year 1974-75, the valuation of the lands at Rs. 5,405 per acre for wealth-tax purposes for the assessment years 1970-71 to 1974-75 indicated undervaluation of his landholding. The assessing officer omitted to rectify these wealth-tax assessments by reference to the

values adopted in income-tax return of the assessee for the assessment year 1975-76. Adopting the sale consideration of Rs. 33,333 per acre for the two years 1973-74 and 1974-75 and a lesser value of Rs. 30,000 per acre for the assessment years 1970-71 to 1972-73, the undervaluation of the land was by Rs. 11,58,150, in the aggregate, and short levy of tax was of Rs. 1,53,617 for all the assessment years.

In the case of the same assessee, in wealth-tax assessments for the assessment years 1971-72 to 1974-75, an incorrect allowance for a debt of Rs. 1,15,000 incurred by him for purchase of shares in companies valuing Rs. 1,27,800, which were themselves exempt from the levy of wealth-tax, was also made. This mistake led to another short levy of tax of Rs. 23,654.

Yet another mistake seen in the wealth-tax assessments in the case of the same assessee for the assessment years 1973-74 and 1974-75 was non-levy of additional wealth-tax of Rs. 14,935 on the value of urban assets owned by him.

The combined effect of all these mistakes was short levy of tax of Rs. 1,92,206.

The Ministry of Finance have accepted all these mistakes and stated (January, 1979) that the Wealth-tax Officer has been instructed to refer the case to the Valuation Officer for valuation.

(iii) In the wealth-tax assessments of an assessee for the assessment years 1970-71 to 1972-73 and of another assessee for the assessment years 1970-71 and 1972-73 (assessment for the assessment year 1971-72 was pending at the time of audit), the value of coffee estates was included in their net wealth and taxed. In the assessments for the assessment year 1972-73 an addition of Rs. 1,04,371 and Rs. 94,310 respectively was made to the returned wealth for the value of 'shade trees' in the estates.

It was noticed in audit in May, 1974 that the first assessee had in his income-tax returns showed the sale price of 'shade trees' for the assessment years 1972-73 and 1973-74 as Rs. 2,04,825 and Rs. 2,16,045 respectively for the levy of capital gains tax. The second assessee also similarly showed the value of 'shade

trees' as Rs. 2,65,413 and Rs. 2,70,230 respectively. Compared with the value of the trees 'felled and sold', the aforesaid addition for the value of the 'shade trees' as on the valuation date relevant for the assessment year 1972-73 was not adequate. Further, the value of the 'shade trees' was to be added not merely in the assessment year 1972-73 but also in the assessment years 1970-71 and 1971-72, including as well, the value of 'felled trees' sold in 1972-73 and 1973-74, as they were standing trees for earlier years and were a chargeable asset. Even if the value alone of the 'felled trees' so sold was taken into account, the short levy of tax due to the aforesaid undervaluation and failure to include these assets in the net wealth of the two assessees was Rs. 93,875.

In accepting the objection, the Ministry of Finance have stated (November, 1978) that the assessments have been re-opened after these cases were referred to the Valuation Cell for valuation.

(iv) The market rates of diamonds, precious stones, gold and silver jewellery on different dates upto 31-3-1975 were circulated by the Technical Committee of Gem & Jewellery Export Promotion Council, Bombay in a handout which was, in turn, circulated by the Central Board of Direct Taxes in May, 1976. In the case of an individual, the Department estimated the market value of jewellery (gold and gold ornaments) for the assessment years 1964-65 to 1976-77 at amounts slightly exceeding the value of Rs. 1,00,000, disclosed by the assessee as far back as in 1952. In this period of about 25 years, constant increase in the price of gold occurred, as is reflected in the aforesaid handout compiled by the Technical Committee. According to the handout, the value of gold as on 31-3-1964 increased by 59 per cent (approx.) over the value declared by the assessee in 1952. The undervaluation of jewellery computed on the basis of this handout ranged from Rs. 57,925 to Rs. 6,58,262 for assessment years 1964-65 to 1976-77 which led to total tax undercharge of Rs. 63,707 for the thirteen assessment years.

The Ministry of Finance have accepted the objection in principle.

In five more cases in as many Commissioners' charges, under-valuation of jewellery in the wealth-tax assessments for the various

assessment years between 1958-59 and 1976-77 were noticed in test audit, involving undercharge of tax of Rs. 48,400.

In one of these cases, re-assessment for the assessment years 1971-72 to 1973-74 was not made in the limitation period on the objection being pointed out in September, 1977. Delay in rectificatory action in this case resulted in loss of revenue of Rs. 3,956 out of the tax undercharge of Rs. 48,400.

The Ministry of Finance have accepted the objection in four cases; in the remaining one case their final reply is awaited (April, 1979).

66. *Mistakes in the computation of net wealth.*

(i) In the case of a Hindu-undivided family, valuation of immovable properties owned by it was referred to a departmental Valuation Officer in February, 1975 and the valuation reports were received in two parts in April, 1976 and July, 1976. The assessments for the assessment years 1966-67 to 1971-72 were, however, finalised by the Wealth-tax Officer in April, 1976 without waiting for the other report of the Valuation Officer in respect of some of the assets of the assessee. The assessments were also not revised on receipt of this subsequent valuation report in July, 1976. This omission resulted in under-assessment of wealth of Rs. 10,71,000 for all the assessment years 1966-67 to 1971-72, involving short levy of wealth-tax of Rs. 17,286 (including additional wealth-tax of Rs. 5,061). On the omission being pointed out by Audit in October 1977, the assessments for the assessment years 1966-67 to 1969-70 were revised and those for 1970-71 and 1971-72 were set aside.

The Ministry of Finance have accepted the objection.

(ii) In the wealth-tax assessment of an assessee for the assessment year 1968-69, completed in April, 1976 on the net wealth of Rs. 31,80,089, deduction of Rs. 20,177 was allowed towards income-tax liability based on the income-tax assessment for the assessment year 1968-69, completed in November, 1968. This income-tax assessment was revised in October, 1976 to give effect to appellate orders as a result of which the assessee became entitled to a total refund of Rs. 80,266, including the tax paid

of Rs. 20,177 under the assessment order of November, 1968. This refund of Rs. 80,266 related back to the valuation date relevant to the assessment year 1968-69 and it was an asset includible in the net wealth of the assessee from the assessment year 1968-69 to the assessment year 1976-77. It was, however, noticed in audit (November, 1977) that this addition was not made in the net wealth for the assessment years 1968-69 to 1971-72 (assessment records for the assessment years 1972-73 onwards were not made available in local audit). This omission resulted in short levy of tax of Rs. 10,456 for the four years upto the assessment year 1971-72.

The Ministry of Finance have not accepted the objection taking the view that the refund of Rs. 80,266 ordered on 20th December, 1977 was merely a 'contingent interest' for the assessment years 1968-69 to 1971-72. In Audit's view the vesting of the refund related back to the assessment years to which it pertained.

(iii) In seven more cases in as many Commissioners' charges, test-check by Audit revealed incorrect computation of net wealth with resultant under-assessment of wealth-tax of Rs. 37,303, in the aggregate, for the various assessment years between 1969-70 and 1976-77.

The Ministry of Finance have accepted the objection in all these cases.

67. *Irregular/excessive exemptions and reliefs.*

(i) Under the provisions of the Wealth-tax Act, 1957 (before amendment), one house or part of a house is exempt upto Rs. one lakh and agricultural land was exempt upto Rs. 1.50 lakhs but they together were exempt upto Rs. 1.50 lakhs. In addition to these exemptions, certain specified investments were also exempt upto the same value. Under the amended provisions, however, exemption for the value of agricultural land together with the value of specified investments shall be restricted to Rs. 1.50 lakhs, with effect from 1-4-1975.

In ten cases in nine Commissioners' charges, the Wealth-tax Officers omitted to apply the amended provisions of the Act and

aggregate the value of agricultural land with specified investments for restricting the exemption for these assets to Rs. 1.50 lakhs. The total undercharge of tax resulting from this omission was of Rs. 39,206 for the assessment years 1975-76 and 1976-77.

The Minisry of Finance have accepted the omission in all the ten cases. Additional tax collected out of the additional tax demand of Rs. 35,139 in nine cases is Rs. 22,894.

(ii) As an incentive for savings, the Wealth-tax Act, 1957 allows, with effect from the assessment year 1971-72, exemption from levy of wealth-tax to bank deposits and investments in securities, shares, etc., upto an aggregate amount of Rs. 1,50,000. Where, however, the aggregate value of specified investments of the nature of ten-year savings deposit certificates, fifteen year annuity certificates, twelve-year national plan certificates, etc., held by an assessee continuously from a date prior to 1st March, 1970, is, in itself, in excess of Rs. 1.50 lakhs, the exemption limit is to be raised to the extent of the value of such deposits and certificates.

In paragraph 71(iv) of the Audit Report, 1974-75, paragraph 92(i) of the Audit Report, 1975-76 and paragraph 78(i) of the Audit Report 1976-77, instances of excessive exemption allowed even where the value of the specified securities was not, in itself, in excess of Rs. 1.50 lakhs were pointed out. Similar mistakes were again noticed in test check by Audit in three cases in three Commissioners' charges, involving undercharge of tax of Rs. 22,790.

The Ministry of Finance have accepted the objection in two cases in which additional demand-tax raised is of Rs. 15,938.

(iii) Under the provisions of the Wealth-tax, 1957, the value of shares in new industrial companies which formed part of the initial issue of equity share capital made after 31st March, 1964 and before 1st June, 1971 is exempt from the levy of wealth-tax for a period of five successive assessment years commencing with the assessment year next following the date on which such companies commence their operations.

(a) In the wealth-tax assessments of a specified Hindu undivided family for the assessment years 1972-73 to 1974-75, completed in February 1977 on the net wealth of Rs. 3,24,100, Rs. 3,54,200 and Rs. 5,51,600 respectively, the aforesaid exemption was allowed for the value of 1,000 shares held by it in a company. A scrutiny of the assessment records by Audit, however, showed that limit of five years for which exemption was allowable ceased with the assessment year 1971-72. As the exemption was not allowable from the assessment year 1972-73, the value of these shares aggregating to Rs. 5,68,000 for the three assessment years 1972-73 to 1974-75 was incorrectly exempted, leading to total short-levy of tax of Rs. 10,086.

The Ministry of Finance have accepted the objection and stated that additional tax collected is Rs. 10,086.

(b) Three individual assessees held equity shares, forming part of the initial issue of equity share capital in a company, established with the object of carrying on an industrial undertaking in India, as well as shares subsequently issued by it for setting up another new unit of the undertaking. Incorrectly treating the subsequent issue of equity share capital as initial issue, the Department allowed exemption for the value of 1131 shares held by each assessee in this subsequent issue. It also erred in allowing exemption beyond the statutory period of five years on certain equity shares, comprising the initial issue, held by these assessees. These incorrect exemptions led to total tax undercharge of Rs. 15,694 in the four assessment years from 1972-73 to 1975-76.

The Ministry of Finance have accepted the objection partly.

(iv) According to the provisions of the Wealth-tax Act, 1957, tax liabilities are not to be treated as debts to the extent an assessee has claimed the same as not being payable by him and has gone in appeal, revision or other proceedings.

The wealth-tax assessments of an individual for the assessment years 1972-73, 1973-74 and 1974-75 were completed on 27-3-1976 after increasing the value of an immovable property from Rs. 2.84 lakhs ; Rs. 1.83 lakhs and Rs. 1.83 lakhs to

Rs. 6.20 lakhs, Rs. 6.87 lakhs and Rs. 7.53 lakhs respectively. The assessee appealed on 27-4-1976 against these additions. It was noticed in audit (August, 1977) that, while finalising the assessment for the assessment year 1975-76 on 26-2-1977, the increased tax liability resulting from the additions made in the net wealth for the assessment years 1972-73 to 1974-75 was allowed. The increase in the liability was not, however, allowable as the assessee had appealed against the addition. This incorrect allowance resulted in under-assessment of aggregate wealth of Rs. 1,23,376 with consequent short levy of tax of Rs. 9,870.

The Ministry of Finance have accepted the objection, and stated that the additional demand raised on rectification is of Rs. 16,072.

(v) In yet other eleven cases in ten Commissioners' charges, incorrect allowance of exemptions and relief made during the wealth-tax assessments for various assessment years between 1965-66 and 1976-77 was noticed in test check by Audit, involving total undercharge of tax of Rs. 66,984.

The Ministry of Finance have accepted the objection in nine cases and stated that additional demand for tax of Rs. 53,336 has been raised; their reply is awaited in the remaining two cases. (April, 1979).

68. *Non-levy/short levy of additional wealth-tax.*

Under the Wealth-tax Act, 1957, as it stood before its amendment by the Finance Act, 1976, where the net wealth of an individual or Hindu undivided family included the value of any asset being building or land (other than premises used by the assessee for his business or profession) or any right in such building or land, situated in an urban area, additional wealth-tax was leviable on the value of urban assets above a prescribed limit.

(i) Although the value of urban properties, included in the net wealth of an individual, computed for the assessment years 1970-71 to 1975-76, exceeded the exemption limit in respect thereof, being Rs. 7,00,000 in the assessment year 1970-71 and Rs. 5,00,000 in the assessment years 1971-72 to 1975-76, additional wealth-tax was not levied by the Department. This

omission resulted in non-levy of total additional wealth-tax of Rs. 42,386 in the six assessment years from 1970-71 to 1975-76.

Besides, two properties comprised in the urban assets were not referred to the departmental Valuation Officer in compliance with the standing instructions issued by the Central Board of Direct Taxes in December, 1971.

The Ministry of Finance have accepted the objection and stated that additional demand for tax of Rs. 42,386 has been raised.

(ii) In the case of a Hindu undivided family, the net wealth determined for the assessment years 1974-75 and 1975-76 included the value of urban immovable properties (comprising a cinema hall let out on hire and a plot of land) as Rs. 9,21,900 and Rs. 9,24,900 respectively. While the Department charged wealth-tax in respect of net wealth including these properties, there was omission to charge additional wealth-tax leviable on the value of these urban immovable properties owned by the assessee. This omission led to undercharge of tax of Rs. 39,585 for the two years. Further, for the assessment year 1975-76 the rate of tax applicable to wealth was charged at 2 per cent instead of the prescribed rate of 3 per cent for wealth exceeding Rs. five lakhs. This resulted in further undercharge of wealth-tax of Rs. 3,619 for that year. Total tax short levy, thus, amounted to Rs. 43,204 for the two assessment years 1974-75 and 1975-76.

The Ministry of Finance have accepted the objection and stated (January, 1979) that remedial action is being initiated.

(iii) The net wealth of an individual for the assessment years 1970-71 to 1973-74 included certain urban properties valued at Rs. 7,65,800, Rs. 9,40,800, Rs. 8,60,800 and Rs. 5,56,800 respectively. In the wealth-tax assessments completed in February, 1971 (revised in December, 1971), December 1971 (revised in March, 1972), February, 1973 and March, 1976 for these assessment years respectively, additional wealth-tax of Rs. 38,450 was not levied, even though the value of the urban assets exceeded the prescribed limit. Though the Internal Audit party of the Department pointed out the omission for the assessment years

1970-71 to 1972-73 in May, 1973 and also indicated that rectification would get time-barred by 30th December, 1973, no corrective action was taken by the Wealth-tax Officer. The omission to levy additional wealth-tax in the original and revised assessments and failure to re-open the assessments for rectification after the omission was pointed out by the Internal Audit Party, thus, led to loss of revenue of Rs. 17,650 for the two assessment years 1970-71 and 1971-72 and non-levy of additional wealth-tax of Rs. 20,800 for the assessment years 1972-73 and 1973-74.

The Ministry of Finance have accepted the objection and stated that additional demand for tax of Rs. 16,130 has been raised.

(iv) An individual assessee owned urban properties valuing Rs. 32,73,045, Rs. 32,48,729 and Rs. 23,98,954 on the valuation dates relevant to the assessment years 1965-66 to 1967-68, comprised in his assessed net wealth of Rs. 15,56,340, Rs. 14,73,950 and Rs. 7,14,500 respectively. These urban properties mainly comprised hotel buildings leased out by the assessee to a partnership firm in which he was a partner. As the assets were not being used by the assessee for his own business (letting is not a business), additional wealth-tax of Rs. 22,750 was leviable. It was, however, not levied.

The Ministry of Finance have not accepted the objection. According to them, these urban assets would be exempt from additional wealth-tax even when they were not used by the assessee in his business but were leased to the firm in which he became a partner. This view now taken (March, 1979) is contrary to instructions of the Board of Direct Taxes issued in September, 1978.

(v) In yet other nine cases in six Commissioners' charges, additional wealth-tax was not levied in respect of urban assets in various assessment years between 1967-68 and 1976-77. The non-levy of tax involved in all these cases was of Rs. 86,009.

The Ministry of Finance have accepted the objection in all the cases. Additional tax collected in five cases is of Rs. 41,871.

69. *Non-levy/incorrect levy of interest.*

The Wealth-tax Act provides that if an assessee fails to pay any amount of wealth-tax within thirty-five days of the service of the relevant notice of demand, he is liable to pay simple interest at the prescribed rate for the period of default. The rule under the Income-tax Act in regard to the default in payment of demand and levy of interest thereon applies to wealth-tax also, whereby the interest payable on the arrears of tax at the end of each financial year is to be calculated and demand for it raised.

(i) In the case of an assessee, the wealth-tax assessments for the assessment years 1964-65 to 1966-67 were completed in March 1970 and the assessments were subsequently revised in October, 1975, based on the orders of an Appellate Assistant Commissioner. The original demand of wealth-tax was raised in May 1970 and taking into account the collections made and the quantum of relief allowed in appeal, the assessee was liable to pay an interest of Rs. 24,000 to the end of March 1976 on the balance of demand due for these assessment years. No demand had, however, been raised upto August 1976, when this case was test checked in audit.

The Ministry of Finance have accepted the objection and stated that demand for interest of Rs. 30,480 has been raised.

(ii) An assessee did not pay, till the end of March 1977, the amount of Rs. 46,501 for which a notice of demand had been issued to him in March 1974. For the delay in payment of this tax demand in arrears, the assessee had become liable to pay interest of Rs. 15,610 upto 31st March, 1977, under the provisions of the Act. However, till September, 1977, the Wealth-tax Officer had not taken any action to levy the interest and create demand therefor. The omission to levy interest at yearly intervals led to postponement of demand of interest.

The Ministry of Finance have accepted the objection.

(iii) In March 1976, orders imposing penalty of Rs. 48,277 and Rs. 52,128 for the assessment years 1969-70

and 1970-71 respectively were passed in the case of an assessee individual for delay in filing his wealth-tax returns without reasonable cause. The demands were raised for a net amount of Rs. 99,510 (after adjusting refund of Rs. 895 due to him) on 25th March, 1976 and the amount was due for payment on or before the 29th April, 1976. The assessee did not pay this amount before the due date but paid smaller amounts on different dates spread over from June 1976 to April 1977. However, no interest had been levied for delay in payment of the demand in arrears. Interest so leviable was Rs. 7,460.

While accepting the omission, the Ministry of Finance have stated that interest of Rs. 7,460 has been collected.

(iv) In the case of a Hindu undivided family, notices of demand for the assessment years 1969-70, 1971-72 and 1972-73 were served on 9th February, 1970, 15th December, 1973 and 14th March, 1973 respectively. The assessee paid taxes for all these years on 4th April, 1977. Thus, the periods of delay in making the payment of the tax demanded were 7 years 20 days for the assessment year 1969-70, 3 years 2 months and 17 days for the assessment year 1971-72 and 3 years 11 months and 18 days for the assessment year 1972-73. Even though charge of interest for delay in payment of demand in arrears was obligatory under the provisions of the Act, no interest had been levied. Non-levy of interest involved in this case was of Rs. 6,707.

The Ministry of Finance, while accepting the objection, have stated that the interest demand of Rs. 6,707 has been raised.

70. *Avoidable payment of interest*

The Wealth-tax Act, 1957, provides that, where a refund is due to an assessee in pursuance of an order passed in appeal or other proceedings under the Act and the Wealth-tax Officer does not grant the refund within a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at prescribed rates on the amount of refund due from the date immediately following the expiry of

the period of six months aforesaid to the date on which the refund is granted.

(i) As a result of appellate orders of 10th March, 1970 in respect of the assessment years 1957-58 to 1961-62, a refund of Rs. 68,218 became due to an individual. The Department revised the assessments to give effect to the appellate orders only on 31st March, 1976 and granted the refund after a lapse of 72 months from the date of the orders. Due to the avoidable delay in giving effect to the appellate orders and granting refund, Government had to make to the assessee an avoidable payment of interest amounting to Rs. 26,107 for the said assessment years. Had the Department revised the assessments and granted refunds within the prescribed time, the payment of interest of Rs. 26,107 could have been avoided.

The Ministry of Finance have accepted the objection in principle and stated that due to the absence of challans of payment of tax and certain other documents on the assessment records, the verification of refunds due took time.

(ii) In compliance with appellate orders passed on 13th September, 1966 for doing certain assessments *de novo*, fresh assessments were made on 10th December, 1971 on the basis of which a refund of tax amounting to Rs. 20,524 became payable to an assessee. This refund was, however, required to be made within six months of the date of such orders *i.e.*, by 12th March, 1967 but the refund order was made on 3rd February, 1972. In November, 1976 the Wealth-tax Officer took *suo motu* action to pay an amount of Rs. 8,703 to the assessee as interest on the delayed refund so made. Prompt action by the Department could have been taken to avoid payment of a large amount of interest.

The Ministry of Finance have accepted that the payment of interest was due to avoidable delay.

71. *Miscellaneous.*

(i) Wealth-tax Act, 1957 empowers the Wealth-tax Officer to make provisional assessments, pending final assessments, of

the tax payable by the assessee on the basis of his return and the accounts or documents, if any, accompanying it.

For the assessment years 1969-70 to 1972-73, an individual submitted returns on 15th December, 1969, 28th October, 1970, 20th September, 1971 and 30th December, 1972, showing taxable wealth ranging from Rs. 9,67,200 to Rs. 18,96,705. Against total tax of Rs. 92,663 payable by the assessee as per returned wealth for these years, advance tax amounting to Rs. 20,354 only had been paid by the assessee on self-assessment. It was seen in audit in October 1977, that the Wealth-tax Officer did not make provisional assessments on receipt of the returns. The omission led to postponement of demand of Rs. 72,039 which could have been made on returned wealth. Regular assessments have also not been made (December 1978).

The Ministry of Finance have accepted the objection, adding that the Wealth-tax Officer has been directed to complete the assessments expeditiously (December, 1978).

(ii) The assessments completed by the Income-tax Department are test checked by their Internal Audit and the assessments are revised, wherever necessary, to rectify the mistakes pointed out by Internal Audit.

It was noticed in Revenue Audit that, in the case of nine assessees, the following mistakes pointed out by the Internal Audit Party as early as in September 1974, in respect of the assessments for the assessment years 1970-71 to 1973-74, had not been rectified till the date of audit of the ward by the Revenue Audit in February 1978 :—

(a) Erroneous exemptions were allowed in all these cases for the value of agricultural lands, though the lands belonged not to the assessees but to a firm, in which they were partners, causing short levy of tax of Rs. 54,495 for the assessment years 1970-71 to 1973-74.

(b) Incorrect adoption of share of interest of an assessee in a firm for the assessment years 1970-71 and 1971-72 involved short levy of tax of Rs. 4,496.

In all these cases, the assessments were completed between February 1973 and December 1973 and in certain cases, they were subsequently revised on some other account but the mistakes pointed out in Internal Audit had not been rectified.

In not accepting the objection, the Ministry of Finance have stated that in four cases notices were issued in 1974 and 1975. The re-assessment proceedings were, however, not completed even in these cases upto February 1979.

OTHER TOPICS OF INTEREST

72. *Incorrect valuation of unquoted equity shares in companies.*

72.1 According to section 7(2) of the Wealth-tax Act, 1957, where an assessee carries on business for which accounts are maintained by him regularly, his share interest in the assets of the business is valued by determining the net value of the 'business as a whole', having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as may be prescribed. One of the prescribed adjustments contained in a rule (in the Wealth-tax Rules, 1957) framed under this section lays down that, where the market value of any asset of the business exceeds its book value by more than twenty per cent, its market value instead of its book value is included, while computing the value of net assets of the business. Such higher market value is being adopted while valuing the sole traderships and partnership firms for computing share interest of an assessee therein.

72.2 Section 7(2) further provides that, where an assessee does not carry on a business, the value of the net assets of the business is to be computed by determining separately the value of each asset of the business. This principle applies where an assessee holds unquoted equity shares in companies. Rule 1-D of the Wealth-tax Rules, in providing for valuation of such shares in companies (other than investment companies and managing agencies companies), has, however, omitted to require the adoption of market value of an asset of the company even when it is appreciably higher than its value reflected in its balance-sheet.

This rule does not even require adoption of the market value of an asset where it exceeds the book value of the asset by more than 20 per cent, which is done for valuation of a business of sole-traders and partnerships. This rule is, thus, not in agreement with the provisions in the substantive section of the Wealth-tax Act, 1957.

72.3 Following the substantive provisions of this section, the requirement of certain adjustments in the balance-sheets was pointed out in paragraph 74 of the Audit Report, 1976-77. No rule has been framed for valuation of unquoted equity shares in investment companies and managing agency companies. Mistake in an instruction for valuation of unquoted equity shares in investment companies, issued by the Central Board of Direct Taxes in October, 1967 have been commented upon in the same paragraph 74 of the Audit Report, 1976-77.

72.4 With reference to this Rule 1-D of the Wealth-tax Rules, 1957, the Public Accounts Committee in Paragraph 4.22 of their 226th Report (Fifth Lok Sabha) (August 1976) observed, "Companies which do not declare dividends presumably with a particular design and accumulate profits in the reserves also derive a tax advantage....." This tax advantage results from the allowance of discount from the break-up value of unquoted equity shares for non-declaration of dividends (by private limited companies as their equity shares are unquoted) under the aforesaid Rule 1-D, even when they have accumulated reserves. The Ministry of Finance stated in the action taken note (February 1977) on this recommendation of the Public Accounts Committee, "The rules regarding valuation of shares are under examination of the Committee appointed for the purpose. The report of the said Committee is expected after April, 1977"

72.5 As pointed out in the previous Audit Reports also, undervaluation of unquoted equity shares in companies are noticed in test audit resulting not only from omission to adopt market value of assets of the companies, where it is above the book value under the provisions of the Act but also from omission

to carry out the prescribed adjustments under Rule 1-D of the Wealth-tax Rules, 1957. Under-assessment of wealth-tax of Rs. 2,96,898 resulting from omission to carry out the prescribed adjustments, including non-adoption of the break-up value of the unquoted equity shares in investment companies, were noticed in test audit of wealth-tax assessments for the assessment years from 1973-74 to 1976-77 of eleven assessees in nine Commissioners' charges. While computing the under-assessment in these cases, the market value of the assets of the companies could not be adopted, it having not been ascertained and recorded in the assessment records.

The Ministry of Finance have not accepted the objection in these cases to the extent of non-adoption of market value of assets of the companies in valuation of their unquoted equity shares. In this view of the matter, however, the provisions of the substantive Section 7 are not complied with.

CHAPTER V

GIFT-TAX AND ESTATE DUTY

A. GIFT-TAX

73. The receipts under gift-tax in the financial years 1972-73 to 1976-77 compared with the budget estimates of these years, thus :—

Years	Budget estimates (Rupees in	Actuals crores)
1973-74	3.50	4.79
1974-75	4.00	5.06
1975-76	4.50	5.11
1976-77	4.75	5.67
1977-78	5.50	5.55 (Prov.)

The arrears of demand and cases pending assessment as on 31st March, 1978 were Rs. 6.97 crores and 22,925 respectively.

74. During the test audit of assessments made under the Gift-tax Act, 1958, conducted during the period from 1st April, 1977 to 31st March, 1978, the following types of mistakes resulting in under-assessment of tax were noticed :—

(i) Gifts escaping assessment.

(ii) Incorrect valuation of gifts.

(iii) Mistakes in calculation of tax.

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

75. *Escapement of gifts due to lack of co-ordination.*

75.1 In the previous Audit Reports, the necessity of correlation of assessment made under various direct taxes had consistently been stressed. The matter has also been discussed in the Public Accounts Committee. The Public Accounts Committee have also emphasised the need for a proper co-ordination among the assessment records pertaining to different direct taxes to ensure an overall improvement in the administration of these taxes (paragraph 2.9 of their 50th Report) (Fifth Lok Sabha). During test audit conducted between April, 1977 and March, 1978, escapement of gift-tax resulting from lack of co-ordination with State Government offices was noticed in seven cases, involving a tax of Rs. 47,353 for the years 1974-75 and 1976-77.

The Ministry of Finance have accepted the objection in all these cases.

75.2 *Lack of correlation amongst assessment records of direct taxes.*

(i) From the income-tax assessment records of a limited company, in which public were not substantially interested, it was noticed that the assessing officer disallowed donations/ contributions made by the company to political parties and other institutions not exempt from tax during the previous years relevant to the assessment years 1970-71, 1971-72 and 1973-74. Gift-tax on these voluntary payment of donation was, however, not levied by the Department. The omission on the part of the Income-tax Officer to initiate gift-tax proceedings led to non-assessment of gift to the extent of Rs. 2,31,526, Rs. 2,41,946 and Rs. 8,25,198 in the assessment years 1970-71, 1971-72 and 1973-74 respectively with consequent short levy of total tax of Rs. 2,73,602. Besides, a similar gift of Rs. 1,00,000 escaped assessment for the assessment year 1969-70 which had become time-barred. Position in respect of the assessment year 1972-73 could not be checked as the assessment records were not made available at the time of the audit of the ward (November, 1977).

The Ministry of Finance have accepted the objection.

(ii) An individual acquired a right over certain share in properties and life-interest in a building from her husband, father, and father-in-law. By a deed executed in June, 1970, she allotted (i) the share in properties to her sons, retaining life-interest in one of the properties for herself and (ii) the building, in which she had life-interest, to her daughter. Though these allotments were stated to be in the nature of partition, there was no partition as such, since the allottees had not been co-owners of the properties. The assessee, thus, relinquished her existing rights and interest in the properties. The value of the rights or interest forgone by the assessee amounted to Rs. 1,35,482 which attracted levy of gift-tax. No gift-tax was, however, levied by the Department. The omission resulted in non-levy of gift-tax of Rs. 17,596 for the assessment year 1971-72.

The Ministry of Finance have accepted the objection.

(iii) Two properties owned jointly by two Hindu undivided families were sold for Rs. 3,50,000 during the previous year relevant to the assessment year 1970-71. In the income-tax assessments of these assessees, completed in 1972-73, the Department fixed the fair market value of these properties at Rs. 5,10,336 and brought the difference between this and the declared consideration to tax as capital gains. The assessing officer, however, omitted to act on this information available in the income-tax records and to levy gift-tax of Rs. 17,000 on the deemed gift of Rs. 1,60,336.

The Ministry of Finance have accepted the objection and stated (December 1978) that further report about completion of remedial action be awaited.

(iv) In 7 more cases in as many Commissioners' charges, similar escapement of gifts resulting from omission on the part of the assessing officer to correlate the gift-tax assessments with other assessment records of direct taxes was noticed in audit. Non-levy of tax involved in all these cases was of Rs. 67,983.

The Ministry of Finance have accepted the objection in all these cases.

76. *Failure to bring 'deemed gifts' to tax.*

The Gift-tax Act, 1958, provides that, where property is transferred otherwise than for adequate consideration, the amount by which the fair market value of the property on the date of the transfer exceeds the value of consideration received shall be deemed to be a gift made by the transferor and subjected to the levy of gift-tax as a 'deemed gift'.

While issuing instructions on the need for proper co-ordination among assessments under different tax laws in November, 1973, the Central Board of Direct Taxes had specifically required Gift-tax Officers to levy gift-tax on 'deemed gift' in cases where they, as Income-tax Officers, noticed and brought to capital gains tax the excess of fair market value over declared consideration. Nevertheless, failure to bring such 'deemed gifts' to tax continues to be noticed as was pointed out in paragraph 80 of the Audit Report, 1975-76 and paragraph 92 of the Audit Report, 1976-77 and is being pointed out in a few illustrative cases, as follows :—

(i) In the gift-tax assessment for the assessment year 1972-73 (completed in March 1973 and revised in June 1973), the value of a house property gifted by an individual to his son in January 1972 was adopted as Rs. 1,13,033. While doing wealth-tax assesment on the donee for the assessment year 1972-73, the Wealth-tax Officer referred the case for valuation of the property to the departmental Valuation Officer who determined the value of the property, as on 31st March, 1975, at Rs. 3,54,000. On this basis, the Wealth-tax Officer adopted the value of the property as Rs. 3,10,000, as on 31st March 1972, for the assessment year 1972-73. Even though this value of Rs. 3,10,000 was also relevant to the gift of this property in January, 1972, the value adopted in the gift-tax assessment remained as Rs. 1,13,033. The omission on the part of the assessing officer to correlate these two assessments and to re-open the gift-tax assessment to bring the deemed gift to tax led to short levy of gift-tax of Rs. 37,320.

The Ministry of Finance have accepted the objection.

(ii) By virtue of a family settlement with effect from 10th June, 1970, an assessee became owner of two house properties, having one-half share in one property and one-third share in the other. The market value of his share in the two properties was determined at Rs. 2,97,333 by an approved valuer which was adopted in his wealth-tax assessment for the assessment year 1969-70. During the previous year relevant to the assessment year 1971-72, the properties were sold by him at a declared consideration of Rs. 80,000 to a relative. The deemed gift of Rs. 2,17,333, being the difference between the market value and the declared consideration on the date of transfer, was, however, not taxed. The escapement of this gift led to tax undercharge of Rs. 34,583 for the assessment year 1971-72.

The Ministry of Finance have accepted the objection.

(iii) It was noticed from the assessment records of an individual that, out of a plot of land situated in an urban area, he transferred one-fourth portion each to his wife and to his son at a total consideration of Rs. 1,38,000, during the previous year relevant to the assessment year 1971-72. On the basis of the market value of Rs. 7,00,000, determined by the Income-tax Appellate Tribunal, of the entire land for the assessment years 1967-68 to 1969-70, however, the value of the two portions sold worked out to Rs. 3,50,000. Gift-tax on Rs. 2,12,000, being difference between the market value and the consideration declared, was, however, not levied by the Department. The omission led to escapement of gift-tax of Rs. 33,250 for the assessment year 1971-72.

The Ministry of Finance have accepted the objection.

(iv) An assessee sold on 30th May, 1970 (relevant to the assessment year 1971-72), 4 *bighas* of garden land and 54.50 *bighas* of irrigated agricultural land to her married daughters for Rs. 50,000. In the wealth-tax return for the same assessment year 1971-72, the value of these lands

was returned by the assessee at Rs. 5,000 and Rs. 2,500 per *bigha* respectively, supported by the report of a registered valuer. These rates were enhanced by Wealth-tax Officer, who held the returned value to be on the lower side. As the values determined by the Wealth-tax Officer were not acceptable to the assessee, she went in appeal in which the values of these lands were determined at Rs. 5,500 and Rs. 4,500 respectively per *bigha* by the Appellate Assistant Commissioner. These valuations were accepted by the assessee. At these rates, the value of the lands sold worked out to Rs. 2,67,250 as against the declared consideration of Rs. 50,000. No action was, however, taken to levy gift-tax of Rs. 34,562 on the 'deemed gift' of Rs. 2,17,250.

The same assessee sold 16 *bighas* of garden land and 4 *bighas* of irrigated agricultural land to her daughter's son on 10th March, 1972 for Rs. 40,000. At the rates determined by the Appellate Assistant Commissioner (as explained in the preceeding sub-paragraph), the value of the land sold worked out to Rs. 1,06,000. No action was, however, taken for levy of gift-tax of Rs. 5,650 on the 'deemed gift' of Rs. 66,000.

Again, the son of the above assessee sold 19.5 *bighas* of agricultural land to his sister's son on 10th March, 1972 for Rs. 39,000. In his wealth-tax assessment for the same assessment year 1972-73, the value of this land was determined by the Wealth-tax Officer at Rs. 5,000 per *bigha* which was confirmed in appeal. At this rate, the value of the land sold worked out to Rs. 97,500. No action, was, however, taken to levy gift-tax of Rs. 4,525 on the 'deemed gift' of Rs. 58,500.

On these omissions being pointed out by Audit in October, 1974, the Department accepted them and raised demands for gift-tax aggregating Rs. 44,737 in March 1978.

The Ministry of Finance have accepted the objection in the latter two cases.

(v) An individual assessee sold his immovable properties for a declared consideration of Rs. 81,000 on 9-5-1972. Considering the sale proceeds to be below the fair market value on the

date of sale, the assessing officer estimated the value of properties sold at Rs. 1,40,000 on the basis of the value which had been declared in the sale deed for levy of stamp duty. The capital gain arising to the assessee was assessed accordingly in his income-tax assessment for the year 1973-74. Orders for the issue of a notice under Section 16(1) of the Gift-tax Act, 1958 were also recorded (March, 1976) to bring the difference between the fair market value and declared consideration for the transfer to gift-tax. No gift-tax proceedings were, however, initiated on the basis of this note. The wealth-tax assessment records of the same assessee indicated that fair market value of the aforesaid properties, as on March 31, 1972, had been returned and accepted at Rs. 2,45,240. The deemed gift arising to the assessee, thus, amounted to Rs. 1,64,240, on which gift-tax of Rs. 24,429 was leviable but was not levied.

The Ministry have accepted the objection and stated (February, 1979) that assessment proceedings have been initiated.

(vi) In seven more cases in 6 Commissioners' charges, non-levy of gift-tax on deemed gifts for the assessment years 1972-73 to 1974-75 was noticed. The total tax not levied amounted to Rs. 42,969.

The Ministry of Finance have accepted the omission in all these cases.

77. *Incorrect valuation of taxable gifts.*

(i) A non-resident company gifted to an Indian company, the entire business of its Indian branch with all its assets and liabilities including landed property measuring 2.6 acres in Bihar during the previous year relevant to the assessment year 1973-74. The value of the property of the transferred company would be Rs. 9,80,667 even as per its own balance-sheet, as on 30-6-1972. The transferor, however, returned the gift only of Rs. 88,363, based on (i) the balance in head office account (Rs. 1,22,867) and (ii) the value of goodwill (Rs. 45,000), less loss (Rs. 79,504) for the half year upto the date of transfer. The gift as returned was accepted by the Gift-tax Officer. The value

of chargeable gift would be the value of the net assets of the transferred branch, including also the value of its goodwill, taking its assets at their market value on the date of its transfer. In the absence of independent valuation by the Gift-tax Officer, the value of the assets of the transferred company taken at Rs. 9,80,667, as disclosed in its balance-sheet against Rs. 88,363 adopted in the assessment, showed short levy of gift-tax of Rs. 2,41,697.

The Ministry of Finance have accepted the objection and stated that assessment has been set aside by the Commissioner of Gift-tax for being done afresh.

(ii) An assessee gifted 8,872 shares of a private limited company on 20th June, 1974. The valuation of the shares for gift-tax was made under the break-up value method on the basis of net assets of the company in the manner laid down in the Wealth-tax Rules. But in so computing the value, the provision for income-tax was erroneously allowed in full, without excluding from it the advance income-tax already paid by the Company. This mistake resulted in under-assessment of gift by Rs. 43,738 with consequent short levy of tax of Rs. 7,818 for the assessment year 1975-76.

The under-assessment may be higher, if the valuation is done under the executive instructions, as applicable to gift-tax cases, according to which the valuation is to be based on the market value of the assets of the company, including the value of its goodwill.

The Ministry of Finance have accepted the objection in the first sub-paragraph of this paragraph; their reply is awaited in respect of the second sub-paragraph (April, 1979).

78. *Incorrect calculation of tax.*

A new Section 6A has been introduced in the Gift-tax Act, 1958 by the Taxation Laws (Amendment) Act, 1975, with effect from 1-4-1976. As a result of this new provision of law, gifts spread over five previous years are aggregated. Gift-tax is now first computed on the gift of the relevant previous year

aggregated with the gifts of the 'preceding four previous years' (excluding gifts made before 1-6-1973) at the rates of the assessment year in hand. From the gift-tax so computed, gift-tax on the gifts of these 'preceding four previous years' at the same rates is then deducted. The balance is the gift-tax payable.

During the test check conducted by Audit from April, 1977 to March, 1978, it was noticed that the aforesaid provision for aggregation of gifts was not applied in as many as 55 cases in 18 Commissioners' charges and gift-tax was levied only on the gifts relating to the previous year relevant to the assessment year 1976-77. This widespread omission to apply higher rate of gift-tax, determined as applicable on aggregation of the gifts of the 'preceding four previous years', led to under-assessment of gift-tax of Rs. 1,01,180.

The Ministry of Finance have accepted the objection in all cases.

B. ESTATE DUTY

79. The receipts under estate duty in the financial years 1973-74 to 1977-78, compared with the budget estimates of these years, thus :—

Year	Budget estimates	Actuals
	(Rupees in crores)	
1973-74	9.25	10.53
1974-75	9.00	10.94
1975-76	9.25	11.65
1976-77	9.75	11.70
1977-78	10.75	12.30 (prov.)

The arrears of demand and the number of assessments pending as on 31-3-1978 were Rs. 17.52 crores and 28,287 respectively.

80. During the test audit of assessments made under the Estate Duty Act, 1953, conducted during the period from 1st April, 1977 to 31st March, 1978, the following types of mistakes resulting in under-assessment of duty were noticed :—

(i) Estates escaping assessment.

(ii) Incorrect valuation of assets.

(iii) Mistakes in computing principal values of estates.

(iv) Irregular/excessive allowance, exemptions and reliefs.

(v) Non-levy of interest.

A few instances of these mistakes are given in the following paragraphs.

81. *Escapement of duty due to lack of co-ordination.*

In the previous Audit Reports, the necessity of correlation of assessments made under various direct taxes has consistently been stressed. The matter has also been discussed in the Public Accounts Committee. The Public Accounts Committee have also emphasised the need for a proper co-ordination among the assessment records pertaining to different direct taxes to ensure an overall improvement in the administration of these taxes. Instances of lack of co-ordination and failure to correlate the information available in records of various direct taxes came to be noticed in test check by Audit. A few more important instances of under-assessments resulting from such lack of co-ordination are given below :—

(i) In the case of a deceased person (died on 24-1-1970), the value of 2,313 equity shares held by him in a banking company (before its liquidation) was taken as Rs. 115 per share, as returned by the accountable person in the account filed for the estate of the deceased. For the wealth-tax assessment for the assessment years 1969-70 and 1970-71 of the estate of the deceased person, the value of these shares was, however, taken as Rs. 125 and Rs. 168 per share respectively. The direct taxes

assessment records of the deceased showed that, the first instalment of payment in 1972 of compensation received by his heirs in respect of these shares on liquidation of the bank was at Rs. 200 per share. The under-valuation of these shares computed at the rate of Rs. 168 as on 31-3-1970 (being nearest to the date of the death) adopted in wealth-tax assessment was by Rs. 1,22,589. This under-valuation caused by lack of correlation of estate duty assessment with wealth-tax assessment resulted in the under-assessment of the estate by Rs. 1,22,589 and of estate duty of Rs. 1,04,201.

The Ministry of Finance have accepted the objection.

(ii) In the wealth-tax assessment for 1971-72 of an assessee, made on 19-5-1973, the value of the agricultural lands (wet and dry) including 560 lime trees was determined at Rs. 2,44,560. The deceased person had adopted this assessed value of Rs. 2,44,560 in her wealth-tax returns for the assessment years 1972-73 and 1973-74. She died on 31-1-1974. In her estate duty case, however, the value of these properties was returned by the accountable person as Rs. 90,412 only which was incorrectly accepted by the Assistant Controller of Estate Duty. The omission to correlate the wealth-tax assessment at the time of the estate duty assessment, as required in Board's instructions, thus, resulted in undervaluation of the estate by Rs. 1,54,148 and short levy of estate duty of Rs. 26,060.

The Ministry of Finance have stated (March, 1979) that the case has been referred to the Valuation Officer for verification of the correctness of valuation.

(iii) In computing the principal value of the estate of a deceased person, who died on the 22nd February, 1970, the assessing officer considered the value of his share interest as a partner in a firm, as (—) Rs. 23,017 in the estate duty assessment done on 26-10-1976. It was so arrived at after making an adjustment of (—) Rs. 1,345 to his opening capital of (—) Rs. 21,672 as it stood on 1st January, 1970, as per the account

field by the accountable person on 14-11-1972. On the other hand, the revised wealth-tax return filed on behalf of the deceased on 26-8-1974 for the period ending 31st December, 1969, disclosed a plus balance of Rs. 35,843, standing in the capital account of the deceased with that firm. Furnishing of an incorrect account by the accountable person and failure on the part of the Department to correlate the estate duty assessment with the wealth-tax records, thus, resulted in under-assessment of the principal value of the estate by Rs. 57,515 and of estate duty of Rs. 12,277.

The Ministry of Finance have accepted the mistake and stated that additional duty raised is Rs. 18,908, on rectifying some other mistakes also.

82. *Incorrect valuation of unquoted equity shares in companies.*

The valuation of unquoted equity shares in companies under the 'break-up value' method, for the purposes of levy of estate duty, is required to be done on the basis of market value of the assets of the company, including the value of its goodwill, whether disclosed in its balance-sheet or not. For levy of wealth-tax, however, such valuation, under a wealth-tax rule, is done by reference to the balance-sheet of the company and discount is allowed from the break-up value for non-declaration of dividends by the company. As the provisions in regard to valuation of unquoted equity shares in companies in the two Acts are different, the extension of this wealth-tax rule made in March, 1968 to estate duty cases was cancelled by the Board in October, 1974.

In paragraph 112(i) of the Audit Report, 1975-76, an instance of erroneous valuation of such shares in an estate duty case was pointed out where the assessment had not been rectified on cancellation of the aforesaid instructions of March, 1968. The under-assessment of estate duty involved in that case was of Rs. 1,80,90,526. Following a review conducted by the Ministry of Finance pursuant to consideration of Audit paragraph

112(i), 91 cases of similar under-assessments caused by incorrect valuation of such shares were noticed and assessments in 80 out of those 91 cases had been re-opened. Additional duty levied in those 80 cases has not so far been intimated (April, 1979). Instances of such under-assessments continued to be noticed in test check by Audit. Two such test cases involving under-assessment of estate duty of Rs. 62,040 were commented upon in paragraph 104(i) and (ii) of the Audit Report, 1976-77. Three more instances are given below :—

(i) In the case of a person, who died on 12-10-1974, while valuing the unquoted equity shares held by him in a private limited company (which had investments in public limited companies not listed on the stock exchanges and consequently shares in which were unquoted), the assessing officer omitted to consider the market value of these investments. One of these public limited companies was a subsidiary of the company. The value of goodwill of the company was also not ascertained and included in the assets of the company. This resulted in undervaluation of shares and consequently in under-assessment of estate by Rs. 1,09,152 causing short levy of duty of Rs. 32,745. The under-assessment would be more if the value of its goodwill was also included.

The Ministry of Finance have accepted the objection in principle, stating that tax effect shall be confirmed when re-assessment is completed.

(ii) In the estate duty cases of two deceased persons (who died in February, 1974 and February, 1975), while completing assessments respectively in March, 1977 and December, 1975, the Assistant Controller of Estate Duty omitted to have regard to the aforesaid cancellation of application of wealth-tax rule to estate duty cases and incorrectly computed the break-up value of unquoted equity shares, held by the deceased persons in three transport and automobile servicing companies (owning *inter alia* urban lands, buildings, vehicles, plant and machinery) under the said wealth-tax rule, adopting only the book value of their assets. In so doing, he incorrectly adopted the book

value, instead of market value, for the assets of these companies, allowed discount for non-declaration of dividends and omitted to include value of goodwill of one of these companies. If in the absence of the market value of assets of these companies and value of goodwill of one of these companies having been ascertained and recorded by the Assistant Controller of Estate Duty, undervaluation of these unquoted equity shares were computed by not allowing the inadmissable discount for non-declaration of dividends, there was undervaluation of these shares by not less than Rs. 71,396 and under-assessment of duty of Rs. 12,920.

The Ministry of Finance have accepted the objection.

(iii) While valuing the unquoted equity shares held by a deceased person (who died on 22nd July, 1975) in a private limited company, which had in turn invested in the quoted and unquoted equity shares of several other companies, the assessing officer considered the market value only of the quoted shares and not of the unquoted shares. In addition, the closing stock of the company was valued at cost, instead of at its market value. These mistakes in the assessment order of 30th November, 1976 resulted in an under-assessment of the value of the estate by Rs. 41.355, leading to a short levy of estate duty of Rs. 20,677.

The paragraph was sent to the Ministry of Finance on 22nd September, 1978; their final reply is awaited (April, 1979).

83. *Incorrect valuation of other assets.*

(i) The house used by a deceased person for his own residence stood on a plot of land measuring 64,768 sq. ft. and had a constructed area of 4,000 sq. ft. only. The value of the house, returned at Rs. 88,400, was not accepted by the assessing officer, who in his computation of the value of dutiable estate, added Rs. 1,29,536 as its value. However, according to the details furnished in the account filed by the accountable person, the amount of Rs. 1,29,536 represented only the cost of 64,768 sq. ft. of land at Rs. 2 per sq. ft. Thus, the cost of construction of the house was wholly omitted in the assessment

made by the Assistant Controller. The net annual letting value of the house was Rs. 7,200 and according to standard adopted by the Assistant Controller in other cases, the value of construction was Rs. 1,08,000 at fifteen times the net annual letting value of the house. The omission in not including the value of the structure, thus, resulted in undervaluation of the property by Rs. 1,08,000 and short levy of estate duty of Rs. 15,110.

The Ministry of Finance have accepted the objection and stated that tax effect can be confirmed on completion of re-assessment.

(ii) A deceased person, before his death on 21st March, 1975, was a partner in a firm. While computing his share interest in the firm, the value of its goodwill was not added to the value of its net assets on the ground, as recorded, that there would be no element of super-profits if the interest on the capital invested by partners and the value of their services in the firm were taken into consideration. However, the firm itself had paid interest to the partners on the capital invested by them and the profits of firm had been determined after taking into account such interest. Thus, while determining the value of goodwill for inclusion in the net assets of the firm, the element of interest on capital was not to be considered again. The value of the goodwill, on the basis of the average profits of the firm for the earlier years and after deducting the value of the services rendered to the firm by the partners, would work out to Rs. 2,23,000, in which the deceased's share was Rs. 55,750. The incorrect computation of share interest of the deceased in the firm by not including the value of its goodwill, thus, led to under-assessment of estate duty of Rs. 11,310. Further, assets of the firm were to be taken at their market value, as on the date of death of the deceased partner, for the purpose of computation of his share interest in its net assets. This was, however, not done.

The Ministry of Finance have accepted the objection, adding further that amount of under-assessment shall depend upon the correct computation of the value of goodwill in the re-opened assessment.

84. *Mistakes in computing principal value of estates.*

Under the Estate Duty Act, 1953, the estate of a deceased person includes the value of cesser of his coparcenary interest in the common property of a Hindu undivided family on death. The Act further provides that the shares of lineal descendants in such common property are also to be included in his estate for rate purposes but not for levy of duty.

(i) According to Board's clarification issued as early as in October, 1959, since the sole surviving coparcener enjoys absolute powers to dispose of or alienate the entire coparcenary property, the property which passes on the death of such a coparcener is the entire family property and not merely the cesser of his share or interest in such property.

While determining the principal value of the estate in the cases of four deceased persons, who were the sole surviving coparceners of their respective Hindu undivided families, governed by Mitakshara School of Hindu Law, only their own shares of interest in the undivided family properties were added to the principal value of their respective estates and not the whole of such properties. The computation of the principal value of the four estates made by the Assistant Controller was, thus, incorrect and this mistake resulted in the total undervaluation by Rs. 7,03,820 and short levy of duty of Rs. 1,27,930. These incorrect assessments were not rectified by the Department even after reiteration in July, 1976 by the Board of their earlier instructions of October, 1959, at the instance of Audit.

The Ministry of Finance have accepted the mistakes in all the four cases and stated (November, 1978) that proceedings are being initiated to rectify the assessments.

(ii) In the case of a deceased person, who expired on February 14, 1970, the principal value of his estate passing on his death, inclusive of the share of his lineal descendants for rate purposes, was assessed at Rs. 5,99,500. The deceased person during his life-time was a partner in a firm in his individual capacity. On November 8, 1969, the deceased had withdrawn a

sum of rupees one lakh out of his individual capital account in the said firm and converted it into the joint Hindu family property. This amounted to disposition in favour of relatives and as the conversion had also been made within two years before his death, the amount of Rs. one lakh was includible in the principal value of his individual estate under the provisions of Estate Duty Act. It was, however, treated as Hindu undivided family property by the Department and only a proportion of it was included in his individual estate. This mistake led to erroneous computation of the chargeable estate of the deceased person and consequent undercharge of estate duty of Rs. 16,873.

The Ministry of Finance have accepted the objection.

85. *Irregular and excessive allowances, exemptions and reliefs.*

Estate Duty Act, 1953 permits deduction of debt incurred by the deceased person in computation of the principal value of his estate subject to prescribed conditions for abatement. One of the such abatements is that a debt, which the deceased had incurred by borrowing money from a person to whom he had previously made a gift or amongst whose resources there was, at any time, found included any property derived from the deceased, is to be abated for the value of the property.

A deceased person, who died on 20th October, 1970, had gifted a house property in 1956, then valued at Rs. 1,00,000, to his wife. This property was sold by his wife in 1960 for Rs. 1,48,500. From time to time the deceased had borrowed moneys from his wife and the balance outstanding as debt due to his wife on the date of his death was Rs. 1,74,838. The Assistant Controller, finding that the deceased had utilised Rs. 1,05,000 of the borrowed moneys for construction of a house, the value of which was included in his estate at Rs. 2,24,200, abated the debt by Rs. 1,05,000 and allowed the remaining debt of Rs. 69,838 as a deduction. As, however, the gifted property had been sold for Rs. 1,48,500 as far back as 1960 and this sum was found included amongst the resources of his wife, the correct abatement

required to be made was of Rs. 1,74,838. The under-abatement of the debt led to under-assessment of the estate by Rs. 69,838 and of duty of Rs. 22,691.

The Ministry of Finance have accepted the objection but stated that the abatement should be by Rs. 1,48,500, the sale proceeds realised by the donee-wife.

86. *Non-levy of interest.*

Under the provisions of the Estate Duty Act, 1953, every person accountable for estate duty is required to submit the return for estate duty within six months from the date of death of the deceased. The Controller of Estate Duty is, however, empowered to extend this time limit on terms, *inter alia* including payment of interest at the rate of 6 per cent.

(i) In the case of a deceased person, who died on 1st July, 1960, extension of time for submission of estate duty account was granted to the accountable person up to 30th November, 1967, subject to the payment of interest. The Department, however, failed to levy interest of Rs. 15,286 for the period of delay in submission of accounts.

While accepting the objection, the Ministry of Finance have stated that additional demand of Rs. 15,286 has been raised.

(ii) In the case of a deceased person, who died on 12th April, 1965, extension of time for filing the account was granted by the Assistant Controller. The accountable person submitted the account on 11th April, 1966 for Rs. 3,42,470, as against the due date of 12th October, 1965. The Assistant Controller made provisional assessment on 19th April, 1966 raising a provisional demand of duty of Rs. 44,696 and regular assessment on 21st March, 1969 (which was modified on 26th March, 1974), determining the principal value of the estate of the deceased as Rs. 29,93,755 and raising additional demand for duty of Rs. 14,30,073. Levy of interest of Rs. 42,902 on Rs. 14,30,073 from 13th October 1965 to 10th April, 1966 was, however, omitt-

ed. When this omission was pointed out (February, 1975) by Audit, the Department stated (December, 1977) that rectification had become time-barred when Audit pointed out the omission. The omission, thus, led to loss of revenue of Rs. 42,902.

The paragraph was sent to the Ministry of Finance on 22nd September, 1978; action taken by them in this case of loss of revenue is awaited (April, 1979).

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(V. GAURI SHANKER)
Director of Receipt Audit.

Countersigned.

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(GIAN PRAKASH)
Comptroller and Auditor General of India.