REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR
1976-77

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS
VOLUME II
DIRECT TAXES

ERRATA

Sl. No.	Page	Para	Line	*For*	*Read*
1.	3	1(c)	3rd from bottom	Rule	Rule 37(2)
2.	6	3	5th from bottom	34.28	34.38
3.	29	13	6th from top	87.138	87,138
4.	47	22	1st from top	the	for the
5.	87	41	14th from top	cent per	per cent
6.	88	42(ii)	9th from bottom	exceeds	exceed
7.	102	49.3	5th from bottom	n	in
8.	128	59(i)(a)	9th from top	income	incomes
9.	149	72	1st from top	ascaping	escaping
10.	172	80(iii)	last line	Delete the word "in"	
11.	185	92(i)	5th from top	discretioi	discretion
12.	188	93(b)	8th from bottom	Insert the word 'the' between the words 'accepted and 'objection'.	
13.	193	94	4th from top	Insert the word 'hand' between the words 'other' and 'in'.	

S/18 C&AG/77

Report

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Union Government (Civil)

Revenue Receipts

Volume II

Direct Taxes

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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.

CHAPTER I

GENERAL

The total proceeds from Direct Taxes for the year 1976-77 amounted to Rs. 2327.74 crores out of which a sum of Rs. 661.76 crores was assigned to the States. The figures for the three years 1974-75, 1975-76 and 1976-77 are given below :—

(In crores of rupees)

	1974-75	1975-76	1976-77
020 Corporation Tax	709.48	861.70	984.23
021 Taxes on Income other than Corporation Tax	878.25	1214.36	1194.40
028 Other Taxes on Income and Expenditure	10.99	58.38	71.27
031 Estate Duty	10.94	11.65	11.73
032 Taxes on Wealth	39.23	53.73	60.44
033 Gift Tax	5.06	5.11	5.67
GROSS TOTAL . .	1653.95	2204.93	2327.74
Less share of net proceeds assigned to the States			
Income-tax	516.16	734.10	652.24
Estate Duty	10.03	8.21	9.52
TOTAL . . .	526.19	742.31	661.76
Net receipts	1127.76	1462.62	1665.98

The grosss receipts under Direct Taxes during 1976-77 went up by Rs. 122.81 crores when compared with the receipts during 1975-76 as against an increase of Rs. 550.98 crores in 1975-76 over those for 1974-75. Receipts under Corporation tax accounted for an increase of Rs. 122.53 crores while taxes on income other than Corporation tax registered a decrease of Rs. 19.96 crores.

N.B.—Figures for 1976-77 are provisional.

(*a*) The break-up of total collections of Corporation tax and Taxes on income other than Corporation tax, during 1976-77, as furnished by the Ministry of Finance, is as under :—

Pre-assessment and post-assessment collection of tax during 1976-77 :—

	(In crores of rupees)
(*i*) Deduction at source.	376.23
(*ii*) Advance tax (net)	1310.19
(*iii*) Self assessment	300.49
(*iv*) Regular assessment	84.62**
	2071.53

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

	(In crores of rupees)*
(*i*) Dividends distributed by companies	64.98
(*ii*) Salaries	173.50
(*iii*) Payments to contractors	39.20
(*iv*) Winnings from Lotteries and Crossword Puzzles	1.24

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

(1)	(*i*) No. of company assessees as on 1-4-1976	40,055
	(*ii*) No. of company assessees as on 1-4-1977.	40,237
	(*a*) No. of foreign company assessees as on 1-4-1976 [included in (i) above].	1,098
	(*b*) No. of foreign company assessees as on 1-4-1977 [included in (ii) above]	1,136
(2)	No. of foreign companies which had made the prescribed arrangements for declaration and payment of dividends within India :	
	As on 1-4-1976.	2
	As on 1-4-1977.	—

*Figures furnished by the Ministry of Finance

**After allowing refunds of Rs. 214.45 crores.

(3) No. of companies which have distributed dividends during 1976-77 and amount of dividend : . . . . .

	No.	Amount of dividend (in thousands of rupees)
(*a*) Indian companies	4,095	2,29,54,19
(*b*) Foreign companies	—	—

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

(*a*) Indian companies	4,062
(*b*) Foreign companies	—

(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	4,056	44,28,95
(*b*) Foreign companies	—	—

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

(*a*) Indian companies	3,947
(*b*) Foreign companies	—

(7) Amount involved in (6) above :

(*a*) Indian companies	41,60,32
(*b*) Foreign companies	—

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

(*a*) Indian companies	109
(*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 shareholder Rs. 5,000 :

(*a*) Indian companies	49
(*b*) Foreign companies	—

(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
(*a*) Indian companies	36	33
(*b*) Foreign companies	—	—

(*d*) Advance Tax—Demand and Collection*. Demand raised (*i.e.* notices issued) and collected by way of advance tax during 1976-77 :—

	Number of cases	Amount (in crores of rupees)
(*i*) Demand raised . . .	Not furnished	1349.27
(*ii*) Demand collected out of (i) .	8,53,578	1306.44
(*iii*) Arrears under advance tax as on 31st March, 1977 . . .	2,75,769	42.83

2. *Variations between Budget estimates and actuals*

(i) The actuals for the year 1976-77 under the Major heads '021—Taxes on Income other than Corporation Tax', '031—Estate Duty', '032—Taxes on Wealth' and '033—Gift-tax' exceeded the Budget estimates. The figures for the years from 1972-73 to 1976-77 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				
1972-73 . . .	493.50	557.86	64.36	13.04
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
021 — Taxes on Income etc.**				
1972-73 . . .	583.00	625.47	42.47	7.28
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

*Figures furnished by the Ministry of Finance.

**Gross figures have been taken.

(1)	(2)	(3)	(4)	(5)
031 — Estate Duty*				
1972-73 . . .	8.00	9.78	1.78	22.25
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
032 — Taxes on wealth				
1972-73 . . .	43.00	35.94	(—)7.06	(—)16.42
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
033 — Gift-tax				
1972-73 . . .	2.50	4.02	1.52	60.80
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

(*ii*) The details of variations under the heads subordinate to the Major Heads 020 and 021 for the year 1976-77 are given below :—

	Budget	Actuals	Increase (+) short-fall(—)	Percentage of variation
			(In lakhs of rupees)	
020—Corporation Tax				
(*i*) Income-tax on companies	9,90,00	9,19,59	—70,41	—7.11
(*ii*) Super Tax on Companies		41	41	
(*iii*) Excess Profits Tax . .		3	3	
(*iv*) Super Profits Tax	—	—	—	—
(*v*) Business Profits Tax		2	2	
(*vi*) Surtax	27,00	27,39	39	1.44
(*vii*) Surcharge		30,57	30,57	—
(*viii*) Other receipts**	8,00	6,22	—1,78	—22.25
	10,25,00	9,84,23	—40,77	3.98

*Gross figures have been taken.

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

021—Taxes on Income other than Corporation Tax				
(*i*) Income Tax . . .	8,86,00	11,19,41	2,33,41	26.34
(*ii*) Super Tax . . .		(—)52	(—)52	
(*iii*) Surcharge . . .	63,00	63,53	53	.84
(*iv*) Excess Profits Tax . .		3	3	
(*v*) Business Profits Tax		1	1	
(*vi*) Other receipts*	8,00	11,94	3,94	49.25
Deduct share of Proceeds assigned to States .	6,48,78	6,52,24	3,46	0.53
	3,08,22	5,42,16	2,33,94	75.90

3. *Cost of collection*

The expenditure incurred during the year 1976-77 in collecting Corporation tax and Taxes on Income other than Corporation Tax, together with the corresponding figures for the preceding three years is as under :—

(In crores of rupees)

	Gross Collections	Expenditure on Collections
020—Corporation Tax		
1973-74	582.60	3.11
1974-75	709.48	3.90
1975-76	861.70	4.85
1976-77	984.23	4.91
021—Taxes on Income etc.		
1973-74	741.37	21.76
1974-75	878.25	27.31
1975-76	1214.36	33.96
1976-77	1194.40	34.28

4. (i) The total number of assessees (including companies) in the books of the Department as on 31st March, 1977 was 37,58,753. As compared to the previous year ending 31st March, 1976 there was a decrease of 37,505 assessees. The numbers

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

of assessees status-wise as on 31-3-1976 and 31-3-1977 were as under :—

	As on 31st March, 1976	As on 31st March, 1977
Individuals	29,81,328	28,76,971
Hindu undivided families	1,86,717	1,97,734
Firms	5,49,568	5,96,750
Companies	40,055	40,237
Others	38,590	47,061
TOTAL	37,96,258	37,58,753

(ii) Category-wise numbers of income-tax paying assessees during the years 1975-76 and 1976-77 are indicated in the following table :—

	As on 31st March, 1976	As on 31st March, 1977
(*a*) Business cases having income over Rs. 25,000	2,72,334	3,10,976
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	2,30,886	2,72,791
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	4,05,293	4,08,210
(*d*) All other cases (including refund cases) except those mentioned in categories (e) and (f) below	6,13,114	4,22,126
(*e*) Government salary cases and non-Government salary cases below Rs. 18,000	4,61,647	4,30,521
(*f*) Summary assessment cases	18,12,984	19,14,129
TOTAL	37,96,258	37,58,753

(iii) The total number of wealth-tax assessees in the books of the Department as on 31st March, 1976 and 31st March, 1977 was as follows :—

	As on 31st March, 1976	As on 31st March, 1977
Individuals	1,99,953	2,16,479
Hindu undivided families	28,984	30,949
Others	1,587	1,878
TOTAL	2,30,524	2,49,306

(iv) The total number of gift-tax assessees in the books of the Department as on 31st March, 1976 and 31st March, 1977 was as follows :—

	As on 31st March, 1976	As on 31st March, 1977
Individuals	99,341	94,931
Hindu undivided families	1,358	1,223
Others	202	278
TOTAL	1,00,901	96,432

(v) The total number of estate duty assessment cases in the books of the Department as on 31st March, 1976 and 31st March, 1977 was as follows :—

As on 1st March, 1976	40,095
As on 31st March, 1977	40,695

(vi) The number of estate duty assessments completed during 1976-77 was as follows :—

Principal value of property	Number of assessments completed
(*i*) Exceeding Rs. 20 lakhs	16
(*ii*) Between Rs. 10 lakhs and Rs. 20 lakhs	63
(*iii*) Between Rs. 5 lakhs and Rs. 10 lakhs	343
(*iv*) Between Rs. 1 lakh and Rs. 5 lakhs	6,186
(*v*) Between Rs. 50,000 and Rs. 1 lakh	10,554
TOTAL	17,162

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 31-3-1977 :

	No.	Amount (In crores of rupees)
(*i*) No. of foreign companies	378	
(*ii*) Income returned		20.5794
(*iii*) Income assessed		26.0205
(*iv*) Gross demand		13.0473
(*v*) Demand outstanding out of (iv) as on 31-3-1977		8.8121
(*vi*) Tax paid up to 31-3-1977 [(iv)–(v)] . . .		4.2352

B. Cases where returns have been filed but assessments were pending as on 31-3-1977 :

(*i*) No. of foreign companies	578	
(*ii*) Income returned.		88.1985
(*iii*) Gross demand being tax due on income returned		48.1192
(iv) Demand outstanding out of (iii) as on 31-3-1977		00.0028
(*v*) Tax paid upto 31-3-1977 [(iii)–(iv)] . . .		48.1164

C. Cases where no returns have been filed as on 31-3-1977 :

Number of foreign companies	180

*The figure shown against "income returned" and "income assessed" is the total of positive income returned/assessed less the total of all losses returned/assessed in other cases.

(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 31-3-1977 :

	No.	Amount (in crores of rupees)
(*i*) Number of foreign companies	6	
(*ii*) Global income shown		.133
(*iii*) Income returned		.047
(*iv*) Income assessed		.048
(*v*) Gross demand		.027
(*vi*) Demand outstanding out of (v) as on 31-3-1977		—
(*vii*) Tax paid upto 31-3-1977 [(v)-(vi)] . . .		.027

B. Cases where returns have been filed but assessments were pending as on 31-3-1977 :

	No.	Amount (In crores of rupees)
(*i*) Number of foreign companies	25	
(*ii*) Global income shown		1346.14
(*iii*) Income returned		.32
(*iv*) Gross demand being tax due on income returned		.49
(*v*) Demand outstanding out of (iv) as on 31-3-1977		—
(*vi*) Tax paid upto 31-3-1977		.49

C. Cases where no returns have been filed as on 31-3-1977.

No. of foreign companies . . . 3

*The figure shown against "income returned" and "income assessed" is the total of positive income returned/assessed less the total of all losses returned/assessed in other cases.

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, 1977 was Rs. 720.97 crores. This did not include Rs. 152.59 crores, the collection of which had not fallen due on that date.

(ii) The figures of Corporation tax, Income-tax, interest and penalty comprised in the gross arrears of Rs. 873.56 crores and the years to which they relate are shown below :—

	Corporation tax	Income-tax	Interest	Penalty	Total (in crores of rupees)
Arrears of 1965-66 and earlier years .	9.33	41.07	4.28	4.44	59.12
1966-67 to 1973-74 .	37.54	146.30	41.59	33.20	258.63
1974-75 . .	16.03	47.35	19.27	14.54	97.19
1975-76 . .	23.44	89.46	33.87	18.64	165.41
1976-77 . .	60.04	149.36	57.26	26.55	293.21
TOTAL . .	146.38	473.54	156.27	97.37	873.56

(iii) The table below shows the number of assessees from whom gross arrears of Rs. 873.56 crores are due :—

Arrear demands	Number of assessees	Total arrears of tax (in crores of rupees)
Upto Rs. 1 lakh in each case	29,80,903	467.60
Over Rs. 1 lakh upto Rs. 5 lakhs in each case . .	4,801	102.79
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case . .	728	53.42
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case .	450	70.26
Over Rs. 25 lakhs in each case	270	179.49
TOTAL . . .	29,87,152	873.56

(iv) Tax demand certified to Tax Recovery Officers and State Government Officers for recovery and its year-wise particulars to the end of 1976-77 are as under:—

	Demand certified				
	At the beginning of the year	During the year	Total	Demand recovered	Balance
				(In crores of rupees)	
1967-68 . .	164.28	69.92	234.20	46.51	187.69
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	461.25
1971-72 . .	483.53	208.79	692.33	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* . .	671.30	343.01	1014.31	373.58	640.73

(v) Demands of Income-tax (including Corporation-tax) stayed as on 31st March, 1977 on account of appeals and revision petitions were as under:—

	(In crores of rupees)
(*a*) By Courts	19.55
(*b*) By Income-tax authorities :	
(*i*) Pending disposal of appeals etc. (including amounts under protective assessments)	71.17
(*ii*) Pending disposal of scaling down petitions . . .	4.31
(*iii*) For other reasons	13.25

*Figures provisional.

close of the previous year. The number of assessments pending as on 31st March, 1977 was 17.42 lakhs as compared to 17.27 lakhs as on 31st March, 1976 and 16.77 lakhs as on 31st March, 1975. Of the 17.42 lakhs of pending cases as many as 6.84 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 :—

Number of assessments completed

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
1972-73	49,90,722	25,07,241	10,90,816	35,98,057	72.1	13,92,665
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

(iii) Category-wise break-up of the total number of assessments completed during the years 1975-76 and 1976-77 is as under :—

		1975-76	1976-77
(*a*)	Business cases having income over Rs. 25,000 .	3,10,130	3,27,195
(*b*)	Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,88,707	1,83,244
(*c*)	Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	3,01,424	2,80,511
(*d*)	All other cases (including refund cases) except those mentioned in categories (e) and (f) . .	6,33,772	4,91,046
(*e*)	Small income scheme cases, Government salary and non-Government salary cases below Rs. 18,000	92,992	62,877
(*f*)	Summary assessments	24,80,619	26,04,006
	TOTAL . . .	40,07,644	39,48,879

(iv) Status-wise break-up of income-tax assessments completed during the years 1975-76 and 1976-77 is as under :—

	1975-76	1976-77
(*i*) Individuals	32,18,567	31,07,646
(*ii*) Hindu Undivided Families . . .	1,93,545	1,96,265
(*iii*) Firms	5,19,344	5,66,091
(*iv*) Companies	40,327	41,878
(*v*) Associations of persons	35,861	36,999
TOTAL . . .	40,07,644	39,48,879

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

	As on 31st March, 1975	As on 31st March, 1976	As on 31st March, 1977
1972-73 and earlier years . . .	76,490	47,716	26,538
1973-74	3,67,964	35,599	18,129
1974-75	12,33,027	4,22,143	47,103
1975-76	..	12,21,225	4,07,231
1976-77	..	..	12,42,837
TOTAL .	16,77,481	17,26,683	17,41,838

(vi) Category-wise break-up of pending income-tax assessments as on 31st March, 1976 and 31st March, 1977 is as under :—

	As on 31st March, 1976	As on 31st March, 1977
(*a*) Business cases having income over Rs. 25,000 .	1,81,297	1,90,539
(*b*) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,69,897	1,82,783
(*c*) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	2,70,718	2,59,123
(*d*) All other cases (including refund cases) except those mentioned in categories (e) and (f) below	5,25,966	4,25,655
(*e*) Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	83,130	67,824
(*f*) Summary assessments	4,95,675	6,15,914
TOTAL . . .	17,26,683	17,41,838

(vii) Status-wise and year-wise break-up of pendency of income-tax assessments as on 31st March, 1977 is as under :—

Status	1972-73 and earlier years	1973-74	1974-75	1975-76	1976-77	Total
Individuals	17,331	13,376	34,423	2,84,436	9,35,603	12,85,169
Hindu undivided families	1,772	1,344	3,408	25,531	63,447	95,502
Companies	2,734	648	1,681	9,704	19,241	34,008
Firms .	3,837	2,404	6,534	75,984	2,04,027	2,92,786
Associations of persons	864	357	1,057	11,576	20,519	34,373
TOTAL .	26,538	18,129	47,103	4,07,231	12,42,837	17,41,838

(viii) 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, 1977 are as follows:—

Assessment year	Number of assessments
1968-69 and earlier years	1,235
1969-70	337
1970-71	417
1971-72	548
1972-73	932
1973-74	1,499
1974-75	2,167
1975-76	1,260
1976-77	1,325
TOTAL . . .	9,720

(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, 1977 are as follows:—

Assessment year	Number of assessments
1968-69 and earlier years	107
1969-70	20
1970-71	42
1971-72	56
1972-73	118
1973-74	75
1974-75	61
1975-76	34
1976-77	182
TOTAL	695

(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, 1977:—

Set aside by Appellate Assistant Commissioners

Assessment year	Number of cases
1968-69 and earlier years	2,920
1969-70	501
1970-71	626
1971-72	686
1972-73	971
1973-74	936
1974-75	846
1975-76	917
1976-77	1,204
TOTAL	9,607

Set aside by Appellate Tribunals

Assessment year	Number of cases
1968-69 and earlier years	494
1969-70	95
1970-71	108
1971-72	104
1972-73	112
1973-74	104
1974-75	57
1975-76	125
1976-77	230
TOTAL	1,429

(b) Pendency of Super Profits Tax and Surtax assessments

The position of pendency as on 31st March, 1977 is given below:—

(Figures in lakhs of Rupees)

	Super Profits tax	Surtax
(*i*) Total number of cases for disposal during 1976-77	18	4248
(*ii*) Number of cases disposed of provisionally .	—	597
(*iii*) Number of cases disposed of finally . . .	3	1144
(*iv*) Amount of demand raised on provisional assessments	—	3600.81
(*v*) Amount of demand collected on provisional assessments	—	3404.88
(*vi*) Amount of demand raised on final assessments	2.11	2136.44
(*vii*) Amount of demand collected on final assessments	1.89	1754.45
(*viii*) Number of cases pending as on 31st March, 1977	15	3104
(*ix*) Approximate amount of tax involved in (*viii*)	0.60	5513.02

Year-wise details of assessments under Companies (Profits) Surtax Act, 1964, pending as on 31st March, 1977 are as under:—

Year	Number of assessments
1967-68 and earlier years	52
1968-69	14
1969-70	17
1970-71	33
1971-72	53
1972-73	104
1973-74	193
1974-75	550
1975-76	884
1976-77	1,204
TOTAL . . .	3,104

(c) Year-wise details of Wealth-tax, Gift-tax and Estate Duty assessments pending on 31st March, 1977 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
1972-73 and earlier years . . .	34,673	4,879	3,229
1973-74	19,705	2,076	2,399
1974-75	34,788	3,794	3,123
1975-76	67,107	4,578	7,467
1976-77	1,32,676	7,253	11,038
Total .	2,88,949	22,580	27,256

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 1976-77	100.27
(*ii*) Of the amount of interest levied, the amount	
(*a*) Completely waived by the Department .	3.85
(*b*) Reduced by the Department . .	8.65

9. *Appeals pending on* 31-3-1977

(i) Particulars in respect of appeals pending on 31st March, 1977 are as under :—

	Income-tax appeals with Appellate Assistant Commissioners	Income-tax revision petitions with Commissioners
(*a*) Number of appeals/revision petitions . .	2,01,949	5,947
(*b*) Out of appeals/revision petitions instituted during 1976-77	1,44,429	3,972
(*c*) Out of appeals/revision petitions instituted in earlier years	57,520	1,975

(*ii*) Year-wise break-up of appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax for the periods ending 31st March, 1976 and 31st March, 1977 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, 1976	31st March, 1977	31st March, 1976	31st March, 1977
1968-69 and earlier years .	170	70	132	49
1969-70	183	86	43	26
1970-71	368	166	130	66
1971-72	1,478	501	212	143
1972-73	4,966	1,449	378	163
1973-74	10,386	2,548	586	246
1974-75	36,373	11,239	1,081	442
1975-76	1,29,691	41,461	3,636	840
1976-77	..	1,44,429	..	3,972
	1,83,615	2,01,949	6,198	5,947

(*iii*) The following table gives details of appeals/references disposed of during 1974-75, 1975-76 and 1976-77 :—

	1974-75	1975-76	1976-77
(*i*) (*a*) No. of appeals filed before Appellate Assistant Commissioners .	2,03,970	2,01,168	2,13,612
(*b*) No. of appeals disposed of by 31-3-1977	1,92,731	1,59,707	69,183
(*ii*) No. of appeals filed before income-tax Appellate Tribunals			
(*a*) by the assessees . . .	20,603	31,223	31,067
(*b*) by the Department . . .	14,457	17,564	17,532
(*iii*) No. of assessees' appeals decided by the Tribunals in favour of the assessees	14,707	25,056	12,995
(*iv*) No. of departmental appeals decided by the Tribunals in favour of the Department	3,439	9,289	4,468
(*v*) No. of references filed to the High Courts			
(*a*) by the assessees . . .	1,364	1,560	1,868
(*b*) by the Department . . .	3,028	3,456	3,705
(*vi*) No. of references disposed of in favour of the			
(*a*) assessees	246	475	635
(*b*) Department	269	419	113
(*vii*) No. of appeals filed to the Supreme Court			
(*a*) by the assessee . . .	46	14	36
(*b*) by the Department . . .	212	46	115
(*viii*) No. of appeals disposed of by the Supreme Court in favour of the			
(*a*) assessees	73	12	—
(*b*) Department	25	13	11

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 assessment year 1975-76.

	No. of assessments	Amount of relief allowed (in thousands of rupees)
(*i*) Relief on account of expenditure on medical treatment of handicapped dependants	605	92
(*ii*) Relief in respect of payments for securing retirement benefits. . .	98	69
(*iii*) Relief in respect of incomes earned by Indian teachers, research workers working in foreign universities and educational institutions. . .	97	78
(*iv*) Relief for newly established industrial undertakings or ships or hotels .	550	1,99,23
(*v*) Relief for expenditure incurred on education abroad of children of foreigners	149	83
(*vi*) Relief for industrial undertakings which provide employment for displaced persons	267	4,32

(b) Refunds

(*i*) Refunds under Section 237 :

1. No. of applications pending on 1-4-1976	5,460
2. No. of refund applications received during the year 1976-77 . . .	93,490
3. No. and amount of refunds made during 1976-77	
(*a*) Out of (1) above	
(*i*) No.	5,190
(*ii*) Amount	68,21
(*b*) Out of (2) above .	
(*i*) No.	89,406
(*ii*) Amount	14,13,45
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 1976-77 : .	
(*a*) Out of (1) above :	
(*i*) No.	3
(*ii*) Amount of refund . .	4
(*iii*) Amount of interest paid .	—
(*b*) Out of (2) above :	
(*i*) No.	11
(*ii*) Amount of refund . .	2,40
(*iii*) Amount of interest paid .	1,45
5. No. and amount of refunds made during 1976-77 on which no interest was paid :	
(*i*) No.	94,582
(*ii*) Amount	14,79,22
6. No. of refund applications pending as on 31-3-1977	4,354
7. Break-up of applications mentioned at (6) above :	
(*i*) Refund applications for less than a year	4,084
(*ii*) between 1 year and 2 years .	270
(*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 acount of appellate/revision etc. orders		7,698
2.	No. of assessments which arose for similar revision in 1976-77		1,45,902
3.	No. of assessments which were revised during 1976-77 :		
	(*i*) Out of those pending as on 1-4-76		7,528
	(*ii*) Out of those that arose during 1-4-76 to 31-3-1977		1,40,340
4.	No. of assessments which resulted in refund as a result of revision and total amount of refund given :		
		No.	Amount of refund (Rs.)
	(*i*) Under item 3(i) above	4,353	2,28,35
	(*ii*) Under item 3(ii) above	65,496	44,60,46
5.	No. of assessments in which interest became payable under Section 244 and amount of interest :		
	(*i*) Under item 4(i) above	53	16
	(*ii*) Under item 4(ii) above	191	15,43
6.	No. of assessments pending revision on 1-4-1977		
	(*i*) Out of (1) above		170
	(*ii*) Out of (2) above		5,562
7.	Break-up of assessments mentioned at (6) above :		
	(*i*) Pending for less than 1 year		5,562
	(*ii*) Pending for more than 1 year and less than 2 years		162
	(*iii*) Pending for more than 2 years		8

11. *Searches and Seizures*

	1974-75	1975-76	1976-77
(*i*) Total number of searches and seizure operations conducted .	2,029	2,635	3,571
		(In lakhs of rupees)	
(*ii*) Total amount each of money, bullion and jewellery or other valuable articles or things seized :			
Cash	385	334	352
Jewellery and bullion . .	940	1,306	1,031
Other assets	388	495	661
TOTAL . . .	1,713	2,135	2,044
(*iii*) Total amount each of money bullion and jewellery or other valuable articles or things released by 31-3-77 :			
Cash		56	
Jewellery and bullion . .		391	
Other assets		163	
TOTAL . .		610	
(*iv*) Total amount of money, bullion and jewellery or other valuable articles or things held as on 31-3-1977 irrespective of the year of search :			
Cash		588	
Bullion and jewellery . .		1,795	
Other assets		854	
		3,237	
(*v*) The earliest date from which any of these assets is still retained .		17.9.65	
(*vi*) The arrangements made for the safe custody of assets still held and for their physical verification	Cash is deposited in the Personal Deposit Accounts of the Commissioners of Income-tax in the Reserve Bank of India. Other valuables are kept either in well-guarded strong rooms in the office buildings or in treasuries or in Bank vaults etc.		

(*vii*) Complaints of losses and pilferage			Nil
(*viii*) No. of cases out of the total searches and seizures mentioned above where the assessments have been completed as on 31-3-1977	290	826	218
(*ix*) No. of cases where assessments were completed by reducing or waiving penalties under Section 271(4A)	—	—	—
(*x*) The total amount of arrears of income-tax pending as on 31-3-1977 in respect of the assessments completed . . .	(In lakhs of rupees) 416	213	48
(*xi*) The amounts of concealed income estimated in these cases at the time of search and seizure	362	698	273
(*xii*) The amounts on which actual assessments were made . .	278	603	140
(*xiii*) No. of cases in which incriminating evidence was found during search and seizure operations indicating an offence for which prosecution could be launched under any section of the Act .	126	167	129
(*xiv*) No. of cases in which prosecution was launched . . .	5	—	1
(*xv*) No. of cases in which convictions were obtained	1	—	—

12. *Frauds and evasions*

(*a*) Income-tax

(*i*) No. of cases in which penalty under-Section 28(1)(c)/271(1)(c) was levied in 1976-77	6,986
(*ii*) No. of cases in which prosecution for concealment of income was launched . .	264

(*iii*) No. of cases in which composition was effected without launching prosecution .	1	
	(In crores of rupees)	
(*iv*) Concealed income involved in (i)	13.21	
(*v*) Total amount of penalty levied in (i) . . .	12.57	
(*vi*) Extra tax demanded on concealed income in (iv) .	5.97	
(*vii*) Cases out of (ii) in which convictions were obtained .	Nil	
(*viii*) Composition money levied in respect of (iii) . .	Rs. 1,600	
(*ix*) Nature of punishment in respect of (vii) . .	Nil	
(*b*) Wealth-tax and Gift-tax		
	Wealth-tax	Gift-tax
(*i*) No. of cases in which penalty under Section 18(1)(c)/17(1)(c) was levied .	500	32
(*ii*) No. of cases in which prosecution for concealment was launched . . .	18	1
(*iii*) No. of cases in which composition was effected without launching prosecution .	Nil	Nil
	(In thousands of rupees)	
(*iv*) Concealment of net wealth/value of gift involved in (i) above . . .	5,25,53	7,62
(*v*) Total amount of penalty levied	2,25,61	94
(*vi*) Extra tax demand on concealment . . .	909	62
(*vii*) Cases out of (ii) in which convictions were obtained .	Nil	Nil
(*viii*) Composition fees levied in respect of cases in (iii) .	Nil	Nil
(*ix*) Nature of punishment in respect of (vii) . . .	Does not arise	

13. *Revenue demands written off by the Department during the year* 1976-77

(a) A demand of Rs. 979.50 lakhs in 87,296 cases was written off by the Department during the year 1976-77. Of this, a sum of Rs. 94.74 lakhs relates to 158 company assessees and Rs. 884.76 lakhs to 87.138 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	—	—	312	1,06,40,360	312	1,06,40,360
(*b*) Assessees having gone into liquidation .	29	42,48,620	1	1,25,000	30	43,73,620
(*c*) Assessees having become insolvent .	—	—	126	15,53,996	126	15,53,996
(*d*) Assessees which are defunct though not gone into liquidation	27	20,55,279	—	—	27	20,55,279
TOTAL . . .	56	63,03,899	439	1,23,19,356	495	1,86,23,255
II. Assessees being untraceable .	72	23,74,973	49,860	3,08,65,909	49,932	3,32,40,882
III. Assessees having left India . .	3	39,436	41	28,76,267	44	29,15,703

1	2	3	4	5	6	7	8
IV.	For other reasons :						
	(*i*) Assessees who are alive but have no attachable assets. .	—	—	10,364	2,37,83,991	10,364	2,37,83,991
	(*ii*) Amount being petty etc. .	25	7,325	25,156	72,18,342	25,181	72,25,667
	(*iii*) Amount written off as a result of settlement (cases of scaling down of demand). .	—	—	218	51,85,791	218	51,85,791
	(*iv*) Demands rendered unenforceable by subsequent developments such as duplicate demands wrongly made, demands being protective etc.	2	7,47,989	845	28,90,181	847	36,38,170
	TOTAL . . .	27	7,55,314	36,583	3,90,78,305	36,610	3,98,33,619
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 for recovery. . .	—	—	215	33,36,387	215	33,36,387
	GRAND TOTAL .	158	94,73,622	87,138	8,84,7 6,224	87,296	9,79,49,846

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
1974-75	80	10
1975-76	80	10
1976-77	79	10

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

Year	Income-tax	Wealth-tax	Gift-tax	Estate duty
1974-75	906	11,022	61	285
1975-76	1,696	12,978	112	260
1976-77	1,641	14,980	111	393

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

(In lakhs of rupees)

Year	Income-tax	Wealth-tax	Gift-tax	Estate duty
1974-75	1,409.75	9,636.99	47.73	201.84
1975-76	2,912.47	19,811.84	111.06	752.93
1976-77	2,929.25	17,132.89	108.69	1,033.64

(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 cases	Total amount
1974-75	725+35*	1934.24	5707+206*	19583.49	36+3*	70.15	98+14*	359.31
1975-76	1401+55*	3538.28	12180+312*	39049.84	86+2*	270.07	296+23*	1246.38
1976-77	1588+71*	4063.54	11880+1970*	36504.51	82+9*	215.61	266+6*	2879.35

*Cases returned to Income-tax Officers.

(5) No. of cases pending in the Valuation Cells on 31-3-1977 :

	Number
Income-tax	2,918
Wealth-tax	10,036
Gift-tax	74
Estate duty	305

(6) Expenditure incurred on Valuation Cells during 1974-75, 1975-76 and 1976-77 :

Year	Expenditure
1974-75	Rs. 61,94,372
1975-76	Rs. 84,29,546
1976-77	Rs. 84,00,000 (estimated)

15. *Results of test audit in general*

(i) *Corporation tax and Income-tax*

During the period from Ist April, 1976 to 31st March, 1977 test audit of the documents of the income-tax offices revealed total under-assessment of tax of Rs. 1944.18 lakhs in 26,365 cases and over-assessment of tax of Rs. 23.37 lakhs in 802 cases. Besides these, various defects in following the prescribed procedures also came to the notice of Audit.

Of the total 26,365 cases of under-assessment, short levy of tax of Rs. 1622.82 lakhs was noticed in 2,077 cases alone. The remaining 24,288 cases accounted for under-assessment of tax of Rs. 321.36 lakhs.

The under-assessment of tax of Rs. 1944.18 lakhs is due to mistakes categorised broadly under the following heads :—

	No. of items	Amount (in lakhs of rupees)
1	2	3
1. Income escaping assessment	1796	286.25
2. Failure to observe the provisions of the Finance Acts.	886	39.96

N. B.—Figures appearing in paragraphs 4 to 14 above have been furnished by the Ministry of finance.

1	2	3
3. Incorrect status adpoted in assessments	380	33.74
4. Incorrect computation of salary income.	655	13.30
5. Incorrect computation of income from house property	935	26.53
6. Incorrect computation of dividend income	64	4.87
7. Incorrect computation of business income	3795	347.62
8. Irregularities in allowing depreciation and development rebate.	1281	134.68
9. Irregularities in connection with export incentives	55	46.38
10. Irregular exemptions and excess reliefs given	1669	261.02
11. Irregular computation of capital gains	274	47.92
12. Mistakes in assessment of firms and partners.	542	43.65
13. Omission to include income of spouse/minor child etc.	94	11.31
14. Avoidable mistakes involving considerable revenue	3231	60.07
15. Irregular set off of losses	136	10.31
16. Under-assessment due to adoption of incorrect procedure.	16	4.55
17. Mistakes in assessments while giving effect to appellate orders.	57	5.21
18. Excess or irregular refunds	883	31.48
19. Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.	3321	128.41
20. Avoidable or incorrect payment of interest by Government.	95	162.79
21. Omission/short levy of penalty	75	28.86
22. Other topics of interest/miscellaneous	6021	119.60
23. Under-assessment of Surtax/Super Profits Tax	104	95.67
TOTAL	26,365	1944.18

(ii) *Wealth-tax*

During test audit of assessments made under the Wealth-tax Act, 1957, short levy of tax of Rs. 265.99 lakhs was noticed in 4,124 cases. The number of cases in which over-assessment was noticed was 187 and tax involved was Rs. 3.15 lakhs.

The under-assessment of tax of Rs. 265.99 lakhs was due to mistakes categorised broadly under the following heads:—

	No. of items	Amount (in lakhs of rupees)
1. Wealth escaping assessment	482	12.47
2. Incorrect valuation of assets	498	19.63
3. Mistakes in computation of net wealth.	698	17.19
4. Irregular/excessive allowances and exemptions	1122	25.47
5. Mistakes in calculation of tax	389	8.94
6. Non-levy or incorrect levy of additional wealth-tax	66	7.53
7. Non-levy or incorrect levy of penalty and non-levy of interest	389	155.45
8. Incorrect status adopted in assessments	57	3.05
9. Mistakes in refunds	39	0.87
10. Miscellaneous	384	15.39
TOTAL	4,124	265.99

(iii) *Gift-tax*

During the test audit of gift-tax assessments it was noticed that in 920 cases there was short levy of tax of Rs. 55.68 lakhs and in 29 cases there was overcharge of tax of Rs. 0.45 lakhs.

(iv) *Estate Duty*

In the test audit of estate duty assessments, it was noticed that in 580 cases there was short levy of estate duty of Rs. 42.20 lakhs and in 4 cases there was overcharge of duty of Rs. 0.17 lakhs.

CHAPTER II

CORPORATION TAX

16. As on 31st March, 1977 there were 48,737 companies. These included 482 foreign companies and 1,356 associations not for profit registered as companies limited by guarantee. The remaining 46,899 companies comprised 701 Government companies and 46,198 non-Government companies with paid-up capitals of Rs. 7,184 crores and Rs. 2,769 crores respectively. Among non-Government companies over 83 per cent were private limited companies.*

The definition of "Indian company" in the Income-tax Act was amended from 1st April, 1971 to include also a statutory corporation. According to the information furnished by the Ministry of Finance (Department of Revenue), the number of Public Sector Undertakings assessed as companies for the assessment year 1976-77 was 319. The total amount of tax levied in the case of these Undertakings was Rs. 26.22** crores. The amount of tax actually paid by these Undertakings during the year, was, however, Rs. **21.84 crores.

The Income-tax Act, 1961, as amended from 1st April, 1971, also empowers the Central Board of Direct Taxes to declare any institution, association or body to be a 'company' for any assessment year or years. The Ministry of Finance (Department of

*Figures given by the Department of Company Affairs, Ministry of Law, Justice and Company Affairs.

**In respect of completed assessments only.

Revenue) have intimated that the following numbers of associations have been declared as 'companies':

	Number of associations declared as companies
1972-73	2
1973-74	10
1974-75	1
1975-76	2
1976-77	1

17. The number of company assessments completed and assessments pending at the close of the year 1976-77 as furnished by the Ministry of Finance, are given below:—

(*i*) Total number of company assessments pending at the beginning of the year 1976-77	34,503
(*ii*) Number of assessments out of (i) completed during 1976-77	21,784
(*iii*) Total number of current assessments required to be completed during 1976-77	41,383
(*iv*) Number of assessments out of (iii) completed during 1976-77	20,094

18. Some instances of mistakes noticed in company assessments are given in the following paragraphs.

19. *Working of provident and gratuity funds*

19.1 The Income-tax Act, 1961 provides that any sum paid by an assessee as an employer—

(a) by way of contribution towards a recognised provident fund in accordance with the prescribed limits and conditions; and

(b) by way of contribution towards an approved gratuity fund for the exclusive benefit of employees under an irrevocable trust,

shall be allowed as a deduction in the computation of income under the head 'profits and gains of business or profession'.

The Act also provides for exemption from tax of any income received by the trustees on behalf of a recognised provident fund or an approved gratuity fund.

A recognised provident fund means a provident fund recognised by the Commissioner of Income-tax under the Income-tax Act, 1961, or a provident fund established under a scheme framed under the Employees Provident Fund Act, 1952. The Income-tax Act and the rules framed thereunder contain terms and conditions under which a provident fund may be recognised by the Commissioner of Income-tax. These terms and conditions include, *inter alia*, the setting up of the fund under an irrevocable trust, the pattern of investment to be followed by the fund, the limits for employees' and employers' contributions, the maintenance of accounts and other statements of the fund and the subscribers and the submission thereof to the income-tax authorities.

An approved gratuity fund means a gratuity fund approved by the Commissioner of Income-tax under the Income-tax Act, 1961. The conditions to be satisfied for obtaining such approval again include the setting up of a fund under an irrevocable trust and the pattern of investments to be followed. These further include the limits for contributions to be made by the employer, the conditions under which company directors may be admitted to the benefits of the fund, the total exclusion of the employer from any right, charge or lien on moneys belonging to the fund, and the submission of returns, statements and other particulars to the income-tax authorities.

The Commissioner of Income-tax is empowered to withdraw the recognition already granted if a fund contravenes any of the conditions of recognition.

19.2 *Incorrect allowance of provision for gratuity*

(*a*) In September, 1973, the Central Board of Direct Taxes issued instructions to the effect that a provision made by an

assessee in his accounts on account of estimated service gratuity payable to the employees may be allowed as a deduction in the computation of business income even when no gratuity fund has been set up, if the provision is based on a scientific and actuarial computation. It was pointed out by Audit in April, 1971 that these instructions were not in accordance with the provisions of the Act which allowed only for a contribution to an approved gratuity fund being accepted as an expenditure. Consequently, the instructions were cancelled by the Board in September, 1974 when it was stated that such provision for gratuity should not be allowed in any pending or future assessment. Since the latter instructions did not affect completed assessments, a considerable amount of revenue was lost in respect of the provisions already allowed on the basis of the earlier instructions. A test check in 9 States revealed 102 cases in which total deductions amounting to Rs. 5.26 crores were allowed upto the assessment year 1972-73. These deductions involved a tax concession of Rs. 2.48 crores in 94 cases and an excess carry forward of loss of Rs. 84 lakhs in 8 cases.

(*b*) To put matters beyond doubt, the Act was amended in 1975 to provide specifically, that no deduction shall be allowed in the computation of business income in respect of any provision made by an assessee for the payment of gratuity to his employees. The provisions for gratuity made during the assessment years 1973-74 to 1975-76 were, however, saved by this amendment if such provisions were made in accordance with an actuarial valuation of the liability of the assessee for payment of gratuity to his employees and the assessee created an approved gratuity fund and transferred the amount of such provisions to such fund before 2nd April, 1977 in the manner prescribed. A test check in 7 States revealed 68 cases in which deductions totalling Rs. 3.09 crores involving a tax effect of Rs. 1.73 crores in 64 cases and excess carry forward of loss of Rs. 12 lakhs in four cases were allowed during the assessment years 1973-74 and

1974-75. It is not known in how many of these cases the conditions about the setting up of approved gratuity funds and the transfer of the amounts of such provisions thereto had been fulfilled.

19.3 *Irregular allowance of contributions to unrecognised/ unapproved funds*

In Andhra Pradesh it was noticed, during a test check, that in 10 cases contributions amounting to Rs. 95,401 made to unrecognised provident funds were allowed in the computation of business income in the assessment years 1971-72 to 1974-75 involving a tax undercharge of Rs. 59,394. In Madhya Pradesh, Maharashtra and West Bengal, four cases were noticed where contributions amounting to Rs. 27,58,082 made to unapproved gratuity funds were allowed during the assessment years 1970-71 to 1974-75 resulting in short levy of tax of Rs. 16,60,983.

19.4 *Non-submission of accounts and returns*

The rules provide for the submission of annual accounts of subscribers to a recognised provident fund to the Income-tax Officer. Further, in order to see that provident/gratuity funds once recognised/approved, continued to observe the conditions of recognition/approval, the Board issued instructions in August, 1973, at the instance of Audit, that income-tax returns should be called for from the funds by issuing notices under the relevant provisions of the Act. It was, however, noticed in the test check that annual accounts in respect of recognised provident funds were not being received or called for and the returns were filed by the funds only where refunds were claimed in respect of any deductions of tax at source. In other cases, the returns were mostly neither filed nor called for as required in the Board's instructions. It was not, therefore, possible to ascertain whether the recognised/ approved funds did actually continue to observe the condition laid down in the Act and the Rules.

19.5 *Non-payment of contributions to Trustees or Provident Fund Commissioners*

A test check in Andhra Pradesh, Assam, Maharashtra and West Bengal revealed many cases in which large amounts representing the employers' and the employees' contributions were not actually paid to the Trustees or the Provident Fund Commissioners. Details of some such cases are given below :—

	State	Number of cases	Amount (Rs.)	Earliest period from which payments are in arrears
(*i*) Amounts not paid to the Trustees in respect of recognised provident funds	Andhra Pradesh	21	68,07,554	1971-72
	Maharashtra	20	75,06,687	1969
	West Bengal	8	10,60,426	1970-71
(*ii*) Amounts not paid to Regional Provident Fund Commissioners (Employees' Provident Fund) .	Assam	17	5,37,314	1961
	Maharashtra	11	61,33,000	1956
(*iii*) Amount not paid to Tea Plantation Provident Fund Commissioner . .	Assam	13	43,09,252	1961

In all these cases, deductions had been allowed in respect of the employers' contributions included in the above amounts in the income-tax assessments of the employers. Apart from the penalties leviable under the relevant Provident Funds Acts, the recognitions granted under the Income-tax Act could be withdrawn in these cases.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated in December, 1977 that the matter is under active consideration.

20. *Administration of provisions regarding provisional assessments*

Under the Income-tax Act, 1961, Government have to pay interest at 12 per cent per annum on the excess of advance tax paid, if any, over the tax determined on regular assessment. Government have, therefore, been devising various steps from time to time to ensure that excess advance tax is adjusted/refunded at the earliest opportunity so as to avoid payment of such interest.

In April 1966, the Central Board of Direct Taxes issued instructions directing the Income-tax Officers to complete regular assessments as soon as possible after receipt of returns so that excess of advance tax, if any, could either be adjusted against the demand or refunded to the assessee. From 1st April, 1968, the Act itself was amended to provide that where an assessee claimed that the taxes already paid by him were in excess of the taxes payable on the basis of his return and Income-tax Officer felt that the regular assessment was likely to be delayed, a provisional assessment should be made so as to refund the excess tax paid. A further amendment in 1971 made it obligatory on the part of the Income-tax Officer to make a provisional assessment in such cases if the regular assessment is not made within six months of the receipt of the return. The Board also issued executive instructions in March 1971 and July 1972 reiterating the need to make provisional assessments in such cases promptly so as "to avoid payment of interest by the Government" and improve "the image of the Department in the eyes of the tax paying public".

Instances of failure to make timely provisional assessments in such cases resulting in large payments of interest were pointed out in the Audit Reports 1969-70, 1972-73, 1974-75 and 1975-76. In para 5.17 of their 187th Report, the Public Accounts Committee (Fifth Lok Sabha) suggested that the Government should examine the feasibility of making provisional assessments by

Income-tax Officers obligatory in cases in which advance tax paid exceeds the tax payable on the income returned substantially. Accordingly, the Act was further amended from 1st April, 1976 to provide for the making of regular/provisional assessments within six months from the date of filing of the return in such cases. The Board also issued administrative instructions on the 5th September, 1974 to the effect that provisional assessments should be invariably made promptly in all appropriate cases, where regular assessments are likely to be delayed so that unnecessary payment of interest by Government is avoided.

Nevertheless, a test check in six Commissioners' charges still revealed 9 cases relating to the assessment years 1972-73 to 1974-75 in each of which failure to make provisional assessments to allow refunds in accordance with the law and the executive instructions resulted in avoidable payment of interest of over Rs. 10,000. In seven of these cases no provisional assessments were made at all though regular assessments were delayed by periods ranging from 16 to 30 months from the date of receipt of the return; in the remaining two cases provisional assessments were made after 22 and 24 months. The total amount of interest paid in these nine cases came to Rs. 9,11,683.

In addition, it was noticed in one single case involving a bank assessee that as per its return for the assessment year 1973-74, filed on 30th April, 1974, the tax payable on the returned income came to Rs. 7,61,58,685, while the tax already paid by deduction at source and as advance tax amounted to Rs. 11,06,11,512. The requisite certificate in support of the tax deducted at source was furnished only on 30th June, 1975. The Department made a provisional assessment for refund on 29th September, 1975 and completed the regular assessment on 31st January, 1976. The assessee bank was allowed interest of Rs. 1,05,32,182 on the refund made to it on account of excess payment of advance tax after allowing credit for tax deducted at source. Of this, an amount of Rs. 97,44,750 related to the period

from 1st April, 1973 to 30th June, 1975 and of the balance, Rs. 7,21,832 related to the period from 1st July, 1975 onwards i.e., the period of delay in the completion of provisional assessment even after the receipt of the tax deduction certificate from the assessee.

The Ministry of Finance have accepted the objection in 9 cases. In respect of one case sent to them in September, 1977, the Ministry have stated in December, 1977 that the audit objection is under active consideration.

21. *Income escaping assessment*

(i) Under the provisions of the Income-tax Act, 1961, the value of any benefit, whether convertible into money or not, arising from business is chargeable to tax as income.

In a case where under the terms of an agreement, royalty or technical fees or other sums assessable as income, are paid tax-free and the payer undertakes to meet the tax liability, the tax payable on such sums should also be deemed as income in the hands of the payee and taxed accordingly.

During the year ended 31st March, 1973, an Indian company paid to a non-resident company in Germany, a sum of Rs.1,45,717 as charges for supply of technical know-how by the latter, which, under the terms of the collaboration agreement, were payable "free without any transfer cost, possible tax and other charge". In the assessment of the non-resident company for the assessment year 1973-74 completed in November 1975, the sum of Rs. 1,45,717 only was assessed as income and not the tax of Rs. 1,07,102 levied thereon and payable by the Indian company. The omission to assess the tax benefit as income, resulted in short levy of tax of Rs. 2,97,056.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated in December 1977 that the audit objection is under active consideration.

(ii) Under the provisions of the Income-tax Act, 1961, all receipts of a revenue nature are assessable to tax as income of the person receiving them.

A parent holding company effected a transfer of some of its personnel to its Indian subsidiary. To meet the accrued pension liability of these transferred personnel, the subsidiary company received in 1965 a sum of Rs. 7,42,160 from the holding company. This was not taxed in that year treating it as a"capital receipt". This amount was kept funded by the subsidiary company separately till the assessment year 1972-73, when it was written back to the profit and loss account. However, it was not brought to tax as revenue receipt in that year, even though as judicially held such write-backs to profit and loss account of the liability provision no longer required should be treated as revenue receipts. The omission resulted in a short levy of tax of Rs. 4,49,993 in the two assessment years 1972-73 and 1973-74 after taking into account the adjustment of the carried forward losses of the past years and the assessed loss of Rs. 74,716 for the assessment year 1972-73, which had been set off in the assessment year 1973-74.

The paragraph was sent to the Ministry of Finance in August 1977; they have stated in November 1977 that the audit objection is under active consideration.

(iii) According to the provisions of the Income-tax Act, 1961, where on completion of the regular assessment, the amount of advance tax is found to be in excess as compared to the tax determined on regular assessment, the excess amount is refunded to the assessee with interest thereon at the prescribed rate. The amount of interest becomes the income of the assessee and is subject to tax in the relevant assessment year.

In the assessment of three companies, it was noticed that the companies had been paid interest of Rs. 1,40,042 by the Department on the excess amounts of advance tax paid by the companies. These interest receipts were neither returned by the

assessees as income nor brought to tax by the assessing officers. Their escapement during the assessment year 1971-72 in one case and 1973-74 in two cases resulted in short levy of tax of Rs. 97,132.

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

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

Under the annual Finance Acts specifying the rates of tax leviable, the rate applicable to a non-domestic company is seventy per cent on the total income. Where, however, the total income of the non-domestic company consists of—

(*a*) royalties received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March 1961, or

(*b*) fees for rendering technical services received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 29th day of February, 1964,

and where such agreement has, in either case been approved by the Government of India, a concessional rate of 50 per cent is applicable in lieu of 70 per cent.

An assessee, being a non-domestic company, entered into a technical collaboration agreement with an Indian company in September 1963 for the manufacture and marketing in India of certain electrical accessories. The agreement, which was approved by the Government of India, apart from granting rights to the Indian company for the designs, processes, trade marks, etc., provided, *inter alia*, that the assessee shall, as the consultant and technical adviser for a period of ten years with an option for extension for a further period of ten years, provide or procure

for the Indian company such technical assistance, advice, formulae and information for manufacture of the products, and shall send such staff to India as may be considered necessary. Further, two persons were to be nominated as directors of the Indian company to render advice on the construction and equipment of its works and for process and manufacture. In consideration for such services, the assessee was to be paid a fee by way of royalty each year at 5 per cent of the annual net sales of the products.

In terms of the agreement, the assessee-company became entitled to receive from the Indian company, during the three previous years ended 31st December, 1969, fees aggregating Rs. 3,84,061, which were assessed in the assessment years 1969-70 to 1971-72 completed during the period March 1970 to August 1971, and taxed at the concessional rate of 50 per cent as royalty received under an agreement made after 31st March, 1961. As the payments to the assessee-company by the Indian company represented fees for technical and consultancy services, and as the agreement was made before 1st March, 1964, the concessional rate of 50 per cent was not applicable and the fees were liable to be assessed at the normal rate of 70 per cent. The incorrect adoption of the concessional rate resulted in short levy of tax of Rs. 76,826 for the three years.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

23. *Incorrect status adopted in assessment*

According to the Finance Acts, 1964 to 1968, the rate of tax applicable to a company in which the public are substantially interested is lower than that applicable to a closely held company. One of the conditions to be satisfied by a company to be classified as a company in which the public are substantially interested is that the shares of the company carrying not less than 50 per

cent (40 per cent in the case of a manufacturing company) of the voting power are held throughout the previous year by the public, not being a director of a company in which the public are not substantially interested. It is further provided that if the shares of a company carrying more than 50 per cent voting rights (60 per cent in the case of a manufacturing company) are held during the relevant previous year by five or less persons, it cannot be regarded as a company in which the public are substantially interested.

A company was assessed as a company in which the public are substantially interested for the assessment years 1965-66 to 1969-70. During the course of audit conducted in November 1973, it was noticed from an analysis of the statement of dividends paid by this company that the major share-holding of the company was with the members of one family either directly or through closely held companies. It was, therefore, pointed out that the determination of the status of the company as a company in which the public are substantially interested would require re-examination. A report of such re-examination was not received in audit till March 1977.

In the meantime, the Income-tax Officer initiated gift-tax proceedings for levy of gift-tax on donations paid by the assessee-company to political parties for the assessment year 1968-69. During these proceedings, it was held by him that the control and management of the company vested with less than six persons and the company had, therefore, to be treated as a company in which the public are not substantially interested. No action was still taken to revise or rectify the income-tax assessments.

The incorrect determination of the status of the company resulted in short levy of tax of Rs. 8,26,033 for the assessment years 1965-66 to 1969-70.

The Ministry of Finance have stated (December 1977) that the remedial action had become barred by limitation.

24. *Incorrect computation of income from house property*

Under the Income-tax Act, 1961, any sum spent by the assessee to collect rent from his property will be allowed as deduction in the computation of income from house property subject to a ceiling of six per cent of the annual value of the property.

A company was allowed collection charges uniformly at six per cent of the annual value of its house property in its assessments for the years 1969-70 to 1975-76. Since the actual collection charges incurred by the assessee, as declared by the assessee-company itself, were far less than six per cent of the annual value in each of the assessment years, there was excess allowance of collection charges aggregating Rs. 3,83,286 with consequent tax undercharge of Rs. 2,25,811 in the seven assessment years commencing from 1969-70.

The Ministry of Finance have accepted the objection adding, however, that for the assessment years 1969-70 to 1971-72, effective remedial action is already barred by limitation.

25. *Incorrect computation of dividend income*

Where the gross total income of a company includes any income by way of dividends from a domestic company, the Income-tax Act, 1961, provides for allowing a deduction at the prescribed percentage rates from such income by way of dividends.

A non-resident company which was a partner in a registered firm received share of profits in the previous years relevant to the assessment years 1974-75 and 1975-76. The profits of the firm included dividend income. The assessing officer making the assessments of the company allowed deduction of Rs. 1,50,961 at the prescribed percentage rate on the dividend income included in the share of profits received from the firm. As the dividend income was not received by the assessee directly

from a domestic company but was included in the share of income from the registered firm, the allowance of deduction was not in order. The incorrect allowance of deduction resulted in undercharge of tax of Rs. 1,10,954 in the assessment years 1974-75 and 1975-76.

The Ministry of Finance have stated that the relief has been rightly allowed as the share income from the firm is assessable in the hands of the partners under the same heads of income under which the income of the firm has been determined and hence dividend income of the firm would be dividend income of the partner company. The fact, however, is that what the assessee received is share income from a partnership and not dividend income from a company.

Incorrect computation of business income

26. *Foreign companies*

(*i*) Under the provisions of the Income-tax Act, 1961, any expenditure paid out or expended wholly and exclusively for the purposes of the business is allowable as deduction in computing the business income of an assessee. Losses which are only notionally computed as a result of fluctuations in the rates of exchange of foreign currencies *vis-a-vis* Indian currency cannot be treated as admissible revenue deductions.

The accounts of the Indian branch of a non-resident company in respect of the assessment years 1972-73 and 1973-74 which were maintained in Indian currency were debited with notional exchange losses amounting to Rs. 1,67,086 and Rs. 1,39,504 respectively in respect of certain proforma accounts maintained for head office transactions in pound sterling, the balances of which were converted into Indian rupees at the beginning and end of the previous years, the resultant differences due to changes in exchange rates being taken as rupee losses in the

profit and loss accounts. Since the losses were not actually incurred, the relevant sterling accounts having not been settled through actual remittances, the notional losses did not constitute admissible deductions and the irregular allowance of these losses led to under-assessment of income by Rs. 1,67,086 and Rs. 1,39,504 with consequent tax undercharge of Rs. 1,19,884 and Rs. 1,02,535 in the assessment years 1972-73 and 1973-74 respectively.

The Ministry of Finance have accepted the objection.

(*ii*) Foreign companies carrying on business in India, either through their branches or through their subsidiaries are entitled to deduction of a portion of the expenses incurred by their head offices abroad towards administration, common services etc., in the computation of their business income assessable to Indian income-tax. In the absence of actual figures of expenses incurred in the head office on the running of the business in India, such portion of the expenses is normally computed as a proportion, which the Indian turnover of the Branch bears to the world turnover of the foreign company as a whole.

(*a*) A U.K.—based multinational corporation engaged in the business of manufacturing and hiring of data processing business machines, earned income in India from hiring its business assets *viz.*, the machines to its wholly-owned subsidiary, an Indian company, on rental basis. The Indian subsidiary, in turn, hired out such machines to various other customers in India. The hire charges receivable by the Indian subsidiary were inclusive of the rental liability payable by it to the foreign multinational company. Under the arrangement which the Indian company had with the foreign company, an amount equal to forty-five per cent of the gross rental charged by it to its customers was payable to the foreign company as its rental liability in turn. This amount of forty-five per cent of rental in fact represented

the Indian turnover of the foreign company *viz.*, the assessee-company. The head office expenses deductible in the computation of business income of the assessee-company should have been related to this turnover as against the total world turnover. Instead, the assessee claimed and was allowed such expenses in the ratio of the entire rental income of the Indian subsidiary to the world turnover of the assessee-company. The excessive allowance of head office expenses year after year resulted in under-assessment of income of the foreign company by Rs. 64 lakhs in the assessment years 1961-62 to 1974-75 with consequent short levy of tax of about Rs. 42.5 lakhs in those years.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

(*b*) In the assessment of another company for the assessment years 1970-71 and 1971-72 the assessing officer, while computing the taxable income, allowed head office expenses to the extent of Rs. 5,59,230 and Rs. 7,11,263 respectively as claimed by the company. While re-assessing the income of the company for the assessment years 1970-71 and 1971-72, the assessing officer came to the conclusion that out of Rs. 5,59,230 and Rs. 7,11,263 allowed as head office expenses for the assessment years 1970-71 and 1971-72, Rs. 40,000 and Rs. 45,000 only were allowable. However, he disallowed Rs. 4,46,427 and Rs. 4,28,607 instead of Rs. 5,19,230 and Rs. 6,66,263 correctly disallowable in the assessment years 1970-71 and 1971-72 respectively. This resulted in an under-assessment of income of Rs. 3,10,459 involving short levy of tax of Rs. 2,32,852 including penal interest of Rs. 15,530.

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

(*iii*) 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, is not allowable as deduction from the business income to the extent such expenditure is in excess of Rs. 72,000 during a previous year comprising more than eleven months.

In the case of three non-resident tea companies, expenditure incurred on payments of commission and remuneration to the secretaries and/or agents, who had substantial interest in the said companies, in excess of the specified limit, in the previous years relevant to the assessment years 1972-73, 1974-75 and 1975-76 was not disallowed in computing the taxable income of the companies. This resulted in under-assessment of income of the companies aggregating Rs. 5,24,422 with consequent total undercharge of tax of Rs. 3,84,131 in the aforesaid three assessment years.

The Ministry of Finance have accepted the objection.

(*iv*) Income received or accrued in the previous year is chargeable to tax in the following assessment year but the profits earned by non-residents by carriage of passenger or cargo by ship at Indian ports, are assessable in the same year at the rates in force. Prior to its amendment by the Finance Act, 1975, the Income-tax Act provided that one-sixth of the amount paid or payable on account of such carriage, should be deemed as income accruing in India. Where the amounts paid or payable in respect of such carriage by ship are expressed in terms of United States dollars, the rules made under the Act stipulated that the rate of exchange to be adopted for determining the income chargeable to tax shall be Rs. 7.50 for each dollar.

In the period from February 1972 to May 1975, assessments of twenty-two non-resident shipping companies were completed

in a single income-tax ward in respect of income earned by carriage of passengers and cargo shipped at Indian ports during the years 1971-72 to 1975-76. In determining the income at one-sixth of the freight earnings expressed in United States dollars, the rate of exchange was adopted as Rs. 7.279 per dollar in 19 cases and Rs. 7.38 per dollar in 3 cases as against the rate of Rs. 7.50 prescribed in the rules. This resulted in total short levy of tax of Rs. 1,55,344.

The paragraph was sent to the Ministry of Finance in August 1977; they have stated in December 1977 that the audit objection is under active consideration.

(v) Under the relevant rules made under the Income-tax Act, 1961 income derived from sale of tea grown and manufactured by the seller in India, is computed as if it were income derived from business and 40 per cent of such income is deemed to be income liable to tax. The rules also provide that in computing such income, allowance shall be made in respect of cost of planting tea bushes that have died or become useless in an area already planted if such area has not been abandoned. These provisions do not cover expenditure incurred in planting tea bushes in new areas or areas that have been previously abandoned. In such cases the Act provides only for grant of development allowance at 50 per cent of the actual cost of planting on land not planted at any time or on land which had been previously abandoned.

In the assessment of a non-resident company carrying on the business of growing and manufacturing tea in India for the assessment years 1972-73 to 1975-76 completed during the period December 1972 to December, 1975 deduction was allowed in full in computing income from business for the expenditure incurred to the extent of Rs. 3,03,343 on planting new bushes on land not planted at any time and on land that had been previously abandoned. Besides the above deduction, the

assessee-company was also allowed development allowance as provided for in the statute. The deduction allowed for the revenue expenditure of Rs. 3,03,343 was not covered by the statutory provisions and hence was not in order. The consequent under-assessment of income of Rs. 1,21,337 at 40 per cent as prescribed in the rules, resulted in short levy of tax of Rs. 88,715 for the four assessment years.

The Ministry of Finance have accepted the objection.

(vi) The profit and loss account submitted by a non-resident company along with the return of income for the assessment year 1973-74 showed an amount of Rs. 61,40,358 as interest received on Government securities/debentures etc. This income was deducted by the assessing officer for being considered separately in the assessment order. However, while deducting the amount only an amount of Rs. 61,94,159 was deducted instead of the correct amount of Rs. 61,40,358 which was actually credited to the profit and loss account, and which was adopted as the base for computation of income. The erroneous deduction of a higher amount resulted in under-assessment of income by Rs. 53,801 leading to short levy of tax of Rs. 39,540 in the hands of the company.

The Ministry of Finance have accepted the objection.

27. *Domestic companies*

(i) Under the Income-tax Act, 1961 any expenditure laid out or expended wholly or exclusively for the purposes of the business is allowable as a deduction provided it is not a mere provision for a liability which has not yet crystallised.

(a) A company had made provisions of Rs. 3,11,063 for custom duty payable and Rs. 7,948 for shortages and the same were charged to the profit and loss account even though the liability had not crystallised. While making assessment for the assess-

ment year 1972-73, the Income-tax Officer allowed these provisions as business expenses. The omission to add back these provisions resulted in excessive computation of loss by Rs. 3,19,011 for the assessment year 1972-73 and consequent short levy of tax of Rs. 1,84,228 in the assessment year 1974-75, the year in which the loss was set off.

The Ministry of Finance have accepted the objection.

(b) In another case, in the assessment of a company for the assessment year 1973-74 a deduction of Rs. 2,09,963 was allowed on account of provision for an unapproved gratuity fund. This resulted in tax undercharge of Rs. 1,21,252.

While accepting the objection the Ministry have stated that the assessment in question has been revised and the amount of additional demand has been raised and collected.

(c) In another case, an assessee debited to its accounts an amount of Rs. 6,63,000 as a provision for payment of interest on account of non-payment of income-tax dues in time. The assessing officer accepted the debit though this was not an allowable deduction under the Act, firstly, because it represented only a provision and secondly, because interest on delayed payment of tax itself has been held to be not an item of legitimate business expense. The inadmissible deduction led to the forgoing of revenue of Rs. 3,31,500.

The Ministry of Finance have stated that all the remedial actions are barred by limitation.

(d) In still another case of a company, it was noticed that the total income computed for the assessment year 1973-74 was Rs. 1,11,57,604 which was fully adjusted by set off of the carried forward loss of Rs. 2,26,59,110 from the assessment year 1966-67,

leaving a balance loss of Rs. 1,15,01,506 for further carry forward. The assessment records for the assessment years 1966-67 and 1973-74, revealed the following irregularities.

(1) A provision for interest amounting to Rs. 60 lakhs made on a notional basis on a portion of unconfirmed loan of Rs. 28.50 crores was allowed in the assessment for the year 1966-67 though the same was in the nature of an unascertained liability and was not allowable as admissible business expenditure.

(2) A provision for contribution to an unrecognised provident fund amounting to Rs. 15,39,827 together with a provision of interest amounting to Rs. 50,000 charged on the said provision were allowed in the assessment for the assessment year 1966-67, though the same were mere provisions and the fund itself had not been created and recognised.

The above irregularities together with (a) non-accountal of Rs. 5,10,688 on account of accrued interest on a loan of Rs. 35 lakhs given by the company and (b) mistakes committed in computing depreciation, resulted in under-assessment of income and excess computation of loss of Rs. 81,00,515 for the assessment year 1966-67 and under-assessment of income of Rs. 2,24,018 for the assessment year 1973-74, thereby making a total under-assessment of income of Rs. 83,24,533 for the assessment years 1966-67 and 1973-74.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

(ii) Under the provisions of the Income-tax Act, 1961, the maximum deduction allowable in respect of expenditure incurred by a company to provide any remuneration or benefit or amenity to a director is Rs. 72,000 if the expenditure or allowance in a previous year relates to a period exceeding eleven months.

(a) A company which employed a foreign technician as a whole time director, incurred expenditure of an aggregate amount of Rs. 18,13,142 during the years relevant to the assessment years 1972-73, 1973-74 and 1974-75 on his salary and perquisites which exceeded the admissible limit of Rs. 72,000 per year by Rs. 15,97,142. The irregular allowance resulted in excess carry forward of loss to the extent of Rs. 15,97,142.

The Ministry of Finance have accepted the objection.

(b) In the assessment of another company for the year 1972-73, a total remuneration of Rs. 2,44,915 paid to two of its managing directors was allowed in full instead of restricting the deduction to Rs. 1,44,000. As a result, there was an under-assessment of income by Rs. 1,00,915 and an excess carry forward of unabsorbed development rebate to the extent of Rs. 1,00,915.

The Ministry of Finance have accepted the objection.

(iii) For computing income from business the Income-tax Act provides for deduction for any sum paid by the assessee as an employer towards contribution to an approved gratuity fund created for the exclusive benefit of his employees under an irrevocable trust. Under the rules made in this regard, the contribution to be allowed as deduction shall be made on a reasonable basis having regard to the length of service of each employee and subject to a limit of eight and one-third per cent of the salary of each employee during each year.

A textile company created a gratuity fund for its employees in December 1972, the rules of which, while stipulating that gratuity is payable in accordance with the Payment of Gratuity Act, 1972, provided for payment of initial contribution in respect of all employees ignoring the minimum qualifying service of five years specified in the above Act. The fund was approved by the Department and in the assessment of the company for the

assessment year 1973-74 completed in February 1975, deduction was allowed, as claimed by the assessee, for a sum of Rs. 39,77,065 as representing the assessee's liability towards gratuity payable as on 31st March 1972 as computed by the authorised representative in March 1973, following the rules of the fund and ignoring the requirement of minimum period of five years service.

The accrued liability for the payment of gratuity as on 31st March 1972 was worked out on actuarial principles as Rs. 14,19,688 only, as per a certificate furnished by a consulting actuary in June 1972. After taking into account the provision of Rs. 3,29,873 made for earlier years and allowed, the amount deductible for the assessment year 1973-74 was only Rs. 10,89,815. The deduction of Rs. 39,77,065 was not, therefore, in conformity with the provisions of the Act. The incorrect deduction allowed resulted in under-assessment of income of Rs. 28,87,250 with consequent short levy of tax of Rs. 16,67,388.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

(iv) The Income-tax Act, 1961 provides that expenditure of a capital nature shall not be allowed in computing the business income. It has been judicially, held in 1955 and in 1975 that payments made for technical know-how obtained for manufacture of new types of articles without any stipulation for its return to the supplier or any limitation as to its period of use, would be capital in nature, and that such expenditure relating to a business which was not already in existence but which is to come into existence in future, would not be admissible for deduction in computing the income from business. It is immaterial for this purpose whether the agreed price for the technical know-how is paid in lump sum once and for all or in periodical instalments or whether it is linked with the net sales amount of such products manufactured by the assessee.

An Indian company entered into a collaboration agreement with a foreign company in February, 1963 for setting up a plant for manufacture of textile machinery. According to the agreement, the duration of which was ten years, renewable for a further period of five years, the foreign company was to supply to the assessee-company technical know-how and the sole exclusive non-transferable right to manufacture specified machinery and the assessee was to pay compensation of a lump sum of Swiss-Francs 15,00,000 in three stages in the form of equity shares in the company, and in addition, royalty at 2½ per cent of the ex-work price of the products manufactured every year during the period of the agreement.

In the assessment of the assessee-company for the assessment years 1967-68 to 1973-74 completed during the period September, 1971 to March, 1975, the royalty payments made to the foreign company aggregating Rs. 47,02,489 were allowed as deduction as revenue expenditure in computing the income from business. As the expenditure was incurred in acquiring the technical know-how without any limitation as to its endurability to the assessee, it was capital in nature and was hence not deductible in computing the income from business. The incorrect deduction allowed resulted in short levy of tax of Rs. 27,15,683 in the assessment year 1973-74, the total income for the earlier year being a loss.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(v) Under the provisions of the Income-tax Act, 1961, the total income of a person should include all income that accrues to or is received by him during the year. Where an assessee maintains accounts on the mercantile system, the income computed for assessment should be the income actually earned, though not realised, bringing into credit what is due immediately it becomes legally due, even though it is not actually received

during the year. It was judicially held in 1953 that the mere fact that an amount due to the assessee has been carried to a suspense account in the debtor's books or that the debtor withholds payment on account of pending dispute, cannot be held to mean that income had not accrued to the assessee.

(a) In the assessments of two companies, which made advances to textile mills to the extent of about Rs. 10 lakhs and Rs. 27 lakhs, interest of Rs. 53,018 and Rs. 61,307 which had accrued on the advances for the two years ended 31st March, 1973 and 31st March, 1974 in the first case, and interest of Rs. 1,33,747 and Rs. 1,55,889 for the years ended 31st December, 1972 and 31st December, 1973 in the second case, were not included for the relevant assessment years 1973-74 and 1974-75 completed in August, 1975 and September, 1975 on the assessees' plea that the amounts of accrued interest were not taken into account as the textile mills were declared as sick by the Government and there was a moratorium on the debt. As the legally enforceable right of the assessee-companies to the interest due as on the last day of the relevant accounting years, was not extinguished but was only dormant and as the assessees were maintaining accounts under the mercantile system, the exclusion of the amounts of accrued interest from the taxable income was not in order. The incorrect exclusion resulted in under-assessment of income of Rs. 4,03,961 with consequent short levy of tax of Rs. 2,75,676 in the two cases.

The Ministry of Finance have accepted the objection.

(b) Further, in the case of income under the head "profits and gains of business or profession", if the mercantile method of accounting is followed by an assessee, all income has to be accounted for on accrual basis.

In the case of an assessee-company which was engaged in the business of exporting automobile ancilliaries and which was following the mercantile system of accounting upto the assessment year 1972-73, the accounting method of the company was

changed from accrual to cash basis for the assessment year 1973-74 in respect of cash assistance received on its exports under Export Promotion Scheme. This change was made in the return for income-tax even though the company still followed the mercantile system of accounting in so far as its profit and loss accounts were concerned.

This irregular change in the system of accounting by the assessee, resulted in under-assessment of income during the assessment year 1973-74 by Rs. 1,70,818 and consequent short levy of tax of Rs. 1,46,140.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(vi) It has been judicially held that the amounts collected by dealers from customers towards sales tax payable by them to Government form part of their trading receipts. These are to be accounted for by the traders as receipts in their trading and profit and loss accounts. The sales tax payments being the dealers' statutory liability shall be charged to the profits before arriving at the true profits of the business.

(a) An assessee, paper manufacturing company, however, accounted for the transactions relating to collections from customers and sales tax payments in a separate suspense account called 'sales tax suspense account', outside the trading and profit and loss account. The Department did not bring to tax the balance in this account. As this balance actually represented surplus of trading receipts over sales tax liabilities allowable as deduction in arriving at the assessee's total income, omission to assess such surplus each year resulted in under-assessment of equivalent amount. The progressive balance in this account at the end of the accounting year relevant to assessment year 1972-73 amounted to Rs. 2,16,366. Omission to assess this amount resulted in a short demand of tax of Rs. 1,21,976 at 1972-73 rates.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(b) In another case, a company followed the practice of debiting its accounts with a provision for sales tax liability relating to the earlier assessment years but pending in appeal before the sales tax authority. A claim for such liability amounting to Rs. 3,75,000 relating to the assessment years 1968-69 and 1969-70 but debited in the accounts for the assessment year 1972-73 was disallowed by the Department on the ground that the liability was still pending before the sales tax authority. The disallowance was confirmed by the appellate authority who held that "a liability construed for the earlier assessment years, the assessments of which were already completed, could not become a charge on a provision basis against the profits for a subsequent year". Yet, in the assessment year 1973-74, the Department allowed deduction of the said sum of Rs. 3,75,000 on the basis of a claim by the assessee. Since the liability in question had neither been settled nor liquidated during the relevant previous year, the irregular allowance thereof resulted in under-assessment of income by Rs. 3,75,000 with consequent tax undercharge of Rs. 2,16,563 in the assessment year 1973-74.

The Ministry of Finance have accepted the objection.

(vii) It has been judicially held that expenditure incurred in connection with breach of law would not be an admissible deduction as infraction of law is not a normal incidence of business.

It was provided in the Cotton Textile (Control) Order, 1948 issued by the Government of India that a producer who failed to pack the whole or part of the prescribed minimum quantity of controlled cloth would have to pay to Government penalty at specified rates. The Central Board of Direct Taxes later issued instructions in January 1976 that the levy partook of the nature of penalty and, as such, was not an allowable deduction under the Income-tax Act, 1961.

In the case of two textile companies a total sum of Rs. 18,49,678 representing penalty payable by them for failure to produce the required quantity of controlled cloth as per the Cotton Textile (Control) Order, 1948 was wrongly allowed as deduction in the assessment years 1969-70 to 1975-76. The erroneous deductions led to excess carry forward of loss of Rs. 14,70,215 as at the end of the assessment year 1975-76 in one case and tax undercharge of Rs. 2,19,240 in the assessment year 1975-76 in the other case.

The Ministry of Finance have stated that after considering a decision of the Gujarat High Court on this point, the Solicitor General has advised that the payments in question are not in the nature of penalty and are admissible as an expenditure wholly and exclusively for the purpose of business.

Incorrect allowance of depreciation and development rebate

28. *Depreciation*

(i) Under the Income-tax Rules, 1962, depreciation on aircraft and aerial photographic apparatus of aeroplanes is admissible at 30 per cent and on aero-engines of aeroplanes at 40 per cent. Accordingly, depreciation is to be allowed separately on the written down value of each portion of the aeroplane.

In the case of a company, depreciation was allowed on the entire cost of the air-crafts/helicopters (inclusive of cost of engines) at the uniform rate of 40 per cent instead of at varying rates. This resulted in an excessive allowance of depreciation of Rs. 84,286 in the assessment year 1971-72 and Rs. 91,587 in the assessment year 1972-73 leading to an aggregate short levy of tax of Rs. 83,735 in the two assessment years.

The Ministry of Finance have accepted the objection.

(ii) In the computation of business income of an assessee, a deduction on account of depreciation is admissible at the prescribed rates on plant or machinery provided it is owned by the

assessee and used for the purposes of his business during the relevant previous year.

A company engaged in the manufacture of sheet glass and rolled plate glass installed a separate unit of plant and machinery for the manufacture of each of these two products. As per the Director's report as also the Auditor's report for the year ending 31-12-1971 relevant to the assessment year 1972-73, the rolled plate unit of the factory did not go into production throughout the year. The Department having, however, allowed depreciation on the unused plant and machinery in the rolled plate unit, there resulted an excess allowance of depreciation to the extent of Rs. 3,95,605 in the two assessment years 1972-73 and 1973-74 with consequent excess carry forward of loss by the same amount.

The Ministry of Finance have accepted the objection.

(iii) Depreciation allowance is admissible on the written down value of the assets at the prescribed rates.

In the assessment of a company for the assessment year 1973-74 made in January, 1976 to give effect to appellate orders, depreciation of Rs. 5,88,023 was allowed on the basis of the written down value in the original assessment for the assessment year 1972-73. The fact that the original assessment for the assessment year 1972-73 was subsequently revised in September, 1974 to give effect to the appellate orders according to which the depreciation allowable was only Rs. 5,04,394 was overlooked. The mistake was pointed out in audit in September 1976. The Department reported in April, 1977 that the assessment was revised in December 1976 wherein the depreciation to be disallowed was determined as Rs. 1,31,429 on recomputation of the written down value based on appellate orders for the earlier years. The consequent additional demand raised for the assessment year 1973-74 was Rs. 75,900.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and that the amount of additional demand raised as a result of revision has been collectedby adjustment out of the refund due to the assessee for the assessment year 1967-68.

(iv) The Income-tax Rules, 1962 provide for the allowance of depreciation at special rates on certain specified plants and machinery and at a general rate of ten per cent on all other plant and machinery.

In the assessment of a banking company for the assessment years 1971-72 to 1973-74, depreciation on lifts was allowed at 20 per cent instead of the general rate of 10 per cent correctly applicable. Further, the written down value of a lift as on 1-1-1970 relating to the assessment year 1971-72 was corrected from Rs. 43,782 to Rs. 55 but the correction was not given effect to in the subsequent assessment years. These mistakes led to an excess allowance of depreciation of Rs. 2,70,390 with consequent tax undercharge of Rs. 1,53,969 in the assessment years 1972-73 and 1973-74.

The Ministry of Finance have accepted the objection.

(v) An assessee-company filed a return of income for the assessment year 1973-74 showing a net loss of Rs. 11,22,033. The Income-tax Officer assessed the loss at Rs. 7,84,670, after allowing depreciation allowance of Rs. 2,34,803 and development rebate of Rs. 2,75,158. As there were no chargeable profits, the depreciation allowance and development rebate should not have been allowed but should have been carried forward as unabsorbed. The irregular grant of depreciation allowance and development rebate resulted in an excess computation of loss by Rs. 5,09,961.

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

(vi) The rate prescribed for depreciation on motor lorries as well as for earth moving machinery employed in heavy construction works, such as dams and tunnels or in mines and quarries, is 30 per cent. The development rebate for new plant and machinery installed and used for the business was not admissible for road transport vehicles.

In the assessment of a private company engaged as contractors for removal of slag and refuse from the site of a steel plant and for dumping them in the low lying areas of the town, for the assessment years 1973-74 and 1974-75, completed in September and October 1975, development rebate was allowed for dumpers owned by the company and used in its business treating them as machinery other than road transport vechicles. Depreciation was, however, allowed for the dumpers at the rate of 30 per cent applicable to road transport vehicles. As the work of removal of slag and refuse from the plant site and dumping them in low-lying areas of the town, could not be equated to earth moving operations in heavy construction works such as dams, tunnels, canals etc., or to mining operations, the grant of depreciation at 30 per cent instead of at the general rate of 10 per cent resulted in grant of excessive depreciation of Rs. 65,588 for the two years.

The assessee-company had also taken some dumpers on hire under an agreement stipulating the payment of hire charges at rates of depreciation under the Income-tax Act. As the correct rate of depreciation was 10 per cent, the deductions admissible for hire charges under this agreement were Rs. 1,21,858 and Rs. 1,05,017 only, as against Rs. 3,65,574 and Rs. 3,15,052 allowed in the assessments for the two years at 30 per cent. These incorrect deductions allowed for depreciation and hire charges at 30 per cent resulted in under-assessment of income by Rs. 5,29,339 with consequent short levy of income-tax and surtax of Rs. 4,22,740 for the two years.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

29. *Development rebate*

(i) Under the provisions of the Income-tax Act, 1961, development rebate at higher rate was admissible on machinery or plant installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the Fifth Schedule to the Act. Any readjustment, increase or decrease of the actual cost of any capital asset acquired from a country outside India on deferred payment terms or against a foreign loan, consequent on devaluation of the rupee, to the extent of the increase or decrease in rupee liability in respect of the instalments on foreign loan falling due for payment subsequent to the date of devaluation is not to be taken into account in computing the actual cost of an asset for the purpose of deduction by way of development rebate. Moreover, in terms of the Central Board of Direct Taxes instruction dated 13-9-1973, no development rebate is allowable in respect of fork lift trucks as these have been classified as transport vehicles.

In the case of a company engaged in the manufacture of graphite electrodes for the assessment years 1968-69 to 1974-75, although the articles or things manufactured by the company were not covered by any of the items specified in the Fifth Schedule, development rebate at the higher rate was allowed on its plant and machinery in respect of the above assessment years. Further, development rebate was allowed on fork lift trucks in the assessment years 1968-69 to 1970-71, 1972-73 and 1974-75 in contravention of the instructions of the Board. Again, in the assessment year 1968-69 the assessee-company was allowed development rebate on the cost of machinery installed at one of its factories as increased by the assessee's additional liability due to devaluation of Indian currency.

These mistakes resulted in excess allowance of development rebate with consequent excess carry forward of loss to the extent of Rs. 1,01,35,279 in the aggregate.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(ii) Development rebate at the higher rate of 35 per cent was also admissible on the actual cost of plant and machinery installed after 31st March, 1963 but before 1st April, 1966 for the purposes of business of coal mining.

In the assessment of a coal company for the year 1964-65, development rebate was allowed at the higher rate of 35 per cent on plant and machinery worth Rs. 9,38,839 used in the coke oven plant. Since the plant and machinery were not used for the purpose of coal mining business, development rebate was admissible only at the lower rate of 20 per cent. The mistake resulted in excess allowance of development rebate of Rs. 1,40,824 with consequent tax undercharge of Rs. 70,416 in the assessment year 1964-65.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and the additional demand of Rs. 70,416 raised.

Irregular exemptions and excess reliefs given

30. *Incorrect allowance of double income-tax relief*

Under the provisions of the Income-tax Act, 1961, unilateral relief is granted in respect of incomes which suffer income-tax both in India and in a country with which there is no agreement for double income-tax relief or for avoidance of double taxation. This relief is allowed at the Indian rate of tax or the rate of tax of the other country, whichever is lower in respect of income accruing or arising in the other country. Any other tax, say, dividend tax not being a part of the doubly taxed income,

chargeable to income-tax under the Indian law, has to be excluded in determining the average rate of tax, at which abatement is admissible, on the doubly taxed income.

An assessee-company was allowed unilateral relief for the assessment years 1970-71 to 1973-74 in respect of its income earned in Fiji, at the average rate of income-tax paid in that country, which was lower of the two rates. However, while calculating the average rate, the dividend tax levied in Fiji on the profits remitted outside that country by the assessee-company was also taken into account. This dividend tax, not being a tax on income, subjected to double taxation, but being only a tax on the dividend being remitted outside Fiji, should have been excluded while determining the average rate of tax. The omission to so exclude it resulted in an excess computation of unilateral relief in taxes payable by the assessee-company in India to the extent of Rs. 3,72,037 in the assessment years 1970-71 to 1974-75.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

31. *Irregular allowance of relief in respect of new industrial 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 new industrial undertaking, the assessee becomes entitled to a tax relief in respect of such profits and gains upto six per cent per annum of the capital employed in the undertaking, in the assessment year in which the industrial undertaking begins to manufacture or produce articles and also in each of the four assessment years immediately succeeding. It has been judicially held and also confirmed by the Central Board of Direct Taxes that in a case where there is unabsorbed depreciation or loss in the new industrial unit in an earlier

year, the depreciation and the loss have to be carried forward and set off against the profits and gains of the unit in the subsequent years before determining if any deduction is allowable towards tax-free profits.

(*a*) During the previous year relevant to the assessment year 1962-63 an assessee-company started a new industrial unit. It suffered a cumulative loss of Rs. 1,61,38,558 in the assessment years 1962-63 and 1963-64 and earned a profit of Rs. 1,49,05,715 in the assessment years 1964-65 to 1966-67. As the profits in the latter years were not sufficient to absorb the past losses from the newly established unit, no tax relief in respect of the profits and gains from the newly established unit was admissible to the company in the assessment years 1964-65 to 1966-67. The Department, however, allowed a total tax relief of Rs. 50,27,811 in the said years leading to under-assessment of income by an identical amount with consequent tax undercharge of Rs. 35,26,584 including surtax undercharge of Rs. 9,10,545.

The Ministry of Finance have stated in December, 1977 that effective remedial action for the assessment years 1964-65 to 1966-67 had already become barred by limitation.

(b) In another case, a new unit belonging to an assessee-company started production in the previous year relevant to the assessment year 1970-71. In computing the total income of the company for the assessment year 1973-74, the Department allowed deduction of a total sum of Rs. 4,99,771 by way of aggregate deficiency of Rs. 3,23,445 carried forward from the assessment years 1970-71 to 1972-73 and relief of Rs. 1,76,326 due for the current year. As, however, the profits and gains of the undertaking for the assessment year 1973-74 amounted only to Rs. 10,58,814 and the unabsorbed depreciation and development rebate of earlier years required to be set off against the said profits amounted to Rs. 33,21,632, there were no profits left to allow the deduction of Rs. 4,99,771. The irregular allowance resulted in undercharge of tax of Rs. 2,88,617.

The Ministry of Finance have accepted the objection.

(ii) Tax relief is also admissible in the hands of a shareholder in respect of dividends coming out of such profits or gains.

A non-resident assessee-company was allowed relief on dividends received from an Indian company which was stated to have paid such dividends from tax-free profits of its new industrial undertaking. The allowance of tax relief on the profits of the new industrial undertaking was not correct as the assessee had no positive income from the new unit for the relevant assessment years after set off of losses carried forward from previous years. As no tax relief was allowable on the income of the new industrial undertaking, the relief on the dividends paid out of such income was also not admissible. This led to excess relief of dividend income of Rs. 29,18,993 with consequent undercharge of tax of Rs. 7,29,733 in the assessments for the assessment years 1965-66 to 1967-68 completed during 1972 to 1974.

The Ministry of Finance have not accepted the objection, relying upon a judicial decision which has no application in the present case.

(iii) Further, the amount of relief admissible is to be worked out proportionately on a time basis, depending upon whether the capital was employed in the undertaking for the whole or part of the previous year, particularly in the year in which it commenced production. For this purpose as clarified by the Central Board of Direct Taxes in their instruction dated 28-10-1976 and as laid down in the Rules framed under the Act, the value of depreciable assets under construction, or awaiting installation as also second hand plant and machinery should be excluded from the capital computation.

The Income-tax Rules, 1962, before amendment from 1-4-1972, also provided that certain loans and debts owed by the assessee should be deducted from the aggregate value

of assets employed in the new industrial undertaking. From 1-4-1972 all moneys borrowed and debts owed are to be deducted.

(a) A company, whose previous year ended on the 25th December each year, commissioned a new industrial undertaking which started production on 10-12-1966 and worked for 16 days in the year relevant to the assessment year 1967-68. The assets of the company, as on the first day of the previous year, included depreciable assets under construction or installation valued at Rs. 7,84,94,860. The amount of relief to be calculated at six per cent per annum should, therefore, have been proportionate to sixteen days, for which the capital, exclusive of depreciable assets under construction or installation, was employed during the accounting year. The Department, in working out the tax relief, however, calculated the relief for the full year with reference to the capital including the aforesaid deductible assets. Similarly, for the assessment year 1968-69, the relief was calculated on the capital before deducting therefrom the value of second hand plant and machinery amounting to Rs. 23,33,064.

Further, in computing the capital for the assessment years 1968-69 and 1969-70, the capital works-in-progress, representing value of uninstalled assets amounting to Rs. 3,70,27,786 and Rs. 2,34,63,050 were irregularly taken into account.

The mistakes resulted in excess carry forward of deficiencies of Rs.38,48,419, Rs. 18,12,804 and Rs. 10,15,856 for the said three years respectively. The entire deficiency having been adjusted against the income for the assessment year 1972-73, there was excess allowance of relief to the extent of Rs. 66,77,079 with consequent tax undercharge of Rs. 44,92,422 including surtax undercharge of Rs. 7,28,219 in that assessment year.

The Ministry of Finance have stated (December, 1977) that the alleged loss of revenue could not be avoided as the effective remedial action for the assessment years 1967-68, 1968-69 and

1969-70, in which the mistakes actually occurred, had already become barred by limitation.

(b) In the assessment of another assessee-company for the assessment year 1972-73, it was noticed that the value of machinery awaiting installation was wrongly taken into account in the computation of capital employed for the assessment year 1972-73. This resulted in excess relief to the extent of Rs. 9,01,348 leading to a short levy of tax of Rs. 5,54,330.

The Ministry of Finance have accepted the objection.

(c) A new industrial unit of an assessee-company started production from February, 1966 and worked for 11 months during the previous year relevant to the assessment year 1967-68. In the assessment instead of allowing proportionate deduction for 11 months only, the Department allowed the relief incorrectly for the full year. Further, in computing the capital employed in the assessment years from 1967-68 to 1969-70 the Department incorrectly took into account the value of fixed assets under installation. These mistakes led to excess relief of Rs. 9,20,285 in the three assessment years from 1967-68 to 1969-70. Profits and gains of the unit for the assessment years 1967-68 and 1968-69 not being sufficient to absorb the deductions due in those years, the entire excess deduction of Rs. 9,20, 285 was allowed in the assessment year 1969-70 leading to an undercharge of tax of Rs. 5,06,157 in that year.

The Ministry of Finance have stated that rectificatory action is barred by limitation.

(iv) A mill producing rayon and artificial silk fabrics consisted of a few independent units. Tax holiday in respect of some of the units was claimed for the assessment years 1966-67 and 1967-68 and was allowed by the assessing officer. While calculating the capital employed in the undertaking, proportionate liabilities on account of unclaimed dividends and

managing agency commission were not taken into consideration. Further, the assessee-company received loan of Rs. 3,00,00,000 by issuing debentures on which interest of Rs. 21,00,000 (at 7 per cent) was payable annually. Proportionate allocation of neither the loan nor the liability on account of outstanding interest to the units entitled to the concession, was made, resulting in the computation of capital at an enhanced amount. Due to these mistakes tax holiday relief was allowed in excess to the extent of Rs. 8,49,732 in the assessment year 1966-67 and Rs. 8,11,774 in the assessment year 1967-68 with consequent tax undercharge of Rs. 9,25,920.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(v) In the case of another assessee-company, while computing the capital employed in a new undertaking, moneys borrowed by the assessee from a source which was not an approved source, were not deducted from the value of assets of the undertaking for the assessment years 1968-69 to 1971-72 resulting in the above relief being carried forward in excess to the extent of Rs. 3,08,183 and leading to a short levy of tax of Rs. 1,75,559 in the assessment year 1974-75.

While accepting the audit objection the Ministry of Finance have stated that the assessments in question have been revised and the additional demand of Rs. 1,75,559 has been raised.

32. *Irregular relief in respect of priority industry income*

Where the gross total income of a company includes any profits and gains attributable to any priority industry, the Income-tax Act, 1961 provided for a deduction from such profits and gains of an amount equal to eight per cent, thereof, upto the assessment year 1971-72 and five per cent for the assessment year 1972-73 in computing the total income of the company. The activities listed as priority industries are

detailed in the Sixth Schedule to the Income-tax Act, 1961. The Act further provides that income derived from royalty received by an Indian company and included in its gross total income shall be eligible for a straight deduction at 40 per cent thereof. If an assessee derives income both from priority industry and royalty, the taxable income from royalty will have to be separately computed and the relief admissible for income from priority industry should also be similarly computed independently with reference to such income only and excluding the income from royalty.

The gross total income of a company for the assessment years 1970-71 to 1972-73 included income from priority industry as well as from royalty. Deductions admissible on such incomes under the provisions of the Income-tax Act, 1961 should have been separately calculated. But, while computing the allowable deduction in respect of income from priority industry, the Department irregularly computed such relief with reference to the total income inclusive of royalty, although relief at the prescribed rate was also separately allowed on the royalty income. This led to excess relief of Rs. 2,15,630 with consequent undercharge of tax of Rs. 1,19,854 in the assessment years 1970-71 to 1972-73.

The Ministry of Finance have accepted the objection.

33. *Irregular computation of capital gains*

(i) Any gain arising on transfer of a capital asset is chargeable to tax as income. The capital gain is determined by deducting the cost of acquisition of the asset and of any improvements thereto, from the value of the consideration received or accruing on the transfer.

Where the capital asset became the property of the assessee or of the previous owner before 1st January, 1954, the fair market value of the asset as on that date is allowed to be substituted, at the option of the assessee, for the actual cost of acquisition for determining the amount of capital gain.

In the case of assets for which depreciation has been allowed in computing income, the cost of acquisition of the asset would be its written down value as adjusted. It has been judicially held that in respect of depreciable assets, the concession of substituting the fair market value as on 1-1-1954 is available only if the asset became the property of the assessee by gift or will or on distribution of assets on partition of Hindu undivided family or dissolution of a firm or by other such specified modes, and not if such assets were acquired by the assessee by purchase.

During the previous year ended 31st December, 1973, an assessee, a foreign company sold to a bank, urban land and building for a total consideration of Rs. 12 lakhs. The total consideration was taken as comprising Rs. 11 lakhs for the land and Rs. 1 lakh for the building as shown by the assessee.

In the assessment for the assessment year 1974-75 completed in December, 1975, a capital loss of Rs. 3,38,498 was determined in respect of the sale of the building. The loss was arrived at by taking the fair market value of the building as on 1-1-1954 as Rs. 4,35,992 adding a sum of Rs. 2,506 thereto towards improvement and deducting therefrom the sale value of the building of Rs. 1 lakh. The capital loss of Rs. 3,38,498 so determined was set off against a capital gain of Rs. 9,86,924 determined on the balance of sale value of Rs. 11 lakhs for the land.

As the assessee acquired the building by purchase and as depreciation was allowed thereon from year to year, the assessee was not entitled to substitute the fair market value as on 1-1-1954. If, as provided in the statute, the written down value of Rs. 72,262 as adjusted with the terminal profit of Rs. 27,738 at the time of sale is adopted as the cost of acquisition, there would be no capital loss to be set off against the capital gain arising in respect of the land. The incorrect substitution of the fair market value and the consequent set off of the loss against

the capital gain, resulted in short levy of capital gains tax of Rs. 1,52,324.

Further, it was noticed in audit in October, 1976 that according to a valuation certificate furnished by the assessee-company itself, the building and the land were valued as on 6th September, 1972 at Rs. 2,53,483 and Rs. 11,78,098 which conformed more or less to the valuation by the Departmental Valuation Cell in November, 1975. On the basis of this break-up, the value of the building working out to 17 per cent of the total value of the property, the sale value of the building amounted to Rs. 2,04,000 and the excess of the sale value over the written down value assessable as income correctly worked out to Rs. 1,31,738 as against Rs. 27,738 assessed in the assessment for the relevant assessment year 1974-75 completed in December, 1975.

The incorrect adoption of the sale value of the building resulted in net short levy of tax of Rs. 29,640 (after taking into account the excess levy of Rs. 46,800 on the corresponding amount of capital gain in respect of the land).

There was thus a total short levy of tax of Rs. 1,81,964.

The paragraph was sent to the Ministry of Finance in October, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(ii) A company sold, in the previous year relevant to the assessment year 1972-73 two of its buildings to the relatives of one of its directors at a consideration of Rs. 17,86,000 which was claimed to be the market value of the properties. As the declared value of each of the properties was more than rupees five lakhs, the cases should have been referred, as enjoined in the Board's circular issued in December, 1971, to the Valuation Cell of the Department for testing the correctness of the declared value. This was not done and the capital gain arising out of the sale was computed on the basis of the returned sale price of Rs. 17,86,000.

Another director of the company submitted a petition to a court stating that the fair market price of the properties was Rs. 36,80,000 as on the date of sale. This was supported by a certificate of an approved valuer. In such circumstances, where an asset was sold at a consideration less than its fair market value, Section 52 of the Act required the assessing officer to adopt, for the purpose of determining the quantum of capital gains, the fair market value of the asset in place of the actual consideration received. As this was not done, capital gain was determined less by Rs. 18,94,000 involving tax effect of Rs. 8,22,770.

The Ministry of Finance have accepted the objection about the failure to refer the question to the Valuation Cell.

(iii) It has been judicially held that trees standing on agricultural land in India do not constitute agricultural land in India. Therefore, profits arising from the sale of such trees with or without land would attract liability for capital gains tax.

An assessee sold a rubber estate for Rs. 16 lakhs during the previous year relevant to the assessment year 1973-74. The proportionate sale consideration attributable to the sale of rubber trees standing on the estate was not considered for the levy of capital gains tax, incorrectly treating the entire sale as sale of agricultural land. The omission resulted in non-levy of tax of Rs. 75,992.

The Ministry of Finance have accepted the objection.

34. *Avoidable mistakes involving considerable revenue*

The assessment of a company for the assessment year 1973-74 was finalised in February, 1976 on a loss of Rs. 1,44,699. It was, however, noticed during audit that the correct total of the disallowed items which were added back, taken at

Rs. 65,89,515 in the computation actually worked out to Rs. 67,89,515.

The income of the company was accordingly under-computed by Rs. 2 lakhs resulting in excess carry forward of loss to that extent.

The Ministry of Finance have accepted the objection.

35. *Irregular set off of losses*

Under the provisions of the Income-tax Act, 1961 where in respect of any assessment year the net result of the computation under any head of income other than 'capital gains' is a loss, such loss may be set off against the income of the assessee assessable for that assessment year under any head including income assessable under the head 'capital gains'.

The income of an assessee-company for the assessment year 1972-73 was computed at a loss figure of Rs. 3,17,930 . Although the assessee had, during the accounting year relevant to the assessment year 1972-73, derived long-term capital gains of Rs. 53,507 on sale of land, the said capital gain was neither taxed nor taken into account in the computation of the said loss for the assessment year 1972-73. As there was nothing on record to show that the assessee had desired that the loss should not be set off against his income from capital gains, there was excess carry forward of loss of Rs. 53,507 in the assessment year 1973-74 leading to under-assessment of income by an identical amount with consequent undercharge of tax of Rs. 30,900 for the assessment year 1973-74.

The Ministry of Finance have accepted the objection.

36. *Under-assessment due to adoption of incorrect procedure*

Under the provisions of the Income-tax Act, 1961, it is obligatory on the part of every person responsible for paying

to a non-resident, any interest, not being interest on securities, or any other sum, not being dividends, chargeable under the provisions of the Act, to deduct income-tax thereon at the rates in force, unless he is himself liable to pay any income-tax thereon as an agent. The Central Board of Direct Taxes issued instructions in December, 1974 according to which the income chargeable to tax in the hands of the non-resident shall be taken to be such an amount that after deducting therefrom the tax payable thereon, it would leave the stipulated net amount of tax-free income. Any person making such tax-free payment to a non-resident is, therefore, required to calculate tax deductible after grossing up the tax-free receipt appropriately and deduct such tax before making the payment to a non-resident.

An Indian company which entered into an agreement with a non-resident for supply of equipment as well as technical services, had agreed to make payments due under the agreement to the non-resident free of tax. The taxable income of the non-resident should, therefore, have been determined by grossing up the tax-free payment made for each year and taxes should have been deducted at source accordingly.

The Department, however, while assessing the Indian company as the agent of the non-resident for the assessment years 1968-69 to 1970-71 did not apply the Board's instructions in this regard. The omission to gross up the income resulted in under-assessment of Rs. 22,58,537 involving a short demand of tax of Rs. 17,30,833 for all these assessment years.

The Ministry of Finance have stated that the taxability of the non-resident's income is in dispute before the High Court; they have not given any reason for the Board's instructions of December, 1974 being not followed at the assessment stage.

37. *Excess or irregular refunds*

(i) The Income-tax Act, 1961 lays down that while making a provisional assessment for refund, adjustment to the income

or loss declared in the return could be made by the Income-tax Officer to the extent laid down in the Act. Though the Act provides for the adjustment of the brought forward unadjusted loss, development rebate etc., as per the earlier completed assessments, there is no provision for allowing the loss, development rebate etc., relating to earlier previous years in respect of which assessments were still pending.

In the provisional assessment of a private limited company for the assessment year 1974-75 (made in November, 1975), the assessee's claim, for set off of Rs. 17,64,596 and allowance of Rs. 2,39,144 respectively towards loss and development rebate relating to the assessment year 1973-74 and for allowance of Rs. 3,11,384 towards brought forward development rebate relaing to the assessment year 1972-73 was allowed and a refund of Rs. 6,12,552 together with interest of Rs. 1,09,725 towards excess payment of advance tax was made to the assessee. The adjustment of the loss and development rebate relating to the assessment year 1973-74 when the regular assessment for that year was still pending and the adjustment of brought forward development rebate relating to the assessment year 1972-73 when no unabsorbed development rebate remained to be adjusted as per the regular assessment for that year in January, 1975 were not in order and the refund of Rs. 6,12,552 together with interest of Rs. 1,09,725 was not in accordance with law.

The Ministry of Finance have accepted the objection.

(ii) Under the provisions of the Income-tax Act, 1961, where a resident assessee proves that, in respect of his taxable income which accrued or arose in the relevant previous year outside India, he had paid tax in another country with which there is no agreement for either affording double taxation relief or avoiding double taxation, a unilateral relief from the Indian income-tax is admissible to the extent of the tax calculated on the doubly taxed income at the average rate of tax in India or the average rate of tax in the foreign country, whichever is lower.

A company had income amounting to Rs. 3,67,818 by way of fees and remuneration received from a foreign company during the year relevant to the assessment year 1970-71. Although the entire foreign income was excluded from the total income of the assessee-company under orders of the Appellate Tribunal, the Department allowed double income-tax relief to the extent of Rs. 1,01,433 on the aforesaid foreign income. As the foreign income did not suffer Indian income-tax no double taxation relief was allowable thereon. The irregular allowance resulted in excess refund of Rs. 1,01,433 for the assessment year 1970-71.

The Ministry of Finance have accepted the objection.

38. *Non-levy of interest*

(i) Under the provisions of the Income-tax Act, 1961, where the amount specified as payable in any 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 period to the date on which such payment is made.

(a) A company was served on 30-3-1974 with a notice of demand for an aggregate sum of Rs. 18,13,423 in respect of the assessment year 1973-74 which should have been complied with by 4-5-1974. The tax was, however, paid in two instalments of Rs. 9,00,000 and Rs. 9,13,423 on 29-10-1974 and 7-2-1975 respectively. For the delay, a sum of Rs. 1,35,157 was payable by it as interest which was, however, not levied by the Department.

The Ministry of Finance have accepted the objection.

(b) In the case of another assessee-company, tax demands for the assessment years 1967-68 and 1968-69 were not paid in full within the period specified in the respective notices of demand. The assessee was, therefore, liable to charge of simple interest on the unpaid amount of demand for the period of default. The Department, however, did not levy the interest as required under

the relevant provisions of the Act. This led to non-levy of interest to the extent of Rs. 6,21,366 and Rs. 3,44,680 for the assessment years 1967-68 and 1968-69 respectively.

The Ministry of Finance have accepted the objection.

(ii) Where, in any financial year, an assessee, without responding to a notice of demand for advance tax issued by the Department, pays advance tax on the basis of his own estimate and the advance tax so paid is less than seventy-five per cent of the assessed tax, simple interest at the prescribed rates from the 1st April next following the said financial year upto the date of regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed tax.

A company, from whom advance tax of Rs. 5,76,300 was demanded by the Department paid advance tax of Rs. 3,30,750 only in respect of the assessment year 1973-74 on the basis of its own estimate. The advance tax so paid was less than 75 per cent of the assessed tax of Rs. 28,38,854. The assessee was, therefore, liable to pay interest amounting to Rs. 2,50,121 which was not levied by the Department.

The Ministry of Finance have accepted the objection.

39. *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 that in respect of any amount refunded on a provisional

assessment, no interest shall be paid for any period after the date of such provisional assessment. Further, advance tax paid by an assessee beyond the last due date for payment of advance tax shall not qualify for payment of interest as confirmed by the Central Board of Direct Taxes in their instruction issued in October, 1975.

A company, while submitting its return for the assessment year 1974-75, claimed refund of the excess of advance tax paid over the tax payable on returned income. The department made a provisional assessment on 19-5-1975 and granted a refund of Rs. 2,14,40,600 which included interest of Rs. 25,72,370 for payment of excess advance tax. Since, out of the total advance tax paid, a sum of Rs. 1,51,64,024 was not paid within 15-3-1974, the last due date for payment of advance tax, the allowance of interest on this sum was irregular and led to excess payment of interest of Rs. 20,90,815 in the assessment year 1974-75.

The Ministry of Finance have accepted the objection.

(ii) Under the Income-tax Act, 1961 as it stood prior to 1-4-1971, the Central Government shall pay interest 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 delayed beyond six months from the date of such order. 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.

(a) A company became entitled to refunds of Rs. 37,500, Rs. 1,25,425 and Rs. 1,20,197 in respect of the assessment years 1963-64, 1965-66 and 1966-67 respectively. The Department disposed of the refund cases after a time lag of 11 years, 9 years and 2 years respectively. As a result, the Department had to pay a total interest of Rs. 1,64,292 to the assessee-company.

Had the Department taken timely action to deal with the refund cases, the payment of a total sum of Rs. 1,64,292 as interest could have been avoided.

The Ministry of Finance have accepted the objection.

(b) In the case of another assessee-company, a refund of tax of Rs. 44,59,717 became due in the assessment year 1964-65 as a result of an appellate order dated 5-1-1971. As the effect to this order was given on 28-2-1972 *i.e.*, after the expiry of three months from the date of the appellate orders, an interest of Rs. 3,31,134 was paid on the amount of refund due to the assessee. As a result of rectifications made on 28-11-1974 and 16-6-1975, the amount of interest was reduced to Rs. 2,47,143.

The appellate order dated 5-1-1971, which was received by the Commissioner of Income-tax on 18-1-1971 was forwarded to the Income-tax Officer through the Inspecting Assistant Commissioner only on 10-11-1971. The delay on the part of the Department in this respect resulted in an avoidable payment of interest of Rs. 2,47,143.

The Ministry of Finance have accepted the objection.

Other topics of interest

40. *Delay in collection of revenue due to non-issue of advance tax notice*

Under the Income-tax Act, 1961, an assessee who has been previously assessed to income-tax by way of regular assessment, may be required through issue of a notice to pay advance tax determined in accordance with the provisions of the said Act.

In the case of two non-resident companies, who had been previously assessed to income-tax by way of regular assessment, no notice for the payment of advance tax in respect of the assessment year 1975-76 was issued by the Department. The failure

to issue advance tax notice resulted in the collection of revenue being deferred to the extent of Rs. 1,28,83,363 for about seven months in the assessment year 1975-76.

The Ministry of Finance have accepted the objection.

41. *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 cent per from 1-4-1977) 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. 95.67 lakhs was noticed in 104 cases. A few illustrative cases are given in the following paragraphs.

42. *Incorrect computation of chargeable profits*

(i) According to the provisions of the Companies (Profits) Surtax Act, 1964, surtax is levied on the "chargeable profits" of a company. Under the rules framed for computing the "chargeable profits" certain adjustments are permitted to be made from the total income arrived at for that year under the Income-tax Act, 1961. One such adjustment allowable from the chargeable profits in the case of foreign (non-resident) banking companies is the deduction of the statutory deposit, made by them with the Reserve Bank of India. Under Section 11 of the Banking Companies Act, 1949, a non-resident banking company shall deposit in cash or in the form of unencumbered approved securities, an amount equal to 20 per cent of its profits for the relevant previous years as disclosed in its profits and loss account.

In the surtax assessments of five non-resident banking companies for the assessment years 1967-68 to 1973-74, a total amount of Rs. 1.26 crores claimed by these companies for adjustment against the "chargeable profits" representing the deposits they had made with the Reserve Bank of India to fulfil the statutory requirements, was allowed by the assessing officers. However, a scrutiny of these assessments revealed that these companies had remitted to their head offices abroad, the entire profits made during these years (after taxation) without deducting therefrom the amounts representing the statutory deposits made. Thus, these deposits appear to have been met from out of their other resources like capital and not out of the profit earned during the relevant previous years. In view of this, the adjustments claimed under the provisions of the Surtax Act, 1964 should not have been considered in the computation of chargeable profits of these years. In addition, this also resulted in these companies remitting as profits to their head offices, excessive amounts in foreign exchange to the tune of Rs. 1.26 crores, than would otherwise have been permissible.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(ii) Under the provisions of the Companies (Profits) Surtax Act, 1964 a company becomes liable to surtax when its chargeable profits exceeds ten per cent of its capital or Rs. 2 lakhs, whichever is greater. In computing the chargeable profits of a company, a deduction is allowed from its total income computed under the Income-tax Act, 1961 on account of the income-tax payable by it on such total income, as reduced by the dividend tax included in such income-tax.

In the surtax assessment of a company for the year 1965-66 revised on 12-9-1974 to give effect to appellate orders, the Department did not deduct dividend tax of Rs. 1,66,976 from the

gross tax payable by the company, in the computation of its chargeable profits. This omission resulted in under-assessment of net chargeable profit by Rs. 1,66,976 with consequent under-charge of surtax of Rs. 66,790.

The Ministry of Finance have accepted the objection.

43. *Incorrect computation of capital*

Under the provisions of the Companies (Profits) Surtax Act, 1964, any amount standing to the credit of any account in the books of a company which is of the nature of liability or provision shall not be regarded as a reserve for the purposes of computation of capital. Further, as per instructions issued by the Central Board of Direct Taxes, where the general reserve balance as on the first day of a previous year includes any sum proposed to be reappropriated for distribution of dividend and such re-appropriation is approved in a general meeting held later in that year, the general reserve balance as reduced by such sum alone should be included in the capital computation for purposes of levy of surtax.

(i) In the case of a company, the general reserve balance appearing in the balance sheets as on the last day of the accounting years 1963 to 1969 included proposed dividends and also provisions for tax which were approved in the general meeting held in the succeeding years. The above general reserve balance as reduced by the sums re-appropriated out of such reserve in the following years for payment of dividends and tax should, therefore, have been treated as the amounts of general reserve as at the beginning of the previous years 1964 to 1970 and considered in the computation of capital for purposes of surtax assessments for the assessment years 1965-66 to 1971-72. Omission to do so resulted in total under-assessment of chargeable profit to the extent of Rs. 1,80,36,437 and surtax undercharge of Rs. 54,65,715 for the assessment years 1965-66 to 1971-72.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(ii) In the case of two other companies, dividends declared and paid out of general reserves in the previous years relevant to the assessment years 1968-69, 1970-71, 1971-72, 1973-74 and 1974-75 respectively which, even though approved and paid subsequent to the first day of the previous year, should have been deemed to be effective from the first day of the relevant previous years and should have been excluded in the computation of capital for the purposes of surtax. Omission to do so led to total undercharge of surtax of Rs. 1,10,157 in the case of the two companies for the said assessment years.

The Ministry of Finance have accepted the objection.

(iii) In the surtax assessments of still another company for the years 1971-72 and 1972-73, proposed dividends of Rs. 78,84,974 payable in each of the above two years out of the balance in the general reserve account were not deducted by the Department in the computation of capital in violation of the instructions issued by the Board. This led to excess computation of capital by Rs. 78,84,974, in each of the two assessment years with consequent surtax undercharge of Rs. 1,73,438 and Rs. 1,93,471 respectively.

The Ministry of Finance have accepted the objection in principle.

44. *Omission to revise the surtax assessment*

Surtax is levied on companies if their chargeable profits exceed the standard deduction *i.e.*, 10 per cent of their capital or Rs. 2,00,000 whichever is more. The chargeable profits are computed on the basis of the total income determined for income-tax and the tax payable thereon. The Central Board of Direct

Taxes issued instructions in October, 1974 that proceedings for completion of regular surtax assessments should be taken up along with the income-tax proceedings and the surtax assessments finalised immediately after the income-tax assessments were completed. The Board further laid down that the surtax assessments should not be kept pending, on the ground that the additions made in the income-tax assessments were disputed in appeal and that the time lag between the date of completion of surtax assessments should ordinarily not exceed one month.

In the income-tax assessment of a private limited company for the assessment year 1969-70 (made in October, 1971) the taxable income and the tax payable were computed as Rs. 10,52,670 and Rs. 5,81,602 respectively. The surtax assessment with reference to the income-tax assessment was made in September, 1972. The income-tax assessment was revised in November, 1975 recomputing the taxable income as Rs. 14,67,550 and the income-tax as Rs. 8,30,530. The surtax assessment was neither revised nor was a note kept indicating the need for revision. Omission to revise the surtax assessment resulted in short levy of surtax of Rs. 41,442.

The Ministry of Finance have accepted the objection.

CHAPTER III

INCOME TAX

45. 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.

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

47. *Voluntary Disclosure of Income and Wealth Scheme,* 1975

47.1 In October, 1975, the Government of India introduced the Voluntary Disclosure of Income and Wealth Scheme, 1975, to "offer an opportunity to persons who have evaded tax in the past to declare their undisclosed income and wealth, pay tax thereon on a reasonable basis and return to the path of rectitude" and to secure "channelisation of black money secreted by tax evaders into productive fields in the overall interest of the economy". The Scheme, operative from the 8th October, 1975 to the 31st December, 1975, provided for immunity from penal and prosecution action in respect of disclosures of income and wealth made during this period. The disclosures were categorised under the following three heads:—

A. Disclosure of income in cases where the assessee's premises had not been searched under the relevant provisions of the

Income-tax Act or the Wealth-tax Act and no assets had been seized. In such cases, the declarants had to pay tax at 60 per cent of the disclosed income in the case of companies and at slab rates varying from 25 to 60 per cent in the case of other persons. The disclosed income was not to be included in the total income of the declarants for any assessment year. The assets representing the disclosed income were also not to be subjected to wealth-tax in any assessment year upto the assessment year 1975-76.

B .Disclosure of income in cases where search and seizure operations had been conducted. In these cases disclosures could be made only in respect of the previous year earlier than and upto the previous year in which search was made. The income disclosed was to be added to the total income of the relevant assessment year and to bear tax at the normal rates for that year.

C. Disclosure of wealth.—The wealth disclosed for any assessment year was to be included in the net wealth of that assessment year for assessment in the ordinary course.

47.2 According to the figures given by the Ministry of Finance, *vide* paragraph 11 of the Audit Report 1975-76, the total number of declarations received was 2,58,992, made up of 2,41,079 under 'A' above, 4,491 under 'B' above and 13,422 under 'C' above. The total amount of income disclosed was stated to be Rs. 746.07 crores made up of Rs. 689.41 crores under 'A' above and Rs. 56.66 crores under 'B' above. The total amount of wealth disclosed was given as Rs. 841.72 crores.

47.3 A test check of the declarations filed in some of the Commissioners' charges revealed the following points:

(i) It was noticed that in returning the amount of net wealth declared the amount disclosed in a declaration against different assessment years was multiplied by the number of assessment years. Thus where a declarant had disclosed a net wealth of Rs. 10 lakhs which he had been holding for the last five years, the disclosure was counted as amounting to Rs. 50 lakhs. The

amount of Rs. 841.72 crores mentioned in the preceding paragraph is, therefore, computed in this manner and is not the actual net wealth disclosed by the 13,422 declarants.

(ii) Under the Scheme a disclosure could be made in respect of any income for which the declarant had failed to furnish a return of income or which he had failed to disclose in a return filed by him before the commencement of the Scheme or which had escaped assessment because of his omission or failure to disclose fully and truly all material facts. A declaration could not be made in respect of the income of any assessment year for which a notice under Section 139 or Section 148 of the Income-tax Act had been served upon the declarant and the return had not been furnished by him before the commencement of the Scheme.

(a) In Tamil Nadu in the case of a registered firm, Audit had pointed out in February, 1975 gross under-valuation of closing stocks in the assessment year 1973-74. As a result, the Department had re-opened the assessments for the years 1973-74 and 1974-75. The Income-tax Officer had issued notices to the assessee under Section 148 of the Act on 15-11-1975 and 17-11-1975 and the notices had been received by the firm on 22-11-1975. The firm filed a disclosure under the Scheme on 29-12-1975 disclosing a concealed income of Rs. 20,68,700, worked out by revising the method of valuation of closing stocks for the assessment years 1971-72 to 1975-76. The declaration was accepted. If the amount of concealed income disclosed by the firm were included in the total income for the assessment years 1972-73 to 1974-75, an additional tax of Rs. 12,82,420 would be recoverable besides penal interest under Sections 139 and 217 and penalty for concealment of income under Section 271 (1)(c) of the Act.

(b) In another case also in Tamil Nadu, the Income-tax Officer had completed the assessment for the assessment year 1972-73 on 29th March, 1975 after making additions of

Rs. 7,11,083 to the returned income of Rs. 28,430. The assessment had been upheld by the Appellate Assistant Commisssioner on 27th August, 1975. The assessee appealed further to the Appellate Tribunal. On 29th December, 1975, the Tribunal set aside the assessment on the ground that the assessee's authorised representative had stated that the assessee proposed to have the matter settled out of Court and the departmental representative had not objected to the assessment being set aside. The assessee, then filed a declaration under the Scheme on 31st December, 1975, disclosing a concealed income of Rs. 19 lakhs including the entire amount of Rs, 7,11,083 which had been the subject of appeal. The declaration was accepted by the Department. If the sum of Rs, 7,11,083 were charged to tax in the normal course as originally done, an additional tax of Rs. 4,72,756 would be recoverable; the concealment would also invite a minimum penalty of Rs. 7,75,907 under Sections 271 and 273 of the Act.

(c) In still another case in Tamil Nadu, 7 assessees of a certain group had in their returns of income for the assessment years 1971-72 and 1972-73 involving 12 assessments, claimed exemption from tax for large amounts aggregating Rs. 32,52,010, stated to have been won in jackpots. After detailed enquiries, the Income-tax Officer had come to the conclusion that the claims were not genuine and the assessees had utilised their unaccounted money for purchasing tickets from persons who had won in horse races, after the result had been announced. In respect of 10 assessments, he, therefore, assessed the alleged race winnings as unexplained income of the assessees; the remaining two assessments were re-opened for fresh assessment. On appeal, the Assistant Appellate Commissioner deleted the additions of Rs. 4,39,725 in two assessments on 30th January, 1975, and set aside the other 8 assessments on 19th December, 1975, for further inquiries. All the 7 assessees made disclosures under the Scheme on 24th December, 1975, declaring a

total concealed income of Rs. 1,66,90,000. The disclosed income included an amount of Rs. 25,24,257 which had earlier been claimed to be jackpot winnings. The disclosures were accepted by the Department. The assessment of this amount in the normal course would attract an additional tax of Rs. 22,77,210 apart from a minimum penalty of Rs. 25,24,257 for concealment of income.

(*d*) In Madhya Pradesh, cash amounting to Rs. 4,07,179 was seized in February, 1974 during the course of searches in the premises of an assessee. While passing (March, 1974) an order under section 132(5) of the Income-tax Act, 1961 the Income-tax Officer determined the income from undisclosed sources at Rs. 2,86,958 and the amount of tax payable thereon as Rs. 2,72,180. After this, the assessee filed (March, 1974) in pursuance of notice issued under Section 148 of the Act, revised returns of income including therein the undisclosed income referred to above. Later, the assessee filed on 31st December, 1975, declarations under the Scheme, declaring the concealed income as mentioned above. These declarations were accepted and the amount of tax payable was reduced from Rs. 2,72,180 to Rs. 79,492. The declarations were outside the scope of the Scheme and could not have been accepted, because the declared amount had already been included in the returns of income filed long before the commencement of the Scheme. The incorrect acceptance of the declarations resulted in tax of Rs. 1,92,690, interest of Rs. 7,990 and penalty of Rs. 2,58,550 (total Rs. 4,59,230) being abandoned.

(iii) Under the Scheme the tax payable on the disclosed income was to be paid before making the declaration and the declaration was to be accompanied by the proof of payment. The Commissioners were, however, authorised to extend the time for payment for good and sufficient reasons, so, however, that an amount of not less than one half of the tax payable should be paid on or before 31st March, 1976. It was,

however, noticed during the test check that in a large number of cases, almost 80 per cent of the cases seen in Bombay for instance, there was no evidence on record of 50 per cent of tax having been paid by 31st March, 1976.

(iv) The Scheme also provided that in addition to the tax payable, the declarants should invest 5 per cent of the declared income in notified Government securities within 30 days of the date of declaration. It was, however, noticed in test check that the requirement had not been complied with in many cases and no penal action had been initiated. In Bombay, no details of investments made by the declarants were available on record. In Tamil Nadu, 152 cases of non-compliance were noticed. These included 5 cases where the disclosed income was over Rs. 10 lakhs in each ease, the total for all five cases being Rs. 1,68,40,000.

(v) Under the Scheme a declaration could be made by a 'person'. All immunities and concessions allowed by the Scheme were available only to the declarant defined in the Scheme as 'person making a declaration'. Under the Income-tax Act, 1961, a firm and its partners are separate 'persons'. It would follow that where a declaration was made by a firm, the immunities could not extend to the partners. The Central Board of Direct Taxes, however, issued a circular on 25th October, 1975, to the effect that where a firm had concealed any income, the declaration could be filed by the firm and the partners need not make any separate declarations. In 452 cases in Andhra Pradesh, Uttar Pradesh and Tamil Nadu, it was noticed that declarations had been filed by the firms and no separate declarations were filed by the partners. In 380 of these cases in Uttar Pradesh and Tamil Nadu charges, the additional taxes recoverable from the partners would be Rs. 30,41,414/- 32, 39, 136

(*vi*) In Andhra Pradesh, Uttar Pradesh and Tamil Nadu 47 cases were noticed where the declarations of concealed income

included income assessable in the assessment year 1976-77 or even 1977-78. These declarations were also accepted.

(*vii*) Under the Scheme any person making a declaration of his concealed income was not entitled to make a second declaration. In Calcutta, it was noticed that 6 members of a family made 32 declarations of total amount of Rs. 8,26,000 in groups of twos and threes by various permutations and combinations without indicating any 'status' for assessment. The income represented investments in the equity shares of a company run by the family. Each of the 32 declarations was for an amount of less than Rs. 50,000. Apparently, this was an arrangement to avoid payment of tax at the higher rate of 60 per cent applicable to disclosed income of over Rs. 50,000. These declarations were also accepted involving a short levy of tax of Rs. 1,66,800.

In another case in Calcutta, a declarant filed a declaration for Rs. 1,85,000 and subsequently filed a second declaration for Rs. 90,000. Both the declarations were accepted though under the Scheme the second declaration which was for the assessment year 1975-76, should not have been accepted and the amount should have been brought to assessment in the normal course.

47.4 The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the matter is under active consideration.

48. *Assessment of foreign technicians*

48.1 The Income-tax Act, 1961, allows, under certain conditions, exemption from tax to remuneration of foreign technicians in the employment of Government or a local authority or a statutory corporation or any business carried on in India. The exemption is admissible for a period of 36 months from the date of arrival in India in the case of technicians whose services as such commenced from a date prior to 1st April, 1971 and for a

period of 24 months from the date of arrival in the case of those whose services commenced from a date on or after 1st April, 1971. Where the technician continues, with the approval of the Central Government, to remain in employment in India beyond the said period of 36 or 24 months and the tax on his remuneration is paid by the employer, the tax so paid is not taxed as a perquisite in the hands of the technician for a further period of 5 years in the former case and two years in the latter case.

48.2 One of the conditions for the grant of the aforesaid exemption is that the contract of service of the foreign technician should be approved by the Central Government. In the case of those whose services commenced before 1st April, 1971, this approval has to be obtained before or within one year of the commencement of service while in the case of those whose services commenced on or after that date, the application for approval should have been made to the Central Government before or within 6 months of the commencement of service. There is no provision in the Act for condoning any delay in this regard. A test check conducted in Andhra Pradesh, Maharashtra, Tamil Nadu and West Bengal revealed 46 cases of foreign technicians where the approval of the Central Government was not obtained within the prescribed time but the exemption was still granted. The loss of tax revenue in 43 of these cases amounted to Rs. 26,20,252 exclusive of interest that could be levied under the Act for non-deduction of tax at source by the employers; for the remaining three cases tax effect could not be collected for want of necessary details.

48.3 In Kerala, in the case of a foreign technician who arrived prior to 1st April, 1971, the contract of service was approved by the Central Government on a salary of Rs. 5,500 per month before July, 1969 and Rs. 6,600 per month from July, 1969 onwards. The employer, however, paid a higher salary to this technician. As an important condition of the approval was

violated, it could not be treated as a case carrying the approval of the Central Government. The erroneous exemption allowed in this case resulted in a short levy of tax of Rs. 90,000.

48.4 The concession is admissible only to technicians in the employment of Government or a local authority or a statutory corporation or a business carried on in India. In other words, the concession is not admissible to those in the employment of foreign enterprises who are governed by a separate provision in the Act. Nevertheless, it was noticed during a test check in Assam, Madhya Pradesh and West Bengal that exemption was allowed in the case of 10 foreign technicians under this provision, although they were employees of the foreign collaborators only. The loss of revenue in these cases amounted to Rs. 9,38,164.

48.5 One of the conditions for the grant of this exemption is that the foreign technician should not have been resident in India in any of the four financial years immediately preceding the financial year in which he arrived in India. In Tamil Nadu exemption was allowed in two cases even though this condition was not satisfied. This involved a tax undercharge of Rs. 44,760.

48.6 In the case of those whose services commenced on or after 1st April, 1971, the exemption is limited to an amount of Rs. 4,000 per month. In 16 cases in Rajasthan and Tamil Nadu, however, it was noticed that remuneration in excess of that limit had also been exempted. This erroneous exemption resulted in a short levy of tax of Rs. 59,417.

48.7 For the purpose of this exemption "technician" is defined in the Act as a person having specialised knowledge and experience in constructional or manufacturing operations or in mining or in generation of electricity or any other form of power or in agriculture, animal husbandary, dairy farming, deep sea fishing, or ship building. In Bombay, the exemption was allowed in the case of two foreigners employed by a company running a

hotel business; one was employed as director of kitchen services and the other as Chef pattissier. The tax forgone in these two cases in the assessment years 1973-74 and 1974-75 amounted to Rs. 38,959.

48.8 In order to discourage payment of very high salaries and perquisites, the Income-tax Act also provides for salaries and perquisites beyond certain limits being not allowed in the computation of business income of the employers. In respect of the foreign technicians mentioned here, the amounts to be disallowed as such are:

(i) Before 1st April, 1972, the value of perquisites (other than tax paid by the employer on behalf of the technician) in excess of 1/5th of salary or Rs. 1,000 per month, whichever is less and;

(ii) From 1st April, 1972, the amount of salary in excess of Rs. 5,000 per month and the value of perquisites in excess of 1/5th of salary or Rs. 1,000 per month, whichever is less, in respect of any period during which the technician is not entitled to exemption.

In Maharashtra and West Bengal, it was, however, noticed that in 18 cases, these provisions were not followed and salaries and perquisites amounting to Rs. 3,12,02,407 were, incorrectly, allowed in the computation of business income of 9 employers.

48.9 The paragraph was sent to the Ministry of Finance in August, 1977. They have accepted the objection in 12 cases and given part reply in 5 cases. For the remaining cases, their reply is awaited (February, 1978).

49. *Deduction of tax at source from contractors*

49.1 The Income-tax Act, 1961 was amended in 1972 to provide for deduction of tax at source at 2 per cent from payments made by Government, local authorities, companies and Govern-

ment Corporations to contractors for works contracts and for labour contracts for carrying out works contracts of a value exceeding Rs. 5,000 in each case. The contractors covered by this provision (excluding individuals or Hindu undivided families) were also required to deduct tax at source at 1 per cent from payments made by them to sub-contractors. The scope of this provision was extended in 1973 to similar contracts made with co-operative societies.

49.2 The total amounts of deduction at source made during the years 1974-75, 1975-76 and 1976-77 under the above provision of the Act have been reported to be Rs. 21.01, Rs. 27.31 and Rs. 39.20 crores only. Even if it is assumed that the sum of Rs. 39 crores represents the tax deducted from payments to contractors only (*i.e.*, excluding sub-contractors) in one year, it would mean that the total amount of contracts awarded by the Central and State Government departments, Central and State Government corporations and companies and the whole of the corporate and co-operative sector would only work out to Rs. 1,950 crores, which, *prima facie*, is an underestimate.

49.3 The amendment made in 1972 was applicable to payments made from and after 1st June, 1972. A test check, however, revealed that most of the Government departments responsible for deducting taxes at source under the new provision were not aware of the new provision till the end of 1972 with the result that during the initial year the new provision remained, more or less, unimplemented. Although the position improved thereafter, cases of non-deduction even in Government departments, corporations and local bodies continued to be noticed in 1974-75 and 1975-76 as well. Thus in Bihar, a test check revealed 288 cases in which tax deductible at source aggregating Rs. 1,90,495 was not deducted and 256 cases in which total amount of Rs. 1,38,418 only was deducted as against the amount of Rs. 1,87,160 that was correctly deductible at the prescribed rate

of 2 per cent. In Karnataka, 421 cases were noticed in which a total amount of Rs. 97,726 deductible at source, was not actually deducted. For failure to deduct tax at source, the Act provides, not only for the levy of interest but also for the institution of penal and prosecution proceedings against the defaulters. No such action was, however, taken in the said cases.

49.4 The tax deducted at source is required to be paid to the credit of the Central Government within the period prescribed under the Rules which, in general is within one week from the end of the month in which the deduction is made. A failure in this regard renders the defaulter liable to pay simple interest at 12 per cent per annum on the amount of such tax from the date on which the tax was deductible to the date on which tax was actually paid. Further, the Income-tax Officer can levy a penalty upto the amount of tax in arrears and the defaulter can also be prosecuted. A test check in Assam, Uttar Pradesh and West Bengal revealed 586 cases in which the remittance to Government account of a total amount of tax deducted at source of Rs. 38,96,891 was delayed by periods ranging from 1 to 35 months. Apart from not resorting to prescribed penal/prosecution measures, the Department did not even levy simple interest amounting to Rs. 2,10,284 in these cases.

49.5 The Act also requires every contractor who enters into a contract exceeding Rs. 50,000 to furnish within one month of the making of the contract, a statement giving particulars of the contract to the Income-tax Officer. The provision originally made in 1964 in respect of building contracts was modified in 1976 to cover all contracts for carrying out any works or for the supply of goods and services in connection therewith. In case of failure to comply with this provision, the Commissioner of Income-tax may impose a fine of upto 50 rupees per day but not exceeding 25 per cent of the value of the contract. It was noticed during the test check that this provision was generally not

complied with and no action was taken by the Department for the breach. In Uttar Pradesh alone, it was noticed that of the 379 such contracts seen in test check, particulars had not been furnished at all in 359 cases; in the remaining 20 cases these had been furnished late by periods ranging upto 24 months. The amount of fine that could be imposed in these cases under the above provisions of the law upto 31st December, 1976 came to Rs. 92,67,945. Similarly, in 50 such cases seen in test check in Haryana the particulars had not been furnished; the fines leviable worked out to over Rs. 10 lakhs.

49.6 The paragraph was sent to the Ministry of Finance in August, 1977; they have stated in December, 1977 that it would take some time for furnishing the reply after collecting necessary details from the officers concerned.

50. *Income escaping assessment*

(i) 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 up to 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 effective from assessment year 1973-74 to make casual and non-recurring receipts also taxable, if such receipts in the previous year exceeded Rs. 1,000 in the aggregate.

An individual was accounting for his winnings from horse racing regularly in his accounts made up and closed for the Samvat year (ending in October/November every

year). Accordingly, for the previous year ended 5th November, 1972, the assessee included in the return of income filed by him for the relevant assessment year 1973-74 a sum of Rs. 76,135 as winnings from horse races for the period from 1st June, 1972 to 5th November, 1972. Subsequently, the assessee filed revised return in August 1973 offering an income of Rs. 96,975 from horse racing for the year April 1972 to March 1973 on the plea that no separate accounts were maintained for this source of income and hence the financial year ended 31st March, 1973 would be the relevant previous year. This was accepted by the Department and in the assessment completed in August 1974 the winnings from horse racing relating to the period October 1971 to March 1972, amounting to Rs. 81,151 which would be taxable for the assessment year 1973-74 under the amended provisions of the Act, were not brought to tax. There was a short demand of tax of Rs. 74,760 on this account.

The Ministry of Finance have accepted the objection.

(ii) As per partial partition of the properties of a Hindu undivided family made in 1950 and decreed by the District and Sessions Court in October 1958, a certain area of land was allotted to the eldest son of the Karta. The son developed the land into more than 500 plots of uniform size for construction of residential houses and sold them to the public commencing from the accounting year 1965-66. The profits arising from these sales were not returned by the son or by the family in any of the assessment years from 1966-67 to 1970-71 nor were these included by the Income-tax Officer in any of their assessments. As a result, income of Rs. 13,70,000 escaped assessment resulting in non-levy of tax of Rs. 8 lakhs.

During the assessment years 1971-72 and 1972-73 the Income-tax Officer assessed the income arising from the sale of plots in the relevant previous years in the hands of the Hindu undivided

family on the grounds that there was no order recognizing partition under the Income-tax Act. This was, however, negatived by the Appellate Assistant Commissioner who held that the income was not assessable in the hands of the family in view of the partition and the decree by the Court.

The Ministry of Finance have accepted the objection in principle.

(iii) In response to notices issued by the Department, an assessee filed her returns of income for the assessment years from 1960-61 to 1969-70 on various dates in 1968-69 and 1969-70. For the assessment years 1960-61 to 1965-66 the assessee returned 'nil' income and for the remaining four years she returned total income of Rs. 1,124. In the assessments completed in March 1972 and March 1973, the Income-tax Officer assessed income of Rs. 8,65,729 for the ten years from the assessment years 1960-61 to 1969-70. The income was computed taking into consideration the assessee's personal living expenses, other cash outgoings, income from undisclosed sources and sale of jewellery. The assessee, however, went in appeal against the assessments except for the assessment year 1963-64 for which year the income computed was 'nil'.

On further investigations the Income-tax Officer found that the assessee's version about the sale of jewellery was not genuine and accordingly requested the Appellate Assistant Commissioner to enhance the assessment for the two assessment years 1960-61 and 1964-65 by a sum of Rs. 83,925. The Department's request was accepted by the appellate authority in November 1974. The assessee's appeal against the original assessments for the assessment years 1967-68 to 1969-70 was dismissed by the Appellate Assistant Commissioner in his orders of September 1972.

In spite of the fact that the Income-tax Officer had come to the conclusion that the sale of jewellery was not a *bona fide*

transaction and got the assessments already made for the assessment years 1960-61 and 1964-65 enhanced by the Appellate Assistant Commissioner, it was noticed in audit in April, 1976 that the alleged sale of jewellery amounting to Rs. 4,20,750 pertaining to the assessment years 1963-64, 1967-68 and 1969-70 was not, similarly, brought to tax as undisclosed income resulting in under-assessment of tax of Rs. 3,86,330.

The Ministry of Finance have accepted the objection for the assessment years 1967-68 and 1969-70. They have stated that for the assessment year 1963-64 time for effective remedial measure had already expired.

(iv) A Hindu undivided family which was deriving guaranteed owner's commission from an association of persons managing its collieries, did not submit any returns of income for the assessment years 1970-71 to 1973-74 nor was any notice calling for the returns issued by the Department, even though the said assessee had received owner's commission of Rs. 55,118, Rs. 37,105, Rs. 67,206 and Rs. 39,446 respectively during the previous years relevant to the assessment years in question. There was thus an escapement of income of Rs. 1,98,875 resulting in a total under-assessment of tax of Rs. 82,020.

The paragraph was sent to the Ministry of Finance in August 1977; they have stated in December 1977 that the audit objection is under active consideration.

(v) In the case of an assessee firm engaged in purchase and sale of flats, it was seen that an amount of Rs. 63,000 received by it in 1968 from a public sector undertaking as a premium on the sale of flats was neither returned nor assessed to tax, though the payment was made by a crossed cheque. This resulted in under-assessment of income of Rs. 63,000 and a short levy of tax of Rs. 26,180, treating the firm as unregistered firm for the assessment year 1969-70.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

51. *Incorrect status adopted in assessments*

(i) The Karta of a Hindu undivided family, which had made heavy investment in a company, received from the latter, remuneration and sitting fees as a director of the company. While the 'sitting fees' were assessed by the Department as income of the Hindu undivided family for the assessment years 1969-70 to 1974-75, amounts received by way of remuneration aggregating Rs. 2,20,000 for all these years were treated as his personal income and assessed in the hands of the Karta in his individual assessments for the relevant assessment years. As the directorial remuneration of the Karta arose by virtue of heavy investment of the family funds in the company, the income received as 'remuneration' also should have been taxed as income of the Hindu undivided family. Further, the remuneration of Rs. 40,000 received by the Karta in the previous year relevant to the assessment year 1972-73 was not considered for assessment either in the hands of the Hindu undivided family or his individual assessment.

These mistakes resulted in a total short demand of Rs. 1,44,328 for the assessment years 1969-70 to 1974-75.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

(ii) The Archakas of a temple were termed as "hereditary servants" of the devastanam. The terms and conditions under which they held the office were stipulated by the devastanam. Under the terms of service the successor who should be one in the line of succession was to be nominated in writing by the Archaka to the devastanam.

A judicial pronouncement in an Archaka's case held that an 'Archaka' has only a personal right to hold a hereditary office. Another judicial pronouncement had held that the right to hold a hereditary office is not a property of the joint family and the successor does not get any interest to that office by reason of his birth. The income arising from such an office is therefore the personal income of the individual and there cannot be any partnership or sub-partnership to share such income.

During audit conducted in May-June 1976 it was noticed that in the assessment year 1975-76 the hereditary right to hold office as Archaka was partitioned among himself, two major sons and three minor sons. The separated members then entered into a partnership to share the income accruing to the partnership from the personal exertion of the hereditary holder in the performance of the duties of Archaka.

It was pointed out to the Income-tax Officer that the partnership was not valid as the right which was personal and succeeded to by nomination was not a partible ancestral property. The entire income received by the Archaka should therefore be taxed in the hands of the Archaka as his individual income from the assessment year in which the partition took place. The short demand on this account for the assssement year 1975-76 alone worked out to Rs. 51,124. The Department was requested to review the assessments of the earlier years also.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

(iii) From the assessment year 1974-75 onwards, a Hindu undivided family which has, at any time during the previous year, at least one member having taxable income, is required to pay tax at rates higher than those applicable in the case of other Hindu undivided families.

In 27 cases, where one or more members of the Hindu undivided families were having taxable income, tax was levied at lower rates resulting in total short demand of Rs. 52,111.

The Ministry of Finance have accepted the objection.

52. *Incorrect computation of salary income*

Under the provisions of the Income-tax Act, 1961, income in the nature of salaries received by an assessee from his employer shall be chargeable under the head "salaries". The Act also provides that accruals and receipts of commission by an employee are to be treated as salary income and assessed to tax accordingly. Further, according to the relevant provisions of the Act, only such deductions as are provided therein are to be allowed in the computation of salary income.

In the income-tax assessments of 35 employees of a public sector undertaking, incentive bonus commission received by them from their employer was assessed under the head "other sources" or "profits and gains of business or profession" and not treated as salary income and assessed under that head. Consequently, deductions which were not admissible against salary income were allowed in the computation of income contrary to the provisions of the Act. This led to incorrect allowance of deductions resulting in total tax undercharge of Rs. 59,964 in eight assessment years from 1968-69 to 1975-76.

The paragraph was sent to the Ministry of Finance in August 1977; they have stated in December 1977 that the audit objection is under active consideration.

53. *Incorrect computation of income from house property*

Under the provisions of the Income-tax Act, 1961, where in respect of any assessment year the net property income of an assessee under the head "income from house property" results

in a loss, the same can be set off against his income for that assessment year under any other head of income. There is, however, no provision in the Act under which such loss can be carried forward for setting off against the income of subsequent year or years of the assessee.

In the case of an assessee, losses amounting to Rs. 42,827 for the previous years under the head "income from house property" were carried forward and set off against the income of the assessment year 1973-74. This resulted in under-assessment of income by Rs. 42,827 with consequent short levy of tax of Rs. 28,377 and penal interest of Rs. 1,987.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and the additional demand of Rs. 30,364 has been raised and collected.

54. *Incorrect computation of business income*

(i) Under the provisions of the Income-tax Act, 1961, any expenditure laid out wholly and exclusively for the purposes of business or profession can be deducted while computing the income chargeable under the head "profits and gains of business or profession". According to instructions issued by the Department, where the gross commission earned by an insurance agent exceeds Rs. 20,000 per annum, the Income-tax Officer may grant deduction of expenses to the extent of Rs. 10,000 only. However, if an agent has incurred expenditure in excess of Rs. 10,000 and wants to claim it as a deduction, he should have maintained regular accounts of his receipts and expenses and he should satisfy the assessing officer as to the genuineness of such excess expenditure.

Two assessees, agents of the Life Insurance Corporation of India, claimed expenses aggregating Rs. 2,37,975 in the previous years relevant to the assessment years 1972-73 to

1975-76 without submitting detailed accounts of their receipts and expenses, in support of these claims. These were allowed by the assessing officers. In the absence of detailed accounts of receipts and expenses, the Income-tax Officer should have restricted the allowance of such expenses to Rs. 10,000 per annum. The omission to do so resulted in an aggregate under-assessment of income of the assessees by Rs. 1,77,875 and consequent short levy of tax of Rs. 1,10,732 in all these years.

The Ministry of Finance have accepted the objection.

(ii) A Hindu undivided family derived income from exhibition of films in three cinema theatres. In March 1973, *i.e.*, during the previous year 1st June, 1972 to 31st May, 1973 relevant to the assessment year 1974-75, the assessee sold two of the theatres. The assessee did not file any return of income for the assessment year 1974-75. The Income-tax Officer made *ex parte* assessment in September 1975 determining the total income at Rs. 46,230. A scrutiny of the assessment records revealed that the following items of income had not been included while determining the total taxable income :—

(1) Income arising from the exhibition of films in the theatres that were sold away upto the date of sale, amounting to Rs. 36,000.

(2) Profit of Rs. 1,92,000 arising on the sale of the two theatres representing the difference between the original cost and the written down value.

(3) Capital gains of Rs. 33,500 arising on the sale of one of the theatres representing the difference between the sale price and the original cost.

The omission to bring to tax the aforesaid items amounting in all to Rs. 2,61,500 resulted in short levy of tax of Rs. 2,31,000 in the assessment year 1974-75.

The Ministry of Finance have accepted the objection in principle.

(iii) At the time of making an assessment if it is claimed by or on behalf of any member of Hindu family assessed as Hindu undivided family that a partition had taken place among the members of such family, the Income-tax Officer should make an enquiry after giving notice. After enquiry the Income-tax Officer has to record a finding whether there had been a partition and if so, the date on which it had taken place. It has been judicially held that it is not sufficient merely to make a statement before the Income-tax Officer that the joint Hindu family has been dissolved or that the properties were divided amongst the members of the family and that there should be a definite prayer made in regard to the partition as put forward and demanding the assessment of the partition. In the absence of a claim for partition followed by a finding of the Income-tax Officer, the undivided family continues to be assessed in the same status in respect of the income from the property.

A Hindu undivided family consisting of a father and two sons derived income from their own business besides various other sources. In November, 1969, out of a credit balance of Rs.3,06,233 in the current accounts of the Hindu undivided family relating to the business, a sum of Rs. 75,000 each was credited to the three individual accounts of the father and two sons, by debit to the accounts of the Hindu undivided family. For the assessment years 1971-72 to 1975-76, the Hindu undivided family claimed deduction for the interest of Rs. 2,03,412 paid to the three coparceners' accounts as business expenses and was so allowed. Though it was indicated in the wealth-tax assessment records for the assessment year 1970-71 that the credit of Rs. 75,000 each in the accounts of the three persons was claimed to be consequent on partial partition in the family, the income-tax records contained neither a claim from the assessee for partial partition mentioning the property divided nor the order passed by the

Income-tax Officer, accepting the plea of partition. In the absence of a claim and acceptance of the partition, the interest paid by the Hindu undivided family to the three coparceners should have been disallowed and brought to tax. This would result in additional levy of tax of Rs. 1,67,000 for the said years subject to credit for the tax already assessed in the hands of the three coparceners.

The Ministry of Finance have accepted the objection.

(iv) Under the Income-tax Act, 1961, as amended with effect from 1st April, 1971, the Income-tax Officer, on receipt of the return of income, can make a regular assessment without requiring the presence of the assessee or the production by him of any evidence in support of the return. The Central Board of Direct Taxes in their instructions of April 1971 laid down that summary assessments in the aforesaid manner should not be resorted to in cases in which the assessees claim deduction in respect of profits and gains from newly established industrial undertakings.

The assessments of an individual for the assessment years 1973-74 to 1975-76 (completed in March 1974, March 1975 and February 1976 respectively) were completed under the summary assessment procedure accepting the returns filed by the assessee. A scrutiny of the assessments revealed the following :

(1) The assessee had claimed deduction for the new industrial undertaking started by him in the previous year relevant to the assessment year 1972-73. As per the Board's aforesaid instructions, the finalisation of the assessments under the summary assessment procedure was not in order.

(2) For the new industrial undertaking, the assessee had drawn up a separate balance-sheet. The borrowals made in respect of the new industrial undertaking were, however, exhibited by the assessee in another balance-sheet pepared by him for his

other business transactions in which the amounts employed in the new industrial undertaking were shown as investments.

(3) For the assessment year 1975-76, the assessee set off the loss arising from the new industrial undertaking against the profits from another business activity and on the net balance claimed deduction towards tax holiday relief. As no profit arose out of the new industrial undertaking, the assessee was not entitled to any tax holiday benefit.

The omission to take into consideration the borrowals made for the purpose of the new industrial undertaking, though not shown in the concerned balance-sheet, and the incorrect set off of balance of business profits from normal activity against the loss incurred in the working of the new industrial undertaking resulted in short levy of tax of Rs. 48,869.

The Ministry of Finance have accepted the objection.

(v) The Income-tax Act, 1961 provides that the taxable income of any business of insurance shall be taken to be the balance of the profits disclosed in the annual accounts to be furnished to the Controller of Insurance, subject to the adjustments as prescribed, such as deduction of any amount either written off or reserved in the accounts to meet the depreciation of or loss on the realisation of investments.

In the assessments of a co-operative society engaged in the business of general insurance, for the assessment years 1972-73 and 1973-74 completed in February, 1973 and October, 1975, in computing the taxable income from business, deductions of Rs 2,05,963 and Rs. 598 representing bonus to policy holders debited to reserve account were allowed from the balance of profits disclosed in the annual accounts. As the deductions are not covered by the adjustments contemplated in the statute, there was under-assessment of income of Rs. 2,06,561 with consequent short levy of tax of Rs. 94,423 for the two years.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(vi) In computing income from business or from other sources, deduction is admissible for interest on capital borrowed for purpose of the business or for investment giving rise to the income.

An assessee, a registered firm, engaged in the business of money lending, general insurance agency, etc., proposed to set up an industrial unit in Malaysia as a joint venture for the manufacture of industrial chains, and the proposal was approved by the Government of India in November, 1971, with the stipulation that the proposed equity participation by the assessee in the joint venture upto a limit of 40 per cent amounting to Rs. 10 lakhs, should be by way of export of new indigenous machinery and equipment, for which the assessee was also entitled to export cash incentives under the relevant scheme. Accordingly, the assessee purchased machinery worth Rs. 5,55,237 during the previous year ended 13th April, 1975 and exported it to Malaysia in the same year. The equity shares of the Malaysian joint venture were not allotted to the assessee as on the last day of the accounting year and the amount of Rs. 5,55,237 was shown under 'suspense' in the assessee's balance-sheet as on 13th April, 1975.

The purchase of the machinery was made out of borrowings and in the assessment for the relevant assessment year 1975-76 completed in December, 1975, the interest payable on the entire borrowings was allowed as deduction in computing the income from business. Further, for the export of the machinery the assessee had received an export cash incentive of Rs. 17,591 which was not included as income in the assessment.

As the joint venture business was not carried on during the relevant previous year and as the shares in the joint venture

were not allotted to the assessee as on the last day of the previous year, the interest of Rs. 66,600 (at the estimated rate of 12 per cent on the cost of the machinery exported) would not be an admissible deduction in computing the income either from business or from other sources. The incorrect deduction allowed for the interest and the omission to assess the export cash incentive as income, resulted in short levy of tax of Rs. 64,820.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

Irregularities in allowing depreciation and development rebate

55. *Depreciation*

(i) While computing the total income under the head 'profits and gains of business or profession', the depreciation debited by the assessee in his accounts is added back by the Income-tax Officer and the amount of depreciation admissible under the Income-tax Rules, 1962, is allowed.

In the case of a co-operative society, depreciation of Rs. 17,93,716 already debited to the profit and loss accounts for the assessment year 1972-73 was omitted to be added back although the amount of depreciation admissible under the Rules was allowed. As a result, there was an over-computation of loss by Rs. 17,93,716 for the said assessment year.

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

(ii) An assessee received a total subsidy of Rs. 1,27,190 during the years relevant to the assessment years 1974-75 to 1975-76 under "10 per cent Central outright grant of subsidy scheme, 1971" for industrial units to be set up in industrially backward areas. The amount of subsidy so received was not considered in

determining the "actual cost" of machinery and building for the purpose of allowing depreciation and development rebate under the provisions of the Act. This resulted in a short levy of tax of Rs. 49,150 for the assessment years 1972-73 to 1975-76.

The Ministry of Finance have accepted the objection.

(iii) The Income-tax Act, 1961, provides for grant of depreciation for buildings, plant and machinery used for business, in computing the income from business. Where plant and machinery are worked on extra shift, additional depreciation is allowed, besides normal depreciation, except in respect of plant and machinery which, under the rules made in this regard are denoted as not entitled to extra shift allowance, as for instance refrigeration plants.

In the assessments of a registered firm assessed in a Central Circle and engaged in the business of exporting marine products, for the assessment years 1967-68 to 1969-70, the assessee's claim for extra shift depreciation in respect of a freezing plant and an ice plant was disallowed but on appeal, the assessee's claim was allowed by the Appellate Assistant Commissioner. On further appeal by the Department, the disallowance of the extra shift allowance was upheld by the Appellate Tribunal in April, 1975. The assessments for the three years were revised in June, 1975 to withdraw the extra shift allowance in accordance with the Appellate Tribunal's decision.

For the subsequent assessment year 1970-71, in the revision made in June, 1973, extra shift allowance was given for the ice plant to the extent of Rs. 35,233. It was also given for both the ice plant and the freezing plant to the extent of Rs. 70,894 in the assessment for the next assessment year 1971-72 completed in March, 1974. The extra shift allowance incorrectly allowed for the two years resulted in tax undercharge of Rs. 95,300 in the hands of the firm and its partners.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

(iv) In the case of a registered firm, an admissible amount of development rebate which cannot be allowed in a particular year due to insufficiency of profits is allowed to be carried forward in the hands of the firm itself to the next assessment year as unabsorbed development rebate.

In one such case, unabsorbed development rebate of Rs. 46,165 instead of being carried forward, was erroneously allocated amongst the partners along with other business losses in the assessment year 1971-72. As a result, there was a short levy of tax of Rs. 39,343 in the hands of the partners.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and additional tax of Rs. 39,343 has been raised and collected.

56. *Irregular computation of capital gains*

(i) Any gain arising on transfer of a capital asset is chargeable to tax as income. The term 'capital asset' as statutorily defined effective from 1st March, 1970, includes agricultural lands situated within the jurisdiction of a municipality or a cantonment board with a population of not less than 10,000 or within such distance not exceeding eight kilometres from the local limits of such municipality or cantonment board, as may be notified by the Central Government.

In June, 1972, two assessees, Hindu undivided families, jointly owning land and buildings situated in a notified area, sold the property to a tile manufacturing company, to which it was partly leased out earlier, for a total consideration of Rs. 3,27,000. The property was valued by the assessees at Rs. 6,000 for their wealth-tax assessments, and on this basis, a capital gain of Rs. 3,21,000 was assessable jointly in their hands in the status of

body of individuals. However, in their assessments completed in the same ward in November, 1974, capital gains tax was not levied by the Department on the ground that the assets being agricultural lands were exempt from capital gains levy.

As the lands were situated in a notified area, the exemption for agricultural lands was not available in both the cases. The erroneous exemption allowed in these cases resulted in non-levy of tax of Rs. 1,73,260.

The Ministry of Finance have accepted the objection.

(ii) Under the provisions of the Income-tax Act, 1961, capital gains on the transfer of a capital asset are computed by deducting the cost of acquisition of the asset from the full value of the consideration received. Where the capital asset became the property of the assessee before 1-1-1954, the assessee has the option of adopting the fair market value of the asset as on 1-1-1954 in place of its actual cost of acquisition.

It was noticed that three assessees inherited one-third each of a house property on the death of their father on 7-6-1964. A part of the house property was sold during the previous year relevant to the assessment year 1971-72 for an amount of Rs. 4,20,000. While assessing capital gains on the sale of part of this property, its fair market value as on 1-1-1954 was adopted at Rs. 4,00,000 as claimed by the assessees. In the estate duty return of the deceased the accountable person had returned the value of this property as Rs. 1,50,000 as on 7-6-1964 and the Estate Duty Officer had adopted a value of Rs. 3,00,000. The adoption of a higher value of Rs. 4,00,000 as on 1-1-1954 in the income-tax assessment, resulting from the failure to correlate the estate duty case resulted in an undercharge of tax of Rs. 79,107 with corresponding short levy of interest of Rs. 4,991.

The Ministry of Finance have accepted the objection.

(iii) The Income-tax Act, 1961 also provides for adoption of the fair market value on the date of transfer as the full value of consideration at the discretion of the Income-tax Officer under certain conditions.

(a) Five individuals who were shareholders of a company got in May, 1962 vacant plots at the rate of about Rs. 960 per ground (2,400 sq. ft.) from the company towards return of capital consequent on the reduction of the share capital. The Income-tax Officer, however, determined the fair market value at Rs. 4,000 per ground and charged the difference to tax as capital gains in the assessment orders for the assessment year 1963-64. On appeal by the assessee, the Appellate Tribunal deleted the capital gains in April, 1974 and the assessments for the assessment year 1963-64 were also revised accordingly in June, 1974.

The five assessees sold away a part of the land during the accounting years relevant to the assessment years 1970-71 to 1972-73 and 1974-75. While determining the capital gains arising out of the sale of the properties, the Income-tax Officer adopted the cost of acquisition as Rs. 4,000 per ground. It was pointed out in audit in January, 1976 that in the light of the Appellate Tribunal's orders of April, 1974, the cost of acquisition amounted to only Rs. 960 per ground approximately and not Rs. 4,000 per ground and that the incorrect computation of capital gains resulted in undercharge of income-tax of Rs. 29,923 in respect of the five assessees for the four assessment years.

The Ministry of Finance have accepted the objection for the assessment years 1971-72, 1972-73 and 1974-75. They have stated that for the assessment year 1970-71 effective remedial action is barred by limitation.

(b) In another case, a firm was constituted in September, 1970 for the purpose of acquiring land on lease or otherwise and to construct a cinema theatre thereon for exhibiting films

either directly or by leasing out the theatre to film exhibitors. This firm constructed a twin theatre in Bombay at a cost of Rs. 43,70,700 in the previous year relevant to the assessment year 1971-72. The twin theatre was sold to a private limited company in January 1972 for a consideration of Rs. 42,00,000 and a short term capital loss of Rs. 1,70,700 was returned by the firm for the assessment year 1973-74. This was accepted by the Income-tax Officer even though the departmental valuer had reported in July 1975 that the value at the time of sale (January 1972) would be Rs. 46.33 lakhs. As one of the partners having a 30 per cent share in the profits of the firm was a life director of the private limited company to which the theatres were sold, the value of Rs. 46.33 lakhs estimated by the departmental valuer should have been adopted as fair market value of the capital asset. The omission to do so resulted in an under-assessment of income of the firm by Rs. 2,62,300 in the assessment year 1973-74 leading to a short levy of tax of Rs. 1,28,071 in the hands of the firm and its partners. The firm was dissolved in January, 1973.

The paragraph was sent to the Ministry of Finance in June 1977; they have stated in December 1977 that the audit objection is under active consideration.

(iv) The Act further provides that in case the consideration declared as received by an assessee is less than the fair market value of the asset by not less than 15 per cent, the fair market value is deemed to be the consideration received in the computation of capital gain.

In the case of two assessees, capital gain on sale of land was computed in the assessment year 1972-73 with reference to a sale price of Rs. 128 per sq. yd. The fair market value of another piece of land in the same locality sold by the same assessees in the immediately preceding year had been determined by the departmental valuation officer at Rs. 600 per sq. yd. The lower value of Rs. 128 was accepted on the ground that the parties

had entered into an agreement to sell the land at that price on 8-5-1964. As capital gain is to be computed in the assessment year relevant to the previous year in which the sale/transfer actually takes place and with reference to the fair market value at the time of such sale/transfer, the acceptance of the lower value was not correct. The net under-assessment of capital gain amounted to Rs. 3,91,000 with a short levy of tax of Rs. 3,55,950 in the case of both the assessees in the assessment year 1972-73.

Further, in computing the capital gain the deductions allowable had been wrongly made twice resulting in a net under-assessment of income by Rs. 21,580 and short levy of tax of Rs. 15,700 in their cases.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated in December 1977 that the audit objection is under active consideration.

(v) For the purpose of computation of capital gains the term "transfer" has been defined to include "sale, exchange or relinquishment of the asset or extinguishment of any rights therein". It has been judicially held that, when a person brings his assets into a firm in which he is a partner as his capital contribution, it amounts to a transfer of capital assets, as the person loses his exclusive right over the said assets which become the property of the firm, his right in that asset being limited to his share in money representing the value of the property of the firm.

During a check of the wealth-tax assessments of an individual, it was noticed that the assessee had transferred during the previous year relevant to the assessment year 1974-75, 1850 shares of a company to a firm in which he was a partner and the firm had credited the assessee's capital account with Rs. 4,08,850 (at Rs. 221 per share). A cross check of the relevant income-tax assessment, however, revealed that the capital gains on this account had not been brought to tax. The fair market value of the shares, on break-up value basis, amounted to Rs. 9,25,000

(Rs. 500 per share) against the credit of Rs. 4,08,850 (Rs. 221 per share) given by the firm. Computed with reference to the fair market value of Rs. 9,25,000 a net capital gain of Rs. 3,70,000 had escaped assessment resulting in non-levy of tax of Rs. 3,44,404 in the assessment year 1974-75.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

(vi) An assessee sold 16,180 shares of a company in the previous year relevant to the assessment year 1971-72 and computed a capital gain of Rs. 1,19,987 by deducting the cost of these shares, Rs. 6,88,783 from the sale price thereof, Rs. 8,08,770. This was accepted by the assessing officer. However, the assessee had sold similar shares in the preceding year and the Income-tax Officer had then worked out the cost price of the shares to be Rs. 24,452 per share, which was subsequently approved by the appellate authority also. The cost of 16,180 shares at this rate was Rs. 3,95,633 and not Rs. 6,88,783 as adopted in the computation of capital gains. The capital gain was, therefore, short calculated by Rs. 2,93,150. As a result, there was an under-assessment of tax of Rs. 95,040.

The Ministry of Finance have accepted the objection in principle.

57. *Incorrect computation of income from other sources*

Under the provisions of the Income-tax Act, 1961, any expenditure (other than capital expenditure) incurred wholly and exclusively for the purpose of earning income chargeable under the head "other sources" is an admissible deduction in computing the income from that source.

An individual obtained loans from a bank at 11.5 per cent per annum during the previous years relevant to the assessment years 1968-69 to 1972-73, out of which she advanced during the

previous year relevant to the assessment year 1968-69 a sum of Rs. 8,18,000 to her husband at 3 per cent. The entire interest paid by her to the bank was allowed as deduction in computing her income from "other sources" for the assessment years 1968-69 to 1973-74, without disallowing any portion thereof as having been incurred in connection with the advance given to her husband at lower rate of interest.

The omission to make such a disallowance resulted in a total under-assessment of income of Rs. 2,12,405 for the assessment years 1968-69 to 1973-74, leading to short levy of income-tax of Rs. 1,25,240.

Further, out of a loan of Rs. 11.50 lakhs borrowed by her in October 1971 from another bank at 11.5 per cent per annum, she claimed to have lent a sum of Rs. 5 lakhs to a private company at 6 per cent per annum. While computing her income from "other sources" for the assessment years 1972-73 and 1973-74, the Department disallowed her claim for deduction of interest paid to the extent of the difference in rates of interest. It was, however, noticed in audit in November 1976 that the assessee had not lent the amount of Rs. 5 lakhs to the company, but had utilised it for other purposes like payment of taxes etc. In view of this, the entire interest payment attributable to the sum of Rs. 5 lakhs was to be disallowed in her assessment. The omission resulted in under-assessment of income of Rs. 28,928 for the assessment years 1972-73 and 1973-74 with consequent short levy of tax of Rs. 26,136.

There was total undercharge of tax of Rs. 1,51,376.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

58. *Irregular exemptions and excess reliefs given*

(i) The Income-tax Act, 1961 provides for exemption from tax for income from property held under a trust for charitable

purposes The term 'charitable purpose' has been statutorily defined as including 'relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving carrying on of any activity for profit'. In August 1975 it was judicially held that if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the object of the trust involves the carrying on of an activity for profit and the income of such a trust was not exempt from tax.

A society, registered under the Societies Registration Act, 1860, was carrying on the business of running a printing press, and derived a profit of Rs. 7,47,765 during the year relevant to the assessment year 1973-74.

The society claimed the entire income as exempt on the ground that it was a recognised charitable trust, and the claim was allowed in the assessment made in March 1976.

In the light of the statutory provisions as judically clarified and in view of the fact that the society had, as one of its objects, the running of a printing and publishing press for profit, the income of the society was not exempt. The incorrect exemption allowed resulted in omission to levy tax of Rs. 6,87,245 on the society.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the audit objection is under active consideration.

(ii) As mentioned in paragraph 61(vi) of the Audit Report 1975-76, income derived from a business of live-stock breeding was fully exempt from tax under the Income-tax Act, 1961, as it stood prior to its amendment from 1-4-1976. The exemption has been given 'having regard to the continuing need of our country for the growth and development of such activities to supplement our food resources'.

In the income-tax assessments of six assessees for the assessment years 1971-72 to 1975-76, it was noticed that the above exemption was also given to income derived from breeding of race horses even though such breeding does not contribute to supplementing the country's food resources. The grant of this exemption resulted in an under-assessment of income aggregating Rs. 12,21,771 in the assessment years 1971-72 to 1975-76 with a total short levy of tax of Rs. 9,06,939.

The Ministry of Finance have stated that the term 'live-stock' would certainly include horses. They have not indicated how it would help the basic objective of supplementing the country's food resources.

59. *Mistakes in assessment of firms and partners*

(i) 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 its income is apportioned among the partners and included in their individual assessments. Where, at the time of completion of the partners' assessments, the firm's assessment has not been completed, the share income from the firm is included in the partners' assessments on a provisional basis. In such cases the partners' assessments are revised later to include the final share income when an intimation of the completion of the firm's assessment is received from the Income-tax Officer assessing the firm. As mentioned in paragraphs 8.1 and 8.6 of the Public Accounts Committee's 186th Report, instances of default in the revision of the partners' assessments in such cases have been commented upon repeatedly by the Committee and executive instructions thereon have also been issued by the Central Board of Direct Taxes in compliance with the Committee's recommendations. Nevertheless, as pointed out in paragraph 61(i) of the Audit Report 1975-76 also, such defaults are still noticed.

(a) The total incomes of an individual assessee for the assessment years 1971-72 and 1972-73 were determined, in March 1974, by an assessing officer in Bombay at Rs. 1,31,320 and Rs. 1,47,100 respectively. In framing the assessments, the assessee's share incomes from two firms which were assessed at Kanpur were taken, provisionally, at Rs. 34,154 and Rs. 31,794 respectively. The assessment records were subsequently transferred in January 1976 from Bombay to the charge of another assessing officer at Kanpur. The share income of the assessee from the concerned firms had been determined for both the years in July 1973, October 1974 and January 1975 before the records were transferred. The assessments were neither revised at Bombay nor was a proper note kept by the Kanpur office for revising the assessments on the basis of the determind share incomes of the assessee. Consequently, the assessee's share incomes detemined at Rs. 66,585 and Rs. 82,603 for the assessment years 1971-72 and 1972-73 respectively remained under-assessed by Rs. 32,431 for 1971-72 and Rs. 50,809 for 1972-73. Again, the annuity receivable was also computed short by Rs. 1,150 for each of the two assessment years.

The mistakes involved short charge of tax of Rs. 77,344 for the two years.

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

(b) In another case, the assessments of a firm comprising ten partners, for the assessment years 1958-59, 1959-60, 1960-61 and 1961-62 were re-opened and revised on 25-3-1970. Rectifications involving an additional demand of Rs. 1,11,299 in the case of five partners were made only in December 1974. These were, later cancelled in appeal by the Appellate Assistant Commissioner in June/July 1975 as time-barred. The delay in rectifying the partners' assessments thus resulted in a loss of revenue of Rs. 1,11,299.

The Ministry of Finance have accepted the objection.

(ii) Where in computing the total income of a firm, any deduction under certain specified sections of the Act is admissible, no deduction under the same section shall be made in computing the total income of a partner in relation to the share of such partner in the income of the firm.

A registered firm comprising four partners had income of Rs. 8,46,763 from long-term capital gains relating to buildings. In computing the total income of the firm a sum of Rs. 3,83,793 was allowed as deduction in terms of section 80T of the Act, leaving a balance of Rs. 4,62,970 which was allocated among the partners of the firm. It was noticed from the assessment records of the partners that against the share of long-term capital gains assessed in the hands of the partners, deductions under Section 80T were again allowed to the extent of Rs. 2,05,263 in the aggregate. This irregular allowance of deductions led to an undercharge of tax of Rs. 1,56,280 in the hands of the four partners in the assessment year 1968-69.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been rectified and the additional demand of Rs. 1,56,280 raised.

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

Under the provisions of the Income-tax Act, 1961, in computing the total income of an individual, there shall be included all such income as arises directly or indirectly to the spouse/minor child of such individual from the membership of the spouse/minor child in a firm carrying on a business, in which such individual is a partner.

In 28 cases, in 6 Commissioners' charges, spread over the assessment years 1968-69 and 1970-71 to 1975-76, such incomes of spouses/minor children aggregating Rs. 20,21,103 were not included in the total incomes of the assesses concerned on the ground

that the assessees were partners in the firms as 'kartas' of their Hindu undivided families and not in their individual capacity. 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.

The non-clubbing of the incomes of spouses/minors in the said 28 cases resulted in tax undercharge of Rs. 7,38,219.

The Ministry of Finance have accepted the objection.

61. *Mistake in giving effect in appellate orders*

(i) In the case of an assessee, an individual, an amount of Rs. 1,99,500 returned as income in the assessment year 1967-68 was held by the assessing officer to pertain to the assessment year 1968-69 and was accordingly included in the total income of 1968-69. As a protective measure, the said income of Rs. 1,99,500 was also included in the total income, in the assessment for 1967-68. Credit for tax of Rs. 99,950 deducted at source on this income of Rs. 1,99,500 was also given in both the assessment years.

On appeal, the Appellate Tribunal ordered the exclusion of the amount of Rs. 1,99,500 from the assessment for 1967-68. In giving effect to the Tribunal's decision on 19-2-1976, while the income of Rs. 1,99,500 was excluded, the corresponding credit for tax of Rs. 99,950 deducted at source was omitted to be withdrawn. This resulted in excess refund of Rs. 99,950 for the assessment year 1967-68.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised. An additional demand of Rs. 99,950 is also stated to have been raised and collected.

(ii) In another case, the total income of an individual for the assessment year 1973-74 was computed at Rs. 34,55,970 after giving effect to appellate orders. The amount of tax leviable on the said income was Rs. 33,34,510. The Department, however, levied a tax of Rs. 32,34,510. This resulted in an undercharge of tax of Rs. 1,00,000.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been rectified.

62. *Short levy of penalty*

The Income-tax Act, 1961 provides that an assessee who fails to comply with a notice under Section 142(1) or 143(2) is liable to a minimum penalty of 10 per cent of the tax which would have been avoided had the returned income been accepted. In the case of a registered firm, the penalty imposable is calculated as if the firm were an unregistered firm.

In one case where the assessee was a registered firm, the penalty leviable for the assessment year 1971-72 was incorrectly computed at Rs. 63,483 on the basis of tax that would have been avoided had it been a registered firm instead of calculating it on the basis of tax that would have been avoided if the firm had been assessed as an unregistered firm. The correct amount of penalty leviable worked out to Rs. 2,40,875. There was thus a short levy of penalty of Rs. 1,77,392.

While accepting the objection, the Ministry of Finance have stated that the assessment in question has been revised and additional demand of Rs. 1,77,392 raised.

63. *Cases of avoidable loss of revenue*

(i) Under the provisions of the Income-tax Act, 1961, deduction of bad debt which has actually been written off as irrecoverable in the accounts of the assessee is allowable. In the case of an assessee, the profit and loss account for the previous year relevant to the assessment year 1967-68, was debited with an amount of Rs. 1,28,368 on account of a debt, the recovery of which was considered to be doubtful and the corresponding

credit, was given to a reserve account entitled "reserve for doubtful debts". The Income-tax Officer disallowed the deduction, but in appeal, the Appellate Assistant Commissioner allowed it. As the debt was only doubtful and the debit in the profit and loss account did not represent the final writing off of the debt, the deduction was not admissible under the law. The Commissioner of Income-tax did not, therefore, accept the decision of the Appellate Assistant Commissioner and directed the Income-tax Officer, on 18th June, 1975, to prefer second appeal with the Appellate Tribunal. The last date for filing the appeal was 8th July, 1975. The Income-tax Officer, however, preferred the appeal on 25th October, 1975. The Tribunal, in its judgment, rejected the appeal of the Department as time-barred, observing that there were no convincing and satisfactory reasons for not filing the appeal within time.

Failure to file the appeal in time led to a loss of revenue of Rs. 1,02,000.

The Ministry of Finance have accepted the objection in principle.

(ii) A person, besides being an assessee in her individual capacity, was also the sole beneficiary of a trust created by her father. The trust was a separate assessee in the same ward. In the assessments of the trust for the years 1967-68 and 1968-69, made in December, 1975, credits to the extent of Rs. 3,58,833 and Rs. 2,44,784 respectively (total Rs. 6,03,617) were allowed on account of taxes stated to have been paid before the completion of the assessments. However, the amount of Rs. 6,03,617 had already been adjusted in December, 1973 against tax payable by the individual as was evident from entries made in the Demand and Collection Register. The credit of Rs. 6,03,617 was thus considered twice, resulting in the abandonment of revenue to that extent.

While accepting the objection the Ministry of Finance have stated that the assessments in question have been revised and the additional demand of Rs. 6,03,617 raised.

Other topics of interest

64. *Compulsory Deposit Scheme (Income-tax Payers)*, 1974

Under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974, where the current income of an individual or Hindu undivided family, for the assessment year 1975-76, exceeds fifteen thousand rupees, the assessee is required to make a compulsory deposit at specified rates and by specified dates. If the assessee fails to make the deposit or the deposit made by him falls short of the requisite amount, he is liable to pay penalty at 25 per cent of the amount of compulsory deposit not paid or short paid.

In the case of 418 assessees assessed in 11 Commissioners' charges, it was seen during audit that compulsory deposits to the extent of Rs. 3,81,141 were not made by them in the financial year 1974-75 in respect of the income assessable to tax in the assessment year 1975-76. This made them liable to penalty amounting to Rs. 1,00,600. Although the assessments for the year 1975-76 had been completed in these cases, no demands had been raised by the assessing officers for the unpaid compulsory deposits, nor had they levied penalty in any of these cases.

The Ministry of Finance have accepted the objection in 99 cases; in the remaining cases they have stated that the matter is under active consideration.

65. *Erroneous allowance of doubtful debts*

Under Section 10(2)(xi) of the Income-tax Act, 1922, in the computation of business income allowance was to be made for "such sum, in respect of bad and doubtful debts,..... as the Income-tax Officer may estimate to be irrecoverable....".

It was judicially held that so long as there is any ray of hope left to recover a debt, however, dim it may be, it cannot be said that it has become irrecoverable.

While considering revision of the Act in 1958 the Law Commission suggested that the word 'doubtful' should be dropped. This was consistent with the aforesaid judicial interpretation. Accordingly, the corresponding provision in the Income-tax Act, 1961 allows an allowance for a debt or part thereof which is established to have become a bad debt in the previous year and has been written off as irrecoverable in the accounts of the assessee for that previous year.

In spite of the omission of the word 'doubtful' in the new Act, the Central Board of Direct Taxes, issued instructions in January, 1972 in the context of allowance of bad debts to assessees selling goods to sick textile mills taken over by State Textile Corporations, that doubtful debts are also covered by the aforesaid provisions of the Income-tax Act, 1961 and hence where a claim under these provisions is made by the suppliers of stores etc., to sick mills that have been taken over by the Government or a public sector undertaking, the Income-tax Officers should examine the claims sympathetically and try to arrive at a decision after taking into account the financial position of the mill, the chances of recovery and all other relevant circumstances. In view of the history of the relevant provision as explained above, these instructions of the Board are extra legal as what the law allows is only an established bad debt and not a doubtful debt. The instructions are also discriminatory in that these have been issued only in relation to the sick mills "nationalised" by Government and not the generality of business assessees.

A test-check in 4 Commissioners' charges revealed 12 cases in which debts aggregating Rs. 29,09,662 claimed by the assessees as doubtful debts, representaing amounts due to them from

certain sick textile mills during the assessment years 1970-71 to 1975-76 were allowed as admissible deductions. The erroneous allowance in these cases resulted in under-assessment of income by Rs. 29,09,662 with consequent tax undercharge of Rs. 5,52,262 in eleven cases and excess computation of loss of Rs. 6,34,925 in one case.

The para was sent to the Ministry of Finance in September, 1977; they have stated in December, 1977 that the audit objection is under active consideration.

66. *Device of deferred annuity policy*

According to the provisions of the Income-tax Act, 1961, salary paid or due or allowed in the previous year, is taxed in the assessment year relevant to the previous year in which it was paid or was due, or was allowed by the employer. The expression 'salary' includes commission also.

A firm was liable to pay commission of Rs. 30,000 for each of the previous years ending 31-3-1973 and 31-3-1974 to an assessee. The firm took a deferred annuity policy for Rs. 30,000 for each year from the Life Insurance Corporation of India, on the life of the assessee during those years. The amount of Rs. 30,000 each was not charged to tax as income from salary in the assessment years 1973-74 and 1974-75. This resulted in a total under-assessment of salary income by Rs. 60,000 with consequent short levy of tax of Rs. 52,317 and of interest of Rs. 1,858.

The Ministry of Finance have accepted the objection.

67. *Working of treasury units*

67.1 The Central Board of Direct Taxes are responsible for administering the various direct taxes throughthe Commissioners of Income-tax who are entrusted, *inter alia*, with the task of collection of these taxes. The assessees make payment of taxes

in to treasuries/banks (from 1-4-1977 only banks) through challans. Copies of these challans are sent by the bank/treasuries to the departmental officers as well as to the accounts officers, the former, primarily, for affording credit to the assessees concerned and the latter for bringing the amount to account in Government accounts. According to the procedure prescribed, the challans so received in the departmental offices are required to be posted in a register called the Daily Collection Register before being distributed among the various assessing officers who afford credits to the assessees in their Demand and Collection Registers. The Daily Collection Register is meant to serve as a bank pass book and it is required to be tallied with the records of the Treasury Officer every month to ensure that all receipts for which credits are given to the assessees have actually entered Government accounts.

67.2 In September, 1970 the Central Board of Direct Taxes issued detailed instructions to ensure that challans are promptly received in the departmental offices, correctly accounted for and placed in the respective assessment records. According to these instructions, a Central Unit called the 'Treasury Unit' is made responsible for receiving the challans with the covering scroll from the Bank/Treasury, sorting them out district/circle-wise, posting them in the Daily Collection Register district/circle-wise and sending them through the district/circle units to the wards/circles concerned. Before affording credits to the assessees in their Demand and Collection Registers and recording the challans in the relevant assessment files, the wards/circles are also required to post these challans in their Daily Collection Registers. The Daily Collection Registers in the wards/circles are required to be reconciled monthly with the Daily Collection Registers of the Treasury Units and the figures of the latter are required to be reconciled every month with those of the Accounts Offices.

67.3 In spite of the aforesaid prescribed procedure and instructions, the figures of gross collections under 'Corporation Tax' and

'Taxes on income other than Corporation Tax' as per departmental books have not agreed with the accounts figures from year to year. The comparative figures for the years 1972-73 to 1976-77 are as follows :—

Year	(In crores of rupees) Departmental Figures	Accounts Figures
1972-73	1172.78	1183.33
1973-74	1304.53	1323.97
1974-75	1544.00	1587.73
1975-76	2031.52	2076.06
1976-77	2071.53	2178.63

67·4 A test check of the working of the Treasury Units in some of the charges revealed that the prescribed procedure was not followed and the registers indicated in the Board's instructions were either not kept or not maintained in the manner laid down. Thus—

(i) In Bihar, Gujarat, Orissa and Uttar Pradesh it was noticed that there was no system to ensure that all the challans have been received from the bank/treasuries and no control was also available to prove that each ward/circle had accounted for all the challans pertaining to it.

(ii) In all these charges and also in West Bengal it was further noticed that the prescribed monthly reconciliation between the Daily Collection Register of the Wards and the Treasury Units on the one hand and between the figures of the Treasury Units and the Treasury/Accounts Offices on the other was never done. In all the months taken up for test check the departmental figures varied substantially from the Accounts figures and a reconciliation had never been attempted.

(iii) In Bihar and West Bengal, no steps had been taken to ensure the proper placement of challans in the assessment

records of the assessees concerned. In Orissa, in one circle, 1,110 challans were recorded in the Daily Collection Register as 'missing challans' and 395 challans were recorded as 'miscellaneous' and corresponding credits were not given to the assessees concerned in the Demand and Collection Registers. Of these, the value of 1,069 challans amounted to Rs. 5.90 lakhs; for the remaining 436 challans the Department had not worked out even the amount.

(iv) The prescribed procedure also requires the departmental officers to check up the proper classification of amounts in the challans under the appropriate heads of accounts. In the context of variations between the budget estimates and actuals of surcharge (Union) for the year 1970-71, the Public Accounts Committee (Fifth Lok Sabha) in paragraph 1.10 of their 87th Report had commented on large scale misclassifications. The Board had accordingly issued instructions in February 1973 and again in January 1975 and September 1975 reiterating the need for proper check of classification. Nevertheless, it was noticed during the test check in Tamil Nadu that no such check had been exercised and misclassifications of substantial amounts were not corrected.

As a result of these defects, it could not be established that all amounts credited to the assessees' accounts had been brought to Government account or on the other hand, that the assessees had got credits for all taxes actually paid by them.

The paragraph was sent to the Ministry of Finance in September 1977; they have stated in December 1977 that the matter is under active consideration.

CHAPTER IV

WEALTH-TAX

68. Wealth-tax is levied on the net wealth of 'individuals' and 'Hindu undivided families'. The expression 'individual' has been held to include a group of persons forming a unit, *e.g.* a corporation created by a statute or a registered society. With effect from the assessment year 1960-61, companies are not liable to wealth-tax. Also, the Finance Act, 1972 amended the Wealth-tax Act retrospectively from 1957-58 to exempt co-operative societies from the charge of wealth-tax and the Finance Act, 1975 amended the Act from 1st April, 1975 to categorise all statutory corporations and foreign companies as 'companies' for the purpose of the Wealth-tax Act.

69. The actual receipt under wealth-tax in the financial years 1972-73 to 1976-77 compared as under with the budget estimates of these years :—

Year	Budget estimates	Actuals
	(Rupees in crores)	
1972-73	43	35.94
1973-74	43	35.78
1974-75	40	39.23
1975-76	43	53.73
1976-77	52	60.38

The arrears of demand and cases pending assessment as on 31st March, 1977 were Rs. 52.75 crores and 2,88,949 respectively.

70. During the test audit of assessments made under the Wealth-tax Act, 1957, conducted during the period from 1st April, 1976 to 31st March, 1977, the following types of mistakes resulting in under-assessment of tax were noticed :—

(i) Wealth escaping assessment.

(ii) Incorrect valuation of assets.

(iii) Mistakes in the computation of net wealth.

(iv) Irregular/excessive exemptions and reliefs.

(v) Mistakes in calculation of tax.

(vi) Non-levy/incorrect levy of penalty.

(vii) Non-levy/short levy of additional wealth-tax.

(viii) Incorrect status adopted in assessments.

(ix) Mistakes in giving effect to appellate orders.

(x) Avoidable losses of revenue.

71. *Levy of wealth-tax on big agricultural landholdings.*

71.1 The Finance Act, 1969 brought agricultural lands (except those situated in the State of Jammu and Kashmir) within the charge of wealth-tax with effect from the 1st April, 1970. Small holdings were, however, exempt. Thus, upto the assessment year 1974-75, the value of agricultural land, by itself or along with the value of an urban house was exempt upto Rs. 1.50 lakhs. From the assessment year 1975-76 onwards, the exemption in respect of agricultural land is combined with certain investments like Government securities, shares in companies, bank deposits, etc. upto Rs. 1.50 lakhs.

71.2 On the introduction of levy of wealth-tax on agricultural lands, the Central Board of Direct Taxes issued executive

instructions in December, 1969 directing the Commissioners of Income-tax to arrange urgent survey by reference to the records maintained by State revenue authorities, registering officers, agricultural income-tax officers, land mortgage banks, agricultural marketing co-operative societies and bulk sellers and purchasers of agricultural produce and implements, etc. to locate potential wealth-tax assessees holding agricultural lands valuing above Rs. 1.50 lakhs. The data so collected were to be posted on prescribed survey cards. These instructions were repeated in May, 1970 when the need for expeditious completion of survey and collection of data regarding location, nature, area, value on the basis of recorded sales and capitalised value of net agricultural income of large agricultural holdings and the posting of these data on the prescribed survey cards were emphasised. In April, 1975, the Central Board of Direct Taxes directed the Wealth-tax Officers to examine the returns filed by big landholders under the State Land Ceiling Acts for their liability to direct taxes. The results of these exercises have not yet been intimated (March, 1978).

71.3 While introducing the Finance Bill, 1969 in Parliament, the then Finance Minister had stated, "Agricultural wealth has so far been exempted from wealth-tax. This has encouraged purchase of such land by the rich professional and business classes.... Accordingly, I propose to provide in the Wealth-tax Act for the levy of wealth-tax on the value of agricultural land including buildings situated on or in the immediate vicinity of such land. Standing crops, tools, implements and equipment such as tractors will, however, be exempt. Agricultural wealth will be added to the other wealth for the purposes of the tax at the existing rate with effect from the assessment year 1970-71. This measure will yield additional revenue of Rs. 5 crores in a full year.... It is my intention to pass on the net proceeds of the revenue of wealth-tax on agricultural property to the states as grants-in-aid."

71.4 The following table indicates the budget estimates and the actual collections from wealth-tax on agricultural property for the years 1970-71 to 1976-77:—

Year	Budget estimates	Actuals
	(Figures in lakhs)	
1970-71	400	3
1971-72	725	33
1972-73	925	55
1973-74	..	124
1974-75	..	278
1975-76	..	459
1976-77	..	877 (Provisional)

In 1970-71, a budget provision of Rs. 4 crores was made for passing on the net proceeds of wealth-tax on agricultural property to the states. This provision was, however, deleted in the revised estimates as no collections were anticipated in that year. In 1971-72, a provision of Rs. 7.25 crores was made but, in the revised estimates, it was reduced to Rs. 3.50 crores. Again in 1972-73, a budget provision of Rs. 9.25 crores was made but, in the revised estimates, it was deleted altogether in view of small collections. Thereafter, in the budgets for the years 1973-74 to 1976-77, no provision was made for payment of grants-in-aid to states on this account.

71.5 For the computation of net wealth under the Wealth-tax Act, 1957, the value of any property is the price that the property will fetch in a free sale in an open market on the relevant valuation date. It has been judicially held that the existence of a free market for this purpose is always assumed.

The Board have not issued any detailed instructions or guide-lines on the valuation of agricultural lands for wealth-tax purposes. In April 1959, however, they had issued instructions on

the valuation of agricultural lands for estate duty purposes. According to these instructions land values should be fixed on the basis of actual recorded sales and independent check should be made on the market sale by comparing the sale price with the net income derived from land, the value being determined at 12 to 20 times the net yield of the land arrived at after allowing a deduction of 50 per cent from the gross yield towards expenses.

71.6 A test check conducted by Audit in a few districts in some states disclosed instances of surveys having not been conducted, of defective surveys and follow-up action, and of omissions to correlate with details available in the State Government records. In none of the wealth-tax wards covered in test check, survey cards were found posted and maintained. Some of the important omissions noticed are detailed in the succeeding paragraphs.

It was noticed, in general, that the wealth-tax returns did not disclose the extent, nature, location and mode of valuation of agricultural lands. The returned values were either accepted or valuation was done on *ad hoc* basis in the absence of necessary data which were required to be collected by the Wealth-tax Officer on a proper survey by correlation with the records mentioned in various instructions of the Board.

71.7 (i) In two districts in Bihar, the land revenue records indicated that out of 1,171 landholdings of 25 acres and above, the holdings of 13 persons were in excess of 500 acres each, those of 262 persons were between 100 and 500 acres and those of 400 were between 50 and 100 acres each. However, no wealth-tax proceedings had been initiated in any of these 1,171 cases.

(ii) In three districts in Gujarat in 240 cases of agricultural holdings valued, on the basis of actual sales and/or yield, above

Rs. 2.50 lakhs each, no wealth-tax proceedings had been initiated. There was evidence in the revenue records that a number of these landowners had other chargeable assets also. The value of agricultural lands alone escaping wealth-tax assessment aggregated Rs. 9.44 crores in a single assessment year. Out of these 240 cases, 37 cases accounted for escapement of aggregate wealth of Rs. 2.46 crores.

(iii) The cost of cultivation of a rubber plantation, being the capital outlay in rearing the rubber trees from the planting stage to yield stage (7 years), has been worked out by the Rubber Board at Rs. 6,000 per acre. Together with the cost of land, other inter-crops and development of roads, coolie sheds etc., the cost of development per acre of rubber plantation would not be less than Rs. 10,000 per acre. Based on this value, a rubber plantation comprising 10 hectares and above would attract levy of wealth-tax.

According to district-wise classification of rubber estates in Kerala at the end of the year 1970-71, prepared by the Government of Kerala, there were in one district, 115 rubber estates of more than 10 hectares of land, 19 comprising land above 40 hectares and 96 comprising land upto 40 hectares. Out of these 115 cases, only 3 estate-holders were assessed to wealth-tax in respect of their rubber plantations.

Similarly, out of 67 cardamom estates (comprising 6,879 acres) and 50 coffee estates (26 comprising 20 hectares and above each) shown in the classification of area prepared by the Government of Kerala, only 2 cardamom estates (308 acres) and 2 coffee estates were found assessed to wealth-tax in one district.

(iv) In Tamil Nadu, comparison of records of agricultural income-tax Offices in four centres with wealth-tax records of the connected income-tax wards revealed that, out of 165 cases relating to three centres where agricultural holdings exceeded

50 acres each, 90 cases related to private and public trusts which were liable to wealth-tax. In 5 such cases alone the value of agricultural holdings, computed at Rs. 2,500 per acre of dry land and Rs. 5,000 per acre of wet land, which escaped assessment in any one of the assessment years 1970–71 to 1974-75 was Rs. 1.13 crores, in the aggregate.

(v) A test check in two districts in Madhya Pradesh revealed that out of 140 cases of agricultural holdings valued above Rs. 1.50 lakhs, only 55 were borne on wealth-tax records. In 10 cases, where the values of landholdings ranged between Rs. 3,61,776 and Rs. 13,48,731, there was an escapement of wealth of Rs. 73,32,141, in the aggregate, in the assessment year 1974-75.

(vi) A scrutiny of land revenue records of four districts in Rajasthan disclosed that in 980 cases, according to the valuation done by the land revenue authoritries, the value of agricultural lands was in excess of Rs. 1.50 lakhs each. These included land values of over Rs. 10 lakhs in 8 cases and of over Rs. 5 lakhs but below Rs. 10 lakhs in 72 cases. No wealth-tax proceedings had been initiated in any of these 980 cases.

In 3 cases, notices calling for wealth-tax returns were issued to persons holding land of the aggregate value of Rs. 19.42 lakhs but the notices remained unserved on the ground that whereabouts of the assessees were not known. Instead of particulars from land records being collected, the proceedings were later on dropped, resulting in escapement of total wealth of Rs. 19.42 lakhs in the assessment year 1970-71 in these three cases.

In the case of 2 Hindu undivided families, 7,011 bighas of agricultural land valued by revenue authorities at Rs. 21.03 lakhs were not brought to charge of wealth-tax from the assessment year 1970-71 onwards.

(vii) In one district in West Bengal, out of 1,844 persons assessed to agricultural income-tax by the State Government, 64 persons had net agricultural income of over Rs. 10,000 per annum. None of these persons was considered for assessment to wealth-tax for the assessment years 1970-71 and 1971-72, while only 4 persons were assessed from the assessment year 1972-73 onwards. Forty persons held agricultural lands in excess of 30 acres and, based on the value according to the yield method and the comparable sale prices, the value of agricultural wealth held by each of them was over Rs. 3 lakhs. These 40 persons were, however, not assessed to wealth-tax, resulting in escapement of wealth aggregating Rs. 6.44 crores for the assessment years 1970-71 to 1974-75.

In another district in West Bengal, there were 142 assessees who, according to the agricultural income-tax records, held more than 20 acres of land each. Based on the value of land worked out on the yield method (Rs. 9,500 per acre for irrigated land and Rs. 7,800 per acre for non-irrigated land), these assessees were potential wealth-tax assessees. However, only 27 persons could be located in the wealth-tax records. In the remaining 115 cases, no enquiries appeared to have been made. Out of 8 individuals who held land in excess of 30 acres each, 7 individuals were not seen assessed to wealth-tax at all. Based on the values on yield method, wealth escaping assessment in these 7 cases would be Rs. 30.83 lakhs for the assessment years 1970-71 to 1974-75. In the remaining case, the assessee returned the value of 12.34 acres of agricultural land as Rs. 25,520 and this was accepted by the Wealth-tax Officer. According to the agricultural income-tax records, however, the assessee was in possession of 38.22 acres of agricultural land.

(viii) In Orissa, in one district, three persons assessed to net agricultural income-tax ranging between Rs. 15,776 and Rs. 42,253 per annum were not assessed to wealth-tax, though the

values of their agricultural holdings at 20 times the net yield were between Rs. 3,15,520 and Rs. 8,45,060 for the assessment year 1974-75.

71.8. (i) The net agricultural income that is being assessed to agricultural income-tax by the State Government authorities is computed after allowing from the gross income certain permissible expenses and this net agricultural income corresponds to net yield. The value of agricultural land should be at least 12 times the net yield. However, in seven cases in Tamil Nadu, it was noticed that the values adopted in wealth-tax assessments worked out to less than 8 times the net agricultural income. In one of these cases in Tamil Nadu, the net agricultural income (Rs. 3.56 lakhs) was more than the net wealth (Rs. 2.26 lakhs). In six cases out of these seven cases, the undervaluation of land (computed at 20 times the net agricultural income) aggregated Rs. 1.01 crores in the assessment year 1974-75.

(ii) In the case of an assessee, wealth-tax assessments for the assessment years 1970-71 to 1974-75 were completed in March, 1976, adopting the value of agricultural lands as ranging between Rs. 1,40,000 and Rs. 1,75,000. The agricultural income arising from these lands was Rs. 60,000 (approximate) in each of these assessment years. The net agricultural income (determined only for the assessment year 1974-75) was Rs. 33,534. Capitalising this net income even at the yield rate of 10 per cent, the value of the lands approximated Rs. 3,35,000 in each of these assessment years. The undervaluation of the lands resulted in total undercharge of tax of Rs. 33,175 for all the assessment years 1970-71 to 1974-75.

(iii) In the cases of 2 assessees in Haryana, the values of agricultural lands measuring 357.5 acres and 340 acres were adopted by the Wealth-tax Officer for the assessment year 1970-71 as Rs. 3,75,000 and Rs. 3,85,000 respectively on an *ad hoc* basis,

as against the values of Rs. 3,01,652 and Rs. 3,66,246 certified by an approved valuer. The values as estimated by the land revenue authorities were Rs. 10,49,800 and Rs. 9,52,600 respectively. It was also noticed that, in respect of transfer of a portion of the lands belonging to these assessees to the tenants under the State Land Tenure Act, the compensation paid by the Government was at the rate of Rs. 2,700 per acre, being 75 *per cent* of the average rate of sale of land in that locality during the preceding 10 years. Even on this apparently low estimate, the values of lands worked out to Rs. 9,65,000 and Rs. 9,18,000 respectively. Incorrect valuation in these two cases resulted in short computation of net wealth aggregating Rs. 31.32 lakhs for the assessment years 1970-71 to 1972-73.

(iv) In 3 cases, in one district in West Bengal, the assessees mentioned in their wealth-tax returns that they possessed agricultural lands whose value was below the exemption limit without furnishing details of area of lands and their value and this was accepted by the Wealth-tax Officer without making any enquiries. On the net yield method of valuation, the value of lands held by them, as shown in the agricultural income-tax records, exceeded Rs. 3 lakhs in each case. Total wealth escaping assessment due to incorrect valuation was Rs. 23.63 lakhs in the assessment years 1970-71 to 1974-75.

(v) In the case of an ex-ruler in Rajasthan, the wealth-tax return for the year 1970-71 showed agricultural holding of 1,342 bighas valued at Rs. 56,348. The assessee, according to land revenue records, possessed 4,815 bighas of land in Kota City and its vicinity valued by revenue authorities at Rs. 47.43 lakhs. The wealth-tax assessments in his case had been pending (June, 1976) from the assessment year 1965-66.

71.9 The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that these objections are under consideration.

72. *Wealth ascaping assessment due to lack of correlation with records of other direct taxes.*

As mentioned in paragraph 89 (i) of the Audit Report, 1975-76, the Public Accounts Committee have been repeatedly emphasising 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. In paragraph 2.9 of their 50th Report (5th Lok Sabha) and paragraph 1.12 of their 103rd Report (5th Lok Sabha), the Committee 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 pointed out below.

(i) In two cases, the assessees were entitled to refund on account of advance taxes paid by them in excess of the income-tax payable by them for the assessment years 1965-66 to 1969-70 in one case and 1968-69 to 1970-71 in the other. These refunds amounting to Rs. 1,70,631, Rs. 38,982, Rs. 9,320, Rs. 1,14,520 and Rs. 14,912 respectively in the first case, Rs. 54,896, Rs. 40,170 and nil respectively in the second case had not been paid to the assessees before the relevant valuation dates. Since the amounts were due to them on the respective valuation dates, these were required to be included in their net wealth for levy of wealth-tax. The Department, however, omitted so to include the amounts of these refunds while completing wealth-tax assessments in December, 1971. The omission resulted in total tax under-charge of Rs. 33,306 for all the assessment years.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the audit objection is under consideration.

(ii) Concealed income disclosed by declarants under the Disclosure Scheme introduced by the Finance Act, 1965 does not enjoy immunity from wealth-tax and is includible in the net wealth for the relevant assessment years.

A registered firm having three partners with specified profit-sharing ratios made disclosure of income of Rs. 19,49,673 under the Disclosure Scheme of 1965 on 10-7-1967. The concealed income was spread over different assessment years from 1960-61 and duly assessed in March, 1976, in the hands of the firm from the assessment year 1960-61. A scrutiny of the assessment orders dated 23-3-1976 for the assessment years 1967-68 and 1968-69 in the case of one of the partners, however, showed that the share of the partners in the concealed income was not included in their net wealth for the assessment years 1961-62 to 1968-69 in the case of one partner, for the assessment years 1961-62 to 1966-67 in the case of the second partner and for the assessment years 1961-62 and 1962-63 in the case of the third, although all the three were partners in the firm since the assessment year 1960-61. The omission so to include the disclosed income led to under-charge of wealth-tax of Rs. 32,078 in the hands of the three partners for the various assessment years between 1961-62 and 1968-69.

The paragraph was sent to the Ministry of Finance on 10-10-1977; they have stated (December, 1977) that the objection is under consideration.

(iii) In the audit of the estate duty assessment of a deceased person (date of death 7-9-1972), it was noticed that the deceased had taken insurance policies for Rs. 2 lakhs each under the Married

Women's Property Act for the benefits of each of his three children. A correlation with the wealth-tax assessments of his children, the beneficiaries under the policies, revealed that the insurance money of Rs. 2 lakh each, that had accrued to them on 7-9-1972, was neither shown in their returns of wealth for the assessment year 1973-74 nor included in their net wealth assessed in the assessment made on 27-11-1973. Wealth aggregating to Rs. 6 lakhs thus escaped assessment, resulting in short levy of tax of Rs. 24,017 for the assessment year 1973-74.

The Ministry of Finance have accepted the objection and stated that the additional demand for tax raised is Rs. 24,017.

(iv) Income-tax return and assessment orders of an assessee revealed that [illegible] in source of income was a private family trust of which he was one of the beneficiaries since the assessment year 1968-69. But the value of his life-interest in the trust was not taken into account in the assessment of his net wealth for assessing wealth-tax in his hands. In the absence of information about his age, the value of his life-interest on each valuation date under Rule I-B of the Wealth-tax Rules, 1957 could not be worked out. But even by taking the minimum rate of 2.875 per rupee per annum of life-interest of a person aged 80 years, the undervaluation of net wealth of the assessee for the assessment years 1968-69 to 1973-74 aggregated Rs. 34,27,000, resulting in under-assessment of total wealth-tax of Rs. 25,269.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(v) A scrutiny of the income-tax assessment records of an individual for the assessment year 1960-61 revealed that the assessee had invested an amount of Rs. 2,11,148 in a house property situated in a posh locality in Bombay city. The omission to include the value of this property in the net wealth of the

assessee for the assessment years 1961-62 to 1971-72 with consequent short levy of wealth-tax of Rs. 11,684 for all these assessment years, computed at the same value of Rs. 2,11,148 for the assessment years 1961-62 to 1963-64 and of Rs. 1,11,148 (after allowing exemption of Rs. 1 lakh for self-occupation) was pointed out by Audit in January, 1975. In reply, the Department stated in May, 1975 that the assessee had transferred the property to a private trust on 30th October, 1958. As, however, the assessee had reserved the right to enjoy the income from the property and corpus of the trust, the value of the property was still required to be clubbed with the net wealth of the assessee from the assessment year 1959-60 under the provisions of the Wealth-tax Act and in that case no exemption for self-occupation of the building was admissible to the assessee.

Further, the assessee did not file any gift-tax return on transfer of the property to the trust nor did the Department initiate gift-tax proceedings.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

73. *Wealth escaping assessment in other cases.*

(i) While finalising the wealth-tax assessments of an assessee for the assessment years 1969-70 to 1972-73, an addition of Rs. 1,43,260, being the sale proceeds of certain shares held by the assessee in his individual capacity which were credited to the account of his Hindu undivided family, was made, treating the shares as the assets of the individual. These additions were also upheld in appeal. But similar additions were not made in the assessments for the assessment years 1973-74 and 1974-75 even though the wealth-tax returns did not show that the individual had received back the money from the family. The omission to make the addition resulted in under-assessment

of wealth by Rs. 1,43,260 in each of these assessment years, involving a total short levy of tax of Rs. 21,088.

The Ministry of Finance have accepted the objection in principle.

(ii) An assessee became liable for assessment to wealth-tax for the first time when she received certain shares in companies by way of gift on 25-3-1974. She filed a wealth-tax return for the assessment year 1975-76 showing her net wealth as Rs. 5,37,887 by adopting 30-9-1974 as the valuation date. The return submitted by her was accepted by the Wealth-tax Officer and she was taxed accordingly for the assessment year 1975-76.

It was, however, seen from her income-tax assessment records that she was a partner in a firm which closed its accounts on 31st March. As she had more than one source of income with different previous years for income-tax purposes, the valuation date of the assessee for purposes of wealth-tax, required to be taken under the provisions of the Wealth-tax Act, was the last day of the previous year ending last. The correct valuation date in her case would be 31st March, 1974 relevant for the assessment year 1974-75. The assessee, having received the gifted shares on 25-3-1974, should thus have filed the wealth-tax return for the assessment year 1974-75 itself. Failure to do so resulted in wealth of Rs. 8,00,000 escaping assessment resulting in short demand of tax of Rs. 10,000 (approximately) for the assessment year 1974-75.

For the assessment year 1975-76, the valuation date would be 31-3-1975 and not 30-9-1974. Bonus shares valued at Rs. 5,74,682 received by the assessee before the correct valuation date should have also been included in her net wealth for 1975-76. Non-inclusion of these shares in her net wealth resulted in short demand of tax of Rs. 11,000 (approximately) for the assessment year 1975-76.

The combined effect to these mistakes was, thus, an under-assessment of tax of Rs. 21,000 (approximately).

The Ministry of Finance have accepted the objection.

(iii) Under the provisions of the Wealth-tax Act, 1957, as amended by the Finance (No. 2) Act, 1971 with effect from the assessment year 1972-73, where an individual being a member of a Hindu undivided family has converted, after 31-12-1969, his individual property into common property of the Hindu undivided family, the interest of the individual, his spouse and minor children (other than married daughters) in the converted property shall remain includible in his net wealth for levy of wealth-tax.

An individual had thrown an amount of Rs. 1,00,000 into the common stock of his Hindu undivided family on 8-12-1970. The asset was includible in the net wealth of the individual from the assessment year 1972-73 onwards. The Department, however, did not include the asset in his net wealth for the assessment years 1972-73 to 1974-75. The omission resulted in an under-assessment of net wealth of Rs. 3,00,000, in the aggregate, leading to a short levy of wealth-tax of Rs. 15,440 for the three years.

The Ministry of Finance have accepted the objection.

(iv) An assessee owned a piece of land in an urban area comprising industrial sheds and uncultivated land measuring 7.36 acres. Its total value of Rs. 2.50 lakhs, as certified by an approved valuer was included in her net wealth up to the assessment year 1969-70. From the assessment year 1970-71 onwards, however, the value of the property was adopted on the basis of the report of a departmental valuer who had, in fact, valued the property exclusive of the uncultivated land (measuring 7.36 acres). It was noticed in audit that, in the assessments from the assessment years 1970-71 onwards, the value of 7.36 acres of this uncultivated land was omitted to be included in the net

wealth of the assessee leading to undervaluation of the property by Rs. 1,76,678 (computed at Rs. 5 per sq. yd., the rate adopted by the departmental valuer in respect of the other land) in each of the assessment years 1970-71 to 1975-76 with total tax undercharge of Rs. 13,758.

The Ministry of Finance have accepted the objection in principle and have stated that the question of valuation has been referred to the departmental Valuation Officer.

(v) The Wealth-tax Act provides that, in computing the net wealth of an individual, the value of assets which on the valuation date are held by the spouse of such individual to whom such assets have been transferred, otherwise than for adequate consideration or in connection with an agreement to live apart (except transfers made after 31-3-1964 but before 1-4-1972, satisfying the prescribed conditions) are to be included in the net wealth of the individual.

In the wealth-tax assessments of an individual for the assessment years 1970-71 to 1975-76, completed during the period from March, 1973 to December, 1975, gifts totalling Rs. 1 lakh made by the individual to his wife prior to the previous year relevant to the assessment year 1964-65 were not included in his net wealth. The escapement thus caused resulted in short levy of wealth-tax of Rs. 32,985 for all these assessment years.

The Ministry of Finance have accepted the objection.

74. *Incorrect valuation of unquoted equity shares.*

In paragraphs 94 and 104 of Chapter V of this Audit Report, the different methods of valuation of unquoted equity shares in companies (other than investment companies) for levy of capital gains tax, gift-tax and estate duty on the one hand and of the wealth-tax on the other hand have been stated. Under the provisions of the Wealth-tax Rules, 1957, framed under the

Wealth-tax Act, 1957, the value of unquoted equity shares in such a company is to be determined on the basis of the net value of the assets of the business as a whole, having regard to the balance-sheet of the business. For the determination of the net values of the assets of a business, the rules also prescribe certain adjustments such as (i) the adoption of the market value of any asset (less depreciation, if any, according to its age) where the market value is in excess of its book value or written down value by more than 20 per cent, (ii) the exclusion of the excess of provision made for taxation over the tax payable on book profits as reduced by advance tax paid and (iii) the exclusion of contingent and future liabilities. As wealth-tax is leviable on the market values of assets on the valuation date, the object of the rules apparently is to ascertain the market value of such shares. The adjustments aforesaid are, therefore, necessary when value of assets and liabilities of company's business as reflected in its balance sheet is computed for computing the break-up value of such shares.

For valuation of unquoted equity shares in investment companies, the Central Board of Direct Taxes prescribed a special method in their circular dated the 31st October, 1967. According to this method, the average of (i) the break-up value of these shares based on the book value of the assets and liabilities of the company disclosed in its balance-sheet and (ii) the capitalised value arrived at by applying a yield rate of 9 per cent to the maintainable profits of the company, should be taken as the fair market value of its shares. Thus, where the balance sheet of an investment company reflects the true market value of its investments and other assets or their market value can be ascertained, the non-adoption of market values or where the break-up value itself is more than the average value computed under the special methods of October, 1967, the adoption of average value, would be detrimental to revenue.

(i) In the wealth-tax assessments of a Hindu undivided family for the assessment years 1970-71 to 1975-76, while computing the break-up value of unquoted equity shares in two companies controlled by the family, the Wealth-tax Officer did not ascertain the market value of the assets of the companies in the respective balance-sheets relevant to the valuation dates. He did not also include the excess of the provision for taxation over the advance tax paid nor did he exclude the provision for gratuity, a contingent liability. Computed at the book value of the assets of the companies (in the absence of their market value having been ascertained) but after adjustments as aforesaid in the value of liabilities, there was undervaluation of these shares by Rs. 12,62,431, in the aggregate, with consequent short levy of total wealth-tax of Rs. 58,242 for all these assessment years.

The Ministry of Finance have accepted the objection and stated that the assessments for the assessment years 1971-72 to 1975-76 are being set aside and re-opened, the assessment for the assessment year 1970-71 having become time-barred.

It was further noticed in audit (November, 1976) that, in the wealth-tax assessments for the various assessment years between 1972-73 and 1975-76 of five individuals belonging to the same family group, the Wealth-tax Officer, while computing the break-up value of unquoted equity shares in one of the same companies controlled by the family, omitted to ascertain and record the market value of assets of the company. Also, in computing the break-up value of these shares based only on the book value of the assets of the company, the assessing officer reduced the advance tax paid from the value of total assets of the company but omitted to reduce correspondingly the provision for taxation shown in the respective balance sheets. Compared even with the break-up value of the shares computed on the basis of book value of the assets of the company, the omission to deduct advance tax paid from the provision for taxation resulted in under-assessment of

wealth in these five cases by Rs. 42,29,586, in the aggregate, with consequent short levy of total tax of Rs. 1,98,277 in all these assessment years.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(ii) An assessee held 168 and 114 unquoted equity shares in a private limited company on the valuation dates relevant to the assessment years 1971-72 and 1972-73. The Wealth-tax Officer did not ascertain the market values of the assets of the company for the valuation of its shares. The values of the shares were determined as Rs. 1,216 and Rs. 1,288 each, being the average of break-up value based on the book value of the assets of the company reflected in its balance sheet and of capitalised value computed under the Board's instructions of October, 1967. These values were adopted in the wealth-tax assessments for the assessment years 1971-72 and 1972-73 completed in December, 1971 and September, 1972 respectively.

The income-tax records of the company revealed that it owned buildings in urban commercial areas and the net rental income therefrom for the assessment years 1971-72 and 1972-73 was Rs. 1,91,825 and Rs. 1,91,541 on the basis of a net return of 5 per cent. The market values of the property under the 'income-capitalisation' method would be Rs. 38,36,500 and Rs. 38,30,820, as against the depreciated values of Rs. 2,82,703 and Rs. 2,75,635 adopted for valuation of shares. As the market values of the buildings were in excess of their written down values by more than 20 per cent, the adoption of the written down values in the computation of break-up value of the shares was incorrect. If the market values of the buildings were substituted for the depreciated book values, the break-up values of shares would be Rs. 7,053 and Rs. 7,028 each, as against Rs. 1,216 and Rs. 1,288

arrived at and adopted. Further, as the correct break-up value was itself more than the average value, the adoption of the average value under the Board's instructions of October, 1967 instead of the break-up value was not correct. These mistakes resulted in undervaluation of shares with consequent short levy of wealth-tax of Rs. 89,990 for the two years.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(iii) In the wealth-tax assessments of an individual for the assessment years 1973-74 and 1974-75, completed on 15-1-1976, the unquoted equity shares held by her in an investment company on the respective valuation dates were valued at Rs. 485 and Rs. 484 per share, adopting the average rate under the aforesaid executive instructions when the break-up value, even based on the book value of the assets of company, was Rs. 1,165 per share for these assessment years. The incorrect valuation of shares led to under-assessment of wealth by Rs. 2,49,400 and Rs. 2,49,830 for the assessment years 1973-74 and 1974-75 leading to total tax undercharge of Rs. 39,938 for the two years.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(iv) Three individual assessees in a ward held unquoted equity shares in the same companies on the valuation dates relevant to the assessment years 1971-72 to 1973-74. In the case of one of them, the break-up value of these shares was determined without adopting the market value of assets of the companies. In the other two cases still lesser values were determined on *ad hoc* basis. Compared even with the break-up value incorrectly so determined in the case of one of the assessees, there was undercharge of total tax of Rs. 18,511 in the other two cases in the assessment years 1971-72 to 1973-74.

The Ministry of Finance have accepted the objection and stated that the assessments have since been rectified under section 35 of the Wealth-tax Act.

(v) In the case of four assessees, the value of unqouted equity shares in a company of the face value of Rs. 1,000 each was determined by the Wealth-tax Officer as Rs. 1,002, Rs. 1,167 and Rs. 901 per share respectively for the assessment years 1972-73 to 1974-75. On an appeal taken by one of these assessees, the Appellate Assistant Commissioner detected the omission of the Wealth-tax Officer to consider the reserves of the company in full while computing the break-up value of its shares and determined their value as Rs. 1,204, Rs. 1,376 and Rs. 1,211 per share for the said three years respectively. The mistake was rectified in the particular case while giving effect to the appellate orders but in the other three cases the values originally taken were not similarly revised.

In the previous year relevant to the assessment year 1975-76, the aforesaid shares of the face value of Rs. 1,000 each were converted into shares of the face value of Rs. 10 each. The three assessees then held 68,200 shares of Rs. 10 each on the valuation date relevant to the assessment year 1975-76. In computing the break-up value of these shares also full reserves of the company were not included. The mistake resulted in break-up value being determined as Rs. 9. 41 per share against the value of Rs. 13.20 per share.

The combined effect of these mistakes was an under-assessment of wealth aggregating Rs. 8,20,280 and an undercharge of wealth-tax of Rs. 17,820 in these three cases for the four assessment years 1972-73 to 1975-76.

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

75. *Incorrect valuation of partner's share interest in partnership firms.*

Under the provisions of the Wealth-tax Act, 1957, where the assessee is a partner in a partnership firm, the value of his interest in the net assets of the firm is to be included in his net wealth. The Wealth-tax Rules framed under the Act provide that any asset of the firm, where its market value exceeds its book value or written down value by more than 20 per cent, shall be valued at its market price.

Section 5 of the Act also provides that wealth-tax shall not be payable by an assessee in respect of certain specified assets and such assets shall not be included in the net wealth of the assessee. As a partnership firm as such is not a chargeable person under the Act, the value of such assets shall not be excluded while computing the value of net assets of the firm. These assets shall also not be exempt in the assessment of a partner as these assets are neither held by nor do they belong to the partner.

(i) In the wealth-tax assessments of two individuals, who were partners in a firm, for the assessment years 1972-73 and 1973-74, completed in December, 1973, the exemption to the full extent of Rs. 1.50 lakhs was allowed to each in respect of the agricultural lands belonging to the firm. The incorrect exemption led to under-assessment of wealth of Rs. 6 lakhs in the aggregate, with consequent short levy of tax of Rs. 6,522 in the two cases for both the assessment years.

The Ministry of Finance have accepted the objection and stated that additional demand for tax raised is of Rs. 6,522.

(ii) Under the provisions of the Wealth-tax Rules prescribed under the Wealth-tax Act, 1957, the value of closing stock of a partnership firm is to be taken, while computing the share interest of a partner in the firm, at its value adopted for purposes of assessment under the Income-tax Act, 1961 for the previous

year relevant to the corresponding assessment year for wealth-tax. Where, however, the market value of the closing stock exceeds the value adopted for purposes of assessment under the Income-tax Act, 1961 by more than 20 per cent, its value shall be taken at market price.

In computing the share interest of two partners in a firm for the assessment years 1968-69 to 1974-75, the values of shares in companies held by the firm, as its closing stock, adopted in income-tax assessments, *viz.* Rs. 3,40,608, Rs. 24,18,963, Rs. 27,91,459, Rs. 27,91,557, Rs. 27,91,558, Rs. 26,89,173 and Rs. 26,90,673 were not adopted but instead market values were determined respectively as Rs. 2,57,025, Rs. 15,07,407, Rs. 19,72,369, Rs. 16,57,911, Rs. 16,95,206, Rs. 16,70,064 and Rs. 15,91,737. As market values of the closing stock, as determined by the Wealth-tax Officer, were less than the values adopted in income-tax assessments, the latter values were to be adopted for wealth-tax. The mistake resulted in share interests of partners being undervalued with consequent short levy of wealth-tax of Rs. 1,43,591.

The Ministry of Finance have accepted the objection and stated that the assessments are yet to be revised (February, 1978).

(iii) In the case of a firm consisting of 9 partners, while taking the market value of machineries owned by the firm for computation of share interest of its partners, the increase in the value of certain machineries to the extent of Rs. 2,60,000 and Rs. 4,19,000 for the assessment years 1974-75 and 1975-76 respectively, was omitted to be considered. As a result of this mistake, there was an under-assessment of tax of Rs. 18,500 for the two assessment years in the case of all the nine partners.

The Ministry of Finance have accepted the mistake and stated that additional demand for tax raised is Rs. 18,500.

76. *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.

For the valuation of house property and buildings two methods are prescribed by the Board. Under the 'land and building' method, land is taken at its market value and the structure on it at its replacement cost less depreciation according to its age. Under the other method *viz.*, the 'income capitalisation' method, the net annual value of the property is capitalized at an appropriate number of years' purchase. Under the executive instructions issued by the Central Board of Direct Taxes for valuation of such properties, the 'land and building' method should, wherever possible, be adopted in preference to the 'income capitalisation' method especially in cases of properties comprising extensive areas of urban land.

(i) Under the executive instructions issued by the Board in June, 1970, even where the higher valuation of a house property in a subsequent year is attributable to adoption of a different basis of valuation, the earlier assessments should be re-opened if the difference on revaluation exceeds 25 per cent of the value adopted in the earlier years and the assessee cannot explain the difference satisfactorily.

An assessee returned the value of four immovable properties as Rs. 5,11,305 in his return for the assessment year 1972-73. On a reference made, the departmental Valuation Officer determined, in July, 1975, the fair market value of the properties as Rs. 8,07,600. Adopting the value of Rs. 8,07,600, the Wealth-tax Officer completed the assessment for the assessment year 1972-73 in September, 1975. Though the Welath-tax Officer left a note in the assessment records that the assessments for assessment years 1970-71 and 1971-72 would also require revision in the light

of the executive instructions of June, 1970, no action had been taken by the Wealth-tax Officer to issue notice and to revise the assessments till the omission was pointed out in audit in August, 1976. Had the assessments for the two assessment years 1970-71 and 1971-72 been revised, adopting the value of these properties as Rs. 8,07,600, an additional tax of Rs. 24,183 would have become leviable.

The Ministry of Finance have accepted the objection and stated that additional tax demand of Rs. 24,183 has been raised.

(ii) An immovable property belonging to an assessee was valued both under the 'land and building' method, and the 'income-capitalisation' method and average of these two values was adopted by the Wealth-tax Officer in the wealth-tax assessments for the assessment years 1965-66 to 1973-74. The valuation so done was not correct as such averaging was not an authorised method of valuation. Further, vacant plot of land surrounding the building and over and above the land appurtenant to it was valued separately at Rs. 1,38,500 and was incorrectly included in the value under the 'land and buildings' method. The mistake in not adopting the value under the 'land and building' method resulted in undervaluation of the property by Rs. 21,97,108, in the aggregate, with consequent under-assessment of total wealth-tax of Rs. 64,941, including additional wealth-tax of Rs. 36,540 for all the assessment years 1965-66 to 1973-74.

The paragraph was sent to the Ministry of Finance on 10th October, 1977; they have stated (December, 1977) that the objection is under consideration.

(iii) Despite the increase in the price of gold in recent years the gold ornaments held by an assessee on the valuation dates relevant to the assessment years 1972-73 to 1975-76 were valued at Rs. 1,40,500 on the basis of valuation made in September, 1965. On the basis of the prices circulated by the Central Board of Direct Taxes in May, 1976 the correct values would work out

to Rs. 1,91,080, Rs. 2,55,710, Rs. 2,66,950 and Rs. 2,66,950 for the assessment years 1972-73 to 1975-76 respectively. The under-valuation of jewellery and consequent under-assessment of wealth led to total tax undercharge of Rs. 17,732 for the assessment years 1972-73 to 1975-76.

The Ministry of Finance, in accepting the objection, have stated that the Wealth-tax Officer has been advised to obtain detailed valuation reports.

(iv) In the computation of net wealth of an ex-ruler of a former Indian State, the value of two plots of land had been taken at Rs. 20,000 each for the assessment year 1963-64 and at Rs. 30,000 each in the assessment years 1964-65 to 1966-67 against their book value of Rs. 5,37,600 and Rs. 5,12,000. On the under-valuation of these plots being pointed out by Audit in June, 1970, their valuation was referred to the Valuation Officer. The plots of land were valued by the departmental valuer at Rs. 1,07,650 and Rs. 1,90,400 as on the valuation date relevant to the assessment year 1967-68. Taking the market value of the plots of land for the earlier assessment years also at Rs. 1,07,650 and Rs. 1,90,400, the net wealth of the assessee was under-assessed by Rs. 2,58,040 in the assessment year 1963-64 and by Rs. 2,38,050 in each of the assessment years 1964-65 to 1966-67, resulting in an aggregate short levy of tax of Rs. 43,344.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(v) In the Wealth-tax assessments of an assessee for the assessment years 1964-65 to 1968-69, land measuring about 40 bighas attached to her palace was treated as agricultural land and its value was excluded from her net wealth. The land, situated within the municipal limits of Udaipur City and not subject to land revenue, had been sub-divided and sold as plots by the

assessee. It was pointed out by Audit that, keeping in view various judicial pronouncements on the subject, the land was non-agricultural land and its value was includible in her net wealth. Further, land measuring 79,006 sq. ft. belonging to the assessee was valued on the lower side at Re. 0.75 per sq. ft. while the adjacent land was sold by the assessee at Re. 1.52 per sq. ft. in the assessment year 1966-67 and at Rs. 2.25 per sq. ft. in the assessment year 1968-69. Further, a house of the assessee was valued at Rs. 71,483 for the assessment year 1968-69 but its value was taken as Rs. 20,000 only for the earlier assessment years. The value of 300 gold *mohurs* was also not found included in her net wealth. The combined effect of these mistakes, pointed out by Audit in January, 1974, was under-assessment of wealth by Rs. 22,80,786 in the aggregate and of wealth-tax and additional wealth-tax of Rs. 40,827 as determined by the Department on rectifying the assessments for the years 1966-67 to 1968-69 (earlier assessments being barred by limitation).

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(vi) In the wealth-tax assessment for the assessment year 1975-76 of a jewellery trust, created by a former ruler, the assessing officer determined the value of jewellery, taking the appreciation of market value at 1 per cent over the value on the preceding valuation date though the comparison of the market quotations on the two valuation dates 31-3-1975 and 31-3-1976 indicated a rise of 6.7 per cent in the price of gold. The undervaluation of jewellery so made resulted in under-assessment of wealth by Rs. 2.70 lakhs leading to short levy of wealth-tax of Rs. 21,630.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

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

Jewellery belonging to an assessee was valued at Rs. 9,00,000 in each of the assessment years 1971-72 to 1973-74 on the basis of an appellate order passed in respect of the assessment year 1970-71. Though the price of gold appreciably increased after 1970-71, the jewellery was not revalued. Computed on the basis of the prices circulated by the Central Board of Direct Taxes, there was undervaluation of jewellary to the extent of Rs. 36,000, Rs. 81,000 and Rs. 4,50,000 respectively in the assessment years 1971-72 to 1973-74. Again, the value of certain silver utensils held by the assessee, according to the returns for earlier years, was not considered in the computation of her net wealth for the assessment years 1972-73 and 1973-74. On the same basis, the wealth thus escaping assessment amounted to Rs. 44,250 in each of these assessment years. Yet again, the value of certain movable assets amounting to Rs. 3,35,359 as shown by the assessee in her return of wealth for the assessment year 1968-69 was taken by the Department as Rs. 3,08,359 only, leading to under-assessment of wealth of Rs. 27,000 for that assessment year. Further, in computing the net wealth of the assessee for the assessment years 1968-69 to 1973-74, the amounts of Rs. 31,634, Rs. 33,532, Rs. 35,544, Rs. 37,677, Rs. 56,355 and Rs. 60,581 representing loans and interest accrued thereon due from the assessee were allowed as deduction in the respective assessment years, although these loans, having been obtained on the security of life insurance policies, which are themselves exempt from wealth-tax, were not deductible. The incorrect allowance of deductions for these liabilities led to under-assessment of wealth to that extent for the aforesaid assessment years.

The combined effect of all these mistakes for various assessment years was a total undercharge of tax of Rs. 24,196.

The Ministry of Finance have accepted these mistakes and stated that additional tax of Rs. 24,196 has been raised.

78. *Irregular/excessive exemptions and reliefs in respect of investments.*

(i) 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, in itself, is 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 paragraphs 56(c) (iii) of the Audit Report, 1973-74, paragraphs 71(iv) of the Audit Report, 1974-75 and 92(i) of the Audit Report, 1975-76, instances of excessive exemption allowed in this regard were pointed out. Similar mistakes were again noticed in test check by Audit in the case of 9 assessees in 4 Commissioners' charges, where the Wealth-tax Officers, while making assessments for various assessment years between 1971-72 and 1975-76, allowed exemption for specified investments over and above Rs. 1.50 lakhs, even though the value of the specified investments, in itself, did not exceed Rs. 1.50 lakhs in each case or besides Rs. 1.50 lakhs, where the value of specified investments exceeded Rs. 1.50 lakhs. The incorrect exemption so allowed led to short levy of total tax of Rs. 57,120 in all the assessment years.

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

(ii) Under the provisions of the Wealth-tax Act, 1957, where the shares of the beneficiaries in a trust are indeterminate and unknown, the net wealth of the trust, without any no-tax limit,

should be subjected to tax at the rate in the Schedule to the Act applicable to an 'individual' or at the rate of one and one-half per cent, whichever is more. While computing the net wealth for this purpose, the Act further provides that, w.e.f. 1-4-1972, exemption in respect of the value of certain movable assets, otherwise exempt up to a limit of Rs. 1.50 lakhs, is not admissible.

In computing the net wealth of private discretionary trusts in two cases to which these provisions were applied for the assessment years 1972-73 to 1975-76 in one case and 1972-73 to 1974-75 in the other, it was noticed that the values of shares in certain companies, held by the trusts were incorrectly excluded from their net wealth up to Rs. 1.50 lakhs in each year. The mistake resulted in under-assessment of wealth aggregating Rs. 10.50 lakhs, leading to short levy of tax of Rs. 20,250.

The Ministry of Finance have accepted the objection in one case and stated that additional tax of Rs. 11,250 has been collected; their reply in the other case is awaited (March, 1978).

(iii) Under the provisions of the Wealth-tax Act, 1957, the value of equity shares in any company of specified nature, where such shares form part of the initial issue of equity share capital made by the company after 31st March, 1964 but before 1st June, 1971 is exempt for a period of five successive assessment years, commencing with the assessment year next following the date on which the company commences operations.

However, in the case of an assessee who held such shares in a company which commenced business on 16-2-1975, this exemption was incorrectly allowed in the assessment years 1973-74 and 1974-75, while it was admissible only from the assessment year 1975-76 *i.e.*, from the assessment year relevant to the valuation date next following the date of commencement of operations. The incorrect exemption so allowed resulted in under-assessment of wealth of Rs. 2,00,720, in the aggregate, with consequent short levy of tax of Rs. 16,058.

The Ministry of Finance have accepted the objection.

79. *Irregular/excessive exemptions and reliefs in other cases.*

Under the provisions of the Wealth-tax Act, 1957, exemption from tax is available in respect of a house or part of a house belonging to an assessee subject to a limit of rupees one lakh. Where there are a number of independent flats in a building, each flat should be regarded as a house in itself and exemption may be allowed only in respect of one flat.

(i) Three assessees were the joint owners of a multi-storeyed building in a metropolitan city with over 70 self-contained flats. In the assessment years 1973-74 and 1974-75, the value of the building was determined at Rs. 19,95,520 and Rs. 25,12,120 respectively and exemption up to the maximum limit of Rs. one lakh was allowed therefrom. As there were a number of independent flats in the building, each flat should have been regarded as a house and the exemption limited to the value of one such flat, not exceeding one lakh of rupees. The value of a flat was only Rs. 26,966 in the assessment year 1973-74 and Rs. 30,636 in the assessment year 1974-75. Since exemption was allowed up to one lakh of rupees, it led to excessive allowance of exemption by Rs. 73,034 and Rs. 69,364 in the assessment years 1973-74 and 1974-75 respectively with consequent total tax undercharge of Rs. 17,819 in the case of the three assessees.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(ii) In the assessments of an individual for the assessment years 1972-73 to 1974-75, it was noticed that she owned three flats each of the value of Rs. 50,000. She was entitled to an exemption of Rs. 50,000 only in respect of the value of one flat. However, exemption was allowed up to the maximum limit of

Rs. 1 lakh in each of the assessment years. Further, though the value of investments in certain specified assets was less than Rs. 1.50 lakhs, their value was treated as exempt over and above the maximum exemption of Rs. 1.50 lakhs allowed in respect of other assets in each of these assessment years. These mistakes resulted in under-assessment of wealth aggregating Rs. 2,71,250 and short levy of tax of Rs. 6,424 for the three assessment years.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated (December, 1977) that the objection is under consideration.

80. *Mistakes in calculation of tax.*

(i) The Schedule to the Wealth-tax Act, 1957, as amended by the Finance Act, 1973, prescribed a higher rate of tax for every Hindu undivided family having at least one member with assessable net wealth exceeding one lakh of rupees for the assessment year 1974-75 onward. Illustrative cases of under-assessment of wealth-tax resulting from incorrect application of rates in wealth-tax assessment of such Hindu undivided families were pointed out in paragraphs 53(i) and 94(i) of the Audit Report, 1975-76. The present test check revealed that the mistake is still continuing.

In 26 cases of such families in 22 Commissioners' charges, where the under-assessment of tax due to incorrect application of the lower rate instead of the higher rate was more than Rs. 5,000 in each case, there was total under-assessment of wealth-tax of Rs. 1,92,967 in the assessment years 1974-75 and 1975-76.

The Ministry of Finance have accepted the mistake in 25 cases in which additional tax of Rs. 1,77,824 is stated to have been raised, collecting Rs. 83,195; in the remaining one case, their reply is awaited (March 1978).

(ii) In the Finance Act, 1974, the rates of wealth-tax with effect from the assessment year 1975-76 were revised and stepped up in certain slabs.

(a) In the case of two Hindu undivided families, tax for the assessment year 1975-76 had been levied at the rates applicable for the earlier year instead of the correct rates applicable for the year 1975-76 and a part of the tax paid by the assessees on self-assessment was wrongly refunded. The total short levy of tax amounted to Rs. 18,344 in both the cases.

The Ministry of Finance have accepted the objection and stated that additional tax collected is Rs. 18,344.

(b) In 10 other cases in 3 Commissioners' charges, the tax rates of 1974-75 were incorrectly applied by the Wealth-tax Officers in assessments for the assessment year 1975-76 resulting in undercharge of total tax of Rs. 36,874. On this mistake being pointed out, the Department rectified the assessments in all these cases and raised a demand for additional tax of Rs. 36,874. Out of this, additional tax of Rs. 20,415 has been collected in 7 cases.

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

(iii) In the wealth-tax assessment of an individual for the assessment year 1971-72, completed in May, 1975, the net wealth was determined as Rs. 12,04,458 which included urban assets of the net value of Rs. 9,54,403. Additional wealth-tax, which was leviable on the value of urban assets up to and inclusive of the assessment year 1975-76, was calculated at 0.50 per cent instead of at the correct rate of 5 per cent, with the result that additional wealth-tax levied was of Rs. 2,272 as against the correct tax of Rs. 22,720. This resulted in short levy of tax of Rs. 20,448. The mistake was not detectedby In the Internal Audit.

The Ministry of Finance, in accepting the mistake, have stated that additional tax demand of Rs. 20,448 has been raised.

81. *Non-levy/incorrect levy of penalty.*

The Wealth-tax Act, 1957 provides for the levy of penalty, *inter alia*, if an assessee has, without reasonable cause, failed to furnish the wealth-tax return within the prescribed time or concealed assets or facts relating thereto. In their executive instructions issued in July, 1969, the Central Board of Direct Taxes directed that where the Wealth-tax Officer has decided not to levy any penalty, having regard to the circumstances of the case, a note should be recorded in the order-sheet giving detailed reasons for not invoking these penalty provisions. Instances of failure in this regard were pointed out in para 59 of the Audit Report, 1973-74, para 75(i) of the Audit Report, 1974-75 and paras 97(ii) of the Audit Report, 1975-76.

(i) In the case of an assessee, there was delay in filing the wealth-tax returns for the assessment years 1972-73 and 1973-74. Neither any penalty proceedings were initiated nor was there any note recorded by the Wealth-tax Officer for not invoking the penalty provisions. The minimum penalty leviable was Rs. 59,750.

The Ministry of Finance have accepted the omission in principle and have stated that "revenue interest will be kept in view at the time of fresh assessment" done in respect of these assessments set aside by the Appellate Assistant Commissioner.

In another case there was delay ranging from 12 to 30 months in the filing of wealth-tax returns for the assessment years 1970-71, 1971-72 and 1972-73. The Wealth-tax Officer, however, neither levied any penalty for late submission of the returns nor did he record any reasons for not initiating the penalty proceedings. The minimum penalty leviable in this case was Rs. 37,950.

The Ministry of Finance have accepted the mistake in principle.

(ii) In the case of an assessee there was delay ranging from 12 to 24 months in filing wealth-tax returns for the assessment years 1972-73 and 1973-74. No penalty proceedings were, however, initiated as in the assessment order the period of delay was incorrectly worked out by the Wealth-tax Officer as less than one month. The incorrect computation of the period of delay led to non-levy of a minimum penalty of Rs. 34,380.

The Ministry of Finance have accepted the mistake in principle and stated that penalty proceedings will be kept in view while making fresh assessments on the original assessments having been set aside by the Appellate Assistant Commissioner.

(iii) An individual, holding a passport issued by the Government of India and carrying on jewellery business in Indonesia, was involved, soon after his arrival in India in the year 1969, in proceedings initiated by the Customs Department for infringement of the Customs Act. On receipt of such information in the Income-tax Department, notice under the Income-tax Act, 1961 was issued to him in December, 1969 calling upon him to furnish the returns of income for the assessment years 1966-67 to 1969-70. As there was no response to the notice, best judgement assessments were made in March, 1974 for all the assessment years 1966-67 to 1969-70 and notice of demand of income-tax was served on the assessee's representative in April, 1974. The assessee thereupon filed the returns of income as well as of wealth for the assessment years 1966-67 to 1971-72 on 4th May, 1974 and applied for revision of the best judgement assessments on the basis of his returns. The Department accordingly revised both the income-tax and wealth-tax assessments on 7th May, 1974. The net wealth determined in the revised assessments for the six assessment years 1966-67 to 1971-72 ranged from Rs. 1,98,600 to Rs. 4,05,700.

For the belated filing of his wealth-tax returns, the assessee was also liable to penalty, the amount of minimum penalty being Rs. 1,49,645 for the six years. No penalty proceedings were, however, initiated by the Department. It was recorded in the wealth-tax assessment order that, on the ground that the assessee was not conscious of his obligation to file wealth-tax returns on account of the special features of his case, no penalty was levied for all the assessment years.

In reply, the Ministry of Finance have only stated that the Wealth-tax Officer had recorded the reasons for not initiating penalty proceedings as required under law.

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

Under the Wealth-tax Act, 1957 before its amendment by the Finance Act, 1976, where the net wealth of an individual or a Hindu undivided family included buildings or lands (other than business premises used throughout the previous year for the purpose of his or its business or profession) or any rights therein, situated in an urban area, additional wealth-tax was leviable on the value of such urban assets above the prescribed limit(s).

(i) The net wealth of a trust for the assessment years 1971-72, 1972-73 and 1973-74 included urban immovable properties valued at Rs. 8,92,324, Rs. 8,97,030 and Rs. 7,42,775 on which additional wealth-tax was leviable to the extent of Rs. 19,616, Rs. 19,852 and Rs. 12,138 respectively. The Department, however, did not levy the tax. The omission resulted in a total short levy of additional wealth-tax of Rs. 51,606 for all the years.

The Ministry of Finance have accepted the objection and stated that the additional tax of Rs. 19,616 had been raised for the assessment year 1971-72 and the other assessments have been re-opened.

(ii) In the case of another trust, additional wealth-tax in respect of agricultural lands held by the trust in an urban area was

omitted to be levied for the assessment years 1971-72 to 1974-75. This omission resulted in non-levy of additional wealth-tax of Rs. 43,076 for all these years.

Though the case was seen by Internal Audit, this mistake was not noticed by them.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(iii) In 11 other cases of individuals and Hindu undivided families in 7 Commissioners' charges, the value of their urban assets above the prescribed limits was similarly omitted to be subjected to levy of additional wealth-tax of Rs. 2,20,605, in the aggregate, in the various assessment years between 1966-67 and 1975-76.

The Ministry of Finance have accepted the omission in 10 cases and stated that demand for additional tax of Rs. 1,87,856 has been raised in eight cases. The audit objection in the remaining one case is stated (December, 1977) to be under consideration.

83. *Incorrect status adopted in assessments.*

(i) In two cases, one for the assessment years 1974-75 and 1975-76 and the other for the assessment year 1975-76, it was noticed in audit (May, 1976) that the correct status of the assessee was 'Hindu undivided family' with at least one member having net wealth above Rs. 1 lakh and not 'individual' as adopted in the wealth-tax assessments. The assessees were, therefore, assessable to tax at higher rates made applicable to such families with effect from 1-4-1974. The mistake in determination of the status of the assessees resulted in total short levy of tax of Rs. 25,470 for the assessment years 1974-75 and 1975-76 in these two cases.

One of the cases was seen by Internal Audit but the mistake was not noticed by them.

The Ministry of Finance have accepted the mistakes and stated that additional tax of Rs. 25,380 has been collected.

(ii) The Wealth-tax Act provides for a 50 per cent reduction in the amount of wealth-tax payable by an individual if he is not a citizen of India as well as a non-resident for a particular assessment year. The deduction is not available to a resident assessee even though he may be a non-citizen.

(a) In the income-tax assessment for the assessment year 1975-76, the status of an individual (non-citizen) was determined by the Department as 'resident but not ordinarily resident'. In the wealth-tax assessment for the same year, completed in February, 1976, the Wealth-tax Officer allowed the aforesaid reduction. As the assessee was not a non-resident, the reduction was incorrectly allowed, resulting in short levy of wealth-tax of Rs. 10,450.

The Ministry of Finance have accepted the mistake.

(b) In 3 other cases in 2 Commissioners' charges, this reduction of 50 per cent was incorrectly allowed in the assessment years 1963-64 to 1969-70 and 1971-72 even when the two assessees were not non-residents and the third assessee was a citizen of India. The incorrect reduction allowed in these three cases resulted in short levy of wealth-tax of Rs. 14,967 for all the assessment years.

The Ministry of Finance have accepted the mistakes in all the cases and stated that additional tax raised in these cases is Rs. 14,967.

84. *Mistakes in giving effect to appellate orders.*

(i) In one case, the orders passed by the Appellate Tribunal under section 27(6) of the Wealth-tax Act, 1957 to give effect to the judgment of the High Court were received by the Wealth-tax

Officer in January, 1975. The orders were not given effect to by the Department till the omission was pointed out by Audit in November, 1976. As a result, the collection of an aggregate demand of Rs. 36,278 for the assessment years 1957-58 to 1964-65; was delayed by 23 months.

The Ministry of Finance have accepted the objection in principle and stated that the effect has since been given to the appellate order.

(ii) An assessee was holding debentures of the face value of Rs. 5,17,000 issued by a company. No interest on these debentures was paid when it became due. In the accounts relevant to the assessment year 1957-58, the assessee credited in his accounts the interest of Rs. 2,34,082 due upto 31st March, 1957 (valuation date of the assessee), by debit to a suspense account titled 'interest due but not received'. In his wealth-tax returns for the assessment years 1957-58 and 1958-59, the assessee valued this asset (accrued interest) at 'nil', but the Wealth-tax Officer added the full amount of Rs. 2,34,082 to the net wealth of the assessee. However, in appeal, the addition was deleted.

In the assessments for the years 1959-60 onwards, the amount of the accrued interest, which was actually written off in the accounts for the year relevant to the assessment year 1960-61, had not been included in the aggregate value of his assets. Nevertheless, the deduction of Rs. 2,34,082 was allowed for each of these assessment years also. As the accrued interest had not been included in the wealth, the deduction was incorrect and it resulted in an under-assessment of wealth of Rs. 28,08,984 and short levy of wealth-tax of Rs. 99,480 for the assessment years from 1959-60 to 1972-73.

The Ministry of Finance have stated that the mistake of deduction of the said amount while it had actually not been

included in the net wealth of the assessee for each of the assessment years crept in an appellate order and the Wealth-tax Officer has now taken up the matter with the appellate authority for verification and necessary action.

85. *Avoidable losses of revenue.*

(i) With the amendment of Section 5(1)(viii) of the Wealth-tax Act, 1957, the value of jewellery intended for personal or household use of an assessee became includible in his net wealth from the assessment year 1963-64. The Board issued instructions in October, 1971 that, in cases where the [illegible] of jewellery brought to tax had been excluded by the Appellate Assistant Commissioner or the Appellate Tribunal in [illegible] the Wealth-tax Officer should move the appellate author[illegible]oncerned to rectify its order so as to include the value in the [illegible]t wealth.

In the case of an assessee, the value of jewellery of Rs. 12,12,245 brought to tax by the Wealth-tax Officer had been excluded in appeal by the Appellate Assistant Commissioner in the assessment years 1967-68 and 1968-69. Audit pointed out in October, 1972 the need for moving the appellate authority to rectify its order so as to include this value in his net wealth. Instead of moving the appellate authority for this purpose, the Wealth-tax Officer passed a rectification order himself in Decembe, 1972 which was struck down by the appellate authority in November, 1974. By this time, action for rectification by the appellate authority had become time-barred.

Incorrect action so taken by the Wealth-tax Officer, thus, resulted in loss of revenue of Rs. 61,056 in the assessment years 1967-68 and 1968-69.

The Ministry of Finance have accepted the objection in principle.

(ii) While computing the net wealth of three assessees for the assessment year 1966-67, the Department allowed income-tax

liabilities to be deducted from the incomes of Rs. 31,56,750, Rs. 38,14,250 and Rs. 27,71,000 disclosed by the assessees on 1-10-65 under the Voluntary Disclosure Scheme of 1965 and added net incomes only to their net wealth. Subsequently, the Department felt that, as the disclosures were made after the relevant valuation date *viz.*, 31-8-65, the income-tax liabilities attaching to such disclosed income were not allowable deductions on the valuation date relevant to the assessment year 1966-67. Accordingly, the Department re-opened the original assessment done on 16-9-1970, rectified the mistakes under Section 35 of the Wealth-tax Act, 1957 on 17-11-1971 and raised additional demands totalling Rs. 1,16,907. On appeal by the assessee the Appellate Tribunal, however, cancelled, on 11-6-1974, the rectificatory orders on the ground that the mistakes in the original assessments were not apparent from records and hence were not rectifiable under Section 35 of the Wealth-tax Act, 1957. As a result, the demands raised and collected by the Department had to be refunded to the assessees. The irregular allowance of the tax liabilities made in the original assessment thus led to a total loss of revenue of Rs. 1,16,907.

The Ministry of Finance have accepted the audit objection in two cases and stated that no action is possible at this stage. In the third case, they have accepted the objection in principle.

(iii) Section 32 of the Finance (No. 2) Act, 1971, amended Section 5(1) (viii) of the Wealth-tax Act, 1957 retrospectively with effect from 1st April, 1963, as a result of which the value of jewellery, which had been exempt from wealth-tax under a Supreme Court decision till then, became liable to be included in net wealth. Accordingly, the Central Board of Direct Taxes, in their executive instructions issued in October, 1971, directed the assessing officers to re-open all assessments from the assessment year 1963-64 onwards, where jewellery had been excluded from the total wealth of the assessees.

The assessments of an individual for the assessment years 1966-67 to 1969-70 were made by the Department on 30-3-71 without considering the value of jewellery amounting to Rs. 1,45,000 for the first two years and Rs. 1,74,290 for the subsequent years. It was noticed in audit in September, 1973 that, despite the Board's specific instructions, the assessment had not been reopened to include the value of jewellery even after the omission for 1967-68 to 1969-70 had been pointed out by Internal Audit on 20-9-74. The omission to assess the value of jewellery for the assessment years 1966-67 to 1969-70 resulted in a total loss of revenue of Rs. 15,240, the rectification of these assessments being time-barred.

The Ministry of Finance have accepted the omission in principle.

86. *Delay in raising demand.*

A new section prescribing time limits for completion of assessments or re-assessments has been inserted in the Wealth-tax Act with effect from 1-4-1976 by the Taxation Laws (Amendment) Act, 1975. Prior to the amendment, although there was no time limit for the Wealth-tax Officer to make a regular assessment, he was required to make, in a summary manner, a provisional assessment of the tax payable by the assessee on the basis of his return when the regular assessment on the face of the accounts and documents accompanying it was not possible.

An assessee submitted his wealth-tax returns for the assessment years 1968-69 to 1973-74 on 24-3-69, 22-3-72 (for three years), 31-10-72 and 29-10-73 respectively with the remarks that valuation given was subject to modification on receipt of valuer's report. Later the assessee neither furnished any valuer's report nor filed any revised returns. The Department completed provisional assessments for all the six years only on 26-3-75 *i.e.* after a lapse of 16 to 72 months from the date of receipt of the returns raising an aggregate tax demand of Rs. 71,700. Had the demand,

even on provisional assessments, been made in time, this delay in realisation of Government revenues could have been avoided.

The Ministry of Finance have accepted the objection.

87. *Erroneous credit allowed.*

In the wealth-tax assessment of an individual for the assessment year 1974-75, completed in March 1975, the gross tax due in respect of the assessed wealth of Rs. 22,40,500 was determined as Rs. 89,240 but demand was raised only for a sum of Rs. 57,240 after giving credit for a sum of Rs. 32,000 for self-assessment tax. When it was pointed out in audit in July, 1975 that there was no proof on record for the payment of the sum of Rs. 32,000, the Wealth-tax Officer replied that the amount had been paid and the concerned challan was verified by him at the time of assessment and that the date of payment would be intimated to Audit later. The Department stated in April, 1976 that the challan had since been placed on the file and that the credit originally given was correct. On verification in July, 1977, however, it was noticed by Audit that the amount had been paid only on Ist September, 1975 *i.e.* after the omission was first pointed out in audit in July, 1975.

The Ministry of Finance have accepted the objection and stated that the tax of Rs. 32,000 has since been collected.

CHAPTER V

GIFT-TAX AND ESTATE DUTY

A. GIFT-TAX

88. Gift-tax is levied on the aggregate value of all gifts made by a person during the relevant previous year. All transfers of property which are made without adequate consideration in money or money's worth are liable to tax unless specifically exempted by the Gift-tax Act. The term 'property' for the purpose of the Gift-tax Act connotes not only tangible movable and immovable property including agricultural land but also other valuable rights and interests.

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

Year	Budget estimate	Actuals
	(Rupees in crores)	
1972-73	2.50	4.02
1973-74	3.50	4.79
1974-75	4.00	5.06
1975-76	4.50	5.11
1976-77	4.75	5.66

The arrears of demand and cases pending assessment as on 31st March, 1977 were Rs. 5.90 crores and 22,580 respectively.

90. In paragraph 3.10 of their 50th Report (Fifth Lok Sabha) and paragraph 1.28 of their 103rd Report (Fifth Lok Sabha), the Public Accounts Committee desired that a complete review of all gifts of agricultural land during the years from 1965-66

to 1972-73 should be conducted. The results of a partial review conducted upto February, 1976 indicated escapement of 24,741 cases of gifts of agricultural land, valued, in the aggregate, at Rs. 22.86 crores and involving non-levy of gift-tax of Rs. 96.83 lakhs, as reported in paragraph 77 of the Audit Report, 1975-76. Results of the complete review are still awaited from the Ministry of Finance (March, 1978).

91. During the test audit of assessments made under the Gift-tax Act, 1958, conducted during the period from 1st April, 1976 to 31st March, 1977, the following types of mistakes resulting in under-assessment of tax were noticed:—

(i) Gifts escaping assessment.

(ii) Incorrect valuation of gifts.

(iii) Irregular/excessive exemptions and reliefs.

(iv) Mistakes in calculation of tax.

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

92. *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 the Income-tax Officers noticed and brought to capital gains tax the excess of fair market value over actual consideration. Nevertheless, failure to bring such 'deemed gifts' to tax was noticed in many

cases. A few instances having substantial tax effect are mentioned below :

(i) Under the will dated 4-5-1949 of a deceased person, the executrix, who was given a life-interest in the estate of the deceased, was entitled to utilise its income at her absolute discretion subject to the condition that she maintained her three daughters, who would succeed to the estate in equal shares as absolute owners on the death of the executrix.

On 3-6-1970, an agreement was entered into between the executrix and her two daughters and the children of her third daughter by which the executrix relinquished her life-interest in the estate in consideration of Rs. 5,77,435, being grant to her of absolute ownership in a house property and shares in companies comprised in the estate. The excess of Rs. 8,63,077, being the value of life-interest relinquished by her, over Rs. 5,77,435, being the consideration for the relinquishment, was assessable to gift-tax. It was, however, noticed that neither the executrix filed gift-tax return nor did the Department initiate gift-tax proceedings. The omission resulted in escapement of gift of Rs. 2,85,642 involving non-levy of gift-tax of Rs. 51,735.

The Ministry of Finance have accepted the objection and stated that additional tax raised is Rs. 51,735.

(ii) In the case of an individual, capital gain on the sale of a house property had been computed for the assessment year 1973-74, adopting the fair market value of the property at Rs. 7,15,500 according to the departmental valuer's valuation report as against the consideration of Rs. 2,85,000 declared by the assessee. No action was, however, taken to levy gift-tax, treating the difference between the market value so adopted and the actual consideration received as 'deemed gift'. A gift of Rs. 4,30,500 thus escaped assessment resulting in non-levy of gift -tax of Rs. 96,875.

The Ministry of Finance have accepted the objection.

(iii) A company demolished its house property and sold the building materials and the land for a consideration of Rs. 4,00,000 during the previous year relevant to the assessment year 1973-74. In the relevant income-tax assessment of the assessee, the Department determined the fair market value of the vacant land and the building materials at Rs. 6,30,000. As the same exceeded the consideration for which the property was sold, the excess value of Rs. 2,30,000 should have been treated as a 'deemed gift' and subjected to tax. No gift-tax proceedings were, however, initiated by the Department. Non-levy of gift-tax was of Rs. 37,750 for the assessment year 1973-74.

The Ministry of Finance have accepted the omission.

(iv) A firm engaged in a manufacturing business and having two partners, a father and his daughter, agreed on 1-6-1969 to transfer its business, as a going concern, with all its assets (other than immovable properties) and liabilities to a private limited company incorporated in March, 1969. The company, in consideration of the transfer, gave its fully paid-up shares and cash totalling Rs. 7,20,657 to the partners of the firm. It was noticed in audit that, while computing the value of net assets of the firm comprising the consideration for the transfer, assets of the firm were taken at their book value instead of their market value and the value of the goodwill of the firm was not at all included. Computed at two years' purchase of average profits of the firm for five years, the value of goodwill of the firm was Rs. 8,68,754. Even at book value of the assets of the firm, there was a 'deemed gift' of Rs. 8,68,754 in the transfer, involving a gift-tax levy of Rs. 2,02,926. It was, however, noticed that the firm had not filed any gift-tax return and the Department had also not initiated gift-tax proceedings. The omission resulted in non-levy of tax of Rs. 2,02,926.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated (December, 1977) that the objection is under consideration.

(v) During the check of the wealth-tax assessments of an individual, it was noticed by Audit that the assessee had transferred, during the previous year relevant to assessment year 1974-75, 1,850 shares in a company to a firm in which he was a partner and the firm had credited his capital account with Rs. 4,08,850 at Rs. 221 per share. The market value of the shares on break-up value basis was, however, Rs. 9,25,000 at Rs. 500 per share. The difference of Rs. 5,16,150 was taxable as deemed gift. Neither the assessee had filed any return of gift-tax nor had the Department called for the same. A gift of Rs. 5,16,150 had, thus, escaped assessment in the assessment year 1974-75, resulting in non-levy of tax of Rs. 1,09,845.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(vi) An assessee firm transferred certain shares to one of its partners at book value of Rs. 1,03,300, whereas the market value thereof was Rs. 1,94,743. The difference in value amounting to Rs. 91,443 was required to be taxed as a deemed gift by the firm. This was, however, not done. The omission resulted in non-levy of gift-tax of Rs. 9,458.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

93. *Other cases of gifts escaping assessment.*

(i) If a partnership firm is reconstituted either with the same old partners or on retirement of one or more partners or due to

the addition of new partners, resulting in a revision of the profit-sharing ratios of the partners, the part of the interest which is surrendered or relinquished by one or more partners without consideration in favour of the other partners would attract levy of gift-tax.

(a) During the year ended 31st March, 1975, an individual having 50 per cent share in a partnership business released 25 per cent of his share in favour of five minors who were admitted to the benefits of partnership. Share interest in the net assets and goodwill of the firm so surrendered valuing Rs. 64,950 was liable to gift-tax of Rs. 5,490. However, neither gift-tax return was filed nor did the Department initiate gift-tax proceedings.

The Ministry of Finance have accepted the objection in principle.

(b) It was noticed that in the case of sixteen firms assessed in the same Commissioner's charge, there was reconstitution during the previous years relevant to the assessment years 1973-74 to 1975-76, involving reduction in the profit-sharing ratios of twenty-two partners, but the deemed gifts arising out of the surrender or relinquishment of the right to receive profits aggregating to Rs. 12,48,424 were not assessed to gift-tax amounting in all to Rs. 92,350.

The Ministry of Finance have accepted objection.

(ii) An assessee, who was a partner in a firm, had one-fifth interest therein. He retired from the firm on 1st April, 1973 and a gift-tax assessment for the assessment year 1974-75 was made in May, 1975 in respect of the assessee's share in goodwill and in appreciation in the value of assets on revaluation, amounting in all to Rs. 20,000. A scrutiny of the assessee's wealth-tax assessment for the assessment year 1973-74, however, disclosed

that the assessee also had a share in development rebate reserve of Rs. 93,904. The omission to assess the sum of Rs. 93,904 representing assessee's share in the development rebate reserve of the firm resulted in short levy of tax of Rs. 12,530.

The Ministry of Finance have accepted the objection.

(iii) Under the Gift-tax Act, donations made to an institution established for a charitable purpose are exempt from levy of gift-tax only if the donee institution satisfies certain conditions. Some of these conditions are that (i) the instrument under which it is constituted does not contain any provision for the transfer of any portion of its assets or income to the author of the trust constituting and managing the institution and (ii) the donee institution should maintain regular accounts of its receipts and expenditure.

During the previous years relevant to the assessment years 1967-68 and 1968-69, a private trust made donations of Rs. 63,000 and Rs. 1,48,600 comprising cash and Government securities to a trust established for educational purposes. The Department did not consider the gift-tax liability of the donor trust even though the donee trust had been created in April, 1956 by a trust deed which, as amended subsequently, provided that the whole of the trust funds as at the end of the eleventh year should be transferred back to the settlors. Due to this stipulation in the trust deed, donations to the trust were not exempt from gift-tax. The omission to initiate gift-tax proceedings led to escapement of gifts valuing Rs. 2,11,600 and to non-levy of gift-tax of Rs. 19,290 in the two assessment years.

The Ministry of Finance have accepted the omission.

(iv) It was noticed from the records of a registration office in a district that a lady transferred, in December, 1974, agricultural land measuring 46.28 acres to her three sons in equal shares without any consideration therefor through an instrument of release. The transfer of the aforesaid property was, thus, a gift

taxable under the provisions of the Gift-tax Act, 1958. The lady did not, however, submit any return in respect of this gift of land nor did the Department initiate any action for the levy of gift-tax. The Collector of the district had determined the value of the land as Rs. 19,000 per acre. The value of 46.28 acres of land at the rate of Rs. 19,000 per acre *i.e.* Rs. 8,79,320, which, thus, escaped assessment, resulted in non-levy of gift-tax of Rs. 2,18,796.

The Ministry of Finance have accepted the objection in principle.

(v) An assessee returned his income from a house property, acquired for Rs. 1,83,087 in June, 1973 in the status of 'Hindu undivided family' comprising himself, his wife and two sons for the assessment year 1974-75. For acquiring the property, the assessee invested joint family fund of Rs. 32,465 and personal fund of Rs. 1,42,022. Though, the amount of Rs. 1,42,022 held by the assessee in his individual capacity and thrown into the common stock of the Hindu undivided family involved a 'deemed gift' of 3/4th of Rs. 1,42,022 *i.e.* Rs. 1,06,517, no gift-tax proceedings were initiated. The gift escaping assessment led to non-levy of gift-tax of Rs. 11,804.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(vi) Gift-tax is leviable on donations or contributions to political parties:

A donation of Rs. 2 lakhs made by the executors and trustees of the estate of a deceased person to a political party in the previous year relevant to the assessment year 1972-73 was disallowed in the income-tax assessment. Though it attracted levy of gift-tax also, the Department did not proceed to levy the same. The tax leviable in the case was Rs. 30,500.

The Ministry of Finance have accepted the omission.

(vii) In paragraph 71 of Chapter IV of this Audit Report, cases of non-and under-assessment of wealth-tax on the value of agricultural lands, noticed as a result of a review conducted by Audit, have been pointed out. During the course of the same review, it was noticed in one revenue district that in 269 cases of settlements of agricultural lands made by big landholders in favour of their relatives, without consideration, valued in the aggregate at Rs. 76.26 lakhs, no gift-tax proceedings had been initiated in the assessment years 1972-73 and 1973-74. These gifts escaped gift-tax assessment due to lack of co-ordination between the Gift-tax Officers and the Revenue and Registering Officers of the State Government.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

94. *Incorrect valuation of gifts comprising unquoted equity shares in companies.*

Income-tax Act, 1961 provides that, where the 'fair market value' of a capital asset transferred by an assessee, on the date of transfer, exceeds 'full value of the consideration' declared by the assessee in respect of such transfer by an amount not less than 15 per cent of the value so declared, the 'full value of consideration' for such capital asset shall be taken to be its 'fair market value' on the date of its transfer for computation of capital gains for levy of capital gains tax. Under section 2(22A) of the Income-tax Act, 'market value' in relation to a capital asset means the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date and, where the price is not so ascertainable, such price as may be determined in accordance with the rules made under the Income-tax Act, 1961. No rule has so far (March, 1978) been made under the Income-tax Act for valuation of unquoted equity shares in companies which are not saleable in an open market for levy of capital gains tax on their transfer.

The Gift-tax Act, 1958 similarly provides that the excess of 'fair market value' over the declared consideration on transfer without consideration shall be deemed as a gift liable to gift-tax. Under the provisions of the Gift-tax Act, the value of any property other than cash, transferred by way of irrevocable gift shall be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market on the date on which the gift was made. Where, however, the value of any property cannot be estimated as it is not saleable in an open market, the valuation shall be done in the manner prescribed in the Gift-tax Rules, 1958. In the case of unquoted equity shares in companies, these rules provide that valuation shall be done by reference to the 'total assets' of the company. As the provisions in regard to valuation of an asset in the Income-tax Act and Gift-tax Act are identical, the provisions for valuation of unquoted equity shares in companies in the Gift-tax Rules would be correctly applicable to cases of valuation of such shares for levy of capital gains tax, in the absence of any rule in this regard framed under the Income-tax Act.

The Estate Duty Act, 1953 also provides for the valuation of unquoted equity shares in companies by reference to their "total assets". Thus, in case of valuation of such shares for capital gains tax, gift-tax and estate duty, the principle of valuation by reference to "total assets" (less liabilities existing on the relevant date) of the company has been adopted. The principle adopted in Rule 1-D of the Wealth-tax Rules, 1957 for valuation of unquoted equity shares in companies is, however, the method of valuation of such shares by reference to the "net value of assets of the business as a whole, having regard to the balance sheet of such business". This means that for cases of levy of capital gains tax, gift-tax and estate duty, the valuation of unquoted equity shares is to be done by adopting the market value of assets of the company and including also the value of its goodwill instead of by adopting merely the book values shown in the relevant balance sheet of the company.

Despite the clear difference in the phraseology of the provisions in the Income-tax Act, Gift-tax Act and Estate Duty Act on the one hand and those in the Wealth-tax Rules on the other in regard to valuation of unquoted equity shares in companies, Rule 1-D of the Wealth-tax Rules, 1957 was incorrectly extended, through executive instructions of the Central Board of Direct Taxes, to gift-tax and estate duty cases in March, 1968 and to capital gains tax cases in August, 1968. In paragraph 72 of the Audit Report, 1972-73, this incorrect extension of Rule 1-D of the Wealth-tax Rules, 1957 to estate duty cases was pointed out. In consequence of the said paragraph this incorrect extension to the estate duty cases as also to gift-tax cases was cancelled by the Board in October, 1974. In paragraph 112(i) of the Audit Report, 1975-76, an instance of an erroneous valuation being not rectified even after October, 1974 when the Board had accepted the correct position resulting in under-assessment of estate duty of Rs. 1,80,90,526 was pointed out. The Department of Revenue accepted the objection in principle. The incorrect extension of Rule 1-D of the Wealth-tax Rules, 1957 to capital gains tax cases made by the Board in August, 1968 has, however, not been cancelled so far (March, 1978).

Four assessees in the same family group sold, in the aggregate, 21,825 unquoted equity shares in a private limited company controlled by the family on 9-10-1972 to another private limited company belonging to the family, the 'full value of consideration' for the sale being returned in the income-tax return for the assessment year 1973-74 as Rs. 200 per share. The assumed cost of these shares, as on 1-1-1954, to the assessees was returned as Rs. 12.50 per share for bonus shares and Rs. 1,330 per share for other shares comprising the sale. The Income-tax Officer, while computing, in October, 1975 to December, 1975, the capital gains for levy of capital gains tax, accepted the returned figures for cost of these shares but, instead of independently determining the break-up value of these shares by taking

the assets of the company at market value and including also the value of its goodwill, adopted the value of Rs. 262.38 per share, as determined by the Appellate Tribunal on 22-9-1975 in a wealth-tax appeal for the assessment year 1973-74 in the case of another member of the family by reference to the balance sheet of the company as on 31-3-1972. It was noticed in audit (June, 1976) that the company had absorbed another company with effect from 1-4-1972 and that the market value of its investments in other companies was shown in the aforesaid balance sheet as Rs. 18,80,11,350 as against their book value of Rs. 3,88,31,327. The Income-tax Officer should not only have ascertained and adopted the market value of assets of the company and the value of its goodwill but also have adjusted other figures in the balance sheet for reflecting the effect of the said absorption of another company. The break-up value of these shares on the basis of its balance sheet as on 31-3-1972 but adopting the value of investments of the company at Rs. 18,80,11,350 instead of their book value of Rs. 3,88,31,327 alone would be Rs. 1,037.55 per share. The undervaluation of these shares resulted in under-assessment of a capital gains tax of Rs. 81,39,928 in the assessment year 1973-74. Besides, there was a non-levy of gift-tax of Rs. 1,04,01,486 on the 'deemed gift' of Rs. 1,66,38,192 being the excess of fair market value (so computed) over the consideration declared for the sale.

Another member of the group gifted 750 unquoted equity shares in the same company on 27-3-1973. The value of these shares was similarly returned at Rs. 200 per share in the gift-tax return for the assessment year 1973-74 against which the value of only Rs. 262.38 per share was adopted by the same assessing officer on the aforesaid basis. Computed similarly at Rs. 1,037.55, per share, there was undervaluation of these shares by Rs. 5,97,135, leading to a short levy of gift-tax of Rs. 1,63,819.

In the gift-tax assessment in the case of three other members of the group, assessed in the same ward, gifts of 6,005 unquoted equity shares in a private limited company belonging to the group (including a 'deemed gift' on sale of 3,200 shares) made in the previous years relevant to the assessment years 1974-75 and 1975-76, the same assessing officer computed the break-up value of these shares on the basis of book value of the assets of the company, as shown in its balance sheets as on 31-3-1973 and 31-3-1974 under Rule 1-D of the Wealth-tax Rules, 1957 in August, 1975 and December, 1975 to February, 1976 *i.e.* after October, 1974, when the extension of the wealth-tax rule to gift-tax cases had been withdrawn. The value of goodwill of the company was also not ascertained and included in the assets of the company. The values per share adopted in these assessments were Rs. 135.55, Rs. 175.51 and Rs. 185.25. The values per share would have worked out to Rs. 189.47, Rs. 341.29 and Rs. 375 had the investments of the company in other companies alone been taken at their market value instead of book value. The undervaluation of these shares led to short levy of gift-tax of not less than Rs. 1,73,945 in the three cases for both the assessment years.

These three paragraphs were sent to the Ministry of Finance on 14th October, 1977; they have stated (December, 1977) in two cases that the objection is under consideration.

95. *Incorrect valuation of gifts in other cases.*

For levy of gift-tax, the Gift-tax Act provides that the value of any property transferred by way of gift shall be the price which it would fetch if sold in the open market on the date on which the gift was made.

(i) An assessee gifted a vacant plot of land measuring 6,850 sq. yds. to each of her two sons, free from encumbrances on 25-9-1972 and returned the value of the two plots as Rs. 96,000 based on the certificate dated 12-8-1972 of a

registered valuer. The registered valuer valued the land at Rs. 1,37,000 at Rs. 10 per sq. yd. but deducted Rs. 41,000 for the value of encumbrances on account of the land being in possession of protected agricultural tenants. As the land was in possession of the donees themselves and as the gift deed declared the land to be gifted free from encumbrances, the deduction of Rs. 41,000 so made was not correct. Further, the assessee sold plots adjacent to the gifted plots to a co-operative society on 27-9-1972 *i.e.* two days after these gifts at Rs. 15 per sq. yard. The gifted plots valued Rs. 2,05,500 at Rs. 15 per sq. yd. It was, however, noticed in audit that the returned value of Rs. 96,000 was accepted by the Gift-tax Officer. The undervaluation of the two plots by Rs. 1,09,500 led to short levy of gift-tax of Rs. 21,175 in the assessment year 1973-74.

The Ministry of Finance have accepted the objection and stated that the case has been referred to the departmental Valuation Cell for valuation of the gifts.

(ii) The income-tax assessments of an individual for the assessment years 1972-73 and 1973-74 showed that two plots of land received by him as gift in May and July, 1971 were sold by him to a State Housing Board in March and May, 1972 for Rs. 1,64,030. A correlation with the gift-tax assessment, made on the donor in another ward in the same place, revealed that gift-tax had been levied, taking the total value of the gift as Rs. 94,200 as returned by the donor on the basis of an approved valuer's report. The value of the land was obviously understated in the gift-tax return. Computed with reference to the compensation money of Rs. 1,64,030 received by the donee, the value of gift had been under-assessed by Rs. 69,800 with resultant short levy of tax of Rs. 12,916 in the assessment for the assessment year 1972-73 done in March, 1973.

The Ministry of Finance have accepted the objection in principle.

(iii) Each of the five assessees in two different wards made gifts respectively on 7-3-1974 and 25-3-1974 of 6,000 and 12,000 quoted shares in a public limited company. The rates per share returned and adopted in the gift-tax assessments for the assessment year 1975-76 by the Gift-tax Officers were Rs. 17.62 quoted on the stock exchange on 31-12-1973 in respect of the first gift and Rs. 19.00 per share in respect of the second gift. The correct rates quoted on the dates of gifts were Rs. 19.00 and Rs. 19.20 respectively. The adoption of incorrect rates led to under-assessment of gift by Rs. 10,680 in each of these five cases with a total undercharge of tax of Rs. 13,350.

The Ministry of Finance have accepted the objection and stated that additional tax collected is Rs. 13,350.

96. *Mistake in calculation of tax.*

On the taxable gift of Rs. 1,17,683 made by an individual for the assessment year 1972-73, completed in November, 1975, gift-tax due was incorrectly determined at Rs. 6,652 applying the rates prescribed for the slab of gift from Rs. 50,001 to Rs. 1,00,000 instead of the correct amount of Rs. 15,036 leviable by applying the rate prescribed for the slab of gift from Rs. 1,00,001 to Rs. 2,00,000. The mistake resulted in short levy of gift-tax of Rs. 8,385.

The Ministry of Finance have accepted the objection and stated that additional demand of Rs. 8,385 has been raised.

Other topics of interest.

97. *Adoption of incorrect status in assessment.*

A husband and wife, governed by the French Civil Code, settled property worth Rs. 5,21,180 by way of gift on their six daughters and one son in December, 1964 through a jointly executed deed. The donors filed separate gift-tax returns

for the relevant assessment year 1965-66, each indicating a moiety of the value of the gift and the returns were accepted by the Gift-tax Officer and separate assessments were concluded on each return.

Under the system of communion of property applicable to persons governed by the French Civil Code, the present and future belongings of each spouse become the common property of both the spouses and the joint ownership continues as long as the marriage subsists. In fact, for wealth-tax assessment, the Wealth-tax Officer had held that, under the French personal law, the wife's right to any share in the property did not arise until after divorce or legal separation and consequently assessed the entire joint property in a single assessment made in the status of 'body of individuals'. The mistake in not making a single gift-tax assessment on the property so settled resulted in short levy of gift-tax of Rs. 60,677.

The paragraph was sent to the Ministry of Finance on 14-10-1977; they have stated (December, 1977) that the objection is under consideration.

98. *Incorrect acceptance of an appellate order.*

Under the provisions of the Gift-tax Act, 1958, the value of any property other than cash, transferred by way of irrevocable gift shall be estimated to be the price which, in the opinion of the Gift-tax Officer, it would fetch if sold in the open market on the date on which the gift was made. Where, however, the value of any property cannot be so estimated as it is not saleable in an open market, the valuation shall be done in the manner prescribed in the Gift-tax Rules, 1958 framed under the Gift-tax Act, 1958. In the case of unquoted shares in companies the Rules provide that valuation shall be done by reference to total assets of the company. For this purpose, the valuation shall be done, taking

assets of the companies at their market value including also the value of goodwill, whether reflected in balance sheet or not.

On 30-3-1971, an individual made a gift of 5,000 shares of the face value of Rs. 10 each in a company controlled by his family. The Gift-tax Officer valued the shares at Rs. 54.55 per share adopting the value of assets as shown in the balance sheet of the company instead of their market value. The value of the goodwill of the company was also not included. On appeal, the Appellate Assistant Commissioner reduced this value to Rs. 42.45 per share. In doing so (i) the value of the assets was taken from the balance sheet of the company as on 28-2-1970 instead of as on 28-2-1971, the date nearer to the date of gift, and (ii) the value of investment held by the company in another company in the same family group determined at a much higher value in an appeal by another member of the family was omitted to be adopted. The Department omitted to bring these omissions to the notice of the Appellate Commissioner and accepted the appellate decision. This omission resulted in undervaluation of the gift by Rs. 89,500 (even on taking assets of the company, other than investments in other companies, at their book values), leading to undercharge of gift-tax of Rs. 23,740 in the assessment for the assessment year 1971-72 done on 2-1-1976.

The Ministry of Finance have stated that the failure to bring the omission to the notice of the Appellate Assistant Commissioner and the acceptance of the 'erroneous' decision of the Appellate Assistant Commissioner are the prerogatives of the Commissioner of Income-tax whose decisions do not fall within the purview of the Audit. The point, however, is that the appellate order contained apparent mistakes and the Gift-tax Act, 1958 provides not only for the Commissioner's authorising the filing of an appeal against the orders of the Appellate Assistant Commissioner to the Appellate Tribunal but also for the Gift-tax Officer's bringing apparent mistakes in such appellate orders

to the notice of the Appellate Assistant Commissioner for rectification.

B. ESTATE DUTY

99. Estate Duty is levied on all properties passing on death. Certain properties, though not actually passing, are deemed to pass on death, such as, interest ceasing on death, property which a deceased was competent to dispose of at the time of death or a gift, where a donor is not entirely excluded from the possession and enjoyment of the gifted property. Agricultural lands throughout India, except in the States of West Bengal and Jammu and Kashmir, are also subject to duty as the Legislatures of all the States, except these two, have adopted resolutions under Article 252(1) of the Constitution of India requesting Parliament to legislate in respect of estate duty on agricultural lands.

100. The actual receipts under estate duty in the financial years 1972-73 to 1976-77 compared as under with the budget estimates of these years :—

Year	Budget estimates	Actuals
	(Rupees in crores)	
1972-73	8.00	9.78
1973-74	9.25	10.53
1974-75	9.00	10.94
1975-76	9.25	11.65
1976-77	9.75	11.70

The arrears of demand and the number of assessments pending assessment as on 31-3-1977 were Rs. 15.56 crores and 27,256 respectively.

101. During the test audit of assessments made under the Estate Duty Act, 1953, conducted during the period from 1st April, 1976 to 31st March, 1977, 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 allowances, exemptions and reliefs.

(*v*) Mistake in giving effect to appellate orders.

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

102. *Estates escaping assessment.*

(i) In the case of a deceased person, who died on 6-8-1974, the value of bonus shares received by him from a company (immediately before the date of his death) was neither returned by the accountable person nor included by the assessing officer in the estate duty assessment completed on 10-6-1975. The omission resulted in escapement of estate of Rs. 1,04,127 with consequent short levy of duty of Rs. 28,002.

Though the case was seen in Internal Audit, this omission was not noticed by them.

The Ministry of Finance have accepted the objection and stated that an additional duty of Rs. 28,002 has been collected.

(ii) Under the provisions of the Estate Duty Act, 1953, a disposition made by a person within a period of two years prior to his death, is to be treated as property deemed to pass on death.

(a) It has been judicially held that where, on a partition of a Hindu undivided family, a deceased coparcener had taken less than his due share, there is such a 'disposition' in favour of relatives to the extent of share less taken by the deceased.

In one case it was noticed that on partition of properties, between the deceased and his three sons comprising a Hindu undivided family, made within two years before his death, the deceased had taken only Rs. 50,000 as against his due share of Rs. 1,56,095. The difference of Rs. 1,06,095 was includible in the principal value of the estate of the deceased. It was, however, not included. The omission resulted in under assessment of the estate of the deceased by Rs. 1,06,095 with consequent short levy of estate duty of Rs. 24,819.

The Ministry of Finance, in accepting the objection, have stated that additional demand for duty of Rs. 24,819 has been raised.

(b) A unilateral declaration by a coparcener of a Hindu undivided family throwing his self-acquired property into the joint family hotchpot also amounts to such a 'disposition' chargeable to estate duty.

In the estate duty assessment of a deceased coparcener, who was *karta* of a Hindu undivided family comprising himself, his wife, sons and daughters, an amount of Rs. 1 lakh thrown by him in the family hotchpot before his death on 28-9-1970 was omitted to be added to his individual estate. This omission, occurring in the assessment made on 10th June, 1974, resulted in short levy of estate duty of Rs. 6,127.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(c) A deceased person, before her death on 15th January, 1975 had paid her husband Rs. 60,000 in July, 1974 and

Rs. 22,000 in December, 1974. The husband, who was the accountable person, claimed that the payment represented blending by the deceased of her self-acquired property with the common fund of the Hindu undivided family of which she was a member and, hence, the amount of Rs. 82,000 was not includible in the estate of his deceased wife. This claim was accepted by the Estate Duty Officer both in the provisional assessment made on 21st February, 1976 and in the final assessment made on 6th October, 1976.

It has been judicially held that a female member of a Hindu undivided family cannot blend her self-acquired property with the common fund of the family. The amount of Rs. 82,000, therefore, remained includible in her individual estate for levy of estate duty. The incorrect acceptance of the claim of the accountable person led to under-assessment of her estate by Rs. 82,000 involving short levy of duty of Rs. 20,500.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(iii) A deceased partner's interest in the goodwill as in other assets of a partnership firm passes on his death and is assessable to estate duty.

A deceased on the date of his death on 17-10-1968 was a partner in three partnership firms but his interest in the goodwill of the firms, as on the date of his death, was not determined and assessed to estate duty. On this omission being pointed out in audit in December, 1976, the Department determined the share interest of the deceased in the goodwill of the three firms at Rs. 7,38,573, revised the assessment and raised an additional demand of duty of Rs. 3,21,653.

The Ministry of Finance have accepted the objection.

(iv) Section 5 of the Estate Duty Act, 1953, provides that estate duty is payable on all property which passes on the death of a person. It has been judicially held that a 'change in a beneficial interest' on a death also constitutes passing of property on death.

A deceased person, who died on 3-3-1972 was, during his life-time, enjoying the occupation of an immovable property as his residence and income therefrom and was being assessed to income-tax and wealth-tax in respect of its income and value. As on his death there was change in his beneficial interest in the property, the value of the property was includible in the principal value of his estate. It was noticed in audit (November, 1975), that the value of this property was not included in the principal value of this estate on the ground that the property stood registered in the name of his son and the deceased was not competent to dispose of the said property. The non-inclusion was incorrect as, even when there was no change in nominal title, there was a change in beneficial interest in it on the death of the deceased, deemed as passing of the property for the purpose of the levy of estate duty. The omission resulted in under-assessment of the estate by Rs. 1,30,600 with consequent short levy of estate duty of Rs. 20,220.

The Ministry of Finance have accepted the objection and stated that the amount of additional duty raised is Rs. 20,220.

(v) Under the provisions of the Estate Duty Act, 1953, any property comprised in a gift in which the donor retains some right, interest or benefit, whenever made, is deemed to pass on the death of the donor and is chargeable to duty. These provisions are also attracted where a settlor dedicates property to a deity and constitutes himself as a *shebait*.

(a) In one case, the deceased person along with his wife settled certain properties in favour of the family deities. The entire

property of the *debuttar* estate, thus settled, were acquired out of funds contributed by the deceased and his wife in the ratio of two to one. In the estate duty assessment of the deceased, the Department included a sum of Rs. 3,08,273 representing the deceased's two-third interest in the immovable properties valued at Rs. 4,62,410 of the said *debuttar* estate, as the deceased had reserved for himself rights, as *shebait,* to residence in the properties and to *prasad* of the deity. According to wealth-tax assessment, however, the said *debuttar* estate comprised not only the said immovable properties but also movable properties worth Rs. 1,24,035. Therefore, the deceased's two-third interest amounting to Rs. 82,690 in the movable properties was likewise includible in the estate. It was, however, not included. The estate was, thus, under-assessed by Rs. 82,690 with consequent undercharge of duty of Rs. 33,072.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated (December, 1977) that the objection is under consideration.

(b) In still another case, the principal value of the estate, inclusive of the share of his lineal descendants, passing on the death of a person, who died on 9th November, 1975, was assessed at Rs. 8,62,789 on 17-2-1976. The deceased person during his life-time was *karta* of a Hindu undivided family, comprising self, wife and three sons and had gifted a sum of Rs. 83,200 to the family during March, 1963 to July, 1968. This amounted to 'disposition' in favour of relatives from which the donor was not excluded. The amount of the gift was, therefore, includible in the value of his individual estate which was not included by the Department. The omission resulted in undercharge of estate duty of Rs. 15,100.

The Ministry of Finance have accepted the objection.

103. *Lack of co-ordination.*

The Public Accounts Committee have been emphasising the need for proper co-ordination among the assessment records pertaining to different direct taxes (Paragraph 4.12 of the Committee's 186th. Report (5th Lok Sabha). Cases of under-assessment resulting from failure to conduct such co-ordination continue to be noticed in test-check conducted by Audit. A few illustrative cases of such under-assessment are, as follows:—

(i) In the case of a deceased person, who died on 9-12-1971, it was noticed that the value of annuity deposit refund due, shares in a company and agricultural lands which, according to his income-tax assessment records, belonged to the deceased were not shown by the accountable person in the account filed by him. The Estate Duty Officer also omitted to correlate the estate duty assessment with the income-tax assesment records and to include the value of these assets in the principal value of his estate. The omission resulted in escapement of estate of Rs. 31,016 with consequent short levy of duty of Rs. 7,714.

The Ministry of Finance have accepted the omission and stated that additional demand for duty of Rs. 7,714 has been raised.

(ii) Under the Estate Duty Act, 1953, where the estate of a deceased person includes his coparcenary interest in the common property of a Hindu undivided family, the shares of his lineal descendants are also included in the estate for rate purposes but not for levy of duty.

In an estate duty assessment made on 18-9-1973, the properties of a deceased person (died on 17-10-1970) were treated as belonging to the Hindu undivided family and abatement of duty, as above, was allowed in respect of lineal decendants' shares. It was, however, seen that the deceased was being assessed to income-tax and wealth-tax only in the status of 'individual' prior to his death and his wife, who succeeded to him under a will, was

also assessed to income-tax in the status of individual only. Her claim for the status of Hindu undivided family was rejected by the Income-tax Officer on 29-11-1974 on the ground that the properties were self-acquired properties of the deceased. The Income-tax Officer did not communicate his finding to the Estate Duty Officer. The failure to co-ordinate the assessments under different direct tax laws resulted in incorrect allowance of rebate in respect of lineal descendants with consequent short levy of estate duty of Rs. 6,057.

The Ministry of Finance have accepted the omission and stated that additional demand for duty of Rs. 6,057 has been raised.

(iii) In the original estate duty assessment of a deceased person (died on 7-7-1969) made on Ist March, 1971, half of the value of two properties amounting to Rs.40,438 was included in the estate of the deceased as the properties were shown in the account for his estate filed by the accountable person as belonging to the Hindu undivided family in which the deceased as a coparcener had one-half share. From the wealth-tax assessment records of the deceased, it later on came to the notice of the Department that the properties wholly belonged to the deceased in his individual capacity and were, thus, wholly includible in his estate. In response to a show cause notice issued on 14/16th May, 1973, the accountable person agreed to(May, 1973) necessary rectification of the estate duty order. But when the rectification order was actually passed on 20th August, 1975, the value of the other half of the properties was omitted to be included. The omission resulted in loss of estate duty of Rs. 8,890 as further rectification was stated to have become time-barred.

The Ministry of Finance have accepted the objection.

(iv) In paragraph 71 of Chapter IV of this Audit Report, results of a review conducted by Audit, indicating cases of non-and under-assessment of wealth-tax on agricultural landholdings, have been incorporated.

It was also noticed in eight cases of deceased landholders that though lands valued in each case between Rs. 3,00,700 and Rs. 7,87,500 passed on their deaths, no estate duty returns were made nor were estate duty proceedings initiated, resulting in escapement of estate aggregating Rs. 33.26 lakhs.

This escapement was brought to the notice of the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

104. *Incorrect valuation of unquoted equity shares.*

In paragraph 72 of the Audit Report, 1972-73, it was pointed out that despite the clear difference in the phraseology of the Estate Duty Act, 1953 and the Wealth-tax Act, 1957, the Board extended, by executive instructions issued in March, 1968, the application of a rule for valuation of unquoted equity shares in companies framed under the Wealth-tax Act to the valuation of such shares under the Estate Duty Act. While according to the Estate Duty Act, the value of such shares is to be ascertained by reference to "total assets" (less liabilities existing on the relevant date) of the company, that under the Wealth-tax Act is to be determined by reference to the "net assets of the business as a whole, having regard to its balance sheet". In other words, it is market value of assets and not only the balance sheet figures that have to be taken for such valuation for estate duty purposes. In consequence of the said paragraph, the Board cancelled their executive instructions of March, 1968 in October, 1974.

In paragraph 112(i) of the Audit Report, 1975-76, an instance of an erroneous valuation of such shares being not rectified even after October, 1974 when the Board had accepted the correct position, resulting in under-assessment of duty of Rs. 1,80,90,526 was pointed out.

The Department of Revenue accepted that objection in principle.

(i) In the Estate Duty case of a deceased person holding 555 unquoted equity shares in a company, the Estate Duty Officer determined in March, 1976 the break-up value of these shares as Rs. 636 per share, taking the assets of company at their book value instead of their market value, omitting to include the value of its goodwill and incorrectly deducting as its liability the proposed dividend of Rs. 3,94,000 which had not been declared and which, thus, was not an existing liability on the balance sheet date. The incorrect allowance of the liability alone resulted in under-valuation of these shares by Rs. 1,11,000 with consequent short levy of estate duty of Rs. 27,740.

The Ministry of Finance have accepted the objection.

(ii) In the case of another deceased person, who died on 11-10-1967, the assessing officer had, while computing the value of certain unquoted equity shares held by the deceased in a 'closely-held company' applied, in March, 1974, the rule in the Wealth-tax Rules. It was noticed in audit in April, 1975 that, despite the issue of executive instructions in October, 1974 directing that Wealth-tax Rules should not be applied for the valuation of unquoted equity shares for estate duty purposes, the original assessment had not been rectified. There was an under-assessment of estate by Rs. 86,902 and a short levy of duty of Rs. 34,300.

The paragraph was sent to the Ministry of Finance on 10-10-1977; they have stated (December, 1977) that the objection is under consideration.

105. *Incorrect valuation of other assets.*

(i) In the estate duty case of a deceased person, who died on 5-9-1973, the value of a vacant site admeasuring 7.47 acres owned by the deceased in a metropolitan area was declared by the accountable person as Rs. 1,03,000 on the basis of an approved valuer's report. This value was accepted by the Estate Duty Officer in the assesment made in September, 1974. In urban land tax proceedings, however, the value of the same property, as in July,

1963, had been determined by the Urban Land Tax Appellate Tribunal in September, 1973 as Rs. 5,60,000. On the undervaluation being pointed out by Audit (August, 1975), the Department adopted the value of the vacant site, as on the date of death, as Rs. 4,51,200 and rectified the under-assessment of the estate by Rs. 3,48,200 raising demand for additional duty of Rs. 1,04,460.

The Ministry of Finance have accepted the objection.

(ii) In the estate duty assessment done in April, 1975 of a deceased person, who died on 28th September, 1973, the value of agricultural lands belonging to him was computed as Rs. 2,94,000. It was, however, noticed that in the wealth-tax assessment of the deceased for the assessment year 1973-74 (valuation date 31st March, 1973) done in May, 1974, the value of Rs. 4,00,000 as returned for the land had been adopted. In the time lag of just six months between the valuation date and the date of death, the value of the lands could not have gone down. Omission to adopt the value of Rs. 4 lakhs in the estate duty assessment resulted in under-assessment of the principal value of the estate by Rs. 1,06,000 and short levy of estate duty of Rs. 42,400.

The paragraph was sent to the Ministry of Finance in August, 1977; they have stated (December, 1977) that the objection is under consideration.

(iii) In the estate duty assessment of a deceased person, the value of two rented properties was arrived at by capitalising their net annual value. It was, however, noticed in audit that, while computing the net annual value by deducting allowable outgoings, water tax recovered from the tenants had not been disregarded. The omission resulted in undervaluation of the properties by Rs. 90,100 and under-assessment of the estate to the same extent, leading to a short levy of estate duty of Rs. 22,524,

Though the case was seen by Internal Audit, the objection was not taken by them.

The Ministry of Finance have stated that the valuation was made by the Valuation Cell of the Department.

106. *Mistakes in the computation of principal values of estates.*

(i) In the estate duty assessment of a deceased person, who died on 3-6-1965, deduction for the amount of debt of Rs. 59,784 owed by the deceased was allowed twice, once while arriving at the net proceeds of the life insurance policies, on which the debt was secured, and again at the stage of working out the principal value of the estate liable to duty. This resulted in under-assessment of the estate by Rs. 59,784 and a short levy of duty of Rs. 24,336.

The Ministry of Finance have accepted the mistake and stated that additional demand of Rs. 24,336 has been raised.

(ii) Under the provisions of section 49 of the Estate Duty Act, 1953 read with Rule 16 of the Estate Duty Rules, 1953, the amount of estate duty paid in a non-reciprocating country is allowable as a deduction from the value of the property situated in such country and passing on the death of the deceased. For this purpose the duty paid in the foreign country is to be converted into Indian rupees at the rate of exchange prevailing at the time of payment of duty in the foreign country.

In the estate duty assessment of a deceased, made in July, 1973, this deduction was allowed converting the local duty of Rs. 1,13,140 paid in Sri Lanka to Indian rupees at the rate of exchange prevalent on the date of death (May, 1967) instead of at the rate prevalent on the date of payment of duty. The application of the incorrect rate of exchange resulted in excess allowwance of deduction of Rs. 39,520 with short levy of duty of Rs. 11,860.

The Ministry of Finance have accepted the mistake.

(iii) In the estate duty case of a deceased person, while computing the principal value of her estate, the assessing officer computed 25 per cent of the excess of assets over liabilities of a partnership firm as Rs. 46,640, being her share interest therein as a partner in the firm but omitted to include the same in her estate. This omission resulted in under-assessment of estate of Rs. 46,640 with a consequent short levy of estate duty of Rs. 13,992.

The Ministry of Finance have accepted the objection and stated that demand for additional tax of Rs. 13,992 has been created.

(iv) Under the Estate Duty Act, 1953, all property which, at the time of his death, the deceased was competent to dispose of, is deemed to pass on his death and its full value is includible in his estate for levy of estate duty. Where, the deceased was a coparcener of a Hindu undivided family governed by *Mitakshara* school of Hindu law, his coparcenery interest in the joint family property and the share of his lineal descendants therein (for rate purposes only) are includible in the estate.

In the estate duty assessment, completed in November, 1971, a deceased person, who died in July, 1961, was treated as a coparcener of a Hindu undivided family governed by the *Mitakshara* school and the principal value of his estate, including the share of his lineal descendants for rate purposes, was determined as Rs. 26,28,577. Following a decision of Madras High Court holding aggregation of lineal descendants' share *ultra vires*, the assessment was revised in July, 1973 and the share of lineal descendants was deleted. The revised principal value for levy of estate duty was determined as Rs. 3,97,120. It was noticed in audit in January, 1975, however, that, according to a release deed executed by the deceased and his two brothers in September, 1943, they had no ancestoral property and the properties were acquired through their joint efforts in a joint venture, indicating that they were co-owners of the self-acquired properties. In the income-tax assessments for the assessment years 1945-46 onwards, the deceased had claimed his status as 'individual' and this status had also been adopted. In an appeal in the case of one of the brothers of the deceased, the Appellate Assistant Commissioner in February, 1973 had held that the properties, acquired through the joint efforts of the three brothers, would belong to the appellant wholly and exclusively as his own property when the two brothers (including the deceased) separated from the joint venture, taking their

respective shares under the release deed. Thus, the property passing on the death of the deceased belonged entirely to him as his separate property and it was incorrectly treated as belonging to a Hindu undivided family in the original and revised assessments. The mistake resulted in under-assessment of the estate by Rs. 18,04,264 with consequent short levy of estate duty of Rs. 4,48,403.

The Ministry of Finance have stated that under the Hindu law a coparcener can blend his individual property into joint family property. There is no evidence in this case, however, of the deceased having so blended his separate property with his joint family hotchpot as allowed by the law.

(v) A male who, for the time being is the sole surviving coparcener in a Hindu undivided family governed by the *Mitakshara* school of Hindu law, is competent to alienate the coparcenary property in the same way and to the same extent as his separate property and the alienation cannot be questioned by the female members of the family or by a son, if any, born to or adopted by him subsequent to the alienation. On the death of such a sole coparcener, the whole of his property including the coparcenery property passes by intestate succession to his own heirs and, as such, the whole of his estate is assessable to estate duty. This well settled position at law was laid down also in the Board's circular instructions issued in October, 1959.

In the case of a deceased sole coparcener, who died on 10th May, 1973, it was noticed (August, 1975) in audit that the circular instructions of October, 1959 were not kept in view and the Assistant Controller of Estate Duty treated only one-half of the Hindu undivided family property valuing Rs. 5,27,280 as passing on his death, treating the other half as belonging to his wife. The principal value of his estate was, thus, computed short by Rs. 2,63,640 resulting in short levy of estate duty of Rs. 58,638.

The Ministry of Finance have accepted the objection.

(vi) In the case of a deceased person, who died in 1963, three separate accounts were filed by three accountable persons. In the accounts filed by the Official Receiver appointed by the court for the estate of the deceased and by one son of the deceased, four house properties were shown as belonging to the deceased. But subsequently, the claim of the same son that the four house properties belonged to the wife of the deceased was accepted by the Assistant Controller of Estate Duty without verification and the value of these properties was excluded from the principal value of the estate in the assessment made by him on 20th September, 1971. The wife of the deceased also died in 1968 and, in the account filed by the Official Receiver of her estate in the same ward, her share in the four house properties was shown only as one-ninth. Thus, though the four properties were shown as belonging to the deceased husband in the account filed in respect of estate duty cases of both the husband and wife by the only authorized accountable person *viz.*, the Official Receiver of their estates before the assessment was completed in September, 1971, the value of Rs. 2,21,000 of the four properties was excluded from the estate of the deceased husband. Further, the documents filed with the account showed that a printing press had been installed in one of the house properties. Its value of Rs. 25,000 was also omitted to be included in the estate of the deceased husband. On these omissions being pointed out by Audit in March, 1973, the Department made an addition of Rs. 2,46,000 to the principal value of the estate and raised an additional demand of duty of Rs. 31,712.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

107. *Irregular/excessive allowances, exemptions and reliefs.*

(i) According to the provisions of the Estate Duty Act, 1953, no estate duty shall be chargeable in respect of one house or part thereof exclusively used by the deceased for his residence

to the extent the principal value thereof does not exceed Rs. 1 lakh, if such house is situated in a place with a population exceeding 10,000 and the full value thereof in any other case.

(a) In the estate duty assessment of a deceased person, such exemption was allowed even though the house was not exclusively used by him for his residence but had been kept vacant. The deceased person had claimed vacancy allowance in respect of the same house in his income-tax returns for the year immediately preceding his death stating that he had not been in occupation of the house as he had been provided by his employer with a rent free accommodation at some other station and this contention of the assessee had been upheld by the Appellate Assistant Commissioner and the Appellate Tribunal. As the house was not being used by him, the exemption allowed was not correct. This incorrect exemption resulted in underassessment of the estate by Rs. 1,00,000 leading to a short levy of duty of Rs. 40,000.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

(b) In paragraph 4.40 of their 50th Report (Fifth Lok Sabha), the Public Accounts Committee had observed that, with a view to preventing evasion of duty, the Board should issue guidelines for determining the extent of land which would be held as appurtenant to house for the purposes of this exemption. Accordingly, the Board had clarified in August, 1972 that open land, to the extent it was necessary to ensure proper enjoyment of the house, would be held as appurtenant to the house. The Board had further clarified in September, 1974 that, where the municipal bye-laws fixed the minimum land required to be kept vacant around a house, land to that extent only would be treated as necessary for the enjoyment of the house.

In one case, the area of open land surrounding a house property having covered area of 8,868 sq. ft. was 1,21,000 sq. ft.

The entire open land was treated as appurtenant to the house and its value taken into account while allowing exemption in respect of the value of the house, although land of only 8,868 sq. ft. could be so treated under the Board's instructions of September, 1974. The value of Rs. 1,09,700 of the remaining vacant land measuring 1,12,132 sq. ft. escaped levy of duty. Besides this, outhouses valued at Rs. 28,670 also escaped assessment. The cumulative effect of these mistakes resulted in short levy of duty of Rs. 18,880.

In another case, land measuring 25,000 sq. ft. was treated as appurtenant to a house, although land of only 4,200 sq. ft., equivalent to the covered area of the building, could be so treated. The remaining land, the value of which was Rs. 99,600, escaped assessment resulting in short levy of duty of Rs. 27,180.

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

(ii) In determining the principal value of an estate for levy of estate duty, a deduction is admissible for actual liabilities which were *bona fide* debts created by the deceased for full consideration in money or money's worth, wholly for his use and benefit.

While computing the principal value of the estate of a deceased person, who died on 17-9-1972, a sum of Rs. 60,000 was deducted as a debt which had been incurred by the deceased for making a gift to his daughter more than two years before his death. The debt, which was, thus, not incurred for full consideration for the use and benefit of the deceased, was not deductible. This incorrect deduction resulted in under-assessment of the principal value of the estate by Rs. 60,000 leading to short levy of duty of Rs. 24,000.

Though the case was checked by the Internal Audit, the point was not noticed by them.

The paragraph was sent to the Ministry of Finance in September, 1977; they have stated (December, 1977) that the objection is under consideration.

108. *Mistake in giving effect to appellate orders.*

While computing the principal value of the estate of a deceased person, who died in April, 1966, the gross annual yield from a cocoanut grove in which the deceased had 50 per cent share, was determined as Rs. 5,100 and, after deducting 25 per cent thereof towards expenses, the value of the grove was determined at 20 times the net annual yield of Rs. 3,825. On appeal by the accountable person, the Appellate Controller held that 33⅓ per cent of the gross annual yield should be allowed towards expenses. While giving effect to the appellate orders, the net annual yield was incorrectly determined as Rs. 2,400 instead of Rs. 3,400, resulting in under valuation of the share of the deceased in the grove by Rs. 10,000 and short levy of duty of Rs. 4,000.

The Ministry of Finance have accepted the objection.

NEW DELHI
The , 1978

(V. GAURI SHANKER)
Director of Receipt Audit.

Countersigned.

NEW DELHI
The , 1978

(A. BAKSI)
Comptroller & Auditor General of India.