REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1996
NO.12 OF 1997

UNION GOVERNMENT
(REVENUE RECEIPTS - DIRECT TAXES)

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Prefatory Remarks

This Report for the year ended 31 March 1996 has been prepared for submission to the President under Article 151(1) of the Constitution of India.

The audit of Revenue Receipts - Direct Taxes of the Union Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts under direct taxes comprising corporation tax, income tax, wealth tax, gift tax etc. The Report is arranged in the following order:-

(i) Chapter 1 includes information on the arrangements for audit of direct taxes and mentions the results thereof;

(ii) Chapter 2 incorporates important statistical information on the administration of direct taxes;

(iii) Chapter 3 includes three system appraisals on "Summary Assessment Scheme", "Accounts under Section 44AB of the Income Tax Act,1961", and "Presumptive Taxation Scheme (Section 115K)" as well as two other topics of contemporary interest viz. "Case of M/s PILCOM" and "Cases of concealment of income and tax evasion by certain suppliers to the Animal Husbandry Department, Government of Bihar";

(iv) Chapters 4 and 5 mention the issues resulting from the audit of corporation tax and income tax respectively;

(v) Chapter 6 highlights the results of the audit of wealth tax, gift tax, interest tax andexpenditure tax.

The observations included in this Report have been selected from the findings of the test audit conducted during 1995-96 as well as in earlier years but which could not be covered in the previous Reports.

Overview

Audit of Direct Taxes and Results of Audit

1. Audit of the revenues of the Union Government from Direct Taxes is conducted by the Comptroller and Auditor General of India under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971. This audit which is conducted through test check of assessment and other records maintained by the Income Tax Department, has a two-fold objective-firstly to obtain an assurance that the systems and procedures laid down by the department in the critical areas of tax administration are working reasonably effectively and secondly to evaluate the degree of compliance with tax laws, rules and judicial pronouncements in assessing, demanding and collecting tax revenues from various assessees.

2 The tax effect of the 327 audit observations and the three system appraisals featured in this Report is Rs.449.86 crore. and that of the 11 cases of overassessment is Rs.2.02 crore. Besides, 2 other topics of contemporary interest were the subject matter of the audit scrutiny for this Report. (the approximate tax effect of one topic is Rs.199.93 crore (including penalty of Rs.84.32 crore)).

During the course of local test audit conducted in 1995-96, 16,768 audit observations on underassessment involving tax effect of Rs.2281.14 crore and 46 cases of overassessment involving tax effect of Rs.7.99 crore have been intimated to the department on Corporation Tax, Income Tax and Other Direct Taxes. Out of these, 819 cases with tax effect of Rs.250.47 crore and 12 cases of overassessment involving Rs.2.03 crore have been issued to the Ministry as individual draft paragraphs. Out of the cases issued to the Ministry, 327draft paragraphs with tax effect of Rs.218.12 crore (including potential tax effect of Rs.75.68 crore) and 11 cases involving overassessment of Rs.2.02 crore (including potential tax effect of Rs.0.85 crore) have been included in this Report. Thus a very small fraction of audit findings have been included in this Report. Some cases noticed in earlier years have also featured as also few cases of overassessment of tax. The cases reported herein are those which either have substantial tax effect or have certain important/ interesting features which in the perception of audit, should be reported. Of the cases featured in this Report, 216 cases involving revenue of Rs.132.83 crore (including potential tax effect of Rs.63.58 crore) have been accepted by the Ministry and remedial measures have been initiated.

Besides the audit observations on individual assessment cases, this Report also includes three system appraisals on the following subjects:

-Summary Assessment Scheme.
-Audit of Accounts under Section 44AB.
-Presumptive Taxation Scheme.

The other two topics of contemporary interest featured here are on

-Case of M/s PILCOM
-Cases of concealment of income and tax evasion by certain suppliers to the Animal Husbandry Department, Government of Bihar.

3. In the subsequent paragraphs of this section, brief particulars of a few cases selected from each chapter of this Report, have been featured to give an idea in brief of the audit findings. Many other interesting cases of different types have been featured in the chapters.

Revenues from Direct Taxes and Administration of Direct Taxes

4. The actual collections of Direct Taxes increased from Rs.26970.88 crore in 1994-95 to Rs. 33559.28 crore in 1995-96 constituting an increase of 24.4 percent over the previous year. The ratio of of Direct Taxes in the Gross Domestic Product was 3.4 percent. The average buoyancy of Direct Taxes during 1995-96 was 0.05 which increased by 0.01 percent compared to the previous year.

While the collections of direct taxes increased by 24.4 percent, the cumulative arrears of Direct Taxes also increased from Rs.22698.64 crore in 1994-95 to Rs.28969.59 crore representing an increase of 21.6 percent. The net arrears of direct taxes also increased from Rs.6274.98 crore to Rs.8287.20 crore in 1995-96, an increase of 32 percent over the previous year. Further, 68.7 percent of the net arrears outstanding on 31 March 1996 was constituted by high demand cases of Rs.10 lakh and above.

[Paras 2.2.1, 2.3(ii)(iii) and 2.9]

5. The expenditure incurred on collection of all the Direct Taxes during 1995-96 was 1.47 percent of the total collections. The preassessment collections of direct taxes by way of tax deducted at source, advance tax and self assessment tax were 82.62 percent of the total collection.

[Paras 2.6.1 and 2.5]

6. During the year the number of assessees increased by 3,79,908 and there were 1.06 crore assessees as on 31 March 1996. Pendency of assessments continued to remain an area of concern as the percentage of pending scrutiny and summary cases remained high at 33.79 and 21.32 percent respectively.

The Department could dispose only 2.8 percent of its total workload of assessments after scrutiny and thus the bulk of the workload was disposed under the summary assessment scheme. Even in the high income category of cases the department could not dispose more than 25 percent cases after scrutiny.

[Paras 2.7.1,2.8.1(I) and (iii)]

7. Cases pending with appellate authorities have a perceptible impact on the assessments and collections of direct taxes. There were 1.57 lakh cases pending with Commissioners (Appeals) and 73630 cases with Dy.Commissioner (Appeals) as on 31 March 1996 and 16.3 percent of cases pending with the Commissioners were high demand cases. Besides, 1.93 lakh cases were pending with the Supreme Court, High Courts and Income Tax Appellate Tribunals.

While the arrears of direct taxes which remained uncollected as a result of stay/kept in abeyance by appellate authorities on 31 March 1996 was Rs.9698.16 crore, Rs. 1002.52 crore was due to the stay and abeyance granted by the departmental appellate authorities.

[Paras 2.11 and 2.9(c)]

System Appraisals

8. (a) Summary Assessment Scheme

(i) A review of the working of the Summary Assessment Scheme during the period 1992-93 to 1994-95 revealed that the twin objectives of the Scheme - to encourage voluntary compliance on part of the assessees and to enable the assessing officers to devote more time to make quality assessments in selective cases have not been achieved. The department had not made any estimate of the revenue loss that would occur due to the implementation of the scheme.

(ii) During the period under review, the percentage of scrutiny assessment in the higher categories of income/loss either remained static or came down. The Department could dispose only 3.5 percent of all cases after scrutiny during the period.

(iii) The overall pendency of the assessments continued to remain high and the department therefore needs to tackle the problem of

increasing workload vis a vis the existing work force.

(iv) In 26.83 lakh cases, additions with a tax effect of Rs.401.32 crore could be made to the income returned. In 1.04 lakh cases scrutinised by the department, additions of Rs.846.02 crore were made to the income after scrutiny and loss returned was reduced by Rs.1207.44 crore and demand of Rs.324.78 crore could be recovered, indicating that the voluntary compliance by the assessees is not forthcoming as the additions are either due to suppression of income or claiming of wrong deductions/ exemptions under the various provisions of the Act which could be detected by the department only after scrutiny. The revenue foregone in cases not scrutinised would therefore, be much more.

(v) In 218 cases, failure to make necessary prescribed adjustments under the scope of Section 143(1)(a) of the Act resulted in undercharge of Rs.140.16 crore (including potential tax of Rs.69.60 crore) and in 33 cases, additional tax of Rs.1.56 crore though leviable was not levied or short levied.

(vi) Due to lacunae in the Act and deficiencies in procedure applicable to the Scheme, on account of non linking of past assessment records, failure to apply the law as laid down by judicial authorities and carrying out of prima facie adjustments at the scrutiny stage with the resultant non levy of additional tax, resulted in undercharge of tax of Rs.27.49 crore (including potential tax of Rs.12.64 crore and non levy of additional tax of Rs.9.15 crore) in 107 cases test checked.

(vii) In many cases, the summary assessments were not revised consequent upon subsequent proceedings though required to be done, resulting in a short levy of tax of Rs.19.59 crore in 35 cases alone.

(viii) The implementation of the Scheme under Wealth Tax Act also revealed several cases of underassessment mainly due to failure to link the asessment records of income tax of the assessees with those of wealth tax, though both the assessments were done by the same assessing officer. The undercharge of wealth tax due to this was Rs.121.53 lakh in 84 cases testchecked.

[Para 3.1]

8(b) Audit of Accounts under Section 44AB of the Income Tax Act

(i) The department had apparently not set up a system to monitor whether the statutory obligations imposed on the accountants have

been fulfilled or not. Setting up of such a system would improve the quality of statement of particulars accompanying the audit report thereby assisting the assessing officers.

(ii) Penalty was not levied nor reasons for the omission recorded in 300 cases where the required tax audit reports were not furnished by the assessees and 707 cases where the above report were furnished belatedly.

(iii) In 1627 cases it was noticed that the Accountants failed to furnish the requisite information as to the correctness of the accounts or have furnished misleading information necessitating additions aggregating Rs.333 crore to the assessees' returned incomes.

(iv) In 6091 cases, the statements of particulars accompanying the tax audit reports were found not helpful in determination of correct incomes. In 590 cases, inadmissible expenditure aggregating Rs.5105.99 lakh were recommended as admissible.

[Para 3.2]

8(c) Presumptive taxation Scheme (Section 115K)

(i) The Presumptive taxation Scheme as introduced in India is different from those prevailing in other countries because apart from presumption there is an element of volition also built in the scheme.

The Board had fixed a target of an additional 10 percent of the existing assessees of the four metropolitan cities and 15 percent for the rest of the country, taking the number of assessees as on 1.4.1992 (87.88 lakhs) as the base. The scheme has not fulfilled the objective of widening the tax base since the addition of new assessees under the scheme has been less than 5 percent of the existing assessees as on 1.4.1992.

(ii) Though the scheme is not applicable to professionals, manufacturers, existing assessees and persons not engaged in any business or vocation yet 2014 ineligible persons opted for the scheme and the department did not exercise any check.

(iii) Abuse of the scheme was noticed in some cases when the same assessee filed separate statement cum challan forms for each of the goods carrier operated by him or when the business was split up.

[Para 3.3]

Other cases of contemporary interest

9(a) Case of M/s PILCOM

M/s PILCOM was a body setup for organising the World Cup Cricket Tournament during February/March 1996.

The case of M/s PILCOM was reviewed on the basis of certain information received that the Central Board of Direct Taxes had interfered/obstructed the assessment proceedings initiated against them by the income tax authorities at Calcutta.

Results of the audit scrutiny revealed the following:

(i) CBDT's directions to the income tax authorities at Calcutta to withdraw the notice issued by them under Section 175 to commence the assessment proceedings against M/s PILCOM, were illegal. The Board by doing so had overstepped their jurisdiction by violating the provisions of Section 119 of the Income Tax Act.

(ii) The decision of the CBDT on the taxability of M/s. PILCOM and on the issue of guarantee money paid to the participating countries were not in accordance with the provisions of law.

(iii) Had the Board not interfered with the assessment proceedings, M/s PILCOM would have discharged their liability under the provisions of Section 194C regarding tax deductible at source on payments made to contractors etc.

The tax liability of M/s PILCOM is not quantifiable before the assessment proceedings are completed.

[Para 3.4]

9(b) Cases of concealment of income and tax evasion by certain suppliers to the Animal Husbandry Department, Government of Bihar

Cases of fraudulent payments, running into crore of rupees made by the Animal Husbandry Department, Government of Bihar to certain suppliers, came to light in January/February 1996.

As the suppliers were also income tax assessees the cases of some major suppliers were examined in audit. The results of the audit scrutiny revealed the following:

(i) The Income Tax Department was aware way back in 1992 of the racket of bogus supplies to and fraudulent payments by the Animal

Husbandry Department, Government of Bihar on basis of which search and seizure operations were conducted on atleast 5 suppliers. The information on the modus operandi was not passed on to either the State Government or other criminal investigating agencies which would have brought to light the "Fodder Scam".

(ii) Seized cash of Rs.1.20 crore was returned illegally and hastily to Shri Badrinarayan & Co., the supplier who had received the largest payments ; despite the categorical statements in the Appraisal Report about the modus operandi of bogus supplies and clear directions to the assessing officer to thoroughly probe the fictitious books of accounts, bank accounts and purchases etc. This frustrated the subsequent assessment proceedings.

(iii) The regular assessment proceedings for AY 1992-93 of Shri Badrinarayan & Co. were not monitored effectively by the Commissioners and the CBDT, though it was a search and seizure case and it was taken up for completion few months before it was to get time barred. Due to late commencement crucial evidences were lost and the investigations made to probe the purchases effected by the assessee to make the supplies to the Animal Husbandry Department, could not be proved. The entire purchases were allowed, though the sample test checked purchases could not be proved.

No scrutiny was done of the bank account of the assessee to trace the destinations of the huge withdrawals despite clear direction to the effect in the Appraisal Report. This and other irregularities have resulted in an approximate undercharge of tax of Rs.21.94 crore. Besides, penalty of Rs.23.55 crore was leviable for concealment of income.

(iv) The scrutiny assessments of six other of the top ten suppliers, assessed in Ranchi and Patna charges, revealed that the incomes were assessed as returned by the suppliers with no substantial additions. All the assessments were completed in a routine manner without probing the purchases made to effect the supplies, sales tax entries and scrutiny of the bank accounts. This has resulted in approximate undercharge of tax of Rs.12.30 crore and penalty of Rs.23.55 crore is also leviable.

(v) Examinations of the top 10 cases revealed that the returns filed have not been subjected to scrutiny in some cases and the time limit for taking up the cases for scrutiny has also expired in some of the cases.

The irregularities and omissions in the scrutiny assessment hold good for the returns which have been processed summarily and the issues will have to be taken care of in the scrutiny assessment while determining the final tax dues.

(vi) None of the 5 cases assessed in West Bengal, including Little Oak Pharmaceuticals (one of the top ten suppliers) had been subjected to scrutiny for the years 1994-95 and 1995-96.

In the case of Little Oak Pharmaceuticals, the sales and consequential income declared were grossly understated in comparison to the payments received from the Animal Husbandry Department.

In the case of Md. K.P. Usman, the returns of income had not been filed though he had received more than Rs.10 lakh from the AHD.

In the case of Medivet, though there was a search and seizure operation, there were several irregularities in the regular assessments of 1992-93 and 1993-94 such as non verification of purchases and irregular allowance of cash payments resulting in undercharge of tax of Rs.1.69 crore. The same assessee had filed a return of income for AY 1994-95 but the same had not been processed and no return had been filed for AY 1995-96.

In case of Anshuman Enterprises, a 'brain child' of a district Animal Husbandry officer, Government of Bihar, though the assessee had received Rs.4.29 crore during the period 1993-1996 from the AHD, no returns have been filed.

In case of Quality Chemical Supplier, a firm owned by Shri Dipesh Chandak and Group, the regular assessments were done independently though it should have been centralised and done by the same assessing officer who had assessed Shri Badrinarayan & Co. As a result the regular assessment suffered the same irregularities on account of non verification of purchases and irregular allowances of cash payments resulting in an under charge of Rs.188.38 lakh.

(vii) In 113 cases though the assessees had received substantial sums from AHD during FY 1993 to 1995 they had not filed their returns of income, nor had the department initiated steps to make the assessees file the return. This indicates a serious flaw in the assessment machinery of the department and their co-ordination

with other agencies if such large number of assessees could remain undetected.

The total approximate undercharge of tax in all the cases reviewed is to the tune of Rs.115.61 crore. Besides, penalty for concealment of Rs.84.32 crore is also leviable.

[Para 3.5]

Audit observations on Corporation Tax

10(i) Corporation tax constitutes approximately 50 percent of the collections of direct Taxes, 536 audit observations on various irregularities/omissions/mistakes in corporate tax assessments were issued to the Ministry of Finance with tax underassessment of Rs.228.22 crore.

The substantial portion of the underassessments noticed in audit were due to avoidable mistakes in computation of income and tax, incorrect computation of business income, irregularties on account of depreciation and investment allowance, incorrect deductions under Chapter VIA and non levy/short levy of interest.

Avoidable mistakes in computation of income and tax due to incorrect adoption of figures, arithmetical errors and application of incorrect rates of tax etc, continued to occur despite instructions issued by the Board from time to time. In 18 cases, the undercharge of tax due to these mistakes was of Rs.2633.53 lakh (including potential tax effect of Rs.1704.13 lakh). Besides, mistakes in 6 cases led to overcharge of tax of Rs.120 lakh (including potential tax effect of Rs.63.71 lakh).

[Paras 4.6 and 4.7]

(ii) In Pune, Maharashtra charge, in the case of a company omission to disallow interest payment of Rs.335 lakh on account of non-business expenditure led to short levy of tax of Rs.176 lakh.

[Para 4.8]

(iii) In West Bengal charge, failure to add back provisions for interest tax which was not debited in the accounts of a banking company even though a deduction was allowed on actual payment basis, resulted in underassessment of income of Rs.710.50 lakh involving potential short levy of tax of Rs.367.69 lakh.

[para 4.9(a)]

(iv) Incorrect allowance of liabilities under Section 43B on account of interest payable to financial institutions, customs duty and sales tax resulted in undercharge of tax of Rs.152.67 lakh in 6 cases.

(v) In the case of a widely held company in West Bengal charge, sales tax of Rs.536.11 lakh collected by the company from customers had not been passed through its accounts and the same remained unpaid during the relevant previous year or before the due date of the returns. However, the same was omitted to be taxed as a trading receipt which resulted in excess carry forward of loss involving potential tax effect of Rs.246.61 lakh.

[Para 4.11(iii)(a)]

(vi) In West Bengal charge, in the case of a widely held company engaged in business of growing and manufacturing Tea only 40 percent of the "income from other sources" was charged to tax instead of the entire amount resulting in underassessment of income of Rs.138.64 lakh involving short levy of tax of Rs.150.72 lakh (including interest).

[para 4.12]

(vii) In Mumbai City charge, in the case of a company, excess allowance of relief on account of excise duty embedded in the closing stock already allowed in the previous assessment year resulted in short levy of tax of Rs.208.90 lakh (including interest).

[Para 4.15.4(i)]

(viii) In Tamil Nadu and West Bengal charges, in the cases of two widely held companies incorrect allowance of depreciation at lower rates, in addition to excess allowance of depreciation in respect of certain machinery even though the same was used for less than 180 days by one company led to under assessment of income aggregating Rs.193.57 lakh involving short levy of tax of Rs.108.16 lakh.

[Para 4.16.4]

(ix) In Gujarat and Mumbai City charge in the case of a public limited company and widely held company irregular set off of unabsorbed depreciation which was already set off in earlier years resulted in underassessment of income and excess carry forward of depreciation by Rs.698.32 lakh and Rs.739.36 lakh respectively involving short levy of tax of Rs.935.13 lakh (including potential tax effect of Rs.382.62 lakh).

[Para 4.16.5(i)(a) and (b)]

(x) In Tamil Nadu charge, in the case of a widely held company, irregular adoption of the written down value of assets of a company amalgamated with it resulted in excess allowance of depreciation of

Rs.147.36 lakh involving tax effect of Rs.131.25 lakh in addition to potential tax effect of Rs.233.43 lakh in respect of the excess written down value carried over to succeeding assessment years.

[Para 4.16.5(ii)]

(xi) In Tamil Nadu charge, irregular allowance of depreciation on the same written down value on the assets transferred to a company from another company amalgamated with it resulted in underassessment of income by Rs.953 lakh involving undercharge of tax of Rs.790.44 lakh.

[Para 4.16.6(ii)]

(xii) In Bhopal, Madhya Pradesh charge, irregular grant of investment allowance in respect of plant and machinery put to use for trial run only without commencement of any commercial production resulted in underassessment of Rs.290.62 lakh involving potential short levy of tax of Rs.172.62 lakh.

[Para 4.17.1(i)]

(xiii) In West Bengal charge, omission to restrict the unabsorbed depreciation and investment allowance brought forward from earlier years to two thirds of the amount resulted in underassessment of income by Rs.783.68 lakh involving short levy of tax of Rs.733.72 lakh.

In Mumbai City charge, similar omission resulted in short levy of tax of Rs.376.66 lakh.

[Para 4.18(i)]

(xiv) In Mumbai City charge, in the case of a company irregular adoption of the original cost of assets for computation of capital gains instead of the written down value in respect of assets sold by it resulted in underassessment of income by Rs.554.16 lakh involving short levy of tax of Rs.329.16 lakh.

[Para 4.20.1(i)]

(xv) In Rohtak, Haryana charge, in the case of state warehousing corporation, irregular allowance of relief on letting out of godowns/warehouses resulted in underassessment of income by Rs.147.90 lakh with consequent short levy of tax of Rs.108.94 lakh.

[Para 4.21.1]

(xvi) In Mumbai City charge, in the case of a company omission to treat the unexplained credit of Rs.199.85 lakh as income of the assessee, resulted in underassessment of an identical amount

involving short levy of tax of Rs.195.35 lakh.

[Para 4.21.2(i)]

(xvii) In Bhubaneswar, Orissa charge, omission to add back to income of `Government company' subsidy received by it from the State Government resulted in underassessment of income by Rs.259.22 lakh with consequent non levy of tax of Rs.230.36 lakh.

[Para 4.21.4]

(xviii) In West Bengal charge, omission in the assessment to include amount credited by a widely held company in its accounts towards income over expenditure on account of earlier years adjustment, resulted in excess computation of income by Rs.416.83 lakh involving potential tax effect of Rs.191.74 lakh.

[Para 4.21.5(i)]

(xix) In Coimbatore, Tamil Nadu charge, in the case of State Government undertaking irregular allowance of charge relating to increase in consumption value of raw material of previous years, even though the income is computed on mercantile basis, resulted in underassessment of income by Rs.350.15 lakh involving short levy of tax of Rs.111.60 lakh in addition to potential tax of Rs.115.55 lakh.

[Para 4.21.7(i)]

(xx) In Mumbai City charge in the case of a public limited company irregular set off of unabsorbed carried forward business loss, though the statutory period of eight years for set off had expired, resulted in underassessment of income and short levy of tax of Rs.95.41 lakh.

[Para 4.22.1(i)]

(xxi) In Delhi charge, in the case of a foreign company, incorrect setting off of brought forward losses against the income received by way of fees for technical services received from an Indian concern, resulted in underassessment of income of Rs.3113.54 lakh involving short levy of tax of Rs.622.71 lakh in addition to excess payment of Rs.174.36 lakh by the Government by way of interest.

[Para 4.22.2]

(xxii) In Cochin, Kerala charge, in the case of a company irregular allowance of carry forward of loss of Rs.714 lakh which was not determined in pursuance of a return submitted within the time limit, led to short levy of tax of Rs.417 lakh.

[Para 4.22.3]

(xxiii) Incorrect carry forward and set off of cases either due to excess set off or incorrect amounts set off or double set off though the loss had been set off earlier, in several charges resulted in short levy of tax of Rs.553.74 lakh (including potential short levy of Rs.265.33 lakh).

[Para 4.22.4]

(xxiv) In Delhi charge, failure to revise the amount of loss carried forward from an earlier assessment year consequent on its redetermination after scrutiny assessment resulted in excess carry forward of loss of Rs.306.20 lakh involving potential tax effect of Rs.176.07 lakh.

[Para 4.22.6(i)]

(xxv) In Delhi charge, failure to adjust the brought forward losses of earlier years against the income before allowing deductions under Chapter VIA resulted in underassessment of income of Rs.4889.99 lakh involving potential short levy of tax of Rs.2530.77 lakh.

[Para 4.24(i)]

(xxvi) In Coimbatore, Tamil Nadu charge, erroneous treatment of a closely held company as a small scale industry resulted in irregular grant of deduction of Rs.159.77 lakh with consequential short levy of tax of Rs.112.11 lakh.

[Para 4.26(i)]

(xxvii) Incorrect allowance of deduction in respect of export profits (Section 80HHC) in 7 cases of Mumbai, Punjab, West Bengal and Orissa charges resulted in underassessment of income leading to short levy of tax to the tune of Rs.264.32 lakh, including one case alone in Mumbai charge involving short levy of tax of Rs.112.88 lakh due to inclusion of non business income in the profits.

In one case of West Bengal charge, in the case of a company engaged in the business of export of manufactured as well as trading goods, though the provisions require consideration of the net results of the business for computing the deduction, omission to consider the loss under trading activity resulted in an underassessment of income of Rs.155.98 lakh and short levy of tax of Rs.80.72 lakh.

[Paras 4.27.1(i) and (ii)(a)]

(xxviii) In Mumbai city charge, in the case of a company omission to deduct unabsorbed losses, depreciation and investment allowance

of earlier years from the profits for computation of deduction under Section 80I, (profits of industrial undertakings) resulted in short levy of tax of Rs.95.79 lakh.

[Para 4.29.2]

(xxix) In North East Region, Shillong charge, while revising the assessment of a widely held company for the assessment year 1993-94 consequent upon revision of earlier year's assessment, failure to withdraw, set off of loss of Rs.741.34 lakh which was already adjusted resulted in under charge of tax of Rs.383.64 lakh and consequent excess refund of Rs.429.68 lakh.

In Allahabad, Uttar Pradesh charge, an excess refund of Rs.97.05 lakh was given to a widely held company as tax deducted at source was refunded twice.

[Paras 4.34.1 and 4.34.2]

(xxx) In Tamil Nadu charge, omission to levy interest for short payment of advance tax for 98 months resulted in short levy of tax of Rs.166.76 lakh.

[Para 4.36(I)]

(xxxi) Short levy/non-levy of interest for short payment/non-payment of advance tax was noticed in 6 cases of Maharashtra, West Bengal, Uttar Pradesh, Kerala and Tamil Nadu charges involving short levy of Rs.871.65 lakh.

[Para 4.37(i)]

(xxxii) Due to absence of enabling provisions in the Act, for charging interest on refunds made at summary assessment stage no interest could be charged on the refunds found to be excessive or inadmissible on subsequent regular assessments. In the case of 8 companies in Maharashtra charge there occurred a loss of Rs.120.34 lakh due to this lacuna in the Act.

Such cases had been pointed out in earlier Reports also to the Ministry of Finance who have yet to remedy the situation despite accepting the recommendations of the Public Accounts Committee in March 1983.

[Para 4.37(iv)]

Audit observation on Surtax

(xxxiii) Omission to make surtax assessments though required to be initiated along with income tax assessments in accordance with Board's instructions, resulted in short levy of surtax of Rs.124.10

lakh in 3 cases of Tamil Nadu and West Bengal charges.

[Para 4.42]

Audit observations on Income Iax other than Corporation Tax

11(i) Avoidable mistakes like application of incorrect rate of tax, adoption of incorrect figures and calculation errors led to undercharge of tax of Rs.210.50 lakh in 11 cases (including potential tax effect of Rs.63.60 lakh).

[Paras 5.6(11) and 5.7.1]

(ii) In Allahabad charge, failure to disallow unpaid interest on loans from financial institutions resulted in underassessment of income of Rs.56.56 lakh involving undercharge of tax of Rs.37.54 lakh (including interest).

[Para 5.11]

(iii) Failure to revise assessments of 285 partners on completion of assessment of 110 firms in 19 CITs' charges resulted in underassessment of income of Rs.882.10 lakh involving tax effect of Rs.493.81 lakh.

[Para 5.17]

(iv) In Tamil Nadu charge, failure to bring to tax interest on belated payments under a contract led to underassessment of income of Rs.69.87 lakh involving tax effect of Rs.49.54 lakh.

[Para 5.18 item 1]

(v) In West Bengal charge, difference between the cost of land as determined by the department and as disclosed by the assessee was not brought to tax which led to underassessment of income of Rs.33.57 lakh involving tax effect of Rs.33.58 lakh.

[Para 5.18 Item 2]

(vi) In Mumbai City Central charge, failure to tax the estimated income at 10 percent of the sale proceeds of Rs.345.28 lakh from continuing housing payments led to underassessment of income of Rs.34.53 lakh involving tax effect of Rs.21.74 lakh.

[Para 5.18 Item 3]

(vii) In Andhra Pradesh charge, excess set off of earlier assessment years resulted in underassessment of income of Rs.17.12 lakh involving tax effect of Rs.16.43 lakh (including interest).

[Para 5.19]

(viii) In Haryana (Rohtak) charge, the mistake in allowing deduction for new industrial undertaking going into production

after 31 March 1981 from profit before setting off brought forward losses and allowances from earlier assessment years led to underassessment of income by Rs.25.62 lakh involving short levy of tax of Rs.18.59 lakh (including interest).

[Para 5.20]

(ix) In Mumbai City charge, failure to adjust the supervision charge of Rs.146.38 lakh from profits of the business resulted in excess export relief involving tax effect of Rs.61.02 lakh.

[Para 5.21 Item 1]

(x) In Mumbai City charge, irregular deduction of Rs.71.19 lakh for services rendered to foreign buyers for export from India led to short levy of tax of Rs.38.94 lakh

[Para 5.23]

(xi) In Haryana (Rohtak) charge, short levy of interest for delay in filing returns led to undercharge of interest of Rs.115.61 lakh.

[Para 5.25 Item 1]

Audit observations on Wealth Tax

12(i) In Tamil Nadu charge, in the cases of 6 individuals the wealth tax returns were not filed nor did the department initiate necessary proceedings even though they were holding shares as promoters in a widely held company. This omission resulted in non-assessment of wealth aggregating Rs.1065.71 lakh with consequent non-levy of wealth tax of Rs.32.47 lakh.

[Para 6.4(i)]

(ii) In Tamil Nadu charge, due to incorrect valuation of the shares held by the assessee in a company led to underassessment of wealth of Rs.2586 lakh involving wealth tax of Rs.65.29 lakh.

[Para 6.6.1(i)]

(iii) In Maharashtra charge, due to levy of interest for 12 months for the delay in furnishing the return instead of the correct period of delay of 13 months, there occurred short levy of interest of Rs.31.87 lakh.

[Para 6.7(i)]

(iv) In Tamil Nadu charge, in the case of a closely held company though the company owned specified assets such as immovable properties and motor cars valuing Rs.452.29 lakh, the company was

not assessed to wealth tax resulting in under charge of Rs.14.83 lakh.

[Para 6.10, Sl.No.1]

Audit observations on Gift Tax

13(i) In Haryana charge, omission to initiate gift tax proceedings in respect of a case of abandonment of the claim of lease rent of Rs.10.22 lakh led to non-levy of gift tax of Rs.2.95 lakh.

[Para 6.16 (i)]

(ii) In West Bengal charge, omission to bring to tax the difference of Rs.8.23 lakh between the sale value and the value determined by the valuation officer led to non-levy of tax of Rs.2.47 lakh.

[Para 6.16(ii)]

(iii) In Tamil Nadu charge, in case of an individual though he had gifted 3000 shares of a company to his daughter on the occasion her marriage and the gift was chargeable to gift tax, which was not levied resulting in under charge of Rs.81000.

[Para 6.17]

Audit observations on Interest Tax

14(i) In Tamil Nadu charge, in two cases due to levy of interest for failure in payment of instalment of advance tax where not leviable and failure to take into account the self assessment tax paid by the assessee while working out the interest for short payment of advance tax in one of the above cases, resulted in overcharge of tax aggregating Rs.29.02 lakh

[Para 6.21(i) and (ii)]

(ii) In Tamil Nadu charge, omission to make the assessment of interest tax even though there were interest receipts aggregating Rs.11. 96 crore as per the income tax return led to non-levy of tax of Rs.72.50 lakh.

[Para 6.22(i)(a)]

Audit observation on Expenditure Tax

15. In Andhra Pradesh charge, omission to initiate expenditure tax proceedings in one case, even though the assessee was liable to collect and remit the same as per the income tax return, led to non-levy of tax of Rs.3.83 lakh.

[Para 6.23(i)]

Chapter 1

Introduction

General

1.1 The Direct Taxes levied by the Union Government comprise:

— **Corporation Tax** (taxes on income paid by companies, corporations etc.)
— **Income Tax**
— **Wealth Tax**
— **Gift Tax**
— **Interest Tax**
— **Expenditure Tax**

The various laws relating to Direct Taxes are administered by the Department of Revenue, Ministry of Finance through the Central Board of Direct Taxes (hereinafter called 'the Board'). The revenue from Direct Taxes during 1995-96 amounted to Rs. 33,559.28 crore. Time series data on the different components of the revenue from Direct Taxes and other important statistical information on working of the tax administration machinery are given in Chapter 2 of this Report.

Statutory Audit

1.2 The audit of Direct Taxes by the Comptroller and Auditor General of India is carried out under Section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971. The important findings are reported by him to the President of India under Article 151 (1) of the Constitution of India who causes this Report to be submitted to the Parliament.

The audit of Direct Taxes is conducted through test check of assessments and other records of the department maintained in its various field offices. For examination of policy issues, introduction of particular amendments to the Income Tax Act or for examination of any background material behind the issue of circulars, instructions and decisions taken in particular cases, the records of the Central Board of Direct Taxes are also examined by the office of Comptroller and Auditor General of India. Various prescribed checks are applied to ensure that the taxes due from assessees have been worked out in accordance with the provisions of law and levied. Reliance is placed on law as interpreted by the judicial authorities including appellate tribunals. The thrust of statutory audit is to verify whether the systems and procedures prevalent in the department for administration of Direct Tax Laws are satisfactory for the levy and collection of taxes and to that extent, the objective is to lay emphasis on 'general' than on 'particular'. With this end in view, certain topics are selected for conducting 'System

Appraisals' every year, in order to selectively review the implementation of particular provisions of the Act, schemes introduced by the government or the working of any particular wing of the tax administration.

The findings of audit in the form of audit observations are brought to the notice of the field Commissioners of Income Tax through local audit reports by the field offices of the Accountants General/Principal Directors of Audit. Important audit observations are then again subjected to technical scrutiny by the office of the Comptroller and Auditor General of India and thereafter issued to the Ministry of Finance for their comments.

Present Report

1.3 The arrangement of this Report has been mentioned in the prefatory remarks. In each case appearing in subsequent sections of this Report, the response of Ministry, to the extent available, has been indicated. Where the reply of the Ministry has not been found acceptable, the reasons therefor have been mentioned alongwith the reply of the Ministry.

A total of 16,768 audit observations of Corporation Tax, Income Tax and other Direct Taxes involving underassessment of tax of Rs.2281.14 crore and 46 audit observations involving overassessment of tax of Rs.7.99 crore as noticed during test check of assessment records in 1995-96 were referred to the department. Out of these above 819 cases involving underassessment of Rs.250.47 crore and 12 cases of overassessment involving Rs.2.03 crore were issued to the Ministry of Finance as **draft paragraphs**. Only a small fraction of these cases has been featured in this Report. The selection of cases featured is based on either their monetary significance or which, in the perception of Audit, require the attention of the Parliament. The present Report contains 327 audit observations pertaining to corporation tax, surtax, income tax, wealth tax, gift tax, and interest tax. The revenue effect of these cases amounts to Rs.218.12 crore (including potential* tax of Rs.75.68 crore in 39 cases). Besides these individual audit observations, the Report also contains system reviews on three topics viz., Summary Assessment Scheme, Audit of Accounts under Section 44AB and Presumptive Tax Scheme, the total tax effect of which is Rs.231.74 crore. 11 cases on overassessment of tax amounting to Rs.2.02 crore (including 3 cases with potential tax effect of Rs.0.85 crore) have also been featured in the Report.

Audit observations in 216 individual cases with tax effect of Rs.132.83 crore (including 29 cases involving potential tax effect of Rs. 63.58 crore) have been accepted by the Ministry. Of the cases referred to the Ministry those in which the Ministry have accepted the audit observations and have also taken rectificatory action including raising and collection of the resultant additional demand, have not been included in the Report unless the tax effect is very large or the case has

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* **'Potential' tax effect or (P) wherever occuring in this Report indicates the tax effect of the irregularity/mistake. In certain 'loss' cases, it may happen that even after correcting the mistake, there is a net loss and no tax would be leviable in the assessment year under examination. However in future years when there is profit, there may be a tax liability.**

some special features.

Of the total 16,768 audit observations involving underassessment referred to earlier as resulting from test check, 1976 cases with tax effect of Rs.26.81 crore have so far been accepted by the department.

Non receipt of Board's comments on draft paragraphs

1.4 Cases with substantial tax effect are brought to the notice of the Income Tax Department and the Ministry in the form of 'draft paragraphs'. Sufficient time is allowed thereafter to them for their response so that these could be considered before finalising this Report. However, despite Board's instructions that all 'draft paragraph' cases should receive the personal attention of the Commissioners of Income Tax for expeditious action, inordinate delays continue to occur in the receipt of departmental responses as indicated below in respect of the preceding five Reports.

Position of Replies received from the Ministry at the time of finalisation of Audit Report

Year of Report	Number of draft paragraphs issued	Replies received before finalisation of Audit Report	Percentage of cases in which replies were received	No. of cases accepted by Ministry	Percentage of cases in which Ministry accepted
1991-92	1022	136	13.3	102	75
1992-93	889	629	70.8	477	75.8
1993-94	620	536	86.5	427	79.7
1994-95	796	668	84.	549	82.2
1995-96	831	673	81	565	84

Local Audit Reports

1.5 In the field, after completion of audit of each assessment unit, audit observations are conveyed to the department through Local Audit Reports. In case of important observations, a Statement of Facts is issued to the department to verify the facts and to obtain their views on the observation.

Results of Test Audit in general

1.5.1 Test audit conducted between 1 April 1995 and 31 March 1996 of the assessments completed by the Income Tax Department revealed 16,768 cases of underassessment involving a total revenue effect of Rs.2,281.14 crore and 46 overassessment cases involving a total revenue effect of Rs.7.99 crore, which were referred to the department. A resume of the deficiences noticed is given below:

Corporation Tax and Income Tax

(i) During the period under report, 15,368 cases involving a tax effect of Rs.2,256.90 crore were referred to the department. Of these cases, major audit observations were raised in 8,066 cases involving short levy of tax Rs.2,213.76 crore. The remaining 7,302 cases accounted for underassessment of tax of Rs. 43.14crore.

The underassessment of tax of Rs.2,256.90 crore (including Potential Tax) arose due to omission/irregularities and mistakes which can

1.5

broadly be categorised under the following heads:

		No. of cases	Amount (Rs. in crore)
1.	Avoidable mistakes in computation of income and tax	1643	105.81
2.	Failure to observe the provisions of the Finance Acts	683	83.45
3.	Incorrect status adopted in assessments	189	8.48
4.	Incorrect computation of income	366	7.16
5.	Incorrect computation of income from house property	267	4.69
6.	Incorrect computation of business income	2826	1024.70
7.	Irregularities in allowing depreciation, investment allowance and development rebate	1489	127.48
8.	Irregular computation of capital gains	350	205.83
9.	Mistakes in assessments of firm and partners	400	7.98
10.	Income not assessed	1014	73.57
11.	Irregualr set-off of losses	536	67.61
12.	Irregular exemptions and excess reliefs given	1156	100.76
13.	Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.	2209	56.17
14.	Avoidable or incorrect payment of interest by Government	137	10.48
15.	Omission/short levy of penalty	646	12.35
16.	Other topics of interest (Miscellaneous)	1457	360.38
	Total	15368	2256.90

Wealth Tax

(ii) During test audit of asessments made under Wealth Tax Act, 1957, short levy of Rs.17.42 crore was referred to the department in 1,241 cases.

The omissions/irregularties and mistakes can be categorised under the following heads:

		No. of cases	Amount (Rs. in crore)
1.	Wealth not assessed	371	10.43
2.	Incorrect valuation of assets	293	2.88
3.	Mistakes in computation of net wealth	151	1.33
4.	Incorrect status adopted in assessments	24	0.26
5.	Irregular/ excessive allowances and exemption	57	0.16
6.	Mistakes in calculation of tax	90	0.04
7.	Non-levy or incorrect levy of additonal wealth tax	24	0.41
8.	Non-levy or incorrect levy of penalty and non-levy of interest	183	1.43
9.	Miscellaneous	48	0.56
	Total	1241	17.42

Gift Tax

(iii) During test check of gift tax assessments, 143 cases involving short levy of Rs. 5.49 crore were referred to the department.

Interest Tax

(iv) In the course of test audit of Interest Tax assessments it was noticed that in 16 cases there was short levy of interest tax of Rs.1.33 crore.

Outstanding audit observations

1.5.2 According to the departmental instructions, observations of statutory audit are to be replied to within a period of six weeks. The Public Accounts Committee (Ninth Lok Sabha) in their 20th Report recommended that the responsibility for the settlement of audit observations rests with the department and it cannot be contented merely with sending replies to audit observations. In their Action Taken Note, the Ministry of Finance had stated that they would endeavour to see that the targets for settlement of audit observations were achieved. However, large number of audit observations made in 1995-96 and earlier years are still to be settled. The details are mentioned below:

(a) On 31 March 1996, 68335 observations involving a revenue of Rs.4198.46 crore were pending for final action. This does not include the audit observations communicated during 1 April 1995 to 31 March 1996. The year-wise particulars of the pendency are as follows:

(Rs. in crore)

	Income Tax		Other Direct Taxes (Wealth Tax, Gift Tax and Estate Duty)		Total	
Year	Items	Revenue effect	Items	Revenue effect	Items	Revenue effect
1992-93 & before	40,734	2,667.70	7,274	63.60	48,008	2,731.30
1993-94	7,062	473.99	927	14.85	7,989	488.84
1994-95	11.168	966.21	1,170	12.11	12,338	978.32
Total	58,964	4,107.90	9,371	90.56	68,335	4,198.46

(b) There were 2,678 pending audit observations as on 31 March 1996 with a revenue effect of Rs. 3,092.08 crore (as against 2380 in earlier year) where the income tax involved in each individual case exceeded Rs.10 lakh. The break-up of such cases in respect of a few charges where number of outstanding items are 50 or more is shown below:

Sl. No.	Name of charge	Items	Amount (Rs. in crore)
1.	Assam	53	33.40
2.	Bihar	50	43.20
3.	Delhi	351	588.18
4.	Gujarat	150	176.86
5.	Karnataka	59	61.41
6.	Kerala	63	23.90
7.	Madhya Pradesh	249	410.91
8.	Maharashtra	573	1048.01
9.	Punjab	53	52.75
10.	Tamil Nadu	295	157.12
11.	Uttar Pradesh	127	92.01
12.	West Bengal	527	339.14

(c) There were 82 pending audit observations with a revenue effect of Rs. 11.94 crore where the wealth tax involved in each case exceeded Rs.5 lakh.

(d) There were 59 pending audit observations with a revenue effect of Rs.19.34 crore where the total gift tax involved in each case exceeded Rs. 5 lakh.

Of the 68,335 pending cases with revenue effect of Rs.4198.46 crore, 2819 cases (4.1 percent) of high tax effect accounted for Rs. 3123.36 crore (74.4 percent). This underlines the need to assign priority to the settlement of observations with high money value.

Steps taken to settle audit observations

1.5.3 The Action Plan of the department for 1995-96 provided for 90 percent disposal of all pending major audit observations. In respect of current observations of statutory audit upto 31 December 1995 (i.e. period of report being 1995-96), replies are to be sent in 80 percent of the cases.

The targets for settlement of the major statutory audit observations for the year 1995-96 according to Action Plan and actual achievements were as under:

	Audit observations				
	For disposal (Rs. in crore)	To be settled as per targets fixed	Settled (Rs. in crore)	Shortfall	
				cases	Percentage
Current	10020 (1122.12)	8016 (80%)	3284 (257.52)	4732	59.03
Arrear	17866 (1928.15)	16080 (90%)	6591 (759.00)	9489	59.01

The achievements were, therefore, well short of targets set.

Remedial action barred by time

1.5.4 The Board have issued specific instructions for taking timely action on audit observations so as to avoid cases becoming time-barred leading to loss of revenue. The Public Accounts Committee (150th Report - Eighth Lok Sabha) have also recommended that the Board may review old outstanding observations in co-operation with Audit.

In a few charges reviewed during the year 1995-96, a number of audit objections issued during the period 1976-77 to 1987-88 where remedial action became barred by limitation were noticed. Details of these cases have been forwarded to the respective Commissioners The number of such cases alongwith tax effect are mentioned below:

Sl. No.	Charge	Corporation Tax and Income Tax		Other Direct Taxes	
		No. of observations	Tax effect (Rs. in crore)	No. of observations	Tax effect (Rs. in crore)
1.	Gujarat	330	5.68	222	2.96
2.	Haryana	77	0.16	-	-
3.	Maharashtra	197	0.12	06	0.01
4.	Punjab	60	0.38	-	-
5.	Bihar	01	0.04	-	-

Internal Audit

1.6 In addition to the statutory audit, the department also has an Internal Audit Department (IAD) which is required to conduct 100 percent and 50 percent audit of all immediate and priority assessment cases respectively (as defined under departmental instructions of September 1990). Based on this, the department had determined the number of auditable cases by their IAD during 1995-96 as 3.32 lakh. However, the target was fixed at a much lower level based on 150 audit parties working during the period from 1 April 1995 to 31 March 1996 and each party being required to audit 110 cases every month. An analysis of their peformance is given below:

Total auditable cases	Targets for disposal	Total cases audited	Shortfall
3,31,636	1,98,000	1,55,603	42,397

Thus achievement fell short of the targets set by 21.41 percent. The short fall in achievements has thus increased from 20.17 percent as on 31 March 1995 to 21.41 percent as on 31 March 1996. No reasons have been furnished for shortfall in targets.

Outstanding observations of Internal Audit

1.6.1 According to the departmental instructions, observations of Internal Audit Department are to be attended to by the assessing officers within three months. However, this did not happen as seen from the fact that on 31 March 1996, 35,582 audit observations made by the Internal Audit involving a tax effect of Rs.988.69 crore were pending settlement. This included 12,631 observations with money value of Rs.518.69 crore made during 1995-96.

The details of the major observations of IAD and their settlement is mentioned in the following table:

Financial year	No. of cases for disposal and amount (Rs. in crore)	No. of cases settled and amount (Rs.in crore)	Percentage of total cases disposed	No. of pending cases and amount (Rs.in crore)
1992-93	18053 (614.59)	6750 (146.78)	37	11303 (467.82)
1993-94	18006 (788.17)	7752 (259.57)	43	10254 (526.61)
1994-95	18465 (976.34)	6357 (261.30)	34	12108 (715.04)
1995-96	18990 (1229.17)	6286 (250.30)	33	12704 (978.87)

The Public Accounts Committee, in their 150th Report submitted to Eighth Lok Sabha in April 1989, had recommended that observations of Internal Audit should be analysed with reference to the year of assessment apart from the year in which these were raised, so that greater attention could be given to the settlement of observations relating to earlier years, before the cases became time-barred for re-

opening. The Ministry of Finance (Department of Revenue) in their action taken note had stated that assessment- yearwise and agewise classification was being made so that greater attention could be paid to settlement of older and revenue significant objections. Since the normal period available for re-opening of cases is four years, all observations pertaining to 1992-93 and earlier years should have been settled by March 1996. However, this did not happen as shown in the following table which gives age-wise analysis of the pending items at the end of 1995-96 and revenue effect involved:

Year of the observation	No. of cases	Revenue effect (Rs. in crore)
1992-93 and before	15,179	281.27
1993-94	4,979	99.15
1994-95	6,145	167.73
1995-96	9,279	44.054
Total	35,582	988.69

Action on observations of Internal Audit

1.6.2 The Action Plan of the department for 1995-96 provided for 90 percent disposal of all pending major audit observations. In respect of current observations of Internal Audit upto 31 December 1995 (i.e. period of reporting being 1995-96), replies were to be sent in 80 percent of the cases.

The targets according to Action Plan and actual achievement in settlement of the major internal audit observations for the year 1995-96 were as under:

	Audit observations				
	For disposal (Rs in crore)	To be settled as per targets fixed	Settled (Rs. in crore)	Shortfall	
				Cases	Percentage
Current	6882 (514.13)	5506 (80%)	2124 (77.50)	3382	61.42
Arrear	12108 (715.04)	10897 (90%)	4162 (172.80)	6735	61.81

The achievements were, therefore, below the targets set.

Chapter 2

Administration of Direct Taxes

Administration of Direct Taxes

2.1 The overall responsibility for administration of Direct Tax Laws lies with Department of Revenue which functions through the Income Tax Department with a staff strength of around 60,000 and with Central Board of Direct Taxes (Board) at its apex.

The Board consists of a Chairman and five members, and have several attached and subordinate offices throughout the country. The attached offices function under three Directors General of Income Tax viz. Director General of Income Tax (Admn.), Director General of Income Tax (Exemption) and Director General of Income Tax (Training). There are 25 Chief Commissioners of Income Tax, who oversee the work of assessment and collection of direct taxes at regional levels. Besides, there are 5 Directors General of Investigation who are in overall charge of the investigation machinery on a regional basis to curb tax evasion and to unearth black money. The Chief Commissioners of Income Tax/Directors General of Income Tax oversee the work of the Commissioners/Directors of Income Tax in their respective charges and have also been given certain powers under the Income Tax Act, regarding discovery, production of evidence by any person, to requisition books of account, call for information etc., whereby they can issue summons. They are also empowered to authorise search and seizure operations.

The Commissioners/Directors of Income Tax oversee the work of the Dy.Commissioners/Asstt. Commissioners/Income Tax Officers and also have similar powers under the Act as given to the Chief Commissioners. Besides they are also empowered to set aside assessments/orders prejudicial to the interests of revenue (section 263) as well as revise other orders (section 264). There is an appellate machinery consisting of Commissioners (Appeal) and Deputy Commissioners (Appeal), who perform the work of quasi-judicial nature and consider appeals against the orders of the assessing officers.

The Settlement Commission which was constituted under the Income Tax Act with effect from April 1, 1976 provides a statutory remedy for avoiding protracted litigation between the assessee and the department. The Commission deals with the settlement of Income Tax and Wealth Tax cases on applications being made by the assessees declaring their intention to pay tax on undisclosed income discovered by the department. The Commission has four benches at Delhi, Bombay, Calcutta and Madras.

Receipts under various Direct Taxes

2.2.1 The total collections from Direct Taxes for the year 1995-96 amounted to Rs.33,559.28 crore out of which Rs.11,288.32 crore was assigned to the States. The collections for the three years 1993-94, 1994-95 and 1995-96, as furnished by the Ministry of Finance are given below:

(Rs. in crore)

Head of account	Category of tax	1993-94	1994-95	1995-96	Increase in 1995-96 over the previous year
0020	Corporation Tax	10060.06	13820.96	16487.13	2666.17
0021	Taxes on income other than Corporation-tax	9122.62	12030.12	15587.17	3557.05
0023	Hotel Receipts Tax	0.05	0.16	0.91	0.75
0024	Interest Tax	727.58	801.40	1170.05	368.65
0028	Other Taxes on Income and Expenditure	228.75	196.87	228.07	31.20
0031	Estate Duty	0.21	1.52	0.39	(-) 1.13
0032	Taxes on wealth	153.98	104.87	74.16	(-) 30.71
0033	Gift Tax	4.99	14.98	11.40	(-) 3.58
	Gross Receipts	20298.24	26970.88	33559.28	6588.40
	Less share of net proceeds assigned to the States:				
	Income Tax	7767.50	8559.88	11288.32	
	Net Receipts	12530.74	18411.00	22270.96	

The above data reveal the following :

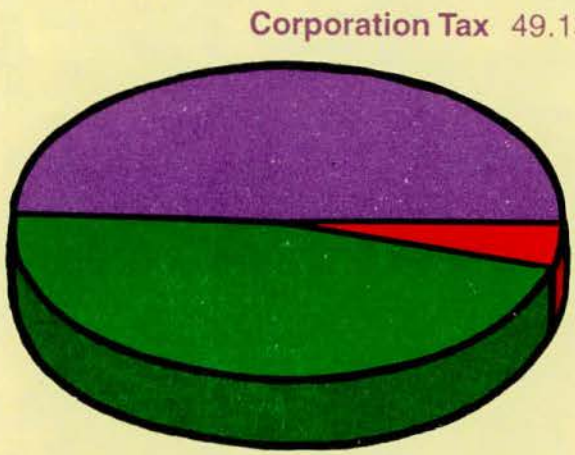
(i) While the Direct Taxes collections increased by 24.4 percent over the previous year as compared to 32.8 percent in 1994-95, the two important components namely Corporation Tax and Income Tax increased by 19.29 percent and 29.56 percent respectively as compared to 37.4 percent and 31.9 percent respectively in 1994-95.

(ii) There was also a reduction of Rs. 30.71 crore in 'Taxes on wealth' due to reduction in wealth tax rates as well as decrease in number of wealth tax assessees on account of upward revision in the exemption limit.

(iii) The increase of Rs.368.65 crore in collections of interest tax over the previous year could be attributed to the increase in the number of assessees by approximately 1000 over the previous year and also increase in the "interest income" chargeable to interest tax.

2.2.2 The State/U.T. wise break-up of collections of direct taxes are given below:

Collection of Direct Taxes (1995-96)



Corporation Tax: Rs. 16,487.13 crore
Income Tax: Rs. 15,587.17 crore
Other Direct Taxes: Rs. 1484.98 crore

States	0020 Corporation tax	0021 Income Tax	0023 Hotel Receipts Tax	0024 Interest Tax	0028 Expenditure Tax	0031 Estate Duty	0032 Wealth Tax	0033 Gift Tax	Total
				(Rs. in crore)					
Andhra Pradesh	301.16	607.90	0.09	7.77	2.38	0.03	1.91	0.43	921.67
Arunachal Pradesh	-	3.03	-	-	-	-	-	-	3.03
Assam	169.87	132.53	-	0.58	-	-	0.24	0.04	303.26
Bihar	32.98	361.06	-	-	0.04	-	-0.27	0.11	393.92
Goa	55.01	71.23	-	0.08	0.20	-	0.85	0.04	127.41
Gujarat	788.58	1164.90	-	2.09	0.70	0.06	3.96	0.35	1960.64
Haryana	56.77	161.09	-	0.05	0.02	-0.01	0.13	0.04	218.09
Himachal Pradesh	4.99	44.74	-	0.22	-	-	0.05	-	50.00
Jammu Kashmir	16.95	27.95	-	6.52	-	-	0.05	-	51.47
Karnataka	121.75	874.48	-	161.80	16.26	0.01	4.10	0.58	1178.98
Kerala	146.00	370.77	0.82	22.74	0.07	-0.42	2.58	0.40	542.96
Madhya Pradesh	96.94	408.22	-	15.05	-	-0.10	1.18	0.11	521.40
Maharashtra	7833.22	4871.54	-	630.23	94.04	0.42	32.40	5.64	13467.49
Manipur	0.10	4.23	-	-	-	-	0.01	-	4.34
Meghalaya	3.25	11.72	-	0.04	-	-	0.04	0.01	15.06
Mizoram	-	0.55	-	-	-	-	-	-	0.55
Nagaland	0.13	6.46	-	-	-	-	-	0.01	6.60
New Delhi	2373.51	2065.12	-	147.01	44.91	0.10	6.99	0.54	4638.18
Orissa	52.51	168.83	-	1.22	-	-	0.09	0.04	222.69
Punjab	93.96	336.78	-	11.73	-	0.01	0.60	0.06	443.14
Rajasthan	123.81	297.39	-	13.28	3.73	-	0.52	0.20	438.93
Sikkim	0.01	0.08	-	-	-	-	-	-	0.09
Tamil Nadu	748.66	1261.97	-	92.97	12.37	0.33	11.63	1.58	2129.51
Tripura	0.12	9.30	-	-	-	-	0.01	0.03	9.46
Uttar Pradesh	258.99	858.66	-	2.77	0.73	-	1.42	0.52	1123.09
West Bengal	992.03	804.80	-	51.59	52.62	-0.04	5.47	0.65	1907.12
Union Territories									
Andaman Nicobar	2.55	0.76	-	-	-	-	-	-	3.31
Chandigarh	65.09	123.20	-	1.98	-	-	0.16	0.02	190.45
Daman	-	0.75	-	-	-	-	-	-	0.75
Diu	-	0.37	-	-	-	-	-	-	0.37
Dadar N. Haveli	-	-	-	-	-	-	-	-	0.00
Pondicherry	2.89	11.96	-	0.33	-	-	0.04	-	15.22
Laxadweep	-	-	-	-	-	-	-	-	0.00
Silvasa	-	0.29	-	-	-	-	-	-	0.29
Total	14341.83	15062.66	0.91	1170.05	228.07	0.39	74.16	11.40	30889.47
CTDS	2145.30	524.51	0.00	0.00	0.00	0.00	0.00	0.00	2669.81
Grand Total	16487.13	15587.17	0.91	1170.05	228.07	0.39	74.16	11.40	33559.28

Thus, Maharashtra had the largest collections of Direct Taxes comprising 40 percent of the total collections, followed by Delhi, Tamil Nadu, Gujarat and West Bengal.

2.3

Trend of collection

2.3(i) The trend in collection of Direct Taxes since 1991-92 is shown below:

Year	Corporation Tax	Income Tax other than Corporation Tax	Other Direct Taxes	Total	Corporation Tax	Income Tax other than Corporation Tax	Other Direct Taxes	Total
1991-92	7867.67	6705.80	768.89	15342.36	100	100	100	100
1992-93	8889.24	7863.49	1344.56	18097.29	113	117.3	174.9	118
1993-94	10060.06	9122.62	1115.56	20298.24	127.9	136	145	132.3
1994-95	13820.96	12030.12	1119.80	26970.88	175.7	179.4	145.6	175.8
1995-96	16487.13	15587.17	1484.98	33559.28	209.5	232.4	193.1	218.7

Direct Taxes - GDP Ratio

(ii) Direct Taxes collections since 1991-92 are shown below as percentage of the Gross Domestic Product:

Year	Direct Taxes	Corporation Taxes	Income Tax other than Corporation tax	G.D.P at factor cost (corrent prices)*	Direct Taxes	Corporation Tax	Income Tax other than Corporation Tax
1991-92	15,342.46	7,867.67	6,705.80	5,41,888	2.8	1.5	1.2
1992-93	18,097.29	8,889.24	7,863.49	6,27,913	2.8	1.4	1.2
1993-94	20,298.24	10,060.06	9,122.62	7,07,145	2.9	1.4	1.3
1994-95	26,970.88	13,820.96	12,030.12	8,54,103	3.1	1.6	1.4
1995-96	33,559.28	16,487.13	15,587.17	9,85,787	3.4	1.7	1.6

Direct Taxes as a percentage of GDP in some Asian countries with 1986-1992 figures as data base is given below:

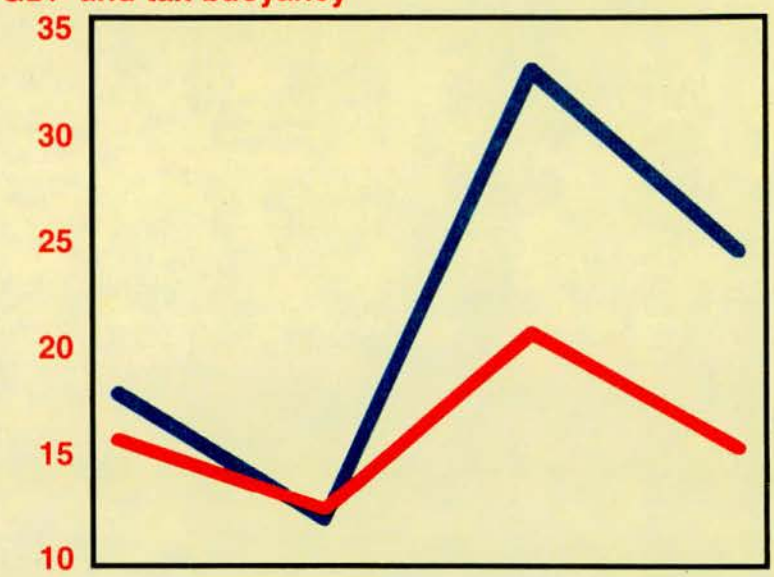
Countries	Percentage of Direct Taxes to GDP
Indonesia	10.1
Korea	5.5
Malaysia	8.7
Pakistan	1.8
Philippines	4.1
Singapore	6.5
Sri Lanka	2.3
Thailand	3.6

Source International Monetary Fund, Government Finance Statistics and International Financial Statistics (Tax Policy Handbook, IMF)

(iii) Buoyancy or income elasticity of tax is measured by the ratio of change in tax revenues to change in GDP at current prices.This would be a reliable indicator of whether the tax administration have taken full advantage of the growth in GDP to optimise the resources mobilised through tax collections. As the following table shows, the buoyancy of

* G D P figures collected from National Accounts Statistics Organisation, Ministry of Planning. The figures for 1995-96 are as per their estimates.

GDP and tax buoyancy



	1992-93	1993-94	1994-95	1995-96
Change in revenue	17.95	12.16	32.87	24.43
Change in GDP	15.87	12.61	20.78	15.41

tax has picked up from the year 1994-95.

Year	Change in revenue over previous year		Change in GDP over previous year		Buoyancy
	Amount (Rs.in crore)	Percent	Amount (Rs. in crore)	Percent	
1992-93	2755	17.95	86025	15.87	0.03
1993-94	2201	12.16	79232	12.61	0.02
1994-95	6673	32.87	146958	20.78	0.04
1995-96	6588	24.43	131684	15.41	0.05

Variation between budget estimates and actual receipts

2.4(i) The comparative position of actual receipts vis-a-vis the budget estimates under the different heads for the years 1991-92 to 1995-96 are as follows:

Year	Budget Estimates	Actuals (Rs. in crore)	Variation	Percentage of variation
0020- Corporation Tax				
1991-92	6,704.00	7,867.67	1163.67	17.35
1992-93	8,125.00	8,889.24	764.24	9.41
1993-94	10,500.00	10,060.06	(-) 439.94	(-) 4.19
1994-95	12,480.00	13,820.96	1340.96	10.74
1995-96	15,500.00	16,487.13	987.13	6.37

0021- Taxes on income other than Corporation Tax				
1991-92	6,152.00	6,705.80	553.80	9.00
1992-93	7,870.00	7,863.49	(-) 6.51	(-) 0.08
1993-94	9,500.00	9,122.62	(-) 377.38	(-) 3.97
1994-95	10,925.00	12,030.12	1105.12	10.11
1995-96	13,500.00	15,587.17	2087.17	15.46

Other Direct Taxes				
1991-92	801.30	623.27	(-) 178.03	(-) 22.21
1992-93	1158.00	1344.56	186.56	16.11
1993-94	1260.00	1115.56	(-) 144.44	(-) 11.46
1994-95	1385.00	1119.80	(-) 265.20	(-) 19.15
1995-96	1276.00	1484.98	208.98	16.38

(ii) The details of variation under the heads subordinate to the Major heads 0020 and 0021 and under Major head 0024 - Interest Tax for the year 1995-96 are as follows:

	Head of revenue	Budget Estimates	Actuals (Rs. in crore)	Variation	Percentage of variation
	0020-Corporation Tax				
(i)	Income Tax on companies	15082.00	15838.95	756.95	5.02
(ii)	Surtax	1.00	0.09	(-)0.91	(-)91.0

* includes Interest Tax, Estate Duty, Wealth Tax and Gift Tax.

(iii)	Surcharge	357.00	565.70	208.70	58.46
(iv)	Other receipts	60.00	82.39	22.39	37.32
	Total	15500.00	16487.13	987.13	6.37
	0021 - Taxes on income other than Corporation Tax				
(i)	Income-tax	13160.00	15360.82	2200.82	16.72
(ii)	Surcharge	120.00	119.60	(-) 0.40	(-) 0.33
(iii)	Other receipts	220.00	106.75	(-)113.25	51.48
(iv)	Total	13500.00	15587.17	2087.17	15.46
(v)	Deduct share of proceeds asigned to States	9733.81	11288.32	1554.51	
	Net Collection	3766.19	4298.85	532.66	

0024 - Interest Tax			
1000.00	1170.05	170.05	17.00

Analysis of collection

2.5 Under the Income Tax Act, 1961, income tax is chargeable for any assessment year in respect of the total income of the previous year at the rates prescribed in the annual Finance Act. The Act provides for pre-assessment collection by way of deduction of tax at source, advance tax and payment of tax on self-assessment. The post-assessment collection is of additional demand arising after assessment.

(i) The sub-head wise break-up of total income tax collections for companies, non companies at pre-assessment and post-assessment stages for the years 1991-92 to 1995-96, as furnished by the Ministry of Finance, are given below:

(Rs in crore)

Year	Tax collections							
	Tax Deducted at source	Advance Tax	Self Assessment	Regular Assessment	Other Receipts	Total Collections	Refunds	Net Collections
	Company							
1991-92	2,348.13	5,962.38	455.31	1,157.09	543.56	10,466.47	2,613.67	7,852.80
1992-93	2,321.19	6,886.67	1032.48	1,437.88	424.86	12,103.08	2,489.04	9,614.04
1993-94	2,772.27	7,303.43	1,250.58	2,382.51	397.46	14,106.25	4,045.96	10,060.29
1994-95	3,810.91	9,770.02	952.84	2,030.36	614.59	17,178.72	3,357.76	13,820.96
1995-96	5,096.71	11,477.04	1,112.19	4,598.40	665.27	22,949.61	6,462.48	16,487.13
	Non-company							
1991-92	3,627.80	2,504.81	721.32	414.33	255.71	7,523.97	794.79	6,729.18
1992-93	3,888.34	3,030.98	1005.38	676.60	459.49	9,060.79	1165.44	7,895.35
1993-94	4,510.31	3,794.34	1156.06	714.19	285.17	10460.07	1340.96	9,119.11
1994-95	5,792.84	4,725.06	1,461.62	982.73	396.14	13,358.39	1,328.29	12,030.10
1995-96	8,849.02	4,871.94	1,701.16	1170.16	530.49	17,123.23	1,536.06	15,587.17
	Total							
1991-92	5,975.93	8,467.19	1,176.63	1,568.08	802.61	17,990.44	3,408.46	14,581.98
1992-93	6,209.53	9,917.65	2037.86	2,114.48	884.35	21,163.87	3,654.48	17,509.39
1993-94	7,282.58	11,907.77	2,406.64	3,096.70	682.63	24,566.32	5,386.92	19,179.40
1994-95	9,603.75	14,495.08	2,414.46	3,013.09	1,010.73	30,537.11	4,686.05	25,851.06
1995-96	13,945.73	16,348.98	2,813.81	5,768.56	1,195.76	40,072.84	7,998.54	32,074.30

Thus 82.62 percent of the collections were made at the pre-asssessment stage with the balance being collected after assessment. Further, 77 percent of the collections in company cases and 90 percent in non-

company cases in 1995-96 were made at pre-assessment stage.

(ii) The details of tax deduction at source during the year 1995-96 under broad categories are as under:

	Amount (Rs in crore)
Salaries	5,226.48
Interest on securities	2,881.88
Dividends	1,176.98
Interest	1,681.29
Winnings from lottery or cross word puzzles	49.16
Winnings from horse races	21.15
Payments to contractors and sub-contractors	1,889.53
Insurance commission	85.66
Payment to non-residents and others	933.60
Total	13,945.73

(iii) The following details of statements of tax deducted at source for the year 1995-96 indicate a shortfall in the returns received from tax deductors:

1.	No. of tax deductors as on 1 April 1995	454029
2.	Adjustment/progressive additions upto 31 March 1996	134278
3.	Effective tax deductors (1+2)	588307
4.	No. of returns required to be filed by tax deductions at 3	588307
5.	Returns received upto 31 March 1996	466788
6.	Balance 4-5	121519

Cost of collection

2.6.1 The total expenditure incurred during the years 1992-96 in collecting the direct taxes was as under:

Year	Collection (Rs. in crore)	Expenditure (Rs. in crore)	Percentage
1992-93	18,097.29	296.48	1.63
1993-94	20,298.24	335.43	1.65
1994-95	26,970.88	388.27	1.44
1995-96	33,559.28	492.24	1.47

The cost of collection has been showing a declining trend as the department's work force and as a consequence its expenditure, have remained more or less static.

2.6.2 The expenditure incurred during the year 1995-96 in collecting corporation tax, taxes on income other than corporation tax and other direct taxes together with the corresponding figures for the preceding three years, is as follows:

Year	Collection (Rs.in crore)	Expenditure on collection (Rs.in crore)	Percentage
0020-Corporation Tax			

1992-93	8,889.24	35.44	0.39
1993-94	10,060.06	40.04	0.39
1994-95	13,820.96	46.84	0.34
1995-96	16487.13	52.59	0.32
0021-Taxes on income etc.			
1992-93	7,863.49	230.43	2.93
1993-94	9,122.62	260.63	2.85
1994-95	12,030.12	302.51	2.51
1995-96	15587.17	398.02	2.55

Other Direct Taxes			
1992-93	1,344.56	30.61	2.27
1993-94	1,115.56	34.76	3.12
1994-95	1,119.80	38.92	3.47
1995-96	1,484.98	39.22	2.64

Number of assessees

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

Income tax

2.7.1 For the assessment year 1995-96, no income tax was payable on a total income not exceeding Rs.30,000 in case of individuals non specified Hindu undivided families, association of persons and body of individuals. For specified Hindu undivided family, firms, co-operative society and local authority, lower limits were applicable. Corporate assessees are required to pay taxes at specified rates on their income.

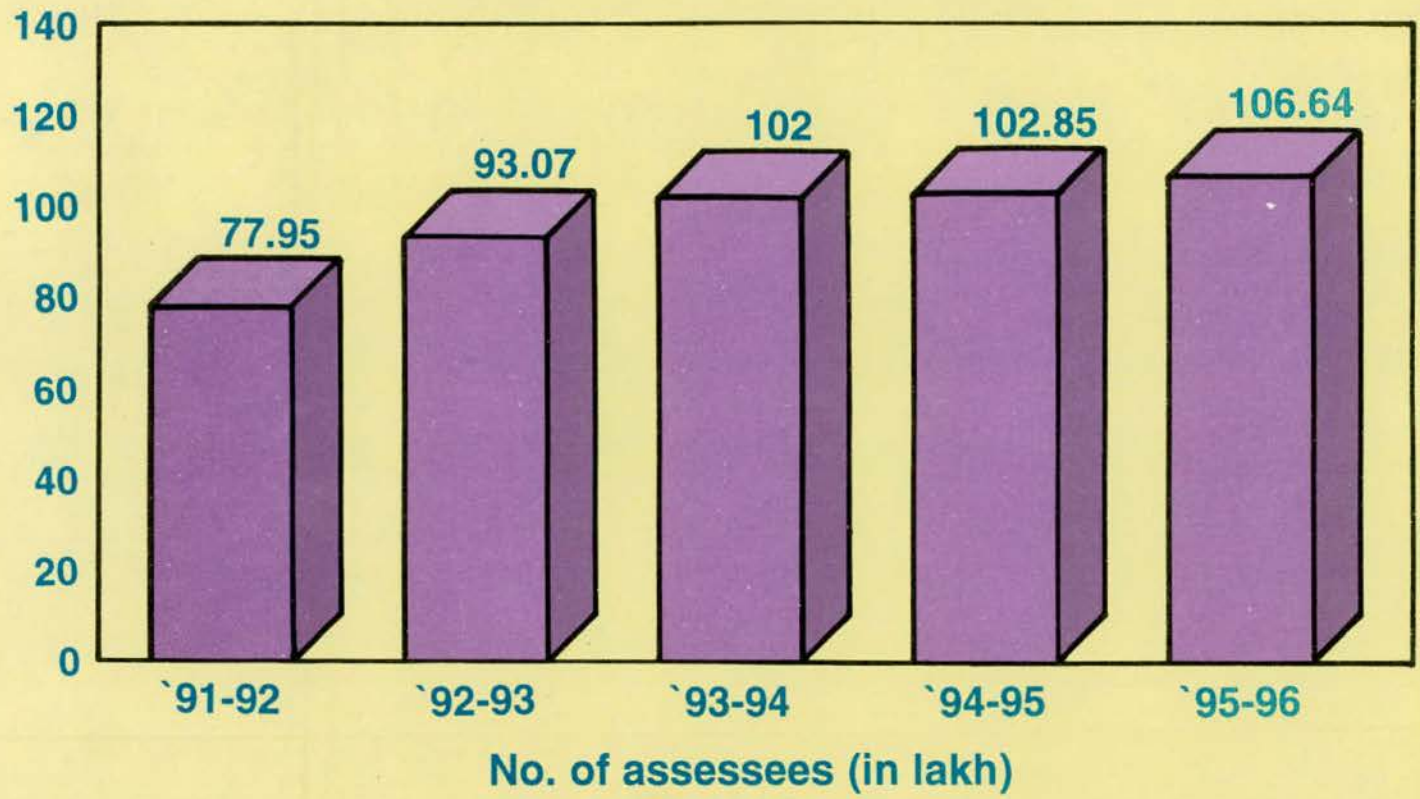
(i) The department brought 3,79,908 additional assessees on its books during 1995-96, bringing the total number of assessees as on 31 March 1996 to 1.07 crore. The comparative break-up of the number of assessees as on 31 March 1995 and 31 March 1996 is given below.

	As on 31 March 1995	As on 31 March 1996
Individuals	84,49,122	87,98,212
Hindu undivided families	4,04,913	4,06,456
Firms	11,72,755	11,92,193
Companies	1,76,594	1,87,574
Trusts	42,564	42,769
Others	38,658	37,310
Total	1,02,84,606	1,06,64,514

(ii) The following table indicates the category wise break up of assessees:

. Includes interest tax, expenditure tax,estate duty, wealth tax and gift tax

Number of assessees (1991-92 to 1995-96)



Category	Individuals	Hindu undivided families	Firms	Companies	Others (including Trusts)	Total
(i) Category 'A'[1]	86,09,612	3,93,649	11,35,823	1,11.218	73,385	1,03,23,687
(ii) Category 'B' (Lower)[2]	1,24,437	8,181	33,504	39,908	4,438	2,10,468
(iii) Category 'B' (Higher)[3]	35,650	2,145	12,345	15,354	601	66,095
(iv) Category C'[4]	14,535	1,011	6,683	19,797	1,450	43,476
(v) Category 'D'[5]	13,978	1,470	3,838	1,297	205	20,788
Total	87,98,212	4,06,456	11,92,193	1,87,574	80,079	1,06,64,514

The above table shows that 98.8 percent assessees are from lower categories i.e with income below Rs.5 lakh, whereas only 1.2 percent of the assessees were from the higher income categories i.e. with income of Rs.5 lakh and above.

Surtax

2.7.2 Under the Companies (Profits) Surtax Act, 1964, surtax is levied on the chargeable profits of a company insofar as they exceed the statutory deductions, which is equal to 15 percent (from 1 April 1977) of the capital of the company or Rs. two lakh, which ever is greater.

The number of surtax assessees in the books of the department as furnished by the Ministry of Finance for the last three years were as under:

Year ending	No. of assessees
31 March 1994	1,190
31 March 1995	Not furnished by the Ministry
31 March 1996	Not furnished by the Ministry

Interest Tax

2.7.3 Under the Interest Tax Act, 1974, as reintroduced with effect from 1 October 1991, by the Finance (No.2) Act,1991, interest tax is leviable on the chargeable interest income of 'Credit Institutions'. Such credit institutions, inter alia, included co-operative societies engaged in the

[1] Category 'A' assessees - Company assessments with income/loss below Rs.50,000/- and non-company assessments with income/loss below Rs. 2 lakh.

[2] Category 'B' assessees (lower income group) - Company assessments with income /loss of Rs.50,000/- and above but below Rs.5 lakh and non-company assessments with income/loss of Rs.2 lakh and above but below Rs.5 lakh.

[3] Category 'B' assessees (higher income group) - Company and non-company assessments with income/loss of Rs.5 lakh and above but below Rs.10 lakh.

[4] Category 'C' assessees - Company and non-company assessments with income/loss of Rs.10 lakh and above.

[5] Category 'D' assessees - Serach and Seizure assessments.

business of banking, not being co-operative societies which provide credit facilities to farmers or village artisans, for the assessment year 1992-93. The interest income chargeable to tax includes interest on loans and advances, commitment charges on unutilised portion of any credit sanctioned and discount on promissory notes and bills of exchange.

The number of assessees for interest tax in the books of the department as furnished by the Ministry of Finance for the last three years were as under:

Year ending	No. of assessees
31 March 1994	1,385
31March 1995	2,121
31 March 1996	3,117

Thus number of assessees increased by 996 over the previous year

Wealth Tax

2.7.4 Under the provisions of the Wealth Tax Act, 1957, wealth tax is levied for every assessment year on the net wealth of every individual and Hindu undivided family according to the rates specified in the schedule to the Act. No wealth tax was levied on companies with effect from 1 April 1960. However, levy of wealth tax on companies has been revived in a limited way with effect from 1 April 1984. For the assessment year 1995-96, no wealth tax was payable where the net wealth was less than Rs.15 lakh.

The number of wealth tax assessees in the books of the department as on 31 March 1995 and 31 March 1996 were as follows:

	As on 31 March 1995	As on 31 March 1996
Individuals	4,71,190	3,35,954
Hindu undivided family	58,379	42,194
Companies	15,232	12,441
Total	5,44,801	3,90,589

Thus the number of wealth tax assessees as on 31 March 1996 has decreased by 1,54,212 as compared to 31 March 1995.

Gift Tax

2.7.5 Under the provisions of the Gift Tax Act, 1958, gift tax is levied according to the rates specified in the schedule for every assessment year in respect of gifts of movable or immovable properties made by a person to another person (including Hindu undivided family) or a company or an association of persons or body of individuals (whether incorporated or not) during the previous year. During the assessment year 1995-96 no gift tax was payable where the value of taxable gifts did not exceed Rs.30,000.

The number of gift tax assessees in the books of the department as on 31

March 1995 and 31 March 1996 were as follows:

Year	No. of assessees
1994-95	63,261
1995-96	49,947

Arrears of assessments

2.8 The limitation period for completion of assessment is 2 years in the case of income tax, wealth tax and gift tax.

Working strength of officers for the last three years was as under:

	1993-94		1994-95		1995-96	
Nature of posts	Assessment Duty	Non-Assessment Duty	Assessment Duty	Non-assessment Duty	Assessment Duty	Non-assessment Duty
Addl.Commissioners/ Dy.Commissioners	198	192	224	268	236	250
Asstt. Commissioners	722	91	880	165	948	180
Income Tax Officers	1376	277	1778	415	2054	420
Total	2296	560	2882	848	3238	850

Income Tax including Corporation Tax

2.8.1(i) The number of assessments completed during the five years was as under:

Financial Year	Number of assessments for disposal			Number of assessments completed			Percentage of disposal
	Scrutiny	Summary	Total	Scrutiny	Summary	Total	
(i)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1991-92	5,34,174	75,00,631	80,34,805	3,06,495	64,06,919	67,13,414	83.55
1992-93	5,09,406	74,43,737	79,53,143	2,85,867	62,17,076	65,02,943	81.76
1993-94	4,98,327	84,65,578	89,63,905	3,36,894	70,86,282	74,23,176	82.81
1994-95	4,53,353	95,51,857	1,00,05,210	2,98,669	72,94,097	75,92,766	75.89
1995-96	4,55,446	1,01,66,080	1,06,21,526	3,01,534	79,98,319	82,99,853	78.14

The break-up of assessments pending at the end of the year 1995-96 is given below:

Year	Scrutiny	Summary	Total
1991-92	2,27,679 (42.62)	10,93,712 (14.58)	13,21,391
1992-93	2,23,539 (43.88)	12,26,661 (16.47)	14,50,200
1993-94	1,61,403 (32.39)	13,79,296 (16.29)	15,40,699
1994-95	1,54,684 (34.12)	22,57,760 (23.64)	24,12,444
1995-96	1,53,912 (33.79)	21,67,761 (21.32)	23,21,673

2.8

(Figures in parentheses denote percentage of pendency with reference to the number of assessments for disposal)

It would be seen from the above table that though the overall pendency of cases decreased over the previous year yet the percentages of pending scrutiny and summary assessment cases was high though the Board had issued instructions for according priority to increasing disposal of both summary and scrutiny assessments.

(ii) Status-wise break-up of income tax assessments completed during the year 1994-95 and 1995-96 are as under:

		1994-95	1995-96
(a)	Individuals	62,28,273	68,91,794
(b)	Hindu undivided families	3,01,731	2,92,996
(c)	Firms	8,17,282	8,55,645
(d)	Companies	1,86,938	1,99,086
(e)	Others	58,542	60,332
	Total	75,92,766	82,99,853

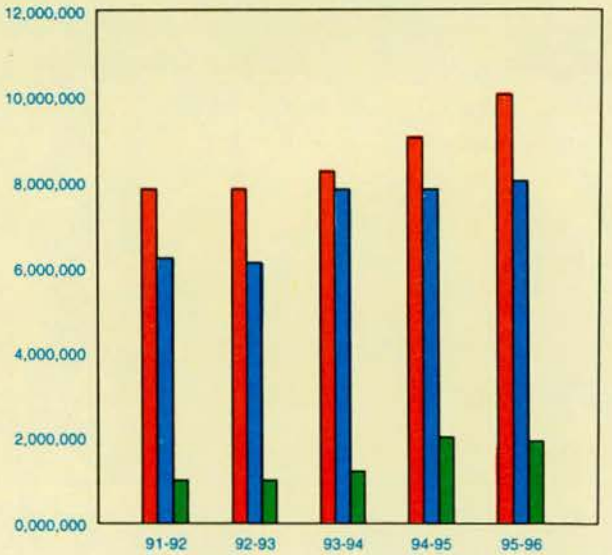
(iii) Status-wise and category-wise break-up of work load, disposals and pendency of assessments as on 31 March 1996 was as under:

			Workload		Disposal		Balance	
			Scrutiny	Non-Scrutiny	Scrutiny	Non-Scrutiny	Scrutiny	Non-Scrutiny
1.	Category 'A' Assessments	Company	20,605	1,20,355	9,926 (7)	88,132	10,679	32,223
		Non-Company	2,97,607	97,05,234	2,07,812 (2)	76,34,880	89,795	20,70,354
2.	Category 'B' (lower) Assessments	Company	12,259	44,873	7,792 (13.6)	35,240	4,467	9,633
		Non-Company	34,369	1,40,792	22,842 (13)	1,18,340	11,527	22,452
3.	Category 'B' (higher) Assessments	Company	8,165	24,569	5,400 (16.4)	18,096	2,765	6,473
		Non-Company	19,644	65,084	12,311 (14.5)	54,914	7,333	10,170
4.	Category 'C' Assessments	Company	21,799	28,805	12,345 (24.4)	19,706	9,254	9,099
		Non-Company	13,693	22,942	8,253 (22.5)	17,622	5,440	5,320
5.	Category 'D' Assessments	Company	2,817	914	1,632 (43.1)	617	1,185	297
		Non-Company	24,488	12,512	13,021 (35.1)	10,772	11,467	1,740
6.	Total	Company	65,645	2,19,516	37,295 (13)	1,61,791	28,350	57,725
		Non-Company	3,89,801	99,46,564	2,64,239 (2.5)	78,36,528	1,25,562	21,10,036

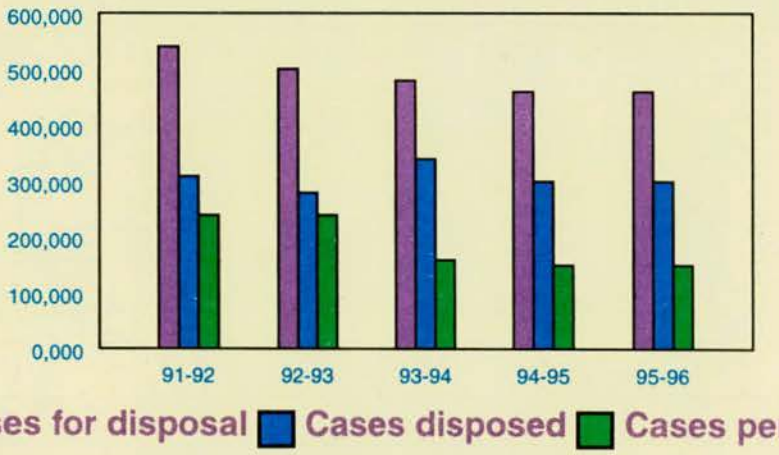
(figures in parentheses denote percentage of scrutiny done vis a vis the total work load in each category of cases).

(a) The department could dispose 2.8 percent of its total workload of assessment cases by scrutiny assessments.

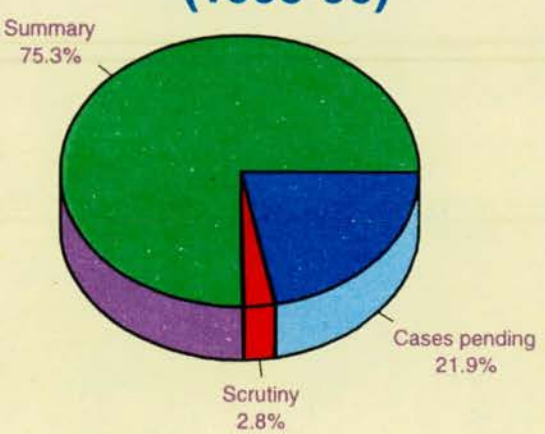
Disposal of summary assessment cases (1991-92 to 1995-96)



Disposal of scrutiny assessment cases (1991-92 to 1995-96)



Disposal of cases (1995-96)



(b) In the higher income category of cases i.e. 'B higher' and 'C', the disposal of scrutiny cases was 16.4 and 24.4 percent in company cases and 14.5 and 22.5 percent in non company cases.

Thus bulk of the workload has been disposed by summary assessment cases and even in the higher income category of cases the department could not complete even 25 percent of cases in a scrutiny manner.

(iv) Status-wise and year-wise break-up of pendency of income tax assessments as on 31 March 1996 is as under:

	Status	1991-92 and earlier years	1992-93	1993-94	1994-95	1995-96	Total
	(a) Company assessments						
(i)	Regular	132	203	2,093	23,535	56,218	82,181
(ii)	Reopened/set side	910	525	405	342	1,712	3,894
	(b) Non-company assessments						
(i)	Regular	7,285	4,483	35,264	3,85,460	16,68,048	21,00,540
(ii)	Reopened/set aside	2,806	1,907	2,681	8,562	1,19,102	1,35,058
	Total	11,133	7,118	40,443	4,17,899	18,45,080	23,21,673

The number of assessments pending as on 31 March 1996 was 23,21,673 as compared to 24,12,444 as on 31 March 1995 and 15,40,699 on 31 March 1994.

Wealth Tax and Gift Tax-

(A) Wealth Tax

2.8.2 Status-wise number of wealth tax assessments due for disposal completed and pending for the years 1994-95 and 1995-96 was as follows:

Assessments	Year	Individual	Hindu Undivided families	Companies	Total
Due for disposal	1994-95	2,60,006	34,876	11,407	3,06,289
	1995-96	1,53,915	22,979	8,516	1,85,410
Completed	1994-95	2,05,495	25,278	6,952	2,37,725
	1995-96	72,263	9,270	3,851	85,384
Pendency at the end of the year (percentage in parentheses)	1994-95	54,511 (20.96)	9,598 (27.52)	4,455 (39.05)	68,564 (22.38)
	1995-96	81,652 (53.05)	13,709 (59.66)	4,665 (54,78)	1,00,026 (53.95)

The pendency position has increased from 22.38 percent in 1994-95 to 53.95 percent in 1995-96 though the number of assessments for disposal had reduced.

(B) Gift Tax

Status-wise number of gift tax assessments due for disposal completed and pending for the years 1994-95 and 1995-96 was as under:

Assessments	Year	Individual	HUF	Company	Firms	Others	Total
Due for disposal	1994-95	29,806	753	90	15	3264	33,928
	1995-96	30,457	894	148	19	219	31,737

Completed	1994-95	24,625	609	44	3	2864	28,145
	1995-96	23,230	596	83	9	191	24,109
Pendency at the end of the year (Percentage in parentheses)	1994-95	5,181 (17.38)	144 (19.12)	46 (51.11)	12 (80.00)	400 (12.25)	5,783 (17.04)
	1995-96	7,227 (23.73)	298 (33.33)	65 (43.92)	10 (52.63)	28 (12.78)	7,628 (24.04)

The pendency of assessments has increased from 17.04 percent in 1994-95 to 24.04 percent in 1995-96.

Surtax and Interest Tax

2.8.3 The number of surtax and interest tax assessments due for disposal, completed and pending for the years 1994-95 and 1995-96 was as follows:

Assessments	Year	Surtax	Interest Tax
Due for disposal	1994-95	1,649	6,704
	1995-96	929	7,189
Completed	1994-95	499	1,810
	1995-96	73	2,864
Pendency at the end of the year	1994-95	1,150 (69.73)	4,894 (73.00)
(Percentage in parentheses)	1995-96	856 (92.14)	4,325 (60.16)

Arrears of demands

2.9 The Income Tax Act, 1961, provides that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, a notice of demand shall be served upon the assessee. The amount specified as payable in the notice of demand has to be paid within 30 days unless the time for payment is extended by the assessing officer on application made by the assessee. The Act has been amended with effect from 1 October 1975 to provide that an appeal against an assessment order would be barred unles the admitted portion of the tax as per return has been paid before filing the appeal.

Corporation Tax (including surtax) and Income Tax

(i)(a) Details of uncollected tax for 1994-95 and 1995-96 are given below:

	1994-95 (Rs. in crore)	1995-96 (Rs. in crore)
Total amount of tax remaining uncollected as on 31 March 1996	22,698.64	28,969.59
Arrears not fallen due as on 31 March 1996	11,014.43	7,598.32
Amount claimed to have been paid but remaining to be verified/adjusted	658.47	3,167.56
Amount stayed/kept in abeyance	4,530.25	9,698.16
Amount for which instalments had been granted but had not fallen due	157.78	218.34

Thus, the arrears remaing uncollected increased by Rs.6,270.95 over the previous year constituting 21.6 percent increase.

(b) The year-wise position of arrears remaining uncollected in company and non-company cases for the years 1993-94 to 1995-96 is given below:

	1993-94	1994-95	1995-96
	(Rs. in crore)		
Companies	6,626.63	9,890.12	12,433.53
Non-companies	4,153.50	12,808.52	16,536.06
Total	10,780.13	22,698.64	28,969.59

Thus arrears of both corporation tax and income tax continued to mount despite direction of the Board for according priority to reduction of the arrear demand.

(c) The details of demands of income tax (including corporation tax) stayed/kept in abeyance as on 31 Marh 1995 and 31 March 1996 were as follows:

		1994-95	1995-96
		(Rs. in crore)	
(1)	By courts	998.57	779.44
(2)	Under Section 245 (F) (2) (Application to Settlement Commission)	130.31	136.85
(3)	By Tribunals	214.79	386.49
(4)	By Income tax authorities due to		
	(i) Appeals and revisions	840.70	1,002.52
	(ii) Double income tax claims	32.66	30.28
	(iii) Restriction on remittance Sec.220 (7)	4.58	18.91
	(iv) Other reasons	2,308.64	7,343.67
	Total	4,530.25	9,698.16

(d) The total outstanding demand remaining uncollected as on 31 March 1996 of Rs.28,969.59 crore comprised arrear demand of Rs.16,416.05 crore of earlier years. The age wise analysis of the arrear demand of corporation tax, income tax, interest and penalty is given below:

(Rs. in crore)

		Corporation Tax	Income Tax	Interest	Others	Total
1.	Over 1 year but less than two years	1,756.71	3,715.26	5,356.26	300.59	11,128.82
2.	Over 2 years but less than 5 years	813.39	1,433.57	1,637.83	174.28	4,059.07
3.	Over 5 years but les than 10 years	243.46	246.89	256.74	110.88	857.97
4.	Over 10 years	90.63	131.55	90.54	57,47	370.19
	Total	2,904.19	5,527.27	7,341.37	643.22	16,416.05

(e) The following table gives the break-up of the gross arrears of

Rs.28,969.59 crore by certain slabs of income:

(Rs. in crore

	Company cases			Non-company cases			Total		
	No. of cases	Gross arrears	Net arrears	No. of cases	Gross arrears	Net arrears	No. of cases	Gross arrears	Net arrears
Upto Rs.1 lakh in each case	190066	1168.52	539.79	4577175	2196.12	935.03	4767241	3364.64	1474.82
Over Rs.1 lakh to Rs.10 lakh in each case	80409	991.49	407.99	65533	1389.47	706.95	145942	2380.96	1114.94
Over Rs.10 lakh to Rs.1 crore in each case	3979	1738.85	602.04	5094	1379.09	701.81	9073	3117.94	1303.85
Over Rs. 1 crore in each case	1039	8534.67	2104.56	951	11571.38	2289.03	1990	20106.05	4393.59
Total	275493	12433.53	3654.38	4648753	16536.06	4632.82	4924246	28969.59	8287.20 *

Thus 68.7 percent of the total net arrears of Rs.8,287.20 crore outstanding on 31 March 1996 was constituted by high demand cases of Rs.10 lakh and above. The department needs to accord priority for recovering these arrears.

Other Direct Taxes

(ii) The following table gives the year-wise arrears of demands outstanding under wealth tax and gift tax as on 31 March 1996.

(Rs. in crore)

	Wealth tax	Gift Tax
Over one year but less than two years	454.01	14.18
Over two years but less than five years	215.16	8.49
Over five years but less than ten years	88.89	4.48
Over ten years	48.17	3.36
Total	806.23	30.51

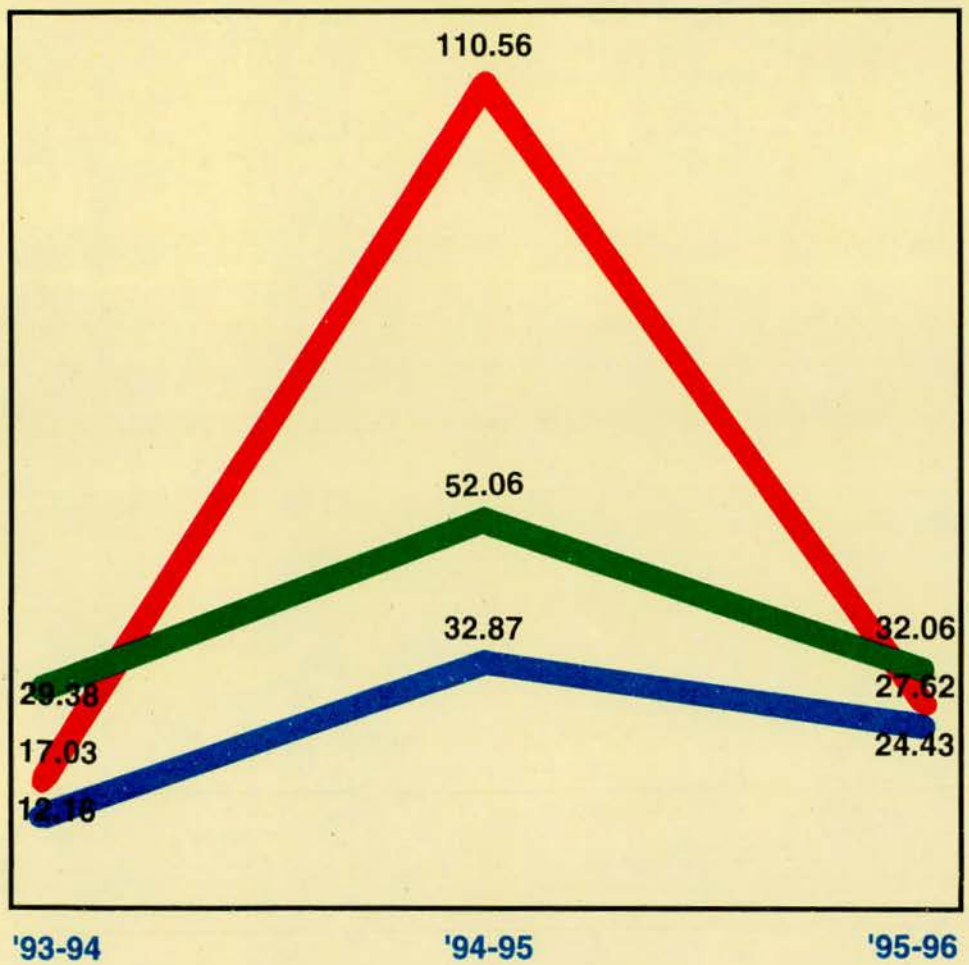
The above data reveals that the arrears of wealth tax are alarmingly high as they were 10.8 times of the collections of wealth tax as on 31 March 1996.

Tax Recovery Machinery

2.10 Under the provisions of the Income Tax Act, 1961 every demand of tax, interest, penalty or fine payable under the Act should be paid within thirty days of the service of notice of demand. On the default of an assessee in this respect, the assessing officer may forward a

* Net arrears comprise gross arrears minus arrears not fallen due, amount claimed to have been paid pending verification, amount for which instalments were granted, amounts stayed/kept in abeyance.

Growth in collections and arrears (1993-94 to 1995-96)



Percentage growth in revenue

Percentage growth in gross arrears

Percentage growth in net arrears

certificate specifying the demand of arrears to the Tax Recovery Officer for recovery of demand. The latter will serve a notice on the defaulter requiring him to pay the demand within fifteen days. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, he shall proceed to realise the amount together with interest at the rate of 1.5 percent per month or part of month (from 1 April 1989) on the outstandings till the date of recovery by one or more of the following modes:

(a) by attachment and sale of the defaulter's movable property;

(b) by attachment and sale of the defaulter's immovable property;

(c) by arrest of the defaulter and his detention in prison;

(d) by appointing a receiver for management of defaulter's moveable and immovable properties.

(i) The number of officers engaged in tax recovery work during 1995-96 was as follows:

Category	Sactioned Strength	Working Strength
Tax Recovery Officers	192	157

(ii) The tax demands certified to the Tax Recovery Officer and the progress of recovery to end of 1995-96 are given in the following table:

(Rs. in crore)					
Year	At the beginning of the year	Demand certified During the year	Total	Demand recovered during the year	Balance at the end of the year
1991-92	776.97	606.35	1383.32	370.60	1012.72
1992-93	1023.79	506.06	1529.85	452.64	1077.21
1993-94	1025.19	1040.60	2065.79	519.33	1546.46
1994-95	1654.56	414.24	2068.80	697.01	1371.79
1995-96	1371.79	753.54	2125.33	730.49	1394.84

Thus, the balance of arrears certified to the Tax Recovery Officers for recovery did not show any perceptible decline.

(iii) Year-wise break up of certificates pending on 31 March 1996 and amount of demand:

Year	No. of Certificates	Amount
		(Rs. in crore)
1991-92 and earlier	7,93,845	414.27

1992-93	33,221	97.81
1993-94	28,148	142.06
1994-95	30,249	265.85
1995-96	50,169	474.85
Total	9,35,632	1,394.84

(iv) Tax-wise and amount-wise analysis of pending certificates:

(Rs. in crore)							
	Range of Demand	Corporation Tax		Income Tax		Wealth Tax	
		No.	Amount	No.	Amount	No.	Amount
(a)	Upto Rs.10,000	34139	13.98	613,723	113.81	104107	15.10
(b)	Over Rs.10,000 and below Rs.1 lakh	6640	8.13	102,193	133.65	9349	13.01
(c)	Over Rs.1 lakh to Rs.5 lakh	1970	24.08	17846	276.41	1,189	8.44
(d)	Over Rs.5 lakh to Rs.10 lakh	714	18.34	5564	157.23	331	4.92
(e)	Over Rs.10 lakh	583	103.54	5751	466.18	131	19.52
	Total	44046	168.07	745,77	1447.28	115107	60.99

(Rs. in crore)									
	Range of Demand	Gift Tax		Surtax		Others		Total	
		No.	Amount	No.	Amount	No.	Amount	No.	Amount
(a)	Upto Rs.10,000	28,646	3.47	84	0.02	708	0.24	7,81,407	146.62
(b)	Over Rs.10,000 and below Rs. 1 lakh	1419	1.62	33	0.05	214	0.36	119,848	156.81
(c)	Over Rs.1 lakh to Rs.5 lakh	167	0.89	25	0.67	25	0.54	21,222	311.04
(d)	Over Rs.5 lakh to Rs.10 lakh	36	0.01	4	0.34	7	0.13	6656	180.97
(e)	Over Rs.10 lakh	9	1.02	16	4.96	9	4.18	6499	599.40
	Total	30,277	7.01	162	6.04	963	5.45	9,35,632	1394.84

(v) Details of disposal and pendency of attached property are indicated below:

Particulars	Movable properties			Immovable properties		
	No.of cases	No.of properties	Approximate value	No.of cases	No.of properties	Approximate value

			(Rs. in crore)			(Rs.in crore)
Propertiesattached	2107	--	98.07	3295	4483	449.35
Sales conducted	27	24	1.65	20	19	3.39
Not sold over six months	106	--	1.26	--	--	--
Not sold over one year	--	--	--	868	1222	89.95
Not sold over three years	--	--	--	1274	1854	135.79

	Number	Amount (Rs.in crore)
Cases in which receiver apponted	17	1.31
Defaulters against whom arrest proceedings initiated	194	3.90

Appeals, Revision petitions and Writs

2.11 Under the provisions of the Income Tax Act, 1961, if an assessee is not satisfied with an assessment, a refund order etc., he can file an appeal with the Appellate Assistant commissioner (now Deputy Commissioner (Appeals)). The Act also provides for appeal by the assessee direct to the Commissioner (Appeals).

A second appeal can be taken to the Income Tax Appellate Tribunal. After the Tribunal's decision, appeal on a point of law can be made to the High Court. An appeal thereafter lies to the Supreme Court. The assessee can also initiate writ proceedings under Article 226 of the Constitution.

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

The number of Commissioners and Deputy Commissioners (Appeals) during 1995-96 was as follows:

Commissioners	178
Deputy Commissioners	50

Pendency position of appeals as on 31 March 1996

(i) Pending with Commissioners (Appeals)

	Total appeals	High demand appeals	With demand of Rs.10-25 lakh	With demand of Rs.25 lakh and above
Appeals for disposal	253753	52770	5025	4950
Completed	96647	27025	3318	3094
Pending	157106	25745	1707	1856

(ii) Pending with Deputy Commissioners (Appeals)

	Total Appeals	High demand
Appeals for disposal	114022	4843
Completed	40392	2101
Pending	73630	2742

The year-wise break up of pending appeals has not been maintained by the Ministry. The Ministry has also not clarified whether the above data include the pending appeals of Other Direct Taxes also.

(iii) Details regarding appeals, references and writs in Supreme Court, High Court and Income Tax Appellate Tribunal are as under:

	No. for disposal	Disposal	Pending
Supreme Court	7655	211	7,444
High court	57,044	2028	55,016
Income Tax Appellate Tribunal	1,41,515	10,580	1,30,935
Total	2,06,214	12,819	1,93,395

Reliefs and refunds

2.12 Where the amount of tax paid exceeds the amount of tax payable, the assessee is entitled to a refund of the excess. If the refund is not granted by the department within three months from the end of the month in which the claim is made, simple interest at the prescribed rate becomes payable to the assessee on the amount of such refund (vide Section 237 read with Section 243 of the Income Tax Act).

(i) The particulars of cases of direct refunds on which claims were made during 1991-92 to 1995-96 were as under:

Financial year	Opening balance	Claims received during the year	Total	No. of claims disposed off	Balance outstanding
1991-92	15,649	97,486	1,13,135	96,470	16,665
1992-93	16,665	90,402	1,07,067	91,249	15,818
1993-94	15,818	68,228	84,046	72,971	11,075
1994-95	11,075	87,377	98,452	81,730	16,722
1995-96	16,722	1,22,592	1,39,314	1,04,362	34,952

Yearwise analysis of the outstanding direct refund claims as on 31 March 1996 was not furnished by the Ministry.

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

Details of cases resulting in refund as a result of appellate orders and revision orders etc. as on 31 March 1996 were not furnished by the Ministry.

Interest

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

Details relating to interest paid on refunds by Government for the years 1993-94 to 1995-96 were as under.

(Rs.in crore)

Section under which Interest Paid	1993-94		1994-95		1995-96	
	No.of assessments	Amount	No. of assessments	Amount	No. of assessment s	Amount
214	15787	10.20	19183	7.30	22067	7.79
243	216	0.09	1345	0.14	1274	6.64
244	852143	193.01	921769	172.32	983633	305.57
244A	294148	180.17	327569	252.37	299749	669.36

Cases settled by Settlement Commission

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

The number of cases settled by the Settlement Commission during the last five years was as under:

(i) Income Tax				
Financial year	No. of cases for disposal	No. of cases settled	Percentage of cases settled	No. of cases pending
1991-92	2014	457	22.69	1557
1992-93	2115	342	16.17	1773
1993-94	2439	403	16.52	2036
1994-95	2553	450	17.63	2103
1995-96	2631	485	18.43	2146

(ii) Wealth Tax				
Financial Year	No. of cases for disposal	No. of cases settled	Percentage of cases settled	No. of cases pending
1991-92	479	166	34.66	313
1992-93	420	99	23.57	321
1993-94	385	52	13.51	333
1994-95	386	59	15.28	327
1995-96	356	98	27.53	258

(iii)	No. of cases pending for admission before Settlement Commission as on 31.3.1996	663
(iv)	No. of cases held up with Settlement Commission for want of comments of the depeartment.	132

(v) Year-wise position of tax determined (including interest and penalty) in cases settled by Settlement Commission.

Financial Year	Income Tax (in lakh of rupees)		Wealth Tax (in lakh of rupees)	
	Additional tax collected/collectable on admission of applications	Gross demand created in respect of cases settled	Additional tax collected/collectable on admission of application	Gross demand created in respect of cases settled
1992-93	1,795.71	1,895.67	11.53	781.68
1993-94	2,547.85	3,773.15	125.45	90.22
1994-95	3,089.39	2,412.73	36.49	34.00
1995-96	2814.74	4,726.89	189.66	119.30

Penalties and prosecutions

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

Income Tax and Corporation Tax

(i)(a) Penalty proceedings initiated, disposed of and pending for each of the three years ending 1995-96 were as under:

Year	Opening balance	Additions	Total	Disposals	Closing balance
1993-94	1,66,346	1,49,306	3,15,652	83,491	2,32,161
1994-95	2,32,161	72,282	3,04,443	85,217	2,19,226
1995-96	2,19,226	64,144	2,83,370	67,923	2,15,447

(b) Details regarding prosecutions launched, convictions/compoundings and acquittals for the three years ending 1995-96 were as under:

Year	Complaints filed during the year			Convictions	Compounding	Acquittal	Total
	For tax evasion	Others	Total				
1993-94	552	389	941	57	507	570	1134
1994-95	257	70	327	47	106	98	251
1995-96	210	78	288	79	1592	487	2158

(c) Details relating to penalty cases such as work load, disposal, pendency and penalties imposed for the year 1995-96 are as follows:

pendency and penalties imposed for the year 1995-96 are as follows:

Nature of penalty	Work load	Disposal	Balance
For Concealment	1,37,225	26,805	1,10,420
Others	1,46,145	41,118	1,05,027
Total	2,83,370	67,923	2,15,447

Analysis of pendency particulars	Less than 6 months	More than 6 months
For concealment	31,807	78,613
Others	28,336	76,691

Penalties imposed (in crore of rupees)		
Particulars	No. of cases	Amount
For concealment	10,994	192.61
Others	20,845	76.22

(d) Details of pendency of penalty cases and composition money levied, collected and pending for 1993-94 to 1995-96 were as under:

(Rs.in crore)

Year	Opining balance		Levied during the year		Collected during the year		Balance outstanding	
	penalty	composition money	penalty	composition money	penalty	composition money	penalty	composition money
1993-94	258.46	48.30	68.84	64.43	43.03	45.01	284.27	67.72
1994-95	284.27	67.72	97.85	91.88	72.47	19.41	309.65	140.19
1995-96	309.65	140.19	152.89	68.71	53.05	18.09	409.49	190.81

Other Direct Taxes

(ii) (a) Penalty proceedings initiated, disposed of and pending for each of the three years ending 1995-96 are given below:

Year	Opening balance	Additions	Disposal	Closing balance
1993-94	40,105	27,310	13,896	53,519
1994-95	53,519	8,178	12,984	48,713
1995-96	48,713	922	10,836	38,799

(b) Details of pendency of of penalties and composition money levied, collected and pending for 1993-94 to 1995-96 were as under:

(Rs. in crore)

Year	Opining balance		Levied during the year		Collected during the year		Balance outstanding	
	penalty	composition money	penalty	composition money	penalty	composition money	penalty	composition money
1993-94	10.88	3.42	1.47	0.26	1.73	0.50	10.62	3.18
1994-95	10.62	3.18	4.58	0.14	0.91	0.44	14.29	2.88
1995-96	14.29	2.89	2.42	0.30	1.67	0.28	15.04	2.91

Searches and seizures

2.16 Sections 132, 132-A and 132-B of the Income Tax Act, 1961 provide for search and seizure operations. A search has to be authorised by a Director/Commissioner of Income Tax or a specified Deputy Director or a Deputy Commissioner of Income Tax. Where any money, bullion, jewellery or other valuable article or thing is seized, the assessing officer after necessary investigations, has to make an order with the approval of the Deputy Commissioner of Income Tax within 120 days of the seizure, estimating the undisclosed income in a summary manner on the basis of the material available with him and calculating the amount of tax on the income so estimated, specifying the amount that will be required to satisfy any existing liability, and retain in his custody such assets as are, in his opinion, sufficient to satisfy the aggregate of the tax demands and forthwith release the remaining portion, if any, of the assets to the persons from whose custody they were seized. The books of accounts and other documents cannot be retained by the authorised officer for more than 180 days from the date of seizure unless the Commissioner approved of the retention for longer period.

(i) The number of cases in which searches and seizures were conducted for the three years 1993-94 to 1995-96 were as under:

Year	Total No. of searches and seizures conducted	Value of assets seized (Rs. in crore)
1993-94	5026	396.46
1994-95	4830	381.43
1995-96	4612	458.14

(ii) (a) Particulars of income determined, tax levied, balance tax outstanding after adjustment of value of assets retained on final assessment for the year 1995-96 were as follows:

Rs.in crore)

No. of cases where final assessments were completed	Income determined	Demand raised			Demand adjusted out of retained assets.	Balance pending recovery		
		Tax	Penalty	Total		Tax	Penalty	Total
9986	2012.24	799.93	18.50	818.43	39.25	761.04	18.14	779.18

(b) The number of cases of prosecutions launched, compounded and convictions obtained for the three years ending 1995-96 were as under:

Year	No. of prosecutions launched			Disposal of cases		
	Opening balance	During the year	Total	No. of cases compounded	No. of cases in which convictions were obtained	No. of cases pending
1993-94	17,270	941	18211	507	57	17,647
1994-95	17,647	327	17,974	106	47	17,821
1995-96	17,821	288	18,109	1592	79	16,438

(c) Particulars of cases of assets returned, interest paid and cases pending for the year 1995-96 were as under:

No.of cases where assets were due for return			No. of cases where assets were returned	No. of cases where interest was paid during the year	Balance cases pending
Opening balance	Added during the year	Total			
1112	383	1495	311	--	1184

Survey

2.17 (i) Number of cases where the powers of survey (other than those relating to ostentatious expenditure) were exercised for the three years ending 1995-96 are given below:

Year	No. of premises surveyed	
	under section 133A(1)	under section 133B
1993-94	6,329	4,91,701
1994-95	10,237	7,81,307
1995-96	8277	7,74,595

(ii) Number of cases where evidence about ostentatious expenditure was collected under Section 133A(5) of Income Tax Act, 1961.

Year	No. of cases
1993-94	487
1994-95	462
1995-96	not available

Purchase by Central Government of immovable properties in certain cases of transfer

2.18 With a view to countering tax evasion and to curb the circulation of black money in real estate transactions, a new Chapter XX- C was inserted in the Income Tax Act, 1961, with effect from 1st October 1986 empowering the Central Government to purchase immovable properties in certain cases of transfer. To begin with, these provisions were made applicable to properties proposed to be transferred for an apparent consideration exceeding Rs.10 lakh in each case in the metropolitan cities of Bombay, Calcutta, Delhi and Madras. It was extended to 24 more cities from 1 April 1991.

(i) Details of properties purchased by the Central Government during the financial year ended March 1996 are as under:

	Calcutta	Chennai	Ahmedabad	Delhi	Mumbai	Total
(i) No. of statements received in form 37-I	307	2624	2205	4892	3795	13823
(ii) No. of properties purchased	2	5	13	8	36	64
(iii) Value of properties purchased (Rs. in crore)	1.40	1.21	6.10	6.33	29.40	44.44
(iv) No. of properties where consideration exceeds Rs.50 lakh	1	-	4	4	22	31

(ii) The disposal of acquired properties and those awaiting disposal (for entire country) during 1995-96 is given below.

No. of properties sold	Sale value (Rs. in crore)	Properties awaiting disposal	Amount
67	86.87	125	89.64

Revenue demands written off by the department

2.19(a) Details regarding amount written off for the year 1995-96 as furnished by the Ministry of Finance, are as under:

No. of cases identified involving arrear demand of Rs.10,000/- and below where recovery certificates were isued upto 31.3.79			Details of cases considered for write off during the year.			Details of cases written off during the year			Details of balance of cases to be written - off		
No. of assessees	No. of entries	Total amount involved (Rs. '000)	No. of assessees	No. of entries	Total amount involved (Rs. '000)	No. of assessees	No. of entries	Total amount written-off (Rs. '000)	No. of assessees (1-7)	No. of entries (2-8)	Total amount for write off (Rs. '000) (3-9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
59117	46535	84261	51993	36993	64174	48191	34002	62696	10926	12533	21565

(b) Category-wise details of revenue demands written of by the Department during 1995-96 were as under:

(i) Income Tax (including Corporation Tax) (Rs.in crore)

Category	Company		Non-company		Total	
	No.	Amount	No.	Amount	No.	Amount
Assessees having died leaving behind no assets or have become insolvent or gone into liquidation.	1982	2.15	2686	66.36	4668	68.51
Assessees who have gone into liquidation or are defunct	--	--	387	30.87	387	30.87
Total of (a) and (b)	1982	2.15	3073	97.23	5055	99.38
Assessee being untraceable.	--	--	16372	479.09	16372	479.09
Assessees having left India	--	--	1997	29.42	1997	29.42
Other reasons:						
Assessees who are alive but have	--	--	3609	175.60	3609	175.60

no attachable assets.						
Amount being petty etc.	23	0.09	52564	222.72	52587	222.81
Amounts written off as a result of scaling down of demand.	--	--	19114	57.45	19114	57.45
Total	23	0.09	75287	455.77	75310	455.86
Amount written off on grounds of equity or as a matter of international courtesy, or where time, labour and expense involved in legal remedies for realisation are considered disproportionate to the recovery.	--	--	--	--	--	--
Grand Total:	2005	2.24	96729	1061.51	98734	1063.75

(ii) Other Direct Taxes (Rs.in lakh)

Amount written off due to untraceability of assessee	Wealth Tax		Gift Tax	
	No.	Amount	No.	Amount
	592	1.00	225	6.73

Chapter 3

A. System Appraisals

3.1 Summary Assessment Scheme

Introductory

3.1.1 The Summary Assessment Scheme was first introduced by the Taxation Law Amendment Act, 1970, with effect from 1 April 1971 with the twin objectives of reducing the department's work load and placing greater reliance on voluntary compliance made by the assessees. The Direct Tax Law (Amendment) Act, 1987, with effect from assessment year 1989-90 substituted the old scheme with new provisions in the Income Tax Act, 1961, the Wealth Tax Act, 1957 and the Gift Tax Act, 1958 empowering the assessing officers to make certain prescribed adjustments. The main features of this scheme which was applicable with effect from 1.4.1989 are:

(i) The requirement of passing an assessment order in all cases where returns of income/wealth/gift are filed has been dispensed with and the assessing officer would issue an acknowledgement slip to the assessee if the assessee has correctly paid tax and interest due on the basis of the return;

(ii) If on the basis of return any amount is found due from the assessee, it can be recovered and if any refund is found due to the assessee, it can be granted without passing an assessment order; and

(iii) Assessment order will be passed in a very limited number of cases randomly selected for scrutiny. The criteria for cases to be selected for scrutiny would be notified by the Central Board of Direct Taxes every year;

(iv) In cases, where as a result of prescribed adjustments, the income returned by assessee is increased or the loss returned is reduced or converted into income, a provision for levy of additional tax at 20 percent of the tax on the additions made was introduced. This additional tax was to serve as a deterrent measure, in order to compel the assessee to disclose correct income/loss.

Objectives of the Scheme

3.1.2 The main objectives of the Summary Assessment Scheme were:

(i) to cope with the increasing number of assessees and to reduce the work load on assessing officers;

(ii) to enable the assessing officers to concentrate more on quality assessments and make sustainable additions; and

(iii) to encourage voluntary compliance by tax payers with pecuniary discouragement for non-compliance

Law and procedure

3.1.3 The provisions of Section 143(1)(a) of the Income Tax Act lay down the scope of summary assessment, and the same are discussed below in brief.

Adjustments to returned income

(A) Section 143(1)(a) provides that a return filed by an assessee under section 139 or in response to a notice under section 142(1) shall be processed first mandatorily. If any tax or interest is found due on the basis of such return after adjustment of any tax deducted at source, any advance tax paid, any amount paid otherwise by way of tax or interest, then without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum payable and such intimation shall be deemed to be a notice of demand issued under section 156 and all provisions of the Act shall apply accordingly. Further, if any refund is due on the basis of such return, it shall be granted to the assessee.

The following adjustments shall be made in the income or loss declared in the return, namely :-

(i) any arithmetical errors in the return, accounts or documents accompanying it, shall be rectified;

(ii) any loss carried forward, deduction, allowance or relief which on the basis of the information available in such return, accounts or documents is prima facie admissible but which is not claimed in the return shall be allowed; and

(iii) any loss carried forward, deduction, allowance or relief claimed in the return, which on the basis of the information available in such return, accounts or documents is prima facie inadmissible, shall be disallowed.

The dictionary meaning of the term "prima facie", is "on the face of it". According to judicial pronouncements* , a decision on a debatable issue is not envisaged by the prima facie adjustment . No adjustment requiring examination of any evidence or obtaining explanation from the assessee can be carried out **

The CBDT have from time to time by way of circular, instructions

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* Kamal Textiles Vs ITO 59-Taxman-555-MP-1991.

** Khatau Junkar Ltd. Vs. K.S.Pathania-196-ITR-55-Bombay

clarified the scope and ambit of prima facie adjustments. The relevant circulars are:
Instruction No.1814 dated 4.4.1989, (ii) Circular No.581 dated 28.9.1990, (iii) Circular No.601 dated 4.6.1991, (iv) Circular No.669 dated 25.10.1993 and (v) Circular No.689 dated 24.8.1994.

Revised intimation

(B) Section 143(1)(b) provides that if there is any variation of carry forward of loss, deduction, allowance or relief claimed in the return, consequent to the order passed under section 143(3), 144, 147, 154, 155,250,254, 260, 262, 263, 264 or 245D(4) relating to an earlier assessment year subsequent to the filing of the return referred to in clause (a), an intimation shall be sent to the assessee in case any tax, interest is due and such intimation shall be deemed to be a notice of demand under section 156. If any refund is due, it shall be granted to the assessee. The limit for sending the intimation is four years from the end of the financial year in which the order was passed. Similar provisions exist for an assessee who is a member of an association of persons or body of individuals.

Additional income-tax

(C) Section 143 (1 A) provides for levy of additional income tax in the following manner:

(i) Where as a result of adjustments made under the first proviso to section 143(1)(a), the income declared by any person in the return is increased, an additional income tax at the rate of 20 percent shall be charged on the difference between the tax on the increased total income and the tax that would have been chargeable had such total income been reduced by the amount of adjustment.

(ii) In cases where the loss declared in the return has been reduced as a result of the aforesaid adjustment or has the effect of converting loss into income, the assessing officer shall charge additional income tax equal to 20 percent of the tax that would have been chargeable on the amount of the adjustment as if it had been the total income of the person.

(iii) In cases where as a result of an order under Section 143(3), 154, 250, 254, 260, 262, 263, the amount on which additional income tax is payable under clause (a) has been increased or reduced, additional income tax shall be increased or reduced accordingly.

Revised return

(D) Section 143(1B) which has been inserted by the Finance Act, 1990 with retrospective effect from 1 April 1989 provides that where an assessee files a revised return under Section 139(5), after issue of an intimation or grant of refund, the intimation already sent can be amended on the basis of such revised return and the amount of income tax, additional income tax or the interest can be enhanced or reduced as per such amendments. Similarly, the amount of refund already granted can be enhanced or reduced on the basis of such revised return.

The proviso to section 143(1B) provides that if an assessee furnishes a revised return under section 139(5) after the service upon him of an intimation under section 143(1), he shall be liable to pay additional income tax in relation to the adjustment made under the first proviso to clause (a) of sub-section (1) and specified in the said intimation, whether or not he has made the said adjustment in the revised return. Thus even if the assessee furnishes a revised return he shall not be absolved from paying additional tax with respect to the adjustment already made and intimated to him.

Appeal

(E) An assessee can file an application for rectification of any mistake in the intimation referred to in clause (a) of sub-section (1) of section 143 and can prefer an appeal only against the order passed under section 154 in respect of such application for rectification.

With effect from June 1994 the assessee can prefer an appeal directly without first applying to the assessing officer for rectification as was provided earlier

Wealth Tax Act

(F) The provisions of law pertaining to wealth tax are enumerated separately in this review.

Objectives of the review

3.1.4 The Summary Assessment Scheme had been reviewed by the Comptroller and Auditor General of India earlier in 1986-87 and 1989-90, the findings of which were featured in the Audit Report on Direct Taxes for the year ended 31 March 1987 and a separate report on the Central Action Plan (Income Tax)(1988-89). The present review covers the implementation of the Scheme during the period 1992-93 to 1994-95 with reference to the law as applicable with effect from April 1989.

The review of the scheme was conducted with the following objectives:

(i) to assess the extent to which the objectives of the scheme have been achieved i.e.:

— whether true voluntary compliance has resulted due to the faith reposed in the assessees;

— whether the work load of the department has been reduced enabling the assessing officer to devote more time to make selected qualitative assessments resulting in sustainable additions with consequential gain to revenue.

(ii) to assess degree of compliance by the department with law and procedural requirements.

(iii) to assess the extent to which the department utilised information available with it to carry out prima facie adjustments;

(iv) to assess the resultant gain to revenue on account of additional income tax and cases in which additional income tax was not levied;
(v) to assess the extent to which prima facie adjustments which on the basis of information available in the return including accompanying accounts or documents required to be made, were not made resulting in under assessment or over assessment of tax; and

(vi) to highlight lacunae in the existing law and procedure applicable to the summary assessment scheme.

For the purposes of the review of the Scheme, the Central Board of Direct Taxes was requested in August 1996 to make available the "policy file" of the scheme with reference to the amendments made to Section 143 of the Income Tax Act w.e.f. 1 April 1989. The objective for the study of the policy file was to ascertain the background against which the amendments were made and whether the Government had made any estimate of the revenue loss that would occur due to the amended Summary Assessment Scheme.

The CBDT had made available in September 1996 a copy of the office note of the Chairman, Central Board of Direct Taxes to the Direct Tax Laws (Amendment) Bill, 1987 for introduction of the Bill in the Lok Sabha, which had received the recommendation of the President of India on 7 December 1987.

Audit examination of the note revealed that:

(i) the amendments to the Summary Assessment Scheme were made primarily to simplify the assessment procedure. The focus was to shift from the concept of assessment of income to the concept of determination of additional income tax only.

(ii) the basic aim was to rationalise and simplify the law and procedure, rather than tax increase or revenue gain.

No study/estimate was made of the likely revenue loss to the Government due to the amended scheme and it was presumed that the proposals would be revenue-neutral

Scope of review - Sample size

3.1.5 For the purposes of the review out of 2855 assessment wards/circles/ranges (inclusive of special ranges and circles) each for income tax, wealth tax and gift tax under the charge of the Commissioners of Income Tax, returns/assessments in 669 wards/circles/ranges were test checked. The total number of returns processed and those test checked in the selected wards/circles/ranges for the period under review are given below:

Financial Year	No. of returns processed	No. of cases test checked
1992-93	10,69,648	80,318
1993-94	11,82,636	88,550
1994-95	12,95,209	94,933
Total	35,47,493	2,63,801

Thus, 7.5 percent of the returns processed were test checked in audit.

Highlights

3.1.6 (i) The twin objectives of the Summary Assessment Scheme to encourage voluntary compliance on part of the assessees and to enable the assessing officers to devote more time to make quality assessments in selective cases have not been achieved.

[Para 3.1.22]

(ii) Examination of the policy file reveals that the Government had not made any estimate of the revenue loss that would occur due to the implementation of the Scheme.

[Para 3.1.4]

(iii) The success of the scheme largely depends on the extent and quality of scrutiny assessments which have been done by the department. Audit scrutiny revealed that the percentage of scrutiny assessments in the higher categories of income/loss remained static in the "C" category of cases and came down in "B" category of cases. Further the overall percentage of scrutiny during the period 1992-93 to 1994-95 was at an average of 3.5 percent.

[Para 3.1.7(A) and (B)]

(iv) The overall pendency of assessments continued to remain high despite the Board's instructions to reduce the pendency of assessments. Further, with the trend of increase in assessments continuing to be so, the departments needs to address itself to the problem of the increasing work load vis a vis the existing work force.

[Para 3.1.7(B) and (C)]

(v) In 26,82,996 returns for which information was furnished by the Department, additions with a tax effect of Rs.405.32 crore could be made to income returned. Out of additional tax of Rs.100.65 crore levied, Rs.67.19 crore sustained. Further in the 1.04 lakh cases scrutinised by the Department additions of Rs.846.02 crore were made to the income after scrutiny and loss returned was reduced by Rs.1207.44 crore and the demand which could be actually recovered was Rs.324.78 crore after appeals and rectifications etc. This indicates that voluntary compliance by the assessees is not forthcoming as the additions are either due to suppression of income or claiming of wrong deduction/exemptions under various provisions of the Act which could be detected by the Department only after scrutiny. The revenue foregone in cases not scrutinised would, therefore, be much more.

[Para 3.1.8 and Para 3.1.9]

(vi) In 217 cases in various charges failure/omissions on part of the assessing officers to make prescribed adjustments under the scope of 143 (1)(a) of the Income Tax Act, under various provisions of the Act, resulted in under charge of tax Rs.140.94 crore (including potential tax of Rs.70.18 crore and resultant short levy of additional tax of Rs.23.50 crore).

[Para 3.1.11]

(vii) In 34 cases, additional tax of Rs.1.57 crore, though leviable was either short levied or not levied. To this extent the deterrent impact of the levy was diluted.

[Para 3.1.12]

(viii) Due to lacunae in the Act and procedure applicable to the Scheme, on account of non linking of past assessments records, failure to apply the law as laid down by judicial authorities and carrying out prima facie adjustments at the scrutiny stage with the resultant non levy of additional tax have either resulted in revenue loss or incorrect carry forward of losses and other claims with the inherent risk of them going undetected in future.

In 108 cases test checked in audit the above lacunae in the Act and deficiencies in the procedure have resulted in under charge of tax of Rs.27.56 crore (including potential tax of Rs.12.69 crore and non levy of additional tax of Rs.9.16 crore).

[Para 3.1.13(A), (B) and (C)]

(ix) Though the law requires the summary assessment orders to be revised due to subsequent proceedings and revision of the claims of refund and levy of additional tax, it was observed that in several cases this was not being done. A test check of 35 cases alone revealed short levy of tax of Rs.19.59 crore (including potential tax of Rs.6.62 crore) on this account.

[Para 3.1.14]

(x) The implementation of the Scheme under the Wealth Tax Act also revealed several cases of underassessment mainly due to failure to link the income tax assessment records of the assessee, though both the assessments are done by the same assessing officer. Test check of 84 cases in audit revealed under charge of tax of Rs.121.53 lakh.

[Para 3.1.17(iii)]

Analysis of work load

3.1.7 As discussed earlier the objectives of the summary assessment scheme were to enable the department to cope with the ever increasing work load and to enable the assessing officers to concentrate more on quality assessments and make sustainable additions.

The statistical data given below gives an idea as to how the department has coped with the work load of assessments:

Income wise analysis of disposal of assessments

(A) The department has categorised the assessments based on the income/loss returned by the assessees. While the lower category of assessments, "A" and "B" are based on income/loss below Rs.2 lakh and Rs.5 lakh respectively, the "B" (higher) and "C" category deal with high income group of assessees of income/loss limit above Rs.5 lakh and Rs.10 lakh respectively.

The objective of the scheme was to enable assessing officers to devote more time to make quality assessments and make sustainable additions in selective cases. The object therefore, was to make substantial additions to the revenue. As the scope for making quality assessments leading to revenue gain is more in the higher income category of assessees, the table below gives the analysis of the disposal of work load of the higher category assessments, to indicate the extent of scrutiny the department was able to do of these categories of assessments.

Financial Year	Category of assessments - asesseewise	Workload		Disposal		Pendency		Percentage of scrutiny
		Scrutiny	Summary	Scrutiny	Summary	Scrutiny	Summary	
1993-94	"B" Higher							
	Company	11628	13187	6834	10472	4794	2715	28
	Non-Company	25503	41908	15976	37417	9527	4491	24
	"C"							
	Company	28090	19783	14198	14226	13892	5557	30
	Non-Company	18194	13530	9661	11648	8533	1882	30
1994-95	"B" Higher							
	Company	9039	19856	5443	15137	3596	4719	19
	Non-Company	19348	39900	13142	24169	6206	15731	22
	"C"							
	Company	24718	24406	14892	17110	9826	7296	30
	Non-Company	14915	16123	9350	12896	5565	3227	30

The above data indicates that the percentage of scrutiny assessments completed by the department, in "B" higher category of cases came down from 28 and 24 for company and non-company assessees to 19 and 22 respectively in 1994-95.

In "C" category of cases the percentage of scrutiny remained the same during the two years.

Pendency of assessments

(B) The particulars of the total number of assessments, summary and scrutiny, for disposal, the number of assessments disposed of and the number of assessments pending for disposal in respect of the three financial years 1992-93 to 1994-95 are given below :

Financial Year	Assessments for disposal			Assessments completed			Assessments pending		
	Summary	Scrutiny	Total	Summary	Scrutiny	Total	Summary	Scrutiny	Total
1992-93	74,43,737	5,09,406	79,53,143	62,17,076	2,85,867	65,02,943	12,26,661 (16.47)	2,23,539 (43.88)	14,50,200

1993-94	84,65,578	4,98,327	89,63,905	70,86,282	3,36,894	74,23,176	13,79,296 (16.29)	1,61,403 (32.39)	15,40,669
1994-95	95,51,857	4,53,353	1,00,05,210	72,94,097	2,98,669	75,92,766	22,57,760 (23.64)	1,54,684 (34.12)	24,12,444

(Figures in paranthesis denote percentage of pendency with reference to the number of assessments for disposal)

(i) It would be seen from the above table that percentage of pending summary and scrutiny assessment cases were not only very high but have also shown increase compared to the preceding year though the Board had issued instructions for according priority to increasing disposal of both summary and scrutiny assessments.

(ii) It would be seen during the period 1992-93 to 1994-95 the percentage of assessment which could be completed after scrutiny ranged from 3.75 to 2.98. Thus on an average the department could complete scrutiny assessments of approximately 3.5 percent of the returns for disposal.

Adequacy of work force

(C) The disposal of assessments is directly related to the work force available with the department. The table below gives the number of officers deployed on assessment duty during the period 1993 to 1995:

(Working strength of officers on assessment duty)

Officers on duty	1992-93	1993-94	1994-95
Category	No. of officers on assessment duty	No. of officers on assessment duty	No. of officers on assessment duty
Additional Commissioners/ Dy.Commissioners	192	198	224
Asstt. Commissioners	425	722	880
Income Tax Officers	1588	1376	1778
Total	2205	2296	2882

During the period there was a phenomenal increase in the number of assessment cases for disposal, an increase of 20.52 lakh cases, whereas the officers on assessment duty increased by 677 in number. Thus, though there was an increase in the workforce it was not sufficient to cope with the increase in the workload during the period and since the trend in increase of workload is likely to continue in the years to come, the department needs to address itself to the problem of coping with the increasing work load, by a combination of factors like revising the work norms for assessing officers, computerisation at the summary stage, increasing the work force. The Board may therefore, consider the various options as from the data indicated above, it appears that the work force does not match the work load and is inadequate to cope with the increasing work load of assessments.

Additions made to income returned

3.1.8 Data given below was collected during the course of the review from the field formations of the department for the wards/ assessing units test checked.

(Rs. in crore)

Financial year	1992-93	1993-94	1994-95	Total
No. of return processed	7,56,409	8,84,293	10,42,294	26,82,996
Total amount of addition/ reduction to income determined after processing	414.47	574.86	(-)3.77 (+)171.50	(-)3.77 (+)1160.83
Total tax effect of additions made	116.07	219.41	69.84	405.32
Total amount of additional income tax levied at the time of processing	33.31	53.01	14.33	100.65
Total amount of additional income tax etc. retained after appeals	19.41	33.40	9.47	62.28
Total No. of cases out of processed cases in which rectification made U/S 154	985	1,125	877	2,987
Total amount of addition/reduction	(-)88.81 (+)26.15	(-)36.37 (+)7.04	(-)72.20 (+)7.91	(-)197.38 (+)41.10
Total amount of additional income tax involved Addition (+) Reduction (-)	(-)15.10 (+)2.08	(-)5.54 (+)1.14	(-)1.45 (+)1.69	(-)22.09 (+)4.91

(i) In the 26,82,996 returns which were processed under Section 143(1)(a) of the Act, additions of Rs.405.32 crore were made during the period 1992-93 to 1994-95.

(ii) Out of the additional tax of Rs.100.65 crore levied on the above processing, Rs.62.28 crore was retained after appeals and Rs.4.91 crore was retained after rectification.

Variation between income returned and determined after summary and scrutiny assessment.

3.1.9 The data given below is in respect of 1.04 lakh cases scrutinised by the department after processing under summary and for which information was furnished by the department.

(Rs. in crore)

Financial Year	Income returned	Income determined after processing	Additional tax demand/refund including income tax/interest	Income determined after scrutiny	Demand actually recovered after appeals etc.
1992-93	1,319.62 (-)542.48	1,422.09 (-)594.28	43.45	1,219.41 (-)256.64	39.99
1993-94	1,903.69 (-)1,430.87	2,387.40 (-)989.20	143.66 (-)6.82	2,837.29 (-)532.37	145.32
1994-95	3,639.94 (-)709.48	3,692.43 (-)565.78	25.33 (-)0.22	4,291.24 (-)152.81	139.47
Total	6,863.25 (-)2,682.83	7,501.92 (-)2,149.26	212.44 (-)7.04	8,347.94 (-)941.82	324.78

(Negative figures indicate losses returned. Above data for financial year 1992-93 does not include information from Bihar and Orissa charges as there is wide variation between the figures supplied by the department)

(a) The above data reveals that an addition of Rs.638.67 crore was made to the income after processing at the summary stage, and a further addition of Rs.846.02 crore at the scrutiny stage. Similarly the loss returned was reduced by Rs.533.57 crore at the summary stage and by Rs.1207.44 crore at the scrutiny stage. Hence in the 1.04 lakh cases selected for scrutiny substantial additions were made by the assessing officer, which indicates that voluntary compliance by the assessees is not forthcoming. The revenue foregone in cases not scrutinised would therefore be much more.

(b) As a result of scrutiny on the income determined at Rs.8,347.94 crore the demand actually recovered was only Rs. 324.78 crore after appeals/rectifications etc.

Results of Review

3.1.10 The test audit of the summary assessments completed during the years 1992-93 to 1994-95 revealed omissions/mistakes and other irregularities of diverse nature in the application of the various provisions of the Income Tax Law as well as some lacunae/deficiencies in the law and procedure.

Test check of 2.63 lakh cases processed in a summary manner in respect of 669 wards out of 2855 wards all over the country during three financial years 1992-93 to 1994-95 revealed aggregate short levy of tax of Rs.192.29 crore in 397 cases and overcharge of Rs.3.93 crore in one case. Some of the important and interesting points noticed during the course of the review are discussed in the subsequent paragraphs.

Omissions to make prescribed adjustments

3.1.11 Under the provisions of summary assessment scheme, the claim of the assessees relating to deductions/relief under the various provisions of the Income Tax Act has to be verified with reference to the details furnished by the assessee in the return of income/accompanying documents. Instances were noticed where prescribed adjustments which were required to be made were not carried out though the items were prima facie inadmissible. In Maharashtra, Delhi, West Bengal, Tamil Nadu, Gujarat, Uttar Pradesh, Kerala, Haryana, Rajasthan, Bihar, Madhya Pradesh, Himachal Pradesh Karnataka, Andhra Pradesh, Assam and Punjab charges, the omissions resulted in under charge of tax of Rs.140.94 crore (including potential tax effect of Rs.70.18 crore and additional income tax of Rs.23.50 crore) in 217 cases and overcharge of Rs.3.93 crore in one case in Tamil Nadu charge.

Some illustrative cases falling under various categories of prime facie adjustments are given below.

Disallowable claims under Section 43B of Income Tax Act.

(A) Under the Income Tax Act, 1961, as applicable from the assessment year 1984-85 and modified w.e.f. 1.4.1989 certain deductions are allowable only on actual payment on types of expenditure specified

under section 43B of the Act. The items of expenditure enumerated are as follows:

(a) any sum payable as tax, duty, cess or fee by whatever name called;

(b) sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund etc.;

(c) any sum payable as interest on any loan from any public financial institution etc.

Audit scrutiny revealed that in Maharashtra, Delhi, West Bengal, Gujarat, Uttar Pradesh, Haryana, Bihar, Madhya Pradesh, Assam, Punjab, and Kerala charges in 39 cases such claims were not added back while processing the returns. Inadmissible deductions so allowed resulted in short levy of tax or Rs.14.96 crore (including potential tax of Rs.11.76 crore and additional income tax of Rs.2.47 crore). Eight illustrative cases are given below:

Sl. No.	Assessee's status	CIT charge	Assessment year/month of assessment	Audit observation	Tax effect (Rs.in lakh)
1.	Public Limited Company	Lucknow, Uttar Pradesh	1992-93 February 1993	Certain inadmissible deductions such as provision for interest, central excise duty and cess on central excise duty amounting to Rs.443.27 lakh as claimed and allowed in the assessment were not actually paid. Consequently loss was computed in excess to that extent.	229.39 (P) 45.87 (Additional Tax)
2.	State owned corporation	Delhi VII	1994-95 January 1995	Provision aggregating Rs.647.07 lakh towards bonus and gratuity payable to the employees was allowed as deduction though there being no proof of its payment during the relevant previous year or within the due date allowed for furnishing the return of income. There was overassessment of loss of Rs.420.94 lakh on account of this.	217.85 (P) 43.56 (Additional Tax)
3.	Private Limited Company	Kochi, Kerala	1993-94 December 1994	An amount of Rs.172.72 lakh being provision for interest on loan from financial institutions	89.38 (P) 17.88

				was not paid during relevant previous year but debited to Profit and Loss Account, resulting in excess carry forward of loss.	(Additional Tax)
4.	Company	DC (Asstt) S.R. Shillong, Assam	1991-92 August 1992	An amount of Rs.647.02 lakh allowed as deduction on account of interest accrued on loans from a financial institution was credited to loan fund and necessary evidence of payment was not filed with the return, the non disallowance of which resulted in excess carry forward of loss to that extent.	297.64 (P) 59.53 (Additional Tax)
5.	Co-operative Sugar Mill	Rohtak Haryana	1993-94 February 1994	An amount of Rs.46.36 lakh allowed as deduction on account of unpaid statutory liability of cane cess was outstanding in the balance sheet and was not actually paid on or before the date of filing the return leading to excess carry forward of loss.	16.18 (P) 3.24 (Additional Tax)
6.	Private Limited Co.	Delhi IV	1994-95 March 1995	Provision of sales tax of Rs.20.40 lakh payable under specific sales tax deferment scheme (MP State Government) debited in profit and loss account was allowed as deduction without production of a certificate from State Government indicating that the company was eligible to avail of the facility of the sales tax department.	14.54 2.35 (Additional Tax)
7.	Co-operative Society	Allahabad Uttar Pradesh	1993-94 December 1993	A sum of Rs.15.29 lakh though not actually paid within the stipulated period was incorrectly allowed as deduction, resulting in excess computation of loss to that extent.	5.99 (P) 1.20 (Additional Tax)
8.	Widely held Company	West Bengal I	1993-94 July 1994	Amount of Rs.30 lakh received as contribution from employees to provident fund during relevant previous year which was not paid to relevant provident fund within due date i.e. 15 days from the end of the	15.53 (P) 3.11 (Additional Tax)

				month of its receipt (Rs.15 lakh was actually paid on 4.5.1993 and Rs.15 lakh was paid on 27.5.1993) was allowed as deduction. The incorrect deduction resulted in excess computation of loss by identical amount.	

Incorrect deductions under other provisions of the Act

(B) Audit scrutiny revealed that in Delhi, West Bengal, Maharashtra, Assam, Kerala, Madhya Pradesh, Rajasthan, Bihar and Utter Pradesh charges incorrect deductions allowed under other provisions of the Act in 16 cases resulted in under charge of tax of Rs.6.59 crore (including potential tax of Rs.2.93 crore and additional tax of Rs.0.89 crore). Six illustrative cases are given below:

(i) In West Bengal charge, the return of a widely held company for the assessment year 1994-95 was processed in March 1995 at 'nil' income after allowing set off of unabsorbed losses and a portion of unabsorbed depreciation relating to earlier years as claimed. Audit scrutiny revealed that while making the aforesaid adjustment, the company allowed a deduction of Rs.226.18 lakh on account of sale proceeds of fixed assets though the sum was not actually credited to the profit and loss account. The assessing officer while processing the return for the assessment year 1994-95 did not disallow the deduction and the omission resulted in an excess carry forward of loss by Rs.226.18 lakh involving potential tax effect of Rs.117.05 lakh and non levy of additional income tax of Rs.23.41 lakh. Since the mistake was apparent from records it constituted a prima facie adjustment.

(ii) In Maharashtra charge, the income tax assessment of a company for the assessment year 1994-95 was processed in a summary manner in January 1995. Audit scrutiny revealed that the assessee has claimed Rs.125.87 lakh as deduction under the head time barred liabilities which was not an allowable deduction being patently inadmissible under law. Omission to disallow wrong claim of deduction of time barred liability reflected in the computation of income resulted in under charge of tax of Rs.101.32 lakh (including additional tax).

(iii) In Maharashtra charge, in the assessment of a private company whose income tax return was processed in a summary manner for the assessment year 1994-95 in February 1995, audit scrutiny revealed that the assessing officer had allowed a deduction of Rs.154.64 lakh on account of contingent liability in respect of interest payable to banks. As the notes to accounts accompanying the return indicated that the assessee had not made any provisions for the liability in the accounts, the same should have been disallowed. Omission to do so resulted in over computation of loss involving potential tax effect of Rs.80.02 lakh

and non levy of additional tax of Rs.16 lakh.

(iv) In West Bengal charge, the income tax assessment of a widely held company for the assessment year 1993-94 was processed in a summary manner in October 1994. Audit scrutiny revealed that the computation of income was made by the assessee and allowed as such by the assessing officer after deducting an amount of Rs.49.73 lakh on account of renovation and overhauling expenses from the net profit as per profit and loss account. This amount had not been debited to profit and loss account and was capitalised. Therefore, no deduction was required to be made from the net profit figure. Failure on part of the assessing officer to add back this amount resulted in short computation of profit and thereby underassessment of income of Rs.49.73 lakh with consequent undercharge of tax of Rs.25.74 lakh and non levy of additional tax of Rs.4.48 lakh.

(v) Under the Income Tax Rules 1962, only 40 percent of the income derived from sale of tea grown and manufactured by a seller in India is deemed to be income derived from manufacturing and selling operation of the assessee and liable to income tax, the remaining 60 percent being deemed to relate to the cultivation of tea income which is agricultural in nature and not liable to income tax.

In West Bengal charge, the assessment of a closely held company, engaged in growing and manufacturing of tea, for the assessment year 1989-90 was completed under summary manner in September 1990 computing total loss for the year at Rs.31.05 lakh. The loss of Rs.31.05 lakh was then allowed to be carried forward for future set off. As the loss represented composite loss attributable to both agricultural and manufacturing operation, only 40 percent of the loss of Rs.31.05 lakh was required to be allowed for carry forward. The mistake thus resulted in excess carry forward of loss by Rs.18.63 lakh involving potential tax effect of Rs.10.76 lakh and non levy of additional tax of Rs.2.15 lakh.

(vi) Under the Income Tax Act, 1961 as applicable from assessment year 1993-94, in computing the business income of an assessee firm, assessable as such, deduction in respect of any payment of interest upto 18 percent per annum to any working partner is allowable provided such payment is authorised by, and is in accordance with the terms of the partnership deed.

In Madhya Pradesh charge, the income tax return of an assessee firm for the assessment year 1993-94 was processed in a summary manner in March 1995. The assessee firm was allowed a deduction of Rs.22.98 lakh on account of interest paid to partners. Audit scrutiny revealed that as per partnership deed interest at the rate of 18 percent per annum was payable on the closing balance of the partners capital for the year amounted to Rs.104.32 lakh on which admissible deduction for interest worked out to Rs.18.78 lakh. Omission to disallow the excess deduction

of Rs.4.20 lakh resulted in under assessment of income of Rs.4.20 lakh with consequent short levy of tax of Rs.3.32 lakh (including interest and additional tax).

Incorrect claims of depreciation/ investment allowance

(C) Under the Income Tax Act, 1961, in computing the business income of an assessee, a deduction on account of depreciation on plant and machinery or other assets is admissible at the prescribed rates. Depreciation on building and plant and machinery is calculated on their cost or written down value, as the case may be, according to the rates prescribed in the Income Tax Rules, 1962. The Central Board of Direct Taxes have clarified (August 1994) that while processing the returns, inadmissible or excess claim of depreciation can be disallowed and any claim which is patently inadmissible in law can be brought under prima facie adjustments.

Audit scrutiny revealed that in Delhi, Tamil Nadu, West Bengal, Maharashtra, Kerala, Gujarat, Haryana, Rajasthan, Madhya Pradesh, Assam, Andhra Pradesh, Karnataka and Uttar Pradesh charges in 36 cases omission to disallow or excess claims of depreciation/investment allowance resulted in short levy of tax of Rs.34.95 crore (including potential tax effect of Rs.4.80 crore and additional tax of Rs.5.71 crore). Five illustrative cases are given below:

(i) In West Bengal charge, the income return of a widely held company for the assessment year 1993-94 was processed in a summary manner in January 1994. Audit scrutiny revealed that while processing the return the assessing officer allowed depreciation of Rs.17,772.93 lakh on plant and machinery and Rs.86.14 lakh on vehicles including the additions made to such assets during the relevant previous year and put to use for the purposes of business for a period of less than 180 days. The depreciation allowed was calculated at the rate of 33 and one third percent on both the category of assets, instead of at the prescribed rate of 25 percent on plant and machinery and 20 percent on vehicles. The mistake resulted in excess allowance of depreciation of Rs.4476.35 lakh with consequent short levy of tax of Rs.2316.51 lakh and non levy of additional tax of Rs.463.30 lakh.

(ii) In Kerala charge, the income tax return of a widely held company for the assessment year 1992-93 was processed in July 1993. Audit scrutiny revealed that depreciation at higher rate of 100 percent was allowed on seven items of plant and machinery aggregating to Rs.1.83 crore whereas it was allowable on one item costing Rs.99.66 lakh. On the remaining six items of plant and machinery the rate of depreciation admissible was 25 percent. Excess allowance of depreciation worked out to Rs.52.04 lakh with consequent tax effect of Rs.29.92 lakh and non levy of additional tax of Rs.5.98 lakh.

(iii) In Tamil Nadu charge, a private limited company did not reduce the written down value by the value of the assets sold which resulted in

incorrect computation of written down value with consequential excess allowance of depreciation by Rs.35.09 lakh while processing the return for the assessment year 1994-95 in March 1995. The potential tax demand works out to Rs.20.18 lakh and non levy of additional tax of Rs.4.03 lakh.

(iv) In Gujarat charge, the income tax return of a company for the assessment year 1992-93 was processed in a summary manner in July 1993. Audit scrutiny revealed that the assessee was a publisher of a news paper and also engaged in the business of leasing and financing. The assessee had leased the vehicle owned by it and as such was not entitled to the depreciation allowance @ 40 percent as the vehicle were not used in the business of running them on hire. The admissible rate being 25 percent, its incorrect allowance resulted in under assessment of income of Rs.24.63 lakh with consequent short levy of tax of Rs.19.26 lakh (including additional tax).

(v) In West Bengal charge, the income tax return of a company for the assessment year 1994-95 was processed in a summary manner in February 1995 allowing set off of unabsorbed depreciation of Rs.127.13 lakh. Audit scrutiny revealed that unabsorbed amount of Rs.99.58 lakh only was carried forward from the earlier assessment year. The information was available from the records furnished alongwith the return and was thus covered under the prescribed adjustment. The incorrect set off resulted in under assessment of income by Rs.27.55 lakh with consequent undercharge of tax of Rs.17.11 lakh (including additional tax).

Avoidable mistakes in computation of income and tax

(D) The summary assessment procedure stipulates that the department should rectify any arithmetical mistakes found in the return of income/accompanying documents while processing the return under sub-section (1) of section 143.

Audit scrutiny revealed that due to arithmetical mistake in processing the return there was potential short levy of tax of Rs.11.70 lakh and non levy of additional tax of Rs.2.34 lakh in Gujarat, Madhya Pradesh and Uttar Pradesh charges whereas in Tamil Nadu charge excess levy of tax of Rs.393.35 lakh was noticed. These cases are discussed below:

(i) In Madhya Pradesh charge, the income tax return of a company for the assessment year 1992-93 was processed in summary manner in February 1993. Audit scrutiny revealed that the total of various deductions was incorrectly taken at Rs.79.58 lakh instead of the correct amount of Rs.69.78 lakh. The mistake persisted even in scrutiny assessment completed in January 1995. The mistake resulted in over assessment of loss of Rs.9.80 lakh with consequent potential tax effect of Rs.5.07 lakh and non levy of additional tax of Rs.1.01 lakh.

(ii) In Gujarat charge while processing the income tax return of a company for the assessment year 1993-94, in calculating the loss instead of reducing the loss of Rs.37.06 lakh, by an amount of Rs.3.60 lakh disallowable under Section 43B, the assessee added the said amount and claimed to carry forward the loss of Rs.40.66 lakh instead of Rs.33.46 lakh. The mistake also persisted in scrutiny assessment completed in April 1995. This mistake resulted in short levy of potential tax of Rs.3.73 lakh and non levy of additional tax of Rs.74,537.

(iii) In Uttar Pradesh charge, the income tax assessment of a Co-operative society for the assessment year 1993-94 was completed in a summary manner in February 1994 at a loss of Rs.16.21 lakh. Audit scrutiny revealed that while computing business income the total income was worked out at Rs.79.89 lakh instead of the correct amount of Rs.86.89 lakh and brought forward loss of previous year at Rs.1423.34 lakh instead of Rs.1422.29 lakh. These mistakes resulted in underassessment of income of Rs.8.05 lakh involving potential tax effect of Rs.2.90 lakh and non levy of additional tax of Rs.0.58 lakh.

(iv) In Tamil Nadu charge, the income tax assessment of a public limited company for the assessment year 1994-95 was processed in a summary manner in March 1995. Audit scrutiny revealed that the assessee company claimed depreciation of Rs.1826.32 lakh under the provisions of section 32 of the Income Tax Act instead of Rs.2521.60 lakh due to mistake in totalling the depreciation of various blocks. The non-rectification of arithmetical mistake by the assessing officer while processing the return resulted in overassessment of income by Rs.695.27 lakh with consequent excess demand of Rs.393.35 lakh.

Omissions/ Irregularities in allowing deductions under Chapter VIA of Income Tax Act, 1961.

(E) Under Chapter VIA of the Income Tax Act, 1961, certain deductions are admissible from the gross total income of an assessee in arriving at the net income chargeable to tax. The over-riding condition is that the total deduction should not exceed the gross total income of the assessee.

Audit scrutiny revealed that in Delhi, Tamil Nadu, Maharashtra, West Bengal, Uttar Pradesh, Assam, Bihar, Karnataka, Kerala, Punjab, Gujarat, Haryana, Rajasthan and Madhya Pradesh, charges in 58 cases incorrect claim and allowance of chapter VIA deductions covered by prescribed adjustments resulted in short levy of tax of Rs.76.24 crore (including potential tax of Rs.48.46 crore and additional tax of Rs.12.80 crore). Thirteen illustrative cases are given below:

Sl. No.	Assessee's status	CIT charge	Assessment year/month of assessment	Audit observation	Tax effect (Rs. in lakh)
1.	Company	Meerut, Uttar Pradesh	1992-93 February 1993 1994-95 March 1995	Deductions under Sections 80G, 80I and 80M aggregating Rs.8124.29 lakh were not restricted to gross total income under the provisions of Sections 80A and 80B(5) and were thus not admissible as the assessee had returned losses for the two years.	4204.31 (P) 840.86 (Additional Tax)
2.	Company	Meerut, Uttar Pradesh	1994-95 March 1995	Deductions claimed under Section 80HH and 80I on Xerox machines were not in order as Xerox machines are not eligible for 80I deduction, being office apparatus included in Schedule XI of the Act. Further 80HH deduction was incorrectly allowed at Rs.801.01 lakh as against admissible amount of Rs.269.33 lakh.	623.66 (including interest) 106.73 (Additional Tax)
3.	Company	Central-I, Mumbai,	1993-94 March 1995	Deductions claimed and allowed under Section 80HH and 80I were irregular as the gross total income on which the deductions were allowed, included short term capital gains and income from other sources which were not income directly derived from the business of the industrial undertaking in pursuance of Supreme Court decision. Bombay Electrical Supply Industrial Co. Ltd. Vs CIT Gujarat II-113 ITR 84 (SC)	468.36 (including Additional tax and interest)
4.	Widely held Company	DC (Asstt) S.R. Dibrugarh Shillong	1992-93 March 1993	Deduction of Rs.448 lakh allowed under Section 80M was irregular as the gross total income was `nil'.	321.84 (P) 46.37 (Additional Tax)
5.	Co-operative Society	Lucknow Uttar Pradesh	1993-94 February 1994	Deductions aggregating Rs.461.45 lakh allowed under various provisions of Chapter VI A were not in order as the assessee had returned losses.	180.84 (P) 36.17 (Additional Tax)
6.	Widely held Company	Kochi, Kerala	1993-94 May 1994	Assessee had two units (Assam and Tamil Nadu). Allowance of deduction under Section 80HHC ignoring loss of Rs.1 crore in Tamil	131.15 (P) 26.23 (Additional Tax)

				Nadu Unit and receipts from duty drawback, premiums on sale of REP licences, service charges and rent was irregular. Considering the above, there was excess allowance of deduction of Rs.253 lakh.	
7.	Firm	Jalandhar, Punjab	1994-95 January 1995	Deductions amounting to Rs.77 lakh under Section 80I allowed in the 9th assessment year was ineligible being apparent from records.	57.38 (including additional tax and interest)
8.	Company	City I, Mumbai	1991-92, 1992-93 October 1993	Deductions aggregating to Rs.356.60 lakh under Chapter VI of the Act were allowed without adjusting unabsorbed losses and allowances of earlier years. The omissions resulted in excess carry forward of loss and depreciation of Rs.110.69 lakh for assessment year 1991-92 and excess allowance of deductions of Rs.118.78 lakh for assessment year 1992-93.	109.28 (P) 21.86 (Additional Tax)
9.	Registere d Firm	Coimbatore Tamil Nadu	1992-93, 1993-94 January 1995	Allowance of deduction under Section 80HHC aggregating Rs.38.27 lakh towards exports was irregular as it was nil as per requisite certificate of the Accountant under Secn. 80HHC(4).	29.34 5.86 (Additional Tax)
10.	Private Limited Company	Jaipur, Rajasthan	1993-94 March 1994	Deductions under Section 80 HHC and 80I were erroneously allowed from the gross total income before deductions of current year's depreciation, the mistake resulting in excess allowance of deduction	12.66 (including interest and Additional Tax)
11.	Company	I.T.O. Ward No.3(2), Mumbai,	1991-92 August 1992	Deductions under Section 80M amounting to Rs.13.05 lakh allowed was irregular as there was no profit of its distribution before due date, on record.	8.10 (including Additional Tax)
12.	Closely held Company	West Bengal IV	1993-94 August 1994	While computing deduction under Section 80HH amounting to Rs.20.32 lakh, brought forward unabsorbed depreciation/ investment allowance/business loss amounting to Rs.33.51 lakh were not set off from the gross total income.	5.28 (including interest and Additional Tax)

13.	**Company**	**Baroda, Gujarat**	**1992-93 August 1993**	**Deduction of Rs.9.05 lakh towards export profits was allowed without necessary certificate required in form 10 CCAC.**	**5.07 1.01 (Additional Tax)**

Incorrect allowance of provisions

(F) Under the Income Tax Act, 1961, a provision made in the accounts for an accrued or known liability is an admissible deduction, while provision made towards liabilities which are contingent in nature do not qualify for deduction while computing the business income of an assessee. A provision for bad and doubtful debt subject to certain conditions is allowable deduction to a scheduled bank only and not to any other company.

Audit scrutiny revealed that incorrect allowance of provisions in 8 cases in Delhi, Maharashtra, West Bengal, Gujarat, Assam and Kerala charges, resulted in short levy of tax of Rs.2.05 crore (including potential tax effect of Rs.1.26 crore and additional tax of Rs.0.33 crore). Four illustrative cases are given below:

(i) In Assam charge, in the assessment of a public limited company for the assessment year 1994-95 done summarily, an amount of Rs.113.85 lakh was allowed as provision for doubtful debts. The information being readily available from accounts and documents accompanying, the amount should have been disallowed while making the prescribed adjustments. Omission to do so resulted in excess computation of loss by Rs.113.85 lakh involving potential tax effect of Rs.58.91 lakh and non levy of additional income tax of Rs.11.78 lakh.

(ii) In Assam charge in the assessment of a widely held company for the assessment year 1994-95, processed summarily in January 1995 at a loss of Rs.151.79 lakh, the assessing officer had allowed a deduction of Rs.86.26 lakh in respect of provisions for doubtful debts as claimed by the assessee, pertaining to outstanding dues from a State Government undertaking. As this was a provision for unascertained liabilities apparent from the accounts and documents accompanying the return, it should have been disallowed. Omission to do so resulted in excess carry forward of loss of Rs.86.26 lakh involving potential tax effect of Rs.44.63 lakh and non levy of additional income tax of Rs.8.93 lakh.

(iii) In West Bengal charge, the income tax return of a widely held company for the assessment year 1993-94 was processed in a summary manner in November 1994 determining `nil' income. Audit scrutiny revealed that the assessee company debited in its profit and loss account for the period ending 31 March 1993 relevant to the assessment year 1993-94 an amount of Rs.32.82 lakh being provision for doubtful debts advances and claims which stood included in the total debit of Rs.5141.82 lakh. The assessing officer while processing the return allowed the aforesaid provision as a deduction as claimed by the

assessee. Omission to disallow provision for an unascertained liability resulted in underassessment of income of Rs.32.82 lakh with consequent excess carry forward of unabsorbed depreciation involving potential tax effect of 16.98 lakh and non levy of additional tax of Rs.3.40 lakh.

(iv) In Gujarat charge, the income tax assessment of a company for the assessment year 1992-93 was processed in March 1993 in a summary manner. Audit scrutiny revealed that the assessee company made the provision for bad and doubtful debt, for Rs.10.13 lakh which should have been added to the income of the assessee. In calculation of income the assessee had added an amount of Rs.35,479 only towards the provision for bad and doubtful debts. The difference of Rs.9.78 lakh not added back should have been disallowed by the assessing officer. The omission resulted in non levy of tax of Rs.6.07 lakh (including additional tax).

Omission to disallow ineligible expenditure

(G) Under the provision of section 37 of the Income Tax Act, expenditure laid out or expended wholly and exclusively for the purpose of business or profession alone can be allowed. Any expenditure in the nature of capital expenditure or personal expenses of the assessee cannot be allowed. The Central Board of Direct Taxes clarified (August 1994) that any expenditure which is patently inadmissible in law can be disallowed while processing the return.

Audit scrutiny in Delhi, West Bengal, Maharashtra, Uttar Pradesh and Bihar charges revealed that in 15 cases omission to disallow such expenditure/deduction resulted in short levy of tax of Rs.1.43 crore (including potential tax effect of Rs.0.21 crore and additional tax of Rs.0.22 crore). One illustrative case is given below

In West Bengal charge, the income tax return of a nationalised bank for the assessment year 1992-93 was processed in a summary manner in July 1993 determining loss of Rs.9556.97 lakh. The Tax Audit Report submitted with the return of income indicated that an amount of Rs.24.69 lakh was debited in the profit and loss account relevant to the assessment year 1992-93 under the head "Entertainment expenses". This was allowed while processing the return without restricting the same to Rs.5000 as admissible. As the entertainment expenses claimed in excess of prescribed limit was prima facie inadmissible, there was excess computation of loss by Rs.24.64 lakh with consequent potential tax effect of Rs.12.75 lakh and non-levy of additional tax of Rs.2.22 lakh.

Income escaping assessment and other irregularities

(H) Audit scrutiny revealed that non assessment of income and other irregularities in 42 cases in Delhi, West Bengal, Maharashtra, Tamil Nadu, Gujarat, Kerala, Madhya Pradesh, Uttar Pradesh, Bihar, Rajasthan, Punjab, Andhra Pradesh and Himachal Pradesh charges resulted in short levy of tax of Rs.4.58 crore (including potential tax

effect of Rs.0.64 crore and additional tax of Rs.1.06 crore. 6 illustrative cases are given below:

(i) Under the Income Tax Act, 1961, as applicable with effect from assessment year 1989-90 , a return of income filed by the assessee shall first be processed for recovery of tax or interest due from the assessee or issue of refund due to assessee. Thereafter the returns which needs detailed investigation to arrive at the correct income/wealth/gift have to be selected for scrutiny on random basis by the department

In Bihar charge, the income assessments of a government company for the assessment years 1992-93 and 1993-94 were completed after scrutiny in December 1994 with out first processing the returns of income for those assessment year in summary manner. Consequently prima facie adjustment relating to outstanding liabilities duly reflected in the statutory audit report enclosed with the returns and provisions made in the account could not be carried out. The adoption of incorrect procedure for assessment resulted in non-levy of additional tax aggregating Rs.51.24 lakh .

(ii) In West Bengal charge , the income tax return of a widely held company for the assessment year 1994-95 was processed in a summary manner in November 1994 . Audit scrutiny of the accounts and the documents enclosed with the return revealed that returned loss was shown at Rs. 87.75 lakh instead of the actual returned loss of Rs.27.75 lakh. The mistake resulted in excess carry forward of loss of Rs.60 lakh with consequent potential tax effect of Rs.27.61 lakh and non-levy of additional tax of Rs.5.52 lakh.

(iii) Under Finance Acts as applicable to the assessment years 1992-93 to 1994-95, a domestic company is chargeable to tax at specified different rates depending upon the status, whether it is a company in which public are substantially interested or not.

In Delhi charge, the income tax returns of a company in which public were not substantially interested for the assessment years 1992-93 to 1994-95 were processed January 1994 and February 1995. Audit scrutiny revealed that the tax on income was chargeable at 50 percent but the assessing officer erroneously applied the rate at 45 percent. The mistake resulted in short levy of tax of Rs.20.51 lakh. However the assessments for the assessment years 1992-93 and 1993-94 were revised after scrutiny in February 1995 and March 1995 but the mistakes persisted.

(iv) In Andhra Pradesh charge the income tax return of a closely held company for the assessment year 1994-95 was processed in a summary manner in March 1995. Audit scrutiny revealed that the assessing officer made a prime facie adjustment of Rs. 31.29 lakh to returned loss of Rs.3.46 lakh. However the assessing officer levied additional tax but

regular tax of Rs.16.89 lakh was omitted to be levied. The mistake resulted in short levy of tax of Rs.16.89 lakh.

(v) In Maharastra charge, the income tax return of a company for the assessment year 1992-93 was processed in a summary manner in March 1993. Audit scrutiny revealed that the assessee company received interest of Rs.18.42 lakh from the income tax department which was not offered for taxation by not including the aforesaid income in interest income. The omission resulted in underassessment of income of Rs.18.42 lakh with consequent undercharge of tax of Rs.11.43 lakh (including additional tax) .

(vi) Under the Income Tax Act, 1961, income from other sources includes any winnings from lotteries,cross word puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature what so ever .

In Madhya Pradesh charge, the income tax return of an individual for the assessment year 1994-95 was processed in a summary manner in March 1995 at Rs.5.80 lakh. Audit scrutiny revealed that during the relevant previous year the assessee received one car worth Rs.3.68 lakh in lucky draw . Neither the assessee offered this income for taxation nor the assessing officer made any addition on this account even though the facts were evident from the documents filed with the returned of income. Omission to do so resulted in underassessment of income of Rs.3.68 lakh with consequent of short levy of tax of Rs.2.37 lakh (including interest and additional tax).

Non/short levy of additional income tax

3.1.12 Under the Income Tax Act 1961, the successful operation of the summary assessment scheme depends mainly on the voluntary compliance by the tax payers. To discourage the tax payers from claiming in admissible/incorrect deduction/relief, a deterrent provision has been made to levy additional income tax at 20 percent of tax demand on the prima facie additions made to income returned. Similarly when the returned loss is reduced or converted into income due to prima facie addition, 20 percent of tax on such addition as if the addition is made to the returned income is levied as additional tax. The additional tax levied will be increased/decreased if the addition made is increased/decreased while making revision to the processed income or loss.

Audit scrutiny revealed that in Delhi, West Bengal, Uttar Pradesh, Kerala, Andhra Pradesh, Haryana and Bihar charges, in 34 cases additional tax of Rs.1.57 crore was not/short levied. 8 illustrative cases are given below:

Sl. No.	Assessee's status	CIT charge	Assessment year/month of assessment	Audit observation	Tax effect (Rs. in lakh)
1.	Widely held Company	West Bengal III	1992-93 June 1994	A sum of Rs.539.27 lakh was added back by the assessing officer to the returned loss of Rs.11939.20 lakh at the time of processing the return but additional tax of Rs.62,106 was levied instead of correct amount of Rs.55.81 lakh.	55.19
2.	Company	Kanpur, Uttar Pradesh	1990-91 January 1992	Additional tax of Rs.20.89 lakh on the adjustment of Rs.193.40 lakh on account of unpaid liability of interest payable to financial institutions levied earlier was incorrectly refunded to the assessee together with interest at the direction of CIT (Appeals) in view of jurisdictional High Court's decision M/s Indo Gulf Fertilisers and Chemicals(195 ITR 485). The adjustment was later on sustained in the scrutiny assessment in view of amendment of Act w.e.f. 1.4.1989 but additional tax was not levied.	21.93
3.	Individual	Mumbai VII	1994-95 November 1994	An incorrect claim of exemption of capital gains under Section 54F being prima facie inadmissible was not disallowed but it was done only on being indicated by the assessee in his revised return. Additional tax was however not levied.	12.09
4.	Limited Company	West Bengal II	1992-93 February 1994	Returned loss and depreciation was disallowed to the extent of Rs.96.96 lakh at the time of processing the return but additional tax was not levied.	10.04
5.	Widely held Company	Patna, Bihar	1992-93 July 1993	Additional tax was incorrectly computed at Rs.15.42 lakh in stead of Rs.25.42 lakh	10.00

6.	**Widely held Company**	**Meerut, Uttar Pradesh**	**1991-92 July 1992**	**Consequent on the reduction of prima facie adjustment from Rs.137.08 lakh to Rs.111.37 lakh, amount of additional tax of Rs.12.61 lakh levied earlier was incorrectly reduced to Rs.0.50 lakh as against amount of Rs.10.25 lakh.**	**9.75**
7.	**Limited Company**	**Delhi-I**	**1992-93 March 1993**	**As a result of reduction in loss declared by the assessee, additional tax of Rs.4.42 lakh which was not to be levied pending passing of Finance Bill 1993, was not levied even after passing of the Bill and the assessment was completed.**	**4.42**
8.	**Registered Firm**	**Central Madras-I, Tamil Nadu**	**1994-95**	**The return was not processed in a summary manner and the depreciation of Rs.12.83 lakh claimed wrongly on capital work in progress which was prima facie disallowable could not be disallowed. The case was straightway taken up for scrutiny thereby leading to non levy of addition tax.**	**1.15**

Lacunae in the Law and Procedure applicable to the Summary assessment Scheme- Income Tax Law as laid down by the Courts

3.1.13(A) The Law applicable to an income tax assessment, both substantive and procedural, is the law as enacted by the legislature as well as that determined/laid down by the judiciary. The law as laid down by the Supreme Court is final and in case of High Courts the law as laid down by the jurisdictional High Court is applicable in the particular assessing charge. Law as laid down by other High Courts can be applied in a particular charge in the absence of any contrary judicial ruling there.

The scope of the prima facie adjustments as laid down in 143(1)(a) of the Act is a limited one. No doubt the assessing officer can not make adjustments on judicially controversial/debatable issues, but there is no reason why such adjustments cannot be made when the law as laid down by the Courts is a settled Law. Provisions of Law to this effect are therefore, necessary in summary assessment scheme in the interests of revenue.

As per instructions of the Central Board of Direct Taxes issued in April 1989, a claim preferred without taking into account the decision of the jurisdictional High Court would constitute a prima facie error. However, claim made on the basis of decision of any High Court would not be prima facie disallowable. This position would not change even if a contrary decision from another High Court exists. In so far as

adjustments of the Supreme Court decisions are concerned, they declare the law not only at the time of judgement but right from the inception.

Audit scrutiny revealed that in 5 cases omission/failure to observe the law as laid down by the Courts in West Bengal, Assam, Madhya Pradesh and Andhra Pradesh charge resulted in short levy of tax of Rs.93.10 lakh (including potential tax of Rs.47.26 lakh and additional tax of Rs.13.01 lakh). Three illustrative cases of omission/failure to observe the law as laid down by the Courts are discussed below:

(i) The Supreme Court has in the case of Chowringhee Sales Bureau [87 ITR 542 (SC)] held that the amount of sales tax collected by a trader in the course of business constitutes his business income. Further even if trading receipts are not routed through the accounts this would not prevent the assessing officer from treating it as such.

In West Bengal charge, the income tax return of an assessee for the assessment year 1992-93 was processed in a summary manner in August 1993 at a loss of Rs.238.66 lakh. Audit scrutiny revealed that a sum of Rs.62.07 lakh being sales tax was lying outstanding as on 31 March 1992. The amount was not routed through the profit and loss account as on 31 March 1992. Further there was no evidence that the unpaid sales tax of the aforesaid amount was paid within the stipulated period under the Act, the sum was required to be added with the income. The omission resulted in underassessment by Rs.62.07 lakh with consequent short levy of potential tax of Rs.35.69 lakh and additional tax of Rs.7.13 lakh.

(ii) In Assam charge, the income return of a company for the assessment year 1991-92 was processed in a summary manner in March 1993. Audit scrutiny revealed that the tax auditor in a note in the tax audit report (under clause 7(i) of form No.3CD) stated that the sale tax amounts outstanding and payable out of sales tax collected and credited to the respective sales tax amount under the provisions of Central Sales Tax Act (Rs.14.26 lakh), West Bengal Sales Tax Act (Rs.1.86 lakh) and Assam Finance Sales Tax Act (Rs.12.40 lakh)aggregating Rs.28.52 lakh were not taxable under the provision of Income Tax Act (under section 43B) as per the contention of the assessee and as such the amounts were not charged to profit and loss account of the previous year relevant to the assessment year 1991-92. However, in the computation of taxable income, sales tax amounting to Rs.10.77 lakh was shown as paid before the due date of filing the return. The unpaid amount of Rs.17.75 lakh kept outside the accounts was not added back to income. The omission resulted in underassessment of income by Rs.17.75 lakh with consequent undercharge of tax and interest of Rs.16.78 lakh (including additional tax).

(iii) Under the Income Tax Act, where the assessee has obtained whether in cash or any other manner some benefit in respect of a trading

liability by way of remission or cessation thereof, the amount obtained by him or value of benefit accruing to him shall be deemed to be profits and gains of business or profession chargeable to Income Tax as income of the previous year.

The Calcutta High Court has held in the case of Kesoram Industries and Cotton Mills Ltd. CIT [1991] 191 ITR 518 (Cal.) that subsidy received by an assessee from the Government by way of refund of sales tax is a revenue receipt.

In West Bengal charge, while processing the return of a closely held company for the year 1994-95 an amount of Rs.20.12 lakh on account of Sales Tax subsidy received by the company was omitted to be included in ;the income of the assessee. This resulted in excess carry forward of loss by Rs.20.12 lakh involving potential tax effect of Rs.11.57 lakh and non levy of additional tax of Rs.2.31 lakh.

Linking of past records

(B) Under the Act, the summary assessment scheme permits disallowances of any loss carried forward, deduction, allowance or relief only if it is prima facie inadmissible on the basis of information available in the return, accounts or documents accompanying it and reference to assessment record of past assessments is not permissible while making prima facie adjustments.

The prescribed adjustments under section 143(1)(a) often require reference to records of earlier years especially where losses/depreciation is carried forward or deductions/allowances which are permissible over a period of time are claimed. Due to absence of explicit provisions in the Act, such reference to earlier records is not being done by the department with the result that claims are being allowed as preferred by the assessee or without utilising information available with the department.

The Central Board of Direct Taxes had in May 1989, advised the assessing officers to link past records with current year's return immediately after the processing of return under section 143(1)(a) and to select cases to ascertain whether any action is called for under section 154 and 147 of the Income Tax Act on account of excess claim of loss, allowances etc. and take appropriate remedial action. These instructions were reiterated by the Central Board of Direct Taxes in June 1991 and July 1991 clarifying that return should be linked with the past records invariably and expeditiously after processing under section 143(1)(a).

Audit scrutiny in Maharashtra, Delhi, West Bengal, Assam, Kerala, Karnataka, Andhra Pradesh, Haryana, Rajasthan, Madhya Pradesh, Punjab and Uttar Pradesh charges revealed that the information available in earlier years assessment records were not utilised while processing the return, summarily, which resulted in incorrect set off of unabsorbed business losses, unabsorbed depreciation, unabsorbed

investment allowance and incorrect consideration of written down value of asset against current year's income even though they were already adjusted in earlier years and nothing remained to be adjusted. Besides in some cases, the intimations sent under section 143(1)(a) of the Act were not rectified under section 147 or section 154 of the Act. Thus due to non linking of past records audit noticed short levy of tax demand of Rs.20.78 crore (including potential tax of Rs.12.17 crore and additional tax of Rs.3.24 crore) in 70 cases in the aforesaid charges. Eleven illustrative cases are given below:

Sl. No.	Assessee's status	CIT charge	Assessment year/month of assessment	Audit observation	Tax effect (Rs. in lakh)
1.	Closely held Company	West Bengal I	1993-94 March 1995	As against actual admissible carry forward of loss/ depreciation pertaining to assessment years 1991-92 and 1992-93 of Rs.153.86 lakh and `nil', department incorrectly allowed the same as Rs.408.79 lakh and Rs.153.86 lakh respectively in assessment for the assessment year 1993-94 which resulted in excess carry forward of loss of Rs.463.52 lakh in AY 1993-94.	266.52 (P) 53.30 (Addnl Tax)
2.	Private Limited Company	West Bengal V	1992-93 March 1994	The assessee incorrectly claimed unabsorbed business loss of Rs.315.91 lakh and unabsorbed depreciation of Rs.14.94 lakh pertaining to assessment year 1991-92 as against the `nil' amount, in the assessment of assessment year 1991-92 which was allowed by the assessing officer. There was thus excess carry forward of loss of Rs.330.86 lakh.	190.24 (P) 38.05 (Addnl Tax)
3.	Company	Mumbai II	1993-94 November 1994	Excess set off of Rs.246.42 lakh towards brought forward investment allowance of earlier years was claimed and allowed erroneously.	153.02 (including Addnl. Tax)
4.	Closely held Company	West Bengal II	1992-93 June 1993	The return was processed after adjusting earlier years loss of Rs.149.76 lakh, consulting past years records. On assessee's	86.11 (P) 17.22 (Addnl Tax)

				going in appeal, this adjustment was not allowed by the appellate authority having recourse to Board's instructions. The department has gone in appeal. This only indicates the need for removal of the lacunae in the Act debarring prima facie adjustment on basis of past records.	
5.	Company	Lucknow, Uttar Pradesh	1992-93 May 1993	As against no losses for earlier year, the assessee claimed brought forward losses of Rs.90.22 lakh pertaining to earlier years which was allowed. Besides, certain inadmissible expenses amounting to Rs.12.35 lakh was also claimed and erroneously allowed.	72.60 (including interest) 10.62 (Addnl. Tax)
6.	Widely held Company	West Bengal IV	1991-92 November 1992	As against `nil' amount of unabsorbed business loss and unabsorbed depreciation of Rs.101.85 lakh pertaining to assessment year 1989-90 was erroneously claimed and set off in the assessment for assessment year 1991-92.	66.54 (including interest) 9.37 (Addnl. Tax)
7.	Company	Delhi II	1993-94 February 1994 1994-95 February 1995	An aggregate deduction of Rs.67.72 lakh under Chapter VI A on an eleventh Schedule item was wrongly allowed as it was already disallowed in scrutiny assessments for the earlier years. Moreover CIT (Appeals)'s decision upholding disallowance made in December 1994 was also available with the assessing officer while processing the claim for 1994-95.	44.32 7.79 (Addnl. Tax)
8.	Four companies	Karnataka I Karnataka II	1993-94 between July 1992 and March 1995	Carried forward loss of Rs.76.18 lakh pertaining to assessment year 1992-93 was claimed in excess.	39.81 7.96 (Addnl. Tax)

9.	**Company**	**Jalandhar, Punjab**	**1994-95 February 1995**	**The assessee incorrectly claimed and was allowed set off of carried forward loss of Rs.34.01 lakh relating to earlier years though no loss was allowed to be carried forward in the assessment for earlier years.**	**19.56 (P)** **3.91 (Addnl. Tax)**
10.	**Corporate Society**	**Lucknow, Uttar Pradesh**	**1992-93 May 1993**	**Assessee's claim of Rs.54.11 lakh for unabsorbed losses and allowances brought forward from preceding years was incorrectly allowed as no such loss/allowances were carried forward in the assessment for assessment year 1991-92.**	**17.94** **3.59 (Addnl. Tax)**
11.	**(i) Widely held Company (ii) Banking Company**	**Cochin, Kerala**	**1993-94 July 1994, 1994-95 March 1995**	**Loss aggregating Rs.14.83 lakh pertaining to earlier years was set off in excess due to non linking of earlier years assessment records.**	**8.54** **1.71 (Addnl. Tax)**

Non levy of additional tax on prima facie adjustments done in scrutiny assessment

(C) Under the Income Tax Act, 1961, there is no provision to charge additional tax on such additions made in scrutiny assessment which in fact fall under prescribed adjustments to be carried out in the processing of the return in summary manner.

Cases have been noticed in audit that rectifications/ additions which came under the scope of prescribed adjustments under 143(1)(a) of the Act are subsequently corrected under Section 143(3) thereof. This has resulted in non levy of additional tax which would have been leviable had there been a provision under Section 143(3) or had the mistake been mandatorily rectified under Section 154.

The resultant non levy of additional tax due to lacunae in Act and procedure applicable to the summary assessment scheme was noticed in 32 cases involving loss of revenue of Rs.5.78 crore in Delhi, Maharashtra, Gujarat, Kerala and Uttar Pradesh charges. Three illustrative cases are given below:

(i) In Delhi charge, the income tax return of a foreign company for the assessment year 1992-93 was processed in a summary manner in July 1993. Audit scrutiny revealed that income from technical service fees amounting to Rs.5428.18 lakh though taxable on gross basis under the provisions of the Act and being prima facie adjustments from return and documents accompanying it, was allowed to be set off against brought forward business losses of earlier years. It was however noticed that the mistake was rectified in the assessment revised after scrutiny in

March 1994. Had the intimation dated July 1993 been revised by the assessing officer after making the aforesaid prescribed adjustments and charging the additional income tax under section 154 of the Act before completion of scrutiny assessment the loss of revenue due to non levy of additional tax of Rs.217.13 lakh could have been avoided.

(ii) In Delhi charge, the income tax return of a public limited company for the assessment year 1993-94 was processed in a summary manner in July 1994 and assessment was completed in scrutiny manner in March 1996. Audit scrutiny revealed that provisions aggregating Rs.459.68 lakh made in the accounts on account of obsolescence project performance and doubtful debts were omitted to be added back to income by making the prescribed adjustment while processing the return. Audit scrutiny revealed that the mistake was rectified in the assessment revised after scrutiny in March 1996. Had the intimation making prima facie adjustment and charging the additional income tax under section 154 of the Act been done before completion of the scrutiny assessment the loss of revenue due to non levy of additional income tax could have been avoided. Omission resulted in loss of revenue on account of additional tax of Rs.47.58 lakh.

(iii) In Kerala charge, the return of income of a widely held company for the assessment year 1991-92 was processed in October 1992 and subsequently rectified in March 1994 determining loss at Rs.78.85 crore. While completing the assessment after scrutiny in March 1994 capital expenditure of Rs.26.19 crore and expenditure on maintenance of guest house amounting to Rs.1.15 lakh were disallowed and the loss reduced to Rs.52.64 crore. The records based on which these disallowances made were available in the accounts that accompanied the return of income. Had it been done at the processing stage itself additional income tax of Rs.2.41 crore could have been levied failure of which resulted in loss of revenue.

Omission to issue revised intimation under section 143(1)(b) of Income Tax Act.

3.1.14 Under the provisions [section 143(1)(b)] of the Income Tax Act, 1961. if there is any variation of carry forward of loss, deduction, allowance or relief claimed in the return, consequent to the order passed [under section 143(3), 144, 147 & 154 etc.] relating to an earlier assessment year subsequent to the filing of the return, an intimation shall be sent to the assessee in case any tax, interest is due and such intimation shall be deemed to be a notice of demand under section 156. In loss cases omission to rectify the carry forward of loss figures has the inherent risk of the incorrect carry forward figures remaining undetected and unrectified.

Audit scrutiny revealed that in Delhi, Maharashtra, Tamil Nadu, West Bengal, Uttar Pradesh, Karnataka, Kerala, Assam, Gujarat, Haryana, Haryana (U.T) and Rajasthan charges in 35 cases revised intimation under the aforesaid provisions were required to be issued which were not issued resulting in short levy of tax of Rs.19.59 crore (including

potential tax of Rs.6.62 crore). Ten illustrative cases are given below:

Sl. No	Assessee's status	CIT charge	Assessment year/month of assessment	Audit observation	Tax effect (Rs. in lakh)
1.	Limited Company	Delhi-IV	1993-94 July 1994	Assessment for earlier assessment year 1992-93 was completed after date of filing return of income for assessment year 1993-94, determining unabsorbed depreciation and investment allowance of Rs.400.18 lakh to be carried forward for future set off but no revised intimation was issued to this effect which resulted in excess set off of losses of earlier years to the extent of Rs.1310.63 lakh.	882.40
2.	Company	DC (Asstt.) S.R.-II, Guwahati, Assam	1993-94 November 1994	Failure to issue revised intimation in respect of assessment for the earlier assessment year 1992-93 computed subsequently in Jan. 1995, with no loss to be carried forward, resulted in under assessment of income of Rs.22.75 lakh and excess carry forward of losses of Rs.425.99 lakh.	16.53 190.61 (P)
3.	Two Limited companies	Delhi-II	1992-93 1993-94	Failure to revise intimations of returns processed in summary manner on the basis of scrutiny assessment carried out subsequently resulted in excess computation/carry forward of loss/depreciation of Rs.269.84 lakh.	144.96
4.	Public Limited Company	Delhi-VII	1993-94 February 1994	In the assessment for the earlier assessment year 1992-93 completed in March 1995, depreciation was disallowed in excess of 25 percent on vehicles on the plea that the assessee had diluted ownership over the leased out vehicles and as such was not in the business of running the vehicles on hire. This position was not intimated to the assessee	98.31

				which led to erroneous allowance of depreciation at 40 percent in the assessment for assessment year 1993-94 leading to excess allowance of depreciation of Rs.155.71 lakh.	
5.	Company	Mumbai IV	1993-94 March 1994	An amount of Rs.163.50 lakh already adjusted in earlier assessments towards unabsorbed brought forward investment allowance was erroneously allowed to be set off only because of the fact that revised intimation was not issued.	84.61
6.	Widely held Company	Chandigarh UT	1993-94 September 1994	Reduction in brought forward losses of earlier years on account of their scrutiny assessment made subsequently to the filing of return of income for assessment year 1993-94 not intimated to the assessee resulted in excess carry forward of losses to assessment year 1993-94.	35.88 (P)
7.	Closely held Company	Cochin, Kerala	1992-93 August 1993	Reduction in carried forward of loss by Rs.30.41 lakh for assessment years 1989-90 and 1990-91 and by Rs.1.82 lakh for assessment year 1991-92 in the scrutiny assessments made after processing the return for assessment year 1992-93 was not intimated to the assessee.	18.53 (P)
8.	Two companies	Karnataka I	1993-94, 1994-95 between July 1994 to March 1995	Scrutiny assessments of the immediately preceding assessment years subsequent to filing of returns for assessment year 1993-94 and 1994-95 caused variation in carried forward claims but revised intimations were not issued for the demand payable.There was aggregate under assessment of income of Rs.25.15 lakh.	17.72
9.	Company	Meerut Uttar Pradesh	1993-94 September 1994 1994-95 December	There being no brought forward losses from earlier assessment year 1992-93, set off of losses aggregating Rs.16.20 lakh relating to earlier years was not	11.63

			1994	in order.	
10.	Closely held Company	Tamilnadu IV	1993-94 February 1994	Carry forward of loss of Rs.19.20 lakh relating to earlier assessment year 1992-93 and set off thereof in assessment year 1993-94 was erroneous as no loss was found to be carried forward in the scrutiny assessment for 1992-93 subsequently in February 1995. Revised intimation was not issued.	11.04

Other points of interest

3.1.15 (i) In Delhi charge, the assessment of the public limited company for the assessment year 1991-92 was processed in a summary manner (October 1993) determining nil income. The assessee company had debited in its profit and loss account a sum of Rs.5276 lakh as provision for doubtful debts, loan and advances, accrued interest and sundries. The assessing officer added back to the income a sum of Rs.2540.05 lakh by making the prima facie adjustments (Rs.5276 lakh minus Rs.2735.95 lakh being provision no longer required written back) and charged additional income tax of Rs.233.68 lakh. Aggrieved by the addition, the assessee company filed an application under Section 154 of the Income Tax Act for deletion of the addition but the same was rejected in January 1994. The relief was however, allowed by the Commissioner of Income Tax (Appeals) in March 1994 holding that there was no information in the return or the accompanying documents to show prima facie that the amount debited in the accounts was on account of provision for any liability of a contingent nature. The relief was allowed in March 1994 deleting the addition. It was noticed in audit that in the scrutiny assessment which was also completed on the same date on which the relief was allowed the assessing officer had disallowed and added back the entire amount of the provisions of Rs.5276 lakh on the plea that the provisions had been made only on estimate basis and were contingent in nature.

The full facts of the case that the provisions had been made only on estimate basis and were contingent in nature were known to the assessee at the time of filing the return of income. The additional income tax had, therefore, rightly been levied for negligence on the part of the assessee to disclose full fact in the return. The department therefore should have filed an appeal with the ITAT. It was all the more necessary to do so to enforce pecuniary discouragement for non compliance with law and procedural requirements. The failure to file the appeal with the ITAT resulted in loss of revenue of Rs.233.68 lakh.

(ii) Annual Action Plans of the Directorate are approved by the Central Board of Direct Taxes specifying *inter-alia* that the returns should be processed by the month of July of the year subsequent to the year in

which the returns are filed.

In Delhi charge, the income tax returns of two limited companies for assessment years 1992-93 and 1993-94 were processed between December 1993 and March 1995. Audit scrutiny revealed that the return had been filed on 31 December 1992 and 31 December 1993. It was noticed that the assessees were allowed payment of interest of Rs.29.30 lakh by the Government. Had the processing of returns been done by 31 July 1993 and 31 July 1994 as laid down by Central Board of Direct Taxes in the Action Plans, the payment of interest of Rs.29.30 lakh could have been avoided.

WEALTH TAX

Law and procedure

3.1.16 Under the Wealth Tax Act, 1957, with effect from 1 April 1989, provisions similar to that of the Income Tax Act were introduced under Section 16 of the Wealth Tax Act, for processing of returns.

The scope of the prima facie adjustments are defined under Section 16(1)(a) of the Wealth Tax Act as follows:

(i) any arithmetical errors in the return, accounts, or documents accompanying it shall be rectified;

(ii) any exemption or deduction which on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed or made in the return, shall be allowed.

(iii) any exemption or deduction claimed or made in the return which on the basis of the information available in such return, accounts or documents is prima facie inadmissible, shall be disallowed.

The Central Board of Direct Taxes have issued instructions from time to time to the assessing officer for proper co-ordination amongst assessment records pertaining to different taxes. The objective of these instructions is to enable detection of evasion of taxes.

Additions made to the wealth returned

3.1.17 Data given below is as furnished by the department in the 669 wards/assessing units where returns test checked in audit. Information was not furnished in Rajasthan charge.

(Rs.in lakh)

Year	1992-93	1993-94	1994-95	Total
No. of returns processed	41,996	29,458	19,440	90,894
Total T.E. of additions made	17.35	10.75	8.29	36.39
Cases selected for scrutiny out of processed cases	4,010	5,638	2,724	12,372
Total amount of addition/ reduction wealth determined after processing	611.28	979.79	1,785.29	3,376.36

Total amount of additional wealth tax levied at the time of processing	**2.05**	**1.84**	**1.64**	**5.53**
Total amount of additional wealth tax etc. retained after appeals	**1.57**	**0.12**	**0.07**	**1.76**
Total No. of cases out of processed cases in which rectification made U/S 35	**2**	**--**	**--**	**2**
Total amount of addition/reduction	**(-)6.34 (+)1.60**	**--**	**--**	**(-)6.34 (+)1.60**
Total amount of additional wealth tax involved Addition (+)/Reduction (-)	**(-(0.02**	**--**	**--**	**(-)0.02**

An analysis of 90,894 returns processed in a summary manner during the years 1992-93 to 1994-95 by the department revealed that out of the additional tax of Rs.5.53 lakh levied on the tax on additions made in returned wealth, Rs.1.76 lakh (i.e. 32 percent) was retained after appeal effect.

Variation between wealth returned and wealth determined in a summary manner and after scrutiny

(ii) An analysis of variation in wealth determined under section 16(1) (a) and that determined after scrutiny assessments during the three years 1992-93 to 1994-95 is given below:

(Rs.in lakh)

Year	Wealth returned	Wealth determined after processing	Additional tax demand/ refund including wealth tax/ interest	Wealth determined after scrutiny	Demand actually recovered after appeals etc.
1992-93	**8,827.72 (-)563.08**	**8,923.92 (-)45.06**	**68.01 --**	**13,801.21 (-)12.68**	**38.60 --**
1993-94	**9,148.80**	**9,168.92**	**29.35**	**11,079.18**	**41.42**
1994-95	**6,122.26**	**6,125.46**	**24.95**	**8,565.05**	**53.48**
Total	**24,098.78 (-)563.08**	**24,218.30 (-)45.06**	**122.31 --**	**33,445.44 (-)12.68**	**133.50 --**

(a) Thus there were no substantial additions to wealth at the summary stage on the wealth returned;

(b) Addition of Rs.9227 lakh could be made after scrutiny.

Results of review

(iii) Test check of 66,616 cases out of 3,30,811 cases processed in a summary manner in respect of 669 wards out of 2855 wards all over the country during three years 1992-93 to 1994-95 revealed aggregate under assessment of wealth of Rs.6,950.99 lakh in 84 cases with consequent tax effect of Rs.121.53 lakh as shown in the table below:

					(Rs. in lakh)
Financial year	**No. of returns processed**	**No. of cases test checked**	**No. of cases in which objection was taken**	**Under assessment of wealth**	**Total tax effect**
1992-93	**1,67,163**	**31,049**	**16**	**1,500.48**	**31.21**
1993-94	**1,02,716**	**19,462**	**15**	**1,120.25**	**22.83**
1994-95	**60,932**	**16,105**	**53**	**4,330.26**	**67.49**
Total	**3,30,811**	**66,616**	**84**	**6,950.99**	**121.53**

Wealth escaping assessment

3.1.18 Under the provisions of Section 40 of Finance Act, 1983, with effect from the assessment year 1984-85, companies other than those in which the public are substantially interested are liable to wealth tax at a flat rate of 2 percent (plus 10 percent surcharge for the assessment year 1988-89 only) of the net wealth comprising the aggregate market value upto the assessment year 1991-92 and for assessment year 1992-93 either value determined in the manner laid down in Schedule III to the Act or value disclosed in balance sheet of the company on the valuation date, whichever is higher, of the specified assets belonging to the company reduced by the debts owed by the company pertaining to such assets on the valuation date. Further from 1 April 1993 there shall be charged for every assessment year a tax in respect of the net wealth on the corresponding valuation date of every individual Hindu undivided family and Company at the rate of 1 percent of the amount by which the net wealth exceeds fifteen lakh rupees. Besides, the Central Board of Direct Taxes have issue instructions from time to time to the assessing officers for proper co-ordination amongst assessment records pertaining to different taxes. The objective of these instructions is to enable detection of evasion of taxes.

Few cases of wealth escaping assessment, irregular exemption, over charge of wealth tax and incorrect valuation of assets are given below:

(i) In Maharashtra charge, audit scrutiny of the income tax assessment records of a company for the assessment years 1984-85 to 1989-90 revealed that the assessee owned free hold land with book value of Rs.20.94 lakh and sold land with book value of Rs.4.13 lakh in assessment year 1989-90 and Rs.6.82 lakh in assessment year 1990-91 for a consideration of Rs.75 lakh. Audit scrutiny of wealth tax assessment records for the assessment years 1984-85 to 1989-90 revealed that for wealth tax assessments, only the value of vehicles was taken. As the market value of the sold portion of land with book value of 10.95 lakh was Rs.75 lakh, the value for the entire land of book value of Rs.20.94 lakh worked out to Rs.139 lakh. Adopting the same value for each of the assessment years 1984-85 to 1989-90, the wealth amounting to Rs.139 lakh escaped assessment in each of the assessment years from 1984-85 to 1988-89 and Rs.64 lakh in each assessment years from

1989-90 to 1991-92 with consequent short levy of tax of Rs.17.74 lakh.

(ii) In Kerala charge, the wealth tax assessments of a closely held company for the assessment years 1989-90 to 1992-93 were completed between November 1992 and July 1993 in a summary manner. Audit scrutiny of the income tax assessment records of the assessee company for above assessment years revealed that the company had rental income from certain godown, factory premises and sheds owned by it, which not evidently being used by the assessee for his business purpose were chargeable to wealth tax. Considering the rent capitalisation method, the value of these assets worked out to Rs.67.38 lakh, Rs.48.86 lakh, Rs.79.30 lakh and Rs.150 lakh for the four assessment years respectively. However, the assessee company did not file any wealth tax return nor did the department initiate any wealth tax proceedings. The omission resulted in under assessment of wealth aggregating Rs.345 lakh with consequent short levy of tax of Rs.6.91 lakh.

(iii) Under the provisions of section 40 of Finance Act, 1983, any unused land held by companies (other than those in which public are substantially interested) for industrial purpose or for construction of hotel is exempt from levy of wealth tax for a period of two years from the date of its acquisition.

In Kerala charge, the wealth tax assessment of a closely held company for the assessment year 1992-93 was processed in a summary manner in July 1993. Audit scrutiny revealed that the assessee owned unused land valued at Rs.34.65 lakh meant for industrial purposes was claimed and allowed as exempt. It was noticed that the land was purchased by the assessee in August 1989 was not utilised for any industrial purposes as on valuation date 31 March 1992. Since the asset in question was not utilised for any industrial purposes within a period of two years from the date of its acquisition, exemption granted under the provisions of Finance Act, 1983 being prima facie inadmissible should have been disallowed. The irregular exemption allowed resulted in under assessment of wealth of Rs.34.65 lakh with consequent short levy of tax of Rs.83,166 (including additional tax).

(iv) In Tamil Nadu charge, the wealth tax return for the assessment year 1992-93 of a closely held company was processed in a summary manner in December 1992. Audit scrutiny revealed that the assessee returned the value of immovable property at Rs.5 lakh which was accepted while processing the return instead of adopting the value under Schedule III of the Wealth Tax Act. Under Schedule III the value of the property worked out to Rs.18.28 lakh on the basis of rent capitalisation method. As the information as to the receipt of rental income was very much available with profit and loss account of the company, copy of which was enclosed to the wealth tax return alongwith a copy of the balance sheet, the value of immovable property could be prima facie ascertainable. The incorrect valuation of property adopted resulted in

short levy of tax of Rs.31,247.

Irregular exemption

3.1.19 Prior to its omission with effect from 1 April 1993, Section 5(1A) of the Wealth Tax Act, 1957 prescribed exemption from the net wealth of the assessee to any assets referred in exemption clauses of Section 5(1) to the extent the value thereof exceeds, in the aggregate, a sum of five hundred thousand rupees. One of the exemption clause was the value, as determined in the prescribed manner, of the interest of the assessee in the asset [not being any land or building or any rights in any land or building or any asset referred to in any other clause of sub section (1) of section 5] forming part of an industrial undertaking belonging to a firm or an association of persons of which the assessee is a partner or, as the case may be , a member.

In Rajasthan charge, the wealth tax assessments of three individuals for the assessment years 1991-92 and 1992-93 were processed in a summary manner between March 1992 and March 1993. Audit scrutiny revealed that all the three individuals were allowed exemption in respect of the interest of the assessees in the assets forming part of undertakings which were claimed to be industrial undertakings. It was noticed that the undertakings were not treated as industrial undertaking by the department and exemptions claimed in assessment year 1990-91 were disallowed. Had the previous assessment record been linked up the incorrect claim of exemption would have been disallowed. The incorrect exemptions thus allowed resulted in under charge of tax of Rs.61,711 (including additional tax).

Overcharge of wealth tax

3.1.20 Under the Wealth Tax Act, 1957, an assessment may be completed in a summary manner after, inter alia, rectifying any arithmetical error in the return, accounts and accompanying documents. In such processing the assessing officer determine the correct sum payable by him or refundable to him on the basis of such assessment. Underassessment of tax of substantial amount and overcharge of tax in a few cases on account of avoidable mistakes attributable to negligence on the part of the assessing officers have been mentioned year after year in the Reports of the Comptroller and Auditor General of India.

In Bihar charge, the wealth tax return of a Government Company for the assessment year 1994-95 was processed in a summary manner in March 1995 at net wealth of Rs.218.69 lakh. While levying tax on net wealth, the department erroneously levied tax of Rs.5 lakh instead of the correct amount of Rs.2.04 lakh. The mistake resulted in overcharge of tax of Rs.2.96 lakh.

Incorrect valuation of assets

3.1.21(i) In Delhi charge, the wealth tax return of an individual for the assessment year 1992-93 was processed in a summary manner in March 1993 at (-)Rs.26.17 lakh. Audit scrutiny revealed that the assessee had 1/3rd share in the property situated in metropolitan city valued at Rs.2.03 lakh and another property at Mussorie at Rs.0.12 lakh as against

Rs.431.10 lakh and 0.22 lakh respectively assessed to wealth tax for assessment year 1990-91. The incorrect valuation resulted in underassessment of wealth of Rs.403 lakh with consequent short levy of wealth tax of Rs.7.64 lakh.

(ii) The Central Board of Direct Taxes have issued instructions in August 1990 that assessment under the Wealth Tax Act, 1957, should be completed after scrutiny in all cases where the returned wealth was Rs.10 lakh and above.

(a) In Rajasthan charge, the wealth tax return of an individual for the assessment year 1991-92 was processed in a summary manner in December 1992 at Rs.13.76 lakh adopting the value of immovable properties at Rs.11.40 lakh. In terms of the instructions of the Board, the returned wealth being more than Rs.10 lakh, the assessment should have been completed after scrutiny . However, audit scrutiny revealed that the value of immovable properties was determined by the valuation cell of the department in March 1993 at Rs.31.76 lakh for the assessments for assessment years 1989-90 and 1990-91 which was also confirmed by the CIT (Appeals) in April 1994. Thus the net wealth of the assessee taking fair market value of immovable properties and value of movable properties worked out to Rs.37.12 lakh for assessment year 1991-92. The omission resulted in under assessment of wealth of Rs.18.36 lakh with consequent short levy of wealth tax of Rs.0.36 lakh (including interest for late filing of return).

(b) In Karnataka charge, the wealth tax return of an individual for the assessment year 1992-93 was processed in a summary manner in November 1992 determining net wealth of Rs.22.42 lakh as returned by the assessee. Audit scrutiny revealed that the assessee's share in an immovable property was adopted at Rs.17.62 lakh as against Rs.53.60 lakh adopted in assessment year 1991-92 based on valuation worked out under Schedule III of Wealth Tax Act. Further in the case of another individual who along with the assessee is also a partner in two firms, the share interest of another assessee partner in two firms was increased by Rs.1.95 lakh and Rs.2.13 lakh respectively but the similar increase of share interest in the case of assessee was not considered. Since the assessee's returned net wealth was more than Rs.10 lakh, the assessment should have been completed in a scrutiny manner. The omission resulted in wealth aggregating Rs.40.06 lakh escaping assessment with consequent short levy of tax of Rs.80,094 (including interest).

(c) In Karnataka charge, the wealth tax return of a company for the assessment years 1993-94 and 1994-95 were processed in a summary manner in October 1994 and December 1994 respectively determining net wealth of Rs.27.33 lakh and Rs.32.99 lakh as returned by the assessee. Audit scrutiny revealed that in each of the two assessment years the net wealth returned included value of two immovable properties at Rs.81,313 and Rs.10.95 lakh which was adopted as such in

processing of returns. Audit scrutiny of the assessment records of the assessee for the earlier assessment years 1992-93 and 1991-92 revealed that the value was adopted at Rs.1.68 lakh and Rs.28.61 lakh respectively based on the valuation report of departmental valuation officer for the assessment years 1991-92 and 1992-93. Besides in the assessment for the assessment year 1992-93 the value of two other immovable properties was assessed at Rs.3.52 lakh which was not declared by the assessee for both the above assessment years and as such was omitted to be assessed to levy wealth tax on them. Since the returned net wealth for both the assessment years was more than Rs.10 lakh, the assessment should have been completed after scrutiny. The omission resulted in underasssessment of wealth aggregating Rs.44.08 lakh with consequent short levy of tax Rs.44,086.

(iii) Under Schedule III of the Wealth Tax Act, 1957, the value of an equity share in any company which is quoted may, at the option of the assessee or a company, be taken on the basis of the average of the value quoted on the 31st March immediately preceding the assessment year and the values quoted in respect of such share on the said dates in relation to each of the immediately preceding nine assessment years provided that where the assessee opts for the average of the values so quoted, he shall get such value certified by an accountant and attach the certificate alongwith the return of wealth in respect of the relevant assessment year.

(a) In Punjab charge, the wealth tax assessments of two individuals for the assessment year 1992-93 were processed in a summary manner in February 1993 and March 1993. Audit scrutiny revealed that the value of shares was returned on average basis but the requisite certificate from an accountant was not attached with the return and as such the valuation of shares was required to be done at the market rate as on 31 March 1992. The omission resulted in short levy of tax of Rs.64,218 (including additional tax).

(b) In West Bengal charge, the wealth tax assessment of three individual assessees for the assessment year 1992-93 were processed in a summary manner and of one individual in a scrutiny manner between February 1995 to March 1995. Audit scrutiny revealed that the assessees owned equity shares of different companies some of which were quoted in stock exchange. The values of the quoted shares as on 31 March 1992 were higher than the values shown by the assessee and accepted by the assessing officers. It was noticed that no option was exercised by the assessees to adopt the average values of the shares as per the provisions of the Act and get them certified by the accountant. The incorrect adoption of the value of the quoted shares thus resulted in under valuation of shares to the extent of Rs.137.48 lakh with consequent under charge of tax of Rs.2.77 lakh.

(iv) The Central Board of Direct Taxes have clarified in October 1989,

that where the balance sheet of a company drawn up as on the valuation date is not published before date of filing wealth tax return by the share holders and hence not available to them on the said date, they may work out the value of unquoted equity shares under Rule 11 and 12 of Schedule III on the basis of the balance sheet drawn up as on the date immediately preceding the relevant valuation date.

In West Bengal charge, the wealth tax return of an individual for the assessment year 1992-93 was processed in a summary manner in March 1995. Audit scrutiny of the information available in the return/accompanying documents enclosed with the return revealed that the assessee owned 4,650 and 5,410 unquoted equity shares in two closely held companies. The value of each share was returned and accepted at Rs.2,656.71 and Rs.31.76 respectively. However, under Schedule III the value of the unquoted equity shares based on balance sheets as on 31 March 1991 of the respective company worked out to Rs.3284.89 and Rs.44.14 per share respectively which was much higher than the value adopted in assessment. The incorrect valuation adopted resulted in undercharge of tax of Rs.59,634.

Conclusions and Recommendations

3.1.22(i) The above findings reveal that the implementation of the scheme has not enabled the Department to increase the percentage of scrutiny assessments as was expected, in as much as during the period under review i.e. 1992-93 to 1994-95, the overall percentage of scrutiny of all categories of assessees was at an average of 3.5 percent. In the higher category of assessments, the percentage of scrutiny remained static at 30 percent in the 'C' category of cases and came down in the 'B' category of cases. Further the overall pendency of assessments continued to remain high during the same period.

(ii) Additions of Rs.846.15 crore were made and loss returned was reduced by Rs.1431.19 crore as a result of scrutiny in the selected few cases. The revenue foregone in the cases which have not come up for scrutiny would be much more and cannot be estimated. The Department itself has not selected any parameters/criteria for estimating the revenue loss.

(iii) Further, the implementation of the scheme revealed several omissions/irregularities in carrying out prima-facie adjustments and non-levy of additional tax. Thus the twin objectives of the scheme of encouraging of voluntary compliance on part of the assessees and enabling the department to devote more time to make quality assessments in selective cases have not been achieved.

(iv) There are some lacunae in the existing law and procedure applicable to the scheme on account of non-linking of past assessment records, inability to apply the law laid down judicially as well as to levy additional tax on prima-facie adjustments made at the scrutiny stage,

which the assessees are taking advantage of thereby leading to immediate revenue loss or errors on account of incorrect carryforward of claims going undetected in future.

(v) Though the Department has decided to implement a scheme of "limited scrutiny" on an experimental basis from the assessment year 1995-96 (parameters for selection of cases for scrutiny during financial year 1996-97), to increase the overall scrutiny and to correct some of the deficiencies in the existing law and procedure, the proposed scheme also prevents/bars prima-facie adjustments from being carried out at the summary stage on account of linking of past records and law as determined by judicial decisions. Thus revenue loss on account of these lacunae would continue to occur and in fact the exchequer would also lose the revenue on account of additional tax due to these factors.

(vi) Though the scheme is necessary to cope with the increasing workload of the department its success depends largely on the back-up of scrutiny assessments, which are absolutely necessary to justify the existence of an important department like the Income Tax Department. The department, therefore, needs to evolve a scheme to increase the scrutiny assessments by a combination of factors of increase in work force, computerisation at the summary stage and revision of work norms for the assessing officers. As the existing deterrence levy of 20 percent additional tax is not serving its deterrent purpose and large number of cases are going unscrutinised, the department could also consider an increase in the levy of additional income tax. The department also needs to remove the existing lacunae and deficiencies in the law and procedure applicable to the scheme so as to plug the revenue leakage at the summary stage itself.

The review was referred to the Ministry in November 1996. The Ministry's reply has not been received (February 1997).

3.2 Audit of Accounts under section 44AB of the Income Tax Act, 1961

Introductory

3.2.1 A mandatory system of audit facilitates the administration of tax laws by ensuring that books and records are properly maintained and they reflect faithfully the assessees income and claims for deduction. It would also help in proper presentation of accounts before the tax authorities and thereby save considerable time of assessing officers by obviating the need to check routine issues like correctness of totals, whether purchases and sales are properly vouched or not etc. Audit could also check fraudulent practices such as concoction of accounts at later dates, maintaining duplicate accounts etc. The time of the assessing officers thus saved could be utilised for attending to the more important investigational aspects of the case. With these in view, section 44AB was introduced by Finance Act 1984 in the Income Tax Act.

Law and procedure

3.2.2 Section 44 AB prescribes that every person carrying on business or profession is required to get his accounts audited by an accountant defined in Sec.288(2) before the specified date (viz 31 December upto assessment year 1993-94 and 30 November thereafter in case of a company and 31 October in other cases), if the total sales/turnover or gross receipts as the case may be in business exceed or exceeds Rs.40 lakh and Rs.10 lakh of gross receipts in case of profession in any previous year. Such an assessee is required to obtain before the specified date, the report of such audit in the Form prescribed, viz Form 3CA in case where accounts have been audited under any other law, Form 3CB in case of person carrying on business and Form 3CC in case of person carrying on profession, duly signed and verified by the accountant. These forms should include such particulars as may be specified in Form 3CD in case of persons carrying on business and Form 3CE in case of professionals. Further, where a person fails to get his accounts audited in respect of any previous year as per section 44 AB or to obtain a report of such audit or to furnish the said report alongwith the return of income filed under section 139(1) or in response to a notice issued under section 142 (1), the assessing officer may levy a penalty of a sum equal to one half percent of total turnover/sales/gross receipts as the case may be, in business or gross receipts in profession in such previous year(s) or a sum equal to Rs.1 lakh whichever is less. With effect from 1.7.1995, the assessee is required to furnish such report by the specified date i.e. 30th November of the assessment year in case of company and 31st October in any other case.

Objectives

3.2.3 The review seeks to evaluate the degree of compliance with law and procedural requirements by the Income Tax department and by the accountant as well as to establish whether the objectives behind inclusion of this provision have been fulfilled. It also seeks to examine the effectiveness of the audit certificates in supplying requisite information to the assessing officers culminating in sustainable additions to total income being made. The review was conducted through test check of records of 655 out of 2882 assessing officers for the years 1992-93 to 1994-95. Cases relating to earlier years have been included wherever necessary.

Highlights

3.2.4(i) A mandatory system of audit ensures proper maintenance and reliability of books of accounts so as to reflect faithfully the assessable income and claims for deductions. Section 44 AB obliges every 'person' carrying on business or profession with turnover/sales and gross receipts exceeding Rs.40 lakh and Rs.10 lakh respectively to get his accounts audited by an 'accountant' and to furnish before the specified date the prescribed audit report. Failure to comply with the requirement shall make the defaulter liable to penalty.

(ii) In 300 cases tax audit reports were not furnished though the total

sales/turnover/gross receipt exceeded prescribed monetary limits. In other 707 cases the delayed reports were filed. Penalty leviable worked out to Rs.642.68 lakh which was neither levied nor reasons for not levying it recorded.

[Para 3.2.5 (i) (iii)]

(iii) The 'Accountant' has to certify the correctness of accounts with reference to the requirements of prescribed tax audit reports to assist the assessing officer in making the proper assessment of assessees' taxable income. However, in 1627 cases, failure to furnish the requisite information or furnishing misleading information necessitated the additions of Rs.33,321.95 lakh to the assessee's returned income by the assessing officer.

[Para 3.2.6]

(iv) Statement of particulars accompanying tax report is designed to assist proper assessment. However, qualifying/casual/routine remarks in 6091 cases were not helpful in the determination of correct income. In another 590 cases inadmissible expenditure of Rs.5105.99 lakh were recommended as allowable which was not found so by the assessing officer. Further, factual inaccuracy about accounting of certain transactions led to knocking out by appellate authorities of additions of Rs.16.32 lakh made by assessing officer in 3 cases based on tax audit report information.

[Paras 3.2.7,3.2. 8 & 3.2.9]

(v) The department does not appear to have set up a system to monitor and evaluate whether the statutory obligations imposed on the Accountants have been fulfilled or not. This would enable the department to take up cases of gross negligence, carelessness and professional misconduct. Existence of such a system alongwith an increase in the monetary limits for the scope of such an audit would greatly improve the quality of statement of particulars accompanying audit reports thereby assisting the correct processing of returns of income by the department.

[Para 3.2.12(b)]

Audit Reports not filed

3.2.5 Audit scrutiny revealed instances where the audit reports were not filed either due to the fact that accounts were not audited at all or they were audited under any other statute. Instances were also noticed where the assessees did not go for tax audit or audit was not completed before specified date. The penalty which was leviable for this omission was also not levied nor were any reasons recorded by the assessing officer for not doing so in cases detected during audit scrutiny. The department also did not appear to have evolved a system to have a proper check on assessees in cases where tax audit reports were to be filed.

Accounts not audited at all

(i) Audit scrutiny of assessment records revealed 300 cases of assessees in Haryana (UT Chandigarh), Orissa, Madhya Pradesh, Assam, Karnataka, Tamil Nadu, Uttar Pradesh, Andhra Pradesh, Bihar, Rajasthan, Gujarat, Punjab, West Bengal, Maharashtra and Delhi charges where accounts were not got audited though total sales/turnover/gross receipts was more than the prescribed limit in the previous year. It was found that no penalty had been levied nor were any reasons recorded by the assessing officer for not doing so. The total penalty leviable in these cases was Rs.182.44 lakh. Two such illustrative cases are given below

(a) In Maharashtra charge, in the assessment of a company for the assessment year 1994-95 completed in a summary manner in March 1995, tax audit was not got done by the assessee though its total sales/turnover or gross receipt was Rs.170.34 lakh i.e. above the prescribed limit. The penalty leviable Under Section 271 B would be Rs.one lakh.

(b) In Gujarat charge, in the assessment of a registered firm for the assessment year 1993-94 completed in a summary manner in March 1994, the assessee failed to get its accounts audited and consequently to obtain the tax audit report though its turnover was Rs.1680 lakh during the relevant previous year. The penalty leviable would be Rs.one lakh.

Non-completion of Audit before specified date

(ii) The Law provides that the accounts should be audited before the specified date i.e. 31 December in case of companies (30 November w.e.f. 1.4.1994) and 31 October in other cases.

Audit scrutiny revealed that in 31 cases in Rajasthan, Bihar, Gujarat, Maharashtra and West Bengal charges the assessees had not got their accounts audited before the specified date. The penalty leviable for this omission under section 271B works out to Rs.19.91 lakh. Two such illustrative cases where penalty proceeding were not initiated nor were reasons recorded for not doing so in violation of executive instructions are given below :

(a) In West Bengal charge, in the assessment of a registered firm for assessment year 1992-93 completed after scrutiny in August 1994, the assessee had got his accounts audited on 5 March 1993 as against the specified due date of 31 October 1992. Though the penalty leviable would be Rs.1 lakh no penalty proceedings had been initiated by the assessing officer.

(b) In another case of West Bengal charge, no penalty proceedings were initiated though the accounts were audited on 28 April 1994 as against the due date of 31 December 1993. The penalty leviable was Rs.0.65 lakh.

Delay in filing tax audit report

(iii) As per provisions of section 271 B as they existed prior to 1.7.1995, the assessee was required to file such audit report with return of income filed under section 139(1) or in response to notice issued under section 142(1). In case of non-filing of report, the assessee would be liable for penalty.

Audit scrutiny revealed delays in filing tax audit reports in 707 cases in Kerala, Orissa, Maharashtra, Assam, Karnataka, Tamil Nadu, Uttar Pradesh, Andhra Pradesh, Himachal Pradesh, Rajasthan, Gujarat, Madhya Pradesh, Punjab and Delhi charges. The penalty leviable was Rs.460.24 lakh. Three such illustrative cases are given below :

(a) In the case of a company in Karnataka charge, for the assessment year 1994-95 whose assessment was completed in a summary manner in March 1995, the return of income was filed on 30 November 1994 but the audit report was submitted to the assessing officer only on 3 January 1995. The penalty leviable would be Rs.1 lakh.

(b) A registered firm in Tamil Nadu charge reported gross sales of Rs.827.59 lakh for assessment year 1992-93 and Rs.923.45 lakh for assessment year 1994-95. The audit reports for these assessment years were however filed on 19 July 1993 and 30 December 1994 respectively. No penalty proceedings under section 271 B were initiated for the belated filing of audit reports though the assessee would be liable to pay penalty of Rs.1 lakh for each assessment year.

(c) In Himachal Pradesh charge, an assessee Company had filed returns for the assessment years 1988-89 to 1990-91 on various dates disclosing gross turnover ranging between Rs.4436.02 lakh and Rs.11120 lakh. Audit scrutiny however revealed that though the assessee had failed to get the accounts audited and file the tax audit report for any of the above said years, the assessing officer finalised the assessments for assessment years 1988-89 to 1991-92 on best judgement assessment basis in March 1994 and treated the returns for assessment years 1992-93 to 1994-95 as *"non-est"* in March 1995. However, he did not levy any penalty for not getting accounts audited for any of the assessment years although penalty of Rs.7 lakh (maximum penalty of Rs.1 lakh for each year) was leviable.

Non filing of Tax Audit Report by non resident assessees

(iv) In the case of non resident assessees, audit certificate under section 44 AB is required if turnover of overseas branches exceeds the prescribed limits though in the Indian branch, it is less than the limit. One illustrative case is cited below :

In Tamil Nadu charge, a non resident company who had received business income of Rs.72.83 lakh as technical fees for assessment year 1989-90 did not file the audit report, on the grounds that as per Para 5 of

Article III of the applicable Double Taxation Avoidance Agreement, fees for technical services is excluded from tax. Since for filing tax audit report, only turnover is important and not the taxable income, the report should have been filed. The penalty leviable for this omission was Rs.36000.

The Ministry have accepted the audit observation.

Exhibition of low sales/turnover to avoid tax audit

(v) The Central Board of Direct Taxes have not issued any instructions with regard to watching of timely receipts of tax audit reports. The Chief Commissioner of Income Tax or Commissioner of Income Tax have also not evolved an appropriate system in the department to have a proper check on the assessees who were required to file the test audit reports and who amongst them filed. Hence there is no record (except assessment files) in the department which could indicate the cases covered under section 44 AB of the Act.

During test check, it was noticed that in 50 cases in Tamil Nadu, Himachal Pradesh, Gujarat, Punjab, Kerala, Assam, Haryana, Madhya Pradesh, Maharashtra and Delhi the assessees had deliberately resorted to understatement of sales/turnover/gross receipts than prescribed limit(s) to avoid tax audit. Two such illustrative cases are mentioned below :

(a) In a case in Assam charge, relating to the assessment year 1989-90 assessed in March 1995 the details of transportation charges furnished by the assessee showed that the assessee brought constituent's goods (coal) on his personal account and received from the parties Rs.86.44 lakh being the value of coal, lorry hire, handling, octroi, sales tax and miscellaneous expenses etc. The assessee thus acted as principal as regard his constituents. However, the assessee had shown the difference of the amount received (Rs.86.44 lakh) from the parties concerned and the amount paid for the above charges (Rs.83.43 lakh) amounting to Rs.3.01 lakh as gross receipts from transportation charges and thus avoided audit under section 44 AB. The assessing officer however, did not consider levying penalty in this case. Penalty leviable would amount to Rs.43000.

(b) A closely held company in Tamil Nadu charge, for the previous year relevant to assessment year 1992-93 reported gross turnover of Rs.31.08 lakh but did not include consignment sales of Rs.32.51 lakh. The penalty leviable would amount to Rs.32000.

Non filing of audit reports in subsequent years

(vi) In 74 cases in Assam, Haryana (UT), Karnataka, Madhya Pradesh, Orissa, Punjab and Uttar Pradesh charges it was noticed in audit that though the total sales/turnover or gross receipt during the previous assessment year was above the prescribed limits in the succeeding assessment year it was shown as below the prescribed limit.

The assessing officers however did not make any efforts to ascertain reasons for the lower turnovers though it would have implications relating to conduct of tax audit. Two illustrative cases are given below :

(a) In the assessment of a company in Orissa charge, for the assessment year 1994-95 completed in a summary manner in January, 1995 it was noticed in audit that the total sales/turnover or gross receipt was taken as Rs.12.60 lakh whereas for the assessment year 1993-94 completed in March 1994 in a summary manner it was Rs.184.83 lakh and tax audit report was filed. The reduction of total sales/turnover or gross receipt from Rs.184.83 lakh in 1993-94 to Rs.12.60 lakh in 1994-95 was not investigated by the assessing officer as there was no evidence in the records.

(b) The assessment of a Registered firm in Orissa charge, for the assessment year 1993-94 was completed in a summary manner in December 1993 wherein total sales/turnover or gross receipts was taken as Rs.35.34 lakh. It was seen in audit that in the return of income for the assessment year 1992-93 the amount was Rs.74.09 lakh and tax audit report was filed. No efforts to investigate the reasons for reduction in total sales/turnover or gross receipt were made by the assessing officer.

Tax Audit Report not filed in case of non-taxable income

(vii) The Act provides that an assessee shall have his accounts audited if it exceeds a prescribed turnover/receipts. The condition is related to turnover and does not depend upon whether the assessee has taxable income or not.

In 14 cases in Uttar Pradesh and West Bengal charges, no tax audit report was submitted to the assessing officer alongwith the return of income though the total sales/turnover or gross receipt exceeded the prescribed limit. However, the assessee had no taxable income. One such illustrative case is given below :

The assessment of an individual in West Bengal charge for the assessment year 1992-93 was completed after scrutiny in March 1995 at a loss of Rs.1.67 lakh. Though the total sales/turnover or gross receipt during the previous year relevant to assessment year was Rs.41.16 lakh, the assessee, however, did not submit the audit report. No action to levy penalty (Rs.21000) was taken by the assessing officer.

Information not given or misleading information given

3.2.6 Under Section 44AB, the tax auditor has to certify the correctness of the accounts of the assessee with reference to requirements indicated in 13 clauses of Form 3CD and 6 clauses of Form 3CE. These clauses contain particulars of certain pertinent information which would enable/facilitate proper determination of assessee's income. Since the auditor is required to furnish true and correct information. Such information should aid the assessing officer in finalising the assessment.

However, audit scrutiny revealed 1627 cases in Haryana, Assam, Utter Pradesh, Orissa, Maharashtra, Tamil Nadu, Karnataka, Bihar, Kerala, Punjab, West Bengal, Delhi, Union Territory of Chandigarh, Gujarat, Rajasthan and Madhya Pradesh charges where the assessing officers had made additions of Rs.33321.95 lakh in the taxable income due to non-furnishing/furnishing, misleading information in the various coloums of Forms 3CD/3CE by the tax auditor engaged by the asseessee to fulfill his statutory obligation. Such additions made by the assessing officers on his own by not relying on the misleading/worng information supplied by the accountant in his tax audit report would tend to nullify the objective behind inclusion of Section 44AB.

Certain illustrative cases are listed below :

Incorrect indication of Method of accounting

(i) The method of accounting i.e. cash, mercantile or hybrid adopted by the assessees is to be reported correctly by the auditors in Form 3CD.

In the case of a public financial institution in Tamil Nadu charge, the tax audit report for the assessment year 1992-93 indicated that the assessee had adopted mercantile system of accounting even though the assessee had adopted cash basis for accounting interest income. The assessing officer while completing assessment after scrutiny increased the interest income offered by Rs.1.16 crore on accrual basis which was upheld by the appellate authorities. Further, for the assessment year 1994-95 the internal audit had pointed out that Rs.5.20 crore of interest accrued had to be taken into account in addition to the interest offered by the assessee on cash basis. However, the department did not initiate any action against the auditor for furnishing incorrect particulars with reference to method of accounting employed by the assessee.

The Ministry have accepted the audit observation.

Non disclosure of Capital expenditure

(ii) As per provisions of the Income Tax Act, 1961 any expenditure not being in the nature of capital expenditure laid out or expended wholly and exclusively for the purpose of the business/profession shall be allowed in computing the income chargeable under the head "Profits and gains". The accountants in their tax audit reports, are required to mention/disclose the amount, if any, being in the nature of capital expenditure but debited to profit and loss account of the assessee as per clause 4(i) of Form 3CD of tax audit reports.

In Delhi charge, the assessment of a hotel company for the assessment year 1992-93, was completed after scrutiny. Audit scrutiny revealed that the assessing officer had disallowed Rs.270.26 lakh debited to profit and loss account under the head "Repairs and Maintenance" being expenditure incurred on renovation programme on the grounds that it was to enhance the profit earning capacity of the assessee and was, therefore, a capital expenditure. However, this fact was not mentioned

by the accountant in his tax audit report.

Inaccurate computation/non-computation of Raw Material consumption

(iii) In clause 12 of Form 3CD, the tax auditor has to furnish details of raw materials and finished products, information regarding percentage of yield, shortage etc. which will help the assessing officer in finalising the assessment.

(a) In Kerala charge, the assessment of a manufacturing concern was completed after scrutiny making an addition of Rs.28.25 lakh on account of inflation of consumption of raw materials. Audit scrutiny revealed that while the assessing officer himself worked out the quantities and value of raw materials with reference to the value of finished products, the auditor had certified the quantitative details of principal items of raw materials and finished good as true and correct. The tax auditor's certificate was proved to be false.

(b) In the assessment of a company in Orissa charge, for the assessment year 1992-93 completed after scrutiny in February 1995, audit scrutiny revealed that a total sum of Rs.129.21 lakh was debited to P&L account towards consumption of raw materials, However, the statement attached to P&L account revealed that the consumption of raw material was of Rs.111.48 lakh. The difference of Rs.17.73 lakh between the amount debited to P&L account and the details of consumption of raw materials was not commented upon by the Tax Auditor nor by the assessing officer while finalising the assessment.

Non-disclosure of payment in excess of Rs.10000 in cash

(iv) In Orissa charge, the assessment of a Hindu Undivided Family for assessment year 1991-92 was completed after scrutiny in October 1992. Audit scrutiny revealed that the assessee had made a payment of Rs.1.53 lakh in cash to a company in which the Karta of HUF was a director. As the payment was made in cash to the company in which the Karta was a Director the payment could not be said to have been made in exceptional and unavoidable circumstances warranting payment otherwise than by crossed cheque/draft. Since this was not disclosed by the accountant, it resulted in under assessment of income of Rs.1.53 lakh for failure to disallow.

Certificate of Tax deducted at source and paid to credit of Central Government

(v) As per clause 11 of Form 3CD, the accountant has to certify whether the assessee has deducted tax at source and paid the amount so deducted to the credit of the Central Government in accordance with the provisions of Chapter XVII-B. As per the Guidance Note of the Institute of Chartered Accountants of India, the accountant is expected to verify from the records whether tax deducted at source has been paid to the credit of Central Government within time stipulated under Chapter XVII-B of Income Tax Act,. However, the use of the word "and" (which is conjunctive) and the fact that clause 11 refers to provisions of Chapter XVII-B, makes it apparent that the duty cast on the auditor cannot be given a narrow interpretation. The fact that clause

11 makes a reference to Chapter XVII-B (which contains all the relevant sections for tax deduction at source) makes it obligatory for the accountant to comment upon the fact as to whether the assessee has correctly deducted tax at source and paid the amount so deducted in accordance with Chapter XVII-B. Though the primary duty of properly deducting tax at source is that of the assessee, the accountant is required to comment on whether tax has been properly deducted or not.

In Maharashtra charge, an airline did not properly deduct tax at source for assessment years 1988-89 to 1992-93 on certain allowances paid to its employees treating these allowances as exempt from tax under section 10(14) though these allowances have not been notified as exempt by the government. Audit scrutiny revealed that the amount of tax not deducted at source amounting to Rs.3.48 crore for these years was not commented upon by the accountant. No explanation was also sought by the assessing officer from the accountant for this lapse.

Non-disclosure of foreign travel expenditure

(vi) In Orissa charge, the assessment of a company for assessment year 1993-94 was completed in a summary manner. Audit Scrutiny revealed that though the Tax auditor was required to indicate the amount of expense on foreign travel, he omitted to do so. When the issue was communicated to the assessee he accepted the fact that the report was defective to this extent.

Expenditure not supported by vouchers

(vii) Where the accountant has certified the correctness of particulars specified in Form 3CD & 3CE and also expressed an opinion on the true and fair nature of accounts, it is presumed that the expenditure claimed by the assessee should be supported by vouchers which would provide evidence as to the genuineness of the expenditure. However, test check in audit revealed 537 cases in Orissa, Maharashtra, Delhi, Uttar Pradesh, Karnataka, UT of Chandigarh and Kerala changes, where the expenditures of Rs.770.56 lakh was not supported by vouchers and consequently disallowed by assessing officer. Since the accountant has examined the books of accounts he should have disclosed such expenses in his report. Two illustrative cases are listed below :

(a) In Delhi charge, in the assessment of a company for the assessment year 1993-94, the assessing officer had disallowed certain expenditure amounting to Rs.1.40 lakh on the grounds that such expenditure was not supported by original vouchers. Audit Scrutiny revealed that the accountant had not disclosed this fact.

(b) In another case in Delhi charge, an amount of Rs.1.42 lakh was added back by the assessing officer during assessment for assessment year 1993-94 on grounds that the expenses were not supported by original vouchers. In this case also the accountants' report was silent.

Non disclosure of deposits accepted in cash

(viii) In West Bengal charge, a corporate assessee, a leading daily newspaper accepted Rs.198 lakh as deposits in cash from its distributor in the previous year relevant to the assessment year 1993-94. The tax auditor had no comments on this important aspect against the relevant clause of form 3CD. In the assessment completed in March 1996, the assessing officer, however, observed that "the assessee was liable for further action, u/s 269SS of the Act".

Qualifying/casual/ routine remarks furnished by tax auditor

3.2.7 In 6091 cases in Maharashtra, Orissa, Madhya Pradesh, Rajasthan, Karnataka, Tamil Nadu, Andhra Pradesh, Delhi, Union Territory of Chandigarh, Jammu and Kashmir, Uttar Pradesh, Gujarat, Punjab, Assam and West Bengal charges it was noticed that the accountant had furnished qualifying/casual/routine remarks against different clauses of form 3CD. Such remarks would not assist the assessing officer to determine correct income. Three such illustrative cases are given below :

(i) The accountant is responsible for indicating the amount of expenditure incurred on maintenance of Guest house charged to profit & loss account and depreciation claimed on Guest house building. In one case in Rajasthan charge for the financial year 1993-94 the CA had stated that it was difficult to segregate the depreciation on guest house building & other items. This was despite the fact that the accountant is presumed to have access to the books and other records of the assessee.

(ii) In the assessment record of a co-operative society in Orissa charge for the assessment years 1992-93 and 1993-94 the observation of the tax Auditor was that "no separate building has been shown in the assets register for the rest house hence depreciation figures could not be disclosed. However, such depreciation figure will be of nominal value". Thus the tax auditor did not furnish categorical remarks to enable the assessing officer to disallow any inadmissible expenditure.

(iii) In two cases in Orissa charge for the assessment years 1992-93 to 1994-95 the observation of the Tax Auditor was "As explained to us the personnel expenditure has not been debited to P&L account". On the basis of the above qualifying remark the assessing officer could neither substantiate nor disallow any expenses.

Information as per Tax Auditor's Report deleted in appeal

3.2.8. Instances were noticed in audit scrutiny where additions made by assessing officers on the basis of report of accountants which were found to be factually inaccurate were deleted in appeal. Three instances are quoted below :

(i) In Kerala charge, the assessment of a closely held company for assessment year 1992-93 was completed in a summary manner in July, 1993 disallowing Rs.2.40 lakh as per information in Tax Audit Report as being amount provided for gratuity. Audit scrutiny revealed that the

assessee's appeal against disallowance was accepted by the appellate authority since the amount was not debited in the accounts. Failure to verify this fact by the accountant led to wrong disallowance by the assessing officer.

(ii) In Kerala charge, the appellate authority deleted an addition of Rs.6.81 lakh made in the assessment of a co-operative society for the assessment year 1992-93 on the grounds that the amounts were not debited in the Profit & Loss Account. Audit scrutiny revealed that the addition was made on the basis of information in the Audit Report that Rs.6.81 lakh which had been paid as tax/duty during the year had been allowed as a deduction in earlier years.

(iii) In Kerala charge, in a similar case of a co-operative society, an amount of Rs.7.11 lakh which was disallowed by the assessing officer on the basis of accountants certificate was however allowed by appellate authority on the ground that the sum was not debited to Profit & Loss Account.

Expenditure disclosed as allowable by the Accountant disallowed by assessing officers

3.2.9. In 590 cases in Orissa, Madhya Pradesh, Assam, Bihar, Union Territory of Chandigarh, Punjab, Tamil Nadu, Andhra Pradesh and Maharashtra charges, the accountants had recommended certain inadmissible expenditure of Rs.5,105.99 lakh against different clauses of Form 3CD accompanying the tax audit reports. The assessing officers however while completing the assessments found such expenses as disallowable thereby indicating that the accountants had not paid proper attention to the legal details involved in the issues.

Variation between inadmissible expenditure as per assessee and as per audit report

3.2.10. During test check it was noticed that in 17 cases in Orissa, Karnataka, Kerala and West Bengal charges an amount of Rs.184.69 lakh debited to profit and loss accounts was taken as inadmissible expenditure by the assessees them selves in computation of their taxable income but such disallowance was not indicated by tax auditor against the relevant clause(s) of form 3CD accompanying the tax audit report. Two such illustrative cases are given below :

(i) In Kerala charge, in the case of a company the accountant had recommended that an amount of Rs.85,220 has to be disallowed, being sales tax payable debited in the profit and loss account. But the assessee itself added back a sum of Rs.5.23 lakh while furnishing the return.

(ii) Two corporate assessees in West Bengal charge, offered for taxation the unpaid amounts debited to P&L account, totalling Rs.12.51 lakh representing outstanding sales tax/turnover tax in the computation of income filed for the assessment year 1992-93 and 1993-94. The tax auditors, however, indicated a 'Nil' figure against clause 7(i) of Tax Audit Reports.

Information available in the tax audit reports not utilised by the assessing officers

3.2.11. One of the main objectives of introducing Section 44 AB was to relieve the assessing officer from the routine type of work like checking of totals, verification of vouchers on the basis of which various claims have been preferred by an assessee, etc. and indicating results thereof in the tax audit report (Form 3CD/3CE) so that assessing officers could utilise this information while completing assessment and time so saved could be utilised by him in more investigational aspect of an assessment.

During audit it was noticed that information available in tax audit reports enclosed with 112 returns of income in Haryana, Kerala, Orissa, Madhya Pradesh, Jammu & Kashmir, Karnataka, Tamil Nadu, Bihar, Gujarat, Andhra Pradesh, Union Territory of Chandigarh and Maharashtra charges was not utilised by the assessing officers while completing assessments. This resulted in loss of revenue to the extent of Rs.3,068.87 lakh. Three illustrative cases are given below :

(i) The assessment of a company in Jammu & Kashmir charge, for the assessment year 1993-94 was completed in March 1994 in a summary manner. Audit scrutiny revealed that the company had claimed deduction of Rs.10.79 lakh on account of contribution towards provident fund not approved under Income Tax Act. As the information was available in the tax audit report, the amount was required to be disallowed being prima facie inadmissible. Omission to add back this inadmissible deduction resulted in non-levy of additional income tax of Rs.1.12 lakh.

(ii) In the assessments of three assessees in Gujarat charge, for the assessment years 1991-92, 1993-94 and 1994-95 completed after scrutiny, amounts of Rs.7.97 lakh covered by section 43B, of the Act, though brought out clearly in the Tax Audit Report (Form 3CD) were not added back by the assessing officer to the total income of the year. Non-addition resulted in short-levy of tax of Rs.4.72 lakh in these cases.

(iii) The assessment of a closely held company in Karnataka charge, for the assessment year 1994-95 was completed in a summary manner in March 1995. Audit scrutiny revealed that though the tax audit report accompanying the return of income revealed that Rs.24.25 lakh representing bonus payable to staff and workers were not paid within the relevant previous year or within the due date of filing of return, no cognisance of this was taken by the assessing officer to disallow this unpaid bonus. This resulted in short computation of income by Rs.24.45 lakh involving short levy of tax of Rs.19.21 lakh (including additional Income tax and interest).

Other observations- Changes needed in Form 3CD/3CE

3.2.12(i)(a) The accountant has to indicate particulars of payments made in excess of Rs.10,000 in cash excluding exceptions covered under Rule 6DD. In Delhi charge, audit scrutiny of 20 Tax Audit Reports in five DC (special Assessment) ranges revealed that the accountants had indicated that "it was not possible for them to verify such payments as the necessary evidence is not in possession of the assessee". While such a remark is supported by the Guidance Note of the Institute of Chartered Accountants, it is not clear as to how the department visualised the disallowance of expenditure incurred in cash in violation of statutory requirement on the basis of information in tax audit report.

(b) Form 3CD/3CE was prescribed keeping in view the provisions of Income Tax Act prevailing at the time of insertion of section 44AB (Inserted by Finance Act, 1984 w.e.f. 1 April 1985). Thereafter several changes in the provisions of the Income Tax Act, 1961 have been made. Therefore, the format needs appropriate modification according to the provisions of Income Tax Act. Certain existing clauses which may need suitable modification are given below :

FORM NO. 3CD

Statement of particulars in the case of a person 3 CD carrying on business

Clause of Form 3CD	Present position	Amendment required
4 (iv)	Articles presented or intended for presentation where expenditure on each such articles is in excess of fifty rupees.	Rs. fifty may be substituted by Rs.1000 from the assessment year 1993-94. (Rule 6B of Income Tax Rules 1992)
4(x)	Bonus or commission paid to an employee (to indicate whether Bonus paid exceeds amount of Bonus payable under the payment of Bonus Act)	Not applicable from the assessment year 1989-90 since proviso one and two to sub-clause (ii) of section 36 (1) of I.T. Act has been omitted from the assessment year 1989-90.
4(xii)	Fees or other remuneration in excess of Rs.10,000 to any person ..... any matter specified in sub section (12) of section 40(A).	Not applicable from the assessment year 1993-94 since section 40A(12) has been omitted.

FORM NO.3 CE

Statement of particulars in the case of a person carrying on profession

Clause of Form 3CE	Present position	Amendment required
3 (v)	Fees or other remuneration paid in excess of Rs.10,000 to any person ..... specified in sub section (12) of section 40A.	Not applicable since section 40 A(12) has been omitted from the assessment year 1993-94.

No action against the Accountant

(ii) The objective behind introduction of compulsory audit duly certified by the chartered accountant was to provide the assessing officer with a reliable source of information. The criticality of the information provided by the accountant in the form of audit certificates and annexed forms (Form 3CD/CE) can be gauged from the fact that nearly 95 percent of the assessments are completed in a summary manner, relying on the information in the return of income and accompanying documents. However, there is no system in the department for monitoring and evaluating the performance of Accountants vis-a-vis statutory obligation cast on them under the Income Tax Act. There is no provision under the Act enabling an Income Tax Authority to take appropriate action for the purposes of section 44AB against an Account found guilty of gross negligence, carelessness and misrepresentation and professional misconduct. Further, the limits of turnover/gross receipts for getting accounts audited by an accountant kept at Rs.40 lakh/10 lakh for business/profession were prescribed in 1985-86. Considering the rise in cost of inflation index in the intervening period 133 to 305 and increase in the maximum amount not chargeable to tax from Rs.15000 to Rs.40000 at present , a review of these monetary limits is called for. The existence of a proper monitoring system at DCIT/CIT level and an enabling provision alongwith a raise in the monetary limits would have salutary influence on the completeness, correctness and reliability of audit reports. The processing by the department of the return of income will greatly benefit by such a system.

Four instances are listed below :

(a) In 4 cases in Karnataka charge, there was omission to sign the Forms 3CB and 3CD by Chartered Accountants. The returns should have been treated as defective in terms of Section 139(9) of the Act and opportunity should have been given to the assessees to correct the omission. However, the assessments were concluded by accepting the defective returns. No explanation was called from the accountant.

(b) In Kerala charge, the return of a contractor was filed alongwith tax audit report within due date. Audit scrutiny of the accountant's report revealed that while in one paragraph, he had expressed a disclaimer that he could not express any opinion on the trueness and correctness of the accounts, in succeeding paragraphs he expressed an opinion that the said accounts give a true and fair view subject to his earlier observation. The assessing officer however did not call for any explanation on such a certificate.

(c) In Tamil Nadu charge, Audit scrutiny revealed a case where audit report was certified by a person who was not competent to do so under section 288(2) of the Act. Even though the assessee had submitted a revised audit certificate, no action was initiated by the assessing officer

to either levy penalty for submitting an inauthentic audit report or for initiating proceedings against the person who had acted as an accountant by referring the matter to the Institute.

(d) In Maharashtra charge, the assessment of an individual for assessment year 1991-92 was completed after scrutiny in March 1995 wherein the assessing officer ignored the disclosure by the accountant that the assessee had made a payment of Rs.15 lakh in cash in violation of section 40A(3). On the issue being raised by audit, the accountant changed his certificate contending that further verification had revealed that the amount should not have been disclosed as a cash payment. It was clear that the accountant had not verified this while submitting his report and had submitted wrong information.

Lacuna in the Section 271-B of the Act

(iii) Section 271 B as it existed prior to 1.7.1995 of the Income Tax Act provides that penalty would be leviable if the audit report is not filed with the returns filed under section 139(1) or in response to a notice issued under section 142(1). Since returns are also filed under section 139(4) of the Income Tax Act, penalty should be levied in such cases also. With effect from 1.7.1995, however the audit report is required to be filed by prescribed date irrespective of the date of filing of return.

Test check in audit revealed 134 cases in Bihar, West Bengal and Haryana charges, where tax audit reports were filed belatedly alongwith the returns of income filed under section 139(4) of the Act. The penalty which was leviable in these cases for belatedly filing of audit reports would be Rs.101.18 lakh which however was not levied. The audit view has been strengthened by ITAT[6].

Non revision of tax audit report vis-a-vis of accounts

(iv) Where the assessee revises his accounts and submits a revised return, it is obligatory for him to submit a revised tax audit report. In the case of 35 assessees in Karnataka, Union Territory of Chandigarh, Madhya Pradesh, Orissa, Uttar Pradesh, Jammu & Kashmir and West Bengal charges it was noticed during audit that though the assessee had revised its accounts and filed revised returns, the audit report was not revised. Two illustrative cases are given below :

(a) The assessment of a co-operative society in Madhya Pradesh charge, for the assessment year 1991-92 was completed in a summary manner on 15 October 1993 on the return of income filed on 31 October 1991 alongwith tax audit report. Audit scrutiny revealed that though the assessee had revised his return of income showing total sales/turnover or gross receipt as Rs.135.82 lakh on 27 October 1993, but revised tax audit report was not furnished. The assessing officer had also not taken any action.

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(b) Audit scrutiny revealed that though an assessee company in Union Territory of Chandigarh charge, had revised its accounts for the assessment year 1991-92 and submitted a revised return of income, the revised tax audit report was not furnished. No action in this regard was taken by the assessing officer.

Loss of revenue due to time bar

(v) In 25 cases in Maharashtra, Gujarat, Karnataka and Uttar Pradesh charges, Government exchequer suffered loss of revenue amounting to Rs.17.67 lakh due to non-initiation/non-completion of penalty proceedings within the prescribed limit of time and hence became time-barred. Two such illustrative cases are given below :

(a) In one case in Karnataka charge, even though penalty proceedings were initiated, there was failure to conclude the proceedings within the time limit prescribed under the Income Tax Act. This resulted in non-realisation of penalty of Rs.0.88 lakh.

(b) In another case in Maharashtra charge, where assessment for assessment year 1993-94 was completed after scrutiny for taxable income of Rs.60.15 lakh, no action was taken to levy penalty under section 271B for default under section 44 AB within the prescribed time limit. Since the amount has become time barred, there is a loss of revenue to the extent of Rs.30,077.

Additions made by assessing officers on the basis of special Audit Under Section 142 (2A)

(vi) Under section 44AB, an assessee whose turnover/receipts exceeds a specified limit is required to get his accounts audited by an accountant who is also required to report on certain particulars specified in Forms 3CD/3CE. Further, section 142(2A) of the Act provides, that where the assessing officer, having regard to the nature and complexity of the accounts of any assessee and in the interest of revenue, is of the opinion that it is necessary to do so, he may direct, with the approval of the Commissioner of Income Tax , the assessee to get his accounts audited by an accountant nominated by the Commissioner of Income Tax and obtain a report of such audit. Thus an audit under section 44 AB is more guided while a special audit under section 142(2A) is resorted to sparingly in special cases. However, Audit Scrutiny revealed that wherever a special audit had been undertaken, it resulted in disclosure of certain issues which were not disclosed in Tax audit Report which had been submitted earlier and consequently resulted in additions to returned income. Two illustrative cases are given below :

(a) In Madhya Pradesh charge, in case of two companies, the assessing officer directed the assessees to get their accounts for the assessment years 1992-93 and 1993-94 audited under section 142 (2A) in one case and in the other for the assessment years 1991-92 and 1992-93. Audit scrutiny revealed that the assessing officer after considering Special Audit Reports made additions of Rs.121.64 lakh to the total income of the assessees involving tax effect of Rs.68.30 lakh as per recommendations made by Chartered Accountants in special Audit

Report under section 142 (2A) of Income Tax Act. However, no mention of these issues was available in the Tax Audit Report.

(b) In Tamil Nadu charge, in the case of an assessee for assessment years 1991-92 and 1992-93 the special audit of the accounts conducted by another Chartered Accountant brought to light various inconsistencies in the determination of income by the previous tax auditors. Based on the special audit report the assessing officer made additions to the income aggregating Rs.11.27 lakh resulting in additional demand of Rs.4.36 lakh for the two years.

The response of the Ministry to the above audit observations have not been received so far except their reply in certain individual cases which have been incorporated suitably.

3.3 Presumptive Taxation Scheme (Section 115 K)

Introductory

3.3.1 With a view to building an atmosphere of trust and confidence and also to widen the tax base by encouraging small shopkeepers to pay their taxes, the Finance Act, 1992 introduced a new simplified procedure of taxation with effect from 1 April 1993. The new procedure is intended to help small shopkeepers in meeting their tax liabilities without having to go through elaborate book keeping and intricacies of income tax law and procedure. The scheme was suggested by the Tax Reforms Committee (1992) in order to ensure "hard to tax" group assessees to contribute in some measure, however small, to the national tax effort. The suggested scheme covered traders and manufacturers in non corporate sector with a turnover between Rs.3 lakh to Rs.5 lakh and envisaged an annual payment of Rs.1000 towards their tax liabilities. Other incomes not exceeding Rs.10,000 were proposed to be taxed at a fixed rate of 20 percent without being aggregated to business income. The extant scheme was modified in consultation with Ministry of Law as given in para 3.3.2 below.

Law and Procedure

3.3.2 The Finance Act, 1992 has inserted a new Chapter XII C in the Income Tax Act, 1961 containing Sections 115K to 115N, which provide for a simplified procedure for payment of income tax by small traders etc. Rule 11EE of Income Tax Rules, 1962 prescribes a statement-cum-challan form No.4A for individuals and Hindu Undivided Families (non specified) and form 4B for Hindu Undivided Families (specified) for payment of tax. The important provisions governing the scheme are:

(i) The Scheme is applicable to a person carrying on the business of retail trade in any goods or merchandise or the business of eating place or of operating, hiring or leasing a goods carriage, a motor cab or a maxi cab or a three wheeled motor vehicle or engaged in any vocation. Vocation includes tailoring, haircutting, clothes washing, typing, photocopying, repair work of any kind and other services of similar

nature. The list would include vocations which are of the same genus as ones mentioned earlier, that is to say vocations which do not require any substantial intellectual output. Illustrations of this would be vocation of carpenters, electricians, plumbers, painters, welders, lathe machine operators, taxi-drivers etc. The scheme is not available to professionals like lawyers, accountants, consultants, engineers, architects, teachers etc.

(ii) This scheme is applicable to only individuals or Hindu Undivided Families. Such persons should not have been assessed to tax for any assessment year commencing on or prior to 1 April 1992. The turnover of the business or retail trade should not exceed Rs. 5 lakh and the income shall not exceed Rs.47,000 for 1995-96, Rs.42,000 for 1994-95, Rs.37,000 for 1993-94 and Rs.35,000 for 1992-93.

(iii) Such person should not have any income in excess of Rs.5,000 in the aggregate chargeable to tax from any source falling under any head of income other than the income from business or vocation.

(iv) Every person shall submit a statement in the prescribed form (Form 4A or 4B) containing the name of such person, his address, nature of business or vocation and a declaration that his turnover and income do not exceed the prescribed ceilings. Such a statement should be verified in the prescribed manner and should be submitted on or before 31 March of the relevant previous year alongwith the proof for payment of tax at the rates specified in the Finance Act (Rs.1,400/5,100 for individual and unspecified HUF/ Specified HUF.

(v) Initially the provisions of this chapter were introduced only for two assessment years, i.e., for assessment year 1993-94 and assessment year 1994-95. Now it has been extended indefinitely.

(vi) Under Section 115L of Income Tax Act, such person shall not be required to furnish a return of income under Section 139(1) and other provisions of Chapter XIV of the Act, i.e., assessment procedures will not apply in such cases.

(vii) Under Section 115M ibid no deduction under Chapter VIA (except section 80L) or rebate of income tax under Chapter VIII of the Act shall be allowed.

It was clarified by the Board in December 1992 that the department would not initiate any action to ascertain whether any assessee had any taxable income for earlier years, and no inquiry with reference to source of capital employed will be made as the scheme is applicable to persons genuinely engaged in small business or vocation.

Objectives and scope of review

3.3.3 The object of the scheme is to broaden the tax base by attracting new tax payers into the tax net. The review seeks to evaluate the extent of realisation of the objective of the scheme and the degree of compliance with the legal and procedural requirement in the operation of the scheme. For this purpose, test check of records kept for financial years 1992-93 to 1995-96 was conducted.

Organisational setup

3.3.4 No presumptive tax ward has been exclusively created for the implementation of the Scheme and the work is assigned to the assessment wards or survey wards in addition to their normal work. In many places it is looked after centrally by Chief Commissioner of Income Tax/Commissioner of Income Tax.

Highlights

3.3.5(i) The scheme had planned to bring into the tax net an additional 10 percent of the existing assessees in the Metros and 15 percent of the existing assessees for the rest of the country. The target of widening the tax base could not be achieved as an increase of less than 5 percent of the existing assessees could be attributed to the scheme by the end of the financial year 1995-96.

[Para 3.3.8]

(ii) The scheme is not applicable to certain categories of persons such as professionals, manufacturers, existing assessees and persons not engaged in any business or vocation. Test check by audit revealed that in 2014 cases, professionals and other ineligible persons opted for the scheme without department exercising any check.

[Para 3.3.12]

(iii) Statement-cum-challan forms which were the backbone of the scheme were found incompletely filled as columns for status, trade or vocation, business establishment address were left blank. In 1272 cases,the tax-payers filed them after the expiry of time limit but the consequence of such late filing was neither spelt out in the statutory provisions nor in administrative instructions nor was any action taken by the department.

[Para 3.3.13]

(iv) Some abuse of the scheme was noticed when the same assessee filed separate statement-cum-challan forms for each of the goods carrier operated by him or when the business was split up to become eligible for the scheme.

[Para 3.3.16]

Statistical information-tax collection vis a vis expenditure on the scheme

3.3.6 The following table gives figures of tax collected and expenditure incurred on publicity etc. as intimated by the department.

Statement of expenditure incurred on publicity and tax remitted

(Rupees in lakh)

	1992-93		1993-94		1994-95		1995-96		
Name of circles	**Exp. incurred**	**Tax remitted**	**Exp. incurred**	**Tax remitted**	**Exp. incurred**	**Tax remitted**	**Exp. incurred**	**Tax remitted**	**Remarks**
Gujarat	-	NA	-	NA	-	NA	-	NA	
Andhra Pd.	-	242.27	8.89	755.06	19.80	1142.09	23.97	737.48	
Tamil Nadu	-	109.99	6.79	67.74	7.43	102.13	7.25	NA	
Assam	-	NA	2.30	12.53	3.00	36.56	2.49	34.91	
Himachal Pd.	0.20	1.34	0.20	11.56	1.37	45.68	1.29	6.83	
Delhi	1.61	142.92	2.71	153.56	3.49	117.07	3.10	NA	
Haryana	-	47.10	-	40.39	2.07	87.58	1.03	82.19	
Orissa	0.56	12.70	2.22	28.70	2.80	46.46	-	NA	
Kerala	2.45	17.66	6.05	43.47	6.00	100.27	-	2.66	(12/95)
Rajasthan	2.96	106.51	4.58	154.86	4.83	222.00	12.37	233.17	
Madhya Pd.	1.47	96.81	2.29	116.84	4.81	442.08	NA	322.29	
Maharashtra	0.61	68.45	4.26	186.69	16.79	389.25	18.23	425.83	(Figure of one CIT not available)
West Bengal	3.48	26.76	8.29	51.18	13.98	110.37	NA	96.33	
Bihar	-	NA	1.80	51.32	5.41	122.42	4.71	101.71	
Chandigarh	-	26.85	-	51.06	0.76	49.27	0.62	NA	
Uttar Pd.	1.01	69.30	1.25	97.44	5.34	309.77	1.80	206.91	Exp. figure in r/o CIT, Agra only
Punjab	-	386.99	-	536.54	8.93	1033.96	2.82	468.29	
Karnataka	3.00	100.77	3.00	547.28	5.00	738.93	13.90	378.69	
Total	**17.35**	**1456.42**	**54.63**	**2906.22**	**111.81**	**5095.89**	**93.58**	**3097.29**	

Action Plan

3.3.7 The Board in their letter dated 9 December 1992 had outlined the broad strategy to be followed for making the scheme popular and result oriented. According to it, the Chief Commissioner should direct the setting up of a Core Group of one Assistant Commissioner/Income Tax Officer and 2 Inspectors for each range. He will in consultation with Director General(Inv), decide the requirement of the Inspectors for his charge as a whole. The CCIT may nominate a DC to co-ordinate the work of the Core Groups for his entire charge. This Core Group was required to identify and select localities for its operations, after utilising expertise gained from survey operations and was to concentrate on new, developing areas, and areas where the targeted group under the scheme was likely to be found. It was hoped that this group would popularise the scheme by addressing small traders and vocational workers, distributing handbills and forms and also rendering assistance to such potential tax-payers in filing forms etc. If still after a reasonable gap, there was no response, then a selective survey under Section 133A of a few prominent traders in the locality who are not assessed to tax should be conducted at the instance or the initiative of the Core Group with Inspectors provided by the Investigation Wing. This survey was to drive home the message that the department would not sit idly by and allow a person having taxable income to go scot-free. It was observed during audit scrutiny that range-wise Core Groups were generally not set up

and where set up, as in Maharashtra, these started functioning in 1994-95 and afterwards. No evidence of a selective survey under Section 133A of prominent traders as potential tax payers which was intended to serve a demonstration effect, came to notice in any circle. It was also observed that detailed plans for general surveys with an eye on popularising the scheme were not made.

Widening of tax base

3.3.8 The main objective of the scheme was to attract large number of tax payers not assessed upto assessment year 1992-93. The Board in its communication to Chief Commissioners and Directors General in December 1992 had set a target of bringing under the Scheme, which was initially for two financial years, an additional 10 per cent of the existing assessees in all the 4 metros namely Mumbai, Calcutta, Chennai and Delhi and 15 per cent of the existing assessees for the rest of the country. However, from Table below it may be observed that the number of tax payers increased from 1.04 lakh in 1992-93 to 3.75 lakh in 1994-95 (the figures for 1995-96 are not complete). Considering the number of assessees on GIR of the department as on 1 April 1992 at 87.88 lakh, the increase in the number of assessees due to introduction of the scheme came to less than 5 percent which fell short of the target set by the Board. The high expectations of the Scheme were not realised and the performance in the charges covering metropolitan cities was particularly poor. This was despite wide publicity and department going all out to create awareness and assure the reluctant potential tax payers about immunity from departmental probe. Given the large number of retailers and service providers operating in the country, the scheme has not yet managed to evoke adequate response due mainly to non maintenance of any reference list which could be used for enforcing compliance either through the scheme or through normal taxation channels. The assessees tend to comply when in their perception, non compliance would imply follow up action under other statutory provisions.

No.of person who remitted tax

Name of Circle	No. of assessees as per GIR as on 1 April 1992	1992-93	1993-94	1994-95	1995-96
Gujarat	7,73391	1609	12,777	9,357	622
Andhra Pd.	4,24,061	17,304	53,933	81,578	52677
Tamil Nadu	7,29,474	7858	4,593	6,812	-
Assam	220,151	-	915	2611	2485
Himachal Pd.	-	96	828	3263	488
Delhi	6,64,315	10,184	10,971	8,296	-
Haryana	1,52,913	3,355	2,881	6,182	5,870
Orissa	1,03,587	877	2,030	3,275	-
Kerala	2,00,765	1259	3,105	7,162	190
Rajasthan	334,789	6,598	11,085	13,707	13,649
Madhya Pd.	3,57,167	6916	8,346	31,577	23,021
Maharashtra	18,71,918	4,780	19,957	27,373	29,032
West Bengal	10,39,243	1,901	3,691	7,836	6,818

Bihar	3,06,129	-	3645	8,558	7,155
UT Chandigarh	-	1,918	3579	3,519	NA
Uttar Pd.	7,32,931	4,451	6660	27,189	13,488
Punjab	4,24,571	27,642	38324	73,854	40,972
Karnataka	4,52,756	7,085	23330	52,379	26,536
	87,88,161	**1,03,833**	**2,10,648**	**3,74,528**	**2,23,003**

Identification of the potential tax payers

3.3.9 The success of the scheme hinges on proper identification and estimation of persons who could be covered and motivated under the scheme. There needs to be a mechanism by which department may identify those who have filed a return and those who have not. The Tax Reforms Committee had advocated the introduction of tax payers identification number (TIN) which would have to be quoted in all commercial transactions and for such matters as applying for licence, sales tax registration, equity shares etc. This would have gone a long way in providing the department with a strong information data base to induce the relevant potential tax payers to pay their taxes. This has, however, not so far been done. Thus, carrying out surveys and proper co-ordination with the local authorities issuing licences for shops, vehicles, small trade etc. to estimate potential tax payers was of primary importance. For this purpose the Board vide their letter No.F.414/69/91/IT (int.I) dated 10 August 1993 instructed the CCITs to direct CITs and assessing officers under their control to maintain close liaison with local authorities etc. But it was observed in audit that the department had not made any estimate of the total number of potential tax payers targeted under the scheme and no specific survey had also been carried out for this purpose. It was noticed that no action plan regarding the total number of surveys to be conducted for identification of such tax payers was formulated. The work was considered incidental to the normal duties of the survey wing for which no record was found to have been kept.

Tax-payers Education Programmes (TEPs)

3.3.10 As per Board's Instruction No.1896 dated 26 August 1992, Tax Payers Education Programmes (TEPs) were to be organised by the Commissioner of Income Tax in such fora as local associations of small traders, tailors, taxi drivers etc. involving officers working under him. It was also contemplated in the instruction that Chambers of Commerce, Association of traders, Chartered Accountants etc. may be involved in order to create a receptive environment for successful implementation of the new scheme.

Table below gives the number of such programmes arranged during the financial year 1992-93 to 1995-96.

Name of Circle	1992-93	1993-94	1994-95	1995-96
Andhra Pradesh	80	282	224	241
Tamil Nadu	31	132	99	NA
Assam	--	105	150	163

Himachal Pradesh	121	106	285	389
Delhi	51	74	75	11
Orissa	34	96	102	--
Kerala	6	12	37	10
Rajasthan	--	330	506	285
Madhya Pradesh	111	71	112	106
Maharashtra (only CCIT Nagpur & Nasik)	120	171	29	26
West Bengal	21	68	180	185 (upto 12/95)
Uttar Pradesh	372	161	972	23
Punjab	102	102	201	63 (upto 10/95)
Gujarat	20	211	159	127
Karnataka	6	645	1958	175
Total	**1075**	**2566**	**5089**	**1804**

It was observed that though information on TEPs held was submitted by CCIT to the Board through fortnightly/monthly progress report, the particulars of category of persons who attended such programmes, the number of forms (4A/4B) distributed and on the spot collection thereof were not kept with the result that it could not be ascertained whether target group and members of the chamber of commerce, trade associations etc. attended such programmes. The response of the targeted audience could also not be gauged.

No proceedings under Section 115N

3.3.11 Section 115N of the Act bars invitation of proceedings under any other chapter of the Act except in a case where Deputy Commissioner of Income Tax, in consequence of evidence in his possession, has reason to believe that the statement furnished by any person regarding his turnover or income is untrue. In the absence of any system in the department to check the correctness of the statements (4A/4B) not a single case could be detected by the department in which proceedings could be initiated for false statement, though test check revealed number of such false representations as mentioned in paragraphs 3.3.14 and 3.3.16 below.

Operation of the Scheme

Scheme availed by ineligible persons

3.3.12 As per Act, the scheme is available to an individual or a Hindu undivided Family carrying on business of retail trade of any goods or merchandise or engaged in the business of running an eating place or of operating, hiring or leasing a motor cab, a maxicab or a three wheeled motor vehicle or engaged in any vocation viz. tailoring, hair cutting, washing clothes, typing, photocopying, repair work of any kind. The scheme is not available to professionals like lawyers, accountants, consultants, engineers, architects, teachers., etc.

During test check of forms 4A/4B filed, it was noticed in all the circles that the scheme had also been availed by ineligible persons, viz.professionals, brokers, commission agents, bookers, manufacturers, registered firms etc. These forms also provided evidence that even persons having turnover/business income/other incomes in excess of prescribed ceilings paid the presumptive tax. Apparently no checks are exercised by either the department or banks about the eligibility of the tax payers to opt for the scheme. Table below gives number of forms filed by such persons during 1992-93 to 1995-96.

Circle	Professionals	Others	Registered firms
Andhra Pd.	143	92	5
Delhi	42	180	--
Haryana	16	--	1
Orissa	9	--	-
Kerala	31	--	-
West Bengal	91	53	-
Gujarat	12	136	-
Karnataka	21	163	1
Punjab	29	--	2
Madhya Pd.	179	275	-
Maharashtra	376	--	-
Uttar Pd.	157	--	-
Total	**1106**	**899**	**9**

Deficiencies noticed in Form 4A/4B

3.3.13 Test check of form 4A/4B revealed the following deficiencies:

(i) The last date for submission of statement-cum-challan (form 4A/4B) is 31st March of the financial year in which the income is earned. However, test check revealed that presumptive tax paid in bank after 31 March was accepted. Delays ranged from a few days to two years in 1272 cases as indicated in the following table. The consequence of such late filing was neither spelt out in the statutory provisions nor in administrative instructions nor was any action taken.

Circle	Number of cases
Andhra Pd.	136
Tamil Nadu	10
Haryana	28
Rajasthan	66
Madhya Pd.	270
Maharashtra	245
West Bengal	31
Uttar Pd.	3
Punjab	28
Gujarat	280
Karnataka	175
Total	**1272**

(ii) Since the form is the backbone of the scheme it has been designed to contain some simple basic information necessary to determine the eligibility of the tax payers and the fulfilment of conditions subject to

which the scheme is available. Deliberately omitting to fill in certain columns of the form would tend to defeat the very objective of ensuring that the prescribed conditions were satisfied. This was aggravated by the fact that the department did not exercise any check on such forms. Test check of forms filed for financial years 1992-93 to 1995-96 revealed:

(a) Nature of business or status of the tax payers or address of the business establishment was not indicated in 4078 cases in A.P, Tamil Nadu, Delhi, Kerala, Madhya Pradesh, West Bengal, U.P, Punjab and Karnataka Charges.

(b) Payment was not authenticated by bank in 35 cases in Karnataka charge. In 4 cases in the same charge and in one case in U.P Charge completely blank forms were submitted.

(c) In Kerala and Karnataka charges in five cases the payment remitted was less than Rs.1400.

(d) In Karnataka, Uttar Pradesh and Punjab charges, statements were not verified by the tax payers in 94 cases and in 127 cases, in Kerala charge more than one form bore the same signature of tax payer.

(e) In Punjab charge in 29 cases, the forms were signed by person other than the assessee or were not signed at all.

Un-enforceability of conditions

3.3.14 The following conditions have been imposed under the Act.

(i) The tax payer should not have been assessed to income tax upto assessment year 1992-93.

(ii) The tax payer should not have income from business or vocation exceeding the prescribed ceiling and also should not have income under any other head of income (except business income) in excess of Rs.5,000.

Though the conditions have been incorporated in the provisions subject to which the scheme is available, their satisfaction at the implementation stage has not been taken care of beyond the verification of a declaration by the assessee to this effect. The Board in their anxiety to attract the targeted tax payers in large numbers and allay their fears, clarified in their circular No.641 dated 9 December 1992 that no inquiry will be carried out regarding their having taxable income for the preceding or subsequent assessment year in any case where they are actually carrying on the business or vocation mentioned in the scheme. Survey teams were also instructed (Instruction No.1896 dated 26 August 1992) not to ask any question regarding the business or vocation declared in form 4A/4B. This was in addition to statutory protection given under Section 115N for the relevant assessment year. Thus, the department has barred itself from satisfying the fulfilment of conditions under which the

scheme is operating. Test check revealed a few cases of infringement of conditions by the tax payer. Some illustrative cases are given below:

(a) In Delhi charge, though the turnover of a tax payer for the previous year 1994-95 as per sales tax return filed by him was Rs.6,63,914, yet he opted for the scheme.

(b) In Tamil Nadu charge, one tax payer paid a tax of Rs.7000 on 31 March 1995 and in Rajasthan charge, another tax payer paid the tax of Rs.10,000 in March 1996 which meant that their incomes were more than the prescribed limit.

(c) In Orissa, West Bengal and Punjab charges,16 tax payers were noticed with reference to blue book and PAN quoted by them that they were assessed to tax in either assessment year 1992-93 or earlier assessment years.

Accounting for receipts

3.3.15(i) As per the provisions of the Act/Rules, the tax-payers are required to file form 4A/4B-cum-challans in duplicate and pay taxes. The Bank returns one copy of challan-cum-form 4A/4B to the assessee along with payment seal. The other copy is enclosed with the daily scroll and sent to the nodal branch. The nodal branch of the bank consolidates all the challan-cum-forms and the sub-scrolls in the main bank scroll indicating in the bank statement, the total number of presumptive tax challans and the amount received. The other copy of the challan-cum-form is sent to the respective computer centres of the CITs for further action. One copy of main bank scroll with bank's statement is received in Zonal Accounts Office. The Zonal Accounts Office book the figures as per bank's statements of the collections under presumptive tax scheme whereas in the computer centres of the respective CITs, the amounts are booked on the basis of number of challan cum Form 4A/4B communicated to the zonal accounts office, by means of ZAO Reports.

Test Check revealed discrepancies in the two sets of figures which were pending reconciliation. Some illustrative cases are given below:

(a) In Tamil Nadu charge, the figure communicated by the computer centre of the Department for the year 1994-95 was Rs.135.41 lakh against Rs.102.13 lakh booked by the ZAO.

(b) In AP Charge, the figure as per computer centre for the year 1994-95 was Rs.1433.04 lakh as against ZAO figure of Rs.1142.09 lakh.

(c) In Kerala charge, the computer centre figures for the years 1993-94 and 1994-95 were Rs.43.47 lakh and Rs.100.27 lakh against the ZAO figures of Rs.31.87 lakh and Rs.95.84 lakh respectively.

(ii) Test check of the computer print out of the list of tax payers who deposited tax under the scheme, revealed the following defects:

(a) Duplicate challans were found entered as separate challans while certain challans were omitted in some cases (Kerala charge).

(b) The regular challans for payment of income tax for self assessment tax and tax deducted at source in many cases were accounted for under the scheme (Kerala and West Bengal charges).

(c) The collections made under the scheme for an earlier financial year were accounted for in subsequent financial year (Kerala, Gujarat and West Bengal charges).

Abuse of the scheme

3.3.16 The scheme is meant for small retail traders, operators of motor vehicles or vocational service providers who have income below the prescribed ceiling. According to the provisions, the prescribed statements are to be submitted to the assessing officer having jurisdiction over the tax payer. Contrary to the provisions, CBDT has instructed the tax payers to tender the statements/challans at the designated banks. As the banks are to send the challans to computer centres of the respective Commissioners of Income Tax, the assessing officers concerned never got a chance to verify the correctness of the statements. The reasons for issuing instructions contrary to the provisions are not known. Test check revealed big traders/operators splitting up their business to become eligible for the scheme. Some illustrative cases are given below:

(i) In Kerala charge, a tax payer filed 5 separate challans under the Scheme on 28 March, 1994 for each of the 5 vehicles operated by him. Apparently, the admitted income from each vehicle was not less than Rs.37,000 otherwise he would not have opted for the scheme. Thus, the total income from the 5 vehicles worked out to Rs.1,85,000 (Rs.37,000 x 5). Against tax of Rs.59,360 payable, the tax paid under PTS was Rs.7,000 only (Rs.1,400 x5), resulting in short remittance of tax of Rs.52,360. In two other cases, included in the computer print out for 1993-94 of Commissioner of Income Tax, Kochi, the tax payers who were operating 2 vehicles each filed separate challans for each vehicle. Against the tax of Rs.11,200 payable for a total income of Rs.74,000 the tax paid was Rs.2800 only resulting in short remittance of Rs.8,400 each in both the cases.

(ii) In Punjab charge, in 5 cases, the business carried on by an individual was split to become eligible for the scheme and thus avoided regular assessment.

(iii) In Gujarat charge, a HUF (Specified), filing form 4B paid a tax of Rs.1400. The same assessee, however, filed a loss return for the relevant year which was accepted.

Submission of Periodical returns

3.3.17 Periodical reports and returns are vital management tools at the disposal of the CIT, to gauge the effectiveness of implementation and

performance of a scheme. The Director of Income Tax (RSP and PR) New Delhi in May 1993 prescribed a proforma for monthly telegraphic report to be submitted by the CIT by the 5th of the succeeding month indicating, inter alia, therein number of meetings addressed, man power deployed, short description of publicity launched, number of forms (4A/4B) distributed, number of new returns of income filed as a result of drive, number of premises where survey action is contemplated/taken in consequence of this drive, general remarks/ suggestions of CCIT/CIT for making the scheme a success. Test check revealed that in some cases in UP, Karnataka, Orissa, AP and Assam charges, these reports were either not submitted or submitted late with incomplete information. The delay ranging from 2 days to 240 days made monitoring of the scheme difficult.

Inadequate data base for monitoring

3.3.18 Audit scrutiny revealed that no registers or any other records except computer print out of the list of persons depositing the presumptive tax, were maintained by the department for monitoring the implementation of the scheme. As certain class of persons such as professionals, manufacturers, existing assessees, etc. were barred from opting for the scheme and others who were allowed to opt for the scheme could do so subject to certain conditions about turnover, other income etc.being satisfied, the mechanism through which the compliance of the bar/conditions were sought to be secured in the absence of proper data base was not even reportedly prescribed. In reply to audit query, the department contended that the scheme being voluntary in nature, the ineligible persons could opt for the scheme at their own risk. However, the inadequacy of the data base led to the abuse of scheme by ineligible persons as brought out in preceding paragraphs.

Miscellaneous- Duplicate or original not distinguishable

3.3.19(a) Though form 4A/4B is to be filed in duplicate, the forms do not bear entries-` original' or `duplicate'. Normally, two copies of the same form are tendered at the bank and one is returned to the tax payer and the other is sent to the computer centre of the department. Instances were noticed wherein the tax-payers filed three or four copies of the form for a single remittance. In such cases, after returning one copy to the tax payer, all the other copies were sent to the computer centre. In Trivandrum charge, in 7 cases, extra copies of the challans were also accounted for by the department as separate cases under the scheme, thereby inflating the number and amount of tax collection. These mistakes could have been avoided had the form indicated `original' and ` duplicate' foils.

Amount of tax collected by department

(b) As per the procedure prescribed, the payment under PTS is to be made direct to the designated banks. No order has been issued authorising the department to collect the amount under PTS However, in Kerala charge tax under PTS was collected by the departmental officers, after issuing receipts in TR5. These receipts were not accounted for in the general cash book of the respective offices. In one office of Kerala

charge, a separate cash book was maintained for recording these collections. Though all the amounts collected were shown as remitted into the bank, some of the names in this cash book could not be traced in the alphabetical list of tax payers for the relevant year furnished by the computer centre. In another office in the same charge, the names of tax-payers from whom amounts were collected, were entered in personal register maintained by the Income Tax Inspectors. Details of remittance into bank were absent in many cases. The entries in this register were not authenticated. In these circumstances it could not be ensured that all the amounts collected by the departmental officers were duly remitted to the banks on Government account.

Non-declaration of turnover by assessee

(c) The scrutiny of printed statement-cum-challan (Form 4A) revealed that turnover is not mentioned anywhere in the form under use. However the form initially used by the department upto 1993-94 contained the declaration to the effect that the turnover from business did not exceed Rs.5 lakh. It is noticed that such declaration is not required to be made in the form presently in use.

Though the limit of income applies to assessees of all specified categories, the condition regarding turnover (Rs.5 lakh upto 1994-95 and Rs.6 lakh for 1995-96) applies only to business of retail trade in any goods or merchandise. Therefore, to become eligible under the scheme, a retail trader must satisfy the condition. Removal of declaration regarding turnover from the prescribed form for 1994-95 is not in keeping with the statutory requirement.

Presumptive tax in other countries

3.3.20 While both elements of presumption and volition are present in this scheme, only presumption has been used in other countries for taxation purposes not only to small business and services but to corporate sector, agriculture and profession as well. While in corporate sector it is primarily asset-based, in other sectors, different base such as turnover, inputs, years of experience/practice cash-flow etc. have been adopted. For example, France has different slabs of turnover for traders, service providers, artisans and professionals. For estimating profit, an enterprise is normally expected to earn and to tax such profits and not the actual profits. In Israel income is estimated from an assortment of output and input indicators which are occupation-specific and are determined on the basis of surveys, negotiation and agreement with relevant associations, bodies etc. In Mexico, Argentina, Nigeria, Peru asset-based minimum alternative taxes are levied on companies and are so designed that the conventional corporate income tax remains payable in full with a crediting provision against the minimum asset-based tax.

Experience with presumptive taxation scheme shows that they can be used as effective and revenue productive base broadening means, if well designed to supplement the conventional method of taxation. Its use in sectors other than corporate has met with less success though it holds high revenue promise with suitable design and proper spade work.

Conclusion and recommendation

3.3.21(i) The scheme failed to achieve the target set for bringing into tax net 10 percent of existing number of assessee in 4 metropolitan cities and 15 percent of the existing assessees in the rest of the country. The percentage of 4.26 achieved in 1994-95 may also not indicate new tax-payers in entirety. The inclusion of sizeable number of existing assessees amongst them cannot be ruled out in the absence of departmental check. Thus, the objectives of widening the tax base and building up of an atmosphere of trust and confidence were not fulfilled as reflected in the lukewarm response to the scheme.

(ii) The rationale for excluding certain categories of persons such as professionals, manufacturers, existing assessees and potential tax payers having income within the prescribed income ceiling is not clear. As the scheme is entirely optional and department is not statutorily barred from initiating proceedings in fit cases of false representation, the removal of restriction may popularise the scheme to a greater extent with no extra effort or cost to the department. As it is, the department is not exercising any control to check the ineligible persons from opting for the scheme.

(iii) Filling up of all columns of forms 4A/4B and their timely submission would require attention with suitable instructions to banks. As the benefit of the scheme is available subject to satisfaction of certain conditions, it is imperative that the department should also exercise some basic checks on the forms submitted. The banks may not be able to ensure that the scheme is availed by only eligible persons fulfilling prescribed conditions.

(iv) Considering the fact that the department has not provided for additional infra-structure for managing the scheme and additional cost to it is by way of amount spent on publicity only, there was net gain to revenue which otherwise would be difficult to collect.

The review was referred to the Ministry in December 1996. The Ministry's reply has not been received (February 1997).

B. Other Cases of Contemporary Interest

3.4 Case of M/s PILCOM

Introduction

3.4.1 M/s PILCOM (Pak-Indo-Lanka Joint Management Committee) was a committee formed by the representatives of the Cricket Boards of India, Pakistan and Sri Lanka to jointly stage the World Cup Cricket Competition in February/March 1995-96. These three countries, as joint bidders, had secured from the International Cricket Conference (ICC) the right to stage the World Cup for Cricket in India, Pakistan and Sri Lanka. The bid amount was 5 million pound sterling.

Apart from formulating the rules for conduct of the matches, appointment of umpires for individual matches, disposal of

representations made by the players, representatives etc., M/s PILCOM would receive money for (a) corporate sponsorship of the event, (b) giving international TV rights for telecasting the matches and (c) giving merchandising rights to various companies for advertising their products and vending them in the venues for the matches. Accordingly M/s PILCOM had received money from the following sources:

I. 8 million pound sterling from ITC (Indian Tobacco Ltd.) for the sponsorship of the event;

II. US$ 10 million from World Tel for exclusive rights to telecast the event;

III. US$ 3,69,000 from Coca Cola for the right to vend the drink at various centres;

IV. 0.55 million pound sterling from National Grid Power for meeting the expenses on neutral umpires;

V. Rs.1 crore from Air India for designating them as International Travel Agents of the Tournament;

VI. US$ 520,000 from VISA for rights given to them for "Financial Supplier" status;

VII. US$ 288,000 from Half Moon SRL for laser and animation work for the opening ceremony;

VIII. Certain moneys were to be received from Wimpy for declaring them as "official caterer" (0.5% of the brand turnover).

The approximate aggregate amount of I to VII above in Indian rupees is 84.35 crore. Information of any other receipts of M/s PILCOM was not available with the CBDT.

It was seen that another agency called INDCOM was formed by Board for Control of Cricket in India (BCCI) to conduct the Indian leg of the tournament comprising 17 matches and to receive guarantee money for conduct of matches, from state cricket associations and certain other receipts similar to those received by M/s PILCOM for selling merchandising rights. Details of the receipts of INDCOM were not verifiable in the absence of accounts except the following two receipts by INDCOM: (i) Rs. 15 lakh from FUJIFILM (ii) Rs. 40 lakh from Perfetti India Ltd. for merchandising rights of chewing gum/bubble gum.

The payments/expenditure to be made by M/s PILCOM was to be for the following items:

I. Payment to ICC:

II. International travel expenses:

III. Expenses incurred on the distribution of the Man of the Match/Man of the Series awards

Except details of the guarantee money paid to various playing and non-playing countries, Income Tax department had no information regarding other payments made since no accounts of M/s PILCOM had been called for/submitted to the Department as yet. After meeting the above expenses the surplus was to be shared equally between the Pakistani and Indian Cricket Boards Sri Lankan Board was to be paid a compensation for having lost two of the four matches allotted to them.

Audit Scrutiny of the case

3.4.2 On basis of information received by Audit in June 1996 that the CBDT had interfered/obstructed the assessment proceedings initiated against M/s PILCOM by the income tax authorities at Calcutta, all relevant files from the Board as well as with the departmental authorities at Calcutta, were requisitioned and examined. Results of the audit scrutiny are given in the subsequent paragraphs.

Highlights

3.4.3 (i) CBDT's directions to the income tax authorities at Calcutta to withdraw the notice issued by them under Section 175 to commence the assessment proceedings against M/s PILCOM, were illegal. The Board by doing so had overstepped their jurisdiction by violating the provisions of Section 119 of the Income Tax Act.

(ii) The decision of the CBDT on the taxability of M/s. PILCOM and on the issue of guarantee money paid to the participating countries were not in accordance with the provisions of law.

(iii) Had the Board not interfered with the assessment proceedings, M/s PILCOM would have discharged their liability under the provisions of Section 194C regarding tax deductible at source on payments made to contractors etc.

The tax liability of M/s PILCOM is not quantifiable before the assessment proceedings are completed.

Income Tax proceedings initiated/aborted at Calcutta

3.4.4 As M/s PILCOM was operating from Calcutta, the Income Tax authorities there initiated proceedings under various provisions of the Income Tax Act on M/S PILCOM. The sequence of events in brief is as under:

(i) By a letter dated 8.11.95, the DC Range 16, Calcutta had made enquiries with M/s PILCOM on the remittances made by ITC Ltd. to M/s PILCOM, which was replied on 12.12.95 by the Convenor and the Secretary of M/s PILCOM, stating the nature and composition of

3.4

M/s PILCOM, the amounts received till that date from ITC Ltd. etc.

Similar information was called for by ITO Company Ward 1(3), Calcutta, in January 1996.

(ii) A summons was issued under section 131 of the Act on 31.1.96, by DC Range 21, Calcutta, making similar enquiries on the status of M/s PILCOM, amount received from ITC and others, deduction of TDS etc. The case was fixed for hearing on 2.2.96, wherein the Convenor and Secretary was requested to produce books of account and bank account. M/s. PILCOM responded to this notice on 8.2.96 by giving details of bank account, composition of M/s. PILCOM etc.

(iii) An authorisation u/s 133A was issued by DC Range - 21, Calcutta, on 31.1.96 to conduct a survey on M/s PILCOM. Convenor/Secretary Shri Dalmiya informed that all books of accounts of M/s PILCOM are maintained by the treasurer of M/s PILCOM of the Pakistan Cricket Board. Shri Dalmiya refused to produce any document and did not also sign the survey proceedings.

Thereafter summons were issued u/s 131 (exact date not available) to Shri Dalmiya to furnish the details of TDS by M/s PILCOM .On non compliance to this notice, proceedings for default in payment of TDS u/s 201(1)/201(1A) were initiated.

(iv) DC Range 21, informed the CCIT, Calcutta, on 8.2.96 that M/s PILCOM had not applied for TAN. The assessing officer (AC Circle 3(1), was asked to issue notice under Section 195 for remittance of 3 million pound sterling outside India on 7.7.95 and 10.11.95 without deducting TDS and to initiate assessment proceedings on M/s PILCOM as it had received more than Rs.300 crore from different sources and was not an approved body u/s 10(23) (exemptions to sport authorities).

CCIT II in his letter dated 9.2.96 also directed ITC to deduct TDS on the payments to M/S PILCOM.

An agreement between M/s PILCOM and ITC, the sponsor of the WORLD CUP, was signed on 12.5.95 which stated that the sponsor shall pay to M/s PILCOM a fee of 8 million pound sterling, 55% of which shall be paid in pound sterling and the balance in Indian rupees. Out of the 55%, 45% was to be paid to Pakistan Cricket Board and 10% to M/s PILCOM's London Account. As per terms of Agreement TDS would be deducted as per laws in force and the Sponsor would provide TDS Certificate.

(v). Proceedings were initiated on M/s PILCOM u/s 175 (assessment of person likely to transfer property to avoid tax) by issue of a notice dated 5.2.96 by the Assistant Commissioner, Circle 3(1) to Shri Jagmohan Dalmiya, Convenor/Secretary, M/s PILCOM, under which M/s

PILCOM was required to file its return of income for AY 1996-97 within a week. Reserve Bank offices at Calcutta, New Delhi, Madras and Bombay were also advised by the assessing officer on 6.2.96 not to allow any remittance outside India by M/s PILCOM without a "no objection certificate" from the assessing officer. While no return was filed within the prescribed time limit, a direction was received from Member (Legal) CBDT to withdraw the Notice u/s 175 and not to take any coercive measure against M/s PILCOM. No further action was initiated by the Calcutta office.

Circumstances leading to the direction to withdraw the notice issued u/s 175

3.4.5 Audit scrutiny of CBDT's files reveals that the Board for Control of Cricket in India (BCCI) on 2.2.96 had represented to the Chairman, CBDT on the issue of TDS on payments to various Cricket Boards of foreign countries. On the same date, the Convenor and Secretary of M/s PILCOM had also represented to the Chairman, CBDT on the enquiries/proceedings initiated by Calcutta Income Tax authorities on M/s PILCOM. The decision to withdraw the notice u/s 175 was taken in February, 1996, after a meeting between the Chairman, CBDT and Board members with the representatives of M/s PILCOM/BCCI. wherein M/s PILCOM/BCCI had represented that M/s PILCOM was only a committee meant jointly to stage the World Cup and it consisted of representatives of Cricket Control Boards of India, Pakistan and Sri Lanka. This joint committee had secured the right to stage the World Cup by paying a bid money of 5 million pound sterling to International Cricket Conference (ICC) and the entire money received in staging the World Cup will be spent in incurring expenditure in payment of guarantees, international air travel (except for Sri Lanka), expenses incurred on delegates, appointment of third party umpires, administrative expenses etc. ***Surplus/deficit accruing from the tournament will be shared in equal proportion by the cricket boards of India and Pakistan.*** M/S PILCOM/BCCI representatives also stated that ***whatever may be the status of M/s PILCOM (i.e. Association of Persons or otherwise) regarding the taxability/exemption***, there was no question of M/s PILCOM purchasing or selling, transferring, disposing of or otherwise parting with any of its assets with a view to avoiding payment of tax liability and hence it was totally improper for IT authorities at Calcutta to issue notice u/s 175 asking for filing of return "in order to complete an accelerated assessment". It was agreed by M/s PILCOM that deduction of tax at source will be made by them in respect of payments to contractors and others for work done for staging the tournament. They also promised to furnish further details to the CBDT regarding exemption of M/s PILCOM from the levy of income tax and also for exemption from TDS in respect of payment of guarantee fee to the ICC.

After due consideration of various arguments of M/s PILCOM, the Board directed CIT-IV Calcutta on 20.2.1996 to withdraw the notice issued by AC Circle 3(1) dated 5.2.1996 and also not to take any coercive measures such as attaching Bank account of M/s PILCOM

pending detailed instructions from the Board. This direction was through a fax message signed by the PS to the then Member (Legal), CBDT.

Issues before the CBDT regarding tax liability of M/s PILCOM and liability of TDS

3.4.6 Various issues which were discussed by CBDT on taxability of M/s PILCOM and on the transactions entered into by it are as follows:

(i) Whether M/S PILCOM is assessable as an Association of Persons(AOP) under the provisions of the Income Tax Act i.e. whether M/s PILCOM is an assessable entity;

(ii) Taxability of Pakistan and Sri Lanka Cricket Boards individually in India;

(iii) Taxability of the guarantee money paid by M/s PILCOM to various associate members and participating countries;

(iv) Applicability of provisions of Section 194 C on tax deductible at source on payments to contractors made by M/s PILCOM

Decisions of CBDT

3.4.7(i) M/s PILCOM is not an association of persons brought into existence with the common purpose of doing business and sharing profit and loss arising there from. Hence it is not a taxable entity.

(ii) Pakistan and Sri Lanka Boards cannot suffer tax in India as neither they carried on any activity in India nor they had any interest in the Indian leg of the Tournament

(iii) M/s PILCOM would be subjected to provisions of Section 194 C relating to payments to contractors;

(iv) Surplus which the BCCI or individual state association earns on the conduct of the matches would be outside the scope of Income Tax in view of the provisions of Section 10 (23) of the Income Tax Act;

(v) Guarantee money paid to the sixteen countries which did not participate in the event would be the outside scope of Section 115 BBA;

(vi) Guarantee money paid to the participating countries with which we have Double Taxation Avoidance Agreement (DTAA) such as Australia, England, New Zealand, Sri Lanka would a also be out side the scope of 115 BBA.

(vii) Guarantee money paid to Pakistan and West Indies would be taxable under Section 115 BBA as there is no DTAA with them

(viii) BCCI would be liable under Section 195 to deduct tax at source on payments to non-residents viz. umpires, players etc.

(ix) Air India, ITC are liable to deduct tax on payments made to M/S PILCOM/BCCI. ITC has deducted Rs.2.64 crore as TDS and deposited to Government account

The above decisions of the Board had been communicated to the Income Tax Authorities at Calcutta and Bombay for necessary action in May 1996.

Audit Observations

3.4.8.➔ The assessing officer had initiated assessment proceedings under section 175 apprehending that M/s PILCOM would dispose of its assets with a view to avoid their tax liability. M/s PILCOM did not file a return within the prescribed time limit (7 days) nor did they apply for any extension of time. Moreover, M/s PILCOM did not co-operate with the authorities at Calcutta on the survey proceeding authorised under section 133A on 31.1.96.

A. CBDT's direction to withdraw notice issued under section 175

The Board by issuing instructions to the assessing authority to withdraw the notice issued under section 175, interfered with the assessment proceedings initiated under section 175. The Board thus overstepped their jurisdiction in issuing directions to the assessing officer **"to dispose of a particular case in a particular manner"** which is denied to them under proviso (a) to section 119(1).

B. Tax Deductibility at source(TDS)

➔ M/S. PILCOM was liable under Section 194C to deduct tax at source relating to payments made to contractors etc. Had CBDT not issued the instructions to the assessing authority in February 1996, there is every reason to believe that before the end of the financial year, PILCOM would have met its liability under Section 194C.

C. Rendition of M/S PILCOM account

➔ The entire M/s PILCOM account and the INDCOM account reflecting the total money received/payments made and the surpluses earned should be rendered by M/s PILCOM to the Income Tax department as it is a legal entity formed in India.

The conclusions/decisions of the CBDT on several substantive issues like the taxability of M/s PILCOM and guarantee money paid to the participating countries were also not in accordance with the provisions of law, which was pointed out in the Audit Note issued to the Ministry in September 1996. The Ministry in their reply (November 1996) stated that the Board had reconsidered the instructions issued earlier to the fileld authorities on taxability of BCCI and PILCOM and other tax related matters and have since withdrawn the instructions and advised the field authorities to take necessary action ***in accordance with the law.*** Since the matter has been remitted to the assessing authority by the Board and they have voided their earlier instructions in this case, Audit would take up for review the PILCOM case after the assessment proceedings are complete.

3.5 Cases of concealment of income and tax evasion by certain suppliers to the Animal Husbandry Department, Government of Bihar

Introductory

3.5.1 The accounts of the State Government of Bihar are prepared by the Accountant General (Accounts & Entitlements), Bihar, Ranchi. The accounts of 1992-93 and 1993-94 which were sent to the Finance Department in March 1994 and October 1994 showed excess over budget provisions of the Animal Husbandry Department. The heavy expenditure in the accounts of November 1995 were specifically brought to the notice of the Finance Department by the Principal Accountant General, Bihar in January 1996.

As a result of these accounts and letters to the State Government, further investigations were made by the State Government which brought to light that huge payments have been amassed by certain suppliers to the Animal Husbandry Department, without effecting supplies or miniscule supplies were effected compared to the payments made to them.

As the suppliers were also taxable assessees under the Income Tax Act, the assessments of the suppliers and other proceedings, if any, initiated against them were scrutinised in audit. This report brings out the results of audit scrutiny of the assessments of some of the suppliers and also of the results of the search and seizure operations carried out by the Income Tax Department prior to the discovery of the payments.

Scope of audit and records examined

3.5.2 Data on payments made by the Government of Bihar, Animal Husbandry Department were collected from the vouchers on which payments were made by various treasuries of the State during the period 1993 - 1996 in 8 Districts of Bihar. These payments amounted to Rs.389.80 crore in 8 Districts alone. 10 Suppliers who had received more than Rs.10 crore were the main audit focus and the individual supplierwise payments were obtained and the assessment folders with the Income Tax Department were scrutinised during the period July - October 1996.

Highlights

3.5.3 (i) The Income Tax Department was aware way back in 1992 of the racket of bogus supplies to and fraudulent payments by the Animal Husbandry Department, Government of Bihar on basis of which search and seizure operations were conducted on atleast 5 suppliers. The information on the modus operandi was not passed on to either the State Government or other criminal investigating agencies which would have brought to light the "Fodder Scam".

(ii) Seized cash of Rs.1.20 crore was returned illegally and hastily to Shri Badrinarayan & Co. the supplier who had received the largest payments despite the categorical statements in the Appraisal Report about the modus operandi of bogus supplies and clear directions to the assessing officer to thoroughly probe the fictitious books of accounts,

bank accounts and purchases etc. This frustrated the subsequent assessment proceedings.

(iii) The regular assessment proceedings for AY 1992-93 of Shri Badrinarayan & Co. were not monitored effectively by the Commissioners and the CBDT, though it was a search and seizure case and it was taken up for completion few months before it was to get time barred. Due to late commencement, crucial evidences were lost and the investigations made to probe the purchases effected by the assessee to make the supplies to the Animal Husbandry Department, could not be proved. The entire purchases were allowed, though the sample test checked purchases could not be proved.

No scrutiny was done of the bank account of the assessee to trace the destinations of the huge withdrawals despite clear direction to the effect in the Appraisal Report. This and other irregularities have resulted in an approximate undercharge of tax of Rs.21.94 crore. Besides penalty of Rs.23.55 crore was leviable for concealment of income.

(iv) The scrutiny assessments of six others of the top ten suppliers, assessed in Ranchi and Patna charges revealed that the incomes were assessed as returned by the suppliers with no substantial additions. All the assessments were completed in a routine manner without probing the purchases made to effect the supplies, sales tax entries and scrutiny of the bank accounts. This has resulted in approximate undercharge of tax of Rs.12.30 crore and penalty of Rs.23.55 crore is also leviable.

(v) Examination of the top 10 cases revealed that the returns filed have not been subjected to scrutiny in some cases and the time limit for taking up the cases for scrutiny has also expired in some of the cases.

The irregularities and omission in the scrutiny assessment hold good for the returns which have been processed summarily and the issues will have to be taken care of in the scrutiny assessment while determining the final tax dues.

(vi) In the 5 cases assessed in West Bengal including Little Oak Pharmaceuticals, one of the top ten suppliers, none of the cases had been subjected to scrutiny for the years 1994-95 and 1995-96.

In the case of Little Oak Pharmaceuticals the sales and consequential income declared were grossly understated in comparison to the payments received from the Animal Husbandry Department.

In the case of Md. K.P. Usman, the returns of income had not been filed though he had received more than Rs.10 lakh from the AHD.

In the case of Medivet, though there was a search and seizure operation there were several irregularities in the regular assessments of 1992-93

and 1993-94 such as non verification of purchases and irregular allowance of cash payments resulting in undercharge of tax of Rs.1.69 crore. The same assessee had filed a return of income for AY 1994-95 but the same had not been processed and no return had been filed for AY 1995-96.

In case of Anshuman Enterprises, a 'brain child' of a district Animal Husbandry officer, Government of Bihar, though the assessee had received Rs.4.29 crore during the period 1993-1996 from the AHD, no returns have been filed.

In case of Quality Chemical Supplier, a firm owned by Shri Dipesh Chandak and Group, the regular assessments were done independently though it should have been centralised and done by the same assessing officer who had assessed Shri Badrinarayan & Co. As a result, the regular assessments suffered the same irregularities on account of non verification of purchases and irregular allowances of cash payments resulting in an under charge of Rs.188.38 lakh.

(vii) In 113 cases though the assessees had received substantial sums from AHD during FY 1993 to 1995 they had not filed their returns of income, nor had the department initiated steps to make the assessees file the return. This indicates a serious flaw in the assessment machinery of the department and their co-ordination with other agencies if such large number of assessees could remain undetected.

The total approximate undercharge of tax in all the cases reviewed is to the tune of Rs.115.61 crore. Besides, penalty for concealment of Rs.84.32 crore is also leviable.

Details of the payments

3.5.4 The names of the top 10 suppliers, payments received, details of assessments etc. are furnished below:

Sl. No.	Name of Assessee/Status	Financial year / Assessment year	Status of assessments	Payments received from Animal Husbandry Dept. Govt. of Bihar (Rs. in crore)	Sales shown as per returns/ accounts (Rs. in crore)
1.	Shri Badrinarayan & Co. Calcutta Shri Dipesh Chandak & Sons (HUF)	1993-94 1994-95 1994-95 1995-96	Summary Summary	21.76 25.81	22.31 27.64
2.	Chotanagpur Cattle Food Supply & Co., Ranchi Partnership firm, Partners: Mohd. Sayeed & Others	1993-94 1994-95 1994-95 1995-96	Scrutiny Summary	14.82 12.02	10.39 15.09
3.	Manas Sales Corporation Partnership firm,	1993-94 1995-96	Summary	10.25	6.38

	Partners: T.M. Prasad & Sushil Kumar	1994-95 1995-96	Summary	15.41	16.70
4.	Shaad & Co., Ranchi Sole Proprietor Mohd. Tauheed	1993-94 1994-95	Scrutiny	5.48	6.02
		1994-95 1995-96	Summary	16.84	14.51
5.	Malik Enterprises, Delhi Partnership firm, Partners: Vijay Malik & Others	1993-94 1994-95	Scrutiny	4.72	5.77
		1994-95 1995-96	Summary	11.76	12.56
6.	Bhagat & Co., Ranchi Sole Proprietor Pramod Kumar. Jaiswal	1993-94 1994-95	Scrutiny	3.46	5.08
		1994-95 1995-96	Summary	7.56	7.51
7.	A. Traders, Patna Individual Ravi Nandan Sinha	1993-94 1995-96	No return filed	5.09	Not Known
		1994-95 1995-96	No return filed	7.19	Not Known
8.	Bihar Surgico Medico Agency, Patna Individual T.M.Prasad	1993-94 1994-95	Summary	3.17	2.40
		1994-95 1995-96	Summary	4.90	6.27
9.	Semex Cryogenics, Delhi Sole proprietor Mohinder Singh Bedi	1993-94 1994-95	Summary	1.55	2.40
		1994-95 1995-96	Summary	4.89	2.83
10	Little Oak Pharmaceuticals, Calcutta Individual Dr .Ajit Kumar Verma	1993-94 1994-95	Summary	2.75	1.34
		1994-95 1995-96	Summary	4.03	0.36

Case of Shri. Badrinarayan & Co.- Search Operations

3.5.5(A) The firm is assessed in the name of Dipesh Chandak and Sons, HUF(Hindu undivided family) with Shri Dipesh Chandak as its Karta.

The Income Tax Department had on the basis of information that Shri Dipesh Chandak was involved in the racket of bogus supplies s to the Animal Husbandry Department, Government of Bihar and had concealed income from the Department, had carried out a search and seizure operation way back in March 1992 on certain bank accounts of Dipesh Chandak and other group cases in Ranchi. The search operations were conducted on 31.3.1992 and 2.4.1992 in the bank accounts of the assessee with the State Bank of India, Doranda, Ranchi. Following the search, total cash of Rs.1.21 crore was seized from three bank accounts.

3.5

The Appraisal Report prepared by ADIT Investigation, Ranchi on 15.5.1992 gave general and specific guidelines for the assessment proceedings as follows:

(i) As the presearch inquiries had revealed that in a sizable number of cases supplies had not actually been made and bogus bills were being passed by the AHD against these supplies and the purchases to effect the supplies are also fictitious, the assessing officer was advised to probe and establish the fictitious nature of the supplies made and purchases made to effect the supplies.

(ii) As the possibility of fictitious/cooked up books/accounts existed the assessing officer had been advised to do intensive screening of the books of accounts, thorough examination of the receipts and expenses, cross verification with parties and personal attendance of suppliers to be enforced before completion of the assessment.

(iii) As the analysis of the bank accounts revealed huge deposits and withdrawals, the assessing officer was asked to correlate each deposit with the moneys received from the AHD and make inquiries of the destination of the withdrawn money which exceeded Rs. 3 crore from SBI, Doranda. Income from AHD was to be taxed separately as the assessee may try to show the entire deposits as that from the AHD.

(iv) The case was also identified as a good one for prosecution as various bank accounts had been opened and closed one by one so as to intentionally avoid their disclosure to the I.T. Department.

Audit Observations-
Information on bogus supplies/ payment not passed on by IT.Department to State Govt. and other agencies

(i) The Department had information prior to March 1992, that the supplier was involved in bogus supplies to a Government department. Had this information been given to the State Government and other investigating agencies the ramifications of the fraudulent payments would have come to light well in advance resulting in timely action to stop the fraudulent payments.

Search and seizure operations restricted to Bank accounts.

(ii) The reasons for restricting the search and seizure operations only to the bank accounts of the assessee and not extending it to the business/residential premises are not forthcoming from the records. Besides, the reasons for carrying out the operations in the absence of the assessee and reasons for not interrogating him then are also not forthcoming from the records.

Further developments on the search proceedings

(B) Under the Income Tax Act, after a search and seizure operation, when money, bullion, jewellery or other article or valuable thing is seized, proceedings are required to be initiated within 120 days of the search and seizure operation to estimate the undisclosed income in a summary manner to the best judgment of the income tax officer after offering a reasonable opportunity of being heard to the person

concerned. This order passed under Sec.5) of the Act with the previous approval of a Dy. Commissioner determines the undisclosed income, the tax and interest payable thereon and specifies the amount that would be required to satisfy all the liabilities under the Act. Thereafter such of the assets required are retained in custody and the balance is to be forthwith released.

In the case of Shri Dipesh Chandak the above mentioned order passed under 132(5) of the Act made the following observations:

Explanation of assessee accepted

(i) The source of acquisition of the cash of Rs.80,50,000 and Rs.40,00,000 (Rs.1.21crore) was explained by the assessee as receipts against supplies made to Animal Husbandry Department, Government of Bihar and this was accepted by the Asstt. Commissioner (Investigation).

Seized cash released by department

(ii) The entries in one bank account opened in UBI, Ranchi prior to 1.4.1991 and which was closed on 2.4.1992 were not explained satisfactorily and hence to safeguard the interests of revenue an estimated amount of Rs.35.58 lakh was retained (inclusive of interest and penalty on concealed income of Rs.25 lakh) and the balance cash of Rs.84.91 lakh out of total seized cash of Rs.1.21 crore was ordered to be released, this order had the approval of DC, Range 10, Calcutta.

(iii) On an appeal by the assessee to the Commissioner as provided for in Section 132(11), against the retention of Rs.35.58 lakh as mentioned above, the said amount was ordered to be released by the Commissioner under provision of 132(12) as the retention was not justified in view of CBDT Instruction No.1180 dated 1.6.1978 directing assessing officer not to estimate income from known sources of income. Thus even the balance cash of Rs.35.58 lakh was also released to the assessee.

Audit observations-Illegal and hasty release of seized cash

(i) The order under Section 132(5) was defective and irregular, in as much it had authorised the release of cash of Rs.84.91 lakh when the appraisal report had clearly mentioned that the assessee had made bogus supplies and fabricated books of accounts to explain the cash deposits in bank accounts. The assessing officer had been advised to thoroughly probe the deposits and withdrawals in the bank accounts and cross verify the purchases made. At the Section 132(5) stage, which is essentially a summary order and no verification of the purchases was made, the explanation of the assessee was accepted with reference to the books of accounts alone, when the presearch inquiries as well as the Appraisal Report had mentioned that the books of accounts were fabricated. When no verification had been done, release of Rs.84.91 lakh was unwarranted and hasty as at that juncture there were no facts to come to the conclusion that all the deposits and withdrawals was with reference to supplies effected to the AHD i.e. known sources of income.

Commissioner's order under 132(12) releasing seized cash was illegal

(ii) The order of the Commissioner under Section 132(12) was more irregular, as it ordered the release of even the balance cash of Rs.35.58 lakh, knowing very well that the allegation against assessee was of fraudulent supplies to a Government department. Only payments received by the assessee were verified from the Government of Bihar and no verification was done against the other charge of bogus purchases. Pending such verification, it was in interests of the revenue to retain the seized cash as the Asstt. Director (Investigation) had rightly done so while passing the 132(5) order. CBDT instruction No.1180 dated 1.6.1978 quoted was misused as at that juncture it could not be concluded that the seized cash was from known sources of income.

Thus the hasty unwarranted orders of the Department under Section 132(5) and Section 132(12) resulted in the entire seized cash of Rs.1.20 crore being refunded to the assessee prematurely also frustrating the subsequent regular assessment proceedings.

Regular assessments of Shri Dipesh Chandak under Section 143(3) for AY 1992-93

The assessment proceedings for the assessment year 1992-93 after the search and seizure operation in March 1992, commenced only in March 1995 and were completed a few days before the assessment was getting time barred, on 31.3.1995. The total income was determined at Rs.7.60 lakh.

Audit observations

For ensuring adequate and proper follow up action in search cases the CBDT had issued instructions (Instruction No.1866 dated 18.7.1991) for ensuring that assessments in search cases are completed properly taking into account all relevant facts and after conducting requisite investigations. The instructions were:

(a) Notices under Section 148 will be issued within 6 months of search and assessments completed within 2 years of the date of the search.

(b) Each CIT will monitor at least 5 of the top search cases every year. The search cases selected for monitoring by the CIT will include all cases where surrender/seizure/estimated concealment is Rs.50 lakh or more. The guidelines for monitoring were laid down in the scheme of Control Mechanism issued in September 1988.

(c) The Board will also keep a watch on the comparatively bigger cases of search i.e. where the seizure/surrender/estimated concealment is Rs.50 lakh or more. Each CCIT is therefore, required to send to the Board a list of such cases.

Audit scrutiny of the case reveals that:

Search case completed routinely few months before time-bar

(i) The search had taken place on 31.3.1992 and 2.4.1992. The instructions require completion of the assessments within 2 years of the date of search. Thus the assessment for the year 1992-93 (Previous year 1991-92) should have been completed latest by April 1994. The

assessment proceedings for 1992-93 were commenced only in March 1995 and the assessment was completed in a routine manner, a few days before it was getting time barred on 31.3.1995.

Case not monitored by higher authorities

(ii) The time to time monitoring by the higher supervisory authorities like the Commissioner/Chief Commissioner as directed by the Board was apparently not done as the investigations commenced in March 1995. As a result of the non monitoring no investigations could be carried out well in advance of commencement of assessment proceedings.

(iii) As the seized cash was more than Rs.50 lakh, the case was also required to be monitored by the CBDT (Member, Investigation) which also apparently has not been done.

Late commencement of assessment proceedings, frustrated the investigations

(iv) Due to late commencement of the investigating process i.e. March 1995, the investigations on purchases made by the assessee could not be completed to draw any meaningful conclusions and appeared to have been done only for records of the assessment proceedings. The immediate fallout of the late commencement of the investigations was destruction of crucial/important evidence, as in March 1995, it was revealed during the verification of the purchases that the areas under North Bengal had stopped cultivating animal feed claimed to have been supplied by the assessee from Salgura, as these areas had been brought under Siliguri Municipal Area and agricultural operation had stopped and farmers had sold their land.

Test checked purchases not proved

(v) Despite the fact that even the test checked purchases for which inquiries had been made at Salgura, North Bengal, could not be proved, the entire purchases made by the assessee have been allowed as verified.

Bank Account entries not verified

(vi) Audit scrutiny of Bank Account No.1836 maintained by the assessee at Oriental Bank of Commerce, Park Street Branch Calcutta, revealed at least 18 entries of huge withdrawals of cash during the period 1992 to 1995. The appraisal report had directed the assessing officers to thoroughly probe the destination of withdrawals of cash. This has not been done as evident from the assessment order.

Cash payments allowed against Rules

(vii) Cash payments of Rs.147.17 lakh had been made on account of freight and transport handling charges. The above payments fall under the circumstances prescribed in Rule 6 DD(j) of the Income Tax Rules, wherein such payments are to be allowed if made (i) due to exceptional or unavoidable circumstances, (ii) because payments by cheque were not practicable or would have caused genuine difficulty to the payee having regard to the nature of the transaction and necessity for expeditious settlement and the assessee furnishes evidence to the satisfaction of the assessing officer as to the genuineness of the payment and identity of the payee.

(a) the payment for transportation and handling charges do not fall under

any of the specific clauses of Rule 6DD of the Act and hence the payments were not covered under clauses (a) to (I);

(b) for arguing that the payments were covered under clause 6DD (j) there was no record of the circumstances and the identity of the payees for making huge payments in cash. Considering the fact the transportation/handling of animal feed was part of the regular business of the assessee, no exceptional or unavoidable circumstances existed to warrant payments in cash.

As payments under this clause are an exception and not a rule, the assessing officer should have explained in the assessment order as to how he was satisfied that the payments in cash were genuine and hence allowed.

Thus the entire expenditure of Rs.147.17 lakh was irregular having not been proved. Had the assessing officer probed this expenditure, the bogus supplies would have been revealed

Audit observations on assessment year 1993-94.

(viii) The assessment was completed on 11.12.1995 in scrutiny manner on returned income of Rs.15.08 lakh. The assessing officer remarked that the facts being similar to the previous year no change is called for.

Case assessed in a routine manner. No verification of purchases was done

(ix) Not even sample percentage check of purchases made to effect the supplies were carried out and the books of accounts and income as returned by the assessee were accepted. The assessee had shown sales of Rs.22.31 crore to the AHD Department, in the accounts. The assessing officer had not verified the actual amount received during the year on account of sales.

Bank account not scrutinised

(x) No scrutiny had been done of the entries in the bank account which reflected huge withdrawals.

Cash payments to sister concern allowed against the Rules

(xi) In this year also cash payments of Rs.232.97 lakh had been made which were allowed though not covered under the Rules.

The entire quantity of yellow maize was purchased from Ankit Industrial Gases Pvt. Ltd. of Sevak Road, Siliguri, which was a family concern of the assessee (father and brother of Dipesh Chandak, the assessee are the Directors of Ankit Industrial Gases Pvt. Ltd.).

Despite the specific instructions in the Appraisal Report in respect of Dipesh Chandak requiring a thorough probe of the purchases made by the assessee, verifications were not made by the assessing officer in respect of purchase of yellow maize made by Ankit Industrial Gases Pvt. Ltd. and sold to the M/s Shree Badrinarayan & Co., though they were part of the same group and M/s Ankit Industrial Gases was not a producer of yellow maize.

Under assessment

For reasons explained above, as the entire purchases were NOT proved, the entire payments received from AHD are taxable as undisclosed income.

Similarly the cash payments for transport and handling are also disallowable as not covered under the Rules 6DD.
The total underassessment of income for the 2 asst. years 1992-93 and 1993-94 is Rs.21.94 crore. Besides, maximum penalty for undisclosed income of Rs.48.98 crore is leviable.

Case of Vijay Malik & Others assessed in Delhi charge

3.5.6 A search and seizure operation was undertaken on 1.2.1993 at Ranchi Airport premises, Ranchi, in respect of Shri Vijay Malik and important documents and cash over Rs.1 crore was seized. On 2.2.1993 the assessees residential premises at Ranchi and Delhi were also searched. The allegations were that the assessee was involved in a racket fictitious/very little supplies of medicines and cattle feeds to the Animal Husbandry Department, Government of Bihar and huge payments being amassed from the State Government which were not disclosed to the Income Tax Department.

In the appraisal report prepared by the ADIT(Investigation), Ranchi, the assessing officer was advised to make a thorough examination of the books of accounts, examine the purchases made to effect the alleged supplies, mode of payments for these purchases examine the agent who had made the alleged supplies on behalf of the assessee as well as the mode of payments made to him and also examine mode of transportation for effecting the supplies.

Audit observation on AY 1993-94

The assessment was completed at a net income of Rs.11.60 crore on 31.3.1994 which included the unexplained cash seized of Rs.100,62,000 as returned by the assessee as income from other sources.

On an inquiry with the department in December 1996 on the out come of the penalty proceedings which had been initiated under Section 271 (1)(c) during the assessment proceedings for AY 1993-94 completed on 31.3.1994, the department has stated that the same is not known as all the papers of the case have been transferred to Patna.

Audit observation on AY 1994-95

The assessment for 1994-95 was completed at a net income of Rs.2.21 lakh on 28.3.1995

The results of the search and seizure operations and the appraisal report were available to the assessing officer at the time of completion of the assessment for AY 1994-95. The appraisal report had clearly suggested a thorough probe of the purchases made, mode of payments of these purchases and details of the transportation and mode of payments to the

transporters for effecting the alleged supplies claimed to have been made by the assessee to the Animal Husbandry Department, Government of Bihar.

Audit scrutiny revealed that even a sample test check had not been done by the assessing officer of the purchases as well as transport payments though the assessee had claimed Rs.11.22 crore and Rs.1.23 crore respectively on this account. In the Trading and Profit & Loss Account for year ended 31.3.1995 submitted alongwith the return, from the statement of details of purchases of Rs.1 lakh or more filed by the assessee it is seen that all the parties are from Delhi. The assessing officer had not examined any of them to inquire whether the assessee had made purchases from them nor called for details of cheques if any issued to them. The assessment was completed in a routine manner by comparing Gross Profit ratio of the earlier year with the current year, though the allegation of bogus supplies were on the assessment records of the previous year.

Thus, the entire payments of Rs.4.72 crore received by the assessee from the AHD, Government of Bihar, were concealed income which was taxable. Failure to do so has resulted in underassessment of income of Rs.4.72 crore involving undercharge of tax of Rs.2.11 crore (including surcharge). Besides, penalty of Rs.5.67 crore under Section 271 (1)(c) is also leviable.

The assessee had received Rs.11.76 crore from Government of Bihar in 1994-95 for which he had filed a return of income for AY 1995-96 returning total income of Rs.3.78 lakh. The scrutiny assessment for this year has not been completed till date.

B. Semex Cryogenics; Delhi.

The supplier assessee carrying on business in the name and style Semex Cyrogenics, Delhi is a sole proprietor by name Mohinder Singh Bedi.

The assessee had received Rs.1.55 crore and Rs.4.89 crore from AHD, Government of Bihar during financial year 1993-94 and financial year 1994-95.

Returned income:	**A.Y. 1994-95**	**A.Y. 1995-96**
	Rs.1,89,050	Rs.1,90,280

(1) The returns have not been subjected to scrutiny since 1990-91 as evident from the Income Tax certificate given to the assessee on 14.11.1995.

(2) For assessment year 1995-96, the Tax Auditors had stated while giving report under Section 44AB in form 3CD that the assessee had not maintained stock register. In absence of this the `true and fair view of

accounts' certified by the accountant was not correct. The Department/assessing officer had failed to take up the case for scrutiny.

Cases assessed in Ranchi

3.5.7(a) Name of the assessee : Bhagat & Co.
Status : Sole Proprietor-Pramod Kumar Jaiswal

	FY 1994-95	1993-94	1992-93
	AY 1995-96	1994-95	1993-94
Returned Income	Rs.10.44 lakh	Rs.1.41 lakh	Rs.1.27 lakh
Assessed Income	Rs.10.44 lakh	Rs.1.41 lakh	Rs.2.37 lakh
Date of Processing under 143(1)(a)	21.11.1995	Rs.8.12.1994	21.3.1994
Date of Scrutiny Assessment [143(3)]	Not done	31.10.1995	9.6.1995
Sales as per Accounts	Rs.7.51 crore	Rs.5.08 crore	Rs.2.17 crore
Purchases	Rs.7.07 crore	Rs.4.67 crore	Rs.2.08 crore
Payments made by AHD	Rs.7.56 crore	Rs.3.46 crore	N.A.

Audit observation on AY 1994-95

A search operation had been carried out in the bank accounts of the assessee on 12.5.92 and a sum of Rs.6.55 lakh had been seized. In the assessment records of 1993-94 &1994-95, there are no notings regarding the lines of investigation to be adopted by the assessing officer and hence audit has not been able to verify the directions given by the investigating authorities and the action taken by the assessing officer.

(i) The assessment for AY 1994-95 had been completed in a scrutiny manner as per details given above. The assessing officer had not made any verification of the purchases worth Rs.4.67 crore.

(ii) Further, audit scrutiny revealed that the supplier had mainly shown sales of medicines, groundnut cake and yellow maize to the Animal Husbandry Department which are taxable items under the Bihar Sales Tax Act with rates of tax ranging from 4 percent to 8 percent. On the basis of maximum concessional rates permissible under the Sales Tax Law for supplies made to Government the Sales Tax payable on the sales shown in accounts worked out to Rs.30.03 lakh. However, there was no debit for any sales tax payable/paid in the Profit & Loss Account of the assessee and the Assessing Officer failed to notice this.

(iii) There is no evidence of any analysis of bank accounts though the assessee had shown huge sales and purchases.

Thus the non verification of the purchases shown to have been made by the assessee and fact that no sales tax had been paid or shown due by the assessee, suggested bogus accounts which have not been verified by the Assessing Officer. This has resulted in non detection of concealed income of Rs.3.46 crore with consequential tax effect of Rs.1.55 crore.

The assessment for AY 1993-94 also done in scrutiny manner also reveals similar irregularities as mentioned above. As the amount of payments received from the AHD Government of Bihar are not readily

available the underassessment could not be quantified.

The assessment for AY 1995-96 has not yet been completed and the same will have to be done keeping in view the above mentioned aspects.

(b) Name of the assessee: Chotanagpur Cattle Food Supply Co.
Status: Firm

	FY 1994-95	1993-94	1992-93
	AY 1995-96	1994-95	1993-94
Returned Income	Rs.1.32 crore	Rs.1.07 crore	Rs.1.74 crore
Assessed Income	Rs.1.32 crore	Rs.1.07 crore	Rs.1.74 crore
Date of Processing under 143(1)(a)	14.12.1995	23.5.1995 (Revised)	7.12.1994
Date of Scrutiny Assessment [143(3)]	Not assessed Notice issued on 15.12.1995	5.7.1995	30.3.1995
Sales as per Accounts	Rs.15.09 crore	Rs.10.39 crore	Rs.19.04 crore
Payments made by AHD	Rs.12.02 crore	Rs.14.83 crore	N.A.

Audit observations on AY 1994-95

(i) A search and seizure operation was conducted on 17.9.1993 at the residential premises of Md. Sayeed one of the partners of the assessee firm and cash amounting to Rs.23.10 lakh was found and seized. It was contended by the assessee during the assessment proceedings that the firm had disclosed income of Rs.50 lakh as part of the income of the assessee firm and also included by it in its return of income. This explanation was accepted by the assessing officer.

The directions given to the assessing officer in the Appraisal report could not be verified by audit and hence the allegation against the assessee based on which the search was conducted are not known.

(ii) Audit Scrutiny of the assessment for the year 1994-95 done in a scrutiny manner revealed that though the stock registers and purchase bills were examined, no actual verification has been done of the purchases effected by the assessee to make the supplies to the Animal Husbandry Department. Further, audit scrutiny revealed that the assessee had mainly shown sales of animal fodder, wheat bran, yellow maize which are taxable items under the Bihar Sales Tax Law ranging from 4 percent to 8 percent. On the basis of maximum concessional rates permissible under the Sales Tax Law for supplies made to Government, the Sales Tax payable on the sales shown in accounts worked out to Rs.41.56 lakh. However, the assessee had debited Rs.1.25 lakh as sales tax payable/paid in the Profit & Loss Account. The Assessing Officer failed to notice this. Thus the non verification of the purchases shown to have been made by the assessee and fact that the sales tax paid was not commensurate to the sales shown and sales tax rates prevailing, suggested bogus accounts which have not been verified by the Assessing Officer. This has resulted in non detection of concealed income of Rs.14.83 crore with consequential tax effect of

Rs.6.64 crore (including surcharge) and penalty of Rs.17.79 crore.

(c) Name of the Assessee: Shaad & Co.
Status: Sole Proprietor - Md. Tauheed

	FY 1994-95	1993-94	1992-93
	AY 1995-96	1994-95	1993-94
Returned Income	Rs.1.14 crore	Rs.66.45 lakh	Rs.95,780
Assessed Income	Rs.1.14 crore	Rs.66.45 lakh	Rs.95,780
Date of processing under 143 (1)(a)	22.12.1995	22.6.1995	7.12.1994
Date of scrutiny	Not done Notice issued	28.9.1995	30.3.1995
Sales as per accounts	Rs.14.51 crore	Rs.6.02 crore	Rs.2.96 lakh
Payments made by AHD	Rs.16.84 crore	Rs.5.48 crore	N.A.
Purchases	Rs.13.30 crore	Rs.5.42 crore	Rs.3.18 lakh

Audit observation on AY 1994-95- Non verification of purchases, sales tax entries

Audit scrutiny of the assessment for the year 1994-95 completed in a scrutiny manner in September 1995, revealed that while the total payments made by the Government of Bihar and received by the assessee supplier were Rs.5.48 crore, the income declared by the assessee was Rs.66.45 lakh and income assessed was the same. The Assessing Officer had not made any verification of the purchases made by the assessee to effect these supplies. Further, audit scrutiny revealed that the assessee had mainly shown sales of animal fodder, wheat bran, yellow maize which are taxable items under the Bihar Sales Tax Law with tax rates ranging from 4 percent to 8 percent. On the basis of maximum concessional rates permissible under the Sales Tax Law for supplies made to Government, the Sales Tax payable on the sales shown in accounts worked out to Rs.24.09 lakh. However, the assessee had debited Rs.0.44 lakh as sales tax payable/paid in the Profit & Loss Account. The Assessing Officer failed to notice this.

Bank account not analysed

There is no mention in the assessment order of any analysis of the bank account of the assessee though there were transactions of huge purchases and sales in the accounts.

Thus the non verification of the purchases shown to have been made by the assessee and the fact that the sales tax paid was not commensurate to the sales shown and sales tax rates prevailing, suggested bogus accounts which have not been verified by the Assessing Officer. This resulted in non detection of concealed income of Rs.5.48 crore with consequential tax effect of Rs.2.15 crore (including surcharge) and penalty of Rs.5.76 crore.

Cases assessed in Patna

3.5.8 The results of the audit scrutiny of assessment records of three cases assessed in Patna charge where the assessees had received more than Rs.10 crore from the Animal Husbandry Department during the period 1993-94 and 1994-95 are given below:

3.5

(a) Name of the assessee: Manas Sales Corporation, Patna
Status: Partnership Firm - T.M. Prasad and Sushil Kumar

	FY 1994-95	1993-94	1992-93
	AY 1995-96	1994-95	1993-94
Returned Income	Rs.52,08,065	Rs.19,17,198	Rs.28,75,170
Date of Processing under 143(1)(a)	17.11.1995	Rs.31.3.1995	23.8.1994
Date of Scrutiny Assessment [143(3)]	Not done	Not done	Not done
Sales as per Accounts	Rs.16,70,28,170	Rs.6,38,99,897	Rs.8,57,04,777
Payments made by AHD	Rs.15,41,86,933	Rs.10,25,70,243	-- --

Audit Observations

(i) The return for AY 1993-94 has not been subjected to scrutiny till date. The case has now become time barred as it should have been assessed latest by 31.3.1996 in terms of the time limit of 2 years from the end of the assessment year in which the income was first assessable under provisions of Section 143(1)(a).

(ii) For both the assessment years 1994-95 and 1995-96 the Profit and Loss Account of the previous years reflected a debit entry for Sales Tax of Rs.64,24,157 and Rs. 24,54,351 no proof of payment was attached with the return. Thus the same should have been disallowed while processing the returns. Failure to do so has resulted in undercharge of tax of Rs.0.36 crore.

(b) Name of the Assessee: Bihar Surgico Medico Agency, Patna.
Status: Individual (T.M. Prasad)

	FY 1994-95	1993-94	1992-93
	AY 1995-96	1994-95	1993-94
Returned Income	Rs.47,19,710	Rs.15,30,370	Rs.55,88,990
Date of Processing under 143 (1)(a)	17.11.1995	31.3.1995	23.8.1994
Date of Scrutiny Assessment [143(3)]	Not done	Not done	Not done
Sales as per Accounts	Rs.6,27,28,018	Rs.2,40,29,012	Rs.5,47,60,097
Payments made by AHD	Rs.4,90,00,698	Rs.3,17,74,113	N.A.

Audit observations

(i) There was a search of bank account in the case of this assessee and cash of Rs.1.37 crore was seized from the bank and residence and the 132 (5) order was passed on 21.9.1992. The case was fixed for hearing in December 1995 few months before the assessment was to become time barred and the 143(3) order has not been passed till date.

As this was a search case, it should have been under monitoring by the Commissioner and CBDT as per the departmental instructions. Evidently such monitoring has not been done.

(ii) The central action plan of the CBDT stipulates the criteria for selection of cases for compulsory scrutiny. According to the action plan for FY 1993-94, cases of returned income of Rs.5 lakh and above were

to be taken for compulsory scrutiny. It was also stipulated that higher income cases should be taken up first. In this case though the notice under 143(2) was issued on 31.3.1995 the case for AY 1994-95 (FY 1993-94) had not been scrutinised till August 1996.

The Sales Tax entries had not been scrutinised even at the 143(1)(a) stage for both AYs 1994-95 and 1995-96.

(c) Name of the Assessee: A. Traders, Patna
Status: Individual (Ravi Nandan Sinha)

Audit observations

The assessee had received payments of Rs.7,19,20,408 and Rs.5,09,53,767 from the Animal Husbandry Department during the financial years 1994-95 and 1993-94 respectively. The assessee had not filed any returns and neither had the department called for the same. Hence the entire amount is taxable.

For AY 1993-94 the sales as per accounts of the assessee were Rs.3,57,91,260. Though the return was processed summarily the scrutiny assessment had not been done till September 1996 and case has become time barred for scrutiny in March 1996. The case fell under the criteria for compulsory scrutiny and failure on the part of the department to complete the scrutiny assessment has resulted in undercharge of tax of Rs.1.60 crore (including surcharge).

Others cases of suppliers assessed/operating in West Bengal

3.5.9 Audit scrutiny of records of 5 cases of other suppliers which were made available to audit is given below:

(a) Name of the assessee: Little Oak Pharmaceuticals
Status: Individual (Dr. Ajit Kumar Verma)

	FY 1994-95 AY 1995-96	1993-94 1994-95	1992-93 1993-94
Returned Income	Rs.1,46,640	Rs.1,96,020	N.A.
Date of Processing under 143(1)(a)	22.4.1996	21.3.1995	N.A.
Date of Scrutiny Assessment [143(3)]	Not done Notice not issued	Not done Notice not issued	N.A.
Sales as per Accounts	Rs.35,56,169	Rs.1,34,19,235	N.A.
Payments made by AHD	Rs.4,03,10,394	Rs.2,75,85,781	N.A.

Audit observations

The assessee has concealed his income by under statement of sales to the extent of Rs.3.67 crore and Rs.1.42 crore in AYs 1995-96 and 1994-95 respectively which has resulted in under charge of Rs.2.48 crore (including interest). Besides penalty of Rs.6.12 crore for the AYs 1995-96 and 1994-95 is also leviable. The cases have not been taken up for scrutiny and for AY 1994-95 the time limit for issuing the notice under Section 143(2) has expired.

(b) Name of the assessee: (Md. K.P. Usman)
Status: Individual

Returns not filed

Under the provisions of the Income Tax Act, 1961 (Section 139) every person if his total income during the previous year exceeds the maximum amount which is not chargeable to income tax, shall on or before the due date furnish a return of his income. Further under provisions of Section 271 (i) explanation 3, where any person who has not previously been assessed under this Act fails without reasonable cause to furnish within the period as specified in the Act, return of his income which he is required to furnish in respect of any assessment year commencing on or after Ist April 1989, such person, shall, for the purpose of Act deemed to have concealed the particular of his income in respect of such assessment year. This failure on part of the assessee makes him liable for penalty under provisions of Section 271(1)(c) and the quantum of penalty shall not be less than the tax payable but shall not exceed three times the amount of tax sought to be evaded by concealment.

The assessee received from the Government of Bihar Rs.8.73 lakh and Rs.2.76 lakh during the previous years relevant to the assessment years 1994-95 and 1995-96. The individual did not, however, furnish return of income in respect of both the assessment years 1994-95 and 1995-96 though he had taxable income. Under the provisions of the Act the income in question was therefore liable to be treated as concealed income and tax, interest and penalty aggregating to Rs.11.96 lakh and Rs.3.30 lakh was leviable in respect of assessment years 1994-95 and 1995-96 respectively. Total undercharge comes to Rs.14.81 lakh for two assessment years.

(c) Name of the assessee: M/s Medivet
Status: Registered Firm (Nirmala Prasad, Anita Prasad).

	FY 1994-95	1993-94	1992-93
	AY 1995-96	1994-95	1993-94
Returned Income	N.A.	N.A.	Rs.3,30,000
Date of Processing under 143(1)(a)	Return not filed	Return filed not processed	N.A.
Date of Scrutiny Assessment [143(3)]	Not done	Not done	October 1995
Sales as per Accounts	Rs.1,43,41,568	Rs.86,40,905	Rs.45,70,602
Payments made by AHD	Rs.1,51,89,006	Rs.57,18,727	NA

Audit observations

(i) Scrutiny assessment of 1992-93 and 1993-94.

The assessee was engaged in the business of supplying general medicines, veterinary medicines and surgical instruments. A search and seizure operation was conducted under Section 132(1) of the IT Act in respect of certain bank accounts and bank lockers on different dates since 21.4.1992 onwards. In the 132(5) order the income from

undisclosed sources was determined at Rs.4,26,87,347

The appraisal report had brought out in detail the modus operandi adopted by the assessee for obtaining illegal payments from the Animal Husbandry Department, Government of Bihar and had suggested bogus accounts and various guidelines were given to the assessing officer for completion of the assessment.

(a) The search was conducted in June 1992 whereas the assessment was completed in May 1994. As the case was not monitored by the higher authorities the time gap has created a situation in which manipulation of the accounts could be possible as highlighted by the ADIT (Inv.) in his report.

(b) The stock position of the suppliers from whom the assessee had ostensibly purchased the medicines to prove the genuineness of the movement of the goods was not verified by the assessing officer.

(c) No cross verification/inquiries were made with the sales tax check posts to verify the actual movement of the goods.

(d) A few vouchers were checked which were insufficient especially when the appraisal report had observed that forged letter of some reputed medicine companies were discovered in the course of search and seizure operation of another supplier involved in this racket.

As the guidelines suggested by the appraisal report were not followed by the assessing officer at the time of framing the assessment it has resulted in the profit element of the business of the assessee only being taxed instead of the entire receipt from the Animal Husbandry Department, Government of Bihar.

Cash payments allowed against Rules

(ii) In the assessments for the assessment years 1992-93 and 1993-94 completed after scrutiny in May 1994 and October 1995 at a total income of Rs.41.56 lakh and Rs.3.30 lakh respectively, audit scrutiny revealed that the assessing officer had allowed deduction of Rs.92.34 lakh and Rs.110.27 lakh being the purchase price of medicine for which payments have been made in cash. Such expenditure in cash is not to be allowed deduction except in exceptional cases as prescribed under the Income Tax Rules. These payments were not covered by the rules and hence the assessing officer should have disallowed the expenditure. Non disallowance of the expenditure has resulted in underassessment of income by Rs.92.34 lakh and 110.27 lakh for AY 192-93 and 1993-94 respectively involving short levy of tax of Rs.32.39 lakh and Rs.94.85 lakh (including interest for delayed submission of return and short payment of advance tax). It has also resulted in under charge of tax of Rs.41.29 lakh for AY 1992-93 in the hands of the partners.

(iii) The assessee had received payments for supply of medicines to the Animal Husbandry Department, Government of Bihar of Rs.5,71,827, Rs. 1,51,89,005 and Rs.89,99,890 during the previous year relevant to assessment years 1994-95, 1995-96 and 1996-97 respectively.

For AY 1994-95 the return of income though filed by the assessee had not been processed under Section 143(1)(a) and for AY 1995-96 and 1996-97 no return of income has been furnished by the assessee.

(d) Name of the assessee: Anshuman Enterprises
Status: Individual (Santosh Kumar)

The assessee had received Rs.83,72,710, Rs.2,83,65,054, Rs.62,09,130 in the financial years 1993-94, 1994-95 and 1995-96 relating to the AY 1994-95, 1995-96 and 1996-97 respectively against sale of goods to the Government of Bihar as per the paid vouchers from the treasury.

Audit scrutiny revealed that the assessee had not filed any returns of income in respect of the aforesaid assessment years in the range office of the department at Calcutta and neither was he registered with the Sales Tax Department.

As the firm had not furnished the return of income it amounts to deemed concealment of income which should be assessed by the department alongwith penalty for concealment. The undercharge of tax for the three years is Rs.4.08 crore (including interest and penalty).

This firm is a "brain child" of Shri Jagdish Prasad, ex-Animal Husbandry Officer, Government of Bihar.

(e) Name of the assessee: Quality Chemical Supplier.
Status: Registered Firm (Dipesh Chandak, Hitesh Chandak)

The assessee firm is owned by the same individuals who own Shri Badrinarayan & Co. the supplier who had received the largest share of payments in the racket of bogus supplies to the Animal Husbandry Department.

(i) The appraisal report of the search case in case of Shri Badrinarayan & Co. (Dipesh Chandak and Group) had categorically instructed the assessing officer to investigate the case and conduct the assessment of Dipesh Chandak and Group accordingly. Audit scrutiny revealed that M/s Quality Chemical Suppliers under the partnership of Chandak Group was assessed in ITO 10(2) ward whereas the partners were assessed with ACIT (CC-I) Calcutta. As they were interconnected firms the assessment should have been done by centralising the cases, under one assessing officer.

Further non investigation of the purchases and sales made by the

assessee has resulted in non detection of the racket of bogus supplies earlier.

(ii) Though the assessee had received huge payments and has also made huge purchases as evident from the records of AY 1992-93 and 1993-94 there is no entry in the Profit & Loss Account for transportation charges, storage, handling etc. The assessing officer has not investigated this aspect.

(iii) It revealed from the assessment records that the assessee paid in cash to the Sardar of labourers Rs.97.91 lakh in assessment year 1991-92 and Rs.98.61 lakh in the assessment year 1992-93 on account of grinding charges, transportation and handling charges. The assessing officer had disallowed out of the said expenditure, Rs.22,000 in the assessment year 1991-92 and Rs.29,000 in the assessment year 1992-93 because the huge payments were made in cash on self made vouchers through the Sardar of labourers.

As the huge payments (exceeding Rs.10,000) were made in cash through self made vouchers, the entire amount of Rs.97.91 lakh and Rs.98.61 lakh were disallowable in the assessment year 1991-92 and 1992-93 respectively. As this was not done total income of the assessment years 1991-92 and 1992-93 was underassessed to the extent of Rs.97.91 lakh and Rs.98.61 lakh respectively on this account alone, resulting in undercharge of Rs.96.45 lakh in the assessment year 1991-92 and Rs.91.93 lakh in the assessment year 1992-93 in the hands of the two partners. The undercharge in two assessment years was Rs.188.38 lakh.

Case of returns not filed/assessed by suppliers to Animal Husbandry Department in Bihar

3.5.10 Under the provisions of the Income Tax Act, 1961 (Section 139) every person if his total income during the previous year exceeds the maximum amount which is not chargeable to income tax, shall on or before the due date furnish a return of his income. Further, under provisions of Section 271(1) explanation 3, where any person who has not previously been assessed under this Act fails without reasonable cause to furnish within the period as specified in the Act, return of his income which he is required to furnish in respect of any assessment year commencing on or after 1st April 1989, such person, shall for the purpose of the Act deemed to have concealed the particulars of his income in respect of such assessment year. This failure on part of the assessee makes him liable for penalty under provisions of Section 271(1)(c) and the quantum of penalty shall not be less than the tax payable but shall not exceed three times the amount of tax sought to be evaded by concealment.

It was noticed that 113 persons received various payments ranging from Rs.3 lakh to Rs.2581 lakh (approximately) from the Animal Husbandry Department during the previous year relevant to assessment years 1994-

95 and 1995-96 but did not file their returns for these assessment years within the specified due dates (in case of assessment year 1994-95, the returns were not filed even within the extended period of one year from the end of that assessment year) and thus could not be assessed to tax till the date of audit (October 1996). The Income Tax Department issued notices under Section 142/148 of the Income Tax Act to six persons out of these 113. It attached money of two persons out of these six. The turnover remaining unassessed on account of said payments alone aggregated to Rs.74.12 crore and Rs.98.30 crore in assessment years 1994-95 and 1995-96 respectively involving respectively maximum tax of Rs.29.65 crore and Rs.39.32 crore.

The review was referred to the Ministry in January 1997. The Ministry's reply has not been received (February 1997).

Chapter 4

Corporation Tax

Number of companies

4.1 According to the Ministry of Finance (Department of Company Affairs), the number of companies under various categories and the paid-up capital in the case of limited companies, as on 31 March 1996 are given below:

Sl. No.	Category	No. of Companies	Paid-up capital (Rs. in crore)
1.	Foreign companies as defined under Section 591 of the Companies Act, 1956	679	not available
2.	Associations `not for profit' but registered as companies	2,506	not available
3.	Unlimited companies	392	not available
4.	Limited companies:		
a.	Government companies	1,216	76,766.52
b.	Non-Government companies-		
	Private limited companies	3,51,129	19,253.29
	Public limited companies	56,797	65,030.78
	Total :	4,12,719	1,61,050.59

Number of assessees

4.2 The number of company assessees on the records of the Income Tax Department during the last five years was as follows:

As on 31 March	Number
1992	1,34,779
1993	1,55,418
1994	1,71,419
1995	1,76,594
1996	1,87,574

Trend of receipts

4.3 The trend of receipts from corporation tax i.e., income tax and surtax payable by companies during the last five years was as follows:

Year	Receipts form Corporation tax (Rs. in crore)	Gross collection of all direct taxes	Percentage of Corporation tax to gross collection
1991-92	7,867.67	15,342.36	51.28
1992-93	8,889.24	18,097.29	49.12
1993-94	10,060.06	20,298.24	49.56
1994-95	13,820.96	26,970.88	51.24
1995-96	16,487.13	33,559.28	49.13

Status of assessments

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

Year	Number of assessments				Total Demand		
	For disposal	Completed during the year	Pending at the close of the year	Percentage of pendency to total cases for disposal	Demand for collection	Collection during the year	Percentage of collection to total demand
1991-92	2,13,359	1,46,998	66,361	31.10	10938.21	7867.67	71.93
1992-93	2,26,665	1,51,913	74,752	32,98	13088.96	8889.24	67.91
1993-94	2,55,344	1,81,130	74,214	29.06	16686.69	10060.06	60.29
1994-95	2,58,059	1,86,938	71,121	27.56	23711.08	13820.96	58.29
1995-96	2,85,161	1,99,086	86,075	30.18	28920.66	16487.13	57.01

Results of Audit

4.5 A total number of 529 draft paragraphs involving tax effect of Rs.225.33 crore and 6 draft paragraphs involving overassessment of Rs.1.20 crore have been issued to the Ministry of Finance for their comments. The categories of audit observations are given in the table below. The Ministry have accepted 360 cases involving tax effect of Rs.144 crore and 6 cases of overassessment involving Rs.1.20 crore.

Of the total 535 cases issued to the Ministry, 203 number of illustrative cases with aggregate tax effect of Rs.198.88 crore relating to various categories and 6 cases of overassessments involving Rs.1.20 crore are indicated in the succeeding paragraphs. Of the cases included, 32 cases involving tax effect of Rs.27.34 crore have been checked by the Internal Audit Wing of the department but the mistakes remained undetected by it. The repetitive nature of the mistakes noticed during test check by Audit indicates the inadequate attention given by the assessing officers in the assessments of even those involving substantial revenue.

Sl. No.	Category	Cases issued to the Ministry		Accepted by the Ministry	
		Nos.	Tax effect (Rs. in crore)	Nos.	Tax effect (Rs. in crore)
	Overassessment	6	1.20	6	1.20
	Underassessment-				
1.	Avoidable mistakes in computation of income tax	53	32.40	48	28.06
2.	Failure to observe provisions of Finance Acts.	14	3.58	9	1.29
3.	Incorrect status adopted in assessments	1	0.07	1	0.07
4.	Incorrect computation of income from house property	1	0.05	1	0.05
5.	Incorrect computation of business income	97	31.67	52	19.88
6.	Irregularities in allowing depreciation, investment allowance, etc.	122	55.28	89	25.36
7.	Incorrect computation of capital gains	5	4.36	1	0.05
8.	Income not assessed	25	12.60	19	9.43
9.	Irregular set off of losses	47	23.28	35	13.90
10.	Mistakes in assessments while giving effect to appellate orders	15	2.21	11	1.28
11.	Irregular exemptions and excess reliefs given	76	37.81	44	33.21
12.	Excess or irregular refunds	7	5.75	6	1.55
13.	Non-levy / incorrect levy of interest for delay in submission of returns etc.	51	12.03	35	7.44
14.	Avoidable or incorrect payment of interest by Government	3	0.46	3	0.46
15.	Other topics of interest (Miscellaneous cases)	4	1.23	3	1.13
16.	Underassessment of Surtax	8	2.55	3	0.84
	Total underassessment	529	225.33	360	144.00

Avoidable mistakes in computation of income and tax

4.6 Under the Income Tax Act, 1961, an assessment may be completed in a summary manner after, inter alia, rectifying any arithmetical error in the return, accounts and accompanying documents. In a scrutiny

assessment, the assessing officer shall make a correct assessment of the total income or loss of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment. In all these assessments, the tax or refund shall be determined after taking into account the prepaid taxes and refunds made. Underassessment of tax of substantial amounts and overcharge of tax in a few cases on account of avoidable mistakes attributable to negligence on the part of assessing officers have been repeatedly mentioned in the Reports of the Comptroller and Auditor General of India. Despite this and issue of instructions by the Government from time to time, such mistakes continue to occur suggesting the need for close supervision and control. The various types of mistakes noticed included, inter alia, incorrect adoption of figures, arithmetical errors, double allowance, non-levy of surcharge etc. The extent of such mistakes noticed during test check of the assessments completed by the assessing officers during last five years was as under:

Year	No. of items	Amount of tax underassessed (Rs. in crore)
1991-92	878	88.57
1992-93	907	14.70
1993-94	1,104	21.01
1994-95	1,503	35.04
1995-96	1,643	105.81

Some important cases of each type noticed in test check are given below:

(1) Overassessment of income and tax

Mistakes by the assessing officers resulted in overcharge of income and tax from some assessees. Of the many cases noticed during test check in audit, a few major cases are mentioned below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	Jaipur, Rajasthan	1991-92 February 1994	143(3)	As against the correct amount of Rs.8034 lakh, the total of disallowances to be added back was erroneously taken as Rs.8154 lakh resulting in under computation of loss	55.36 (P)
2.	Tamil Nadu V, Chennai	1992-93 March 1995	143(3)	Written down value of the plant and machinery was incorrectly taken as Rs.28.03 lakh instead of the correct figure of Rs.280.28 lakh for the purpose of calculating depreciation	22.54
3.	Tamil Nadu V, Chennai	1990-91 March 1992		While determining the amount of tax to be refunded to the assessee while giving effect to appellate orders in October 1994, tax of	15.91

				Rs.15.71 lakh paid by the assessee in March 1993 was not taken into account	
4.	Jallandhar, Punjab	1992-93 November 1994	143(3)	Against the correct amount of depreciation of Rs.31.51 lakh allowable, the assessing officer has allowed Rs.13.51 lakh which resulted in less carry forward of depreciation of Rs.18 lakh	10.35 (P)
5.	Central I, Chennai	1992-93 March 1995	143(3)	Arithmetical mistake in computation of tax demand resulted in incorrect demand of Rs.221.72 lakh instead of the correct amount of Rs.211.72 lakh	10.00
6.	Rajkot, Gujarat	1987-88 July 1993	143(3)	Against the correct amount of Rs.23.54 lakh, the gross total income was computed at Rs.33.54 lakh	5.50

The Ministry have accepted the audit observations.

(2) Underassessment of income and tax

(i) Incorrect adoption of figures

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs. in lakh)
1.	West Bengal III, Calcutta	1992-93 March 1995	143(3)	As against an aggregate amount of Rs.2225.22 lakh disallowed as per assessment order, Rs.38.49 lakh only were added back in actual computation of income which resulted in overassessment and excess carry forward of loss by Rs,2186.63 lakh	1131.58 (P)
2.	North East Region, Shillong	1992-93 March 1993/ February 1995	143(1) 143(3)	As against the amount of Rs.980.72 lakh which was disallowed being unpaid interest on loans, Rs.98.07 lakh only were added back which resulted in excess computation of loss by Rs.882.65 lakh. Further, the omission to add back the above unpaid interest at summary assessment stage resulted in non-levy of additional tax	456.77 (P) 88.26 (AT)
3.	City II, Mumbai	1991-92 February 1994	143(3)	Even though a contingent liability of Rs.348.84 lakh being probable import duty was disallowed as per assessment order, the same was omitted to be added back at the time of computing the income in February 1994 or even in January 1995 when the assessment was revised to give effect to appellate orders	272.79
4.	Ranchi, Bihar	1992-93 February 1995	143(3)	As against the correct figure of Rs.212.19 lakh as per profit and loss account, the profit was erroneously adopted at Rs.166.19 lakh.	40.47
5.	Jaipur, Rajasthan	1992-93 February	143(3)	Even though the prior period expenses being depreciation under-provided in the preceding	30.84 (P)

		1995		year, amounting to Rs.59.60 lakh were proposed to be added back, the same were omitted to be included in computation of the total income.	
6.	West Bengal III, Calcutta	1991-92 March 1994	143(3)	Expenditure of Rs.28.92 lakh being payment made to workers' sickness benefit society which was disallowed in the assessment order was omitted to be added back while computing the income.	22.88

The Ministry have accepted the audit observations at Sl.Nos. 1,2,4 to 6. Their response to the remaining case has not been received.

(ii) Arithmetical errors

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	Bhopal, Madhya Pradesh	1992-93 February 1995	143(3)	Instead of adding the disallowed expenses, the same were erroneously deducted from the total income which resulted in underassessment of Rs.76.04 lakh	74.32
2.	Delhi III	1993-94 February 1995	143(3)	The income of Rs.37.81 lakh was erroneously adopted as loss which resulted in excess carry forward of loss of Rs.75.62 lakh	43.49 (P)
3.	Kanpur, Uttar Pradesh	1990-91 January 1993	143(3)	The amount of Rs.29 lakh credited to profit and loss account on account of net difference of income and expenditure relating to previous years was erroneously deducted which resulted in underassessment of income by Rs.58 lakh	34.45 (P)
4.	West Bengal III, Calcutta	1992-93 March 1995	143(3)	A deduction of Rs.51.23 lakh towards dividend paid was allowed twice, once while computing the income from the dividend and later while computing the taxable income	26.51
5.	West Bengal I, Calcutta	1992-93 March 1995	143(3)	While computing the house property income, instead of adding the income of Rs.16.11 lakh of one unit, the same was deducted which resulted in underassessment of income by Rs.32.22 lakh	21.94

The Ministry have accepted the audit observations.

Application of incorrect rate of tax

4.7 Under the Finance Act, a domestic company is chargeable to tax at specified different rates depending on whether it is a company in which public are substantially interested or not substantially interested and in the latter case, whether it is an industrial company or trading and investment company or any other company. In the case of a foreign company, tax is levied at different rates on income by way of royalties

and fees and other income. Instances of incorrect application of rates were noticed during the test check involving substantial undercharge of tax. Some important cases are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	City II, Mumbai	1992-93, 1993-94 January 1995, February 1995	143(3)	Tax was levied at the rate of 45 percent instead of at the correct rate of 50 percent applicable to the companies in which public were not substantially interested	140.39
2.	City V, Mumbai	1992-93 March 1994	143(3)	Tax payable by the assessee was computed erroneously at the rate of 45 percent instead of at the correct rate of 50 percent even though the assessee was a closely held company	58.86
3.	West Bengal II, Calcutta	1992-93 March 1995	143(3)	Tax payable by an assessee company in which public were substantially interested was computed at the rate of 40 percent instead of at the correct rate applicable of 45 percent	37.43
4.	City II, Mumbai	1992-93 April 1994	143(3)	Though the assessee was treated as a company in which public were not substantially interested, tax was levied at 45 percent instead of at the correct rate of 50 percent applicable	28.12
5.	Jalandhar, Punjab	1992-93 March 1995	143(3)	Tax was levied at the rate of 45 percent instead of at the correct rate of 50 percent as applicable to the companies in which public are not substantially interested	10.36

The Ministry have accepted the audit observations at Sl.Nos.2 to 5. Their response to the remaining cases has not been received.

Incorrect allowance of non -business expenditure- Section 28

4.8 Under the Income Tax Act,1961, any expenditure not being expenditure of a capital nature or personal expense of the assessee laid out or expended wholly and exclusively for the purpose of business is allowable as deduction in computing the income chargeable under the head `profits and gains of business or profession'.

In Pune, Maharashtra charge, the assessment of a company for the assessment year 1989-90 was completed in November 1991 after scrutiny. Audit scrutiny revealed that during the relevant previous year the assessee company had mobilised funds amounting to Rs.1479 lakh through loans from the banks, debentures and discounted bills which were invested in tax free public sector bonds and in Unit Trust of India. Since the interest earned on the public sector bonds was not included in the total income, and the funds were utilised for non business purpose, interest of Rs.335 lakh charged to the accounts of the relevant previous

year should have been disallowed as non business expenditure. Omission to do so resulted in underassessment of income of Rs.335 lakh involving short levy of tax of Rs.176 lakh.

The reply of the Ministry to the audit observation has not been received.

Incorrect allowance of bad debts/ provision in the case of a banking company- Section 36 (1) (vii)

4.9 Under the Income Tax Act, 1961, as amended from 1 April 1989, the amount of any debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year is allowable as deduction in computing the income chargeable to tax under the head 'profits and gains of business or profession'. In the case of a bank to which provision for bad and doubtful debts is admissible, the amount of deduction shall be limited to the amount by which such debt or part thereof exceeds the "credit balance in the provision for bad and doubtful debts' account" made under the Act.

(a) In West Bengal III charge, the assessment of a banking company for the assessment year 1992-93 was completed in March 1995 on best judgement assessment basis. Audit scrutiny revealed that the assessing officer did not add back the provision for interest tax of Rs.710.50 lakh which had been debited by the assessee in its accounts, even though a deduction of Rs.690 lakh was allowed on actual payment basis. The omission resulted in excess carry forward of loss by Rs.710.50 lakh involving potential short levy of Rs. 367.69 lakh.

The Ministry have accepted the audit observation.

(b) In Tamil Nadu I charge, the assessment of a banking company for assessment year 1992-93 was completed after scrutiny in February 1995 `interalia, allowing a deduction of Rs.56.79 lakh towards provision for bad and doubtful debts and restricted the bad debts claimed by the assessee to Rs.25.85 lakh being excess over the current year's provision for bad debts. Audit scrutiny of the assessment records for assessment years 1987-88 to 1992-93 revealed that there was a balance of Rs.93.01 lakh in the provision for bad debts account to adjust the bad debts of Rs.82.64 lakh in assessment year 1992-93. Since the amount of deduction to be allowed as bad debts is to be restricted to the amount which exceeds the credit balance in the provision for bad debts, deduction of Rs.25.85 lakh on account of bad debts was irregular. The irregular allowance resulted in underassessment of income of Rs.25.85 lakh involving tax effect of Rs.22.74 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Incorrect allowance of provisions- Section 37

4.10 A provision made in the accounts for an accrued or known liability is an admissible deduction, while other provisions made do not qualify for deduction. It has been judicially held* that in order that a loss be

* CIT Vs Indian Overseas Bank 151 ITR 446 (Madras)

deductible, it must have actually arisen and incurred and not merely anticipated as certain to occur in future. Further, write back of provisions not required is to be treated as income of the previous year in which so written back. A few cases noticed during test check are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of Mistake	Tax effect (Rs. in Lakh)
1.	West Bengal IV, Calcutta	1992-93 September 1994	143(3)	Provision of Rs. 150 lakh made to reimburse the estimated shortfall credited to members' accounts and the income from the investment of the company's Employees' Provident Fund pending finalisation of account of the Trust, was erroneously allowed resulting in excess computation of loss	77.63 (P)
2.	Allahabad, Uttar Pradesh	1992-93 November 1993	143(3)	Provisions of Rs.125 lakh towards bad and doubtful debts and Rs. 20.30 lakh for estimated loss in respect of inventories were erroneously allowed leading to overcomputation of loss by Rs.145.30 lakh	75.19 (P)
3.	West Bengal I, Calcutta	1992-93 March 1995	143(3)	Provisions for bad and doubtful debts amounting to Rs.66.09 lakh was erroneously allowed resulting in excess computation of loss	34.20 (P)
4.	Delhi III	1992-93 January 1995	143(3)	Provision of Rs.64.60 lakh for bad and doubtful debts was erroneously allowed leading to excess computation of loss.	33.43 (P)

The Ministry have accepted the audit observations at Sl.Nos.1 to 3. Their response to the remaining case has not been received.

Incorrect allowance of liability- Section 43B

4.11(i) Under the Income Tax Act, 1961, as applicable from the assessment year 1984-85, certain deductions are allowable only on actual payment on types of expenditure specified under section 43 (B) of the Act. From 1 April 1988, tax or duty actually paid by the assessee on or before due date applicable in his case for furnishing the return of income shall also be allowed as deduction. From 1 April 1989, cess, fee or any sum payable by an assessee as employer by way of contribution to any provident fund, superannuation fund or gratuity fund etc. or any sum payable to an employee as bonus or commission for services rendered or any sum payable as interest on any loan from any public financial institution are also deductible on actual payment basis. No deduction in respect of contribution to the above funds is, however, allowable unless such sum has actually been paid before the stipulated due date as specified under the relevant statute governing the funds.

In Tamil Nadu II charge, the assessments of a widely held company for the assessment years 1991-92 and 1992-93 were completed after scrutiny in October 1993. Audit scrutiny revealed that the assessing officer allowed the outstanding liabilities of Rs.78.02 lakh and Rs.85.78 lakh on account of interest payable to public financial institutions debited in the profit and loss account of the relevant previous years. Since the above sums were not paid by the assessee within the due date and shown as accumulated liability in the balance sheet, the same should have been disallowed. Omission to do so resulted in excess carry forward of loss aggregating Rs.163.80 lakh involving potential short levy of Rs.84.77 lakh.

The Ministry have accepted the audit observation.

(ii) Other important cases on provisions of Section 43(B) are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	Rajkot, Gujarat	1992-93 January 1995	143(3)	In the absence of evidence of actual payment of sales tax amounting to Rs.83.54 lakh, deduction was errouneously allowed.	50.86 12.96 (P)
2.	West Bengal IV, Calcutta	1992-93 December 1994	143(3)	Deduction of Rs.58.81 lakh on account of customs duty payable erroneously allowed eventhough the same was not paid	30.43
3.	West Bengal IV, Calcutta	1992-93 February 1995	144	Interest of Rs.22.79 lakh payable to financial institution, though not actually paid, was erroneously allowed as deduction.	22.28
4.	West Bengal II, Calcutta	1990-91 January 1993	143(3)	Interest of Rs.23.67 lakh payable to finanical institutions was erroneously allowed as deduction even though there was no evidence of actual payment.	21.47
5.	West Bengal I, Calcutta	1991-92 March 1994 (revised in March 1995)	144	Interest of Rs.19.76 lakh payable to two financial institutions, though not actually paid, was erroneously allowed as deduction.	15.63
6.	Central II, Calcutta	1992-93 March 1995	143(3)	In the absence of evidence of actual payment of sales tax of Rs.10.98 lakh, deduction was erroneously allowed.	12.00

The Ministry have accepted the audit observations at Sl.Nos. 1,5 and 6. Their response to the remaining cases has not been received.

(iii) It has been judicially held* that the amount of sales tax collected by a trader in the course of business constitutes his trading or business receipts and as such is liable to be included in his business income.

The Board in consultation with the Ministry of Law have clarified (September 1987) that in regard to cases where sales tax payable by a registered dealer has been deferred under specific sales tax deferment scheme of a State Government and tax so deferred is deemed to have been paid in the year in which the liability thereof has arisen, the dealer would be entitled to claim, in the relevant assessment year, the amount of tax deemed to have been paid in the relevant previous year. To facilitate availing of this benefit by the dealers registered under the M.P. General Sales Tax Act, 1958 the Government of Madhya Pradesh introduced a new provision in Section 22 of M.P.General Sales Tax Act, 1958 vide Act 14 of 1988. According to this provision, a registered dealer liable to pay sales tax but enjoying the benefit of deferment of this liability, would be deemed to have paid the tax equal to the amount for which agencies specified by the State Government have created, against a dealer, loan liability equal to the amount of his tax liability during the period of its eligibility under the tax deferment scheme.

(a) In West Bengal VI charge, the assessment of a widely held company for the assessment year 1991-92 was completed after scrutiny in March 1994. Audit scrutiny revealed that sales tax of Rs.536.11 lakh collected from the customers had not been passed through the relevant profit and loss account and the amount remaining unpaid was shown as liability in the balance sheet. Since the amount was not paid to the government account during the relevant previous year or before the due date of the return of income it should have been treated as a trading receipt and taxed. Omission to do so resulted in underassessment of income by Rs.536.11 lakh leading to excess computation and carryforward of loss by an identical amount involving potential short levy of Rs.246.61 lakh.

The reply of the Ministry to the audit observation has not been received.

(b) In Bhopal, Madhya Pradesh charge, the assessments of a company for the assessment years 1987-88 to 1990-91 and 1993-94 were completed in summary manner between December 1988 and November 1994 and for the assessment years 1991-92 and 1992-93 in March 1992 and November 1994 after scrutiny allowing a deduction aggregating Rs.114.35 lakh towards deferred sales tax liability of the assessee on the ground that the assessee company was eligible to avail of the facility of sales tax deferment. Audit scrutiny, however, revealed that the payment of sales tax, stated to have been deferred, could not be claimed

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* Chowringhee Sales Bureau (P) Ltd. Vs CIT (1973)-87 ITR 542 (SC)

as a deduction under the provisions because no evidence had been produced during the assessment to indicate that a corresponding loan liability had been created by any of the agencies specified by the State Government for this purpose. As such the deduction allowed for the above seven years was irregular. The irregular deduction resulted in underassessment of income aggregating Rs.114.35 lakh involving potential tax effect of Rs.59.35 lakh. Additional income tax of Rs.9.52 lakh was also not levied for the assessment years 1989-90 to 1993-94.

Similarly, in the same charge, in the case of another company for the assessment year 1992-93 completed after scrutiny in December 1994, a deduction of Rs.22.31 lakh was allowed towards deferred sales tax liability even though corresponding loan liability has not been created by any of the agencies specified for the purpose. The irregular deduction resulted in short levy of tax of Rs.21.30 lakh (including interest).

The reply of the Ministry to the audit observations has not been received.

© In North East Region, Shillong charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in June 1994. Audit scrutiny revealed that sales tax of Rs.64.91 lakh collected by the assessee from its customers had not been passed through the relevant profit and loss account and the amount remained unpaid was shown as liability in the balance sheet. Since the amount was not paid to the Government account during the relevant previous year or before the due date of submission of return of income, the assessing officer added back the aforesaid amount. The addition so made was deleted by the Commissioner of Income Tax (Appeal) on the ground that sales tax receipt was not passed through profit and loss account and in view of the jurisdictional High Court decision in the case of same assessee for an earlier assessment year. Consequently the assessment was revised in March 1995 deleting the addition. It was observed in audit that while revising the assessment, addition on account of unpaid sales tax should have been made under the principle laid down in the Supreme Court decision by treating it as a trading receipt without resorting to Section 43 (B). Failure to do so resulted in under assessment of income of Rs.64.91 lakh involving short levy of tax of Rs.51.73 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Incorrect computation of income from tea business- Rule 8

4.12 Under the Income Tax Rules,1962, only 40 percent of the income derived from the sale of tea grown and manufactured by a seller in India is deemed to be income derived from manufacturing and selling operations of the assessee and liable to income tax, the remaining 60 percent being deemed to relate to the cultivation of tea, income from which is agricultural in nature and hence not liable to tax. This rule regarding apportionment of income applies only to income from tea

business.

In West Bengal II charge, the assessment of a widely held company engaged in the business of growing and manufacturing tea, for the assessment year 1992-93 was completed in March 1995 after scrutiny. Audit scrutiny revealed that during the relevant previous year, apart from its income from tea business, the assessee derived interest income of Rs.231.07 lakh on loans advanced to others the entire amount of which was taxable under the head "income from other sources". However, the assessing officer brought to tax only 40 percent of interest income of Rs.231.07 lakh instead of bringing the amount to tax. The mistake resulted in under assessment of income of Rs.138.64 lakh (60 percent of Rs.231.07 lakh) involving short-levy of tax of Rs.150.72 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Incorrect allowance of deduction in respect of deposit under tea development account- Section 33 AB

4.13 Where an assessee carrying on business of growing and manufacturing tea in India has, before the expiry of six months from the end of the previous year or before furnishing the return of his income, whichever is earlier, deposited with a nationalised bank any amount or amounts in an account maintained by the assessee with that bank for the specified purposes approved by the Tea Board, the assessee shall, subject to other provisions of the Act be allowed a deduction of a sum equal to twenty percent of the profits of such business (computed under the head 'profits and gains of business or profession' before making any deduction under this section), whichever is less. As such, the income which is attributable to the business of manufacturing of tea from tea leaves purchased from outside is not eligible.

In West Bengal II charge, the assessment of a closely held company engaged in the business of growing and manufacturing of tea for the assessment year 1992-93 was completed after scrutiny in March 1995 in which a deduction of Rs. 30.82 lakh on account of deposit under tea development account was allowed. Audit scrutiny revealed that the income of the assessee was derived from manufacture of tea out of tea leaves grown by the assessee in his own garden and also from the tea leaves purchased from outside. Thus, as per the provisions of the Act, the deduction was required to be calculated on the income derived from the business of growing and manufacturing of tea from tea leaves grown by the assessee in his own garden by seggregating the same from the total income. Omission to do so resulted in excess allowance of deduction of Rs. 10.16 lakh leading to underassessment of income by Rs. 10.41 lakh with consequent undercharge of tax of Rs. 11.30 lakh (including interest).

The Ministry have accepted the audit observation.

Incorrect allowance of expenditure on know-how- Section 35 AB

4.14 Under the Income Tax Act, 1961, with effect from 1 April 1986, where an assessee has paid, in any previous year, any lump sum consideration for acquiring know-how for the purpose of his business, one-sixth of the amount so paid shall be deducted in computing the business income for that year and the balance amount shall be deducted in equal instalments in each of the five immediately succeeding years.

(i) In Tamil Nadu V charge, the assessments of a closely held company for the assessment years 1988-89 and 1989-90 were revised in August 1993, allowing a deduction of Rs. 9.27 lakh for each year being one sixth of the technical know-how fees of Rs. 55.47 lakh paid from the interest income earned from temporary deposits which was assessed as "income from other sources". Audit scrutiny of the assessment records revealed that there was no business activity carried on by the assessee and the only activity carried on was construction of buildings and installation of machinery. As the deduction on payment of technical know-how fees was to be allowed only in computing business income and when there was no computation of business results, the deduction of Rs. 18.54 lakh was not allowable. The mistake resulted in under charge of tax of Rs. 11.15 lakh (including interest and withdrawal of interest) besides potential tax effect of Rs. 5.47 lakh.

The reply of the Ministry to the audit observation has not been received.

(ii) In Tamil Nadu I charge, the assessment of a closely held company for the assessment year 1992-93 was completed after scrutiny in February 1995. Audit scrutiny revealed that the entire technical know-how fee of Rs.20.92 lakh paid by the assessee company to a foreign company for the services rendered in modernisation of the cylinder block and cylinder head operations to upgrade the existing manufacturing facilities to international standards, was allowed as a deduction. As the payment was for the technical know-how, deduction should have been restricted to one-sixth of the lump sum consideration. The mistake resulted in excess deduction of Rs.17.43 lakh involving short levy of tax of Rs.10.02 lakh.

The reply of the Ministry to the audit observation has not been received.

Other mistakes in computation of business income

Prior period expenses- Section 145

4.15.1 Under the Income Tax Act, 1961, income under the head "Profits and gains of business or profession" is computed in accordance with the method of accounting regularly employed by the assessee. Where the assessee follows mercantile system of accounting, the annual profits are worked out on due or accrual basis i.e. after providing for all expenses for which a legal liability has arisen and taking credit for all receipts that have become due regardless of their actual receipt or payment. Only such expenses are allowable as deduction from a previous year's income as are relevant to that year.

(i) In Ranchi, Bihar charge, the assessment of a company for the assessment year 1991-92 was completed after scrutiny in March 1994. Audit scrutiny revealed that a sum of Rs.202.31 lakh had been charged to the profit and loss account towards expenses relating to earlier years. As the assessee company was following mercantile system of accounting and had not been consistently adjusting prior period debits/credits against current year's profits, the allowance of earlier year's expenses led to excess computation of loss by Rs.202.31 lakh involving potential tax of Rs.93.06 lakh.

The Ministry have accepted the audit observation.

(ii) In West Bengal II charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in March 1995. Audit scrutiny revealed that a sum of Rs.3012 lakh was debited in the profit and loss account towards prior period expenses which included a sum of Rs.94.49 lakh on account of depreciation. Since actual amount of depreciation admissible as per prescribed rates had already been deducted in computing income of the assessee in earlier assessment years, a further allowance for depreciation in respect of earlier years was not admissible and was required to be added back. Omission to do so resulted in underassessment of income and excess carry forward of unabsorbed investment allowance of Rs.94.49 lakh involving potential tax effect of Rs.48.90 lakh.

The reply of the Ministry to the audit observation has not been received.

Payments outside India- Section 40

4.15.2 Under the Income Tax Act, 1961, where in any financial year the assessee has paid any interest, royalty or fees for technical services or other sum chargeable under this Act, which is payable outside India, on which tax has not been paid or deducted such amounts (payable outside India) shall not be deducted in computing the income chargeable under the head 'profits and gains of business or profession'.

In City VI, Mumbai charge, the assessment of a closely held company for assessment year 1990-91 was completed after scrutiny in February 1993. Audit scrutiny revealed that a deduction of Rs. 21.69 lakh towards equipment and ship hire charges payable outside India was allowed without deduction of tax at source, resulting in underassessment of income of Rs. 21.69 lakh involving under charge of tax of Rs. 21.90 lakh (including interest).

The Ministry have accepted the audit observation.

Incorrect allowance of perliminary expenses- Section 35 D

4.15.3 Under the Income Tax Act, 1961, the admissible deduction towards preliminary expenses incurred prior to commencement of business or in connection with the extension of an industrial undertaking is limited to 2.5 percent of cost of the project or capital employed at the option of the assessee and is allowed in equal instalments spread over

ten years. It has been judicially held* that expenditure on public issue of shares could be amortised under section 35 D. Further, in another case, it has been held** that interest paid on bridge loan cannot be set off against interest earned on contributions made by shareholders.

(i) In City IV, Mumbai charge, assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in March 1995. Audit scrutiny revealed that the assessing officer allowed a deduction of Rs.139.86 lakh being expenditure in connection with the issue of debentures. Since the debentures were raised by the assessee for the purpose of expansion, modernisation, diversification/modification, the allowable preliminary expenses should have been limited to 13.98 lakh being one tenth of 139.86 lakh. The mistake resulted in under assessment of income of Rs.125.87 lakh involving short levy of tax of Rs.65.14 lakh.

The Ministry have not accepted the audit observation in view of the Supreme Courts judgement that expenditure on issue of debentures is admissible against profits of the year.

The reply is not tenable in view of the applicability of provisions of section 35 D (enacted subsequent to the aforesaid Supreme Court judgement) which provides that expenditure on extension of industrial undertaking is to be amortised in 10 years. Perusal of Director's report indicated that the debentures were issued for expansion and modernisation and thus the expenditure would be governed by Section 35 D. A subsequent legislative provision (sec.35 D) would override the Supreme Court judgement on issues covered by the provisions.

(ii) In Andhra Pradesh I, charge, the assessment of a company in which public are substantially interested, for the assessment year 1992-93 was completed after scrutiny in April 1993. Audit scrutiny revealed that the assessee had claimed and was allowed an amount of Rs.44.27 lakh towards 'advertisement expenditure on the public issue of shares' and Rs.19.26 lakh towards 'interest on bridge loan' as deduction from "income from other sources". Since the advertisement expenditure was incurred in connection with the issue of shares, it should be treated as preliminany expenses and allowed to be amortised over ten years. Similary, the interest paid on bridge loan was required to be capitalised being the cost of project implementation. Failure to do so resulted in underassessment of income of Rs.63.53 lakh involving tax effect of Rs.38.99 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

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* Goa Carbon Ltd. Vs CIT-73 Taxmann 68 (Bom).
** Andhra Pradesh Carbides Ltd. CIT-198-386 (A.P).

Incorrect valuation of stock

4.15.4 (i) It has been judicially held* that an assessee who has valued the closing stock and work in progress taking into account the element of custom duty paid but who has charged the profit and loss account with the customs duty relatable only to the goods sold, is entitled to have the deduction in computation of income, of a sum equal to the element of customs duty embedded in the value of closing stock.

In City IV, Mumbai charge, the assessment of a company for assessment year 1990-91 was completed after scrutiny in March 1993, allowing a relief of Rs.224.92 lakh on account of excise incidence embedded in the closing stock of assessment year 1989-90. Audit scrutiny revealed that the entire excise incidence embedded in the closing stock of assessment year 1989-90 was allowed as relief by the appellate authority in June 1992 itself but this fact was not considered while finalising the assessment for assessment year 1990-91. The mistake resulted in excess allowance of relief of Rs.224.92 lakh involving short levy of tax of Rs.208.90 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(ii) It has been judicially held** that any system of accounting which excludes for the valuation of Stock in trade, all costs other than the cost of raw materials is likely to result in a distorted picture of the true state of business, for the purpose of computing its chargeable income. The Board clarified in 1981 that the Central Excise/Customs duties, if any, payable by the manufacturer/trader should go into calculation of production cost and the closing inventory should include an element of such duty to represent such cost.

(a) In North East Region, Shillong charge, the assessments of two widely held companies for the assessment year 1992-93 were completed after scrutiny in May 1994 and February 1995 respectively. Audit scrutiny revealed that excise duty of Rs.55 lakh payable in one case and excise duty of Rs.21.99 lakh and custom duty of Rs.17.89 lakh payable on finished goods in other case had not been included in the value of closing stock. The excise duty and customs duty payable should have been debited to the profit and loss account on accrual basis. As customs and excise duty were deductible on actual payment basis, the said amounts not paid to government accounts should have been added to arrive at the total income of the assessees. Omission to do so resulted in underassessment of income of Rs.94.88 lakh involving short levy of tax of Rs.59.78 lakh (including potential tax effect of Rs.5.38 lakh).

The reply of the Ministry to the audit observation has not been received.

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* Lakhanpal National Ltd. Vs ITO-162 ITR 240 (Gujarat)
** CIT Vs British Paints India Ltd.- 188 ITR 44 (SC).

(b) In West Bengal IV charge, the assessment of a widely held company for the assessment year 1991-92 was completed in February 1994 after scrutiny. Audit scrutiny revealed that an estimated amount of Rs.110.58 lakh representing excise duty on closing stock was not provided for in the relevant accounts as per accounts prepared for year ended 30 June 1991. As the assessee was maintaining two sets of accounts, one for the purpose of income tax upto 31 March and other upto 30 June for commercial expediency, the proportionate amount of central excise duty to be added to the value of closing stock as on 31 March 1991 was Rs.83.87 lakh. This excise duty payable should have been debited to profit and loss account on accrual basis. As excise duty was deductible only on actual payment basis, the said amount not paid to government account should have been added to arrive at the total income of the assessee. The omission resulted in underassessment of income of Rs.10.96 lakh invloving undercharge of tax of Rs.5.04 lakh and also excess carry forward of loss of Rs.72.91 lakh with potential tax effect of Rs.33.54 lakh.

The reply of the Ministry to the audit observation has not been received.

Incorrect computation of income of financial corporation- Section 36(1)(viii)

4.15.5 Under the Income Tax Act, 1961, financial corporations engaged in providing long term finance for industrial or agricultural development in India, are entitled to a special deduction of an amount transferred by them out of their profits to a special reserve account, upto an amount not exceeding 40 percent of their total income as computed before making any deduction under Chapter VIA. The deduction is to be limited to the amount of special reserve actually created in the accounts of the relevant previous year.

(i) In Jaipur, Rajasthan charge, the assessement of a financial corporation for the assessment year 1983-84 was completed in September 1991 after scrutiny allowing a special deduction of Rs.278.27 lakh. Audit scrutiny revealed that the assessee had created a special reserve of Rs.244 lakh only out of its profits and as such the deduction was required to be restricted to the amount of special reserve created. Incorrect allowance of deduction resulted in underassessment of income by Rs.34.27 lakh involving short levy of tax of Rs.19.32 lakh.

The reply of the Ministry to the audit observation has not been received.

(ii) In City II, Ahmedabad charge, the assessment of a state industrial investment company for the assessment year 1984-85 was revised in January 1994 to give appeal effect and for the assessment year 1991-92 was completed in March 1994 after scrutiny allowing special deductions of Rs.45.19 lakh and Rs.322.89 lakh respectively. Audit scrutiny revealed that in the accounts of the relevant previous years, the assessee company had actually created special reserve of Rs.42.83 lakh and Rs.300 lakh respectively. Therefore, the deduction should have been restricted to the amount of the reserve actually created. Omission to do

so resulted in excess deduction aggregating Rs.25.25 lakh involving short levy of tax of Rs.11.89 lakh.

The reply of the Ministry to the audit observation has not been received.

Loss on account of variation in rate of exchange of foreign currency- Section 43A

4.15.6 In computing the income of an assessee, any loss on account of variation in the rate of exchange of foreign currency (accruing on outstanding liabilities) is allowed as admissible expenditure.

In Karnataka I charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in March 1995 allowing a deduction of Rs.266.31 lakh as loss on account of variation in the rate of exchange on its outstanding liabilities. Audit scrutiny revealed that the rate of exchange adopted by the assessee was Rs.18.72 per D.M.against the correct official rate of exchange of Rs.15.77 per D.M.prevailing on 31 March 1992. Had the correct rate of exchange been adopted, the assessed loss of Rs.83.73 lakh would turn to a positive income of Rs.52.03 lakh. The mistake resulted in underassessment of income of Rs.52.03 lakh involving short levy of tax of Rs.41.12 lakh (including interest). Further, the loss of Rs.83.73 lakh incorrectly allowed to be c carried forward to the next year was also required to be withdrawn.

The Ministry have accepted the audit observation.

Irregular allowance of depreciation- Section 32

4.16.1(i) Under the Income Tax Act, 1961, in computing the business income of an assessee, a deduction on account of depreciation on plant and machinery or other assets is admissible at the prescribed rates provided these are owned by the assessee and used for the purpose of his business during the relevant previous year. Where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purpose of his business or profession. Where any asset falling within a block of assets is acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction in respect of such assets shall be restricted to fifty percent of the amount calculated at the percentage prescribed in respect of the block of assets comprising such asset

(a) In City II, Mumbai charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in January 1995 allowing depreciation of Rs.408.61 lakh which included depreciation of Rs.109.93 lakh allowed at hundred percent on bio-gas plant. Audit scrutiny revealed that out of the total value of the gas plant of Rs.109.93 lakh, bio-gas plant valuing Rs.61.11 lakh was put to use for a period of less than one hundred and eighty days. Depreciation on these assets was required to be restricted to fifty percent of the amount calculated at the prescribed percentage. Omission to do so resulted in under assessment

of income by Rs.30.55 lakh leading to short levy of tax of Rs.26.56 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(b) In Rajkot, Gujarat charge, the assessment of an assessee company for the assessment year 1992-93 was completed after scrutiny in March 1995 allowing depreciation agreegating Rs.18.48 lakh, which included depreciation of Rs.15.73 lakh allowed on plant and machinery. Audit scrutiny revealed that the written down value of plant and machinery at the begining of relevant previous year was Rs.20.11 lakh. Additions of Rs.87,510 were made on 30.9.91. The depreciation allowable on the plant and machinery would, therefore work out to Rs.5.14 lakh at the rate of twenty five of Rs.20.11 lakh and twelve and one half percent on the addition of Rs.0.87 lakh as against depreciation of Rs.15.73 lakh allowed resulting in excess allowance of depreciation of Rs.10.59 lakh involving tax effect of Rs.10.35 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(ii) ITAT Madras has held* that where containers are handled only in bulk, each container cannot be treated as single plant for purpose of 100 percent depreciation. Depreciation is to be allowed at normal rate on cumulative value of entire lot of the containers.

In Andhra Pradesh I charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in October 1994 allowing deduction of Rs.18 lakh on oxygen cylinders on the ground that cost of each cylinder was less than Rs.5,000. Audit scrutiny revealed that the cylinders were purchased in bulk and were also leased out in bulk and thus it was not correct to treat each cylinder as a separate item of plant in order to claim 100 percent deduction. Therefore, the entire bulk purchased should have been treated as a single plant/unit and normal rate of depreciation allowed. The incorrect application of rates resulted in excess allowance of depreciation of Rs.15.75 lakh with a consequent short demand of Rs.13.20 lakh (including interest).

The Ministry have accepted the audit observation.

Excess allowance of depreciation-Section 32

4.16.2 While computing the income of an assessee, the assessing officer normally takes the net profit in the profit and loss account as the starting point and then makes necessary adjustments by way of additions or deletions in accordance with the provisions of the Act to arrive at the total income.

(i) In West Bengal IV charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in

* ITO Vs First Leasing Co. of India Ltd-20 itd 449

November 1994 determining a loss of Rs.3632.77 lakh after allowing depreciation of Rs.218.23 lakh. Audit scrutiny revealed that the amount of Rs.218.23 lakh being depreciation as per books of accounts was deducted for separate consideration from the net loss as per profit and loss account and subsequently the same amount was allowed as depreciation without considering the admissible amount of depreciation as per Income Tax Rules. The correct amount of admissible depreciation worked out to Rs.86.04 lakh on the basis of particulars furnished by the assessee company. The mistake resulted in excess carry forward of unabsorbed depreciation allowance by Rs.132.19 lakh involving potential tax effect of Rs.68.41 lakh for the assessment year 1992-93.

The Ministry have accpted the audit observation.

(ii) In Central, Bangalore charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in March 1995. Audit scrutiny revealed that the assessee had claimed depreciation of Rs.25.23 lakh and Rs.162.61 lakh. The assessing officer reworked the admissible depreciation of Rs.162.61 lakh at Rs.161.70 lakh and added back Rs.162.61 lakh to the returned income for separate consideration. However, while allowing the admissible depreciation, the assessing officer deducted the full depreciation of Rs.186.93 lakh including the depreciation of Rs.25.23 lakh which had not been added back. This led to underassessment of income by Rs.25.23 lakh involving short levy of tax of Rs.23.76 lakh (including interest).

The Ministry have accepted the audit observation.

Non-restriction of depreciation allowance - Section 32

4.16.3 Taxation laws (Amendment) Act 1991 provided that for the assessment year 1991-92, depreciation on any block of assets in the case of companies was to be restricted to seventy five percent the amount calculated at the prescribed percentage of normal allowance.

In West Bengal VIII charge, the assessment of a State Public Sector company for the assessment year 1991-92 was completed after scrutiny in March 1994 computing loss at Rs.384.40 lakh, inter alia, allowing depreciation of Rs.414.59 lakh. Audit scrutiny revealed that the depreciation was not restricted to Rs.310.94 lakh being seventy five per cent of the amount calculated at the prescribed percentage. The mistake resulted in excess allowance of depreciation to the extent of Rs.103.65 lakh leading to excess computation and carryforward of depreciation by an identical amount involving potential short levy of Rs.47.68 lakh.

The Ministry have accepted the audit observation.

Incorrect application of rates- Section 32

4.16.4 Under the Income Tax Act, 1961, in computing the business income of an assessee, deduction on account of depreciation on plant and machinery or other assets is admissible at the prescribed rates provided these are owned by the assessee and used for the purpose of his

business during the relevant previous year. Depreciation is calculated on the cost or written down value of the assets according to the rates prescribed in the Income Tax Rules, 1962.

(i) In Tamil Nadu I and West Bengal III charges, the assessments of two widely held companies for the assessment year 1992-93 were completed after scrutiny in March 1995, inter alia, allowing depreciation of Rs.514.95 lakh and Rs.25.59 lakh respectively. Audit scrutiny revealed that the depreciation was incorrectly allowed at the rate of 33.33 per cent instead of the correct rate of 25 per cent applicable. Further, in the latter case, depreciation of Rs.63.21 lakh was allowed erroneously on the machinery which was put to use for less than 180 days as against the allowable amount of Rs.4.74 lakh. There mistakes resulted in underassessment of income aggregating Rs.193.57 lakh with resultant short levy of tax of Rs.108.16 lakh (including withdrawal of interest on refunds in the former case).

The Ministry have accepted the audit observations.

(ii) The Income Tax Rules 1962 as applicable from the assessment year 1988-89 provides for the grant of depreciation at 5 per cent in respect of residential buildings with plinth area exceeding 80 square metres and at 20 per cent in respect of residential buildings with plinth area not exceeding 80 square metres.

In West Bengal II charge, the assessment of a widely held tea company for the assessment year 1988-89 originally completed after scrutiny in March 1991 was subsequently revised in May 1992 on a total income of Rs. 125.75 lakh allowing interalia depreciation of Rs. 106.62 lakh and Rs. 2.98 lakh, calculated at the rate of twenty per cent and five per cent respectively, towards residential buildings with plinth area exceeding 80 square metres as well as that not exceeding 80 square metres respectively. Audit scrutiny revealed that the assessing officer in computing the amount of depreciation applied the rates of depreciation for the first category of building to the second category and vice versa. The mistake resulted in excess allowance of depreciation of Rs. 71.02 lakh leading to underassessment of income of Rs. 28.41 lakh (computed at 40 per cent of Rs. 71.02 lakh for a tea company) with consequent short levy of tax of Rs. 21.44 lakh (including interest on excess refund).

The Ministry have accepted the audit observation.

Excess/irregular set off of unabsorbed depreciation- Section 32(2)

4.16.5(i) Under the Income Tax Act, 1961, where for any assessment year unabsorbed depreciation under the head 'Profits and gains of business or Profession' cannot be set off against any other income in the relevant year, such unabsorbed depreciation shall be carried forward to the following assessment year and shall be set off against profits and gains of business or profession of that year and if there is no positive income in that year also, it can be carried forward to the subsequent

year for set off.

(a) In Gujarat I charge, in the assessment of public limited company for the assessment year 1991-92 completed after scrutiny in March 1994, unabsorbed depreciation of Rs.959.66 lakh in respect of the assessment year 1989-90 was set off. Audit scrutiny revealed that the unabsorbed depreciation to the extent of Rs.698.32 lakh had already been set off in the assessment for the assessment year 1990-91 and Rs.261.33 lakh was available for set off. Thus, excess set off of unabsorbed depreciation of Rs.698.32 lakh resulted in underassessment of income by an identical amount involving short levy of tax of Rs.552.51 lakh (including interest).

The Ministry have accepted the audit observation.

(b) In City II, Mumbai charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in January 1995 on 'Nil' income after allowing set off of a sum of Rs.2712.13 lakh being unabsorbed depreciation of assessment years 1987-88 and 1988-89 by applying the restrictive provisions of the Act, to the extent available, and the balance was allowed to be carried forward. Audit scrutiny revealed that the actual unabsorbed depreciation carried forward from earlier years and allowable for set off was Rs.1972.77 lakh only. Thus setting off and allowing to carry forward unabsorbed depreciation at Rs.2712.13 lakh instead of correct amount of Rs.1972.77 lakh available for set off resulted in excess carry forward of unabsorbed depreciation of Rs.739.36 lakh involving potential short levy of tax of Rs.382.62 lakh.

The reply of the Ministry to the audit observation has not been received.

(ii) Under the Income Tax Act, 1961, where in any previous year any block of assets is transferred by the amalgamating company to the amalgamated company, in a scheme of amalgamation and the amalgamated company is an Indian company, then the actual cost of the block of assets in the case of the amalgamated company shall be the written down value of the block of assets as in the case of the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.

In Tamil Nadu I charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in March 1995 allowing, inter alia, depreciation of Rs.648.95 lakh on the written down value of its own assets and those valuing Rs.781.83 lakh of another company which amalgamated with it with effect from 1 April 1991. Audit scrutiny revealed that as per the income tax depreciation statement of the amalgamating company for the assessment year 1991-92, the closing written down value of the assets was Rs.183.30 lakh.

Thus Rs.183.30 lakh should have been taken as the opening written down value of these assets in the hands of the amalgamated company and depreciation for the assessment year 1992-93 regulated thereon. The mistake resulted in excess allowance of depreciation of Rs.147.46 lakh on the excess written down value of Rs.598.53 lakh involving tax effect of Rs.131.25 lakh (including interest). Besides excess written down value carried over to the succeeding assessment year would result in potential tax effect of Rs.233.43 lakh.

The reply of the Ministry to the audit observation has not been received.

(iii) Other important cases are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	Tamil Nadu V, Chennai	1992-93 January 1995	143(3)	Rs.147.09 lakh were irregularly set off towards unabsorbed depreciation even though in same was already set off in an earlier assessment year	102.31 4.14 (P)
2.	City II, Bombay	1992-93 March 1994	143(3)	Against the correct amount of Rs.195.56 lakh of unabsorbed depreciation, on amount of Rs.231.89 lakh was erroneously allowed	30.91 42.77(P)
3.	Tamil Nadu I, Chennai	1992-93 March 1995	143(3)	Against the correct amount of Rs.1198.86 lakh of unabsorbed depreciation, an amount of Rs.1281.29 lakh was erroneously allowed	47.78
4.	West Bengal II, Calcutta	1992-93 March 1995	143(3)	Unabsorbed depreciation of Rs.86.24 lakh was erroneously allowed even though set off in the assessment year 1991-92	44.63
5.	Meerut, Uttar Pradesh	1990-91 March 1993	--	Rs.35.46 lakh were erroneously allowed towards unasborbed depreciation, investment allowance and investment deposit account even though the same was already set off in the assessment year 1989-90	32.94
6.	Ranchi, Bihar	1992-93 March 1995	143(3)	Against the correct amount of Rs.108.63 lakh, Rs.162.94 lakh was set off towards unabsorbed depreciation	28.11
7.	West Bengal IV, Calcutta	1992-93 March 1995	143(3)	Instead of correct amount of Rs.34.51 lakh, an amount of Rs.51.23 lakh was erroneously set off	16.89
8.	Bhopal, Madhya Pradesh	1992-93 March 1995	143(3)	Instead of correct amount of Rs.35.67 lakh towards unabsorbed depreciation and investment allowance, an amount of Rs.63.39 lakh was erroneously allowed	16.45
9.	Jaipur, Rajasthan	1991-92, 1992-93 November 1995	143(3)	Rs.13.93 lakh was erroneously allowed toward unabsorbed depreciation even though the same was already set off in the earlier assessment years.	10.59

10.	**North East Region, Shillong**	**1992-93 March 1995**	**144**	**Non-restriction of unabsorbed depreciation led to underassessment of income of Rs.3.33 lakh; And interest was levied upto the date of processing the return on 7 July 1993 instead of upto March 1995**	**10.11**

The Ministry have accpted the audit observations at Sl.Nos. 2,3 and 6 to 10. Their response to the remaining cases has not been received.

Lacuna in the Act- Sections 32 and 43

4.16.6 Under the Income Tax Act, 1961, in the case of amalgamation of companies in a scheme of amalgamation the amalgamated company shall be allowed depreciation in respect of block of assets transferred on the written down value of the block of assets as in the case of the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.

(i) In West Bengal II charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in March 1995. The assessee company was merged with another company with effect from 1 January 1992. The assessee company which is the amalgamating company acquired the assets valuing Rs.978.21 lakh from the amalgamated company and was allowed depreciation of Rs.98.41 lakh on these assets calculated at 50 per cent of the normal rate of depreciation for the period from January 1992 to March 1992. Audit scrutiny revealed that the amalgamated company was also allowed depreciation on these assets at full rates for the period from 1 April 1991 to 31 December 1991 while computing its income for the assessment year 1992-93. As there was loss, the entire amount was allowed to be carried forward and was allowed to be set off against the income of the amalgamating (assessee) company for the assessment year 1992-93. Thus depreciation on the same assets was allowed twice, once in the hands of amalgamated company and second time in the hands of amalgamating company during the same assessment year resulting in aggregate allowance exceeding the depreciation allowance admissible on the assets in the previous year. Thus due to a lacuna in the Act to restrict the depreciation to the admissible allowance at the specified rates in the previous year has resulted in an underassessment of income of Rs.98.41 lakh involving short levy of tax of Rs.87.29 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) In Tamil Nadu II charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in March 1995 allowing depreciation of Rs.953 lakh. The depreciation was allowed on the written down value of the assets as on 1 April 1991 and taking into account the subsequent additions and deletion to the asset account. Audit scrutiny revealed that the company was merged with its

subsidiary company with effect from 1 October 1991 under a scheme of amalgamation approved by the High Court and all the assets and liabilities of the amalgamating company were taken over by the amalgamated company. The assessee company which is the amalgamating company filed its return of income for the period from 1 April 1991 to 30 September 1991 and was allowed depreciation of Rs.953 lakh on the assets. As all the assets had been transferred to the amalgamated company in the middle of the previous year and as that company was eligible to claim the depreciation on the written down value as in the case of the amalgamating company, the allowance of depreciation in the hands of the amalgamating company on the same written down value was not in order. The irregular allownce resulted in under assessment of total income of the assessee company by Rs.953 lakh involving an additional demand of Rs.790.44 lakh (including interest and withdrawal of interest granted on the refund).

The reply of the Ministry to the audit observation has not been received.

Incorrect allowance of investment allowance- Section 32A

4.17.1 Under the Income Tax Act, 1961, in respect of machinery owned by the assessee and used for the purpose of business carried on by him, a deduction shall be allowed in the previous year of first usage of a sum equal to 25 percent (20 percent with effect from 1 April 1989) of the actual cost of the machinery to the assessee. The Act further provides that where the plant or machinery on which investment allowance allowed in any assessment year is sold or otherwise transferred before the expiry of eight years from the end of the previous year in which it was installed, the investment allowance granted should be withdrawn treating it as wrongly allowed and the assessing officer is required to recompute the income of the assessee for the relevant previous year and make necessary adjustment.

In Bhopal, Madhya Pradesh charge, the assessment of a closely held company for the assessment year 1990-91 was completed initially under summary scheme and subsequently after scrutiny in March 1992 allowing cary forward of investment allowance of Rs.290.62 lakh. Audit scrutiny of the account and the tax audit report revealed that during the previous year relevant to assessment year 1990-91 the assessee company had put its plant and machinery on trial run and no commercial production had commenced in the previous year. Thus the assessee company was not entitled for any investment allowance. The incorrect allowance of carry forward of investment allowance resulted in under assessment of income of Rs.290.62 lakh with potential short levy of tax of Rs.172.62 lakh.

The Ministry have not accepted the audit observation stating that there is no precondition in the Section which may require commercial production in the year, in which the investment allowance is claimed.

The Ministry's reply is not tenable as the basic condition for allowance

of the deduction is that the plant and machinery shall be wholly used for the purposes of the business and it has been judicially held that unless production commences which can result in profits and gains, the deduction on account of depreciation and investment allowance cannot be claimed.

Loss of revenue- Section 32A

4.17.2 No investment allowance is admissible on machinery or plant which are not used in any industrial undertaking for the purpose of business of manufacture or production of any article or thing. The Act also provides that an order of fresh assessment due to setting aside, cancellation of an assessment shall be passed before the expiry of two years from the end of the financial year in which the order cancelling the assessment is passed.

In West Bengal VIII charge, the assessment of a widely held company engaged in the business of forest and plantation development for the assessment year 1987-88 was completed after secutiny in September 1989 allowing investment allowance of Rs.23.62 lakh on the cost of a ship used for logging project. Audit scrutiny revealed that since the assessee company was not an industrial undertaking/engaged in the business of manufacture or production of any article or thing, the assessing officer had disallowed the claim of investment allowance. However, the same remained to be disallowed in the actual computation of income. The incorrect grant of investment allowance of Rs.23.62 lakh together with incorrect allowance of provision of Rs.1.87 lakh and irregular allowance of earlier years expenditure of Rs.3.68 lakh resulted in underassessment of income aggregating Rs.29.17 lakh involving short levy of tax of Rs.20.60 lakh (including interest). As the fresh order of assessment required to be made before expiry of two years from the end of the financial year in which the order cancelling the assessment was passed has not made till March 1996, the omission further resulted in loss of revenue of Rs.20.60 lakh.

The reply of the Ministry to the audit observation has not been received.

Non-creation of reserve- Section 32A

4.17.3 Under the Income Tax Act, 1961, in computing the business income of an assessee, a deduction is allowed by way of investment allowance at the rate of twenty percent of the actual cost of new machinery or plant installed during the previous year, subject to the condition that an amount equal to seventy-five percent of the sum so allowed is debited to profit and loss account and credited to a reserve account.

(i) In Tamil Nadu II charge, assessment of a widely held company for assessment year 1987-88 was revised in June 1992 in which investment allowance of Rs.416.58 lakh was allowed and the balance of Rs.103.73 lakh was allowed to be carried forward. Audit scrutiny revealed that the assessee had created investment allowance reserve of Rs.218.97 lakh entitling it for investment allowance of Rs.295.79 lakh as against

Rs.416.58 lakh allowed by the department. The mistake resulted in underassessment of total income of Rs.120.79 lakh with consequent short levy of tax of Rs.60.40 lakh.

The Ministry have not accepted the audit observation stating that the assessee had created reserve of Rs.218.97 lakh during the period ending 31 December 1986 (previous year of assessment year 1987-88 consisted of 15 months from 1 January 1986 to 31 March 1987) and reserve of Rs.171.26 lakh for the period ending on 31 March 1988 which covered the claim of investment allowance of Rs.416.58 lakh allowed in assessment year 1987-88.

The reply is not tenable for the reason that against the reserve of Rs.218.97 lakh created during assessment year 1987-88 inestment allowance of Rs.295.79 lakh was allowable under the provisions of the Income Tax Act. Creation of reserve in the ;next year against the investment allowance allowed in earlier year is in contravention to the provisions of the Act.

(ii) In West Bengal II charge, the assessment of a widely held company for the assessment year 1991-92 was completed after scrutiny in December 1993 allowing set off of Rs.101.42 lakh being unabsorbed investment allowance for the assessment year 1985-86. Audit scrutiny revealed that no investment allowance reserve was created either in the accounts of the previous year relevant to the assessment accounts of the previous year relevant to the assessment year 1985-86 or in subsequent previous years relevant to assessment years 1986-87 to 1991-92 and hence, the set off of unabsorbed investment allowance was irregular and resulted in excess carry forward of unabsorbed investment allowance by Rs.101.42 lakh involving potential tax effect of Rs.46.65 lakh.

The Ministry have accepted the audit observation.

(iii) In Coimbatore, Tamil Nadu charge, in the assessment of a widely held company for the assessment year 1993-94 completed after scrutiny in March 1995, the assessing officer allowed unabsorbed investment allowance of Rs.198.56 lakh relating to assessment years 1985-86 to 1987-88 . Audit scrutiny revealed that the reserve created in the accounts was only Rs.100 lakh and hence the assessee was eligible for an allowance of Rs.133.33 lakh only. This resulted in excess grant of investment allowance of Rs.61.39 lakh (after allowing deduction of Rs.3.84 lakh towards export profits) involving a tax effect of Rs.46.02 lakh (including interest and withdrawal of refund granted to the assessee).

The Ministry have accepted the audit observation.

Non-restriction of investment allowance- Section 34A

4.17.4 Under the Income Tax Act, 1961, as applicable for the assessment year 1992-93, in computing the profits and gains of the business of a domestic company where effect is to be given to the unabsorbed deprecation allowance or unabsorbed investment allowance or both in relation to any previous year relevant to the assessment year commencing on or before the first day of April 1991, the deduction shall be restricted to two third of such allowance or allowances.

In City I, Mumbai charge, in the assessment of a company for the assessment year 1992-93 completed after scrutiny in February 1995 set off of unabsorbed investment allowance of Rs.133.98 lakh relating to the previous years relevant to the assessment years 1986-87 to 1990-91 was allowed. Audit scrutiny revealed that unabsorbed investment allowance relating to the earlier previous years available for set off was Rs.130.79 lakh only. Therefore, the company was entitled to set off unabsorbed investment allowance of Rs.87.19 lakh (being two third of Rs.130.79 lakh) against Rs.133.98 lakh allowed. This resulted in underassessment of income of Rs.46.79 lakh involving short levy of tax of Rs.26.90 lakh.

The Ministry have accepted the audit observation.

Incorrect carry forward and set off of investment allowance- Section 34A

4.17.5 Under the Income Tax Act, 1961, where for any assessment year unabsrobed investment allowance under the head `Profits and Gains of business or profiession' cannot be set off against any other income in the relevant year, such unabsorbed investment allowance shall be carried forward to the subsequent year and shall be set off against the profits and gains of business or profession of that year and if there is no positive income in that year also, it can be carried forward for set off upto a maximum eight assessment year immediately succeeding the assessment year for which was first computed.

Some important cases in which incorrect carry forward and set off of investment allowance were noticed in test check during audit are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	Surat, Gujarat	1993-94 April 1994	143(3)	Unabsorbed investment allowance of Rs.117.86 lakh was allowed to for set off beyond the period of eight assessment years	60.99 (P)
2.	City III, Mumbai	1991-92, 1992-93 March 1994, March 1995	143(3)	Against correct amount of Rs.36.25 lakh, Rs.86.68 lakh was allowed set off and Rs.9.59 lakh was allowed carryforward towards unabsorbed investment allowance	41.40 4.96 (P)

3.	West Bengal II, Calcutta	1992-93 January `95	143(3)	Unabsorbed investment allowance of Rs.2042 lakh was erroneously allowed once again eventhough the same was set off in an earlier assessment year.	19.73 5.87(P)
4.	Bhopal, Madhya Pradesh	1992-93 February 1995	143(3)	Against the correct amount of Rs.105.53 lakh, Rs.129.61 lakh were crroneously set off due to irregular carryforward of unabsorbed investment allowance beyond the period of eight years	23.54
5.	Tamil Nadu IV, Chennai	1992-93 Februry 1995	143(3)	Rs.20.67 lakh was allowed set off even though the same was given set off in earlier assessment years	17.74
6.	Tamil Nadu III, Chennai	1989-90 March 1992	143(3)	An amount of Rs.17.30 lakh was given irregular set off even though the same was set off in an earlier assessment year	17.18
7.	Madurai, Tamilnadu	1992-93 March 1995	143(3)	Rs.12.79 lakh were erroneously set off even though there remained no unabsorbed amount for set off	11.39

The Ministry accepted the audit observations at Sl.Nos. 1,2,4 to 7. Their response to the remaining cases has not been received.

Incorrect/excess set off of unabsorbed depreciation and investment allowance- Section 34A

4.18 Under the Income Tax Act, 1961, in computing the profits and gains of the business of a domestic company in relation to the previous year relevant to the assessment year commencing on the first day of April 1992, where effect is to be given to the unabsorbed depreciation allowance or unabsorbed investment allowance or both in relation to any previous year relevant to the assessment year commencing on or before the first day of April 1991, the deduction shall be restricted to two thirds of such allowance or allowances.

(i) In West Bengal II charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in March 1995 allowing set off of unabsorbed depreciation and investment allowance relating to earlier years aggregating Rs.2351.03 lakh of a company amalgamated with the assessee company. Audit scrutiny revealed that the above amount was not restricted to Rs.1567.35 lakh being two third of the amount as required under the Act. The mistake resulted in underassessment of income by Rs.783.68 lakh involving short levy of tax of Rs.733.72 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(ii) In City I, Mumbai charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in January 1995 at a 'Nil' income after setting off unabsorbed depreciation and unabsorbed investment allowance aggregating Rs.1387.13 lakh out of

total unabsorbed amount of Rs.1463.88 lakh. Audit scrutiny revealed that the unabsorbed depreciation and unabsorbed investment allowance was not restricted to two third of the allowance as required under the Act. The allowable set off would work out to Rs.975.93 lakh. The mistake resulted in under assessment of income of Rs.411.20 lakh with resultant short levy of tax of Rs.376.66 lakh (including interest).

The Ministry have accepted the audit observation.

(iii) In Lucknow, Uttar Pradesh charge, the assessment of a domestic company for the assessment year 1992-93 was completed in a summary manner in February 1993 at the loss of Rs.417.28 lakh after allowing set off of carried forward unabsorbed depreciation allowance of Rs.427.06 lakh of the earlier assessment years. Audit scrutiny revealed that the ubabsorbed depreciation was not restricted to two third of the allowance as required under tha Act, though the mistake was prima facie apparent from the return. This resulted in excess computation of loss of Rs.142.35 lakh leading to short levy of potential tax of Rs.73.66 lakh and additional tax of Rs.14.73 lakh.

The Ministry have not accepted the audit observation stating that on the original return processed in February 1993, the adjustment was not carried out and that the assessee had himself corrected the mistake by filing a revised return on 22 October 1993. They have further stated that the audit had pointed out the adjustment on 4 November 1993, i.e. after the assessee had filed the revised return and contended that case processed on basis of original return cannot be amended on basis of mistakes occured in the original return.

The reply is not tenable as this was clearly a prima facie adjustment which should have been carried out by the assessing officer on basis of the original return and intimated to the assessee. Failure to do so has resulted in the non levy of additional tax and consequential loss of revenue of Rs.14.73 lakh which now cannot be retrieved due to the proviso to Section 143(1B) as the adjustment was not intimated to the assessee. Further, the adjustment required to be made was pointed out by Audit on 20 October 1993, i.e. before the revised return was filed and not on 4 November 1995 as claimed by the Ministry.

(iv) Other important cases of incorrect set off of unabsorbed depreciation and investment allowance noticed in audit are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	City VI, Mumbai	1992-93 March 1995	143(3)	Entire amount of Rs.120.06 lakh was set off instead of restricting the same to Rs.80.04 lakh being two third of the amount	39.64

2.	Jaipur, Rajasthan	1992-93 March 1995	143(3)	Entire amount of Rs.74.04 lakh was given set off instead of restricting the same to Rs.52.07 lakh being two third of the amount	12.63
3.	Gujarat I, Ahmedabad	1992-93 March 1995	143(3)	Entire amount of Rs.30.08 lakh was given set off instead of restricting the same to Rs.20.05 lakh being two third of the amount	10.03

The Ministry have accepted the audit observations at Sl. Nos.2 and 3. The observation at Sl.No.1 has not been accepted by the Ministry stating that the mistake was already in the knowledge of the department and the notice under section 154 was issued prior to the date of audit inspection.

The Ministry's reply is not tenable for the reasons that during the audit inspection neither was any documentary evidence in support of the above contention made available to audit nor the initiation of Section 154 proceedings evident from the assessment record. Further, the Department in their replies of December 1995 and March 1996 had not mentioned of the Section 154 notice now stated by the Ministry but on the contrary had accepted the audit observation.

Incorrect deduction in respect of investment deposit account - Section 32AB

4.19 Under the Income Tax Act, 1961, in the case of an assessee whose total income includes income under the head 'profits and gains of business and profession' and who has out of such income, deposited any amount in a deposit account with the Development Bank within a period of six months from the end of the previous year or before furnishing of the return of income whichever is earlier, or had utilised any amount during the previous year for the purchase of new ship, new aircraft, new machinery or plant, is allowed a deduction equal to the amount deposited and/or any amount so utilised. The amount of deduction is, however, limited to twenty percent of the profits of eligible business or profession as per audited accounts. The profits of the eligible business or profession of an assessee shall be an amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provisions of the Income Tax Act from the profits computed in accordance with Parts II and III of such schedule of the Companies Act and as increased by certain specified items which include, inter alia, the amount of depreciation debited to the profit and loss account.

In Central III, Mumbai charge, the assessment of a Banking Company for the assessment year 1988-89 was completed after scrutiny in March 1990 allowing deduction of Rs. 370.41 lakh towards investment deposit account on the eligible profit of Rs. 1852.05 lakh. The assessment was revised in September 1993 to give effect to appellate orders whereby an amount of Rs. 69.81 lakh on account of depreciation on furniture was disallowed. Audit scrutiny revealed that while computing the deduction in the revised assessment, an amount of Rs. 760.77 lakh being interest

income which was excluded from taxable income being exempt under other provision of the Act, was not deducted from the eligible profits and the depreciation of Rs. 69.81 lakh disallowed in the assessment was not added back in computing the eligible profits. After making the aforesaid adjustments, the eligible profits worked out to Rs. 1161.09 lakh and the allowable deduction to Rs. 232.21 lakh instead of Rs. 370.41 lakh allowed. The mistake resulted in excess allowance of deduction and underassessment of income of Rs. 138.20 lakh involving short levy of tax of Rs. 72.55 lakh.

The Ministry have accepted the audit observation.

Incorrect computation of capital gains- Section 50

4.20.1 Under the Income Tax Act, 1961, as applicable from 1 April 1988, where full value of consideration received or accruing as a result of transfer of any capital asset falling within a block of assets on which depreciation has been allowed under the Act during the previous year exceeds the aggregate amount of (i) the expenditure incurred wholly and exclusively in connection with such transfer, (ii) the written down value of the block of assets at the beginning of the relevant previous year and (iii) the actual cost of any asset falling within that block of assets acquired during the year, such excess shall be deemed as capital gains arising from the transfer of short term capital assets.

(i) In City IX, Mumbai charge, the assessment of a company for the assessment year 1990-91 was completed after scrutiny in March 1993 at a loss of Rs.436.63 lakh. Audit scrutiny revealed that during the previous year relevant to the assessment year, the assessee sold certain capital assets which included three units as going concern for a total sale consideration of Rs.501.11 lakh. Of the above amount, the department brought to tax Rs.88.80 lakh only as long term capital gains, taking into account the original cost of plant and machinery as cost of acquisition instead of the written down value of the assets at the beginning of the previous year. The incorrect computation resulted in under assessment of income of Rs.554.16 lakh involving short levy of tax of Rs.329.16 lakh.

The Ministry have not accepted the audit observations on the ground that as per provisions of section 48, capital gains is to be completed by taking the cost of acquisition and transfer expenses from the amount of sale consideration and the written down value is not the cost of acquisition. They further stated that in view of Supreme Court's decisions in the casae of B.C. Srinivas Shetty and in the case of Mugneeram Bangur (57-ITR-299), the surplus in not chargeable to tax and slump price on sale of unit cannot be apportioned separately to any asset and with the deletion of section 41(2) w.e.f. 1.4.88 the department could not tax the recouped depreciation as 'balancing charges'.

The above reply of the Ministry is not tenable as the observation is not based on provision of Section 41(2), which is no longer on the statute

but on the provisions of Section 50 which clearly state that in the case of depreciable assets.*written down value* has to be deducted from the sale price alongwith transfer expenditure. Further, the judicial decisions quoted in the reply are not germane to the issue here.

(ii) In West Bengal IV charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in March 1995 at a total income of Rs.2812.68 lakh including short term capital gains of Rs.1759.42 lakh arising from transfer of non-residential buildings falling within the block 'Buildings'. Audit scrutiny revealed that in computing capital gains, the written down value of the asset as on 1 April 1990 was considered instead of the written down value as on 1 April 1991, relevant to the previous year 1991-92. The mistake in the computation of capital gains resulted in underassessment of income by Rs.17.46 lakh, after adjustment of unabsorbed depreciation brought forward, with consequent short levy of tax of Rs.15.54 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

4.20.2 Under the provisions of the Act, agricultural land is excluded from the definition of 'capital asset'. It has been judicially held* that where land hitherto used for agriculture by the assessee is transferred for non-agricultural use, it ceased to be agricultural land on the date of transfer.

In North East Region, Shillong charge, the assessment of a tea company for the assessment year 1993-94 was completed after scrutiny in November,1994 after allowing a deduction as claimed for 'compensation on acquisition of land', Rs.113.04 lakh credited to the profit and loss account for the relevant assessment year treating the same as revenue without deduction of cost which was not ascertainable. The assessee, however, claimed that the compensation was not taxable as transferred agricultural land was not a capital asset under the provisions of the Act. Audit scrutiny revealed that the land hitherto used in agriculture for plantation was transferred for non-agricultural use viz., for extraction of mineral oil by an oil company and, therefore, this was not a case of transfer of agricultural land. The status of the land thus changed to non-agricultural on the date of transfer and as such, the exemption was incorrect and resulted in non-assessment of capital gains to the extent of Rs.113.04 lakh involving tax effect of Rs.77.51 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Income not assessed-Section 10(29)

4.21.1 Under the Income Tax Act, 1961, in the case of an authority constituted under any law for the time being in force for the marketing of commodities, any income derived from the letting of godowns or

* Ranchhodbhai Bhaijibhai Patel Vs CIT-81 ITR 446

warehouses for storage, processing or facilitating the marketing of commodities shall not be included in the total income of the assessee.

In Rohtak, Haryana charge, the assessment of a State warehousing corporation for the assessment year 1991-92 was completed after scrutiny in December 1993. Audit scrutiny revealed that the assessee acting as an agent of State Government for purchase and sale of wheat was allowed an exemption of Rs.147.90 lakh in respect of profits earned from trading of wheat with Food Corporation of India. Since the assessee's income was derived from trading of wheat and not from letting out of godowns or warehouses, the said income formed part of total income and was not an income exempt under the aforesaid provisions of the Act. The incorrect exemption of income resulted in under-assessment of income of Rs.147.90 lakh with consequent short levy of tax of Rs.108.94 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Section 68

4.21.2 Under the Income Tax Act, 1961, where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not found to be satisfactory, the sum credited may be charged to income tax as the income of the assessee of that previous year.

(i) In City VI, Mumbai charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in February 1995 for taxable income of Rs.71,270. Audit scrutiny revealed that the assessee received Rs.199.95 lakh from an individual which had been credited in the books and consequential liability shown towards the individual in the accounts maintained by the assessee. A cross verification with case records of the individual assessee, however, revealed that he had shown Rs.10.000 as due from the assessee. Even though the assessee credited the sum as received and also shown it as a liability due, the same was not reflected as debt due by the individual and hence, the amount was an unexplained credit and the same should have been treated as the income of the assessee. Omission to add back the amount has resulted in underassessment of income of Rs.199.85 lakh involving short levy of tax of Rs.195.35 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Section 69 A

(ii) In City III, Mumbai charge, in the assessment of a private limited company engaged in the business of constructing flats for the assessment year 1992-93 completed after scrutiny in March 1995, the assessing officer treated the expenditure towards compensation to tenants amounting to Rs.64.50 lakh as unproved/non genuine. Audit scrutiny revealed that while computing the taxable income the same was reduced from the work in progress instead of adding the same to the

taxable income. This mistake has resulted in underassessment of income by Rs.64.50 lakh leading to short levy of tax of Rs.63.79 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Section 69

(iii) In City XI, Mumbai charge, in the assessment of a company for the assessment year 1992-93 was completed after scrutiny in March 1995. Audit scrutiny revealed that even though the assessing officer disallowed interest of Rs.3.02 lakh on unproved loans, the amount of unproved loan of Rs.43.77 lakh itself remained to be brought to tax. The omission to bring to tax the unproved loan in the assessment year 1990-91 and interest thereon in assessment year 1991-92 has resulted in under assessment of Rs.43.77 lakh involving short levy of tax of Rs.25.81 lakh.

The Ministry have accepted the audit observation.

Section 5

4.21.3 Under the Income Tax Act, 1961, the total income of a person for any previous year includes all income from whatever sources derived which is received or deemed to be received or which accrues or arises or is deemed to accrue or arise during such previous year unless specifically exempted from tax by the provisions of the Act.

(i) In North East Region, Shillong charge, the assessments of a widely held company for the assessment years 1991-92 and 1992-93 were completed after scrutiny in March 1994 and December 1994 respectively. Audit scrutiny revealed that the assessee company had shown Rs.62.81 lakh in the balance sheet being refund of Customs Duty paid in earlier years received in the previous year relevant to the assessment year 1991-92. The amount was, however, not brought to tax in the assessment years 1991-92 and 1992-93 on the plea that the settlement of refund was sub-judice. The action was not correct as the amount was actually received by the assessee and the liability that might arise in the event of the refund being withdrawn was contingent only in nature and not an ascertained liability. Omission to consider the refund of Rs.62.81 lakh resulted in underassessment of income by like amount involving undercharge of tax of Rs.53.96 lakh (including interest) for the assessment year 1992-93.

The Ministry have accepted the audit observation.

(ii) In Tamil Nadu I charge, the assessment of a widely held company for assessment year 1990-91 was revised in October 1993 on a total income of Rs.526.63 lakh. The assessee company had returned interest income of Rs.25.74 lakh which was assessed to tax. Audit scrutiny revealed that the assessee had received interest of Rs.27.81 lakh in the months of April 1989 and May 1989 under the Companies (Profits) Surtax Act, 1964. This amount was neither offered for tax by the

assessee nor was assessed by the assessing officer. The omission resulted in under charge of tax of Rs.21.48 lakh (including withdrawal of interest granted on refund).

The Ministry have accepted the audit observation.

(iii) In Cochin, Kerala charge, the assessment of a company for the assessment year 1992-93 was completed after serutiny in March 1995. Audit scrutiny revealed that commission and interest aggregating Rs.13.13 lakh received during the relevant previous year and accounted for in the profit and loss account were omitted to be included in the total income. The omission resulted in underassessment of income of Rs.13.13 lakh with consequent short levy of tax of Rs.11.32 lakh (including interest).

The Ministry have accepted the audit observation.

Section 41

4.21.4 Under the Income Tax Act, 1961, where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year the assessee had obtained whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit, accruing to him shall be deemed to be profits and gains of business or profession chargeable to income tax as income of that previous year. It has also been judicially held* that subsidy received from the Government was assessable to tax under section 41(1) of the Income Tax Act.

In Bhubaneswar, Orissa charge, the assessment of a government company for the assessment year 1992-93 was completed after scrutiny in March 1995 accepting the loss returned at Rs.4.80 lakh. Audit scrutiny revealed that an amount of Rs.264.01 lakh towards subsidy received from the State Government during the relevant previous year was credited by the assessee to reserves and surplus in the balance sheet instead of crediting the same to the profit and loss account as income. The assessing officer also did not add back the receipt as income in the assessment. The omission resulted in underassessment of income to the extent of Rs.259.22 lakh with consequent non levy of tax of Rs.230.36 lakh (including interest of Rs.96.22 lakh).

The Ministry have accepted the audit observation.

Section 41

4.21.5 Under the Income Tax Act, 1961, any expenditure or trading liability incurred for the purpose of business carried on by the assessee is allowed as a deduction in the computation of business income. Where

* CIT Vs Ampro Foods - 196 ITR 556 (AP)

on a subsequent date, the assessee obtained any benefit in respect of such expenditure or trading liability allowed earlier, by way of remission or cessation thereof, the benefit that accrues thereby, shall be deemed to be profits and gains of business or profession to be charged to tax as the income of the previous year in which such remission or cessation takes place.

(i) In West Bengal III charge, the assessment of a widely held company for the assessment year 1991-92 was completed after scrutiny in March 1994 at a loss of Rs.1317.99 lakh. Audit scrutiny revealed that the assessee company had credited to its profit and loss appropriation account for the relevant previous year, a sum of Rs.416.83 lakh representing an income over expenditure on account of earlier year's adjustment. While completing the assessment, the assessing officer did not consider the said sum of Rs.416.83 lakh as income for the relevant assessment year. As the sum constituted a receipt of the assessee company, the omission to include the same in the assessment led to excess computation of loss by an identical amount involving potential tax effect of Rs.191.74 lakh.

The Ministry have accepted the audit observation.

(ii) In Gujarat I charge, the assessment of a private limited company for the assessment year 1991-92 was completed after scrutiny in December 1993. Audit scrutiny revealed that a receipt of Rs.81.97 lakh towards refund of Central Excise Duty was not offered for tax on the plea that appeal could be filed by the Excise Department against the refund order. Since the liability for Excise Duty was allowed as a deduction in the earlier assessment year, the amount of refund should have been treated as income and assessed to tax. Omission to do so resulted in underassessment of income by Rs.81.97 lakh involving short levy of tax of Rs.70.18 lakh (including interest).

The Ministry have accepted the audit observation.

(iii) In Gujarat I charge, the assessment of a private limited company for the assessment year 1991-92 was completed after scrutiny in March 1994. Audit scrutiny revealed that the assessee received a remission of interest of Rs.29.05 lakh on loan borrowed by it from a Nationalised Bank. The remission so received was neither returned by the assessee nor was it assessed to tax by the assessing officer. Since the liability for interest was allowed as a deduction in earlier assessment years, the amount of remission should have been treated as income and assessed to tax. The omission resulted in underassessment of income by Rs.29.05 lakh involving short levy of tax of Rs.25.86 lakh (including interest).

The Ministry have accepted the audit observation.

Section 199

4.21.6 Under the Income Tax Act, 1961, any deduction of tax made at source and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made and credit shall be given for such tax on the production of the certificates furnished under the act in the assessment for the assessment year for which such income is assessed.

In Bhubaneswar, Orissa charge, the assessment of a private limited company for the assessment year 1990-91 was completed after scrutiny in March 1993. Audit scrutiny revealed that the assessee was allowed credit for tax of Rs.1.01 lakh deducted at source from the payments of Rs.46.82 lakh received by the assessee in respect of execution of electrical contract works. As against the above receipt of Rs.46.82 lakh, Rs.34.27 lakh only were brought to tax treating the balance as advance in the nature of capital receipt on the ground that the advance was subsequently adjusted against the bills payable by the contracting agency as contended by the assessee. As credit for tax deducted at source was allowed for the entire amount of Rs.46.82 lakh, the same was required to be included in the taxable income for the assessment year 1990-91. Omission to do so resulted in under assessment of income of Rs.12.55 lakh involving short levy of Rs.14.24 lakh (including interest).

The Ministry have not accepted the audit observation stating that the amount of Rs.12.55 lakh related to mobilisation advance which was in the nature of a capital advance and was adjusted in subsequent years against regular bills raised by the assessee.
The reply is not tenable as the total receipts on which tax was deduted at source and credit allowed should have been brought to tax. Moreover the Ministry have accepted the audit observation on the similar point brought out in para 4.16.3 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1995 on Union Government, Revenue Receipts-Direct Taxes.

Incorrect allowance of prior-period expenditure- Section 5,45 and 43(2)

4.21.7 Under the Income Tax Act, 1961, the business income shall be computed in accordance with the method of accounting regularly adopted by the assessee. The mercantile system of accounting bring to credit what is due immediately it becomes legally due but before it is actually received and brings to debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed. Only such expenses as are relevant to that year are allowable as deduction from a previous year's income.

(i) In Coimbatore, Tamil Nadu charge, the assessment of a State Government undertaing for the assessment year 1992-93 was completed after scrutiny in February 1995 at a loss of Rs.223.30 lakh. The assessee charged off in its profit and loss account a sum of Rs.350.15 lakh being the increase in consumption value of raw material relating to the accounting years 1985-86 to 1990-91 and this was allowed by the

4.21

assessing officer. It was observed from the notes on accounts forming part of the annual report of the company that till then supply of raw magnesite for internal consumption was accounted for at cost or net realisable value whichever was lower pending approval from the State Government. Based on Goverment's decision in the current year, such supplies for the years 1985-86 to 1990-91 were valued at market price and a total amount of Rs.350.15 lakh had been charged off by debting the profit and loss account for the year 1991-92 . As the income is computed on mercantile basis, in respect of the previous year relevant to the assessment year 1992-93, the charge relating to earlier periods was not an allowable deduction. Omission to disallow this amount resulted in under assessment of income by Rs.350.15 lakh involving short levy of tax of Rs.111.60 lakh (including interest) besides a potential tax effect of Rs.115.55 lakh.

The Ministry have accepted the audit observation.

(ii) In West Bengal I charge, the assessment of a closely held company for the assessment year 1991-92 was completed after scrutiny in July 1993 and revised in August 1993. During the relevant previous year, the assessee company derived income of Rs.47.41 lakh from some additional work apart from its regular contracted item of work. The said sum of Rs.47.41 lakh for the additional work done, though not actually received, was however provided in the accounts and included in the total turnover of the business on accrual basis. Audit scrutiny revealed that the assessing officer, in the computation of the total income, deducted the amount of Rs.47.41 lakh from the total turnover on the ground that the sum was not actually received but merely represented the amount receivable. As the assessee was following mercantile system of accounting, accrued income of Rs.47.41 lakh should have been brought to tax. Omission to do so resulted in an underassessment of income of Rs.47.41 lakh involving tax undercharge of Rs.24.53 lakh

The Ministry have accepted the audit observation.

(iii) In Bhubaneswar, Orissa charge, the assessment of a public limited company for the assessment year 1989-90 originally completed after scrutiny in February 1992 was subsequently revised in November 1992 and again in July 1995 determining total income of Rs.85.77 lakh which was adjusted against unabsorbed business loss, depreciation allowance and investment allowance of earlier years amounting to Rs.105.21 lakh and balance unabsorbed losses amounting to Rs.19.44 lakh was allowed to be carried forward to the subsequent years. Audit scrutiny revealed that an amount of Rs.39.85 lakh being expenditure relating to earlier years was debited to the profit and loss account of the relevant previous year. As the assessee company was following mercantile system of accounting, the amount should have been disallowed and added back while determining the taxable income. But the assessing officer erroneously omitted to add back the amount to the taxable income of the

assessee company though the assessee correctly added the amount to the taxable income while filing the return. The mistake resulted in underassessment of income of Rs.39.85 lakh involving under charge of tax of R.20.92 lakh (including potential tax effect of Rs.10.20 lakh)

The Ministry have accepted the audit observation.

Incorrect carry forward and set off of losses- Section 72(3)

4.22.1 Under the provisions of the Income Tax Act, 1961, where the net result of the computation under the head profits and gains of business or profession' is a loss to the assessee and such loss including depreciation cannot be wholly set off against income under any other head of the relevant year, so much of the loss as has not been set off shall be carried forward to the following assessment year/years to be set off against the profits and gains of business or profession. No loss shall be carried forward for more than eight assessment years immediately succeeding the assessment year for which the loss was first determined.

(i) In City II, Mumbai charge, the assessment of a public limited company for the assessment year 1991-92 originally completed after scrutiny in February 1994 was subsequently revised in August 1994 at an income of Rs.2.46 lakh. Audit scrutiny revealed that Rs.97.61 lakh representing business loss for the assessment year 1982-83 was incorrectly allowed to be set off even thoughs the same could be set off till assessment year 1990-91, it lapsing thereafter. The mistake resulted in under assessment of income of Rs.97.61 lakh involving short levy of tax of Rs.95.41 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) In West Bengal IV and XI charges, the assessments of two companies for the assessment year 1992-93 were completed after scrutiny in March 1995 and April 1994 determining incomes at 'nil', inter alia, allowing set off of unabsobed loss/ depreciation and unabsorbed loss of previous years against their total incomes of Rs.89.95 lakh and Rs.149.50 lakh respectively. Audit scrutiny revealed that the above incomes of the assessees included Rs.64.53 lakh on account of capital gains and income from other sources in respect of one assessee and Rs.15.02 lakh of capital gains in respect of the other. As the unabsorbed losses/depreciation of earlier years could be set off against the income from business only, the adjustment thereof against the income from capital gains and other sources was thus, irregular. The erroneous adjustment resulted in underassessment of incomes by Rs.57.27 lakh and Rs.15.02 lakh with resultant short levy of income tax of Rs.40.11 lakh and Rs.12.95 lakh respectively including interest.

The Ministry have accepted the audit observations.

Section 115A

4.22.2 Under the special provisions of Income Tax Act, 1961, income by way of royalty or fee for technical services in case of foreign company is taxed on gross basis at the flat rate provided in Chapter XII relating to determination of tax in certain special.cases. Income earned by a foreign company for technical services received from Government or an Indian concern in pursuance of an agreement made shall be taxable at the rate of thirty percent.

In Delhi II charge, the assessment of a foreign company for the assessment year 1991-92 was completed after scrutiny in January 1994 at an income of Rs.634.95 lakh after setting off unabsorbed losses amounting to Rs.3,351.92 lakh relating to earlier years. Audit scrutiny revealed that the income of the assessee mainly consisted of Rs.3748.50 lakh towards fees for technical services received from an Indian concern which was required to be taxed on gross basis at the rate of 30 per cent. The incorrect setting off of brought forward losses against this income resulted in underassessment of income of Rs.3,113.54 lakh involving short levy of tax of Rs.622.71 lakh in addition to excess payment of Rs.174.36 lakh by the Government by way of interest.

The reply of the Ministry to the audit observation has not been received.

Section 80

4.22.3 No loss under the head profit and gains of business or profession' is allowed to be carried forward from 1 April, 1985 for set off unless the assessee had filed the return of loss voluntarily within the due date or within such further time as may be allowed by the assessing officer.

In Cochin, Kerala charge, in the case of a company for the assessment year 1985-86, the date for submission of return was allowed upto 30 September, 1985. The assessee, however, submitted the return only on 15 November, 1985 and the belated submission was not covered by extension of time. Audit scrutiny in October 1995 revealed that in the assessment completed in February 1988, as revised in August 1989 and May 1994, the business loss of Rs.714 lakh was allowed to be carried forward and this was set off against the profit of the assessment year 1990-91. As the loss was not determined in pursuance of a return submitted within the time allowed as prescribed in the Act, the carry forward of loss allowed in the aforesaid assessment and its subsequent set off were not in order. The irregular carry forward of loss of Rs.714 lakh led to a short levy of tax of Rs.417 lakh (including interest).

The Ministry have accepted the audit observation.

4.22.4 Other improtant cases of incorrect carry forward and set off of losses are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs. in lakh)
1.	WB IV, Calcutta	1992-93 December 1994	143(3)	Out of unabsorbed losses aggregating Rs.456.50 lakh relating to assessment years 198-87, Rs.195.34 lakh were erroneously allowed set of even though the same were set off already in assessment year 1991-92	101.09 (P)
2.	WB IV, Calcutta	1991-92 and 1992-93/ March 1994 and March 1995	143(3)	As against Rs. 53.54 lakh of unabsorbed losses of previous years, Rs.162.53 lakh were incorrectly allowed set off leading to aggregating underassessment of income of Rs.98.99 lakh during the two years	81.98
3.	WB VIII, Calcutta	1991-92 January 1994	143(3)	As against the correct amount of Rs.10.45 lakh of unabsorbed losses pertaining to previous years, Rs.141.77 lakh were incorrectly allowed carry forward leading to excess carry forward of Rs.131.32 lakh	67.96 (P)
4.	City III, Mumbai	1991-92 March 1994	143(3)	Amount of Rs.531.71 lakh was set off erroneously towards unabsorbed business losses/investment allowance of earlier years against the correct amount of Rs.461.52 lakh	62.48
5.	TN IV, Chennai	1992-93 February 1995	143(3)	As against correct amount of Rs.60.56 lakh remained to be carried forward, an amount of Rs.179.12 lakh was allowed carry forward towards unabsorbed depreciation and investment allowance	61.35 (P)
6.	TN VII, Chennai	1992-93 February 1995	143(3)	As against correct amount of Rs.43.37 lakh required to be set off towards unabsorbed loss and depreciation, Rs.88.51 lakh were allowed set off	44.18
7.	TN I, Chennai	1992-93 September 1994	143(3)	Even though unabsorbed depreciation of earlier year was reduced to Rs.8.74 lakh on revision in June 1994, an amount of Rs.76.24 lakh was erroneously allowed to be carried forward for set off	34.93 (P)
8.	City III, Mumbai	1991-92 October 1993	143(3)	Against correct amount of Rs.24.38 lakh available for set off towards unabsorbed losses of earlier years, an amount of Rs.62.17 lakh was erroneously set off	31.68

9.	Karnataka I, Bangalore	1991-92 February 1994	143(3)	An amount of Rs.110.18 lakh was allowed to be carried forward towards unabsorbed business losses of earlier years against the correct amount of Rs.42.30 lakh available	31.23
10.	Trivandrum, Kerala	1989-90 March 1992 (revised in December 1992)	143(3)	Set off of Rs.31.67 lakh allowed provisionally towards unabsorbed business losses of the assessment years 1987-89 was omitted to be withdrawn even though the assessments of these years were redone and no losses remained for carry forward	23.79
11.	Surat, Gujarat	1991-92 October 1993	143(3)	Rs.20.58 lakh were erroneously allowed to be set off towards unabsorbed loss of previous year instead of the correct amount of Rs.3.79 lakh available for set off	13.07

The Ministry have accepted the audit observations at Sl.Nos. 1,3 to 6 and 8 to 11. Their response to the remaining cases has not been received.

Section 115J

4.22.5 The Act also provides that the application of the special provisions under Section 115J of the Act would not affect carryforward of unabsorbed depreciation, unabsorbed investment allowance and unabsorbed business losses to the extent not set off.

In West Bengal II charge, an assessee company in which the public are not substantially interested, in the assessment made after scrutiny in September 1992, the assessing officer, determined total income at Rs.39.66 lakh under the normal provisions of the Act after allowing set off of brought forward business loss of Rs.309.61 lakh as claimed by the assessee and a deduction of Rs.43.34 lakh admissible under Chapter VIA of the Act. In September 1994, the Appellate Authority allowed the claim preferred by the assessee for carry forward of business loss of Rs.85.21 lakh being the difference between the income under the special provisions and the income determined under the normal provisions of the Act. Audit scrutiny revealed that while revising the assessment in view of the appellate order in February 1995, the assessing officer determined the amount of carry forward of business loss at Rs.107.15 lakh by adjusting the brought forward business loss of Rs.202.46 lakh in place of Rs.309.61 lakh from the gross total income of Rs.370.22 lakh and allowing deduction of Rs.42.89 lakh in place of Rs.43.34 lakh admissible under chapter VIA of the Act leaving a balance of Rs.124.87 lakh as offered by the assessee for taxation under the special provisions of the Act. As the amount of total income assessed under the normal provisions was Rs.39.66 lakh after allowing set off of unabsorbed business loss of Rs.309.61 lakh along with deduction admissible under chapter VIA, further allowance of carryforward of loss of Rs.107.15 lakh for future set off was not in order. As the palpable mistake in the

appeal order was not pointed out by suggesting a second appeal before giving effect to the appellate order, there was incorrect carry forward of loss by Rs.107.15 lakh in the assessment for the assessment year 1990-91. It was further observed that the assessing officer allowed set off of Rs.107.15 lakh in the revised assessment for the assessment year 1991-92 completed in June 1995. The above irregularity in setting off of incorrect brought forward loss of Rs.107.15 lakh involved tax effect of Rs.57.86 lakh for the assessment year 1991-92.

The reply of the Ministry to the audit observation has not been received.

Section 143(1)(b)

4.22.6 Under the Income Tax Act, 1961, as applicable from the assessment year 1989-90, where as a result of an order of scrutiny assessment or best judgement assessment or on revision, rectification or on settlement relating to any earlier assessment year and passed subsequent to the filing of return of income processed under the summary assessment scheme for any subsequent year, there is any variation in the carry forward of loss, deduction, allowance or relief claimed, in the return and as a result of that if any tax or interest is found due, an intimation shall be sent to the assessee specifying the sum so payable and such intimation shall be deemed to be a notice of demand and all the provisions of the Act shall apply accordingly and if a refund is due, it shall be granted to the assessee.

(i) In Delhi II charge, the assessment of a private limited company for the assessment year 1993-94 was completed after scrutiny in July 1994 adjusting business loss of Rs. 98.88 lakh relating to previous year and allowing carry forward of loss of Rs. 497.23 lakh. Audit scrutiny revealed that income of the assessee company for the assessment year 1992-93 was revised after scrutiny in March 1994 from Rs. 239.75 lakh to Rs. 545.95 lakh. However, the loss to be carried forward was accordingly not revised. The omission resulted in excess carry forward of loss of Rs. 306.20 lakh involving potential tax effect of Rs. 176.07 lakh.

The Ministry have accepted the audit observation.

Section 71

(ii) In Tamil Nadu IV charge, in the assessment of a company for assessment year 1989-90 completed after scrutiny in February 1995, unabsorbed depreciation of Rs.17.76 lakh relating to assessment year 1988-89 was set off in computing the total income of Rs.47.45 lakh. Audit scrutiny revealed that the assessment for assessment year 1988-89 was revised in January 1994 in which the loss to be carried forward was determined at Rs.4.13 lakh,as against of Rs.17.76 lakh. This resulted in excess set off of Rs.13.63 lakh involving short levy of Rs.12.31 lakh (including interest).

The Ministry have accepted the audit observation.

4.22.7 While computing the income chargeable to tax, the assessing officer takes the profits or loss as per the profit and loss account of the assessee as the starting point and then adds back or deducts the amount not allowable or which requires special consideration. The Central Board of Direct Taxes, have from time to time, issued instructions stressing the necessity for ensuring accuracy in the computation of income and tax, carryforward of figures etc.

In West Bengal I charge, the assessment of a widely held company for the assessment year 1988-89, originally completed after scrutiny in March 1991, was rectified in June, 1992 computing the total income at `nil' after set off of unabsorbed investment allowance of Rs.207.23 lakh of earlier assessment years and allowing carry forward of the balance unabsorbed investment allowance of Rs.141.12 lakh. Audit scrutiny revealed that in the rectification assessment, the assessing officer started with the income of Rs.448.94 lakh as determined in the original assessment made in March, 1991. This income was arrived at after deducting a sum of Rs.130.36 lakh from the net profit as per the profit and loss account of the relevant previous year for separate consideration and adding it as income from other sources. However, in the computation of income in the rectification assesment, the sum of Rs.130.36 lakh was again deducted from the amount of Rs.448.91 lakh as excess computation of `income from other sources'. This resulted in excess carry forward of investment allowance by Rs.130.36 lakh involving potential tax effect of Rs.68.44 lakh.

The Ministry have accepted the audit observation.

Section 79

4.22.8 Under the Income Tax Act, 1961, where a change in share holding has taken place in a previous year in the case of a company, not being company in which the public are substantially interested, no loss incurred in any year prior to the previous year, shall be carried forward and set-off against the income of the previous year unless of the last day of the previous year, the shares of the company carrying not less than fifty one per cent of voting power were beneficially held by persons who beneficially held shares, of the company carrying not less than fifty one per cent of the voting power on the last day of the year or years in which the loss was incurred.

In Patiala charge, the assessments of a private limited company dealing in shares, for the assessment years 1991-92 and 1992-93 were completed after scrutiny in March 1993. In the assessment year 1991-92, loss of Rs.27.27 lakh claimed by the assessee due to fall in the prices of shares was disallowed by the assessing officer treating the assessee company as bogus since no business activity was stated to have been carried on by it and company was having fully paid up capital of Rs.200 only. Thus, purchase of shares were treated as investment and interest income was assessed on income of the company. The Commissioner of Income Tax, however, held that the assessee was carrying on business

activities and consequently, in the assessment year 1992-93 the assessing officer allowed the set off of loss of Rs.27.27 lakh and Rs.4.59 lakh as dividends distributed against the income of Rs.31.86 lakh and computed income as 'nil'. Audit scrutiny revealed that during the previous year relevant to assessment year 1992-93, the paid up capital as shown in the balance sheet was Rs.5 lakh which was held by two other private limited companies. Since there had been a change in the share holding of the company and shareholders holding the beneficial interest during the previous year and the year in which the loss was incurred were not the same, the set off of loss of Rs.27.27 lakh against the income of assessment year 1992-93 was irregular. This irregular set off resulted in underassessment of income of Rs.26.85 lakh (after allowing distributed dividend of Rs.5 lakh) involving short levy of tax of Rs.15.38 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Mistakes in assessments while giving effect to appellate orders

4.23 Under the Income Tax Act, 1961, an assessee who is aggrieved can appeal to the Commissioner of Income Tax (Appeals) against an order of assessment made by the assessing officer and latter shall comply with the direction given by him in the appellate order. Underassessment of tax of substanital amounts and over charge of tax in a few cases on account of avoidable mistakes attributable to negligence on the part of assessing officers have been mentioned year after year in the Reports of the Comptroller and Auditor General of India. Despite this and issue of repeated instructions by the Government.,such mistakes continue to occur suggesting the need for close supervision and control.

(i) In West Bengal II charge, the assessment of a widely held company for the assessment year 1991-92 was completed after scrutiny in March 1994 making an addition of Rs.87.37 lakh and Rs.3.80 lakh on non-tea income and tea income respectively on various items. On an appeal perferred by the assessee, the Commissioner of Income Tax (Appeals) in his order in December 1994 granted relief aggregating Rs.61.40 lakh against the total amount of Rs91.17 lakh. Audit scrutiny revealed that while giving effect to the above appellate order in January 1995, the above sums were allowed as relief from the income originally computed and shown by the assessee in its return instead of from the income determined by the assessing officer in the original assessment. The mistake resulted in underassessment of income by Rs.91.17 lakh with consequent short levy of tax of Rs.72.13 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(ii) In Madurai, Tamil Nadu charge, the assessment of a closely held company for assessment year 1990-91 originally completed after scrutiny in July 1992 was revised in September 1993 to give effect to Tribunal's decision wherein modernisation expenses of Rs.58.63 lakh

treated as capital expenditure in original assessment were allowed as revenue expenditure. Audit scrutiny revealed that depreciation of Rs.20.21 lakh and investment allowance of Rs.11.73 lakh allowed on this in the original assessment were not, however, withdrawn. This resulted in under assessment of income of Rs.31.94 lakh with consequent short levy of tax of Rs.29.59 lakh (including interest).

The Ministry have accepted the audit observation.

(iii) In Madurai, Tamil Nadu charge, in the assessment of a widely held company for the assessment year 1990-91 completed after scrutiny in March 1993 on a total income of Rs.305.28 lakh, a claim of Rs.103.43 lakh towards expenditure incurred on replacement of machinery as revenue expenditure was disallowed. Audit scrutiny revealed that the assessee's claim was subsequently allowed as revenue expenditure by the appellate authority and the depreciation of Rs.34.47 lakh was withdrawn in the revised assessment completed in March 1994. However, in the assessment for the assessment year 1991-92 revised in March 1995, depreciation originally allowed in December 1993 was not withdrawn. The omission resulted in underassessment of income of Rs.17.24 lakh with consequent short demand of Rs.10.34 lakh (including interest).

The Ministry have accepted the audit observation.

(iv) In Central II, Chennai charge, the assessment of a widely held company for the assessment year 1990-91 was completed after scrutiny in February 1993 on a total income of Rs.390.23 lakh. While computing the total income, the assessee had claimed a deduction of Rs.180.53 lakh credited to the profit and loss account on accrual basis but not actually realised during the previous year. While assessing the income, the assessing officer made an addition of Rs.163.17 lakh to the business income but omitted to assess the balance of Rs.17.36 lakh representing interest under 'other sources'. On appeal, it was held that the addition made should be deleted. Audit scrutiny revealed that while giving effect to the appellate orders, relief was allowed for the entire amount of Rs.180.53 lakh. As the sum of Rs.17.36 lakh was not actually assessed to tax in the original assessment order, relief should have been restricted to Rs.163.17 lakh. The mistake resulted in underassessment of income by Rs.17.36 lakh involving a short levy of tax of Rs.10.31 lakh (including withdrawal of interest).

The Ministry have accepted the audit observation.

Incorrect allowance of deduction under chapter VI-A- Sections 80A, 80AB and 80B

4.24 Under the Provisions of the Income Tax Act, 1961, certain deductions are admissible from the gross total income of an assessee in arriving at the net income chargeable to tax. The overriding condition is that the total deduction should not exceed the gross total income of the assessee which has been defined in the Act as the total income

computed as per provisions of the Act before allowing deductions under chapter VIA but after setting off of any unabsorbed loss, depreciation, investment allowance etc. pertaining to earlier years. Where the set off unabsorbed loss, depreciation investment allowance etc. of earlier years results in reducing the total income to 'nil' or to a 'loss', no deduction under Chapter VIA is admissible.

(i) In Delhi I charge, the assessment of a Government undertaking for the assessment year 1992-93 was completed after scrutiny in February 1995 at 'nil' income, inter alia, allowing deductions of Rs.4889.99 lakh under chapter VI-A and adjusting earlier years losses to the extent of Rs.5732.75 lakh. Audit scrutiny revealed that brought forward loss relating to previous years amounting to Rs.95322.38 lakh were not adjusted against the income before allowing deductions under Chapter VIA, which if allowed to be adjusted as per provisions of the Act, would have left no income for any deduction under Chapter VIA. The incorrect allowance of deductions resulted in underassessment of income of Rs.4889.99 lakh involving potential tax effect of Rs.2530.57 lakh.

The Ministry have accepted the audit observation.

(ii) In West Bengal II charge, in the assessment of a widely held company for the assessment year 1991-92 completed after scrutiny in March 1994 and subsequently rectified in June 1994, a deduction of Rs.411.66 lakh was allowed towards export profits with reference to a gross total income of Rs.2399.41 lakh. Audit scrutiny revealed that the above income was arrived before set off of the unabsorbed investment allowance relating to previous year which was not in order, The business income after adjusting the unabsorbed investment allowance of previous years would work out Rs.1827.07 lakh on which the admissible deduction would be Rs.313.46 lakh as against Rs.411.66 lakh allowed. This resulted in excess allowance of Rs.98.20 lakh with consequent short levy of tax of Rs.63.51 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(iii) In Bhopal, Madhya Pradesh charge, in the assessment of a company for the assessment year 1991-92 completed after scrutiny in March 1994, deductions aggregating Rs.286.07 lakh were allowed under Chapter VIA of the Act. Audit scrutiny revealed that the above deductions were allowed before setting off unabsorbed depreciation and investment allowance of earlier years which was not in order. After setting off the above, the total allowable deductions worked out to Rs.207.78 lakh an against Rs.286.07 lakh allowed by the department. The mistake resulted in underassessment of income of Rs.78.29 lakh with consequent short levy of tax of Rs.36.01 lakh.

The Ministry have accepted the audit observation.

Incorrect deduction in respect of profits from new industrial undertaking in the backward area after 31 March 1981- Sections 80HH and 80I

4.25 Under the Income Tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking established in a backward area, the assessee is entitled, subject to certain provisions, to a deduction of twenty per cent of such profits and gains for a period of ten assessment years including the one relevant to the previous year in which the assessee begins to manufacture or produce articles or things. A further deduction of twenty five per cent of such profits and gains is also admissible if the industrial undertaking goes into production after 31 march 1981. It has been judicially held* that the use of the term 'derived from' in the relevant provisions of the Act indicates the restricted meaning given by the Legislature to cover only the profits and gains directly accruing from the conduct of the business undertaking.

(i) In Hyderabad, Andhra Pradesh charge, the assessment of a widely held company for the assessment year 1991-92 was completed after scrutiny in January 1994 allowing deductions aggregating Rs.32.42 under the above provisions. Audit scrutiny revealed that the profit of Rs.72 lakh included Rs.53.51 lakh being interest income and income from sale of replenishment licences. As the deductions were admissible only in respect of profits and gains derived from the business activity, the deduction allowed in respect of other incomes was not in order. After excluding the above amounts, the aggregate admissible deductions would work out to Rs.8.34 lakh as against Rs.32.42 lakh allowed by the department leading to excess allowance of deduction of Rs. 24.08 lakh with resultant underassessment of income by an identical amount and short levy of tax of Rs. 14.29 lakh (including excess payment of interest on refund).

The Ministry have accepted the audit observation.

(ii) In Bhopal, Madhya Pradesh charge, the assessment of a closely held company for the assessment year 1992-93 was completed after scrutiny in March 1995 at an income of Rs.17.48 lakh after allowing deductions in respect of newly established industrial undertaking in backward area and newly industrial established undertaking after 31 March 1981. Audit scrutiny revealed that 'other income' and 'interest income' aggregating Rs.29.05 lakh not derived directly from industrial activity were not deducted while computing the profits from business. This omission resulted in excess allowance of a toal deduction of Rs.11.62 lakh involving short levy of tax of Rs.11.49 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

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* **Cambay Electric Supply Industrial Co. Ltd. Vs CIT, Gujarat II-113 ITR 84 (SC).**

Incorrect allowance of deduction in respect of profits and gains from newly established small scale industrial under-taking in certain areas- Section 80HHA

4.26 Under the Income Tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a small scale industrial undertaking, there shall be allowed in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty percent thereof. For this purpose, an industrial undertaking shall be deemed to be small scale industrial undertaking, if the aggregate value of the machinery and plant installed for the purposes of the business does not exceed Rs.35 lakh as on the last day of the previous year. Further, the value of any machinery or plant shall be the actual cost thereof to the assessee.

(i) In Coimbatore, Tamil Nadu charge, the assessments of a closely held company for the assessment years 1989-90 to 1993-94 were completed after scrutiny between March 1992 and December 1994 allowing deductions aggregating Rs.159.77 lakh in respect of the newly established small scale industrial undertaking. Audit scrutiny revealed that the aggregate value of plant and machinery on the last day of the relevant previous years exceeded Rs.35 lakh and as such, the company was not a small scale industrial undertaking and hence was not entitled to the deduction. The irregular allowance of deduction resulted in underassessment of income of Rs.159.77 lakh with consequent short levy of tax of Rs.112.11 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) In Delhi II charge, in the assessment of a company for the assessment year 1993-94 completed after scrutiny in January 1995, a deduction of Rs. 30.15 lakh was allowed in respect of profits and gains from newly established small scale industrial undertaking in certain area. Audit scrutiny revealed that the aggregate value of plant and machinery on the last day of the previous year relevant to the assessment year 1993-94 exceeded Rs. 35 lakh and hence the company could not be described as small scale industrial undertaking and thus the deduction should not have been allowed to the company. The mistake resulted in underassessment of income of Rs. 30.15 lakh with resultant short levy of tax of Rs. 26.88 lakh (including interest).

The Ministry has accepted the audit observation.

Incorrect allowance of deduction in respect of export profits

Incorrect computation of profits- Section HHC

4.27.1(i) Under the Income Tax Act, 1961, as amended by the Finance Act, 1988, with effect from 1 April 1989, an assessee being an Indian company or other assessee resident in India, engaged in export business, is entitled to a deduction equal to the profit derived from the export of goods or merchandise other than the exempted items if the sale proceeds thereof are received in convertible foreign exchange. Where the business of the assessee does not consist exclusively of export of goods/merchandise, profit derived from export shall be the amount which bears to the profit of the assessee as computed under the head 'profits and gains of business or profession' the same proportion as

export turnover to the total turnover. With effect from 1 April 1992, for the purposes of the deduction, `profits of the business' means the profits of the business as computed under the head `profit and gains of business or profession as reduced by ninety per cent of certain receipts specified in the Act. The profit so derived from export shall be futher increaed by the amount which bears to ninety per cent of export incentives, the same proportion as the export turnover bears to total turnover. Some important cases are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs. in lakh)
1.	City II, Mumbai	1992-93 December 1994	143(3)	Amount of Rs.183.14 lakh being assignment of tenancy rights and interest income and loss of Rs.95.80 lakh from export of trading goods were not reduced to arrive at the adjusted profits of the business. This resulted in excess allowance of deduction and underassessment of income by Rs.131.41 lakh	112.88
2.	Jalandhar, Punjab	1992-93 March 1995	143(3)	Instead of the loss of Rs.320.44 lakh, the profits from business were adopted as `nil' which resulted in excess allowance of deduction of Rs.119.33 lakh	61.75
3.	West Bengal III, Calcutta	1990-91 March 1993	143(3)	Dividend income and interest income aggregating Rs.404.67 lakh were not deducted in computing the profits of business which resulted in excess allowance of deduction by Rs.45.83 lakh involving tax effect of Rs.24.75 lakh. As the revision of the assessment was barred by limitation of time, the mistake resulted in loss of revenue	24.75
4.	West Bengal II, Calcutta	1990-91 March 1993 (Revised in December 1993)	143(3)	The profits of the business were arrived at before setting off unabsorbed depreciation of Rs.105.06 lakh relating to earlier years which resulted in excess allowince of deduction of Rs.29.06 lakh	24.01
5.	West Bengal I, Calcutta	1991-92 March 1994 (Revised in March 1995)	143(3)	Deduction of Rs.23.59 lakh originally allowed in March 1994 was omitted to be withdrawn in the revised assessment made in March 1995 even though the business profits worked out to a negative figure on account of further set off of Rs.1341.89 lakh allowed as carry forward loss	18.66
6.	Bhubaneswar, Orissa	1993-94 October 1994	143(3)	Even though the profits of business were determined at Rs.15,595 in the revised assessment made in May 1995 on appeal, an amount of	11.65

		(Revised in May 1995)		**Rs.18.03 lakh was allowed as deduction towards export profits. This resulted in underassessment of income by Rs.17.87 lakh**	
7.	**Central I, Mumbai**	**1992-93 March 1995**	**143(3)**	**Even thogh not received in convertible foreign cxchange, an amount of Rs.1.83 lakh was not deducted while computing profits from export of trading goods. In additions, the profits on export of manufacturing goods were adopted at `nil' instead of loss of Rs.8.91 lakh. Due to above, there was underassessment of income by Rs.10.73 lakh**	**10.62**

The Ministry have accepted the audit observations at Sl. Nos. 1,3,5 and 7. Their response to the remaining cases has not been received.

(ii)(a) In West Bengal IV charge, the assessment for the assessment year 1992-93 of a widely held company angaged in the business of export of manufactured as well as trading goods was completed after scrutiny in March 1995 allowing deduction of Rs.155.98 lakh towards export profits. Audit scrutiny revealed that while computing the above deduction, the assessing officer had taken into consideration only the profit of Rs.94.69 lakh in respect of manufactured goods and export incentives amounting to Rs.61.29 lakh but omitted to consider the loss of Rs.170.99 lakh worked out by himself in respect of trading goods. Had this loss been taken into account, the resultant amount would be negative and thus no deduction would be admissible. The omission of not considering the loss under trading goods resulted in underassessment of income of Rs.155.98 lakh involving short levy of tax of Rs.80.72 lakh.

The Ministry have not accepted the audit observation on the ground that the deduction was granted on the basis of the certificate of the Accountant furnished by the assessee alongwith the return to the effect that the deduction was correctly claimed. The Ministry have further stated that no provision exists in the Act for setting off the loss sustained in export of manufactured goods against profits derived from export of trading goods or vice versa.

The Ministry's reply is not tenable in view of the provisions under section 80HHCC which clearly indicate that where the export out of India is of goods manufactured by the assessee and also of trading goods, the profits derived shall be the amounts mentioned in clauses (i) and (ii) thereunder, i.e. aggregate of both the amounts or net result thereof, is to be considered. Further, the certificate of the Accountant is the procedural requirement of the provisions which cannot override the substantive provisions mentioned above. Similar audit observation included in para No.4.271(i) (Sl.No.1 of Table) have been accepted by

the Ministry of Finance.

(b) In West Bengal II charge, the assessment of a widely held company for the assessment year 1993-94 was completed in a summary manner in June, 1994 on a total income of Rs.3602.73 lakh after allowing a deduction of Rs.28.58 lakh towards export profits which comprised of Rs.27.44 lakh and Rs.1.14 lakh being profit in respect of goods manufactured and exported by the assessee and proportionate export incentives respectively. Audit scrutiny revealed that the assessee had incurred a loss of Rs.28.25 lakh in respect of export of trading goods and if this loss had been considered, the resultant amount would be negative and the assessee would not be entitled to any deduction towards export profit. The omission to consider the loss on export of trading goods resulted in underassessment of income by Rs.28.25 lakh involving short levy of tax of Rs.17.16 lakh including additional tax.

The reply of the Ministry to the audit observation has not been received.

(c) In City I, Mumbai charge, the assessment of a company engaged in the business of export of trading as well as manufactured goods for the assessment year 1992-93 was completed after scrutiny in March 1995 allowing deduction of Rs.46.44 lakh towards export profits. Audit scrutiny revealed that the assessee had computed profit of Rs.20 lakh from export of manufactured goods and loss of Rs.14.09 lakh from export of trading goods. The proportionate deduction in respect of incentives was Rs.26.44 lakh. The allowable deduction would thus be Rs.32.35 lakh being the sum total of the aforesaid amounts. However, while computing the deduction, the profit from trading export was adopted as nil instead of the loss of Rs.14.09 lakh. This resulted in excess allowance of deduction of Rs.14.09 lakh involving underassessment of income of an identical amount leading to short levy of tax of Rs.12.54 lakh.

The reply of the Ministry to the audit observation has not been received.

Incorrect computation of turnover- Section 80HHC

4.27.2 It has been judicially held* that central excise duty and sales tax collected form part of the turnover of the manufacturer.

(i) In West Bengal IV charge, in the assessment of a closely held company for the assessment year 1992-93 completed after scrutiny in March 1995, a deduction of Rs.115.88 lakh was allowed in respect of export profits. Audit scrutiny revealed that Central Excise Duty of Rs.1038.24 lakh collected and paid by the assessee for its commodities was not routed through its relevant profit and loss account and thus the turnover of the business was not inclusive of excise duty. Further, the assessee had a receipt in the nature of design and erection charges amounting to Rs.282.68 lakh, and ninety percent thereof was required to

* **McDowell and Co. Ltd. Vs CTO-154 ITR 148(SC)**

be deducted from the profits of the business which was not done. Considering the above, the deduction allowable would work out to Rs.81.74 lakh as against Rs.115.88 lakh allowed. The incorrect allowance of deduction resulted in underassessment of income by Rs.34.14 lakh with consequent undercharge of tax of Rs.19.63 lakh.

The reply of the Ministry to the audit observation has not been received.

(ii) In City II, Mumbai charge, in the assessment of a company for the assessment year 1993-94 completed in summary manner in February 1993, a deduction of Rs. 123.90 lakh was allowed in respect of export profits. Audit scrutiny revealed that the total turnover of Rs. 4009.97 lakh considered for the purpose of computing the deduction in respect of such profits did not include an amount of Rs. 825.03 lakh comprising Excise duty, Sales Tax, processing charges and miscellaneous income and the same was apparent from the documents accompanying the return. After including the aforesaid amount in the total turnover, the allowable deduction worked out to Rs. 102.76 lakh instead of Rs. 123.90 lakh allowed by the department. The mistake resulted in excess allowance of deduction and underassessment of Rs. 21.14 lakh with consequent short levy of tax of Rs. 12.16 lakh.

The Ministry have accepted the audit observation.

Mistake in allowance of deduction of profits derived from services provided to foreign tourists- Section 80HHD

4.28 Under the provisions of the Income Tax Act, 1961, as applicable to the assessment year 1992-93 where an assessee being an Indian company or person resident in India is engaged in the business of hotel or of a tour operator approved by the prescribed authority, there shall be allowed in computing the total income of the assessee, a sum equal to the aggregate of 50 percent of the profit derived from services provided to foreign tourists and so much of the amount out of the remaining profits derived as such as is debited to the profit and loss account and credited to a reserve account to be utilised by the assessee for the purpose of his business under the conditions prescribed in the Act. For this purpose, the profits derived from services provided to foreign tourists shall be the amount which bears to the profits of the business (as computed under the head 'profits and gains of business or profession') the same proportion as the receipts in relation to services for foreign tourists received in convertible foreign exchange bears to the total receipts of the business carried on by the assessee.

(i) In Cochin, Kerala charge, the assessment of a closely held company, engaged in hotel business, having two units, for the assessment year 1992-93 was completed after scrutiny in February 1995 after allowing deductions aggregating Rs.56.84 lakh towards profits derived from services rendered to foreign tourists. Audit scrutiny revealed that the aforesaid deduction had been worked out separately for each unit of the assessee company on the basis of profits derived by the respective unit instead of with reference to the total profits derived from both the units

as computed under the head 'profits and gains of business'. This irregular computation resulted in excess allowance of deduction of Rs.13.98 lakh leading to underassessment of income of an identical amount with consequent short levy of tax of Rs.13.36 lakh (including interest).

The Ministry have not accepted the audit observation on the ground that the prescribed authority had granted approval seperately to each unit and that the Supreme Court in the case of CIT Vs Canara Workshops Ltd. (161 ITR 320) while referring to the computation of deduction under sections 80I had held that where an assessee carries on more than one eligible industry, relief must be computed qua each industry seprerately.

The Ministry's reply is not tenable as the ruling of the Supreme Court mentioned therein is not germane to the issue here as the basis of the deductions under section 80I and 80HHD are different. The deduction under section 80HHD is granted on the 'profits and gains of the business' on the same proportion to the receipts in convertible foreign exchange on account of services rendered to foreign tourists bear to the total profits of the business. The deduction under section 80I, on the other hand, is on the profits of the eligible unit. Thus, there is no provision under section 80HHD to grant the deduction to each unit seperately, even though the units have been approved seperately by the pescribed authority.

(ii) In City III, Mumbai charge, the assessment of a company for the assessment year 1992-93 completed after scrutiny in December 1994 was revised in March 1995 allowing deduction of Rs.44.70 lakh. Audit scrutiny revealed that the unabsorbed investment allowance and depreciation relating to earlier years were not deducted from the profit of the business. After making the aforesaid adjustment, the profits of the business would work out to Rs.44.92 lakh and the allowable deduction would be Rs.27.80 lakh as against Rs.44.70 lakh allowed. The mistake resulted in excess grant of deduction of Rs.16.90 lakh involving short levy of tax of Rs.11.18 lakh (including interest).

The Ministry have accepted the audit observation.

Incorrect deduction in respect of profits from new industrial undertakings established after 31 March 1981 - Incorrect computation of profits-Sec. 80I

4.29.1 Under the Income Tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a newly established industrial undertaking which goes into production after 31 March 1981, the assessee is entitled to a deduction of twenty five percent of such profits provided the industrial undertaking does not manufacture or produce any article or thing specified in the eleventh schedule. It has been judicially held* that the use of the term 'derived from' in the relevant provisions of the Act indicates the restricted meaning given by the Legislature to cover only the profits and gains

* **Cambay Electric Supply Industrial Co. Ltd. Vs CIT Gujarat-113 ITR 84 (SC)**

directly accruing from the conduct of the business undertaking.

(i) In Surat, Gujarat charge, the assessment of public limited company for the assessment year 1992-93, completed after scrutiny in February 1995 was subsequently revised in March 1995 allowing a deduction of Rs.424.99 lakh in respect of profits from new industrial undertaking established after 31 March 1981. Audit scrutiny revealed that the profits of the industrial undertaking was Rs.1647.07 lakh and as such deduction actually worked out to Rs.411.77 lakh as against Rs.424.99 lakh allowed by the department. This mistake resulted in underassessment of income by Rs.13.22 lakh involving short levy of tax of Rs.11.63 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) In Delhi II charge, the assessment of a private limited company for the assessment year 1992-93 was completed after scrutiny in November 1993 at an income of Rs.59.72 lakh after allowing a deduction of Rs.17.33 lakh towards profits and gains from new industrial undertaking established after 31 March 1981. Audit scrutiny revealed that the qualifying profits included interest income of Rs.73.31 lakh from short term fixed deposits. As the deduction was admissible only in respect of profits derived by the assessee from its manufacturing activity, deduction allowed on the interest income was not in order. Its exclusion from the qualifying profit would result in the income being reduced to loss, there by disqualifying the assessee from any deduction. The erroneous deduction resulted in underassessment of income of Rs.17.33 lakh and short levy of tax of Rs.11.26 lakh (including interest).

The Ministry have accepted the audit observation.

Omission in set off of losses, etc. of earlier years- Section 80I

4.29.2 The Act further provides that in determining the quantum of deduction, the profits and gains of the industrial undertaking shall be computed as if such profits and gains from the business were the only source of income of the assessee during the previous year relevant to the initial assessment year and every subsequent assessment year up to and including the assessment year to which determination is to be made. Further, the Central Board of Direct Taxes while explaining the scope and effect of section 80 I have clarified in September 1980 that losses, depreciation and investment allowance of earlier years of the new industrial undertaking will be taken into account in determining the quantum of deduction even though they may have actually been set off against the profit of the assessee from other sources.

In City III Mumbai charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in February 1995 allowing deduction of Rs.870.90 lakh in respect of its newly established

undertaking, being 25 percent of the profit of Rs.3483.61 lakh. Audit scrutiny revealed that unabsorbed losses, depreciation and investment allowance relating to earlier years amounting to Rs.435.52 lakh were not deducted from the profits for determining the quantum of deduction. After deducting the aforesaid amount, the profit of the undertaking worked out to Rs.3048.90 lakh and the allowable deduction worked out to Rs.762.02 lakh as against Rs.870.90 lakh allowed. The mistake resulted in underassessment of income of Rs.108.88 lakh involving short levy of tax of Rs.95.79 lakh (including interest).

The Ministry have accepted the audit observation.

Mistake in computation of book profits- Section 80I

4.29.3 The Act was amended with effect from 1 April 1991 to provide that in relation to any profit and gains derived by an assessee company from an industrial undertaking which begins to manufacture or produce articles or things on or after 1 April 1990 but before 1 April 1991, there shall be allowed in computing the total income of the assessee company, a deduction from such profits and gains of an amount equal to thirty percent thereof. The Act also provides that depreciation in respect of new industrial undertaking shall be taken into account in determining the profits of the new unit for the relevant year.

In West Bengal II charge, the assessment of a widely held company for the assessment year 1991-92 was completed after scrutiny in March 1994 allowing a deduction of Rs.160.76 lakh as claimed by the assessee towards profits and gains from new industrial undertaking which commenced commercial production on 1 April, 1990. Audit scrutiny revealed that while computing the book profits, current depreciation amounting to Rs.540.89 lakh was not deducted. After the deduction, the profits derived from the new industrial undertaking included in the gross total income would work out to Rs.225.64 lakh only, and thus a deduction of Rs.67.69 lakh should have been allowed as against Rs.160.76 lakh allowed by the department. The mistake resulted in excess allowance of deduction by Rs.93.07 lakh leading to an excess carryforward of unabsorbed depreciation by an identical amount involving potential tax effect of Rs.42.81 lakh.

The reply of the Ministry to the audit observation has not been received.

Incorrect allowance of deduction in respect of certain intercorporate dividends- Section 80M

4.30 Under the Income Tax Act, 1961, in the case of a domestic company, where the gross total income includes any income by way of dividends from another domestic company, there shall be allowed in computing the total income a deduction at the specified percentage of such income. The Act was amended through the Finance (No.2) Act, 1980, with restropective effect from April 1968, to provide that the deduction on account of intercorporate dividends is to be allowed with reference to the net dividend income as computed in accordance with

the provisions of the Act and not on the gross amount of dividends. It has also been judicially held* that proportionate management expenses should be deduced from the gross dividend for the purpose of the deduction.

In Baroda, Gujarat charge, the assessment of a public company for the assessment year 1990-91 completed after scrutiny in March 1993 was modified in June 1993 allowing a deduction of Rs.118.07 lakh towards intercorporate dividends against its dividend income of Rs.196.78 lakh. Audit scrutiny revealed that while interest expenses amounting to Rs.30.45 lakh were deducted, proportionate administrative expenses were not deducted in computing the above deduction. Since the amount of the administrative expenses attributable to dividend income was not ascertainable from the assessment records, such expenses were required to be apportioned in the ratio of the dividend income to the total receipts. Accordingly, the deduction on account of administrative expenses deductible from the dividend income would work out to Rs.46 lakh and the allowable deduction to Rs.90.47 lakh as against Rs.118.07 lakh allowed. The mistake resulted in underassessment of Rs.27.60 lakh with consequent short levy of tax of Rs.25.33 lakh (including interest).

The Ministry have accepted the audit observation .

Incorrect allowance of deduction in respect of royalties etc. received from foreign enterprises- Section 80O

4.31 Under the Income Tax Act, 1961, where the gross total income of an assessee includes any income by way of royalty, commission, fees or any similar payment received by him in convertible foreign exchange from a foreign government/ enterprise, inter alia, in consideration of technical services to such government or enterprise, a deduction equal to fifty percent of such income is allowed in computing the total income of the assessee. The Board have clarified that the technical services for the purposes of section 80 'O' should relate only to the productive fields and the services such as those relating to management, organisation etc, would not qualify for the purpose.

In West Bengal IV charge, the assessment of a closely held company, for the assessment year 1992-93 was completed after scrutiny in March 1995 allowing a deduction of Rs.22.49 lakh towards royalties,etc, received from foreign enterprises. Audit scrutiny revealed that the assessee received income by way of service charges from the foreign company as an agent in terms of an agreement entered into by them which consisted of stevedoring charges, advance against export, disbursement charges, freight charges etc. As this income could not be treated as fees/ commission received in consideration of technical services rendered to the foreign company and arose only from the stevedoring business of the assessee, the assessee was not entitled to the deduction. The irregular allowance of deduction resulted in underassessment of income by Rs.22.49 lakh with resultant short levy of

* **CIT Vs. United General Trust Ltd.-200 ITR 488 (SC)**

tax of Rs.14.30 lakh (including interest). The refund of Rs.16.40 lakh (including interest) granted to the assessee was also irregular.

The reply of the Ministry to the audit observation has not been received.

Incorrect allowance of double taxation relief- Sections 90 and 91

4.32 Under the Income Tax Act, 1961, a person resident in India is entitled to a relief in respect of his foreign income taxed both in India and in a foreign country. The quantum of relief is governed by agreement entered into by the two countries. In cases where there is no agreement between the Government of India and the foreign country for either affording double taxation relief or avoiding double taxation in respect of income tax in both the countries, the Income Tax Act, 1961 provides for a unilateral relief by way of allowance of tax relief to the extent of tax calculated on the doubly taxed income at the average rate of tax in India or the average rate of tax in the foreign country whichever is lower. Further, under the Act, where the gross total income of an assessee, being an Indian company includes any income by way of royalty, fee or any similar payment received from the Government of a foreign state or a foreign enterprise in consideration for the use outside India of any patent, invention, model, design, copyright, secret formula or process of similar property right or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided to such Government by the assessee or in consideration of technical services rendered outside to such Government by the assessee under an agreement approved in that behalf and such income is finally received in convertible foreign exchange in India in accordance with any new law for the time being in force for regulating payments and dealings in foreign exchange, a deduction of an amount equal to the income so received in or brought into India is allowable in computing the total income of the assessee.

In City I, Mumbai charge,the assessment of a public limited company for the assessment year 1990-91 was completed after scrutiny in March 1993 allowing double taxation relief of Rs.296.41 lakh as claimed. The assessee company was also allowed deduction of Rs.184 lakh under the aforesaid provisions of the Act. While framing the assessment order, the assessing officer had recorded that double taxation relief would be allowed only on such income which is actually taxed in India and income exempt under other provisions of section 80-O of the Act would not be considered for this purpose. Audit scrutiny revealed that the assessee's claim for double taxation relief was, not reduced by the taxes relating to the aforesaid deduction of Rs.184 lakh. In the absence of details regarding the composition of income countrywise and taxes paid thereon, it was pointed out in audit that 30 percent of the relief amounting to Rs.55.42 lakh based on the maximum rate of tax provided under Double Taxation Treaties with various countries should have been withdrawn. The omission to do so resulted in loss of revenue to the tune of Rs.55.42 lakh.

The reply of the Ministry to the audit observation has not been received.

Incorrect computation of book profits and deemed income to levy minimum tax- Section 115J

4.33 Under the Income Tax Act, 1961, with effect from the assessment year 1988-89 to 1990-91, the income chargeable to tax of any company other than a company engaged in the business of generation of electricity, whose total income as computed under the normal provisions of the Act in respect of any previous year is less than 30 percent of its book profit, shall be deemed to be the amount equal to 30 percent of such book profit. For this purpose, book profit means the net profit shown in the profit and loss account for the relevant previous year prepared in accordance with the provisions of Companies Act, 1956, subject to certain additions/deletions as mentioned in the provision on computation of income under the normal provision.

(i) In Haryana charge, the assessment of a widely held company for the assessment year 1990-91 originally completed under scrutiny in March 1993 was subsequently revised in July 1995 adopting the taxable income at Rs.29.25 lakh under the normal provisions of the Act as against Rs.10.11 lakh under the special provisions as computed by the assessee and accepted by the department. Audit scrutiny revealed that the book profits under the special provisions actually worked out to Rs.206.07 lakh as withdrawal from revaluation reserve, debenture redemption reserve should not have been deducted as the book profits had not been increased orignally in the previous year 1989-90, when the reserves were created. Besides, depreciation of Rs.4.43 lakh was not permissible under the Companies Act. Thus thirty percent of the recomputed book profits which worked out to i.e. Rs.61.82 lakh being higher than the income under normal provisions should have been charged to tax. Omission to do so resulted in underassessment of income of Rs.32.57 lakh with consequent short levy of tax of Rs.30.25 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(ii) In City II, Mumbai charge, the assessment of a corporation in which public are substantially interested for the assessment year 1990-91 was computed after scrutiny in February 1993 computing the taxable income at Rs.12,562 lakh under the special provisions of the Act. Audit scrutiny revealed that provision for doubtful debts amounting to Rs.131.28 lakh which was an unascertained liability and charged to the profit and loss account of the relevant previous year was not added back to arrive at the correct amount of 'book profit'. This omission to add back the provision for unascertained liabilities resulted in short computation of book profit of Rs.39.39 lakh involving underassessment of income of an identical amount and consequent short levy of tax of Rs.21.27 lakh.

The reply of the Ministry to the audit observation has not been received.

(iii) In Tamil Nadu I charge, the assessment of a closely held company

for the assessment year 1990-91, originally completed in March 1993 was revised in January 1995 computing an income of Rs.62.69 lakh under the special provision. While computing the book profits, an amount of Rs.100.56 lakh being withdrawal of reserves and provisions credited to profit and loss account was deducted from the net profit. Audit scrutiny revealed that the assessee had debited Rs.100.56 lakh towards bad debts in the profit and loss account. As only the difference between the old and new reserves should be debited/credited to profit and loss account after adjusting the bad debts against the old reserve debiting of the above amount to profit and loss account was not in conformity with the accounting principles. Adoption of irregular procedure resulted in underassessment of income of Rs.27.66 lakh with short levy of tax of Rs.16.43 lakh.

The Ministry have accepted the audit observation.

Excess/irregular refund- Sections 143(1)(b) and 143(1)(a)

4.34.1 Under the Income Tax act, 1961, where as a result of an order of scrutiny assessment relating to any earlier assessment year and passed subsequent to the filing of the return of income processed under the summary assessment scheme for any subsequent year, there is any variation in the carry forward of loss claimed in the return and as a result of that if a refund is due to the assessee, the assessing officer may grant the refund in cash or adjust or set off the refund against outstanding dues of the assessee.

In North East Region, Shillong charge, the assessment of a widely held company for the assessment year 1993-94 was completed in a summary manner in March 1994 determining total income of Rs.1159.56 lakh after allowing set off of carried forward loss of Rs.741.34 lakh pertaining to assessment year 1992-93. Audit scrutiny revealed that the assessment for the assessment year 1992-93 was subsequently completed after scrutiny in March 1995 and loss allowed to be carried forward was reduced to Rs.474.45 lakh. accordingly, assessment for the assessment year 1993-94 was also revised in June 1995 determining income at Rs.685.11 lakh after allowing set off of Rs.474.45 lakh. However, while doing so, the assessing officer omitted to withdraw the set off of loss of Rs.741.34 lakh which was already adjusted while processing the return in March 1994. This mistake resulted in under assessment of income by the like amount involving under charge of tax of a Rs.383.64 lakh and consequent excess refund of Rs.429.68 lakh (including interest).

The Ministry have accepted the audit observation

Sections 240 and 245

4.34.2 Under the Income Tax Act, 1961, where as a result of any order passed in assessment, appeal, revision or any other proceedings under the Act, refund of any amount becomes due to the assessee, the assessing officer may grant the refund in cash or adjust or set off the refund against outstanding dues of the assessee.

(i) In Allahabad, Uttar Pradesh charge, the assessment of a widely held company for the assessment year 1991-92 originally completed after scrutiny in December 1992 was revised in March 1993 to give effect to the orders of the appellate authority determining a refund of Rs. 86.21 lakh which arose due to the tax deducted at source of Rs. 65.58 lakh paid by the assessee and balance due to the interest portion. This refund was adjusted against the demand for the assessment year 1992-93 and the balance was refunded in November 1993. Audit scrutiny revealed that a sum of Rs. 97.05 lakh including the tax deducted at source of Rs. 65.58 lakh and interest of Rs. 31.47 lakh was erroneously refunded again in June 1995 resulting in excess refund of Rs. 97.05 lakh.

The Ministry have accepted the audit observation.

(ii) In Lucknow, Uttar Pradesh charge, the assessment of a state owned corporation for the assessment year 1991-92 was completed after scrutiny in March 1994. The assessing officer, on a claim made by the assessee, allowed a credit of advance tax of Rs. 10.35 lakh out of a refund of Rs. 37.77 lakh due to the assessee. Audit scrutiny revealed that the above amount of Rs. 37.77 lakh was already adjusted against the demand for assessment year 1987-88 and as such there was no amount left to be adjusted further. The mistake this resulted in short raising of demand of tax by Rs. 17.59 lakh (including interest).

The Ministry have accepted the audit observation.

(iii) In West Bengal II charge, the assessment of a widely held company for the assessment year 1982-83 was revised in January 1995 at a total income of Rs.992.49 lakh and an amount of Rs.50 lakh (including interest) was found refundable and adjusted fully against the demand for the assessment year 1990-91. Audit scrutiny revealed that for the assessment year 1982-83, a sum of Rs.13.29 lakh had been refunded in April 1993 and was fully adjusted against the demand for the assessment year 1990-91. However, while determining the refundable amount of Rs.50 lakh in January 1995, the tax refund of Rs.13.29 lakh already allowed in April 1993 was not considered by the assessing officer. The mistake resulted in excess refund of Rs.13.29 lakh for the assessment year 1982-83.

The Ministry have accepted the audit observation.

Non-levy /incorrect levy of interest

Non-levy of interest for not filing/ delay in filing the return-Sections 139(b) and 217

4.35 Under the Income Tax Act, 1961, where the return for any assessment year is furnished after the specified due date, the assessee shall be liable to pay interest at two per cent per month or part thereof (fifteen per cent per annum upto assessment year 1988-89), from the date immediately following the specified due date to the date of filing the return or where no assessment on the amount of tax determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted or collected at source.

(i) In Ranchi, Bihar charge, the assessment of a private limited company for the assessment year 1985-86 was completed in December 1993 on a total income of Rs.112.28 lakh with an assessed tax of Rs.76.63 lakh. Audit scrutiny revealed that no return of income was filed by the assessee. The company was, thus, liable to pay interest of Rs.96.75 lakh for 101 months (from August 1985 to December 1993) on the tax demand of Rs.76.63 lakh (no advance tax was paid by the assessee), instead of interest of Rs.9.58 lakh levied by the department for 10 months only. This mistake resulted in short levy of interest amounting to Rs.87.17 lakh.

The reply of the Ministry to the audit observation has not been received.

Section 234 A

(ii) In Gujarat I charge, the assessment of a company for the assessment year 1991-92 was completed after scrutiny in March 1994. Audit scrutiny revealed that the assessee had filed the return on 7 August 1992, though the specified due date was 31 December 1991. The assessee was, therefore, liable to pay interest of Rs.20.73 lakh from January 1992 to August 1992 which was not levied by the assessing officer. The omission resulted in non-levy of interest of Rs.20.73 lakh.

The Ministry have accepted the audit observation.

Short levy of interest for short/non-payment of advance tax- Section 215

4.36 (i) Under the Income Tax Act, 1961, where in any financial year, an assessee who is liable to pay advance tax, has failed to pay such tax or where the advance tax paid by such assessee is less than eighty-three and one-third percent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of fifteen percent per annum from 1 April next following such financial year to the date of regular assessment on the amount by which the advance tax so paid falls short of the assessed tax.

In Tamil Nadu V charge, the assessment of a closely held company for the assessment year 1986-87 was completed in June 1994 on a total income of Rs.257.52 lakh and tax was determined at Rs.137.51 lakh. Audit scrutiny revealed that interest for short payment of advance tax was levied at Rs.1.68 lakh instead of the correct amount of Rs.168.44 lakh for 98 months (April 1986 to May 1994). The omission resulted in short demand of tax of Rs.166.76 lakh.

The reply of the Ministry to the audit observation has not been received.

Section 217

(ii) Under the provisions of Income Tax Act, 1961, as applicable upto assessment year 1988-89, where on making the regular assessment, the assessing officer finds that any person has not sent a statement of advance tax payable by him computed in the manner laid down in the Act, simple interest at the rate of fifteen percent per annum from the first day of April next following the financial year in which the advance tax

was payable upto the date of regular assessment shall be payable by the assessee on the amount of assessed tax as defined in the Act.

In Ranchi, Bihar charge, the assessment of company, for the assessment year 1985-86 was completed in December 1993 at a total income of Rs.112.28 lakh with an assessed tax of Rs.76.63 lakh. Audit scrutiny revealed that the assessee company did not file any estimate or statement of advance tax payable by him nor paid any advance tax. The company was, thus liable to pay interest on the assessed tax, of Rs.100.58 lakh for 105 months for the period from April 1985 to December 1993 instead of Rs.10.06 lakh for 10.5 months levied by the department. This resulted in short levy of interest amounting to Rs.90.52 lakh.

The reply of the Ministry to the audit observation has not been received.

Short/non-levy of interest for short payment/non-payment of advance tax-Section 234B

4.37(i) Under the Income Tax Act, 1961, as applicable from the assessment year 1989-90 onwards, where in any financial year, an assessee who is liable to pay advance tax has failed to pay such tax or where the advance tax paid by such assessee is less than ninety percent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of two percent for every month or part thereof reckoned from 1 April next following such financial year to the date of determination of total income by processing the return of income and where a regular assessment is made, to the date of such regular assessment on the amount equal to the assessed tax, or as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

Some cases involving large revenue effect are given below:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs.in lakh)
1.	Maharashtra	1992-93 March 1995	143(3)	Interest of Rs.1071 lakh for short payment of advance tax was levied erroneously for 24 months instead of the correct amount of Rs.1606 lakh leveable for 36 months	535.00
2.	West Bengal,IV Calcutta	1992-93 March 1995	143(3)	Interest for short payment of advance tax was leviable at Rs.10.93 lakh for 3 months instead of Rs.131.21 lakh leviable for 36 months from April 92 to March 1995	120.28
3.	West Begnal,V Calcutta	1990-91 March 1993	143(3)	Though the advance tax made by the assessee fell short of 90 percent of the assessed tax, interest of Rs.101.83 lakh for 36 months from April 1990 to March 1993 was not levied	101.83
4.	Allahabad, Uttar Pradesh	1989-90 January 1991	143(3)	Instead of the correct amount of interest of Rs.116.47 lakh for short payment of advance tax, interest of	53.31

		(Revised in July 1991)		Rs.63.16 lakh only was levied	
5.	Cochin, Kerala	1992-93 March 1995	143(3)	As against the interest of Rs.47.56 lakh for short payment of advance tax leviable for the period from April 1992 to March 1995, interest of Rs.4.76 lakh only was levied	42.80
6.	Madurai, Tamil Nadu	1990-91 April 1994	-	As against the correct amount of interest of Rs.20.95 lakh leviable for short payment of advance tax, interest of Rs.2.52 lakh only was levied	18.43

The Ministry have accepted the audit observations at Sl.Nos. 1,2,5 and 6. Their response to the remaining cases has not been received.

(ii) It has been judicially held* that the initial order of assessment gets effected by appellate or revision order and the only effective order is the ultimate order of the superior authority. The original order of assessment becomes part of the entire proceedings culminating in the ultimate order which, for all practical purposes, should be treated as an order of regular assessment.

Section 144

(a) In Jalandhar, Punjab charge, the assessment of a company for the assessment year 1989-90 originally completed on the best judgment in December 1991 at an income of Rs.45 lakh was set aside by the appellate authority on an appeal made by the assessee. In pursuance of the appellate orders, the best judgment assessment was again made in December 1994 at the same income of Rs.45 lakh. Audit scrutiny revealed that the interest for default in payment of advance tax on the assessed tax was wrongly determined for the period from 1 April 1989 to the date of assessment made in December 1991, instead of upto the date of fresh assessment made in December 1994 though the assessment was set aside for fresh orders. The mistake resulted in short levy of interest of Rs.18.33 lakh.

The reply of the Ministry to the audit observation has not been received.

Section 234B

(b) In Chandigarh charge, the assessment of a widely held company for the assessment year 1990-91 was completed after scrutiny in December 1991. Consequent to an appeal order, the assessment was reframed in January 1995. Audit scrutiny revealed that the interest for default in payment of advance tax on the assessed tax of Rs.17.93 lakh was calculated for the period from 1 April 1990 to the date of assessment framed in December 1991 instead of upto the date of order of reframed assessment of January 1995. The mistake resulted in short levy of interest of Rs.13.19 lakh.

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* **Calcutta Electric Supply Corporation Ltd. Vs CIT (and vice versa)- 179 ITR 580 (Cal) and CIT Vs Deepchand Kishanlal-183 ITR 299 (Kar)**

The reply of the Ministry to the audit observation has not been received.

Section 215

(c) In Lucknow, Uttar Pradesh charge, the assessment of a company for the assessment year 1988-89 was completed in January 1992. The assessment was set-aside by the Commissioner of Income Tax (Appeals) completely to be framed de novo and the fresh assessment was completed in October 1994 at an income of Rs.234.81 lakh while giving effect to the appellate orders. Audit scrutiny revealed that the chargeable interest for default in payment of advance tax was wrongly determined upto the date of first assessment, i.e. January 1992 instead of upto the date of fresh assessment made in October 1994. The mistake resulted in short levy of interest of Rs.12.48 lakh.

The reply of the Ministry to the audit observation has not been received.

Section 234B

(iii) The self assessment tax paid should include interest if any, liable to be paid by the assessee, under any provision of the Act. In the event of shortfall of the aggregate of the tax and interest, the amount so paid shall first be adjusted towards interest payable and the balance, if any, be adjusted towards the tax payable.

(a) In West Bengal IV charge, the assessment of the widely held company, for assessment year 1992-93 was completed after scrutiny in the month of March 1995 at a total income of Rs.877.94 lakh determining tax at Rs.454.33 lakh. The assessee paid Rs.50.46 lakh by way of tax deducted at source, Rs.218 lakh as advance tax and self assessment tax of Rs.95 lakh on 30 December 1993. Since the advance tax paid fell short of assessed tax, the assessee was liable to pay interest of Rs.92.60 lakh for 36 months (from 1st April 1992 to March 1995) as against Rs.64.76 lakh levied by the department. This resulted in short levy of interest by Rs.27.84 lakh.

The Ministry have accepted the audit observation.

(b) In West Bengal II charge, the assessment of a widely held company for the assessment year 1991-92, originally completed in March 1994, was subsequently revised in June 1994 determining total income at Rs.1395.32 lakh with a tax demand of Rs.641.85 lakh. Audit scrutiny revealed that as against the assessed tax of Rs.596.86 lakh, the assessee company paid advance tax of Rs.181.28 lakh and self assessment tax of Rs.445.64 lakh on 31 December 1991. As the advance tax paid was less than ninety per cent of the assessed tax, the assessee was liable to pay interest of Rs.102.14 lakh calculated at the rate of two percent per month for 36 months (from 1 April 1991 to March 1994) instead of Rs.74.81 lakh levied by the department. This resulted in short levy of interest by Rs.27.33 lakh.

The reply of the Ministry to the audit observation has not been received.

4.37

(c) In West Bengal charge, the assessment of a widely held company for the assessment year 1993-94 was completed after scrutiny in March 1995 at a total income of Rs.485.77 lakh and tax of 251.39 lakh was levied. Audit scrutiny revealed that the assessee paid Rs.106.52 lakh towards advance tax and tax deducted at source and Rs.125 lakh as self assessment tax on 24 December 1993. Since the advance tax paid was less than ninety percent of the assessed tax, the assessee was liable to pay interest of Rs.39.12 lakh (from 1 April 1993 to 31 March 1995) as against Rs.26.08 lakh levied by the department. This resulted in short levy of interest of Rs.13.04 lakh.

The Ministry have accepted the audit observation.

Lacuna in the Act-Section 234B

(iv) Refunds are often made after processing a return under summary assessment. However, there is no provision in the Income Tax Act for charging interest on such refunds or parts thereof which are found to be in excess after assessing the case under scrutiny. The PAC had considered this issue in their 100th Report (7th Lok Sabha) and recommended that Government should examine it and bring forth suitable amendment in the Act. No action has been taken as yet despite the Ministry's reply in their Action Taken Note in March 1983 that the recommendations of the Committee had been noted and would be processed while formulating proposal for the comprehensive amendment expected to be introduced in 1983. No such amendment has yet been introduced.

In five Commissioners' charges in Maharashtra, the assessments of eight companies for the assessment years 1991-92 and 1992-93 were initially completed in a summary manner, allowing refunds of Rs.427.71 lakh between February 1992 and October 1994. The regular assessments which were completed between March 1993 and March 1995 resulted in substantial additions to the incomes resulting in demand of Rs.717.34 lakh. Interest for short payment of advance taxes was levied considering the amount of advance tax which had been refunded to the assessees. As the revenue by way of advance tax refunded was not available to the government during the intervening period, it resulted in loss of revenue by way of interest which could not be charged for want of enabling provisions on refund found to be excessive on regular assessment. The exchequer sustained loss of Rs.120.34 lakh in the shape of interest for short payment by advance tax.

The Ministry have not accepted the audit observation stating that there is no provision in the Act to exclude the amount of refund granted after summary assessment or levy interest on the amount of said refund.

The Ministry's reply does not address the issue as absence of the enabling provisions have been pointed by audit as a lacuna in the Act not only in this case but in similiar cases in earlier years also. Further,

for similar cases which featured in Audit Report 1994-95, the Ministry had replied that the matter is under active consideration of the Board. Despite the recommendations of the Public Accounts Committee and Ministry's assurance in their Action Taken Note of March 1983 for introduction of an ammendment, no such ammendment has been introduced.

Interest for delay in payment of tax demand- Section 220(2)

4.38 (i) Under the Income Tax Act, 1961, as amended from 1 April 1989, any demand for tax should be paid by an assessee within thirty days (thirty five days prior to the assessment year 1989-90) of service of notice of the relevant demand. Failure to do so would attract levy of simple interest at one and one half per cent per month or part thereof (twelve per cent per annum upto 30 September 1984 and fifteen per cent per annum upto March 1989) from the date of default till actual payment. In November 1974, the Central Board of Direct Taxes issued instructions that interest for belated payment of tax should be calculated and charged within a week of the date of final payment of the tax demand. It issued further instructions in June 1991 that demand for such interest should be raised before 30 April on the balance of demand due from the assessee as on 31 March of the year.

(a) In West Bengal I,III,V and X, charges, the assessments of seven assessees for the assessment years 1979-80 to 1981-82 and 1989-90 to 1991-92 were completed between September 1990 and March 1994 and notices were served upon the assessees between September 1990 and August 1994 demanding tax aggregating Rs.338.58 lakh. Audit scrutiny revealed that even though the assessees did not pay the tax demanded within the dates specified in the respective demand notices, the assessing officers did not raise interest demand of Rs.79.02 lakh for non-payment of tax demand calculated upto March 1994 in respect of two cases and interest calculated upto March 1995 in respect of five cases in April 1994 and April 1995 respectively. Due to failure to observe the Board's instructions, the demand for interest of Rs.79.02 lakh was not raised.

The reply of the Ministry to the audit observation has not been received.

(b) In West Bengal III charge, the assessment of a widely held company for the assessment year 1986-87 originally completed in March 1992 was revised in January 1993 with a reduced net tax demand of Rs.1139.57 lakh. The demand notice was served on 31 March 1992 and was required to be paid before 29 April 1992. Audit scrutiny revealed that a sum of Rs.233.40 lakh out of total demand was adjusted on 10 February 1993 against refund for the assessment years 1990-91 and 1991-92. The department did not charge any interest for default in payment of aforesaid part of tax demand. The omission resulted in non levy of interest by Rs.35.01 lakh.

The Mnistry have accepted the audit observation.

(c) In Central II, Chennai charge, assessments of two companies for the assessment years 1989-90 and 1991-92 were completed in a summary manner between March 1992 and July 1994 and demand notices for Rs.26.36 lakh and Rs.69.41 lakh respectively were issued on 31 March 1992, 12 November 1993 and March 1994. Audit scrutiny revealed that even though the assessees paid the tax belatedly during February 1993 to July 1995, the assessing officer did not levy interest for the delays. The omission to do so, resulted in non-levy of interest aggregating Rs.15.64 lakh.

The Ministry have accepted the audit observation.

(ii) The Act also provides that where due to any revisionary order, the amount of tax payable has been revised, the interest payable shall also be revised accordingly. In April 1982, the Board issued instructions clarifying that the interest is to be calculated with reference to the date of service of original demand notice on tax finally determined if the original assessment order is restored either in part or wholly by the appellate authority.

In West Bengal II charge, the assessment of a widely held company for the assessment year 1984-85 was originally completed in March 1988 determining the taxable income at Rs. 1552.11 lakh and notice of demand was served on the assessee on 28 March 1988. Subsequently the assessment was partially modified in pursuance of an appellate order and the reassessment was completed in February 1992 at a total income of Rs. 1551.11 lakh with a net tax demand of Rs. 37.21 lakh which was paid in February 1992. The demand was required to be paid within 35 days of service of the original demand notice but was paid beyond the permissible period, and thus the assessee was liable to pay interest amounting to Rs.27.14 lakh instead of Rs.5.63 lakh levied by the department. This resulted in short levy of interest of Rs. 21.51 lakh.

The Ministry have accepted the audit observation.

Non-levy of interest for deferment of tax

4.39 Under the Income Tax Act, 1961, where in any financial year, if an assessee fails to pay advance tax or underestimates the instalments thereof, interest is chargeable at the rate of one and one half per cent per month of the shortfall where the advance tax paid on or before 15th day of September is less than twenty per cent of the tax due on the returned income. Similarly, interest is chargeable where the advance tax paid on or before the 15th day of December is less than fifty per cent of the tax due on the returned income.

In City III, Mumbai charge, the assessment of a banking company for the assessment year 1992-93 was completed in a summary manner in July 1993, determining taxable income at Rs.12,455.52 lakh. The tax payable on the returned income was Rs. 7447 lakh. Audit scrutiny revealed that the company had paid advance tax of Rs.650 lakh upto 15

September 1991 and Rs.1720 lakh upto 15 December 1991 as against the amount of Rs.1299 lakh and Rs.13249 lakh payable respectively. Interest for the deferment of payment of advance tax leviabe as per provisions of the Income Tax Act was not levied. The omission resulted in under charge of interest of Rs.68.77 lakh.

The Ministry have accepted the audit observation.

Incorrect payment of interest by government to the assessee- Section 244(A)(1)

4.40 Under the Income Tax Act, 1961, as applicable from assessment year 1989-90 onwards, where any refund is due to an assessee out of any advance tax (including the tax deducted at source), he shall be entitled to receive in addition to the said amount, simple interest thereon at the rate of one percent per month, from 1 October 1991 (one and half per cent upto 30 September 1991), for every month or part thereof from the first day of April of the assessment year to the date on which the refund is granted. No interest shall be payable if the amount of refund is less than ten per cent of the tax determined under summary or regular assessment.

In West Bengal IV charge, the assessment of a widely held company for the assessment year 1992-93 was completed after scrutiny in February 1995 at a total income of Rs. 1837.39 lakh and tax payable at Rs. 950.85 lakh. Audit scrutiny revealed that the assessee, having paid a total sum of Rs. 1042.38 lakh towards tax deducted at source and advance tax, was granted a refund of Rs. 91.53 lakh inclusive of interest of Rs. 32.04 lakh. Since the amount of refund was less than ten percent of the tax determined in the assessment, no interest on excess amount paid was admissible as per provisions of the Act. The mistake thus, resulted in irregular paymentof interest by Rs. 32.04 lakh.

The Ministry have accepted the audit observation

Short demand of tax- Sections 156 and 143(4)

4.41.1 Under the Income Tax Act, 1961, when any tax, interest, panalty, fine or other sum is payable in consequence of any order passed under the Act, the assessing officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable. The Act also provides that where a regular assessment is made, any tax or interest paid by the assessee on assessment made by processing of return shall be deemed to have been paid towards such regular assessment, and if no refund is due on regular assessment or the amount refunded at the time of processing the return exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of the Act shall apply accordingly.

(i) In West Bengal II charge, the assessment of a widely held company for the assessment year 1992-93 was originally completed in a summary manner in June 1993 allowing a refund of Rs.26.60 lakh to the assessee. The assessment was revised in July 1993 and a further refund of Rs.83.75 lakh was granted to the assessee. Subsequently, the assessment

was completed after scrutiny in March 1995 at a total income at Rs.3344.82 lakh with net tax demand of Rs.219.78 lakh as payable by the assessee. Audit scrutiny revealed that the refund of Rs.83.75 lakh granted to the assessee in the revised assessment order of July 1993 was not taken into account while computing the demand payable by the assessee after the scrutiny assessment was completed. The omission resulted in short raising of demand by Rs.83.75 lakh.

The Ministry have accepted the audit observation.

(ii) In West Bengal IV charge, the assessment of a widely held company for the assessment year 1993-94 was completed after scrutiny in March 1995 at a total income of Rs.485.77 lakh determining a tax of Rs.251.39 lakh payable by the assessee. The assessee paid tax of Rs.231.52 lakh before issue of the demand notice leaving a balance of Rs.19.87 lakh payable for the assessment year 1993-94. Audit scrutiny however, revealed that while issuing the demand notice, the assessing officer raised a demand of Rs.33.19 lakh being the total interest payable under various provisions of the Act. The demand notice, however, did not include the unpaid tax of Rs.19.87 lakh. The mistake resulted in short demand of tax by Rs.19.87 lakh.

The Ministry have accepted the audit observation.

(iii) In West Bengal II charge, the assessment of a widely held company for the assessment year 1992-93 originally completed in a summary manner in May 1993 was subsequently rectified and finally completed after scrutiny on the same day in March 1995. Audit scrutiny revealed that in the rectification assessment, a refund of Rs.10.03 lakh was determined as due to assessee which was adjusted against the tax demand of Rs.14.18 lakh determined in scrutiny assessment and a net demand of Rs.4.15 lakh was raised. There was, however, an excess levy of tax of Rs.1,273 in the scrutiny assessment. Since the scrutiny assessment was completed on the same day on which rectification assessment was made and an amount of tax of Rs.14.18 lakh was arrived at, the adjustment of Rs.10.03 lakh in the scrutiny assessment was not in order. The mistake resulted in short demand of tax of Rs.10.02 lakh (after considering the overcharge of tax of Rs.1,273).

The reply of the Ministry to the audit observation has not been received.

Irregular grant of credit to tax deducted at source

4.41.2 Under the Income Tax Act,1961, any tax deducted at source shall be treated as a payment of tax on behalf of the person from whose income the deduction was made and credit shall be given to him for the amount so deducted in respect of the assessment year for which such income is assessable. The related receipt from which the tax was deducted has to be taken into account in computing the assessee's total income.

In City II, Mumbai charge, the assessment of a company for the assessment year 1992-93 was completed after scrutiny in January 1995. Audit scrutiny revealed that while determining the quantumof tax payable, credit was allowed for a sum of Rs.17.80 lakh towards tax deducted at source from dividend amounting to Rs.72 lakh even though the said dividend income was offered for taxation in succeeding assessment year. Thus, the grant of credit in respect of tax deducted at source from dividend when dividend itself was not offered for taxation was irregular. The mistake resulted in under charge of tax by Rs.26.70 lakh (including interest).

The Ministry have accepted the audit observation.

Omission to make surtax assessment

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

(a) In Tamil Nadu V charge, the income tax assessment of a closely held company for the assessment year 1986-87 was completed in June 1994 determining the total income at Rs.257.52 lakh. Audit secutiny revealed that surtax amounting to Rs.69.86 lakh (including interest) should have been levied. However, surtax return was neither filed by the assessee company nor called for by the department. The omission resulted in non-realisation of surtax of Rs.69.86 lakh (including interest).

The Ministry have accepted the audit observation.

(b) In Tamil Nadu V charge, the income tax assessment of a closely held company for the assessment year 1987-88 was completed under best judgment assessment basis in March 1990 determining total income at Rs.232.41 lakh. Audit scrutiny revealed that the assessee had a chargeable profit of Rs.74.92 lakh on which the gross surtax payable amounted to Rs.29.02 lakh excluding interest. When the audit observation was raised in August 1990, it was replied by the assessing officer that the assessee had filed the surtax return in August 1989. Omission to complete the surtax assessment was brought to notice. The surtax assessment was, however, completed in March 1996 raising a demand of Rs.29.02 lakh without charging interest of Rs.38.82 lakh.

The Ministry have accepted the audit observation.

(c) In West Bengal II charge, the income tax assessment of a widely held tea company for the assessment year 1986-97 originally completed after scrutiny in March 1989 was subsequently revised in September 1992 on a total income of Rs.180.34 lakh. Audit scrutiny revealed that although the company was liable to pay surtax, neither did the assessee company file its return nor did the assessing officer initiate any surtax proceedings. The omission resulted in non-realisation of surtax of Rs.25.22 lakh.

The reply of the Ministry to the audit observation has not been received.

Omission to revise surtax assessments

4.43 Under the Companies (Profits) Surtax Act, 1964, if the total income on which surtax assessment was based is varied as a result of any revision orders passed under the Income Tax Act, 1961, or to give effect to appellate order, the assessing authority has to determine afresh the surtax payable or refundable, as the case may be.

In Tamil Nadu I charge, the surtax assessment of a company for the assessment years 1984-85, 1985-86 and 1987-88 were completed treating the status of the company as private company based on orders of Commissioner of Income Tax (appeals). Audit scrutiny revealed that though the Tribunal had decided the status of the company as public company and the income tax assessments for assessment year 1984-85, 1985-86 and 1987-88 were revised, the surtax assessments already completed had not been correspondingly revised. Omission to do so resulted in under assessment of chargeable profits of Rs.170.03 lakh involving a tax effect of Rs.67.78 lakh.

The Ministry have accepted the audit observation.

Chapter 5

Income Tax

General

5.1 Income Tax collected from persons other than companies is booked under the major head `0021 Taxes on income other than corporation tax'. Eighty five percent of the net proceeds of this tax, except insofar as these are attributable to Union emoluments, Union Territories and Union surcharge is assigned to the States in accordance with the recommendations of the Finance Commission.

Receipts from income tax

5.2 The trend of receipts from income tax during the last five years is shown below:

Year	Total Collection of all Direct Taxes	Amount of Income Tax	Percentage of Income Tax to total collection
	(In crore of rupees)		
1991-92	15,324.07	6,729.18	44.56
1992-93	18,097.29	7,863.49	43.45
1993-94	20,298.24	9,122.62	44.94
1994-95	26,970.88	12,030.12	44.60
1995-96	33,559.28	15,587.17	46.44

Number of assessees

5.3 The number of assessees (other than companies) borne on the books of the Income Tax Department during the last five years was as follows:

As on 31 March	Number of assessees
1992	76,60,407
1993	82,32,350
1994	100,28,974
1995	101,08,012
1996	104,76,940

Status of assessment

5.4 The following table indicates the progress in the completion of assessments and collection of demand under income tax (excluding corporation tax) during the last five years:

Year	No. of assessments				Total demand		
	For disposal	Completed during the year	Pending at the close of the year	Percentage of pendency to total cases	Demand for collection (In crore of rupees)	Collected during the year	Percentage of collection
1991-92	78,21,446	65,66,416	12,55,030	16.04	9,127.88	6,729.88	73.72
1992-93	77,28,312	63,51,030	13,77,282	17.82	9,922.87	7,863.49	79.24
1993-94	85,10,569	72,42,046	12,68,523	14.90	12,403.40	9,122.62	73.55
1994-95	97,47,151	74,05,828	23,41,323	24.02	24,838.64	12,030.12	48.43
1995-96	103,36,365	81,00,767	22,35,598	21.62	32,123.23	5,587.17	48.52

Results of audit

5.5 A total number of 204 audit observations involving tax effect of Rs.21.36 crore were issued to the Ministry of Finance for comments. The Ministry have accepted the observations in 134 cases involving tax effect of Rs.10.54 crore. 77 illustrative cases involving tax effect of Rs.15.93 crore are given in the following paragraphs. Out of these, the Ministry have accepted the observations in 50 cases involving tax effect of Rs.8.20 crore. Of the cases accepted by the Ministry, 11 cases involving tax effect of Rs.1.70 crore were checked by the Internal Audit Wing of the department but the mistakes remained undetected.

Avoidable mistakes in computation of income and tax

5.6 Underassessment of tax of substantial amounts and overcharge of tax in a few cases on account of avoidable mistakes attributable to negligence on the part of assessing officers have been mentioned year after year in the Reports of the Comptroller and Auditor General of India. Despite this and issue of instructions by Government from time to time, such mistakes continue to occur suggesting the need for close supervision and control. The various types of mistakes noticed included, inter-alia, incorrect adoption of figures, double allowance, calculation mistakes etc. Some important cases of each type noticed in test check are given below:

(i) Over assessment of income and tax.

Sl No	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs. in lakh)
1.	Ranchi	1982-83 & 1983-84 March 1994	147	Interest for late filing of return and non-payment of advance tax was erroneously charged.	21.55
2.	Tamil Nadu V	1992-93 December 1994	143(3)	Allowable depreciation erroneously reduced instead of being added to the returned loss	19.35 (P)
3.	Ahmedabad III	1992-93 March 1995	143(3)	Total income erroneously adopted as Rs.16.85 lakh instead of the correct amount of Rs.6.85 lakh	11.76

The Ministry have accepted the audit observations.

(ii) Underassessment of income and tax

Sl. No	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistake	Tax effect (Rs. in lakh)
1.	Lucknow	1990-91 Dec.92	143(3)	Net profit of Rs.66.26 lakh was erroneously taken as loss	57.11(P)
2.	Mumbai Central I	1992-93 March 95	144	Total taxable income erroneously taken at Rs.995 lakh instead of the correct amount of Rs.1017.68 lakh.	34.02
3.	Mumbai Central II	1987-88 March 95	143(3)	Total income was erroneously taken as Rs.131.64 lakh instead of the correct amount of Rs.151.64 lakh.	26.13
4.	Kanpur Central.	1991-92 March 1994	143(3)	Tax incorrectly worked out as Rs.36.15 lakh instead of the correct amount of Rs.48 lakh	18.00 (including interest)
5.	Pune	1989-90 Jan.95	143(3)	Tax of Rs.14.13 lakh was erroneously worked out for 12 months instead of the correct amount of Rs.20.02 lakh for 17 months in the transitional previous year	16.33 (including interest)
6.	Pune	1989-90 March 1995	143(3)	Tax of Rs.9.23 lakh erroneously levied instead of the correct amount of Rs.12.55 lakh	10.17 (including interest)
7.	Mumbai Central I	1992-93 Nov.1994	143(3)	Net loss returned erroneously adopted at Rs.34.42 lakh instead of the correct amount of Rs.24.42 lakh.	6.49 (P)
8.	Mumbai City II	1989-90 Nov.94	143(3)	Mistake in calculation resulted in underassessment of income of Rs.10.15 lakh	6.03
9.	Ranchi	1991-92 March 1995	143(3)	Tax payable was erroneously determined at Rs.38.28 lakh instead of the correct amount of Rs. 42.83 lakh	5.91 (including interest)

The Ministry have accepted the audit observations at Sl.Nos.1 to 3,5 to 7 and 9. Their response to the remaining cases has not been received.

Application of incorrect rate of tax

5.7.1. Under the Income Tax Act, 1961, tax shall be charged on the total income of an association of persons/body of individuals at the maximum marginal rate where the individual shares of the members are indeterminate or unknown, provided that if the total income of any such member is chargeable to tax at higher rate than the maximum marginal rate, tax should be charged at such higher rate. Two representative cases are as under:

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of mistakes	Tax effect (Rs.in lakh)
1.	Mumbai City IX,	1992-93 Feb.1995	143(3)	Tax was erroneously levied at the rate of 45 per cent applicable to public limited company instead of at the correct maximum marginal rate of 50 percent	20.10
2.	Ahmedabad III	1989-90 1990-91 March 1990 March 1991	143(1)	Tax was not levied at the maximum marginal rate applicable to body of individuals	10.21

The Ministry have accepted the audit observation at Sl.No.1. Their response to the remaining audit observation has not been received.

Non levy of surcharge

5.7.2 As per Finance Act, 1991, surcharge at the rate of twelve percent on income tax is payable in the case of non-corporate assessee for the assessment years 1992-93 and 1993-94 where the taxable income exceeds Rs.75,000. However, in the case of non-resident assessees no surcharge on income tax is leviable.

In Mumbai City II charge, the assessment of an assessee individual for assessment year 1992-93 was completed in December 1994 after scrutiny, at a taxable income of Rs.82 lakh. Audit scrutiny revealed that though the assessee had claimed his status as `non resident', the assessment was completed by the department as `resident' rejecting his claim for non-inclusion of his foreign income. However, in the computation of tax, no surcharge was levied. Omission to do so resulted in short levy of tax of Rs.8.10 lakh (including interest).

The Ministry have accepted the audit observation.

Undervaluation of closing stock

5.8 In order to determine the true profits of business, the assessee values the closing stock of his business according to the method of valuation consistently adopted every year. It has been judicially held* that difference between the stock disclosed to the bank and stock valued in the books of account should be treated as income from undisclosed sources and added to the income of the assessee.

In Rajkot charge, the assessment of a firm for the assessment year 1992-93 was completed after scrutiny in December 1994. Audit scrutiny revealed that the aggregate value of stock as on 31 March 1992 as per books of accounts was Rs.145.22 lakh whereas the assessee had declared the value of above stock at Rs.158.05 lakh to the bank. The difference in value of stock of Rs.12.83 lakh was therefore required to be added back to the income of the assessee. Omission to do so resulted

* Swadeshi Cotton Mills Ltd. V CIT (180-ITR-651)

in underassessment of income of Rs.12.83 lakh involving short levy of tax of Rs.10.03 lakh.

The Ministry have accepted the audit observation.

Incorrect allowance of provisions

5.9 Under the Income Tax Act, 1961, a provision made in the accounts for an accrued or known liability is an admissible deduction while other provisions made do not qualify for deduction.

In Tamil Nadu V charge, the assessment of a co-operative store for the assessment year 1992-93 was completed after scrutiny in January 1995. Audit scrutiny revealed that the assessing officer allowed a sum of Rs.72.27 lakh being provision for bad debts. As the amount debited in the accounts represented a mere provision and not an accrued or ascertained liability, it should have been disallowed. Omission to do so resulted in excess carry forward of loss by Rs.72.27 lakh involving potential tax effect of Rs.28.29 lakh.

The Ministry have accepted the audit observation.

Incorrect allowance of business expenses

5.10.1 Under the Income Tax Act,1961, income chargeable under the head "Profits and gains" of business or profession is computed in accordance with the method of accounting regularly employed by the assessee. Where an assessee follows mercantile system of accounting the annual profits are worked out on due basis, i.e. after providing for all expenses for which a legal liability has arisen and taking credit for all receipts that have become due regardless of their actual receipt or payment. Further, any expenditure not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly or exclusively for the purpose of business shall be allowed as a deduction. The Act also provides that any interest, royalty, fees for technical services or other sum chargeable under it which are payable outside India and on which the tax has not been paid or deducted at source shall not be deducted.

(i) In Mumbai City I charge, the assessment of a registered firm for the assessment year 1991-92 was completed in March 1994 after scrutiny. Audit scrutiny revealed that the assessee following hybrid system of accounting, has followed cash system of accounting for interest payments and receipts. Consequently the provision of Rs.18.24 lakh made by the assessee for interest payable to a Bank for the period 27.7.1990 to 31.3.1991 which was not paid, was required to be disallowed and added back to the income of assessee. Omission to disallow the interest payable resulted in underassessment of income of Rs.18.24 lakh with short levy of tax of Rs.3.83 lakh (positive) and potential short levy of tax of Rs.4.99 lakh (in the hands of firm and partners).

The Ministry have not accepted the audit observation on the ground that as the interest receipts were taxed on accrual basis, interest payments were also allowed on mercantile basis and additions made accordingly in earlier assessment orders were confirmed by CIT (A).

The Ministry's reply is not factually correct as the verification of assessment records revealed that the assessee followed cash system of accounting for interest receipts and payments and the assessing officer had in fact disallowed the provision for interest payment of Rs.17.38 lakh (to others) in the assessment year in question stating that there could not be different methods of accounting for the same source of income. On the same analogy, allowance of interest payable to Andhra Bank amounting to Rs.18.24 lakh, (which is different from Rs.17.38 lakh already disallowed) should have been disallowed. Incidentally, such additions made in the past assessment years had been upheld by the appellate authority.

(ii) In Mumbai City VII charge, the assessment of an assessee 'individual' for the assessment year 1991-92 was completed after scrutiny in March 1992 at a taxable income of Rs.4.26 lakh. Audit scrutiny revealed that the assessee had paid commission of Rs.12.38 lakh to foreign agents on which no tax had been deducted at source. As no tax was deducted at source from the commission paid outside India, the assessee was not entitled for deduction, on the amount of Rs.12.38 lakh. However, while computing the total income of the assessee it was allowed as a deduction. Omission to disallow resulted in underassessment of income of Rs.12.38 lakh leading to short levy of tax of Rs.6.93 lakh.

The reply of the Ministry to the audit observation has not been received.

(iii) In Mumbai City IX charge, the assessments of a registered firm for the assessment years 1991-92 and 1992-93 were completed in November 1994 after scrutiny at a loss of Rs.68.49 lakh and taxable income of Rs.45,790 respectively. Audit scrutiny revealed that the assessee had been allowed a deduction of Rs.10.66 lakh towards remuneration payable to foreign technicians and fees for technical know-how on which the assessee did not deduct any tax at source. Since tax had not been deducted at source, the amount should have been disallowed. Failure to do so resulted in excess carry forward of loss of Rs.4.84 lakh in the assessment year 1991-92 and underassessment of income of Rs.5.82 lakh in the assessment year 1992-93 with consequent short levy of tax of Rs.6.81 lakh in the hands of the firm and partners (including potential tax effect Rs.3.09 lakh).

The reply of the Ministry to the audit observation has not been received.

Non disallowance of expenditure in excess of Rs.10,000 paid otherwise than by crossed cheque/draft

5.10.2 The Income Tax Act, 1961, provides for disallowance of expenditure incurred in business or profession for which payment is made for any amount exceeding Rs.10,000 otherwise than by crossed cheque/draft. Some cases and circumstances in which exemption from this requirement can be claimed have been provided in the Income Tax Rules, 1962. It has been judicially held* that to claim the benefit of the provision of this Rule, it is not sufficient merely to establish the genuineness of purchases and identity of the payee. The assessee is further required to prove that the circumstances mentioned in the Rule existed and the required conditions were satisfied, and in the absence of the evidence such payments are not deductible in the computation of income.

In Nasik charge, the assessment of an individual assessee for the assessment year 1992-93 was completed after scrutiny in March 1995 computing a loss of Rs. 2.64 lakh. Audit scrutiny revealed that during the previous year relevant to the assessment year 1992-93 the assessee had made nine cash payments on behalf of the proprietary concern, aggregating Rs. 28.73 lakh (each exceeding Rs. 10,000). Of these one payment of Rs. 20.77 lakh was made to an individual in cash on the ground that the other members of the family were not ready to sign the documents on land dealings and that they insisted on payment in cash. Since this was not an unavoidable circumstance visualised under the Rules, the entire amount should have been disallowed and brought to tax. The omission resulted in underassessment of income by Rs. 20.77 lakh involving short levy of tax of Rs. 20 lakh (including interest).

The Ministry have accepted the audit observation.

Incorrect allowance of liability

5.11 Under the Income Tax Act, 1961, as applicable from the assessment year 1984-85, certain deductions are allowable only on actual payment of expenditure of the types specified under section 43B of the Act. From 1 April 1988, tax or duty actually paid by the assessee on or before due date applicable in his case for furnishing the return of income shall also be allowed as deduction. From 1 April 1989, cess, fee or any sum payable by an assessee as employer by way of contribution to any provident fund, superannuation fund or gratuity fund etc. or any sum payable to an employee as bonus or commission for services rendered or any sum payable as interest on any loan from any public financial institution are also deductible on actual payment basis.

In Allahabad charge, the assessment of a co-operative society for the assessment year 1991-92 was completed after scrutiny in February 1994 at NIL income. Audit scrutiny revealed that the assessing officer omitted to disallow Rs. 56.56 lakh debited to profit and loss accounts as interest on loan from financial institutions which was not paid within the

* **Nahgi Lal v/s CIT (167-ITR-139)**

relevant previous year or within the due date of submission of the return of income. Omission to do so resulted in underassessment of income of Rs. 56.56 lakh involving undercharge of tax of Rs. 37.54 lakh (including interest).

The Ministry have accepted the audit observation.

Incorrect computation of business income

5.12 Under the Income Tax Act, 1961, in the case of an assessee, being a person other than a public sector company obtaining in any sale by way of auction, tender or any other mode, conducted by any other person, the right to receive any forest produce not being timber, a sum equal to thirty five percent of the amount paid or payable by the buyer in respect of the sale of such right or as the purchase price in respect of such goods shall be deemed to be profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head "Profits and gains of business or profession". In case of goods in the nature of alcoholic liquor for human consumption (other than Indian made & foreign liquor) a sum of 40 percent of the amount paid or payable by the buyer as the purchase price shall be deemed to be computable as business profits. These provision were applicable for assessment years 1989-90 to 1992-93.

In Jodhpur charge, the assessment of a firm, a country liquor contractor, for the assessment year 1990-91, was completed after scrutiny in November 1992, at an income of Rs. 4.61 lakh. Audit scrutiny revealed that the total purchase of liquor during the assessment year amounted to Rs. 34.70 lakh (inclusive of excise duty and corking charges). The income of the assessee thus worked out to Rs. 13.88 lakh (40 percent of Rs. 34.70 lakh) as against Rs.4.61 lakh assessed. The mistake resulted in underassessment of income of Rs. 9.27 lakh involving short levy of tax of Rs. 7.05 lakh in the hands of firm and its partners (including interest).

The reply of the Ministry to the audit observation has not been received.

Mistake in the allowance of depreciation

5.13 Under the Income Tax Act, 1961, in computing the business income of an assessee a deduction on account of depreciation on plant and machinery or other assets is admissible at the prescribed rates provided these are owned by the assessee and used for the purpose of his business during the relevant previous year. Depreciation on building, plant and machinery is calculated on their cost or written down value, as the case may be according to the rates prescribed in the Income Tax Rules, 1962.

(i) In Nasik charge, the assessment of an association of persons, for assessment year 1992-93 was completed after scrutiny in March 1995 allowing depreciation on plant and machinery at the rate of 33.33 percent as claimed by the assessee instead of the admissible rate of 25 percent. The mistake resulted in excess allowance of depreciation

leading to underassessment of income by Rs.12.11 lakh involving short levy of tax of Rs.7.02 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) In Bhopal charge, the reassessment of an assessee firm for the assessment year 1990-91 was completed after scrutiny in March 1995, inter-alia, allowing depreciation of Rs.3.18 lakh on two trucks which were purchased in March 1990. Audit scrutiny revealed that these trucks were not used in the business due to non-building of truck bodies during the relevant previous year which were built in May 1990. Consequently, the depreciation allowed was irregular. The mistake resulted in underassessment of income of Rs.3.18 lakh involving short levy of tax of Rs.6.31 lakh (including interest).

The Ministry have accepted the audit observation.

Irregular investment allowance

5.14. Under the Income Tax Act, 1961 in respect of Plant and machinery owned by the assessee and used for the purpose of business carried on by him, a deduction by way of investment allowance shall be allowed to the assessee of a sum equal to 20 percent of the actual cost of the plant and machinery in the previous year of installation or in the previous year of first usage. However, it has been judicially held* that civil contractors engaged in the construction of bridges, dam, canal etc., are not eligible for investment allowance on the plant and machinery used by them in their construction work as these cannot be considered an article or thing.

In Lucknow charge, the assessment of a registered firm engaged in supply of material and services on contract basis for the assessment year 1990-91 was completed after scrutiny in March 1993 at an income of Rs.1.84 lakh. Audit scrutiny revealed that the assessee firm claimed and was allowed investment allowance of Rs.10.05 lakh. As the contract business does not constitute any industrial or manufacturing activity, investment allowance was not admissible. Moreover, the assessee had not furnished any details of machinery or plant alongwith the return. Incorrect allowance of deduction resulted in short computation of income by Rs.10.05 lakh with consequent short charge of tax of Rs.5.22 lakh (including interest) in the hands of the firm alone.

The reply of the Ministry to the audit observation has not been received.

Omission to levy tax on capital gains

5.15.1 Under the Income Tax Act, 1961, any profits and gains arising from the transfer of a capital asset are chargeable to tax under the head `capital gains' except in certain specified cases in the year in which the transfer takes place. With effect from 1st April 1988 the contribution of

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* Budhiraja & others V CIT (204-ITR-41SC)

a capital asset by a person to a firm in which he is or becomes a partner shall constitute transfer for the purpose of capital gains. The Act provides that the amount recorded in the books of accounts of the firm, as the value of the capital asset shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset. The Act, 1961 further provides that where any capital gains arises from the transfer of a long term capital asset and the assessee has within a period of six months after the date of such transfer invested the whole or any part of the net consideration in any specified asset, the capital gains is exempt in full or in part subject to further deduction. Conversion by owner of an asset into stock-in-trade of a business constitutes transfer and gives rise to capital gains.

(i) In Pune charge, the assessment of a registered firm the assessment year 1990-91 was completed after scrutiny in March 1993. Audit scrutiny revealed that the partners of the firm converted their share of ancestral property valued at Rs.1.30 lakh as stock-in-trade of the firm as per agreement dated 1 July 1988 and the same was taken in the books of the firm at Rs.28.50 lakh. As the conversion constituted `transfer' of property giving rise to capital gains it was required to be brought to tax in the assessment year 1989-90 in the hands of the partners. Failure to do so resulted in underassessment of income of Rs.13.30 lakh in aggregate after allowing the stipulated deduction with consequent short levy of tax of Rs.6.98 lakh.

The Ministry of Finance have not accepted the audit observation on the ground that the capital gains was taxable in the hands of transferors i.e. in partners' hands and not in the hands of the transferee firm. The reply is not tenable as the audit observation has been taken in respect of assessments of the partners and not that of the firm.

(ii) In Mumbai City II charge, the assessment of an assessee individual for the assessment year 1990-91 was completed after scrutiny in March 1992. Audit scrutiny revealed that assessee had transferred, during the previous year relevant to the assessment year, development rights of a plot of land to a construction company under an agreement executed in July 1989, for a consideration of Rs.23.50 lakh. The development rights in land being a capital asset, the gains arising from its transfer should have been brought to tax, but no action was taken by the assessing officer. The omission resulted in underassessment of income of Rs.11.70 lakh involving tax effect of Rs.6.32 lakh

The Ministry have accepted the audit observation.

(iii) In Pune charge, the assessment of a individual for the assessment year 1988-89 was completed in a summary manner in February 1989. Audit scrutiny revealed that during the relevant previous year, the assessee had sold a residential flat for Rs.23.50 lakh and claimed the long term capital gain of Rs.21.33 lakh as exempt stating that the

amount was being deposited with specified bank/institution. It was seen that though the assessee had deposited the amount in capital gains scheme with Bank of India, such deposit did not remain in the same account continuously for three years and hence did not qualify for deduction. The incorrect deduction allowed resulted in underassessment of income of Rs.10.65 lakh (after allowing basic deduction admissible under the Act) involving short levy of tax of Rs.5.37 lakh.

The Ministry have accepted the audit observation.

Incorrect of computation of capital gains

5.15.2 Under the Income Tax Act, 1961, where the whole of the net consideration received from the transfer of a capital asset not being a short term capital asset, is invested in residential house within a specified period after the date of transfer, the whole of the capital gains arising out of such transfer shall not be charged to tax. The Act also provides that if the cost of the new asset, is less than the net consideration in respect of the original asset, capital gain at proportionate rate shall be exempt. Further, under the Act, indexed cost of acquisition of the original asset has to be deducted from the sale consideration to arrive at the capital gain (before allowing admissible deductions).

In Karnataka I charge, the assessment of an individual for the assessment year 1993-94 was completed after scrutiny in March 1995. Audit scrutiny revealed that in the relevant previous year the assessee had sold certain shares for a consideration of Rs.72.66 lakh and after deducting the indexed cost of acquisition of Rs.16 lakh had returned capital gain of Rs.56.66 lakh. Out of this, the assessee deducted Rs.45.91 lakh being the amount invested for purchase of two residential flats, which was allowed by the assessing officer. However, it was observed that there were mistakes in adopting the indexed cost whereby the correct indexed cost of acquisition of shares worked out to Rs.4.66 lakh as against Rs.16 lakh adopted. Further, as the assessee had invested only a part of the sale consideration towards purchase of new residential flats, he was entitled only to proportionate exemption which worked out to Rs.42.96 lakh against Rs.45.91 lakh erroneously allowed. The mistakes resulted in aggregate short computation of capital gains by Rs.14.28 lakh leading to short levy of tax of Rs.5.88 lakh (inclusive of additional tax and interest).

The Ministry have accepted the audit observation.

Incorrect computation of income from other sources

5.16 Under the Income Tax Act, 1961, in computing income chargeable under the head "Income from other sources" any expenditure not being in the nature of capital expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income shall be allowed as a deduction.

In Tamil Nadu V charge, the assessments of a private family trust for

assessment years 1990-91 and 1991-92 were completed after scrutiny in March 1993 and December 1993. Audit scrutiny revealed that the assessee derived interest income on IDBI capital bonds in which the entire consideration relating to transfer of capital asset had been invested to claim full exemption of capital gains. It was further revealed that expenses pertaining to sale of the asset amounting to Rs.2.97 lakh and Rs.4.02 lakh (for the two years) being travelling expenses, legal expenses, fencing charges etc. were not disallowed but were set off against interest income. Since the expenses were not incurred in connection with the earning of income under "Income from other sources", the same should have been disallowed. Omission to do so resulted in under assessment of income aggregating Rs.6.99 lakh involving short levy of tax of Rs.7.03 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Mistakes in the assessment of firms and partners

5.17 Under the Income Tax Act, 1961, upto assessment year 1992-93, if the assessment of the firm has not been completed, the share income from the firm is included in the assessments of the partners on provisional basis and revised later to include the final share income on completion of the assessment of firm. For this purpose, the assessing officer is required under the instructions issued by the Central Board of Direct Taxes in March 1973 to maintain a register of cases of provisional share income so that these cases are not omitted to be rectified. No revision of assessment of partner can, however, be made under the Act, after the expiry of four years from the end of the financial year in which the final order was passed in the case of the firm.

The Central Board of Direct Taxes issued instructions in November 1981, that where the firm and its partners are assessed in different wards, the assessing officer assessing the firm should communicate the share income of each partner to the officer having jurisdiction to assess such partners immediately after completion of the assessment of the firm and should insist for its acknowledgment by the other assessing officer. The latter was also required to revise the assessments of the partners within three months of receipt of intimation of share income. These instructions were issued to ensure that the correct share incomes are assessed in the hands of the partners promptly and correct tax due to the Government is assessed and demand raised without loss of time.

Pursuant to the recommendations of Public Accounts Committee made in 85th Report (7th Lok Sabha-1981-82), the department issued fresh instructions in April 1983 for proper maintenance of provisional share income registers and adequate checking of the registers by Range Inspecting Assistant Commissioners and departmental audit parties. Reiterating the earlier instructions, the Board in their instructions issued in October 1984 also stated that there should be co-ordination between the assessing officers of the firm and the partners in the matter of

ascertaining correct share income of partners and taking rectificatory action based on it. The Board issued clarificatory orders in February 1988 specifying that even in the assessment of partners completed in summary manner the remedial measures to rectify the mistakes could be taken. Inspite of these instructions, cases of failure to revise the share income of the partner consequent upon the completion of the assessments of the firm continues.

In Haryana (Rohtak), Ahemdabad Central, Ahmedabad II & III, Surat, APII (Hyderabad), Visakhapatnam, Vijayawada, Tamil Nadu II, III, IV & V (Chennai), Madurai, Coimbatore, Chennai Central I & II and Mumbai City I, XI, and XII charges, the assessments in case of 285 partners of 110 registered firms in 49 wards for the assessment years 1986-87 to 1992-93 were completed in scrutiny manner between October 1991 to March 1996. Audit scrutiny revealed that due to non-maintenance or improper maintenance of the prescribed register in many cases the assessments of partners were not revised after completion of assessments of firms though the firms and partners were assessed in the same wards in many cases. Where the different wards were involved the requisite intimations were not sent to the wards where the partners were assessed to tax to enable the concerned assessing officers to do the needful. The omission resulted in underassessment of income of Rs.882.10 lakh with consequent short levy of tax aggregating Rs.493.81 lakh besides levy of interest for belated filing of returns and short payment of advance tax.

The Ministry have accepted the audit observation in one case. Their response to other audit observations has not been received.

Income not assessed

5.18 Under the Income Tax Act, 1961, the total income of a person for any pervious year includes all income from whatever sources derived which is received or deemed to have been received or which accrues or arises or is deemed to accrue or arise during such previous year unless specifically exempt from tax under the provisions of the Act. It has been judicially held* that interest on belated payment of amounts under contract is only an accretion to the receipts from the contract and is attributable and incidental to the business carried on by the assessee and hence includible in business income only. Income chargeable is computed in accordance with the method of accounting regularly employed by the assessee. It has been judicially held** that in case of contract business, in order to ascertain the income, one need not wait till the contract is completed and it is open to the revenue to estimate the profit on the basis of receipt in each year of construction although the contract is not completed.

The Act further provides that dividend includes any distribution made to

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*CIT V Govinda Choudhary & sons (203-ITR-881)
**Tirath Ram Ahuja (P) Ltd. V CIT 103-ITR-15

the shareholders of a company on its liquidation to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not. It has been judicially held* that reserves are appropriations of profits, the assets by which they are represented being retained to form part of the capital employed in the business.

Some illustrative cases of incomes not assessed are given below :

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of objection	Tax effect (Rs.in lakh)
1.	Tamil Nadu IV	1992-93 1993-94 & 1994-95 March 1994 to March 1995	143(3)	Interest of Rs.69.87 lakh on belated payment of amounts under contract was not brought to tax	49.54
2.	WB VIII	1991-92 March 1994	143(3)	Failure to bring to tax the entire difference between the cost of land as determined by the departmental valuation officer and as disclosed by the assessee resulted in underassessment of income of Rs.33.57 lakh	33.58
3.	Mumbai City Central	1990-91 March 1993	143(3)	Failure to bring to tax the estimated income on the sale proceeds of Rs.345.28 lakh from housing projects not completed led to underassessment of income of Rs.34.53 lakh taking the income at 10 percent of the sales.	21.74
4.	Jabalpur	1990-91 Nov.1994	143(3)	Non-inclusion of income by way of interest, bank commi-ssion and insurance claims led to escapement of income of Rs.18.75 lakh	14.21
5.	Mumbai Central I	1992-93 March 1995	143(3)	Failure to allocate the profits of a firm in accordance with the revised shares of partners led to underassessment of income of Rs.11.67 lakh in the hands of one partner	14.02
6.	Patna	1991-92 March 1994	143(3)	Omission to include interest on deposits and capital gains on sale of vehicles in the total income led to underassessment of income of Rs.14.63 lakh	11.74
7.	Kanpur	1992-93 Oct.1993	143(3)	Non-inclusion of profits earned by the firm from the takeover of business of three other units in hands of partners' total income resulted in underassessment of income of Rs.14.87 lakh	11.23
8.	Calcutta Central I	1992-93 March 1995	143(3)	As against the correct addition of Rs.65.81 lakh based on a search and seizure operation, addition of Rs.56.81 lakh only was erroneously made to the total income leading to underassessment of income of Rs.9.00 lakh	10.62

* Metal Box Co. (India Ltd. Vs. Their workmen AIR-1969-SC-612

9.	Pune	1992-93 December 1994	143(3)	Failure to bring to tax income from construction of an incompleted project led to non-assessment of income of Rs.12.03 lakh taking 10 percent of the aggregate of work-in-progress and closing stock as estimated income.	8.78
10.	WB V	1992-93 April 1994	143(3)	Omission to include Rs.24.28 lakh received from railway authorities for goods lost/damaged in transit as trading receipt and incorrect allowance of Rs.50243 representing unpaid taxes, duties, provident fund and employees state insurance subscription led to underassessment of income of Rs.24.78 lakh	8.40
11.	Bhopal	1992-93 March 1995	144	Non-inclusion of interest income from non-cooperative channels amounting to Rs.12.02 lakh in the case of a cooperative society led to underassessment of income by like amount	8.20
12.	WB VII	1992-93 Sept.93	143	Non-inclusion of compen-sation of Rs.10 lakh in an individual's total income for handing over the vacant possession of the premises over which he had no claim led to underassessment of income by the like amount	7.56
13.	Cochin	1992-93 March 1993	143(3)	Erroneous exclusion of Rs.13.27 lakh from total income of a registered firm representing sales tax payable in the assessment year 1987-88 written back in the assessment year in question led to underassessment of income by the like amount	7.32
14.	Pune	1991-92 March 1994	143(3)	Non-inclusion of interest income of Rs.12.69 lakh in the total income of two individuals discovered during search operation led to underassessment of income by the like amout.	7.11
15.	Mumbai	1992-93 Feb 1993	143(3)	Non inclusion of the entire share in the accumulated profits of a company considered as deemed dividend in the total income of an individual led to underassessment of income of Rs.11.50 lakh	6.44
16.	Mumbai City X	1989-90 March 1992	143(3)	Interest income from loans advanced amounting to Rs.5.37 lakh on estimate basis was not brought to tax in the case of an unregistered firm even though it had paid interest on bank loans	5.81

The Ministry have accepted the audit observations at Sl. Nos.1,2,4,7,8,10,11,14 and 16. They have not accepted the audit observation at Sl.No.3 on the ground that the Supreme Court's decision quoted is distinguishable on facts. The assessee in that case was a

contractor whereas in the present case it is a builder engaged in housing projects and the method of accounting followed by it has been accepted by the assessing officer. They have also not accepted the audit observation at Sl.No.13 on the ground that they have appealed against the orders of the appellate authority deleting the disallowance of sales tax payable made in the assessment year 1987-88.

The reply is not tenable in the former case as the income tax is levied on profits ascertained on an annual basis and there is no justification to wait until all the sales have been effected. Supreme Court have held* that the profits or loss on each sale should be ascertained by working out the proportionate cost of the item of which sale is effected from time to time, except in special circumstances where the entire operation is treated as a sungle indivisible operation. Therefore the difference between a contractor and a builder of housing projects is not relevant. In the latter case the reply is not tenable since the effect of the department's action was that the income had not been charged to tax either in assessment year 1987-88 or in assessment year 1992-93. As long as department's appeal is not decided in their favour the appellate authority's orders hold the field. The department should, therefore, have not excluded the said income from the assessment for assessment year 1992-93. Their response in the remaining cases has not been received.

Excess set-off of losses

5.19 Under the Income Tax Act, 1961, where the net result of the computation under the head `profits and gains of business or profession' is a loss to the assessee and such loss cannot be wholly set off against income under any other head, so much of the loss as has not been set off shall be carried forward to the following assessment year/years to be set off against the profits and gains of business or profession of those years.

(i) In Andhra Pradesh I charge, the assessment of an un-registered firm, for the assessment year 1992-93 was completed in March 1995 after scrutiny accepting the income of Rs.46,390 returned by the assessee, which was determined after setting off business loss of Rs.20.26 lakh relating to the assessment year 1991-92. Audit scrutiny, however, revealed that the loss which was required to be set off was only Rs.3.14 lakh. The mistake resulted in excess set-off of loss of Rs.17.12 lakh with consequent short levy of Rs.16.43 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) In Surat charge, the assessment of a registered firm for the assessment year 1991-92 was completed after scrutiny in October 1993. Audit scrutiny revealed that its business loss pertaining to assessment years 1989-90 and 1990-91 aggregating Rs.42.54 lakh was brought forward and adjusted, though the same had already been allocated

* **Mohammed Meerakhan Vs.CIT 73-ITR-735**

among the partners in the respective assessment orders. The mistake resulted in underassessment of income by like amount with consequent short levy of tax of Rs.8.58 lakh.

The Ministry have accepted the audit observation.

Mistakes in allowing deduction under chapter VIA

5.20 Under the provisions of Chapter-VIA of the Income Tax Act, 1961 certain deductions are admissible from the gross total income of an assessee in arriving at the net income chargeable to tax. The overriding condition is that the total deductions should not exceed the gross total income of the assessee. Gross total income has been defined in the Act as the total income computed in accordance with the provisions of the Act before making the deduction under Chapter VIA, but after setting off unabsorbed losses, depreciation, investment allowance etc. of earlier years. Where the set off of unabsorbed loss, depreciation, investment allowance etc. of earlier years results in reducing the total income to nil or to a loss, no deduction under chapter VIA is admissible.

In Haryana (Rohtak) charge, the assessment of a cooperative society for the assessment year 1990-91 originally completed after scrutiny in January 1993, was rectified in August 1993, allowing deduction of Rs.25.62 lakh in respect of profits from New Industrial undertaking going into production after 31st March 1981. Audit scrutiny revealed that the deduction has been erroneously allowed before setting off brought forward losses and allowances of earlier years. The omission resulted in excess grant of deduction of Rs.25.62 lakh with consequent short levy of tax of Rs.18.59 lakh (including interest).

The Ministry have accepted the audit observation.

Incorrect allowance of relief in respect of export turnover

5.21 Under the Income Tax Act, 1961, in the case of an Indian company or person resident in India engaged in the business of export out of India of eligible goods or merchandise other than mineral oil, minerals and ores, a deduction in respect of the profit derived from export of such goods is allowed as a deduction while computing the income. Where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profit derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee. When the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export.

With effect from 1 April 1992 'profits of the business' means the profits of the business as computed under the head "profits and gains of the business or profession" and as reduced by ninety percent of any sum towards profits on the sale of licence, cash assistance received or receivable and duty drawback or of any receipt by way of brokerage,

commission, interest, rent, charges or any other receipt of a similar nature included in such profit. The profit computed as above shall further be increased by the amount which bears to ninety percent of any sum received towards profit on sale of import licence, cash assistance or duty drawback received, the same proportion as the export turnover bears to the total turnover of the business. Further, adjusted profits of the business means the `profits of the business' as reduced by the profits derived from the business of export of trading goods.

Some illustrative cases are given below :

Sl. No.	Status	Commis-soner's charge	Assessment year and date of assessment	Section under which assessed	Nature of objection	Tax effect (Rs.in l akh)
1.	Regd. firm	Mumbai City XI	1992-93 March 1994	143(3)	Failure to deduct the supervision charges amounting to Rs.146.38 lakh from profits of the business resulted in excess export relief.	61.02
2.	Ind.	Trivan-drum	1992-93 July 1994	143(1)(a)	Non-adjustment of loss of Rs.54.12 lakh in respect of export of trading goods resulted in incorrect determination of export profits involving excessive deduction of Rs.21.65 lakh.	9.63
3.	Reg. firms	Vijaya-wada	1992-93 March 1994	143(3)	Omission to deduct 90% of receipts on account of interest, hire charges and rebates from profits of the business resulted in excessive export relief by Rs.38.05 lakh.	9.50
4.	R.F.	Mumbai Central II	1992-93 March 1994	143(3)	Omission to deduct 90% of licence premium, labour charges and interest amounting to Rs.10.09 lakh from profits of the business resulted in excess allowance of Rs.6.35 lakh.	5.06
5.	R.F	Jaipur	1992-93 March 1995	143(3)	Omission to reduce 90 percent of interest receipt led to excess deduction of Rs.1.92 lakh.	2.10

The Ministry have accepted the audit observations at Sl.No.2 and 5. They have not accepted the audit observations at Sl.Nos.3 and 4 on the ground that since explanation (baa) provides that only receipts by way of brokerage, commission, interest, rent charges etc which are included in the profit are to be excluded for computing deduction under Sec 80 HHC, only net amount which is included in profits is to be excluded. Moreover, labour charges are a part of the turnover included in the trading account and therefore has no semblance to any receipt of the type referred to in the explanation.

The reply is not tenable as both receipts and payments on account of brokerage, commission etc. are accounted for in the profit and loss account to arrive at the correct net profit or loss. Ascribing a meaning `net receipts' would be adopting a restrictive definition not envisaged

under the Act. Further, the word 'charges' have specifically been included in the explanation for adjusting the profits of the business and therefore there is no justification for excluding labour charges from the purview of the explanation. Incidentally, the Ministry have accepted the audit observation at Sl.No.5. Their response in the remaining case has not been received.

Incorrect deduction in respect of profits from new industrial undertaking established after 31 March 1981

5.22 Under the Income Tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a newly established industrial undertaking which goes into production after 31 March 1981, there shall be allowed a deduction of 20 percent of such profits provided the industrial undertaking, if not a small scale industrial undertaking, does not manufacture or produce any article or thing specified in the Eleventh Schedule to the Act. One of the items included in the Eleventh Schedule is beer, wine and other alcoholic spirits. As such a large scale industrial undertaking engaged in the manufacture of alcoholic spirits is not entitled to the aforesaid deduction.

In Lucknow charge, in the assessment of a co-operative society for the assessment year 1991-92, completed after scrutiny in February 1994, the assessing officer allowed an aggregate deduction of Rs. 14.38 lakh in respect of industrial undertaking set up after 31 March 1981 as claimed by the assessee for its two newly established distilleries. Audit scrutiny revealed that the newly established distilleries engaged in production of alcoholic spirit were not small scale industrial undertaking and as such deductions of Rs. 14.38 lakh were incorrectly allowed. Besides, depreciation on plant and machinery of another distillery was erroneously allowed in excess by Rs. 63,775. The incorrect deductions resulted in aggregate underassessment of income of Rs. 15.02 lakh involving short levy of tax of Rs. 10.01 lakh (including interest).

The Ministry have accepted the audit observation.

Incorrect allowance of deduction in respect of royalty, commission, fees etc. from a foreign enterprise

5.23 Under the Income Tax Act, 1961, an assessee who is either an Indian company or a person other than a company resident in India is entitled to a deduction, from the gross total income, of an amount equal to fifty percent of the income received by way of royalty, commission, fees, etc. from a foreign enterprise including Government of Foreign State in consideration for use outside India of any patent, invention, model, design, secret formula or process or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided to such Government or enterprise, or in consideration of technical services or professional services rendered outside India if the income is received in convertible foreign exchange within India or brought into India within a period of six months from the end of the relevant previous year or within such extended period as may be allowed by the Chief Commissioner or Commissioner of Income Tax. The Act further provides that the services rendered or agreed to be rendered outside India includes services rendered from India but does

not include the services rendered in India. The deduction allowable is determined with reference to the net income and not on the gross income from such receipts.

In Mumbai City I charge, the assessment of a registered firm for the assessment years 1992-93 and 1993-94 was completed in December 1993 after scrutiny allowing an aggregate deduction of Rs.71.19 lakh in respect of export services. Audit scrutiny revealed that the assessee was carrying on the business of commission agent in addition to its trading activities and received orders from foreign buyers for their import from India. The assessee would find out prospective exporters for such orders and was paid a commission in foreign exchange on receipt of the goods by the foreign buyers. Thus the nature of the services rendered by the assessee showed that it could not be treated either as services rendered from India or outside India. Having received orders from foreign buyers, other actual services were rendered in India and no part of the service rendered extended beyond the territory of India. So the above provisions were not attracted in its case. The irregular deduction resulted in underassessment of income to the extent of Rs.71.19 lakh with consequent short levy of tax of Rs.38.94 lakh.

The Ministry have accepted the audit observation.

Excess refund

5.24 Under the Income Tax Act, 1961, an assessment may be completed in a summary manner after rectifying any arithmetical error in the return, accounts and accompanying documents. In a scrutiny assessment the assessing officer shall make a correct assessment of the total income or loss of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment. In all these assessments the tax or refund shall be determined after taking into account the prepaid taxes and refunds made.

(i) In Tamil Nadu V charge, the assessment of an individual for the assessment year 1991-92 originally completed after scrutiny in November 1993 was revised in April 1994, allowing a refund of Rs. 7.16 lakh. Audit scrutiny revealed that an amount of Rs. 12.55 lakh had already been refunded to the assessee at the summary assessment stage in March 1992 and that the further refund of Rs. 7.16 lakh was computed without considering the earlier refund. The omission resulted in excess refund of Rs. 12.55 lakh.

The Ministry have accepted the observation.

(ii) In Bangalore Central charge, the assessment of a registered firm for assessment year 1988-89 was revised in March 1995 based on an appellate order. Audit scrutiny revealed that the assessee was allowed a credit of Rs.6.35 lakh while computing the refund even though this amount had been withdrawn and adjusted separately. Thus, the incorrect credit of Rs.6.35 lakh afforded in March 1995 was irregular which

resulted in excess refund by a like amount for the assessment year 1988-89.

The reply of the Ministry to the audit observation has not been received.

Short levy of interest for delay in filing the return

5.25 Under the Income Tax Act, 1961, where the return for any assessment year is furnished after the specified due date, the assessee shall be liable to pay interest at two per cent per month or part thereof from 1 April 1989 (15 percent per annum prior to assessment year 1989-90), from the date immediately following the specified due date to the date of filing the return or where no return is furnished, to the date of completion of regular assessment on the amount of tax determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source. Further, where the return of income furnished by the assessee is regarded as defective on grounds of non-fulfilment of specified conditions and no rectification of the defects as indicated by the assessing officer has been done within the period specified in the Act, the return submitted shall be treated as invalid return and the provisions of the Act shall apply as if the assessee had failed to furnish the return.

Four illustrative cases are given below :

Sl. No.	Commissioner's charge	Status	Assessment year and date of assessment	Section under which assessed	Nature of objection	Tax effect (Rs.in lakh)
1.	Haryana Rohtak	AOP	1989-90 to 1991-92 March 1995	144	Interest of Rs.194.98 lakh was erroneously levied for 33 months instead of the correct amount of Rs.310.59 lakh leviable for 67, 55 and 43 months.	115.61
2.	Pune	Ind.	1989-90 March 1994	143(3)	Interest of Rs.8.23 lakh was erroneously levied instead of the correct amount of Rs.16.45 lakh.	8.22
3.	NER, Shillong	Ind.	1992-93 March 1995	143(3)	Instead of the correct amount of Rs.20.22 lakh interest of Rs.13.48 lakh was erroneously levied.	6.74
4.	Mumbai City I	RF	1988-89 March 1992	144	Interest erroneously levied from the specified due date to the date of filing of invalid return instead upto the date of assessment	5.95

The Ministry have accepted the audit observation at Sl.Nos.2 and 4. The Ministry have not accepted the audit observation at Sl.No.1 on the ground that the mistake was already in the knowledge of the assessing officer before the audit observation was raised and was rectified on 10 July 1995 whereas the date of audit was 19 July 1995.

The Ministry's reply is not tenable since the audit was conducted from 6 July to 4 August 1995. Though the audit query on the issue was raised on 19 July 1995, audit scrutiny of the D.C.R revealed that entries were

made by the department only on 20 July 1995. Further, while replying to the initial audit observation, the assessing officer did not inform Audit that it was in his knowledge. Their response in the remaining case has not been received.

Non-levy of interest for default in payment of advance tax

5.26 Under the Income Tax Act, 1961, where an assessee who is liable to pay advance tax for any financial year on the basis of his own estimate has failed to pay such tax or where the advance tax so paid falls short of ninety percent of the tax determined on regular assessment, interest at the rate of two percent for every month or part of a month is payable by the assessee on the amount by which the advance tax paid falls short of the assessed tax from the first day of the next financial year to the date of determination of total income in a summary manner or regular assessment. Further, as per the provisions of Income Tax Act, 1961, as they stood prior to assessment year 1989-90, where on making regular assessment, the assessing officer finds that an assessee has not sent an estimate of advance tax payable by him or has not sent an estimate of his current income and advance tax payable by him on the current income and has not paid any advance tax, simple interest at the rate of 15 percent per annum from the first day of April next following the financial year upto the date of regular assessment shall be payable by the assessee upon the amount equal to the assessed tax.

Six illustrative cases are given below :

Sl. No.	Commis-sioner's charge	Status	Assessment year and date of assessment	Section under which assessed	Nature of objection	Tax effect (Rs.in lakh)
1.	Chennai Central I	Inds.	1989-90 Aug.94	154	Interest for non-payment of advance tax not levied.	10.65
2.	WB V	Unregd firm	1992-93 March 1995	143(3)	Interest for short payment of advance tax was erroneously levied at Rs.4.53 lakh instead of the correct amount of Rs.14.98 lakh	10.45
3.	Meerut	AOP	1991-92 Feb. 1994	143(3)	Interest of Rs.6.97 lakh for short payment of advance tax erroneously levied instead of the correct amount of Rs.15.96 lakh.	8.99
4.	Baroda	AOP	1986-87 & 1987-88 March 1995	143(3)	Interest for non-filing of statement/estimate of advance tax and for non- payment of ad-vance tax was omitted to be levied.	7.17
5.	WB XI	RF	1991-92 March 1994	143(3)	Interest for non-payment of advance tax levied upto the date of summary assessment instead of upto the date of regular assessment	6.50
6.	Mumbai City XII	Ind.	1989-90 March 1992/ January 1995	143(3)	Interest for shortfall in advance tax not levied upto the date of regular assessment	6.08

The Ministry of Finance have accepted the audit observations at Sl.No.1 to 5. Their response in the remaining case has not been received.

Short levy of interest for short/non-payment of tax

5.27 Under the Income Tax Act, 1961, any demand for tax should be paid by an assessee within 30 days of service of notice of the relevant demand and failure to do so attracts levy of simple interest at one and one-half percent for every month or part thereof from the date of default till the actual date of payment of demand. The Act further provides that if no refund is due on regular assessment or the amount refunded exceeds the amount refundable on regular assessment, the whole or the excess refund so granted shall be deemed to be tax payable by the assessee.

In Mumbai City II charge, the assessment of an assessee individual for the assessment year 1992-93 was completed in a summary manner in December 1992 allowing a refund of Rs.20.59 lakh. Audit scrutiny revealed that the scrutiny assessment which was completed in December 1994 resulted in raising of demand of Rs.27.43 lakh including the recovery of refunded amount of Rs.20.59 lakh. However, no interest was levied on the excess refund of Rs.20.59 lakh treating the same as tax payable. The interest on the refund of Rs.20.59 lakh which was due from the date of refund is Rs.9.88 lakh.

The Ministry have accepted the audit observation.

Omission to levy penalty

5.28.1 Under the Income Tax Act, 1961, no person shall, after 30 June 1984, take or accept or repay any loan or deposit of Rs. 20,000 or more, otherwise than by an account payee cheque or bank draft subject to certain exceptions. For contravention of this provision without reasonable cause an assessee is liable to pay by way of penalty, a sum equal to the amount of deposit or loan so taken or accepted or repaid. The Board have also directed that in cases where the assessing officer does not initiate penalty proceedings, he should record reasons for not doing so.

Two illustrative cases are given below :

Sl. No.	Commissioner's charge	Assessment year and date of assessment	Section under which assessed	Nature of objection	Tax effect (Rs. in lakh)
1.	Ahmedabad II	1989-90 1991-92 1992-93 June 1990 to Sept.1993	143(3)	Repayment of deposits of Rs.2.53 lakh was made in cash and deposits of Rs.3.30 lakh in cash were accepted without reasons for not initiating penalty proceedings	5.83
2.	Ranchi	1990-91 March 1993	143(3)	Loans/deposits aggregating Rs.5.48 lakh were accepted in cash. However no penalty proceedings were initiated by the deptt. nor were reason recorded for not doing.	5.48

The Ministry have accepted the audit observations at Sl.No.2. They have not accepted them at Sl.No.1 on the plea that the provision is applicable for firms from the assessment year 1989-90 and the transactions pointed out relate to November 1987 and December 1987.

The reply is not tenable since only two assessee firms repaid deposits in November 1987 and December 1987 whose transitional previous year consisted of twenty one months beginning from 1 July 1987 to 31 March 1989 and hence were covered by assessment year 1989-90.

Irregular immunity from penalty

5.28.2 Under the Income Tax Act, 1961, if the assessee, in the course of search, makes a statement under sub section (4) of section 132 that any money, bullion, jewellery or other valuable articles or things found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in sub section (1) of section 139 and also specifies in the statement the manner in which such income has been derived and pays tax together with interest, if any, in respect of such income, he shall not be liable to pay penalty for concealment of the particulars of his income or furnishing inaccurate particulars of his income.

In Jabalpur charge, the assessment of a assessee firm for the assessment year 1993-94 was completed after scrutiny in March 1995 at an income of Rs.13.01 lakh after making an addition of Rs.12 lakh which was surrendered by the assessee at the time of search in September 1992. Audit scrutiny revealed that the assessee had not paid any tax at the time of surrender of the concealed income. As such it was not entitled to immunity from penalty for concealment of income. However, the assessing officer did not initiate any penalty proceedings in the course of assessment proceedings. The omission resulted in non-levy of minimum penalty of Rs.5.38 lakh.

The reply of the Ministry to the audit observation has not been received.

Non-deduction of tax at source

5.29.1 Under the Income Tax Act, 1961, any person, not being an individual or a Hindu undivided family, who is responsible for paying on or after the 18 day of October 1991 but before the 18 day of June 1992 to a resident, any income by way of commission (not being insurance commission) or brokerage shall at the time of credit of such income to the account of the payee or at the time of payment of such income deduct income tax thereon at the rate of 10 per cent. Failure to deduct tax or to pay it to the credit of Central Government shall make the defaulter liable to levy of interest and penalty.

In Jabalpur charge, the assessment of a registered firm for the assessment year 1992-93 was completed after scrutiny in March 1994. Audit scrutiny revealed that the assessee firm during the relevant

previous year made payment of commission of Rs.57.36 lakh to two agents but did not deduct tax at source amounting to Rs.5.74 lakh. Failure of the assessing officer to levy interest and penalty for the default resulted in non- realisation of Rs.7.46 lakh.

The Ministry have accepted the audit observation.

Short demand of tax

5.29.2 Under the Income Tax Act, 1961, when any tax, interest, penalty, fine or other sum is payable in consequence of any order passed under the Act, the assessing officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable. The Act also provides that where a regular assessment is made, any tax or interest paid by the assessee at the time of processing of return shall be deemed to have been paid towards such regular assessment, and if no refund is due on regular assessment or the amount refunded on processing of return exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of the Act shall apply accordingly.

In Cochin charge, the assessment of an individual assessee for the assessment year 1988-89 originally completed in March 1991 after scrutiny was revised twice in April 1993 and March 1994. Audit scrutiny revealed that in the revision order of March 1994 the assessing officer gave credit for the total sum of Rs. 10.15 lakh paid by the assessee without considering the refund of Rs. 6.75 lakh already granted in April 1993. The mistake resulted in short demand of tax by Rs. 6.75 lakh.

The Ministry have accepted the audit observation.

Chapter 6

Other Direct Taxes

A-Wealth Tax

Revenue from wealth tax

6.1 The following table gives a time series analysis of wealth tax receipts as against budget estimates during 1991-92 to 1995-96.

Year	Budget estimates	Actuals	Variation	Percentage variation
		(Rs. in crore)		
1991-92	255.00	306.93	51.93	20.4
1992-93	300.00	467.27	167.27	55.7
1993-94	200.00	153.98	(-)46.02	(-)23.0
1994-95	125.00	104.87	(-)20.13	(-)16.1
1995-96	90.00	74.16	(-)15.84	(-)17.6

The rather large variations between the budget and actual figures indicate the need to put the budgetary estimation on a realistic basis.

The drop in revenues in 1993-94 to 1995-96 with reference to preceding years was apparently due to the fact that with effect from assessment year 1993-94, net wealth upto Rs.15 lakh became exempt from wealth tax and a flat rate of 1 percent was imposed for net wealth exceeding Rs.15 lakh for all categories of assessees.

Status of assessments

6.2 Particulars of assessments completed, assessments pending and demands in arrear for the last five years ending 31 March 1996 were as given below:

Year	Number of assessments			Percentage of total cases pending	Arrear of demands at the end of the year (Rs. in crore)
	Due for disposal	Completed during the year	Pending at the end of the year		
1991-92	10,15,199	6,87,158	3,28,041	32.3	473.28
1992-93*	10,05,524	6,57,971	3,47,553	34.6	480.55
1993-94	6,13,751	4,32,574	1,81,177	29.5	423.28
1994-95	3,06,289	2,37,725	68,564	22.4	425.21
1995-96	1,85,410	85,384	1,00,026	53.9	806.23

*The revised figures for 1992-93 furnished by Ministry of Finance in February 1994 are different from those furnished by the Ministry provisionally and incorporated in the Report of the Comptroller and Auditor General of India on Union Government-Direct Taxes for that year. There was a steep fall in the number of assessments for disposal in 1993-94 to 1995-96 as with effect from 1 April 1993 net wealth below

Rs.15 lakh was exempted from levy of wealth tax.

Although there was reduction in the work load, the department could complete 0.85 lakh assessments in 1995-96 against 2.38 lakh assessments completed in the earlier year. This resulted in the pendency position improving only marginally from 22.4 percent in 1994-95 to 53.9 percent in 1995-96. The arrears continued to mount despite direction of the Board for according priority to reduction of arrear demand.

Results of audit

6.3 During the test audit of assessments completed under the Wealth Tax Act, 1957, conducted during the period 1 April 1995 to 31 March 1996, short levy of wealth tax of Rs.17.42 crore was noticed in 1241 cases.

A total number of 73 audit observations involving tax effect of Rs.290.33 lakh and one audit observation involving over charge of tax of Rs.1.06 lakh were issued to the Ministry of Finance for comments during March 1996 to November 1996. Out of these, the Ministry of Finance have accepted the observations in 39 cases involving tax effect of Rs.189.59 lakh in respect of non-company assessments and 11 cases with tax effect of Rs.43.21 lakh and over charge of Rs.1.06 lakh in respect of company assessments. 7 cases involving tax effect of Rs.37.88 lakh were checked by the Internal Audit wing of the department but the mistakes were not detected by them. The categorywise break up of the audit observations issued to the Ministry of Finance is given below:

Nature of the audit observation	No.	Tax effect (Rs. in lakh)
Wealth not assessed	8	52.60
Non-levy of wealth tax on companies	14	45.10
Incorrect valuation of assets	33	136.20
Incorrect computation of net wealth	7	10.43
Mistake in application of rate of tax/calculation of tax	4	4.66
Non-levy/short-levy of interest/penalty	7	41.34
Overassessment of wealth	1	(-)1.06
Total	74	290.33

36 illustrative cases with tax effect of Rs.244.10 lakh are discussed in the succeeding paragraphs to highlight the important audit observations. Out of these, the Ministry of Finance have accepted the observations in 25 cases involving tax effect of Rs.207.76 lakh. While paragraphs 6.4 to 6.9 are on wealth tax on assessees other than companies, paragraphs 6.10 to 6.12 relate to company cases.

Individual and others

Wealth not assessed

6.4(i) Under the Wealth Tax Act, 1957, wealth tax on assessees other than companies is chargeable in respect of each assessment year on their net wealth as on the valuation date relevant to that assessment year at the rates prescribed in the Schedule to the Act. Net wealth means the

aggregate value of all assets wherever located belonging to the assessee as reduced by the aggregate value of all admissible debts owed by him on the valuation date.

In Central I, Tamil Nadu charge, in cases of six individuals the income tax assessments for assessment year 1992-93 were completed after scrutiny in December 1994 and March 1995 on a total income ranging from Rs.16,780 to Rs.11.18 lakh. All the above assessees were holding shares as "promoters" in a widely held company aggregating 5,27,100 shares and 1,60,000 shares in another company valued at Rs.10 per share. Audit scrutiny revealed that the value of the 5,27,100 shares held by the assessees in the widely held company was quoted at Rs.210 per share on the valuation date. The assessees were therefore assessable to wealth tax. Neither did the assessees file wealth tax returns for assessment year 1992-93 nor did the department initiate wealth tax proceedings resulting in non-assessment of wealth aggregating Rs.1065.71 lakh with consequent non-levy of wealth tax of Rs.32.47 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) Despite recommendations of the Public Accounts Committee and several instructions of the CBDT emphasising the necessity for proper co-ordination of assessment records of various direct taxes, omissions to do so continue to occur.

In West Bengal VI and IX charges, audit scrutiny of the income tax assessment records of two individuals for the assessment years 1989-90 and 1990-91 revealed that both the individuals owned let out immovable properties and movable assets valued at Rs. 123.94 lakh which were chargeable to wealth tax. Neither did the assessees file their return of net wealth nor did the department initiate any wealth tax proceedings. The omissions resulted in wealth aggregating Rs. 94.43 lakh escaping assessments with consequent non-levy of wealth tax of Rs. 2.08 lakh (including interest).

The Ministry have accepted the audit observation.

(iii) Under the Wealth Tax Act, 1957, prior to 1 April 1993 'assets' include property of every description, movable or immovable but does not include certain specified assets. It has been judicially held* that interest due on accrual basis in cash system of accounting though not realised is liable to be included in the net wealth. Further under the Act from 1 April 1989, if the assessing officer has, in consequence of any information in his possession, reason to believe that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of under assessment or assessment at too low a rate or otherwise he may issue a notice to the assessee for re-opening of assessments beyond seven years but upto ten years from the end of the relevant assessment year if

* **CWT Vs Vysyaraju Badreenarayana Moorthy Raju (152 ITR-454-SC)**

the escaped net wealth is Rs.10 lakh or more for that year in cases subjected to scrutiny by way of assessment under Section 16(3) or 17(1) of the Act.

In Ahmedabad II, Gujarat charge, audit scrutiny of the revised assessments for the year 1987-88 done in March 1994 of 21 assessee trusts revealed that, in May 1987, the trusts were allotted 2,14,492 bonds, carrying interest @ 10.5 percent per annum, of a company on amalgamation of another company whose shares were held by them. As per scheme of amalgamation approved by Gujarat High Court in November 1985, interest was to be commenced from July 1981 and was payable annually on 1 October each year. The bonds were re-deemed in May 1987. The paying company had made the provisions for payment of interest on bonds upto June 1985, in respective accounting year which was allowed as deduction against its income in income tax proceedings. The assessee had however not returned the wealth on account of accrued interest on these bonds in any of the wealth tax returns from the assessment year 1982-83 to 1988-89. Noticing the escapement of wealth the assessment for assessment year 1987-88 was reopened and revised in March 1994 by adding interest accrued on bonds of Rs.22.01 lakh for the period 1.7.85 to 30.6.86. The assessing officer had initiated action to reopen the income tax assessment for the years 1986-87 and 1988-89. However, the wealth tax assessments for assessment years 1985-86, 1986-87 and 1988-89 remained to be revised, which resulted in non assessment of wealth aggregating Rs.66.05 lakh with consequent short levy of tax of Rs.2.05 lakh.

The Ministry have accepted the audit observation.

Avoidable mistakes in computation of net wealth

6.5 Underassessments of tax of substantial amounts on account of avoidable mistakes attributable to negligence on the part of assessing officers have been mentioned year after year in the reports of the Comptroller and Auditor General of India. Despite this and issue of repeated instructions by Government, such mistakes continue to occur suggesting the need for close supervision and control.

(i) In Central I, Mumbai charge, wealth tax assessment of an individual for the assessment year 1992-93 was completed exparte in March 1995. Audit scrutiny revealed that the total of wealth of the assessee was incorrectly computed at Rs. 3417.23 lakh instead of correct total of Rs.3482.03 lakh. Further an amount of Rs. 42,000 on account of undisclosed asset was not added back to the total wealth of the assessee. These mistakes resulted in underassessment of wealth of Rs. 65.22 lakh with consequent short levy of tax of Rs. 2.13 lakh (including interest).

The Ministry have accepted the audit observation.

(ii) In Central I, Mumbai charge, wealth tax assessment of an individual for the assessment year 1990-91 was completed after scrutiny in March

1995. Audit scrutiny revealed that the assessing officer had added several types of assets in the net wealth of the assessee whose total was incorrectly worked out at Rs. 2099.82 lakh instead of the correct total of Rs.2162.86 lakh. The mistake resulted in underassessment of wealth of Rs. 63.04 lakh with consequent short levy of tax of Rs. 2.05 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Incorrect valuation of assets - Quoted shares

6.6.1 (i) Under the Wealth Tax Act, 1957, from 1 April 1989, the value of any asset other than cash, shall be its value as on the valuation date determined in the manner laid down in Schedule III to the Act. Under Schedule III the value of an equity share of any company which is quoted shall be taken as the value quoted in respect of such share on the valuation date.

In Central I, Chennai charge, the wealth tax assessment of ten individuals for the assessment year 1992-93 were completed after scrutiny in March 1995. Audit scrutiny revealed that the value of 12,93,000 quoted equity shares of a company, owned by the assesees was adopted at face value of Rs. 10 per share as returned by the assessee instead of the quoted rate of Rs. 210 per share on the valuation date 31 March 1992. The omission resulted in underassessment of wealth aggregating Rs. 2586 lakh with consequent short levy of wealth tax of Rs. 65.29 lakh (including interest).

The Ministry have accepted the audit observation.

(ii)(a) The value of an equity share in any company which is a quoted share may, at the option of the assessee or a company, be taken on the basis of the average of the value quoted on the 31st of March immediately preceding the assessment year and values quoted in respect of such share on the said dates in relation to each of the immediately preceding nine assessment years provided where the assessee opts for the average of the values so quoted, he shall set such value certified by an accountant and attach the certificate alongwith the return.

In Central II, Chennai charge, the wealth tax assessment of an individual for the assessment year 1991-92 and 1992-93 and another two individuals for the assessment year 1992-93 were completed after scrutiny in March 1995. The net wealth of each of assessee interalia included value 2,71,890 quoted equity shares of a company at face value of Rs.10 each as returned by the assessee and accepted by the department. Audit scrutiny revealed that the average quoted value of each share as in the valuation dates 31.3.1991 was Rs.24 for relevant assessment 1991-92 and Rs.33 as on 31.3.1992 relevant to assessment year 1992-93. The non adoption of the average quoted value as prescribed under the mandatory valuation provisions resulted is under assessment of wealth of Rs.225.67 lakh with consequent short levy of Rs.6.77 lakh.

The Ministry have accepted the audit observation.

(b) In Baroda and Ahmadabad charges, the wealth tax assessments of two assessees for the assessment year 1991-92 and four assessees for the assessment year 1992-93 were completed after scrutiny between March 1994 and March 1995 adopting the average value of shares held by them at Rs.85.60 lakh under the special valuation provisions as opted and returned by the assessees. Audit scrutiny revealed that the certificate as required under the above provisions for adopting the average value of shares was neither attached with the returns of wealth nor was it produced during the scrutiny assessment proceedings. In absence of such mandatory certificate the value of the shares should have been adopted at Rs.159.51 lakh at quoted rates of shares on the respective valuation dates which was higher than the adopted average quoted value. Omission to do so resulted in underassessment of wealth aggregating Rs.73.91 lakh involving tax effect of Rs.2.58 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

(c) In Andhra Pradesh II, Hyderabad charge, the wealth tax assessments of three individuals for the assessment year 1992-93 were completed after scrutiny in March 1995. Audit scrutiny revealed that value of the quoted equity shares of several companies, owned by the assessees was adopted at average quoted value under the special valuation provisions of Schedule III to the Act as opted and returned by the assessees. For adoption of such opted value, the assessees were required to get a certificate of valuation by an accountant and to attach the same with the return which was not done and neither was the same produced during the scrutiny assessment proceedings. Since the statutory requirement of furnishing the certificate of an accountant was not fulfilled by the assessees to substantiate their claim the value of the shares should have been adopted at quoted rates of shares on the respective valuation date i.e. 31 March 1992 which was higher than the adopted average quoted value. The omission resulted in underassessment of wealth aggregating Rs.81.65 lakh with consequent short levy of tax of Rs.2.16 lakh.

The Mnistry have accepted the audit observation.

(iii) According to the instructions issued by Central Board of Direct Taxes in September 1957, if an assessee is assessed within a state in which there is a recognised stock exchange, the rate of share/debenture quoted in that stock exchange should be adopted as the market value of such share/debenture for the purpose of wealth tax assessment.

In City II, Mumbai charge, the wealth tax assessment of an individual for the assessment year 1992-93 was completed after scrutiny in February 1995 at a taxable wealth of Rs.38.88 lakh. Audit scrutiny revealed that the assessee's net wealth included 27,500 equity shares and 75,628 debentures of a company. While making assessment, the value of these

investment were incorrectly adopted at Rs.82.12 per share and Rs.105 per debenture on basis of rates quoted at Ahmedabad stock exchange as against their quoted value in Bombay stock exchange at Rs.190 per debenture and the average value per share under the mandatory Wealth Tax Rules at Rs.134.21 on the valuation date. As the company's shares and debentures were quoted in Bombay Stock Exchange and the assessee was a resident of Bombay, these quoted values should have been adopted for valuation purpose. The adoption of incorrect value resulted in underassessment of wealth of Rs.78.61 lakh with consequent short levy of wealth tax of Rs.1.54 lakh.

The reply of the Ministry to the audit observation has not been received.

Unquoted equity shares of companies other than investment companies

6.6.2 (i) Under the Wealth Tax Act, 1957, from 1 April 1989, the value of any asset other than cash, shall be its value, on the valuation date, determined in the manner laid down in schedule III of the Act. Further, the value of unquoted equity shares of a company, other than an investment company, shall be 80 percent (85% upto the assessment year 1988-89) of the break-up value. The break-up value shall be determined by dividing the value of all assets in excess of all liabilities as shown in the Balance sheet by the total amount of its paid up equity share capital and by multiplying the result by the paid up value of each equity share. For this purpose 'balance sheet' in relation to any company means the balance sheet of such company as drawn up on the valuation date and where there is no such balance sheet, the balance sheet drawn up on a date immediately preceding the valuation date. Thus quoted investments held by the company in the form of shares would be its quoted market value in respect of each share as on the valuation date.

In West Bengal III, Calcutta charge, three individual assessees were the owners of 6400, 4640 and 5450 and 5450, 5410 and 5400 unquoted equity shares of two companies respectively in the previous year relevant to the assessment year 1991-92. While framing the wealth tax assessments of the individual assessees after scrutiny in March 1994, the assessing officer accepted the value of each share at Rs.2417.16 and Rs.30.32 respectively of the two companies on the basis of the balance sheets as on 31 March 1990, instead of the same as on 31 March 1991, as submitted by the assessees. It was observed from the income tax assessment records of both the companies that the Annual Reports for the previous year ended on March 1991, were drawn up in August 1991, which was well before of the submission of wealth tax return in October 1991 by the assessees and, as such, the break-up value of each share in respect of the two companies was to be completed with reference to the balance sheet as on 31 March 1991. Based on the balance sheet as on 31 March 1991, the break-up value of each share in respect of the two companies worked out to Rs.3284.89 and Rs.44.14 respectively and as such each share was underassessed by Rs.867.73 and Rs.13.82. Omission to adopt the correct value of unquoted equity shares resulted in the underassessment of wealth of Rs. 145.33 lakh with consequent short levy

of tax of Rs.2.85 lakh.

The reply of the Ministry to the audit observation has not been received.

(ii) In Pune, Maharashtra charge, the wealth tax assessment of three individuals, for the assessment years 1990-91 and 1991-92 were completed after scrutiny in November 1992. The assessee's wealth included 94,000 shares and 10,000 shares of two non investment companies. Audit scrutiny revealed that in the case of one company the break up value of shares was adopted at Rs.1086 as against Rs.1116 per share for assessment year 1990-91 and Rs.1364 as against Rs.1380 per share for assessment year 1991-92. In respect of another company the break up value was adopted at Rs.2760 as against Rs.3224 per share for assessment year 1990-91 and at Rs.3825 as against Rs.4092 per share for assessment year 1991-92. The difference in break up value was mainly due to adoption of the book value of shares instead of adoption of quoted value of shares shown in the balance sheet which were held as investments by these companies. The adoption of incorrect valuation of the break up value of shares resulted in aggregate underassessment of wealth of Rs.118.64 lakh with consequent short levy of wealth tax of Rs.2.37 lakh.

The Ministry have not accepted the audit observation on the grounds that the companies whose shares were held by the assessees were not investment companies and the audit view that a member who is the share holder and have made investments in these companies should be treated as investment companies is not proper.

The reply of the Ministry is not relevant to the issue and not tenable as both for investment as well as non-investment companies in working out the break up value of investments of shares the value of quoted shares held as investment by these companies have to be adopted at market value as disclosed in the balance sheet in accordance with the valuation provision quoted above instead of the book vlaue of investments as adopted by the department.

(iii) In West Bengal V, Calcutta charge, in the wealth tax assessment of an individual for the assessment year 1991-92, completed after scrutiny in March 1995, the value of 2625 and 5000 unquoted equity shares of two private limited companies held by him, was adopted as 'nil' as returned. Audit scrutiny revealed the value of these shares was adopted at Rs. 2378 and Rs. 194.71 per share respectively in the assessment of earlier assessment year 1990-91 completed after scrutiny in September 1991. The assessee did not furnish any balance sheet of the respective companies as on March 31, 1991 alongwith the return of wealth or at the time of assessment. In the absence of the balance sheet, the break up value of the unquoted equity shares was required to be computed on the basis of the available balance sheet as on 31 March 1990. This having not been done, the assessee's wealth for the assessment year 1991-92 was

underassessed to the extent of Rs. 72.16 lakh with consequent non-levy of wealth tax of Rs. 2 lakh (including interest).

The Ministry have accepted the audit observation.

Unquoted equity shares in investment company

6.6.3 (i) Under the Wealth Tax Act, 1957, from 1 April 1989, the value of any asset other than cash shall be its value as on the valuation date, determined in the manner laid down in Schedule-III of the Act. Further, the value of an unquoted equity share of an investment company shall be the break-up value which shall be determined by dividing the value of all assets in excess of all liabilities as shown in the balance sheet by the total amount of its paid-up equity share capital and by multiplying the result by the paid up value of each equity share. The Act defines an investment company as a company whose gross total income consists mainly of income which is chargeable to income tax under the heads "Income from house property", "Capital Gains" and "Income from other Sources". The Act further provides that with effect from 1 April 1992, the value of an asset disclosed in the balance sheet of the investment company shall be taken to be its value in accordance with the rules as applicable to that particular asset. The Board have clarified in October 1989 that where the balance sheet of a company drawn up as on the relevant valuation date is not published before the due date of filing wealth tax return, the value of unquoted equity shares under the rules may be worked out on the basis of the balance sheet drawn up as on a date immediately preceding the relevant valuation date. It has also been judicially held* that losses are negative profits and must be taken into account while computing the taxable income of the assessee.

In Tamil Nadu V, Chennai charge, the wealth tax assessments of an individual for the assessment years 1991-92 and 1992-93 which were filed in February 1993 and June 1993 were completed after scrutiny in March 1995 on a net wealth of Rs.59.57 lakh and Rs.60.44 lakh. The assessee was holding 15,680 unquoted shares in an investment company and the value of each share was adopted at Rs.477 in the assessments as returned by the assessee. Audit scrutiny revealed (July 1995) that as per the valuation certificate furnished by the assessee, the value of a share as on 31 March 1991 was Rs.757.89. This was not adopted in the assessment for assessment year 1991-92. Further, for the assessment year 1992-93, the break-up value had to be worked out after redetermining the value of the assets of the company in accordance with the provisions of Schedule-III of the Act. For the assessment year 1992-93, there was no valuation certificate in the records. In the absence of the certificate, the assessing officer should have worked out the break-up value as per the relevant rule instead of adopting the rate as per the return. Since the balance sheet of the company as on 31 March 1992 was not drawn up on

* **Eastern Aviation and Industries Ltd. Vs.CIT-208 ITR 1023 (Calcutta H.C).**

the due date of filing of return of wealth, the balance sheet as on 31 March 1991 was to be taken into consideration for working out the break up value. The break up value on the basis of this balance sheet by substituting the market value of the quoted shares held by it for the values shown in that balance sheet, would amount to Rs. 2137 per share. The due date of filing the return of wealth, the balance sheet as on 31 March 1991 was to be taken into consideration for working out the break-up value. The break-up value on the basis of this balance sheet by substituting the market value difference of Rs.1660 per share was omitted to be brought to tax. The omissions resulted in total under assessment of wealth of Rs.304.33 lakh and under charge of tax of Rs.7.54 lakh.

The reply of the Ministry to the audit observation has not been received.

(ii) In calculation of break up value in accordance with Rule 9 of the Schedule, the value of a quoted share or a quoted debenture held by the investment company shall be taken as the value quoted in respect of such share or debenture on the valuation date. Further Rule 12(5) (operative between 1.4.1992 and 31.3.1993) made it obligatory for the purpose of facilitating the valuation of unquoted equity shares under Rule 12, on the part of the company concerned to have such valuation made by its auditors appointed under Section 224 of the Companies Act, 1956 and a certificate of the auditors relating to such valuation in the prescribed form was to be furnished to the assessing officer in the case of the company and such valuation made by the auditors was to be taken into account in the assessment of the shareholders of the company.

In City IX, Mumbai charge, the wealth tax assessments of an individual for the assessment years 1990-91 and 1991-92 were completed after scrutiny in September 1992 computing taxable net wealth at Rs.66.57 lakh and Rs.80.73 lakh respectively. The assessee's net wealth included 1216 shares of an investment company whose value was adopted at Rs.1087.51 and Rs.1076.27 per share respectively for the two assessment years on the basis of valuation made by the auditors. Audit scrutiny revealed that the company had quoted investments in the form of shares and debentures in several companies and value of those investments were adopted at cost price as shown at Rs.12.23 lakh in the balance sheets as on 31 March 1990 and 31 March 1991 as against their market value of Rs.433.57 lakh and Rs.586.03 lakh respectively. Since the value of assets i.e. investments were quoted the market value thereof had to be adopted in accordance with the Rule 9 of schedule III of the Act. Thus on the basis of market value, the value of unquoted equity shares of the investment company worked out to Rs.10207.25 and Rs.13,496 per share as on 31 March 1990 and 31 March 1991 respectively as against Rs.1087.51 and Rs.1076.27 respectively as adopted by the assessee. The mistake in adoption of valuation of unquoted equity shares resulted in underassessment of wealth aggregating Rs.261.92 lakh with consequent short levy of tax of Rs.5.14 lakh.

6.6

The Ministry have not accepted the audit observation interalia on the grounds that the shares of the company were not quoted and were rightly valued as per Rule 12(5) of Schedule III of Wealth Tax Act. They have further stated that the market value of the shares were the same as adopted by the assessee as accepted by the assessing officer.

The reply is not tenable as the audit observation is not based on valuation rules for quoted shares and accordingly the valuation for unquoted shares of an investment company was required to be done on basis of Rule 12(2) of Schedule III of the Act. Incidentally, Rule 12(5) of Schedule III, laying down the requirement of adoption of valuation of the unquoted share as certified by the company's auditors on which reliance is sought to be placed by the Ministry, was not in force for the assessment years 1989-90 to 1991-92 and was thus not applicable in this case. The valuation of the shares of the investment company adopted by the assessing officer based on the certificate of the company's auditor was incorrect as the value of the quoted investments held by the company were taken at their book value instead of their quoted value, which resulted in the underassessment of wealth. The basis of the valuation of the shares have also been furnished to the Ministry.

(iii) For the purposes of Rule 12(2) of Schedule III, for purposes of working out the break-up value of an unquoted share, "balance sheet" in relation to any company, means the balance sheet of such company (including the Notes annexed there too and forming part of the accounts) as drawn up on the valuation date.

In City I, Mumbai charge, in the Wealth Tax assessment of an individual for the assessment year 1991-92 completed after scrutiny in February 1992 the value of 54,010 unquoted equity shares of an investment company held by the assessee was adopted as Rs.34.86 per share. Audit scrutiny revealed that the assessee also owned shares in two other non investment companies whose break-up value had been adopted by the department at Rs.77.99 and Rs.1170.37 per share respectively. The investment company also held shares in the above two companies. However, while working out the break-up value of the equity shares of the investment company the department adopted the book value of the shares of these two companies instead of the break up value which had been adopted for purposes of the Wealth Tax assessment of the assessee. The incorrect adoption of the value of the shares held by the investment company resulted in under assessment of wealth of Rs. 94.54 lakh with consequent short levy of tax of Rs.2.04 lakh (including interest).

The Ministry have not accepted the audit observation stating that in this case Rule 12(3) was not applicable since it was inserted w.e.f. 1.4.1992 and is applicable for the assessment year 1992-93.

The reply is not tenable as the audit observation is not based on Rule 12(3), but on Rule 12(2) of Schedule III according to which the value of

an asset would be the value as shown in the balance sheet. Accordingly the value of an unquoted share would be its break-up value and this should have been adopted instead of the book value of the shares of the two investment companies as adopted by the department.

Immovable properties

6.6.4 (i) Under the provisions of the wealth tax Act, 1957, prior to assessment year 1989-90 the value of any property shall 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. It has been judicially held* that the assessee's own valuation report/sale value filed in respect of the properties for subsequent years could be 'information' for re-opening of the assessment of earlier years.

In City IV, Mumbai charge, in the income tax assessment of an individual, for the assessment year 1989-90 completed in January 1993, the assessee had been assessed to long term capital gain on sale of residential house at Pune. The consideration received on sale of the property was Rs.161 lakh. It was noticed that in the wealth tax assessments for the assessment years 1986-87 and 1987-88 completed in March 1991 after scrutiny the value of this property was shown at Rs.2.92 lakh based on the valuation of the departmental valuation officer for the assessment year 1980-81 and without ascertaining the market value or obtaining a recent years valuation. As this property was sold during the assessment year 1989-90 for substantially high amount the market value of this property should have been ascertained and assessed to wealth tax. In the absence of full particulars, by adopting a moderate value of Rs.100 lakh for the assessment years 1986-87 and 1987-88, there was an underassessment of wealth of Rs.97 lakh in each year (approx) involving short levy of wealth tax of Rs.5.94 lakh (approx) in aggregate.

The Ministry have accepted the audit observation.

(ii) In Tamil Nadu I, Chennai charge, the wealth tax assessments of three assessees having equal share in a landed property in a metropolitan city, for the assessment years 1987-88 to 1990-91 were completed/revised during the period January 1989 to March 1992. Audit scrutiny revealed that the value of the property was assessed as Rs. 24 lakh for assessment year 1987-88 and 1988-89 and as Rs. 36 lakh for assessment year 1989-90 and 1990-91. It was observed that on the basis of the valuation of similar property in the same locality made by the Appropriate Authority of the Income Tax Department for the assessment year 1987-88 by and increasing it by 10 percent per annum for escalation of cost, the property would have to be valued at Rs. 64.38 lakh, Rs. 70.82 lakh, Rs. 78 lakh and Rs.85.70 lakh for assessment years 1987-88 to 1990-91 respectively. The omission to do so resulted in underassessment of wealth of Rs. 134.10 lakh with consequent short levy of tax of Rs. 2.49 lakh for the

* **DR.Keki Hormusji Gharda Vs.B.H.Raisinghani,W.T.O.(1981) 135 ITR 386 (Bombay HC).**

four assessment years.

The Ministry have accepted the audit observation.

(iii) Under the Wealth Tax Act, 1957, effective from 1 April 1989, the value of any asset other than cash, shall be its value, as on the valuation date, determined in the manner laid down in Schedule III to the Act. Further, the value of any immovable property being land and building appurtenant thereto shall be the amount arrived at by multiplying the net maintainable rent by the figure 12.5. The net maintainable rent shall be derived from the gross maintainable rent by deducting therefrom the amount of taxes levied by any local authority and a sum equal to fifteen percent of the gross maintainable rent. The Central Board of Direct Taxes issued instructions (November 1973, April 1979 and September 1984) for proper co-ordination amongst assessment records pertaining to different direct taxes with a view to bringing to tax, cases of evasion of tax.

In West Bengal II, Calcutta charge, in the wealth tax assessment of three individuals each having one fifth share in a house property situated in the Metropolitan city of Calcutta, for the assessment years 1991-92 and 1992-93 completed after scrutiny in November 1993 and December 1993, the value of the house property in the case of each of three assessees was adopted at Rs.6.93 lakh as returned. Audit scrutiny of the income tax assessment records for these years revealed that assessees had rental income of Rs.11.77 lakh from the house property during the relevant previous years. Considering the mandatory valuation provisions under the Act on rent capitalisation method, the value of the house property would work out to Rs.109.84 lakh and the respective share of the each individual Rs.21.99 lakh as against Rs.6.93 lakh adopted in the assessments. The omission resulted in underassessment of wealth aggregating Rs.90.24 lakh with consequent short levy of tax of Rs.1.96 lakh (including interest).

The reply of the Ministry to the audit observation has not been received.

Partner's share interest in partnership firm

6.6.5 (i) Under the provisions of Wealth Tax Act, 1957, the value of the interest of a partner in a firm shall be included in his net wealth as determined by the rule under Schedule-III of the Wealth Tax Act. The rules provide for the global valuation of the assets of the business and allocation among the partners. The rules provide that where a property is not let, the amount of annual rent assessed by the local authority for the purpose of levy of property tax shall be taken as the gross rent for computing the value of such property.

In Central I, Chennai charge, in the case of two individuals the wealth tax assessments for assessment year 1992-93 were completed after scrutiny in March 1995. The net wealth inter alia included 18 percent and 27 percent of each assessees' interest in a firm which owned buildings and

land in a metropolitan city. While working out the interest of the assessee in the firm value of the land and buildings owned by the firm was incorrectly computed at Rs.40.34 lakh under Schedule-III of the Act and was accepted in the assessments. Audit scrutiny revealed (November 1995) that the firm had let out only one-tenth of a building but capitalised the rent for this portion only as value for the entire building instead of annual rent for the entire building. Omission to assess the value of the entire building resulted in under assessment of wealth of Rs.138.92 lakh (approx.) with consequent short levy of wealth tax of Rs.2.72 lakh.

The Ministry have accepted the audit observation in principle but have not accepted the revenue effect as pointed out stating that valuation of the property has to be done seperately for let out portion and for portion used for own business. They have further stated that in this case as the book value of the property was more than the value assessed by the Corporation of Madras, for the portion not let out, the book value has to be adopted in accordance with Rule 14(2) of Schedule III to the Wealth Tax Act.

The reply is not tenable as Rule 14(2)(b) also makes a reference to Rule 3, read with Rule 5(ii) for valuation of immovable property when it is not let out. Accordingly when there is no assessment of the property by the local authority with reference to the valuation date, the value to be adopted is the value for which the property can reasonably be let out. Since one tenth portion of the property was let out the same annual rent had to be adopted proportionately for the remaining portion to arrive at the reasonable valuation of the entire property. Further the municipal valuation by the local authority of Madras referred to in the reply was for the year 1986-87 and hence there being a time gap of 6 years, the valuation was not relevant for any comparison as it did not reflect the true valuation of the property under Schedule III of the Act.

(ii) Under the Wealth Tax Act, 1957, as amended with effect from 1 April 1989, in computing the net wealth of an assessee who is a partner in a firm or a member of an association of persons (not being a Co-operative Housing Society) the value of his interest in the firm or association shall be included as determined in the manner laid down in Schedule III to the Act. Rule 16 of part E of the Schedule which deals with computation of net wealth of the firm or association of persons and its allocation amongst the partners and the members and for such computation and allocation, provides for allocation of that portion of the net wealth of the firm or association as is equal to the amount of its capital amongst the partners in the proportion in which capital has been contributed by them.

In West Bengal V, Calcutta charge, in the assessment of an individual for the assessment year 1992-93 completed after scrutiny in March 1995, the value of the assessee's share of interest in the firm was considered at Rs.18.19 lakh as returned by the assessee. Audit scrutiny revealed that in

the Balance Sheet of the firm as on 31 March 1992 enclosed with the return, the assessee's share of capital in the firm was shown as Rs.79.10 lakh and the same amount appeared in the balance sheet of the assessee also as on 31 March 1992 and hence this was required to be adopted as his net wealth instead of Rs.18.19 lakh adopted in the assessment. The incorrect adoption of value of share of the assessee's interest in the firm resulted in underassessment of wealth of Rs.60.91 lakh with consequent short levy of wealth tax of Rs.1.57 lakh (including interest for late submission of return).

The Ministry have accepted the audit observation.

Assessee's interest in proprietary concern

6.6.6 (i) Upto the assessment year 1992-93, the term 'asset' included an assessee's interest in his proprietary concern. Under Schedule III to Wealth Tax Act, where the assessee is carrying on a business for which accounts are maintained by him regularly, the net value of the asset of the business as a whole, having regard to the balance sheet of such business on the valuation date after adjustments specified in sub- section (2) shall be taken as the value of such assets for the purposes of Act. Under Rule 14(2) of Schedule III capital employed in the business other than that attributable to borrowed money and reserves by whatever name called shown as liabilities in the balance sheet shall not be taken into account for working out the net value of the assets of business.

In Karnataka II, Banglore charge, the wealth tax assessment of an individual for the assessment years 1988-89 and 1989-90 were completed after scrutiny in November 1991 and March 1992 respectively determining net wealth of Rs.1.13 crore and Rs.1.21 crore. Audit scrutiny of the account returns and other details enclosed by the assessee to the returns of wealth revealed that the assessee had 'Reserve against liabilities' of Rs.60.76 lakh and Rs.61.75 lakh on the valuation dates relevant to the two assessment years which should not have been deducted from the value of assets while working out the net value of assets of the business as a whole. Similarly, for the assessment year 1988-89, the capital investment in business in one of the proprietary concerns was taken less by Rs.3.29 lakh while for the assessment year 1989-90, the investment allowance reserve was less accounted by Rs.2.50 lakh. These mistakes resulted in underassessment of wealth of Rs.1.28 crore with consequent short levy of tax aggregating Rs.2.62 lakh.

The reply of the Ministry to the audit observation has not been received.

(ii) In Tamil Nadu IV, Chennai charge, the wealth tax assessments of an individual for the assessment years 1991-92 and 1992-93 were completed after scrutiny in February 1994 and October 1994 on a net wealth of Rs.198.90 lakh and Rs.206.63 lakh adopting the value of closing stock, trade debtors and other assets in the two sole proprietary

concerns aggregating Rs.23.83 lakh and Rs.24.67 lakh respectively and the value of 88,647 shares of a closely held company at Rs.137.39 lakh for assessment year 1992-93 as returned. Audit scrutiny revealed that in the case of business assets the actual value of movable assets worked out to Rs.64.31 lakh and Rs.62.51 lakh as against Rs.23.83 lakh and 24.67 lakh and the value of aforesaid 88,647 shares worked out to Rs.157.59 lakh as against Rs.137.59 lakh adopted. Omission to adopt the correct value of trading assets and shares resulted in under assessment of wealth of Rs.98.32 lakh with consequent short levy of wealth tax of Rs.1.92 lakh.

The Ministry have accepted the audit observation.

Short levy of interest for delay in filing the return

6.7 Under the Wealth Tax Act, 1957, where the return of net wealth for any assessment year is furnished after the specified due date or is not furnished, the assessee shall be liable to pay simple interest at the rate of two percent for every month or part of a month from the date immediately following the due date to the date of filing the return, on the amount of tax determined in regular assessment.

(i) In Central II, Mumbai charge, the wealth tax assessment of an individual for the assessment year 1992-93 was completed after scrutiny in March 1995 determining net wealth and tax at Rs.796.80 crore and Rs.15.93 crore respectively. Audit scrutiny revealed that the assessee filed the return of wealth on 11 November 1993 as against the specified due date for furnishing the return on 31 October 1992. The assessee was therefore liable to pay interest of Rs.414.27 lakh for delay in furnishing the return from 1 November 1992 to 11 November 1993 for a period of 13 months instead of Rs.382.40 lakh levied for 12 months. This resulted in a short levy of interest of Rs.31.87 lakh.

The Ministry have accepted the audit observation.

(ii) In Andhra Pradesh I, Hyderabad charge, the assessment of a Hindu undivided family specified for the assessment year 1991-92 was completed after scrutiny in March 1995 determining a net wealth of Rs. 391.94 lakh. Audit scrutiny revealed that for delay of 22 months in submission of return, interest was levied at the rate of one percent per month as against the applicable correct rate of two percent per month. The mistake resulted in short levy of interest of Rs. 2.55 lakh.

The Ministry have accepted the audit observation.

Incorrect calculation of tax

6.8 Underassessment of tax of substantial amounts on account of avoidable mistakes attributable to negligence on the part of the assessing officer has been mentioned year after year in the report of the Comptroller and Auditor General of India. Despite this and issue of repeated instructions by the Board, such mistakes continue to occur suggesting the need for close supervision and control.

In Patiala, Punjab charge, the wealth tax assessment of an individual for the assessment years 1985-86, 1991-92 and 1992-93 were completed after scrutiny in March 1995 at a net wealth of Rs.110.07 lakh, Rs.175.78 lakh and 187.33 lakh. The aggregate wealth tax of Rs.9.73 lakh was levied incorrectly instead of Rs.11.38 lakh leviable as per rates specified for the relevant assessment years. The mistake in calculation of tax resulted in short levy of tax of Rs.2.12 lakh (including interest for late filing of return).

The Ministry have accepted the audit observation.

Omission to levy penalty

6.9 Under Section 18(1)(a) and 18(1)(b) of Wealth Tax Act, 1957, if the assessing officer in the course of any proceedings under the Act is satisfied that any person has failed to furnish the return which he is required to furnish or has without reasonable cause failed to comply with a notice issued to him he may by order in writing direct that such person shall pay by way of penalty in addition to the amount of wealth tax if any payable by him, a sum equal to two percent of the assessed tax for every month during which the default continued and in addition to the amount of wealth tax payable by him, a sum which shall not be less than ten percent but which shall not exceed fifty percent of the amount of the wealth tax, if any, which would have been avoided if the net wealth returned by such person had been accepted as the correct net wealth.

In Tamil Nadu I, Chennai charge, the wealth tax assessment of an individual for assessment year 1988-89 was completed ex-parte in March 1992on a total wealth of Rs.256.70 lakh. The assessment was reopened as a result of appellate orders setting aside the original assessment and completed on a net wealth of Rs.130.69 lakh. Audit scrutiny revealed that the assessee was liable to penalty under the provisions of the Act for non-filing of the return and for non-compliance of notices issued. However, the assessing officer did not initiate any penalty proceedings. Omission to do so resulted in non-levy of penalty aggregating Rs.2.47 lakh.
The reply of the Ministry to the audit observation has not been received.

Company cases

Non levy of wealth tax

6.10 Under the provisions of Section 40 of Finance Act, 1983, with effect from the assessment year 1984-85, companies other than those in which the public are substantially interested are liable to wealth tax at a flat rate of 2 percent (plus 10 percent surcharge for the assessment year 1988-89 only) of the net wealth comprising the aggregate market value upto the assessment year 1991-92 and for assessment year 1992-93 either value determined in the manner laid down in Schedule III to the Act or value disclosed in balance sheet of the company on the valuation date, whichever is higher, of the specified assets belonging to the company reduced by the debts owed by the company pertaining to such assets on the valuation date.

In Tamil Nadu, West Bengal, Madhya Pradesh, Gujarat and Haryana charges, audit scrutiny of the income tax assessment records of closely held companies for the assessment years 1984-85 to 1992-93 revealed that the companies owned specified assets which were chargeable to wealth tax. However, neither did the assessee companies file their return of net wealth nor did the department initiate any wealth tax proceedings. The omission resulted in aggregate wealth of Rs.1668.17 lakh escaping assessment with consequent non-levy of wealth tax of Rs.37.05 lakh. Brief particulars of these cases are given below:

Sl. No.	Commissioner's charge	Assessment year	Type of assets owned	Aggregate value of assets escaping assessment	Tax effect
				(Rs.in lakh)	
1	Central II Madras	1992-93	Immovable property and Motor cars	452.29	14.83
2	West Bengal IV Calcutta	1990-91 to 1992-93	Land and Building	272.16	5.23
3	Tamil Nadu IV Chennai	1990-91 & 1992-93	House property	216.64	4.33
4	Bhopal	1993-94 &1994-95	House properties	269.13	3.47
5	Rajkot	1991-92 & 1992-93	Godown building	162.13	3.24
6	West Bengal II Calcutta	1984-85 to 1991-92	House and Land properties	171.92	3.18
7	Haryana	1989-90 to 1992-93	Part of a building and car	123.89	2.77

The Ministry have accepted the audit observation at Sl.Nos. 1 and 3 to 7. The Ministry have not accepted the audit observation at Sl.No.2 stating that the assessee was not a closely held company but a company in which the public are substantially interested and in view of Section 2(18)(b)(c). of the Wealth Tax Act and Section 40 of the Finance Act 1983, the company cannot be subjected to any wealth tax; details of the shareholding pattern are also enclosed with the reply.

The reply is not tenable as for assessment years 1990-91 to 1992-93, the assessee company had itself quoted in its return of income its status as 'a domestic company which is a trading company or investment company in which public are not substantially interested i.e. Code No.14' and the assessing officer also assessed the company under this category as a private company. Hence for purposes of Wealth Tax the company cannot be treated as one in which public are substantially interested i.e. public limited company. Further, the details of shareholding pattern now furnished by the Ministry are not available in the assessment records.

Incorrect valuation of specified assets

6.11 Under the provisions of Section 40 of Finance Act, 1983, companies other than those in which public are substantially interested, are liable to wealth tax from the assessment year 1984-85 at a flat rate of two percent of the market value of the specified assets including building or land appurtenant thereto, other than building or part thereof used by the assessee as factory, godown, warehouse, hotel or office for the purpose of its business, and their value is estimated to be the price, which, in the opinion of the wealth tax officer, they would fetch if sold in the open market on the valuation date. The Act further provides that the assessing officer may make a reference to the departmental valuation officer, for the valuation of an asset, if in his opinion, the fair market value of the asset exceeds the value of the asset as returned by more than 33.33 percent or Rs.50,000 whichever is less. The value so estimated by the valuation officer shall be binding on the assessing officer.

In City V, Mumbai charge, in the wealth tax assessment of a closely held company for the assessment years 1990-91 and 1991-92 completed after scrutiny in March 1993 value of two residential properties, on the outskirts of a metropolitan city, of area 1310 square feet and 5190 square feet were adopted at Rs.2.13 lakh and Rs.11.64 lakh. The values were adopted as per Rule 1 BB of Wealth Tax Rules, 1957, which was omitted with effect from 1 April 1989. Audit scrutiny revealed that while completing the assessment the market value of these properties for assessment years 1990-91 and 1991-92 were not taken into consideration by the assessing officer as it was a closely held company. Omission to adopt the market value of the two residential properties at Rs.52.40 lakh and Rs.103.80 lakh (approximately) respectively for the above two assessment years resulted in approximate under-assessment of wealth aggregating Rs.142.43 lakh and short levy of tax of Rs.5.70 lakh.

The Ministry have accepted the audit observation.

Mistake in calculation of interest

6.12 Under the Wealth Tax Act, 1957, in a scrutiny assessment, the assessing officer shall make a correct assessment of taxable wealth of the assessee and determine the correct tax payable by him or refundable to him on the basis of such assessment. The Central Board of Direct Taxes have, from time to time, issued instructions stressing the necessity for ensuring accuracy in the computation of income/wealth and tax etc.

In Karnataka I, Banglore charge, the return of wealth of a company, for the assessment year 1992-93 was filed in February 1994 against the due date of 31 December 1992. For the delay in filing the return, the company was liable to pay interest of Rs. 2.29 lakh. Audit scrutiny revealed that in completing the assessment after scrutiny in March 1995 while calculating the interest for delay in filing the return, the interest was charged at Rs. 22,459 due to error in placement of a digit. The mistake resulted in short levy of interest of Rs. 2.06 lakh.

The Ministry have accepted the audit observation.

B-GIFT TAX

Revenue from gift tax

6.13 In the financial years 1991-92 to 1995-96, gift tax receipts vis-à-vis the budget estimates were as given below:

Year	Budget estimates	Actuals	Variation	Percentage variation
	(Rs. in crore)			
1991-92	9.00	8.44	(-) 0.56	(-) 6.2
1992-93	5.00	9.27	4.27	85.4
1993-94	10.00	4.99	(-) 5.01	(-) 50.1
1994-95	5.00	14.98	9.98	200.0
1995-96	10.00	11.40	1.40	14.00

The large variation between the budget estimates and actuals (except in 1991-92) indicate the necessity to put budget estimation on a realistic basis.

Status of assessments

6.14 Particulars of assessments completed, assessments pending and demands in arrear for the last five years ending 31 March 1996 were as given below:

Year	Number of assessments			Percentage of total cases pending	Arrear of demands at the end of the year (Rs. in crore)
	Due for disposal	Completed during the year	Pending at the end of the year		
1991-92.	52,859	42,176	10,683	20.2	37.86
1992-93	45,667	34,447	11,220	24.6	35.26
1993-94	36,478	28,489	7,989	21.9	31.81
1994-95	33,928	28,145	5,783	17.1	30.70
1995-96	31,737	24,109	7,628	24.04	30.51

The above figures indicate that though the number of cases for disposal have been consistently declining, finalisation of assessments have also been declining and consequently the percentage of pendency has ranged between 17.1. to 24.04.

Results of audit

6.15 During the test audit of assessments made under the Gift Tax Act, 1958, conducted during the period 1 April 1995 to 31 March 1996, short levy of gift tax of Rs.5.49 crore was noticed in 143 cases.

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* **The above revised figures for 1992-93 furnished by Ministry of Finance in February 1994 are different from those furnished by the Ministry provisionally and incorporated in the Report of the Comptroller and Auditor General of India on Union Government-Direct Taxes for that year.**

A total number of 5 audit observations involving tax effect of Rs.8.57 lakh were issued to the Ministry of Finance for comments during March to November 1996. Out of these, the Ministry of Finance have accepted the observations in 3 cases involving tax effect of Rs.4.70 lakh. All the cases issued are discussed below.

Non levy of tax on deemed gift

6.16 Under the Gift Tax Act, 1958, where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value thereof to the extent to which it has not been found to the satisfaction of the assessing officer to have been bona-fide, shall be deemed to be a gift made by the person responsible therefor.

(i) In Rohtak, Haryana charge, audit scrutiny of the income tax assessment records of a closely held company for the assessment year 1990-91 revealed that the assessee company leased out its Air Conditioning Plant worth Rs.20.00 lakh (Book value) to another company vide lease deed executed on 26 March 1989, at a monthly lease of Rs.51,096 from 27 March 1989 to 26 March 1994 and at Rs.10,000 thereafter. Subsequently the assessee company allowed a payment holiday to the lessee of the lease instalments payable from 1 August 1989 to 1 March 1991 vide supplementary agreement executed on 26 July 1989 immediately after a span of four months. Thus the abandonment of the claim of lease rent of Rs.10.22 lakh in previous years relevant to assessment years 1990-91 and 1991-92 without adequate consideration by the assessee company constituted deemed gift in favour of the lessee and attracted levy of gift tax. However, the assessee company did not file any gift tax return nor did the department initiate any gift tax proceedings. The omission led to non-levy of gift tax aggregating Rs.2.95 lakh besides levy of interest.

The reply of the Ministry to the audit observation has not been received.

(ii) Under the provisions of the Gift Tax Act, 1958, w.e.f. 1 April 1992, where property is transferred otherwise than for adequate consideration, the amount by which the value of the property as on the date of transfer and determined in the manner laid down in schedule II of Gift Tax Act, exceeds the value of the consideration, shall be deemed to be a gift made by the transferor.

In West Bengal V, Calcutta charge, audit scrutiny of the income tax assessment records of an individual for the assessment year 1992-93 revealed that the assessee sold immovable property at a consideration of Rs.1.85 lakh during the relevant previous year. Considering the lower value of sale declared by the assessee, the department referred the case to the departmental valuation officer to ascertain the value of the sold property on the date of sale. The valuation officer determined (March 1995) the value of the property on the date of sale at Rs.10.28 lakh. The difference of Rs.8.23 lakh between the sale value of the property and the

value as determined by the valuation officer constituted deemed gift in the hands of the assessee attracting levy of gift tax. However, the assessee did not file any return of gift, nor did the department initiate any gift tax proceedings. The omission resulted in non-levy of gift tax of Rs.2.47 lakh.

The Ministry have accepted the audit observation.

(iii) Under the Provisions of the Gift Tax Act, 1958, where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property on the date of transfer exceeds the value of the consideration, shall be deemed to be a gift made by the transferor.

In West Bengal I, Calcutta charge, audit scrutiny of the income tax assessment records of an individual for the assessment year 1991-92 revealed that a flat was purchased by him for a consideration of Rs.7.83 lakh during the relevant previous year. To ascertain the fair market value of the property, the case were referred to the departmental valuation cell which in turn determined the value at Rs.12.75 lakh on the date of purchase. This higher valuation was considered in the corresponding wealth tax assessment completed after scrutiny in March 1995 but no action was taken for the transfer of property being below the adequate consideration. The difference of Rs.4.92 lakh constituted gift attracting levy of gift tax in the hands of transferor. However, no return of gift was filed by the assessee nor did the department initiate any gift tax proceedings. The omission resulted in non-levy of gift tax of Rs.1.42 lakh in the hands of the vendor.

The Ministry have accepted the audit observation.

(iv) Under the Gift Tax Act, 1958, with effect from 1 April 1989, ordinarily a notice requiring a person to furnish a return of gift can be served upon him if the assessing officer has reasons to believe that the taxable gifts in respect of which any person is assessable under the Act have escaped assessment for any assessment year (whether by reason of under-assessment or assessment at too low a rate or otherwise). After serving such notice the assessing officer is empowered to proceed to assess or reassess such gifts and also any other taxable gifts in respect of which such person is assessable, which have escaped assessment and which came to his notice subsequently in the course of the proceedings for the relevant assessment years. The Central Board of Direct Taxes have issued instruction (November 1973, April 1979 and September 1984) for proper co-ordination amongst assessment records pertaining to different direct taxes with a view to bring to tax the cases of evasion of tax.

In Andhra Pradesh I, Hyderabad charge, the audit scrutiny of income tax assessment records of an individual for the assessment year 1990-91

revealed that a property measuring 901 square yards, was originally acquired by the assessee jointly along with her husband in March 1982 equally contributing Rs.20,000 each. Thereafter, vide relinquishment deed of September 1987 the assessee's husband relinquished his right in the property duly accepting back his part of monetary contribution of Rs.20,000. Later on, in April 1989, entire property was sold by the wife, as a sole owner, against a sale consideration of Rs.7.66 lakh. Presuming 10 percent increase in the market value of the land (on basis of cost inflation index for capital gains), a practice generally adopted by the department when actual valuation is awaited or is not known, in the intervening period i.e. the date of relinquishment and the date of sale, the market value of the property on the date of relinquishment would be Rs.6.96 lakh, in which husband's half share would be Rs.3.48 lakh. The relinquishment of the right by the husband of his one half share of the property against an in-adequate consideration of Rs.20,000 amounted to deemed gift of Rs.3.28 lakh in assessment year 1988-89. Neither the assessee's husband filed the gift tax return nor was it considered by the assessing officer while completing the income tax assessment. The omission resulted in non assessment of deemed gift of Rs.3.28 lakh with consequent non-levy of gift tax of Rs.92,400.

The reply of the Ministry to the audit observation has not been received.

Gift escaping assessment

6.17 Under the Gift Tax Act, 1958, gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth is chargeable to gift tax. The Act further provides that no gift-tax shall be charged in respect of gifts made by any person to any relative dependent upon him for support and maintenance on the occasion of the marriage of the relative upto a maximum of Rs.10,000 in value.

In Central II, Chennai charge, audit scrutiny of the income tax assessment records of an individual for assessment year 1989-90 disclosed that he had gifted 30,000 shares of a company at the face value of Rs.3 lakh to his daughter in September 1988 on the occasion of her marriage. This gift was chargeable to gift tax after allowing admissible exemption under the Act. However, neither the assessee filed any return of gift nor did the department initiate any gift tax proceedings. This resulted in under assessment of taxable gift of Rs.2.70 lakh with consequent non-levy of gift tax of Rs.81,000.

The Ministry have accepted the audit observation in principle.

C-Interest Tax

Revenue from interest tax

6.18 In the financial year 1991-92 to 1995-96, interest tax receipts vis-à-vis the budget estimates were as given below:

Year	Budget Estimates	Actuals	Variation	Percentage variation
	(Rs. in crore)			
1991-92	535.00	305.04	(-)229.96	(-)42.9
1992-93	800.00	714.70	(-) 85.30	(-)10.6
1993-94	900.00	727.58	(-)172.42	(-)19.3
1994-95	1044.00	801.40	(-)242.60	(-)23.2
1995-96	1000.00	1170.05	(+)170.05	(+)17.0

Status of assessments

6.19 Particulars of assessments completed, assessments pending and demands in arrear for the last five years ending 31 March 1996 were as given below:

Year	Number of assessments			Percentage of total cases pending	Arrear of demands at the end of the year (Rs. in crore)
	Due for disposal	Completed during the year	Pending at the end of the year		
1991-92	48	3	45	93.7	10.79
1992-93	972	77	895	92.1	0.96
1993-94	2381	395	1986	83.4	0.62
1994-95	6704	1810	4894	73.0	0.60
1995-96	7.189	2,864	4325	60.16	102.82

Results of audit

6.20 A total number of 9 audit observations involving tax effect of Rs.126.92 lakh and 2 audit observations involving overcharge of tax of Rs.29.02 lakh were issued to the Ministry of Finance for comments during March to November 1996. Out of these, the Ministry of Finance have accepted the observation in 7 cases involving tax effect of Rs.125.70 lakh and the 2 cases over charge of Rs.29.02 lakh. Of these, 2 cases involving tax effect of Rs.25.26 lakh were checked by the Internal audit wing of the department but the mistakes were not detected by it.

7 illustrative cases involving tax effect of Rs.125.70 lakh and two cases of overcharge of Interest Tax of Rs.29.02 lakh are given in the following paragraphs to highlight the important audit observations. Out of these, the Ministry of Finance have accepted the audit observations in 6 cases involving tax effect of Rs.123.59 lakh and two cases of overcharge of tax of Rs.29.02 lakh.

Overcharge of interest tax

6.21 Under the Interest Tax Act, 1974, where in any financial year, the interest tax paid in advance by an assessee is less than ninety percent of the assessed interest tax the assessee shall be liable to pay simple interest at the rate of two percent for every month or part of a month comprised in

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* **The above revised figures for 1992-93 relating to pendency in completion of assessments furnished by Ministry of Finance in February 1994 are different from those furnished by the Ministry provisionally incorporated in the Report of the Comptroller and Auditor General of India on Union Government-Direct Taxes for the year.**

the period from 1 April next following such financial year to the date of determination of chargeable interest on the amount by which the interest tax payable in advance falls short of the assessed interest tax. The Act further provides that where such tax paid by the assessee on his chargeable interest on or before the 15 September is less than twenty percent of the interest tax due on the returned chargeable interest or the amount of such interest tax paid on or before 15 December is less than fifty percent of the tax due on the returned chargeable interest, then, the assessee shall be liable to pay simple interest at the rate of one and one-half percent per month of the shortfall for a period of three months on the amount of shortfall from twenty percent or as the case may be, fifty percent of the interest due on the returned chargeable interest. The Act which was suspended from the assessment year 1986-87 was reintroduced with effect from 1 October 1991.

(i) In Tamil Nadu I, Chennai charge, the interest tax assessment of a widely held company for the assessment year 1992-93 was completed in March 1995. Audit scrutiny revealed that while computing the interest for failure in payment of instalments of advance tax, the assessee was charged interest for failure to pay the first instalment of the advance tax on or before 15 September 1991. As the Act came into force only with effect from 1 October 1991, the assessee was not liable to pay any advance tax by 15 September 1991. The mistake resulted in excess charge of interest of Rs. 4.38 lakh. Further the interest for short payment of advance tax was worked out without taking into account the self assessment tax resulting in excess levy of interest of Rs. 13.94 lakh. These mistakes resulted in overcharge of tax aggregating Rs. 18.32 lakh.

The Ministry have accepted the audit observation.

(ii) In Tamil Nadu I, Chennai charge, the interest tax assessment of a widely held company for the assessment year 1992-93 was completed in March 1995 on a chargeable interest of Rs. 557.51 crore. Audit scrutiny revealed that, in raising the demand, interest of Rs. 10.70 lakh for default in the payment of first instalment of the advance interest tax was levied. As the Act was revived only with effect from 1 October 1991, the assessee was not liable to pay the first instalment in September 1991. The mistake resulted in overcharge of tax of Rs. 10.70 lakh.

The Ministry have accepted the audit observation.

Omission to make assessment of interest tax

6.22(i) Under the Interest Tax Act, 1974, as reintroduced with effect from 1 October, 1991, by the Finance (No.2) Act, 1991, interest tax is leviable on the chargeable interest income of 'credit institutions'. Such credit institutions, inter alia, included Co-operative Societies engaged in the business of banking, not being Co-operative Societies which provide credit facilities to farmers or village artisans, for the assessment year 1992-93. The interest income chargeable to tax includes interest on loans and advances, commitment charges on unutilised portion of any credit

sanctioned and discount on promissory notes and bills of exchange. The returns of chargeable interest are required to be filed by 31 December of the relevant assessment year.

(a) In Tamil Nadu IV, Chennai charge, the income tax assessment of a company for the assessment year 1993-94 was completed after scrutiny in March 1995. Audit scrutiny revealed that the assessee had debited a sum of Rs.35.94 lakh in its profit and loss account towards interest tax and the chargeable interest receipts were Rs.11.96 crore. However, neither did the assessee file any interest tax return nor did the department call for the return. The omission resulted in non-assessment of chargeable receipts of Rs.11.96 crore involving a tax demand of Rs.72.50 lakh including interest upto the date of audit.

The Ministry have accepted the audit observation.

(b) In Cochin, Kerala charge, audit scrutiny of income tax assessment records of a District Co-operative Bank for the assessment year 1992-93 revealed that the assessee had received Rs.5.17 crore towards interest income during the period covering 1 July 1991 and 31 March 1992. Since details of interest income in respect of six months from 1 October 1991 to 31 March 1992,(to which provisions of interest tax apply) were not available, an amount of Rs.2.62 crore (excluding interest received from loans paid to credit societies) could be taken to be chargeable to interest tax during the relevant period on proportionate basis. However, the assessee had neither filed any return of chargeable interest for the assessment year 1992-93, nor did the assessing officer initiate any action for its assessment. The omission resulted in non-assessment of chargeable interest of Rs.2.62 crore involving a tax effect of Rs.18.68 lakh (including interest).

The Ministry have accepted the audit observation.

(c) In Tamil Nadu IV, Chennai charge, the assessment of a widely held company, engaged in the business of leasing and financing, for the assessment year 1992-93 was completed after scrutiny in March 1995. Audit scrutiny of assessment records revealed that the assessee company had received Rs. 292.11 lakh by way of finance charges. Since details of interest income in respect of six months from 1 October 1991 to 31 March 1992 (to which provisions of interest tax apply) were not available, an amount of Rs. 146.06 lakh could be taken to be chargeable to interest tax during the relevant period on proportionate basis. However, the assessee company had neither filed any interest tax return nor did the department initiate interest tax proceedings. The omission resulted in non-assessment of chargeable interest of Rs. 146.06 lakh involving a tax effect of Rs. 10.95 lakh (including interest).

The Ministry have accepted the audit observation.

(d) In Tamil Nadu III, Chennai charge, the interest tax assessment of an investment company for assessment year 1992-93 was completed in March 1995. Audit scrutiny revealed that interest income of Rs.81.98 lakh accrued from two persons and assessed to income tax for assessment year 1992-93 was omitted to be included in chargeable interest. The mistake resulted in under assessment of interest of Rs.40.99 lakh (taking proportionate interest receipts for six months) with the consequential short levy of tax of Rs.2.11 lakh (including interest).

The Ministry have not accepted the audit observation on the plea that the assessing officer disallowed Rs.81.98 lakh towards interest free loan advanced to two parties out of the total interest payments against borrowed funds claimed by the assessee and no interest was received assessable to tax.

The reply is not tenable since as a result of such disallowance interest was accrued from the two persons which was taxable under the provisions of Interest Tax Act. This was however omitted to be taxed.

(ii) The Board clarified in March 1996 that the finance charges accruing or arising to hire purchase Finance Companies are in the nature of interest chargeable to interest tax.

(a) In Coimbtore, Tamil Nadu charge, two companies engaged in the business of hire purchase financing were assessed to interest tax for the assessment year 1992-93 in January 1995 and March 1995 on a chargeable interest of Rs.14.28 lakh and Rs.16.90 lakh respectively. Audit scrutiny revealed that the companies received Rs.202.68 lakh from hire purchase operations during the period from 1 October 1991 and in the other case Rs.236.50 lakh during the relevant year. The chargeable interest which was assessable to interest tax but not assessed worked out to Rs.202.68 lakh and Rs.118.25 lakh for six months on proportionate basis. The mistake resulted in non-levy of interest tax aggregating to Rs.12.08 lakh.

The Ministry have accepted the audit observation.

(b) In Tamil Nadu I, Chennai charge, the interest tax assessments of a hire purchase, leasing and financing company for the assessment years 1992-93 and 1993-94 were completed in November 1994 on a chargeable receipt of Rs.3.72 lakh and Rs.8.09 lakh respectively. Audit scrutiny revealed that the hire purchase finance charges of Rs.93.92 lakh and Rs.110.30 lakh received in the respective assessment years were not considered for assessment. Omission to consider the hire purchase finance charges resulted in under assessment of chargeable receipts of Rs.46.96 lakh proportionately for six months from 1 October 1991 to 31 March 1992 and Rs.110.30 lakh with the consequential under charge of tax of Rs.6.94 lakh (including interest).

The Ministry have accepted the audit observation.

(c) In Coimbtore, Tamil Nadu charge, the income tax assessments of two finance companies engaged in the business of hire purchase and leasing for assessment years 1992-93 and 1994-95 were completed after scrutiny in February 1994 and February 1995. Audit scrutiny revealed that neither did the assessees file the returns of interest tax nor were they called for by the department though the assessee companies received finance charges and interest during the relevant previous years amounting to Rs.40.79 lakh and Rs.25.20 lakh respectively. Taking the interest receipts proportionately for six months from 1 October 1991 in respect of the assessment year 1992-93, the chargeable interest assessable to interest tax worked out to Rs.20.40 lakh and Rs.25.20 lakh for the assessment years 1992-93 and 1994-95 respectively. Omission to complete the assessments resulted in non-levy of interest tax of Rs.2.44 lakh including interest.

The Ministry have accepted the audit observation.

D- Expenditure Tax

Omission to levy expenditure tax

6.23 The Expenditure Tax Act, 1987, provides for levy of tax at 15 percent on the expenditure incurred in a restaurant before 1 June 1992. Under the Act, the assessee restaurant has to remit the tax collected during any calendar month to the credit of the Central Government by 10th day of the succeeding month and if any person responsible for collecting such tax fails to collect it, not withstanding such failure shall be liable to pay tax to the credit of the Central Government within the said period. The Act further provides that if an assessee fails to credit the tax to the account of the Central Government within the period specified above, he shall be liable to pay simple interest at the rate of one and one half percent for every month or part thereof during the period the default continues.

(i) In Vijayawada, Andhra Pradesh charge, the income tax assessment of an assessee engaged in the business of running an air-conditioned restaurant for the assessment year 1992-93 was completed after scrutiny in March 1995 determining the taxable income at Rs.(-) 22.47 lakh. Audit scrutiny revealed that the assessee had received an amount of Rs.14.85 lakh towards sale of food and soft drinks during the period from October 1991 to March 1992 on which he was liable to collect expenditure tax at 15 percent from the customers which was not collected also and not remitted the amount of expenditure tax to the credit of the Central Government. The assessee did not file any return of expenditure and the department also did not initiate any expenditure tax proceedings. The omission resulted in expenditure to that extent escaping assessment with consequent non-levy of tax of Rs.3.83 lakh (including interest upto the period ending March 1996).

The Ministry have accepted the audit observation in principle.

(ii) In Andhra Pradesh I, Hyderbad charge, the income tax assessment of

a registered firm engaged in the business of running a restaurant, for the assessment year 1992-93 was completed after scrutiny in February 1995 determining the taxable income at (-)Rs.2.90 lakh. Audit scrutiny revealed that the assessee had received an amount of Rs.5.54 lakh towards sale of food and liquor during the relevant previous year on which he was liable to collect expenditure tax at 15 percent which was not collected also and not remitted the amount of expenditure tax to the credit of the Central Government. The assessee did not file any return of expenditure and the department also did not initiate any expenditure tax proceedings. This omission resulted in non-assessment of chargeable expenditure of Rs.5.54 lakh involving non levy of expenditure tax of Rs.1.43 lakh (including interest).

The Ministry have accepted the audit observation.

New Delhi
The 3 March 1997

(SAMAR RAY)
Principal Director of Receipt Audit
(Direct Taxes)

Countersigned

New Delhi
The 3 March 1997

(V.K. SHUNGLU)
Comptroller and Auditor General of India