REPORT OF THE
COMPTROLLER AND AUDITOR GENERAL
OF INDIA

FOR

THE YEAR 1985-86

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME II

DIRECT TAXES

REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR 1985-86

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME II

DIRECT TAXES

TABLE OF CONTENTS

IRREGULARITIES IN ALLOWING DEPRECIATION DEVELOPMENT REBATE AND INVESTMENT ALLOWANCE

CHAPTER 3—INCOME TAX

CHAPTER 4 OTHER DIRECT TAXES

A—WEALTH-TAX

PREFATORY REMARKS

As mentioned in the prefatory remarks of Volume I of the Audit Report on Revenue Receipts of the Union Government, the result of audit of receipts under Direct Taxes are presented in this separate volume. The Report is arranged in the following order :—

(*i*) Chapter 1 sets out statistical information and reviews on Attachment of movable properties towards recovery of taxes and their disposal, Functioning of valuation Cells and Outstanding audit objections.

(*ii*) Chapter 2 mentions the results of audit of Corporation Tax and Surtax.

(*iii*) Chapter 3 deals, similarly, with the points that arose in the audit of Income-tax receipts.

(*iv*) Chapter 4 covers points that arose in the audit of Wealth-tax, Gift-tax and Estate Duty. This chapter also incorporates a review on pendency of Estate Duty assessments and arrears in Estate Duty demands.

The points brought out in this Report are those which have come to notice during the course of test audit.

VOLUME II

CHAPTER I

GENERAL

1.01 *Receipts under various Direct Taxes*

The total proceeds from Direct Taxes for the year 1985-86 amounted to Rs. 5,621.83 crores out of which a sum of Rs. 1,865.18 crores was assigned to the States. The figures for the three years 1983-84, 1984-85 and 1985-86 are given below :

(In crores of rupees)

	1983-84	1984-85	1985-86
020 Corporation Tax	2,492.73	2,555.89	2,865.08
021 Taxes on Income other than Corporation tax	1,699.13	1,927.75	2,511.29
023 Hotel Receipts Tax	@	£	0.40
024 Interest Tax	177.91	170.88	57.70
028 Other Taxes on Income and Expenditure	S	*	**
031 Estate Duty	26.46	24.37	22.26
032 Taxes on Wealth	93.31	107.58	153.44
033 Gift Tax	8.84	10.86	11.66
Gross total	4,498.38	4,797.33	5,621.83
Less share of net proceeds assigned to the States :			
Income-tax	1,171.64	1,231.47	1,846.38
Estate Duty	16.57	20.20	18.80
Hotel Receipts Tax	—	—	—
Total	1,188.21	1,251.67	1865.18
Net Receipts	3,310.17	3,545.66	3756.65

@The actual amount is Rs. 25,200.
£The actual amount is Rs. 30,734.
SThe actual amount is Rs. 36,163.
*The actual amount is Rs. 48,880.
**The actual amount is Rs. 67,156.

The gross receipts under Direct Taxes during 1985-86 went up by Rs. 824.50 crores when compared with the receipts during 1984-85 as against an increase of Rs. 298.95 crores in 1984-85 over those for 1983-84. Receipts under Corporation Tax and Surtax registered an increase of Rs. 309.18 crores while receipts under "Taxes on income other than Corporation Tax" accounted for an increase of Rs. 583.54 crores.

1.02 *Variations between budget estimates and actuals*

(i) The actuals for the year 1985-86 under the Major heads 020—Corporation tax, 021—Taxes on Income other than Corporation tax, 032—Taxes on Wealth and 033—Gift Tax exceed the budget estimates.

The figures for the years from 1981-82 to 1985-86 under the various heads are given below :

Year	Budget estimates	Actuals	Variation	Percentage of variation
			(In crores of rupees)	
020—Corporation Tax				
1981-82	1,690.00	1,969.96	270.96	16.56
1982-83	2,382.00	2,184.51	(—)197.49	(—)8.29
1983-84	2,362.00	2,492.73	130.73	5.54
1984-85	2,568.00	2,555.89	(—)12.11	(—)0.47
1985-86	2,804.00*	2,865.08	61,08	2.18
021—Taxes on Income other than Corporation Tax				
1981-82	1,444.00	1,475.50	31.50	2.18
1982-83	1,562.75	1,569.72	6.97	0.45
1983-84	1,669.60	1,699.13	29.53	1.75
1984-85	1,746.00	1,927.75	181.75	10.41
1985-86	1,964.00*	2,511.29	547.29	27.87
024—Interest Tax				
1982-83	220.00	265.47	45.47	20.67
1983-84	156.00	177.91	21.91	14.04
1984-85	190.00	170.88	(—)19.12	(—)10.06
1985-86	220.00*	57.70	(—)162.30	(—)73.77
031—Estate Duty				
1981-82	15.00	20.31	5.31	35.40
1982-83	17.00	20.38	3.38	19.88
1983-84	19.00	26.46	7.46	39.26
1984-85	20.00	24.37	4.37	21.85
1985-86	22.50*	22.26	(—)0.24	(—)1.07
032—Taxes on Wealth				
1981-82	66.00	78.12	12.12	18.36
1982-83	80.00	90.37	10.37	12.96
1983-84	90.00	93.31	3.31	3.67
1984-85	97.00	107.58	10.58	10.91
1985-86	104.00*	153.44	49.44	47.54
033—Gift Tax				
1981-82	6.25	7.74	1.49	23.84
1982-83	6.75	7.71	0.96	14.22
1983-84	8.50	8.84	0.34	4.00
1984-85	8.50	10.86	2.36	27.76
1985-86	100.0*	11.66	1.66	16.60

*Figures incorporated from Explanatory Memorandum on the Budget of the Central Government for 1985-86.

(ii) The details of variations under the heads subordinate to the major Heads 020 and 021 for the year 1985-86 are given below :—

	Budget*	Actuals	Increase (+)/ shortfall (—)	Percentage of variation
			(In crores of rupees)	
020—Corporation Tax				
(i) Income-tax on companies	2,720.00	2,700.16	(—)19.84	(—)0.73
(ii) Surtax	74.00	70.16	(—)3.84	(—)5.19
(iii) Surcharge	—	58.50		
(iv) Receipts awaiting transfer to other minor heads	—	—		
(v) Other receipts	10.00	36.26	26.26	262.60
Total :	2,804.00	2,865.08	61.07	2.18
021—Taxes on income other than Corporation Tax				
(i) Income-tax	1712.00	2324.78	612.78	35.79
(ii) Surcharge	237.00	159.37	(—)77.63	32.76
(iii) Receipts awaiting transfer to other minor heads	..	1.11	1.11	100.00
(iv) Other receipts	15.00	26.04	11.04	73.60
(v) Deduct share of proceeds assigned to States	1,340.37	1,846.38	506.01	37.75
Total :	623.63	664.92	41.29	6.62

*Figures incorporated from Explanatory Memorandum on the Budget of the Central Government for 1985-86.

1.03 *Analysis of collections*

Under the provisions of 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, however, 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 residuary taxes not so paid.

A. The break-up of total collections of Corporation Tax, Sur-tax and Interest-tax from companies and Taxes on income other than Corporation tax from non-companies, at pre-assessment and post-assessment stages, during the year 1985-86* as furnished by the Ministry of Finance is given below :

	Company				Non-Company	
	Corporation Tax	Surtax	Interest tax	Total	Income tax	Total
			(In crores of rupees)			
Tax deducted at source	385.59	0.08	—	385.67	512.71	898.38
Advance Tax	1,237.92	49.51	44.85	1,332.28	622.23	1,954.51
Self-assessment	214.11	0.32	0.13	214.56	218.80	433.36
Regular assessment	385.58	13.67	6.88	406.13	152.02	558.15
Other receipts	31.50	—	0.04	31.54	12.82	44.36
Total	2254.70	63.58	51.90	2,370.18	1,518.58	3,888.76
Refunds	445.80	2.21	2.19	450.20	202.60	652.80
Net collections	1,808.90	61.37	49.71	1,919.98	1,315.98	3,235.96

B. The details of tax collections from Government Companies and corporations (including nationalised banks) and foreign companies out of the company assessees in 'A' above, during the year 1985-86* furnished by the Ministry of Finance, are as under :

(In crores of rupees)

	Government Companies and Corporations	Foreign Companies	Others	Total
Advance-tax	329.37	41.32	360.33	731.02
Self-assessment	69.66	17.09	60.00	146.75
Regular assessment	99.19	25.51	58.58	183.28
Sur-tax	21.78	0.37	16.12	38.27
Interest-tax	20.42	1.69	1.32	23.43
Total :	540.42	85.98	496.35	1,122.75

*Figures furnished by the Ministry of Finance are provisional.
**Figures as furnished by the Ministry of Finance.

C. **The details of tax deduction at source during the year 1985-86* under broad categories are as under :—

	Amount (In crores of rupees)
Salaries	152.70
Interest on securities	49.40
Dividends	46.06
Interest	61.88
Winnings from lottery or crorrssward puzzles.	1.82
Winnings from horse races	6.41
Payments to contractors and sub-contractors	100.45
Insurance Commission	5.05
Payments to non-residents and others.	35.09
Total	458.86

D. *Advance-tax—Tax payable and collected by way of advance tax during the year 1985-86** is as under :—

(In crores of rupees)

	Company				Non-Company	
	Corporation Tax	Surtax	Interest Tax	Total	Income-tax	Total
1. Arrear demand	66.33	0.42	4.11	70.86	44.74	115.60
2. Current demand	568.45	20.47	50.56	639.48	363.69	1,003.17
3. Collections						
(a) Out of arrear demand	38.35	0.31	3.77	42.43	13.66	56.09
(b) Out of current demand	511.11	20.11	16.95	548.17	314.64	862.81
(c) Total	549.46	20.42	20.72	590.60	328.30	918.90
4. Balance Demand						
(a) Arrear	27.25	0.05	0.33	27.63	31.04	58.67
(b) Current	57.34	0.36	33.62	91.32	49.05	140. 37
(c) Total	84.59	0.41	33.95	118.95	80.09	199.04

*Figures as furnished by Ministry of Finance.
**Figures furnished by the Ministry of Finance are provisional.

1.04 *Cost of collection*

(i) The expenditure incurred during the year 1985-86 in collecting Corporation tax, Taxes on Income other than Corporation Tax and Interest Tax together with the corresponding figures for the preceding three years, is as under :—

	Gross Collection	Expenditure on collection
	(In crores of rupees)	
020—Corporation Tax		
1982-83	2,184.51	9.02
1983-84	2,492.73	10.37
1984-85	2,555.89	11.54
1985-86	2,865.08	12.76
021—Taxes on income etc.		
1982-83	1,569.72	63.17
1983-84	1,699.13	72.60
1984-85	1,927.75	80.81
1985-86	2,511.29	89.30
024—Interest Tax		
1982-83	265.47	@
1983-84	177.91	@
1984-85	170.88	0.01
1985-86	57.70	0.01

@Figures were not furnished by the Controller General of Accounts in the relevant years.

(ii) The expenditure incurred during the year 1985-86 in collecting other direct taxes, *i.e.*, Taxes on Wealth, Gift-tax and Estate Duty together with the corresponding figures for the preceding three years, is as under :—

	Gross collections	Expenditure on collection
	(In crores of rupees)	
031—Estate Duty		
1982-83	20.38	1.60
1983-84	26.46	1.84
1984-85	24.37	2.04
1985-86	22.26	2.26
032—Taxes on Wealth		
1982-83	90.37	5.62
1983-84	93.31	6.45
1984-85	107.58	7.18
1985-86	153.44	7.94
033—Gift Tax		
1982-83	7.71	0.80
1983-84	8.84	0.92
1984-85	10.86	1.03
1985-86	11.66	1.13

1.05 *Number of assessees*

(i) *Income Tax*

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.

For the assessment year 1985-86 no income-tax was payable on a total income not exceeding Rs. 15,000 except in the case of specified Hindu undivided family, registered firms, co-opeative society, local authority and company where a lower limit is applicable.

(a) The total number of assesses in the books of the department was 17,57,112 as on 31 March 1986* as against 49,96,133 as on 31 March 1985. The break-up of the assessees on the said two dates was as under :—

	As on 31 March 1985	As 31 March 1986*
Individuals	36,46,638	1,3,53,839
Hindu undivided families	2,60,084	86,839
Firms	8,74,912	2,66,184
Companies	58,478	18,997
Trusts	58,476	15,656
Others	97,545	15,597
Total :	49,96,133	17,57,112

*The figures furnished by the Ministry of Finance are provisional.

(b) *The following table indicates the break-up of assessees according to slabs of income :—

	Individuals	Hindu undivided families	Firms	Companies	Others	Total
(i) Below taxable limit	4,81,251	35,299	62,917	10,227	20,386	6,10,080
(ii) Above taxable limit but upto Rs. 1,00,000.	8,66,960	50,974	1,91,285	6,517	10,410	11,26,146
(iii) Rs. 1,00,001 to Rs. 5,00,000.	5,359	541	11,554	1,340	430	19,224
(iv) Above Rs. 5,00,000	269	25	428	913	27	1,662
Total :	13,53,839	86,839	2,66,184	18,997	31,253	17,57,112

(ii) *Surtax**

Under the Companies (Profits) Surtax Act, 1964, surtax is levied on the 'Chargeable Profits' of a company in so far as they exceed the statutory deduction, which is an amount equal to 10 per cent (15 per cent from 1 April 1977) of the capital of the company or Rs. two lakhs, whichever is greater.

The number of Sur Tax assessees in the books of the department as furnished by the Ministry of Finance, for the last three years was as under :

Year ending	No. of assessees
31 March 1984	442
31 March 1985	486
31 March 1986	559

(iii) *Interest-tax**

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 was as under :

Year ending	No. of assessees
31 March 1984	17
31 March 1985	16
31 March 1986	17

*Figures furnished by the Ministry of Finance are provisional.

(iv) *Wealth-tax*

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 is 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 1985-86, no wealth-tax was payable where the net wealth is less than Rs. 1.50 lakhs.

(a) The number of wealth-tax assessees in the books of the department as on 31 March, 1985 and 31 March 1986* were as folows :

	As on 31 March 1985	As on 31 March 1986*
Individuals	4,29,976	1,13,072
Hindu undivided families	66,359	18,491
Companies		1,146
Others	4,727**	109
Total :	5,01,062	1,32,818

*Figures furnished by the Ministry of Finance are provisional.

**Includes figure for companies also.

(b) *The following table indicates the break-up of assessees according to slabs of income :

	Individuals	Hindu undivided Families	Companies	Others	Total
(i) Below taxable limit	32,450	5,684	355	22	38,511
(ii) Above taxable limit but upto Rs. 5,00,000	73,670	11,851	632	71	86,224
(iii) Rs. 5,00,001 to Rs. 10,00,000	5,887	845	135	4	6,871
(iv) Rs. 10,00,001 to Rs. 15,00,000	620	64	12	4	700
(v) Above Rs. 15,00,000	445	47	12	8	512
Total :	1,13,072	18,491	1,146	109	1,32,818

*Figures furnished by the Ministry of Finance are provisional.

(v) *Gift-tax*

Under the provisions of the Gift-tax Act, 1958, gift-tax is levied according to the rates specified in the Schedule for every assesment 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 1985-86, no gift-tax was payable where the value of taxable gifts did not exceed Rs. 5,000.

The number of gift-tax assessment cases for the years 1984-85 and 1985-86 were as follows :

1984-85	77,015
1985-86*	16,786

*Figures furnished by the Ministry of Finance are provisional.

(vi) *Estate Duty*

Under the provisions of the Estate Duty Act, 1953, in the case of every person dying after 15 October 1953, estate duty at rates fixed in accordance with section 35 of the Act is levied upon the principal value of the estate comprised of all property settled or not settled including agricultural land and which passes on the death.

No estate duty is leviable in respect of estate passing on death occurring on or after 16 March 1985.

During the assessment year 1985-86, no estate duty was chargeable where the principal value of the estate passing on death, did not exceed Rs. 1,50,000.

The number of estate duty assesment cases for the years 1984-85 and 1985-86 were as follows :

1984-85	36,133
1985-86*	6,383

*Figure furnished by the Ministry of Finance is provisional.

1.06 *Arrears of assessments*

The limitation period for completion of assessments is 2 years in the case of Income-tax, 4 years in the case of Wealth-tax and Gift-tax.

(i) *Income-tax including Corporation-tax*

(a) The number of assessments completed during the last five years were as under :

Financial year	Number of assessments for disposal			Number of assessments completed			Percentage	Number of assessments pending at the end of the year		
	Scrutiny	Summary	Total	Scrutiny	Summary	Total		Scrutiny	Summary	Total
1981-82	72,08,405		72,08,405	45,47,716		45,47,716	63.0	26,60,689		26,60,689
1982-83	70,15,368		70,15,368	44,35,114		44,35,114	63.2	25,80,254		25,80,254
1983-84	68,92,824		68,92,824	48,11,821		48,11,821	69.8	20,81,003		20,81,003
1984-85	66,44,955		66,44,955	53,89,217		53,89,217	81.1	12,55,738		12,55,738
1985-86*	97,654	7,50,541	8,48,195	50,209	5,81,919	6,32,128	74.5	47,445	1,68,622	2,16,067

*Figures furnished by Ministry of Finance are provisional.

(b) Status-wise break-up of income-tax assessments completed during the years 1984-85 and 1985-86 was as under :

	1984-85	1985-86*
(i) Individuals	40,79,453	4,44,409
(ii) Hindu undivided families	2,86,017	35,861
(iii) Firms	8,79,651	1,27,301
(iv) Companies	64,059	7,098
(v) Association of persons etc.	80,037	17,459
Total	53,89,217	6,32,128

(c) Status-wise and income range-wise break-up of pendency of assessments as on 31 March 1986* was as under :

Sr. No.	Status	No. of pending assessments with income			
		Upto Rs. 1,00,000	Rs. 1,00,001 to Rs. 5,00,000	Over Rs. 5,00,000	Total
1.	Companies	5,943	896	760	7,599
2.	Firms	39,454	8,013	267	47,734
3.	Individual	1,31,540	6,502	319	1,38,361
4.	Hindu undivided families	14,456	771	67	15,294
5.	Others	5,821	1,200	58	7,079
	Total :	1,97,214	17,382	1,471	2,16,067

(d) Assessment year-wise position of pendency of income-tax assessments at the end of the last two years was as under :

	As on 31 March 1985	As on 31 March 1986*
1981-82 and earlier years	28,378	2,705
1982-83	82,967	1,433
1983-84	2,97,417	7,096
1984-85	8,46,976	25,142
1985-86	—	1,79,691
Total	12,55,738	2,16,067

*Figures furnished by the Ministry of Finance are provisional.

(e) Status-wise and year-wise break-up of pendency of income-tax assessments in respect of various assessment years as on 31 March 1986* was as under :—

Status	1981-82 and earlier years	1982-83	1983-84	1984-85	1985-86	Total
(a) Company assessments						
(i) Regular	48	39	208	1,580	5,277	7,152
(ii) Reopened/set aside	272	39	17	48	102	478
(b) Non-company assessments						
(i) Regular	913	889	6,560	23,289	1,74,135	2,05,786
(ii) Reopened/set aside	1,472	466	311	225	177	2,651
Total	2,705	1,433	7,096	25,142	1,79,691	2,16,067

*Figures furnished by the Ministry of Finance are provisional.

The number of assessment cases to be finalised as on 31 March 1986 being provisional is not comparable to that at the close of the previous year. The number of assessments pending as on 31 March 1986 was 2,16,067 (provisional) as compared to 12,55,738 as on 31 March 1985 and 20,81,003@ as on 31 March 1984.

(ii) *Wealth-tax, Gift-tax and Estate Duty*

1. *Wealth-tax*

(a) The number of wealth-tax assessments completed during the year 1985-86* was as under :

No. of assessments for disposal	No. of assessments completed	Percentage	No. of assessments pending at the end of year
1,37,714	61,257	44.4	76,457

*Figures furnished by the Ministry of Finance are provisional.
@Discrepancy is still under reconciliation by the Ministry of Finance.

(b) Status-wise break-up of the wealth-tax assessments completed during the years 1984-85 and 1985-86* were as under :

Status	No. of assessments completed during	
	1984-85	1985-86*
(i) Individual	4,15,799	51,268
(ii) Hindu undivided families	58,273	8,086
(iii) Companies	**	487
(iv) Others	1,761**	1,416
Total	4,75,833	61,257

(c) Assessment year-wise position of pendency of assessments at the end of 1985-86* was as under :

Year	Number of assessments		
	Regular	Reopend/ set aside	Total
1981-82 and earlier years	1,165	2,031	3,196
1982-83	7,502	128	7,630
1983-84	10,607	79	10,686
1984-85	17,557	83	17,640
1985-86	37,223	82	37,305
Total	74,054	2,403	76,457

*Figures furnished by the Ministry of Finance are provisional.
**Includes figure for companies also.

(d) Status-wise and wealth range-wise break-up of pendency of wealth tax assessments at the end of 1985-86* was as under :

No. of pending assessments

Wealth range	Status				Total
	Individual	HUFs	Companies	Others	
Upto Rs. 2,50,000	30,442	5,847	1,257	4,208	41,754
Rs. 2,50,001 to Rs. 5,00,000	24,975	4,520	255	21	29,771
Rs. 5,00,001 to Rs. 10,00,00	3,003	690	51	—	3,744
Rs. 10,00,001 to Rs. 15,00,000	515	127	23	2	667
Over Rs. 15 lakhs	399	112	9	1	521
Total	59,334	11,296	1,595	4,232	76,457

*Figures furnished by the Ministry of Finance are provisional.

2. *Gift-tax*

(a) The number of gift-tax assessments completed during the year 1985-86* was as under :

No. of assessments for disposal	No. of assessments completed	Percentage	No. of assessments pending at the end of year
16,786	10,813	64.4	5,973

(b) Assessment year-wise position of pendency of assessments at the end of 1985-86* was as under :

Assessment year	Number of Assessments		
	Regular	Reopend/ set aside	Total
1981-82 and earlier years	49	76	125
1982-83	329	7	336
1983-84	537	6	543
1984-85	901	1	902
1985-86	4,067	..	4,067
Total	5,883	90	5,973

3. *Estate Duty*

(a) The number of estate duty assessments completed during the year 1985-86* was as under :

No. of assessments for disposal	No. of assessments completed	Percentage	No. of assessments for disposal at the end of year
6,383	5,301	83.0	1,082

*Figures furnished by the Ministry of Finance are provisional.

(b) *The number of assessments completed according to range of principal value of estate was as under :

Principal value of estate	Number of assessments completed
Upto Rs. 5 lakhs	5,180
Rs. 5,00,001 to Rs. 10 lakhs	107
Rs. 10,00,001 to Rs. 15,00,000	11
Above Rs. 15 lakhs	3
Total	5,301

*Figures furnished by the Ministry of Finance are provisional.

(c) Assessment year-wise position of pendency of assessments at the end of 1985-86* was as under :

Assessment year	Number of assessments		
	Regular	Reopened/ set aside	Total
1981-82 and earlier years	456	94	550
1982-83	148	8	156
1983-84	147	..	147
1984-85	104	..	104
1985-86	125	..	125
Total	980	102	1,082

(d) Estate value-wise pendency of assessments at the end of 1985-86* was as under :

Principal value of estate	Number of assessments
Upto Rs. 5 lakhs	789
Rs. 5,00,001 to Rs. 10 lakhs	257
Rs. 10,00,001 to Rs. 15 lakhs	34
Over Rs. 15 lakhs	2
Total	1,082

*Figures furnished by the Ministry of Finance are provisional.

4. *Surtax*

(a) The number of surtax assessments completed during the year 1985-86* was as under :

No. of assessments for disposal	No. of assessments completed	Percentage	No. of assessments pending at the end of year
695	200	28.7	495

(b) Assessment year-wise position of pendency of assessments at the end of the year 1985-86* was as under :

Assessment year	Number of assessments
1981-82 and earlier years	168
1982-83	39
1983-84	83
1984-85	99
1985-86	106
Total	495

*Figures furnished by the Ministry of Finance are provisional.

5. *Interest-tax*

(a) The number of interest-tax assessments completed during the year 1985-86* was as under :

No. of assessments for disposal	No. of assessments completed	Percentage	No. of assessments pending at the end of year
38	16	42.1	22

(b) Assessment year-wise position of pendency of assessments at the end of the year 1985-86* was as under :

Assessment year	Number of assessments
1981-82 and earlier years	7
1982-83	1
1983-84	3
1984-85	5
1985-86	6
Total	22

*Figures furnished by the Ministry of Finance are provisional.

1.07 *Arrears of tax demands*

10.07.01 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 35 days unless the time for payment is extended by the Income-tax 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 unless the admitted portion of the tax has been paid before filing the appeal.

(i)* Corporation-tax (including Surtax) and Income-tax

(a) *The total demand of tax raised and remaining uncollected as on 31 March 1986 was Rs. 2,276.53** crores out of which arrears of Rs. 1,022.59 related to companies. The arrears included 630.13 crores in respect of which the permissible period of 35 days had not expired as on 31 March 1986, Rs. 17.96 crores claimed to have been paid but remaining to be verified/adjusted, Rs. 155.07** crores stayed/kept in abeyance and Rs. 24.72 crores for which instalments had been granted and instalments not fallen due.

(b) *The details of demands of Income-tax (including Corporation-tax) stayed/kept in abeyance as on 31 March 1986, were as under :

	(In crores of rupees)
(1) By Courts	47.52
(2) Under Section 245F(2) (applications to Settlement Commission)	30.38
(3) By Tribunal	17.59
(4) By Income-tax authorities due to :	
(i) Appeals and revisions	190.36
(ii) Double Income-tax claims	17.47
(iii) Restriction on remittances—Section 220(7)	2.57
(iv) Other reasons	379.02
Total	684.91**

*Figures furnished by the Ministry of Finance are provisional.
**Figures are under reconciliation by the Ministry of Finance.

(c) *The amounts of Corporation-tax, Income-tax, interest and penalty making up the gross arrears and the year-wise details thereof are given below :

	Corporation tax	Income tax	Interest	Penalty	Total
			(In crores of rupees)		
Arrears of 1981-82 and earlier years	48.96	161.37	92.31	52.01	354.65
1982-83	16.05	43.15	27.85	8.60	95.65
1983-84	76.06	66.88	50.00	16.08	209.02
1984-85	148.17	195.51	158.21	24.26	526.15
1985-86	598.57	433.30	365.72	42.66	1440.32
Total :	887.81	900.21	694.16	143.61	2625.79

(d) The following table gives the break-up of the gross arrears of Rs. 2625.79 crores by certain slabs of income.

(In crores of Rs.)

	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	1,09,571	221.79	107.25	27,75,754	739.11	413.27	28,85,325	960.90	520.52
Over Rs. 1 lakh upto Rs. 5 lakhs in each case	3,852	87.19	52.23	11,118	165.08	103.84	14,970	252.27	156.07
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case	999	68.35	37.28	1,181	81.73	48.31	2,180	150.08	85.59
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case	686	112.55	49.40	758	120.57	61.30	6,444	233.12	110.70
Over Rs. 25 lakhs in each case	616	673.79	202.35	8,129	355.63	145.35	8,745	1,029.42	347.70
Total	1,15,724	4,163.67	448.51	27,96,940	1,462.12	772.07	29,12,664	2,625.79	1,220.58

(ii) *The amounts of Interest-tax in arrears and the year-wise break-up thereof are given below :

	No. of cases	Amount (in crores of rupees)
Arrears of 1981-82 and earlier years	793	0.62
1982-83	669	0.16
1983-84	1121	0.29
1984-85	2377	20.11
1985-86	7444	33.37

*Figures furnished by the Ministry of Finance are provisional.

(iii) *Other Direct Taxes (Wealth-tax, Gift-tax and Estate duty).

The following table gives the year-wise arrears of demands outstanding and the number of cases relating thereto under the three other direct taxes, *i.e.*, wealth-tax, gift-tax and estate duty, as on 31 March 1986 :

(Amount in lakhs of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	Number	Amount	Number	Amount	Number	Amount
1981-82 and earlier years	52,885	3,769.62	14,166	389.17	6,495	658.68
1982-83	26,366	875.97	4,147	61.61	1,763	147.56
1983-84	36,394	2,034.48	4,333	97.96	2,474	229.54
1984-85	36,976	2,772.80	6,999	141.44	3,060	598.04
1985-86	56,659	4,240.12	15,493	300.52	7,967	1,160.44
Total	2,09,280	13,692.99	45,138	990.70	21,759	2,794.26

*Figures furnished by the Ministry of Finance are provisional.

1.07.02 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 five days of the service of notice of demand. On the default of an assessee in this respect, the Income-tax Officer may forward a certificate specifying the demand in arrears to the Tax Recovery Officer for recovery of the demand. The Tax Recovery Officer 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, the Tax Recovery Officer shall proceed to realise the amount together with interest at the rate of 12 per cent (15 per cent from 1st October 1984) 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 the management of the defaulter's movable and immovable properties.

*The tax demands certified to the Tax Recovery Officers and the progress of recovery to end of 1985-86 are given in the following table :—

Year	Demand Certified			Demand recovered during the year	Balance at the end of the year
	At the beginning of the year	During the year	Total		
				(In crores of rupees)	
1981-82	85.82	32.28	118.10	23.39	94.71
1982-83	94.71	21.92	116.63	29.89	86.74
1983-84	107.21	39.98	147.19	31.43	115.76
1984-85	115.76	65.42	181.18	53.86	127.32
1985-86	129.30	67.07	196.37	46.44	149.93

1.07.03 *Disposal of attached property*

*Year-wise details of attached properties awaiting disposal at the end of 1985-86 as furnished by the Ministry of Finance were as under :

Year of attachment	Number of cases					
	Movable		Immovable		Total	
	No.	Amount	No.	Amount	No.	Amount
				(In crores of rupees)		
1981-82 and earlier years	244	0.53	268	4.41	512	4.94
1982-83	144	0.14	215	3.15	359	3.29
1983-84	54	0.03	179	2.43	233	2.46
1984-85	105	0.16	268	4.03	373	4.19
1985-86	325	2.13	443	5.67	768	7.80

*Figures furnished by the Ministry of Finance are provisional.

Attachment of movable properties towards recovery of taxes and their disposal

I. The proceedings for recovery of any sum payable under the Act shall not be commenced after the expiration of one year (3 years from 1 October 1984) from the last day of the financial year in which the demand is made or in which the assessee is deemed to be in default.

The procedure prescribed for the attachment of movable properties and their disposal require the following :

1. Maintenance of Control Registers.

2. Issue of tax recovery certificate by the Income-tax Officer and furnishing by him of a detailed list of movable properties belonging to the defaulter.

3. Issue of demand notices/warrants for attachment in time and their service/execution thereof.

4. Attachment of the properties by actual seizure, where the arrears are not paid within a reasonable time.

5. Preparation of an inventory of the articles attached by actual seizure and valuation of jewellery and precious stones by a registered valuer.

6. Removal of the attached properties to office premises or in the case of heavy articles, leaving them in the custody of the defaulter with the approval of the Tax Recovery Officer in the execution of a duly stamped bond. (Sapurdnama)

7. Issue of a proclamation of sale and sale by public auction.

II. In the Report of the Comptroller and Auditor General of India for the year 1984-85, the results of a review on the disposal of immovable properties attached towards tax recovery was incorporated, highlighting the delays and deficiencies in the disposal of the properties after they are attached and the non/defective maintenance of the prescribed registers.

A review of the records relating to the movable properties attached was conducted in Audit during the year 1985-86 in the different Commissioners' charges and case studies undertaken in respect of a few hardcore items, both in terms of the age of the arrears and their magnitude. The results of the review are summarised in the following paragraphs :

1. *Pendency in disposals* :

The number of movable properties attached towards tax recovery and awaiting disposal as at the end of March 1986 was 3978 in 28 Commissioners' charges.

An analysis of the properties on the basis of their age after they are attached (table below) indicated that 138 properties (attached) were as old as 10 years and 269 properties were attached towards recovery of arrears of tax of Rs. 10 lakhs and above in each case. The following are the details Commissionerwise :

Properties attached and awaiting disposal.

State	Commissioners charges	Number of Properties			Total	Extent of arrears of tax
		More than 10 years	5-10 years	Less than 5 years		
				(In lakhs of rupees)		
1	2	3	4	5	6	7
Maharashtra	4	104*	91	2383	2578	768.23
West Bengal	1	8A	35	478	521	483.00
Uttar Pradesh	4	5	—	265	270	63.73
Tamil Nadu	1	—	1	36	37	1103.36
Karnataka	2	—	1	47	48	53.75
Madhya Pradesh	2	15B	21	4	40	197.11
Kerala	2	—	—	22	22	5.65
Andhra Pradesh	3	5	15	73	93	51.51
Punjab	3	1	6	34	41	22.92
Gujarat	1	—	9	148	157	507.00
Haryana	1	—	—	21	21	17.71
Rajasthan	2	—	1	98	99	14.26
Jammu & Kashmir	1	—	—	1	1	1.16
New Delhi	1	—	4	46	50	180.76

Notes		A—Out of 8 the range of delay for 4 is 15—20 years	B—Range of delay	No. of properties
*Over 20 years	1			
15—20 years	11			
10—15 years	92		10—15 years	15
	104			

2. *Maintenance of Control Registers* :

In order to keep watch of the execution of warrant of attachment of movable properties, custody and disposal of the properties by sale or otherwise, departmental instructions require the maintenance of the following registers :

(a) Register of movables attached and sold ;
(b) Execution register ;
(c) Custody register ;

(a) *Register of movables attached and sold*

This register gives information regarding the name of the defaulter, amount of arrears, date of attachment, description of the property attached, estimated value

of the property, date of sale etc. It is generally noticed that this register was either not maintained or was not maintained in the prescribed manner. One of the important columns of the register providing for the estimated value of each property was invariably not filled in. The broad details are :

State	No. of Tax Recovery offices test checked	No. of offices where the registers were wanting/ defective
1	2	3
Maharashtra	44	34
West Bengal	43	43
Uttar Pradesh	12	9
Tamil Nadu	12	11
Karnataka	5	Nil
Madhya Pradesh	6	3
Kerala	4	3*
Andhra Pradesh	6	6
Punjab	8	5
Gujarat	13	13
Haryana	1	Nil
Bihar	6	6
Rajasthan	7	7
New Delhi	4	4
Jammu & Kashmir	1	1

NOTE : *In the remaining 1 charge, the Register is brought into use only from 31-12-1985.

(b) *Execution Register*

This register is intended to have a watch on the issue of the warrants and their execution by the attaching officer. The test check has revealed that in 134 charges this register was not maintained or was maintained in a defective manner.

(c) *Custody Register*

This register gives the particulars of the articles attached. In 124 charges test checked, where this register was not maintained or was maintained in defective manner, the seized articles were allowed to remain with the defaulters for want of conveyance to transport the articles/or a strong room to safely store the articles.

Non/improper maintenance of the Control Registers would lead to inadequate control being exercised by the department in the matter of attachment and disposal of the properties, besides leading to inordinate delays in the disposal of the properties and consequent loss to Government by depreciation etc.

3. *Lack of co-ordination between the Income-tax Officers and Tax Recovery Officers*

According to the instructions issued by the Central Board of Direct Taxes in February 1978 and July 1983, the Income-tax Officer shall, along with the tax recovery certificate furnish to the Tax Recovery Officer a detailed list of all movable and immovable properties belonging to the defaulter for necessary action for attachment of the properties and their sale towards realisation of the demand shown in the tax recovery certificate. In Tamil Nadu, Punjab, Uttar Pradesh, Maharashtra, Rajasthan, Jammu and Kashmir, Chandigarh (Union territory) Kerala and New Delhi charges, this requirement was not complied with or complied with after long delays. Besides, the Income-tax Officers should also promptly communicate to the Tax Recovery Officers the variation in demands on account of rectification, revision, appeals etc. collections made by adjustment of refunds or otherwise and the Income-tax Officers and the Tax Recovery Officers should periodically reconcile the registers of tax recovery certificates. This procedure was seldom followed.

4. *Delays in issue of tax recovery certificates and commencement of tax recovery proceedings*

The existing procedure requires that the Income-tax Officer shall forward to the Tax Recovery Officer a tax recovery certificate specifying the net amount of arrears payable by a defaulter well within time so that the demand does not become barred by limitation of time. The test check in audit generally revealed considerable delays in the issue of tax recovery crtificates, issue of demand notices as also issue of warrants of attachments.

5. *Causes for delays in the disposal of properties attached*

The delays in the disposal of the movable properties, as the review had indicated, were *inter-alia*, mainly caused by one or more of the following :

(a) Commissioners' granting stay orders due to appeals pending before appellate authorities ;

(b) Department not asking the Courts for expeditious disposal of the cases pending in Courts for long years ;

(c) Defective service of attachment orders ;

(d) Permission granted to pay the arrears in instalments in some cases even lifting the attachment orders, but generally not kept up by the defaulters ;

(e) Frequent changes in the jurisdiction of Tax Recovery Officers ;

(f) Want of real ownership details of the properties attached :

(g) Others—

(i) Lack of follow-up action with the Court/Public Officer with a view to realising the deposits held by them ;

(ii) Non-availability of—

(1) Correct particulars of debtors/companies (for share certificates) and their addresses ;

(2) Share script details ;

(3) Bank account numbers/enough credit balances in the case of bank attachments.

(iii) Want of any bidder or a low bid only in the auction sale after advertisements in the newspaper, and

(iv) Omission to indicate the correct name as for the LIC policy.

III. Case studies of certain old and high-value cases from selected charges.

(a) *Tamil Nadu*

Movable properties comprising 37 items involving Rs. 11.03 crores in 13 charges in the jurisdiction of the various Commissioners in this charge were awaiting disposal as at the end of March 1986.

The details of some of the cases are given below :—

Defaulter	Amount of arrears (in lakhs of rupees)	Assessment years involved
A	83.81	1963-64 to 1975-76
B	21.57	1964-65 to 1970-71
C	27.29	1965-66 to 1971-72
D	12.75	1963-64 to 1973-74

Case A : In the case of the assessee, the recovery certificates were issued between August 1978 and February 1983, but since then the only collection so far made is a sum of Rs. 2.31 lakhs by way of sale on 28 February 1986 of 22,540 shares of a Mill after attachment of Rs. 75,290 on 5 February 1983 in respect of unpaid dividends. Curios of the value of Rs. 12.77 lakhs were seized during an income-tax raid conducted in 1975. They were allowed to remain in the custody of the defaulter in his premises/garden/verandah. The prescribed Sapurdnama (duly stamped bond) was, however, not executed. The curios could not be put to auction or sold to realise the tax arrears so far, as the statement of issue of the curios seized had not been reconciled by the Income-tax Officer. No action was also taken to attach the other valuables *viz.* jewellery (Rs. 80,000), house hold furniture (Rs. 97,000) reported in October 1982 by the Income-tax Officer.

Case B : In this case, the recovery certificates were issued in March 1973/February 1974 and notices of demand in August 1973-74. The Income-tax Officer communicated the details of the assets held by the defaulter in February 1974 and the Commissioner of Income-tax issued instruction in August 1974. The Tax Recovery Officer attached the share certificates and fixed deposits in October/November 1974. The defaulter's appeals to the Appellate Tribunal/Madras High Court on the ground that the income of the trust is exempt from income-tax, however, failed. Nevertheless, no action had so far been taken to realise the properties attached to the extent of the arrears of Rs. 17.85 lakhs.

Case C : In this case, a registered firm, a sum of Rs. 4.73 lakhs lying with the Madras High Court was attached in April 1978 but this amount could not be realised due to stay obtained by an unsecured creditor to the firm. The arrears got reduced to Rs. 12.39 lakhs as on 30 August 1983 due to reduction in appeals and further collections made and the attachment order issued in April 1978 was treated as closed. No action was, however, taken to issue a fresh attachment order in respect of the Court Deposit to realise the balance amount of Rs. 12.39 lakhs (approx). No action was also taken to follow up the attachment order served in June 1985 on Director, Doordarshan Kendra, Madras attaching the royalty payable to the defaulter for a film. Besides, as instructed by the Inspecting Assistant Commissioner of the concerned Range no action was taken to collect the particulars of the films produced by the assessee and attach the negatives of the films.

Case D : In the case of the assessee, a firm, 72 buses belonging to the firm shared and run individually by the 4 partners were attached in August 1969 and September 1969. The defaulter on the execution of a Sapurdnama was allowed to retain the attached buses for their beneficial use against payment of a sum of Rs. 500 per day. The defaulter failed to keep to the dates of the arrangement and the buses were attached again in April 1970. The instalment scheme was granted for a second time in March 1971. Even then the assessee defaulted but no action was taken to dispose of the buses and to realise the arrears

of taxes. Meanwhile, in October 1977, the Tehsildar sold 5 buses for Rs. 43,938 and kept the amount in Revenue Deposit. The amount is yet to be realised from the Tehsildar, though buses were already under attachement by the Income-tax Department. In this case, the correct amount of arrears is also not known.

(b) *Madhya Pradesh*

In this charge, 40 properties in respect of 19 defaulters attached towards recovery of tax arrears of Rs. 1.97 crores were awaiting disposal as on 31 March 1986.

The following are the details of some of the cases reviewed in Audit (records in respect of 13 properties were not made available to audit).

Defaulter	Amount of arrears (in lakhs of rupees)	Assessment years involved
E	108.00	1957 to 1980-81
F	157.64	1944-45 to 1949-50 and 1955-56
G	28.76	1958-59 to 1982-83
H	1.86	1977-78
I	20.32	1971-72 to 1976-77

Case E : The Wealth-tax assessments in this case for the years 1957-58 to 1961-62 were completed exparte in January 1962 as no returns were filed despite issue of notices. In appeal, the Tribunal set aside the assessments (October 1973) and the assessee filed the returns of net wealth for the assessment years 1962-63 to 1966-67 between February 1966 and December 1966 but did not file the returns for the assessment years 1967-68 to 1974-75 as called for. In the meantime, the Central Excise authorities in June 1965 and August 1965 seized gold bullion weighing 243.778 kilograms and silver bullion 9.595 kilograms from the premises of the assessee and the gold bullion was confiscated by the Collector, Central Excise in June 1966 under rule 126-M of the Defence of India Rules, 1962. The revision petitions filed by the assessee were rejected by the Government of India in June 1979. The assessee's writ challenging the validity of the search and confiscation was pending before the High Court (June 1986). The silver bullion seized was handed over to the District Collector who forfeited it (in August 1972) to the State Government under the Treasury Trove Act. A writ in the matter filed by the assessee is pending before Rajasthan High Court. Immediately after the raids by the Central Excise authorities, the assessee discovered 51 gold bars (each weighing 3 seers or so) which was given in Trust to four persons on the fear that they would also be seized. During the previous year relevant to assessment year 1967-68, the assessee subscribed to National Defence Gold Bonds, 1980 for 36,993 kilograms of gold including 19 kilograms of gold (7 bars) received back from the trustees, out of 142 kilograms (51 bars) given on trust. The assessee sold these Bonds on 28 July 1971 and the Wealth-tax Officer in his assessment for the assessment year 1972-73 and onwards assessed the sale proceeds of 37 kilograms of Gold Bonds as cash (amount not available as assessment records were with the Board). No action under Section 226(3) of the Act was, however, taken by the Income-tax Officer to issue prohibitory orders for transfer of the Bonds or the money realised after sales. The four persons refused to return the remaining 44 gold bars and the assessee lodged a complaint for criminal breach of trust and the police recovered the gold and kept it in the custody of the Court. The four persons were tried for offences under Section 406, 411, 414 of I.P.C. The trial Court in judgement dated 11 January 1977 confirmed the ownership of the appellant and the fact of the gold having been given in trust to the accused 4 persons. Later, the accused persons filed an appeal. As a result of appellate decision on 4 August 1978, the findings of the lower court were materially reversed. The matter is still subjudice in further litigation before the High Court. The gold continues to be in possession of police (deposited in Treasury). No action was taken to get the case decided by the High Court. The Court intimated to the Tax Recovery Officer on 14 July 1981 that in view of the High Court *ad interim* order dated 25 October 1978 to maintain *status quo* (property not to be released to appellant assessee) no order was required to be passed.

Fresh assessments for the assessment years 1957-58 to 1961-62 as also original assessments for the assessment years 1962-63 to 1974-75 were completed on 26 March 1979 as these were getting time barred on 31 March 1979 and a total demand of Rs. 96.64 lakhs was raised. The Wealth-tax Officer issued revenue recovery certificates for a sum of Rs. 98.57 lakhs [inclusive of interest under section 220(2)] to the Tax Recovery Officer on 6 July 1979 and furnished details of the properties in January 1980. On receipt of the revenue recovery certificates, the Tax Recovery Officer issued notices of demands on 23 November 1979, after a delay of about 4 months due to change of jurisdiction on 19 November 1979.

On 8 February 1980, the Tax Recovery Officer issued notices of attachment of movable property (ITCP-10) to the—

(i) Rajasthan High Court, Jodhpur and Munsif, Chhoti Sadri (Rajasthan) in respect of 9595 kilograms of silver confiscated by District Collector under Treasury Trove Act (Value Rs. 253.48 lakhs).

(ii) Collector, Central Excise, New Delhi in respect of 171 silver bars of foreign markings confiscated by the Collector of Central Excise (value Rs. 4.67 lakhs).

(iii) Collector, Central Excise, New Delhi in respect of 240.40 kilograms of gold bullion (value of gold Rs. 384.96 lakhs).

(iv) Rajasthan High Court in respect of 51 gold bars given in trust (value Rs. 196.80 lakhs).

Warrant of attachment of movable properties (ITCP) was issued on 14 October 1980. 274 shares of a company were attached by issue of Prohibitory Order (ITCP 4) on 25 October 1980 to the Principal Officer of the company (value Rs. 0.55 lakhs). Copies of the above notices were also issued and served on the assessee.

On 17 February 1971, the Wealth-tax Officer seized 20 kilograms of gold ornaments and kept in the Sub-Treasury (value Rs. 20.00 lakhs). The seized ornaments kept in the Sub-Treasury in the custody of Wealth-tax Officer would constitute an attachment for purpose of recovery.

The Tax Recovery Officer reported on 15 March 1982 to the Range Inspecting Assistant Commissioner that he could call for the custody officer to realise the attached property (other than money) and pay the proceeds of realisation to the Tax Recovery Officer.

The Commissioner of Income-tax directed the Tax Recovery Officer (June 1980) to auction the seized gold ornaments. The Tax Recovery Officer reported to the Range Inspecting Assistant Commissioner (February 1981) that the gold ornaments were kept in the Sub-Treasury on behalf of the Wealth-tax Officer who could auction the valuables. The Commissioner of Income-tax then issued directions (June 1981) to the Wealth-tax Officer to take possession of the jewellery from the Treasury and conduct the auction with the help of Tax Recovery Officer, the approved valuer and the Appraiser of the Customs department. The Wealth-tax Officer took no action till February 1982 and sought the approval of the Commissioner of Income-tax for auction of the property which might fetch Rs. 15 to 20 lakhs. On a petition filed by the assessee on 15 March 1982, the Commissioner of Income-tax, however, stayed the demand. The defaulter was asked to pay Rs. 5 lakhs by 30 March 1982. In April 1982, the Commissioner of Income-tax informed the Board that the assessee's request for the postponement of the recovery proceedings till the decision of the Rajasthan High Court could not be accepted as it would have involved stay for an indefinite period. The Commissioner of Income-tax further ordered (June 1982) that if the second appeal filed in May 1980 (assessment years 1957-58 to 1977-78) were not decided by the Tribunal by September 1982, attached ornaments would be auctioned in October 1982. The first appeal filed on 22 April 1979 by the assessee were decided on 14 March 1980 as a result of which the demand was reduced to Rs. 52.44 lakhs. Although the Tribunal decided the appeal on 30 September 1982 (assessment years 1957-58 to 1963-64) and November 1982 (assessment years 1964-65 and 1965-66) reducing the demand by Rs. 89,092, no action was taken to auction the property. The assessee offered to pay a sum of Rs. 5 lakhs if the gold ornaments lying in the Sub-Treasury under the custody of the Wealth-tax Officer were released. The matter was under active consideration of the Commissioner of Income-tax (June 1986).

The matter regarding the ownership of the confiscated gold and silver (value Rs. 642.21 lakhs) confiscated by Central Excise authorities and District Collector was pending with the High Court (June 1986). No action was taken by the department to get the cases decided by the High Court on priority basis. No action was also taken to sell the shares (June 1986). For the assessment years 1966-67 to 1977-78, the Tribunal in its order dated 15 September 1984 had set aside the decision of the Commissioner of Wealth-tax (Appeals) for giving fresh decision by him.

The Commissioner of Income-tax requested the Commissioner of Wealth-tax (Appeals) in November 1984 and May 1985 to dispose of the appeals for the assessment years 1966-67 to 1980-81 involving a demand of Rs. 105.40 lakhs, which were pending decision (June 1986).

The assessee had also filed an application on 27 September 1984 before the Settlement Commission which was forwarded by the Commissioner on 30 March 1985. The Commissioner rejected the petition on 16 September 1985. The assessee has filed a writ in the Delhi High Court against the orders of the Settlement Commission in February 1986.

Case F : In March 1962 it came to notice of the Income-tax Officer that the assessee had not disclosed truly and fully the income earned in British India. Accordingly, notice under section 34 of Income-tax Act 1922 was served in March 1962. The assessee contended that the Income-tax Officer had no jurisdiction to re-open the assessments. On a petition of the assessee, the Madhya Pradesh High Court on 25 November 1963 held that Income-tax Officer had no jurisdiction to re-open the assessments for 1940-41 to 1946-47, but the notice under section 34 for the assessment years 1947-48 to 1949-50 were proper. The assessee accordingly filed returns in January 1970 for the assessment years 1947-48 to 1949-50 and the issue regarding reopening of assessments for 1940-41 to 1946-47 went upto the Supreme Court which held that the Income-tax Officer did possess the jurisdiction. The assessee then filed returns for assessment years 1940-41 to 1946-47 in September 1973.

The assessee expired on 17 December 1973. The assessments for the assessment years 1940-41 to 1949-50 were framed under Section 34 of the Act on 4 October 1974 raisng a demand of Rs. 32.64 lakhs. The regular assessment for the year 1955-56 was also made on 4 October 1974 raising a demand of Rs. 30.20 lakhs. On appeals filed by the assessee for assessment years 1940-41 to 1949-50 on issue of assessment of unexplained accretion, the Appellate Assistant Commissioner in his decision dated 3 March 1975 and 30 June 1975 held that entire amounts were assessable in the assessment years 1944-45 to 1949-50. Consequently, fresh assessments were completed raising a revised demand of Rs. 46.19 lakhs in February 1976. Penalty under section 271 (1)(a) and 271(1)(c) of the Act amounting to Rs. 81.25 lakhs for assessment years 1944-45 to 1949-50 were also levied in March 1977.

Revenue recovery certificates for Rs. 157.64 lakhs were issued in December 1974 and March 1978 after a lapse of 2 years. The assessee owned 14,107 shares of a Public Limited Company whose value in December 1973 was Rs. 90 per share (total value of Rs. 12.70 lakhs as per Estate Duty records).

A Notice under section 226(3) of Income-tax Act, 1961, was issued to the Company in December 1974, by the Income-tax Officer. The Tax Recovery Officer/Income-tax Officer did not take any action to sell the shares. The Tax Recovery Officer on 17 November 1981 intimated Range Inspecting Assistant Commissioner that requisite details of these shares were being obtained by issue of summons under Rule 83 of Second Schedule to Income-tax Act, 1961, read with Order 16 Rule 6 of Code of Civil Procedure, 1908. The shares were received by the Tax Recovery Officer on 24 November 1981 and returned to the Executors of the will of the deceased assessee in 'Sapurdnama'. The value of these shares declined to Rs. 25 per share in March 1978 and the present value is Rs. 10 per share. Inquiries made by the Tax Recovery Officer from Local Stock Exchange and brokers revealed that there was no transaction in the shares of the company (a sick mill) since 21 March 1984 and no purchaser was interested in acquiring these shares. Delay in disposal of the shares, has, therefore, resulted in a loss Rs. 11.28 lakhs to Government, 400 shares of foreign company (Value Rs. 5,780) were not sold (June 1986).

After including interest upto 31 March 1979 under Section 220(2) of the Act amounting to Rs. 26.93 lakhs on unpaid demands of Rs. 150.06 lakhs, the total demand as on 31 March 1979 stood at Rs. 176.99 lakhs out of which demand of Rs. 132.99 lakhs were written off by the Board on 31 March 1979 on the recommendations of Zonal Write Off Committee, leaving a balance of Rs. 44 lakhs for future realisation. After making deductions for certain demands realised and additions for demand raised for assessment years 1966-67, 1981-82 and 1982-83 and adding interest under section 220(2), the demand in February 1985 stood at Rs. 35.45 lakhs. A further proposal for write off of demand of Rs. 25.25 lakhs leaving a sum of Rs. 10.20 lakhs for possible recoveries in future, was submitted to the Board on 27 February 1985. The Board has, however, returned the proposal in April 1985 with directions that after reconciliation of the figures of outstanding demand, a fresh proposal should be submitted. Further action was awaited (June 1986).

Case G : The Wealth-tax assessments set aside for the assessment years 1958-59 to 1979-80 were made in March 1984 and March 1985 and a total demand of Rs. 34.87 lakhs was raised against the assessee. The assessment for the assessment years 1963-64 to 1974-75 were set aside by the Commissioner of Wealth-tax (Appeals) and the demand was reduced to Rs. 21.76 lakhs in March 1986. The Income-tax assessments for the assessment years 1976-77 to 1982-83 were made during the financial years March 1983 to March 1986 and a total demand of Rs. 7.00 lakhs was raised.

The Income-tax Officer issued revenue recovery certificate for an amount of 12.70 lakhs (Wealth-tax) in September 1984 and for Rs. 5.37 lakhs between March 1983 to March 1985. The Tax Recovery Officer issued Notices of demand (ITCP-I) between

December 1983 and August 1985. The list of shares held by the assessee in seven companies was furnished by the Income-tax Officer in February 1985. Notices under Section 236(3) of the Income Tax Act and Section 32 of Wealth-tax Act were issued by the Income-tax Officer on 11 February 1985 to the companies. On 19 August 1985, the Tax Recovery Officer issued Prohibitory orders (ITCP 4) under the Second Schedule to the Income-tax Act and attached 38,601 shares (estimated value of Rs. 22.64 lakhs). In March 1986 and June 1986, 25,000 shares valuing Rs. 12.05 lakhs were disposed of. The adjustment to this extent has not so far been made. The assessee has been asked to produce the remaining shares on 26 July 1986 for sale.

Case H : Revenue recovery certificates for an amount of Rs. 1.77 lakhs were issued to Tax Recovery Officer between March 1981 and March 1983. Notices of demand (in ITCP 1) were issued in May 1981 and March 1983. The Tax Recovery Officer issued Warrants of Attachement of Movable Property (in ITCP 1) in August 1981 and August 1983.

The firm was dissolved on 1 April 1978 but the names of partners and their shares in the firm were intimated to the Tax Recovery Officer by the Income-tax Officer on 17 December 1985. Accordingly, notices of demand (ITCP 1) were also issued to partners on 17 January 1986. Tax Recovery Officer attached 170 bundles of paper (valuing Rs. 67,445) on 4 September 1981 and Printing Machine (Value Rs. 2.85 lakhs) on 20 August 1983 and gave them in 'Sapurdnama'. The attached properties could not be sold as the Tribunal had granted stay for a demand of Rs. 58,639 on 21 February 1985 and the assessee's appeal against penalty demand of Rs. 1.02,490 levied under section 271(1)(a) of the Act was pending before Commissioner of Income-tax (Appeals) till June 1986.

Case I : Revenue recovery certificate for Rs. 20.32 lakhs were issued to Tax Recovery Officer between July 1975 and August 1981 and notices of demand (ITCP-1) were issued during July 1975 to July 1977. The Tax Recovery officer attached movable property (consisting of a Jeep, 34 animals, utensils etc. valued at Rs. 53,580) on 8 February 1978 and made them over in Sapurdnama to an agriculturist. The agriculturist reported that the animals died for want of proper fodder arrangement by the department.

There was, thus, a loss of Rs. 34,000 (by estimating the value per animal at Rs. 1,000) due to non-auction of the animals immediately after attachment. The loss was not reported to higher authorities. The auction of the movable property was fixed twice in March 1979, but had to be postponed as the 'superaddar' did not produce the attached property and absconded. The matter was reported to Superintendent of Police in January 1982 and November 1982 but the 'superaddar' could not be traced out. In January 1986, the Board directed the Commissioner of Income Tax to take up the matter with the Deputy Inspector General of Police. Further action was awaited (June 1986). A search was conducted in April 1981 (as per authorisation issued under section 132(A) of the Act) and police seized Rs. 68,400 in cash from the assessee and deposited it with the Court. Inspite of notice issued to the Court (under section 226 of Act) in December 1982, the money could not be realised as the matter was sub-judice.

Out of the total outstanding demand of Rs. 20.32 lakhs, proposals for write off of demand of Rs. 19 lakhs was approved by the Zonal Write Off Committee in March 1983. The proposal was submitted to the Board in March 1984 which was returned in August 1984 due to discrepancies/wanting information. The proposal was again sent by the Commissioner of Income-tax to the Board in November 1985 which was again returned by the Board in January 1986, pointing out certain discrepancies. Further action is awaited (May 1986).

(c) *Calcutta*

521 movable properties attached towards recovery of tax arrears involving Rs. 4.83 crores within the jurisdiction of various Tax Recovery Officers under the charge of the Commissioner of Income-tax (Recovery) West Bengal, Calcutta, were pending disposal as at the end of March 1986. Some of the interesting cases noticed are discussed below :

Defaulter	Amount of arrears (in lakhs of rupees)	Assessment years involved
J	188.77	1965-66 to 1978-79
K	41.86	1969-70 to 1978-79
L	37.31	1941-42 to 1965-66
M	4.43	1954-55 to 1958-59 and 1960-61

Case J : In this case, rental income in respect of two house properties (monthly rent of Rs. 2000 in one case and amount not ascertainable in another case) and two sundry debtors involving total debt of Rs. 16,000 only were attached. The assessee Trustee Sebait expired on 7 April 1981 leaving behind beneficiaries. The beneficiaries had not so far cooperated with the department. A proposal for sale of two immovable properties was considered by issue of

notice on 12 January 1984. Records produced to audit do not indicate any further development. Wealth-tax assessments of the assessee for the years are also not finalised.

Case K : On 28 December 1982, the rental income from 18 tenants of the house properties belonging to the Certificates debtor was attached by the Tax Recovery officer. No other movable asset was found to have been attached. Attempts to attach the house properties of the debtor for recovery of the arrears had not made any headway as the properties were under the control of the Receiver appointed by the Court. Permission for necessary leave of the Court for the attachment of the above properties is still awaited from the CIT, though the TRO had approached the CIT. The pending assessments of Income-tax and Wealth-tax were also completed in 1981 and 1982 after long delays after the old Income-tax and Wealth-tax assessments were set aside and revoking the orders of attachment issued earlier. There are no details/documents to show if the Estate Duty Officer was contacted to ascertain the details of assets of the deceased and if so, with what results.

Case L : Tax recovery certificates in respect of arrears of tax of Rs. 149.27 lakhs were isued, during March 1958/1967. The Karta of the HUF died in November 1965 and the business was discountinued. On the recommendations of the Zonal Committee, the CBDT approved in March 1983 the writing off of a sum of Rs. 111.90 lakhs. Thus, the amounts got reduced to Rs. 37.31 lakhs.

In this case, the shares in different companies held by the legal heir of the defaulter were attached between April 1959 and March 1969 but no sale had so far been made stating that the bids were low. In the meantime, the collection of taxes was stayed and ex-parte order of injunction passed by the High Court of Calcutta on 28 November 1983. An application for vacation of the interim order of injunction had been filed in August 1984, but the same has not come up for hearing till May 1986.

Case M : The shares held by the assessee in four companies valuing Rs. 4.38 lakhs were attached in August 1969 and were put to sale in the year 1978 after the lapse of about 9 years. As there was no bidder forthcoming, the sale did not take place. The department proposed for the write off of the arrears to the Central Board of Direct Taxes but no write off order had been received in the department. There is no evidence on records to indicate any steps being taken by the department for possible recovery from the estates of the deceased.

(d) *Bombay*

2578 movable properties (valued at Rs. 72.11 lakhs) in respect of 85 defaulters towards recovery of tax arrears of Rs. 768.23 lakhs were attached and pending disposal as on 31 March 1986.

A review conducted in 34 Tax Recovery Officers charges revealed that movable properties in furniture, machinery, motor cars were attached but were kept with the defaulters on the execution of sapurdnamas. The details in respect of two cases are as under :—

Defaulter	Amount in arrears (in lakhs of rupees)	Assessment years involved
N	5.05	1974-75 to 1978-79
O	63.74	1977-78 to 1982-83

Case N : Furniture of the value of Rs. 4,425 were attached in March 1982 from Office premises and movable property viz. Fridge, Tape Recorder, Radiogram, steel cupboards etc. valuing Rs. 43,400 were attached from the residence of the partners. The tenancy rights of the residence of the partners were also attached. Bank accounts were attached in April 1984 but there was no balance in the accounts. The defaulter had been asked to bring all the movable properties attached to the Income-tax Office or alternatively to pay arrears of taxes. In October 1984, the defaulter was intimated that coercive measures including arrest and detention would be taken in case of default. There is no further development of the case till date as regards the movable properties attached.

Case O : In this case, the tax recovery certificate was issued in October 1982. The arrears were permitted to be paid by instalments of Rs. 2.5 lakhs by the Commissioner of Income-tax (Recovery) in January 1983. As the assessee defaulted, movable property comprising 35 items (value not known) was attached in February 1984. The instalment scheme was cancelled in November 1985. The Central Board of Direct Taxes had stayed the payment of interest of Rs. 22.04 lakhs payable for non/under payment of advance tax under Section 215 and 217 of the Income tax Act. The arrears as on 31-3-1986 pending is Rs. 51.52 lakhs including Tax Recovery Officer's interest of Rs. 15.91 lakhs.

(e) *Uttar Pradesh*

In this charge 1,24,219 tax recovery certificates involving arrear demands of tax, interest, penalty etc., of Rs. 43.60 crores were remaining outstanding as on 31 March 1986 under the four Commissioners, charges. However, only 270 movable

properties involving arrear demand of Rs. 64 lakhs (less than 2 per cent) were attached by the department. Out of these, in one Commissioner's charge, 68,295 recovery certificates were pending which involved arrears of Rs. 17.32 crores. 4 recovery certificates exceeded Rs. 10 lakhs in each case (arrears Rs. 1.73 crores) and 4082 recovery certificates were more than 10 years old. No movable property was attached by the two Tax Recovery Officers under this Commissioner but the third Tax Recovery Officer had no movable property which was awaiting disposal as on 31 March 1986. Another Commissioner had 41,227 recovery certificates (arrears Rs. 22.45 crores as on 31 March 1986) outstanding against which 249 movables valuing approximately Rs. 13.06 lakhs were attached and were awaiting disposal. The third and fourth Commissioners had 14,697 tax recovery certificates (arrears Rs. 383.52 lakhs) outstanding against which 21 movables were attached. Attachment generally related to Bank Accounts of defaulters only. The actual realisation was negligible/was not ascertainable as the details of the branches of the bank where the defaulter had his accounts, were not available with the attaching officers. Two of the cases are :

Defaulter	Amount in arrears (in lakhs of rupees)	Assessment years involved
P	12.43	1956-57 to 1962-63
Q	1.03	1947-48 to 1949-50

Case P : In this case, two partners of a registered firm owned Rs. 12.43 lakhs. The recovery certificates in these cases were issued during March 1974, and the demands were revised in July 1985 and got reduced to Rs. 10.66 lakhs which was outstanding as on 31 March 1986. The defaulter owned several houses, agricultural lands, accounts in various banks, credit balance in registered firms and 39 boxes containing silver ornaments worth Rs. 13 lakhs. The defaulters, account with the State Bank was attached in December 1982. So far, no remittance has been received, Gold and ornaments valuing Rs. 19.60 lakhs belonging to the registered firm were seized by the Customs and Central Excise Department in 1969 and this was attached in September 1975. But nothing was realised till September 1985 when the Allahabad High Court stayed the entire demand as representing interest under section 220(2) for non payment of tax in time.

Case Q : In this case, the assessee owned Rs. 1.03 lakhs over the years 1947-48 to 1949-50. In execution of the Civil Suit, the State Government deposited Rs. 1.62 lakhs in the Court of a Civil Judge in favour of the defaultee, the decree holder. The department served ITCP 10 on the Court in May 1979 attaching this amount but the Court did not remit the same stating that the amount was deposited as security and did not appear to be payable to the decree holder. The second notice was issued in October 1979 on which no action was taken by the Court. When the third notice was served in May 1983 after another 4 years, it transpired that the defaulter had already obtained the payment of the amount deposited of Rs. 1.62 lakhs in February 1982 itself. The District Government Counsel opined that the arrears be realised from the other assets of the defaulter. Accordingly, the compound interest at 10% on the decreed amount of Rs. 1.62 lakhs from May 1962 due to the defaulter from the State Government was attached in 1983. But so far, nothing has been realised. During 1965, the defaulter had obtained a decree of Rs. 1.22 lakhs over a registered firm which was attached in October 1967, which went by default because of not taking follow up action and the registered firm stood dissolved in 1970 on the death of a partner. The claim has become time barred as 12 years have elapsed after the award of the decree. This has resulted in loss of Rs. 1.22 lakhs to Government.

(f) *Kerala*

In the four Tax Recovery Officers charges, 22 items of movable properties attached towards recovery of arrears of tax demands aggregating to Rs. 5.65 lakhs were awaiting disposal as on 31 March 1986.

In the case of a company (Case R) engaged in the business of bus transport service, the arrears of tax stood at Rs. 3,03,020, Rs. 3,84,730 and Rs. 3,95,346 (assessment years 1963-64 to 1969-70) as on 20 March 1975, 4 November 1976 and 31 December 1985 respectively. Despite the continuing default on the part of the company, the movable properties of the defaulter which were attached on various dates (one bus on 20 March 1975, 2 buses on 4 November 1976 and 7 buses on 31 December 1985) were entrusted to the defaulter on each of these occasions. As on 31 March 1986, the outstanding against the defaulter amounted to Rs. 8.42 lakhs (including interest of Rs. 4.47 lakhs). Although the default had been continuing from 1975 to 1983, no attempt was made to realise the tax by sale of the buses. The department has confirmed the facts. The comments of the Department, however, are awaited (June 1986).

(g) *Karnataka*

The approximate tax arrears outstanding in respect of 24 defaulters whose movable properties numbering 48 were attached amounted to Rs. 53.75 lakhs as

on 31 March 1986 in the charges of two Commissioners of Income-tax under this charge. Attachments were generally of bank and other accounts of defaulters (31), rentals due to defaulters (11), land compensation due to defaulters (3), moneys due to defaulter from private parties (2) and finished and unfinished metal sheets (1).

In the case of a defaulter (Case S) recovery certificates were issued by an Income-tax Officer during the period 1975-76 to 1979-80 for recovery of arrears of income-tax, wealth-tax and penalty aggregating to Rs. 10.86 lakhs for the assessment years 1968-69 to 1976-77 and interest for delay in the payment of demands raised. As a result of appeal reductions and other coercive steps taken by the Tax Recovery Officer, the arrears were reduced to Rs. 4.22 lakhs as on March 1986.

As decreed by the Civil Court, a sum of Rs. 1.93 lakhs was payable to the defaulter by the Mysore University as compensation for the defaulter's land acquired by the University. The defaulter in November 1980 gave his consent for attachment of this amount. The Tax Recovery Officer issued attachment order in December 1980 to the Principal Civil Judge and CJM Mysore. A cheque was issued in May 1981 by the University for the payment of Rs. 1.93 lakhs which lapsed due to its non-encashment in time and another cheque was issued in October 1981. The amount could not be encashed for want of records with the Civil Judge which are stated to be with the High Court in Bangalore. The amount is yet to be recovered and is still under correspondence between the Tax Recovery Officer and the Principal Judge, Civil Court, Mysore.

(h) *Bihar*

46,731 tax recovery certificates remained outstanding at the end of March 1986 involving arrears of tax amounting to Rs. 16.51 crores in the charges of 6 Tax Recovery Officers out of which 16,376 certificates (Rs. 1.99 crores) related to 1977-78 and earlier years. 2,412 warrants of attachments of movable properties were issued in 1985-86 but no attachment had so far been made. In 40 cases the warrants of attachment could not be executed for want of full addresses of the assessees or winding up of their business. 177 cases of warrants of attachment of bank accounts of the defaulters involving arrears of Rs. 61.39 lakhs were issued out of which 89 cases involving arrears of Rs. 46.45 lakhs were attached. 38 cases (arrears of Rs. 9.49 lakhs) of warrants of attachment were either withdrawn or dropped. 50 items involving Rs. 5.45 lakhs remained pending (March 1986).

(i) *Punjab*

41 movable properties attached in Punjab between August 1974 to March 1986 under the jurisdiction of three Commissioners of Income-tax against arrears of tax demand amounting to Rs. 22.92 lakhs, were outstanding as on 31 March 1986 and awaiting disposal. In 31 cases, the value of properties attached in satisfaction of tax arrears was not known, the value in respect of the other 10 cases being 10.60 lakhs.

Case T

The total arrears of tax in this case stood at Rs. 0.51 lakh in respect of assessment years 1964-65 to 1973-74. The TRO, Ambala intimated in March 1982 that the assets of the firm stood pledged with State Bank of Patiala, Kalka and that the bank had filed civil suit for the recovery of its arrears in October 1980 in the Court of Sub-Judge, Patiala. The department did not want to be a party to the said civil suit and issued ITCP 10 in July 1982 in the name of a partner/firm. It was not served on the partner and the notice on the firm was served on the chowkidar of the factory which was not valid. The whereabouts of the partners called for from the assessing officer in August 1985 are still awaited.

(j) *Gujarat*

In Gujarat Circle, 157 movable properties attached towards tax recovery were outstanding as on 31 March 1986 involving a tax demand of Rs. 507 lakhs. This represented about 6.76 per cent of the value of 1,82,483 recovery certificates involving an amount of Rs. 7,492 lakhs pending with the Tax Recovery Officers in this circle. The value of all these properties attached were not available from the records maintained by the Tax Recovery Officers who had made no attempt to ascertain the same. There was no case of realisation of tax arrears by sale of movable properties and this was attributed to absence of facilities with the department to safe custody of the properties that may be seized.

Details of a few cases of interest are as follows :

Defaulter	Tax arrears (in lakhs of rupees)	Assessment years
U	18.54	1963-64 to 1976-77
V	17.73	1964-65 to 1974-75
W	0.67	1975-76
X	13.70	1974-75 to 1982-83
Y	214.25	1972-73 to 1975-76
Z	5.94	1974-75 to 1977-78

Case U

In the case of the defaulter the recovery certificates (Eleven) were received between March 1976 and January 1978. A prohibitory order was issued on the bank with whom the defaulter was believed to have maintained his accounts on 8 February 1978. The bank reported on the same day that they do not maintain any account of the defaulter. No recovery had been made, so far (July 1986). However, examination of the records disclosed that the Income-tax Department was in possession of 512 Kgs. of silver bars, originally confiscated by the Customs department and later on handed over to the Income-tax department and that the defaulter had concurred for the disposal of the silver, as early as 1973, towards satisfaction of the tax demands pending against him. In terms of an agreement reached by the defaulter with the Commissioner of Income-tax, the defaulter paid a sum of Rs. 1,50,000 and got released silver of equivalent value, to be disposed of by him and to be utilised for satisfaction of tax dues. But, this process was to be continued till the entire quantity of the silver was sold off. However, the records available with the Tax Recovery Officer did not indicate either the complete and correct details of the terms of agreement with the CIT, the progress of recovery in terms of it, if any. When these facts were brought to the notice of the Tax Recovery Officer during review, he stated that the seizure was not made by the Tax Recovery Officer, the sale of the silver was not made, and that the reasons for the non-disposal will be intimated after getting the correct facts from the records.

Case V

A sum of Rs. 17.73 lakhs was due for recovery from the defaulter in respect of 8 recovery certificates received between December 1972 and February 1976. A motor car (value not determined) seized by the Customs department was attached in Octboer 1976 and kept in the premises of the office of Mamlatdar, Daman. Records revealed that the property attached was not sold and that no attempt for sale was made. The records further disclosed that a substantial part of the demand is relatable to the income of an association of persons, which was included in the hands of the defaulter while the said income was assessed protectively in the case of association of persons. Examination of the case file of the association of persons revealed that proceedings for recovery were initiated in that case also, thus causing a prejudice to the asssessment made in the hands of the defaulter. A sum of Rs. 98,684 was recovered in the case of the association of persons by means of attachement of rents receivable from tenants, upto April 1983. The jurisdiction of the case of association of persons was transferred from one office to another by a notification issued by the Board in November 1983. However, the case papers were transferred only on 20 August 1985. During this period, proceedings for recovery remained unattended to.

Case W

A sum of Rs. 67,489 pertaining to assessment year 1975-76 was reported as due for recovery in a case through a recovery certificate dated 28-3-1980. Rents payable by 8 tenants were attached on 26 March 1982. However, no recoveries were effected so far. When these facts were brought to notice, the Tax Recovery Officer stated that necessary action will be taken for recovery.

Case X

In the case of this defaulter a sum of Rs. 18.69 lakhs was due for recovery in respect of 19 recovery certificates received between September 1981 and September 1985. The amount due for recovery on 31 March 1986, was reported to be Rs. 13.70 lakhs. The defaulter is the owner of a shopping complex. Rent receivable from 7 tenants was attached on 18 October 1985 (monthly total rent Rs. 2050). The amount of rent in arrears was Rs. 1,30,875. To an audit querry, the Tax Recovery Officer reported that the tenants in view of financial difficulties were allowed to pay the rent including the arrears, in instalments. It was pointed out in Audit that the shopping complex included 13 other shops which were on lease for 98 years and that lease rent could be attached. Further there were two other shops, the rent from which had remained to be attached. When these were pointed out, the Tax Recovery Officer agreed to take immediate action. The Tax Recovery Officer further stated that the defaulter approached Commissioner of Income-tax (Recovery) for easy instalments and the Commissioner of Income-tax allowed monthly instalments of Rs. 8000. As the assessee defaulted in making the payments as agreed to a notice for setting a sale proclaimation of an immovable property was issued in January 1986 whereupon the party paid a sum of Rs. 80,000. The proceeding was postponed to March 1986 subject to the condition that the defaulter would make a further payment of Rs. 1 lakh before 25-3-1986. Since the party failed to fulfil this obligation a warrant of sale of property was issued in May 1986. Further developments are awaited (July 1986). The records further disclosed that two companies in which the defaulter was substantially interested, were in default to the extent of Rs. 2.07

lakhs and Rs. 4.26 lakhs. In the former case, no action was taken beyond issue of notice of demand on the defaulter company. In the latter case, it was noticed in Audit that in respect of 5 recovery certificates totalling to Rs. 2.96 lakhs even the notices of demand were not issued though the recovery certificates were received as early as 12-9-1985. This company is the owner of a building tenated by parties such as Air India, Project and Development Corporation of India Ltd., Bank of Rajasthan etc. When the reasons for non attachment of the rents was enquired into in Audit, the Tax Recovery Officer stated that the rent in question was attached by the assessing officer in 1985. However, the attachment was vacated when the defaulter company made a payment of Rs. 72,000. Since the party subsequently failed to make payments as agreed upon with Commissioner of Income-tax (Recoveries), the Tax Recovery Officer agreed that the rents in question will be attached.

Case Y

In this case 4 recovery certificates amounting in all to Rs. 214.25 lakhs pertaining to assessment years 1972-73 to 1975-76 were received by the Tax Recovery Officer in August 1977. Notice of attachment on Assistant Collector of Customs, Bulsar was issued on 24 August 1977 in respect of 2 mechanised vesseles seized by them earlier. However, no attachment was made since the assessing officer had made a provisional attachment under section 281-B of the Income-tax Act 1961. The defaulter intimated on 27-8-1977 that—

(i) the vessels do not belong to him.

(ii) recovery certificates were bad in law since no valid demand notice was served on him.

Scrutiny of records disclosed that the assessment proceedings in this case were completed ex-parte under Section 144 of the Income-tax Act when the person was under detention under COFEPOSA in the Central Prison, Jaipur and many of the notices issued by the assessing officer were sent to the Jail Superintendent who despatched them to the assessee after his release on 1 April 1977 and they reached him only on 14 April 1977. An application for revision under section 146 of the Income-tax Act was turned down by the Income-tax Officer; but on appeal, the Appellate Assistant Commissioner, gave a direction to reframe the assessment. The re-assessments were completed in 1981 and a demand of Rs. 3,73,916 was issued and remained outstanding. It is not clear from the records whether the value of the two vessels registered in the name of 4 other persons, which was considered as income from undisclosed sources of the defaulter in the original assessments was considered so in the revised assessments. If it is so, then it is a case where there is no legal attachment of any movable subsisting, since the original attachment made by the Income-tax Officer in September 1977 under Section 281-B lapsed in September 1979. When these facts were brought to notice, the Tax Recovery Officer stated that effective steps would be taken for recovery. But no action is possible now.

Case Z

Recovery certificates for Rs. 1,26,699 pertaining to assessment year 1976-77 and Rs. 21,781 pertaining to assessment year 1977-78 dated 16 March 1981 and 18 March 1981 respectively were received by a Tax Recovery Officer who issued notices of demand (ITCP-1) on 2 February 1982, *i.e.* after the lapse of 10 months to the defaulter. It was observed from the records that certain other demands for earlier years as well were also pending for recovery from the defaulter firm and its partners. The records further indicated that a summon to appear on 21 or 22 April 1981 was issued in this case. In reply to the summons one of the partners sent a telegram on 20 April 1981 expressing his inability to attend for the reasons that the theatres belonging to them were to be given possession to the buyers on the said dates. Had a notice under Rule 2 of the Second Schedule to the Act been issued in time, it would have enabled the recovery since the defaulter could not have effected the sale vide Rule 16. Further it was not clear from the records as to how the defaulter could have obtained a clearance certificate from the Income-tax Officer under Section 230-A of the Income-tax Act, for effecting the sale, when the demands raised by him had remained unpaid. When these facts were brought to notice, the Tax Recovery Officer stated that the case would be looked into and the reply would be sent after taking necessary action.

IV Conclusion

(a) According to the procedure prescribed for issue of tax recovery certificates, the certificates should be issued within reasonable time so that the demands do not get barred by limitation of time. Inordinate delays were noticed in the receipt of tax recovery certificates by the Tax Recovery Officer from the Income-tax Officers with the result there were avoidable delays in the issue of demand notices. Besides, there were considerable delays in the proceedings for attachment, including execution of warrants of attachments and sale of the movable properties even after the prescribed period of 15 days allowed for payment of taxes shown in the notice of demand. The review

revealed that these delays provided opportunity to the defaulters to alienate their properties with payment of taxes or nominal payment of taxes.

(b) The law lays down that the Income-tax Officers shall furnish a detailed note of the assets held by the defaulter and in the case of defaulters who are shareholders in companies, their addresses etc., with a view to expedite and enforce the recovery of the tax arrears. Non-compliance of these provisions were widespread and nearly total, as the review had indicated, and had led to the transfer or disposal of the properties by the defaulters rendering the recovery of arrears of taxes ineffective.

(c) According to the existing procedure, the attached articles should be removed to the safe custody of the department, except heavy articles where they may be left in the custody of the defaulter on the execution of Sapurdnama (duly stamped bond). Due to lack of adequate facilities for strong room the department adopted dilatory tactics in the attachment of movable properties and generally all the attached properties were invariably allowed to remain with the defaulters, thus jeopardising the expeditious recovery of taxes.

(d) According to the instructions issued by the Central Board of Direct Taxes in June 1974 and 1977, the Commissioners of Income-tax are required to call on the Chief Justice for speedy hearing of references/writs when payment of taxes have been stayed by Courts. There is no evidence of any constructive action in this regard and cases have been pending in Courts for years together, prejudicing the interests of revenue.

(e) Want of prescribed particulars for effective attachment of properties, of regular follow-up action with the Courts/Public Receiver by/after attachment of court deposits and unwarranted grant of instalment repayment scheme, despite successive defaults by assessees had led to the recovery of arrears being considerably delayed/impossible.

(f) The law does not lay any time limit for sale of movable properties attached. The law, however, provides for appointment of a receiver for the management of the properties attached and arrest and detention of the defaulter. The test check has revealed considerable time lag between the date of attachment and sale leading to even write off of substantial arrears and non-invoking of the punitive measures for default in payment of taxes. Besides, the realisation of tax arrears by sale of movable properties was insignficant.

The review was sent to the Ministry of Finance in September 1986 and their comments are awaited. (December 1986).

1.08 *Appeals, Revision petitions and writs*

Under the provisions of the Income-tax Act, 1961, if an assessee is dissatisfied with an assessment, a refund order, etc., he can file an appeal to the Appellate Assistant Commissioner. 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, a reference on a point of law can be taken to the High Court from which an appeal lies to the Supreme Court. The assessee can also initiate writ proceedings under Article 226 of the Constitution.

A tax payer can approach the Commissioner of Income-tax to revise an order passed by an Income-tax 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.

(i) *Particulars of Income-tax appeals and revision petitions pending as on 31 March 1986 were as under :—

(a) No. of Income-tax appeals pending with	
(i) Appellate Assistant Commissioner	1,25,236
(ii) Commissioner of Income-tax (Appeals)	68,172
(b) No. of Income-tax revision petitions pending	13,072
Total	2,06,480

(c) (i)* Year-wise details of appeals pending with Appellate Assistant Commissioner for the 5 years ending 1981-82 to 1985-86 were as under :

Financial year	No. of disposal at the beginning of the year	No. added during the year	No. disposed of during the year	Pending at the end of the year
1981-82	96,341	77,912	84,393	89,860**
1982-83	89,202**	78,089	78,961	88,330**
1983-84	99,963**	82,661	86,592	96,032**
1984-85	1,40,619**	1,01,997	1,05,114	1,37,502**
1985-86	1,36,809**	1,05,662	1,17,235	1,25,236

*Figures furnished by the Ministry of Finance are provisional.
**Figures are under reconciliation by the Ministry of Finance.

(ii)* Year-wise break of high demand appeals pending with Appellate Assistant Commissioner, at the end of the year 1985-86 with reference to their year of institution was as under :

Year of Institution	No. pending
1981-82	78
1982-83	91
1983-84	194
1984-85	226
1985-86	470

(d)(i)* Year-wise details of appeals pending with Commissioners of Income-tax (Appeals) for the five years ending 1981-82 to 1985-86 were as under :

Financial year	No. for disposal at the beginning of the year	No. added during the year	No. disposed of during the year	No. pending at the end of the year
1981-82	46,894	22,559	25,467	43,986**
1982-83	46,122**	31,079	36,799	40,402**
1983-84	41,460**	38,174	37,143	42,491**
1984-85	43,264**	45,570	38,401	50,433**
1985-86	51,049**	55,409	38,286	68,172

(ii)* Year-wise break-up of high demand appeals pending with Commissioners of Income-tax (Appeals) at the end of the year 1985-86 with reference to their year of institution, was as under :

Year of institution	No. pending
1981-82 and earlier years	372
1982-83	215
1983-84	423
1984-85	868
1985-86	3,143
Total	5,021

(e)(i)* Particuals of revision petition for the five years ending 1981-82 to 1985-86 were as under :

Financial year	No. for disposal at the beginning of the year	Number added during the year	No. disposed of during the year	No. pending at the end of the year
1981-82	6,375	4,441	4,511	6,305**
1982-83	6,349**	5,061	4,407	7,003**
1983-84	6,842**	5,225	4,170	7,897**
1984-85	7,954**	6,019	5,076	8,897**
1985-86	11,705**	7,961	6,594	13,072**

*Figures furnished by the Ministry of Finance are provisional.
**Figures are under reconciliation by the Ministry of Finance.

(ii)* Year-wise break-up of Revision petitions pending at the end of the year 1985-86 with reference to their year of institutions was as under :

Year of Institution	No. pending
1981-82	2,559
1982-83	1,442
1983-84	1,886
1984-85	2,657
1985-86	5,088
Total	13,632**

(ii) *Other Direct Taxes*

(a)* Particulars of wealth-tax, gift-tax and estate duty appeals and revision petitions pending as on 31 March 1986 were as under :

	Wealth-tax	Gift-tax	Estate Duty
No. of appeals pending with :			
(i) Appellate Assistant Commissioner	44,998	2,103	205
(ii) Commissioners of Income-tax (Appeals)	5,874	356	2,964
No. of revision petitions pending	2,480	186	@
Total	53,352	2,645	3,169

(b) Particulars of appeal cases with Appellate Assistant Commissioners and Commissioners' (Appeals) and revision petitions with Commissioners for the year 1985-86 were as under :

(i)* With Appellate Assistant Commissioners

	Pending at the beginning of the year	Added during the year	Total	No. disposed of during the year	No. pending at the end of the year
(i) Wealth-tax	47,216	30,968	78,184	33,186	44,998
(ii) Gift-tax	2,288	1,452	3,740	1,637	2,103
(iii) Estate Duty	271	37	308	103	205
(iv) Super Profits tax/Surtax	16	19	35	25	10
(v) Interest Tax	..	—	—	—	—
Total	49,791	32,476	82,267	34,951	47,316

*Figures furnished by the Ministry of Finance are provisional.
**,£Figures are under reconciliation by the Ministry of Finance.
@Figure awaited from the Ministry of Finance.

(ii)* With Commissioners of Income-tax (Appeals)

	Pending at the beginning of the year	Added during the year	Total	No disposed of during the year	No. pending at the end of the year
(ii) Wealth-tax	5,358	4,117	9,475	3,601	5,874
(ii) Gift-tax	375	263	638	282	356
(iii) Estate Duty	3,490	1,600	5,090	2,126	2,964
(iv) Super Profits tax/Surtax	257	230	487	225	262
(v) Interest-tax	13	20	33	15	18
Total	9,493	6,230	15,723	6,249	9,474

(iii) *Revision Petitions with Commissioners

(i) Wealth-tax	1,958	1,206	3,164	684	2,480
(ii) Gift-tax	106	117	223	37	186
(iii) Super Profits tax/Surtax	10	6	16	5	11
(iv) Interest-tax	394	60	454	44	410
Total	2,468	1,389	3,857	770	3,087

(c)* Year-wise break-up of pendency of high demand appeals at the end of the year 1985-86 with reference to their year of institution was as under :

(i) *With Appellate Assistant Commissioners

Year of Institution	Wealth tax	Gift tax	Estate Duty	Interest tax	Super Profit/ Surtax	Total
1981-82	312	14	32	—	—	358
1982-83	131	8	—	1	—	140
1983-84	163	3	—	—	—	166
1984-85	269	5	—	—	—	274
1985-86	238	29	—	—	—	267
Total	1,113	59	32	1	—	1,205

(ii) *With Commissioners of Income-tax (Appeals)

1981-82	144	1	17	—	—	162
1982-83	66	16	34	—	—	116
1983-84	140	12	59	1	1	213
1984-85	238	38	96	—	6	378
1985-86	550	25	154	3	39	771
Total	1,138	92	360	4	46	1,640

(d) *Year-wise pendency of revision petitions with Commissioners.

Year of filling of petition	Number pending
1981-82	1,519
1982-83	1,004
1983-84	1,168
1984-85	1,283
1985-86	1,803
Total	6,777

*Figures furnished by the Ministry of Fince are provisional.

(iii) *Writ petitions pending

	In Supreme Court	In High Courts	Total
(i) On 31 March 1986	106	2,902	3,008
(ii) Out of (i) above pending for			
Over 5 years	12	294	306
3 to 5 years	29	750	779
1 to 3 years	37	980	1,017
Upto 1 year	28	878	906
Total	106	2,902	3,008

(iv) *Cases pending with Judicial Courts :

	In Supreme Court	In High Courts	Total
(i) On 31 March 1986	1,413	12,531	13,944
(ii) Out of (i) above pending for			
Over 5 years	84	1,286	1,370
3 to 5 years	344	1,961	2,305
1 to 3 years	525	5,956	6,481
Upto 1 year	460	3,328	3,788
Total	1,413	12,531	13,944

1.09 *Reliefs and Refunds*

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 become payable to the assessee on the amount of such refund (vide Section 237 read with Section 243 of the Income-tax Act).

(i)(a)* The particulars of cases of direct refunds for which claims were made, the claims settled and the balance outstanding during 1985-86 were as under :

Financial year	Opening Balance	Claims received during the year	Total	No. of refunds	Balance outstanding
1981-82	104	16,290	16,394	16,159	235
1982-83	235	20,775	21,010	20,543	467
1983-84	440	20,040	20,480	19,581	899
1984-85	937	28,204	29,141	27,646	1,495
1985-86	1,495	29,728	31,223	29,089	2,134

(b)* Year-wise analysis of the outstanding direct refund claims as on 31 March 1986 :

Financial year in which application was wade	No. of cases pending
1983-84 and earlier years	105
1984-85	83
1985-86	1,946
Total	2,134

*Figures furnished by the Ministry of Finance are provisional.

(ii)(a)* 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 in that behalf. Simple interest at the prescribed rate is payable to the assessee in such cases too.

Cases resulting in refund as a result of appellate orders and revision orders etc. during each of the five years ending 1985-86 were as under :

Financial year	Opening balance	Additions	Disposal	Balance
1981-82	1,694	5,683	7,241	136
1982-83	136	7,767	7,736	167
1983-84	167	7,868	7,791	244
1984-85	244	9,756	9,663	337
1985-86	337	9,260	8,906	691**

(b)* Year-wise analysis of balance as on 31 March 1986 was as under :

Financial year	No. of cases pending
1983-84 and earlier years	3
1984-85	1
1985-86	684
Total	688**

1.10* *Interest*

The Act provides for payment of interest by the assesses 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 also to pay interest.

The particulars of interest paid on refunds by Government under the different provisions of the Act during the years 1983-84, 1984-85 and 1985-86 are given below :

Section of Income-tax Act under which interest paid	1983-84		1984-85		1985-86	
	No. of assess-ments	Amount (Rs. (000)	No. of assess-ments	Amount (Rs. (000)	No. of assess-ments	Amount (Rs. (000)
214	28,290	32,976	33,447	42,778	32,068	20,740
243	373	37	147	109	432	120
244	1,125	32,677	1,395	10,045	1,329	5,573

*Figures furnished by the Ministry of Finance are provisional.
**Figures are under reconciliation by the Ministry of Finance.

1.11 *Cases settled by Settlement Commission*

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 as to 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 disposed of	Percentage	No. of case pending
1981-82	1,231	159	12.91	1,072
1982-83	1,430	186	13.00	1,244
1983-84	1,799	224	12.45	1,575
1984-85	1,988	270	13.57	1,718
1985-86	1,890	204	10.79	1,686

(ii) **Wealth-tax**

1981-82	506	86	16.99	420
1982-83	551	47	8.52	504
1983-84	702	92	13.10	610
1984-85	733	86	11.73	647
1985-86	683	57	8.34	626

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

Financial year	Income-tax	Wealth tax
	(In lakhs of rupees)	
1981-82	124.90	6.92
1982-83	207.02	10.39
1983-84	373.91	26.62
1984-85	225.19	23.43
1985-86*	202.69	4.95

*Figures furnished by the Ministry of Finance are provisional.

	Income-tax	Wealth-tax	Total
(iv) No. of cases pending for admission before Settlement Commission	659	192	851
(v) No. of cases held up with Settlement Commission for want of comments of the Department	261	70	331

1.12 *Penalties and prosecutions*

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 laws also provide for levy of penalty and prosecution for failure to produce accounts and documents, failure to deduct or pay tax, etc.

(i) Income-tax and Corporation-tax.

(a) *Penalty proceedings initiated, disposed of and pending for each of the three years ending 1985-86 were as under :

Year	Cases pending at the beginning of the year	Added during the year	Total	No. of cases Disposed of during the year	Cases pending
1983-84	2,60,724	1,87,582	4,48,306	1,84,302	2,64,004
1984-85	2,64,004	1,72,125	4,36,129	2,24,042	2,12,087
1985-86	2,12,087	1,82,407	3,94,494	1,98,011	1,96,483

(b) * Prosecutions launched, convicted/compounded and cases pending in the Courts for the three years ending 1985-86 were as under :

Year	Pending at the beginning of the year	Complaints filed during the year	Total	No. of cases disposed of during the year	No. of cases		Total	Balance
					convicted	compounded		
1983-84	251	172	423	26	13	7	20	397
1984-85	397	778	1,175	37	9	26	35	1,138
1985-86	1,138	711	1,849	321	16	303	319	1,528

(c) * Penalty and composition money levied, collected and pending for the three years 1983-84 to 1985-86 were as under :

(Rs. in thousands)

Year	Opening balance		Levied during the year		Collected during the year		Blalance outstanding	
	Penalty	Composition money	Penalty	Composition money	Penalty	Composition money	Penalty	Composition money
1983-84	25,841	3,727	19,493	9,804	7,668	9,871	37,666	3,660
1984-85	37,666	3,660	19,370	8,013	19,947	6,898	37,089	4,775
1985-86	37,089	4,775	25,947	3,704	10,488	2,488	52,548	5,991

(ii) Other Direct Taxes

(a) * Penalty proceedings initiated, disposed of and pending for each of the three years ending 1985-86 are given below :

Year	Pending at the beginning of the year	Added during the year	Total	No. of cases Disposed of during the year	Cases pending
1983-84	40,828	21,482	62,310	22,200	40,110
1984-85	40,110	19,311	59,421	22,991	36,430
1985-86	36,430	21,512	57,942	25,911	32,031

(b) * Prosecution launched, convicted/compounded and cases pending in the Courts for the three years ending 1985-86 are given below :

Year	Pending at the beginning of the year	Complaints filed during the year	Total	No. of cases disposed of	No. of cases			Cases pending
					Convicted	Compounded	Total	
1983-84	8	59	67		—	—	—	67
1984-85	67	19	86	—	—	—	—	86
1985-86	86	1	87	—	—	—	—	87

*Figures furnished by the Ministry of Finance are provisional.

(c)* Penalty and composition money levied, collected and pending for the three years 1983-84 to 1985-86 are given below :

(Rs. in thousands)

Year	Opening balance		Levied during the year		Collected during the year		Balance outstanding	
	Penalty	Composition money	Penalty	Composition money	Penalty	Composition money	Penalty	Composition money
1983-84	2,236	—	3,151	—	1,943	—	3,444	—
1984-85	3,444	—	4,653	—	797	—	7,300	—
1985-86	7,300	—	3,872	—	1,536	—	9,636	—

*Figures furnished by the Ministry of Finance are provisional.

1.13 *Searches and Seizures*

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 of Inspection, Commissioner of Income-tax, or a specified Dy. Director of Inspection or Inspecting Assistant Commissioner. Where any money, bullion, jewellery or other valuable article or thing is seized, the Income-tax Officer has, after necessary investigations, to make an order with the approval of the I.A.C. within 90 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 person from whose custody they were seized. The books of account 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 a longer period.

(a)* The number of cases in which searches and seizures were conducted for the three years ending 1983-84 to 1985-86 was as under :

Year	No. of cases where cash jewellery etc. assets were seized		No. of cases where no assets were seized
	No.	Value (Rs. in thousands)	
1983-84	559	24,884	164
1984-85	137	45,365	567
1985-86	258	10,049	886

*Figures furnished by the Ministry of Finance are provisional.

Year	Opening balance of orders U/s 132(5)	Orders U/s 132(5) passed during the year
1983-84	62	56
1984-85	91	75
1985-86	93	195

*Figures furnished by the Ministry of Finance are provisional.

(b) (i)* Particulars of orders under Section 132 (5) passed during the three years ending 1985-86 were as under :

Year	Opening balance of cases	Search cases during the year	Total	No. of cases where orders were passed during the year	No. of cases pending at the end of the year
1983-84	7	559	566	56	510
1984-85	510	137	647	75	572
1985-86	572	258	830	195	635

(ii)* Particulars of income determined in the orders under Section 135(5), tax involved therein, assets retained and assets returned of the three years ending 1985-86 were as under :

Year	No. of cases where orders were passed	Income determined in the orders	Tax involved therein	Value of assets retained	Value of assets returned
					(Rs. in thousands)
1983-84	56	88,242	73,088	21,796	1,174
1984-85	75	77,062	95,088	23,668	6,058
1985-86	195	92,700	83,385	48,935	22,033

*Figures furnished by the Ministry of Finance are provisional.

(c) (i)* The number of search cases out of b(ii) where final assessments were completed and pending for the three years ending 1985-86 was as under :

Total	No. of cases where final assessments were completed			Balance cases
	Where concealed income was found	With no Concealed income	Total	
118	18	9	27	91
166	49	24	73	93
288	103	48	151	137

(ii)* Year-wise particulars of pendency of orders under section 132(5) where final assessments were pending as on 31st March 1986 were as under :

Year in which summary assessments was made	No. of cases where final assessments were pending	Out of (2), No. of cases with settlement commission
(1)	(2)	(3)
1983-84	40	12
1984-85	27	11
1985-86	42	5

(iii)* Particulars of income determined, tax levied, balance tax outstanding after adjustment of value of assets retained on final assessment for the three years ending 1985-86 were as under :

(Rupees in thousands)

Year	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
			Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
1983-84	27	11,090	6,498	92	6,590	1,206	5,348	36	5,384
1984-85	73	29,172	19,960	825	20,785	1,096	18,914	775	19,689
1985-86	151	1,45,457	1,05,750	18,975	1,24,725	24,714	81,036	18,975	1,00,011

*Figures furnished by the Ministry of Finance are provisional.

(iv)* The number of cases of prosecutions launched compounded and convictions obtained for the three years ending 1985-86 was as under :

Year	No. of prosecutions launched			No. of cases	No. of cases in which convictions were obtained	No. of cases pending
	Opening balance	During the year	Total			
1983-84	142	24	166	12	1	154
1984-85	154	40	194	12	1	182
1985-86	182	53	235	17	3	218

*Figures furnished by the Ministry of Finance are provisional.

(v)* Particulars of cases of assets returned, interest paid and cases pending for the three years ending 1985-86 were as under :

Year	Number of cases where assets were due for return			Number of cases where assets returned during the year	Number of cases where interest paid	Balance cases pending
	Opening balance	Added during the year	Total			
1983-84	6	2	8	—	—	8
1984-85	8	17	25	19	—	6
1985-86	6	36	42	25	—	17

*Figures furnished by the Ministry of Finance are provisional.

1.14 *Acquisition of Immovable Properties*

1.14.01 Chapter XXA of the Income-tax Act, 1961, introduced with effect from 15 November 1972, empowers the Central Government to acquire an immovable property, where such property is transferred by sale or exchange and the true consideration for such transfer is concealed with the object of evading tax. The scope of these provisions has been extended through the Income-tax (Amendment) Act, 1981 with effect from 1 July, 1982, to cover :

(a) transfer of flats or premises owned through the medium of co-operative societies and companies;

(b) agreements of sale followed by part performance viz. by actual physical possession of the property by the defacto buyer, and

(c) long term leases i.e. leases for a period of 12 years or more.

The provisions were introduced in the statute on the recommendations of the Direct Taxes Enquiry Committee popularly known as Wanchoo Commitee (1971) Report on black money. The objective of the legislation is to counter evasion of tax through understatement of the value of immovable property in sale deeds and also to check the circulation of black money, by empowering the Central Government to acquire immovable properties, including agricultural lands.

1.14.02 Acquisition proceedings under these provisions can be initiated where an immovable property of fair market value exceeding Rs. 25,000 (Rs. 1 lakh with effect from 1 June 1984) is transferred for an apparent monetary consideration, which is less than the fair market value by more than 15 per cent of the apparent monetary consideration. The compensation payable on acquisition is the amount of the monetary consideration shown in the transfer document plus 15 per cent of such amount. Regarding taking over and management of the immovable properties vested in the Government under the provisions of the Income-tax Act, it was agreed in November 1976 in the Ministry of Works and Housing and the Ministry of Finance that the Central Public Works Department would take over the immovable properties from the Revenue authorities after the forfeiture had become absolute and all formalities relating to appeal etc., provided under the law have been completed and manage the same. Accordingly the Central Board of Direct Taxes issued instructions in May 1977.

1.14.03 With effect from 1 October 1986, the provisions of Chapter XXA of the Income-tax Act, 1961 do not apply to or in relation to the transfer of any immovable property made after the 30 September 1986 (Section 269 RR).

*A. Number of Assistant Commissioners of Income tax engaged on the work for the year 1985-86.

	Sanctioned Strength	Working Strength
At the commence of the year	13	11.25**
At the close of the year	13	11.25**

*B. The number of intimations in Form 37-G received from the Registering Authorities during the three years ending 1985-86 was as under :

Year	No. of Intimations received
1983-84	4,39,065
1984-85	2,21,646
1985-86	2,15,257

*Figures furnished by the Ministry of Finance are provisional.
**Figures are under reconciliation by the Ministry of Finance.

*C. (i) The number of notices issued, dropped, acquisition orders passed and notices pending for the three years ending 1985-86 was as under :

Year	Opening Balance	No. of notices issued during the year	Total	No. of notices dropped during the year	No. of cases where orders were passed	No. pending
1983-84	13,077	5,688	18,765	5,032	33	13,700**
1984-85	13,078**	10,167	23,245	6,847	39	16,359**
1985-86	15,634**	10,909	26,543	7,764	58	18,721**

(ii)** Year-wise particulars of pendency as on 31 March 1986 were as under :

Year of institution	No. of notices pending
1983-84 and earlier years	8,607
1984-85	7,588
1985-86	9,027

*Figures furnished by the Ministry of Finance are provisional.
**Figures are under reconciliation by the Ministry of Finance.

*D. The number of cases where acquisition orders were passed, properties acquired and the balance pending for the three years ending 1985-86 was as under :

Year	No. of cases where orders were passed			No. of cases where properties were actually taken over	Balance No.
	Opening Balance	During the year	Total		
1983-84	131	15	146	—	146
1984-85	146	18	164	—	164
1985-86	164	31	195	—	195

*Figures furnished by the Ministry of Finance are provisional.

*E. The particulars of disposal of acquired properties.

Year	Details of properties acquired		No. of properties disposed of	Nature of disposal						Properties awaiting disposal	
				By Sale		Appropriation for own use		Others			
	No.	Compensation paid		No.	Sale Value	No.	Compensation paid	No.	Amounts	No.	Compensation paid
	(a)	(b)		(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b) Rs.
1	2		3	4		5		6		7	
@	—	—	—	—	—	—	—	—	—	3	1,65,226

*Figures furnished by the Ministry of Finance are provisional.
@Awaited from the Ministry of Finance.

1.15 *Functioning of Valuation Cells* :

1.15.01 The Central Government established in October 1968, a departmental Valuation Cell manned by Engineering Officers taken on deputation from the Central Public Works Department to assist the assessing officers and various direct tax laws. Certain details about the functioning of the Valuation Units under the Cell are given in the following sub-paragraphs :

(i) No. of Valuation Units/Districts

Year	No. of Valuation Units		No. of Valuation Districts
	V.O.	A.V.O.	
1981-82	79	78	11
1982-83	79	78	11
1983-84	79	78	11
1984-85	79	78	11
1985-86	78	77	12

(ii) No. of cases referred to valuation cells, disposed of and pending at the end of the each of three years ending 1985-86

	Year	For disposal at the beginning of the year	No. of cases referred during the year	Disposed of during the year	Pending at the end of the year
(a) Income tax	1983-84	1,769*	12,805	11,446	3,128
	1984-85	3,128	10,228	10,634	2,722
	1985-86	2,722	12,490	10,599	4,613
(b) Wealth tax	1983-84	4,492*	11,925	11,157	5,260
	1984-85	5,260	9,355	10,976	3,639
	1985-86	3,639	9,851	8,620	4,870
(c) Gift tax	1983-84	33*	134	87	80
	1984-85	80	133	168	45
	1985-86	45	134	123	56
(d) Estate Duty	1983-84	186*	541	437	290
	1984-85	290	327	417	200
	1985-86	200	178	282	96

*Figures are under reconciliation by the Ministry of Finance.

Law and Procedure

1.15.02 Pursuant to the recommendations of the Public Accounts Committee, the Central Government set up a Valuation Cell in the Income-tax Department in October 1968, which is manned by qualified engineers of the Central Public Works Department. The main objective of the Departmental Valuation Cell is to aid and assist the assessing officers in the correct determination of the fair market value of assets for the purpose of the different incidence of direct taxes and to prevent the large scale avoidance of taxes by understatement of the values by assessees on the basis of the certificates of registered valuers. The Valuation Cell is assigned the work of valuation of immovable properties such as land, buildings, etc., referred to it under the Tax laws.

With the amendments of the Direct Taxes Acts, Valuation Cells were created in the Income-tax Department and specific provisions for statutory reference of the valuation of properties to the Valuation Cell, if the assessing officer was of the opinion that the values returned are understated by assessees, were inserted.

Under the Income-tax Act, a reference to the Valuation Cell lies—

(a) for ascertaining the fair market value of capital assets for the purpose of computing capital gains;

(b) for the purpose of estimating the cost of construction of capital assets;

(c) for the purpose of initiating acquisition proceedings in respect of immovable properties and estimating the amount of compensation payable;

(d) for the purpose of estimating the reserve price of properties attached towards recovery of tax arrears.

For the purposes of Wealth-tax, Gift-tax and Estate-duty, the references are made for the following :

(i) to determine the fair market value of immovable properties on the valuation date;

(ii) to determine the fair market value of assets on the date of gift;

(iii) to determine the fair market value of immovable properties held by the deceased at the time of his death;

The Reserve Bank of India may also refer cases of valuation of immovable properties held by non-residents under the provisions of the Foreign Exchange Regulation Act.

The Central Board of Direct Taxes exercises overall control of the Departmental Valuation Cell. The Departmental Valuation Cell, however, functions under the directions of the Chief Engineers at New Delhi and Madras, designated as Regional Valuation Officers. They are assisted by District Valuation Officers, Valuation Officers and Assistant Valuation Officers in the corresponding ranks of Superintending Engineers, Executive Engineers and Assistant Engineers of the Central Public Works Department. They have assigned jurisdiction with reference to varying monetary values of the property.

District Valuation Officer	Value of assets declared in the return exceeding Rs. 10 lakhs.
Valuation Officer.	Value of assets declared exceeding Rs. 2 lakhs but not exceeding Rs. 10 lakhs.
Assistant Valuation Officer	Value of assets not exceeding Rs. 2 lakhs.

In July 1969, the Central Board of Direct Taxes instructed the assessing officers that the value once determined for an assessment year should ordinarily be left undisturbed for another two years but should be re-assessed after two years. These instructions were withdrawn in July 1970 in view of the statutory provisions introduced in the Acts.

1.15.03 *Recommendations of the Public Accounts Committee*

In their 181st Report, the Public Accounts Committee emphasising the need to bring out better regulation and discipline over non-official valuers observed that so long as the avowed objectives for which the valuation cells are set up, namely, that of preventing large scale avoidance of taxes by understatement of the returned value of assets and making investment of unaccounted money in real estates unprofitable and unattractive, are not achieved, the need for such an organisation remained and expected the Ministry of Finance to keep a close watch over their functioning. On the delay in the disposal of cases referred to the Valuation Cell being attributed to the non-furnishing of the valuation reports by the registered valuers in the prescribed form with all the required information, the Committee wanted the Ministry to be informed of the precise steps undertaken to improve the working of the institution of registered valuers and to ensure that the valuation reports are furnished by the registered valuers in the prescribed form.

The valuation of properties is important not only for the purpose of wealth-tax but also for other direct taxes. The provisions of various laws governing valuation are, however, not identical though the principles of valuation and the instructions under the tax laws happen to be the same.

In their 181st Report the Public Accounts Committee found that :

(i) references on questions of valuation were not made to the valuation cell in all cases required to be made.

(ii) Valuation given by the valuation cells were not adopted in the assessments despite specific provisions in the tax laws making such valuations binding on tax authorities.

(iii) The time taken by valuation cells to give valuation reports was far too long.

(iv) The number of cases pending remained very high.

(v) In a large number of cases, the valuations given by valuation cells did not stand the test of appeal.

Noticing the large pendency in the cases and the time lag in completing the valuations, the Committee suggested a Works and Method Study into the functioning of the Valuation Cell and necessary action to streamline the system. In February 1983, the Ministry of Finance accordingly emphasised upon the Valuation Cells the need for expeditious disposal of cases for valuation and to keep the level of pendency to the minimum necessay, at the same time asking the valuation cells to review all the cases pending for over six months and to send lists of the cases over one year old.

1.15.04 *Review*

A review of the functioning of the Departmental Valuation Cell, particularly in the context of the observations and recommendations of the Public Accounts Committee, was conducted during the year 1985-86. The results of the review are summarised in the following paragraphs :

A. No. of cases awaiting disposal.

(i) The number of cases referred to the departmental Valuation Cells, the number disposed of and the number pending for disposal during the five years 1981-82 to 1985-86 are given below :

Year	Opening balance	No. of cases referred to the valuation cell	Total	No. of cases disposed of by the cell	No. of cases pending valuation	Percentage to total
1981-82	8,379	29,278	37,657	28,854	9,243*	24.5
1982-83	9,243	25,402	34,645	27,163	7,482	20.5
1983-84	7,482	30,334	37,816	27,183	10,633	28.1
1984-85	10,633	23,011	33,644	25,475	8,169	24.2
1985-86	8,169	27,681	35,850	23,295	12,555	35

*Does not include Karnataka Figures for want of records.

The number of cases referred to the Valuation Cell every year was approximately 27,000 on an average. The number of cases pending for disposal had gone up over the years and at the end of 1985-86, the pendency was 12,555 cases, a record 35 per cent. The cases were pending from 6 to 36 months (3 years) and in respect of 10 States, the value of the 7,006 properties pending for disposal amounted to Rs. 137.15 crores.

The average disposals during the five years was 72 per cent and the time taken for disposal of a case varied from 3 months to 41 months (nearly 3½ years). Time barring cases and cases connected with recovery proceedings were given priority in disposal over other cases, which were taken up in order generally of the date of reference. Cases of high value involving large revenue were, however, not afforded any priority. The under valuation in the cases disposed of ranged from 1 per cent upto 728 per cent of the declared values.

(ii) At the end of March 1986, there were 12,555 cases of valuation pending with the Departmental Valuation Cells. The period of pendency of these cases are as given below :—

No. of cases pending	Total	Percentage to total
For less than 6 months	10,474	83
For over 6 months but less than 12 months	1,491	12
For over 12 months	590	5

The Statewise particulars of the number of cases referred to the Valuation Cell, the number disposed of and the number pending are as given below :—

DETAILS OF CASES REFERRED TO VALUATION CELL

State	1981-82				1982-83				1983-84				1984-85				1985-86			
	Opening Balance	Re-ceipts	Dis-posal	Closing Balance	Opening Balance	Re-ceipts	Dis-posal	Closing Balance	Opening Balance	Re-ceipts	Dis-posal	Closing Balance	Opening Balance	Re-ceipts	Dis-posal	Closing Balance	Opening Balance	Re-ceipts	Dis-posal	Closing Balance
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Tamil Nadu	2667	9274	8772	3169	3169	7210	7839	2540	2540	8948	7661	3827	3827	6502	7721	2608	2608	9460	7456	4612
New Delhi	348	1575	1585	338	338	1620	1675	283	283	1688	1633	338	338	1299	1285	352	352	1359	1150	561
Madhya Pradesh	327	1865	1757	435	435	1509	1618	326	326	2428	2061	693	693	1744	2150	287	287	1020	996	311
Orissa	21	274	275	20	20	135	127	28	28	204	193	39	39	364	168	235	235	310	271	274
Assam	326	156	426	56	56	196	74	178	178	186	275	89	89	194	95	188	188	343	350	181
Karnataka	*	*	*	440	440	965	1147	258	258	1457	1223	492	492	867	1101	258	258	2241	1237	1262
Bihar	116	463	514	65	65	735	400	400	400	585	655	330	330	390	439	281	281	421	544	158
Uttar Pradesh	562	1715	1911	366	366	1465	1214	617	617	1103	1355	365	365	956	1119	202	202	799	788	213
Gujarat	972	1996	2159	809	809	1686	1997	498	498	2702	2391	809	809	2556	2392	973	973	2840	2104	1709
Punjab	771	2855	2984	642	642	2635	2772	505	505	2785	2578	712	712	1971	2003	680	680	1733	2002	411
Maharashtra	573	3596	3156	1013	1013	2783	3083	713	713	3553	3114	1152	1152	2550	3082	620	620	3155	2555	1220
Haryana	80	293	308	65	65	180	244	1	1	382	268	115	115	460	463	112	112	286	276	122
Andhra Pradesh	599	2168	2026	741	741	1781	2051	471	471	1890	1533	828	828	929	1324	433	433	1139	907	665
Kerala	142	680	577	245	245	560	707	98	98	432	331	199	199	527	505	221	221	527	651	97
Rajasthan	415	1403	1431	387	387	1031	1256	162	162	1016	794	384	384	665	893	156	156	966	957	165
Jammu and Kashmir	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
West Bengal	460	965	973	452	452	911	959	404	404	975	1118	261	261	1037	735	563	563	1082	1051	594
Himachal Pradesh	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	8379	29278	28854	9243	9243	25402	27163	7482	7482	30334	27183	10633	10633	23011	25475	8169	8169	27681	23295	12555

*Figures not available.

The number of cases referred to Valuation Cell is too small when compared to the total number of Wealth-tax assessees and the number of immovable properties that may be held by them and the number requiring reference to the Valuation Cell.

Year	No. of Wealth-tax assessees	No. of cases referred to the Valuation Cell	Percentage
1981-82	4,11,387	29278	7
1982-83	4,23,311	25402	6
1983-84	4,37,135	30334	7
1984-85	5,01,062	23011	5
1985-86	1,32,818@	27681	4.79

@Figures furnished by the Ministry of Finance are provisional

The statistics has also revealed that the number of cases referred to the Valuation Cell for valuation of properties in the following three charges where the metropolitan cities of Bombay, Calcutta and Delhi are situated was far less than the number referred to in Tamil Nadu with the city of Madras.

The particulars for the year 1985-86 are :

Tamil Nadu	12,068
Bombay	3,775
Calcutta	1,645
Delhi	1,711

(B) General Reasons for the pendency.

The broad reasons for the pendency are :

(i) Dilatory tactics adopted by assessees in submitting the requisite documents and other particulars required by the Valuation Officers ;

(ii) Incomplete information furnished by the assessing officers who made the references;

(iii) Inordinate delays in issue of notices by the Valuation Cell ;

(iv) Lack of adequate and timely action in the pursuance of the cases where documents and other particulars were called for from assessees.

1.15.05 *Works and Method Study on the functioning of Valuation Cells*

In para 3.71 of their 101st Report (7th Lok Sabha 1981-82), the Public Accounts Committee recommended the need for streamlining the functioning of the Valuation Cell so that the pendency as well as the time lag of 4 to 7 months in completing the valuation are effectively reduced. The Committee accordingly suggested a Works and Method Study into the functioning of the Valuation Cells.

Pursuant to these recommendations, the Central Board of Direct Taxes directed the Directorate of Organisation and Management Services (DOMS) in the Income-tax Department to undertake the Works and Method Study of the Valuation Cell. The study was however, undertaken by the Directorate in February 1985|January 1986 only and its Report is still awaited. In the absence of the results of a Works and Methods Study, the Valuation Cells are functioning according to the guidelines issued by the Chief Engineers (North and South Zones). The guidelines of the Chief Engineer (Valuation) are updated upto 15 September 1982.

1.15.06 *Absence of centralised Data Bank*

There is no centralised Data Bank for guidance in the matter of valuation of properties, commercial, industrial etc., to facilitate coordination of cases decided by the different valuation officers. In Kerala, the sale particulars of land gathered from the Sub Registry Offices are made use of. In Delhi, the sources of information of value of land are Delhi Development Authority auctions, Registrar's office and schedule of market rates with the Land and Development Officer. In the absence of any centralised record, one and the same rate for valuation of properties situated in different areas separated by long distances is adopted resulting in erroneous valuation of landed property.

The Departmental Valuation Cell came into being in 1968. The Central Board of Direct Taxes have also not brought out a Manual for the guidance of the Valuation Officers.

1.15.07 *Maintenance of prescribed Registers*

According to the instructions issued by the Central Board of Direct Taxes in June 1979 the Valuation Officers are required to maintain, **inter alia,** the following important registers *viz.,*

(a) Register of references to Valuation Cell.
(b) Case register.
(c) Instances of Sale Register.

(i) The Central Board of Direct Taxes (in June 1979) Prescribed a register of references for valuation to the Valuation Cell to be maintained by all the assessing officers and directed the Inspecting Assistant Commissioner to make periodical checks of the register to ensure that all cases required to be referred to the Valuation Cell have actually been referred to it and also to send a certificate to the effect at the end of each financial year to the Commissioner of Income-tax.

The test check in a few assessing offices (detailed below) revealed that in a majority of the wards, the prescribed register was not being maintained and wherever maintained, the entries in the Register were not complete. No periodical checks had also been carried out by the Inspecting Assistant Commissioners to point out the cases of omission. The departmental authorities could not, therefore, ensure that all the cases required to be referred to the Valuation Cell had actually been referred for valuation.

State	Number of wards test checked	Number in which the registers were maintained	Number in which the registers were not maintained	Number in which the registers were maintained defectively
Kerala	10	5	4	1
Karnataka	7	2	4	1
New Delhi	Not maintained	—	—	—
Uttar Pradesh	27	1	26	—
Tamil Nadu	21	3	16	2

(ii) Case register gives the particulars of the cases referred to the Valuation Cell for determining the fair market value of the assets under the provisions of the different Acts. The register is to be maintained for each Act separately.

In the Delhi charges, there is no consolidated register at the level of the District Valuation Officer where all references for valuations under the various Acts are recorded. No system existed to watch the progress of the cases at any given time and consequently the stage of a particular case at any given time was not available in the register.

In the Madhya Pradesh charges the entries regarding issue of notices, value assessed, date of finalisation of the report and difference between the assessed value and declared value were not noted in the registers.

(iii) The Register of Instances of Sale is intended to assist the Valuation Officer in making a realistic estimate of value of the assets. The register should provide complete details of determining the land value, if the sale instance is of a composite property. The physical attributes of the assets such as the access, shape, size, etc., should also be noted in the register. The Taluk or District Registry where all sale deeds are registered and the details of sale and purchase of properties available with the Inspecting Assistant Commissioner (Acquisition) are the main sources wherefrom the sale instances are to be collected and noted in the register.

The Registers maintained by the Valuation Officers in Maharashtra State were not kept upto date and did not incorporate the latest sale transaction in their jurisdiction. The registers contained instances of sales as old as 1976 and in any case not beyond 1983. As the prices of land and buildings are constantly on the increase, estimating the fair market value of property on the basis of market prices prevailing 3 to 4 years back would lead to unrealistic and incorrect results.

In Bombay, the Valuation Officer considered the prices prevailing 2 to 8 years prior to the valuation dates for determining the fair market value of seven similar properties referred to him by the assessing officers.

1.15.08 *Valuation determined by the Valuation Cell not adopted in the assessments*

Under the provisions of the Wealth-tax Act, 1957, the Wealth-tax Officer may refer the Valuation of any asset to the Valuation Officer if the value returned in the return, in his opinion, is less than its fair market value. The assessing officers may also make a reference to the Departmental Valuation Cell to determine the fair market value of the assets under the provisions of other Direct Taxes Acts to ascertain the value of investment in the construction of properties, to determine the income not disclosed by the assessees, the real value of gift and the real value of the estate passing on death of a person.

While it is obligatory for a Wealth-tax Officer to adopt the value determined by the Valuation Cell in respect of the properties referred to them in completing the Wealth-tax assessments, the fair market value of the properties determined by the Valuation Cell in pursuance of references made under other Direct Taxes Acts is only advisory. However, the value determined by the Valuation Cell will help the assessing officers for suitable adoption of the value of assets in the assessments under the respective Acts.

(i) During test audit it was noticed that in 8 states, the values of immovable properties in 28 cases were referred to the Valuation Cell for determining then fair market value. However, the value as determined by the Departmental Valuation Cell was not adopted in assessments without recording any reasons therefor. The total value of the property thus underassessed in the assessments amounted to Rs. 1.96 crores.

(ii) For the assessment year 1984-85, a Co-operative Housing Society declared the total cost of construction of a housing complex as Rs. 10,37,530 in the Income-tax returns. The cost of construction was not supported by a certificate of registered valuer. On a reference made by the Income-tax Officer in October 1983 the Valuation Officer, adopting the approved plinth area rate, determined the cost of construction at Rs. 15,82,800. The Co-operative Society had not furnished the details of materials purchased and quantities used in the construction as well as the vouchers for its purchase to the Valuation Officer. The Income-tax Officer questioned the cost of construction determined by the Valuation Officer at a higher value stating that the accounts of the assessee were audited by a Chartered Accountant and the construction was done by a contractor on turn-key basis. The Chief Engineer, Valuation justified the Valuation determined by the Valuation Officer and stated that in the absence of details of materials purchased and used in the construction as well as the supporting vouchers of purchase, the cost of construction determined by the Valuation Officer was not questionable and desired that the accounts of the Society may be got audited as envisaged under the Income-tax Act.

The Income-tax Officer rejected the cost of construction determined by the Valuation Officer and completed the assessment for 1984-85 in July 1985 accepting the cost of construction at Rs. 10,37,530 as declared by the Co-operative Society.

The rejection of the valuation done by the Valuation Officer would, *prima facie,* not be in order as the assessee society had failed to justify the value declared by producing the accounts and other supporting documents. This resulted in income of Rs. 5,45,270 escaping assessment.

1.15.09 *Modification of valuation in appeals*

In para 3.70 of the 101st Report (7th Lok Sabha 1981-82), the Public Accounts Committee observed that "the Committee.....find that the values determined by the Valuation Cell are not upheld by the appellate authorities in a quite large number of cases. The Committee consider that while on the one hand it is necessary to curb the tendency on the part of the assessees to undervalue the properties, it is equally necessary that the Valuation Officers act in a judicious manner and be fair to the assessees and revenue. This underscores the need for proper selection and training of the personnel employed for this work". In their action taken note of March 1983 on the above observation, the Ministry of Finance stated that the "advice of the Honourable Committee for proper selection and training of Valuation Officers has been noted".

A test check conducted in a few offices of Valuation Officers revealed that the value determined by the Valuation Officers had not stood the test of appeal and had been reduced in appeal in a number of cases. Some such instances are—

(i) In 37 cases in Kerala, Delhi, Madhya Pradesh and Assam, the value of properties was determined by the Departmental Valuation Officers at Rs. 536.29 lakhs. On appeal by the assessees, the value was reduced to Rs. 305.78 lakhs by the appellate authorities.

(ii) 57 assessments made in Tamil Nadu and Uttar Pradesh charges were disputed in appeal by the assessees against the Valuation of properties at Rs. 406.40 lakhs by the Valuation Cells. In appeal, the value in 27 cases was reduced to Rs. 233.10 lakhs. The decision in appeal in the remaining 30 cases are awaited.

The Central Board of Direct Taxes have issued instructions in January 1980 and August 1982 that the grounds of appeal should be supplied to Valuation Officers while preparing departmental defence and copies of appellate decisions are also to be supplied and where valuation is modified in appeal by 25 per cent or more, such cases should be brought to the notice of the Valuation Officer for preferring further appeal.

It was noticed in audit that in Karnataka, Calcutta and Delhi charges that the copies of appellate decisions were not made available to the Valuation Cells with the result that the Departmental Valuation Officers were not aware of modifications, if any, made in their valuations in appeal. Absence of feed back information denies the Valuation Officers an opportunity to prefer further appeal wherever called for and also improve upon their efficiency.

In Karnataka charge, a Register of Appeals is maintained by the Valuation Officer to enter cases of valuation disputed in appeal and information from the department should be obtained to enter other columns of the Register. No entries are found in the column "outcome of appeal" owing to the failure to furnish the required information by the Income-tax Officer or to obtain copies of appellate decision by the Valuation Officer. The register serves the Valuation Officer with the reasons for modifications of the valua-

tion in appeals and with the facts/principles on which the appellate authorities had differed so as to review the guidelines issued in this regard. The purpose of the maintenance of the register had, however, not been achieved.

1.15.10 *Failure to refer cases to valuation cell for determining the fair market value*

Under the Wealth-tax Rules, effective from 1 January 1973, a reference may be made to the Departmental Valuation Officer, if the assessing officer considers that the fair market value of a property exceeds the returned value by more than 33 1/3 per cent or Rs. 50,000, whichever is less. Similar references are also to be made by the assessing officers under the provisions of Income-tax Act/Gift-tax Act for determining valuation of property, or the cost of construction either for acquiring the property by the department or to determine the undisclosed investment by the assessee or the value of the gift returned short. Where such a reference is made under the Wealth-tax Rules to the Valuation Officer it is obligatory on the Wealth-tax Officer to complete the assessment in accordance with the valuation of the Departmental Valuation Officer.

(a) Rajasthan : In this charge, a test check of records of 21 assessing officers revealed that in 15 wards, 78 cases which were required to be referred to the Departmental Valuation Cell in terms of the above provisions of the Wealth-tax Rules were not referred to the Valuation Officer by the assessing authorities As a result, it could not be ensured in audit whether the valuation of the properties adopted by the assessing authorities was correct.

The net wealth of a Hindu undivided family was computed by Wealth-tax Officer for the assessment year 1977-78 in March 1980 adopting the value of three immovable properties at Rs. 1,33,400, Rs. 4,00,000 and Rs. 3,00,000 as against the returned value of Rs. 1,00,000, Rs. 3,00,000 and Rs. 1,00,000 respectively. Though the value adopted in respect of each of these properties exceeded the returned value by more than the prescribed limit of Rs. 50,000 and the cases were required to be referred to the departmental valuation cell for determining the correct fair market value, no reference was made to the Valuation Cell. Another property was also adopted at Rs. 75,362 as against the returned value of Rs.1,07,000. Further, the amount of compensation due to the Hindu undivided family in respect of land acquired by Government under the Urban Ceiling Act was not included in the assessment. The rate of tax was also not applied correctly in this case. On these omissions being pointed out in June 1980, the department referred the case to the Departmental Valuation Officer who valued the properties at Rs. 20,56,000 as against the value of Rs. 9,08,762 adopted in the assessment. The assessment was, accordingly, revised by the department in November 1985 creating an additional demand of Rs. 46,180 which was also collected in December 1985.

(b) *Bombay* :

(i) An assessee declared the value of a property at Rs. 1,60,000 as on the valuation date 31 March 1979 in his Wealth-tax returns for the assessment year 1979-80. For the subsequent assessment years, the value of the property was declared by the assessee at Rs. 2,20,000 on the basis of the registered valuer's certificate. Not agreeing with the valuation, the Wealth-tax Officer referred the case to the Valuation Cell for determining the fair market value of the property. The Assistant Valuation Officer valued the property at Rs. 3,30,000 as on 31 March 1979 and the Wealth-tax assessments for the assessment years 1979-80 to 1985-86 were completed by the Wealth-tax Officer on this value. According to the provisions of the Act and the upward market conditions in the eighties, the valuation determined by the Valuation Cell could be adopted for a period of three years and the case should have been referred to the Valuation Cell thereafter for determining the fair market value, so that the value of the property as assessed would be realistic. Accordingly, the case was required to be referred to the Valuation Cell in 1981 and in 1984. Failure to refer the case to the Valuation Cell and adopting the same value for 8 long years had led to gross under valuation of the property.

(ii) For the assessment years 1980-81 to 1982-83, the value of properties located in two cities were declared by the assessee at Rs. 2,64,680 on the basis of a certificate issued by a registered valuer and the wealth-tax assessments for these years were completed accepting the valuation of the property as declared by the assessee. On audit pointing out the apparent low valuation of the properties, the Wealth-tax Officer referred the case to the Departmental Valuation Cell which determined the value of the property at Rs. 19,47,000 for the assessment year 1980-81, Rs. 21,16,000 for the assessment year 1981-82 and at Rs. 22,71,000 for the assessment year 1982-83.

Failure to refer the case to the Departmental Valuation Cell resulted in under-assessment of wealth of Rs. 55,39,960 involving short levy of Rs. 1,39,248. The assessments have since been rectified raising additional demand of Rs. 1,39,248.

(c) Bihar : In this charge the assessing officers at Bhagalpur, Nalanda and Arrah had not made any reference of valuation of property to the Valuation Cell during the last 5 years.

(d) *Uttar Pradesh* :

The net wealth of an individual included free hold land measuring 75,400 sq. ft., in a posh locality with a small construction thereon. The value of the property was estimated by the registered valuer at Rs. 2,67,000 which was accepted by the department while completing the wealth-tax assessments of the individual, for the assessment years 1977-78 to 1979-80 in October 1981. Audit scrutiny revealed that the value of the property was grossly underestimated for two reasons :

(i) The land was valued at Rs. 8 per sq. ft. on the basis of the rate of Rs. 5.30 per sq. ft. fixed by the Development Authority in respect of lease hold plots of a new underdeveloped colony instead of at the much higher rate prevalent for free hold plots in the posh locality, and

(ii) Hypothetical deductions to the extent of Rs. 3,76,648 were allowed for developing roads, levelling, multiple ownership, arithmetical error of Rs. one lakh etc. As the valuation by the registered valuer was less than the fair market value of the property, the case should have been referred to the departmental valuation cell under the provisions of the Act. This was not done. By adopting the value of land at Rs. 8 per sq. ft. its value alongwith construction would work out to Rs. 6,41,000. The incorrect valuation resulted in under-assessment of wealth by Rs. 3,74,000 in each of the three assessment years and a total under charge of tax of Rs. 23,774.

On being referred to the Departmental Valuation Cell the fair market value of the property was determined at Rs. 11,43,000, Rs. 12,20,000 and Rs. 13,74,000 in October 1985, for the assessment years 1977-78, 1978-79 and 1979-80 respectively. The department accepted the valuation and revised the assessments in January 1986 creating an additional demand of Rs. 72,924.

(e) *Karnataka* :

During the previous year relevant to the assessment year 1981-82, a private limited company sold in July 1980 property consisting of buildings and land appurtenant thereto situated in a commercial area of big city for Rs. 7,00,000 and returned a capital gain of Rs. 1,40,000, after deducting Rs. 5,60,000 as its cost of acquisition,being the market value on 1 January 1964. In the assessment completed for the assessment year 1981-82 in June 1984, the assessing officer had not accepted the cost of acquisition of the property and had determined a capital gain of Rs. 2,00,000 adopting the cost of acquisition as Rs. 5,00,000 under the directions of the Range Inspecting Assistant Commissioner who was guided by a valuation report of a registered valuer of November 1983 placing the value as on 1 January 1964 of the property at Rs. 5,23,450 being the average of values under the "land and building" and "rent capitalisation" methods. Audit scrutiny revealed that the assessee had, in connection with the acquisition proceedings under the Act, produced a valuation report of 10 June 1980 from a registered valuer wherein the valuer had valued, the building according to the reversionary value method of valuation taking note of the fact that the building was a tenanted property and the owner could get vacant possession even through legal means, only after ten years at Rs. 6,65,043 as on 10 June 1980 and that the competent authority had dropped the acquisition proceedings accepting the valuation report. As the property was tenanted even as on 1 January 1964, applying the principle of reversionary value as was done in the valuation report of 1980, the cost of acquisition worked out to Rs. 3,35,812 as on that date. The adoption in the assessment of the cost of acquisition at Rs. 5,00,000 instead of Rs. 3,35,812 resulted in the short computation of income by Rs. 1,39,052 (after set off of some allowable losses to the extent of Rs. 1,43,017) and a short levy of tax of Rs. 69,528.

The objection was communicated to the department in December 1985. The statement of facts was issued in April 1986. The department stated (April 1986) that the method adopted by audit *viz.*, estimation of fair market value on the basis of reversionary interest was not sound and does not give the exact market condition as on a particular date. It was further stated that the "average of land and building" method as was done, was the scientific one and that considering that the property was purchased in 1953 for Rs. 3,25,200, the adoption of Rs. 5 lakhs by the department on 1 January 1964 cannot be considered too high.

The reply needs consideration as the method of valuing the property on the basis of average of "land and building" and "rental" method, ignored the fact of depression in the value of property due to occupation by tenants and the valuation report dated 10 June 1980 which was more reasonable should have been applied for the computation of capital gains

as well, in the absence of any extenuating factors. In any case, the acceptance of two different basis for the valuation of the same property by two authorities under the Income-tax Act without a reference to the valuation cell led to one of the decisions being apparently wrong, more appropriately the one relating to capital gains involving under charge of tax of Rs. 69,528.

1.15.11 *Under valuation of properties by the Departmental Valuation Cell*

Orissa :

(a) For the assessment year 1982-83 the value of a 'Ladies Nursing Home' situated in a city was estimated by the department at more than Rs. 10 lakhs as against the Valuation of Rs. 8.03 lakhs done by the registered valuer. On a reference made to the Valuation Officer by the assessing officer the value of the property was determined by the Valuation Officer at Rs. 8.66 lakhs. Not being satisfied with the valuation made by the Valuation Officer, the Chief Engineer, Valuation, New Delhi directed the Superintending Engineer, Valuation, Calcutta to recompute the value. Finding several omissions and defects in the method of valuation adopted by the Valuation Officer, the Superintending Engineer, Valuation Calcutta, finally determined the value of the Nursing Home at Rs. 11.51 lakhs as against Rs. 8.66 lakhs determined by the Valuation Officer.

Calcutta :

According to the guidelines issued by the Chief Engineer, Valuation, where any property or part of the property is let out to any relative of the assessee, it should be examined before applying the rental method of valuation of the property that the rent is the fair rent and not merely collusive rent.

(b) For the assessment year 1979-80, an owner of a three storyed building declared the value of the property in a metropolitan city at Rs. 1,42,000 in the wealth-tax returns and the value was not supported by a certificate of a registered valuer. Two floors of the building were let out and one floor was in the occupation of the assessee. The Wealth-tax Officer referred the case in December 1980 to the Departmental Valuation Officer for determining the value of the property as on 31 March 1979 being the valuation date relevant to the assessment year 1979-80. Adopting the land and building method of valuation for the self-occupied portion of the property and rental method for the let out portions, the value of the property was determined at Rs. 2,19,200 as on 31 March 1979 by the Departmental Valuation Officer. The net wealth of the assessee was computed adopting the value of the building at Rs. 2,19,200.

It was noticed in audit that the assessee had let out the ground floor of the building to a school at a monthly rent of Rs. 700 and the entire first floor and one room in the ground floor to her husband at a monthly rent of Rs. 400 for running a nursing home. From the records it was observed that no attempt was made by the Valuation Officer to determine the fair rent of the let out portions of the property especially the portion let out to her husband to run a nursing home and to work out the correct market value of the portion let out leading to under-valuation of the property.

Bombay :

(c) According to the guidelines issued for valuation of immovable properties by the department, in the case of cinema, hotels, factories etc., leased rent should be taken into account if the building is leased outright ensuring that the rent charged in comparable to the prevailing market rent for similar properties. In a case where the rent is deliberataly kept low or being let out to close relations etc., the prevailing market rent or profit earning capacity should be taken into account.

A cinema theatre was run by an assessee till March 1971. By an agreement dated 1 April 1971, the cinema with fixtures and furniture was given on lease to a partnership firm consisting of himself, his wife and married daughter, the assessee having 50 per cent share in the firm. The lease rent was fixed at Rs. 3,500 per month. The assessee retired from the firm in June 1971 and the partnership was continued by the other two partners. The lease rent was raised to Rs. 5,000 in 1976.

In the Wealth-tax return for the assessment year 1983-84 (valuation date 31 March 1983) the value of the cinema theatre was declared at Rs. 3,67,685. The case was referred to the Valuation Officer for determining the fair market value of the property by the Wealth-tax Officer stating, *inter alia*, that the theatre building owned by the assessee is let out to an exhibitor firm consisting of the assessee's wife and assessee's married daughter. In view of the near relationship between the lessor and lessee the rent is shown at a very low figure as against the higher rent potential for the type of building.

Adopting rent capitalisation method, the Valuation Officer determined in April 1986 the value of the cinema at Rs. 6,34,000 as on 31 March 1983.

On the registered valuer objecting to the capitalisation of rent at Rs. 5,000 p.m. on the ground that the rent of Rs. 3,500 fixed on 1 April 1971 should alone be considered without any increase thereto, the Valuation Officer stated that the rent of Rs. 3,500 was not fixed by any competent authority and the rent agreed in April 1971 could not be taken as standard rent. However, the main question whether in view of the close relationship between the parties, the rent of Rs. 5,000 itself could be considered as reasonable as on the date of valuation, was not examined by the Valuation Officer in the light of the guidelines issued in this regard. Taking into account the profit made by the firm as on 31 December 1982 at Rs. 77,500, this should have been considered for capitalisation instead of rent at Rs. 5,000 p.m. The yield capitalisation would have resulted in increase in the value of property by Rs. 1,70,000. To a query whether the revised lease charges agreed to in 1976 were collusive or deliberately low, the Valuation Officer stated that this should be examined with reference to the normal returns for such property in 1976 and not in 1982 and 1983. But as the property was to be valued as on 31 March 1983 being the valuation date, whether the rent derived from the property on that day was low or collusive rent should have been considered.

(d) Properties situated in two plots along with plant and machinery agreed to be sold by an assessee on 4 November 1985 for a consideration of Rs. 41 lakhs was referred by the Inspecting Assistant Commissioner to the Valuation Cell in January 1986 for determining the fair market value of the property as on 4 November 1985. Applying the physical valuation method, the District Valuation Officer determined the value at Rs. 26.16 lakhs. The sale consideration of Rs. 41 lakhs included the value of plant and machinery and in the absence of break-up of Rs. 41 lakhs between land and buildings and plant and machinery, the value of Rs. 26.16 lakhs could not be compared. In reply to audit the District Valuation Officer stated that the break-up of the figures was not indicated by the parties to the transaction. Neither the Inspecting Assistant Commissioner furnished the break-up value of the sale consideration. The Inspecting Assistant Commissioner accepting the absence of the break-up of the figures stated that the question of valuation of plant and machinery would be referred to a separate wing. Further report is awaited.

(e) The President and Managing Trustee of a Foundation run by the head of a religious sect in Pune was in default in the payment of Income-tax and Wealth-tax to the extent of over Rs. 3.89 crores. The Income-tax Officer attached 4 plots of land under the occupation of the Foundation towards recovery of the tax arrears, and passed on the case to the Tax Recovery Officer to initiate recovery proceedings. The plots of land were valued by a registered valuer on 10 January 1980 as follows :

Valuation date	Value determinde by a registered valuer
31-12-1974	Rs.15,92,182
31-12-1975	Rs. 18,79,613
31-12-1976	Rs. 39,36,855
31-12-1977	Rs. 41,60,915

The Tax Recovery Officer referred the case for Valuation of these lands to the Valuation Officer to determine the fair market price as well as the reserve price. The valuation Officer directed the Foundation in November 1985 to submit the necessary documents for estimating the fair market value of the lands. In December 1985, the Trustees of the Foundation submitted a note on the ownership of the property which indicated that the properties were only in its occupation and it was not the legal owner. The Trustees also furnished a copy of the lease deed leasing the property to an Ashram connected with the Foundation. The Trustees stated that the total land area was 2,19,300 sq. ft. and a rent of Rs. 2,25,000 was being recovered from the property. Adopting the Rent Capitalisation method the Valuation Officer valued the property in February 1986 at Rs. 31,18,000 much lower than the valuation made as on 31 December 1976 and 31 December 1977 by the registered valuer.

The valuation made by the Valuation Officer was grossly undervalued by adoption of the rent capitalisation method. The lease agreement is in the nature of lease and licence agreement covering a period of eleven months initially and extended from time to time. Considering the closeness of the lessee the Ashram, and lessor the Foundation, it is not in order to resort to capitalise the rent in perpetuity. The Valuation Officer in his letter of February 1986 stated that if tenancy was to be ignored the value of the property would be much more and the value be determined by land and building method which would be much higher. For this purpose the Valuation Officer sought for a specific reference from the Tax Recovery Officer. The Tax Recovery Officer had not followed it up.

The value of the property was shown at Rs. 44,31,855 in the Balance Sheet of the Foundation as on 31 December 1981. The value of these lands was determined at Rs. 41,60,915 as on 31 December 1977 by the registered valuer. The value of the land determined by the Valuation Officer at Rs. 31,18,000 was apparently lower by any standard.

(f) For the assessment year 1983-84, the value of a property situated at Bombay which was jointly owned by 19 owners was returned for Wealth-tax purposes at Rs. 8,55,000 as on the valuation date, 31 March 1983, the value of each share being Rs. 45,000 (in the Joint Property). The assessing officer at Delhi in whose jurisdiction the assessments of the co-owners were to be made referred the case to the Departmental Valuation Officer at Bombay in January 1985 for determining the fair market value of the property as on the valuation dates 31 March 1980, 1981, 1982, 1983 and 1984. By applying the physical valuation method, the Valuation Officer, Bombay, valued the property as under :

Valuation date	Value determined
	Rs.
31-3-1980	9,17,000
31-3-1981	10,64,000
31-3-1982	12,11,000
31-3-1983	14,39,000
31-3-1984	17,12,000

A search and seizure in the premises of some of the co-owners had revealed that a part of the property at Bombay had been sold to a public enterprise in April-May 1985 for a price of Rs. 85,00,000. The assessing Officer, therefore, requested the Valuation Officer for a review of his valuation so that the gross under-valuation of the property could be corrected. The Valuation Officer refused to review the case on the ground that the acquisition by Government or Semi-Government body was for specific purpose and the compensation paid did not represent the market value and the eviction of the 100 hutments in the land was possible only by a Government or Semi-Government body and not by any private party. The value of the land would not be more than Rs. 3,37,000 for any private bidder and as the value of land for each co-owner was less than Rs. 2 lakhs, the valuation was to have been made by the Assistant Valuation Officer and the valuation having actually been done by the next superior authority it did not call for any review.

The reasons given by the Valuation Officer are not tenable as the compensation is determined with reference to the market conditions and did not reflect a purchase and the value of the property was returned in the Wealth-tax returns for the assessment year 1983-84 at Rs. 8.55 lakhs. The value being more than Rs. 2 lakhs but less than Rs. 10 lakhs, the property was also rightly valued by the Valuation Officer and further review by the District Valuation Officer was possible.

The Valuation Officer further stated that after considering the whole property for determining the value, the individual share was to be arrived at after reducing the value by 10 per cent. A further reduction of 15 per cent was allowed by the Valuation Officer towards open space to be reserved for recreational purposes. It would not be correct to allow both the deductions when the property was to be individually valued for wealth tax purposes as the individual share in the plot of land by each co-owner was less than 3,000 sq. yds. The provision of open space as prescribed for recreational purposes was to be be applied to a plot of land exceeding 3,000 sq. yds. in area.

Andhra Pradesh

(g) For determining the fair market value of a college building as on 31 March 1981, 31 March 1982 and 31 March 1983, being the valuation dates relevant to the assessment years 1981-82, 1982-83 and 1983-84, the Wealth-tax Officer made a reference in August 1984 to the Departmental Valuation Officer stating that the value of the college building was determined by him at Rs. 1.20 lakhs for the earlier assessment year 1979-80 taking into account the location of the building and estimating the site value at Rs. 1 lakh and the superstructure at Rs. 20,000 as against the value of Rs. 59,020 declared by the assessee in his wealth-tax returns and that the assessee not accepting the valuation had gone in appeal to the Appellate Assistant Commissioner. In his report of March 1985, the Valuation Officer determined the value of the college building at the declared value of Rs. 59,020 for the four assessment years 1980-81 to 1983-84 stating that the building was more than 100 years old and covered under the provisions of Rent Control Act. In his order of October 1984, the Appellate Assistant Commissioner decided the value of the college building for the assessment year 1979-80 at Rs. 87,000 taking into account the site value and the superstructure thereon. The value of Rs. 87,000 was accepted by the assessee. The Wealth-tax Officer again referred the valuation to the Valuation Officer

stating that the Appellate Assistant Commissioner had decided the value of the building at Rs. 87,000 for the assessment year 1979-80 which was also accepted by the assessee. Thereupon, the Valuation Officer revised the valuation of the property at Rs. 87,000 stating that the assessee had not intimated him of the acceptance of the decision. Adoption of rental method of valuation by the Valuation Officer as against the land and building method followed by the Appellate Assistant Commissioner led to the undervaluation of the property. Further the Valuation Officer is required to determine the valuation of the property independently regardless of any valuation of the property in appeal.

Tamil Nadu

(h) The valuation of six buildings belonging to an assessee was referred to the Valuation Cell in October 1981. In its valuation report in respect of 4 buildings for the assessment years 1963-64 and 1964-65 furnished in March 1985, as against the correct total value of buildings of Rs. 11.91 lakhs as on 31 March 1963 and Rs. 12.26 lakhs as on 31 March 1964, the value in the valuation report was given as Rs. 10.54 lakhs and Rs. 10.81 lakhs respectively which led to short valuation of property by Rs. 1.37 lakhs and Rs. 1.45 lakhs for the two years. Failure to furnish the details of valuation in the report and working out the total in a separate sheet led to the short valuation. The Valuation Officer has agreed to rectify the mistake.

(I) Free hold pockets of land in the central and urban developed area are not taken up for valuation by the Valuation Cell, if they are claimed as agricultural lands. In the absence of adequate guidelines for valuation of these lands as agricultural lands as claimed by the assessee there was short valuation of the lands. In one case, claiming the lands as agricultural lands the value was declared by the assessee as Rs. 26,000. But on the basis of the value of developed plots in neighbourhood area the value of the lands worked out to Rs. 21 lakhs treating the lands as vacant house sites.

1.15.12 *Irregular withdrawal of cases referred for valuation to the Valuation Cell*

Madhya Pradesh

(a) A private Company returned the value of a factory building as on 31 December 1983 at Rs. 6,56,510. Although no wealth-tax was leviable on companies, the Wealth-tax Officer referred the case of the factory building for valuation by the Valuation Cell in November 1984 but subsequently withdrew the reference in December 1985. In the meantime the market value of the factory building was estimated by the Departmental Valuation Officer to be over Rs. 90,00,000. Since the balance sheet of the company disclosed the factory building at Rs. 6,56,510 as against the market value of Rs. 90,00,000, the value of the equity shares of the company worked out on the basis of value of assets in the balance sheet would lead to undervaluation of equity shares in the hands of share-holders.

(b) A discretionary trust declared the value of one of its buildnig as on 21 October 1979 at Rs. 4,07,802 in the Wealth-tax returns. The property was let out for residential and commercial purposes by the Trust. The Wealth-tax Officer referred the valuation of the building to the Valuation Officer in March 1983 and subsequently withdrew the reference in June 1983 on the ground that the building had been let out for several years and was covered by the Rent Control Act and the provisions of Wealth-tax Rules were to be applied for determining the valuation. The provisions of Wealth-tax Rules were, however, not applicable to this case as the asset was an immovable property let out for business purposes. The withdrawal of the case from the Valuation Cell was therefore, not in order.

1.15.13 *Loss of revenue due to delay in valuation of of immovable property*

Haryana

Under the Wealth-tax Act, 1957, the assessment for any assessment year shall be completed before the expiry of four years from the end of the assessment year or within one year from the date of filing of the return.

(a) In one charge, three wealth-tax cases were referred to the Departmental Valuer for valuation of the properties for the assessment years 1976-77, 1977-78 and 1979-80 in time (one case was however, referred in January 1984 at the fag end of the limitation period viz. 31 March 1984) but the valuation was done/communicated to the assessing officers after the expiry of the period prescribed for completion of the assessments. As a consequence, wealth to the extent of Rs. 10.98 lakhs escaped assessment. The details of the cases are :

Name of assessee	Name of property	Assessment year and valuation date	Value returned	Date of reference to valuation cell	Value assessed	Date of valuation	Difference value
			Rs.		Rs.		Rs.
A	Factory building	1977-78 (31 March 1977)	6,80,507	August 1981	7,04,900	January 1983	24,393
B	Cinema theatre	1976-77 (31 March 1976)	1,50,716	October 1980	1,65,700	December 1981	14,984
C	Cinema theatre	1979-80 (31 March 1979)	5,03,641	January 1984	15,62,000	March 1985	10,58,359

Assam

(b) An assessee showed an investment of Rs. 1,74,000 on a property (a two storeyed RCC building total area 454.67 sq. meters) constructed between 1976 and 1980. As per the Valuer's report the investment amounted to Rs. 1,77,000. On being referred to the Valuation Cell in December 1983, the Valuation Officer in November 1985 estimated the total investment at Rs. 3,24,606 during the relevant period viz., assessment years 1977-78 to 1980-81. No assessment proceedings could be initiated to charge the undisclosed income as they had become timebarred by 31 March 1985. The loss of revenue amounted to Rs. 65,619.

Kerala

(c) The Valuation Officer estimated (April 1984) on a reference by the Income-tax Officer in December 1983 the cost of construction of a building during 1976-77 at Rs. 1,54,600 against Rs. 92,260 claimed as invested in the return. Action to reopen the assessment made in February 1980 for the assessment year 1977-78 under the provisions of Income-tax Act, 1961, within 8 years was negativated by the Commissioner of Income-tax as the assessee had disclosed all material facts in the return. Failure to initiate timely action had led to a loss of revenue of Rs. 31,116.

1.15.14 *Unwarranted valuation by the Valuation Officer without any official reference from the assessing Officer*

According to the powers of the Valuation Officer, the Valuation Officer is to deal with the valuation of properties when the declared value did not exceed Rs. 10 lakhs, referred to him by the assessing Officer.

Andhra Pradesh

An assesse made a direct approach to the Valuation Officer of the rank of Executive Engineer for valuation of the property (declared value Rs. 22 lakhs) and the Valuation Officer also valued the property at the value of Rs. 24.46 lakhs without the case being referred to the Valuation Cell by the assessing Officer. The search and seizure operations conducted by the Income-tax Department in the premises of the assessee revealed that the measurements of the property were short recorded in the field book, measurement register and the expensive items of lavish construction work were valued by the Valuation Officer at a low price, as a result of which the property was grossly undervalued by the Valuation Officer. The Commissioner of Income-tax referred the valuation of the property to the District Valuation Officer who was of the rank of Superintending Engineer who initiated action for the valuation in December 1983. However, the assessee adopted dilatory tactics and delayed the valuation by eight months and finally filed a writ petition in the High Court and obtained interim stay of further proceedings in August 1984. Unable to proceed further in the matter, the District Valuation Officer closed the case of valuation of the property in his books. In the absence of an authentic valuation report the loss to revenue cannot be evaluated. The Valuation Officer had exceeded his jurisdiction in undertaking the valuation of the property whose value exceeded Rs. 10 lakhs, besides committing a breach of procedure in entertaining a reference direct from assessee.

1.15.15 *Omission to value the assets by the Valuation Cell*

Under the Wealth-tax Act, 1957, the net wealth of an assessee 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.

Bombay

During the course of audit of the wealth-tax assessments of an assessee it was noticed that salt pans owned by an assessee were valued at Rs. 200 per pan for the assessment years 1978-79 and 1979-80. In the case of another assessee assessed in the same ward the salt pans owned by him were valued at Rs. 200 per pan upto the assessment year 1976-77 and at

Rs. 500 per pan from assessment year 1977-78. On the disparity in valuation of salt pans in the same ward being pointed out with a suggestion for upward revision of valuation in the former case by Audit, the Inspecting Assistant Commissioner (Audit) stated that the assessing Officers, had approached the Assistant Valuation Officer, Valuation Officer and Chief Engineer, Valuation having jurisdiction over him for valuation of salt pans for the purpose of Wealth-tax Act. However, these Departmental Valuation Officers did not determine the value of the salt pans on the ground that they did not fall within the category of immovable property in the shape of land and buildings.

The Act provides for making a reference by the Wealth-tax Officer to the Valuation Cell for determining the fair market value of any asset where the Wealth-tax Officer is of the opinion that the value is understated in the wealth-tax returns. For the purpose of estimating the value of any asset, in pursuance of a reference, the Valuation Officer may serve on the assessee a notice for production of the accounts and other documents to enable him to determine the value of the asset. No action calling for the details regarding salt pans was taken by the Valuation Cell. Failure to determine the value of salt pans on the plea that they are not in the nature of land and buildings is not in order. Specific guidelines for valuation of properties of this nature is called for. Absence of departmental guidelines in this regard had led to adoption of different values of the assets of the same nature assessed in the same ward.

1.15.16 *Survey operations*

In para 1.21 of their 181st Report (7th Lok Sabha-1983-84) the Public Accounts Committee, **inter-alia,** observed that "it was in the context of absence of systematic flow of information in the assessing and valuation Officers in respect of sale|auction of land/houses/flats and new constructions in metropolitan cities and the fact that internal survey formed an integral part of the survey operations that the Committee had stressed the need for strengthening and streamlining the machinery for collecting relevant information from various sources with a view to detect evasion of tax. Although instructions had been issued by the Central Board of Direct Taxes to those engaged in survey togather information in respect of properties from the records of local bodies, the Committee noticed that the Board had no information about the number of property owners in large metropolitan areas. As early as in 1970, the Public Accounts Committee (1969-70) had in paragraph 1.11 of their 117th Report (4th Lok Sabha) laid stress on external survey and systematic analysis and processing of information thus collected. The Central Board of Direct Taxes had issued instructions in October 1977, requiring the Commissioners of Income-tax to arrange their programme of survey in such a manner that all the areas in their respective charges were fully covered by the end of 1979-80; priority being given to posh localities/new localities and important markets. Another circular issued in August 1979 emphasised the need for intensifying survey operations but shifted the target date covering all important localities to March 1982.

The Committee have now been informed that a number of sources of information have been identified and Commissioners of Income-tax have been asked to get information from these sources exhaustively in a span of 3 years starting from 1982-83. From the Government's reply the Committee also find that the target date for completing survey of premises had been further shifted from March 1982 to March 1983, and this dead-line is also over. While the Committee take note of the steps now taken by the Department to survey properties in Urban Areas, they would like to point out that the Ministry's reply does not meet the requirements of the recommendations of the Committee in regard to maintenance of complete records of all Urban properties surveyed so far. The Committee, therefore, reiterate their earlier recommendations contained in paragraph 3.102 of the 101st Report and would like the data collected from 1 April 1978 upto 31 March 1983 to be tabulated yearwise with regard to the number of localities and the total number of houses surveyed, the number of new assessees located together with full details of the areas still remaining to be surveyed. Keeping in view the phenomenal increase in the prices of real estate in recent years, particularly in metropolitan cities, the Committee need hardly re-emphasise the importance of the above data".

The Central Board of Direct Taxes issued instructions in October 1982 to all the Commissioners of Income-tax to include *inter alia,* the following targets in the survey operations during 1982-83.

(a) Completing the survey of the premises which were to be surveyed by 31 March 1982 by 31 March 1983.

(b) Second round of survey to cover all the localities both residential and commercial in four years by 31 March 1986.

(c) Annual survey of the following important areas :—

(i) New commercial complexes particularly multi-storeyed commercial buildings.

(ii) New industrial estates sponsored either by Government or private colonisers.

(iii) New construction of buildings particularly multi-storeyed buildings.

(iv) Godown areas in metropolitan cities.

(d) A complete survey of the following is to be made once in a cycle of four years (1 April 1982 to 31 March 1986) :-

(i) Posh residential localities.

(ii) Vacant land in urban and semi-urban areas.

(iii) Complexes where there is concentration of godowns in metropolitan towns.

The number of premises surveyed and new assessees discovered in a few charges are given below .

Charge	No. of new premises surveyed					No. of new assessees discovered				
	1981-82	1982-83	1983-84	1984-85	1985-86	1981-82	1982-83	1983-84	1984-85	1985-86
Cochin and Trivandrum	5641	11689	11303	4048	—	1654	2932	2430	1435	—
Nasik	—	14357	22602	4409	1934	—	670	2925	1535	61
Survey Range, Bombay	—	75532	81266	47688	38082	—	5997	9548	2492	8146
Gujarat	—	—	—	—	4700	—	—	—	—	387
Assam	—	9123	24575	16007	9349	—	988	3903	2164	2127
Karnataka	—	43903	46804	20281	9293	—	2231	3843	1154	1976

Kerala

In Cochin and Trivandrum charges, 3834 returns were filed by the new assessees. The department raised a demand of Rs. 118.79 lakhs from them out of which Rs. 94.22 lakhs were collected for the years 1981-82 to 1984-85. No exhaustive property survey was undertaken to cover every region. The survey operation was carried out on random basis confining to buildings having a plinth area of over 1500 sq. ft. owing to innumerable constructions comping up. The achievements of survey operations with reference to the targets fixed could not be ascertained from the records.

Bombay

In Nasik charge no reasons for the shortfall in the survey operations could be found from the records whereas no target was fixed in the survey range, Bombay. Tax of Rs. 21.36 lakhs was collected in Nasik charge from the new assessees discovered.

Gujarat

In Gujarat, the survey operations were confined to business premises only. No list of commercial complexes with concentration of business was maintained by the department. The short fall in the survey operations was attributed to civil disturbances etc.

Assam

No target for survey operations was fixed in Assam charge.

Karnataka

No information whether the survey operations covered new commercial complexes etc., or posh residential localities was available from the records maintained in Karnataka charge.

Other charges

In other places the search and seizure operations were not carried out as per programme fixed by the Central Board of Direct Taxes. The Board's instructions were not complied with fully in respect of the few charges where the survey operations were conducted. The Income-tax department had not carried out a systematic survey of new residential localities and business complexes to bring the new assessees in the tax net. The assurance given to the Public Accounts Committee and the instructions issued by the Board to the Commissioners of Income-Tax largely remained unfulfilled and no action seems to have been initiated so far.

1.15.17 *Conclusions*

(i) While the total number of cases for disposal during the five years period from 1981-82 to 1985-86 more or less remained the same, the actual disposal of these cases showed a decline registering a larger increase in the pendency. The pendency at the end of 1985-86 was 12,555 cases against the pendency of 9000 cases on an average, during the earlier years.

(ii) The inherent deficiencies in the law and procedure led to inordinate delays in the issue of notices by the Valuation Cell, incomplete information being furnished by the assessing Officers, lack of adequate and

timely action in the pursuance of cases and dilatory tactics being adopted by assessees in submitting the information to the Valuation Officers and those facts largely contributed to the huge pendency.

(iii) There is no centralised data bank available for the guidance of the Valuation Officers in the matter of valuation of properties, commercial industrial etc., and there was hardly any co-ordination in valuation of the immovable properties by different Valuation Officers.

(iv) The prescribed Registers maintained by the Valuation Cells are deficient in many respects.

(v) Though the value determined by the Valuation Cell is binding for the purposes of wealth-tax, instances were noticed where they were not adopted in wealth-tax assessments.

(vi) The machinery provides for feed back information in respect of the cases decided by the Valuation Cells where the valuations determined by them are modified in appeals. This procedure is not followed with the result the benefits of appeal orders are available to the valuation Cells for corrective action.

(vii) The departmental instructions and the law, require references to the Valuation Cell of certain cases depending upon the possible undervaluation in properties. Considering the large number of immovable properties in urban cities and their appreciation in values in recent years the number of cases referred to the Valuation Cell was negligible. In three charges in Bihar State, no case was referred to the Valuation Cell during the last 5 years. In several other charges also there was failure to refer many cases to the Valuation Cells.

(viii) Cases were noticed where due to failure to apply the correct and scientific method of valuation to determine the value of the property and adoption of different methods had led to undervaluation of properties.

(ix) Delays in valuation of property by the Cell had also led to operation of time bar resulting in loss of revenue to Government.

(x) There are no instructions or guidelines regarding the valuation of salt pans.

(xi) No systematic survey of new residential localities and commercial complexes to bring new assessees in the tax net was carried out.

The review was sent to the Ministry of Finance in October 1986; their comments are awaited (December 1986).

1.16* Revenue demands written off by the department.

(1) **Income-tax**

A demand of Rs. 381.64 lakhs in 31,279 cases was written off by the department during the year 1985-86, and of this, a sum of Rs. 61.38 lakhs relate to 62 company assessees and Rs. 320.26 lakhs to 31,217 non-company assessees, Income-tax demands written off by the department during the year 1985-86 are given below category-wise :

(Amount in lakhs of rupees)

	Companies		Non-Companies		Total	
	No.	Amount	No.	Amount	No.	Amount
1	2	3	4	5	6	7	8
I (a) Assessees having died leaving behind no assets or have become insolvent or gone into liquidation	1	0.21	259	4.81	260	5.02
(b) Companies which have gone intioliquidation or are defunct	39	0.95	—	—	39	0.95
Total	40	1.16	259	4.81	299	5.97
II Assessees being untraceable	5	4.22	20,583	128.28	20,588	132.50
III Assessees having left India	—	—	73	1.81	73	1.81
IV Other reasons :						
(a) Assessees having no attachable assets	1	0.04	1,371	75.99	1,372	76.03
(b) Amount being petty, etc.	14	0.04	8,243	32.70	8,257	32.74
(c) Amount written off as a result of scaling down of demands	2	55.92	505	75.92	507	131.84
V. Amount written off on grounds of equiry or as a matter of international courtesy or where, time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount of recovery	—	—	183	0.75	183	0.75
Grand Total	62	61.38	31,217	320.26	31,279	381.64

*Figures furnished by the Ministry of Finance are provisional.

(II) Wealth-tax, Gift tax and Estate Duty demands written off by the department during the year 1985-86 are given below category-wise :

(Amount in lakhs of rupees)

	Wealth-tax		Gift-tax		Estate Duty	
	No.	Amount	No.	Amount	No.	Amount
I (a) Assessees having died leaving behind no assets	—	—	—	—	—	—
(b) Assessees having become insolvent	—	—	—	—	—	—
Total	—	—	—	—	—	—
II. Assessees being untraceable	49	3.06	91	0.19	129	0.26
III. Assessees having left India	—	—	—	—	—	—
IV. Other reasons :						
(a) Assessees who are alive but have no attachable assets	2	1.00	83	6.19	—	—
(b) Amount being petty, etc.	—	—	3	0.01	—	—
(c) Amount written off as a result of settlement with assessees.	—	—	—	—	—	—
Total	2	1.00	86	6.20	—	—
V. Amount written off on grounds of equity or as a matter of international courtesy or where the time, labour and expenses involved in legal remedies for realisation are considered disproportionate to the amount of recovery	—	—	—	—	—	—
Grand Total	51	4.06	177	6.39	129	0.26

1.17 Outstanding audit objections

As on 31 March 1986, 98,127 audit objections involving revenue of Rs. 368.42 crores (approximately) raised by the Internal Audit of the Department and by the Statutory Audit, are pending without settlement. Of these, 7,528 cases (only major cases) of the Internal Audit accounted for Rs. 124.61 crores. The remaining 90,599 cases were statutory audit objections involving Rs. 243.81 crores.

(i) Internal Audit

Mention was made in Audit Report 1984-85, regrading the organisational set up, the scope of audit work of the Internal Audit Department and the pendency in the disposal of the Internal Audit objections.

As per the monthly reports drawn up by the Directorate of Inspection (Income-tax and Audit) of the Department, the number of major objections (with tax effect of Rs. 10,000 and above, under the income-tax and Rs. 1,000 and above under the other direct taxes) of the Internal Audit disposed of and pending during the five-year period 1981-82 to 1985-86 are as follows :—

Financial year	No. of cases for disposal and amount	No. of cases disposed of and amount	Percentage of disposals to total number of cases for disposal	No. of pending cases and amount
				(Amount in crores of rupees)
1981-82	18,036	5,039	27.94	12,997
	141.86	23.56	16.61	118.30
1982-83	17,218	5,516	32.03	11,702
	143.85	49.16	34.19	94.69
1983-84	16,335	5,415	33.15	19,920
	133.74	36.43	27.24	97.31
1984-85	16,167	6,959	43.04	9,208
	138.46	47.88	34.58	90.58
1985-86	15,106	7,578	50.16	7,528*
	194.86	70.25	36.05	124.61

Note : *Out of pending cases at the end of 1985-86, 3,493 items of value of Rs. 49.04 crores were over 1 year old.

No year-wise analysis of the age of the pending items is being undertaken by the Central Board of Direct Taxes to enable them to watch that old items are cleared expeditiously.

(ii) **Statutory Audit**

(a) As on 31 March 1986, 90,599 objections involving a revenue of Rs. 243.81 crores, are outstanding without final action. The year-wise particulars of the pendency, as compared to the position as on 31 March 1985, are as follows :

(a) Statement showing year-wise particulars of pendency of objections, as compared to the position as on 31 March 1985

(Amount of tax effect—In crores of Rupees)

Year	Position	Income-tax		Wealth-tax		Gift-tax		Estate Duty		Total	
		Items	Revenue effect	Items	Revenue effect	Items	Revenue effect	Items	Revenue effect	Items	Revenue effect
Upto 1980-81 & earlier years	(i) 31-3-1985	45,173	86.16	7,016	7.05	1,892	3.70	982	8.31	55,063	105.22
	(ii) 31-3-1986	34,479	73.67	5,812	6.27	1,622	3.29	774	8.22	42,687	91.45
1981-82	(i) 31-3-1985	9,958	19.21	1,698	2.22	343	0.79	302	0.75	12,301	22.97
	(ii) 31-3-1986	7,841	14.23	1,464	1.97	275	0.71	209	0.70	9,789	17.61
1982-83	(i) 31-3-1985	11,727	29.98	1,814	2.50	334	1.06	245	0.41	14,120	33.95
	(ii) 31-3-1986	8,900	22.10	1,355	2.04	255	0.64	162	0.30	10,672	25.08
1983-84	(i) 31-3-1985	13,166	62.60	2,128	3.22	381	2.10	290	1.06	15,965	68.98
	(ii) 31-3-1986	10,293	37.43	1,634	1.49	272	2.04	196	0.36	12,395	41.32
1984-85	(i) 31-3-1986	12,323	63.15	1,918	2.24	425	2.24	390	0.72	15,056	68.35
Total :	(i) 31-3-1985	80,024	197.95	12,656	14.99	2,950	7.65	1,819	10.53	97,449	231.12
	(ii) 31-3-1986	73,836	210.58	12,183	14.01	2,849	8.92	1,731	10.30	90,599	243.81

During the year 1985-86 while the number of outstanding objections has come down by 6,850 items, the revenue effect of the outstanding objections has shown a rise of over Rs. 12 crores over the earlier years' figure.

(b) In the following charges the total income-tax involved in outstanding objections exceeded Rupees 10 lakhs in each individual case.

(Amount in lakhs of rupees)

Sr. No.	Name of charge	Upto 1980-81 and earlier years		1981-82		1982-83		1983-84		1984-85		Total	
		Items	Amount	Items	Amount	Items	Amount	Items	Amount	Items	Amount	Items	Amount
1.	West Bengal	40	2260.94	4	99.61	4	93.75	1	14.55	6	430.22	55	2899.07
2.	Bombay	6	179.21	7	127.05	15	469.75	16	790.90	13	376.08	57	1942.99
3.	Tamil Nadu	2	84.02	4	62.49	4	70.28	10	236.63	13	886.04	33	1339.46
4.	Uttar Pradesh	—	—	—	—	1	14.33	—	—	1	998.62	2	1012.95
5.	Orissa	—	—	—	—	—	—	—	—	1	756.00	1	756.00
6.	D.A.C.R. New Delhi	5	92.80	—	—	1	13.45	3	160.81	1	14.20	10	281.26
7.	Karnataka	1	31.12	3	38.47	—	—	2	125.78	2	36.25	8	231.62
8.	Assam	6	101.80	—	—	—	—	—	—	1	19.70	7	121.50
8.	Gujarat	1	12.51	—	—	—	—	2	52.89	2	31.21	5	96.61
10.	Bihar	—	—	—	—	—	—	1	14.15	1	36.06	2	50.21
11.	Andhra Pradesh	—	—	—	—	—	—	1	12.77	3	26.24	4	39.01
12.	Madhya Pradesh	—	—	—	—	1	17.41	—	—	—	—	1	17.41
13.	Kerala	—	—	—	—	—	—	—	—	1	15.53	1	15.53
14.	Punjab	—	—	—	—	—	—	—	—	1	11.56	1	11.56
Total :		61	2762.40	18	327.62	26	678.97	36	1408.48	46	3637.71	187	8815.18

(c) In the following charges the Wealth-tax involved in the outstanding objections exceeded Rupees 5 lakhs in each case.

(Amount in lakhs of rupees)

Sr. No.	Name of charge	Upto 1980-81 and earlier years		1981-82		1982-83		1983-84		1984-85		Total	
		Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount
1.	Andhra Pradesh	3	141.88	—	—	—	—	—	—	—	—	3	141.88
2.	Madhya Pradesh	3	57.67	—	—	—	—	—	—	—	—	3	57.67
3.	Bombay	1	6.71	2	39.49	—	—	—	—	—	—	3	46.20
4.	D.A.C.R., New Delhi	—	—	1	21.30	—	—	—	—	—	—	1	21.30
5.	Karnataka	—	—	—	—	—	—	—	—	8	19.37	8	19.37
	Total :	7	206.26	3	60.79	—	—	—	—	8	19.37	18	286.42

(d) In the following charges total gift-tax involved in the outstanding objections exceeded Rupees 5 lakhs in each case.

(Amount in lakhs of rupees)

Sr. No.	Name of charge	Upto 1980-81 and earlier years		1981-82		1982-83		1983-84		1984-85		Total	
		Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount
1.	Gujarat	5	72.80	—	—	1	19.08	3	155.46	—	—	9	247.34
2.	Bombay	2	15.49	1	24.92	1	10.98	—	—	2	122.27	6	173.66
3.	Orissa	—	—	—	—	—	—	1	5.76	—	—	1	5.76
4.		—	—	—	—	—	—			—	—		
	Total :	7	88.29	1	24.92	2	30.06	4	161.22	2	122.27	16	426.76

(e) In the following charges, the total estate duty involved in the outstanding objections exceeded Rupees 5 lakhs in each case.

(Amount in lakhs of rupees)

Sr.	Name of charge	Upto 1980-81 and earlier years		1981-82		1982-83		1983-84		1984-85		Total	
		Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Item Nos.	Amount	Amount Nos.	Amount	Item Nos.	Amount
1.	Andhra Pradesh	6	701.62	—	—	—	—	—	—	—	—	6	701.62
2.	Madhya Pradesh	—	—	1	46.81	—	—	—	—	—	—	1	46.81
3.	West Bengal	2	11.54	—	—	—	—	—	—	1	5.08	3	16.62
	Total :	8	713.16	1	46.81	—	—	—	—	1	5.08	10	765. 05

The total number and amount of pendency in respect of major audit objections involving Rs. 10 lakhs and above, as regards income-tax, and Rs. 5 lakhs and above, as regards other direct taxes, is given below :

	No. of cases	Amount (Rs. in crores)
Income-tax	187	88.15
Other Direct Taxes	44	14.78
Total :	231	102.93

Out of a total pendency of 90,599 cases, involving a revenue effect of Rs. 243.81 crores, 231 cases accounted for a revenue effect of Rs. 103 crores. This indicates that cases involving larger revenue effect were not given priority in the matter of settlement.

(iii) **Steps taken to settle objections**

(a) The inadequacy of control maihinery in the department in the matter of timely action on audit objections, particularly in the light of Public Accounts Committee's observations and loss of revenue due to time-bar in certain cases, was pointed out in Audit Report 1984-85.

The machinery of inter-departmental periodical meetings between the officers of the two departments introduced from February 1984, for the settlement of outstanding audit objections and to sort out contentious issues as indicated in the Audit Report 1984-85, has also not borne desired results during the year 1985-86 in as many as 42,687 outstanding objections involving revenue effect of Rs. 91.45 crores relating to 1980-81 and earlier years were outstanding as on 31 March 1986.

The control system apparently continues to be inadequate and the pace of settlement of the outstanding objections continues to be slow.

The action plan target of the department for 1985-86 included 100 per cent disposal of all arrears major audit objections (both of internal and statutory audits) and in respect of all objections received upto 31 December 1985, replies should be sent by 31 March 1986. This is like last year, nowhere near achievement during the current year 1985-86 also.

(b) **Remedial action barred by time**

As indicated in the Audit Report 1984-85, despite Public Accounts Committee's detailed observations in the matter and the specific instructions issued by the Central Board of Direct Taxes to take timely action on audit objections to avoid cases becoming time-barred leading to loss of revenue, instances have come to notice in test check during 1985-86 where remedial action became barred by limitation of time, despite the fact that adequate time was available for rectificatory action when the mistake was brought to the notice of the department, through Local Audit Reports. Instances of delay in action in two different circles resulting in loss of revenue are given below :

(A) In three cases of income-tax in three Commissioners' charges in Bombay circle, there was loss of revenue totalling Rs. 4,18,793, as detailed below :

Sl. No.	Commissioner's Charge/Assessment year	Nature of objection	Date of pointing out of the mistake by Internal Audit/ Receipt Audit	Date upto which rectificatory action could be taken	Loss of revenue Rs.
1.	'A' 1976-77	Expenditure incurred on issue of convertible bonds is capital in nature where as Department allowed it as revenue expenditure.	January 1981 (Receipt Audit)	June 1981	3,77,225
2.	'B' 1974-75	Cost of acquiring distribution rights of a firm allowed in excess.	March 1978 (Receipt Audit)	February 1981	37,553
3.	'C' 1979-80	Depreciation allowed in excess on cages used for keeping birds in a poultry farm.	February 1984 (Receipt Audit).	March 1986	4,015
		Total :			4,18,793

(B) In a case in Tamil Nadu charge, there was omission to take remedial action on an internal audit objection in a wealth-tax case.

In the wealth-tax assessments of a deceased person (return filed by the legal representative) for the assessment years 1976-77, 1977-78 and 1978-79 completed in February 1980, the value of one-half share in an urban immovable property was determined adopting the value of the property as Rs. 6,95,600 as on 1 April 1971. This concession was applicable only in respect of a house belonging to the assessee and exclusively used by him for residential purposes. The internal audit party of the department pointed out in August 1980 that the adoption of the value as on 1 April 1971 was not applicable in the case of representative assessee and if the market value of Rs. 10,66,000 (determined for the assessment year 1975-76) was adopted there would be a short levy of wealth tax of Rs. 49,000 for the three assessment years. Audit scrutiny (October 1984) revealed that no action was taken by the assessing officer to revise the assessments though the assessment was revised in February 1984 to rectify some other mistakes as pointed out by the internal audit party. Failure to take timely action on the internal audit party's objection resulted in loss of revenue of Rs. 49,000 as remedial action had become time-barred.

(iv) **Non-receipt of Board's comments on draft paragraphs**

As indicated in the Audit Report 1984-85, sufficient time (about 7-8 months) is available to Income-tax department for dealing with Audit Para cases in respect of important objections with substantial tax effect. However, despite Board's instructions that all draft paragraph cases should receive the personal attention of the Commissioners of Income-tax for expeditious action, there are long delays in the receipt of Department's replies. For Audit Report 1985-86, 1102 draft paras (on Income-tax, Wealth-tax, Gift-tax and Estate Duty cases) having a revenue effect of Rs 39.95 crores were issued to the Board but Board's replies have been received only in respect of 450 draft paragraphs.

The review was sent to the Ministry on 22 October 1986; their comments are awaited.

1.18 **Results of test audit in general**

(i) **Corporation-tax and Income-tax**

During the period under report test audit of the documents of the Income-tax Offices revealed total under-assessment of tax of Rs. 8,232.97 lakhs in 18,309 cases.

Of the total 18,309 cases of under-assessment short-levy of tax of Rs. 7,572.39 lakhs was noticed in 3,462 cases alone. The remaining 14,847 cases accounted for under-assessment of tax of Rs. 660.58 lakhs.

The under-assessment of tax of Rs. 8,232.97 lakhs is due to mistakes categorised broadly under the following heads :—

	No. of cases	Amount (in lakhs of rupees)
1	2	3
1. Avoidable mistakes in computation of income	1,257	133.61
2. Failure to observe the provisions of the Finance Acts	321	112.12
3. Incorrect status adopted in assessments	258	62.67
4. Incorrect computation of salary income	585	49.40
5. Incorrect computation of Income from house property	543	48.89
6. Incorrect computation of business income	3,461	3,383.69
7. Irregularities in allowing depreciation and development rebate.	1,803	863.02
8. Irregular computation of capital gains	230	131.52
9. Mistakes in assessment of firms and partners	775	185.23
10. Omission to include income of spouse/ minor child etc.	94	16.86
11. Income escaping assessment.	1,773	1,079.21
12. Irregular set off of losses.	263	297.54
13. Mistakes in assessments while giving effect to appellate orders.	124	37.05
14. Irregular exemptions and excess reliefs given	1,868	750.94
15. Excess or irregular refunds	510	86.32
16. Non-levy/incorrect levy of interest for delay in submission of returns, delay in payment of tax etc.	1,856	233.48
17. Avoidable or inncorrect payment of interest by Government	199	74.46
18. Omission/Short levy of penalty	663	123.14
19. Other topics of interest/miscellaneous	1,657	409.18
20. Under-assessment of surtax	69	154.64
Total	18,309	82,32.97

(ii) **Wealth-tax**

During test audit of assessments made under the Wealth-tax Act, short-levy of Rs. 260.69 lakhs was noticed in 2916 cases.

The under-assessment of tax of Rs. 260.69 lakhs was due to mistakes categoried broadly under the following heads :

	No. of cases	Amount (in lakhs of rupees)
1	2	3
1. Wealth escaping assessment	703	55.80
2. Incorrect valuation of assets	602	88.43
3. Mistakes in computation of net wealth	415	33.22
4. Incorrect status adopted in assessments	101	6.30
5. Irregular/excessive allowances and exemptions	432	14.49
6. Mistakes in calculation of tax	213	16.15
7. Non-levy or incorrect levy of additional wealth-tax	25	10.47
8. Non-levy or incorrect levy of penalty and non-levy of interest	168	17.04
9. Miscellaneous	257	18.79
	2,916	260.69

(iii) **Gift-tax**

During the test audit of gift-tax assessments it was noticed that in 484 cases there was short levy of tax of Rs. 141.23 lakhs.

(iv) **Estate Duty**

In the test audit of estate duty assessments it was noticed that in 483 cases there was short levy of estate duty of Rs. 84.89 lakhs.

CHAPTER 2

CORPORATION TAX

2.01 The trend of receipts from corporation-tax *i.e.* income-tax and surtax payable by companies was as follows during the last five years :—

Year	Amount (In crores of rupees)
1981-82	1,969.96
1982-83	2,184.51
1983-84	2,492.73
1984-85	2,555.89
1985-86	2,865.08

2.02 According to the Department of Company Affairs, Ministry of Law, Justice and Company Affairs, there were 1,24,528 companies as on 31 March 1986. These included 332 foreign companies and 1,739 associations "not for profit" registered as companies limited by guarantee and 298 companies with unlimited liability. The remaining 1,22,159 companies comprised 1,012 Government companies and 1,21,147 non-Government companies with paid up capital of Rs. 24,058.30 crores and Rs. 6,659 crores respectively. Among non-Government companies, over 87 per cent (1,05,457) were private limited companies with a paid up capital of Rs. 1,755.20 crores.

2.03 The number of companies on the books of the Income-tax Department during the last five years was as follows :—

As on 31 March	Number
1982	46,355
1983	48,597
1984	52,951
1985	58,478
1986	18.997*

2.04 The following table indicates the progress in the completion of assessments and collection of demand under corporation-tax during the last five years :—

Year	No. of assessments		Amount of demand	
	Completed during the year	Pending at the close of the year	Collected during the year	In arrears at the close of the year
			(in crores of rupees)	
1981-82	47,238	55,861	1,969.96	311.74
1982-83	47,505	57,638	2,184.51	442.07
1983-84	51,923	61,599	2,492.73	619.33
1984-85	64,059	57,861	2,555.89	1,028.17
1985-86	7,098*	7,630*	2865.08	887.81*

*Figures furnished by the Ministry of Finance are provisieail.

2.05 Some instances of mistakes noticed in the assessments of companies under the Income-tax Act, 1961 and the Surtax Act, 1964 are given in the following paragraphs. In a number of these cases, assessment work had been done by Inspecting Assistant Commissioner (Assessment). Pursuant to the recommendations of the Public Accounts Committee, the Revenue Department created in October 1978, the institution of Inspecting Assistant Commissioners (Assessment) with a view to utilising the experience gained by Senior Officers, amongst other things on making assessments in bigger and complicated cases. The mistakes pointed out in these paragraphs would indicate that the expectations of improvement in the standard of performance and reduction in the possibility of mistakes on the introduction of Inspecting Assistant Commissioner of Income-tax for assessment work remain largely to be realised.

2.06 *Avoidable mistakes in the computation of income-tax*

Under-assessment of tax on account of mistakes in the determination of tax payable or in the computation of total income, attributable to carelessness or negligence involving substantial revenue have been reported every year.

The Public Accounts Committee in paragraph 5.21 of their 186th Report (5th Lok Sabha), in paragraphs 5.11, 6.13 and 6.14 of their 196th Report (5th Lok Sabha) and in paragraphs 5.24 and 5.25 of their 51st Report (7th Lok Sabha) expressed concern over under-assessment of tax on account of mistakes due to carelessness or negligence which could have been avoided had the assessing officers and their staff been a little more vigilant. The Central Board of Direct Taxes in their instructions issued in December 1968, May 1969, October 1970, October 1972, August 1973, January 1974 and the Directorate of Inspection (Income-tax) in their circular issued in July 1981 emphasised the need for ensuring arithmotical accuracy in the computation of income and tax carry forward of figures etc.

Inspite of these repeated instructions such mistakes continue to occur.

The under-assessment of tax due to avoidable mistakes in the computation of income or tax noticed in the test audit of assessment records from the year 1981-82 onwards are given below :—

Year	Number of items	Amount of tax under-assessed
		(In lakhs of rupees)
1981-82	1,133	71.92
1982-83	1,548	127.04
1983-84	1,533	458.94
1984-85	1,536	272.51
1985-86	1,257	133.61

A few illustrative cases noticed in audit are given in the following paragraphs.

(i) In the case of three companies in three Commissioners' charges assessed between September 1984 and March 1985 for the assessment years 1981-82 and 1982-83, owing to incorrect adoption of digits in the figures for determining the taxable income, there was short computation of income of the companies by Rs. 5,00,000 resulting in total short levy of tax of Rs. 4,51,829, inclusive of interest for late filing of income-tax return and non-payment/ under-estimate of advance-tax.

In two cases the assessments were completed by the Inspecting Assistant Commissioner (Assessment).

The Ministry of Finance have accepted the objection in one case and their comments in respect of the other cases are awaited (December 1986).

(ii) While computing the income chargeable to tax, the assessing officer takes the profit 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 require separate consideration.

In the case of eleven companies assessed in nine different Commissioners' charges between May 1984 and September 1985 for the assessment years 1981-82, 1982-83 and 1984-85, failure to add back expenditure/reserve already debited to the Profit and Loss Account of the companies while allowing the admissible expenditure/allowance at the time of assessment and non-assessment of certain incomes deducted for separate consideration resulted in under-assessment of income of Rs. 19,20,458 in six cases involving short levy of tax of Rs. 15,62,714 and excess carry forward of loss of Rs. 42,36,674 with a potential tax effect of Rs. 25,76,437 in the remaining five cases and one of the six cases mentioned above for one assessment year.

One of these assessments was made by Inspecting Assistant Commissioner (Assessment), the details of which are as under :

Interest income filed by an assessee for an assessment year amounting to Rs. 40,56,256 was incorrectly adopted as Rs. 38,58,520 at the time of assessment.

The Ministry of Finance have accepted the objection in six cases and their reply is awaited in the remaining cases (December 1986).

(iii) In 20 cases, owing to arithmetical mistakes in the computation of assessable income and tax leviable thereon, income was short computed by Rs. 40,36,587 resulting in under-charge of tax of Rs. 29,89,298 in nine cases and excess carry forward of unabsorbed depreciation/loss of Rs. 1,23,40,492 involving a potential tax effect of Rs. 70,59,156 in the remaining eleven cases.

The details as given in the table below :

Sr. No.	C.I.T. CIT's Charge Assessment year	Nature of the mistake	Tax effect/ Revenue involved Rs.
1.	A 1982-83	Refund made at the time of provisional assessment amounting to Rs. 6,98,950 not adjusted at the time of completing regular assessment.	6,98,950
2.	B 1979-80 to 1982-83	Excess allowance of depreciation of Rs. 9,33,362 due to adoption of incorrect written down value of plant and machinery in the revised assessment giving effect to the orders of Commissioner of Income-tax (Appeals).	6,84,413
3.	C 1982-83	Omission to adopt the correct rate of tax of 65 per cent applicable to non-industrial company as was done in the earlier assessment years 1980-81 and 1981-82.	5,50,851
4.	D 1982-83 and 1983-84	Excess allowance of depreciation and extra shift allowance amounting to Rs. 11,54,478 due to mistake in carry forward of the written down value of machinery from previous years.	4,92,131
5.	E 1974-75	Incorrect computation of tax payable including interest) at the time of assessment.	1,52,152
6.	F 1981-82	Mistakes in the determination of the net tax payable at the time of revision of assessment in the adjustment of tax deducted at source, calculation of penal interest etc.	1,22,981

7.	A 1982-83	Refund of advance tax of Rs. 1,00,000 made at the time of provisional assessment was not taken into consideration while completing regular assessment in February 1985 as well as during revision in February 1986.	1,00,000
8.	G 1981-82 and 1982-83	Incorrect carry forward of business loss, unabsorbed depreciation, unabsorbed development rebate and unabsorbed investment allowance resulting in underassessment of income by Rs. 1,64,163.	95,623
9.	H 1973-74	Incorrect computation of income at the time of subsequent revision resulting in under assessment of income by Rs. 1,59,650.	92,197
10.	F 1980-81	Omission to disallow depreciation charged to the Profit and Loss Account under a different head leading to excess carry forward of unabsorbed depreciation of Rs. 39,74,000.	23,49,628 Potential)
11.	H 1982-83	Allowance of depreciation of Rs. 20,45,526 on a machine twice over resulting in under assessment of income by Rs. 20,45,526.	12,57,997 (Potential)
12.	I 1978-79	Carry forward of loss of current year including loss of Rs. 10,65,268 pertaining to the earlier assessment year, besides carrying forward of the business loss and unabsorbed depreciation of earlier year .which included the loss of Rs. 10,65,268 resulting in over computation of loss to be carried forward by Rs. 10,65,268.	6,15,192 (Potential)
13.	J 1982-83	Excess computation of loss of Rs. 10 lakhs due to disallowance of Rs. 19,27,839 on account of depreciation instead of the correct amount of Rs. 29,27,839 debited to accounts.	5,77,500 (Potential)
14.	K 1982-83	Omission to include income from "duty draw back' amounting to Rs. 8,44,864 separately resulting in excess computation of loss by Rs. 8,44,864.	5,62,890 (Potential)
15.	L 1981-82	Excess carry forward of unabsorbed depreciation of Rs. 5,72,746 due to allowance of expenditure of the same amount twice over the inadequacy of the gross profit as worked out by the assessing officer to adjust the depreciation admissible.	3,69,421 (Potential)
16.	E 1982-83	Excess allowance of depreciation of Rs. 4,45,304 in the statement attached to assessment order resulting in over assessment of loss by Rs. 4,45,304.	2,73,86 0 (Potenti al)
17.	M 1983-84	Omission to add back depreciation amounting to Rs. 1,16,533 resulting in excess computation of loss by Rs. 1,16,533.	65,695 (Potential)
18.	G 1980-81	Omission to consider correct cost of acquisition of bonus shares resulting in excess computation of capital loss and excess carry forward of the same by Rs. 14,90,571.	5,96,228 (Potential)
19.	N 1982-83	Omission to add depreciation of Rs. 5,09,088 debited to accounts resulting in excess computation of net loss by Rs. 5,09,088 to be carried forward to the subsequent year.	2,34,817 (Potential)
20.	N 1982-83	Incorrect adoption of net loss as Rs. 5,85,600 instead of Rs. 3,09,008 resulting in excess carry forward of loss of Rs. 2,76,592.	1,55,928 (Potential)

Eight out of the 20 companies were assessed by Inspecting Assistant Commissioner (Assessment).

The Ministry of Finance have accepted the mistakes in thirteen cases and their comments in respect of the other cases are awaited (December 1986).

2.07 *Application of incorrect rate of tax*

Adoption of incorrect rate of tax is another common mistake. A few illustrative cases are given in the following paragraphs.

Under the provisions of the Finance Acts, as applicable to the assessment years 1975-76 to 1982-83 the income of the companies are charged to tax at the following rates.

In the case of a domestic company

1. Where the company is a company in which the public are substantially interested.

   Total taxable income upto :

   (A) Rs. 1 lakh — 45 per cent

   (B) Above Rs. 1 lakh — 55 per cent

2. Where the company is a company in which the public are not substantially interested.

   (i) in the case of industrial company.

   For assessment year 1975-76

   (a) on so much of total income as does not exceed Rs. 2,00,000. — 55 per cent

   (b) on the balance, if any, of the total income. — 60 per cent

   From assessment year 1976-77 to 1982-83

   (a) where the total income does not exceed Rs. 2,00,000. — 55 per cent of the total income.

(*b*) where the total income exceeds Rs. 2,00,000.	60 per cent of the total income.
(ii) in any other case.	65 per cent of the total income.
3. In the case of a foreign company	
Royalties and fees	50 per cent.
Balance income	70 per cent.

(i) (a) Seven private non-industrial companies were taxed at the rate of 60 per cent of the total income (in three cases at the rate of 55 per cent) in six different Commissioners' charges for the assessment years 1975-76 to 1982-83, instead of at the correct rate of 65 per cent treating them as industrial companies or companies in which the public are substantially interested. Similarly, six other private industrial companies in four different Commissioners' charges were assessed to tax, for the assessment years 1976-77, 1977-78 and 1980-81 to 1982-83 at the rate of 55 per cent instead of at 60 per cent treating them erroneously as companies in which public are substantially interested. Also a foreign company deriving income for professional assistance from an Indian concern and having no agreement with the Indian concern was taxed at the rate of 50 per cent instead of at 70 per cent for the assessment years 1979-80 and 1980-81. In the case of another foreign company, technical know-how fees received from an Indian company under an approved agreement was taxed at the rate of 20 per cent (treating the "know how" fees as royalty income) for the assessment year 1982-83 instead of at the correct rate of 40 per cent applicable to fees for technical services.

The application of incorrect rate of tax in these seventeen cases resulted in short levy of tax of Rs. 25,38,194.

Of these, four companies were assessed by the Inspecting Assistant Commissioner (Assessment).

The Ministry of Finance have accepted the mistake in six cases. Their comments in respect of the other cases are awaited (December 1986).

(b) Under the provisions of Income-tax Act, 1961, where the total income of a company includes any income chargeable under the head 'capital gains' arising from any asset other than land and buildings, other than any short term capital gain, the income-tax is payable at the flat rate of 40 per cent on the long term capital gain arising from any asset other than land and buildings and at the usual rate prescribed in the Finance Act of the relevant assessment year on the remaining income including short term capital gain.

The assessment of a public limited company for the assessment year 1978-79 was completed in August 1985 on an income of Rs. 3,23,330 comprising of short term capital gain of Rs. 2,85,043 arising from any asset other than land and buildings. While computing the tax payable, the tax was incorrectly charged at the flat rate of 40 per cent on entire income including the short term capital gain though the correct rate applicable to the income from short term capital gain was 55 per cent plus surcharge at 5 per cent. This together with a minor mistake in the computation of income from dividend and sundry receipts of Rs. 1,000 resulted in short levy of tax of Rs. 51,172.

The assessment was checked by the internal audit party of the department but the mistake escaped its notice.

The Ministry of Finance have accepted the mistake.

(ii) Under the provisions of the Income-tax Act, 1961, in the case of a foreign company deriving income by way of royalty or fees for technical services from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31 March 1976 and where such agreements are approved by the Central Government, income-tax is leviable at the rate of 40 per cent of such income, while other income is charged to tax according to the rates prescribed in the annual Finance Act of the respective assessment years. Further, while computing the income by way of royalties or fees in the case of a foreign company deriving such income under agreements made after 31 March 1976, no deduction in respect of any expenditure or allowance was admissible.

A non-resident company received income by way of technical fees, royalty etc. from an Indian company in pursuance of an agreement made by the foreign company with the Indian company on 4 November 1976. In addition, the foreign company also derived income by way of dividend, interest, compensation etc. While computing the income chargeable to tax for the assessment years 1978-79 to 1981-82 in September 1981, November 1981 and November 1982, the assessee company claimed deduction for certain expenses and the assessing officer also allowed the expenses as claimed. It was also noticed that according to a decision of the Income-tax Appellate Tribunal for the assessment years 1962-63 to 1965-66, the company was allowed a deduction to the extent of 20 per cent of royalty etc., and only a portion of the technical fees and royalty was included in the total income for the assessment years 1978-79 to 1981-82. As the income was received by the company under an agreement made after 31 March 1976,

no deduction in respect of any expenditure or allowance was admissible in computing the income.

These mistakes resulted in an under-assessment of income of Rs. 68,84,993 and a short levy of tax of Rs. 25,91,483 for the four assessment years.

The Ministry of Finance have accepted the mistake.

(iii) Under the provisions of the Finance Acts applicable to the assessment years 1981-82 and 1982-83, a company in which public are not substantially interested and which is also not an industrial company, is charged to tax at the rate of 65 per cent of the total income. A closely held industrial company is, however, charged to tax at the rate of 60 per cent, if the total income exceeds Rs. 2 lakhs. Industrial company, as defined in the Finance Act, 1981, means a company which is mainly engaged in the manufacturing or processing of goods. It has been clarified by the Board in January 1986 that a company running a hotel could not be treated as an industrial company.

In the assessments of a private limited company, engaged in the business of running a hotel for the years relevant to assessment years 1981-82 and 1982-83 (assessments made in August 1984 and November 1984 respectively and both revised in appeal in June 1985) tax was levied at the rate of 60 per cent, treating the company as an industrial company. The business of running a hotel was treated by appellate authorities in orders of January 1985 to be non-industrial in nature, but this appellate decision was not given effect to while giving effect to the appellate order in June 1985. As the business of running a hotel will not make the company an industrial company, the incorrect application of rate of tax resulted in short levy of tax of Rs. 2,78,163 (including short levy of interest of Rs. 19,147).

The Ministry of Finance have accepted the mistake.

(iv) Under the provisions of the Finance Act as applicable to the assessment year 1981-82, surcharge on income-tax in the case of companies was leviable at the rate of seven and half per cent.

In the assessment of a company for the assessment year 1981-82 completed in January 1985, the surcharge on income-tax was charged at the rate of five per cent instead of at the correct rate of seven and half per cent. The incorrect application of rate of surcharge resulted in short-levy of tax of Rs. 85,865 (including short-levy of interest of Rs. 28,140).

The assessment was checked by the internal audit party of the department but the mistake escaped its notice.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) A non-resident company derived an income of Rs. 8,29,231 in assessment year 1978-79 from an Indian company. The tax due thereon was paid by the Indian company. As the taxes were paid by the Indian company, same was to be grossed up and treated as perquisites in the hands of the non-resident company and taxed as 'tax on tax' basis. In the assessment of the non-resident company completed in March 1985, while arriving at the value of tax perquisite, surcharge on income-tax was, however, worked out at 2.5 per cent of income-tax instead of at 5 per cent as prescribed in the Finance Act of 1978. The mistake resulted in a short levy of tax of Rs. 2,10,594 including interest for the late filing of the return.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.08 *Incorrect status adopted in assessment*

(i) Under the provisions of the Income-tax Act, 1961, a company is said to be a company in which public are substantially interested, if the affairs of the company or the shares carrying more than 50 per cent (60 per cent in the case of Indian company) of its total voting power were at no time, during the relevant previous year, controlled or held by five or less number of persons.

In the original assessment of an industrial company for the assessment year 1981-82 completed in March 1984, the status of the assessee was determined as a company in which public are not substantially interested. Subsequently on an application filed by the assessee in April 1984 enclosing a list of shareholders of the company, the aforesaid assessment was revised in June 1984 (further revised in January 1985), treating the company as one in which public not substantially interested. In the assessment for the assessment year 1982-83 completed in January 1985, the assessee company was again treated as widely held company. It was, however, noticed from the list of shareholders that during the relevant previous years, only five persons controlled the affairs of the company by holding more than 60 per cent of the voting rights of the company. Thus, the status of the company should have been determined as closely

held industrial company as per provisions of the Act and income charged to tax at the rate of 60 per cent as prescribed in the relevant Finance Acts. However, the department adopted the status of the company as widely held one and levied tax at the rate of 55 per cent. The mistake resulted in under-charge of tax aggregating to Rs. 4,32,931 for the two assessment years 1981-82 and 1982-83 including short levy of interest of Rs. 42,926 for short-payment of advance tax for the assessment year 1981-82.

The Ministry of Finance have accepted the mistake.

(ii) The income of a company in which the public are substantially interested suffers a lower rate of tax at the rate of 55 per cent of the total income against 60 per cent of total income in respect of closely held industrial companies. Under the Income-tax Act, 1961, a company is said to be a company in which the public are substantially interested if the equity shares in the company carrying not less than 50 per cent of the voting power had been allotted unconditionally to or acquired unconditionally by and were throughout the relevant previous year beneficially held by the public (not being a Director).

A company was formed to take over the running business of four non-resident tea companies with retrospective effect from 1 January, 1978. The company was incorporated on 1 August, 1978 as a public limited company during the previous year relevant to assessment year 1979-80. The only subscribed share capital was Rs. 140 represented by 14 shares of Rs. 10 each taken up by 14 promotees. No share-capital was issued to the public before the assessment year 1981-82. As all the shares were held by the promoter members who were to be regarded under the Companies Act, 1956 as directors during the previous year relevant to the assessment years 1979-80 and 1980-81, the company (an industrial company) should have been taxed as one in which the public are not substantially interested. But the department incorrectly applied the rate of 55 per cent treating the company as one in which public are substantially interested as claimed by the assessee instead of applying the correct rate of 60 per cent. The mistake resulted in aggregate tax undercharge of Rs. 2,02,280 in the assessment years 1979-80 and 1980-81. In addition, there was a further short levy of penal interest of Rs. 3,089 for late filing of return and Rs. 10,983 for non-submission of estimate of advance tax in the assessment year 1979-80.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Under the Incomt-tax Act, 1961, a company which is treated as one in which the public are substantially interested is subjected to a lower rate of tax. To be so treated, the company should not be a private company and its equity shares should be listed in a recognised stock exchange in India or its affairs should not, at any time during the relevant previous year, have been controlled by five or less persons.

In the case of an industrial company, the assessment for the assessment year 1981-82, was completed in July 1984, on a taxable income of Rs. 33,07,730 adopting its status as a company in which the public are substantially interested and tax was levied accordingly. Audit scrutiny revealed in December 1985 that during the relevant previous year the affairs of the company were controlled by less than five persons. The status of the company was, therefore, required to be taken as one in which the public are not substantially interested and subjected to the higher rate of tax. The adoption of incorrect status resulted in short levy of tax of Rs. 1,64,815.

The assessment was checked by the internal audit party of the department but the mistake escaped its notice.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) Under the provisions of the Income-tax Act, a company is treated as one in which public are substantially interested if, *inter alia*, the shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) were during the relevant previous year, freely transferable by the holder to the other members of the Public.

A domestic company dealing in textiles was treated as a company in which public are not substantially interested for and upto the assessment year 1982-83 by the assessing officer. For the assessment year 1983-84, the company was assessed as a company in which public are substantially interested on the assessee's claim that the share holding of the major groups of five persons was less than fifty per cent, *viz.* 470 out of 1,000 shares, and the shares in the company were during the previous year freely transferable by the holder to the members of the public. Audit scrutiny revealed (February 1984) that Articles 5 and 6 of the Articles of association adopted at the time of registration of the company in 1975-76 which contained prohibitive provision regarding the transfer of shares and which was within the absolute discretion of the Directors (without any right of appeal) were, however, not amended and were in force for the previous year relevant to the

assessment year 1983-84. As one of the essential conditions regarding free transferability of the shares was not satisfied, the assessee company should have been treated as a company in which the public are not substantially interested. The incorrect status adopted in the assessment for the assessment year 1983-84 resulted in a short levy of tax of Rs. 1,26,290.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

Incorrect computation of business income

Under the provisions of Income-tax Act, 1961 any expenditure laid out or expended wholly and exclusively for the purpose of business is allowable as deduction in computing the business income of an assessee, provided the expenditure is not in the nature of capital or personal expenses of the assessee.

Some instances of mistakes noticed in the computation of business income in the case of companies and corporations are given in the following paragraphs.

2.09 *Incorrect exemption from tax allowed to a company set up in Free Trade Zone*

Under the provisions of the Income-tax Act, 1961, effective from 1 April 1981, profits and gains derived from an industrial undertaking set up in any free trade zone is exempt from tax for a period of five successive assessment years reckoned from the initial assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things subject to the fulfilment of certain prescribed conditions. The conditions, *inter alia,* prescribed that (i) the industrial undertaking should not have been formed by the splitting up or reconstruction of a business already in existence, and (ii) the industrial undertaking should not have been formed by the transfer to the new business of machinery or plant previously used for any purpose, though this condition is not applicable if the plant and machinery transferred to the new business did not exceed 20 per cent of the total value of the machinery or plant used in the new business. The Act also provides that in the case of an industrial undertaking in any free trade zone which had begun to manufacture or produce articles or things during any of the previous years relevant to assessment years 1977-78 and 1980-81, the assessee may, at his option, claim tax exemption for the unexpired period of five years after the assessment year 1980-81.

A company engaged in the business of processing geological data on computers and producing field maps claimed exemption from tax in respect of the income amounting to Rs. 7,20,857 relating to the previous year relevant to assessment year 1981-82, on the ground that the goods were produced for the first time in the "Free Trade Zone" in Bombay in the previous year relevant to the assessment year 1977-78. The assessee contended that the concerned authorities had allotted the necessary industrial shed in the free trade zone in the year 1976-77 relevant to the assessment year 1977-78. In the assessment for the assessment year 1981-82 completed in March 1984, the assessing officer accepted the claim and assessed the company on 'nil' income. Audit scrutiny revealed that the company was incorporated in January 1974 and it was carrying on its activities outside the Free Trade Zone and had filed returns of income for assessment years 1975-76, 1976-77 and 1977-78 and the losses pertaining to those years were allowed to be adjusted in assessment year 1980-81. The assessee had thus merely transferred its existing buisness from outside the Free Trade Zone to the premises inside the Free Trade Zone. As the company had started its manufacturing activities in the previous year relevant to the assessment year 1975-76 and not in the previous year relevant to assessment year 1977-78 and as the company had only shifted its business already in existence by making further additions to machinery, the company was not entitled to the benefit of the exemption provided under the Act. The incorrect grant of tax exemption resulted in non-levy of tax of Rs. 6,71,206 inclusive of interest for late filing of income-tax return and short estimate of advance tax.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.10 *Incorrect exemption of business income of a charitable trust*

Under the provisions of the Income-tax Act, 1961, the income from property held under trust wholly for charitable purposes is exempt to the extent to which the income is applied for such purposes in India and also any income not exceeding twenty-five per cent of the income from such property accumulated or set apart for application to such purposes in India However, the income of a charitable trust does not qualify for exemption where the income of the trust enures directly or indirectly for the benefit, among others, to the author of the trust or founder of the institution or one who has made a substantial contribution to the trust. The Act further stipulates that the income is deemed to have been used or applied for the benefit of the above persons if any part of the income or property of the trust is or continues to be lent to the above persons for any

period during the previous year without either adequate security or adequate interest or both and such a transaction will result in the forfeiture of the exemption. The Act also lays down that where the aggregate of the funds of the trust or institution invested in a concern in which any of the above mentioned persons has substantial interest exceeding five per cent of the capital of the concern, then such income will be taxable.

In the case of a scientific research association registered under the Companies Act, the income-tax returns for the assessment years 1981-82 to 1983-84 were filed by the assessee company claiming its income as exempt on the ground of being a charitable institution registered with the Commissioner of Income-tax. In the assessments made in October and December 1983, these deductions were allowed by the Income-tax Officer and income was computed as 'nil' allowing the benefit of the 25 per cent accumulation statutorily provided for in the Income-tax Act. It was seen from the accounts of the Trust that the main source of income was from its investment amounting to Rs. 50 lakhs in the debentures of three private limited companies carrying lower rate of interest than the prevailing rate offered for debentures by other companies. The Auditors of these companies had certified that investment in debentures exceeded 5 per cent of the capital of the companies in which the settlors and the Trustees had substantial interest. The income, thus not being applied to the purpose of the trust, the same was required to be taxed. After allowing administrative expenditure, the taxable income worked out to Rs. 3,54,610, Rs. 3,21,690 and Rs. 3,34,750 for the assessment years 1981-82, 1982-83 and 1983-84 respectively. Tax leviable of Rs. 6,85,135 on these incomes was, however, not levied.

The Ministry of Finance have accepted the mistake.

2.11 *Incorrect allowance of expenditure on scientific research*

Under the Income-tax Act, 1961, in computing the business income of an assessee, any sum paid by him to a scientific research association, university, college or other institution for scientific research is an admissible deduction provided that such association, university, college or institution is approved by the prescribed authority.

The Act provides that in respect of any expenditure of a capital nature incurred after 31 March 1967 on scientific research related to the business carried on by the assessee the whole of such capital expenditure incurred in any previous year shall be deducted for that previous year.

(i)(a) In the case of a company while computing the business income for the assessment year 1980-81 in March 1984, out of an amount of Rs. 32,97,542 claimed by the company as expenditure on scientific research, the assessing officer disallowed an amount of Rs. 4,66,374 being advance paid by the company to the contractor of the building and allowed Rs. 28,31,168 on account of research and development expenditure. It was noticed in audit that the building for research and development (R&D) was under construction and the work was in progress and the plant and machinery for the research and development was yet to be erected. The balance sheet of the company also showed the asset as "capital works-in-progress including advances on capital account". As the amount was expended on research and development building which was under construction, it cannot be treated as amount spent on scientific research. Hence the deduction of Rs. 28,31,168 was not in order. The incorrect deduction allowed by the department resulted in under-assessment of income of Rs. 28,31,168 involving short levy of tax of Rs. 16,73,928.

Relying on a decision of an Income-tax Appellate Tribunal, the Ministry while not accepting the objection stated that the provisions of the Income-tax Act only require incurring of expenditure of capital nature on scientific research related to the business carried on by the assessee and do not require the assets to be completed and commissioned for use.

The Ministry's reply is not in order. The amount had been expended on a building which was under construction, and only after construction of the building for research purpose was complete, it could be said that expenditure had been incurred on scientific research. Till then, it was only a capital work-in-progress which was not a capital asset. Further, a capital asset is not created till the asset is constructed and is capable of being used as such. An asset of enduring advantage is not acquired till the asset is brought into existence for use by the business. Hence it cannot be said that the expenditure during construction which had not brought into existence, a physical asset and which is accounted for as capital work-in-progress would constitute expenditure on scientific research. Each assessment year being separate and independent, the allowance of expenditure of a subsequent year cannot also be allowed in an earlier assessment year.

Final reply of the Ministry of Finance is awaited (December 1986).

(b) In the assessment of an industrial company in which public are substantially interested engaged in the manufacture of coated and bonded abrasives for the assessment year 1980-81 (assessment completed in September 1983), the whole of the expenditure of Rs. 16,18,305 incurred during the previous year on the purchase of a cloth finishing plant was allowed as claimed by the assessee. Audit scrutiny (September 1984) revealed that there was no evidence to show that the assessee had a research and development wing and that the expenditure incurred on the cloth finishing plant was exclusively for the purpose of the business of the assessee. As such, the entire expenditure was required to be disallowed. Omission to do so resulted in under-assessment of income by Rs. 16,18,305 leading to a short levy of tax of Rs. 9,56,827.

The assessment was checked by the internal audit party of the department but the mistake escaped its notice.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) In the income-tax assessment of a widely held company for the assessment year 1981-82 completed in July 1984, a deduction of Rs. 15,00,585 was allowed towards expenditure on research and development which included a sum of Rs. 7,57,532 being the capital cost of the buildings. It was noticed in audit (May 1985) that a sum of Rs. 3,00,285 included in the sum of Rs. 7,57,532 had already been allowed as a deduction in the previous year relevant to the assessment year 1980-81 towards expenditure on scientific research. The amount of Rs. 3,00,285 was, therefore, required to be disallowed in the assessment for the assessment year 1981-82. The omission to do so resulted in excess allowance of deduction of Rs. 3,00,285 and a consequent short levy of tax of Rs. 1,77,542. The consequential additional surtax leviable is about Rs. 30,686.

The Ministry of Finance have accepted the mistake.

(ii) The Act was amended in 1974 to provide that where the assessee pays any sum to a scientific research association, university or college or other institutions to be used for scientific research undertaken under a programme approved by the prescribed authority having regard to the social, economic and industrial needs of India, a deduction of an amount equal to one and one-third times of the sum so paid shall be allowed. By an amendment of the Act by the Finance (No. 2) Act, 1980, effective from 1 September 1980 any expenditre (not being capital expenditure, incurred on the acquisition of any land or building, or construction of any building) by an assessee on scientific research undertaken under an approved programme by the prescribed authortiy, a deduction equal to one and one-fourth times of the expenditure certified by the prescribed authority to have been so incurred during the previous year shall be allowed. These deductions have, however, been discontinued with effect from 1 April 1984 by an amendment to the Act by the Finance Act, 1984.

In the income-tax assessment of a widely held company for the assessment year 1982-83, completed in March 1985, a weighted deduction of Rs. 2,17,449 was allowed towards expenditure on research and development. However, there was nothing on record to indicate that approval of the prescribed authority for undertaking the specific research programme had been obtained or that the assessee company had contributed any amount to any institution as provided under the Act. In the absence of such evidence, the weighted deduction of Rs. 2,17,449 allowed was not in order and resulted in excess carry forward of loss of Rs. 2,17,449 for the assessment year 1982-83, with a potential tax effect of Rs. 1,22,587.

The Ministry of Finance have accepted the mistake.

(iii) The Act further provides that the actual cost of expenditure means the actual cost to the assessee reduced by that portion of the cost thereof, as has been met directly or indirectly by any other person or authority.

In the assessments of a company for the assessment years 1980-81 and 1981-82 (assessments completed in August 1983, revised in February 1984 and September 1984), the department allowed a deduction of the entire capital expenditure on scientific research amounting to Rs. 31,24,247 and Rs. 5,64,648 respectively without reducing therefrom the amounts of grants of Rs. 4,43,000 and Rs. 3,44,000 received by the assessee company from Government during the relevant previous years. This resulted in excess carry forward of unabsorbed depreciation of Rs. 4,43,000 in the assessment year 1980-81 and excess carry forward of unabsorbed expenditure on scientific research of Rs. 3,44,000 for the assessment year 1981-82 involving potential tax effect of Rs. 4,65,314.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.12 Mistakes in the grant of export markets development allowance

The Income-tax Act, 1961, as it stood prior to its amendment by the Finance Act, 1983, provided for

an export markets development allowance to resident assessee engaged in the business of export of goods outside India or in providing services or facilities outside India. A domestic company was entitled to a deduction on account of this allowance from the income assessed, under the head 'profit and gains of business or profession' at one and one-third times of qualifying expenditure as prescribed in the Act. Widely held domestic companies were entitled to a deduction at one and one-half times of the qualifying expenditure incurred during the period from 1 March 1973 to 31 March 1978. Expenditure incurred after 31 March 1978 was not entitled to the weighted deduction, unless the domestic company was engaged in the business of export of goods either as a small scale exporter or holder of an Export House Certificate or in the business of provision of technical know-how or rendering of services in connection with the provision of technical know-how to persons outside India. The Act was amended by the Finance (No. 2) Act, 1980, declaring that any expenditure which is in the nature of purchasing and manufacturing expenses ordinarily debitable to the trading and manufacturing account and not to the profit and loss account shall not qualify for weighted deduction. Expenditure incurred by the assessee on items like carriage, freight, and insurance of goods whether in India or outside did not qualify for weighted deduction. It was judicially held that commission paid to agents in consideration of procuring orders by the agent for its principal is not eligible for weighted deduction.

In the case of 16 companies assessed in six different Commissioners' charges for the assessment years 1976-77 to 1983-84, due to incorrect application of the above provisions of the Act, export markets development allowance of Rs. 1.60 crores was erroneously allowed on expenditure which did not qualify for the weighted deduction. This resulted in undercharge of tax of Rs. 48,28,816 in the case of 12 companies and carry forward of losses with a potential tax effect of Rs. 41,75,227 in the remaining four cases. The details of the cases are given below :

Sl. No.	C. I. T./ Assessment year	Nature of mistake.	Tax effect (Rs.)
1.	A B C D 1976-77 1978-79 to 1983-84	Weighted deduction of Rs. 74,59,876 was wrongly allowed on commission paid to foreign and Indian agents in the cases of 11 companies. The deduction includes expenditure of Rs. 10,500 on account of payment of hotel bills in India in one case.	40,80,970 and potential tax effect of Rs. 3,95,568 in 3 cases.
2.	B 1980-81 to 1982-83	Weighted deduction of Rs. 60,11,354 was wrongly allowed on direct co sts in the nature of purchase and manufacturing expenses directly debitable in the works and manufacturing accounts of the company engaged in the execution of contract work of supplying and erecting electrical transmission towers in a foreign country.	33,88,901 (Potential)
3.	E 1980-81	Weighted deduction of Rs. 6,05,827 allowed twice while considering the salary paid to export department of the company—once separately towards "export department salary" and again 75 per cent of the "salary and staff expenses."	3,90,758 (Potential)
4.	A 1977-78	Weighted deduction was allowed in full on an expenditure of Rs. 7,39,066 instead of allowing at 50 per cent thereof amounting to Rs. 3,69,533.	2,13,405
5.	F 1983-84	A weighted deduction of Rs. 9,967 only was admissible to a company on its expenditure incurred on travelling abroad in connection with export trade against which weighted deduction of Rs. 2,39,093 wrongly allowed.	1,40,911
6.	C 1980-81	Weighted deduction of Rs. 5,35,359 on warehouse charges, insurance charges and commission paid to agents not qualifying for weighted deduction wrongly allowed.	1,14,744

The assessments of six of these companies were made by the Inspecting Assistant Commissioners (Assessment). The internal audit party of the department checked the asessments in 2 cases, but the mistake was not noticed by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.13 **Incorrect grant of agricultural development allowance**

Under the provisions of the Income-tax Act, 1961, where any company engaged in the manufacture of any article or thing, which is made from any product of agriculture, has incurred after 29 day of February 1968, whether directly or through an association or body which has been approved for this purpose by the prescribed authority, any expenditure on the provision of any goods, services or facilities specified in the Act, to a person who is a cultivator, grower or a producer of such product in India, the company shall be allowed a deduction of a sum equal to one and

one-fifth times of the amount of such expenditure incurred during the previous year.

(i) An assessee company was allowed weighted deduction of Rs. 2,63,785, Rs. 3,88,134 and Rs. 2,97,194 for the assessment years 1980-81, 1981-82 and 1982-83 (assessments made in March 1985, August 1984 and March 1985) respectively on account of agricultural development allowance. It was seen in audit in September 1985 that the expenditure on which the weighted deduction was allowed represented the expenditure incurred by the assessee company on its own establishment, and not on the provision of any goods, services or facilities to a cultivator, grower or producer as required under the Act. The irregular allowance of weighted deduction resulted in under-assessment of income aggregating to Rs. 9,49,113 and a short levy of tax of Rs. 5,52,937 for the assessment years 1980-81 to 1982-83.

The department has accepted the objection stating that remedial action had been taken for the assessment year 1980-81 and action in respect of the assessment years 1981-82 and 1982-83 was in progress.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In their instructions issued in July 1968, the Central Board of Direct Taxes have clarified that expenditure in the form of cash assistance to cultivators, growers or producers will not qualify for the weighted deduction.

In the assessment for the assessment year 1982-83 (completed in March 1985) of a widely held industrial company, a weighted deduction of Rs. 11,16,189 was allowed by the assessing officer on account of agricultural development allowance on cane development expenses of Rs. 55,80,944 which included a sum of Rs. 41,54,836 received by the assessee company on account of incentive paid to cane growers. In terms of the Board's instructions of July 1968, the amount of Rs. 41,54,836 being the incentive payment to cane growers did not qualify for the allowance of weighted deduction. The incorrect allowance of weighted deduction on the amount resulted in under assessment of income of Rs. 8,30,967 and an undercharge of tax of Rs. 4,68,457.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.14 Incorrect deduction of payment made for rural development programme

Under the Income-tax Act, 1961, where an assessee incurs any expenditure by way of payment of any sum to an association or institution, which has as its object, the undertaking of any programme of rural development to be used for carrying out any programme of rural development approved by the prescribed authority and the training of persons for implementing programmes of rural development, the same was allowed as a deduction. The deduction shall not be allowed unless such association or institution is also approved in this behalf by the prescribed authority. As per the guidelines issued by the Government in September 1977, particulars of rural areas which qualify as a rural area should be given by the association, based on which approval for specific programmes are to be given by the competent committee constituted for the purpose.

(i) In the assessment of a State Transport Corporation, for the assessment year 1981-82 completed in August 1984, deduction of an amount of Rs. 20 lakhs was allowed towards payment made by the assessee company in the previous year ended 31 March 1981 to an approved association for carrying out a programme of rural development approved by the prescribed authority. It was noticed in audit (June 1985) that the sanction issued by the Committee was subject to the following conditions.

1. The areas sought to be covered by the programme should qualify as "Rural area" within the meaning of the provisions of the Act authorising the allowance of expenditure towards rural development programme.
2. The programme should be completed by 31 March 1982.

There was, however, nothing on record to prove that these conditions had been fulfilled and in the absence of the information, the deduction allowed was not in order and resulted in under-assessment of income involving a potential tax effect of Rs. 11,82,500.

The assessing officer contended that the deduction was in accordance with the approval of the prescribed authority and the conditions stipulated by the prescribed authority would apply only to the donee-association and the assessee had no control over the matter. The reply is not in order since the identification of rural area is a pre-requisite before the sanction is issued and the other conditions prescribed by the competent authority are also to be complied with before the date of assessment. As the approval accorded was subject to certain conditions, the eligibility of the concession will arise only after the conditions are satisfied and as the same had not been

proved, the payment made by the assessee company would not qualify for the deduction for the assessment year 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the assessment of a company for the assessment year 1983-84 completed in January 1985, the assessee was given deduction for a sum of Rs. 1 lakh being donation made to scientific research centre. It was noticed in audit in November 1985 that the scientific research centre was neither included in the list of institutions approved by Government nor the assessee had obtained the prescribed certificate from the institution and hence the deduction was not allowable to the company while computing income. The irregular deduction allowed resulted in short levy of tax of Rs. 66,625.

The internal audit party of the department checked the assessment but the mistake escaped its notice.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.15 Incorrect allowance of preliminary expenses

Under the provisions of the Income-tax Act, 1961, where an assessee being an Indian company or other resident assessee incurs any preliminary expenses being expenditure before the commencement of its business or in connection with the extension of its industrial undertaking, the assessee shall in accordance with the provisions of the Act, be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten assessment years beginning immediately after the business commences or extension of business is completed. The preliminary expenses are not, however, allowable for any previous year in which business has not commenced or the extension programme is not completed. The allowable expenditure is to be limited to 2½ per cent of the cost of project or of the capital employed.

(i) A private limited company engaged in job works for manufacture of electrical insulators, launched an expansion programme and began importing certain machinery since 1973-74. The installation of machinery was not completed till the previous year relevant to assessment year 1984-85. During the previous year relevant to the assessment year 1984-85, the assessee company claimed a deduction of Rs. 5,37,176 being part of incidental expenditure incurred during construction/expansion of business and the same was allowed by the assessing officer in the assessment made in December 1984. Since neither the installation of machinery was complete, nor the expansion of industrial undertaking was over, the deduction allowed was not in order. The incorrect deduction of Rs. 5,37,176 for the assessment year 1984-85 resulted in excess carry forward of loss to the same extent with a potential tax effect of Rs. 3,38,421.

The case was seen by the special audit party of the department, but the mistake was not detected by it.

The Ministry of Finance have contended that the provisions relating to amortisation of preliminary expenditure in the Act do not apply to the facts of the case as there is neither commencement of any business nor setting up of a new industrial unit and none of the expenditure incurred falls under the scheme of such amortisation. According to the Ministry, the expenditure was allowable as revenue expenditure incurred for the purpose of the business.

Local verification of the assessment records however revealed that the assessment had been set aside by the Commissioner of Income-tax stating that the expenditure incurred on the erection of building, purchase of plant and machinery and incidental expenditure thereof is all capital expenditure for the purpose of extention of company's business and not revenue expenditure. Further developments are awaited.

(ii) A public limited company was incorporated in August 1982 and during the previous year relevant to the assessmest year 1983-84 (year ending 31 March 1983), the total investment of the company was Rs. 20 lakhs. The company incurred preliminary expenses of Rs. 1,05,336 during the year and it was also allowed to capitalise a sum of Rs. 10,000 on account of preliminary expenses in the assessment made in September 1983. The assessing officer allowed the expenditure of Rs. 1,05,336 in full and also allowed a sum of Rs. 1,000 being one-tenth of the capitalised value of the expenditure. As the capital employed was Rs. 20 lakhs, the expenditure allowable as preliminary expenses should have been restricted to 2½ per cent of the capital employed. On this basis, the company was entitled to a deduction of Rs. 5,000 only being 1/10th of said 2.1/2 per cent. Omission to limit the allowance to Rs. 5,000 resulted in excess allowance of deduction amounting to Rs. 1,01,336 and incorrect carry forward of loss of Rs. 46,865.

The Ministry of Finance have accepted the mistake.

2.16 Mistake in the allowance of ex-gratia or ad-hoc payments

Under the Income-tax Act, 1961, bonus paid to employees covered by the Payment of Bonus Act, 1965 in excess of the limits prescribed therein or any ex-gratia payment in addition to the bonus paid under the Act is not an admissible expenditure. The Central Board of Direct Taxes issued instructions in December 1980 clarifying that such additional payment cannot be treated as any other expenditure incurred wholly and exclusively for the purpose of business and resort cannot, therefore, be had to any other provision of the Income-tax Act to claim deduction for payments in excess of what is admissible under the Bonus Act.

(i) During the previous year relevant to the assessment year 1981-82, a jute company made payment of bonus of Rs. 37,20,988 calculated at 8.33 per cent of the salary of its employees. The company also made an ad-hoc payment of Rs. 22,20,834. The ad-hoc payment made in pursuance of a tripartite agreement of October 1980 between workers of the jute mills and State Government covered the accounting years 1978 and 1979. It was noticed in audit in August 1985 that the minimum statutory bonus at 8.33 per cent of salary for 1978 and 1979 amounting to Rs. 28,66,966 and Rs. 34,12,403 had been allowed as deduction in assessment years 1979-80 and 1980-81. The company was incurring loss since 1970-71 and had no allocable surplus during the year to cover the ad hoc payment. The ad hoc payment over and above the statutory liability for bonus was, therefore, not allowable in computing the income of the assessee. However, while computing income for the assessment year 1981-82 in August 1984, the ad-hoc payment and statutory bonus claimed as deduction by the company was allowed by the department. The irregular allowance of ad-hoc payment resulted in under assessment of income by Rs. 22,20,834 with consequent tax undercharge of Rs. 18,38,268 inclusive of interest of Rs. 5,25,200 for short payment of advance tax for the assessment year 1981-82.

The objection was communicated to the department in August 1985. The Income-tax Officer has not accepted it on the ground that the ad-hoc payment was not bonus but expenditure laid out wholly and exclusively for the purpose of the business admissible under the general provisions of the Income-tax Act. The reply of the Income-tax Officer was not in conformity with the Act and the Board's instructions of December 1980.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) During the previous year relevant to the assessment year 1980-81, a non-resident banking company paid an amount of Rs. 76,70,213 towards bonus for the year 1975 as per agreement entered into in September 1975 with the employees' Federation. The Inspecting Assistant Commissioner (Assessment) while completing assessment for 1980-81 in September 1983, disallowed a sum of Rs. 20,53,061 and admitted the balance amount of Rs. 56,17,152 as deductible bonus for 1975 on the basis of a similar amount allowed as bonus for 1978. It was noticed in audit that the ex-gratia payment in lieu of bonus for 1975 amounting to Rs. 19,08,662 was made by the bank in the year 1976 which was allowed as deduction in the relevant assessment year and the assessing officer omitted to add back the amount. The omission resulted in excess allowance of bonus of Rs. 19,08,662 with a consequent short levy of tax of Rs. 14,36,238 for the assessment year 1980-81.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) During the previous year relevant to the assessment year 1982-83, a private limited company made an ex-gratia payment of Rs. 1,81,243 to its employees in addition to the bonus payment of Rs. 2,19,014 admissible under the Payment of Bonus Act. While computing the assessment for the assessment year 1982-83 in March 1985, the ex-gratia payment was allowed to be deducted by the assessing officer as claimed by the assessee. As the ex-gratia payment over and above the statutory liability for bonus, was not allowable in computing the income, the incorrect deduction resulted in under-assessment of income of Rs. 1,81,243 involving short levy of tax of Rs. 1,52,993 including interest for belated filing of return and short payment of advance tax.

The Ministry of Finance have accepted the mistake.

(iv) The Director's Report of a company for the year ended 31 March 1981 corresponding to the assessment year 1981-82 showed that the company had to pay Rs. 17.34 lakhs during the relevant previous year at the rate of 6.17 per cent of wages as extra and ad hoc payment under a tripartite agreement, in addition to the statutory minimum bonus of 8.33 per cent as per Bonus Act of 1965. As the ad hoc payment of bonus of Rs. 17.34 lakhs was over and above the statutory liability of bonus payable under the Act, the deduction of Rs. 17.34 lakhs allowed in the assessment of the company for the assessment year 1981-82 (assessment made in December 1983) was not in order.

The omission to disallow the same resulted in under-assessment of business income by Rs. 17.34 lakhs with consequent excess carry forward of loss by the same amount for the assessment year 1981-82 involving a potential tax effect of Rs. 10,25,227.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) During the previous year relevant to the assessment year 1981-82, a company made statutory payment of bonus at 8.33 per cent of the salary of its employees. The company also made ad hoc payment of bonus of Rs. 1,45,595 to its employees during the year. In the assessment made in February 1984, the ad hoc payment of bonus was allowed as business expenditure. As the ad hoc payment of bonus was over and above the statutory liability for bonus, the ad hoc payment was not allowable. The omission to disallow the claim resulted in excess computation of carry forward of business loss of Rs. 1,45,595 for the assessment year 1981-82 involving potential tax effect of Rs. 86,082.

The objection communicated to the department in September 1985 was not accepted by them contending that the ad hoc payment was made as a result of an agreement between the management and the workers. The department's reply is not in conformity with the Board's instructions of December 1980.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.17 *Incorrect allowance of bad debt*

Under the Income-tax Act, 1961, all income accruing or arising to an assessee in India in a previous year relevant to the assessment year is includible in the total income of the assessee. The Act further provides that the amount of any debt or part thereof or any recoverable dues which is established to have become bad in the previous year and written off in the accounts shall be allowed as deduction in computing the business income of the assessee.

(i) In the assessment of a tea company for the assessment year 1981-82 completed in March 1985, the value of the closing stock was reduced by Rs. 3,55,636 being the value of 26,800 kgs. of tea lying with the broker was written off on the ground that its recovery was doubtful. Audit scrutiny (October 1985), however, revealed that a scheme of compromise between the broker and its creditors had been pending before the High Court and the matter was not settled during the previous year and the value of stock of tea in question had thus not been established to have become really a bad debt. The allowance of the claim by reducing the closing stock as bad debt during the previous year was, therefore, not in order and had resulted in under assessment of business income of Rs. 1,42,254 (40 per cent of Rs. 3,55,636) with a consequent undercharge of tax of Rs. 98,644 in the assessment for the assessment year 1981-82 (including undercharge of surtax of Rs. 14,537).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) A company was allowed deduction on account of bad debt for an amount of Rs. 95,752 during the previous year relevant to the assessment year 1982-83 (assessment made in March 1985) accepting the assessee's contention that no legal action for recovery of dues could be taken in consideration of the maintenance of cordial business relations with the concerned parties. There was also nothing in the assessment records to indicate that the amount due to the assessee company had actually become irrecoverable. As the amounts due had not been established to have become bad, the assessing officer should have disallowed the claim. This resulted in underassessment of income by Rs. 95,752 involving short levy of tax of Rs. 78,517.

The assessment was checked by the internal audit party of the department but the mistake escaped its notice.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) An assessee company had debited a sum of Rs. 6,92,465 in its profit and loss account for the year relevant to the assessment year 1982-83 as doubtful debts and the same was allowed as deduction by the assessing officer in the assessment made in January 1985. Since the debts had not been established to have become bad the sum of Rs. 6,92,465 was required to be added back to the total taxable income of the assessee. Failure to do so resulted in excess carry forward of depreciation to the extent of Rs. 5,47,275 (after adjusting the business loss of Rs. 1,45,190) with a potential short levy of tax of Rs. 3,10,062.

The Minisrty of Finance have accepted the mistake.

2.18 *Incorrect computation of income of a financial corporation*

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 in the computation of their taxable profits of the amount transferred by

them out of such profits to a special reserve account upto an amount not exceeding 40 per cent of their total income, as computed before making any deduction under Chapter VI A of the Act. The deduction is to be restricted to the actual reserve created in the accounts of the relevant previous year. The Central Board of Direct Taxes in their instructions issued in November 1969 and August 1979 certified that the amount of deduction allowable on this account is to be calculated by applying the specified percentage to the total income arrived at after the deduction is made.

(i) In the assessment for the assessment years 1981-82 and 1982-83 completed in September 1984 and March 1985, a State owned industrial investment corporation was allowed the aforesaid deduction at Rs. 20,81,972 and Rs. 81,55,056 respectively against the claims of Rs. 89,833 and Rs. 5,24,512 made by the assessee company. In the accounts for the previous years relevant to the assessment years 1981-82 and 1982-83, the company had actually created special reserve of only Rs. 89,770 and Rs. 5,25,000 respectively. As such the deduction should have, therefore, been restricted to the amount of the reserve actually created in the accounts for the relevant previous years. The omission to do so resulted in excess deduction aggregating to Rs. 96,22,258 for the two assessment years and total short levy of tax of Rs. 58,88,673 including withdrawal of interest of Rs. 4,09,344 paid for excess payment of advance tax.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraphs are awaited (December 1986).

(ii) In the case of a State Financial Corporation while completing the assessment in March 1985 revised in October 1985 for the assessment year 1982-83, the Inspecting Assistant Commissioner of Income-tax allowed a deduction by applying the prescribed rate of forty per cent on the gross total income before allowing the specified deduction and the deduction in respect of depreciation and expenses on issue of bond but restricted it to Rs. 74,60,060 being the amount carried to special reserve account of the relevant previous year. The deduction allowable at forty per cent of the total income (after allowing the aforesaid deductions) worked out to Rs. 53,37,748 only. The allowance of excess deduction of Rs. 21,22,312 resulted in short levy of tax (including interest) of Rs. 17,52,634 in the assessment year 1982-83.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In the assessment of a State Financial Corporation entitled to this concession for the assessment year 1981-82 (assessment made in July 1984) a special deduction of Rs. 12,00,000 being the amount not exceeding 40 per cent of the total income of Rs. 36,23,208 was allowed. It was, however, noticed in audit in March 1986 that the total income of Rs. 36,23,208 taken for determining the amount of special deduction was the income before and not after allowing the special deduction. As a result special deduction of Rs. 12,00,000 was allowed as against a sum of Rs. 10,35,200 correctly admissible. The excess deduction of Rs. 1,64,800 resulted in total undercharge of tax of Rs. 1,35,424 (including penal interest of Rs. 37,986 for non-payment of advance tax) for the assessment year 1981-82.

The Ministry of Finance have accepted the mistake.

2.19 *Omission to disallow excessive expenditure on advertisement, publicity and sales promotion*

Under the provisions of the Income-tax Act, 1961, as applicable during the period 1 April 1979 to 31 March 1981, where the aggregate expenditure incurred by an assessee on advertisement publicity and sales promotion in India does not exceed ¼ per cent of the turnover or gross receipts of the business, 10 per cent of the adjusted expenditure, where such expenditure exceeds ¼ per cent but does not exceed ½ per cent of the turn over, 12½ per cent of the adjusted expenditure and where such aggregate expenditure exceeds ½ per cent of the turnover, 15 per cent of the adjusted expenditure has to be disallowed, excepting in cases where the aggregate amount of such expenditure did not exceed Rs. 40,000. In the absence of a statutory definition of the term "sales promotion" any expenditure for effecting sales such as a sales organisation, commission paid to salesman and whatever expenses which were in connection with sales would constitute expenditure on sales promotion. The Act specifically laid down that any expenditure incurred by an assessee on advertisement in any small newspaper or in any newspaper for recruitment of personnel, the maintenance of any office or payment of salary of employees for the purpose of advertisement, publicity or sales promotion, holding of or participating in sales conference, trade fairs and publication, distribution of journals, catalogue or price lists had to be excluded from the purview of advertisement, publicity and sales promotion expenses. In other words, in view of the fact that the law itself lays down what is to be excluded, all the expenses other than those mentioned above had to be treated as constituting expenditure on advertisement, publicity

and sales promotion. Expenses on supply of free samples, commission on sales, commission paid to agents, cash discount, incentive bonus, advertisement, publicity and sales promotion are to be disallowed as prescribed in the Act.

The expression adjusted expenditure means the aggregate of expenditure incurred on advertisement, publicity and sales promotion in India as reduced by expenditure not allowable as business expenditure in the computation of business income of the assessee and further reduced by expenditure specifically excluded under the Act.

(i) In the case of a company for the assessment year 1980-81 it was noticed that apart from an expenditure of Rs. 1,43,675 debited to the relevant profit and loss account under the head "publicity and advertisement", another sum of Rs. 73,86,610 (net) was also debited on account of its sales promotion department in Calcutta. Audit scrutiny in September 1984 revealed that the aforesaid expenditure included expenses (other than salary) on medical representatives amounting to Rs. 29,20,700 and free samples of medicines provided to the doctors amounting to Rs. 19,56,983. After adjusting recovery from sister concerns on pro rata basis amounting to Rs. 15,89,978, the net expenses on account of medical representatives and free samples worked out to Rs. 32,87,705. As this expenditure was incurred on publicity and sales promotion and had exceeded ½ per cent of the turnover of the assessee, 15 per cent thereof was required to be disallowed while computing the total income of the assessee. No such disallowance was, however, made by the department while completing the assessment for 1980-81 in January 1983. The omission to do so resulted in under assessment of business income by Rs. 4,93,156 with cansequent undercharge of tax of Rs. 3,18,085 for the assessment year 1980-81.

The department justified the assessment stating *inter alia,* that the assessee was a pharmaceutical company and that expenses on medical representatives and free samples were in its regular course of business and not on sales promotion.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Four companies, assessed in a Commissioner's charge, incurred, during the previous year relevant to the assessment year 1980-81, expenditure of Rs. 22,59,219 on commission and discount on sales (Rs. 22,09,916) and advertisement, publicity and subscription (Rs. 49,303). As the aggregate expenditure on advertisement, publicity and sales promotion by each of the companies during the previous year exceeded ½ per cent of the respective turnover, 15 per cent of the above expenditure had to be disallowed in computing the business income of the companies. In the assessments for the assessment year 1980-81 made between August 1983 and March 1984, the assessing officers did not disallow the excess expenditure on this account. The omission resulted in underassessment of income of Rs. 3,24,550 involving undercharge of tax of Rs. 2,04,014.

The department has not accepted the objection, mainly on the ground that payment of commission in the course of sales cannot be deemed to constitute expenditure on sales promotion and also contended that what normally constitutes sales promotion expenses is expenditure on fashion shows, beauty contests, consumer contests, gift schemes, etc., and after excluding the expenditure incurred by the assessee-companies on sales promotion, the expenditure on advertising was within the monetary limit prescribed in the Act.

The department's contention is not acceptable. The term sales promotion has not been defined in the Act and in commercial parlance, such expenses would include all expenses incurred for promoting the sales, whether they are for effecting the sales or for prospecting development of sales and for augmenting and improving the sales. Besides the provisions in the Act provide the scope of expenditure on sales promotion by exceptions. It would not be correct to attribute to 'advertisement' and 'publicity' any narrow meaning as they are as good broad spectum words in the commercial sense as 'sales promotion' is.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) A public limited company engaged in the manufacture of textile goods, incurred an expenditure of Rs. 22,00,315 on publicity and business development in the previous year relevant to the assessment year 1980-81. As the total expenditure on publicity and business development exceeded 1/4 per cent but was less than 1|2 per cent of the gross sales of Rs. 58.08 crores, 12.1/2 per cent of such expenditure amounting to Rs. 2,75,040 was required to be disallowed. Omission to do so in the assessment of the company made in September 1983 resulted in underassessment of the company's income by Rs. 2,75,040 leading to a short levy of tax amounting to Rs. 1,62,618.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) In the case of a company, the assessments for assessment years 1979-80 and 1980-81 were completed in August 1982 and September 1983 respectively. It was seen in audit in September 1984 from the company's accounts of the previous year relevant to the assessment years 1979-80 and 1980-81, that the company had debited sums of Rs. 4,62,232 and Rs. 5,79,245 towards commission on sales paid to individuals and firms. As the commission on sales paid is for the promotion of sales, it should have been disallowed to the extent provided for in the Act. Failure to do so resulted in underassessment of income of Rs. 69,334 and Rs. 86,886 for assessment years 1979-80 and 1980-81 involving short levy of tax aggregating to Rs. 99,720.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) During the previous year relevant to the assessment year 1979-80, an assessee company incurred expenditure of Rs. 7,56,641 by way of discount paid to distributors, commission for promotion of export sales, lodging and boarding charges of customers etc. The turnover of the company for the year amounted to Rs. 5,45,67,523. In the assessment made in September 1982, the assessing officer, under the directions of the Inspecting Assistant Commissioner of Income-tax disallowed, out of the expenditure of Rs. 7,56,641, a sum of Rs. 25,000 which was in the nature of entertainment expenditure. As the remaining expenditure of Rs. 7,31,641 was in respect of sales promotion, advertisement, publicity etc., and had exceeded the prescribed percentage of the turnover of the company, 15 per cent of such expenditure was required to be disallowed by the assessing officer in computing the business income of the company. However, this was not done. The omission to disallow the excessive expenditure resulted in underassessment of income by Rs. 1,09,746 involving short levy of tax of Rs. 69,140.

The department has accepted the objection in principle.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.20 *Incorrect allowance of expenditure on guest house*

Under the Income-tax Act, 1961, no deduction is allowed in respect of any expenditure incurred by an assessee after 28 February 1970 on the maintenance of any residential accommodation in the nature of guest house. The Act was amended retrospectively with effect from 1 April 1979 by the Finance Act, 1983 to include any accommodation by whatever name called, arranged by the assessee for the purpose of providing lodging or boarding and lodging to any person (including any employee or company Director) on tour or visit to the place at which such accommodation is situated.

(i) In the assessments of a company for the assessment years 1979-80, 1980-81 and 1981-82 (assessments made in August 1982, September 1983 and September 1984 respectively) amounts of expenditure of Rs. 8,21,883, Rs. 9,02,458 and Rs. 7,49,452 respectively incurred towards transit flat expenses were allowed as deduction. The expenditure being in the nature of maintenance of guest houses was not an admissible deduction. It was noticed in audit that similar expenditure was disallowed by the department in the assessment for the assessment year 1982-83. The incorrect allowance for the assesment years 1979-80 to 1981-82 resulted in an aggregate underassessment of business income by Rs. 24,73,793 with consequent undercharge of tax of Rs. 14,51,328 in the three assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) A public limited company debited in its accounts for the previous year relevant to the assessment years 1978-79, 1979-80 and 1980-81, sums of Rs. 57,221, Rs. 2,07,080 and Rs. 1,54,077 respectively, being expenditure incurred on the maintenance of a guest house. Since the expenditure on guest house is not an allowable expenditure in the computation of business income, the same was required to be added back and brought to tax. In the assessments made in February and March 1983, the Inspecting Assistant Commissioner (Assessment), however, allowed the expenditure. This resulted in underassessment of income of Rs. 4,18,378 involving a short levy of tax of Rs. 2,43,728 for the three assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In the assessments of a tea company for the assessment years 1980-81 and 1981-82, assessments made in September 1984 and August 1984 respectively, expenditure of Rs. 3,06,835 and Rs. 1,42,366 respectively incurred on the maintenance and machinery repair charges of transit flats were allowed as deduction. The above expenses being in the nature of maintenance of guest house were not admissible as a deduction. The incorrect allowance resulted in under assessment of business income by Rs. 1,22,734

and Rs. 56,946 (40 per cent of Rs. 3,06,835 and Rs. 1,42,366 respectively) in the assessment years 1980-81 and 1981-82 with consequent undercharge of tax aggregating to Rs. 1,19,676 in the two years (including excess payment of interest of Rs. 13,440 in the assessment year 1981-82).

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) In computing the business income of an assessee company for the assessment years 1979-80 and 1980-81 (assessments made in March 1982 and August 1983 revised in February 1984) expenditure of Rs. 1,56,631 and Rs. 41,000 incurred by the assessee company on the maintenance and hiring charges of the guest house were allowed as deductions. Since no deduction in respect of any expenditure incurred on the maintenance of guest house was admissible after 28 February 1970, the incorrect deductions allowed resulted in under assessment of business income by Rs. 1,56,631 and Rs. 41,000 and an aggregate excess carry forward of unabsorbed depreciation of Rs 1,97,631 for the two assesment years 1979-80 and 1980-81 involving potential tax effect of Rs 1,16,849.

The Ministry of Finance have accepted the mistake.

(v) A company in its return for the assessment year 1982-83 claimed an amount of Rs. 1,78,710 as being inadmissible by way of expenditure on "guest house". In the assessment completed in February 1985, the Inspecting Assistant Commissioner (Assessment) determined the amount of inadmissible expenditure on "guest house" as Rs. 2,67,315. However, in the final computation of total income, an amount of Rs. 1,78,710 only was added back instead of the correct amount of Rs. 2,67,315. The mistake resulted in under assessment of income of Rs. 88,605 and a short levy of tax of Rs. 67,951 including interest for late filing of return and under estimate of advance tax.

The Ministry of Finance have accepted the mistake.

2.21 Omission to disallow the value of perquisites

Under the Income-tax Act, 1961, where an assessee incurs any expenditure in respect of payment to a relative or to an associate concern, so much of the expenditure as is considered by the assessing officer to be excessive or unreasonable having regard to the fair market value of the goods for which payment is made or for any other services rendered, shall not be allowed as deduction. 'Associate concern' means a concern which has a substantial interest in the business of the assessee or in which the assessee or any relative has a substantial interest.

(i)(a) During the previous year relevant to the assessment year 1975-76, a closely-held company, purchased from another closely-held company, gripe water at the rate of Rs. 218.90 per gross (details of quantity purchased not available) and sold 16,588.5 gross to another closely-held company. The assessment of the assessee company for the assessment year 1975-76 was completed in August 1982 (revised in March 1983) accepting the purchase price as returned. During local audit conducted in June 1983, it was noticed that the seller company had subsequent interest in the assessee company and that another closely connected concern of the assessee company purchased during the same period from the same party gripe water at a lower rate of Rs. 189.09 per gross. Consequently the excess payment at Rs. 29.81 per gross of gripe water in respect of the total quantity purchased by the assessee company during the accounting year relevant to the assessment year 1975-76 from the other company with substantial interest in the assessee company would require to be disallowed. In the absence of details regarding total purchase, the disallowance was required to be made to the extent of Rs. 4,94,503 in respect of at least 16,588.5 gross sold by the assessee company during the accounting year relevant to the assessment year 1975-76, the consequential additional tax demand being Rs. 3,11,535.

The department stated that no remedial action was possible for the assessment year 1975-76 since the original assessment order was passed in September 1977 and the revision in March 1983 was made only to give effect to the orders of Commissioner of Income-tax. However, it is found that

(i) in respect of the assessment year 1975-76, based on a request made by the department (December 1984), the Central Board of Direct Taxes had given their approval in February 1985 for reopening the assessment to disallow the sum of Rs. 4,93,503, and that

(ii) in respect of the assessment year 1976-77 based on a request from the assessing officer, the Commissioner of Income-tax had given approval for reopening the assessment to disallow a similar sum of Rs. 4.90 lakhs as estimated by the assessing officer in the absence of details regarding the price paid

by the other closely associated company and that relevant notice for this year was served on the assessee in January 1985.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the assessment of a public company for the assessment years 1979-80 and 1980-81 completed in June 1981, the assessee's claim of reimbursement of service charges of Rs. 1,48,587 and Rs. 1,44,171 to its holding company for earning warehouse and storage receipts of Rs. 4,26,072 and Rs. 4,04,688 respectively, was allowed in full. Audit scrutiny (September 1982) revealed that the corresponding service charges reimbursed, in previous years relevant to the assessment years 1977-78 and 1978-79 were Rs. 81,473 and Rs. 90,407 only for earning incomes of Rs. 5,74,124 and Rs. 4,26,072 respectively and that the service charges claimed to have been reimbursed for the assessment years 1979-80 and 1980-81 were excessive.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the Income-tax Act, 1961, any expenditure incurred by a company which results directly or indirectly in the provision of any remuneration, benefit or amenity to a director who is also an employee of the company is not allowable as deduction from business income to the extent such expenditure is in excess of Rs. 72,000 (Rs. 1,20,000 with effect from 1 April 1985) during the previous year comprising more than 11 months.

(a) During the previous year relevant to assessment year 1979-80 a company paid Rs. 1,45,000 by way of commission to its directors who were employees of the company. In the assessment of the company for the assessment year 1979-80 completed in August 1982 and revised in January 1983, the payment of commission of Rs. 1,45,000 was not taken into account for working out the inadmissible expenditure. This mistake resulted in under-assessment of business income by the same amount with consequent undercharge of tax of Rs. 83,738 for the assessment year 1979-80.

The Ministry of Finance have accepted the mistake.

(b) In the assessment of a company for the assessment year 1980-81 completed in August 1983 the remuneration paid to a Director and a Managing Director of the company in excess of the prescribed limit amounting to Rs. 86,766 was not added back. The assessment was revised in September 1984 on some other ground but the excess remuneration paid to the directors was not withdrawn. This resulted in under-assessment of income of Rs. 86,766 and a short levy of tax of Rs. 29,150 including interest in assessment year 1980-81 and a notional tax effect of Rs. 39,480 in later years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) During the accounting year relevant to the assessment year 1978-79, a public limited company paid remuneration to its directors according to their service contracts which exceeded the amount according to company Law and as approved by the Central Government by Rs. 1,65, 074. Under the provisions of the Companies Act, 1956, the excess amounts drawn by the directors should have been refunded by them to the company unless the excess is permitted to be retained by the Government. As no such approval had been obtained by the company, excess payment was not incurred for the purposes of business and was required to be added to the business income of the company for the assessment year 1978-79. Failure to do so resulted in under-assessment of income by Rs. 1,65,074 and a consequent potential short levy of tax of Rs. 95,329.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) In the case of a company, while computing the income chargeable to tax for the assessment year 1980-81 in August 1984, the Income-tax Officers computed the disallowable amount at Rs. 87,387. However, in the final computation, this amount remained to be considered and was not added back. Against the disallowance made by the Income-tax Officer, the company had gone in appeal to the Commissioner of Income-tax (Appeals). In his orders dated 21 February 1985, the Commissioner of Income-tax (Appeals) stated that the disallowance should be determined by application of some other provision of the Act and not under the provisions applied by the Income-tax Officer. It is observed that even as per the Appellate Commissioners' directions, the amount disallowable worked out to Rs. 87,387 only but no amount was actually disallowed by the Income-tax Officer. In the original computation, the assessee was not entitled to any relief from the disallowance. However, the Income-tax Officer while giving effect to the orders of Commissioner of Income-tax (Appeals) in March 1985

gave a relief amounting to Rs. 27,089 which was not correct. Besides, there was a totalling error of Rs. 6,000 in the rectification order. All these errors cumulatively resulted in under assessment of income by Rs. 1,20,476 involving potential short levy of tax of Rs. 72,231.

The Ministry of Finance have accepted the mistake.

2.22 **Incorrect allowance of contribution to gratuity, pension and superannuation fund**

Under the Income-tax Act, 1961, deduction is admissible in respect of any provision made by an assessee for payment of gratuity to his employees on their retirement or on termination of their employment provided the provision made is (1) for payment towards an approved gratuity fund and (2) the provision has become payable during the previous year relevant to the assessment year.

However, provisions made during the previous year relevant to the assessment years commencing on or after 1 April 1973 but before 1 April 1976 is admissible upto the prescribed limit if the provision is made on the basis of an actuarial valuation of the ascertainable liability for payment of gratuity, and at least 50 per cent of the admissible amount is paid by the assessee as contribution to the approved gratuity fund before 1 April 1976 and the balance before 1 April 1977.

(i) In the previous year relevant to the assessment year 1977-78, a company created an approved gratuity fund (approved in March 1976). The assessee company paid a total sum of Rs. 6,60,476 being initial contribution towards the approved gratuity fund for liability for the period upto 30 September 1971, arrived at by actuarial valuation in the previous year relevant to the assessment year 1981-82 and the department allowed it as deduction in the assessment year 1981-82 (assessment completed in August 1984 and revised in February 1985).

As the assessee was following the mercantile system of accounting and as the gratuity fund was approved during the previous year relevant to the assessment year 1977-78, the liability to pay the initial contribution cannot arise in the assessment year 1981-82. The aforesaid deduction is not admissible also on the ground that payment to the approved gratuity fund was made after 1 April 1977. The deduction of Rs. 6,60,476 allowed as initial contribution in the assessment year 1981-82 was, therefore, not in order and resulted in undercharge of tax of Rs. 5,96,409 (including interest of Rs. 1,70,402 for short payment of advance tax).

The department has not accepted the objection on the ground that there was no time limit prescribed in the Income-tax Act or Rules to make payment of initial contribution to the gratuity fund. The department's reply is contrary to the provisions of the Income-tax Act.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the assessment of a company in which public are substantially interested which had no approved gratuity fund, provision for gratuity made in accounts was being disallowed and actual payment of gratuity made during the relevant previous year was being allowed as a deduction. In the previous years relevant to the assessment years 1980-81 and 1981-82, the company made a total provision for gratuity of Rs. 37,46,293 and Rs. 1,14,28,311 in its accounts which included provision of Rs. 7,83,698 and Rs. 1,86,083 relating to previous year. While completing the assessment in March 1984 for the assessment year 1980-81 and in November 1984 for the assessment year 1981-82, the assessing officer added back provision for gratuity of Rs. 29,62,595 and Rs. 1,12,42,248 only and allowed actual payment of Rs. 47,93,364 and Rs. 46,85,552 respectively for the assessment years 1980-81 and 1981-82. Provision made in the accounts through "adjustment relating to previous year" for Rs. 7,83,698 and Rs. 1,86,063 was omitted to be added back. The mistake resulted in excess allowance of gratuity of Rs. 7,83,698 in the assessment year 1980-81 and Rs. 1,86,063 in the assessment year 1981-82 with consequent excess carry forward of loss of Rs. 9,69,761 at the end of the assessment year 1981-82 involving potential tax effect of Rs. 5,73,370.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In the assessment of a public limited company (a State Government undertaking) for the assessment year 1978-79 (assessment completed in July 1981), a sum of Rs. 11,74,849 claimed by the assessee company in its accounts for the year ending March 1978 as contribution to provident fund, was allowed as deduction by the assessing officer (January 1983). Audit scrutiny revealed that the approval accorded by the Commissioner of Income-tax for the provident fund took effect from 30 March 1979 only. As no approved provident fund was in existence during the previous year relevant to the assessment year 1978-79 the allowance of provident contribution of Rs. 11,74,840 was not in order. The incorrect

allowance resulted in under-assessment of business income of Rs. 11,74,849 and undercharge of tax of Rs. 3,93,822 (after setting off of loss of the earlier years).

The Ministry of Finance have accepted the mistake.

(iv) The employees' pension fund of a public sector banking company was recognised by the Commissioner of Income-tax in February 1976 relevant to the assessment year 1977-78. In the assessment of the company for the assessment year 1977-78 completed in March 1983, the deduction towards initial contribution was allowed at Rs. 15,70,052. It was noticed in audit (June 1983) that the company had been allowed deduction of contributions towards pension of Rs. 3,41,565 in the assessments for the assessment years 1973-74 to 1975-76. This amount was, therefore, required to be reduced while working out the initial contribution allowable. The excess deduction of Rs. 3,41,565 resulted in a short levy of tax of Rs. 1,97,254.

The Ministry of Finance have accepted the mistake.

(v) A widely-held company had created an employees' gratuity fund which was approved by the Commissioner of Income-tax effective from 12 December 1975. For the assessment year 1977-78, the assessee claimed a deduction of Rs. 3,97,628, being the amount remitted to the approved gratuity fund. In the original assessment for the assessment year 1977-78 completed in May 1980, the assessing officer did not allow the claim on the ground that the employees of the assessee company had not completed five years of continuous service to have enforceable legal right for gratuity. On appeal by the assessee company, the Commissioner of Income-tax (Appeals), however, directed (June 1983) the assessing officer to allow the assessee's claim after verifying the correctness of the payments to the gratuity fund. In the revision made in October 1983, the assessing officer allowed the sum of Rs. 3,97,628 in full. Audit scrutiny revealed (July 1984) that the assessing officer had overlooked the fact that gratuity liability amounting to Rs. 76,400 and Rs. 60,000 had already been allowed in the assessments for the assessment years 1975-76 and 1976-77 made in May 1978 and March 1983 respectively on the basis of provision made in the books as per actuarial valuation and that the assessing officer had not also examined to find out the assessment years to which the payment of Rs. 3,97,628 related. Further as seen from the records, the incremental gratuity liability as per actuarial valuation for the assessment year 1977-78 was Rs. 98,612 only. As a result of these omissions, there was excess allowance of deduction of Rs. 2,99,016 which resulted in a short levy of tax of Rs. 1,80,909.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) In the case of a non-resident company, the Commissioner of Income-tax accorded recognition to the Pension Fund in December 1978 with retrospective effect from 1 January 1976. The amounts due to the fund upto 31 December 1975 and the annual contribution from 1976 to 1978 were allowed as deduction while computing the income-tax assessments of the company. In respect of those employees of the company retiring after 1 January 1976, payments on account of pension would be met from the Pension Fund and such payment were, therefore, debitable to the Company's accounts. It was, however, seen that the company had debited an amount of Rs. 2,29,216 in its accounts for the year ending 31 December 1978 relevant to assessment year 1979-80 on account of pension paid to those who retired during the year 1978 instead of meeting the expenditure from the duly constituted pension fund. While completing the assessment for the assessment year 1979-80 in March 1982, the Inspecting Assistant Commissioner (Assessment) Foreign Company Circle did not disallow the expenditure. The omission resulted in under-assessment of income of Rs. 2,29,216 and a short levy of tax of Rs. 1,68,474.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vii) A public sector corporation switched over to cash system of accounting during the previous year ending 31 March 1981 relevant to assessment year 1981-82. On the change over to the cash system of accounting, deduction for liabilities were allowable on actual payment basis. It was noticed that no amount on account of gratuity was debited in the accounts of the corporation as no amount was paid during the year ending 31 March 1981. Nevertheless, the company claimed a deduction of Rs. 1,83,328 for the assessment year 1981-82 on account of gratuity liability on the basis of acturial valuation which was also allowed by the Inspecting Assistant Commissioner (Assessment) in the assessment made in May 1984. As the company was following cash system of accounting, the deduction for gratuity liability based on actuarial valuation was not an admissible deduction. Failure to disallow the amount of Rs. 1,83,328 claimed by the assessee resulted in excess computation of loss to the same extent involving potential short levy of tax of Rs. 1,03,350.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(viii) In respect of initial contributions to the superannuation fund, the Central Board of Direct Taxes have clarified that an amount equal to 80 per cent of the contribution actually paid to the Fund shall be allowed in five equal instalments commencing from the assessment year relevant to the previous year in which the amount was actually paid and four immediately succeeding assessment years.

In the case of an assessee company, the initial contribution to the Superannuation Fund was determined by the Life Insurance Corporation of India as Rs. 31,19,131 as on 31 December 1978 and as per executive instructions of the Board, the deductible amount being 80 per cent thereof, i.e., Rs. 24,95,305 was allowable in five equal instalments of Rs. 4,99,061 each in assessment years 1980-81 and four succeeding years. It was noticed in audit that the assessee company had debited a sum of Rs. 6,59,004 in its accounts for the previous year relevant to the assessment year 1980-81 and the same was allowed in full by the assessing officer in the assessment made in October 1983 instead of restricting the allowance to Rs. 4,99,061. The incorrect allowance of deduction resulted in under-assessment of income of Rs. 1,59,943 and a short levy of tax of Rs. 94,566.

The Ministry of Finance have accepted the mistake.

2.23 *Omission to disallow Interest paid on deposits*

Under the Income-tax Act, 1961, where an assessee being a company other than a banking or financial company, incures any expenditure by way of interest in respect of any deposit received by it, 15 per cent of such expenditure shall not be allowed as deduction in the computation of business income. The term 'deposit' has been defined to mean any deposit of money with the company and includes any money borrowed by the company except those specifically excluded in the Act. Interest has been defined in the Act as interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. The partial disallowance has been withdrawn with effect from 1 April 1986 by an amendment to the Act by the Finance Act, 1985.

(i) A company paid interest amounting to Rs. 45,10,000 on the fixed deposits raised by it from public in the previous year relevant to the assessment year 1981-82. In the assessment completed in March 1985 the Inspecting Assistant Commissioner (Assessment) disallowed a sum of Rs. 6,76,500 calculated at the rate of 15 per cent of the amount of interest paid. It was, however, noticed in audit in January 1986 that the assessee had incurred other expenses amounting to Rs. 14,77,736 in connection with the issue/raising of the deposit. As these expenses formed part of interest as defined in the Act, the department should have disallowed 15 per cent of this amount also. Omission to do so resulted in under assessment of income by Rs. 2,21,660 with consequent short levy of tax of Rs. 1,31,056 for the assessment year 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) During the previous year relevant to the assessment year 1982-83 (assessment made in February 1985), a public limited company claimed and was allowed a deduction of Rs. 9,52,184 on account of interest paid on moneys borrowed for payment of income-tax. It was, however, noticed in audit in November 1985 that the amount represented interest paid on fixed deposits, accepted by the company, for payment of income-tax. The assessee company being not a banking or financial company, 15 per cent of interest paid by it on fixed deposits was required to be disallowed, which was not done by the assessing authority. The omission resulted in under assessment of income by Rs. 1,42,820 with a short levy of tax of Rs. 80,512.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Two private limited companies paid interest amounting to Rs 6,45,919 in the previous years relevant to the assessment years 1980-81 and 1982-83 on the deposits received by them from depositors. In the assessments made in December 1981 and November 1984, the Income-tax Officer allowed the interest paid by these companies in full without disallowing 15 per cent of interest so paid as required under the Act. Omission to disallow the interest resulted in under assessment of income of Rs. 96,888 involving short levy of tax of Rs. 58,760.

The Ministry of Finance have accepted the mistake in both the cases.

2.24 *Irregular deductions allowed on contribution towards other funds*

Under the Income-tax Act, 1961, as amended by Finance Act 1984 with retrospective effect from 1 April 1980, no deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to any fund, trust, company, association of persons, body of individuals etc. or other institution for any purpose, except where such sum is so paid by way of contribution towards a Recognised Provident Fund, Approved Superannuation Fund or Gratuity Fund created for the benefit of employees.

(i) During the previous year relevant to the assessment year 1982-83, an industrial company made a contribution of Rs. 10,02,000 to the Staff Welfare Trust. This contribution was allowed as deduction by the Inspecting Assistant Commissioner (Assessment) in the computation of income made in March 1985. As these contributions are not admissible deduction, the allowance of the deduction, was not in order and resulted in under assessment of assessee's income by Rs. 10,02,000 involving short levy of tax of Rs. 5,64,878.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) A company was allowed deduction of Rs. 4,53,000 in its assessment for the assessment year 1981-82 (assessment made in February 1985) in respect of the contribution made to its Employees and Staff Welfare Trusts. As the contribution was not admissible deductions under the Income-tax Act, no deduction was allowable. Omission to disallow the contribution resulted in under assessment of income of Rs. 4,53,000 and a short levy of tax of Rs. 2,92,185.

The department has accepted the objection (April 1986).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Two companies were allowed a deduction of Rs. 2,66,005 for the assessment years 1981-82 and 1982-83 (assessments made in September/December 1984 and March 1985) towards contribution made to the Employees' Welfare Co-operative Society and Companies Staff Welfare Fund. Under the provisions inserted in the Act with effect from 1 April 1980, these deductions are not admissible in the computation of business income of the companies. However, in the assessment of the companies, the contribution of Rs. 2,66,005 was not disallowed. Failure to do so resulted in under assessment of income by Rs. 2,66,005 involving short levy of tax of Rs. 1,69,715.

The department has accepted the objection in one case.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.25 *Irregular deduction of liabilities*

Under the provisions of the Income-tax Act, 1961, as amended by the Finance Act, 1983, with effect from the assessment year 1984-85, in computing the business income of an assessee liability for any sum payable by way of tax or duty under any law for the time being in force or for any sum payable by him as an employer by way of contribution to any provident fund or superannuation or gratuity fund or any other fund for the welfare of the employees will be allowed out of the income of the previous year in which the sum is actually paid. In other words, these deductions are admissible only on actual payment and not on accrual basis.

(i) In the case of a private limited company for the assessment year 1984-85 (assessment completed in March 1985), the assessing officer disallowed a sum of Rs. 30,580 on account of sales-tax, surcharge, Provident Fund and Employees State Insurance payments on the ground that the amounts were not actually paid. It was seen in audit that the company had, however, shown a liability on account of sales-tax amounting to Rs. 2,17,704 outstanding at the end of accounting year as on 31 December 1983. Since the tax had not actually been paid and the liability had only been debited in the accounts, the company was not entitled for deduction under the amended provision of the Act and the amount was required to be disallowed. Omission to do so resulted in under assessment of income of Rs. 2,17,704 involving a short levy of tax of Rs. 1,54,975.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the previous year ending 31 December 1983 relevant to the assessment year 1984-85, a widely-held company had not paid taxes, duties and statutory contributions to certain funds amounting to Rs. 3,71,311 although the liability to this extent was debited in its accounts. While completing the assessment for the assessment year 1984-85 in February 1985, the assessing officer disallowed an amount of

Rs. 72,579 only instead of the entire amount of Rs. 3,71,311. This resulted in short disallowance of Rs. 2,98,732. The mistake resulted in under assessment of income of Rs. 2,98,732 and a short levy of tax of Rs. 2,00,982 (including interest for short payment of advance tax and for belated filing of return).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In the case of a private company for the assessment year 1984-85, it was noticed from the accounts of the relevant previous year that liabilities on account of purchase tax, professional tax, sales-tax etc. relating to the assessment year 1984-85 aggregating to Rs. 1,70,946 were not paid although included under the head 'current liabilities and provisions'. In computing the business income of the company for the assessment year 1984-85 (assessment completed in September 1984) the aforesaid liabilities of Rs. 1,70,946 relating to the year and remaining unpaid till the last day of the previous year was required to be disallowed. Omission to do so resulted in under assessment of income of Rs. 1,70,946 with consequent undercharge of tax of Rs. 1,17,481 including interest of Rs. 9,785.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) In the assessment of two private limited companies belonging to the same group for the assessment year 1984-85 completed in January 1985, purchase tax, sales tax and excise duties amounting to Rs. 2,55,600 levied by different states and Central Government during the relevant previous year, was allowed as deduction in full although the assessee company had not paid the same at the end of the relevant previous year. The unpaid amount of Rs. 2,55,600 was to have been disallowed by the assessing officer. Omission to do so led to short levy of tax of Rs. 1,60,605.

The assessments were checked by the internal audit party of the department but the mistake escaped its notice.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) A tea company in its accounts for the year relevant to the assessment year 1984-85 debited a sum of Rs. 22,21,032 towards West Bengal Duty and Cess. The balance sheet of the company for this year showed an outstanding liability of Rs. 5,79,977 towards unpaid West Bengal Cess and Duty. The balance sheet for the immediate preceeding assessment year 1983-84, however, showed the outstanding liability on this account at Rs. 45,753 only. The excess liability of Cess and Duty to the extent of Rs. 5,34,224, therefore, represented the liability not actually paid during the current year and should have been disallowed in the assessment for the assessment year 1984-85 completed in February 1985. However, a sum of Rs. 10,696 only was disallowed by the department. Thus an excess allowance of deduction of Rs. 5,23,528 was allowed leading to under assessment of business income by Rs. 2,09,411 with consequent excess carry forward of loss by the same amount involving potential tax effect of Rs. 1,31,928.

The Ministry of Finance have accepted the mistake.

(vi) A private industrial company debited in its accounts for the previous year relevant to the assessment year 1984-85 an aggregate sum of Rs. 93,077 towards sales-tax, contribution to Employee's State Insurance and to labour welfare fund which were actually outstanding for payment as at the end of the relevant previous year. In the assessment for assessment year 1984-85 completed in March 1985, the assessing officer should, however, have disallowed this amount as these payments were not actually made, though debited to the accounts. The omission to do so resulted in excess computation of business loss of Rs. 93,077 involving potential tax effect of Rs. 58,638.

The Ministry of Finance have accepted the mistake.

2.26 *Incorrect allowance of provisions*

Under the Income-tax Act, 1961, any expenditure laid out or expended wholly and exclusively for the purpose of business of an assessee is admissible as a deduction provided the expenditure is not in the nature of capital expenditure or personal expenses of the assessee. 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.

(i) A company in its accounts for the year relevant to the assessment year 1981-82, debited a sum of Rs. 60,58,13,085 towards raw materials consumed, which included a provision for claims amounting to Rs. 15,00,976 for supplies made by the suppliers which were not accepted by the assessee. The entire sum was allowed as a deduction in assessment year 1981-82 (assessment made in March 1985). As the sum of Rs. 15,00,976 merely represented a provision and not an ascertained liability, the allowance of deduction on this account was not in order. This led

to under assessment of business income by Rs. 15,00,976 with consequent excess carry forward of loss by the same amount involving potential tax effect of Rs. 8,87,452.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) A State Electricity Board claimed and was allowed in the assessment year 1981-82, a provision of Rs. 21.65 lakhs on account of "fuel adjustment surcharge" for the period from April 1974 to December 1974, by the Inspecting Assistant Commissioner (Assessment). It was stated in the Audit Report on the annual accounts of the Board for the year 1980-81 that the fuel adjustment charges were not payable and the provision was, therefore, to be withdrawn. As the liability had ceased, the amount was required to be written back in the accounts, and included in the total income for the assessment year 1981-82. Omission to do so resulted in under assessment of income of Rs. 21.65 lakhs involving a potential short levy of tax of Rs. 12,80,056.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) A provision made in the accounts for an ascertained liability is an admissible deduction but a provision made for a contingent liability does not qualify for deduction in computing the business income.

(a) An assessee company engaged in the manufacture of high tension overhead transmission line materials did not pay any central excise duty for its products. A show cause notice was issued by the Central Excise Department in April 1980 upon the assessee requiring it to explain as to why an aggregate amount of central excise duty of Rs. 3,09,599 for the assessment years 1979-80 to 1981-82 should not be paid by the assessee company. No regular adjudication order was, however, passed by the central excise authority till the date of audit (March 1985). No demand for the payment of excise duty of Rs. 3,09,599 was raised by the department. It was noticed in audit that the company provided for the entire amount of Rs. 3,09,599 being central excise duty payable as per show cause notice, in its accounts relevant to the assessment year 1981-82 and claimed deduction of Rs. 32,587, Rs. 1,46,885 and Rs. 1,30,127 for the assessment years 1979-80 to 1981-82 respectively. The department disallowed the assessee's claim for the assessment year 1979-80 but allowed the deduction in the assessment for the assessment year 1980-81 and 1981-82, completed in August 1983 and March 1984 (revised in June 1984). As the provision was made not for an ascertained liability but for a contingent one it was required to be disallowed. The incorrect allowance resulted in under assessment of income by Rs. 1,46,885 and Rs. 1,30,127 for the assessment years 1980-81 and 1981-82 respectively and an aggregate undercharge of tax of Rs 1,92,524 (including penal interest of Rs. 51,044) for these two years and excess carry forward of business loss of Rs. 74,537 to the assessment year 1982-83.

The Ministry of Finance have accepted the mistake.

(b) In the assessment of a company for the assessment year 1980-81 completed in March 1983, the assessing officer disallowed the assessee's claim for a sum of Rs. 96,78,700 being the contingent liability in respect of central excise duty demands raised by the Central Excise Department but not provided for in the accounts of the relevant previous year. Audit scrutiny, however, revealed (July 1985) that the assessing officer had allowed a sum of Rs. 7,43,598 in the assessments for the assessment years 1977-78 to 1979-80 on account of excise duty raised by the Central Excise Department in the years 1976-77 to 1978-79 and the claim of Rs. 96,87,700 for the assessment year 1980-81 was the net demand after deducting the sum of Rs. 7,43,598. It was also noticed that the demands raised in the assessment years 1976-77 to 1978-79 of Rs. 7,43,598 were withdrawn by the Central Excise Department. However, the assessments for the assessment years 1977-78 to 1979-80 were not revised and the allowance of Rs. 7,43,598 in those years not withdrawn. The omission to do so resulted in under assessment of income of Rs. 7,43,598 with a consequent undercharge of tax of Rs. 4,39,644.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) It has been judicially held that the liability to sales-tax would ordinarily relate to the year in which the transaction took place.

An assessee company, maintaining its accounts on mercantile system, provided in its accounts for the year ended 31 December 1979 relevant to the assessment year 1980-81 a sum of Rs. 6,82,285 towards central sales tax for the year ended 31 December 1978. The provision was allowed as deduction in the assessment made in May 1984 for the assessment year 1980-81. Since the liability actually related to the assessment year 1979-80 the allowance thereof as deduction in the assessment year 1980-81 was not correct. The mistake resulted in under assessment of business income by Rs. 6,82,285 with a consequent tax under charge of Rs. 4,03,401 for the assessment year 1980-81.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.27 *Under valuation of closing stock.*

Under the provisions of the Income-tax Act, 1961, income under the head 'profits and gains of business' is to be computed in accordance with the method of accounting regularly employed by the assessee. Excise duty is normally considered as a manufacturing expenditure and like other manufacturing expenses is an element of cost of inventory valuation.

(i) Upto the assessment year 1979-80, an assessee company accounted for the liability on account of central excise duty in respect of the products manufactured by it as and when the products were removed from the factory. This method of accounting was changed by the company during the course of assessment year 1980-81 and a provision for the duty liability in respect of the entire production of the year was made in the accounts. However, while valuing the closing stock of the finished products in the previous year relevant to the assessment year 1980-81, the element of central excise duty on the finished goods in closing stock was excluded and the same was also not added by the Income-tax Officer in the assessment completed in September 1981. As central excise duty in respect of the goods manufactured during the year was charged to the profit and loss account in order to reflect the correct profits of the business of the year, the value of the closing stock should have included the corresponding element of central excise duty. The omission resulted in an under-assessment of income by Rs. 13,82,383 and a short levy of tax of Rs. 8,17,332.

The Ministry of Finance have accepted the mistake.

(ii) An assessee company accounted for the liability on account of central excise duty in respect of the products manufactured by it at the time of removal of the products from the factory. During the previous year relevant to the assessment year 1980-81, the company changed the method of accounting hitherto followed and provided for the duty liability in respect of the entire production during the year itself. However, while valuing the closing stock of the finished products in the previous year relevant to the assessment year 1981-82, the element of central excise duty on the finished goods in closing stock was excluded. While finalising the assessment in August 1982, the Income-tax Officer omitted to include the excise duty on finished goods lying in the bonded warehouse and charged to profit and loss account as part of the finished goods. The omission resulted in an under-assessment of income of Rs. 4,07,780 and a short levy of tax of Rs. 2,41,000.

The assessment was checked by the internal audit party of the department but the mistake escaped its notice.

The Ministry of Finance have accepted the mistake.

(iii) According to the principles of commercial accounting, a trader is allowed to value unsold stock at the end of the accounting period at cost or market price, whichever is lower.

For the previous year relevant to the assessment year 1981-82 a company valued the closing stock held in its four branches at Rs. 3,59,711 and deducted therefrom a sum of Rs. 1,45,683 on account of obsolete machinery and depreciation on closing stock and returned the closing stock at Rs. 2,14,029. In the assessment made in January 1984 for the assessment year 1981-82, the Income-tax Officer did not examine the correctness of working of the closing stock shown by the company and adopted the same in the assessment. No depreciation on closing stock or on obsolete machinery is admissible and the erroneous deduction of Rs. 1,45,683 resulted in under assessment of a like amount and a short levy of tax of Rs. 1,01,795.

The Ministry of Finance while not accepting the objection stated that the assessee had adopted the same method of valuation of closing stock for a number of years. It is however noticed that the closing stock had been valued at cost less 15 per cent on account of depreciation for all the years except for the assessment years 1980-81 and 1981-82 and the closing stock for the two years was further reduced by 30 per cent towards obsolescence thereof diverting from the normal practice.

2.28 *Incorrect deductions in the computation of business income*

(a) It was judicially held by several High Courts that payment made to an employee in recognition of his meritorious service or in appreciation of his long and valuable service was not an allowable expenditure in computing the income from business of the employer.

A widely-held company was allowed expenditure of Rs. 89,352, Rs. 1,20,287, Rs. 1,33,337 and Rs. 1,10,687 in the assessment years 1979-80, 1980-81, 1981-82 and 1982-83 respectively (assessments made in September 1982, March 1985, September 1984 and March 1985). The payments were made to the employees not in the discharge of their

duties in connection with the business of the employer but in appreciation of their long years of service to the assessee company. The expenditure was not, therefore, allowable as deduction in the computation of business income of the assessee. Omission to disallow the same resulted in short computation of income aggregating to Rs. 4,53,663 and a consequent undercharge of tax aggregating to Rs. 2,83,270 for the four assessment years from 1979-80 to 1982-83 (including short levy of surtax of Rs 19,315 in the assessment year 1982-83).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) Under the Income-tax Act, 1961, surtax payable/paid is not an allowable deduction in computing the business income of an assessee.

In the assessment of a company for the assessment year 1981-82 made in September 1984, a sum of Rs. 3,77,392 debited in the accounts for the relevant previous year towards "interest on surtax for the assessment year 1974-75" (included in the amount of Rs. 22,31,106 under sundries), was incorrectly allowed as deduction. As the expenditure was not an allowable deduction, the mistake resulted in under assessment of business income by Rs. 3,77,392 with consequent undercharge of tax of Rs. 2,23,133 for the assessment year 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) A provision made in the accounts for an accrued or known liability is an admissible deduction, no other provision made would qualify for deduction.

In the previous year ending 31 December 1981 relevant to the assessment year 1982-83, a company wrote back and credited to the accounts, provision for doubtful debts of Rs. 2,27,004 relating to the assessment years 1978-79 and 1979-80. While completing the assessment for the assessment year 1982-83 in March 1985, the assessing officer observed that the provisions were not allowed as deductions in the relevant assessment years and hence the amounts credited to the account were deducted while computing the income chargeable to tax, Audit scrutiny, however, revealed that the provision for doubtful debts had not actually been disallowed in the assessments for the assessment years 1978-79 and 1979-80. The erroneous deductions allowed for these two assessment years resulted in under assessment of income aggregating to Rs. 2,27,004 and a short levy of tax of Rs. 1,67,322 including interest for belated filing of return and short payment of advance tax.

The Ministry of Finance have accepted the mistake.

(d) A Government company made a provision of Rs. 2,57,64,544 in the accounts of the previous year relevant to the assessment year 1976-77 for estimated liability in respect of claims preferred against it but not settled. At the time of assessment, the company claimed additional liability of Rs. 3,17,000 on the ground that provision in this regard was not included in the accounts due to oversight and the same was allowed by the assessing officer in the assessment made in August 1979. As provision of Rs. 2,57,64,544 already made in the accounts was towards estimated liability in respect of claims preferred but not settled, the allowance of a separate additional liability for the claim of Rs. 3,17,000 was not in order. Omission to disallow the additional liability of Rs. 3,17,000 resulted in a short levy of tax of Rs. 1,83,067.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(e) In the assessment for the previous year ending 31 March 1981 relevant to the assessment year 1981-82 made in August 1983, a private limited company which has been regularly following mercantile system of accounting, was allowed a deduction of Rs. 1,60,604 as claimed by the company from its business income on account of the expenditure on foreign tours undertaken by the two directors of the company. It was noticed in audit in August 1984 that the foreign tour was actually undertaken by the directors between May 1981 and September 1981 relevant to the assessment year 1982-83 and as such the expenditure on the foreign tours did not pertain to the previous year relevant to the assessment year 1981-82. The allowance of deduction for that expenditure in the assessment year 1981-82 was, therefore, irregular. The irregular deduction resulted in under assessment of the income by Rs. 1,60,604 involving undercharge of tax of Rs. 1,12,220.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) In the previous year relevant to the assessment year 1983-84, a private limited company debited a sum of Rs. 2,60,000 towards provision of income-tax in its accounts. This provision is not an admissible expenditure under the Income-tax Act. But while making the assessment in May 1984, the assessing officer failed to add back the provision. The omission to disallow the expenditure resulted in under assessment of income of Rs. 2,60,000 and a short levy of tax of Rs. 1,42,983 for the assessment year 1983-84.

The Ministry of Finance have accepted the mistake.

(g) For the assessment year 1979-80 a closely-held company claimed a deduction of Rs. 98,107 representing export duty drawback claims wrongly provided for but written off in the subsequent year's accounts. This was allowed in the assessment for the assessment year 1979-80 completed in February 1982. Audit scrutiny revealed (December 1982) that the assessee had made a similar claim for deduction of the same amount of Rs. 98,107 in the assessment year 1980-81 on the ground that it was wrongly provided for in the earlier year's accounts. This was also allowed by the Income-tax Officer which resulted in excess deduction of Rs. 98,107 involving a short levy of tax of Rs. 61,810.

The Ministry of Finance have accepted the mistake.

2.29 *Incorrect allowance of capital expenditure*

Under the provisions of the Income-tax Act, 1961, any expenditure not being expenditure of a capital nature or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of business is allowable as deduction in computing income chargeable under the head 'profits and gains of business'. It has been judicially held that while expenditure incurred for raising a loan for the purpose of business is a revenue expenditure and, therefore, allowable as deduction, expenditure incurred in connection with the issue of shares is in the nature of capital expenditure and hence not allowable as deduction in the computation of business income of the assessee.

Four companies assessed in four different Commissioners' charges debited a sum of Rs. 10,36,684 in the accounts of the previous years relevant to the assessment years 1978-79, 1980-81 to 1982-83 on account of expenditure on public issue of shares as well as on issue of bonus shares, for obtaining computerised information regarding processing of share application and interest on share application money. While completing the assessments between November 1978 and March 1985, the assessing officer allowed the expenditure treating them as revenue expenditure instead of as capital expenditure. The mistake resulted in under assessment of business income by Rs. 10,36,684 for these assessment years leading to short levy of tax of Rs. 5,91,522.

The department has accepted the objection in two cases. In one case, the department stated that the assessee company had utilised the amount as working capital and that the income earned from the deposits had been returned as income from other sources and justified the allowance under the residuary provisions of the Act. However, the money was not borrowed for utilising as working capital for the business and the interest paid on share application money is classifiable as capital expenditure in the light of judicial decision in the matter.

The Ministry of Finance in one case justified the payment as revenue expenditure relying on another judicial decision. However, this decision was not appealed against in view of the low revenue involved and not on principle. The comments of the Ministry in respect of the other cases are awaited (December 1986).

2.30 *Irregular allowance of tax relief in the case of occasional non-resident shipping.*

Under the Income-tax Act, 1961, the profits arising to a non-resident owner/charterer of a ship from carriage of passengers, livestock, mail or goods shipped at a port in India, can be assessed in respect of each voyage on an ad hoc basis by treating 7½ per cent of such income as the taxable income. This facility is available whether the earnings made are by a regular liner ship or a tramp steamer. However, the assessee has been allowed, in such cases to opt for a regular assessment of his total income of the previous year, in which case the tax paid on ad hoc assessment is treated as an advance tax. The Act also empowers the Central Government to enter into agreement with the Government of any foreign country for the avoidance of double taxation of income under the Act and the corresponding law in force in that country. Such agreements (DTA agreements) entered into by the Central agreement with the foreign country, as regards the profits derived by operating ships in international traffic by the non-resident shipping concerns, usually provide for 50 per cent relief from normal Indian tax (55 per cent in the case of Japan).

The Central Board of Direct Taxes had clarified in January 1976 that, under the terms of DTA agreements, the reduction from the normal tax by the specified percentage is available to shipping profits from regular shipping lines earned by owners or charterers of ships of the concerned countries at the stage of both regular and ad hoc assessments and that except in shipping concerns of Denmark, Norway, Romania and Sweden, it does not apply to occasional shipping or tramp steamers. The non-resident shipowners may also appoint agents in India who should execute guarantee bonds for the payment of tax in the case of occasional shipping or tramp steamers.

(i) During the course of audit in February 1985, it was noticed that in 31 cases of assessments of tramp steamers (not owned/chartered by concerns in Denmark, Norway, Romania and Sweden) made between November 1981 and February 1984 the income was determined as Rs. 1,22,16,733 on which tax of Rs. 88,31,258 became due for payment by the 31 assessees. However, tax relief to the extent of Rs. 44,15,629 being 50 per cent of normal tax determined was allowed in the ad hoc assessments. The ships assessed are tramp steamers is confirmed by the execution of guarantee bonds by the agents of shippers, which clearly states that they (agents) are acting as agents of non-resident company for that particular instance/voyage only. Similarly, the agreement between the owners and the charterers of the ship clearly indicates that the ship is chartered for the particular voyage for carriage of goods from an Indian port which is the subject matter of assessment. Thus, the grant of relief from tax was not in accordance with the instructions of the Board. The irregular relief resulted in short levy of tax to the extent of Rs. 44,15,629.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the ad hoc assessment of 19 tramp steamers for the assessment year 1984-85, tax relief to the extent of Rs. 36,72,148 being 50 per cent of the normal tax leviable was granted. The relief granted was erroneous as the incomes arose to tramp steamers (whose owners/charterers did not belong to Denmark, Sweden, Norway or Romania), and not to regular liners.

The Inspecting Assistant Commissioner (Audit) contended (January 1986) that (1) the terms 'regular shipping lines', 'occasional shipping' and 'tramp steamers' were not defined in the Act or in the Board's instructions; (2) merely because some of the shippers of conference lines (i.e. shipping lines committed to various rules and regulations of several conferences of shippers) call on Indian ports occasionally, it does not mean they were not regular shipping lines; (3) under a judicial decision, if an assessee does not exercise option to have a regular assessment, the ad hoc assessment made is final and the tax relief allowed is on final assessment in the sense that owners/charterers of the ships under consideration have not opted for regular assessment and (4) the agent on whom the assessment is made acts on behalf of the owner or charterer of the regular shipping lines.

The reply is not tenable. The term "tramp steamer" even without a specific definition, is well known in the shipping business as a steamer that is not compelled to operate to a pre-determined route or time schedule. The judicial decision relied upon is not relevant to the issue since the fact of an ad hoc assessment, becoming final when the assessee does not opt for regular assessment, does not mean that the Central Board of Direct Taxes had permitted allowance of relief on the ad hoc assessments of tramp steamer also. The contention that the ships assessed were regular liners and not tramp steamers are not supported by any proof in the assessment records. The assessments are based on 'charter party' which is an agreement between the owners of the ship and the party which has hired the ship. Each charter party relevant to the assessments showed that the agreement is made to charter a particular vessel specifically to cover the particular voyage to and from the specified Indian Port, the freight arising from which were taxed on ad hoc basis. The guarantee bond given by the Indian agent of the non-resident relating to payment of tax to get port clearance also mentions that the agents are acting as agents of non-resident principal for the particular instance only. The assessments made, therefore, relate to occasional or shipping or of tramp steamers only.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) The Act provides that income accruing or arising to any person whether directly or indirectly from or through any business connection in India or through any source of income in India shall be deemed to accrue or arise in India and accordingly such income becomes taxable.

Two ships were assessed in a summary manner in July 1984 on the income of Rs. 1,97,776 and Rs. 15,97,018, being the earnings of freight carried by them to foreign countries from Indian ports in December 1983 and May 1984, and the tax on such earnings was collected from their Indian agents. The Charter Party between the non-resident owner and non-resident charterers of the ships provided in the case of one of the ships that a commission of five per cent on the gross amount of the freight, dead freight and demurrage was due to the owner, a non-resident company, and in the other case that an address commission of 1.25 per cent was to be paid to charterer on delivery of cargo, and owners were to pay to two non-resident shipping companies, a commission of 1.25 per cent each. The commission, arising on account of carriage of freight in India worked out to

Rs. 74,118 in one case and a sum of Rs. 59,886 in the hands of three non-residents, in the other. It was observed in audit that the Income-tax Officer did not subject these amounts to tax nor were any proceedings started in this regard. Omission to do so resulted in a short levy of tax of Rs. 54,746 in the hands of the non-resident company in the first case for assessment year 1984-85 and Rs. 43,926 in the hands of three non-resident companies in the second case for assessment year 1985-86 (total Rs. 98,672).

The assessment records were checked by the internal audit party of the department but the mistake was not noticed by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.31 *Incorrect allowance of relief to a foreign airliner*

Under the provisions of the Income-tax Act, 1961, the Central Government may enter into an agreement with the Government of any country outside India for avoidance of double taxation of income under the said Act and under the corresponding law in force in that country. According to such an agreement entered into with the Government of a neighbouring country in September 1956, effective from 1950-51, the whole of the income arising from transport by air is assessable in the country in which it originates. A new convention for the avoidance of double taxation with the same country was notified in April 1983, the provisions of which were effective in India in respect of income assessable for the year of assessment commencing on or after 1 April 1981.

The regular assessment of a non-resident airline company for the assessment year 1980-81 was completed in March 1983 on the taxable income of Rs. 88,24,740 and a demand of Rs 66,40,617 was raised. The assessment was, however, revised in September 1983 redetermining the tazable income as 'nil' on the ground that the income arising in India was exempt in its entirety in accordance with the latter agreement. It was pointed out in audit in May 1985 that the convention of April 1983, became effective only in respect of income assessable for and from the assessment year 1981-82 and the income of the foreign airline for the assessment year 1980-81 would be taxable in India as per the old agreement of September 1956; but no action was taken to rectify the assessment so as to restore the original position for the assessment year 1980-81.

The department contended that in view of another provision of the convention that profits derived by an enterprise of a contracting state from the operation of aircraft in international traffic shall be taxable only in the contracting state in which the place of effective management of the enterprise was situated and, therefore, the assessment was in order. The contention of the department is not in order as the income of the airline attributable to traffic originating in India during the previous year relevant to the assessment year 1980-81 is assessable to tax only in India as per the earlier agreement of September 1956 and the provisions of the new convention on taxability of income in India are operative on or after 1 April 1981 only and accordingly applicable from assessment year 1981-82 and onwards.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.32 *Other mistakes in the determination of business income*

Under the provisions of the Income-tax Act, 1961, any expenditure not laid out or expended wholly or exclusively for the purpose of business is not allowable in computing business income. It has been judicially held that expenditure incurred on account of payment of penalties for breach of law was not an allowable expenditure.

(i) (a) An assessee company had debited in its accounts for the year ending 30 June 1979 relevant to assessment year 1980-81, an amount of Rs. 53,74,557 towards interest. This included interest payments amounting to Rs. 42,53,857 paid to the Sales Tax Department. The Sales Tax Act of the State stipulates that if the dealer does not, without reasonable cause, pay the sales tax within the time he is required to pay, the Commissioner of Sales Tax may, after giving the dealer an opportunity of being heard, impose penalty upon the dealer, in addition to the amount of tax due. Since the penal interest was levied for breach of law relating to payment of sales tax in time, the interest payment was not an allowable expenditure. It was, therefore, required to be added back by the assessing officer. Omission to do so resulted in under assessment of income of Rs. 42,53,857 and a potential short levy of tax of Rs. 25,15,092.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The accounts of an assessee company for the previous year relevant to the assessment year 1982-83 included a debit of Rs. 77,531, being penalty in the form of interest for delayed payment of sales-tax under the provisions of the Sales-tax laws of the State Government. The penalty was levied for breach of provisions of the Act and the expenditure on this

account, was not allowable. The expenditure was, however, allowed in full in the assessment for the assessment year 1982-83 completed in March 1985 and revised in August 1985. The irregular deduction resulted in under assessment of income by Rs. 77,530 with undercharge of tax of Rs. 67,865 (including interest for belated filing of return Rs. 476) for non payment of advance tax (Rs. 17,256) and for belated payment of original demand (Rs. 2,452).

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the Income-tax Rules, 1962, only 40 per cent of the income derived from the sale of tea grown and manufactured by a seller in India is deemed to be income liable to Indian Income-tax, the remaining 60 per cent being deemed to be agricultural in nature and hence not liable to Indian Income-tax.

(a) In the assessment of a tea company for the assessment year 1983-84 (assessment made in May 1984), the department computed a total loss of Rs. 3,32,080 on account of its tea business. After adjustment of interest income of Rs. 93,452 (100 per cent), the net loss was arrived at Rs. 2,38,628 which was allowed to be carried forward. It was noticed in audit in March 1986 that the company had derived net consultancy income of Rs. 3,92,933 on account of service contract, which is distinct from its tea business and, therefore, was taxable in full as business income other than tea business. Further the loss at head office computed at Rs. 1,39,400 was allowed in full in the computation of income from tea business instead of at 40 per cent thereof. As against the loss determined by the Income-tax Officer for the assessment year 1983-84, the above mistakes resulted in a positive income of Rs. 80,770 being under-assessed with consequent tax undercharge of Rs. 53,813 and excess carry forward of loss of Rs. 2,38,628 for the assessment year 1983-84 involving potential tax effect of Rs. 1,58,986.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A tea company received in the previous years relevant to the assessment years 1981-82 and 1982-83 interest income of Rs. 46,803 and Rs. 1,70,590 respectively on loans advanced to a firm in which one of the Directors of the company had an interest. The company also made interest payments of Rs. 46,330 and Rs. 1.68,935 respectively during the relevant previous years on borrowings for running the tea business. In the assessments for the assessment year 1981-82 and 1982-83 completed in December 1982 and January 1986, the department assessed the net interest income under the head 'other sources' after setting off the interest payments of Rs. 2,15,265 against the gross income of Rs. 2,17,393. As the assessee was engaged in business of cultivation and manufacturing of tea, the interest payments made on borrowals for running the tea business were required to be treated as business expenditure and were not incurred in earning the adjusted interest income. The irregular adjustment led to an aggregate under assessment of income by Rs. 1,29,159 involving undercharge of tax of Rs. 73,580 in the assessment years 1981-82 and 1982-83.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) (a) An obligation to apply the income in a particular manner before it is received by the assessee or before it has accrued or has arisen to the assessee results in the diversion of income. Where such diversion takes place on account of superior title, such income has to be excluded from the taxable income of an assessee. Where, however, an obligation to apply income of, which has accrued or arisen or has been received, amounts merely to the apportionment of income, the income so applied is not deductible.

A private limited company was a partner in a partnership firm alongwith three other partners. On dissolution of the firm, the company took over the business of the firm from 1 July 1980. As per the terms of the dissolution deed, the other three partners of the firm allowed a sum of rupees six lakhs, due to them as purchase consideration, to remain with the purchaser, *i.e.*, the company, for a minimum period of ten years and the company, in turn, agreed to pay to those three persons, in consideration thereof, five per cent of the net profits of the year, or interest at the rate of 15 per cent per annum on the amounts credited to the accounts of each of the parties, whichever is more.

In the first accounting year ending 30 June 1981, relevant to the assessment year 1982-83, the company had debited to the profit and loss account an amount of Rs. 7,73,187 as consideration payable to the three persons who had deposited the sum of Rs. 6 lakhs in the company. The entire expenditure was allowed as deduction in the assessment completed in March 1983. The sum of Rs. 7,73,187 paid to the three depositors was made out of profits of the company as per the conditions of the agreement. As the payment was not by way of diversion of income

by an over-riding title, but merely an apportionment of income, the deduction for the full amount was not admissible. However, considering that the agreement provided a minimum payment of 15 per cent by way of interest on the sum of Rs. 6 lakhs left with the company by the three depositors, a deduction of Rs. 90,000 could be allowed as expended wholly and exclusively for the purposes of the business, out of the total payment of Rs. 7,73,187. The omission to disallow the balance of Rs. 6,83,187 which was application of income resulted in short levy of tax of Rs. 4,20,160.

The Ministry of Finance have accepted the mistake.

(b) Under the provisions of the Income-tax Act, 1961, any expenditure laid out or expended wholly and exclusively for the purpose of business is allowed as deduction in computing the business income provided it is an ascertained liability and not a mere provision. No deduction is, however, admissible in respect of a mere contingent liability or a mere reserve created in the books of accounts for meeting future liability. It has been judicially held that only contributions to reserves which are placed completely beyond the control of the assessee from their creation right upto the point of utilisation would be deductible as outgoings.

In the assessments of a Road Transport Corporation of a State Government for the assessment years 1980-81 and 1981-82 completed in August 1983 and August 1984, deductions of Rs. 26,32,682 and Rs. 8,35,145 respectively being the amounts of contribution made by the assessee company to an insurance fund maintained by itself were allowed. The amount was intended to meet the future/present liability of third party insurance. It was pointed out in audit (June 1985) that in the absence of any provision in the Income-tax Act for allowing contribution to such a fund, the deductions allowed were not in order. The actual compensation of Rs. 1,46,645 and Rs. 5,68,254 paid from the fund to the accident victims during the relevant previous years, was only admissible as deduction. The total amount of irregular deduction on this account for the assessment years 1980-81 and 1981-82 aggregated to Rs. 27,52,928 with a potential tax effect of Rs. 15,51,963. The Income-tax Officer did not accept the objection stating that the amount paid to the insurance fund was in the course of business carried on by the assessee and hence allowable under the residuary provisions of the Act. The reply of the department is not tenable as deductions to the fund created by the assessee is not contemplated/admissible under the law.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) While a provision made for any accrued or known liability is allowable as deduction, an amount appropriated from the profits is not allowed as deduction.

Two public limited companies debited in its profit and loss account for the previous years relevant to the assessment years 1981-82 and 1982-83, an amount of Rs. 3,41,778 towards proposed dividend payment. The assessing authority, while completing the assessment in May 1984 and March 1985 allowed the expenditure as revenue expenditure and computed the income as 'nil' with carry forward unabsorbed investment allowance of Rs. 5,97,786 and carry forward tax holiday relief of Rs. 1,28,175. As the payment of dividend was to be out of net profits only, it being an appropriation of profit, was not an admissible business expenditure and the deduction should have been disallowed and added back to the income. Omission to do so resulted in short computation of income by Rs. 3,41,778 with consequent excess carry forward of unabsorbed investment allowance and tax holiday relief involving potential tax effect of Rs. 1,87,145.

The Ministry of Finance have accepted the mistake.

(iv) Under the Income-tax Act, 1961, entertainment expenditure incurred by a company in the course of its business in excess of certain specified limits is not allowed as business expenditure. Further, by an amendment made by the Finance Act, 1983 effective from 1 April 1976, entertainment expenditure was defined as expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverage or in any other manner whatsoever.

In the assessment of a company for the assessment year 1981-82 (assessment made in September 1984 and revised in October 1984), the department allowed deduction of a sum of Rs. 2,66,249 being expenditure on "Gifts to share holders attending the get-togethers on various locations on the occasion of the company's silver jubilee celeberation". However, consequent on the amendment made in the Act with retrospective effect from 1 April 1976 the above expenditure of Rs. 2,66,249 incurred on providing gifts to the share

holders constituted entertainment expenditure and as such was not an allowable business expenditure. Expenses on other entertainment and hospitality booked under a separate head was, however, duly disallowed in the assessment. The incorrect allowance of the expenditure of Rs. 2,66,249 resulted in under-assessment of business income by the same amount with consequent short levy of tax of Rs. 2,21,962 (including excess payment of interest of Rs. 64,542) for the assessment year 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986)

(v) While computing the income of an assessee, the assessing officer normally proceeds with the income as computed by the assessee as the starting point and then makes necessary adjustments by way of additions or deletions, in keeping with the provisions of the Act and rules to arrive at the total income.

For the assessment year 1981-82, a public limited company returned an income of Rs. 6,37,95,066 for the year ending 31 March 1981 after making various adjustments to the net profit shown in its profit and loss account. The net profit of the company as shown in its accounts included a sum of Rs. 8,74,000 being the profits on sale of fixed assets. However, before the assessment was made, the assessee stated in it's letter of January 1983 that the correct figure of profit on sale of fixed assets should be Rs. 10,00,359. In its revised 'statement of adjustment', the company deducted this amount for separate consideration but the net profit of the company was not correspondingly increased by an amount of Rs. 1,26,359 being the difference between the correct profit on sale of assets of Rs. 10,00,359 and the profits of Rs. 8,74,000 credited to the profit and loss account. The Inspecting Assistant Commissioner (Assessments) accepted the position and concluded the assessment in June 1984. The mistake resulted in excess deduction and under assessment of income of the company by Rs. 1,26,359 involving short levy of tax of Rs. 74,710.

The case was seen by the internal audit party of the department but it did not notice the mistake.

The department has accepted the mistake in principle.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) Under the Income-tax Act, 1961, any expenditure laid out or expended wholly and exclusively for the purpose of business of an assessee is admissible as a deduction provided the expenditure is not in the nature of capital expenditure or personal expenses of the assessee.

A public sector undertaking running a Government sponsored scheme on agency basis received during the year 1980-81 a grant of Rs. 17,85,000 from the State Government. The expenditure on the scheme during the year, however, amounted to Rs. 19,32,940. The excess expenditure of Rs. 1,47,940 was debited by the assessee company in its profit and loss account instead of adjusting it from grants to be received in subsequent years, as the expenditure did not relate to the business of the company. This resulted in under assessment of business income by Rs. 1,47,940 and short levy of tax of Rs. 87,470.

The assessment was checked by the special audit party of the department but the mistake escaped its notice.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vii) Under the provisions of Income-tax Act, 1961, any sums paid on account of land revenue, local rates or municipal taxes in respect of buildings and premises used for the purpose of business or profession is allowable as business expenditure. Where any building is not exclusively used for the purposes of the business or profession the deduction shall be restricted to a fair proportionate part thereof which the Income-tax Officer may determine having regard to the user of the building for the purposes of business or profession.

A company in which the public are substantially interested debited a sum of Rs. 1,00,720 towards property tax in its profit and loss account of the previous year relevant to the assessment year 1978-79. One seventh portion of the building was used by the company for its business and the remaining six-seventh portion was let out. In the assessment made in September 1981 for the assessment year 1978-79, the assessing officer allowed the payment on account of property tax both in the computation of business income and in the computation of house property income. The assessment was revised in July 1982 and the excess deduction on account of property tax was not withdrawn. However, the assessing officer made a note in assessment records for the assessment year 1978-79 in October 1982 that the double deduction should be rectified. But no such rectification was made till the date of audit (July 1984). The

excess deduction of property tax was brought to the notice of the department in May 1985. The department while accepting the objection stated that the actual amount of property tax paid was Rs. 1,60,466 and in the computation of house property income, the property tax allowable was Rs. 1,37,544 as against Rs. 1,60,466 actually allowed. Similarly, in the computation of business income as against the property tax of Rs. 1,60,466 actually allowed, the property tax deductible was Rs. 22,922 only. The excess allowance resulted in under assessment of income by Rs. 1,56,645 involving short levy of tax of Rs. 90,462.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(viii) As per provisions of the Finance Act, 1979, the rate of tax applicable to income by way of royalty or fees for technical services received by a non-resident company from an Indian concern was 50 per cent where the agreement made by the non-resident company with the Indian concern was before 1 April 1976. Where the agreement made by the foreign company was after 31 March 1976, tax rates were specified in the Income-tax Act itself and was to be charged at the lower rate of 40 per cent. Where there was no agreement, the rate of tax applicable was 70 per cent.

Further, in computing the income from royalty or fees for technical services rendered, pursuant to an agreement entered into before 1 April 1976, deduction for expenses was limited to 20 per cent of the gross royalty or fees, while in case of agreements entered into after 31 March 1976, no deduction for expenses was admissible. In the cases where there was no agreement income was to be computed by allowing the deductions as provided for in the Income-tax Act, 1961.

In the assessment for the assessment year 1978-79 made in March 1982, of a non-resident company, deriving income from rendering technical services to Indian companies, tax was levied at the rate of 70 per cent on the income computed after allowing the expenses as claimed by the company. However, audit scrutiny revealed (January 1983) that the company was engaged in providing technical services to Indian companies pursuant to agreements entered into after the 1 April 1976 and was not entitled to any deduction for expenses and the gross technical fees received for technical services rendered was liable to tax at the rate of 40 per cent. Incorrect allowance of expenditure as claimed by the company resulted in under assessment of income of Rs. 10,37,220 and a short levy of tax of Rs. 2,78,117.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ix) A closely-held company carrying on the business of bulk carriers consisting of construction, shipping and river fleet division was assessed to tax for the assessment year 1980-81 in September 1983. During the previous year relevant to the assessment year 1980-81 the assessee had debited to its profit and loss account a sum of Rs. 2,19,264 towards expenditure incurred in connection with sand blasting and painting of ship loaders and conveyor structures. Out of this a sum of Rs. 45,000 was disallowed and the balance amount of Rs. 1,74,264 was allowed as deduction in computing the income from business. It was noticed in audit in September 1984 that a similar expenditure of Rs. 2,80,678 was disallowed in entirety in the assessment for the assessment year 1979-80 on the ground that the payee was not a genuine person and accordingly the entire expenditure of Rs. 2,10,264 and not merely Rs. 45,000 should have been disallowed. The omission to do so resulted in under assessment of income by Rs. 1,74,264 and a short levy of tax of Rs. 1,14,875.

The Ministry of Finance have accepted the mistake.

(x) Under the provisions of the Income-tax Act, 1961, a resident tax payer is required to pay tax on foreign income accruing or arising to him. The Central Board of Direct Taxes issued clarification in March 1968, January 1976 and December 1983 indicating that gross foreign dividend will be subjected to tax in his hands and not the net dividend.

A closely-held domestic company received during the previous year relevant to the assessment year 1982-83 gross foreign dividend of Rs. 4,29,848. While computing the income for the assessment year 1982-83 in March 1985, the Inspecting Assistant Commissioner (Assessment) considered the net dividend of Rs. 3,22,388 in place of gross dividend of Rs. 4,29,848 for purpose of levy of tax. Incorrect computation of foreign dividend income resulted in under assessment of income of Rs. 1,07,460 with consequent undercharge of tax of Rs. 97,548 including penal interest of Rs. 25,953 for failure to furnish correct estimate of advance tax.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xi) The Income-tax Rules, 1962, provide that the rate of exchange for the calculation of the value in rupees of any income accruing or arising or deemed to accrue or arise to the assessee in foreign currency or received or deemed to be received by him in foreign currency which is chargeable under the head "Profits and gains of business or profession", shall be the telegraphic transfer buying rate of such currency as on the last day of the previous year of the assessee. Accordingly, even in cases where the income in foreign currency is actually received by the assessee during the course of the previous year, the rate of exchange for conversion of the income into Indian rupees applicable is the telegraphic transfer buying rate as on the last day of the previous year.

(a) A private industrial company received an income in foreign currency of £ 1,44,267.41 during the previous year ending 7 November 1980 relevant to the assessment year 1981-82. The assessee company returned the value of the income in Indian rupees at Rs. 25,76,971.63 which was worked out at the rates of exchange for conversion of pound sterling into Indian rupees prevailing on the various dates of receipt of the income and the same was accepted by the assessing officer in the assessment for the year 1981-82 completed in September 1984. The telegraphic transfer buying rate as on the last day of the previous year *i.e.* 7 November 1980 being £ 5.3240 for every hundred rupees, the rupee equivalent according to the Income-tax Rules, of the income in foreign currency received during the course of the previous year worked out to Rs. 27,09,575. Adoption of the incorrect rate of conversion resulted in under assessment of income of Rs. 1,32,785 and a short levy of tax of Rs. 86,907.

The assessment was checked by the internal audit party of the department and the mistake was not noticed by it.

The department justified its action stating that the Income-tax Rules governing the rate of exchange applied to cases where the accrual or receipt was still in the form of currency and the need for conversion into Indian rupees had arisen on the specified date and had no application to cases where foreign currency had in reality, been already realised and taken into account. The contention of the department is not tenable in view of thes express provisions of the Income-tax Rules.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A foreign company was deriving its income in India by way of fees for technical services rendered to an Indian company. During the previous years relevant to the assessment years 1982-83 and 1983-84 the foreign company was paid 2,98,623 and 89,377 Canadian dollars respectively for the technical services rendered to the Indian Company. Adopting an exchange rate of 13.479 Canadian dollars for every Rs. 100 the foreign company returned the income earned by way of fees for technical services at Rs. 36,92,470 and Rs. 11,05,150 for the assessment years 1982-83 and 1983-84 respectively. In the assessments for these two years made in January 1985, the assessing officer accepted the income as returned by the assessee company.

It was noticed in audit that the telegraphic transfer buying rates in force as on the last day of the relevant previous year of the assessee company were 13.220 Canadian dollars for every Rs. 100 as on 31 March 1982 and 12.375 Canadian dollars for every Rs. 100 as on 31 March 1983 which rates should have been adopted for conversion. Adoption of incorrect exchange rate, resulted in under assessment of income aggregating to Rs. 1,70,900 for the assessment years 1982-83 and 1983-84, leading to short levy of tax of Rs. 68,360 for the two assessment years.

The case was seen by the special audit party of the department, but the mistake was not detected by them.

The Ministry of Finance have accepted the mistake.

(c) During the previous years relevant to assessment years 1978-79, 1980-81 and 1981-82, an assessee company debited in its accounts sums aggregating to Rs. 2,94,679 towards exchange loss on revaluation of its foreign liabilities the revaluation having been caused by the difference of exchange rate prevailing on the closing and opening dates of the relevant previous years. It was allowed as a deduction in assessments. Since there was no actual remittance of such debts during the previous years, the allowance of the exchange loss computed on a notional basis as a deduction in the computation of business income was not in order and resulted in under assessment of income by Rs. 2,94,679 with undercharge of tax of Rs. 1,73,157 in the three assessment years 1978-79, 1980-81 and 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xii) The deduction of expenditure from the business income is allowed only if the business existed during the accounting year relevant to the assessment

year. If the business had been closed, discontinued or sold out, no deduction of expenditure is allowed in respect of such closed, discontinued or sold out business.

(a) In the assessment of a company for the assessment year 1980-81 completed in December 1982, expenditure of Rs. 2,40,889 incurred for payment of interest on loans taken to repay certain customer's deposits and interest thereon, was allowed as deduction. The business for which the loans were taken was not being carried on during the previous year relevant to the assessment year 1980-81 and the company's income was only from leasing of properties. As the assessee was not carrying on the business for which it had incurred the expenditure of Rs. 2,40,889 in the previous year relevant to the assessment year 1980-81, it was not an allowable deduction. Failure to disallow the interest payment, resulted in short levy of tax of Rs. 1,63,285.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the case of an assessee company engaged in the manufacture and sale of foreign liquor and country spirit, interest expenses amounting to Rs. 1,30,591 was allowed by the Inspecting Assistant Commissioner (Assessment) while completing the assessment for 1980-81 in September 1983. As the expenses related to sugar business of the assessee which was sold away by it in May 1977 the deduction of liability in respect of sold out sugar business from the present business was not in order. Similar expenditure was, however, rightly disallowed by the assessing officer in the assessment year 1981-82. The omission to do so led to underassessment of income of Rs. 1,30,591 with consequent short levy of tax of Rs. 77,212 in the assessment year 1980-81.

The Ministry of Finance have accepted the mistake.

(xiii) In its accounts for the previous year relevant to the assessment year 1981-82 (assessment completed in July 1984) a State Electricity Board engaged in the generation and distribution of electricity wrote-off an amount of Rs. 17,55,358 under the head "under/over absorption of cost of pole factory". No details of the nature of the expenditure were furnished by the assessee company. A perusal of the assessment records of the company for the subsequent years disclosed that the expenditure represented the difference between standard fixed cost of precast cement concrete poles and their actual cost and was charged off to general establishment charges and the department had disallowed the same as capital expenditure. On the same basis, an amount of Rs. 16,67,590 (capital expenditure of Rs. 17,55,358—Rs. 87,768 depreciation admissible thereon) was required to be disallowed in the assessment for the assessment year 1981-82 completed in July 1984. Omission to do so resulted in underassessment of income of Rs. 16,67,590 involving potential tax effect of Rs. 9,85,963.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xiv) Under the provisions of the Income-tax Act, 1961, where the total income of a company includes any income chargeable under the head 'Interest on securities', there shall be allowed in computing such income any reasonable sum expended for the purpose of realising such interest and any interest payable on moneys borrowed for the purpose of investment in the securities.

The assessment of a non-resident banking company for the assessment year 1982-83 was completed in February 1985 by the Inspecting Assistant Commissioner (Assessment) determining the total taxable income at Rs. 4,09,19,948. The assessee company derived income by way of interest on securities to the extent of Rs. 45,14,007. While computing the business income, the amount of Rs. 45,14,007 was deducted from the net profit of Rs. 1,19,64,857 as shown in the profit and loss account for separate consideration. A sum of Rs. 13,81,344 was allowed as deduction by the assessing officer on account of expenses incurred while determining interest income on securities. While computing the business income of the company, the Inspecting Assistant Commissioner (Assessment) again allowed the expenditure of Rs. 13,81,344 on account of expenses incurred in earning interest on securities. Thus, the expenses of Rs. 13,81,344 was allowed as deduction twice, once in computing interest from securities and again while computing business income of the banking company. The double deduction resulted in under assessment of income by Rs. 13,81,344 involving short levy of tax of Rs. 10,30,758 (including short levy of interest of Rs. 39,644 for belated filing of the return).

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xv) The assessment of a company for the assessment year 1981-82 was originally completed in December 1984. The assessment was revised in January 1985 computing the revised total income as Rs. 44,46,222. It was noticed in audit that as a result of tripartite settlement reached in October 1980 the company incurred a total liability of Rs. 22,65,833 (Rs. 3,85,759 for assessment year 1979-80 and Rs. 18,80,074 for assessment year 1980-81), towards *ad hoc* payment to its employees. The assessments for the assessment years 1979-80 and 1980-81 had not been finalised by then and the company submitted revised returns for the assessment years 1979-80 and 1980-81 claiming such liability which was ultimately allowed in the respective assessments. From the financial statement appearing in the Director's Report for the year relevant to the assessment year 1981-82 it was noticed that a sum of Rs. 22,52,200 was actually paid during the financial year in pursuance of the said tripartite settlement. The aforesaid payment thus stood included in the total payment of Rs. 5,97,52,778 towards, "payment to and provision for the employees" debited in the Profit and Loss Account. As the liability of Rs. 22,65,833 was already allowed in the assessment years 1979-80 and 1980-81, as claimed by the company in the revised returns, the sum of Rs. 22,52,200 and the excess liability of Rs. 13,633 allowed in the earlier assessments should have been offered for taxation by way of addition to net profit for the assessment year 1981-82. However, neither the assessee disclosed the same either in original return or in the revised return, nor did the department consider the disallowance in the assessment for the assessment year 1981-82 (assessment completed in December 1984 and revised in January 1985). This led to underassessment of business income by Rs. 22,65,833 with consequent undercharge of tax of Rs. 13,39,674 for the assessment year 1981-82. The assessee was also liable to pay minimum penalty of Rs. 13,39,674 for concealment of income.

The Ministry of Finance have accepted the mistake.

(xvi) Under the Income-tax Act, 1961, the term 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. It has been judicially held that in cases where the purchase has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it, the transaction is an adventure in the nature of trade and was, therefore, taxable. It has also been held judicially that the profits arising from the conversion of surplus funds invested by a bank or financial institution, instead of being kept idle into cash as and when needed, is income from business and not capital gain.

A banking company purchased 2 per cent National Defence Gold Bonds, 1980 in October 1980 for Rs. 13,52,439. In July 1981, the company sold the gold covered by the Bond to a bullion merchant for Rs. 14,63,346 and realised a profit of Rs. 1,10,907 which was assessable under the head "business". However, in the assessment for the assessment year 1982-83 (made in February 1985) taking the cost of gold on the date of redemption of the bond at Rs. 14,19,988 as the cost of acquisition the assessing officer determined the capital gain (short term) arising from the sale at Rs. 43,358 and taxed it. The omission to assess the profit as income from business resulted in under assessment of income of Rs. 67,549 and a short levy of tax of Rs. 50,480 in the assessment year 1982-83 (inclusive of mistake of Rs. 12,400 in calculation of tax by the department).

The department has accepted the mistake (March 1986).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

Irregularities in allowing depreciation, development rebate and investment allowance.

2.33 *Mistakes in the allowance of depreciation*

Under the Income-tax Act, 1961, in computing the business income of an assessee, a deduction on account of depreciation is admissible at the prescribed rates on plant, machinery or other assets provided it is owned by the assessee and used for the purpose of his business during the relevant previous year.

Depreciation on buildings and plant and machinery is calculated on their written down value according to the rates prescribed in the Income-tax Rules, 1962. Special rates of depreciation ranging from 15 per cent to 100 per cent are prescribed for certain specified items of machinery and plant. A general rate of 10 per cent (15 per cent from the assessment year 1984-85) is prescribed in respect of machinery and plant for which no special rate has been prescribed.

(i) (a) In the assessment of twelve companies for the assessment years 1976-77 to 1982-83 assessed in ten different Commissioners' charges, due to incorrect

application of rates of depreciation allowance and other calculation mistakes, there was an aggregate excess allowance of depreciation of Rs. 90,42,807 resulting in short levy of tax of Rs. 54,02,692 in seven cases and excess carry forward of unabsorbed depreciation/over computation of loss amounting to Rs. 79,62,166 involving potential tax effect of Rs. 47,29,046 in the remaining five cases. The particulars of these cases are as under :

S. No.	C.I.T.' Charge / Assessment year	Nature of mistake	Tax effect Rs.
1.	A 1981-82 and 1982-83	Special rates of depreciation at 30 per cent and 40 per cent were allowed on moulds used in the production of electronic components, radio sets, tape recorders, record players, electric bulbs, welding electrodes and other accessories instead of the general rate applicable at 10 per cent.	46,62,522
2.	B 1981-82	Incorrect allowance of depreciation at 20 per cent on machinery used in printing greeting cards and for data processing machines, though the same was classified as printing machinery by Government for purposes of investment allowance.	1,60,065
3.	C 1978-79	Depreciation on factory and workshop shed was allowed at 15 per cent instead of at the correct rate of 5 per cent.	1,59,712
4.	D 1982-83	Depreciation and additional depreciation at 15 per cent and 7½ per cent respectively were allowed on an electric generator which was not running on wind energy instead of the correct rate of 10 per cent and 5 per cent respectively. Further, additional depreciation amounting to Rs. 75,966 was also allowed again erroneously. The company was also assessed at 55 per cent instead of at the correct rate of 60 per cent applicable to the company.	1,56,795
5.	E 1980-81 to 1981-82	Depreciation on generating set was allowed at 20 per cent instead of at the general rate of 10 per cent.	1,00,820
6.	F 1980-81	Adoption of incorrect rate of depreciation on various items of machinery including generators at 20 per cent instead of at the correct rate of 10 per cent which was also the rate upheld by the Commissioner of Income-tax (Appeals) for the earlier assessment years 1974-75 and 75-76.	87,416
7.	G 1982-83	Depreciation on water treatment plant was allowed at 30 per cent instead of at the correct admissible rate of 10 per cent for the assessment year 1982-83. The increased rate was applicable from the assessment year 1983-84.	75,362
8.	A 1979-80 to 1980-81	Allowance of depreciation at 10 per cent on hydraulic works as included in the depreciation schedule for income-tax purposes under general plant and machinery instead of the correct rate of 5 per cent leading to excess carry forward of loss of Rs. 34,44,000 (assessment year 1979-80) and Rs. 33,18,000 assessment year 1980-81).	39,50,678 (Potential)
9.	H 1981-82	Allowance of depreciation on aircraft at 40 per cent as against the allowable rate of 30 per cent resulting in under assessment of income of Rs. 4,54,876.	3,42,294 (Potential)
10.	I 1982-83	Allowanceo f depreciation on diesel generating sets at 15 per cent instead of at the correct rate of 10 per cent resulting in over computation of loss by Rs. 2,93,953.	1,80,779 (Potential)
11.	I 1977-78 and 1978-79	Allowance of depreciation on engines kept ready for use as spares for motor buses at the rate of 30 per cent prescribed for motor buses/lorries instead of at the general rate of ten per cent resulting in allowance of excess depreciation of Rs. 1,66,798 (assessment year 1977-78) and Rs. 1,05,529 (assessment year 1978-79).	1,54,380 (Potential)
12.	J 1982-83	Allowance of depreciation at 15 per cent on "Boiler House" and "Cooling Tower" not coming into contact with corrosive chemicals instead of at the admissible rate of 10 per cent resulting in excess allowance of depreciation of Rs. 1,79,010.	1,00,915 (Potential)

Five of the twelve companies, were assessed by the Inspecting Assistant Commissioner (Assessment).

The Ministry of Finance have accepted the objection in three cases and their comments are awaited in the remaining cases (December 1986).

(b) A public limited industrial company engaged in manufacture and sale of cement incurred a total expenditure of Rs. 4,81,760 in the previous years relevant to the assesment years 1974-75 and 1975-76 on guarantee commission, interest on loans and miscellaneous items in connection with installation of a ropeway equipment, and claimed a deduction of the relevant expenditure of each year in the two assessment years 1974-75 and 1975-76. The Income-tax

Officer disallowed the claim on the ground that the installation was still incomplete. The assessee took the matter in appeal but at the same time capitalised the expenditure and claimed depreciation and initial depreciation on it amounting to Rs. 2,40,880 for the assessment year 1976-77. This was allowed by the Income-tax Officer. The Appellate Tribunal decided the case in favour of the assessee for the assessment years 1974-75 and 1975-76 and the Income-tax Officer accordingly gave effect to the appeal orders in February 1985 and allowed the expenses in the assessment years 1974-75 and 1975-76. The allowance of depreciation of Rs. 2,40,880 allowed in the assessment year 1976-77 thus became incorrect and was required to be withdrawn. Omission to withdraw the depreciation for the assessment year and subsequent assessment years resulted in a total short levy of tax of Rs. 2,57,596 for the three assessment years 1976-77, 1977-78 and 1978-79 including short levy of interest for delay in filing the return (Rs. 2,395) and for short payment of advance tax (Rs. 16,769).

The Ministry of Finance have accepted the objection.

(c) For the assessment years 1981-82 and 1982-83 a company was allowed depreciation (normal and additional) amounting to Rs. 5,16,821 and Rs. 11,44,989 respectively on the value of plant and machinery acquired in earlier years and on those acquired in the relevant previous years. From the particulars furnished by the assessee in support of its claim for investment allowance, it was noticed that some of the plant and machinery were not installed in the same year in which these were acquired but were installed in the subsequent years. In view of this, depreciation (normal and additional) allowable to the assessee in the said two years worked out to Rs. 4,58,774 and Rs. 11,37,173 only. Thus, there was excess allowance of depreciation of Rs. 58,047 and Rs. 7,186 respectively for the assessment years 1981-82 and 1982-83. Further, plant and machinery installed during the assessment year 1982-83 included Diesel Generating Sets costing Rs. 3,45,312 on which depreciation was allowed at 15 per cent instead of at the admissible general rate of 10 per cent leading to further excess allowance of depreciation (including additional depreciation) of Rs. 25,895 for the assessment year 1982-83. It was also noticed that in the returns of income for the assessment years 1981-82 and 1982-83 the assessee had declared that it was a company in which public were not substantially interested. Assessment records of earlier assessment years also confirmed this. But the assessing officer while completing the assessments for 1981-82 and 1982-83 treated the company as one in which public were substantially interested and hence eligible for the concessional rate of tax. These mistakes led to tax undercharge of Rs. 1,32,900 (including short levy of interest of Rs. 39,104) in the assessment year 1982-83, there being no positive taxable income in the assessment year 1981-82.

The Ministry of Finance have accepted the mistake.

(d) In the case of buildings, machinery, plant or furniture, the depreciation is allowable on the actual cost or the written down value, as the case may be of the assets.

In the case of a company, the written down value at the close of the assessment year 1979-80 of certain taxies used by the assessee in its business was Rs. 10,56,360. However, while finalising the assessment for the year 1980-81 in March 1985, the written down value of the taxies was erroneously adopted as Rs. 14,12,682 instead of Rs. 10,56,360. Consequential mistakes also occurred in the assessments for the assessment years 1981-82 and 1982-83. The mistakes resulted in depreciation being allowed in excess by Rs. 3,66,322 and consequent short levy of tax of Rs. 1,73,407 in the assessment years 1980-81, 1981-82 and 1982-83.

The Ministry of Finance have accepted the mistakes.

(e) A company filed its return of income for the assessment year 1981-82 in June 1981 in which it had claimed a depreciation of Rs. 2,54,05,810. A revised return was filed by the company in March 1984 in which the claim for depreciation was reduced to Rs. 2,52,93,969 due to disallowance of depreciation on the value of assets representing technical know-how. In the assessment for the assessment year 1981-82 completed in February 1985, the assessing officer, however, incorrectly allowed the depreciation of Rs. 2,54,05,810 as claimed in the original return instead of the amount of Rs. 2,52,93,969 as reduced. This resulted in allowance of excess depreciation of Rs. 1,11,841 involving a short levy of tax of Rs. 66,125.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) In the assessment of a company for the assessment year 1981-82, completed in May 1984 the assessing officer allowed depreciation allowance of Rs. 23,815 and investment allowance of Rs. 51,135 on plant and machineries purchased for its sugar project. But these plant and machineries were not put to use in the business as the project was ultimately abandoned. The incorrect allowance of depreciation

and investment allowance resulted in under assessment of income by Rs. 74,950 and an under charge of tax of Rs. 61,590 including short levy of interest for delayed submission of return and short payment of advance tax for the assessment year 1981-82.

The Ministry of Finance have accepted the mistake.

(ii) Under the Income-tax Act, 1961, in computing the business income of an assessee a deduction on account of depreciation is admissible at the prescribed rates on plant, machinery or other assets provided it is owned by the assessee and used for the purpose of his business during the relevant previous year. No depreciation is admissible on the assets which have not at all been used for any part of the accounting year.

(a) In the depreciation chart filed alongwith the return of income for the assessment year 1981-82, an assessee company claimed depreciation on plant and machinery at Rs. 14,051 and on factory buildings at Rs. 37,433 stating specifically that the written down values of these assets which were actually used during the previous year were Rs. 1,40,511 and Rs. 3,74,326 respectively. In the original assessment made in March 1984 and in the revised assessment made in September 1984 to give effect to the orders of the Commissioner of Income-tax (Appeals), the assessing officer did not consider the fact of the lower claim for the depreciation made by the assessee on the basis of actual user of the assets and allowed it at Rs. 1,86,170 and Rs. 39,056 respectively. The mistake resulted in excess allowance of depreciation totalling to Rs. 1,73,742 for the assessment year 1981-82 and excess carry forward of unabsorbed depreciation to that extent with potential tax effect of Rs. 1,09,457.

The Ministry of Finance have accepted the mistake.

(b) In the previous year relating to assessment year 1980-81, a company purchased non-factory building (2nd class) at a cost of Rs. 37,00,000. The company claimed depreciation allowance of Rs. 1,85,000 at the rate of 5 per cent on the value of these assets and the claim was allowed by the assessing officer in the assessment completed in March 1984. Since the registeration of the deed purchasing the immovable asset in the form of buildings had not been executed the assessee could not be said to be the owner of these assets. The depreciation allowed on these assets was, therefore, not in order. The mistake resulted in excess allowance of depreciation of Rs. 1,85,000 with consequent under assessment of income by an identical amount involving short levy of tax of Rs. 1,09,381.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) In the assessment for assessment year 1982-83 completed in December 1984, a company was allowed depreciation of Rs. 3,59,993 on the workers quarters. In the relevant previous year the workers quarters were owned by the company employees welfare fund and not by the company. As the asset was not owned by the assessee company during the relevant previous year the allowance of depreciation was not in order. The incorrect grant of depreciation resulted in a short levy of tax of Rs. 2,21,395.

The Ministry of Finance have accepted the mistake.

(d) Where the actual cost of any machinery or plant does not exceed Rs. 750 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.

In the assessment of a tea company for the assessment years 1981-82 and 1982-83, completed in September 1984 and March 1985, the whole amount of expenditure of Rs. 2,35,199 and Rs. 5,25,956 respectively, incurred during the relevant previous years on electrification of each 1983 units of labour quarters and labour lines was allowed as deduction on the ground that the cost of electrification of each unit of labour quarter/lines was less than Rs. 750 as claimed by the assessee in the depreciation statement under "electrical machinery". As the cost of electrification of each unit of labour quarter/lines did not represent the cost of any individual item of plant and machinery, the general rate of depreciation of 10 per cent as applicable to wirings and fittings of electric lights and fans was admissible in this case instead of depreciation at 100 per cent. The mistake led to excess allowance of depreciation to the extent of Rs. 2,11,679 and Rs. 4,52,192 in the assessment years 1981-82 and 1982-83 respectively. The assessee being a tea company, there was under assessment of income of Rs. 84,672 and Rs. 1,80,877 with tax undercharge of Rs. 63,906 (including surtax of Rs. 13,844) and Rs. 1,01,969 in the assessment years 1981-82 and 1982-83 respectively, besides excess payment of interest of Rs. 14,412 and Rs. 90,262 by the Government.

The Ministry of Finance have accepted the mistake.

(e) The Act provides that no depreciation shall be allowed in respect of any motor car manufactured

outside India, where such motor car is acquired by the assessee after 28 February 1975 and is used otherwise than in a business of running it on hire for tourists.

While determining the income of a public limited company for assessment year 1982-83 finally at Rs. 11,56,150 in February 1985, the department allowed depreciation of Rs. 51,124 on a motor car acquired during the previous year at a total cost of Rs. 2,55,621. The unusual price of the car revealed that it was not manufactured in India. Assessment records of the assessee further revealed that it was not manufactured in India. Assessment records of the assessee further revealed that car was not used in the business of running it on hire for tourists. No depreciation was, therefore, allowable on this car. The mistake resulted in undercharge of tax of Rs. 42,895 including short levy of interest for short payment of advance tax.

The department has initiated proceedings for rectification.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) A deduction in respect of machinery owned by the assessee and used for the purpose of business carried on by him shall be allowed in the previous year of installation or the previous year of first usage of a sum by way of investment allowance equal to 25 per cent of the actual cost of the machinery to the assessee. No investment allowance is admissible on machinery and plant which are not used for the purpose of business.

In the assessment for the assessment year 1983-84 completed in January 1985, a company was allowed depreciation and investment allowance of Rs. 82,800 and Rs. 1,03,500 respectively on additions to plant and machinery worth Rs. 37,69,318. It was noticed that out of the additions, plant and machinery worth Rs. 4,14,000 (including erection and commissioning charges of Rs. 10,000) was actually installed in February 1983 *i.e.* after the close of the previous year ending 31 December 1982 relevant to the assessment year 1983-84. As plant and machinery worth Rs. 4,14,000 were not actually used during the assessment year 1983-84, no depreciation and investment allowance was admissible thereon. The incorrect allowance of depreciation and investment allowance aggregating to Rs. 1,86,300 resulted in under assessment of income of Rs. 1,86,300 and a consequent tax undercharge of Rs. 1,12,370 (including excess payment of interest of Rs. 7,343).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Under the Income-tax Rules, 1962 depreciation on motor buses, motor lorries or motor taxies is admissible at 40 per cent of the written down value if used in the business of running them on hire. Otherwise, the admissible rate is 30 per cent.

In the previous year ending 31 October 1980 and 31 October 1981 relevant to the assessment years 1981-82 and 1982-83, a private industrial company engaged in the manufacture and sale of beedies let out its lorries on hire for short durations on some return trips after delivering beedi packets to its distributiors. The hire receipts earned worked out to Rs. 4,04,672 and Rs. 5,00,733 respectively against a gross profit from business of Rs. 3,55,39,769 and Rs. 4,83,08,836 in these two years, which actually constituted only 1.1 per cent and 1 per cent respectively of the gross receipts of business. In the assessments for the two assessment years completed in July 1983 and September 1983, the assessee was allowed depreciation at the higher rate of forty per cent. As the assessee company's business was mainly manufacture and sale of beedies and the plying of vehicles on hire was only incidental and fetched nominal increase the correct rate of depreciation applicable was 30 per cent only. The incorrect allowance of depreciation resulted in underassessment of income aggregating to Rs. 1,59,375 involving total short levy of tax of Rs. 1,01,001.

The internal audit party of the department checked the cases but could not detect the mistake.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) Under the provisions of the Income-tax Act, 1961, expenditure of a capital nature incurred by an assessee on scientific research during the relevant previous year is deductible in computing the taxable income for that assessment year. In such a case the assessee will not be entitled to depreciation in respect of the capital expenditure on scientific research represented by any asset either in the same or in any subsequent previous year.

(a) While completing the assessments of a public limited company for the assessment years 1977-78 and 1978-79 in October 1982 and in April 1982 respectively depreciation of Rs. 1,44,254 was allowed by the department to the assessee company on the assets acquired by it for scientific research. As the deduction on account of the whole of expenditure incurred on acquisition of the assets for scientific research was

allowed in the year of acquisition, the incorect allowance of depreciation by the department in assessment years 1977-78 and 1978-79 resulted in an under assessment of income of Rs. 1,44,254 and under charge of tax of Rs. 83,305.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the assesments of a company for the years 1977-78 and 1978-79 completed in March 1980 and March 1981, the expenditure amounting to Rs. 1,40,593 and Rs. 14,28,818 respectively on 'Training' and 'Technological documents' was treated as capital expenditure and depreciation of Rs. 3,09,577 allowed as per the rates prescribed. On an appeal by the assessee company, the Commissioner of Income-tax (Appeals) in December 1981 allowed these expenses as revenue expenditure and the orders were given effect to in January 1982, the entire expenditure was allowed as revenue expenditure. The department, however, omitted to withdraw the depreciation of Rs. 3,09,577 allowed thereon in the assessment years 1977-78 to 1979-80. Further, in the assessment for the assessment year 1979-80 completed in March 1982, the assessing officer allowed depreciation amounting to Rs. 1,64,036 on the capital expenditure relating to 'Training' rejecting the assessee's claim for terminal allowance on it in the year 1978-79. As the Commissioner of Income-tax (Appeals) had allowed the claim of the assessee for the terminal allowance for the entire amount in the year 1978-79 and the same was allowed in January 1982, the depreciation of Rs. 1,64,036 allowed in the year 1979-80 was not correct. The above omissions together with failure to disallow 10 per cent of the expenses on publicity amounting to Rs. 55,624 in the year 1979-80 led to the under computation of assessee's income by Rs. 5,29,237 in the aggregate and a consequent undercharge of tax of Rs. 3,35,318.

The department has accepted the objection

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) Under the Income-tax Act, 1961, in determining the written down value of assets for the purpose of allowance of depreciation both normal depreciation and additional depreciation are required to be taken into account and not normal depreciation alone.

(a) In the case of a company additional depreciation was allowed on new plant and machinery in the assessment years 1981-82, 1982-83 and 1983-84. However, the written down value of these assets for the purposes of grant of depreciation for the succeeding assessment years viz., 1982-83, 1983-84 and 1984-85, assessments of which were completed in September 1983 (revised in December 1984), January 1985 and February 1985 was completed without reducing it by the additional depreciation allowed in the preceding years respectively. The mistake resulted in excess allowance of depreciation (including extra shift allowance) of Rs. 54,697, Rs. 1,10,724 and Rs. 1,26,649 in the assesment years 1982-83 to 1984-85 with aggregate tax undercharge of Rs. 1,82,008 (including excess payment of interest) in the three assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The Act provides that in determining the written down value of assets for purpose of allowance of depreciation, both normal and extra shift allowance are required to be taken into account.

In the case of a company, although extra shift allowance was allowed on plant and machinery in respect of its industrial unit established in backward areas, in the assessment year 1979-80 the same was not taken into account in determining the written down value of the assets in succeeding assessment years, viz., 1980-81, 1981-82 and 1982-83 assessments completed in April 1983, December 1984 (last revised in February 1985) and March 1985 respectively. Further, normal and extra shift depreciation were not worked out separately for machinery coming into contact with corrosive materials and others not so coming into contact for which depreciation was admissible at a lower rate. The mistakes resulted in aggregate excess allowance of deprecation of Rs. 2,42,421 leading to net underassessment of income of Rs. 1,93,937 (after deduction in respect of profits and gains from newly established industrial undertaking in backward area) and a consequent tax undercharge of Rs. 1,56,610 including short levy of interest of Rs. 43,185 for belated filing of return of income and short payment of advance tax for the assessment years 1980-81 to 1982-83.

The Ministry of Finance have accepted the mistake.

(vi) (a) During the provious year relevant to assessment year 1980-81, a company revalued its factory buildings and appreciated the value of the buildings by Rs. 51,90,432. The written down value of the buildings stood at Rs. 3,22,368 prior to its revaluation (actual cost Rs. 21,12,941 less depreciation of Rs. 18,00,573 allowed in the earlier years). While completing the assessments in March 1984 and

March 1985 for the assessment years 1981-82 and 1982-83 respectively, the assessing officer incorrectly allowed depreciation of Rs. 8,25,420 and Rs. 7,01,606 on the value of the factory buildings as revalued at Rs. 55,02,800 (i.e. the actual written down value of Rs. 3,12,368 plus Rs. 51,90,432 by which the value of the buildings was appreciated) instead of the admissible amounts of Rs. 39,827 and Rs. 33,853 respectively on the actual written down value of Rs. 3,12,368. After considering the depreciation of Rs. 46,855 allowable which was not allowed in the assessment year 1980-81, incorrect adoption of the written down value of the factory buildings led to excess allowance and carry forward of depreciation by Rs. 14,06,491 in the assessment years 1981-82 and 1982-83 involving potential tax effect of Rs. 7,92,909.

The Ministry of Finance have accepted the mistake.

(b) While computing the business income, depreciation at the prescribed rates on the actual cost or the written down value of the assets as the case may be, owned by the assessee and used for the purpose of business is allowable under the income-tax Act. The Act further provides that the term 'actual cost' for the purpose of allowance of depreciation means the actual cost of the assets to the assessee reduced by that portion of the cost ,if any as has been met directly or indirectly by any other person or authority. The Central Board of Direct Taxes clarified in March 1976 that the subsidy received under "Central outright grant of subsidy scheme, 1971" for establishing industrial units in selected backward areas, constitutes capital receipts in the hands of the receipient and as such this amount would have to be reduced from the cost of the asset for the purpose of allowing depreciation on such assets. Accordingly in computing depreciation and also investment allowance on the assets eligible for these deductions, the same are allowable on the cost of the assets as reduced by the subsidy amount.

A private limited company engaged in the manufacture and sale of foam leather cloth had received subsidy of Rs. 2,45,442 from Government in the previous year relevant to the assessment year 1980-81 for its capital investment in a factory situated in the backward area of a State. Since the subsidy was received towards capital investment, a portion of the same was allocated to the fixed assets such as land, plant and machinery and buildings. Hence, while calculating the "actual cost" for the purpose of allowing depreciation and investment allowance, the subsidy element was required to be deducted from the cost of the asset and then only depreciation and investment allowance at the prescribed percentages worked out on the reduced cost of the assets. Failure to do this resulted in grant of excess depreciation of Rs. 77,524 for the three assessment years 1980-81, 1981-82 and 1982-83, investment allowance of Rs. 44,137 in assesment year 1980-81 and excess computation of loss for the above assessment years involving potential tax effect of Rs. 70,615

The department has accepted the objection.

The case was checked by the internal audit party of the department but the mistake was not detected by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) A newly incorporated assessee company which started commercial production during the previous years relevant to the assessment year 1981-82 received Rs. 9,93,600 as subsidy under the "ten per cent central outright grant of subsidy scheme, 1971" for establishing company's manufacturing unit in a backward area in Bihar. This amount of Central subsidy included Rs. 6,97,879 representing ten per cent cost of plant and machineries of Rs. 69,78,788 installed and put into use by the assessee company in the above manufacturing unit. As per the provisions of the Income-tax Act and the instructions of the Board the amount of Rs. 6,97,879 was required to be deducted from the actual cost of plant and machineries of Rs. 69,78,788 before allowing investment allowance and depreciation. But while completing the assessment at a loss in April 1984, the assessing officer allowed both investment allowance and depreciation on the actual cost of plant and machineries without first reducing it by the amount of central subsidy resulting in excess allowance of investment allowance of Rs. 1,74,470 and depreciation of Rs. 1,39,576. The omission led to an excess carry worward of loss of Rs. 3,14,046 involving a potential tax effect of Rs. 1,85,679.

The Ministry of Finance have accepted the mistake.

(d) During the previous year relevant to the assessment year 1977-78, a company received a central subsidy of Rs. 7,70,000 towards cost of fixed assets installed in a backward area. However, the assessing officer while calculating depreciation allowance on such assets omitted to deduct this amount of Rs. 7,70,000 from the cost of the assets. This led to excess allowance of depreciation from the assessment year 1977-78 onwards. As, however, rectification of assessments upto the assesment year 1978-79

was barred by limitation, the amount of capital subsidy needed to be deducted from the written down value of assets of the assessment year 1979-80. This not having been done, there was excess allowance of depreciation of Rs. 3,68,055 during the assessment years 1979-80 to 1982-83 leading to tax undercharge of Rs. 3,08,388 (including penal interest of Rs. 82,034) in the assessment year 1982-83, there being no positive taxable income in the assessment years 1979-80 to 1981-82.

The Ministry of Finance have accepted the mistake.

(e) During the previous year relevant to the assessment years 1981-82, 1982-83 and 1983-84, three companies (assessed in two different wards) received subsidies totalling to Rs. 5,72,651 from Central/ State Government for purchase of machinery. However, the assessing officer while calculating depreciation and investment allowance on the plant and machinery, omitted to reduce the amount of subsidy from the cost of the plant and machinery. The omission resulted in excess grant of depreciation (including additional depreciation and extra shift depreciation) and investment allowance aggregating to Rs. 2,25,925 with consequent short levy of tax of Rs. 1,33,817 in the three cases.

The Ministry of Finance have accepted the mistake.

(f) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure incurred by the assessee and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever any benefit in respect of such loss or expenditure, the amount so obtained by him shall be charged to tax as income of that previous year in which such benefit was received.

In the previous year relevant to the assessment year 1982-83, a company received a subsidy of Rs. 3,57,000 towards the cost of two generators which had been commissioned during the assesment year 1981-82. In the assesment for the assessment year 1981-82, the assessee was allowed depreciation and investment allowance totalling 50 per cent of the cost of Rs. 17,58,204 in respect of one generator. The entire cost of the second generator amounting to Rs. 17,27,503 was allowed in the same assessment year 1981-82 as revenue expenditure under orders of the Appellate Commssioner. As the original cost of the generator costing Rs. 17,58,204 was not reduced by proportionate subsidy (Rs. 1,80,072 to arrive at the actual cost for purpose of granting depreciation and investment allowance, there was excess grant of those allowances by Rs. 90,036 in the assessment year 1981-82 (being 50 per cent of the proportionate subsidy received amounting to Rs. 1,80,072) and consequent excess allowance of depreciation of Rs. 27,010 in the assessment for the assessment year 1982-83. Further, as the entire cost of the second generator (Rs. 17,27,503) was already allowed as revenue expenditure in the assesment for the assessment year 1981-82 and the assessee in the subsequent year received subsidy for the same, proportionate subsidy received amounting to Rs. 1,76,928 should have been treated as income and charged to tax in the assessment year 1982-83. Omission in this regard led to underassesment of income of Rs. 1,76,928 for the assessment year 1982-83. The mistake resulted in aggregate underassessment of income of Rs. 2,93, 974 during the assessment years 1981-82 and 1982-83 and a consequent tax undercharge of Rs. 2,05,568 (including penal interest of Rs. 37,365 for the assessment year 1982-83).

The Ministry of Finance have accepted the mistake.

(g) In the case of a company in respect of the previous year relevant to the assessment year 1982-83 a part of the cost of machinery for its new units was met by a subsidy of Rs. 12,75,000 received from the Central Government. This amount of subsidy should have been deducted from the original cost of plant and machinery to arrive at the 'actual cost' on which depreciation (including additional depreciation) is to be computed. But this was not done by the department and depreciation was calculated on the original cost of plant and machinery. This omission resulted in excess allowance of total depreciation of Rs. 1,91,250 including additional depreciation of Rs. 63,750 and consequent excess carry forward of unabsorbed depreciation by Rs. 1,91,250 for the assesment year 1982-83 involving potential tax effect of Rs. 1,07,818.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(h) In the assessment for the assessment year 1984-85 completed in December 1984, a private limited company was allowed depreciation and investment allowance of Rs. 67,161 and Rs. 1,11,937 respectively on plant and machinery costing Rs. 4,47,748. The company had received Rs. 4,97,413 as subsidy from the State Government under the State subsidy scheme. Accordingly the "actual cost" of the plant

and machinery to the assessee was "nil" and no depreciation and investment allowance was admissible. The incorrect allowance of depreciation and investment allowance aggregating to Rs. 1,79,098 resulted in underassessment of income of Rs. 1,79,098 and a short levy of tax of Rs. 1,12,830.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(i) An assessee company received investment subsidy of Rs. 12,18 000 and Rs 2,82,000 from the Central Government in respect of its fixed assets viz., land, buildings plant and machinery and other electrical installations in the previous year relevant to the assessment years 1980-81 and 1981-82 respectively. While completing the assessments, the actual costs of the depreciable assets were not reduced by the amounts of such subsidies.

Further, although no depreciation is allowable on land as per Income-tax Rules, 1962, the same was allowed incorrectly at one per cent on leasehold land in the assessment years 1981-82 and 1982-83. In the assessment year 1982-83 depreciation was also allowed erroneously at 30 per cent on the written down value of vehicles instead of at the prescribed rate of 20 per cent as claimed and allowed in earlier years. The omissions resulted in excess allowance of depreciation of Rs. 1,94,407, Rs. 1,99,590, Rs. 2,34,249 and Rs. 1,72,757 with consequent excess carry forward of unabsorbed depreciation by like amounts for the assessment years 1980-81, 1981-82, 1982-83 and 1983-84 respectviely involving a total potential tax effect of Rs. 4,51,566.

The Ministry of Finance have accepted the mistakes.

(j) For the assessment years 1980-81 to 1982-83, a company claimed depreciation on electric machinery (Hot dipped plant) at 20 per cent instead of the admissible general rate of 10 per cent, there being no specific rate of depreciation for this type of assets. The department in completing the assessments for the assesment years 1980-81 and 1981-82 disallowed the assessee's claim and allowed depreciation on electric machinery at 10 per cent. In the assessment for the assessment year 1982-83 (assessment made in March 1985) the department, however, allowed depreciation thereon at 20 per ceht on the value as shown by the assessee without making any adjustment for depreciation disallowed in assessment years 1980-81 and 1981-82. This led to excess allowance of depreciation of Rs. 1,68,507 in assessment year 1982-83. Further, a subsidy of Rs. 5,00,000 received in the previous year relevant to the assessment year 1982-83 from Government towards purchase of a diesel generating set was not deducted to arrive at the actual cost thereof for the purpose of allowing depreciation thereon. This led to further excess allowance of depreciation of Rs. 75,000 in the assessment year 1982-83. As the asssessment resulted in a loss the total excess allowance of depreciation of Rs. 2,43,507 in the asssessment year 1982-83 resulted in excess carry forward of loss by the same amount involving a potential tax effect of Rs. 1,37,277.

The Ministry of Finance have accepted the mistake.

(k) In the previous years relevant to the assessment years 1980-81 and 1981-82, a tea company received subsidy of Rs. 5,69,950 and Rs. 4,28,813 from the West Bengal Government, Housing Board towards cost of construction of the workers quarters. Accordingly, in computing the depreciation (both normal and initial) on the aid asset, the subsidy of Rs. 5,69,950 and Rs. 4,28,813 reimbursed to the assessee was required to be deducted from the cost of the assets. While completing the assessment for the assessment year 1980-81, the assessing officer made no deduction of the subsidy of Rs. 5,69,950 and that for the assessment year 1981-82 deducted only an amount of Rs. 2,45,845 out of the total subsidy of Rs. 4,28,813. The mistake resulted in excess allowance of depreciation by Rs. 2,70,727 and Rs. 1,26,449 in the assessment years 1980-81 and 1981-82 respectively leading to aggregate under assessment of business income by Rs. 1,58,870 (40 per cent of Rs. 3,97,176) with consequent tax undercharge of Rs. 1,16,806 (including surtax undercharge of Rs. 22,874) for the two assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(l) In computing the income from business, the Income-tax Act, 1961, provides for depreciation on building, plant and machinery and furniture owned by the assessee and used for the purpose of business. The Act further provides that where full effect to the depreciation allowance cannot be given in any previous year, the allowance or part of the allowance to which effect has not been given, as the case may be, can be carried forward for adjustment in the following assessment years. However, under a new provision inserted by the Finance Act, 1975 regarding the computation of business income of non-resident shipping companies, the above provisions regarding allowance of depreciation are specifically

made applicable and the unabsorbed depreciation for earlier years will not be allowed in determining the profits and gains for the assessment year 1976-77 and subsequent years.

The assessment of a non-resident shipping company for the assessment year 1974-75 was revised in January 1982 determining a business loss of Rs. 11,81,500 and unabsorbed depreciation of Rs. 54,24,513. The same was carried forward and set off against the income for 1976-77 in the revision made in March 1982 and the business loss of assessment year 1974-75 to be carried forward for set off was indicated as Rs. 14,15,266 which was subsequently adjusted in the assessment years 1978-79 (Rs. 11,31,674) and 1979-80 (Rs. 2,83,592) in November 1983. It was noticed in audit (January 1985) that the loss of Rs. 14,15,266 for the assessment year 1974-75 carried forward from the assessment year 1976-77 included a business loss of Rs. 11,91,500 only and the balance of Rs. 2,33,766 represented unabsorbed depreciation. Following the revised provision of the Act applicable from the assessment year 1976-77, only the business loss of Rs. 11,81,500 should have been set off and the incorrect adjustment also of the unabsorbed depreciation of Rs. 2,33,766 resulted in short levy of tax of Rs. 1,75,910 in the assessment year 1979-80.

The Ministry of Finance have accepted the mistake.

(m) The total income of a company for the assessment year 1976-77 completed in September 1980, was determined at a loss of Rs. 16,45,663 being unabsorbed depreciation. Out of this, a sum of Rs. 13,67,331 was set off in September 1980 against the income for assessment year 1977-78 reducing the income of that assessment year to nil and the balance of unabsorbed depreciation of Rs. 2,78,332 was carried forward for set off in later years. Both the assessments for the assessment years 1976-77 and 1977-78 were later revised. The assessment for assessment year 1976-77 was revised in January 1982 reducing the unabsorbed depreciation from Rs. 16,45,663 to Rs. 14,52,241 and the same was fully set off in March 1985 against the revised total income for the assessment year 1977-78. Although there remained no unabsorbed depreciation to be carried forward in respect of the assessment year 1976-77, a sum of Rs. 2,78,332 was set off in March 1985 against the income for the assessment year 1980-81 on account of unabsorbed depreciation for the assessment year 1976-77. This mistake resulted in underassessment of income by Rs. 2,78,332 in the assessment year 1980-81 with tax undercharge of Rs. 2,60,609 including interest of Rs. 66,124 for delayed submission of return and short payment of advance tax.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.34 *Incorrect grant of additional depreciation*

Under the Income-tax Act, 1961, as amended by the Finance (No. 2) Act, 1980, a further deduction is allowed by way of additional depreciation in respect of new plant or machinery installed after 31 March 1980 but before 1 April 1985, the additional sum being equal to one half of the normal depreciation in respect of the previous year in which such plant or machinery is installed or if the plant or machinery is first put to use in the immediately succeeding previous year than in respect of that previous year. The Act further provides that no deduction by way of additional depreciation shall be allowed in respect of any office appliances.

(a) In the assessment of a company for assessment year 1982-83 completed in March 1985, the assessing officer allowed additional depreciation of Rs. 5,30,100 on Data Processing Computers. While disallowing the claim of investment allowance of the company the assessing officer had treated these as sophisticated office appliances. He had, however, failed to apply this finding while examining the admissibility of additional depreciation. The incorrect allowance of additional depreciation resulted in underassessment of income by Rs. 5,30,100 with consequent short levy of tax of Rs. 2,98,844.

The Ministry of Finance have accepted the objection.

(b) In the assessment of a company engaged in the production of metal and alloy steel for the assessment year 1982-83 completed in March 1985, additional depreciation of Rs. 10,26,442 was allowed at seven and a half per cent of the cost of machinery and plant instead of at five per cent amounting to Rs. 6,84,294. This resulted in the excess allowance of additional depreciation of Rs. 3,42,148 and a potential short levy of tax of Rs. 2,10,420.

The Ministry of Finance have accepted the mistake.

(c) A private industrial company in its assessment for the assessment year 1982-83 completed in January 1985 was allowed additional depreciation of Rs. 4,36,254 (being 50 per cent of the normal depreciation of Rs. 8,72,507) on the value of machinery and plant as at the end of the previous

year on 30 April 1981. The value of machinery and plant (Rs. 43,62,536) was made up of the opening value as at the commencement of the accounting year (Rs. 40,55,872) as well as the value of additions made during the accounting year (Rs. 8,87,264) less central subsidy Rs. 5,80,600.

A scrutiny of the assessment records revealed that machinery valued at Rs. 36,69,396 had been acquired and installed by the company before 31 March 1980. As the condition for the grant of the additional depreciation regarding installation of the machinery after 31 March 1980 was not fulfilled, the grant of additional depreciation was not in order. This resulted in excess carry forward of depreciation of Rs. 3,66,940 involving a potential tax effect of Rs. 2,06,862 for the assessment year 1982-83.

The case was checked by the internal audit party of the department but the mistake was not detected by it.

The Ministry of Finance have accepted the mistake.

(d) A company incurred during the assessment years 1981-82 and 1982-83, considerable capital expenditure on account of modernisation, modification and replacements in its various manufacturing units. All such expenditures appear to have been made in relation to the old plant and machinery installed in the previous years relevant to the assessment years 1977-78 to 1979-80 or even earlier. In the assessments for the assessment years 1981-82 and 1982-83, the assessing officer allowed additional depreciation of Rs. 81,200 and Rs. 1,32,729 respectively on the additional expenditure incurred during the relevant previous years on the above modernisation, modification and replacement of plant and machinery as claimed by the assessee. As the additional expenditure so incurred did not bring into existence any new plant or machinery but merely increased the life and efficiency of the existing old plants the same did not qualify for the additional depreciation. The incorrect allowance of additional depreciation of Rs. 81,200 and Rs. 1,32,729 resulted in under assessment of business income by the same amount with consequent aggregate tax undercharge of Rs. 1,22,836 in the assessment years 1981-82 and 1982-83.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(e) An assessee, a company in which the public are substantially interested installed new machineries and plant valued at Rs. 36,36,13,024 in the previous year relevant to the assessment year 1981-82. Though the additional depreciation of Rs. 1,81,80,504 was deducted in determining the written down value of the machineries and plant at the end of the assessment year 1981-82 for the purposes of allowance of depreciation for the succeeding assessment year 1982-83. The same was not done by the department for the purposes of extra shift allowance and extra shift allowance was allowed based on the increased written down value of the plant and machineries in the assessment year for the succeeding assessment year 1982-83 completed in February 1985. The mistake resulted in excess allowance of extra shift allowance of Rs. 15,20,922 for the assessment year 1982-83. As the assessee company had no positive income in the assessment year 1982-83 the sum of Rs. 15,20,922 was allowed to be carried forward in excess resulting in short levy of tax of Rs. 8,57,420 (potential).

The Ministry of Finance have acceptede the mistake.

(f) In computing the business income of a company for the assessment year 1981-82 (assessment made in March 1985) the department allowed normal depreciation of Rs. 2,13,90,092 as per statement of computation furnished by the assessee. In addition, a further deduction of Rs. 6,30,379 was also allowed by way of additional depreciation, particulars regarding computation of which were not on record. However, as per particulars furnished by the assessee in support of its claim for investment allowance the total value of plant and machinery installed during the relevant previous year was Rs. 74,23,175 on the basis of which additional depreciation allowable to the assessee worked out to Rs. 4,25,221 only against Rs. 6,30,379 allowed by the department. There was thus an excess allowance of aditional depreciation of Rs. 2,05,158 in the assessment year 1981-82 and excess carry forward of unabsorbed depreciation by the same amount, as the assessment had resulted in a loss involving potential tax effect of Rs. 1,21,300.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.35 *Mistake in allowing terminal depreciation*

Under the Income-tax Act, 1961, in the case of any building, machinery, plant and furniture which is sold, discarded, demolished or destroyed in the previous years, the amount by which the moneys payable in respect of such building, machinery, plant or furniture together with the amount of scrap value, if any, falls short of the written down value thereof should be allowed as deduction.

In the assessment of a private limited company for the assessment year 1982-83 completed in October 1982 (revised in March 1985), the assessing officer while allowing terminal depreciation on machinery costing Rs. 3,06,312 purchased during the years 1974 and 1975 and which was discarded during the year, did not take into account the initial depreciation amounting to Rs. 60,126 allowed during the assessment year 1977-78. This resulted in terminal depreciation being allowed in excess by Rs. 60,126 and a short levy of tax of Rs. 36,980.

The Ministry of Finance have accepted the mistake.

2.36 *Incorrect grant of extra depreciation to hotels*

Under the Income-tax Act, 1961, Indian Companies engaged in the hotel business were entitled to deduction from their business income on account of development rebate as a percentage of the cost of plant and machinery installed in premises used by it as a hotel, provided such hotel is for the time being approved by the Central Government. However, the provisions relating to development rebate were abolished (except in certain cases) with effect from 1 June 1974 and after 1 June 1977, development rebate is not admissible. The provisions in the Income-tax Act relating to development rebate have thus become otiose.

The Income-tax Rules, 1962, provided for an extra allowance of depreciation of an amount equal to one half of the normal allowance in the case of plant and machinery installed by an assessee, being an Indian company in premises used by it as hotel where such hotel is for the time being approved by the Central Government for the purpose of grant of development rebate.

With the withdrawal of the deduction on account of development rebate (except in certain cases) with effect from 1 June 1974 and the total withdrawal of the same with effect from 1 June 1977, there could be no approval by the Central Government to hotels for the purpose. As there cannot be any approval under provisions which are non-existent and in the absence of amendment to the Rules suitably, the extra allowance of depreciation in respect of plant and machinery installed in the premises of hotels will not be admissible.

While completing the assessment of a widely-held company for the assessment year 1979-80 in January 1982 (revised in January 1984) the assessee company was allowed a sum of Rs. 2,21,404 being extra depreciation in respect of a hotel run by it based on the approval given by the Government of India in July 1974. It was pointed out in audit (January 1986) that as the provisions relating to grant of development rebate had been abolished with effect from 1 June 1974, the grant of extra depreciation of Rs. 2,21,404 in respect of approved hotel was not in order. The incorrect allowance resulted in under assessment of income of Rs. 2,21,404 and short levy of tax of Rs. 1,30,902.

The department stated that the provisions relating to the grant of development rebate had not been omitted from the Act and that the approval by the Central Government contemplated under the Act was also not withdrawn. Though the provisions relating to the grant of development rebate had not altogether been deleted from the Act, they have become inoperative after the said date when the provisions do not exist, and approval under the provisions also lapses since the phraseology used in the Act/Rule is "that the hotel is for the time being approved by Central Government", it thereby means that the approval must be legally enforceable during the relevant previous year.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.37 *Incorrect allowance of extra shift depreciation*

In the case of plant and machinery, extra shift depreciation allowance is given where a concern claims such allowance on account of double or triple shift working. At the instance of audit, it was clarified by the Ministry of Finance in September 1966 that extra shift allowance should be granted only in respect of machinery which has actually worked extra shift and not in respect of all machinery of the concern which has worked extra shift. Similar instructions were issued by the Central Board of Direct Taxes in December 1967 pointing out that extra shift allowance was being granted without verifying as to how many days the plant and machinery had actually worked extra shift.

In September 1970, the Board issued instructions in modification of their instructions of December 1967 stating that where a concern has worked double shift or triple shift, extra shift allowance may be allowed in respect of the entire plant and machinery used by the concern without making any attempt to determine the number of days for which each machine had actually worked double or triple shift during the relevant previous year. These instructions ran counter to the instructions of September 1966 issued at the instance of audit and as such grant of extra shift allowance for the concern as a whole without reference to each machinery, is not in accordance with the law. The Board was accordingly requested in July 1971 to

re-examine the question. The Board, however, repeated the instructions in their circular of March 1973. On a reference seeking their advice, the Ministry of Law opined in February 1978 that if in any particular year any particular machine or plant was not at all used even for a day, the normal depreciation allowance was not admissible and as a corollary thereto extra shift depreciation would not be admissible and suggested that the Board's instruction of September 1970 should be modified. It followed from the Law Ministry's advice that depreciation both normal and extra shift should be calculated not for the entire concern but with reference to the various items of machinery and plant.

In January 1979, the Board informed audit that extra shift allowance is allowed as a percentage of the normal depreciation and where no normal depreciation has been allowed on any particular machinery, because it has not worked even for a day, no extra shift allowance would become allowable on it. They added that the Board's instructions of September 1970 would not require modification even in the light of Law Ministry's advice of February 1978. It was pointed out to the Board in March 1979 that the Act allows depreciation only in respect of plant and machinery and not for a concern so that calculation of extra shift allowance on the basis of number of days for which the concern as a whole has worked extra shift, would be contrary to the provisions of the Income-tax Act. The Board agreed in April 1979 to examine whether the instructions would require any modification. In June 1981 also the Ministry informed audit that the matter was under consideration in consultation with the Ministry of Law. The Board were again requested in June 1982 to review and revise their instructions of September 1970.

The point came before different High Courts on a number of occasions. The Madras High Court held in September 1981 that the Income-tax Officer has to apply his mind and examine whether the machinery owned by the assessee has been used by him in extra shift. As long as the particular machine has worked extra shift, it would be eligible for extra shift allowance on the number of days it has worked. Earlier, the Calcutta and Allahabad High Courts had also held in 1968, 1972, 1974 and 1980 that the extra shift allowance has to be calculated in proportion to the number of days the plant and machinery had actually worked and not on an amount equal to the full amount of normal depreciation. In fact these two High Courts had held even prior to the issue of Board's instructions of September 1970 that the extra shift allowance should be allowed proportionately for the actual number of days the machinery had worked. In all these cases, the department presented its case and succeeded in obtaining the Court's verdict that the extra shift allowance is to be allowed only for the number of days the plant and machinery has worked double or triple shift. There is no judicial decision for the opposite view taken in the Board's instructions of September 1970.

The non-maintainability in law of Board's instructions of September 1970 was again pointed out to the Board in May 1984 suggesting issue of revised instructions which would be in conformity with the Act and judicial pronouncements.

In February 1985 the Board issued instructions directing the assessing officers to grant extra shift allowance on plant and machinery calculating the same with reference to the working of a factory situated at a place and not with reference to the number of days each plant and machinery has worked. These instructions further provide that where a concern has more than one factory the extra shift allowance will be regulated for each factory in the above manner. The revised instructions are still not in conformity with the provisions of the law. Further, these instructions have also serious revenue implications to the Government and accordingly the matter was again referred to the Ministry of Finance in May 1985.

The Ministry of Finance while reiterating their earlier stand added that the instructions issued were under the authority vested in them by Section 119(1) of the Act and aimed at simplifying the calculations of the allowance, keeping in view the administrative difficulties experienced in the field.

Under the Act the basic allowance in normal depreciation is related to the working of each machinery and plant and not to the concern as a whole.

The extra allowance is a proportion of the normal allowances. The Act and the Rules thus envisage the working of the extra allowance with reference to each machinery and plant. Section 119(1) unlike Section 295(2)(d), empowers the Board to issue instructions for the proper administration of the Act and such instructions should, however, be within the framework of the Act and cannot over-ride the provisions of the law.

The Ministry was, therefore, requested (August 1986) to review the instructions of February 1985 to fall in line with the law and the judicial decisions on the subject, if necessary in consultation with the Ministry of Law.

While not accepting the audit objection, the Ministry of Finance have stated (November 1986) that the validity of the instructions of February 1985 are under reconsideration of the Board.

A few cases where extra shift allowance was incorrectly allowed were reported in the Report of the Comptroller and Auditor General of India for the years 1982-83, 1983-84 and 1984-85. Details of 24 representative cases noticed during the year under report having a total revenue implication of Rs. 1,15,40,879 are given below :

(i) During the previous year ending 30 June 1981 relevant to the assessment year 1982-83 a company purchased certain items of plant and machinery and claimed extra shift depreciation for triple shift working equal to normal depreciation. While completing the assessment in January 1985, the Inspecting Assistant Commissioner (Assessment) allowed the extra shift depreciation as claimed by the assessee. The items of the machinery were commissioned on various dates between 11 February 1981 and 19 June 1981 and, therefore, these had actualy worked extra shift for a period ranging from 12 days to 140 days. However, the extra shift depreciation was not limited to the number of days the particular plant and machinery had actually worked extra shift but was allowed in full. The mistake resulted in excess allowance of depreciation to the extent of Rs. 38,48,245 with a potential tax effect of Rs. 21,69,448.

(ii) In the Income tax assessment of a widely held company, for the assessment year 1982-83 and 1983-84 completed in October 1984 (revised in March 1985), extra shift allowance was allowed on the basis of the number of days the concern had worked instead of restricting it to the number of days for which each plant and machinery had actually worked double on triple shift. This resulted in excess allowance of extra shift depreciation amounting to Rs. 16,93,084 and Rs. 7,27,421 for the assessment years 1982-83 and 1983-84 respectively and an aggregate short levy of tax of Rs. 16,27,543.

(iii) A public limited company claimed Rs. 35,21,669 on account of extra shift allowance on the machinery installed in a new unit calculated according to the working of the concern as a whole for the accounting year ending in September 1977 relevant to the assessment year 1978-79. The machinery installed in the new unit was commissioned on 1 June 1977 and worked for 122 days in multiple shifts, whereas the concern as a whole worked for 344 days during the relevant accounting year. The assessing officer, while completing the assessment in September 1982, allowed the extra shift allowance in full instead of restricting it to Rs. 12,48,964 as admissible on the actual number of days for which the machinery of the new unit had worked in multiple shifts. The mistake resulted in under assessment of income by Rs. 22,72,705 and consequent excess carry forward of loss to that extent in the assessment year 1978-79 involving a potential tax effect of Rs. 13,12,487.

(iv) In the income-tax assessments of two widely-held companies for the assessment years 1981-82 and 1982-83 completed in December 1984 and February 1985, extra shift allowance was allowed on the basis of the number of days the concern had worked instead of restricting it to the proportionate number of days each plant and machinery had worked. This resulted in excess allowance of extra shift depreciation amounted to Rs. 8,08,758 and Rs. 10,58,000 with consequential undercharge of tax of Rs. 4,78,179 and Rs. 5,96,448 respectively.

(v) In the assessments of a company for the assessment years 1980-81 to 1982-83 completed during the period July 1984 to December 1984, extra shift depreciation allowance was granted at 100 per cent of normal depreciation on the basis of triple shift working of the factory as a whole. From the list of plant and machinery purchased during the relevant previous years it was noticed that these machineries purchased in the middle of the year had not worked for full year and on all the days the concern had worked triple shift. Accordingly, extra shift depreciation allowance on these machineries should have been calculated on the basis of the actual number of days the machinery had worked triple shift. The omission resulted in excess allowance of extra shift depreciation of Rs. 1,79,259, Rs. 1,29,202 and Rs. 10,89,091 respectively and underassessment of income by the same amount with consequent total tax undercharge of Rs. 7,96,352 in the three assessment years including penal interest for under estimation of advance tax payable of Rs. 1,99,517 in the assessment year 1982-83.

(vi) In the case of an assessee company, extra shift allowance (triple shift allowance) equal to the normal depreciation on machineries were allowed even though machineries in the spinning department worth Rs. 90,75,571 were installed only on 28 March

1980 at the close of the relevant previous year. Actual or proportionate depreciation extra shift allowance on these machineries based on the number of days the machineries worked in triple shift amounted to Rs. 1,13,445 whereas full amount of Rs. 13,61,335 was allowed in the assessment for the assessment year 1980-81. The mistake resulted in grant of extra shift allowance of Rs. 12,47,890 involving tax effect of Rs. 7,17,815.

(vii) (a) In the case of a company extra shift allowance amounting to Rs. 12,55,785 was allowed by the assessing officer for the assessment years 1981-82 and 1982-83 (assessment made in April 1984 and December 1984) on plant and machinery purchased during the previous years relevant to these assessment years. The plant and machinery purchased during these years had not worked for the entire period and extra shift allowance should have been calculated on the basis of the number of days each plant and machinery had actually worked in extra shift. Failure to do so resulted in excess allowance of depreciation amounting to Rs. 8,48,366 leading to excess carry forward of loss by a like amount for the assessment years 1981-82 and 1982-83, involving a potential tax effect of Rs. 5,21,745.

(b) In the case of another company, total extra shift allowance amounting to Rs. 12,77,894 was allowed by the Income-tax Officer for the assessment year 1982-83 (assessment made in March 1985) on plant and machinery. The aforesaid allowance, however, included extra shift depreciation on plant and machinery purchased during the previous year relevant to this assessment year. The plant and machinery purchased during this previous year had not worked for the entire period and the extra shift allowance should have been calculated on the basis of number of days each plant and machinery had actually worked extra shift. There was as a result excess allowance of extra shift depreciation amounting to Rs. 1,30,598 leading to excess carry forward of loss by the same amount for the assessment year 1982-83 involving a potential tax effect of Rs. 73,623.

(viii) In the previous year relevant to the assessment year 1981-82, a company acquired plant and machinery worth Rs. 3,52,74,582 and claimed extra shift depreciation on such machineries for Rs. 35,27,458. But said machineries did not work in multiple shifts for the full year. The auditors in their report stated that extra shift depreciation of plant and machinery installed during the year and calculated on the basis of actual multiple shift working would go to reduce depreciation by Rs. 5,00,900. The assessing officer, however, allowed in assessment the extra shift allowance on the basis of multiple shift working of the concern and did not calculate the extra shift depreciation on the basis of actual number of days the plant and machinery actually worked in multiple shifts. This resulted in under assessment of income by about Rs. 5,00,900 leading to carry forward of loss of an identical amount involving a potential tax effect of Rs. 2,96,152. In the absence of full particulars the exact amount of extra shift depreciation allowable could not be ascertained in audit.

(ix) In the assessments of two companies—one for the assessment year 1981-82 and the other for the assessment year 1980-81, extra shift allowance equal to normal depreciation amounting to Rs. 7,44,524 and Rs. 1,65,170 respectively was allowed on plant and machinery added during the year for working in three shifts. It was noticed that plant and machinery purchased during the year could work multiple shift at best for only 3 to 183 days in the case of the first company and 5 to 295 days in the case of the other company during the relevant previous years. As the machinery did not work in triple shift on all the days the concern had worked, the extra shift allowance should have been calculated on the basis of the actual number of days the machinery had worked extra shift. On this basis extra shift allowance to the extent of Rs. 1,15,909 and Rs. 59,757 only was admissible as against Rs. 7,44,524 and Rs. 1,65,170 respectively allowed by the department. This resulted in excess allowance of extra shift depreciation by Rs. 7,34,028 in the case of the two companies with consequent tax undercharge of Rs. 4,33,994 for the two assessment years.

(x) During the previous years ending 30 June 1980 and 30 June 1981 relevant to the assessment years 1981-82 and 1982-83, a company in which the public are substantially interested purchased certain items of plant and machinery and claimed extra shift depreciation equal to normal depreciation. While completing the assessments for the two assessment years in June 1984 and March 1985, the assessing officer alowed the extra shift depreciation as claimed by the assessee company. It was noticed in audit in February 1986 that the plant and machinery were actually purchased in different months during the course of the respective previous years, and the machinery had worked for a period ranging from 2 days to 243 days. A few machineries had worked for as small a period as 2 days, 4 days, 6 days, 9 days, 42 days etc. Therefore, in the light of the judicial pronouncement, the allowance of extra shift allowance at an amount equal to the normal depreciation was not in order and the claim should have been regulated with reference to the actual number of days the plant and

machinery had actualy worked extra shift. The omission to do so resulted in excess allowance of depreciation aggregating to Rs. 3,78,674 involving short levy of tax of Rs. 2,14,218 for the two assessment years.

(xi) In the case of a public limited company, income for the assesment year 1983-84 was computed in February 1985 at a loss of Rs. 1,09,60,030 which, besides unabsorbed normal depreciation included extra shift allowance amounting to Rs. 13,39,472. The extra shift allowance allowed in respect of machinery and plant was worked out on the basis of the concern having worked double or triple shifts. Since some of the machinery and plant were installed during the relevant previous year between February 1982 and December 1982, they had not worked for the entire period the concern had worked extra shift, and extra shift allowance in respect of such machinery and plant was accordingly allowable proportionately on the basis of actual number of days they worked double shift and triple shift. The extra shift allowance admissible on this basis worked out to Rs. 10,02,767 only. Thus, the excess allowance of Rs. 3,36,705 led to excess computation and carry forward of loss, being unabsorbed depreciation to that extent involving a potential tax effect of Rs. 1,89,817.

(xii) A private limited company installed machinery worth Rs. 33,21,992 during the previous year (ended 30 June 1980) relevant to the assessment year 1981-82, of which machinery worth Rs. 32,41,009 was purchased after 1 April 1980. The assessee company claimed extra shift depreciation amounting to Rs 4,86,150 being 100 per cent of depreciation allowance for triple shift working. In the assessment made in September 1984, the extra shift allowance was not limited to the number of days the machinery had actually worked extra shift but was allowed in full. The excess allowance resulted in under assessment of income by Rs. 3,24,100 with a consequent short levy of tax of Rs. 2,09,044.

(xiii) In the case of an assessee, a domestic public limited company, the extra shift allowance equal to normal depreciation of Rs. 2,54,459 and Rs. 1,09,683 was allowed for the assessment years 1978-79 and 1979-80 respectively, in respect of plant and machineries costing Rs. 16,96,394 installed on 30 and 31 March of the previous year ending March 1978 and costing Rs. 10,96,834 which were installed on 9 January, 15 February, 25 March, 30 March and 31 March of the previous year ending March 1979. The assessing officer allowed full extra shift allowance for the entire concern irrespective of the number of days the machinery worked in extra shift against which the extra shift allowance allowable with reference to date of installation and actual number of days the machinery worked extra shift was Rs. 1,227 and Rs. 4,287 respectively. The mistake resulted in excess allowance of extra shift allowance with under assessment of income of Rs. 2,53,232 and Rs. 1,05,396 respectively for the assessment years 1978-79 and 1979-80 and a consequent short levy of tax of Rs. 2,07,107 in aggregate.

(xiv) A public company made additions of Rs. 26,93,753 to plant and machinery during the previous year relevant to assessment year 1981-82 and claimed total depreciation thereon amounting to Rs. 9,87,907 comprising of normal depreciation of Rsfl 3,95,163, additional depreciation of Rs. 1,97,581 and extra shift depreciation for triple shift equal to normal depreciation of Rs. 3,95,163. The same was allowed in the assessment by the Inspecting Assistant Commissioner (Assessment) in February 1985. Since additional depreciation is admissible on plant and machinery put to use after 31 March 1980, it was likely that the machineries were installed and put to use after that date. The previous year having ended on 30 June 1980, the machineries could not have worked extra shift in the previous year for more than 3 months. The actual dates of purchase were not available. Even assuming that the machineries were installed and put to use on 1 April 1980 the total extra shift allowance for triple shift with reference to the number of days of the working of machineries would work out to Rs. 98,790 as against Rs. 3,95,163 allowed in assessment. The excess allowance of Rs. 2,96,373 resulted in under assessment of income by a like amount and short levy of tax of Rs. 1,75,231 in assessment year 1981-82.

(xv) In the assessment of a company for the assessment years 1981-82 and 1982-83 (assessment made in August 1984 and last revised in July 1985), triple shift depreciation equal to normal depreciation amounting to Rs. 20,67,742 and Rs. 18,08,344 respectively was allowed on plant and machinery for triple shift working thereof. As however, the concern worked triple shift for lesser number of days than the normal number of working days of the factory, the triple shift allowance should have been calculated in the proportion the number of days of triple shift working bore to the normal number of working days of the concern during the previous year. The mistake resulted in excess allowance of triple shift depreciation of Rs. 8,761 and Rs. 1,27,481 for the assessment years 1981-82 and 1982-83 respectively leading to tax undercharge of Rs. 5,179 for the assessment year

1981-82 and excess carry forward of loss of Rs. 1,27,481 for the assessment year 1982-83 involving a potential tax effect of Rs. 71,868.

(xvi) In the assessment of a widely held company for the assessment year 1982-83 (previous year ending 31 December 1981) completed at a loss of Rs. 24,62,734 in December 1984, extra shift allowance of Rs. 49,22,763 on new machinery and Rs. 98,937 on electric fitting equal to the normal depreciation was allowed for triple shift working of machinery valued at Rs. 1,85,55,693. The machinery was installed on various dates between 20 January 1981 to 31 December 1981. Thus some machinery had worked only for one day in the previous year out of 300 days, the factory had worked triple shift during the previous year. If the extra shift allowance had been restricted to the number of days the machinery had actually worked, the amount of allowance admissible would be only Rs. 31,22,261 on new machinery. Under the provisions of Income-tax Rules, no extra shift allowance is admissible on electric fittings. The extra deduction resulted in excess computation of loss by Rs. 18,99,439. Further instead of deducting the income from house property, long term capital gains etc. amounting to Rs. 3,83,086 from the business loss of Rs. 20,79,648, it was added to the loss. This also led to excess computation of loss by Rs. 7,66,172. The total excess computation of loss of Rs. 26,65,611 would result into a taxable income of Rs. 2,02,877 against the loss of Rs. 24,62,734 assessed with a short levy of tax of Rs. 1,14,374.

(xvii) In 5 cases relating to three Commissioners at Bombay and Pune the incorrect allowance of extra shift depreciation relating to assessment years 1980-81 to 1982-83 resulted in an aggregate tax effect of Rs. 13,29,980 including surcharge of Rs. 68,153.

2.38 *Other cases of extra shift depreciation allowance*

(a) Under the Income-tax Rules, 1962, extra shift depreciation allowance shall be allowed upto a maximum of one half the normal depreciation allowance where the concern had worked double shift and upto a maximum of amount equal to the normal allowance where the concern had worked triple shift. No extra shift depreciation allowance for multiple shift is admissible in respect of machinery and plant against which the letters 'NESA' appear in the depreciation schedule in the Income-tax Rules, 1962.

A public limited company claimed extra shift allowance amounting to Rs. 5,10,831 on refreigeration unit, cooling tower, boiler and water-works in the assessment year 1981-82 which was allowed by the department in the assessment made in July 1984. Extra shift allowance is not admissible in respect of these items of machinery as they have been specifically excepted by the stipulation of the letters 'NESA' in the depreciation schedule. Similarly, claim for the assessment year 1982-83 amounting to Rs. 1,09,726 was also allowed in the assessment made in February 1985. Further, for the above two assessment years depreciation on water-works was allowed at 10 per cent as against 5 per cent admissible, leading to excess allowance of depreciation of Rs. 28,322 and Rs. 22,595. The erroneous allowance of extra shift depreciation and normal depreciation resulted in excess computation of loss by Rs. 3,39,153 and Rs. 1,32,321 for the assessment years 1981-82 and 1982-83 respectively.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The Income-tax Rules, 1962, provide for grant of extra shift depreciation for extra shift working of plant and machinery depending upon the number of days of double and triple shift working of the concern. For claiming the deduction, the assessee has to furnish the particulars prescribed in the Income-tax Rules.

(i) In the case of a private limited company there was no evidence that it had worked extra shift during the previous year relevant to the assessment year 1980-81 and the assessee had also not furnished the prescribed particulars to establish the claim. The assessee claimed and the department allowed the extra shift allowance on triple shift to the extent of Rs. 1,17,833 while completing the assessment for the assessment year 1980-81 in December 1981. The incorrect allowance resulted in short levy of tax of Rs. 1,10,700.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the assessment of a company for the assessment year 1983-84, deduction on account of triple shift allowance equal to normal depreciation amounting to Rs. 7,57,938 was allowed although the company had worked triple shift for 186 days only during the relevant previous year. The deduction admissible on this account worked out to Rs. 5,87,400 only. Incorrect calculation of triple shift allowance resulted in excess deduction on account of depreciation amounting to Rs. 1,70,538 and a consequent tax

undercharge of Rs. 1,02,868 (including excess payment of interest of Rs. 6,727) for the assessment year 1983-84.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In the case of a domestic public limited company the deduction of extra shift allowance equal to normal depreciation was allowed (March 1985) in computation of income for three assessment years (1982-83 to 1984-85) on additions to the machineries which were purchased on various dates of the relevant previous years, instead of on proportionate basis for the triple shift working of the concern. These additions also included renovation expenses, consultancy charges on improvement to the existing machineries during the three assessment years on which the extra shift allowance was not admissible. The incorrect allowance of extra shift depreciation resulted in the computation of the losses of the assessee in excess by Rs. 2,07,677 for the three assessment years and an undercharge of income by a like amount involving a notional undercharge of tax of Rs. 1,22,258.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) An assessee company had six different units having several divisions. While claiming extra shift depreciation allowance in assessment year 1982-83, the company stated that during the previous year, three of its units had worked triple shift for 303, 304 and 351 days respectively while the other three units did not work triple shift for all the normal number of working days and some of the divisions of these units had worked in double and single shift only. The company had, accordingly, claimed extra shift allowance for double and triple shift working equal to 70.51 per cent of normal depreciation of Rs. 61,97,203 as claimed by it. While completing the assessment for 1982-83 in March 1985 the department, however, erroneously allowed full extra shift allowance at 100 per cent of normal depreciation amounting to Rs. 63,93,256. The mistake resulted in excess allowance of extra shift depreciation of about Rs. 18,85,371 and a consequent excess carry forward of unabsorbed depreciation of a like amount involving a potential tax effect of Rs. 10,62,878.

The Ministry of Finance have accepted the mistake.

2.39 *Incorrect grant of investment allowance*

(i) As per the provisions of the Income-tax Act, 1961, in respect of machinery owned by the assessee and used for purpose of business carried on by him, a deduction shall be allowed in the previous year of installation or in the previous year of first usage of a sum by way of investment allowance, equal to twenty-five per cent of the actual cost of the machinery to the assessee. No investment allowance is admissible on machinery and plant which are not used in the industrial undertaking for the purpose of business of construction, manufacture or production of any article or thing.

(a) In the assessment of a company (a dugdh sang) made in February 1985 for the assessment year 1984-85, investment allowance of Rs. 28,72,110 on the plant valued at Rs. 1,14,88,442 was allowed and carried forward for set off against the profits for future years. The assessee was engaged in the business of purchase and supply of milk after processing, manufacture of milk products etc. The main activity of the concern was supply of processed milk as was evident from the trading account for the accounting year ending 31 March 1984 relevant to the assessment year 1984-85 according to which, out of total sales of Rs. 7.88 crores, sales of milk amounted to Rs. 6.38 crores. Accordingly the plant valued at Rs. 1,14,88,442 acquired during this year was used mainly for the purposes of processing of milk and not for purposes of production of milk products. The assessing officer had not, however, examined the vital condition of manufacture or production before grant of the investment allowance. The mistake resulted in incorrect carry forward of investment allowance of Rs. 28,72,110 involving potential tax effect of Rs. 16,58,643.

The Ministry of Finance have contended that the plant installed was meant for processing of fluid milk and manufacturing of bye products such as caesin, butter, ghee etc. as is evident from the licence issued by the Government and it is, therefore, not correct to say that the assessee was not manufacturing any article or thing. The contention is not acceptable as the activity of the concern is mainly of processing of fluid milk (comprising over 80 per cent of the total turnover). Further, as the end product "fluid milk" is also milk, the processing of fluid milk according to judicial tests does not involve any manufacture.

The further comments of the Ministry of Finance are awaited.

(b) In the assessment for the assessment year 1983-84 completed in November 1984 of a company engaged in the work of dubbing, mixing and transferring of sound on blank magnetic tapes as per the requirement of the customers the assessing officer allowed an investment allowance of Rs. 9,37,760 on

the machinery valuing Rs. 50,01,386 although it was not engaged in the business of construction, manufacture or production. The incorrect grant of investment allowance resulted in under assessment of income of Rs. 9,37,760 involving potential tax effect of Rs. 5,76,722.

The assessing officer had not accepted the objection stating that the company is doing production of recorded cassettes from blank cassettes and the nature of the finished product is entirely different from raw material (blank Magnetic Tapes). The reply of the department is not acceptable as the company was engaged in the process of recording sound on magnetic tapes and as contemplated under the Act no articles or thing had been manufactured/produced.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) The assessee company received two Central Government investment subsidies of Rs. 12,18,000 and Rs. 2,82,000 for creation of fixed assets in the previous year relevant to assessment years 1980-81 and 1981-82 respectively. This included subsidy of Rs. 9,62,220 and Rs. 2,08,116 received against plant and machinery installed in these two years. While calculating the amounts of investment allowance for the assessment years 1980-81 and 1981-82 the actual cost of the said plant and machinery installed were not, however, reduced by the respective amounts of subsidy *i.e.* Rs. 9,62,220 and Rs. 2,08,116. The mistake resulted in excess allowance of investment allowance by Rs. 2,40,555 and Rs. 52,029 in the assessment years 1980-81 and 1981-82 respectively and excess carry forward of unabsorbed investment allowance of Rs. 2,92,584 in later years involving potential tax effect of Rs. 1,72,990.

The Ministry of Finance have accepted the mistake.

(d) In the assessment of a widely held company for the assessment year 1980-81 completed in November 1983 (revised in October 1984), investment allowance of Rs. 3,46,798 was allowed in respect of plant and machinery valued at Rs. 13,87,191 as claimed by the assessee. Audit scrutiny revealed (August 1985) that the machinery was installed during the previous years relevant to the assessment years 1976-77, 1977-78 and 1978-79 but was put to use for the first time in the previous year relevant to the assessment year 1980-81 and that the claim for the allowance was first made in assessment year 1980-81. As the deduction was not allowed either in the accounting year in which the assets were installed or in the immediately succeeding year in which the assets were first put to use, the deduction allowed was not in order. The incorrect grant of investment allowance resulted in under assessment of tax of Rs. 2,05,046 in the assessment year 1980-81.

The department justified (February 1986) the grant of investment allowance in the year in which reserve was created in view of instructions issued by the Central Board of Direct Taxes in January 1976.

The contention of the department is not tenable as the instructions related only to the conditions regarding the creation of reserve and not to the allowance of the rebate which under the provisions of the Income-tax Act, 1961 could be allowed only in the previous year of installation or in the next previous year of usage. It has also been judicially held (154-ITR-585) that for the actual allowance of development rebate, creation of reserve was a must but not for claiming the rebate, and that the rebate may be quantified in the assessment year in which it is legally allowable and be allowed to be carried forward for adjustment in the year in which the assessee earns profits and also creates the necessary reserve. The same ratio of the decision was applicable to the facts of the case.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(e) The Act permits the deduction being allowed in the immediately suceeding year in which its first put to use but not any time later on, if the machinery cannot be used in the year in which it is installed.

A widely-held company installed in the previous year ended December 1977 relevant to assessment years 1978-79, a 500 KVA diesel generatnig set purchased in August 1975 from Czekoslavakia at a cost of Rs. 8,07,346. The generator was not put to use either in the year of installation or in the immediately succeeding year *i.e.* the previous year relevant to assessment year 1979-80 as evidenced by the fact that no depreciation was claimed/allowed upto assessment year 1979-80. In the nil assessment for the assessment year 1980-81 completed in January 1983, the assessing officer, however, allowed an investment allowance of Rs. 2,01,837 in respect of the generator and set it off against the carried forward business loss and unabsorbed depreciation of earlier years amounting to Rs. 18,73,464 and carried forward the balance of Rs. 16,08,903 for adjustment in the assessment year 1981-82. As the generator was not put to use even in the assessment year 1979-80, being the immediately succeeding year, the grant of invtsement allowance of Rs. 2,01,837 with a potential tax effect of Rs. 1,13,785 was not in order. Further the grant of

the investment allowance before adjustment of the business loss of earlier years was also not in order.

The Ministry of Finance have accepted the mistake.

(f) The Central Board of Direct Taxes had clarified that new ships and aircraft qualify for the investment allowance only in the hands of tax-payers carrying on the business of operating ships or aricraft and the above will not be available in respect of ships or aircraft acquired by other tax-payers.

A company engaged in transport business and agency had constructed a barge and given it on charter hire alongwith three other barges to another company and was receiving only barge hire charges. During the previous year ending 30 September 1982 relevant to assessment year 1983-84 the assessment of which was completed in March 1984, the company was allowed investment allowance of Rs. 12,62,090. As the assessee company was not carrying on the business of operating ships but was engaged in the business of hiring out its barges to others and receiving hire charges, investment allowance was not admissible. The incorrect grant of investment allowance of Rs. 12,62,090 resulted in short levy of tax of Rs. 8,40,867.

The department has not accepted the objection on the ground that the assessee company had acquired the barge and had earned income by way of freight charges on time basis and hence the company was engaged in operation of ships. The contention of the department is not tenable as the company was not engaged in operating ships and it was the third party that was carrying on shipping business.

The comments of the Ministry of Finance on the paragraph are aawtied (December 1986).

(ii) The Act stipulates that investment allowance shall be allowed on any new machinery or plant installed after 31 March 1976 in any industrial undertaking for the purpose of construction, manufacture or production of any article or thing except those specified in the list in the Eleventh Schedule to the Act.

In the assessment of eight companies assessed in six different Commissioners' charges for the assesment years 1980-81 to 1984-85, investment allowance of Rs. 25,27,836 was erroneously allowed on the machinery used in the manufacture of items listed in the Eleventh Schedule. The irregular grant of investment allowance resulted in short levy of tax of Rs. 16,36,332 in seven cases and excess carry forward of unabsorbed investment allowance of Rs. 1,28,160 with a potential tax effect of Rs. 75,775 in one case.

Details of these cases are as under :

Sr. No.	Commissioners/ charge / Assessment year	Particulars of mistakes	Tax undercharge Rs.
1.	A 1981-82	Incorrect grant of investment allowance of Rs. 4,27,644 on machinery used in processing of cinematographic films.	3,75,130
2.	A 1982-83	Incorrect grant of investment allowance of Rs. 4,48,846 on machinery used in processing of cinematographic films etc. on job basis.	2,76,040
3.	B 1980-81	Incorrect allowance of investment allowance of Rs. 3,36,507 on machinery used in the manufacture of air-conditioners and refrigerators to assessee who is not a small scale manufacturer.	2,17,049
4.	A 1982-83	Incorrect grant of investment allowance of Rs. 1,95,321 on machinery used in processing of scrap by removal of impurities and converting the same into marketable lots.	1,20,122
5.	C 1980-81	Incorrect grant of investment allowance of Rs. 5,26,147 to a company engaged in consultancy services which was not an industrial undertaking.	3,67,641
6.	D 1982-83 1983-84 1984-85	Incorrect grant of investment allowance of Rs. 2,98,107 on renovation expenses, consultancy charges etc. in respect of existing machines.	1,74,956
7.	E 1981-82 and 1982-83	Investment allowance of Rs. 1,67,104 was erroneously allowed though the assessing officer had held the same as inadmissible in the assessment for assessment year 1979-80 as the product manufactured by it was covered by the Eleventh Schedule.	1,05,394
8.	F 1981-82	Incorrect grant of investment allowance of Rs. 1,28,160 on machinery utilised in the manufacture of ampoules and vials covered by glass and glassware listed in the Eleventh Schedule.	75,775 (polention)

The assessments were completed in three cases by the Inspecting Assistant Commissioner (Assessment). The assessmnt was checked by the internal audit party of the department in one case and the mistake escaped its notice.

The Ministry of Finance have accepted the objection in two cases and their comments are awaited in the remaining cases (December 1986).

(iii) Industrial company as defined in Finance Act, 1966 means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

It has been judicially held that the term 'Industrial company' covers a construction company only when it is engaged in the construction of ships. So companies engaged in the construction of anything other than ships cannot be considered as industrial companies and no investment allowance is admissible to such construction companies.

In the assessment for the assessment year 1982-83 completed in March 1985, a private limited company was allowed investment allowance of Rs. 6,04,357 on its machinery treating the company as one engaged in manufacturing activity. The assessee company acted as consultants and as contracting Engineers doing construction jobs (other than construction of ships) for others. Thus, the assessee company was not engaged in any manufacturing activity of production of goods and was not entitled for investment allowance. The incorrect grant of investment allowance resulted in under assessment of income of Rs. 6,04,357 leading to tax undercharge of Rs. 5,56,647 (including short levy of interest of Rs. 1,53,995 for late submission of return and short payment of advance tax).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) It has been judicially held that the processing and preservation of food articles in cold storage is not manufacture.

(a) In the income-tax assessments of a closely-held company, engaged in the processing and export of sea-food for the assessment year 1982-83, completed in October 1982, a deduction of Rs. 4,29,772 on account of investment allowance was allowed as claimed by the assessee company in respect of certain machinery. As the machinery was not used for the purpose of manufacture or production of articles but for only processing export of sea foods, the assessee was not entitled to any investment allowance. The incorrect grant of investment allowance resulted in a short levy of tax of Rs. 2,64,309 for assessment year 1982-83.

The Ministry of Finance have accepted the mistake.

(b) It has been judicially held that 'cold storage plant' serves to preserve articles from decay and deterioration and as such is engaged in processing of goods and not engaged in manufacture or production of goods.

In the assessment of three companies, under two different Commissioners' charges, engaged in the business of running of cold storage plants, for the assessment years 1980-81 to 1983-84 the department allowed deductions amounting to Rs. 6,75,899 by way of investment allowance. As the cold storage plants were engaged in the processing of goods and not in the manufacture or production of goods, the deductions of investment allowance were irregular and resulted in excess carry forward of loss/unabsorbed investment allowance amounting to Rs. 6,75,899 involving a potential tax effect of Rs. 4,11,612.

The assessments were completed by the Inspecting Assistant Commissioner (Assessment) in two cases.

In one case, the internal audit party of the department had checked the assessments for two years and in another case they had checked the relevant assessment. In both these cases, the mistakes could not be detected by it.

The Ministry of Finance have accepted the mistake.

(v) No deduction of investment allowance shall be allowed in respect of any office appliances or plant and machinery installed in any office premises.

In the assessment made by the Inspecting Assistant Commissioner in March 1985 for the assessment year 1982-83 of a company engaged in providing computer maintenance and other consultancy services, the company was allowed investment allowance of Rs. 8,70,007 on the plant and machinery. As the company was not engaged in manufacture or production of article or things, the grant of investment allowance was not in order. Failure to disallow the investment allowance resulted in an under assessment of income by Rs. 8,70,007 involving a short levy of tax of Rs. 4,90,465.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) The Income-tax Act, 1961, was amended by the Finance Act, 1977 to provide for higher rate of investment allowance at 35 per cent in respect of machinery or plant installed after 30 June 1977 but before 1 April 1982, for the purpose of manufacture or production of any article or thing in cases where the article or thing invented in a laboratory owned or financed by Government or by a public sector company or a University or by a recognised institution subject to the condition, *inter alia*, that the assessee furnishes a certificate to this effect from the prescribed authority.

In the assessment of a company for the assessment year 1981-82 completed in July 1984, investment allowance of Rs. 26,44,421 at the higher rate of 35 per cent was allowed on machinery valued at Rs. 75,55,489. The company had not furnished the prescribed certificate from the competent authority. As such, investment allowance at the higher rate of 35 per cent was not admissible under the Act. The grant of investment allowance at the higher rate resulted in excess grant of investment allowance of Rs. 7,55,549 and short levy of tax of Rs. 4,46,717.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vii) Under the Income-tax Act, 1961, while computing the business income of an assessee, a deduction is allowed by way of investment allowance at 25 per cent of the actual cost of new plant and machinery installed in the relevant previous year. There is, however, no provision in the Act for grant of investment allowance in respect of any capital expenditure subsequently incurred on account of replacement, modernisation or modification of any plant and machinery already installed and put to use in any earlier previous year.

In the case of a company, considerable capital expenditure was incurred in assessment for 1980-81 to 1982-83 on account of modernisation, modification and replacement in its various manufacturing units. All such expenditure appear to have been made in relation to the old plant and machinery installed and already put to use during the earlier previous years. The department, however, in computing the business income of the company for the assessment years 1980-81 to 1982-83 allowed investment allowance at 25 per cent of not only of the actual cost of items of new plant and machinery installed during the relevant previous years but also of the additional expenditure incurred during the years on the modification, modernisation and replacements. As the additional expenditure so incurred did not bring into existence any new plant and machinery but just increased the life and efficiency of the old existing plant and machinery installed and under use in an earlier previous year, the same did not qualify for grant of investment allowance. The incorrect grant of investment allowance of Rs. 99,767, Rs. 4,06,003 and Rs. 6,63,645 in the assessment years 1980-81, 1981-82 and 1982-83 respectively resulted in under-assessment of business income by the same amounts with aggregate tax undercharge of Rs. 6,73,170 in the three assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(viii) It has been judicially held that a hotel is mainly a trading concern and the preparation of articles of food from raw materials did not constitute manufacture or processing of goods.

The Central Board of Direct Taxes have also issued instructions in January 1986 that investment allowance is not admissible to a hotel as no manufacture or processing of goods is involved.

(a) A company engaged in the business of running a hotel was allowed investment allowance of Rs. 2,28,323 and Rs. 90,350 for the assessment years 1982-83 and 1983-84 in November 1982 and May 1983 respectively. As the company was not engaged in the manufacture of any article or thing, no investment allowance was admissible. The incorrect grant of investment allowance of Rs. 2,28,323 and Rs. 90,350 resulted in short levy of tax aggregating to Rs. 2,12,316 for the assessment years 1982-83 and 1983-84.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the case of a private limited company, while completing the assessment for the assessment year 1984-85 in March 1985, investment allowance of Rs. 5,69,748 was allowed in respect of plant and machinery worth Rs. 22,78,992 installed during the relevant previous year. The company was engaged in the business of running a hotel which is not engaged in any manufacture or production of article or thing. The assessee is, therefore, not entitled to grant of investment allowance. The incorrect grant of investment allowance resulted in under assessment of income by Rs. 5,69,748 with consequent tax undercharge of Rs. 3,88,857 for the assessment year 1984-85.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ix) Under the provisions of the Income-tax Act, 1961 if a machinery on which investment allowance is granted is sold at any time before the expiry of eight years from the end of the previous year in which it was installed, the investment allowance originally granted has to be withdrawn. The allowance so granted is, however, not required to be withdrawn where in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company, any machinery or plant in respect of which investment allowance had been

allowed to the amalgamating company. An amalgamating company is defined in the Act as a company which merges into another company so as to lose its separate existence by being dissolved without being wound up. An amalgamated company is one in which one or more existing companies merges or merge. Amalgamation in relation to companies means the merger of one or more companies with another company or the merger of two or more companies to form one company. Thus, the expression amalgamation contemplates essentially the dissolution of one or more existing companies without being wound up and their merger into one company.

It has been judicially held (September 1985) by the Supreme Court that it was not necessary for the assessing officer to first allow and then withdraw a rabate/relief admissible under the Act if the fact about the non-fulfilment of the condition for the allowance of said rebate/relief was within the knowledge of the assessing authority when the assessment was made (156-ITR-489).

(a) The assessment of a closely held company for the assessment year 1981-82 was completed in September 1984 on a taxable income of Rs. 97,78,157 after allowing investment allowance of Rs. 24,02,048. The assessment records relating to the assessment year 1983-84 disclosed that the assessee company was dissolved in December 1982 under a scheme of amalgamation/reconstruction as approved on 3 May 1983 by the High Court whereby three wholly owned subsidiaries were promoted and the assets and liabilities of the assessee company transferred. As this arrangement did not result in the merger of one or more companies with another company or in the merger of two or more companies to form a new company, it was not a case of amalgamation but amounted to a transfer as contemplated under the Act and the investment allowance was not admissible as the transfer of the assets took place within the specified period. The fact of transfer of assets being within the knowledge of the assessing officer at the time of finalisation of the assessment for the assessment year 1981-82 in September 1984, the assessing officer should not have allowed the investment allowance. Incorrect allowance led to an under assessment of income of Rs. 24,02,048 and a consequential under charge of tax of Rs. 15,48,320.

The objection was communicated to the department in July 1985. The department stated that amalgamation having been approved by the High Cour it was a case of "amalgamation". This is not tenable as the transfer of the assets/liabilities to wholly owned subsidiaries did not amount to amalgamation for the purposes of non-withdrawal of investment allowance.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A company was allowed investment allowance aggregating to Rs. 2,49,949 on certain items of plant and machinery during the assessment years 1977-78 and 1978-79. Although the manufacturing unit consisting of the said machinery was sold as per an agreement dated 5 October 1979 *i.e.* before the expiry of the prescribed period of eight years, no action was taken to withdraw the investment allowance. The omission resulted in under assessment of income of Rs. 21,201 for assessment year 1977-78 and of Rs. 2,28,748 for the assessment year 1978-79 with consequent short levy of tax of Rs. 24,572 (including interest) for the assessment year 1977-78 and a potential short levy of tax of Rs. 1,39,647 for the assessment year 1978-79.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) A company installed machinery worth Rs. 9,19,046 during the previous year relevant to the assessment year 1980-81, on which investment allowance of Rs. 1,91,392 (the correct amount, however, worked out to Rs. 2,29,761) was granted by the department. A test check of the assessment records of the company, for the subsequent assessment year 1982-83 completed in March 1985, disclosed that the assessee had sold the above machineries during the previous year relevant to assessment year 1982-83. The assessment for the assessment year 1980-81 was, however, not revised withdrawing the investment allowance originally granted as provided under the Act. Omission to do so resulted in under assessment of income by Rs. 1,91,392 and a short levy of tax of Rs. 1,33,734.

The Ministry of Finance have accepted the mistake.

(x) Under the provisions of the Incometax Act, 1961, when for any assessment year the loss under the head "profit and gains of business or profession" cannot be set off against any other income in the relevant year, such loss shall be carried forward to the following assessment 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 to the subsequent years for set off and so on for eight assessment years immediately succeeding the assessment year in which

the loss was first computed. The Act further provides that unabsorbed losses pertaining to the earlier years get precedence over current years investment allowance and is to be allowed only after setting off the unabsorbed losses of the previous years.

In the asessment of a company for the assessment year 1981-82 completed in September 1984, the assessing officer computed the income as "nil" after allowing a deduction of Rs. 2,38,567 towards investment allowance and adjustment of earlier year's losses, though the carried forward losses of earlier assessment years were required to be first adjusted against the business income of assessment year 1981-82 and the current year's investment allowance was to be allowed if any income remained after such adjustment. In the case of the assessee, after adjusting the carried forward business loss of assessment year 1979-80 against the income of current year 1981-82 no amount remained for adjustment of the investment allowance. The irregular grant of investment allowance of Rs. 2,38,567 resulted in excess carry forward of business loss involving a potential tax effect of Rs. 1,53,875.

The Ministry of Finance have accepted the mistake.

2.40 *Omission to withdraw development rebate*

Under the Income-tax Act, 1961, development rebate was admissible in respect of new machinery and plant installed by an assessee and used for the purposes of his business or profession. The relief was abolished from 1 June 1974 except for a limited period in certain cases. One of the conditions for the allowance of development rebate was that the assessee should create a development rebate reserve for an amount equal to seventy-five per cent of the development rebate to be actually allowed and should utilise the reserve for the purpose of business for a period of eight years following the previous year in which the reserve was created. If the assessee utilises the amount credited to the reserve account, *inter alia*, for distribution by way of dividend or profits or any purpose which is not a purpose of the business of the undertaking, the development rebate originally allowed shall be deemed to have been wrongly allowed. It has been judicially held that these provisions are mandatory and breach of these cannot be overlooked merely on the ground that the breach was technical or venial.

(a) During the previous year relevant to assessment year 1981-82, an assessee company utilised the entire amount of Rs. 48,72,539 created by way of development rebate reserve in the previous years relevant to the assessment years 1973-74 to 1976-77 for the issue of bonus shares to its shareholders. On the issue of the bonus shares by capitalisation of the reserve, the development rebate had ceased to exist and had become the property of the shareholders as their capital. Under the provisions of the Act as judicially interpreted, the development rebate reserve created and credited to the reserve account should not be utilised for any other purpose which is not a purpose of the business of the undertaking for a minimum period of 8 years and as such, the assessee company had violated the condition in the Act regarding retention and utilisation of the reserve in respect of the reserve created for all the previous years relevant to the assessment years 1973-74 to 1976-77. The development reserve credited during the assessment year 1972-73 being only Rs. 3 lakhs, while completing the assessment for the assessment year 1981-82 in January 1985, the assessing officer should have withdrawn the development rebate allowed in assessment years 1973-74 to 1976-77 aggregating to Rs. 56,79,137 as wrongly allowed. The omission to do so resulted in short levy of income-tax of Rs. 32,79,710. The remedial action in this case having become time barred in December 1984, there was loss of revenue of Rs. 32,79,710.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The Act provides that if any machinery or plant on which development rebate was 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 development rebate so granted is to be withdrawn.

A company was allowed development rebate of Rs. 1,16,404, Rs. 4,485 and Rs. 3,848 in the assessment years 1972-73, 1973-74 and 1974-75 respectively. As seen from the assessment order for the assessment year 1979-80, the company had closed their business and sold its machinery during the previous year relevant to assessment year 1979-80. As the machinery was sold within the prescribed period of eight years, the development rebate aggregating to Rs. 1,24,737 originally granted during the assessment years 1972-73 to 1974-75 was required to be withdrawn. Omission to do so resulted in under-assessment of Rs. 1,24,737 and a short levy of tax of Rs. 83,240 for the three assessment years.

The Ministry of Finance have accepted the objection.

2.41 *Incorrect computation of capital gains*

(i) Under the Income-tax Act, 1961, the income chargeable under the head 'capital gains' shall be computed by deducting from the full value of the consideration, the cost of acquisition of the asset including the cost of any improvements thereto and the expenditure incurred wholly and exclusively in connection with the transfer. The cost of acquisition shall be the cost of acquisition of the asset to the assessee or the fair market value of the asset as on 1 January 1964.

For the assessment year 1981-82, a company returned a short term capital gains of Rs. 11,42,300 on the sale of plant and machinery purchased from another company in January 1980 after deducting from the net sale price of Rs. 25,06,300 the cost of acquisition of the plant and machinery *viz.*, Rs. 13,64,000 and the same was accepted in the assessment for the assessment completed in January 1982. From the income-tax assessment records of the vendor company it was seen that the plant and machinery had been purchased by the assessee company for Rs. 5,40,099 and the profit on sale of assets had been computed in the hands of the vendor company by taking the sale price as Rs. 5,40,099. As the cost of acquisition of the capital asset to the assessee company shall be the sale price of the plant and machinery by the vendor the correct capital gains leviable would be Rs. 19,66,201 as against Rs. 11,42,300 levied. The mistake resulted in under assessment of income of Rs. 8,23,901 and a potential short levy of tax of Rs. 4,87,131.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the provisions of Income-tax Act, 1961, any profits or gains arising from the transfer of a capital asset are chargeable to tax under the head 'capital gains' except in certain specified cases.

During the previous year relevant to the assessment year 1983-84, a State Government company sold a piece of land and earned a capital gain of Rs. 1,84,963 which it exhibited in the relevant Balance Sheet under "reserves and surpluses". This income was neither returned by the company for tax purposes nor was it brought to tax by the assessing officer in the assessment completed in January 1985. The omission resulted in an excess carry forward of loss to the extent of Rs. 1,84,963 with a potential tax effect of Rs. 92,482.

The case was checked by the Internal Audit Party of the department but the omission was not detected by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.42 *Income escaping assessment*

(i) Under the Income-tax Act, 1961, in computing the total income of a person, interest payable by an industrial undertaking in India on any moneys borrowed by it in a foreign currency from sources outside India, under an approved loan agreement, shall not be included in the total income.

The expression 'industrial undertaking' has not been defined in the Act for the purpose and in its absence, law is fairly well settled that it would be open to look for its meaning by reference to the definitions in other provisions in sister legislations and also to the plain legal meaning of the expression.

It has been judicially held that industry in the wide sense of the term would be capable of comprising three different aspects, (i) raw materials, which are an integral part of the industrial process, (ii) the process of manufacture or production, and (iii) the distribution of the products of the industry. It has also been held judicially that to be an industrial undertaking the work of manufacture or production should be carried on in one or more factories by any person or authority including Government.

In the entries in the Union List (Seventh Schedule) to the Constitution of India, the carriage of passengers and goods by railway, sea or air or by national waterways in mechanically propelled vessels has been separately classified (in Entry 30) and not along with 'industries' (in Entry 52). The Industries (Development and Regulation) Act, 1951, defines 'industrial undertaking' to mean any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government. In the relevant Schedule to the Act, reference has been made only to industries engaged in the manufacture or production of articles. Mere plying of ships for cariage of goods/passengers for freight could not, therefore, be classified as an 'industrial undertaking'.

The Income-tax Act, 1961, provides that a person responsible for making interest payment to a company, other than a domestic company, is required to deduct income-tax thereon, at the time of making payment at the rates prescribed by the relevant Finance Act. Failure to deduct tax at source renders the person responsible for deducting the tax, liable to pay interest at twelve per cent per annum on the amount of such tax. The Act also provides that if no such deduction is made in respect of any interest

chargeable under the Act, which is payable outside India, the interest will not be allowed as a deduction in computing the income.

A widely held domestic company dealing in the business of transport of foodgrains, fertilisers etc. in ships for freight in international tramping trade raised a foreign exchange loan of $ 16.5 million from a non-resident foreign bank to meet 90 per cent cost of a ship acquired in May 1974, under an agreement approved by the Government of India in May 1974. Under the agreement the interest payable by the company on the loan was free from Indian Income-tax. During the previous year relevant to the assessment years 1975-76 to 1981-82, the assessee company paid interest aggregating to Rs. 5,97,69,965 on the loan to the foreign bank. No deduction of income-tax at source on the amount of interest paid to the foreign bank was made relying on the sanction of the Ministry of Shipping and Transport. In the assessments completed for the assessment years 1975-76 to 1981-82, the assessing officer allowed the interest payments in the assessments of the company but did not consider the assessability of the interest income in the hands of the non-resident foreign bank. In addition, the assessee company, being a cargo carrier for freight is not classifiable as an 'industrial undertaking' in the light of the judicial decision and in view of the distinction meted out to carriage of passengers and goods by sea etc. in the Union List by not including it under 'industries' and accordingly, the interest payments made by the company will not be exempt from Indian Income-tax. The Central Government's approval for the foreign loan and payment of interest thereof is also silent regarding the specific section of the Income-tax Act, 1961, under which the exemption was granted. The omission to include the interest amount led to escapement of income of Rs. 5,97,69,965 involving a total non-levy of tax of Rs. 4,41,60,149 for the seven assessment years.

The omission to treat the interest payment as assessable income also resulted in non-deduction of tax at source by the assessee company rendering it liable to levy of interest for the default.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the provisions of Income-tax Act, 1961, in computing the total income of a previous year, of any person, all income from whatever source derived is included unless it is specifically exempted by the provisions of the Income-tax Act. The income of a State is immune from the taxation of the Union under the provisions of the Constitution of India. A Government undertaking is not similarly placed and is an assessable person under the Act. The Act, however, exempts from tax the income of any authority constituted in India by or under any law enacted for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both. It has been judicially held that Boards not having such objects as provided in the Income-tax Act will not be exempt from taxation.

A Board was set up by an Act of a State Legislature in 1966 with the objects in general of promoting the rapid and orderly establishment, growth and development of industries in the industrial areas. The primary task of the Board is to form industrial areas all over the State and to provide developed plots with all infrastructures to the entrepreneurs for setting up of industries. The Board submitted the returns of income for the assessment years 1967-68 to 1978-79 between March 1974 and September 1979 declaring 'nil' income. The returns of income for the subsequent assessment years were not filed. The department also completed the assessments with 'nil' income upto assessment year 1975-76, presumably accepting the Board's claim that its income is not taxable under the provisions of the Act. The claim for exemption under the provisions of the Income-tax Act mentioned above is not tenable as the said exemption did not apply to development of industrial plots, and that the Board created by law could not be equated with the State as held by Courts. There was thus omission to bring to tax the income of the Board for the years since the inception from assessment years 1967-68 onwards. The non-levy of tax for the last eight years worked out to Rs. 1,17,61,664 on the basis of the net profit (excess of income over expenditure) declared by the Board, treating it as a company in which public are substantially interested.

The Ministry of Finance have accepted the mistake.

(iii) (a) Under the provisions of the Income-tax Act, 1961, a non-resident tax payer is chargeable to tax in India on all income which is received or deemed to be received in India or which accrues or arises or deemed to accrue or arise in India. The Act also imposes a statutory obligation on every person other than an agent of the non-resident responsible for paying to a non-resident any sum chargeable to tax to deduct tax at source thereon at the rates in force and to pay the tax so deducted at source to the credit of the Central Government within the prescribed time limit. Failure to deduct tax would render a person liable to the charge of simple interest at prescribed rates and also to levy of penalty.

A non-resident company entered into two inter-related agreements styled "Distiliation Tray Know-how Agreement" and "Design Transfer Agreement" in March 1970 with its Indian subsidiary company for sale of technical know-how for fabrication of distillation trays and detailed engineering drawings relating to the fabrication and installation of distillation trays respectively. The Indian subsidiary company in its turn entered into two agreements with Bhabha Atomic Research Centre for resale of the said know-how and drawings to the said body at Bombay. The non-resident did not have any agreement with Bhabha Atomic Research Centre. In consideration of the technical know-how and drawings purchased under the first agreement, the Indian company paid 1,25,000 U.S. dollars to the non-resident company, out of the proceeds of 2,50,000 dollars realised from Bhabha Atomic Research Centre, during the previous year relevant to the assessment year 1971-72. The sum of 1,25,000 dollars each received by the Indian company and the non-resident was duly taxed in their hands in the assessment year 1971-72. Another sum of U.S. $ 5,15,000 (Rs. 38,62,500) under the second agreement (Designs Trasnfer Agreement) was received by the Indian subsidiary from Bhabha Atomic Research Centre, Bombay in four instalments during the previous years relevant to the assessment years 1971-72 and 1972-73 and the entire sum was paid by the Indian company to the non-resident principal. The income of the non-resident company from the above receipts of Rs. 38,62,500 having accrued and arisen from the regular business connection with its subsidiary company in India was taxable in the hands of non-resident. While the income from the receipts of U.S. $ 1,25,000 under the first agreement was duly taxed in the hands of the non-resident in its assessment for the assessment year 1971-72 completed in May 1973, no such effort was made to tax income arising to the non-resident from the receipt of Rs. 38,62,500. The income from the receipts of U.S. $ 5,15,000 (Rs. 38,62,500) escaped assessment. The non-resident also did not return the income. This resulted in under assessment of income of Rs. 30,90,000 and undercharge of tax of Rs. 21,90,037 in the hands of the non-resident company for the assessment years 1971-72 and 1972-73. The non-resident was also liable to levy of penalty for concealment of income.

Further, the Indian company was required to deduct tax of Rs. 21,63,000 from the payment of U.S. $ 5,15,000 to the non-resident company and to credit the tax so deducted at source to Government within the prescribed time-limit. Failure to deduct tax at source made the Indian company liable to pay penal interest. The omission of the department to levy any such interest resulted in non-levy of interest of Rs. 39,64,779 upto March 1986. The Indian company could be deemed to be an assessee in default thereby attracting levy of penalty (in addition to penal interest).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) Under the provisions of the Income-tax Act, 1961, a non-resident is chargeable to tax in respect of income which is received or deemed to be received in India or which accrues or arises or is deemed to accrue or arise in India. In the mater of levy of tax, certain concessional rates of tax are applicable to non-resident companies in respect of royalties received from an Indian concern in pursuance of an agreement made by it with an Indian concern before 1 April 1976 and approved by Government.

As per an agreement between a non-resident company and an Indian concern for supply of know-how for manufacture of certain equipments, royalty was payable to the non-resident company after deduction of taxes at the rates applicable to the income but the amount so payable was not to be less than fifty per cent of the gross amount of royalty, the difference between net royalty and the fifty per cent being paid as an additional sum to the non-resident.

In the assessment of the non-resident company for the assessment year 1980-81 completed in February 1983 the gross royalty amounted to Rs. 13,50,882 and the income-tax and surcharge payable thereon worked out to Rs. 7,26,105 and the net royalty was Rs. 6,24,777. However, as per the agreement the company received Rs. 6,75,441, the difference of Rs. 50,664 being borne by the Indian company. The amount borne by the Indian concern being additional consideration is not of the nature of royalty covered by the agreement between the non-resident company and the Indian concern. It was, therefore, required to be treated as 'income from other sources' and charged to tax at the higher rate of 70 per cent plus surcharge. This was not done and accordingly there was short levy of tax of Rs. 38,125. In addition, the foreign company was liable to interest of Rs. 12,962 for under estimate of advance tax.

The Ministry of Finance have accepted the mistake.

(iv) (a) 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 his income. Where, 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 profit and gains of business or profession so to be charged to income-tax as the income of the previous year in which such remission or cessation takes place.

In the profit and Loss Appropriation Account for the assessment year 1982-83, a company credited a net amount of Rs. 9,53,294 after adjustment of Rs. 84,419 being write-back of excess liability provided for in the earlier assessment years 1975-76 to 1981-82. This amount comprised of Rs. 5,42,718, being concession in the rate of interest granted by banks and other financial institutions on term and other loans given by them to the assessee and Rs. 4,94,995 being the company's claim for refund of electricity demand charges admitted by the electric supply authority. Since the aforesaid liability had already been allowed in earlier assessments the net sum of Rs. 9,53,294 was required to be treated as income of the company in the assessment year 1982-83.

In the assessment completed in February 1985 for the assessment year 1982-83 the assessing officer did not, however, include this amount as income of that year. The mistake led to escapement of income of Rs. 9,53,294 leading to excess carry forward of loss by the same amount and consequential potential short levy of tax of Rs. 5,37,419 for the assessment year 1982-83.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) (i) During the previous year relevant to assessment year 1968-69, an assessee company collected excise duty on certain products manufactured by it and paid the same to the Excise department. However, later on, the excise duty was refunded to the assessee company as the said products were not subject to levy of excise duty. The excise duty refund was added as income of the previous year relevant to the assessment year 1968-69, but on appeal by the company the same was deleted by the Appellate Assistant Commissioner of Income-tax on the ground that the excise refund amounts were liable to be refunded to various customers from whom they were initially collected. The amount refundable was credited by the company to the "Excise Duty Refundable Account". The credit balance in the above account stood at Rs. 5,62,788 in the assessment year 1979-80 after taking into account the refunds already made.

As the amounts were not refunded to the different customers from whom they were collected even after the lapse of more than ten years the same should have been considered as income of the assessment year 1979-80, the assessment of which was completed in April 1982. Failure to do so resulted in excess computation of loss by Rs. 5,62,788 with a potential tax effect of Rs. 3,25,009.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) (ii) The assessment of a public liimted company for the assessment year 1984-85 was completed in July 1984 computing a loss of Rs. 1.61 crores (approximately). During the previous year relevant to the assessment year, the company had written back excess provision for bonus aggregating to Rs. 22.31 lakhs pertaining to the assessment years 1974-75, 1975-76 and 1977-78. While computing the taxable income for the assessment year 1984-85 in July 1984 the department allowed a deduction of Rs. 22.31 lakhs on the ground that the provisions for the respective assessment years had already been disallowed. However, a scrutiny in audit of the relevant assessment orders revealed that provisions for bonus amounting to Rs. 5 lakhs only in respect of the assessment year 1977-78 had been disallowed. Since the balance amount of Rs. 17.31 lakhs for assessment years 1974-75 and 1975-76 had not been disallowed in the relevant assessments, the same should not have been deducted while computing the income chargeable to tax in the assessment year 1984-85. The incorrect deduction resulted in under assessment of income by Rs. 17.31 lakhs involving a short levy of tax of Rs. 10.02 lakhs.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) During the previous years relevant to the assessment years 1981-82 and 1982-83, a company received refund of central excise duty of Rs. 4,54,850 and Rs. 6,07,908 respectively. These amounts were accounted for by the assessee under the head 'current liabilities' on the ground that the amounts were required to be passed on to the customers and the assessing officer in the assessment finalised in September 1984 and February 1985 excluded these refunds while computing taxable income. Omission to consider the refund of central excise duty as income resulted in under assessment of income aggregating to Rs. 10,62,758 and a potential total short levy of tax of Rs. 7,22,846 for both the assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) It is seen from the audit certificate on the accounts of an Electricity Board for 1981-82 relevant to assessment year 1982-83 that the miscellaneous

receipts shown in the accounts did not include an amount of Rs. 7,63,843 being the compensation received from a Government department for occupation of a portion of the building purchased by the Electricity Board. The amount was not included in the taxable income for the assessment year 1982-83, the assessment for which was completed in December 1984. The omission resulted in escapement of income of Rs. 7,63,843 involving potential short levy of tax of Rs. 4,30,616.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) Under the Income-tax Act, 1961, any expenditure laid out or expended wholly and exclusively for the purpose of business is allowable as deduction in computing business income of an assessee, provided the expenditure is not in the nature of capital expenditure, or personal expenses of the assessee.

In the assessment of a public limited company for the assessment year 1982-83 completed in March 1984, the assessing officer disallowed the incidental expenses of Rs. 2,20,812 included under 'miscellaneous expenses' as the company had not furnished the details of such expenses. In the previous years relevant to assessment years 1980-81 and 1981-82 the company had debited to the accounts, amounts of Rs. 1,58,525 and Rs. 1,74,292 as incidental expenses. Though the complete details of the expenses were not furnished for the assessment years 1980-81 and 1981-82 the assessing officer disallowed only a sum of Rs. 50,000 for each of these assessment years. This resulted in under assessment of income of Rs. 1,08,525 and Rs. 1,24,292 respectively for assessment years 1980-81 and 1981-82 and potential short levy of tax aggregating to Rs. 1,37,901.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) The matter regarding the necessity of correlation of assessments made under the various direct taxes has been consistently stressed upon, and the need for maintaining a proper correlation amongst the various assessment records has been emphasised by the Public Accounts Committee.

In the case of an assessee, a marketing company, a sum of Rs. 52,55,250 received towards service charges from eight companies belonging to the same group was included in the total income for the assessment year 1982-83 completed in March 1985. Five of the eight companies from whom service charges were received were assessed in the same ward. However, no attempt was made by the assessing officer to correlate the receipts shown by the assessee company with the figures of expenditure shown in the returns of the payer companies. Audit scrutiny revealed (January 1986) that the total amount of service charges shown as paid by two of the five companies, for which details were available in the assessment records of the companies was more by Rs. 3,81,079 as compared to the service charges returned for assessment in the hands of the assessee company. Non-correlation of relevant figures of receipts and expenditure as disclosed by the returns filed and assessed in the same ward, resulted in under assessment of income of Rs. 3,81,079 and a short levy of tax of Rs. 2,50,797.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vii) (a) Under the provisions of Income-tax Act, 1961, the total income of any previous year of a person who is a resident includes all income from whatsoever source derived which is received or deemed to be received in India or accrues or arises or is deemed to accrue or arise in India during such year. Where any depreciable asset is sold, the difference between the sale price and the written down value as does not exceed the difference between the actual cost and the written down value is chargeable to tax as income in the year in which the surplus arises. Further, any profit or gain arising from the transfer of a capital asset is chargeable to tax under the head 'capital gains' which is computed by deducting the cost of acquisition of the capital asset and cost of improvement if any, from the full value of the consideration received.

The Receipts and Payments Accounts of a company in liquidation for the assessment years 1977-78, 1979-80 and 1980-81 included receipts of Rs. 7,95,772, Rs. 36,50,570 and Rs. 9,00,000 respectively on account of sale of assets. As per the office notes of the assessing officer in the assessment orders for the assessment years 1976-77 and 1978-79, the details of assets sold were not available on record and in the absence of details the whole amount of sale proceeds could be treated as income of the year. However, no action was taken to assess the income for these assessment years. This resulted in a short levy of tax aggregating to Rs. 32,61,128.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) Under the provisions of Income-tax Act, 1961, where any depreciable asset which is owned by the assessee and which has been used for the pur-

pose of business or profession is sold and the sale price, exceeds the written down value, the difference between the sale price (upto the limit of actual cost) and the written down value shall be charged to income-tax as income from business of the previous year in which the moneys payable for the asset become due.

In the previous year relevant to the assessment year 1981-82, a company realised a profit of Rs. 3,30,547 on the sale of a building. In the return of income for the assessment year 1981-82 the company treated an amount of Rs. 1,29,001 as capital gains and balance of Rs. 2,01,546 as taxable surplus. In the assessment for the assessment year 1981-82 completed in July 1984, the assessing officer omitted to include the surplus of Rs. 2,01,546 as income chargeable to tax. This resulted in the escapement of income of Rs. 2,01,546 and consequent short levy of tax of Rs. 1,19,166.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) Under the provisions of the Income-tax Act, 1961, the capital gain arising as a result of transfer or sale of agricultural land is not to be charged to income-tax subject to certain conditions.

In the case of a public limited company capital gain of Rs. 4,69,827 arising on the sale of an agricultural land valuing Rs. 1,61,150 in the assessment year 1974-75 for a consideration of Rs. 6,30,977 in the accounting year relevant to the assessment year 1982-83 was not brought to tax though the condition *viz.*, purchase of another agricultural land within two years of sale, stipulated for exemption was not fulfilled. The omission resulted in under assessment of income of Rs. 4,69,827 and consequent short levy of tax of Rs. 2,34,913.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(viii) Under the provisions of the Income-tax Act, 1961, 'actual cost' means the actual cost of the assets to the assessee reduced by that portion of the cost, if any, as has been met directly or indirectly by any other person or authority. It has been judicially held that interest paid on amounts borrowed for acquiring/installing machinery for the period prior to the commencement of the business is includible in 'actual cost' and so far as interest after the commencement of the business is concerned, it is not to be included in actual cost.

In the case of an assessee company during the previous year relevant to the assessment year 1984-85, the company had taken a term loan of Rs. 25 lakhs from a Bank for purchase of machinery and for making additions to the machinery. The value of addition to plant and machinery during the previous year was computed at Rs. 37,56,935 which included an amount of Rs. 12,11,600 being interest payable to the bank for the entire contracted period of the loan. On the amount of interest of Rs. 12,11,600 capitalised, depreciation and investment allowance aggregating to Rs. 5,75,510 were claimed by the company and also allowed by the department. From the notes of the company's accounts for the year ending 30 September 1983, it was noticed that the amount of interest which accrued during the previous year was only Rs. 87,945. As interest payment upto the date of commissioning of the machinery only can legitimately be capitalised, grant of depreciation and investment allowance on the capitalised interest of Rs. 12,11,600 resulted in under assessment of income of Rs. 4,87,565 with a potential short levy of tax of Rs. 3,07,166.

The Ministry of Finance have accepted the mistake.

(ix) In the assessment of four companies in three different Commissioners' charges for the assessment years 1978-79 to 1982-83, there was undercharge of tax aggregating to Rs. 10,99,448. The details of the cases are given below :

Sl. No.	Commissioner's charge	Nature of objection	Tax undercharge
	Assessment year		Rs.
1.	A 1981-82 1982-83	Accrued interest of Rs. 1,13,502 and Rs. 1,05,313 due from certain companies to whom loans were advanced and in which Directors of the company were interested was not included on the ground that the debtors were facing financial difficulties.	1,52,896
2.	B 1978-79 to 1980-81	Accrued interest on deposits by the company with the Industrial Development Bank of India amounting to Rs. 64,500, Rs 66,000, Rs. 66,000, not assessed to tax.	1,14,386
3.	C 1982-83	A sum of Rs. 5,98,621 received as interest from Income-tax Department in respect of the assessment year 1977-78 was not taxed.	4,80,055 (including interest Rs. 1,42,582)
4.	C 1982-83	The assessee company received a sum of Rs. 6,24,588 as interest from the Income-tax Department in respect of assessment year 1979-80 but was not taxed.	3,52,111

Of the four cases, the assessments in three cases were made by the Inspecting Assistant Commissioner (Assessment)

The comments of the Ministry of Finance on all the four cases are awaited (December 1986).

(x) An assessee company deriving income from manufacture and sale of steel products, interest and dividend, credited in its accounts for the years relevant to assessment years 1979-80, 1980-81 and 1982-83 interest on fixed deposits and interest on securities amounting to Rs. 3,26,583, Rs. 8,77,681 and Rs. 2,49,842 respectively on accrual basis. The company followed mercantile system of accounting for its manufacturing etc., but with regard to assessment of interest income, cash basis was being followed. The Inspecting Assistant Commissioner (Assessment) while completing the assesments for the said years (assessments completed in July 1981, December 1982 and March 1985), assessed the interest income on cash basis amounting to Rs. 1,38,264, Rs. 5,40,634 and Rs 18,31,894 against the correct assessable (cash basis) income of Rs. 2,99,206, Rs. 7,27,359 and Rs. 20,52,338 respectively. Interest income to the extent of Rs. 1,60,942, Rs. 1,86,725 and Rs. 2,20,444, therefore, escaped assessment leading to aggregate short levy of tax by Rs. 3,27,620 in the three assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.43 *Incorrect set off of losses*

(i) Where for any assessment year, the net result of the computation under the head 'profits and gains of business or profession' is a loss to the assessee, not being a loss sustained in speculation business, and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of the Act, so much of the loss as has not been so set off shall, subject to the other provisions of the Act, be carried forward to the following assessment year(s) and shall be set off against the profits and gains of business or profession of those years. No loss shall, however, be carried forward for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

(a) In the case of a company, the department computed business loss, unabsorbed depreciation and unabsorbed development rebate of Rs. 1,13,26,291, Rs. 67,78,869 and Rs. 22,50,243 respectively aggregating to Rs. 2,03,55,403 for the assessment years 1967-68 to 1975-76. While completing the assessments for the assessment years 1970-71, 1971-72, 1974-75 to 1979-80, a sum of Rs. 2,45,39,007 was set off by the Inspecting Assistant Commissioner against positive business income of these years resulting in excess set off of Rs. 41,83,604. The excess set off of loss of Rs. 41,83,604 resulted in under assessment of income of Rs. 33,55,389 and Rs. 8,28,215 for the assessment years 1978-79 and 1979-80 respectively with consequent aggregate undercharge of tax of Rs. 24,16,030 for the two assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the case of a public limited company, the assessments for assessment years 1975-76 to 1977-78 were concluded resulting in the computation of business losses and unabsorbed depreciation to be set off against future income. The assessments for these years were rectified to set right apparent mistakes committed (August 1981) while giving effect to the appellate orders, which resulted in reduction in the quantum of business losses for assessment year 1976-77 and enhancement of unabsorbed depreciation for the assessment years 1975-76 to 1977-78 to be carried forward. In the original assessment made for the assessment year 1976-77 in September 1979, the business loss was determined as Rs. 59,21,417 which was allowed to be carried forward for set off against the income of future years. This business loss was set off in July 1981 against the income of Rs. 38,80,610 for the assessment year 1978-79 and the balance of Rs. 20,40,807 was allowed to be carried forward. The balance of Rs. 20,40,807 was set off in July 1982 against the income of Rs. 31,81,635 for the assessment year 1979-80 and there was no amount of business loss of 1976-77 which remained to be carried forward and set off in later years. However, the business loss of Rs. 20,40,807 pertaining to assessment year 1976-77 was allowed set off again to the extent of Rs. 15,63,102 in the assessment made in September 1983 for the assessment year 1980-81 and the balance of Rs. 4,77,705 was allowed to be carried forward even though the loss had already been set off in the assessment year 1979-80. The incorrect set off of business losses allowed for a second time in assessment year 1980-81 resulted in under assessment of income of Rs. 20,40,807 involving a potential tax effect of Rs. 13,16,320.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) The assessment of a widely-held company for the assessment year 1979-80 was completed in March 1982, determining the income as 'nil' after setting off a carried forward business loss of Rs. 3,14,057 and unabsorbed depreciation of Rs. 3,88,275 relating to the assessment years 1972-73 to 1974-75. The assessment for the earlier assessment year 1978-79 was revised in January 1983 and the entire business loss relating to the assessment years 1972-73 and 1973-74 and a business loss amounting to Rs. 86,888 (out of Rs. 1,19,320) of assessment year 1974-75 were adjusted leaving a balance of business loss of Rs. 32,432 to be adjusted in the subsequent assessment year 1979-80. The asssessment for the assessment year 1979-80 was, however, not revised to withdraw the business losses relating to the assessment years 1972-73 and 1973-74 and the loss of Rs. 86,888 relating to assessment year 1974-75 originally adjusted. The assessment for the assessment year 1980-81 was also completed in August 1983 on a 'nil' income after setting off the unabsorbed business loss of Rs. 32,432 of assessment year 1974-75 and unabsorbed depreciation of Rs. 4,05,199 including the amount of Rs. 3,88,275 already set off in assessment year 1979-80.

The omission to revise the assessment for assessment year 1979-80 resulted in the incorrect carry forward and set off of Rs. 32,432, being the balance of the loss relating to assessment year 1974-75 and the unabsorbed depreciation of Rs. 3,88,275 of assessment years 1972-73 to 1974-75 in the assessment year 1980-81.

Further, in the original assessment for the assessment year 1977-78 completed in January 1980, a loss of Rs. 79,725 was arrived at after allowing depreciation of Rs. 3,83,590. The Commissioner of Income-tax (Appeals) allowed (December 1980) a further depreciation of Rs. 60,472 but while giving effect to the orders in March 1982, a sum of Rs. 8,83,590 was added to the loss instead of Rs. 60,472 which led to excess carry forward of business loss of Rs. 8,23,118.

The erroneous adjustments resulted in aggregate short levy of tax of Rs. 3,31,733 in the assessment years 1979-80 and 1980-81 and excess carry forward of business loss of Rs. 8,23,118 involving a potential tax effect of Rs. 4.75 lakhs (approximately) in the subsequent assessment year(s).

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) A closely-held company returned a long term capital gain of Rs. 6,08,500 on the sale of shops and Rs. 31,681 on the sale of furniture and fixtures in its return for the assessment year 1983-84. In the assessment completed in January 1985, the assessing officer set off the brought forward business loss pertaining to the assessment years 1981-82 and 1982-83 against the long term capital gain of Rs. 6,40,181, reducing the taxable income to 'nil'. As the business loss of earlier years can be adjusted against business income only and not against any capital gain in respect of long term capital assets, the incorrect set off of business loss against income from capital gains resulted in under assessment of income by Rs. 6,40,181 involving non-levy of tax of Rs. 3,16,922.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(e) The assessments of a closely-held company running motor bus service for the assessment years 1978-79, 1979-80 and 1980-81 were completed in January 1982 and June 1984 on a taxable income of Rs. nil for the assessment years 1978-79 and 1979-80 and Rs. 24,370 for the assessment years 1980-81, after adjusting Rs. 2,32,420, Rs. 1,49,340 and Rs. 21,355 respectively towards unabsorbed business loss relating to the assessment year 1977-78. Audit scrutiny revealed (December 1985) that based on the orders of Appellate Tribunal issued in March 1983, the assessment for the assessment year 1977-78 (for which the business loss of Rs. 4,03,115 was determined in September 1981) was revised in July 1984 computing the taxable income as Rs. 2,47,810. However, the assessments of the assessments years 1978-79 to 1980-81 were not correspondingly revised to withdraw the carried forward business loss of assessment year 1977-78, which was adjusted earlier. The omission resulted in short-levy of tax of Rs. 2,75,472 for the three assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) In the assessment made in September 1984 of a company for the assessment year 1980-81, a carried forward business loss of Rs. 55,626 was set off against the income of Rs. 45,626. This resulted in excess set off of Rs. 10,000. Similarly business loss and unabsorbed depreciation relating to the assessment year 1978-79 amounting to Rs. 3,22,64,956 was required to be set off against the income for the assessment year 1981-82. In the assessment made in March 1985, a sum of Rs. 3,25,02,769 was set off against

the income of the assessment year 1981-82 as against the correct sum of Rs. 3,22,64,956. These mistakes resulted in an aggregate excess carry forward of Rs. 2,47,813 for the assessment year 1981-82 involving short levy of tax of Rs. 1,46,519.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(g) In the assessment of a company for the assessment year 1983-84 (assessment made in November 1984), a sum of Rs. 2,22,861 pertaining to the assessment year 1980-81 was set off against the positive income for that assessment year and the amount to be carried forward for set off in the subsequent years was determined at Rs. 3,53,269. It was noticed in audit in December 1985 that a portion of the loss of the assessment year 1980-81 amounting to Rs. 2,48,659 was already set off in the assessment year 1982-83 and a sum of Rs. 2,70,942 only (Rs. 5,19,601 being the loss computed for the assessment year 1980-81—Rs. 2,48,659) remained to be carried forward and set off against the positive income of the subsequent years. After setting off of a sum of Rs. 2,22,861 in the assessment for the assessment year 1983-84 in November 1984 to the extent of the available profits, the unabsorbed loss to be carried forward and set off in future years was only Rs. 48,081 against the amount of Rs. 3,53,269 determined in the order.

The incorrect set off of loss of Rs. 2,48,659 twice, once in the assessment year 1982-83 and again in 1983-84 (included in the set off of Rs. 3,53,269) and the excess carry forward of loss of the assessment year 1980-81 by Rs. 56,529 (Rs. 5,76,130—Rs. 5,19,601) resulted in excess carry forward of loss aggregating to Rs. 3,05,188 involving potential short levy of tax of Rs. 2,03,331.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(h) In the assessment of a company for the assessment year 1981-82 completed in September 1984, deficiency on account of tax holiday reliefs admissible to the company for the assessment years 1978-79 1979-80 and 1980-81 aggregating to Rs. 93,124 and unabsorbed investment allowance of Rs. 54,805 for the assessment year 1978-79 was adjusted against the income. In the assessment for the assessment year 1980-81, the assessing officer had computed 'nil' income. It was noticed in audit (October 1985) that the assessee company had a positive income of Rs. 3,51,602 for the earlier assessment year 1980-81 against which all the deficiency on account of tax holiday reliefs together with the unabsorbed investment allowance of earlier assessment years could have been adjusted and a positive income of Rs. 59,648 computed for that year. This resulted in an under assessment of income of Rs. 59,648 for the assessment year 1980-81 and a short levy of tax of Rs. 35,266. Further, as all the losses of earlier years had been fully set off in the assessment year 1980-81, there would be nothing left for adjustment in the assessment year 1981-82. The incorrect adjustment of the tax holiday reliefs of Rs. 93,124 together with the unabsorbed investment allowance of Rs. 54,805 aggregating to Rs. 1,47,929 in the assessment year 1981-82 resulted in under assessment of income of Rs. 1,47,929 and a short levy of tax of Rs. 1,40,937 inclusive of interest for under-estimate of advance tax. The aggregate short levy of tax amounted to Rs. 1,76,203 for the two assessment years 1980-81 and 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(i) The total income of a company for the assessment year 1975-76 was originally computed in November 1977 at a loss of Rs. 4,22,014 comprising of business loss of Rs. 1,40,676 and unabsorbed depreciation of Rs. 2,81,338. On the basis of appellate order, the assessment was revised in March 1985 determining the total loss at Rs. 9,91,775 which included the aforesaid unabsorbed depreciation of Rs. 2,81,338. The entire loss of Rs. 9,91,775 was set off in assessment year 1977-78. In addition, a sum of Rs. 879 was set off towards unabsorbed depreciation for the assessment year 1975-76 and the total income for the assessment year 1977-78 was reduced to nil. Further ,a sum of Rs. 2,80,459 (Rs. 2,81,338—Rs. 879) was also allowed to be carried forward as being the balance of unabsorbed depreciation for the assessment year 1975-76. As the entire unabsorbed depreciation of Rs. 2,81,338 was already included in the total amount of Rs. 9,91,775 for the assessment year 1975-76 and set off against the income for the assessment year 1977-78, the set off of Rs. 879 towards unabsorbed depreciation and carry forward of Rs. 2,80,459 was irregular. This led to undercharge of tax of Rs. 507 together with irregular carry forward of unabsorbed depreciation of Rs. 2,80,459 for the assesment year 1977-78 involving short levy of potential tax of Rs. 1,61,965

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(j) The assessment of a company for the assessment year 1981-82 was completed in April 1984 and the total income was reduced to nil after setting off of unabsorbed losses of Rs. 16,28,607 and Rs. 10,41,866 for the assessment years 1978-79

and 1980-81 respectively. A further unabsorbed loss of Rs. 33,47,875 for the assessment year 1980-81 was also allowed to be carried forward. It was, however, noticed in audit in June 1985 that as a result of rectification made subsequently for the assessment year 1978-79 in June 1984, the loss of Rs. 16,28,607 for the assessment year 1978-79 was reduced to Rs. 14,56,012. Accordingly, the assessment for the assessment year 1981-82 was also required to be revised and the amount of unabsorbed loss of the assessment year 1980-81 to be carried forward at the end of the assessment year 1981-82 recalculated at Rs. 31,75,280 in place of Rs. 33,47,875 allowed to be carried forward. As this was not done, there was excess carry forward of loss of Rs. 1,72,595 at the end of the assessment year 1981-82 with a tax effect of Rs. 1,02,047.

The Ministry of Finance have accepted the mistake.

(k) The total income of a company for the assessment year 1984-85 was computed in February 1985 at Rs. 1,12,884 which comprised of house property income of Rs. 1,02,721 and business income of Rs. 10,163. The assessing officer set off unabsorbed business loss of Rs. 1,12,884 relating to the assessment year 1982-83 against the income and reduced the total income to nil. As the unabsorbed business loss of the assessment year 1982-83 could be set off only against the business income of Rs. 10,163 and not against the house property income of the assessment year 1984-85, the erroneous adjustment resulted in the house property income of Rs. 1,02,721 escaping assessment in the assessment year 1984-85 leading to undercharge of tax of Rs 70,106.

The comments of the Ministry of Finance on the paragraph are awited (December 1986).

(l) While computing the business income of a company for the assessment year 1978-79 in June 1982, the business loss was determined at Rs. 1,49,496. The assessment was revised in June 1984 to give effect to the orders of the Commissioner of Income-tax. In the revised assessment made in June 1984, the loss was determined at Rs. 41,563. While completing the assessment for the assessment year 1980-81 in September 1984, the loss of Rs. 1,49,496 as originally computed was erroneously set off instead of the correct amount of loss of Rs. 41,563 determined in June 1984. The mistake resulted in excess set off of loss and a consequent under assessment of income of Rs. 1,07,933 involving a short levy of tax of Rs. 63,815

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(m) An industrial company had carried forward unabsorbed loss/depreciation/development rebate/tax holiday deficiency for the assessment years 1974-75 to 1978-79 and these were adjusted against the positive incomes of the subsequent years, the last adjustment being made in the assessment for the assessment year 1981-82 completed in January 1984 on a positive income of Rs. 1,00,865. There was, thus, no unabsorbed deficiency to be carried forward for adjustment in the subsequent assessment year 1982-83. However, in the assessment for the assessment year 1982-83 completed in February 1985, the assessing officer determined an income of Rs. 1,03,740 and computed the net income as 'nil' after setting of an amount of Rs. 1,03,740 by way of unabsorbed loss, depreciation etc., brought forward from earlier years. The incorrect adjustment of the loss etc., resulted in under assessment of income of Rs. 1,03,740 and a short levy of tax of Rs. 58,483 for the assessment year 1982-83.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (Decmber 1986).

(n) In the original assessment of a company for the assessment year 1981-82 made in March 1984, the net taxable income after allowing the brought forward loss of Rs. 99,176 (for the assessment year 1980-81) was computed at Rs. 6,74,200. As a result of revision of the assessment for the assessment year 1980-81 to give effect to the order of the Commissioner of Income-tax (Appeals) (January 1985), the benefit of brought forward loss of Rs. 99,176 was again given and the taxable income incorrectly determined at Rs. 1,54,190 against Rs. 2,53,366. The assessment was further revised in September 1985 to give effect to the order (September 1985) of the Commissioner of Income-tax (Appeals), and the loss for the assessment year 1980-81 was determined at Rs. 2,08,888. In this revised order, while the figure of income was correctly taken at Rs. 2,53,366 (instead of Rs. 1,54,190 incorrectly determined at the time of giving effect to the appellate order of January 1985), the benefit of brought forward loss of Rs. 99,176 already given during original assessment was overlooked. Thus, against a loss of Rs. 1,09,712, loss of Rs. 2,08,888 was adjusted. This resulted in excess adjustment of loss by Rs. 99,176 involving potential short levy of tax of Rs. 58,637.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) If an assessee carrying on a business or profession sustains loss during a year and such loss cannot be set off against income from other heads in that assessment year, such unadjusted loss is allowed to be carried forward for set off against profits and gains, if any, of any business or profession carried by him in the next or subsequent assessment year provided the business or profession in which the loss was sustained was continued to be carried on in that year. The unadjusted loss brought forward cannot be set off against income from other head (i.e. except income from business or profession).

An assessee company manufacturing utensils upto the assessment year 1978-79 had accumulated losses for the assessment years 1970-71 to 1972-73 and 1976-77. In the previous year relevant to the assessment year 1979-80, the company stopped production of utensils and started production of shots and notch bars and leased out the factory godowns. The income from leasing was assessed under the head 'income from other sources'. The brought forward business loss was allowed to be set off against the net income of Rs. 73,268 and Rs. 74,685 from 'other sources' in the assessment years 1979-80 and 1980-81 in contravension of the provisions of the Income-tax Act, 1961. In fact, there was loss under the head 'business' in these years. The mistake resulted in short levy of tax of Rs. 1,02,191.

The Ministry of Finance have accepted the mistake.

(iii) Under the provisions of the Income-tax Act, 1961, any loss computed in respect of a speculation business carried on by the assessee can be set off only against profits and gains of another speculation business. It has also been provided in the Act that where any part of the business of a company (other than an investment, a banking or a financial company) consists in the purchase and sale of shares of other companies, such companies shall be deemed to be carrying on a speculation business to the extent to which the business consists of purchase and sale of shares.

(a) An industrial company engaged in various business activities was also carrying on business in share dealings in the previous years relevant to the assessment years 1982-83, 1983-84 and 1984-85. The company sustained losses of Rs. 1,01,908 in the assessment year 1982-83, Rs. 5,48,824 in the assessment year 1983-84 and Rs. 2,86,339 in the assessment year 1984-85 in share dealings and charged the losses to the profit and loss account of the company. These losses were allowed as deductions by the assessing officer while completing the assessments in April 1983, March 1984 and December 1984 respectively. The loss being from speculation business which could be set-off only against speculation profit, the deduction of the same from the profits of the company was not in order.

The omission to disallow the loss resulted in under assessment of income of Rs. 1,01,908, Rs. 4,89,200 and Rs. 2,11,433 in the assessment years 1982-83, 1983-84 and 1984-85 respectively leading to undercharge of tax aggregating to Rs. 4,66,438 for the three assessment years 1982-83 to 1984-85.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The assessment of an investment company carrying on the business of dealing in shares and granting of loans and advances, for the assessment year 1982-83 was completed in March 1985 on a business income of Rs. 3,17,967 and dividend income of Rs. 54,390. Against the business income of Rs. 3,17,967, the department set off unabsorbed speculation loss of the like amount in respect of the assessment year 1980-81 and the net total income was computed at Rs. 54,390 representing dividend income alone. Major part of its income during the assessment year 1982-83 was derived from interest earned on loans and advances and from dividend income, both of which were assessed under "other sources". The income under the head "other sources" was more than the income derived from business (share-dealing). The assessee was, therefore, an investment company in the assessment year 1982-83 and the income from share-dealing was not speculative in nature. The set off of unabsorbed speculation loss of earlier years against the other income was, therefore, not correct. The mistake resulted in under assessment of income of Rs. 3,17,967 with a consequent undercharge of tax of Rs. 1,84,830 for the assessment year 1982-83.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) Under the provisions of the Income-tax Act, 1961, where a change in the share holding has taken place in a previous year in the case of a company, in which public are not 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 certain prescribed conditions are fulfilled, one such condition being that the Income-tax Officer should be satisfied that the change in the share holding was not made with a view to avoiding or reducing any liability to tax.

In the assessment order of a private limited company for the assessment year 1978-79 completed in August 1981, the assessing officer observed that changes in the share holdings had taken place during the previous year relevant to the assessment year 1978-79 and in the absence of satisfactory explanation from the assessee company, the losses for the assessment years upto 1977-78 would not be allowed to be carried forward for adjustment. However, a loss of Rs. 2,56,109 relating to the assessment year 1973-74 was allowed to be set off in the assessment year 1981-82 in January 1985, while giving effect to the orders of Commissioner of Income-tax (Appeals). The erroneous set off of the losses resulted in under assessment of income of Rs. 2,56,109 and a short levy of tax of Rs. 2,34,574 including interest for belated filing of return and under-estimate of advance tax for not filing revised estimates.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) Under the Income-tax Act, 1961, where in respect of any assessment year, the net result of the computation under the head 'capital gains' is a loss, such loss shall be carried forward to the following assessment years and set off against capital gains relating to long term capital assets for those assessment years.

In the assessment of a widely-held company for the assessment year 1973-74 completed in December 1975, the assessing officer determined a long term capital loss of Rs. 10,28,833 and this was allowed to be carried forward for adjustment against the long term capital gains of the following assessment years. Out of this loss, a sum of Rs. 3,10,942 was adjusted against the long term capital gains in the assessment for the assessment years 1974-75, 1975-76 and 1976-77 completed in February 1979, September 1978 and March 1979 respectively. Subsequently, while completing the reopened assessment for the assessment year 1973-74 in March 1984, the capital loss was redetermined as 'nil'. Audit scrutiny of the records revealed (July 1984) that consequent on the redetermination of long term capital loss for the assessment year 1973-74, the amounts of Rs. 33 set off in the assessment year 1973-74 and Rs. 2,99,360 (after rectification of an error in the original assessment year 1975-76 whereby the capital gain to be taxed was determined as Rs. 13,141 instead of the correct amount of Rs 1,559) carried forward and set off in the assessment years 1974-75 to 1976-77 required to be withdrawn. But no action was taken to revise the assessments for these years to withdraw the capital losses already adjusted. Omission to do so resulted in under assessment of income of Rs. 2,99,360 and a short levy of tax of Rs. 1,64,365.

The case was checked by the internal audit party of the department but the mistake escaped its notice.

The Ministry of Finance have accepted the mistake.

(vi) Under the provisions of the Income-tax Act, 1961, business loss of a registered firm may be allocated amongst its partners for being set off against their individual income. Tax holiday deficiency in respect of a new industrial undertaking and unabsorbed investment allowance, however, are to be carried forward and set off against the profits of the firm itself in subsequent assessments and is not allocable to the partners.

In the case of a registered firm, tax holiday deficiency in respect of a new industrial undertaking and unabsorbed investment allowance was determined as Rs. 1,75,027 for the assessment year 1981-82. One-third of it, amounting to Rs. 58,342 was allocated to an assessee company, one of the three partners of the firm. The aforesaid loss was set off against the positive income of the assessee in the assessment year 1981-82 (assessment made in March 1984 and last revised in January 1985). As the tax holiday deficiency and unabsorbed investment allowance were to be carried forward in the hands of the firm itself, the set off thereof in the hands of the partner company was not in order. The mistake resulted in under assessment of business income by Rs. 58,342 and a short levy of tax of Rs. 51,166 for the assessment year 1981-82, inclusive of interest of Rs. 13,536 for short payment of advance tax for the assessment year 1981-82. The position in respect of the other two partners also needs consideration.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.44 *Mistakes in assessments while giving effect to appellate orders*

(i)(a) The assessment of a widely held company for the assessment year 1979-80 was completed in September 1982 on a taxable income of Rs. 59,25,860 which was arrived at after deducting from the total income of Rs. 3,33,25,787, investment allowance of Rs. 31,20,419 and business loss, unabsorbed depreciation allowance, unabsorbed development rebate and unabsorbed investment allowance aggregating to Rs. 2,42,79,508. Consequent on the orders (February 1985) of the Commissioner of Income-tax (Appeals)

the assessments for the assessment years 1974-75 to 1980-81 were revised in March 1985 in which the the losses etc. relating to earlier years were suitably modified. Audit scrutiny revealed (May 1985) that while revising the assessment for the assessment year 1979-80 (March 1985) for giving effect to appellate orders allowing a relief of Rs. 1,21,71,939 the net income of Rs. 59,25,860 was taken as the basis for computation of income. The carried forward business losses, unabsorbed depreciation etc. of earlier years which were already set off in the original assessment were allowed to be carried forward in the assessment years 1979-80 and 1980-81 as modified by the appellate orders and adjusted to the extent possible. As the modified figures of carried forward losses etc., were claimed for set off at the time of revision of assessment for the assessment year 1979-80, the computation of total income should have been made based on the gross income of Rs. 3,33,25,787 determined in the assessment order of September 1982. The incorrect adoption of the sum of Rs. 59,25,860 as the basis for computation resulted in excess carry forward of loss etc., to the extent of Rs. 2,42,79,508 taking into account the investment allowance of Rs. 31,20,419 required to be carried forward but omitted to be considered in the revision order for the assessn ent year 1979-80. The mistake resulted in potential short levy of tax of Rs. 1,40,21,415.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A widely-held company while returning the income from interest (earned on financing hire-purchases) had indicated that accrued interest as well as accrued penal interest on loans had not been taken into account as it was decided by the company to account the receipts on due basis. While completing (August 1978) the asssessment for the assessment year 1975-76, the Income-tax Officer assessed the interest and penal interest on loans aggregating to Rs. 10,20,000 on accrual basis on the ground that the assessee was following mercantile system of accounting. The additions were, however, deleted on the orders of the Commissioner of Income-tax (Appeals) in August 1979. In the appeal by the Department the orders of Commissioner of Income-tax were set aside by the Tribunal in June 1980. But the Tribunal's orders were not given effect to till the date of audit (August 1985). On the orders (May 1983) of the Commissioner of Income-tax, the assessment for the assessment year 1975-76 was again revised (June 1983) to deduct a sum of Rs. 8,02,134 representing the accrued interest relating to the assessment year 1974-75. As the assessment of the accrued interest/penal interest aggregating to Rs. 10,20,000 for the assessment year 1975-76 was deleted by the Commissioner of Income-tax (Appeals) in June 1979, it was pointed out in audit that the deduction of a sum of Rs. 8,02,134, being the accrued interest for the assessment year 1974-75 from the income for the assessment year 1975-76 was not in order. Moreover, the accrued interest of Rs. 97,866 and penal interest of Rs. 1,20,000 were not also assessed in the assessment year 1975-76. This has resulted in a short levy of tax of Rs. 7,74,614 in the assessment years 1977-78 and 1978-79.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) In the regular assessment of a widely-held company for the assessment year 1978-79 completed in September 1981, depreciation of Rs. 8,68,940 was allowed in respect of deferred payment of interest and guarantee commission amounting to Rs. 28,69,206 and Rs. 21,29,379 which were treated as capital expenditure by the assessing officer in the assessments for the assessment years 1976-77 and 1977-78 respectively. In appeal, the Commissioner of Income-tax (Appeals) allowed (November 1981) the assessee's claim to treat the deferred payment of interest and guarantee commission as revenue expenditure and the assessments for the assessment years 1976-77 to 1978-79 were revised in March 1982 accordingly treating the above expenditure as revenue expenditure. However, the depreciation allowed in the assessment for the assessment year 1978-79 was not simultaneously withdrawn. This resulted in an under assessment of income by Rs. 8,68,940 and undercharge of tax of Rs. 5,10,040.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) During the previous years relevant to the assessment years 1980-81 and 1981-82 a company installed plant and machinery worth Rs. 12,60,479 and Rs. 62,67,389 respectively. Subsequent to the filing of return for the said two years, the company claimed the aforesaid expenditure as revenue in nature, being replacement of identical plant and machinery. In the original assessments for the assessment years 1980-81 and 1981-82 completed in May and July 1984, the assessing officer disallowed the claim and treated the expenditure as capital in nature and allowed depreciation and investment allowance thereon. Pursuant to an appellate order of November 1984, the assessments were revised on 18 December 1984 and the said expenditure of Rs. 12,60,479 and Rs. 62,67,389 was

allowed as revenue expenditure. The depreciation and investment allowance allowed thereon in these years were also withdrawn. In the assessment for the assessment year 1982-83, completed on 12 December 1984, depreciation of Rs. 11,20,574 (including extra shift allowance) was allowed as per depreciation schedule filed by the assessee which included the written down value of the assets claimed by the assessee as revenue expenditure but treated as capital expenditure in the years 1980-81 and 1981-82. As the entire expenditure on the assets was allowed as revenue expenditure in the two assessment years 1981-82 and 1982-83, the depreciation allowed on those assets in assessment year 1982-83 should also have been withdrawn. Omission to do so resulted in excess allowance of depreciation of Rs. 11,20,574 leading to net under assessment of income of Rs. 11,19,307 (after some different and minor adjustments) in the assessment year 1982-83. As this assessment resulted in a loss of Rs. 2,57,395, the under assessment of income led to tax undercharge of Rs. 6,14,910 (including non levy of penal interest of Rs. 1,41,473) together with excess carry forward of loss of Rs. 2,57,395 for the assessment year 1982-83.

The Ministry of Finance have accepted the mistake.

(e) The assessment of a transport company for the assessment year 1978-79 was modified in December 1983 to give effect to an order of Commissioner of Income-tax (Appeals) and loss was determined as Rs. 2,27,527. This loss was set off against the income for the assessment year 1979-80 simultaneously. The assessment was revised in June 1984 and again in April 1985 to give effect to the orders of Appellate Tribunal and the loss was finally determined as Rs. 5,95,158. The entire loss of Rs. 5,95,158 was fully set off against the income for the assessment year 1979-80, though loss to the extent of Rs. 2,27,527 had already been set off in December 1983. This resulted in excess set off of loss by Rs. 2,27,527 and consequent short levy of tax of Rs. 1,31,398 for the assessment year 1979-80.

The Ministry of Finance have accepted the mistake.

(f) In the assessment of an industrial company, provision for bonus of Rs. 1,46,000 made in the previous year relevant to the assessment year 1981-82 was disallowed in the assessment completed in August 1984. The said sum was, however, allowed as deduction in the assessment year 1982-83 completed on 14 March 1985 on actual payment basis. The assessee company went in appeal against the disallowance made during the assessment year 1981-82. The commissioner of Income-tax (Appeals) in his order of February 1985 allowed the deduction. Accordingly, the assessment for the assessment year 1981-82 was revised on 30 March 1985 allowing the relief of Rs. 1,46,000 as per the appellate order but the consequential rectification of the assessment for 1982-83 was not effected. The omission resulted in allowance of the deduction twice and led to under assessment of income of Rs. 1,46,000 with consequent short levy of tax and interest aggregating to Rs. 1,26,837 in the assessment year 1982-83.

The Ministry of Finance have accepted the mistake.

(g) In the regular income-tax assessments of a State owned transport undertaking the Income-tax Officer disallowed in the assessments for the assessment years 1974-75 to 1976-77, the claim of the assessee for full deduction of the interest payable to ex-operators on unpaid compensation aggregating to Rs. 4,38,668 and in the assessment for the assessment years 1975-76, 1976-77 and 1978-79, fifty per cent of the contribution paid to Flag Day Fund and Chief Minister's Fund aggregating to Rs. 9,93,500. On assessee's appeal, the Commissioner of Income-tax (Appeals) allowed (December 1981) the claim of the assessee in respect of both the items. Consequently, the assessments for the four assessment years were revised in March 1982, giving effect to the orders of the Commissioner of Income-tax (Appeals). On further appeal by the department, the Appellate Tribunal reversed the orders of Commissioner of Income-tax (Appeals) in December 1982. It was noticed (June 1985) that no action was initiated till the date of audit (June 1985) to revise the assessments, withdrawing the excess deduction aggregating to Rs. 9,35,418 for the four assessment years, although separate orders of Tribunal (November 1982) relating to assessment year 1977-78 on the same point were given effect to and the surtax assessments for the assessment years 1974-75 to 1976-77 and 1978-79 had been completed in August 1984 based on the earlier revision of income-tax assessments in March 1982. This resulted in under assessment of income by Rs. 9,35,418 and short levy of tax of Rs. 6,91,773.

The Ministry of Finance have accepted the mistake.

(ii) During the previous year relevant to the assessment year 1978-79 an assessee company debited in its Profit and Loss Account a sum of Rs. 5,18,851 on account of provision for contingencies. Out of the said sum, an amount of Rs. 3,91,175 was disallowed by the assessing officer in the original assessment

completed in September 1982 and the balance amount of Rs. 1,27,676 being municipal tax, was allowed. The assessee company also claimed separately Rs. 2,26,463 on account of municipal tax for the same assessment year and the assessing officer allowed a sum of Rs. 98,787 being the difference between Rs. 2,26,463 and Rs. 1,27,676 already allowed. In appeal, the appellate authority directed the Income-tax Officer to allow a further sum of Rs. 1,27,676. In the revised assessment made in March 1983, the Income-tax Officer allowed a sum of Rs. 1,27,676 though the amount of Rs. 1,27,676 had already been allowed in the original assessment made in September 1982. The double deduction resulted in under assessment of business income by Rs. 1,27,676 and a short levy of tax of Rs. 73,733 for the assessment year 1978-79.

The Ministry of Finance have accepted the mistake.

(iii) Under the provisions of the Income-tax Act, 1961, any sum received by a foreign company from an Indian concern by way of royalty or fees for technical services rendered under an agreement approved by the Central Government is chargeable to tax at the rate of 40 per cent. Royalty received in the form of a lump sum payment for the supply of know-how outside India is, however, charged to tax at a concessional rate of 20 per cent.

Under an agreement for technical collaboration, a non-resident company was entitled to receive from an Indian company, a sum of U.S. $ 35,00,000 in three instalments. During the previous year relevant to the assessment year 1982-83, the foreign company received from the Indian concern U.S. $ 11,66,667 (Rs. 1,09,03,420) being the second instalment of the amount due. and in the assessment completed in October 1983 a sum of Rs. 89,804 was charged to tax at the rate of 20 per cent and the balance of Rs. 19,62,616 at the rate of 40 per cent. The assessee claimed before the Commissioner of Income-tax (Appeals), that out of Rs. 19,62,616 taxed at the rate of 40 per cent, a sum of Rs. 9,81,308, representing lump sum payment for technical know-how transferred outside India, was chargeable at the lower rate of 20 per cent, and the appeal was allowed. However, while giving effect to the appellate order in April 1984, the entire amount of Rs. 19,62,616 was taxed at the rate of 20 per cent, instead of only Rs. 9,81,308. This resulted in a short levy of tax of Rs. 1,92,262.

The Ministry of Finance have accepted the mistake.

(iv) The Income-tax Act, 1961, as it stood prior to its amendment by the Finance Act, 1983, provided for export market development allowance to resident assessees engaged in the business of export of goods outside India or in providing services or facilities outside India in computing the business income at one and one-third times of the qualifying expenditure (one and one-half times in the case of a domestic company in respect of expenditure incurred between 1 March 1973 and 31 March 1978).

In the assessment of a private limited company for the assessment year 1980-81 completed in January 1984, the deduction was allowed at one and one-half times of the expenditure of Rs. 14,50,934 incurred in connection with the business of export of goods outside India by the Inspecting Assistant Commissioner of Income-tax (Assessment) instead of at the rate of one and one-third times though the higher weighted deduction was admissible upto the assessment year 1978-79 only. In an appeal filed by the assessee company, the Commissioner of Income-tax (Appeals) in his order (July 1984) had also directed that the weighted deduction should be restricted to 1/3rd of the eligible amount instead of ½ thereof allowed in the original assessment. The mistake, however, remained unrectified even while giving effect to the appellate order. The allowance of higher rate of deduction resulted in under assessment of income of Rs. 2,41,820 and a short levy of tax of Rs. 1,55,974.

The Ministry of Finance have accepted the mistake.

(v) Under the Income-tax Act, 1961, where an assessment is set-aside in appeal, a fresh assessment in pursuance of the appellate order may be made at any time before the expiry of two years from the end of the financial year in which the appellate order is received by the Commissioner. The Act further provides that where any income is excluded from the total income of an assessee for an assessment year in pursuance of an appellate order, an assessment of such income in another assessment year is to be deemed to be one, made in consequence of or to give effect to any finding or direction contained in the said order.

A company carrying on the business of distribtuion of electricity was taken over by the State Government concerned in January 1974. In the assessment for the assessment year 1974-75 redone in July 1982, a sum of Rs. 22,33,841 was included as interest accrued on the compensation due to the assessee company for the period from January 1974 to March 1982. Pursuant to the orders of the Commissioner of Income-tax (Appeals) (February 1983) that interest relating to each year should be assessed in the respective

assessment years, the assessments for the assessment years 1974-75 and from 1981-82 to 1983-84 were revised during December 1982 to November 1984, withdrawing the excess interest charged to tax in the respective assessments, to be spread over the assessments relating to the subsequent assessment years. It was, however, noticed in audit (September 1985) that the department had not initiated any action to reopen the assessments for the assessment years 1975-76 to 1980-81 to assess the accrued interest aggregating to Rs. 20,59,740 relating to those years involving non levy of tax of Rs. 12,23,922.

The Ministry of Finance have not accepted the mistake on the plea that the same was in the knowledge of the department.

INCORRECT EXEMPTIONS AND EXCESS RELIEFS

2.45 *Mistakes in allowing deductions under Chapter VI-A*

Chapter VI-A of the Income-tax Act, 1961, provides for certain deductions to be made from the gross total income of an assessee to arrive 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. 'Gross total income' has been defined as the total income computed in accordance with the provisions of the Act before making the deductions under Chapter VI-A. Where the set off of unabsorbed loss, depreciation, investment allowance etc., of earlier years, being an anterior stage, results in reducing the total income to 'nil' or to 'loss', no deduction under Chapter VI-A is admissible.

(i) In the assessment of a company for the assessment year 1980-81 (completed in April 1982 and revised in March 1984) the department allowed a deduction of Rs. 5,19,769 (being 7½ per cent of capital of Rs. 69,30,250 towards tax holiday relief for the new industrial undertaking. While determining the profits of the new unit, the department did not deduct from the profit of the new unit, depreciation and investment allowance of Rs. 45,04,903 allowable to the new unit for that year. After providing for depreciation and investment allowance the profits of the new unit were nil and as such the assessee was not entitled to the aforesaid deduction for the assessment year 1980-81. The incorrect allowance of deduction of Rs. 5,19,769 resulted in under assessment of business income by the same amount with consequent undercharge of tax of Rs. 3,07,314 for the assessment year 1980-81.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the regular assessment of a company for the assessment year 1981-82 completed in September 1984, the gross total income was computed by the assessing officer at Rs. 1,41,45,787 after allowing deduction of Rs. 4,85,636 on account of inter-corporate dividends and royalties etc., under Chapter VI-A and net income of Rs. 1,36,60,151 was assessed to tax. On a representation by the assessee, the assessment was rectified during the same month to allow set off of brought forward unabsorbed depreciation and investment allowance amounting to Rs. 1,33,78,514 for assessment year 1979-80 and unabsorbed loss of the assessment year 1980-81 to the extent of Rs. 2,81,637. The rectification of assessment resulted in a 'nil' income being assessed for the assessment year 1981-82. Consequently no deduction under Chapter VI-A was allowable. However, while carrying out the rectification, the assessing officer omitted to withdraw the deduction of Rs 4,85,636 allowed earlier in the original assessment. The omission resulted in incorrect allowance of deduction of Rs. 4,85,636 and a consequent excess carry forward of loss by the same amount for the assessment year 1981-82 involving a potential short levy of tax of Rs. 2,87,131.

The Ministry of Finance have accepted the mistake.

2.46 *Incorrect deduction in respect of donation*

Under the Income-tax Act, 1961, in computing the total income of an assessee, there shall be deducted from the gross total income an amount equal to fifty per cent of sums paid by the assessee as donations in the previous year to the funds specified in the Act However, the qualifying amount is restricted to ten per cent of the gross total income or five hundred thousand rupees, whichever is less.

(i) The assessment of a widely held company for the assessment year 1980-81 was completed in September 1983 by the Inspecting Assistant Commissioner (Assessment) on a total income of Rs. 73,84,230 in which a deduction of Rs. 2,50,000 was allowed in respect of donations of Rs. 5,00,000 made by the assessee company. It was noticed in audit that the donations paid by the assessee were not supported by any receipts and, therefore, the deduction allowed in respect of donations of Rs. 5,00,000 was not in order.

The department stated in December 1985 that out of donation of Rs. 5,00,000 made by the company, a sum of Rs. 2,50,000 was paid to a college, the income of which is exempt under the Act and hence

the donation made to this institution is exempt under the provisions of the Act. The department further stated that the deduction allowed in respect of the balance donation of Rs. 2,50,000 made to other institution is not valid and as the relief was not admissible, it has been withdrawn in December 1985, creating additional demand of Rs. 80,625.

The case was checked by the internal audit party of the department but the mistake escaped its notice.

The Ministry of Finance have accepted the mistake.

(ii) In the assessment of a closely-held non-industrial company for the assessment year 1982-83 (completed in March 1985) on a total income of Rs. 1,92,440, a deduction of Rs. 50,500 was allowed by the Inspecting Assistant Commissioner (Assessment) in respect of donation of Rs. 1,01,000 paid to a public school. As the gross total income of the assessee amounted to Rs. 2,42,936 a deduction of Rs. 12,147 only was admissible at the rate of 50 per cent on Rs. 24,294 (being 10 per cent of the gross total income). The incorrect deduction along with another totalling error of Rs. 1,000 resulted in under assessment of income by Rs. 39,353. This together with a mistake in incorrect application of rate of tax, resulted in short levy of tax by Rs. 65,069, including short levy of interest for late filing of return (Rs. 1,836) and for short payment of advance tax (Rs. 17,290).

The Ministry of Finance have accepted the mistake.

2.47 *Incorrect deduction in respect of profits and gains from newly established industrial undertaking in backward areas*

Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits from newly established industrial undertaking in backward areas, as specified in the Eighth Schedule to the Act, a deduction equal to twenty per cent of the profits is allowed while computing its business income. The Income-tax Act was amended in 1980 by the Finance Act, 1980 effective from assessment year 1981-82, by which the deduction was to be calculated with reference to net income as computed in accordance with the provisions of the Act and not with reference to gross amount of such income. That is to say, the gross amount of such income will be reduced by the expenditure incurred in earning the income.

(i) In the assessment of a public limited company for the assessment year 1981-82 made in March 1984, the Inspecting Assistant Commissioner (Assessment) allowed a deduction of Rs. 6,08,041 in respect of their T.M.P. Unit, being twenty per cent of the profit of Rs. 30,44,206. While arriving at the above profit no deduction was made for the Head Office and Administrative expenses incurred in earning the above income as in the case of another unit of the assessee where the profit was reduced by twenty per cent of the sales towards Head Office and Administrative expenses. If the same percentage is adopted in respect of the T.M.P. Unit also, there would not have been any profit left for allowing the deduction. The incorrect computation of profit in respect of T.M.P. Unit resulted in excess deduction of Rs. 6,08,841 and a short levy of tax of Rs. 4,85,969, including interest of Rs. 1,25,992 paid on the excess payment of advance tax being rendered 'nil' due to the demand.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the assessment of a company for the assessment year 1980-81, made in September 1983, the assessing officer disallowed the claim of the company towards the deduction for setting up a new industrial undertaking in a backward area. In appeal, the Commissioner of Income-tax (Appeals) directed the grant of the deduction in September 1984. While giving effect to appellate orders in December 1984, the assessing officer allowed the deduction at 25 per cent of the gross income of Rs. 47,58,510 instead of at 20 per cent of the net income of Rs. 33,74,382 (after allowance of depreciation etc.). The irregular allowance resulted in excess allowance of deduction of Rs. 5,14,752 and consequent excess carry forward of unabsorbed 'tax holiday' relief in the assessment year 1981-82 (in which the assessee had positive income) involving an undercharge of tax of Rs. 3,92,591 (including Rs. 88,247 towards interest for short payment of advance tax).

The Ministry of Finance have accepted the mistake.

(iii) In the case of a widely held company engaged in the manufacture of dry cells, the Income-tax Officer proposed a draft assessment order for the assessment year 1980-81 in March 1983 for a total income of Rs. 57,21,078 and for a deduction of Rs. 11,44,215 being 20 per cent thereof towards profits and gains derived from its industrial undertaking situated in a backward area. Subsequently, the total income was reduced to Rs. 37,44,348 in accordance with the direction of Inspecting Assistant Commissioner as well as the appellate orders of the Commissioner of Income-tax, made in March 1984. However, while giving effect to the appellate orders in March 1984, reducing the total income to Rs. 37,44,348 the relief

of Rs. 11,44,215 already proposed for establishing an industrial undertaking in backward area was not correspondingly reduced. This omission resulted in the allowance of excess relief of Rs. 3,95,346 involving a short levy of tax of Rs. 2,33,751.

The department has accepted he mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) In the assessment of a widely held domestic company for the assessment years 1981-82 and 1982-83, deduction in respect of profits and gains from newly established industrial undertakings in backward areas was allowed at Rs. 3,88,302 and Rs. 41,351 in assessments made in September 1984 and January 1985 respectively. As the gross total income of the company for both the assessment years 1981-82 and 1982-83 was a loss, the above deduction was not allowable. The irregular deduction led to excess carry forward of loss and unabsorbed depreciation of Rs. 3,88,302 in the assessment year 1981-82 and Rs. 41,351 in the assessment year 1982-83 involving potential tax effect of Rs. 2,42,217.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) The income of a private limited company for the assessment year 1980-81 was determined in April 1982 at Rs. 7,31,350 after allowing depreciation admissible for the relevant previous year. The company was allowed a deduction of Rs. 1,46,270 being 20 per cent of the income of Rs. 7,31,350 in respect of the newly established industrial undertaking in backward area. It was noticed in audit that there were business losses and depreciation amounting to Rs. 3,37,346 carried forward from the previous assessment years for set off against the profits of the year, which were not actually set off from the income of Rs. 7,31,350 before allowing the relief. Taking into account the deduction of Rs. 25,672 on account of donation also admissible to the company but was not allowed in the assessment, the profit of the new industrial undertaking correctly worked out to Rs. 3,68,332. The assessee company was, therefore, entitled to a relief of Rs. 73,666, being 20 per cent of the profit of Rs. 3,68,332. Incorrect computation of the relief at Rs. 1,46,270 resulted in under assessment of income of Rs. 72,604 and a short levy of tax of Rs. 42,926.

The Minisrty of Finance have accepted the mistake.

2.48 *Excessive allowance of relief in respect of export turnover*

Under the provisions of the Income-tax Act, 1961, prior to its amendment by Finance Act, 1985, an assessee being an Indian company or other assessee resident in India, engaged in export business was entitled to a deduction in the computation of taxable income of an amount equal to 1 per cent plus a further amount equal to 5 per cent of the incremental export turnover of certain goods and merchandise if the sale proceeds thereof were receivable in convertible foreign exchange. The deduction was subject to the restriction that it shall not, in any case, exceed the gross total income of the assessee.

The assessment of an Indian company for the assessment year 1983-84 was completed by the Inspecting Assistant Commissioner in December 1984, at a loss of Rs. 66,310. The gross total income of the company was computed by the department at Rs. 21,777 against which full deduction of Rs. 88,082 calculated at the prescribed percentage of export turn over of the business was allowed therefrom without restricting the deduction to Rs. 21,777 only. Thus, the deduction was allowed by the department in excess by Rs. 66,305 which resulted in excess computation of loss by the same amount involving potential tax effect of Rs. 44,179.

The assessment was checked by the special audit party of the department in July 1985 but the mistake was not detected by it.

The Ministry of Finance have accepted the mistake.

2.49 *Incorrect deduction in respect of profits from new industrial undertaking established after* 31 *March* 1981

Under the provisions of Income-tax Act, 1961, as amended by the Finance (No. 2) Act, 1980, with effect from 1 April 1981, where the gross total income of a company included any profits and gains derived from a newly established undertaking which went into production within a period of four years next following 31 March 1981, the company is entitled to a deduction of 25 per cent of such profits for a period of eight years including the year in which the manufacturer started producing or manufacturing subject to fulfilment of the conditions prescribed in the Act. The conditions, *inter alia,* prescribe that the undertaking is not formed by splitting or reconstruction of a business already in existence and that it is not formed by the transfer to a new business, of machinery and plant previously used.

(i) In the assessment of a private industrial company for the assessment year 1981-82 completed on an income of Rs. 12,77,110 in March 1984 and revised in November 1984, the department allowed a deduction of Rs. 4,00,694 at the rate of 25 per cent on the profit of Rs. 16,02,775 attributable to its dyeing division. As the previous year of the company ended on 31 March 1981, and the aforesaid deductions under the Act is applicable in respect of an undertaking going into production after 31 March 1981, the company is not entitled to the deduction admissible to a new industrial undertaking. Further, as recorded in the assessment order for assessment year 1977-78 framed in December 1978, the company started the dyeing plant in the previous year relevant to assessment year 1977-78. Notional income of dyeing division for the assessment year 1981-82 was calculated after taking into account the opening stock of dyeing material of Rs. 12,75,807 brought forward from earlier year. The dyeing division was, therefore, in operation even prior to the previous year relevant to the assessment year 1981-82 and the dyeing division shown in the records of the previous year ending 31 March 1981 was only a reconstruction of a business already in existence. The company was, therefore, not eligible for this deduction on account of the reconstruction of the existing unit. The mistake resulted in undercharge of tax of Rs. 3,51,493 (including excess payment of interest on advance tax).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The deduction shall not, however, exceed the gross total income as computed, *inter alia*, after setting off the unabsorbed losses and allowances of earlier years as prescribed in the Act.

In the case of an assessee company for the assessment year 1983-84 (completed in January 1985) the assessing officer allowed a deduction of Rs. 2,37,864 at twenty-five per cent of this gross total income of Rs. 9,51,455 as being the deduction towards tax holiday though the correct gross total income of the company after setting off of the brought forward losses and allowances was 'nil'. The company was, therefore, not entitled to the relief. Failure to apply correctly, the provisions of the Act, resulted in grant of incorrect deduction of Rs. 2,37,864 involving potential short levy of tax of Rs. 1,37,366.

The Ministry of Finance have accepted the mistake.

2.50 *Incorrect relief in respect of newly established industrial undertaking (prior to 31 March 1981)*

Under the provisions of Income-tax Act, 1961, prior to its amendment by the Finance Act 1980, with effect from the assessment year 1981-82, where the gross total income of an assessee included any profits and gains derived from a newly established undertaking which went into production before 1 April 1981, the assessee became entitled to tax relief in respect of such profits and gains upto 6 per cent per annum (7½ per cent from 1 April 1976) of the capital employed in the undertaking in the assessment year in which it began to manufacture or produce articles and also in each of the four succeeding assessment years.

Where, however, such profits and gains fell short of the relevant amount of the capital employed during the previous year, the amount of such short fall or deficiency was to be carried forward and set off against future profits upto the seventh assessment year reckoned from the end of initial assessment year.

The method of computing capital employed in the industrial undertaking was laid down in Income-tax Rules, 1962, according to which the capital employed would be the value of assets as on the first day of the computation period of the undertaking as reduced by moneys and debts owed by the assessee on that day. In the computation of value of capital employed, the value of depreciable assets should be taken at their written down value as on the first day of the computation period.

The Act further provides that the terms 'actual cost' for the purpose of the relief means the actual cost of the assets to the assessee reduced by that portion of the cost, if any, as has been met directly or indirectly by any other person or authority. The capital employed was calculated on the basis of owned capital and reserves only exclusive of borrowed capital. Under an amendment by the Finance Act, 1980, to the Act, the provisions of the Rules were incorporated in the Act itself retrospectively from 1 April 1972.

(i) In the assessment of 13 companies for the assessment years 1976-77 to 1984-85, assessed between June 1981 and July 1985, in 11 different Commissioners' charges, due to erroneous determination of capital employed in the newly established industrial undertaking, there was excess computation of capital employed resulting in excess/irregular allowance of relief of Rs. 1.05 crores involving short levy of tax of Rs. 20,23,274 in 7 cases and potential

tax effect of Rs. 44,45,410 in the remaining cases. The details of the cases are as under :

Sr. No.	Commissioners' Charge / Assessment year	Nature of mistake	Tax effect Rs.
1.	A 1976-77 to 1980-81	Omission to deduct borrowed moneys and debts owed by the assessee from the value of assets in respect of its two newly established industrial undertakings resulting in excess relief of Rs. 45,78,318.	25,92,144) (Potential and 1,22,787
2.	B 1981-82 to 1984-85	Omission to reduce the actual cost of fixed assets by the investment subsidy of Rs. 15,00,000 received from Central Government and incorrect adoption of the value of fixed assets at book value instead of their written down value.	7,78,074 (Potential)
3.	C 1982-83	Incorrect adoption of borrowings at a reduced figure of Rs. 1.12 crores instead of Rs. 2.35 crores as on the first day of the computation period.	6,61,654
4.	D 1980-81	Failure to revise the assessment to reduce the value of assets acquired with borrowwed capital from the total value of assets consequent upon the retrospective amendment of the Act despite a directive from the Appellate Tribunal.	5,98,132
5.	B 1982-83 to 1984-85	Incorrect consideration of miscellaneous expenditure and losses which were not assets. Adoption of value of depreciable assets at their book value instead of written down value.	5,45,262 (Potential)
6.	E 1980-81	Liabilities and debts owed by the assessee company not deducted in the computation of capital employed.	2,72,752
7.	F 1981-82	Secured and unsecured loans and sundry creditors amounting to Rs. 38,72,112 and cash subsidy of Rs. 3,92,549 received from Central Government and State Government not deducted from the value of assets.	2,06,303
8.	A 1980-81 to 1982-83	Omission to deduct the borrowed money and debts owed from the value of assets.	2,39,057 (Potential)
9.	J 1977-78	Erroneous adoption of depreciable assets at their book value at Rs. 1.68 crores and incorrect inclusion of Rs. 6.29 lakhs on account of certain expenditure not capitalised in the capital computation.	1,18,496
10.	G. 1981-82 and 1982-83	Entire capital employed in the undertaking was raised by loans taken on hypothecation of plant and machinery and no tax holiday relief is admissible.	1,29,939 (Potential)
11.	K 1981-82 and 1982-83	Omission to reduce liabilities of Rs. 13.69 lakhs from the value of assets in the computation of capital employed.	95,314 (Potential)
12.	H 1983-84	Adoption of the depreciable assets at their book value instead of their written down value.	65,620 (Potential)
13.	I 1980-81	Adoption of value of assets as on the last day of computation period instead of on the first day of computation period in computing the capital employed.	43,150

One of the above assessments was completed by Inspecting Assistant Commissioner (Assessment).

The department has accepted the objection in 10 cases.

Assessments of two companies were checked by the internal audit party of the department but the mistake was not detected by it.

The Ministry of Finance have accepted the mistake in six cases. Their comments in the other cases are awaited (December 1986).

(ii) The Act stipulates that the industrial undertaking should not have been formed by splitting up or reconstitution of a business already in existence and that the undertaking was not formed by transfer to the new business of machinery or plant previously used for any purpose. The Act, however, provided that when any machinery or plant previously used for any purpose is transferred to a new business and the total value of the machinery or plant so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, the new industrial underaking could be given the benefit of tax holiday relief. However, in such a case the value of the used machinery transferred to the new undertaking is not to be taken into account while computing the capital employed for calculating the tax holiday relief admissible.

In the assessments of 20 companies for the assessment years 1975-76 to 1984-85 completed between September 1979 and September 1985 in 14 Commissioners' charges owing to incorrect application of above provisions of the Act, incorrect application of rate of relief, erroneous deductions allowed to units not engaged in manufacturing activities, irregular deductions of relief beyond the prescribed period of 5 assessment years etc., tax holiday relief amounting to Rs. 2.88 crores was allowed in excess resulting in short levy of tax of Rs. 1.65 crores in 18 cases and excess carry forward of losses etc., involving potential

tax effect of Rs. 4,58,236 in the remaining two cases. The details are as under :

Sr. No.	Commissioner's charge / Assessment year	Nature of Mistake	Tax effect Rs.
1.	A 1975-76 to 1978-79	Used machinery valued at Rs. 8.81 crores was transferred to the new industrial undertaking, the value of which exceeded the prescribed limit of 20 per cent of the total value of machinery and plant used in the business of the assessee. Consequently no tax holiday relief was admissible.	1,17,32,671
2.	B 1978-79 and 1979-80	Failure to add back depreciation of Rs. 30.04 lakhs in respect of two industrial units kept aside for separate consideration at the time of assessment and omission to deduct investment allowance of Rs. 21.80 lakhs in respect of one unit to determine profit and gains of the unit and incorrect allowance of relief of Rs. 19.63 lakhs instead of Rs. 9.42 lakhs and short allowance of relief in respect of one unit.	11,36,563
3.	C 1977-78	Tax holiday relief allowed at the rate of 7.5 per cent on Rs. 4.09 crores instead of at 6 per cent correctly admissible.	4,57,436
4.	D 1982-83	Irregular allowance of relief to the assessee engaged in processing activity and not engaged in the manufacture or production of article.	4,46,382
5.	E 1977-78 to 1979-80	Relief at the rate of 7.5 per cent was allowed to a unit established prior to 1 April 1976 instead of at the correct rate of 6 per cent.	4,28,333
6.	A 1980-81	Excess allowance of relief of Rs. 4.75 lakhs owing to omission to restrict the allowance of relief to the profit of Rs. 8.15 lakhs.	2,80,988
7.	F. 1977-78	Relief at the rate of 7.5 per cent was wrongly allowed to a unit which went into production prior to 31 March 1976 instead of at the correct rate of 6 per cent.	2,78,396
8.	C 1979-80	Wrong allowance of tax holiday relief when there were no profits or gains from the new undertaking.	2,63,603
9.	C 1981-82 and 1982-83	Incorrect set off of carried forward deficiency of relief, as against a total relief of Rs. 16,23,060 due to the assessee, relief of Rs. 20,91,224 was allowed.	2,65,989
H01.	1980-81	Expansion of existing industrial unit was wrongly taken as establishment of new industrial undertaking and wrong calculation of even the irregular relief.	2,46,680 (Potential)
11.	N 1974-75 to 1981-82	Incorrect set off of carried forward deficiency of Rs. 2,04,176 in the assessment year 1978-79 where the new unit did not have any profit or gain for such set off and excess allowance of development rebate of Rs. 95,622 by applying a rate of 25 per cent instead of 15 per cent.	2,09,968
12.	I 1979-80 and 1980-81	Incorrect allowance of relief of Rs. 2.99 lakhs in the assessment year 1978-79 being the sixth assessment year from the initial assessment year in which the unit went into productions instead of limiting the relief to five assessment years.	1,92,648
13.	N 1979-80	Erroneous carry forward of deficiency and set off of relief of Rs. 2.73 lakhs beyond the seventh assessment year reckoned from the initial assessment year.	1,71,700
14.	J 1979-80 to 1983-84	Old and used machinery transferred to the new unit represented 95 per cent of the total value of machinery used in the business. Hence unit not entitled to tax holiday relief.	1,63,866
15.	K 1983-84 and 1984-85	Incorrect allowance of relief beyond the prescribed period of five assessment years.	1,75,358 (Potential)
16.	L 1981-82 and 1982-83	Incorrect allowance of relief where there was no profit or gain derived from the newly established unit.	1,29,025
17.	D 1982-83	Assessee engaged in processing certain rubber compounds for its parent company and not engaged in manufacturing or production activity was wrongly allowed tax holiday relief of Rs. 1.93 lakhs.	1,08,835
18.	D 1982-83	Double set off of carried forward defeciency of relief of Rs. 1.54 lakhs once in the assessment year 1978-79 and again in the assessment year 1982-83.	86,241
19.	K 1976-77	Double set off of carried forward deficiency of relief and unabsorbed development rebate of Rs. 1.26 lakhs once in the assessment year 1973-1974 and again in the assessment year 1976-77.	72,837
20.	M 1980-81 and 1981-82	Erroneous allowance of relief in the sixth and seventh assessment years from the initial assessment year of commencement of manufacturing activity.	40,692

In 7 cases, the assessments were completed by the Inspecting Assistant Commissioner (Assesment).

One case was checked by the internal audit party of the department but the mistake escaped its notice.

The department has accepted the objection in thirteen cases.

The Ministry of Finance have accepted the mistakes in seven cases. Their reply in other cases is awaited (December 1986).

(iii) An assessee company having industrial units in backward areas and also a new industrial undertaking was allowed set off of reliefs in respect of the industrial unit established in backward area and tax holiday relief for the new industrial undertaking from the total income before first setting off the business loss, unabsorbed depreciation, investment allowance and deficiency of the earlier years. The gross total income of the company after allowance of business loss, unabsorbed depreciation and unabsorbed investment allowance was nil which would not be sufficient to absorb all the deductions under Chapter VI-A of the Act during the assessment years 1981-82 to 1984-85. The deduction allowed to the company for newly established industrial undertaking in backward area was, therefore, not in order. The deduction on account of tax holiday relief allowed also to the same assessee at the rate of six per cent at Rs. 83,337 on the capital employed in respect of profits and gains of newly established undertaking in assessment year 1975-76 would lapse in assessment year 1983-84 as the deficiency could not be carried forward beyond seven years from the end of the assessment year in which it was first allowed. As a result of these mistakes there was an excess carry forward of loss of Rs. 4,61,433 involving short levy of tax of Rs. 2,90,703 at the end of the assessment year 1984-85 due to the cumulative effect of assessments from assessment years 1981-82 to 1983-84.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) Where an assessee is entitled to the deduction in respect of newly established industrial undertaking in backward areas as well as to the deduction in respect of profits and gains from newly established industrial undertaking effect shall first be given to the deduction admissible in respect of industrial undertaking in the backward areas.

A company established a new industrial undertaking in a backward area. The total income of the company for the assessment year 1981-82 was computed at Rs. 20,41,130 in August 1984 after allowing a total deduction of Rs. 5,44,450 towards tax holiday relief on new unit as well as relief in respect of profit from newly established industrial undertaking in backward area. The profit from the new industrial undertaking which was established in backward area, was determined at Rs. 4,00,718. Under the provisions of the Income-tax Act, the deduction on account of relief in respect of industrial unit in backward area amounting to Rs. 80,143 being 20 per cent of the profit earned therefrom was to be allowed first and the balance of profit of Rs. 3,20,575 only should have been considered for tax holiday relief and the unabsorbed tax holiday relief carried forward. However, the assessee company was allowed tax holiday relief of Rs. 4,64,307 as against Rs. 3,20,575. This resulted in under assessment of business income by Rs. 1,43,732 and an undercharge of tax of Rs. 84,982 for the assessment year 1981-82.

The Ministry of Finance have accepted the mistake.

2.51 *Excess relief allowed in respect of profits from poultry farming*

Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a business of live-stock breeding, or poultry or dairy farming a deduction was allowable in computing income chargeable to tax. In case where the amount of such profits and gains did not exceed the aggregate of Rs. 15,000 the whole of such amount was allowed as deduction. In any other case, the deduction was allowed at 1/5th of the aggregate of such profits and gains or Rs. 15,000 whichever was higher. However, in case the profits and gains were derived from a business of a poultry farming, the profits to be considered while determining the deduction allowable were limited to Rs. 75,000. Effective from 1 April 1984 the percentage of deduction was modified from 1/5th to 15 per cent and simultaneously the amount for working out the deduction allowable was raised from Rs. 75,000 to Rs. 1 lakh. The Act was amended by Finance Act 1985 withdrawing this deduction from 1 April 1986.

(i) In the case of a company engaged in poultry farming business, the gross total income for assessment years 1982-83, 1983-84 and 1984-85 was worked out as Rs. 4,01,692, Rs. 2,98,806 and Rs. 3,58,690 respectively from which deduction of Rs. 80,338, Rs. 59,761 and Rs. 53,803 respectively on account of profits derived from the business of poultry farming was allowed, though the maximum permissible deduction under the Income-tax Act, 1961, was Rs. 15,000 only for each of the above assessment years. The excess deduction allowed while completing

the assessments in December 1984 and March 1985 resulted in under assessment of income aggregating to Rs. 1,48,902 involving short levy of tax of Rs. 92,933 for the three assessment years, inclusive of interest for delay in filing the return for assessment year 1982-83 and under-estimate of advance tax for assessment year 1984-85.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the case of a company engaged in the business of poultry farming a deduction of Rs. 1,37,656 being 1/5th of the profits of Rs. 6,88,282 derived from the business of poultry farming, was allowed in the assessment year 1981-82 completed in September 1984. As the assessee derived income from poultry farming, the deduction was to be restricted to Rs. 15,000. The incorrect grant of excess deduction resulted in underassessment of income of Rs. 1,22,656 involving a short levy of tax of Rs. 79,111.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.52 *Incorrect deduction of dividend income*

Under the Income-tax Act, 1961, where any dividend is declared by a company from out of its profits attributable to the relief granted to it under the provisions of the Act in respect of a newly established industrial undertaking set up by it, such dividend or part thereof attributable to the tax holiday relief received by the assessee will be exempt from tax. However, aggregate deductions under Chapter VI-A of the Act are not to exceed the gross total income of the assessee. 'Gross total income' has been defined as the total income computed in accordance with the provisions of the Act under the various heads of income before making any deductions under Chapter VI-A.

The gross total income of a private limited company for the assessment year 1982-83 was worked out as Rs. 3,405 under the various heads of income which included a gross dividend income of Rs. 62,000 under the head 'Income from other sources'. The department while completing the assessment for the assessment year 1982-83 in February 1984 allowed a deduction of Rs. 50,000 on account of dividends attributable to the tax holiday relief granted to the newly established industrial undertaking from the gross dividend income instead of restricting it to the gross total income of Rs. 3,405. This mistake resulted in excessive deduction of Rs. 46,595 involving a notional tax effect of Rs. 31,047.

The Ministry of Finance have accepted the mistake.

2.53 *Incorrect deduction in respect of inter corporate dividends*

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 a specified percentage of such income. The Act was amended through Finance (No. 2) Act, 1980, with retrospective effect from April 1968, to provide that the deduction on account of inter-corporate dividend 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 the dividend. The Act further stipulates that where the gross total income of an assessee includes any income by way of dividends on shares in a company attributable to profits and gains from a new industrial undertaking a deduction equal to the whole of the dividend attributable to such profits and gains of the undertaking shall be allowed in computing the income of the assessee.

(i) During the previous year relevant to the assessment years 1978-79, 1979-80 and 1981-82, a State Industrial and Investment Corporation received dividend income aggregating to Rs. 56,24,297 from other domestic companies. Out of this, dividends amounting to Rs. 5,74,769 were attributable to profits and gains from new industrial undertaking. There were no details available in the assessment records of interest paid by the assessee Corporation on the amounts of borrowed funds for the purchase of the shares in other companies. On the basis of the interest paid in assessment year 1977-78, the corporation would have incurred expenditure of Rs. 33,62,289 approximately on account of interest on its borrowed funds.

In the income-tax assessment of the corporation for the assessment years 1978-79, 1979-80 and 1981-82, completed by the Inspecting Assistant Commissioner (Assessment) in March 1981, December 1981 and December 1982, deduction aggregating to Rs. 30,29,717 on account of inter-corporate dividends was allowed after excluding Rs. 5,74,769 from the gross dividends of Rs. 56,24,297 for the three assessment years, instead of on the net dividend income after considering the interest expenditure incurred for earning the dividend income.

The incorrect allowance of deduction on the gross dividends resulted in excess deduction aggregating to Rs. 13,42,478 for the three assessment years 1978-79, 1979-80 and 1981-82 involving short levy of tax of Rs. 7,78,642 for the three years.

The department justified the deduction stating that the shares were transferred by Government to the State Corporation and the sale price of the shares was treated as a loan for a period of 25 years and that the interest payable on the loan, could not be treated as amount spent for earning the dividend income. The department's reply is not in conformity with the Act in as much as the corporation had obtained the shares, out of loan funds on which interest was payable and in view of the amendment to the Income-tax Act brought out by the Finance Act, 1980, such interest was required to be deducted from the dividends received.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the case of a widely-held company, the income-tax assessments for the assessment years 1974-75 and 1982-83 were redone/completed in March 1985 allowing deductions of Rs. 23,76,178 and Rs. 13,67,899 respectively towards income from inter-corporate dividends. The assessee company was also allowed deductions of Rs. 2,60,730 and Rs. 1,14,806 for assessment years 1974-75 and 1982-83 towards dividend income attributable to profits and gains from new industrial undertaking. The deductions allowable towards inter-corporate dividends were, therefore, required to be calculated with reference to the dividend as reduced by Rs. 2,60,730 and Rs. 1,14,806 for the two assessment years. The omission to do so resulted in excess allowance of deduction of Rs. 1,56,438 and Rs. 68,884 and a consequent short levy of tax of Rs. 1,29,176 for the two assessment years 1974-75 and 1982-83.

The Ministry of Finance have accepted the mistake.

(iii) In the income-tax assessments of two companies for the assessment years 1981-82 and 1982-83 (assessments completed between March 1984 and January 1985), excess deductions amounting to Rs. 1,36,873 were allowed as a result of allowance of relief on the gross amounts of dividends instead of on the net amount of dividends. The mistakes resulted in short levy of tax of Rs. 79,928 for the assessment years 1981-82 and 1982-83 in respect of the two companies.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) In another charge while completing the assessment of two companies between January 1984 to November 1984, excess deduction amounting to Rs. 94,199 was made by allowing the deduction towards inter-corporate dividends on the gross amount of dividend instead of on the net amount for the assessment years 1982-83 to 1984-85 in the case of one company and for the assessment years 1983-84 to 1984-85 in the case of the other company. The mistake resulted in short levy of tax aggregating to Rs. 62,798.

The Ministry of Finance have accepted the mistake.

2.54 *Incorrect deductions of royalties etc., received from a domestic company*

Under the provisions of the Income-tax Act, 1961, as it stood prior to its amendment by the Finance Act, 1983, where the gross total income of an assessee, being an Indian company included any income by way of royalty, commission, fees or any other payment (not being income chargeable under the head 'capital gains') received by the assessee from any person carrying on a business in India in consideration of the provision of technical know-how or for rendering services in connection with the provision of technical know-how under an agreement entered into by the assessee with such person on or after the 1 April 1969 and approved by the Central Government/Central Board of Direct Taxes, a deduction from such income of an amount equal to forty per cent thereof shall be allowed in computing the total income of the assessee.

(i) In the case of a Government company which carried on business primarily of mining consultancy and exploration, the Central Board of Direct Taxes approved an agreement for Rs. 5,65,000 for the purpose of relief under the aforesaid provision of the Act. The assessing officer while assessing the income for the assessment year 1980-81 allowed a relief of Rs. 5,65,000 instead of restricting it to forty per cent of Rs. 5,65,000. The omission to do so resulted in excess allowance of relief by Rs. 3,39,000 with consequent undercharge of tax of Rs. 2,98,631 including interest for delay in filing of return and non-payment of advance tax.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) A public limited company entered into an agreement with a foreign enterprise to act as the latter's agents for marketing its products in India. During the previous year relevant to the assessment year 1980-81, the Indian company received an agency commission of Rs. 1,47,516 from the foreign enterprise and claimed a deduction of Rs. 59,006 at 40 per cent of the commission, which the department allowed in the assessment completed in October 1982. As the assessee was appointed only as the convassing and marketing agents for the products of the foreign enterprise, the income derived was neither in consideration of providing technical know-how which is likely to assist in the manufacture or processing of goods or for rendering services in connection therewith nor was it received from any concern in India. There was also no evidence in the records to indicate that the agreement had been approved by the Board. The deduction allowed was, therefore, not in order. The incorrect allowance of deduction of Rs. 59,006 resulted in short levy of tax of Rs. 79,543 including surtax of Rs. 44,658.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.55 *Incorrect deduction in respect of royalty etc., from a foreign enterprise*

Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee, being an Indian company includes any income by way of royalty, commission, fees or any similar payment received by the assessee from a foreign enterprise in consideration for use outside India of any patent, invention, model, design, secret formula or process or in consideration of technical services rendered or agreed to be rendered outside India to such enterprise by the assessee under an agreement entered into by the assessee with such person and approved by the Central Government/Central Board of Direct Taxes, and such income is received in convertible foreign exchange in India, a deduction of the whole of the income so received shall be allowed in computing the total income of the assessee.

(i) (a) According to an agreement entered into in September 1980 by an Indian company with a foreign company based at New York belonging to the same multinational group, the Indian company was to carry out research in its existing Research and Development Wing in India at Bhopal for invention and development of pesticides suitable for controlling pests of tropical crops as per programme sponsored by the foreign enterprise on the basis of technical information furnished by them and to communicate the results of the work to the foreign enterprise. The agreement provided for the foreign enterprise agreeing to provide funds upto a maximum limit of $ 1,50,000 each year to the Indian company for carrying out the programme. The Indian company was to submit periodical programmes statements to get the reimbursement of the expenditure on these programmes from the foreign enterprise. The assessee company obtained the approval of the Board to the aforesaid scheme according to which the net income *i.e.* the payments received by the Indian company as reduced by the expenditure incurred by it, was fully exempt from taxation. Accordingly, for the assessment years 1981-82 and 1982-83 (assessments made in September 1984 and March 1985 respectively), the department allowed deduction of Rs. 5,91,351 and Rs. 10,80,000 being the net income which was computed after deducting from the gross receipts of Rs. 7,39,189 and Rs. 13,50,000 respectively, 20 per cent thereof as the estimated expenditure to earn the said income in the absence of the details of the expenditure in the assessee's records. No attempt was also made by the department to call for the expenditure statements furnished periodically by the Indian company to the foreign company to get periodical reimbursements. The company had incurred expenditure of Rs. 24,25,886 during the previous years relevant to the assessment years 1981-82 and 1982-83 on a programme entitled 'New Molecule Synthesis and Screening (Bio-efficiency)' for discovery of new pesticides suitable for pest control of tropical crops—particularly paddy and obtained reimbursement of Rs. 20,89,189 in the two assessment years 1981-82 and 1982-83. No net income thus remained to be allowed as deduction for these two years. It was also observed in audit that the assessee, as a result of these receipts, had parted for good with the world rights over the research results, and was merely taking up research on behalf of a foreign enterprise on contract basis and was not earning fee/royalty on export of technical knowledge outside India. The assessee is thus not entitled to the deduction of the income as earned on account of export of technical know-how outside India. The incorrect allowance of deductions of Rs. 5,91,351 and Rs. 10,80,000 resulted in under assessment of incomes by the like amounts leading to total tax undercharge of Rs. 9,58,486 for the assessment years 1981-82 and 1982-83.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) During the previous year relevant to the assessment year 1981-82, a public limited company received a fee of Rs. 10,71,171 from a foreign enterprise for technical services rendered and claimed the entire amount as deduction under the aforesaid provisions of the Act. This was allowed by the assessing officer in the assessment year 1981-82 completed in July 1983. Audit scrutiny revealed (August 1984) that there was no evidence in the records to indicate that the fees received by the assessee was covered by an agreement entered into by the assessee with the foreign concern and duly approved by the Central Board of Direct Taxes. A further verification of the records (in December 1985) revealed that the approval was given by the Central Board of Direct Taxes in December 1983 for the assessment years 1982-83 to 1984-85 only and that there was no specific approval in respect of the assessment year 1981-82. The deduction allowed for the assessment year 1981-82 was, therefore, not in order. The incorrect allowance of deduction of Rs. 10,71,809 resulted in short levy of tax of Rs. 8,19,809 (including surtax of Rs. 1,86,480).

The department reopened the assessment in March 1986, based on the clarification issued by the Central Board of Direct Taxes that the approval of the agreements did not relate to assessment year 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) (a) The gross total income of a company for the assessment year 1982-83 was computed at Rs. 13,19,542 which included an amount of Rs. 11,68,509 on account of income from foreign contract approved by the Central Board of Direct Taxes and the balance income was derived by the company from capital gains and interest. The assessee company was entitled to deduction of the income of Rs. 11,68,509 by way of royalty or fees etc. from the foreign enterprises in full. However, in the assessment for the assessment year 1982-83, made in February 1985, the assessing officer allowed the relief for a sum of Rs. 13,19,542 being the gross total income of the company including other incomes of the company and computed the taxable income at 'nil'. The omission to restrict the deduction to Rs. 11,68,509 only resulted in underassessment of income by Rs. 1,51,033 and short levy of tax of Rs. 1,00,625.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the assessment of a company for assessment year 1981-82 completed in August 1984, the Inspecting Assistant Commissioner (Assessment) allowed deduction of a sum of Rs. 5,77,207 being the gross payment received for services rendered in Middle East and West Germany. The Central Board of Direct Taxes gave its approval in June 1981, in respect of income from West Germany, subject to the condition that the deduction should be allowed on net income after accounting for the expenses incurred for earning such income. It was, however, noticed in audit in January 1986 that the assessee company incurred expenditure of Rs. 3,21,489 for overseas income of which Rs. 2,78,799 was incurred for allowance paid to executives sent on assignment to Dubai and West Germany. The amount, being a specific charge against gross income earned, should have been deducted therefrom as required under the Act and order of the Board. Omission to do so resulted in underassessment of income by Rs. 2,78,799 with consequent short levy of tax of Rs. 1,64,840.

The assessment was checked by the internal audit party of the department but the mistake escaped its notice.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Under an amendment to the Act by Finance (No. 2) Act, 1980 effective from 1 April 1981, the relief on account of income derived by way of royalty, fees, commission etc. in consideration for provision of technical know-how rendered to an Indian company or similar income derived for supply of technical know-how to foreign enterprise where such income is received in convertible foreign exchange is to be determined with reference to the net income derived in respect of these services and not on gross receipts.

The assessments of a private limited company for the assessment years 1981-82 and 1982-83 were completed in September 1984 and March 1985 respectively. A relief of Rs. 22,61,671 and Rs. 21,32,508 was allowed on gross receipts from consultancy in assessment years 1981-82 and 1982-83 respectively. During the relevant previous years the company received gross consultancy service fees of Rs. 4,62,65,854 and Rs. 5,27,75,630 respectively and the department allowed expenditures to the extent of Rs. 4,48,20,438 and Rs. 5,14,00,071 in the respective assesments. The income from consultancy fees was determined by the department at Rs. 14,45,416 and Rs. 13,75,559 and tax relief allowable thereon worked out to Rs. 6,66,935 and Rs. 5,31,461 as against relief of Rs. 22,61,671 and Rs. 21,32,508 allowed in assessments for 1981-82 and 1982-83 respectively. The allowance of relief on gross receipts instead of on net income as provided

in the Act is not in order. The mistake resulted in underassessment of income of Rs. 15,94,736 and Rs. 16,01,047 for the assessment years 1981-82 and 1982-83 respectively and undercharge of tax aggregate ing to Rs. 30,12,463 for both the assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.56 *Incorrect deductions allowed in respect of profits and gains from publication of books*

Under the provisions of the Income-tax Act, 1961, where the gross total income of the previous year included any profits and gains derived from a business carried on in India on the printing and publication of books or publication of books, a deduction of 20 per cent of such profits and gains is allowable while computing the total income of an assessee.

In the assessment of a company for the assessment year 1982-83 completed in January 1985, a deduction of Rs. 1,64,349 was allowed by the Income-tax Officer while computing the total income chargeable to tax at 20 per cent of the gross profit on the publication of books amounting to Rs. 8,21,746. However, the profits and gains on the publication of the books was computed by the assessing officer at Rs. 4,44,489 only and hence the company was entitled to a deduction of Rs. 88,898. The incorrect allowance of deduction of Rs. 1,64,349 resulted in under assessment of income by Rs. 75,451 and a short levy of tax of Rs. 67,306 (inclusive of the recovery of interest of Rs. 17,043 paid earlier on excess advance tax payment).

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.57 *Irregular or excess refunds*

(i) Under the provisions of the Income-tax Act, 1961, where an assessee files a return of income claiming that the advance tax paid and the tax deducted at source exceed the tax payable on the basis of return of income filed by him, the Income-tax Officer is required to make a provisional assessment and to refund the excess tax paid by the assessee, if the regular assessment is not likely to be made within six months from the date of filing the return. In doing so the Income-tax Officer is authorised to disallow any deduction, allowance or relief claimed in the return which is, *prima facie*, inadmissible. According to the Income-tax Rules, 1962, the general rate of depreciation in respect of plant and machinery was ten per cent upto the assessment year 1983-84 and the rate was increased to fifteen per cent by the Income-tax (Amendment) Rules, 1983. It has been clarified by the Board in June 1983 that the increased rate is effective from assessment year 1984-85.

In the case of a closely-held company the assessing officer made a provisional assessment in April 1984, for the assessment year 1983-84, determining the loss at Rs. 4,84,274 and authorised a refund of Rs. 13,14,679 as claimed by the assessee. Audit scrutiny, however, revealed (September 1985) that the assessee company had arrived at the loss by claiming a total depreciation of Rs. 1,06,32,500 (approx) towards plant and machinery, adopting the rate of 15 per cent. As the enhanced rate of depreciation was introduced with effect from 1984-85, the depreciation correctly allowable in this case *i.e.* for the assessment year 1983-84, was only 10 per cent and as this was a *prima facie* incorrect claim, the excess claim should have been disallowed. The irregular allowance resulted in under assessment of income by Rs. 35,44,165 leading to an irregular refund of Rs. 13,14,679 to the assessee.

The Ministry of Finance have accepted the mistake.

(ii) Further, the Income-tax Act, 1961, provides that the tax paid on self-assessment shall be deemed to have been paid towards regular assessment and, therefore, for determining the refund of tax due on provisional assessment, the tax paid on self-assessment is not required to be considered. After completion of the regular assessment any amount refunded on provisional assessment shall be adjusted accordingly.

(a) In the assessment of a company for the assessment year 1982-83 completed in January 1985, the assessing officer raised a net demand of Rs. 52,571 after adjusting credit for advance tax of Rs. 1,04,413 and tax of Rs. 33 deducted at source. Audit scrutiny, however, revealed that the department had already refunded the sum of Rs. 1,04,446 to the assessee on the basis of provisional assessment made in November 1982. Failure to adjust the refund made on the basis of provisional assessment, while determining the tax payable at the time of regular assessment resulted in excess allowance of tax credit with consequent short demand of tax amounting to Rs. 1,04,446.

The Ministry of Finance have accepted the mistake in principle.

(b) In another case, in the assessment of a company for the assessment year 1983-84, completed in July 1984, the assessing officer raised a net demand of Rs. 57,799 after allowing credit for advance tax of Rs. 1,36,500. Audit scrutiny, however, revealed that

out of the said advance tax of Rs. 1,36,500, the department had already refunded a sum of Rs. 91,948 on the basis of provisional assessment. Failure to take this refund into account while determining the tax payable at the time of regular assessment resulted in excess allowance of tax credit of Rs. 91,948 with consequent short demand of tax of Rs. 91,948.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In the assessment of a company for the assessment year 1975-76 completed in March 1985, an amount of tax of Rs. 1,99,497 was deducted from the amount of tax payable for the assessment year 1975-76 though the same had already been adjusted in the assessment for the assessment year 1974-75 completed in September 1984. The incorrect credit allowed in assessment year 1975-76 resulted in excess refund of Rs. 1,99,497.

The Ministry of Finance have accepted the mistake.

Non-levy or incorrect levy of interest

2.58 *Delay in filing the return*

(i) Under the Income-tax Act, 1961, if the return of income for any assessment year is not furnished within the prescribed due date the assessee shall be liable to pay simple interest at 12 per cent (15 per cent from October 1984) per annum from the date immediately following the due date to the date of furnishing of the return or where no return had been furnished on the amount of tax determined in the regular assessment as reduced by the advance tax if any, paid and any tax deducted at source.

Further, the Income-tax Rules, 1962, provide that the period for which such interest is to be calculated shall be rounded off to a whole month(s) and for this purpose any fraction of month shall be ignored. The Central Board of Direct Taxes on advice by the Ministry of Law clarified in December 1974 that for this purpose the actual date of filing the return should be included in computing the period for which interest is leviable.

A widely-held company did not file its return of income for the assessment year 1975-76 within the specified date. There was also no response to the notice served on the assessee in April 1982. The income-tax assessment was, therefore, completed in May 1982 *exparte* determining the taxable income as Rs. 35,00,000 and penal interest of Rs. 9,90,413 was levied by the assessing officer for failure to file the return. However, while calculating the period for which interest was chargeable the period of default was taken as from 1 July 1975 to 30 August 1979 instead of upto 28 May 1982. The mistake resulted in short levy of interest of Rs. 6,67,053.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The assessment of a company for the assessment year 1981-82 was completed in September 1984 raising a net tax demand of Rs. 1,58,25,873 after allowing deduction for advance tax paid and tax deducted at source. The company had filed its return of income on 31 August 1981 while the due date for filing the return was 31 July 1981. For the delay in filing the return the assessee was liable to pay interest amounting to Rs. 1,58,258 for a period of one month which was not levied. The omission to do so resulted in non-levy of interest of Rs. 1,58,258.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) A company filed the return of its income for the assessment year 1981-82 on 13 March 1984 while the due date for filing the return was 30 June 1981. The assessee company was, thus, liable to pay an interest of Rs. 1,68,832 for the period from 1 July 1981 to 29 February 1984 for late filing of the return. The assessing officer erroneously levied an interest of Rs. 1,05,520 instead of the correct amount of Rs. 1,68,832 resulting in short levy of interest of Rs. 63,312.

The Ministry of Finance have accepted the mistake.

2.59 *Delay in payment of tax demand*

(i) Under the Income-tax Act, 1961, any demand for tax should be paid by an assessee within thirty-five days of service of notice of the relevant demand and failure to do so would attract simple interest at 12 per cent (15 per cent from 1 October 1984) per annum from the date of default. 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 demands. 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 in cases of assessments set aside or varied by appellate authority and the fact that during the intervening period there was no tax payable by the assessee under any operative order would make no difference to the position.

In the case of seven companies assessed in seven different Commissioners' charges, income-tax demands amounting to Rs. 1,92,74,808 for the assessment years 1973-74 to 1981-82 (assessments completed between December 1975 and June 1985) were raised and the demands became due for payment in all the cases between March 1976 and July 1985. The tax demands were paid by the assessee companies between February 1977 and July 1985 after delays ranging from 4 months to 63 months. As the demands were paid beyond the permissible period of 35 days, these companies were liable to pay interest of Rs. 23,15,044 for the belated payment of tax.

No interest was levied by the assessing officers in any of these cases and the omission resulted in non-levy of interest of Rs. 23,15,044 for the nine assessment years.

The department has accepted the objection in four cases.

The Ministry of Finance have accepted the mistake in three cases; their reply in the remaining four cases is awaited (December 1986).

(ii) Under the provisions of the Income-tax Act, 1961, and the Rules made thereunder, where the case of an assessee in default is referred by means of a recovery certificate to the Tax Recovery Officer for recovery of tax dues, the officer shall levy and collect interest on the arrears of tax from the date next to the date of issue of certificate to the date of realisation.

An Income-tax Officer issued two tax recovery certificates on 30 March 1983 for recovery of the tax due from a defaulter, a private limited company, one for the assessment year 1979-80 and the other for 1980-81. The defaulter paid the arrear demand for the year 1979-80 of Rs. 1,70,031 on 30 March 1984 and for the year 1980-81 of Rs. 9,81,042 on 20 March 1984. However, no interest was collected on the arrears of tax from 1 April 1983 to the date of realisation which worked out to Rs. 1,26,610 being the interest due on Rs. 1,70,031 for the period 1 April 1983 to March 1984 and that due on Rs. 9,81,042 for the period from 1 April 1983 to February 1984. Both the certificates were, however, closed and returned to the Income-tax Officer on 30 March 1985.

The Ministry of Finance have accepted the mistake.

2.60 *Non levy of interest for non-payment of advance tax due to lacuna in the Act*

(i) The Income-tax Act, 1961, provides that where the advance tax paid by the assessee during a financial year exceeds the amount of tax determined on regular assessment, the Government is liable to pay interest at the rate of 12 per cent (15 per cent with effect from 1 October 1984) on such amount of advance tax as is found to be in excess and the interest is computed from 1 April next following the said financial year upto the date of regular assessment.

Where, however, the amount of advance tax refunded on provisional assessment results in the balance advance tax falling short of seventy-five per cent of the tax determined on regular assessment, there is no provision in the Act to levy interest on such excess refund. Finding the absence of the enabling provision in the Act for levy of interest on such excess refund of advance tax and to prevent the abuse of such advance refunds by the assessee and considering the inequitous situation to the disadvantage of the Government, the Public Accounts Committee, in their 100th Report (7th Lok Sabha—1982-83) observed that this is apparently an anomalous situation which calls for a suitable amendment of the law to remove the lacuna, and the Committee recommended that Government should examine this question and bring forth suitable amendment to the Act forthwith. In the 'Action Taken Note' on this recommendation of the Public Accounts Committee in March 1983, the Ministry of Finance stated that 'the recommendation of the Public Accounts Committee has been noted and would be processed while formulating proposals for the comprehensive Amendment Bills, expected to be introduced this year' (1983). The Income-tax Act, 1961, was amended in 1984 and 1985, but no amendment to the Act to plug the lacuna pointed out by the Public Accounts Committee has been made so far. As a result, though the exchequer continues to be deprived of the benefit of advance tax, interest for non-payment of advance tax could not be levied.

A company had paid advance tax of Rs. 63,21,000 in the previous year, relevant to assessment year 1981-82. The provisional assessment was made in September 1981 on a taxable income of Rs. 89,01,810 and a sum of Rs. 5,79,457 was refunded to the company as excess advance tax paid. Regular assessment in the case was completed in January 1985 and was subsequently rectified in March 1985 on a taxable income of Rs. 1,49,66,537 and a tax of Rs. 96,53,293 was determined as payable by the company. Since the tax liability of Rs. 96,53,293 was much more than the advance tax paid, the refund of Rs. 5,79,457 already made was actually not due. The refund amount remained with the company till tax was demanded by the department again on completion of the regular assessment in January 1985. However, in the absence of an enabling provision in the Act, no interest could be charged on the amount of advance

tax refunded to the assessee company. Had such a provision been introduced as recommended by the Public Accounts Committee and agreed to by the Ministry of Finance, interest amounting to Rs. 2,37,595 would have accrued to the Government.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the Income-tax Act, 1961, where the advance tax paid by an assessee, being a company in any financial year falls short of seventy five per cent (eighty three and one-third per cent from 1 September 1980) of the assessed tax *viz.*, the tax determined on regular assessment less tax deducted at source, interest at twelve per cent per annum (fifteen per cent from 1 October 1984) is payable by the assessee on the amount by which the advance tax paid fall short of the assessed tax from the first day of the next financial year to the date of regular assessment.

In the case of a public industrial company for the assessment year 1976-77 the amount of advance tax paid by the assessee company was less than seventy five per cent of the assesed tax and, as such, it was liable to pay interest for deficiency in the amount of advance tax payment.

Although the Income-tax Officer levied interest for deficiency in advance tax payment (Rs. 5,65,281) in August 1979, the levy was struck down in March 1980 by the Commissioner of Income-tax (Appeals-I), who directed the Income-tax Officer to consider levy of interest only after giving a hearing to the assessee in the matter. By his fresh orders passed on 22 July 1980, the Income-tax Officer levied interest of Rs. 4,92,133 for the default, rejecting assessee's request for more time to file his objections. This time also levy of interest was set aside by the Commissioner of Income-tax (Appeals—I) on 22 January 1981. The Income-tax Officer was again directed to give the assessee a reasonable opportunity of being heard. Consequently, the interest charged in the second order was also withdrawn.

However, no action has so far been taken, even after five years to levy interest after hearing the assessee, even though rectification of mistakes in assessment was made subsequently twice, once on 15 October 1981 and again on 12 March 1985.

The interest leviable for deficiency in payment of advance tax worked out to Rs. 4,95,050.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.61 *Incorrect working of interest*

(i) (a) In the revised assessment of a company for the assessment year 1981-82, completed in February 1986, the Inspecting Assistant Commissioner (Assessment) charged interest of Rs. 1,90,935 as the advance tax of Rs. 25,36,000 paid fell short of eighty-three and one-third per cent of the assessed tax of Rs. 39,69,957 on seventy-five per cent of the assessed tax as reduced by the advance tax paid instead of on the entire assesed tax as reduced by the advance tax paid. The correct amount of interest leviable, however, worked out to Rs. 6,20,162. The mistake resulted in short levy of interest of Rs. 4,29,227.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the assessment of a company for the assessment year 1982-83 completed in February 1985, the Inspecting Assistant Commissioner (Assessment) erroneously levied interest of Rs. 96,109 as the advance tax paid amounting to Rs. 33,21,000 fell short of seventy-five per cent of the assessed tax of Rs. 48,04,900, on the amount by which the advance tax paid fell short of seventy-five per cent of the assessed tax and applying the rate of interest of 12 per cent instead on the amount by which the advance tax paid fell short of the assessed tax and at the rate of 15 per cent from 1 October 1984. The correct amount of interest worked out to Rs. 5,19,365 against Rs. 96,109 determined by the department. The mistakes in calculation resulted in short-levy of interest of Rs. 4,23,256.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) During the financial year relevant to the assessment year 1981-82 a company paid a sum of Rs. 13,650 as advance tax. On completion of regular assessment in March 1985 for the assessment year 1981-82, the department raised a net demand of tax of Rs. 5,93,167 after allowing credit for advance tax of Rs. 13,650 and levied interest of Rs. 1,36,428 for short payment of advance tax. It was, however, noticed that while computing the interest, the department had wrongly calculated the interest of Rs. 1,36,428 for a period of 23 months instead of the correct amount of Rs. 2,86,203 for 47 months. This led to a short levy of interest to the tune of Rs. 1,49,775.

The Ministry of Finance have accepted the mistake in principle.

(iii) In the assessment of a company for the assessment year 1981-82 completed in March 1985, the company was also liable to pay interest of Rs. 2,54,567 for short payment of advance tax from 1 April 1981 to 28 February 1985. However, the assessing officer levied interest of Rs. 1,91,255 for short payment of advance tax from 1 April 1982 to 28 February 1985. This resulted in a short levy of interest of Rs. 63,312.

The Ministry of Finance have accepted the mistake.

2.62 *Avoidable payment of interest by Government*

Under the Income-tax Act, 1961, where the advance tax paid by an assessee exceeds the amount of tax payable as determined on regular assessment, the Government is liable to pay interest on the amount of advance tax paid in excess for the period from 1 April of the assessment year to the date of regular assessment. The Board issued instructions in April 1966 directing the Income-tax Officers to complete regular assessments as soon as possible after receipt of the return.

In 1968, the Act was amended to provide for provisional assessment and grant of refund of advance tax paid in excess on the basis of provisional assessment. The Board also issued instructions that provisional assessment should be made in all cases where regular assessment is delayed beyond six months from the date of receipt of the return. These instructions were reiterated by the Board in March 1971 and again in July 1972.

In September 1974 the Board prescribed a register to be kept in the personal custody of the Income-tax Officer for noting down cases where provisional assessments would have to be made. The Income-tax Officers were also required to leave notes on the files, giving reasons as to why regular assessments could not be completed within six months. While stating that any payment of avoidable interest would be viewed seriously, the Board required the Commissioners and Inspecting Assistant Commissioners to call for half-yearly statements of interest paid, exceeding Rs. 1,000 in each case in order to satisfy themselves that the payment of interest was unavoidable.

In their further instructions of July 1977, the Board prescribed the proforma of a register to be maintained by the Income-tax Officers for making provisional assessments. All applications for provisional refunds and all returns with income exceeding Rs. 50,000 were required to be entered in this register as and when they are received. The Board also stated that provisional assessment for refund should be made not only in cases where the assessee had specifically claimed refunds but also where refunds were apparently due on the basis of returns filed.

Despite the controls prescribed by the Board, the omission to make provisional assessments continue to occur involving avoidable payment of substantial amounts of interest by Government apart from the delay caused in refunding the amounts due to the assessees under the law.

(i) Nine companies assessed in five Commissioners' charges filed their returns of income for the assessment years 1978-79 to 1982-83 between October 1978 to October 1982. Of these, two companies submitted their revised return of incomes during September 1983 and March 1984. A total income of Rs. 8,92,46,358 was returned by the eight companies whereas the ninth company filed a return showing a loss of Rs. 23,82,79,310. A sum of Rs. 13,78,35,070 was paid by these companies as advance tax including tax deducted at source in respect of these assessment years. As refund of advance tax paid in excess was *prima facie* due to these companies, provisional assessments were required to be made in pursuance of the provisions of the Act and the executive instructions issued by the Board. No provisional assessments were, however, made to refund the tax paid in excess in all these cases. The regular assessments in these cases were made between March 1981 and March 1985 raising a demand of Rs. 10,77,37,651 and the advance tax of Rs. 3,05,50,800 paid in excess was refunded to the assessee companies along with interest of Rs. 79,60,312 thereon.

Had provisional assessments been made in time *i.e.* within the prescribed period of six months from the date of filing of the returns, payment of interest to the tune of Rs. 52,64,964 by the Government could have been avoided.

Eight of these companies were assessed by the Inspecting Assistant Commissioner (Assessment).

The Ministry of Finance have accepted the mistake in principle in five cases; their comments in respect of the remaining four cases are awaited (December 1986).

(ii) In the assessment of a company for the assessment year 1976-77, a refund of Rs. 53,89,714 was allowed by the assessing officer, on the basis of provisional assessment made on 21 September 1976 and the refund voucher was issued on 25 September 1976. But the refund voucher could not be encashed as the advice note sent to the Reserve Bank of India was

not duly signed. Consequently a fresh refund voucher was issued on 8 March 1977. The regular assessment of the assessee company was completed in July 1980 and interest of Rs. 5,92,867 on the amount of advance tax paid in excess (*i.e.* on Rs. 53,89,714) for the period from 1 April 1976 to 8 March 1977 was allowed. Had the refund voucher issued on 25 September 1976, been a valid one, payment of interest to the extent of Rs. 3,23,381 (representing interest for the period from 22 September 1976 to 8 March 1977) could have been avoided.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Under the Income-tax Act, 1961, where on completion of the regular assessment, the amount of advance tax is found to be in excess of the tax determined as payable, the excess amount is refunded to the assessee with interest thereon at the prescribed rate. The Central Board of Direct Taxes have issued instructions in April 1976 that if the regular assessment needs rectification on account of a mistake apparent from the records the interest payable by Government can be altered either on the assessee's application or by the Income-tax Officer, on his own motive with reference to the tax payable as per rectified order.

In the regular assessment of a widely-held company for the assessment year 1977-78 completed in March 1978, a sum of Rs. 2,08,21,580 being the excess of the advance tax paid of Rs. 3,53,07,365 over the tax payable of Rs. 1,44,85,785 alongwith the interest of Rs. 24,98,580 was refunded to the assessee in April 1978. Audit scrutiny (January 1986) revealed that the assessment for assessment year 1977-78 under-went revision several times subsequently and the tax payable by the company was determined as Rs. 4,19,68,257 in the latest revision made in March 1985 to rectify a mistake apparent from the record. Accordingly, as per the executive instructions of April 1976, the interest of Rs. 24,98,580 already allowed to the assessee was required to be withdrawn. This was, however, not done. The omission to do so resulted in incorrect grant of interest of Rs. 24,98,580.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

Other Topics of Interest

2.63 *Non completion of set aside assessment*

In the assessment for the assessment year 1969-70 completed in March 1972, the tax payable by a widely-held company was determined as Rs. 31,98,917. In March 1974, the Commissioner of Income-tax set aside the said assessment with a direction to redo it after considering the correctness of the substitution of the fair market value as on 1 January 1954 for computing capital gains in respect of a transferred property. The assessee's appeal against the orders of the Commissioner had also been dismissed by the Income-tax Appellate Tribunal in February 1976. The set aside assessment had not, however, been completed till the date of audit *viz.*, December 1983.

On the delay being pointed out in audit, the assessing officer repiled in February 1985 that the assessment for the assessment year 1969-70 was kept pending as the decision of the Commissioner of Income-tax (Appeals) was awaited for the assessment year 1975-76 wherein a similar point was involved and the instructions of the Commissioner of Income-tax were sought for keeping the assessment pending till the appeal was decided. The delay of over 10 years in redoing a set aside assessment has resulted in non-realisation of revenue of Rs. 32 lakhs approximately.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.64 *Omission to take action on internal audit objection*

With a view to providing a second check over the arithmetical accuracy of computation of income and calculation of tax with reference to the growing complexity of tax laws and to improve the quality of assessment, the department set up internal audit parties to check the assessments done by the various assessing officers. Special Audit Parties headed by senior level officers were created by the department in July 1976 to check the assessment cases made in company circles, central circles, special circles and all other important revenue yielding circles.

Not satisfied with the functioning of the internal audit of the department which was attributed by the department to the shortage of staff, the Public Accounts Committee in their 194th Report (Seventh Lok Sabha– 1983-84) *inter alia* stated that the Committee are strongly of the view that there is an urgent need to strengthen the Internal Audit Wing particularly in a revenue earning department like income-tax where any extra expenditure incurred in this behalf is certain to be more than compensated by increase in revenue as a result of detection of mistakes by the internal Audit Wing. The Committee further observed that 'these should be in addition to quanti-

tative strengthening, qualitative strengthening of internal audit so as to make it more effective and better subserve the end in view'.

According to the executive instructions issued in 1977, mistakes pointed out by internal audit parties of the department should be rectified by the assessing authorities promptly. The remedial action should be initiated within a month and completed as far as possible within three months of the report of internal audit. Inspite of the internal audit wing pointing out mistakes in assessments involving large revenue effect and despite the above instructions of the Board, failure to take remedial action on internal audit objection has been noticed in audit.

While scrutinising the assessment of a widely-held company for the assessment year 1977-78 in January 1981 the Special Audit Party of the department raised an audit objection regarding the allowance of the relief of Rs. 2,16,198 in respect of a newly established industrial undertaking, on the ground that the conditions prescribed under the Act have not been fulfilled and that for the purpose of computation of capital, the entire value of plant and machinery owned by the assessee was taken as the basis instead of the value of plant and machinery employed in the new unit. Nevertheless, the assessing officer without taking any action on the internal audit objection, proceeded to allow similar relief of Rs. 2,51,914 and Rs. 1,84,914 for the assessment years 1978-79 and 1979-80 in the assessments completed in July 1981 (revised in March 1983 and July 1983) and September 1982 respectively. The irregular relief was, therefore, reiterated by the Special Audit Party for the subsequent assessment years 1978-79 and 1979-80 in August 1983 and June 1984. However, no action was initiated to withdraw the relief even at the time of the local audit of the ward in June 1985. The total short levy of tax involved for the three assessment years amounted to Rs. 3,96,620 including surtax of Rs. 19,500 (for the assessment year 1979-80). The omission to take timely action was fraught with the risk of possible loss of revenue of Rs. 2,70,330 for the assessment years 1977-78 and 1978-79 due to time bar.

In respect of the same assessee, for the assessment year 1977-78, the Income-tax Officer allowed credit for tax deducted at source of Rs. 26,250 in the computation of net tax payable. While scrutinising the assessment in January 1981, the Special Audit Party of the department pointed out that the corresponding interest amount of Rs. 1,25,000 has not been assessed to tax resulting in short levy of tax of Rs. 72,187. As no action was taken on the audit note the point was reiterated by the Special Audit Party in August 1983 and June 1984. Despite this no action was initiated till the date of audit *viz.*, June 1985.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.65 *Irregular grant of permission for change of previous year*

Under the provisions of the Income-tax Act, 1961, an assessee can change the hitherto followed previous year in respect of his business with the consent of the Income-tax Officer upon such conditions as the Income-tax Officer may impose. The Central Board of Direct Taxes have issued instructions in May 1971 and August 1976 requiring the Income-tax Officers to ensure that the assessee is not attempting to make use of the device of changing his previous year in a manner detrimental to revenue including undue deferment of payment of advance tax. Where the application is made with the object of causing loss to revenue the orders of Commissioner of Income-tax should be obtained before granting permission to the assessee to change the previous year. The Board also specifically directed the Commissioner of Income-tax to cancel all permissions granted for change of previous year by the Income-tax Officers if they are found to be prejudicial to revenue.

A closely-held industrial company which was having its previous year ending 31 December upto the assessment year 1979-80, sought for a change in the acccounting year, and to close the accounts for a period of 4 months from 1 January 1979 to 30 April 1979 so that its previous year would be ending on 30 April. The department consented to the change, subject to the condition that the assessee's claim for depreciation for the assessment year 1980-81 (accounting year 1 January 1979 to 30 April 1979) should be restricted to one-third of the normal depreciation admissible for a full year. However, while filing the return for the assessment year 1980-81, the assessee claimed depreciation admissible for a full year, contending that the condition, *viz.*, to restrict the claim for depreciation to one-third of normal depreciation admissible, imposed by the department, was not legally valid and not binding on the assessee. This was accepted by the assessing officer with the approval of the Commissioner of Income-tax and the assessment for the assessment year 1980-81 was completed in March 1983 allowing full depreciation of Rs. 48,06,610 as claimed by the assessee.

It was pointed out in audit (September 1983) that the permission given for the change in previous year proved prejudicial to the revenue, in that the assessee

not only avoided payment of tax amounting to Rs. 17,78,450 on the two-thirds of normal depreciation (Rs. 32,04,418) which would not have been allowed but for the change, but also interest of Rs. 3,12,690 was paid by the department on the advance tax paid in excess of the assessed tax.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

SURTAX

As a disincentive to excessive profits, a special tax called super profits tax was imposed on companies making excessive profits during the assessment year 1963-64 under the Super Profits Tax Act, 1963. This tax was replaced from the assessment year 1964-65 by surtax levied under the Companies (Profits) Sur-tax Act, 1964.

Surtax is levied on the 'chargeable profits' of a company in so far as they exceed the statutory deduction, which is an amount equal to 10 per cent (15 per cent from 1 April 1977) of the capital of the company or Rs. 2 lakhs, whichever is greater.

During the period under review, under assessment of super profits tax/surtax of Rs. 154.64 lakhs was noticed in 69 cases. A few illustrative cases are given in the following paragraphs.

2.66 *Incorrect computation of capital*

Under the provisions of the Companies Profits Surtax Act, 1964, surtax is leviable on the amount by which the chargeable profits of a company exceed the statutory deduction, which is an amount equal to 15 per cent of the capital of the company as on the first day of previous year or Rs. 2 lakhs, whichever is greater. Capital for the purpose includes the paid-up share capital and reserves. It has been judicially held that reserves would not include any liability or provision included therein. The chargeable profits of any year for this purpose are computed with reference to the total income assessed for levy of income-tax for that year after making the prescribed adjustments.

(a) A public limited company provided for depreciation in its accounts for some years on straight line method. The full amount of depreciation as admissible under the provisions of the Income-tax Act was, however, debited to the profit and loss account. The difference between the two figures was credited to a reserve account (General Reserve No. 2). The amount credited to this reserve was appropriated from time to time for payment of dividends, adjustment of losses etc., so that the credit balances in the fund at the close of different years were less than the total amount credited on account of difference in depreciation. During the previous years 1979-80 and 1980-81, the General Reserve No. 2 was nil as the entire credit balance under the fund was wiped off under the above procedure.

For the purposes of surtax, the company returned the capital employed for the assessment years 1980-81 and 1981-82 in respect of other reserves by deducting from the total of the credit balance under 'other reserves', an amount arrived at by reducing the aggregate payments made towards dividends, adjustment of losses etc., upto the end of the previous year from the total credits made to the reserve account on account of the difference in value of depreciation over the years. Under the rules prescribed for the computation of capital, the total of the balances under other reserves should be reduced by only the amount credited to such reserves as have been allowed as expenditure in the computation of taxable income and no further adjustment is contemplated. The incorrect procedure followed resulted in excess computation of capital employed by Rs. 37,24,904 and Rs. 49,49,649 for the assessment years 1979-80 and 1980-81 respectively and under assessment of the chargeable profits by Rs. 5,58,869 and Rs. 7,43,657 for the two assessment years with resultant undercharge of surtax of Rs. 2,51,490 and Rs. 3,34,644 respectively for these assessment years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the surtax assessments of an insurance company for the assessment years 1976-77 and 1977-78 completed in May 1984, the capital reserve representing excess of assets over liabilities consequent on the merger of other insurance companies with the assessee company on 1 January 1973, was included in the capital base for these two years. Audit scrutiny revealed that the net assets acquired by the assessee company consequent on the merger, worth Rs. 15,21,38,958 was worked out as the difference between the total assets and the total liabilities of the merged companies without considering the loss of Rs. 52,65,439 sustained by the merged companies upto 31 December 1972. As this loss did not go to reduce the net assets of the merged companies it stood included in the capital reserve of the assessee company. The loss was, however, debited to the profit and loss account of the assessee company for the previous year relevant to the assessment year 1974-75. The loss which was not allowed in the hands of the merged companies earlier was also allowed as deduction in the

hands of the assessee company while computing the taxable total income for assessment year 1974-75. So much so, in computing the total income of the assessee company the capital reserve represented by the loss cannot be treated as reserved in the hands of the assessee company for the purpose of surtax. The mistake resulted in excess computation of capital by Rs. 19,66,816 and Rs. 52,65,439 leading to consequent short assessment of chargeable profits by Rs. 1,96,682 and Rs. 7,89,816 and short levy of surtax of Rs. 93,423 and Rs. 3,55,418 for the assessment years 1976-77 and 1977-78 respectively.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) For the assessment year 1977-78, a company derived income from different sources and part of this income was agricultural income not chargeable to income-tax. In the surtax assessment, its gross income was computed at Rs. 4,05,15,651 including agricultural income of Rs. 1,68,48,998 which constituted 41.59 per cent of gross income. Accordingly 41.59 per cent of capital was excluded in the computation of capital on which the percentage deduction was allowed. However, the agricultural income was actually Rs. 1,98,48,996 included in a gross income of Rs. 4,35,15,649 and constituted 45.61 per cent of the gross income. Hence 45.61 per cent of the capital should have been excluded instead of 41.59 per cent in computing the capital for the purpose of allowing percentage deduction. This mistake in the computation of capital resulted in excess deduction from chargeable profits to the extent of Rs. 3,46,934 with consequent undercharge of surtax of Rs. 1,56,121 for the assessment year 1977-78.

The Ministry of Finance have accepted the objection.

(d) Under the provisions of the Companies (Profits) Surtax Act, 1964 any amount standing to the credit of any account in the books of a company, which is of the nature of liability or provision, shall not be regarded as a reserve for the purposes of computation of capital. Where no specific provision is made for payment of taxes and they are to be paid out of general reserve the general reserve, is to be reduced by such taxes since to that extent it is not a free reserve.

In the surtax assessment of a public limited company for the assessment year 1975-76 completed in October 1982, the capital base was computed after deducting the dividends payable out of general reserve. However, the income-tax of Rs. 95,70,455 relating to the previous years ended March 1973 and March 1974 relevant to the assessment years 1973-74 and 1974-75 paid out of the general reserve and an aggregate income-tax demand of Rs. 12,25,241 pertaining to these two assessment years which was under appeal (and hence not provided for by the assessee company in the books) were not excluded from the capital base computed. Further, in computing the chargeable profits for the assessment year 1975-76, the total income of Rs. 84,68,010 determined in a revision made in February 1979 was adopted instead of a higher sum of Rs. 86,18,810 according to a revision of August 1980. These mistakes resulted in undercharge of surtax of Rs. 2,69,272.

The Ministry of Finance have accepted the objection.

(e) In the case of a company, the surtax assessment for assessment year 1980-81 was revised on 31 March 1984 and the gross dividend of Rs. 3,14,252 instead of net dividend of Rs. 1,25,701 was deducted from total income as directed by the Commissioner of Income-tax (Appeals), for arriving at the chargeable profits. However, the income-tax payable by the company allowed as a deduction was not reduced by the income-tax payable on gross dividends instead of net dividends. This resulted in under assessment of chargeable profits by Rs. 1,26,643 and a short levy of surtax to the extent of Rs. 50,656.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.67 *Mistakes in the computation of chargeable profits*

Under the provisions of the Companies (Profits) Surtax Act, 1964, in computing the chargeable profits of a banking company, any sum transferred by it during the previous year to a reserve fund under subsection (1) of Section 17 of the Banking Companies Act, 1949, is to be excluded.

(a) In the surtax assessment of a banking company for the assessment year 1981-82, completed in June 1984 and revised in May 1985, while working out its chargeable profits, an amount of Rs. 1,63,984 was excluded from its total income, invoking the above provision. A scrutiny of the income-tax assessment records of the company however, showed that no transfer to such a reserve fund had actually been made during the previous year relevant to the assessment year 1981-82. The exclusion allowed was, therefore, not in order. The mistake resulted in short computation of chargeable profits by Rs. 1,63,984 and consequent short levy of surtax of Rs. 65,593.

The assessment was checked by the Special Audit Party of the department in August 1984 but the mistake was not detected.

The Ministry of Finance have contended that the Directors of the company considered the transfer after closure of the accounts and the transfer was actually from that year's profits. Relying on a judicial decision, the Ministry further stated that the transfer would accordingly relate back to the last day of the previous year.

According to the judicial decision relied upon by the Ministry, such transfer taking place after closure of the accounts are to be related to the beginning of the accounts of the new year and have to be treated as effective from that day *i.e.* the first day of the succeeding previous year and not to the last day of the relevant previous year. Further comments of the Ministry of Finance are awaited (January 1987).

(b) While completing the surtax assessment of a company for the assessment year 1976-77 in February 1983, in computing the chargeable profits the total income as per the income-tax assessment was incorrectly adopted at Rs. 50,01,510. The mistake resulted in the short computation of chargeable profits by Rs. 1 lakh and a short levy of surtax of Rs. 40,000.

The Ministry of Finance have accepted the mistake.

(c) Wherever the income-tax assessment of a company is revised to give effect to appellate orders or otherwise the corresponding surtax assesment of the company is required to be revised to determine the correct surtax liability.

(i) The surtax assessment of a company for the assessment year 1980-81 was completed in March 1983 and revised in December 1983 determining the chargeable profits as Rs. 31,50,252 with reference to a total income of Rs. 2,39,49,936 and the tax payable of Rs. 1,54,47,711 thereon. The income-tax assessment was revised (January 1984 and April 1984) to give effect to appellate orders determining the status of the company as one in which the "public are substantially interested" and also granting some reliefs. The taxable income was reduced to Rs. 2,30,21,289 and the revised tax payable thereon was only Rs. 1,36,11,397 due to the change in status of the company. The surtax assessment was however, not revised and the chargeable profits recomputed at Rs. 40,57,240. This resulted in under assessment of chargeable profits by Rs. 9,06,988 and a short levy of tax of Rs 3,62,795.

The Ministry of Finance have accepted the mistake in principle.

(ii) The surtax assessment of a public limited company for the assessment year 1979-80 was completed in January 1983 on the basis of the income of Rs. 41,32,36,690 as determined in the assessment of the company for that year made in September 1981. The income-tax assessment of the company was revised in February 1985 raising the income of the company to Rs. 41,43,54,874. Accordingly, the surtax assessment of the company was also required to be revised on the basis of the revised income of the assessee company which was not done. Omission to revise the surtax assessment resulted in short levy of surtax to the extent of Rs. 1,12,068.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

2.68 *Omission to make surtax assessments*

Under the Companies (Profits) Surtax Act, 1964, there is no statutory time limit for completion of surtax assessments. Pursuant to the recommendations of the Public Accounts Committee in Para 6.7 of their 128th Report (Fifth Lok Sabha), the Central Board of Direct Taxes issued instructions in October 1974 that surtax assessment proceedings should be initiated alongwith the income-tax assessments. The Board further laid down that the surtax assessments should not be kept pending on the ground that the additions made in the income-tax assessments were disputed in appeal and the time lag between the date of completion of income-tax assessments and surtax assessments should not ordinarily exceed a month unless there are special reasons justifying the delay.

Noticing the persistent delay or omission in completing the surtax assessments despite the above recommendations and issue of instructions by the Board, the Public Accounts Committee recommended in paragraphs 3.3 to 3.10 of their 85th Report (Seventh Lok Sabha) that a statutory time limit for completion of surtax assessments under the Surtax Act should be prescribed. The need for a statutory time limit for completion of surtax assessment was again stressed by the Public Accounts Committee in Para 1.16 of their 193rd Report (Seventh Lok Sabha).

Instances of delay in the computation of surtax assessments continue to occur leading to postponement of realisation of larger revenue.

(a) The income-tax assessments of a widely-held company for the assessment years 1979-80 and 1980-81 were completed in August 1982 (revised in March 1983) and September 1983 on a total income of Rs. 87,65,040 and Rs. 1,08,78,486 respectively. On this basis, the company was liable to pay surtax of Rs. 4,02,530 for assessment year 1979-80 and Rs. 4,64,757 for assessment year 1980-81. However, no action was initiated to levy surtax till the audit in November 1984.

The Ministry of Finance have accepted the objection.

(b) In the case of a private limited company, though the income-tax assessments for assessment years 1981-82 and 1982-83 were completed on 12 September 1984 and 29 March 1985 respectively the corresponding surtax assessments were not made and no return was also filed by the assessee. The omission resulted in non-levy of surtax of Rs. 6,40,827 for the two assessment years including interest upto December 1985.

The Ministry of Finance have accepted the mistake in principle.

(c) For the assessment years 1979-80 and 1980-81, the income-tax assessments of a private limited company were completed in August 1983 and March 1984 determining the taxable income as Rs. 9,27,720 and Rs. 26,71,920 respectively. Though the company was liable to surtax, no surtax proceedings were initiated till the date of audit in September 1984. No surtax return was also filed by the assessee company.

The Ministry of Finance have accepted the objection.

(d) In the case of a private limited company, the income was assessed by the assessing officer in July 1984 at Rs. 23,60,880 as against the returned income of Rs. 75,000. Neither the return of surtax was filed by the assessee nor action for levy of surtax was initiated by the department. The omission resulted in non-levy of surtax of Rs. 2,12,280.

The department has accepted the objection in principle.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(e) The income-tax assessments of a widely-held company for the assessment years 1980-81 and 1981-82 were completed in October 1984 and January 1985 on a total income of Rs. 8,42,920 and Rs. 13,99,600 respectively. On this basis, the company was liable to pay surtax of Rs. 29,288 for the assessment year 1980-81 and Rs. 1,06,610 for the assessment year 1981-82. However, no action was initiated by the department to levy surtax. The delay resulted in non-levy of surtax of Rs. 1,35,898 for the two assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) The regular income-tax assessment of a widely-held company for the assessment year 1982-83 was completed/revised in March 1985 on a total income of Rs. 90,54,440. Based on the latest revision of the income-tax assessment, the assessee company was liable to pay a surtax of Rs. 98,125 for the assessment year 1982-83, but no action was taken by the department to initiate the surtax proceedings.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(g) An assessee company filed the return of income for the assessment year 1982-83 for Rs. 3,13,415 and was assessed in March 1985 on an income of Rs. 11,13,460. Although, on the basis of income as returned by the assessee for income-tax, the assessee was chargeable to surtax, no return for surtax was filed by the assessee and no notice calling for the return was issued by the Surtax Officer. The omission resulted in chargeable profit of Rs. 2,28,642 escaping surtax assessment and non-levy of surtax amounting to Rs. 84,559.

The Ministry of Finance have accepted the objection.

(h) The income-tax assessment of a company for the assessment year 1981-82 was finalised in March 1984 on an income of Rs. 16,83,750 and income-tax payable thereon worked out to Rs. 9,95,520. On that basis, the chargeable profits of the company exceeded the statutory deduction by Rs. 2,26,567 on which surtax was leviable. It was noticed in audit (October 1984) that the company had not filed the surtax return and no action had been initiated by the department to call for the same. The omission resulted in non levy of surtax of Rs. 67,544. In addition, penalty of Rs. 67,544 for failure to furnish the return of chargeable profits was also leviable.

The Ministry of Finance have accepted the objection.

2.69 *Incorrect payment of interest/non-levy of interest*

(a) Under the Companies (Profits) Surtax Act, 1964, read with the provisions of the Income-tax Act, 1961, where refund is due to the assessee as a result of any amount paid by him after 31 March 1975 in pursuance of any order of assessment and such amount having been found in appeal or other proceedings to be in excess of the amount which the assessee is liable to pay as tax, the assessee is entitled for interest on that amount, so found to be in excess, from the date of payment of tax to the date of refund. However, any delay in issuing refunds arising out of giving effect to appellate orders under the Income-tax Act will not entitle the assessee to any interest under the Surtax Act.

The surtax assessment of a widely held company for assessment year 1975-76 was originally completed in January 1981 on a net chargeable profits of Rs. 90,36,973. Consequent on the revision of the income-tax assessment to give effect to appellate orders of May 1983 and December 1983, the surtax assessments were also correspondingly revised in August 1983 and December 1983 redetermining the chargeable profits as Rs. 42,36,350 and Rs. 33,00,948 respectively. The revisions resulted in refunds of Rs. 16,14,139 and Rs. 4,64,644 on which interest of Rs. 1,16,987 and Rs. 74,308 respectively was paid. It was pointed out to the department that according to Income-tax Act any refund of surtax arising out of giving effect to appellate orders or rectification under the Income-tax Act will not entitle the assessee to interest under the Surtax Act. The payment of interest aggregating to Rs. 1,91,205 was, therefore, not in order.

The Ministry of Finance have accepted the mistake.

(b) Under the Companies (Profits) Surtax Act, 1964, as amended from 1 April 1981, every company having chargeable profits is required to send to the Income-tax Officer an estimate or statement of advance surtax and to pay the same in three instalments within the financial year on the dates prescribed in the Act. Failure to send the estimate or to pay advance surtax (on the basis of self-estimate) at least to the extent of eighty three and one-third per cent of the assessed surtax entails levy of interest from first day of April next following the financial year upto the date of regular assessment. For failure to send the estimate interest is levied upon the amount equal to assessed surtax and for short payment of advance surtax interest is levied upon the amount by which advance surtax so paid falls short of the assessed surtax.

As per the Third Schedule to the Act, surtax is leviable at the rate of 25 per cent on so much of the chargeable amount as does not exceed 5 per cent of the capital of the company and at the rate of 40 per cent on the balance of the chargeable amount.

Surtax assessments of a company for assessment years 1982-83 and 1983-84 were completed in February 1985 on chargeable amounts of Rs. 2,27,708 and Rs. 3,00,995 respectively. The company had not filed estimates of advance surtax in the financial years relevant to two years and no advance surtax was paid in the financial year relevant to assessment year 1982-83. A lump sum of Rs. 50,640 was, however, paid by the company on 15 December 1982 in the financial year relevant to assessment year 1983-84 but the same was neither supported by a formal self-estimate nor deposited in instalments on the dates prescribed. Thus, due to non-filing of estimate and non-payment of advance surtax within the relevant financial years in the manner prescribed in the Act, the company was liable to pay interest of Rs. 26,810 and Rs. 23,069 in the assessment years 1982-83 and 1983-84 respectively which was not levied by the department. Further, in assessment year 1982-83 while computing surtax, the department erroneously applied the uniform rate of 25 per cent on the entire chargeable amount whereas a part thereof exceeding 5 per cent of capital attracted higher rate of surtax *i.e.* 40 per cent. The error resulted in short charge of surtax by Rs. 19,678. The mistake resulted in a total no levy of interest and short levy of surtax of Rs. 69,557.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) Under the provisions of Companies (Profits) Surtax Act, 1964 read with the relevant provisions of the Income-tax Act, 1961, where the amount specified in a notice of demand is not paid within thirty five days of the service of the notice, the assessee is liable to pay interest at prescribed rates from the day commencing after the end of the period.

In the case of a widely-held company for the assessment year 1978-79, notice for payment of surtax demand of Rs. 18,00,870 was served on 16 August 1978 and the payment was made by the assessee in five instalments in September 1978, November 1978, January 1979, February 1979 and March 1979. For the belated payment of demand, interest amounting to Rs. 34,898 was not levied.

The Ministry of Finance have accepted the mistake.

CHAPTER 3

INCOME-TAX

3.01 Income-tax collected from persons other than companies is booked under the Major Head "021. Taxes on Income other than corporation tax". Eighty five per cent of the net proceeds of this tax, except in so far as these are attributable to Union emoluments, Union Territories and Union surcharges is assigned to the States in accordance with the recommendations of the Eighth Finance Commission.

3.02 The trend of receipts from income-tax was as follows during the last five years :

Year	Amount (in crores of rupees)
1981–82	1475.50
1982–83	1569.72
1983–84	1699.13
1984–85	1927.75
1985–86	2511.29

3.03 The number of assessees (other than companies) on the books of the income-tax department during the last five years was as follows :

As on 31 March	Number
1982	46,14,530
1983	47,47,756
1984	48,79,143
1985	48,79,179
1986*	17,38,115

3.04 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		Amount of demand	
	Completed during the year	Pending at the close of year	Collected during the year	In arrears at the close of the year
			(In crores of rupees)	
1981–82	45,00,478	26,04,828	1475.50	513.95
1982–83	43,87,609	24,29,262	1569.72	532.00
1983–84	47,71,869	20,19,903	1699.13	616.08
1984–85	53,25,158	11,97,877	1927.75	781.59
1985–86	6,25,030*	2,08,468*	2511.29	772.07

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

3.06 Avoidable mistakes in the computation of tax

(i) Under assessment of tax of substantial amount have been noticed year after year on account of avoidable mistakes resulting from carelessness or negligence. Such mistakes continue to occur despite repeated instructions of the department. In 25 cases, such errors resulted in total short levy of tax of Rs. 23.61 lakhs.

Sl. No.	Commissioner's charge	Assessment year	Nature of mistake	Tax effect/ Financial implication
				Rs.
1.	A	1972–73	Rate of tax applicable for assessment year 1982-83 applied instead of that for 1972–73.	2,98,606 (including interest)
2.	B	1983–84	Brought forward loss incorrectly allowed at Rs. 4,33,894 instead of Rs. 79,053.	2,12,000
3.	C	1979–80	Inadmissible expenditure of Rs. 1,05,942 erroneously deducted instead of being added.	1,61,892 (including interest)
4.	D	1982–83	Depreciation of Rs. 1,54,764 charged to account was not added back although actual depreciation was allowed separately.	1,45,319
5.	C	1983–84	Credit for tax paid on self assessment incorrectly allowed at Rs. 2,72,686 instead of the actual amount of Rs. 1,32,490	1,40,196
6.	E	1976–77	Error in calculation of tax liability due to incorrect adoption of total income.	1,20,890 (including interest of Rs. 43,890).
7.	B	1979–80	Amount to be added taken as Rs. 16,000 as against the correct amount of Rs. 1,50,000.	96,480
8.	E	1979–80	Jewellery valued at Rs. 1,25,000 being income from undisclosed source not added even in revised assessment.	94,267

*Figures furnished by the Ministry of Finance are provisional.

S/17 C&AG/86—21

9.	B	1982–83	Omission to add an amount of Rs. 1,25,000 as income while computing taxable income.	82,500
10.	B	1980–81 to 1982–83	Double deduction of Rs. 2,33,255 towards interest.	79,090
11.	F	1982–83	Incorrect computation of loss on sale of machinery.	76,731
12.	E	1982–83	Income of Rs. 1,00,000 estimated for inclusion was incorrectly taken as Rs. 10,000 while computing the total income.	75,428
13.	E	1983–84	Total income incorrectly computed at Rs. 2,83,310 instead of at Rs. 3,83,310.	71,970
14.	B	1982–83	Undisclosed income incorrectly taken at Rs. 3,55,214 instead of at Rs. 4,31,694.	70,802 (including interest).
15.	G	1982–83	Excess allowance of depreciation of Rs. Rs. 1,03,523.	66,721
16.	E	1982–83	Taxable income incorrectly taken as Rs. 2,81,650 instead of as Rs. 3,81,645.	66,000
17.	H	1982–83	Error in calculation of tax liability.	65,933 (including interest).
18.	I	1974–75	Rates of tax incorrectly applied.	65,669
19.	C	1980–81	Incorrect computation of tax liability.	63,476
20.	E	1980–81	Rates of tax for registered firm adopted instead of that for individual.	63,350 (including interest of 24,960).
21.	F	1978–79	Total taxable income taken as 26,08,980 instead of correct amount of Rs. 26,38,890.	61,674 (including interest of Rs. 40,974).
22.	J	1984–85	Incorrect computation of income by way of winning from lottery.	53,015
23.	B	1982–83	Amount of Rs. 27,600 inadvertantly deducted instead of being added back.	46,672 (including interest).
24.	K	1981–82	Omission to include share income of the partner in the assessment.	44,097 (including interest).
25.	L	1983–84	Incorrect accountal of the refund already made while working out the tax demand.	38,016

The Ministry of Finance have accepted the mistakes in 15 cases, their comments in the remaining 10 cases are awaited (December 1986).

(ii) With a view to curbing the tendency for the creation of multiple Hindu undivided families by making partial partition of the families and for the avoidance of tax, the Income-tax Act, 1961 was amended by the Finance (No. 2) Act, 1980 to provide that any partial partition effected after 31 December 1978 shall be treated as null and void and such families shall be assessed as if no such partial partition had taken place.

A Hindu undivided family consisting of three coparceners and deriving income from business, house property, interest etc., claimed that a partial partition had taken place on 31 March 1979 and the Income-tax Officer passed orders on 22 April 1980 recognising the partial partition. However, after the amendment to the Act, the recognition given to the partial partition became null and void and should have been withdrawn. This was not done. Instead, the co-parceners were assessed in a summary manner for the assessment years 1980-81 and 1981-82 in March 1981 and December 1981 respectively as individuals. The omission resulted in exclusion of the income of Rs. 1,36,900 from the total income of the Hindu undivided family and a short levy of tax of Rs. 94,275 for the two assessment years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.07 Incorrect application of rate of tax

(i) The Income-tax Act, 1961, provides that income-tax is chargeable for every assessment year in respect of the total income of the previous year of a person according to the rates prescribed under the particular Finance Act.

In the assessment of a Hindu undivided family for the assessment year 1972-73 completed in March 1985 while computing the tax payable on the income of Rs. 1,94,550, the assessing officer erroneously adopted the rates applicable for the assessment year 1984-85 instead of the rate applicable for the assessment year 1972-73. The incorrect application of rates resulted in short levy of tax of Rs. 1,18,153 including interest for belated filing of return and non-payment of advance tax.

The Ministry of Finance have accepted the mistake.

(ii) (a) In the assessment of an individual, for the assessment year 1981-82 completed in February 1985, the assessing officer incorrectly determined the tax due on the returned income of Rs. 1,83,710 as Rs. 30,090 by applying the rates applicable to a registered firm. The tax payable on the returned income correctly worked out to Rs. 89,426 at the rates applicable to individual. The adoption of incorrect rate of tax resulted in under-charge of tax of Rs. 93,329 including interest for belated filing of return and short payment of advance tax.

The Ministry of Finance have accepted the mistake.

(b) The total income of an individual for the assessment year 1981-82 (assessment completed in September 1984) was determined at Rs. 1,16,420 and tax of Rs. 13,720 together with a penal interest of Rs. 5,356 for delay in submission of return and for non-payment of advance tax on estimates was levied applying the rate of tax applicable to a registered firm (deriving income mainly from a profession) instead of applying the rates applicable to an individual. The correct tax payable, however, worked out to Rs. 53,990. The mistake in application of incorrect rates resulted in tax undercharge of Rs. 68,230 including penal interest of Rs. 27,960.

The Ministry of Finance have accepted the mistake.

3.08 Incorrect status adopted in assessments

The Income-tax Act, 1961, provides that income-tax is chargeable for every assessment year in respect of the total income of the previous year of every person. The incidence of income-tax differs according to the residential status of the tax payers. An individual is treated as resident in a previous year, (i) if during that year, he has resided in India for a total period of 182 days in all or more or (ii) having, within the four years preceding that year, been in India for a period or periods amounting in all to 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year. For and upto the assessment year 1982-83, a person maintaining a dwelling place in India for a period or periods amounting in all to 182 days or more and who has been in India for 30 days or more in that year is also treated as a resident. In order to become an 'ordinarily resident' an individual should have been resident in nine out of ten preceding previous years and should also have been in India for a period or periods amounting in all to 730 days or more during the seven years preceding that previous year, failing which he shall be treated as not ordinarily resident. For persons who are resident and ordinarily resident, all incomes whether arising in India or outside India are chargeable to tax.

An individual was for the first time appointed as the manager of a German Branch of a New Delhi based Indian company during the company's accounting period ending 30 June 1981. He declared, inter alia, the said managerial salary income of DM 30000 (equivalent to Rs. 1,25,215) in the income-tax returns for the previous years ending on 31 March 1981 and 31 March 1982 relevant to assessment years 1981-82 and 1982-83 but claimed the same as exempt on the ground that he was non-resident and the salary accrued outside India, In the assessment completed in June 1983 and September 1983 respectively, only the other incomes were taxed and the salary income was treated as exempt without examining the correctness of the status claimed. No details were filed by him to substantiate his claim. The available details indicated that he remained in India at least for 365 days during the four years preceding the relevant year and apparently for 60 days during the relevant year also. As such in the absence of supporting details, the claim for non-resident status should have been rejected. Omission to do so resulted in short computation of income of Rs. 1,25,215 in each of the two assessment years 1981-82 and 1982-83 and total short charge of tax of Rs. 2,22,285 including interests for late filing of return and for shortfall in payment of advance tax.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.09 Incorrect computation of income in the case of foreign technicians.

(i) The Income-tax Act, 1961, allows under certain conditions exemption from tax on the remuneration received by or due to a foreign technician in the employment of the Government or of a local authority or of a statutory corporation or in any business carried on in India as does not exceed Rs. 4,000 per month during the period of twenty four months commencing from the date of his arrival in India. Further, the tax on the remuneration in excess of Rs. 4,000 per month in respect of the period of twenty four months and on the remuneration for any period thereafter, paid to the Central Government by the employer normally treated as perquisite is also not included in the total income and is exempted from tax provided, inter-alia, the

contract of service of the foreign technician is approved by the Central Government.

(a) In the assessments of two foreign technicians employed by an Indian Company during 1 August 1973 to 31 December 1976 exemption for the assessment year 1977-78 was erroneously allowed in respect of remuneration received beyond the period of twenty four months calculated at the rate of Rs. 4,000 per month amounting to Rs. 68,000 and for the tax of Rs. 87,825 paid to the Government by the employer on the remuneration relating to the period from 1 August 1976 for which contract of service had not been approved by Central Government. This resulted in under-assessment of income of Rs. 1,53,825 and a short levy of tax aggregating to Rs. 99,661.

The Ministry of Finance have accepted the mistake.

(b) The regular and supplemental assessments of a foreign technician employed by a Government Company, for the assessment year 1980-81 were completed in May 1983, allowing an aggregate deduction of Rs. 76,142 out of a total remuneration of Rs. 3,57,549 received by him. Audit scrutiny revealed in February 1985 that the foreign technician had been allowed the exemption for the entire period of his services in India from 4 June 1977 to 27 October 1980 without restricting the same for a period of 24 months upto June 3,1979. This resulted in an aggregate under-assessment of income of Rs. 67,740 and a short levy of tax of Rs. 48,770 in the two assessments of the assessment year 1980-81.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) The period of employment of a foreign technician for purpose of exemption for tax on remuneration is, however, restricted to the overall limit of 48 months, commencing from the date of his arrival in India, subject to approval by the Central Government.

In the assessment of a foreign technician in the employment of a Government of India undertaking for the assessment year 1982-83 completed in December 1984, the department, while computing his total income allowed exemption on tax perquisite towards tax paid by the employer on his salary received during the entire previous years. It was, however, noticed (November 1985) that the prescribed period of exemption of 48 months commencing from the date of the technician's arrival in India had ended on 19 January 1982. Therefore, exemption in respect of the tax perquisite on salary of Rs 2,03,090 received by him during the period from 20 January 1982 to 31 March 1982 was not admissible and was therefore, required to be added back to the total income of the assessee. Omission to do so resulted in underassessment of income of Rs. 2,03,090 with consequent undercharge of tax of Rs. 1,34,040.

The Ministry of Finance have accepted the mistake.

(ii) One of the conditions to be fulfilled for claiming exemption from tax on remuneration of foreign technicians in the employment of any business in India is that the contract of service should be approved by the Central Government, the application for such approval having been made to the Government before the commencement of such service or within six months of such commencement.

In the assessment of two foreign technicians employed by an Indian company, for the assessment years 1981-82 and 1982-83, completed in September 1984 and March 1985 respectively, exemption of salary amounting to Rs. 1,02,144 was allowed. It was noticed in audit (February 1986) that the applications for approval of the contracts of service were not made within the period prescribed. The exemption allowed was, therefore, not in order leading to underassessment of income of Rs. 1,02,144 and a short levy of tax of about Rs. 67,425.

In the case of one of the two foreign technicians income-tax of Rs. 96,996 for the assessment year 1981-82 was paid by the Indian collaborators. As he was an employee of the foreign collaborators, the tax paid by the Indian concern was to be treated as a perquisite and brought to tax as income from other sources. Omission to do so resulted in short levy of tax of Rs. 64,021.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In the case of a foreign technician (non-resident) engaged in oil and mineral exploration, for the assessment years 1983-84 and 1984-85 the income-tax assesments was made stating that rectification of assessment will be made on receipt of Central Government's approval for which application has been made. Income-tax of Rs. 2,98,951 and Rs. 4,41,397 on his salary income of Rs. 4,86,580 and Rs. 6,87,880 respectively, was

paid by the employer. The tax paid by the employer was not treated as a perquisite in the hands of the technician and taxed on 'tax on tax' basis in the assessment of the two assessment years completed in March 1985. The omission resulted in short computation of tax of Rs. 5,80,312 and Rs. 9,16,745 aggregating to Rs. 14,97,057 for the two assessment years.

The department contended that the tax has been paid by the employer on behalf of the employee treating it as a temporary loan recoverable from their future salary and hence taxing it on 'tax-on-tax' basis did not arise. The reply is not acceptable as neither a contract of service approved by the Central Government mentioning that the tax paid by the employer was a temporary loan recoverable eventually from the future salary of the technician nor a separate agreement, existing during the relevant previous years, between the employer and the employee to treat such taxes as advances recoverable later, was made available by the assessee. Further, as the technician had left India, there could be no recovery of the tax from any salary to be earned in India.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.10 Incorrect exemption of income from salary

Under the provisions of the Income-tax Act, 1961, cash equivalent of leave salary received by an employee at the time of retirement, whether on superannuation or otherwise, is exempted from income-tax in respect of so much of the period of earned leave at credit as does not exceed six months, subject to an overall ceiling of Rs. 30,000 (Rs. 25,500 for employees retired before 1 January 1982).

An assessee received from a hospital an amount of Rs. 2,20,000 being notice pay for termination of service and leave salary for accumulated leave incidental to his employment with the hospital in the previous year relevant to assessment year 1980-81. In the assessment of the assesee for the assessment year 1980-81 completed in May 1982, the department exempted the whole amount of Rs. 2,20,000 though the sum eligible for exemption was only Rs. 25,500. The mistake resulted in under assessment of income of Rs. 1,94,500 and a short levy of tax of Rs. 1,77,907.

The Ministry of Finance have accepted the mistake.

3.11 Incorrect computation of income from house property

Under the provisions of the Income-tax Act, 1961, the annual value of property consisting of buildings or lands appurtenant thereto, of which the assessee is the owner, is assessable as income from house property.

(a) It has been judicially held by the Supreme Court in 1972 that the income derived from letting out of buildings owned by the assessee to tenants is to be computed under the head 'income from house property' and not under the head 'income from profits and gains of business or profession' regardless of the object of the assessee viz., letting out buildings at rents, with or without amenities. Further, where a group of persons carry on an activity which is not business or profession, such a group cannot be considered as a firm under the Indian Partnership Act, 1932.

A registered firm acquired on lease for 40 years a vacant piece of land with a few buildings, constructed a commercial complex of eight blocks thereon and let it out mainly to shops, post office, bank and school etc. The income-tax assessments for the assessment years 1981-82 to 1984-85 were completed during August and December 1984 on income of Rs. 3,01,440, 4,45,670, 4,89,590 and 4,88,350 respectively. The income/loss derived from letting out the complex was, however, assessed as business income. As the assessee was the owner of the property which was let out, the income derived by the firm should have been assessed as income from house property and not as business income. The error in classifying the income under a wrong head resulted in short levy of tax of Rs. 9,91,780, treating the assessee as an association of persons, as the assessee did not carry on any business and hence cannot be treated as a firm.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A registered firm derived income from trading in precious stones and jewellery and also rental income from a house property owned by it and used as residence by its four partners on payment of rent. The assessee returned this income under the head "profits and gains from business or profession" which was accepted by the assessing officer in the assessments for the assessment years 1980-81, 1981-82 and 1982-83 completed originally between January 1983 to July 1984 and revised subsequently between August 1983 and March 1985 and the income from the said property was computed at Rs. 1,015, Rs. (—)18,237

and Rs. (—) 7,517 respectively treating the rent as business income. However, the rental income from the house property was correctly chargeable under the head "income from house property" and worked out to Rs. 27,444, Rs. 17,377 and Rs. 27,856 for the assessment years 1980-81, 1981-82 and 1982-83 respectively. Incorrect computation of property income as business income resulted in under-assessment of income of Rs. 97,146 and undercharge of tax of Rs. 74,181 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) It has been judicially held (December 1983) that an agreement entered into by the partners treating the firm's property as individual property will not have any such effect unless that agreement is followed by a deed of conveyance known to law, because the partner's cannot claim the firm's property as their separate and individual property so long as the firm continues (154 ITR 432).

A registered firm of five partners was the owner of a building and rental income therefrom was returned and assessed to income-tax in the hands of the firm as income from house property upto the assessment year 1982-83. The firm did not return income from house property in respect of this building in the assessment year 1983-84 on the plea that four partners of the firm took over the ownership of the building with effect from 28 October 1981 and kept the same as tenants-in-common, in accordance with a settlement deed executed on 30 October 1981 by the four partners. The firm had also passed book entries in its accounts on the last day of the previous year (27 October 1981) relevant to the assessment year 1982-83 by which the book-value of the building revalued at Rs. 2,10,000 was credited to the building account and each of the four partner's accounts were debited by Rs. 52,500. The assessing officer accepted the contention of the assessee firm and did not include the rental income of the property in the assessment for the assessment year 1983-84 completed in March 1984 and in the assessment for the assessment year 1984-85 completed in September 1985. The deed of settlement of 30 October 1981 was executed by four out of the five partners of the firm on a stamp of Rs. 10 only. The transfer of the immovable property by the firm to its four partners for a consideration of Rs. 2,10,000 was not effected through a registered document as required under the Transfer of Property Act/Indian Registration Act. Even an agreement entered into by partners treating the firm's property as individual property of partners will not have any such effect unless that agreement is followed by a deed of conveyance recognised by law because the partners cannot claim the firm's property as their separate and individual property so long as the firm is continuing. As the firm continued to be the legal owner of the building during the previous years relevant to the assessment years 1983-84 and 1984-85, rental income therefrom was assessable in its hands and not in the hands of the four partners. The mistake in not assessing the income resulted in under-assessment of income of Rs. 1,01,540 in the assessment year 1983-84 and Rs. 1,72,793 in the assessment year 1984-85 with consequent short levy of tax of Rs. 51,750 including interest for short payment of advance tax in the hands of the firm. The tax effect in the hands of the partners is yet to be ascertained.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) In computing the income from house property of an assessee which is let out for a part of a year, but is vacant for the remaining part of the year, a deduction from annual value proportionate to the period of vacancy, is allowed. It has been judicially held (1980) (124 ITR 31 SC) that no such deduction towards vacancy is allowable where the property was not let out at all during the previous year.

Three flats owned by an assessee individual were vacant throughout the previous year relevant to the assessment year 1984-85 but in the assessment for the assessment year 1984-85 deduction of Rs. 55,310 towards vacancy allowance and of Rs. 3625 towards municipal taxes were incorrectly allowed by the assessing officer. This erroneous deduction resulted in a short levy of tax of Rs. 44,662 including interest for belated filing of return, allowance of excess interest and interest for shortfall in payment of advance tax.

The case was seen by the Internal Audit Party of the department but the mistake escaped its notice.

The Ministry of Finance have accepted the mistake.

3.12 Incorrect computation of business income

(i) Under the provisions of the Income-tax Act, 1961, the total income of any previous year of a person inter alia, includes all income from whatever source derived which is received or is deemed to be received in India in such year or accrues or arises or is deemed to accrue or arise to him in India during such year. The Income-tax Rules, 1962, provide that the rate of exchange for the calculation of the value in rupees of any income accruing or arising or deemed to accrue or arise to the assessee in foreign

currency or received or deemed to be received by him in foreign currency which is chargeable under the head "profits and gains of business or profession", shall be the telegraphic transfer buying rate of such currency as on the last day of the previous year of the assessee. Accordingly, even in cases where the income in foreign currency is actually received by the assessee during the course of the previous year, the rate of exchange for conversion of the income into Indian rupees applicable is the telegraphic transfer buying rate as on the last day of the previous year.

(a) A registered firm deriving its income mainly from the exports of food products to foreign countries, received during the previous year ending on 30 June 1981 relevant to the assessment year 1982-83 income of 28,35,243 in American Dollars. The assessee accounted for the same in Indian Rupees at Rs. 2,27,43,311 by applying the exchange rates prevalent on the dates of the various invoices between 16 August 1980 and 12 June 1981 and returned the income of Rs. 2,27,43,311 for assessment. In the assessment of the firm made in November 1984, the income as returned was accepted and taxed by the assessing officer. As the correct rate of exchange to be adopted was the telegraphic transfer buying rate on the last day of the previous year, the rupee equivalent of 28,35,243 dollars correctly worked out to Rs. 2,46,43,572 as against Rs. 2,27,43,311 adopted in the assesment. The exchange rate being 11.505 American Dollars for every Rs. 100 on 29 June 1981, the last day of the previous year (30 June being holiday on account of half yearly closing of bank accounts), adoption of incorrect exchange rate resulted in under-assessment of income of Rs. 19,00,260 and a short levy of tax of Rs. 13,98,860 in the hands of the firm and its four partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A registered firm received in the previous year ending on 31 August 1981 relevant to the assessment year 1982-83 an income of U.S. $ 3,25,594 by sale of shrimps. In the assessment of the firm for the assessment year 1982-83 completed in March 1985, the assessing officer accepted the income of Rs. 26,09,142 as returned which was arrived at by converting the income in foreign currency at the rates prevailing on various dates between October 1980 and June 1981. The exchange rate as on 31 August 1981 as correctly applicable for conversion in this case was U.S. $ 11.180 for Rs. 100 and adopting this rate, the rupee equivalent of income worked out to Rs. 29,12,290 as against Rs. 26,09,142 actually worked out. This resulted in under-assessment of income of Rs. 3,03,148 with short levy of tax of Rs. 1,98,166.

The assessment in question was checked by the internal audit party of the department ; but the mistake was not noticed by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986)

(ii) 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 years the assessee has 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 the benefit accruing to him is deemed to be profits and gains of business or profession chargeable to income-tax as income of that previous year.

(a) In the case of a registered firm, liabilities of Rs. 10,56,877 claimed as payable to various dealers outside India on account of fruits imported from that particular country during September|October 1977 were allowed to be carried forward for eight consecutive years upto 1984-85 by the department. The export licence against which the fruits were imported stipulated export of goods in lieu thereof within a stipulated period. Neither any goods in lieu thereof were exported by the firm nor did the Reserve Bank of India permit remittance of the amount in cash. The amount of Rs. 10,56,877 remained with the assessee for eight years and for all purposes formed part of his trading receipts, as such it should have been treated as income of the assessee for the assessment year 1984-85. Omission to do so resulted in short levy of tax of Rs. 8,09,352.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The assessment of a registered firm for the assessment year 1982-83 was completed in March 1985 on a taxable income of Rs. 9,55,550. Audit scrutiny revealed (November 1985) that the assessee firm had shown a sum of Rs. 6,25,870 under 'sales promotion suspense account' in the details furnished under 'outstanding liabilities'. For the earlier assessment year 1981-82 the amount standing in the account was Rs. 4,47,725. This indicated that during the previous year relevant to assessment year 1982-83, the assessee had received a sum of Rs. 1,78,145.

The transaction was in respect of the amount received by the assessee from a foreign supplier to whom the assessee had paid the entire invoice price of goods imported and later received back a percentage of the price so paid to be kept under suspense account to be utilised subsequently for sales promotion on instructions from the supplier. The amount of Rs. 1,78,145 so received during the previous year relevant to the assessment year 1982-83 was not included as income for the year even though there was no quantified liability on this account in that year. This resulted in undercharge of tax of Rs. 1,33,500 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In computing business income, a liability for expenditure is allowable as a deduction if it is an ascertained liability and not merely a contingent liability.

(a) In its accounts for the previous year relevant to the assessment year 1981-82, a registered firm made a provision of Rs 7,32,838 as amount payable to the State Bank of India against letter of credit. In the accounts of the subsequent two years further sums of Rs. 1,34,451 and Rs. 1,34,532 were provided as provision for interest payable to the State Bank of India against the amount of letter of credit. The provisions made as aforesaid in the three years were allowed as admissible expenditure in the assessments for the assessment years 1981-82 to 1983-84 made by the Inspecting Assistant Commissioner of Income-tax (Assessment) in December 1983, May 1984 and June 1984 respectively. The explanation filed by the assessee indicated that the letter of credit was opened in favour of a company of Hongkong against supply of raw materials worth 89,300 US dollars to the assessee firm. The company withdrew the amount against the letter of credit but did not supply the raw-materials. A dispute arose between the State Bank of India and the assessee-firm on the responsibility for the loss thus suffered. The assessee firm denied its liability for the loss. The Bank filed a civil suit against the assessee and the dispute was decided by the Court against the assessee on 13 February 1984. As the liability of the assessee to pay the amount withdrawn against letter of credit and interest thereon had not crystallised till the decision of the Court, the provisions made thereof in the accounts represented contingent liability and not ascertained liability to be allowed as deduction. The incorrect allowance of deduction resulted in under-assessment of income of Rs. 7,32,838, Rs. 1,34,451 and Rs. 1,34,532 in the assessment years 1981-82, 1982-83 and 1983-84 respectively involving short levy of tax totalling to Rs. 6,06,095 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) For the assessment years 1981-82 and 1982-83 a registered firm engaged in the business of money lending and conduct of chits claimed a deduction of Rs. 1,34,500 and Rs. 81,000 towards additional payment to subscribers of chits on completion of the period of 60 months, and this was allowed in the assessments completed in July 1983 and October 1983. Audit scrutiny revealed (January 1985) that the chits commenced only in August 1978 and October 1978 and as such the chit period would be completed only in August 1983 and October 1983 respectively. As no such additional payment arose in the previous years relevant to the assessment years 1981-82 and 1982-83, the claims were only in respect of contingent liabilities and therefore not allowable. This resulted in short computation of income by Rs. 2,15,500 involving short levy of tax aggregating to Rs. 1,26,681 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) While a provision made in the accounts for an accrued or known liability is an admissible deduction, the other provisions do not qualify for the deduction.

An assessee, a registered firm debited amounts of Rs. 5,68,016 and Rs. 5,68,363 for the assessment years 1984-85 and 1983-84 on account of bonus which was allowed by the department in the assessments completed in March 1985 and December 1984. Audit scrutiny (August 1985), however, revealed that out of these amounts the actual payment of bonus was only Rs. 4,35,505 and Rs. 4,54,328 for assessment years 1984-85 and 1983-84 respectively. Thus, the excess provision for bonus of Rs. 1,32,511 and Rs. 1,14,035 should have been disallowed at the time of assessment which was not done. The omissions resulted in total under-assessment of income of Rs. 2,46,546 involving short levy of tax aggregating Rs. 1,49,145 for the two assessment years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) A registered firm in its accounts relevant to the assessment year 1981-82 showed a net profit of Rs. 73,304 after debiting an amount of Rs. 1,46,608 as net profit carried down to the balance sheet by a

corresponding entry in the balance sheet. While computing its taxable income for the assesment year 1981-82 in February 1984, the assessing officer omitted to add back this amount of Rs. 1,46,608 shown in accounts as net profit carried down to the balance sheet, as being a reserve of profits to the net profit of Rs. 73,304. The omission resulted in under-assessment of income of Rs. 1,46,608 and a short levy of tax of Rs. 1,02,940 in the hands of the firm and its partners, including interest for belated filing of the return and non-filing of an estimate of advance tax.

The Ministry of Finance have accepted the mistake.

(iv) Under the provisions of Income-tax Act, 1961, as applicable with effect from the assessment year 1984-85, a deduction otherwise allowable under the Act, in respect of any sum payable by the assessee by way of tax or duty under law for the time being in force shall be allowed in computing the business income of that previous year in which such sum is actually paid by him. It has been judicially held by the Supreme Court (October 1972 and November 1974) that the amount of sales-tax collected by the trader in the course of business constitutes his trading or business receipts and as such liable to be included in his business income. It has also been judicially held (March 1983) that if a receipt is a trading receipt, the fact that it is not so shown in the accounts books of the assessee would not prevent the assessing authority from treating it as trading receipt.

(a) In computing the business income of two registered firms for the assessment year 1984-85 completed in March 1985, the amounts of central sales-tax and other taxes collected but remaining unpaid to the Government in the relevant accounting period and credited to a separate "sales-tax payable account" were not disallowed and added back to the income liable to tax. Omission led to under-assessment of income by Rs. 7,78,458 with consequent short demand of tax of Rs. 4,88,512 in the case of the firms.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) An assessee who was a commission agent as well as a grocery merchant, did not include the amounts collected by him towards several taxes viz., sales tax and surcharge, entry tax and turnover tax, in his trading and profit and loss account. The taxes which remained unpaid at the end of the accounting year were exhibited as a liability in the balance sheet. Such liability remaining unpaid at the end of the accounting year ending 4 November 1983 relevant to the assessment year 1984-85 was Rs. 2,36,591 out of which only an amount of Rs. 16,050 was brought to tax by the assessing officer in the assessment for the assessment year 1984-85 made in March 1985 though under the law the entire amount was taxable. This resulted in short computation of income of Rs. 2,70,541 and consequent short levy of tax of Rs. 1,74,833 in the hands of the firm and its partners including interest for short payment of advance tax.

The case was checked by the internal audit party of the department but it failed to notice the mistake.

The Ministry of Finance have accepted the mistake.

(c) A registered firm during the accounting year relevant to the assessment year 1984-85, collected a sum of Rs. 1,10,145 as market cess and also a sum of Rs. 39,915 as sales tax, both levies having been authorised under the State Acts. The amounts were not charged to profit and loss account and also remained unpaid during the previous year relevant to the assessment year 1984-85. Since the market cess and the sales tax collected are legally trading receipts, and not actually paid to the Government/ concerned authorities, these amounts should have been brought to tax by the assessing officer in the assessment of the firm completed in March 1985. The omission resulted in a short levy of tax of Rs. 1,09,560 in the hands of the firm and its partners.

The case was checked by the internal audit party of the department, but the mistake escaped its notice.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) Nine registered firms showed in their balance sheets for the previous year relevant to the assessment year 1984-85 various sums totalling Rs. 1,87,526 representing liability towards unpaid sales tax and entry tax. In the assessment of the firms completed between August 1984 and January 1985, the assessing officer did not add back the unpaid liability on the ground that the assessees did not charge off the liability in their trading or profit and loss account. As the sales tax collections become part of trading receipts, these should have been brought to tax. Omission to do so resulted in the total under assessment of income of Rs. 1,87,526 leading to a total short levy of tax of Rs. 1,07,877 including interest for belated filing of return and short payment of advance tax.

The assessments were checked by the internal audit party of the department in seven out of nine cases, but the omission was not noticed by it.

The Ministry of Finance have accepted the mistake.

(e) In computing the business income of an individual for the assessment year 1984-85 (assessment made in September 1984), a sum of Rs. 6,14,314 debited in the accounts towards sales tax, was allowed as deduction. It was, however, noticed that the said sum of Rs. 6,14,314 included Rs. 1,51,437 being the provision for sales tax liability for the relevant year and which remained unpaid till the last day of the said year. Accordingly, the sum of Rs. 1,51,437 was not an allowable deduction. The omission to disallow it resulted in under-assessment of business income by Rs. 1,51,437 with consequent undercharge of tax of Rs. 1,02,222.

The Ministry of Finance have accepted the mistake.

(f) In the assessment of a registered firm running a cinema house for the assessment year 1984-85 completed in March 1985, the assessee claimed and was allowed a sum of Rs. 1,95,744 as entertainment tax due, but not paid during the relevant previous year. As the entertainment tax was to be allowed on the basis of actual payment and not on accrual basis, the incorrect allowance resulted in under-assessment of income of Rs. 1,95,744 and short levy of tax of Rs. 97,300.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(g) In the previous year relevant to assessment year 1984-85, an assessee registered firm claimed deduction on account of outstanding liability towards general sales tax and central sales tax amounting to Rs. 1,35,393 and the claim was allowed by the department while completing the assessment in December 1984. As these taxes were not actually paid by the assessee during the assessment year, the liability should, therefore, not have been allowed at all and the amount should have been added back. Omission to do so resulted in under-assessment of income of Rs. 1,35,393 leading to short levy of tax of Rs. 86,696 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(h) For the previous year relevant to the assessment year 1984-85, an assessee firm showed an expenditure of Rs. 70,419 towards entry tax (a tax levied under the State Act) in the trading account and showed the amount as a liability in the balance sheet. As the amount had not actually been paid during the previous year it had to be disallowed. But in the assessment for the assessment year 1984-85 made in March 1985, the assessing officer did not disallow the amount. The omission resulted in short computation of income by Rs. 70,419 involving total short levy of tax of Rs. 38,353 in the hands of the firm and its partners.

The Ministry of Finance have accepted the mistake.

(v) Under the provisions of the Income-tax Act, income chargeable under the head 'profits and gains of business' shall be computed in accordance with the method of accounting regularly employed by the assessee.

(a) The assessment of a proprietary pharmaceutical concern for the assessment year 1979-80 was completed in December 1980 accepting a trading loss of Rs. 3,05,312 as shown by the assessee. The trading loss had arisen as the assessee had purchased various chemicals and sold them at a price much less than the cost price|prevailing market rates. As no prudent businessman will sell their goods at a price less than the cost price or market rate, assuming that the assessee had sold the goods at the cost price|market rate, there was an under-assessment of income of Rs. 4,72,325 which eventually resulted in short levy of tax of Rs. 5,45,380 including interest for belated filing of return and short payment of advance tax.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The assessments for the assessment years 1982-83 and 1983-84 of an individual who owned buses and had deployed them with the State Road Transport Corporation was completed in a summary manner in August and October 1983 respectively on incomes of Rs. 1,320 and Rs. 60,670 as returned. As the assessee was not maintaining any books of account, the gross income was worked out at 30 per cent of the gross receipts from the Corporation for the assessment year 1982-83 and at 20 to 25 per cent of the gross receipts for the assessment year 1983-84. For the assessment year 1981-82, however, the gross income out of gross receipts before allowing depreciation was taken at 50 per cent. The appellate Assistant Commissioner of Income-tax reduced the percentage from 50 per cent to 35 per cent which

was not accepted by the department on the grounds of second appeal to the Income-tax Appellate Tribunal on the consideration that in a similar case the former authority allowed expenses at 40 per cent on new buses and 50 per cent on buses purchased a year before. As the Commissioner of Income-tax had approved the percentage of 50 for arriving at the gross income for the assessment year 1981-82, the assessing officer should have applied the same rate to work out the gross income for the later assessment years 1982-83 and 1983-84. The gross receipts being Rs. 4,73,342 and Rs. 5,94,516 for the assessment years 1982-83 and 1983-84 respectively, the gross income would work out to Rs. 2,36,671 and Rs. 2,97,258 as against Rs. 1,42,002 and Rs. 1,43,699 actually adopted in the assessments. This resulted in short computation of income by Rs. 94,670 and Rs. 1,53,560 for the aforesaid assessment years involving short charge of tax of Rs. 1,30,959.

The department reopened the assessment for assessment year 1983-84 and completed it in February 1986 by raising the additional demand. For the assessment year 1982-83 the Commissioner of Income-tax was requested to cancel the assessment.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) Under the provisions of the Income-tax Act, 1961, any expenditure not being in the nature of capital expenditure or personal expenses of an assessee which is wholly and exclusively incurred for the purpose of business is allowable in computing the business income of the assessee.

(a) While completing the assessment of a registered firm for the assessment year 1983-84 in November 1984, the assessing officer held that the provision made for sales tax, amounting to Rs. 7,69,307, and the commission paid to two closely-related concerns, totalling Rs. 71,938, could not be allowed as deduction as the assessee-firm had no statutory liability for the payment of sales tax, and as the partners of the firm had a direct interest in the two concerns. However, the assessments for the assessment years 1981-82 and 1982-83 completed earlier (July 1983 and June 1984 respectively) were not simultaneously revised to withdraw similar deductions that had been allowed in those assessments (provisions for sales tax Rs. 4,28,116 and commission Rs. 6,22,250, in the assessment year 1981-82 and commission Rs. 5,42,799 in the Assessment year 1982-83). This resulted in under-assessment of income of Rs. 10,50,366 and Rs. 5,42,799 respectively in the assessment years 1981-82 and 1982-83 and consequent short levy of tax of Rs. 7,83,267 and Rs. 3,95,880 respectively.

The assessment for the assessment year 1982-83 was checked by the special audit party of the department in October 1985; but the omission was not pointed out.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the assessments for the assessment years 1979-80 to 1981-82 of a registered firm completed in February 1981, July 1983 and February 1984, deductions of Rs. 1,84,302, Rs. 1,68,813 and Rs. 1,28,114 respectively towards interest payments to outsiders on account of borrowals were allowed by the assessing officer. As the partners of the firm had huge debit balances amounting to Rs. 3,12,187, Rs. 5,88,358 and Rs. 7,31,843 in their current accounts at the end of the previous years relevant to assessment years 1979-80 to 1981-82 respectively and as the assessee firm was paying huge interest on its borrowals, a major portion of which was utilised by the partners for their personal requirements, a proportionate amount of interest relating to the overdrawal by the partners was required to be disallowed. This was not done. Taking the average of the debit balances as at the end of each year as the amount of personal borrowals of the partners the aggregate interest that should have been disallowed would be Rs. 1.40 lakh at a nominal rate of interest of 10 per cent per annum, resulting in a loss of revenue of Rs. 25,000 for assessment year 1979-80 (in respect of which remedial action had become time barred) and a short-levy of tax of Rs. 84,000 for assessment years 1980-81 and 1981-82.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) In the assessment of a registered firm for the assessment years 1982-83 and 1983-84, completed in February 1984, liabilities of Rs. 74,681 and Rs. 76,978 on account of advances received from Government Departments/Agencies against supplies to be made in the relevant previous years were allowed as deductions. As the said advance payments are not expenditure wholly and exclusively for the purpose of business, these were not allowable and were required to be added back. The omission resulted in under-assessment of income to the extent of Rs. 1,51,659 and consequent short levy of tax of Rs. 69,276.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vii) Under the provisions of the Income-tax Act, 1961, as applicable during the period from 1 April 1984 to 31 March 1986, where the aggregate expenditure incurred by an assessee in India on advertisement, publicity and sales promotion, or running and maintenance of aircraft and motor cars, or payments made to hotel exceeds Rs. one lakh, twenty per cent of such excess is not to be allowed as deduction in computing the income chargeable under the head "profits and gains of business or profession".

(a) In the assessment of a registered firm for the assessment year 1984-85 completed in November 1984, a sum of Rs. 20,775 being twenty per cent of the excess of the expenditure incurred in India on advertisement, sales promotion, car expenses and hotel expenses etc., over a lakh of rupees viz., Rs. 1,03,877 was disallowed in computing the business income. In its profit and loss account, however, the assessee firm had debited Rs. 9,75,273 as commission on sales executed by its consignees and Rs. 19,20,610 as discount on sales allowed by the consignees to their customers, but these two items totalling Rs. 28,95,883 were not treated by the assessing officer as expenditure on 'sales promotion' on the plea that these were in the normal course of business practice. Since the commission and discount on sales were in connection with the promotion of sales, these would constitute expenditure on 'sales promotion' and accordingly twenty per cent of Rs. 28,95,883 amounting to Rs. 5,79,177 was also to be disallowed. The omission resulted in underassessment of income of Rs. 5,79,177 with consequent short levy of tax of Rs. 3,86,217 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the the paragraph are awaited (December 1986).

(b) In the assessment of a registered firm for the assessment year 1984-85 completed in February 1985, the assessing officer disallowed only Rs. 9,000 out of the total expenditure of Rs. 4,20,212 towards advertisement, publicity and car expenses against a sum of Rs. 64,042 actually disallowable under the provisions of the Act. This mistake resulted in a short levy of tax of Rs. 30,766 including penal interest for short payment of advance tax on estimates.

The Ministry of Finance have accepted the mistake.

(viii) Under the Income-tax Act, 1961, the profits and gains of any business which was carried on by an assessee at any time during the previous year is chargeable to income-tax under the head 'profits and gains of business or profession'. All trading receipts have to be taken into consideration in the computation of income from business, though the trading receipts might have been credited by the assessee to a suspense or any head of account. It has been judicially held (1974) that the amount collected by an assessee as sales tax constituted his trading receipt and had to be included in his total income and that if and when the assesee paid the amount collected to the State Government or refunded any part thereof to the purchaser, the assessee would be entitled to claim deduction of the sum so paid or refunded.

A registered firm realised sales tax of Rs. 3,12,794, Rs. 2,90,639 and Rs. 93,350 during the previous years relevant to assessment years 1974-75, 1975-76 and 1976-77 respectively from customers and exhibited the total amount of Rs. 6,96,782 in its accounts for assessment year 1976-77 under "Arunachal Pradesh Suspense" as liability for sales tax payable to the State Government. But, in the absence of any enactment for levy of tax on sales made within the State and because of non-refund of unpaid taxes to the customers in the concerned years, the amount kept under suspense for discharging sales tax liability was to be treated as part of income for the respective assessment years and taxed accordingly. Omission to bring the aforesaid amounts to tax in the relevant assessment year resulted in undercharge of tax aggregating to Rs. 2,07,889.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ix) Under the provisions of the Income-tax Act, 1961, all income accruing or arising or deemed to accrue or arise to an assessee in India in the previous year relevant to the assessment year is includible in the total income of that assessee.

An individual, a contractor, returned a net income of Rs. 60,433 and Rs. 79,827 for the assessment years 1982-83 and 1983-84 respectively but the assessing officer estimated the income at 7 per cent for assessment year 1982-83 and 5 per cent for assessment year 1983-84 of the contract receipts less recovery towards materials and hire charges and determined the income assessable at Rs. 72,428 and Rs. 1,13,730 respectively. Audit scrutiny revealed (November 1984) that in computing the net income the assessee had taken into account only the cheque payments received from the Government departments,

after deduction towards earnest money deposits, security deposit and income tax. As these represented amounts withheld temporarily and were to be refunded| given credit to subsequently, the amounts so withheld amounting to Rs. 1,00,358 and Rs. 2,23.829 respectively for the two assessment years were also required to be added back to the income returned. The incorrect estimation resulted in under-assessment of income of Rs. 88,363 and Rs. 1,89,926 for assessment years 1982-83 and 1983-84 respectively involving an aggregate short levy of tax of Rs. 1,83,665.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(x) Under the provisions of the Income-tax Act, 1961 as amended retrospectively from 1 April 1973, any provision made by an assessee for the purpose of payment of a sum by way of contribution towards a gratuity fund or a provident fund or a superannuation fund created by him for the exclusive benefit of his employees shall be allowed as deduction in computing the business income, only if such fund is recognised by the Commissioner of Income-tax. Any income received by the assessee on behalf of a recognised provident fund does not form part of the total income.

(a) In the assessments of an association of persons (Compulsory Employees Provident Fund) for the assessment years 1979-80 and 1980-81 completed in February 1983, the interest income of Rs. 1.07 lakhs and Rs. 1.21 lakhs respectively were totally exempted although the provident fund was not recognised by the Commissioner of Income-tax till the end of January 1983. The irregular exemption of income led to tax under charge of total income of Rs.2.28 lakhs and short levy of tax of Rs. 1.78 lakhs including interest for belated filing of return and short payment of advance tax.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) An association of persons was registered as a Fund under the Societies Registration Act, 1904 of a State, and was constituted with the employees of a public sector bank as members with the objects of giving financial aid or loans with or without interest to the members or their families in case of their sickness, and for education of their children, etc. and giving relief to the dependents of the employees of the bank whether they were members of the Fund or not, in the event of their death while in the service. The fund was financed mainly from donations received from the bank or any members of the staff or from others and members' deposits.

In the previous years relevant to the assessment years 1980-81 to 1982-83, the assessee derived income through donations from the bank for defraying scholarships, donations from others meant for death relief and from sundry sources. In the assesments for assessment years 1980-81 to 1982--83 completed in November 1984, all receipts excepting the donations received from others and credited to Death Relief Fund were brought to tax. As the death relief scheme was not recognised by the Commissioner, there was no provision in the Act to exempt the surplus of income after meeting the death relief expenses. The omission resulted in under-assessment of income of Rs. 47,028, Rs. 1,26,417 and Rs. 79,670 for the assessment years 1980-81, 1981-82 and 1982-83 respectively and a total short levy of tax of Rs. 1,70,508.

The assessments in question were checked by the internal audit party of the department and this mistake was not noticed by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) In the assessment of a registered firm for the year 1981-82 completed in December 1983, a provision of Rs. 2,02,520 made by the firm in its accounts of the previous year ending 30 June 1980 towards contribution to gratuity fund was allowed as a deduction. It was however, noticed in audit (February 1986) that the "gratuity trusts fund" constituted by the assessee firm was recognised by the Commissioner of Income-tax on 8 July 1982 with effect from 1 March 1981 only. As no approved gratuity fund was in existence during the relevant previous year, the allowance of the provision for gratuity of Rs. 2,02,520 in the assessment year 1981-82 was not correct. The mistake resulted in under assessment of business income to the extent of Rs. 2,02,520 and a short levy of tax of Rs. 1,63,503 including interest for belated filing of return and short payment of advance tax in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xi) Under the provisions of the Income-tax Act, 1961, where any building, machinery and plant or furniture owned by an assessee and used for the purpose of business or profession is sold for a consideration in excess of the written down value, the amount of difference, not exceeding the cost price of the asset and written down value is to be brought to tax under

the head 'income from business and profession' during the previous year in which the money becomes due, the balance, if any, is to be taxed under the head 'capital gains'.

During the previous year relevant to the assessment year 1976-77, an electricity supply unit run by a co-operative society was taken over by the State Electricity Board alongwith plant, machinery and overhead lines etc. The sale price of the assets was fixed at Rs. 13 lakhs while the cost price was Rs. 15 lakhs (approximately) and the written down value was Rs. 7,04,815. The agreement of transfer of the undertaking provided that the assessee should transfer balances outstanding against certain reserves and deposits to the Electricity Board. The assessee claimed that an amount of Rs. 3,55,184 outstanding against these accounts is deductible in computing profit on sale of assets which was accepted by assessing officer in the assessment made in January 1979 and only the net surplus of Rs. 2,40,001 was brought to tax under business income. It was brought to the notice of the department (August 1980) that computation of profit under the provisions of the Act required deduction of merely the written down value from the sale consideration and hence, further deduction of Rs. 3,55,184 was not in order. The incorrect computation of income resulted in under-charge of income of Rs. 3,55,184 and short levy of tax of Rs. 1,56,279.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

xii) The Income-tax Rules 1962, prescribe the procedure for amortisation of expenditure on production of feature films. When a film producer exhibits or sells the right for exhibition of a certified feature film in only some of the territories specified in the Table contained in the rules the cost of production to be allowed as deduction in computing the profits and gains of the relevant previous year shall be an appropriate fraction of the total cost of production arrived at by aggregating the proportionate sums specified in the Table in respect of each territory and the balance shall be carried forward and allowed in the following assessment year.

In the assessment of a registered firm for the assessment year 1983-84 completed in December 1984, a sum of Rs. 78,90,694 being the cost of production of a Hindi feature film was allowed in full, though it was not exhibited or rights for exhibition sold in three States. The deduction allowable as per rules worked out to 97 per cent of the total cost. The mistake resulted in excess allowance of deduction of Rs. 2,36,721 and a short levy of tax by Rs. 1,45,477 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xiii) According to the payment of Bonus Act, 1965, bonus is payable to employees covered by the Act at an amount not exceeding the 'allocable surplus' computed in the manner prescribed therein, subject to a minimum of 8.33 per cent and a maximum of 20 per cent of the salaries and wages of the employees. Bonus paid in excess of the above-mentioned amount is not an admissible deduction under the Income-tax Act, 1961.

In the case of a registered firm whose employees were covered by the Payment of Bonus Act, 1965, while computing its business income for the assessment year 1982-83 in March 1983, a deduction of Rs. 4,80,878 was allowed towards payment of bonus to employees. However, in the accounting year relevant to the assessment year 1982-83, the assessee-firm had an allocable surplus of only Rs. 3,76,368 and, as such, was not statutorily bound to pay a higher amount as bonus. The allowance of deduction in excess of the assessee's statutory liability thus resulted in under-assessment of income to the extent of Rs. 1,04,510 and consequent short levy of tax of Rs. 74,100 in the hands of the firm and its partners.

The Ministry of Finance have, while not accepitng the mistake, stated that the point raised was highly debatable and the issue was pending before the High Court. The Central Board of Direct Taxes have, however, clarified in December 1980 that the payments made in excess of the limits prescribed under the Bonus Act 1965, cannot be treated as any other expenditure incurred wholly and exclusively for the purpose of business and resort cannot be had to any other provision of the Act to claim deduction thereof even on grounds of commercial expediency.

(xiv) The value of any benefit whether convertible into money or not, arising from business or exercise of a profession is chargeable to tax under the head 'profits and gains of business or profession'. The import entitlements granted to exporters are transferable and consequently an exporter who does not need the import of goods can sell or otherwise transfer his import entitlement. It has been judicially held (March 1980, March 1981 and March 1985) that profits from sale of import entitlements are assessable as business income.

While completing the assessment of a registered firm for the assessment years 1981-82 and 1982-83 in June 1983 and February 1984 respectively, profit

on sale of import entitlements was treated as capital receipts, as claimed by the assessee and the amounts of Rs. 76,116 and Rs. 77,789 were accordingly reduced from the income of the firm. The department did not consider that the profit from sale of import entitlement under export promotion scheme would be taxable as income from business in the light of the judicial decision. As a result, there was an under-assessment of income of Rs. 76,116 and Rs. 77,789 for assessment years 1981-82 and 1982-83 respectively involving a short levy of tax aggregating to Rs. 73,290 in the hands of the firm and its partners.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xv) Where an assessee follows mercantile accounting system, the net profit or loss is calculated after taking into account all the income actually received as well as all expenditure incurred and the liability relating to the period, regardless of their actual receipt or payment.

An individual, a contractor received during the previous year relevant to the assessment year 1979-80 a sum of Rs. 1,14,015 in satisfaction of an arbitration award relating to a bridge-work completed in earlier years. The assessee estimated his taxable income at 12.5 per cent of the award amount, and on that basis offered for assessment an amount of Rs. 14,252 accordingly. As the assessments of the assessee for all the earlier assessment years had been completed after considering all the expenditure incurred by the assessee for executing the work, the entire income from the award was taxable in the year of its receipt viz., assessment year 1979-80. Omission to do so resulted in under-assessment of income of Rs. 99,763 and consequent undercharge of tax of Rs. 65,930.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xvi) Under the Income-tax Act, 1961, any payment of interest made by a firm to any partner of the firm shall not be an allowable deduction in computing the business income.

During the previous year relevant to assessment year 1984-85, a registered firm paid an interest of Rs. 1,60,975 to a proprietary concern of one of the partners of the firm. This was allowed as a deduction in the assessment of the firm for the assessment year 1984-85 completed in March 1985. As it was not an admissible deduction, the amount of interest should have been added back to the firms income Omission to do so led to under-assessment of income of Rs. 1,60,975 and a short levy of tax of Rs. 50,328 including interest for failure to file an estimate of advance tax in the hands of the firm. The tax effect in the hands of the partners is to be ascertained.

The internal audit party of the department had checked the assessment but the mistake escaped its notice.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(xvii) Under the Portuguese Civil Code followed in Goa, marriage as per the custom consists in communion, between the spouses, of all their estates, present and future not specifically excluded by the law. In the corpus as well as the income of the communion property of the husband and wife immovable as well as movable, the husband and the wife each have during the subsistence of the marriage, a fixed and certain half share. The half share of income from the communion property is chargeable to tax separately in the hands of each of the spouses; but this does not extend to the income earned by each spouse due to personal exertion, individual skill and specialised knowledge.

An assessee, a practising Chartered Accountant, was a partner in a firm of Chartered Accountants and derived income of Rs. 1,34,539 and Rs. 1,32,598 for the assessment years 1981-82 and 1982-83. Besides, the assessee had his independent professional practice as well, from which he showed loss for the two assessment years. The assessee returned only half of his professional share income from the firm and half of the loss from independent profession as his individual income, and his spouse returned the other half shares as her income for the two respective assessment years. This position was accepted by the Income-tax Officer in the assessments. As the income earned by the assessee using his personal skill and knowledge did not fall into the common estate, it was entirely assessable in the hands of the assesee as individual. The omission to assess the full income in the hands of the assessee resulted in underassessment of income of Rs. 1,17,504 for the assessment years 1981-82 and 1982-83 leading to a short levy of tax of Rs. 34,919.

The Ministry of Finance have stated that remedial action has been initiated.

3.13 Mistakes in the grant of export markets development allowance

Under the provisions of Income-tax Act, 1961, domestic companies and resident non-corporate assessees engaged in the business of export of goods outside India or for providing services or facilities outside India were entitled upto March 1983, to export

market's development allowance equal to the actual amount of qualifying expenditure plus an additional amount of one-third thereof as weighted deduction. Expenditure on distribution and supply of goods in India and expenditure wherever incurred on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit, did not qualify for this allowance. According to the amended provisions of the Act as applicable from 1 April 1981, expenditure incurred, *inter alia,* on obtaining information regarding market outside India for such goods, services, or facilities or on their supply, distribution or provision outside India would not qualify for weighted deduction while that incurred wholly and exclusively on the maintenance outside India of a branch office or agency for the promotion of their sale outside India continue to enjoy the benefit. Expenditure incurred on commission paid to foreign agents was entitled to the weighted deduction provided such expenditure was incurred outside India before 31 March 1978. It has been judicially held (February 1982) that the weighted deduction is admissible only in respect of expenditure incurred outside India and no such allowance is admissible in respect of expenditure incurred in India (146 ITR 425).

(i) In the assessment of six registered firms assessed in four Commissioner's charges for the assessment years 1977-78 to 1981-82 (assessed between December 1979 and November 1984) additional weighted deduction of one-third of expenditure incurred in India which under the provisions of the Act would not qualify for weighted deductions towards export markets development allowance, was allowed.

The details of the cases are as under :

Sl. No.	Assessee (Registered firm)	Assessment year	Nature of expenditure	Inadmissible weighted deduction allowed Rs.	Undercharge of tax Rs.
1	2	3	4	5	6
1.	A	1977–78	Insurance and freight charges incurred on transportation of goods outside India.	5,21,365	3,65,000
2.	B	1981–82	On various items in relation to exports which were not allowable.	5,54,715	3,27,971
3.	C	1981–82	Export sales commission, telex and foreign postage expenses.	3,54,398	2,62,000
4.	D	1981–82	Commission paid to foreign agency in India after 31 October 1978.	4,68,388	2,29,102
5.	E	1980–81	On various items in relation to exports in India which were inadmissible.	3,11,613	1,53,300
6.	F	1977–78 1978–79	Contributions to the export promotion fund.	3,22,704	1,24,105

The incorrect allowance of weighted deductions on the inadmissible items of expenses resulted in the undercharge of tax of Rs. 14,61,478 in the hands of these six firms and their partners.

The Ministry of Finance have accepted the mistake in one case; their comments in the remaining five cases are awaited (December 1986).

(ii) During the period 1 April 1978 to 31 March 1980, admissibility of the weighted deduction was subject to the further conditions that the assessee should be either a small-scale exporter or a holder of an Export House Certificate or engaged in the business of provision of technical know-how or rendering services in connection with that business to persons outside India.

In the case of an assessee-firm, weighted deduction of Rs. 1,43,417 was allowed, in the assessment year 1979-80 assessed in May 1982 and revised in July 1984 on expenditure incurred on development of export markets, although the assessee had not fulfilled any of the aforesaid conditions prescribed under the Act. The mistake resulted in under-assessment of income of Rs. 1,43,417 and consequent short levy of tax of Rs. 1,05,258 in the hands of the firm and its partners.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.14 Mistakes in valuation of closing stock

In order to determine the profits from business an assessee who maintains accounts on mercantile basis, may choose to value the closing stock of his business every year, at cost or market price, whichever is lower. It has been judicially held in September 1980 that the privilege of valuing closing stock in a consistent manner would be available only to a continuing business and that it cannot be adopted where a business comes to an end when stock on hand should be valued at the market price in order to determine the true profits of business on the date of closure of business (102 ITR 622). The Ministry

of Law also had confirmed this position in August 1982 and March 1984. The Central Board of Direct Taxes have not, however, issued any instructions in this regard for the guidance of assessing officers.

(a) Two of the three partners of a partnership firm retired on 27 October 1981, the last day of the previous year relevant to the assessment year 1982-83 and the third member formed a new partnership on 28 October 1981 taking in two new partners. The preamble to the partnership deed of the new firm executed on 10 November 1981 also mentioned that the old partnership was dissolved by a deed of dissolution dated 9 November 1981. The assessment in the case of the old firm for the assessment year 1982-83 was, however, completed (January 1984) on 'Nil' income adopting the value of the closing stock at Rs. 7.59 lakhs being its cost price as on 27 October 1981, without valuing it at market rate to ascertain the true profits of the firm on the date of its dissolution. In the absence of the relevant details, adopting the gross profit rate of 150 per cent (approx) the market value of the closing stock would come to about Rs. 18.98 lakhs and the amount of addition to be made to the taxable income of the assessee firm on this account would be about Rs. 11.39 lakhs involving short levy of tax of Rs. 7.80 lakhs (approx) in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A partnership dealing in textiles was dissolved on 1 January 1980, and the business was taken over by a new firm from that date. In computing the business income of the dissolved firm for the period ended 31 December 1979, relevant to the assessment year 1980-81 (assessment completed in August 1982 and revised in September 1984), the value of its closing stock at the time of dissolution was determined at Rs. 98,10,580 as returned, instead of at the estimated market value of Rs. 1,05,75,805 (based on the gross profit margin of 7.8 per cent). This resulted in under-assessment of income of Rs. 7,65,225 and consequent short levy of tax of Rs. 6,12,668 in the hands of the firm and its partners.

The assessment was checked by the internal audit party in November 1983 but the mistake was not pointed out by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) During the previous year relevant to the assessment year 1982-83, a registered firm consisting of nine partners was dissolved and its assets and liabilities were taken over by a closely held company. While completing the assessment of the firm for the assessment year 1982-83 in October 1984/November, 1984, the assessing officer adopted the value of the closing stock at cost price (Rs. 18,34,745) as returned by the assessee instead of valuing it at market price to ascertain the true profits of the firm on the date of dissolution. It was pointed out in audit in September 1985 that in the absence of the details regarding the market value of the stock, the gross profit ratio of 28.10 per cent has to be taken to determine the market value of the closing stock. Based on this, the value of the stock would have to be taken at Rs. 23,50,308. The omission to adopt this value resulted in under-assessment of income of Rs. 5,15,563 and a total short levy of tax of Rs. 3,72,173 in the hands of the firm and the partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) In the previous year relevant to the assessment year 1982-83 a registered firm having two partners, was dissolved in October 1981 to form a trust and as such the original partnership ceased to exist from November 1981. While completing the assessment for the assessment year 1982-83 in October 1984 the Income-tax Officer accepted the value of the closing stock at cost price of Rs. 36,13,098 as on the date of dissolution instead of at the market value to ascertain the true profits of the firm on the date of dissolution. By adopting the gross profit of 10 per cent (in the absence of other details), the market value of the closing stock worked out to Rs. 39,74,407. This resulted in under-assessment of income of Rs. 3,61,310 and an aggregate short levy of tax of Rs. 2.70 lakhs in the hands of the firm and its partners together with interest for belated filing of return.

The department has accepted the objection in principle.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(e) During the previous year relevant to the assessment year 1982-83, a registered firm was dissolved and its assets and liabilities were taken over by a closely held company which was a partner in the dissolved firm. Audit scrutiny (July 1984) revealed that while completing the assessment of the firm for the assessment year 1982-83 in February

1984, the assessing officer adopted the value of the closing stock at cost price i.e. Rs. 7,32,145 as returned by the assessee instead of valuing it at market price to ascertain the true profits of the firm on the date of dissolution. In the absence of the details regarding the market value of the stock on the basis of the gross profit ratio of 33 per cent, the market value of the closing stock would work out to Rs. 9,76,000 (approximately). The omission to adopt this value resulted in under-assessment of income of Rs. 2,44,000 (approximately) involving a total short levy of tax of Rs. 1,86,000 (approximately) in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) In one case, the business of the assessee individual, came to an end on account of conversion of proprietary business into firm. The closing stock of the business on the date of closure of the business was valued at the cost price instead of at the market price. The assessing officers did not adopt the market value of the closing stock in this case to determine the true profits while completing the assessment for the assessment year 1984-85 in January 1985. The omission resulted in under-assessment of income of Rs. 2,04,444 involving short levy of tax of Rs. 1,18,001.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(g) A registered firm was dissolved in April 1980 during the previous year relevant to the assessment year 1981-82. According to the dissolution deed, the fixed assets of the firm were revalued and these assets alongwith the other assets and liabilities were shared among the partners. However, the closing stock was not revalued at market rate. The assessing officer, in concluding the assessment under the direction of the Inspecting Assistant Commissioner, accepted the fact of dissolution of the firm but adopted the value of closing stock at the cost price only viz., Rs. 8,55,485 as returned by the assessee, instead of adopting its market value which, increased by gross profit ratio, in the absence of actual market rates, would work out to Rs. 10,58,398. The omission resulted in under-assessment of income by Rs. 2,02,915 involving short levy of tax of Rs. 1,14,548 in the hands of the firm and its partners.

The assessment was checked by the internal audit party of the department. This mistake was, however, not noticed by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.15 Mistakes in computation of trust income

(i) Under the provisions of Income-tax Act, 1961, where the individual shares of the persons on whose behalf or for whose benefit such income is receivable by a trust, are indeterminable or unknown, tax is chargeable on such income in the hands of the trust at the maximum marginal rate, as applicable from assessment year 1980-81 to the highest slab of income in the case of an association of persons as specified in the Finance Act of the relevant year. Where income is receivable under a trust declared by Will, tax is chargeable at the rates applicable to association of persons etc.

(a) In the cases of eleven oral discretionary family trusts which derived income from some main trusts of a particular family group and had as their beneficiaries each, some oral discretionary family trusts which in turn had individual beneficiaries, tax was charged for the assessment years 1981-82 and 1982-83 assessed in March 1983 at normal rate applicable to an association of persons instead of at the maximum marginal rate on the ground that none of the beneficiaries had other income chargeable to tax. It was, however, noticed (August 1984) that the individual beneficiaries were also beneficiaries in other trusts and had other income chargeable under the Act exceeding the maximum amount not chargeable to tax. Thus, viewed with reference to ultimate beneficiaries, the trusts should be treated as discretionary trusts and assessed accordingly at the maximum marginal rate of income-tax *i.e.* at sixty-six per cent as applicable for the assessment year 1981-82 and 1982-83. Omission to take into account this aspect resulted in short levy of tax of Rs. 4.16 lakhs for two assessment years 1981-82 and 1982-83.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the cases of 16 oral discretionary family trusts which derived income from some main trusts of a particular family group and had as their beneficiaries each, a pair of oral discretionary family trusts which in turn had 3 beneficiaries each, who were either minors or wives of adult members of the same family group, tax was assessed on the protective measure for assessment year 1981-82 at the normal rates applicable for an association of persons

in terms of the specific provisions of the Act. It was, however, noticed (February 1985) that the minors|wives who are the ultimate beneficiaries were also beneficiaries in more than one such trust and as such all these cases attracted levy of tax at the maximum marginal rate viz., 66 per cent for the assessment year 1981-82. The omission to charge the tax at the maximum marginal rates resulted in short levy of tax of Rs. 2,84,010 in the cases of thirteen beneficiary trusts. Tax effect in the other cases is yet to be ascertained.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) While assessing (February 1983) the income of a trust for the assessment year 1980-81 at Rs. 2,52,175 (which included an income of Rs. 2,17,717 on account of capital gains from the transfer of a property by the trust), no tax was charged as the shares of the beneficiaries in the income of the trust were treated as determinate and known. As per the terms of the trust deed, a male/female member would cease to be a beneficiary in the income of the trust after attaining the age of 30/40 years. It was, however, noticed in audit (October 1983) that during the period relevant to the assessment year 1980-81, 5 beneficiaries (including 3 sons of the same main beneficiary) were removed from the list of beneficiaries. As all of them could not have attained the age of 30 years at a time, the shares of the beneficiaries would be treated as indeterminate and unknown and the trust income should, therefore, have been charged at the maximum marginal rate. The omission led to under-assessment of income of Rs. 1,94,000 involving short levy of tax of Rs. 1,39,680.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The Income-tax Act, 1961, provides that a trustee appointed under a trust declared by a duly executed instrument is to be assessed as a 'representative assessee' in respect of the income he receives on behalf of the beneficiaries of the trust. The amount of tax payable by the trustee is the same as that payable by each beneficiary in respect of his beneficial interest if he were assessed directly. The Income-tax Officer has also the option to assess the income of the beneficiary directly. In cases, where the trustee is authorised to carry on business by the settlor on behalf of the beneficiaries, the status of the trustee is to be treated as an 'association of persons' as the trustee and the beneficiaries have common interest in the business carried on by the trust. According to the instructions issued by the Central Board of Direct Taxes in July 1985, in cases where the trustee is authorised to carry on business by the settlor on behalf of the beneficiaries, trustee in such cases is to be assessed as an association of persons.

While completing the assessment of a trust for the assessment year 1981-82 in February 1984, the assessing officer directed that the income of the trust as allocated in accordance with the trust deed would be assessed in the hands of the beneficiaries. It was noticed in audit (August 1984) that three of the beneficiaries were the trustees of the trust and were authorised to carry on business and that the trust carried on business for the benefit of the beneficiaries. The income of the trust should, therefore, have been assessed in its hands in the status of an association of persons. The failure to do so resulted in under-assessment of income of Rs. 4,38,710 involving short levy of tax of Rs. 3,57,313 including interest for short payment of advance tax.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.16 Incorrect allowance of depreciation

(i) The Income-tax Act, 1961, provides for grant of depreciation allowance on buildings, plant and machinery owned by an assessee and used for the purpose of business in computing the income from business. The rules prescribed in this regard provide for specific rates of depreciation ranging from 15 per cent to 100 per cent for certain items of plant and machinery and a general rate of 10 per cent (15 per cent from the assessment year 1984-85) in respect of machinery and plant for which no special rate of depreciation has been prescribed. Additional depreciation in respect of any new machinery or plant installed after 31 March 1980 but before 1 April 1985, is also to be allowed of an amount equal to 50 per cent of the normal depreciation (excluding extra shift allowance).

(a) A registered firm dealing in manufacture and sale of power presses, shearing machines etc. claimed and was allowed depreciation on its plant and machinery at the rate of 15 per cent against the prescribed admissible rate of 10 per cent while completing the assessments for the assessment years 1981-82 and

1982-83 in June 1983 and November 1983. Further, extra depreciation allowance on double shift working and additional depreciation on new machinery was also allowed at the rate of 7-1|2 per cent against the admissible rate of 5 per cent for these assessment years.

The above mistakes resulted in under-assessment of the income of the assessee firm to the extent of Rs. 3,68,096 and under-charge of tax of Rs. 2,25,520 in the hands of the firm and its partners.

The Ministry of Finance have accepted the mistake.

(b) Till the assessment year 1983-84, depreciation at 2.5 per cent was prescribed for different classes of buildings, while a general rate of 10 per cent, was prescribed for machinery and plant. Further, in determining the written down value of the assets, both normal depreciation and extra shift allowance are required to be taken into account.

In the assessment of a co-operative society for the assessment years 1979-80 and 1980-81 completed in August 1982 and August 1983 respectively, depreciation at 10 per cent as applicable to I class buildings was allowed on Road costing Rs. 4,14,703 in factory premises as against the admissible rate of 2.5 per cent. It was also noticed (April 1985) that the actual cost of the Road on this account was Rs. 3,01,251 only and the balance amount represented expenditure on site development, which would not qualify for depreciation. Besides, during the assessment year 1979-80, extra shift allowance of Rs. 43,06,400 was allowed on assessee's plant and machinery but the same was not deducted in arriving at the written down value of plant and machinery for the assessment year 1980-81. These mistakes resulted in excess allowance of depreciation of Rs. 33,939, Rs. 4,60,620 for the assessment years 1979-80 and 1980-81 with consequential potential short levy of tax of Rs. 2,27,308 for both the assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The Income-tax Act, 1961, provides in computing the business income of any year, for the grant of depreciation on buildings, plant and machinery and furniture owned by the assessee and used for the purpose of his business, calculated at specified rates on their written down value viz. the actual cost less all the depreciation allowed in the past years. Under the Income-tax Rules, 1962, extra shift allowance shall be allowed upto a maximum of one half of the normal depreciation allowance where the concern had worked double shift and upto the maximum of an amount equal to the normal allowance where it had worked triple shift. Ipso facto, where triple shift allowance is claimed for a particular period, there can be no separate claim for double shift allowance.

(a) In the assessment of an industrial co-operative textile mill for the assessment year 1980-81 completed in September 1983, the assessing officer allowed the set off of losses initial depreciation and also extra shift allowance carried forward from the earlier years. It was noticed in audit (August 1984) that for the assessment years 1979-80 and 1980-81, the depreciation already allowed in the earlier years was not deducted in arriving at the written down value for the purpose of calculating the current year's depreciation and it had resulted in depreciation being allowed each year on actual cost instead of on the progressively reduced cost. The mistake resulted in excess carry forward of depreciation of Rs. 1,73,222 for the assessment year 1979-80 and Rs. 3,54,602 for the assessment year 1980-81 involving potential tax effect of Rs. 2,40,490 for the two years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the assessment of an association of persons for the assessment year 1982-83 assessment of which was completed in December 1984, triple shift allowance of Rs. 22,63,424 equal to normal depreciation was allowed on plant and machinery as the concern had worked triple shift throughout the working season in the relevant previous year. In addition to triple shift allowance, double shift allowance of Rs. 11,31,712 at half the normal depreciation was also allowed. As full triple shift allowance was granted for the full working season, the assessee was not eligible for double shift allowance again separately. The irregular grant of double shift allowance resulted in excess computation of loss of Rs. 11,31,712.

The Ministry of Finance have accepted the mistake.

(iii) Depreciation on motor buses, motor lorries and motor taxis is admissible at 40 per cent if used in the business of running them on hire, otherwise the admissible rate is at 30 per cent.

(a) In the income-tax assessments of an individual engaged in the business of running tourist cars on hire, for the assessment years 1981-82, 1982-83 and 1983-84 completed in September 1982, March 1984 and March 1984, depreciation allowance of Rs. 3,78,104, Rs. 3,12,275 and Rs. 1,76,050 respectively was allowed by the department as claimed by the assessee. During the previous year relevant to the

assessment year 1981-82, the assessee enhanced the value of the tourist cars with reference to their conditions and prevailing market value and claimed depreciation for the assessment year 1981-82 at 40 per cent of the revalued cost. For the assessment years 1982-83 and 1983-84, the depreciation was claimed on the written down value derived from such revalued cost. As the depreciation is allowable only on the written down value determined with reference to the historical cost of an asset and not its market value, the mistake resulted in excess allowance of depreciation aggregating to Rs. 3,48,657 for the three assessment years and a total short levy of tax of Rs. 1,94,383.

The Ministry of Finance have stated that the assessments in these cases were completed under summary assessment scheme.

(b) In the assessment of a registered firm for the assessment year 1983-84 completed in October 1983 depreciation was claimed by the assessee in respect of its buildings and plant and machinery, at the higher rates applicable to the assessment year 1984-85 and the same was allowed by the assessing officer. The mistake resulted in excess allowance of depreciation to the extent of Rs. 46,220 on buildings and Rs. 93,637 on machinery. Similarly, the assessee's claim for depreciation on lorries at 40 per cent instead of at the correct rate of 30 per cent of their written down value was also allowed which resulted in allowance of excess depreciation of Rs. 26,343. The consequent aggregate underchange of tax worked out to Rs. 74,821 in the hands of the firm and one of the partners as also reduction of loss of Rs. 61,165 in the case of another partner.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) The income-tax assessments of a registered firm engaged in the business of sale of black granite slabs for the assessment years 1981-82 and 1982-83 were completed in March 1984 and December 1984 allowing depreciation at the rate of 40 per cent amounting to Rs. 2,08,832 and Rs. 3,73,552 respectively on lorries owned by the assessee firm. As the assessee firm was not dealing in the business of hiring out lorries but was only using them for the purpose of business, the depreciation was allowable at thirty per cent only. The adoption of the higher rate of depreciation resulted in under-assessment of income by Rs. 1,29,934 leading to under-charge of tax of Rs. 82,623 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) In the assessment of a registered firm engaged in the business of contract work and plying of motor vehicles on hire for the assessment year 1983-84 completed in March 1984, depreciation of Rs. 1,14,533 was allowed which included inter alia, depreciation for three motor vehicles. In the case of one vehicle, no depreciation allowance was admissible as it was not used for the purpose of hire/own business of the assessee in the relevant accounting year and in the case of the other two vehicles, depreciation was allowed twice i.e. once in computing business from contract work and second time in computing income from running of the motor vehicles on hire. The mistakes resulted in under assessment of income of Rs.1,13,583 involving short demand of tax of Rs. 62,196.

The Ministry of Finance have accepted the mistake.

(iv) With effect from 1 April 1981, depreciation at special rate of thirty per cent of the written down value is allowable on certain renewable energy devices which, inter alia, include any special devices including electric generators and pumps running on wind energy; otherwise the general rate as applicable for the machines using conventional engery is 10 per cent (15 per cent from assessment year 1984-85).

(a) During the previous year relevant to the assessment year 1983-84, an assessee acquired "310 KVA Diesel Generator" at a cost of Rs. 12,71,341 for the purpose of his business and claimed depreciation at the special rate of 30 per cent and extra shift allowance at 50 per cent of the normal depreciation which was allowed by the department. As the generator acquired by the assessee was run on diesel and not on wind energy, depreciation was admissible only at the general rate of 10 per cent and not at 30 per cent as claimed and allowed by the department. The department's omission to disallow the claim at the higher rate resulted in excess allowance of depreciation of Rs. 3,81,402 (including extra shift allowance of Rs. 1,27,134). This together with a minor computation mistake led to excess carry forward of unabsorbed depreciation to the extent of Rs. 3,14,318 and excess carry forward of investment allowance of Rs 76,425.

The Ministry of Finance have accepted the mistake.

(b) In 25 cases in one Commissioner's charge spread over assessment years 1980-81 to 1983-84 (assessments completed between December 1981 and March 1985) depreciation on generators other

than special energy devices was allowed by assessing officers at rates ranging from 15 per cent to 30 per cent instead of at the correct rate of 10 per cent. The incorrect grant of depreciation resulted in under charge of tax of Rs. 1,44,659 in the hands of the firms and their partners.

The Ministry of Finance have accepted the mistake.

(v) According to the depreciation schedule in the Income-tax Rules, 1962, depreciation is admissible on "mines and quarries machinery other than electrical and portable underground machinery", at the rate of 15 per cent of its actual cost. Depreciation at the rate of 30 per cent is admissible only on such portable underground and earthmoving machinery used in open cast-mining.

(a) In the assessments of a registered firm engaged in quarry work for the assessment years 1982-83 and 1983-84 completed in October 1983 and December 1985, depreciation on machinery and portable underground machinery, used in surface and underground quarry mining was allowed at the rate of 30 per cent instead of at the correct admissible rate of fifteen per cent. This resulted in under-charge of income of Rs. 1,80,409 and short levy of tax of Rs. 1,06,041 in the hands of the firm and its partners.

The Ministry of Finance have accepted the mistake.

(b) For the assessment year 1982-83, a registered firm engaged in the business of purchase and sale of minerals, mineral products etc., claimed a depreciation of Rs. 4,48,846 at forty per cent in respect of a "fronted loader" costing Rs. 11,22,115. This was allowed in the assessment completed in March 1985. As the earthmoving machinery used in mining activity was eligible for depreciation at thirty per cent only, the grant of depreciation at forty per cent was not admissible. The excess allowance of depreciation led to under-assessment of income by Rs. 1,12,212 with consequent short levy of tax of Rs. 96,703 including interest for belated filling of the return and short-fall in payment of advance tax in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) The deduction on account of depreciation is not allowable, if in any previous year the machinery, plant or furniture is sold. The Act further provides that where any depreciable asset is sold, the difference between the sale price and the written down value of the asset is chargeable to tax as income in the year in which the moneys payable for the assets sold became due.

In the assessment of an individual for the assessment year 1979-80 completed in November 1981, depreciation of Rs. 68,417 in respect of machinery sold on 31 July 1978 was allowed as deduction although it was not allowable. Likewise, the difference between the sale price and the written down value of the machinery sold was not assessed to tax in the assessment year 1979-80. The mistakes resulted in short levy of tax of Rs. 59,616.

The Ministry of Finance have accepted the mistake.

(vii) Under the provisions of the Income-tax Act, 1961, as applicable to the assessment years 1975-76 and 1976-77, initial depreciation equal to 20 per cent of the value is admissible in respect of new plant and machinery installed for production of one or more articles specified in the Ninth Schedule, in respect of the assessment year relevant to the previous year in which the plant and machinery were installed or put to use. Besides, in determining written down value of assets for purposes of allowance of depreciation both normal including extra shift and the additional depreciation are required to be taken into account and not the normal depreciation alone.

In the assessment of a registered firm for the assessment years 1980-81 to 1983-84, the assessee's claim for initial depreciation which was not admissible was incorrectly allowed. Besides, the amount of additional depreciation was not considered in determining the written down value of the plant and machinery. These mistakes resulted in under-assessment of tax of Rs. 61,931, inclusive of interest for delay in filing of return and under-estimation of advance tax in the hands of the firm and one of the nine partners for the four assessment years.

The case was checked by the internal audit party of the department but the mistakes were not pointed out by it.

The Ministry of Finance have accepted the mistake.

3.17 Incorrect grant of investment allowance.

(i) Under the provisions of the Income-tax Act, 1961, while computing the business income of an assessee, a deduction is allowed by way of investment allowance at twenty-five per cent of the actual cost of the machinery or plant installed in any industrial undertaking after 31 March 1976 for the purposes of construction, manufacture or production of any one or more of the articles or things except those specified in the Eleventh Schedule to the Act. The Act further provides for withdrawal of relief already allowed if

the assets are sold or otherwise transferred to any person at any time before the expiry of eight years from the end of the previous year in which the assets were acquired or installed. The right to investment allowance is lost even if the transfer of an asset results from a business re-organisation or expansion e.g., when a sole proprietary firm is formed into a partnership.

(a) During the previous year ending 30 June 1981 relevant to the assessment year 1982-83, a registered firm transferred certain machinery to a new firm. These items of the machinery had been acquired by the registered firm during the previous years relevant to the assessment years 1974-75, 1975-76, 1977-78 and 1978-79 and a total development rebate|investment allowance of Rs. 1,30,321 had been allowed by the department in the assessments of the respective assessment years. Consequent upon the transfer of the machinery within the specified period of eight years, the development rebate|investment allowance allowed in respect of these assets in the earlier assessment years was required to be withdrawn. This was, however, not done while completing the assessment for the assessment year 1982-83 in March 1985. The omission resulted in short levy of tax of Rs. 90,260 in the hands of the firm and its partners for the four assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A registered firm engaged in retreading of old tyres claimed a deduction of Rs. 79,255 towards investment allowance in respect of new machinery installed during the previous year relevant to assessment year 1981-82 which was allowed by the assessing officer while completing the assessment in October 1983. A sum of Rs. 99,465, being the unabsorbed investment allowance was also carried forward from previous years. Since the assessee firm was not engaged in the manufacture or production of any article or thing as specified in the Act, the investment allowance was not admissible to the assessee firm. The incorrect deduction of investment allowance amounting to Rs. 79,255 resulted in short-levy of tax of Rs. 46,031 in the hands of the firm and its partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) In the case of a registered firm running a flour mill for converting wheat into flour and other wheat products, the assessment for the assessment year 1982-83 was completed in December 1982 allowing a deduction of Rs. 1,63,678 on account of investment allowance. Part of the items of plant and machinery (on the cost of which the allowance was granted) was old and some of them would not fall under the category of plant and machinery. The grant of investment allowance was also not in order as the assessee was not an industrial undertaking engaged in the business of manufacturing of any article or thing. This resulted in under-assessment of income of Rs. 1,63,678 in the hands of the firm and under-assessment of tax of Rs. 38,490 in its hands. The short-levy of tax in the hands of the partners is to be ascertained.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Investment allowance is not admissible on road transport vehicles or on plant or machinery, the whole cost of which has been allowed as a deduction (whether by way of depreciation or otherwise) while computing business income.

The assessments of a firm for the assessment years 1980-81 and 1981-82 were completed in March 1983 and July 1983 after allowing investment allowance of Rs. 58,304 and Rs. 56,620 respectively as claimed by the assessee firm. Audit scrutiny revealed in August 1985 that for the assessment year 1980-81 investment allowance had been allowed on (i) rolling mill rolls costing Rs. 73,217, the entire value of which had been allowed as depreciation and (ii) for cranes costing Rs. 1,60,000, for which a depreciation at 30 per cent as applicable to transport vehicles had been allowed. For the assessment year 1981-82, the investment allowance had been allowed on rolling mill rolls costing Rs. 2,26,481, which amount had also been allowed in full as depreciation in that assessment year. As full value of rolling mill rolls had been allowed as depreciation and cranes were treated as road transport vehicles, no investment allowance was admissible in respect of such items. The department itself negatived the claim of investment allowance for the first item for the later assessment year 1982-83. The incorrect grant of investment allowance resulted in short levy of tax aggregating to Rs. 75,291.

The Ministry of Finance have accepted the mistake.

(iii) In the case of small scale industry, the allowance is admissible even in respect of machinery utilised for the manufacture of any article or thing

specified in the Eleventh Schedule. It has been judicially held (126 ITR 377) that the term 'industrial company' covers a construction company only when it is engaged in the construction of ships. Accordingly, other construction companies would not qualify for the investment allowance in respect of their plant and machinery.

In the assessment of an assessee registered firm, for the assessment year 1981-82 completed in February 1984, a deduction of Rs. 1,78,500 was allowed by way of investment allowance on newly acquired machinery of value of Rs. 7,14,005 installed in its two branches. While in one branch, the machinery was let out to a sub-contractor, in the other branch the assessee was engaged in civil/works contracts only. As the assessee was not engaged in the construction, manufacture or production of any article or thing, the grant of investment allowance was not in order. The incorrect allowance resulted in a short levy of tax of Rs. 47,124 in the hands of the assessee firm alone. The corresponding tax effect in the hands of the partners is yet to be ascertained.

The Ministry of Finance have accepted the mistake.

(iv) Under the provisions of the Income-tax Act, 1961, where the income of an assessee for any assessment year is not sufficient to absorb the investment allowance allowable on new plant and machinery owned and installed by an assessee in his business after 31 March 1976, the allowance has to be restricted to such amount as is sufficient to reduce the total income to 'nil' and any portion of the investment allowance which remains unabsorbed shall be carried forward to the next assessment for set off. Where the assessee is a registered firm, any business loss which cannot be set off against any other income of the firm would be apportioned between the partners of the firm for set off and carried forward for set off. However, the unabsorbed investment allowance is not so eligible to be allocated to the partners but shall be carried forward for set off in later assessment years.

In the case of two registered firms, the assessing officer determined the losses for the assessment years 1983-84 and 1984-85 at Rs. 1,70,710 and Rs. 3,61,170 respectively which included unabsorbed investment allowance of Rs. 1,23,149 and Rs. 1,79,270 respectively. These losses including the investment allowance were allocated to the partners. The mistake in allocating also the unabsorbed investment allowance instead of carrying forward the investment allowance in the hands of the firms themselves resulted in a potential short levy of tax of Rs. 43,264 for the assessment years 1983-84 and 1984-85 in the hands of the partners.

Both the assessments were checked by the internal audit party of the department but the mistakes were not noticed by it.

In another case of a registered firm in the assessment for the assessment year 1982-83 (completed in October 1982), the unabsorbed investment allowance of Rs. 1,24,161 was similarly allocated to the partners instead of being carried forward in the hands of the firm resulting in short levy of tax of Rs. 30,661 in the hands of the partners.

The Ministry of Finance have accepted the mistake.

3.18 Mistake in the allowance of depreciation, investment allowance and development rebate

(i) Under the provisions of the Income-tax Act, 1961, depreciation, initial depreciation and investment allowance etc., are allowed with reference to the actual cost of the assets to the assessee reduced by that portion of the cost thereof, as has been met directly or indirectly by any other person or authority. The Central Board of Direct Taxes clarified in March 1976 that the subsidy received from the Central Government for establishing industrial units in selected backward areas constitute capital receipts in the hands of the recipient and as such the grant made in relation to acquisition of assets, would have to be reduced from the cost of the assets for the purpose of allowing depreciation etc., on such assets.

(a) An assessee firm engaged in the manufacture and sale of plywood, received a central subsidy of Rs. 4,22,520 towards the cost of its assets in the previous year relevant to the assessment year 1983-84 but in computing depreciation and investment allowance on the assets in the assessment made in May 1984, the subsidy was not deducted from the value of the assets. Omission to do so resulted in excess allowance of depreciation, extra shift allowance, additional depreciation and investment allowance, to the extent of Rs. 4,22,520 in all and a short levy of tax of Rs. 3,42,434 including interest for late filing of the return and short payment of advance tax in the hands of the firm and its partners.

The assessment was checked by the internal audit party of the department but the mistake was not noticed by it.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the case of a co-operative society, running a spinning mill, a part of the cost of plant and machinery was met by subsidy amounting to Rs. 15 lakhs received from the Industrial Finance Corporation of India in the previous year (ending 30 June 1979) relevant to the assessment year 1980-81. The machinery was, however, put to use during the accounting year 1980-81 relevant to the assessment year 1981-82. Accordingly, in computing depreciation and investment allowance for the assessment year 1981-82, in February 1984, the said sum was required to be deducted from the cost of the assets, which was not done. The omission resulted in excess allowance of depreciation of Rs. 1.5 lakhs and invesment allowance of Rs. 3.75 lakhs. Consequently, unabsorbed depreciation allowance and investment allowance was computed in excess by Rs. 5.25 lakhs with potential tax effect of Rs. 2,26,600 when adjusted against income in subsequent years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) In the previous years relevant to the assessment years 1980-81 and 1982-83, a registered firm received a cash subsidy of Rs. 4,93,196 in two instalments i.e. Rs. 4,61,366 in assessment year 1980-81 and Rs. 31,830 in assessment year 1982-83. This amount was however, not deducted from the cost of plant and machinery for the purpose of computing the depreciation allowance admissible in the asesssments for these assessment years completed in March 1983 and March 1985 respectively. Further, depreciation on plant and machinery was claimed and allowed at fifteen per cent. As the machinery used in solvent extraction plant did not fall under any of the categories for which special rates of depreciation are prescribed in the Schedule to Income-tax Rules, 1962, depreciation at the normal rate of ten per cent only was admissible.

The mistakes in computing depreciation allowance in assessment year 1980-81 resulted in excess carry forward of investment allowance to the extent of Rs. 2,64,464 with a potential tax effect of Rs 71,123. Excess grant of depreciation had the effect of reducing the business loss apportioned among the partners to the extent of Rs. 3,51,085 and Rs. 1,05,112 respectively, in the assessment years 1981-82 and 1982-83.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) In the assessment of an individual for the assessment year 1979-80 completed in September 1982, a deduction on account of depreciation and investment allowance was allowed on the actual cost of the plant and machinery without reducing it by the amount of central subsidy of Rs. 1,19,118 received by the assessee. This resulted in excess allowance of depreciation and investment allowance of Rs. 35,736 and Rs. 29,779 respectively. This, together with another minor mistake in the computation of depreciation of Rs. 1,425 resulted in under-assessment of income of Rs. 66,940 and a consequent short levy of tax of Rs. 63,895 including interest for short payment of advance tax.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the computation of business income of an assessee, the Income-tax Act, 1961, provided (upto 31 May 1974/May 1977) for grant of development rebate in respect of plant and machinery installed for use in his business at the rates specified in the Act. Further development rebate would be allowed only if the assessee furnished the prescribed particulars in respect of plant and machinery installed and put to use and debited 75 per cent of development rebate allowed to the profit and loss account of the previous year in which deduction was allowed and credited it to a reserve account called 'development rebate reserve account'. The right to development rebate already allowed would be lost if the 'reserve so created' is utilised during a period of eight years following the said previous year except for the purpose of business of the undertaking. A distribution by way of dividend or profits or remittance outside India as profits or for the creation of any asset outside India would not, for the purpose be treated as utilisation for the business of the undertaking.

During the previous year ended 31 March 1972 relevant to assessment year 1972-73, an assessee (a registered firm) had created a development rebate reserve of Rs. 1,09,078. During the previous year ended 31 March 1980 relevant to assessment year 1980-81, the assessee transferred a sum of Rs. 1,07,208 from the development rebate reserve account to the profit and loss account. As the reserve was transferred to the profit and loss account

before the expiry of eight years, the development rebate originally allowed was required to be withdrawn. This was not done. Omission to do so resulted in excess carry forward of loss by Rs. 1,09,078 and a short levy of tax in the hands of the partners at Rs. 81,307.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.19 Irregular carry forward and set off of unabsorbed development rebate

Under the Income-tax Act, 1961 prior to introduction of scheme of investment allowance through Finance Act 1976 effective 1 April 1976, development rebate was allowable in respect of new machinery plant installed by an assessee and wholly used for the purpose of his business or profession. If the total income of the assessee falls short of the full amount of the development rebate allowable, the unabsorbed development rebate is carried forward for adjustment against the income of the succeeding eight assessment years. Similar provisions exist for carry forward and adjustment of depreciation, investment allowance and business loss. According to the circular of the Central Board of Direct Taxes issued in July 1976, such carry forward allowance and losses, have to be allowed in a given order of priority viz., current depreciation, carried forward business loss, unabsorbed depreciation, unabsorbed development rebate, current development rebate, unabsorbed investment allowance and current investment allowance.

The total income of a co-operative society, for the assessment years 1980-81 and 1981-82 was determined as 'nil' in the assessments completed in March 1983 and November 1983 respectively after set off of carried forward amounts. The assessee had been incurring losses and had been carrying forward the same for adjustment against the profits of later assessment years. It was, however, noticed in audit in June 1984 that the business losses and the other unabsorbed amounts like depreciation, development rebate and investment allowance of the various years were adjusted in the chronological order in the assessment years 1975-76, 1980-81 and 1981-82 instead of in order of priority in which they were required to be adjusted. Had the correct order of priority been followed, the unabsorbed development rebate aggregating to Rs. 12,87,495 relating to the assessment years 1971-72 to 1973-74 would not be available for adjustment upto the assessment year 1981-82 (the last of the eight succeeding assessment years provided under the Act) during which the development rebate relating to the relevant assessment years could be carried forward. This resulted in irregular adjustment of the development rebate amounting to Rs. 12,87,495 in the assessment years 1975-76 and 1980-81.

The Ministry of Finance have accepted the mistake.

3.20 Incorrect computation of capital gains tax

(i) Under the provisions of the Income-tax Act, 1961, as applicable upto the assessment year 1982-83, where a capital gains arises from the transfer of a house property owned by the assessee and used mainly as a residence by him or his parents for the two years immediately preceding the date of transfer, and the assessee has, within a year before or after that date purchased or has within a period of two years after that date constructed another house property for the purpose of his own residence, then the excess, if any, of the capital gains over the cost of the new house property alone is chargeable to tax as income of the previous year in which the transfer took place. According to the instructions issued by the Central Board of Direct Taxes in August 1977, the relief was available only to an individual transferring the house property and not to a Hindu undivided family. It has been judicially held (July 1978) that the relief is not available in respect of house property transferred by a Hindu undivided family.

(a) A Hindu undivided family sold a house property in July 1978 and earned a capital gains of Rs. 3,38,000. The assessee claimed the capital gains as exempt from tax as he had purchased another house for Rs. 5,50,000 within one year of the sale of property. The assessment of the assessee for the assessment year 1979-80 was completed in March 1982, in a summary manner accepting the income returned. The assessee being a Hindu undivided family, no exemption was to be allowed on the capital gains. This mistake resulted in under assessment of income of Rs. 3,38,000 and a short levy of tax of Rs 1,75,760.

The Ministry of Finance have stated that the assessment in this case was made in a summary manner.

(b) The capital gain amounting to Rs. 1,19,894 which arose on the sale of an old house and some land by a Hindu undivided family in the assessment year 1982-83 assessed in March 1985, was not brought to tax by the assessing officer on the ground that a new residential house had been purchased within the

prescribed time. The assessee being a Hindu undivided family was not entitled to the relief from capital gains. The incorrect relief allowed resulted in under-assessment of income by Rs. 1,04,676 and short levy of tax of Rs. 69,086.

The Ministry of Finance have accepted the mistake.

(c) An individual sold his land aggregating a total area of 11.16 grounds and a residential house thereon for a consideration of Rs. 10.80 lakhs during the previous year relevant to the assessment year 1982-83. The consideration was invested in the purchase of a new house (Rs. 8 lakhs) and savings certificates (Rs. 2.75 lakhs). In the assessment completed in March 1985, the capital gain was computed at Rs. 9,40,000 and the excess of Rs. 1,40,000 over the cost of new house viz., Rs. 8 lakhs was assessed to tax as long term capital gains.

The wealth-tax assessment records of the assessee, however, disclosed that for the purpose of levy of wealth-tax, the department had determined the excess land held by the assessee as 8.43 grounds, after deducting the space occupied by building as per the floor space index. As the exemption under the Income-tax Act, was applicable to the capital gains arising on the sale of a residence and not on the sale of vacant land, the capital gains attributable to the above land viz., Rs. 4,70,000 was taxable. The incorrect grant of exemption resulted in short levy of tax of Rs. 1,60,875.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) When the new house property is transferred within a period of three years from the date of its purchase or construction, the amount of capital gain arising therefrom, together with the amount of capital gains exempted earlier will be chargeable to tax in the year of sale of the new house property.

An individual, during the previous year relevant to the assessment year 1978-79, sold his residential house constructed at a cost of Rs. 1,01,629 in November 1974 for a consideration of Rs. 2,50,000. As the assessee completed the construction of a new house in December 1979 at a total cost of Rs. 1,51,000, the capital gain of Rs. 1,48,371 arising out of the transfer of the house property was exempted from tax in the assessment year 1978-79. Audit scrutiny revealed (November 1983) that the assessee sold the new house also in December 1981, for a consideration of Rs. 2,00,000. Though the new house was sold within the prohibited period of three years of its acquisition, neither the assessee returned the capital gains nor the assessing officer considered the capital gain together with the capital gains exempted earlier for taxation in the assessment year 1982-83. The omission resulted in non-assessment of short-term capital gain of Rs. 1,97,371 and a short levy of tax of Rs. 1,07,384.

The Ministry of Finance have stated that the assessments in this case was completed under the summary assesments scheme.

(e) An assessee sold his house property in November 1978 for a consideration of Rs. 3,80,000 and purchased another flat for Rs. 1,08,000 in November 1980. While completing the assessment for the assessment year 1979-80 in March 1982, the assessing officer disallowed the assessee's claim for exemption from capital gains tax in respect of the sum of Rs. 1,08,000 on the ground that the house property which was sold was not wholly used by the assessee for his residence. The claim for exemption was, however, allowed (August 1982) based on appellate orders, though the assessee had purchased the flat only in November 1980 after the expiry of the period specified under the Act, the fact of which was also not brought to the notice of the appellate authority. The irregular exemption allowed resulted in under-assessment of income by Rs. 1,08,000 and a short levy of tax of Rs. 86,690.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) In the previous year relevant to assessment year 1981-82, an assessee had sold his house property for Rs. 1,20,000 and purchased a new flat in May 1980 for Rs. 1,40,000 and claimed exemption of the capital gains of Rs. 52,965 which was allowed by the department. The assessee sold this new flat in October 1981 i.e., within a period of three years of its purchase, as such the capital gain already exempted should have been taxed. While completing the assessment for the assessment year 1982-83 in December 1983, in a summary manner, the said capital gain was, however, not subjected to tax. The omission resulted in under-assessment of short term capital gain of Rs. 52,965 involving short-levy of tax of Rs. 31,327.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The Income-tax Act, 1961, provides that the income chargeable under the head "capital gains" shall be computed after deducting from the full value of the consideration for transfer of the capital asset,

the expenditure incurred wholly and exclusively in connection with the transfer and the cost of acquisition of the capital asset and improvement thereo. The cost of improvement includes expenditure of a capital nature and not the cost of furniture, fixtures and fittings.

(a) An individual purchased a property located in a city in December 1980 for Rs. 3,50,000. The property was vacant throughout the calendar year 1981 and was let out on rent in January 1982. In June 1982 within a period of six months, the assessee sold the property for a sum of Rs. 8 lakhs and returned a capital gain of Rs. 71,000 for the assessment year 1983-84 after deducting, inter alia, from the consideration, a sum of Rs. 2,16,000 towards "tenancy vacancy" expenses. In the assessment for the assessment year completed in March 1985, the assessing officer also allowed the claim. As the expenses did not represent expenditure wholly and exclusively incurred in connection with the transfer and no tenancy rights was possible in a period of six months, the allowance of tenancy charges of Rs. 2,16,000 was incorrect. This resulted in under charge of tax of Rs. 1,36,770.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the assessment for the assessment year 1982-83 completed in March 1985 of an assessee a long-term capital gain of Rs. 2,43,000 on the sale of a flat was assessed to tax. The cost of acquisition of the flat for the purpose of capital gains was shown as Rs. 1,90,000. From the copy of the purchase agreement it was seen that the previous owner of the flat had fully furnished the flat and had rented it out together with furniture, fixtures and fittings at a monthly rent of Rs. 2,000 for the flat and Rs. 1,000 for the use of the furniture etc., and the assessee had purchased the flat along with the furniture, fixtures and fittings for Rs. 1,90,000. As the cost of acquisition does not include the cost of furniture, fixtures and fittings, the same should have been excluded in arriving at the real cost of acquisition. The cost of furniture, fixtures and fittings was not available separately in the records. On a pro-rata basis the cost of acquisition of the flat without furniture, fixtures and fittings would be Rs. 1,26,667 and the net long term capital gains on the basis of this cost would be Rs. 3,51,250 as against Rs. 2,43,000 returned by the assessee and assessed. Incorrect computation of the long term capital gains resulted in underassessment of income of Rs. 1,08,250 and a consequent short-levy of tax of Rs. 1,00,736 including interest for late filing of the income-tax return and for not filing an estimate of advance tax payable.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) While working out the capital gains arising on the sale of a house property for Rs. 3,33,000 in December 1981, in the assessment of an individual for the assessment year 1982-83 completed in February 1985, the assessing officer allowed a deduction of Rs. 2,74,350 as cost of acquisition of the property based on the valuation report as on 31 March, 1971 filed by the assessee along with the return. It was noticed in audit (August 1985) that the actual cost of acquisition of the property amounted to Rs. 84,520 (Rs. 77,420 cost of building plus Rs. 7,100 cost of plot) as per the valuation report filed at the time of first assessment to property income. The incorrect adoption of cost of acquisition resulted in excess allowance of deduction of Rs. 1.89,830 involving short-levy of tax of Rs. 91,303 including interest for belated filing of return and short payment of advance tax.

The department has accepted the objection.

The comments of the Ministry of Finance on the pargraph are awaited (December 1986).

(iii) Where a capital gain arises to an individual from the transfer of any long term capital assets, being a residential house and the assessee has within a period of one year before or after the date of transfer purchased, or has within a period of three years after that date, constructed a residential house, the capital gains tax shall be charged only on the excess, if any, of the capital gain over he purchase price or cost of construction. This position applies in case where the individual completes the purchase or construction of the house in the previous year in which the capital gain arose but where the purchase or construction is delayed beyond that year, no exemption from capital gains tax is initially allowed in the assessment completed for that year. The Board has clarified in September 1973 that in cases of delay as mentioned above the assessee should disclose the capital gain in the reforms of income of the relevant year.

In the assessment of an individual for the assessment year 1984-85 completed in November 1984 in a summary manner, the sale proceeds of residential building sold for Rs. 4,70,000 by her in November 1983 was not considered for capital gains tax for the reason that the assessee had indicated in the return her intention to utilise the sale pro-

ceeds for the construction of a residential property within three years from the date of sale and claimed exemption of capital gain. As there is no provision in the Act to exempt capital gains on the basis of mere intention to comply with the requirements of law, the capital gain should have been taxed for 1984-85 and later, the assessment should have been rectified on fulfilment of the prescribed conditions. The incorrect allowance of exemption of capital gain resulted in short-levy of tax of Rs. 1,34,484 including interest for delay in filing of returns.

The Ministry of Finance have stated that the assessment in this case was completed under the summary assessment scheme.

(iv) Under the provisions of the Income-tax Act 1961, any profits and gains arising from the transfer of a capital asset are chargeable to income-tax under the head 'capital gains'. Capital gains are computed by deducting from the full value of the considtration received, the cost of acquisition of the asset including the cost of any improvements thereto and the expenditure incurred wholly and exclusively in connection with the transfer. For this purpose, where the capital asset transferred, became the property of the assessee before 1 January 1964, the assessee is given the option of adopting the fair market value of the property as on 1 January 1964 as the cost of its acquisition. The Act further provides for the exemption of the amount of capital gain fully from tax, if the entire net consideration received as a result of such transfer is invested or deposited in any of the specified assets within a period of six months from the date of such transfer. If only a part of the net consideration is so invested or deposited, a proportionate part of the capital gain would be exempt from tax.

(a) In the assessment of a Hindu undivided family, for the assessment year 1978-79 completed in April 1981, for computing capital gains arising from the sale of a capital asset for Rs. 10,00,000 acquired before 1 January 1964, deemed cost of acquisition was taken at Rs. 8,20,000 by the assessing authority. However, in wealth-tax appeal cases of the assessee for the assessment years 1964-65 and 1965-66, the Appellate Tribunal had determined its market value at Rs. 6,77,000. The incorrect adoption of the fair market value of the asset as on 1 January, 1964 by the assessing authority resulted in non-charging of capital gains of Rs. 1,43,000 and consequent short-levy of tax of Rs. 80,903.

The Ministry of Finance have accepted the mistake.

(b) In the assessment of an individual for the assessment year 1982-83 (assessed in February 1983) the capital gains arising from sale of a house site was computed at Rs. 2,69,400 taking the fair market value of land as on 1 January, 1964 as Rs. 1,87,110 at Rs. 35 per square yard. The assessment records disclosed that the assessee had earlier sold in June 1970, another portion of the same site measuring 400 square yards at Rs. 13 per square yard. The value of the site in 1964 has necessarily to be far less than Rs. 13 per square yard. Even if the rate of Rs. 13 per square yard is adopted as the fair market value as on 1 January 1964, the capital gains worked out to Rs. 3,62,612 as against Rs. 2,69,400 adopted. This led to a short demand of tax of Rs. 61,466.

The Ministry of Finance have accepted the mistake.

(c) During the previous year relevant to the assessment year 1979-80, an individual sold land measuring 2.14 acres with buildings thereon for a consideration of Rs. 14 lakhs and was assessed on a capital gains of Rs. 17,143 in the assessment completed in November 1984. The assessee had deposited Rs. 12 lakhs within the specified period out of the above sale consideration in nationalised bank for a period of five years and three months and had computed the capital gains as Rs. 1,20,000 estimating at his option the value of the property (acquired prior to 1 January 1964) as on 1 January 1964 at 40 per cent of the balance amount of sale consideration of Rs. 2,00,000, which was accepted by the assessing officer.

This was not correct as the estimated cost of acquisition cannot be based on the balance of net consideration retained by the assessee and the capital gain has to be arrived at by deducting the cost of acquisition from the full value of the consideration. On the basis of the value adopted in the wealth-tax assessment of the assessee for the asset as on 31 March 1964 viz., Rs. 3,06,800 and assuming the cost as on 1 January 1964 as Rs. 3,00,000 the capital gain would work out to Rs. 1,57,000 instead of Rs. 17,143 as assessed. The mistake resulted in under-assessment of capital gains by Rs. 1,39,850 and a short levy of tax of Rs. 61,180.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) Where the capital asset becomes the property of the assessee on any distribution of assets on the total or partial partition of a Hindu undivided family, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost

of any improvement of the asset incurred or borne by the previous owner or the assessee as the case may be.

During the previous year relevant to the assessment year 1982-83, a Hindu undivided family sold a plot of land for Rs. 1,79,050. The asset had been acquired by the assessee on a partition of another Hindu undivided family in September 1978. In the deed of partition, the value of the asset which was acquired in exchange of another property was shown as Rs. 30,000 which should have been taken as the cost of acquisition while computing the capital gains in respect of the property in the assessment for the assessment year 1982-83 completed in March 1983 in a summary manner instead of Rs. 1,50,000 as claimed and accepted by the assessing authority in this case. Incorrect computation of capital gains resulted in short-levy of tax of Rs. 68,877 including interest for the belated filing of return.

The department has accepted the objection.

The comments of the Ministry of Finance on the the paragragh are awaited (December 1986).

3.21 Omission to levy capital gains tax

(i) Under the provisions of Income-tax Act, 1961, any profits or gains arising from the transfer of a capital asset are chargeable to income-tax under the head "capital gains". For the purpose of computation of capital gains the term 'transfer' has been defined to include sale, exchange or relinquishment of an asset or exting wishment of any right therein. However, the Act also provides that the distribution of assets among the partners of a firm on its distribution or vice versa does not amount to transfer and, therefore, does not attract the capital gains tax. It has been judicially held (September 1985) that if the transfer of the personal asset is merely a device or ruse for converting the asset into money which would remain available for the benefit of the assessee without liability to income-tax on a capital gain, it is open to the income-tax authorities to go behind the transaction and decide the issue of capital gain with reference to certain tests laid down therein for determining whether a transaction is a sham or an illusory transaction (156 ITR 509 SC) like the real need for the capital contribution, whether the personal asset was sold by the partnership soon after transfer etc. In yet another case the Supreme Court has ruled (April 1985) that tax planning may be legitimate provided it is within the frame-work of law and that colourable devises cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious means (154 ITR 148 SC).

A firm constituted in January 1980 by two partners with equal shares admitted to partnership a third partner in June 1982, a private limited company in which one of the partners of the firm had fifty per cent share as a director. The firm was dissolved in November 1983 and the third partner (the private limited company) took over the entire business of the firm. On the date of dissolution, the assets of the firm were revalued at Rs. 37,11,600 as against the book value of Rs. 24,55,123. No capital gain was however, returned as according to the letter of the law there was no transfer. However, by adopting the ruse of introducing a company as a partner and later on dissolving the firm within a short period to enable the company to take over the firm's business, the other two partners ensured accretion of considerable wealth to themselves without any liability to capital gains tax. As the Supreme Court had refused judicial benediction to such colourable devises as tax planning the transaction should be regarded as a transfer and the difference Rs. 12,56,477 between the value of the assets credited to the company's accounts and the book value should have been treated as capital gains. Omission to bring to charge the capital gain resulted in non-levy of capital gains tax of Rs. 5,57,082.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the provisions of the Income-tax Act, 1961, any profit or gains arising from the transfer of capital asset effected in the previous year shall be chargeable to income-tax under the head 'capital gains' and shall be deemed to be the income of the previous year in which the transfer took place. Capital gain on the transfer of a capital asset is computed with reference to the cost of acquisition of the asset or where the capital asset became the property of the assessee before 1 January 1964, at the option of the assessee, the fair market value of the asset as on that date. Where compensation was awarded subsequent to the year of transfer in respect of assets acquired under any law, the department is empowered to issue a revised order within the specified time limit to bring to charge in the year of transfer, the quantum of compensation which does not enjoy exemption.

(a) In the case of an individual, land measuring 44.11 acres was acquired by the State Government the possession where of was taken over by the Land Acquisition Officer on 5 January 1972 i.e. during the previous year relevant to the assessment year 1972-73. The compensation of Rs. 3,56,235 in respect of the acquisition of the land was however, awarded in July 1978 i.e. during the previous year relevant to the assessment year 1979-80. The assessee returned a

capital loss of Rs. 1,765 in the return of income for the assessment year 1979-80 after deduction of Rs. 3,53,000 as the fair market value of the land on 1 January 1964 and Rs. 5000 as the statutory deduction. The fair market value of the property on 31 March 1976 as determined by approved valuer was Rs. 3,08,770 and on this basis the fair market value of transferred land as on 1 January 1964 could not be more than Rs. 2,10,000 assuming a rate of appreciation in value at 10 per cent of every three years. The capital loss as returned was, however, accepted by the assessing officer in the assessment or the assessment year 1979-80 completed in March 1982. As the acquisition of land was made in January 1972, the transfer of land would be deemed to have taken place in the previous year relevant to the assessment year 1972-73. The entire profits and gains arising from the transfer of capital assets was accordingly chargeable to tax as income of the previous year relevant to the assessment year 1972-73 in which the transfer took place. The department should have considered initiation of proceedings for levy of tax on the income escaping assessment during the assessment year 1972-73 after taking approval of the Board in accordance with the provisions of the Act. Omission to do so resulted in income escaping assessment to the tune of Rs. 2,26,350 involving a short levy of tax of Rs. 1,77,557, besides non levy of interest of Rs. 2,96,425 for non-filing of return. The penalty proceedings for non filing of return are also to be quantified.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) Four persons jointly pruchased an estate comprising of land, buildings, sheds and other installation for Rs. 1,10,700 on 17 December 1968 and constituted a firm on 17 January 1969 to derive, inter-alia, renal income from the properties. In the assessment for the assessment year 1970-71 completed in January 1971, the assessing officer refused registration to the firm on the ground that the firm had not carried on any business during the year and assessed it as an 'association of persons'. The rental income was, however, assessed in the hand of partners treating them as 'co-owners' under the specific provisions of the Act relating to the computation of income from house property, where the shares are definite and ascertainable. The assessee sold the properties in August 1981 for a consideration of Rs. 5,50,000. In the assessment of the assessee for the assessment year 1982-83 completed in February 1984, the assessing officer taxed the long-term capital gains of Rs. 4,40,000 arising from such transfer in the hands of each of the four co-owners instead of in the status of association of persons. The omission resulted in short levy of tax of Rs. 91,896.

The Ministry of Finance have accepted the mistake.

(c) In the wealth-tax return for assessment year 1979-80, an individual disclosed that a bungalow belonging to him had been acquired by the State Government at an expected cost of Rs. 2,07,000, the value of which had all along been disclosed by the assessee as Rs. 65,000. The award for compensation money (Rs. 2,07,410) had been finalised by the Land Acquisition Officer in December 1977 (though the payment was made in June 1980). Thus, assessable capital gains arising from the transfer of capital asset became due to the assessee in the previous year relevant to assessment year 1978-79. But, neither the assessee showed any capital gains in his return for the assesment year 1978-79 (filed on 12 August 1978) nor had the department computed the capital gains while completing the assessment in March 1981. Omission to bring the capital gains of Rs. 1,42,410 to tax resulted in under charge of tax of Rs. 56,652.

The Ministry of Finance on have accepted the mistake.

(iii) A registering authority appointed under the Indian Registration Act, 1908, shall not register any document purporting to transfer, assign, limit, or extinguish the right, title or interest of any person to or in any property valued at more than Rs. 50,000 unless the person concerned produces before such authority, a tax clearance certificate from the Income-tax Officer to the effect that such a person has either paid or made satisfactory provision for payment of all existing tax liabilities.

A Hindu undivided family sold 3.25 acres of land acquired in the previous year relevant to the assessment year 1976-77 through a family settlement in the previous year relevant to the assessment year 1983-84 to two companies for a total sale consideration of Rs. 3.70 lakhs. The tax clearance certificates were issued to the assessee (in May 1982 and July 1982) on the basis of a bank guarantee furnished by the assessee for a sum of Rs. 30,000 towards the probable capital gains tax. However, neither the assessee returned the capital gains for assessment in the assessment year 1983-84 nor did the department initiate assessment proceedings in this regard. The cost of acquisition of land being Rs. 65,000 (at Rs. 20,000 per acre as declared by the assessee in the wealth-tax assessment for the assessment year 1976-77) there was escapement of capital gains of Rs. 3,05,000. This resulted in non-levy of tax of Rs. 1,20,370.

The Ministry of Finance have accepted the mistake.

(iv) With regard to the National Defence Gold Bonds 1980, which matured for conversion on 27 October 1980, the Government of India, Ministry of Finance had clarified in September 1980 that transfer of the National Defence Gold Bonds after redemption would attract Capital gains tax and that for the purposes of computation of capital gains, the cost of acquisition of gold would be the market value of the Bonds on the date of redemption. For this purpose, the deemed cost of such Bonds maturing on 27 October 1980 is to be taken at Rs. 1,460 (per ten grammes) as the market value, irrespective of the actual cost of the Bond.

For the assessment year 1982-83, an individual returned a short term capital loss of Rs. 18,415 on the sale of gold received on National Defence Gold Bonds which matured for conversion on 27 October 1980. For working out the capital loss the cost price of the gold was taken at Rs. 1,680 per ten grammes for 2,500 grammes of the gold and at Rs. 1,655 per ten grammes for 3052 grammes of the gold. Taking the cost of acquisition at Rs. 1,460 per ten grammes, the market value of the bonds on the date of redemption, the sale of gold should have resulted in a capital gain of Rs. 96,099 instead of the short term capital loss of Rs. 18,415. Incorrect computation of capital gains resulted in short-levy of tax of Rs. 59,441, including interest for belated filing of the return.

The Ministry of Finance have stated that the assessment in this case was completed under the summary assessment scheme.

3.22 Mistakes in the assessments of firms and partners

(i) Under the Income-tax Act, 1961, firms are classified into registered firms and unregistered firms. A registered firm pays only a small amount of tax on its income and the rest of its income is apportioned among the partners and included in their individual assessments. An unregistered firm pays full tax on its total income.

Where at the time of completion of the assessments of partners, the assessment of the firm has not been completed and the final share income of the partners is not known, the assessments of the partners are to be completed by taking their share income from the firm on a provisional basis. In such cases, the assessments of the partners are to be revised subsequently to include the final share income when the assessment of the firm is completed. For this purpose, the Income-tax Officers are required, under the instructions of the Central Board of Direct Taxes issued in March 1973, to maintain a 'register of cases of provisional share income' so that these cases are not omitted to be rectified. The Range Inspecting Assistant Commissioners were made responsible for ensuring that these registers were maintained properly and that the assessing officers adhered to the time limit prescribed by the Board, for rectification of the partner's cases viz., three months from the date of receipt of the intimation of the share income. The instructions of the Board issued in July 1976 provide that the cases of partners of a firm should, as far as possible, be assessed in the same ward|circle where the firm is assessed as to reduce the rectification work to the minimum. No revisions of partners' assessments can, however, be done 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.

(a) In the income-tax assessments of three individuals for the assessment years 1977-78 to 1980-81 completed during March 1980 and December 1982 the Income-tax Officer adopted the share income from a firm as Rs. 25,349, Rs. Nil, Rs. Nil and Rs. 57,730 in the cases of each partner for the four assessment years respectively on a provisional basis. No entries were made in the prescribed register as required under the executive instructions to watch timely completion of the revisions for adoption of the correct share income later. The firm's assessments were subsequently completed in November 1983 in respect of the assessment years 1977-78 to 1979-80 and in March 1985 in respect of the assessment year 1980-81 when the correct share income in respect of the three individuals was determined as Rs. 1,58,750, Rs. 65,285, Rs. 1,96,166 and Rs. 1,19,412 each for the four assessment years respectively but no action was initiated to revise the partners' assessments correspondingly. The omission resulted in underassessment of income of Rs. 4,56,534 each in the hands of the three individuals and a total short-levy of tax of Rs. 7,57,737.

The Ministry of Finance have accepted the mistake in principle.

(b) While completing the assessments of an individual for the assessment years 1978-79, 1979-80 and 1981-82 in March 1981, June 1981 and January 1984 respectively, the assessing officer adopted the share income of the assessee from a firm assessed in the same ward as Rs. 38,511, Rs. 60,177 and

Rs. 31,476 (loss) provisionally. In respect of another individual assessed in the same ward and also a partner in the same firm, the share income was adopted provisionally as Rs. 38,512, Rs. 60,179 and Rs. 31,369 (loss) for the assessment years 1978-79, 1979-80 and 1981-82 respectively completed in March 1981, June 1981 and November 1983. Audit scrutiny (August 1985) revealed that these cases were not watched through the register of cases of provisional share income for adoption of the correct share income, and as a result no action was taken to revise the partners' assessments soon after the completion of the firm's assessments for the assessment years 1978-79, 1979-80 and 1981-82 in March 1981, October 1984 and May 1984 respectively. The correct share income determined was Rs. 38,856 for the assessment year 1978-79 and Rs. 69,940 for the assessment year 1979-80 in both the cases and Rs. 4,85,592 in the first case and Rs. 5,41,392 in the second case for the assessment year 1981-82. The omission to revise the assessments to adopt the correct share income resulted in a total short-levy of tax of Rs. 6,29,449.

The Ministry of Finance have accepted the mistake.

(c) The income-tax assessments of a Hindu undivided family of specified category, a partner in two registered firms for the assessment years 1979-80 to 1982-83, were completed in March 1983. The correct share income from the first firm for the assessment year 1979-80 was adopted as Rs. 39,878 and from the second firm for the assessment year 1980-81 as Rs. 1,29,274. However, for the assessment years 1981-82 and 1982-83, share incomes were provisionally adopted as Rs. 51,825 and Rs. 53,152 in respect of the first firm and Rs. 1,77,376 and Rs. 1,79,604 in respect of the second firm. The assessments of the firm for the assessment years 1979-80 and 1980-81 were revised in February 1984 and September 1983 and the regular assessments for assessment years 1981-82 and 1982-83 were completed on various dates during the period February 1984 to March 1985, determining the assessee's revised correct share income from the first firm as Rs. 50,899, Rs. 79,136 and Rs. 83,034 in respect of the assessment years 1979-80, 1981-82 and 1982-83 and from the second firm as Rs. 1,35,029, Rs. 4,23,040 and Rs. 4,61,027 in respect of assessment years 1980-81, 1981-82 and 1982-83.. No action was, however, taken by the assessing officer to correspondingly revise the assessee's share income for the four assessment years.

Audit scrutiny revealed (May 1985) that the assessment files relating to the partners and the two registered firms, which were dealt within a city circle ward till the completion of the above assessments, were transferred to a Central Circle ward in June 1984, but the fact that the correct share income for the assessment years 1979-80 and 1980-81 required revision and that only provisional share income had been adopted for the assessment years 1981-82 and 1982-83 was not recorded in the transfer memo filed in the records nor was any entry recorded in the register of cases of provisional share income, which was maintained only from 1984-85 onwards in the previous ward. The procedural lapse resulted in omission to revise the assessee's share, involving under assessment of tax amounting to Rs. 3,96,835 for the four assessment years 1979-80 to 1982-83.

The Ministry of Finance have accepted the mistake.

(d) The income-tax assessments of an assessee, a partner in two registered firms for assessment years 1980-81 to 1982-83 were completed between August 1982 and March 1983 adopting the share income provisionally as Rs. 1,32,935 and Rs. 1,54,363 for assessment years 1981-82 and 1982-83 from the first firm and Rs. 92,788, Rs. 1,21,157 and Rs. 1,31,376 for assessment years 1980-81, 1981-82 and 1982-83 respectively from the second firm. The assessments of the firms for the assessment years 1980-81 to 1982-83 were completed on various dates during the period October 1981 to March 1985. It was noticed (May 1985) that the assessment of the first firm for the assessment years 1981-82 and 1982-83 had been completed in October 1981 and August 1982 respectively but the correct share income was not adopted in the partner's assessments completed later in March 1983. Similarly, in the case of the second firm for the assessment year 1980-81 the assessment had already been completed in March 1982 (revised in September 1983) but only provisional share income instead of the correct share income was adopted in the partner's assessment completed later in August 1982. No action was also taken subsequently to revise the assessments of the partner to adopt the correct share income. It was also noticed that the assessment files relating to the partners as well as the two registered firms which were dealt within City Circle wards were transferred to a Central Circle ward in June 1984. But the fact that only provisional share income had been adopted in the partner's assessments was not recorded in the transfer memo filed in the records nor was any entry recorded in the provisional share income register which was maintained only from 1984-85 onwards in the previous ward. The omission resulted in short levy of tax of Rs. 2,56,900.

The Ministry of Finance have accepted the mistake.

(e) The assessments of three partners of a registered firm for the assessment years 1975-76 to 1977-78 were made between February 1979 and March 1980 provisionally pending finalisation of assessments of the firm. Assessments of the firm for the assessment years 1975-76, 1976-77 and 1977-78 were completed in March 1980, February 1983 and June 1982 respectively but no action was taken by the assessing authority to revise assessment of the partners for these years. Register of cases of provisional assessments was also not maintained. This resulted in short-levy of tax of Rs. 1.93 lakhs.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) The assessments of a registered firm for the assessment years 1976-77 and 1979-80 were completed in November 1979 and January 1985 respectively but the share of the income of its two partners which was adopted provisionally in their assessments completed in December 1984 for the assessment year 1976-77 and in February 1982 and March 1982 for the assessment year 1979-80, were not rectified till the date of Audit (November 1985). This resulted in under-assessment of income of Rs. 1,90,183 and short-levy of tax of Rs. 1,82,150 including interest for belated filing of return and short payment of advance tax.

The Ministry of Finance have accepted the mistake.

(g) The total income of an individual consisted of the share income from five firms and income from other sources and for the assessment year 1982-83 she returned share of loss of Rs. 5,40,530 from one registered firm. Her assessment for the assessment year 1982-83 was concluded in January 1985 as "not assessable" with reference to this loss adopted on a provisional basis. The income of the firm was determined at 'nil' in the assessment made on 25 March 1985 as against the loss of Rs. 5,40,530 adopted provisionally. However, even after a lapse of six months (October 1985) no action was taken to rectify the assessment of the partners. The provisional share income register prescribed by the Board was also not maintained by the Income-tax Officer. The mistake resulted in under-assessment of income of Rs. 2,96,446 involving a tax effect of Rs. 1,72,777.

The assessment was checked by the internal audit party of the department but the omission was not noticed by it.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(h) The assessments of an individual, who was a partner in the firm, for the assessment years 1979-80, 1980-81 and 1982-83 were completed in March 1982, February 1983 and December 1983 adopting his share income from the firm provisionally at Rs. 95,330, Rs. 54,720 and Rs. 10,710 respectively as returned by the assessee. The assessments of the firm (also assessed in the same ward) for the years 1979-80, 1980-81 and 1982-83 were subsequently completed in July 1984, March 1983 and March 1985 and the correct share income of the assessee from the firm for these years determined as Rs. 1,60,440, Rs. 99,381 and Rs. 1,19,132 respectively but the assessments of the partners were not revised. The omission to revise the assessments of the partner to adopt the correct share income resulted in an aggregate short levy of tax of Rs. 1,61,790 for the three assessment years.

The Ministry of Finance have accepted the mistake in principle.

(i) The Income-tax assessments of an individual for the assessment years 1977-78, 1978-79 and 1980-81 were completetd during March 1980, March 1981 and December 1982 respectively adopting the share income from a firm as Rs. 25,349, Rs. Nil and Rs. 57,730 respectively on a provisional basis. No entries were made in the prescribed register to watch timely completion of the revisions for adoption of the correct share income later. In the firm's assessments subsequently completed betwteen November 1983 and March 1985, the correct share income was determined as Rs. 1,58,750, Rs. 65,285 and Rs. 1,19,412 respectively. However, no action was initiated to revise the partner's assessments correspondingly. The omission resulted in total under-assessment of income of Rs. 2,60,365 and a total short levy of tax of Rs. 1,20,031.

The Ministry of Finance have accepted the mistake in principle.

(j) In the case of an individual who was a partner in a firm, the assessments for the assessment years 1977-78 to 1979-80 completed in November 1978 and March 1982, on a provisional basis adopting the share income from a registered firm at Rs. 1,29,326, Rs. 44,511 and Rs. 2,76,114 respectively were not revised although the assessments of the firm for the three assessment years had been completed subsequently in March 1983 allocating to the assessee the correct share income for the assessment years

1977-78 to 1979-80 at Rs. 1,75,888, Rs. 95,679 and Rs. 3,27,180 respectively. No note was kept in the register of cases of provisional share income. In another similar case, the assessments for the assessment years 1978-79 and 1979-80 completed in November 1978 and October 1981 adopting the provisional share income at Rs. 17,120 and Rs. 1,06,197 for the two assessment years were not revised on the basis of correct share income determined in March 1983 at Rs. 36,997 and Rs. 1,25,839 respectively. The omission resulted in aggregate short levy of tax of Rs. 1,16,492.

The Ministry of Finance have accepted the mistake.

(k) The total income of a registered firm of two partners (having 50 per cent share each) for the assessment year 1982-83 was assessed at Rs. 1,49,211 in March 1985. The assessment records of the partners assessed in the same ward in which the firm was assessed revealed (April 1983) that—

1. In the case of one of the partners (who died in November 1981), the legal heir of the deceased partner did not file the return of income for the assessment year 1982-83 nor did the department take any action to call for the return to assess the share income of Rs. 68,899.

2. In the case of another partner, the assessment for the assessment year 1982-83 had been completed in December 1984 taking his share income from the above firm at Rs. 12,330 as returned on provisional basis but no entry thereof was made in the provisional share income register to this effect. The assessment was also not revised immediatetly after completion of the firm's assessment in March 1985 resulting in undercharge of income of Rs. 68,120.

The above mistakes resulted in short levy of tax of Rs. 83,356 including interest for belated filing of return and short payment of advance tax.

The Ministry of Finance have accepted the mistake in principle.

(ii) Where as a result of the orders of any appellate authority the assessment of a registered firm is modified and the income is revised, the assessments of the partners in the firm should be amended to adopt the correct share income allocated to the partners.

The tax liability of a registered firm was settled by the Settlement Commission in their orders issued in April 1984. The orders were given effect to in the firm's case by orders passed in June 1984 for assessment years 1977-78 to 1979-80. One of the partners in the firm represented his minor Hindu undivided family. While revising the assessments of the partners for the assessment years 1977-78 to 1979-80 the assessing officer, instead of rectifying the assessment of the Hindu undivided family where the share income was assessable, rectified the assessments of the partner as individual. This resulted in the creation of invalid demands of Rs. 1,63,244 for the three years in the hands of the individual and in a short demand of Rs. 86,075 in the hands of the Hindu undivided family.

The assessments in question were checked by the internal audit party of the department but the mistake was not noticed by it.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) In case where delay is likely to occur in completing the assessments of the partners, the share income assessable in the hands of the partners should invariably be communicated to the partner's file so that the correct share is adopted later at the time of parners' assessment.

The taxable income of a registered firm with nine partners for the assessment year 1981-82 was determined by the assessing officer at Rs. 2,50,860 in January 1985 which was subsequently reduced to Rs. 2,08,500 in the revised assessment made in January 1986. On this basis the share of nine partners from the firm was taxable. However, none of the partners filed the returns of income for the assessment year 1981-82 nor were these called for by the assessing authority. This resulted in under-assessment of tax of Rs. 60,712 including interest for belated filing of return and filing of incorrect estimates. Penalty for failure to file the return of income also needs to be levied.

The Ministry of Finance have accepted the mistake.

3.23 Mistakes in assessment of firms

(i) The Income-tax Act, 1961 provides that in the case of an unregistered firm, the Income-tax Officer may treat an unregistered firm as a registered firm, if the aggregate amount of the tax payable by the firm, and its parterns, if it were assessed as a registered firm, would be greater than the aggregate amount of the tax payable by the firm and its partners as an unregistered firm.

For the assessment year 1982-83, two firms were assessed on an income of Rs. 6,75,455 and Rs. 14,45,050 as unregistered firms in March 1985 and

the tax including interest aggregating Rs. 26,90,351 on the firms and their partners was levied accordingly. If these firms had been treated as registered firms, the aggregate amount of the tax payable by each of the firms and its partners would work out to Rs. 28,90,786 which would be greater than the aggregate amount of the tax actually levied. The mistake in not assessing the firms as registered firms resulted in total short levy of tax of Rs. 2,00,435 including interest for belated filing of returns and short payment of advance tax.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The Excise Rules of a State, under which licences were issued for sale of liquor, prohibited the transfer of the licence by the licensee/licensees (in cases where these were held jointly) to any other person or inclusion or exclusion of any partner, other than those indicated in the licence except with the prior permission of the licensing authority It has been judicially held in October 1978 by the Punjab and Haryana High Court that the partnerships formed in violation of the rules are not legal and such partnerships are not entitled to registration under the Income-tax Act. Departmental instructions were also issued to the same effect in June 1981. If partnership firms are constituted in violation of extant rules, they are to be assessed to tax as unregistered firms.

In an income-tax ward, the department incorrectly granted registration to four partnership firms engaged in arrack trade although the licence in the case of each firm was issued to one of the partners in his individual capacity. The transfer and formation of firms without prior permission of the licence issuing authority rendered the firms ineligible for registeration and eventually resulted in short levy of tax of Rs. 82,862 for the assessment years 1980-81 and 1981-82.

The Ministry of Finance have accepted the mistake.

3.24 Incorrect Grant of registration to a firm

(i) Under the Incomet-ax Act, 1961, and the rules made thereunder, the application for registration of a firm is required to be signed personally by all the partners of the firm. If a partner is absent from India or is a lunatic or an idiot, the application may be signed by any person duly authorised by him in this behalf or as the case may be by a person entitled under law to represent him. If this condition is not satisfied, the firm has to be treated as an unregistered firm.

A firm doing the business of running a lodge produced a partnership deed alongwith prescribed declaration for renewal of registration for the assessment years 1982-83 and 1983-84 and registration was renewed by the Income-tax Officer in June 1984 and January 1985 for these years respectively. The deed, however, showed that the two of the partners of the firm represented the partnership in two capacities viz., as individuals and as Karthas of Hindu undivided family and the partnership deed was signed by them in the dual capacity. Audit scrunity (January 1986) revealed that the firm was granted registration by the assessing officer for the assessment year 1982-83 and the same was renewed for the assessment years 1983-84 and 1984-85 relying on the judicial decisions (November 1973 and September 1980) according to which there was nothing in law preventing an assessee from becoming a partner in a dual capacity, one as an individual and the other representing H.U.F. The Central Board of Direct Taxes have, however, not accepted the decisions and a special leave for appeal has been granted by the Supreme Court against the said decisions in September 1983. Pending an authoritative decision by the Supreme Court, the grant of registration to the assessee firm was not in order. The irregular grant of registration resulted in a total short levy of tax of Rs. 2,08,867 for the assessment years 1982-83 and 1983-84.

The case was seen by the internal audit party of the department but the mistake was not discovered.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) According to the provisions of the Income-tax Act, 1961, registration granted to a firm for purposes of income-tax remains effective for every subsequent year provided that there is no change in the constitution of the firm or in the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted. Where any change or changes have occurred in the constitution of the firm or in the shares of the partners during the relevant previous year, the firm should apply for a fresh registration for the assessment year concerned failing which the firm has to be treated as an unregistered firm.

A registered firm having three partners upto the assessment year 1979-80 admitted during the previous year relevant to the assessment year 1980-81 one more partner and divided the net profit of the firm among the four partners. Though, there was a change in the constitution during the relevant assessment year, the partners of the reconstituted firm did not apply for fresh registration for the assessment year

1980-81 as required under the Act. The assessing officer, however, granted continuation of registration for the assessment year 1980-81 on the basis of a declaration (filed alongwith the return of income) signed by the partners of the firm stating that there had been no change in the constitution of the firm during the previous year. In the absence of a fresh application for registration for the assessment year 1980-81, the registration granted for the assessment years 1980-81 to 1983-84 was not in order. The mistake in incorrect grant of registration resulted in a net short levy of tax of Rs. 95,476.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.25 Omission to include income of spouse/minor child etc.

(i) The Income-tax Act, 1961, provides that when an individual transfers an asset directly or indirectly to any person otherwise than for adequate consideration, and the income arising from that asset to that person is for the immediate or deferred benefit of the individual's spouse or minor child, the income should be clubbed in the hands of the transferor. The clubbing of income from the asset should also be done when transfer for inadequate consideration is made to the individual's (transferor's) spouse or minor child, on or after 1 June 1973 to sons, wife or son's minor child.

(a) It has been judicially held that if two transfers were inter-connected and were part of the same transaction in such a way that they could be said to have been adopted as a devise to avoid the implication of the specific provisions of the Income-tax Act, the case would fall within the provisions ibid even though one was not consideration for the other in the technical sense (49 ITR 107 SC) and (66 ITR 142 SC).

During the previous year ending 31 March 1978, two out of three brothers who were partners, among others, in a firm in their individual capacity advanced a sum of Rs. 3.50 lakhs each, to the minor children of their partner-brothers. The third partner during the same year advanced an equal sum to his mother. The father of the partners, who was an ex-partner himself, similarly advanced a sum of Rs. 3.50 lakhs to the minor sons of his partner son, during the same year. All these loans carried a nominal rate of interest.

These sums of money totalling Rs. 14 lakhs were deposited by the minors/mother in the same firm and the firm paid interest on the balances at credit of these persons at market rates from year to year. The interest paid by the minors/mother to the uncles/son and the interest received by them from the firm for the five assessment years from 1979-80 to 1983-84 were Rs. 33,190 and Rs. 8,05,157 respectively. The interest had arisen to the partners on their initial investment of Rs. 3.50 lakhs each, indirectly, through the minors of whom they are guardians and to the father through his wife, but such interest had not been assessed in their hands along with their other incomes. Instead, it has been assessed (in March 1984) in the hands of each minor and the partner's mother for these years.

The net income escaping assessment for the years 1979-80 to 1983-84 in respect of two persons, and for the years 1979-80 to 1981-82 in respect of the other two, amounted to Rs. 7,71,967 involving short levy of tax of Rs. 2,56,323.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) It has been judicially held (May 1978) that the words 'directly or indirectly' would also cover cases of transfer through the medium of trusts.

An individual created a trust in June 1977 for the benefit of his four grandsons. Under the trust deed, the income of the trust was to be accumulated and utilised for the purpose of imparting education etc., to the beneficiaries. By a supplementary deed executed in May 1979, the author of the trust declared that the income shall be divided equally and annually among the grand children existing at the time of division. The assessing officer assesed the income of the trust in the status of association of persons for the assessment years 1978-79 and 1979-80. However, in appeal, the Appellate Tribunal held (Secptember 1983) that the income should be assessed only in the hands of each of the beneficiaries as their share of income was definite and ascertainable even as per the original deed. It was, however, noticed in audit (October 1984) that for the assessment years 1980-81 and 1981-82, the assessing officer did not consider inclusion of the income of each of the beneficiaries in the total income of the grand parent as provided for under the Act. Instead, the income was separately assessed in the hands of the beneficiaries. This resulted in short levy of tax of Rs. 66,112 for the two assessment years. Similar inclusion of the income is required to be examined for the assessment years 1978-79 and 1979-80 also.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the provisions of Income-tax Act, 1961, in computing the total income of an individual, there shall be included all such income as arises directly or indirectly to the minor child of such individual from the admission of the minor to the benefits of partnership in a firm even if that individual is not a partner in the firm. For this purpose, the income of the minor shall be included in the income of that parent whose total income is greater.

(a) In the case of two assessees, income of Rs. 61,396 and Rs. 70,233 arising to minor child in each case, from their admission to the benefits of partnership firm were not included in the total income of these assessees for the assessment year 1982-83 (assessment completed in March 1985) in accordance with the provisions of the Act. The omission to club the income resulted in under-assessment of tax aggregating to Rs. 84,003.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The minor children of an individual, were partners in various firms and their share incomes were being assessed in her hands upto the assessment year 1978-79. However, for the assessment year 1979-80 the individual did not return the income of the minors on the ground that the particulars of share income were not received and it should be included as determined in the firm's cases. In the assessment for assessment year 1979-80 completed in November 1981, the assessing officer included the assessee's income only and did not take action to call for details of the share incomes of the minors for being assessed to tax in the hands of the assessee. The omission to include the share income of minors resulted in under-assessment of income amounting to Rs. 87,630 and short levy of tax of Rs. 61,493.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) All such income as arises directly or indirectly to the spouse of any individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such an individual has a substantial interest, are also included in computing the total income of that individual. This provision is, however, not applicable to any income arising to the spouse where the spouse possesses technical or professional qualification and the income is solely attributable to the application of his or her technical or professional knowledge and experience. It has been judicially held (154 ITR 59) that if the recipient of the salary possesses the attributes of technical or professional qualification, in the sense, that he has got expertise in such profession or technique and if by the use of that expertise in the profession or technique the person concerned earns the salary, the income is solely attributable to the application of the technique or professional knowledge.

An individual running a proprietary concern dealing in automobiles employed his wife, an M.A. (in Economics, in running the business and paid salary of Rs. 10,700, Rs. 16,200, Rs. 16,800 and Rs. 16,800 to his wife in the previous years relevant to the assessment years 1980-81 to 1983-84 respectively. As the payment of salary to the spouse cannot solely be attributed to her technical or professional qualification and expertise, the salary paid was statutorily required to be included in the hands of the individual. In the assessment for the assessment years 1980-81 to 1983-84 completed between March 1983 to November 1983, the department did not apply the clubbing provisions in the Act. The omission resulted in undercharge of tax of Rs. 41,336 including interest for short payment of advance tax.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.26 Income escaping assessment

(i) Under the Income-tax Act, 1961, all incomes accruing or arising to an assessee in India in a previous year relevant to the assessment year includible in his total income.

(a) In the case of an unregistered firm, the assessments for the assessment years 1981-82 and 1982-83 were completed in September 1984 and March 1985 respectively wherein credits for Rs. 22,563 and Rs. 58,651 were allowed for deductions of tax made at source from interest paid by a company to the assessee firm. The certificates for tax deducted at source for the aforesaid sums issued by the company between January 1980 and December 1980 (Rs. 22,563) and between January 1981 and October 1981 (Rs. 58,651) showed that the assessee was paid interest amounting to Rs. 2,25,626 and Rs. 5,86,509 during the previous years ending 31 December relevant to the assessment years 1981-82 and 1982-83 respectively. While the interest of Rs. 2,25,626 pertaining to the assessment year 1981-82 was not credited to the interest account nor was shown as a distinct item of receipt in the relevant profit and loss account, as against the interest of

Rs. 5,86,509 for the assessment year 1982-83. the amount taken in the interest account for tLe relevant period was only Rs. 55,397. The assessing officer also did not enquire into the reasons for these discrepancies. This resulted in interest income totalling to Rs. 7,56,738 escaping assessment for the two assessment years 1981-82 and 1982-83 involving short levy of tax of Rs. 7,33,830 including interest for belated filing of return and for filing untrue estimates.

The comments of the Ministry of Finance on the paragraph are awaited (October 1986).

(b) An assessee, a contractor received income from contracts of Rs. 2,50,429 and Rs. 8,67,937 for the assessment years 1977-78 and 1979-80 but returned only Rs. 2,29,494 and Rs. 7,34,335 for assessment. In the assessmenets completed in February 1979 and June 1981 the assessing officer, however, assessed these contract receipts as returned by the assessee. This resulted in the under-assessment of income of Rs. 1,54,537 for the two assessment years and a total short levy of tax of Rs. 90,317.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Where in any financial year an assessee has made investments or is found to be the owner of any money or other valuable articles and the assessee offers no satisfactory explanation about the nature and source of such investments or the money, the value of such investments or the money etc., may be deemed to be the income of the assessee for such financial year.

An assessee returned for the assessment year 1984-85, a gross wealth of Rs. 8,96,430 against Rs. 5,70,190 for the assessment year 1983-84, an increase of Rs. 3,26, 240 over the assessment year 1983-84. For the assessment year 1984-85, the assessee had returned a gross income of Rs. 66,203. This income together with an amount of Rs. 6,636 representing increase in the value of shares accounted for an increase of Rs. 72,839 in the gross wealth for the said assessment year. The balance increase in the wealth of the assessee by Rs. 2,50,000 had not been explained and should have been treated as undisclosed income for the assessment year 1984-85. The omission to do so resulted in short levy of tax of Rs. 1,58,654.

The Ministry of Finance have accepted the mistake.

(iii) It has been judicially held (December 1979) that the interest awarded by the Court on the amount of additional land compensation decreed to the erstwhile owner of the land under the land acquisition proceedings, becomes the income of the person only on the date of decree and not prior to it. Hence, the entire interest received by an assessee on the passing of a decree awarding the additional compensation is assessable as the income of the previous year in which the decree is passed (127 ITR 650).

In the assessment of an individual for the assessment year 1976-77, completed in March 1984 ex-parte (earlier ex-parte assessment in March 1979), her one fourth share in the total interest at 4 per cent from 6 May 1961 to 5 March 1976 amounting to Rs. 41,163 per annum, as per Court decree in September 1975 on enhanced compensation in respect of lands acquired by the Government was computed at Rs. 10,290. However, as the total interest decree amounted to Rs. 6,10,587, the assessee's one-fourth share correctly worked out to Rs. 1,52,646 which should have been subjected to tax. The omission to do so resulted in under-assessment of income of Rs. 1,42,356 involving short levy of tax of Rs. 1,54,156 including interest far belated filing of return and short payment of advance tax.

The Ministry of Finance have accepted the mistake.

(iv) Under the provisions of the Income-tax Act, 1961, the various types of income chargeable to income-tax include profits and gains of business or profession. Business for this purpose includes not only trade, commerce or manufacture but also any adventure in the nature of trade. The term 'adventure' in the nature of trade connotes that it is allied to transactions that constitute trade or business but, may not be trade or business. It has been judicially held (November 1955) that adventure in the nature of trade is characterised by some of the essential features that make up trade or business but, not by all of them and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade. It has further been held that in cases where the purchase has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the asset for himself or otherwise enjoying or using it, the transaction is an adventure in the nature of trade.

In the case of an assessee individual, the total income for the assessment year 1981-82 was computed in March 1984 which included an income of Rs. 1,82,813 derived from the purchase and sale of National Defence Gold Bonds, 1980. The assessee

claimed and was allowed by the assessing officer, exemption in respect of the income earned on sale of Gold Bonds. As the assessee was dealing in purchase and sale of Gold Bonds, the nature of transaction was, therefore, required to be treated for income-tax purposes as an adventure in the nature of trade and the gain of Rs. 1,82,813 was assessable as business profit in computing the total income of the assessee. The omission to assess it so, resulted in escapement of income of Rs. 1,82,813 with consequent undercharge of tax of Rs. 1,20,654 in the assessment year 1981-82.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) The Act provides that every person carrying on medical profession shall maintain such books of accounts and other documents as may enable the Income-tax Officer to compute his income. Default by an assessee in this regard makes him liable to penalty at the rates prescribed in the Act.

An assessee not maintaining accounts of his income from medical profession, returned such income for assessment years 1980-81 to 1983-84 on estimate basis. The assessing officer too framed his assessments on estimate basis. During the course of audit of a Corporation by the Commercial Audit, it was noticed that the said assessee was paid by the Corporation medical fees amounting to Rs. 70,243, Rs. 53,947, Rs. 33,656 and Rs. 11,049 in the financial years 1979-80, 1980-81, 1981-82 and 1982-83 relevant to the assessment years 1980-81, 1981-82, 1982-83 and 1983-84. Scrutiny of the assessment records revealed that the aforesaid fees were neither declared by the assessee in his income-tax returns nor were the same added to his income by the assessing officer in the assessments for assessment years 1980-81, 1981-82, 1982-83 and 1983-84 completed and revised during August 1981 to September 1983. Proceedings for non-maintenance of accounts were also not initiated. Concealment|escapement of the income aforesaid in the four years resulted in total undercharge of tax of Rs. 93,246, including interest for short payment of advance tax. Besides, the penalty leviable for concealment of income and for non-maintenance of accounts would also need to be quantified.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) Under the provisions of Income-tax Act, 1961, winnings from lotteries are exigible to tax. It has been judicially held (January 1985) that if a resident derives income from a source outside the country, such income has to be considered while evaluating his total income. Thus, winnings from lotteries received by a 'resident' individual from Sikkim which is treated as outside India for the purpose of Income-tax Act, 1961, has to be included in his total income.

During the previous year relevant to assessment year 1984-85, an individual had received a sum of Rs. 3,32,679 as winnings from Sikkim State lottery and claimed it as exempt on the ground that it had already suffered income-tax under Sikkim State Income-tax laws. His income tax assessment for 1984-85 was completed as 'nil' assessment under the summary assessment scheme accepting the claim of the assessee. As the assessee is a reident individual, the winning from Sikkim State lotteries would require to be brought to tax. The omission resulted in under assessment of income of Rs. 332,679 involving short levy of tax of Rs. 91,600.

The Ministry of Finance have stated that the assessment in this case was made in a summary manner.

(vii) Any profits or gains arising from transfer of a capital asset is chargeable to income-tax under the head "Capital gains". The term "Capital asset" includes agricultural land in the vicinity of a municipality.

In the wealth-tax return for the assessment year 1979-80, an assessee showed disposal of 9 bighas of agricultural land situated within 8 kilometres of the Municipal Corporation and showed an increase of Rs. 1,42,156 in her fixed deposit in bank, and cash in hand and cash at bank (an amount of Rs. 4,82,705 as against the corresponding figure of Rs. 3,40,549 shown in the last year's accounts). In the income-tax return for the assessment year 1979-80, however, the assessee did not show any capital gains arising out of the sale of land or other particulars about the increase in the deposits in bank, and cash in hand and at bank. The assessing authority also did not call for such particulars while completing the income-tax assessment for that year in March 1982 on an income of Rs. 13,110 as against Rs. 9,631 returned. By adopting the value of the land at Rs. 21,500 per bigha, as accepted in the wealth-tax assessment for the assessment year 1977-78, in the absence of particulars regarding the actual sale proceeds, the amount of capital gains that had escaped assessment would work out to Rs. 1,21,125 (after allowing admissible deductions) with consequent short levy of tax of Rs. 67,830.

The Ministry of Finance have accepted the mistake.

(viii) Under the provisions of the Income-tax Act, 1961, the income of the estate of a deceased person is chargeable to income-tax, in the hands of its executor, as if the executor were an individual. Separate assessments shall be made under the Act on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

An assessee died on 15 June 1982 and his income for the previous year commencing from 28 October 1981 (Diwali year) to the date of death was assessed to tax in the assessment year 1983-84 in January 1985 in the hands of his legal representative in a summary manner. As per the Will left by the deceased, his son had been appointed as an executor to administer the estate and distribute it equally among his seven grandsons. The estate was distributed to the seven beneficiaries on 10 February 1984 . Till such time the estate remained with the executor *i.e.* from 16 June 1982 to 10 February 1984, the income from the estate for the above period was chargeable to income-tax in each of the assessment years 1983-84 to 1985-86, in the hands of the executor. The executor neither filed the returns of income for these years nor did the department call for the same. Based on the rental income from house properties comprised in the estate, as shown in the return of income for the period upto 15 June 1982 (assessment year 1983-84) the income escaping assessment for the assessment years 1983-84, 1984-85 and 1985-86 amounted to Rs. 38,900, Rs. 83,350 and Rs. 21,940 respectively with consequent non levy of tax aggregating to Rs. 65,898 including interests for belated filing of returns and short payment of advance tax. Penalty provisions for non-filing of the returns were also attracted.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ix) The Central Board of Direct Taxes had in their instructions of November 1974 directed that proper liasion should be maintained with Sales-tax authorities so that various matters arising from proceedings under the Sales-tax Act, which have a bearing on the income-tax assessments, are taken due note of by the income-tax authorities in the relevant assessment proceedings.

A registered firm trading in gold and silver jewellery and precious stones showed after deducting amounts of sales tax collected and sales returns, a net sales turnover of Rs. 26,08,620 in its accounts for the period ending 31 March 1982 relevant to the assessment year 1982-83. This was accepted by the assessing officer in the assessment for the assessment year 1982-83 made in February 1985. However, the sales tax assessment order for the relevant period filed by assessee showed that the sales tax authorities had determined after considering the sales returned and collection of sales tax, the net sales turnover as Rs. 27,04,500 on the ground that the assessee firm had not disclosed fully the sales of precious stones and diamonds. Considering the sales tax collection of Rs. 62,119, sales turnover that should have been considered for income tax assessments worked out to Rs. 27,66,619. The omission to look into the findings of sales tax authorities regarding the suppression of sales by the assessee firm resulted in under assessment of income of Rs. 1,57,999 and a short levy of tax of Rs. 65,881 in the hands of the firm and its partners.

Though the case was checked by internal audit party of the department, the mistake was not detected by it.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(x) Under the Income-tax Act, 1961, all income accruing or arising to a resident assessee in a previous year relevant to the assesment year is includible in the total income of that assessee.

An assessee received interest payment of Rs. 1,13,500 in the previous year relevant to the assessment year 1980-81. The assessee was not borne on the General Index Register of the concerned Income-tax Officer. The Income-tax Officer did not issue notice to the assessee to file the return of income nor did he ascertain whether the assessee was assessed in any other ward. This resulted in non levy of tax of Rs. 56,760. Penalty for concealment of income was also leviable.

The Ministry of Finance have accepted the mistake.

3.27 Income escaping assessment due to lack of correlation with the records of other direct taxes

The need for a proper co-ordination among the assessment records pertaining to direct taxes to ensure an overall improvement in the administration of these taxes has been repeatedly emphasised by the Public Accounts Committee. Mention in this respect may be made of paragraph 4.12 and 4.13 of 186th report (Fifth Lok Sabha) and paragraph 1.19 of

61st Report (Sixth Lok Sabha) of the Public Accounts Committee. The Central Board of Direct Taxes have also issued instructions from time to time, the latest being on 11 April 1979 for carrying out such correlation. Despite these instructions, instances of undercharge of tax resulting from omission to utilise information already available in the assessment records of other direct taxes continue to be noticed.

(a) The wealth-tax assessment records of an individual for the assessment year 1979-80 revealed that he was the owner of several house properties, including a shopping complex valued at Rs. 7,74,000 and that his net taxable wealth was of the order of Rs. 11,00,000. As the assessee was not enlisted for income-tax assessment, it was pointed out in audit (December 1984) that the possibility of the assessee having made unexplained investments cannot be ruled out. The department, accordingly, initiated income-tax proceedings against the individual, and completed the assessments for the assessment years 1979-80 to 1983-84 during July—December 1985 on a total income of Rs. 97,700, Rs. 12,600, Rs. 27,280, Rs. 27,280 and Rs. 27,280 respectively, raising a total demand of Rs. 1,32,986.

The Ministry of Finance have accepted the mistake.

(b) The income-tax assessment of a Hindu undivided family of the specified category for the assessment years 1978-79 and 1979-80 to 1982-83 were completed in March 1981 and August 1982 respectively. Audit scrutiny of the wealth-tax assessments for the assessment years 1977-78 to 1982-83 revealed that the assessee owned a house property and a godown in a city in addition to its residential house. A perusal of the gift tax assessment of the family for the assessment year 1983-84 completed in May 1983 further revealed that the assessee family was deriving rental income of Rs. 21,600 per annum from the two properties. However, no rental income was returned by the assessee nor the assessing officer had initiated proceedings under the Income-tax Act to assess the income for the assessment years 1978-79 to 1982-83. The omission to correlate the information available in the wealth-tax and gift-tax records with the income-tax assessment resulted in the escapement of a total estimated income of Rs. 90,000 (in the absence of details of actual rental income) for five assessment years 1978-79 to 1982-83 and a total short levy of tax of Rs. 61,560. Penalty for concealment of income, for the five assessment years was also leviable.

The Ministry of Finance have accepted the mistake.

3.28 Irregular set off of losses.

(i) Under the provisions contained in the Income-tax Act, 1961, the assessing officer may amend any order passed by him under the Act with a view to rectifying any mistake apparent from the record. No amendment shall, however, be made after the expiry of four years from the date of the order sought to be amended.

An individual did not file any return of income for the assessment year 1969-70 within the prescribed time limit under the Act and the assessment was completed ex-parte in March 1972 determining the taxable income at Rs. 3,65,000. The ex-parte assessment was subsequently cancelled and the assessment was reopened in July 1972 and the regular assessment was completed in January 1981 determining a net loss of Rs. 3,17,762. This loss was allowed to be carried forward and set off against the income for the assessment years 1970-71 and 1971-72 by revising the assessments for the two assessment years 1970-71 and 1971-72 in January 1981 and a total refund of Rs. 3,01,500 was granted to the assessee. Audit scrutiny revealed (May 1984) that the assessments for the assessment years 1970-71 and 1971-72 were originally completed in January 1974 and March 1974 and the revision of assessments had already become time barred. The mistake resulted in incorrect grant of refund of Rs. 3,01,500 for the assessment years 1970-71 and 1971-72.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the Income-tax Act, 1961, where for any assessment year, the loss under the head 'profits and gains of business or profession' cannot be set off against any other income, such loss is carried forward to the following assessment year and is set off against the profits or gains of any other business or profession provided the business or profession from which the loss was originally computed continued to be carried on in the previous year relevant to that assessment year. No portion of the business loss would, however, be carried forward for more than eight assessment years immediately succeeding the assessment year in which the loss was first computed.

(a) In the case of a Hindu undivided family, the assessing officer revised the total income for the assessment years 1974-75, 1975-76, 1980-81 and 1981-82 in October 1984 and adjusted the carried forward business losses of past years to the extent of Rs. 5,56,189 against the current years' income which included also income from house property, long-term

capital gains and interest income. The revised total income for these years was arrived at as 'NIL' and the taxes paid were refunded alongwith interest. As the past years business losses could be set off only against the income under the head 'profits and gains from business', the incorrect set off allowed against the other incomes resulted in an aggregate short levy of tax etc., to the extent of Rs. 2,58,644 including interest on refunds of taxes for the assessment years 1974-75, 1975-76, 1980-81 and 1981-82.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) A Hindu undivided family engaged mainly in the business of coffee curing works closed the business in March 1976 and the assessment for the assessment year 1976-77 was completed determining a loss of Rs. 2,11,233 from coffee curing business. Audit scrutiny revealed (January 1982) that a part of the loss amounting to Rs. 1,28,405 was carried forward and adjusted against rental income of godowns and buildings amounting to Rs. 1,90,108 and Rs. 1,76,679 in the assessments for the assessment years 1977-78 and 1978-79 completed in March 1980 and March 1981 respectively.

Further, in computing the income for assessment years 1977-78 and 1978-79, interest payments of Rs. 1,12,531 and Rs. 88,589 in respect of credits obtained for the coffee curing business had been allowed as deduction. As the coffee curing business had ceased to exist during the previous year relevant to assessment year 1976-77, the carry forward of loss of Rs. 1,28,405 and deduction of interest payments aggregating to Rs. 2,01,120 was not in order and eventually resulted in short levy of tax totalling to Rs. 2,04,129 for the two assessment years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) The income of an individual, for the assessment year 1977-78 was computed at a loss of Rs. 3,83,991. Part of the loss amounting to Rs. 1,17,390 was allowed set off in the assessment for the assessment year 1981-82 completed in December 1983. It was noticed in audit (April 1985) that the assessment for the assessment year 1978-79 of the assessee was revised in July 1984 and the entire loss of Rs. 3,83,991 computed for the assessment year 1977-78 was allowed to be set off therein. As a result, the loss of Rs. 1,17,390 allowed set off in the assessment year 1981-82 was excessive and should have been withdrawn. Omission to do so resulted in incorrect set off of loss of Rs. 1,17,390 and a consequent short levy of tax of Rs. 1,00,278 including interest for belated filing of the return and non-filing of an estimate of advance tax.

The Ministry of Finance have accepted the mistake.

3.29 Mistake in assessment while giving effect to appellate orders.

In the assessment of an assessee Co-operative Union for the assessment year 1976-77, certain disallowances were made by the Income-tax Officer in respect of rates of depreciation and extra shift allowance in certain cases and also of machinery supplied by the UNICEF. Originally, the assessee claimed Rs. 48,61,644 as depreciation and when it went in appeal against the disallowances made in the assessment, the Commissioner of Income-tax (Appeals) in his orders of March 1982 had allowed the depreciation to the extent of Rs. 4,96,024. While giving effect to the said appellate order in October 1982 the Income-tax Officer, however, allowed depreciation of Rs. 6,15,410 as against Rs. 4,96,024 allowed in appeal.

The excess allowance of depreciation by Rs. 1,19,386 resulted in under-charge of tax of Rs. 52,529.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.30 Incorrect exemption in the case of co-operative society.

(i) Under the provisions of the Income-tax Act, 1961, the profits or gains of a co-operative society attributable, interalia, to banking business or providing credit facilities to its members etc., are allowed as deduction in computing its taxble income. The Act further provides deduction in respect of income by way of dividend or interest derived by the co-operative society from its investments with any other co-operative society. Dividend on shares is otherwise taxable as 'income from other sources'.

In the assessment of a co-operative society engaged in the business of banking for the assessment years 1981-82 to 1984-85 (completed in November 1983/ February 1985) the department allowed in addition to its business profits, deduction aggregating to Rs. 7,38,090, Rs. 10,52,040, Rs. 10,73,340 and Rs. 11,14,960 in the respective years in respect of dividend on shares from Agricultural Refinance

Development Corporation and Unit Trust of India, which were not cooperative societies. As the assessee cooperative society was not dealing in purchase and sale of shares and dividend was not derived by it from any other co-operative society, the deduction allowed was irregular. This led to short levy of tax of Rs. 17,43,960 for these four years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the provisions of Income-tax Act, 1961, the entire income of a co-operative society from specified activities including, inter alia, marketing of the agricultural produce of its members or the processing without the aid of power of their agriculture produce, is exempt from income-tax. It has been judicially held by the Supreme Court in a sales tax case (1981) that conversion of paddy into rice and bran amounts to manufacture giving rise to a new and commercially different product, which are not agricultural commodities (47 STC 369).

A co-operative society was deriving income from marketing of agricultural produce and many other activities. On behalf of a State Food and Civil Supplies Corporation, the co-operative society was procuring levy paddy from the ryots and storing it. It was delivering, when required, the paddy as well as rice converted from it in its own rice mills, to the State Corporation by virtue of an agreement. For these activities, the co-operative society was remunerated by the Corporation in the form of "procurement charges" and "milling charges". In addition, the assessee was allowed by the Corporation to retain the byproducts of paddy viz., the bran and broken rice. The sale proceeds of these by products for the years ending 30 June 1980 and 30 June 1981 were Rs. 3,10,252 and Rs. 7,34,864, which were totally exempted in the assessments for the assessment years 1980-81 and 1981-82 completetd in March 1983 and February 1984 respectively. Assuming that the expenditure on conversion of paddy has been fully met from the receipts from 'procurement' and 'milling' charges, the sale proceeds of bran and broken rice are taxable in entirety as this income has arisen from the marketing not of paddy which is an agricultural commodity, but of converted or manufactured product viz., rice and bran. Incorrect grant of exemption resulted in short levy of tax of Rs. 3,77,610 for these two years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) The Income-tax Act, 1961 provides for deduction in the case of a co-operative society engaged in the purchase of agricultural implements, seeds etc., intended for agriculture and for the purpose of supplying them to its members, of the whole of the amount of profits and gains of business attributable to such activity in computing the total income of the assessee. The rebate received by an assessee co-operative society on account of purchase of fertilizers is not includible in the gross profit thereon but should be adjusted against the rebate paid by the co-operative society on sale of fertilizers to the members. The net profit attributable to sale of fertilizers to members is eligible for deduction while computing the total income of the assessee.

In the assessment of a co-operative society, for the assessment year 1981-82 assessed in September 1981, the rebate on purchase of fertilizers was taken into account twice in determining the net profit on sale of fertilizers to members; once by adding the amount of rebate received (Rs. 6,48,359) to gross profit and again by deducting it from the rebate paid. This resulted in inflating the figures of profit on sale of fertilizers and correspondingly inflating the figures of net profit on sale of fertilizers to members. If the rebate received had been taken into account only once, the net working result of fertilizers account would disclose a loss of Rs. 37,883 on total sale of fertilizers and accordingly no deduction on this account was admissible. The incorrect method adopted while computing the net profit on account of sale of fertilizers resulted in incorrect grant of exemption involving under-assessment of income of Rs. 5,24,096 and short levy of tax of Rs. 3,29,762 including interest for belated filing of return and short payment of advance tax.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) The entire income of a co-operative society engaged in specified activities like banking or providing credit facilities to its members or of marketing the agricultural produce of its members etc., is exempt from income-tax. For a co-operative society engaged in other activities, either independently or in addition to those specified, a deduction from such income relatable to other activities is admissible to the extent of Rs. 20,000.

An assessee co-operative society was engaged mainly in marketing the member agriculturists' products (betelnut, pepper and cardamom) and to a small extent in running a medical store, a rice mill and a provision stores. Its major source of income

was from interest and commission. In the assessments for the four assessment years 1981-82 to 1984-85 completed between March 1982 and November 1984 under the summary assessment scheme, the net income was computed as loss of Rs. 4,950, nil income, loss of Rs. 12,640 and loss of Rs. 59,670 respectively after accepting the claim of the assessee for entire exemption of the interest income. It was, however, noticed in audit (February/March 1986) that the interest income earned was from certain non-members who were mostly purchasers of agricultural products from the society and from short term investment in banks. As the business of the assessee was not banking or providing credit facilities to its members nor were the debtors from whom the interest was realised members of the society, the interest income should have been charged to tax. The omission to do so resulted in a total short levy of tax of Rs. 2,14,132 for the four assessment years from 1981-82 to 1984-85 assuming that the investment in bank was for 2 months at 8 per cent.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.31 Incorrect allowance of relief in respect of newly established undertaking.

(i) Under the provisions of Income-tax Act, 1961 as amended retrospectively with effect from 1 April 1972 by the Finance Act, 1980, where the gross total income of an assessee, being a co-operative society included profits and gains derived from a newly established industrial undertaking which went into production before 1 April 1981, the assessee became entitled to tax relief in respect of such profits and gains upto 6 per cent per annum of capital employed in the industrial undertaking in the assessment year in which the undertaking began to manufacture or produce articles and also in each of the six succeeding assessment years. Under the Rules prescribed for computing capital employed, the values of the assets as on the first day of the computation period of the undertaking as reduced by money and debts owned by the asessee on that day are to be considered. Where, however, the profits and gains derived from the industrial undertaking fall short of the relevant amount of capital employed or where there are no profits and gains, the whole or balance of the deficiency can be carried forward and set off against future profits upto the seventh assessment year reckoned from the end of the initial assessment year.

A sugar factory owned by a co-operative society started production during the previous year ending 30 June 1978 relevant to the assessment year 1979-80. As on 1 July 1978 i.e. the first day of computation period for the assessment year 1980-81, the capital employed was Rs. 1,25,24,474 representing excess of assets (Rs. 7,98,81,946) over the money and debts owed (Rs. 6,73,57,472) by the society, and accordingly, the 6 per cent relief thereon worked out to Rs. 7,51,468 only. But in the assessment of the co-operative society for the assessment year 1980-81, completed in August 1983|March 1984, the department adopted the figure of capital employed at Rs. 3,11,88,370 (share capital Rs. 2,07,91,000 and investment allowance reserve Rs. 1,03,97,370) and allowed 6 per cent relief of Rs. 18,71,302 which was carried forward due to insufficiency of profits. The adoption of incorrect figure of capital employed thus resulted in excess carry forward of loss of Rs. 11,19,834 with a potential tax effect of Rs. 5,32,718.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Where the gross total income of an assessee other than a co-operative society included profits and gains derived from a newly established industrial undertaking which went into production before 1 April 1981, the assessee becomes entitled to tax relief in respect of such profits and gains upto 6 per cent per annum of the capital employed in the industrial undertaking in the assessment year in which the undertaking began to manufacture or produce articles and also in each of the four succeeding assessment years. For the purpose of arriving at the value of the capital employed, the aggregate of moneys borrowed or debt owed by the assessee should not be included in capital employed.

In the assessment of a registered firm, the assessments for the assessment years 1980-81 to 1982-83 completed between August 1984 and March 1985, the capital employed for the purpose of allowing deduction on account of tax holiday relief was computed without deducting certain liabilities incurred. This resulted in grant of relief of Rs. 55,952, Rs. 82,185 and Rs. 74,674 in the assessment years 1980-81, 1981-82 and 1982-83 respectively as against the admissible amounts of Rs. 5,130, Rs. 26,969 and Rs. 57,406 respectively. The mistake resulted in an aggregate short levy of tax of Rs. 95,215 in the hands of the firm and its partners.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.32 Incorrect allowance of relief in respect of newly established industrial undertaking in rural backward areas.

(i) Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a small scale industrial undertaking which began production after 30 September 1977, in any rural area, the assessee becomes entitled to a deduction in respect of such profits and gains of an amount equal to twenty per cent thereof. The gross total income has been defined as the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VIA. Where the new industrial undertaking was formed by the transfer of machinery or plant previously used for any purpose in any rural area, the total value of the machinery or plant or part so transferred, should not exceed twenty per cent of the total value of the machinery or plant used in the business for allowing the deduction.

While completing the assessment of a registered firm for the assesment years 1980-81 to 1982-83 between August 1984 and March, 1985, the deduction in respect of profits and gains from newly established small scale industrial undertaking set up in rural area was allowed after adding back to the gross total income, the amounts of depreciation and investment allowance. This resulted in excess allowance of deduction by Rs. 88,026, Rs. 41,130 and Rs. 43,518 for the assessment years 1980-81, 1981-82 and 1982-83 respectively leading to a total under charge of tax of Rs. 1,87,676 in the hands of the firm and its partners.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains, derived from an industrial undertaking which began manufacture or production after 31 December 1970 in any backward area, a deduction of twenty per cent of such profits and gains would be allowable. The deduction is admissible only in relation to the income from the manufacture or production of articles, and not from any other activity carried on by the assessee.

In the assessment of a body of individuals, engaged in the business of running barges for the assessment years 1980-81 and 1981-82 (assessments completed in September 1983 and August 1984) deductions amounting to Rs. 52,970 and Rs. 45,209 respectively were allowed by the assessing officer treating the barge earnings as income from an industrial undertaking. As the barge earnings do not represent income derived from the manufacture or production of articles, the deduction was not admissible. The incorrect allowance of deductions resulted in underassessment of the income aggregating to Rs. 98,179 and a total short levy of tax of Rs. 97,554 including interest for short payment of advance tax and late filing of the return.

The Ministry of Finance have accepted the mistake.

3.33 Irregular exemptions and reliefs

(i) Chapter VIA of the Income-tax Act, 1961, provides for certain deductions to be made from the gross total income to arrive at the net income chargeable to tax. The overriding condition is that the total of the deductions should not exceed the gross total income of the assessee. 'Gross total income' has been defined as the total income computed in accordance with the provisions of the Act before making deduction under Chapter VIA.

The gross total income of a registered firm for the assessment year 1984-85 was completed in February 1985 at Rs. 8,721. Accordingly, the firm was entitled to deduction under Chapter VIA to the extent of Rs. 8,721 only i.e. limited to the gross total income assessed. The department, however, allowed a deduction of Rs. 2,11,416 on account of export turn over as admissible under Chapter VIA *ibid* and computed the net total income at a loss of Rs. 2,02,695. This resulted in excess computation of loss of Rs. 2,02,695 in the hands of the firm with consequent excess carry forward of loss in the hands of the partners.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the Income-tax Act, 1961, in computing the total income of an assessee an amount equal to fifty per cent of the sums paid by the assessee as donations made in the previous year to the funds specified in the Act (excepting those contributions which are wholly deductable) shall be allowed as a deduction from the gross total income. With effect from the assessment year 1978-79, the qualifying amount is subject to a ceiling limit of Rs. 5,00,000 or 10 per cent of the processed gross total income, whichever is less.

In the assessment of a firm for the assessment year 1982-83 completed in March 1985, a deduction of Rs. 5,00,000 was allowed in respect of donation of Rs. 10,00,000 paid to a charitable trust in computing the total income of Rs. 1,05,77,580. While

working out the donation qualifying for deduction, the amount was not, however, restricted to Rs. 5,00,000 as required under the Act. This resulted in excess deduction of Rs. 2,50,000 (50 per cent of Rs. 5,00,000) and a short levy of tax of Rs. 1,87,440 in the hands of firm and its partners.

The Ministry of Finance have accepted the objection.

(iii) The Income-tax Act, 1961, provides for a deduction in the computation of total income of the shareholder of a company of the part of the dividends received by him from the company which is attributable to its profits and gains in respect of which the company is entitled to tax relief at the prescribed percentage as admissible to the newly established undertakings upto the assessment year 1981-82.

An Inspecting Assistant Commissioner of Income-tax (Assessment), pointed out (March 1981) to an Income-tax Officer that the shareholders of a private limited company assessed with him had been allowed excessive relief in respect of dividends received by them from the company during the assessment year 1976-77 and recommended action in respect of the other shareholders of the said company being assessed by the Income-tax officer. The Income-tax Officer did not take any action and the omission eventually resulted in short levy of tax of Rs. 30,967 for the assessment year 1976-77 and of Rs. 58,600 for the assessment year 1980-81.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) Under the provisions of the Income-tax Act, 1961, as it stood prior to its amendment by the Finance Act, 1983, where the income of an assessee included any profits and gains derived from a business of livestock breeding or dairy farming, a deduction was allowed in computing the total income of the assessee at the rate of one-fifth of such profits or rupees fifteen thousand, whichever was higher. In respect of profits and gains from the business of poultry farming, the deduction was limited to rupees fifteen thousand only. The term 'poultry' includes domestic fowls like chicken etc.

A registered firm engaged in the business of poultry farming claimed and was allowed deductions of Rs. 1,58,950, Rs. 77,517 and Rs. 1,21,980 while completing the assessments for the assessment years 1981-82, 1982-83 and 1983-84 in August 1985, November 1984 and January 1985 respectively against the admissible deduction of Rs. 15,000 for each of the assessment years. The mistake resulted in an aggregate under-assessment of income of Rs. 3,13,447 and an under-charge of tax of Rs. 82,750 for the assessment years 1981-82 to 1983-84 in the hands of firm alone.

The Ministry of Finance have accepted the mistake.

(v) Under the Income-tax Act, 1961, as applicable upto the assessment year 1985-86, any assessee being an Indian company or a person (other than a company) resident in India engaged in the business of export out of India of any goods or merchandise during the previous years, is allowed, in computing the total income, a deduction of one per cent of export turnover of the previous year and in addition, five per cent of the increase in the export turnover of such goods or merchandise during the previous year over the export turnover of the goods or merchandise during the immediately preceding previous year.

In the assessment of a registered firm for the assessment year 1984-85 completed in March 1985 on a total income of Rs. 5,90,420, the department allowed a deduction of Rs. 6,93,960, by adopting the export turnover of the previous year at Rs. 3,26,83,582. The assessment records disclosed that the eligible amount of export turnover for the previous year was Rs. 2,96,51,551 on the basis of which a deduction of Rs. 6,03,821 only was admissible. The excess deduction of Rs. 90,139 alongwith another minor mistake in allowing depreciation on a car resulted in short computation of assessee's income by Rs. 93,561 and a short levy of tax of Rs. 64,621 including interest for belated filing of return in the hands of the firm and its six partners.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.34 Non levy/incorrect levy of interest.

(i) The Income-tax Act, 1961, provides that any person responsible for paying any income chargeable under the head 'salaries' shall at the time of payment deduct income-tax on the amount payable at the average rate of income-tax, computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under salary for that financial year. The Act further provides that if such a person fails to deduct or after deducting fails to pay the tax within the prescribed period, he shall be liable to pay simple interest at the rate of 12 per cent per

annum (15 per cent from 1 October 1984) on the amount of such tax from the date on which such tax was deductible to the date on which such tax was actually paid.

For the assessment years 1982-83, 1983-84 and 1984-85, sums of Rs. 57,924, Rs. 1,30,81,632 and Rs. 1,63,53,771 respectively were remitted by an employer as income-tax in respect of salaries paid to foreign technicians engaged in oil drilling. Audit scrutiny revealed (February 1986) that a major portion of the tax pertaining to the assessment years 1983-84 and 1984-85 aggregating to Rs. 2,38,21,458 were paid in two equal instalments in July 1983 and November 1984 after the period specified under the Act. The delay ranged from 3 to 14 months for the assessment year 1983-84 and 7 to 18 months for the assessment year 1984-85. Interest was, therefore, chargeable from the employer at 12 per cent upto end of September 1984 and at 15 per cent thereafter. In the absence of details of monthly salary payable to the technicians, taking the average monthly deduction of tax at source from salary paid as Rs. 10 lakhs, interest chargeable from the employer worked out to Rs. 10.20 lakhs and Rs. 18 lakhs approximately for the two assessment years 1983-84 and 1984-85 respectively.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The Income-tax Act, 1961 provides that any person responsible for paying to a resident any income by way of interest other than income chargeable under the head 'interest on securities', shall at the time of credit of such income to the account of the payee or at the time of payment thereof, deduct income-tax thereon at the rates in force. The Act further provides that if the prescribed person fails to deduct or after deducting fails to pay it to Government within the prescribed period (within one week from the last day of the month in which deduction is made) he shall be liable to pay simple interest at 12 per cent (15 per cent from 1 October 1984) per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.

(a) During the previous years relevant to the assessment years 1972-73 to 1974-75, a registered firm paid by way of interest sums of Rs. 3,12,328, Rs. 4,38,584 and Rs. 1,10,836 to a closely held company on the monthly balances held by the latter with the assessee firm for the 12 months ending on 31 October 1971, 31 October 1972 and 31 October 1973 respectively, and these payments were allowed as expenditure in the assessments of the firm for the respective assessment years. Audit scrutiny (June 1983) of the certificates of tax deducted at source filed by the closely held company revealed that the assessee firm had deducted tax at source amounting to Rs. 65,588, Rs. 94,295 and Rs. 23,276 for the three assessment years but these sums were credited to Government account by the firm belatedly on various dates during March 1978 to May 1978, April 1982 to August 1982 and June 1978 respectively and hence the firm was liable to pay interest on such tax working out to Rs. 50,410, Rs. 1,09,193 and Rs. 12,760 for the assessment years 1972-73, 1973-74 and 1974-75 respectively. No action was, however, taken by the department to levy the interest aggregating Rs. 1,72,363.

The Ministry of Finance have accepted the mistake.

(b) A registered firm which made a total payment of Rs. 5,97,818 by way of interest during the previous years relevant to the assessment years 1976-77 to 1979-80 did not deduct tax of Rs. 59,780 from such payments and deposit the same to the credit of Government. As such the firm was liable to charge of interest for failure to deduct the tax but the same was not levied by the department. The omission resulted in total short levy of interest of Rs. 73,463.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) (a) Under the Income-tax Act, 1961, where the advance tax paid by an assessee on the basis of his own estimate for any financial year falls short of seventy five per cent of the assessed tax, interest at 12 per cent per annum is payable on the amount by which the advance tax paid by the assessee falls short of the assessed tax for the period from 1st day of April next following the relevant financial year upto the date of the regular assessment.

In the assessment of an individual for the assessment year 1977-78 completed in January 1985 the period of default from 1 April 1977 to 31 December 1981 for levying of interest for short payment of advance tax was incorrectly adopted at 45 months instead of 57 months. This resulted in short levy of interest of Rs. 5,86,495.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) Any person who has not been assessed previously has to send to the Income-tax Officer, in each financial year, before the date on which the last instalment of advance tax is due, an estimate of his total

income for the relevant previous year and pay advance tax accordingly. Failure to file the estimate and to pay the tax within the due date renders the assessee liable to pay interest at the prescribed rates from 1 April next following the financial year in which advance tax was payable, upto the date of regular assessment.

A Hindu undivided family was assessed for the first time for the assessment year 1976-77 to 1978-79 in July 1984 and accordingly was required to file its estimates of current income and to pay advance tax for the assessment years 1977-78 and 1978-79. Failure to file estimates and pay the advance tax for the two assessment years 1977-78 and 1978-79 rendered the assessee liable to interest of Rs. 54,204 which was not levied.

The Ministry of Finance have accepted the mistake.

(iv) Under the provisions of the Income-tax Act, 1961, where the return for an assessment year is furnished after the specified date, the assessee is liable to pay simple interest at 12 per cent (15 per cent from 1 October 1984) per annum from the day immediately following the specified date to the date of furnishing the return, on the amount of tax payable on total income as determined on regular assessment, as reduced by the advance tax, if any, paid and any tax deducted at source.

(a) In the case of an association of persons, an ex parte assessment for the assessment year 1972-73 made in March 1981 at Rs. 6,72,200 was reopened in the same month. In response to a notice subsequently issued by the department, the assessee filed a return in March 1985 showing 'nil' income. The re-assessment was completed in March 1985 at Rs. 6,72,000 and a tax demand for Rs. 6,13,180 was raised. As the return was not filed by the specified date of 31 July 1972, the assessee was liable to pay interest amounting to Rs. 9,33,468 for the period from August 1972 to February 1985 as against the interest of Rs. 6,37,900 actually levied by the department in respect of the period from August 1972 to March 1981. The mistake along with another minor mistake resulted in short levy of interest of Rs. 2,95,288.

The Ministry of Finance have accepted the mistake.

(b) A Hindu undivided family filed the return of income for the assessment year 1980-81 in April 1983. The assessment was completed in January 1985 by the Inspecting Assistant Commissioner (Assessment) on a taxable income of Rs. 10,68,517 including agricultural income of Rs. 5,000 and a tax demand of Rs. 7,53,852 was raised. For the delay of 33 months in filing the return, the assessee was liable to pay interest of Rs. 2,48,771 against the sum of Rs. 24,849 actually levied by the department. The omission resulted in short-levy of interest of Rs. 2,23,922.

The Ministry of Finance have accepted the mistake.

(v) Under the Income-tax Act, 1961, any demand for tax should be paid by the assessee within thirty-five days of service of notice of the relevant demand and failure to do so would attract simple interest at nine per cent per annum upto 31 March 1972, and at twelve per cent per annum from 1 April 1972, from the date of default. 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 tax demands.

The assessments of an individual for the assessment years 1962-63 and 1963-64 were completed in November 1966 (revised in May 1969 and March 1971) determining a net tax demand of Rs. 1,77,238 and Rs. 1,40,200 respectively. These demands were adjusted in July 1981 (together with interest for the belated payment of tax for the period upto 31 December 1971) against the refunds relating to the assessment years 1970-71 and 1971-72. The department charged further interest for the period of delay from 1 January 1972 to 30 June 1981 and arrived at the interest leviable at Rs. 1,02,894 for the assessment year 1962-63 and at Rs. 1,45,806 for the assessment year 1963-64. It was noticed in audit (May 1984) that the correct amount of interest worked out to Rs. 2,00,679 and Rs. 1,58,776 respectively for the two assessment years. The mistake arose due to the incorrect charging of interest upto the various dates of payments made in instalments of the tax demands relating to the assessment years 1970-71 and 1971-72 The refunds for the assessment years 1970-71 and 1971-72 were determined only in January 1981, and hence the credit towards demands for the assessment years 1962-63 and 1963-64 would arise only in July 1981, on which date the adjustment refund orders were issued by the department. The incorrect procedure followed in arriving at the interest for the belated payment of tax relating to the assessment year 1962-63 and 1963-64 resulted in short levy of interest of Rs. 1,10,755 for both the assessment years.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

the cancellation of the penalty proceedings initiated under the various provisions of the Income-tax Act at the time of the original assessment consequent on the cancellation of the assessment were also not correct. The minimum penalty leviable for short payment of advance tax was Rs. 16,590.

(ii) In another case assessed in the same ward, the assessment for the assessment year 1980-81 was completed on 'best judgement' basis on 25 March 1983 determining a total income of Rs. 2,50,000 treating the firm as an unregistered firm. The date of service of the notice of demand was not verifiable as the demand notice was not kept on record. However, as per the acknowledgement made on the assessment order, a copy of the order was received by the firm on 25 March 1983 and the firm made an application for cancellation of the assessment on 3 June 1983. The assessing officer cancelled the assessment on 22 August 1983. The fresh assessment was made on 19 March 1985 on a total income of Rs. 1,50,330 in the status of a registered firm. As the application for cancellation was made beyond the one month period, this resulted in the irregular reduction in total income from Rs. 2,50,000 to Rs. 1,50,330 and consequent short levy of tax and interest to the extent of Rs. 1,67,320. The total under charge of tax in the two cases for the assessment year 1980-81 amounted to Rs. 6,42,625.

The comments of the Ministry of Finance on the paragraphs are awaited (December 1986).

3.39 Incorrect allowance of the credit of tax deducted at source.

Under the provisions of the Income-tax Act, 1961, any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract of the value for more than Rs 10,000 from 1 June 1982 between the contractor and the Central/State Government shall at the time of payment thereof deduct an amount equal to 2 per cent of such sum as income-tax on income comprised therein. Deductions made in accordance with the above provisions and paid to 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 to him for the amounts so deducted on the production of the certificate for tax deducted, in the assessment, if any, made for the immediately following assessment year. According to the instructions issued by the Central Board of Direct Taxes in September 1973, in cases where contract is taken by an individual and is executed by a firm of which he is a partner, the credit for tax deducted at source would be given to the firm in whose total income, the income from the contract in question is included.

In the assessments of a registered firm for the assessment years 1982-83 and 1983-84 completed in February 1984, the department allowed credit for tax deducted at source for sums of Rs. 99,132 and Rs. 99,192 respectively. The scrutiny of the certificates of tax deducted at source, however, revealed (September 1984) that the contracts were made in the name of another firm and the certificates of tax deducted at source were also issued to that concern as the tax at source was deducted from the payments made to the said party. As the payments were not made to the assessee firm and the tax at source was also not deducted from any payments to said firm, the allowance of credit of Rs. 1,98,324 for the assessment years 1982-83 and 1983-84 was incorrect.

The Ministry of Finance have accepted the mistake.

3.40 Incorrect exemption of income.

Under the provisions of Income-tax Act, 1961, any income from interest on moneys standing to credit in a Non-resident External Account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973 does not form part of the total income in the case of person resident outside India as defined in the Foreign Exchange Regulation Act, according to which a person resident outside India means a person who is not a resident in India. A person is said to be a 'resident in India' under the Income-tax Act, if he being a citizen of India, returns to India and stays there for any purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

During the previous years relevant to the assessment years 1982-83 and 1983-84, an individual derived interest income of Rs. 1,25,222 and Rs. 1,27,676 respectively from his non-resident external account and claimed it as exempt from income-tax. While completing the assessments in March 1984, the assessing officer accepted the claim of the assessee and allowed the exemption. The assesee, an Indian citizen, was residing in India and was going abroad on short business visits but there was no evidence to show that he was resident outside India during the previous years relevant to the assessment years 1982-83 and 1983-84. According to the details in respect of the assessee's stay in India, the assessee was in India from 25 July 1980 onwards except for a brief visit outside India from 28 December 1981 to 6 January 1982 and he had not been able to go outside India for personal reasons. His stay in India

thereby being for an uncertain period, he was to be treated as 'resident in India' under the Foreign Exchange Regulation Act and the interest income brought to tax. The incorrect exemption of interest income of Rs. 1,25,222 and Rs. 1,27,676 resulted in an aggregate short levy of tax of Rs. 1,48,290 for the two assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.41 Incorrect reduction of demand.

The original assessment for the assessment year 1976-77 of an individual was completed in September 1979 and a demand notice for Rs. 46,734 was issued : Penalty proceedings under the various provisions of the Income-tax Act, 1961, were also initiated. The assessee went in appeal against the assessment and the appellate authority (October 1981) reduced the demand to Rs. 44,000 which was given effect to in November 1981. In the meantime, in February 1981 the assessment was reopened by the department and pending completion of re-assessment proceedings, the assessing officer took the demand of Rs. 44,000 through a minus memo to nil amount on 5 March 1982 and also dropped the penalty proceedings initiated at the time of the original assessment.

In February 1985 the re-assessment proceedings initiated in February 1981 were dropped by the Inspecting Assistant Commissioner (Assessment) on the ground that there was no escapement of the income and a nil demand was created. However, the demand of Rs. 44,000 raised in October 1981 and taken to nil was not restored alongwith interest, for non-payment of the demand. The penalty proceedings initiated at the time of original assessment were also not revived. These misakes resulted in non-raising of demand to the extent of Rs. 91,513.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

3.42 Loss of revenue due to incorrect orders passed in revisionary proceedings.

The Income-tax Act, 1961, provides that the Commissioner of Income-tax may, either of his own motion or on an application by the assessee for revision, revise any order passed by an authority subordinate to him. The Act also provides that the Commissioner shall not revise any order where the same has been made the subject of an appeal to the Commissioner of Income-tax (Appeals).

In the case of a registered firm, the assessing officer, under the direction of the Inspecting Assistant Commissioner completed the assessment for the assessment year 1977-78 in July 1980 on a total income of Rs. 1,92,240. The assessee firm preferred an appeal against the assessment order of the assessing officer before the Commissioner of Income-tax (Appeals). Thereafter, the assessee filed a revision petition before the Commissioner of Income-tax stating, *inter alia*, that the appeal filed before the Commissioner of Income-tax (Appeals) had been withdrawn on 27 February 1981 because it was not likely to be disposed of before the expiry of at least six months. The assessee also requested the Commissioner of Income-tax to dispose of the revision petition on priority basis. Considering the request of the assessee and with a view to collect the correct demand from the assessee, the Commissioner of Income-tax passed orders on 28 March 1981 allowing a reduction in income of Rs. 1,18,964. The appeal filed before the Commissioner of Income-tax (Appeals) was subsequently dismissed on 25 July 1981 on the ground that the assessee had requested on 9 March 1981 to decide the appeal within 2-3 days or else to treat the appeal as withdrawn and the appeal had become infructuous in view of the revision petition already decided by the Commissioner on 28 March 1981.

As the appeal filed by the assessee was pending before the Commissioner of Income-tax (Appeals), the Commissioner of Income-tax was not empowered to decide the revision petition of the assessee on 28 March 1981. The incorrect orders of the Commissioner led to reduction of demand of Rs. 71,267 in the hands of the firm and its partners.

The Ministry of Finance have accepted the mistake.

3.43 Loss of revenue due to time bar.

Under the Income-tax Act, 1961, all income accruing or arising to an assessee in India during any previous year is includible in his total income for that year.

Two brothers each assessed in the status of individuals had half share in about 22 grounds of land in a metropolitan city. In October 1967, they leased out the lands to their mother, permitting the latter to construct a theatre for exhibiting films on payment of ground rent of Rs. 19,500 per annum. The income by way of ground rent for the assessment years 1968-69 to 1972-73 was, however, omitted to be assessed to tax. When this omission involving an additional tax demand of Rs. 90,580 was pointed out in audit in August 1975, the Ministry of Finance

(ii) Under the provisions of the Wealth-tax Act, 1957, property held under trust for any public purpose of a charitable or religious nature is exempt from wealth-tax. By an amendment made with effect from 1 April 1973, the exemption was made inadmissible if the funds of the trust were invested in a concern in which the author or trustee of the trust had substantial interest. If, however, the amount of investment of the funds of the trust in such a concern did not exceed 5 per cent of the capital of the concern, the exemption would be available for any assets other than those representing such investment.

For the assessment years 1980-81 to 1983-84, a charitable trust was held as assessable to income tax, in the status of an association of persons, as more than 75 per cent of the funds of the trust had been invested in concerns wherein the authors of the trust were substantially interested. The corpus of the trust was like-wise, liable to wealth-tax for the four assessment years at the minimum rate of one and one-half per cent or at the rates applicable to an individual, whichever was beneficial to the revenue. No action was, however, taken to assess to tax the wealth of the trust for these years. The taxable wealth according to the balance sheet of the trust on the respective valuation dates for the assessment years 1980-81 to 1983-84 was Rs. 6,28,328, Rs. 8,87,688, Rs. 13,06,578 and Rs. 15,42,578 respectively. The omission to assess the aggregate wealth of Rs. 43,65,172 resulted in non-levy of wealth-tax of Rs. 74,093 (reworked after excluding wealth-tax liabilities).

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Under the Wealth-tax Act, 1957, the net wealth of an assessee 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. The Act also provides that where an assessee is a partner in a firm, the value of his interest in the net assets of the firm is to be included in his net wealth. The Wealth-tax Rules, 1957, while laying down the method for determination of the net value of assets of business as a whole, *inter alia*, provide that necessary adjustments in the value of an asset not disclosed in the balance-sheet shall be made while computing the value of interest of a partner in a firm. Further, the Act also provides for the levy of penalty, inter alia, if an assessee has, without reasonable cause, failed to furnish the wealth-tax return within the prescribed time or concealed the particulars of any assets or furnished inaccurate particulars of assets or debts. The Central Board of Direct Taxes issued instructions (November 1973 and April 1979) emphasising the need for proper co-ordination amongst assessment records pertaining to different direct taxes with a view to bring to tax cases of evasion of tax.

(a) Six individuals (a father and his five sons), were partners of a firm which was engaged in the business of lorry transport. Three of them filed their wealth-tax returns for the assessment years 1980-81 to 1982-83 showing their capital/current account balances as per the balance sheets of the firm and the same was accepted by the assessing Officer while completing their assessments in March 1984 and 1985. The remaining three partners had not filed their wealth-tax returns. Audit scrutiny of the income-tax assessments (July 1985) disclosed that the firm was adopting cash system of accounting in respect of its lorry contract receipts and the amounts outstanding for collection after raising bills were Rs. 25,08,880, Rs. 23,99,400 and Rs. 30,27,226 as on 31 March 1980, 31 March 1981 and 31 March 1982 respectively. These were not disclosed in the Balance Sheets of the firm and consequently omitted to be considered in computing the assessee's interest in the partnership firm. The omission resulted in an aggregate non-levy of wealth-tax of Rs. 72,170 in the hands of the six individuals. Further, penalty provisions for non-filing of the returns by the three individuals were also attracted.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The wealth-tax assessment records of two individuals for and upto the assessment year 1972-73 disclosed that they owned wealth in the status of Hindu undivided family, for the assessment years 1975-76 and 1976-77. It was noticed in audit (July 1982) that they had neither filed the returns of their net wealth for these assessment years nor had the department called for the wealth-tax returns. The cases were also not shown as pending in the departmental records. The omission resulted in under-assessments of wealth of Rs. 21,43,200 and short-levy of wealth-tax of Rs. 66,116. Further, penalty provisions for non-filing of the returns and concealment of wealth were also leviable.

The Ministry of Finance have accepted the mistake.

(c) The Wealth-tax assessment records of an assessee, for the assessment years 1967-68, 1968-69 and 1970-71 disclosed investment of an amount of

Rs. 1,25,000 by the assessee in a company, which was assessed to wealth-tax in these assessment years. However, in the subsequent assessment years 1971-72 to 1978-79, the assessee neither returned the amount nor the department included the same in the net wealth of the assessee while completing the assessments for those assessment years between April 1976 and January 1983. The omission resulted in under assessment of net wealth by Rs. 10,00,000 and short levy of tax of Rs. 33,570. Further, penalty for the concealment of wealth was also leviable under the provision of the Act.

The department has accepted the objection in principle.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) The compensation receivable by an assessee is an asset within the meaning of Wealth-tax Act and as such is assessable to wealth-tax.

(a) In one case, lands belonging to an individual (who died on 27 June 1977) were acquired by a State Housing Board and compensation awarded on various dates from April 1965 to May 1970. Though details of the final compensation awarded were not available, the compensation receivable according to the wealth-tax records of the assessee was of the order of Rs. 3,06,321. The account delivered (in June 1980) by the Accountable Person, for the property passing on the death of the assessee, also included a sum of Rs. 3,75,000 as compensation receivable on the lands acquired. The amount was, however, not included in the net wealth of the assessee for the assessment years 1974-75 to 1977-78 assessed in March 1979 and March 1980.

The department has accepted the objection and has raised an additional demand of Rs. 65,474 for the four assessment years.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The lands belonging to an individual were acquired by the State Government in 1967 and enhanced compensation of Rs. 2,17,712 and interest of Rs. 74,251 thereon was granted by the High Court in October 1977. While these amounts were brought to charge of wealth-tax in the assessment for the assessment year 1978-79 completed in March 1983. the assessability of the compensation amount to tax for the earlier assessment years beginning from the year of acquisition of the lands in 1967, was not considered. This resulted in non-levy of tax of Rs. 38,092 for the assessment years 1972-73 to 1977-78.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

4.05 *Incorrect valuation of assets*

A. *Immovable properties*

(i) Under the provisions of the Wealth-tax Act, 1957, the Wealth-tax Officer shall subject to rules made in this behalf estimate the value of any asset (other than cash) to be the price, which in his opinion, it would fetch if sold in the open market on the valuation date. Besides, Agricultural lands comprised in tea, coffee, rubber or cardamom plantations were chargeable to wealth tax upto the assessment year 1982-83. No rules were framed for valuation of these lands though a decision was taken by the department in 1980 itself to frame rules for valuation of lands comprised in specified plantations. In February 1982 the Board issued guidelines through a circular for valuing these plantation lands by capitalising the average income realised from these lands for six years. In March 1983, the Board through another circular issued fresh guidelines in respect of lands in coffee plantations situated in Karnataka are concerned stating that the revision was made with a view to have some uniform procedure for speedy completion of the assessments pending in Karnataka. According to these guidelines the rates ranging from Rs. 5,000 to Rs. 15,000 per acre in accordance with the average yield per acre were considered reasonable for valuation of plantation lands covered by plants which had started yielding. The Wealth-tax Officers complied with the circular instructions of the Board and completed the assessments during the years 1983-84 and 1984-85. The following underassessments due to under-valuation of coffee lands and other irregularities were noticed by audit (November 1984 to January 1986).

(a) The Wealth-tax Officer initiated action for reopening of a large number of assessments concluded in the years 1977-78 and 1978-79, 1979-80 and 1980-81 as the value of coffee lands included in the assessments at rates ranging from Rs. 5,000 to Rs. 7,000 per acre, were in his opinion found to be too low as the market value of the lands prevailing then ranged from Rs. 20,000 to Rs. 30,000 per acre. The Wealth-tax Officer also took into consideration the fact that in two neighbouring districts, coffee lands which were less fertile had been valued by the concerned Wealth-tax Officers at rates ranging from Rs. 12,000 to Rs. 16,000 per acre. However, after the issue of the guidelines by the Board in February 1982 and March 1983, the Wealth-tax

Officer dropped the proceedings initiated for re-opening the past assessments. This resulted in consequent short-levy of tax of Rs. 19.37 lakhs computed on the basis of the minimum of Rs. 20,000 per acre for the assessment years 1977-78 to 1981-82 in the case of 31 assessees.

(b) In another thirty cases, the value of lands returned by the assessees in their wealth-tax returns amounted to Rs. 3.54 crores. The value of these lands was arrived at Rs. 2.53 crores by Wealth-tax Officer by applying the guidelines issued by the Board. Although the value of the land as returned was more by Rs. 1.01 crores than the value determinable as per guidelines, the returned value was ignored and assessments were concluded adopting the value as per guidelines. The resultant under-assessment led to undercharge of tax of Rs. 2,57,639 for the assessment years from 1977-78 to 1982-83.

(c) In four cases, the land was sold for a sale consideration of Rs. 54.35 lakhs effected on dates subsequent to the relevant valuation dates which was ignored and the coffee lands were valued at Rs. 12.14 lakhs by adopting the rates suggested in the guidelines. The value of coffee lands sold in May 1979, July 1979, May 1980 and May 1981 for Rs. 11,00,000, Rs. 9,15,000, Rs. 26,20,000 and Rs. 8,00,000 respectively were adopted in the assessments of immediately preceding assessment years at mere Rs. 3,27,630, Rs. 1,55,000, Rs. 5,56,540 and Rs. 1,75,000. Failure to adopt the higher value resulted in under valuation of wealth by Rs. 42.21 lakhs involving short levy of tax of Rs. 1,46,454 for eight assessment years.

(d) In seven cases though the value of the coffee lands included in the earlier assessment years had been accepted by the assessee, the value of the land was determined at a lower valuation of Rs. 47.77 lakhs by the assessing officer for the subsequent assessment years 1980-81 to 1982-83 on the basis of the Board's guidelines. The under valuation amounted to Rs. 62.70 lakhs on this account leading to short levy of tax of Rs. 2,46,929.

(e) In another case, an estate purchased for Rs. 15,05,000 in 1968 and valued by an approved valuer at Rs. 17,50,000 as on 30 June 1977 (assessment year 1978-79) was valued at Rs. 5,86,206 as on 30 June 1977 in the assessment concluded in October 1982. The estate was similarly valued at amounts of Rs. 4,92,740 and Rs. 6,61,634 for the assessment years 1977-78 and 1979-80 in the assessments concluded in March 1982 and October 1982 respectively. Owing to the adoption of lower valuation there was undercharge of tax of Rs. 64,490 for the three years together.

The Department stated that the Board's circulars were binding on the assessing authorities even if the value arrived at in accordance with the guidelines was less than the prevailing market value or the value according to the approved valuer's reports or values returned by the assessees themselves. It was also stated by the Department that even according to judicial pronouncements, Board's circulars which are especially beneficial to the assessees (benevolent circulars) are binding on the assessing authorities even if they deviate from law.

The scheme of valuation of assets laid down in the Act envisages valuation of asset at market value only. The Act authorises the Board to make rules to provide the manner in which the market value of the assets has to be determined. The Board's Circulars of February 1982 and March 1983 lay down only guidelines for the valuation of lands and these circulars not being in the nature of instructions are not binding on the assessing officers.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(f) Two individuals were partners having 15/44 and 14/44 share in a firm, owning extensive immovable properties. In the wealth-tax assessments of these two individuals for the assessment years 1981-82 to 1983-84 completed in March 1985, the department adopted the value of a land and a building thereon as Rs. 25,05,750, Rs. 35,82,660 and Rs. 35,58,600 for the three assessment years respectively and determined their share of the wealth accordingly. Audit scrutiny revealed (September 1985) that one other partner of the firm retired in November 1984 and the consideration of the relinquishment of her share in the partnership assets was valued at Rs. 22 lakhs and towards this, she was given 1/3rd share of the above property. It was, therefore, pointed out by audit that on this basis the value of the property would require to be adopted as Rs. 60 lakhs for the three assessment years 1981-82 to 1983-84 and if this was done the aggregate valuation would work out to Rs. 1,67,06,060 in the case of two individuals, resulting in a total short levy of tax of Rs. 2,62,152.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(g) For the assessment year 1982-83 (valuation date 31 March 1982) an assessee returned the value of 1,91,111 sq. metres of non-agricultural lands at Rs. 5,73,333, at the rate of Rs. 3 per sq. metre on the basis of registered valuer's report dated 27 April 1982. The assessing officer accepted the value as returned by the assessee and completed the assessment in July 1982. In the meantime, the assessee executed two sale deeds on 1 April 1982, the day following the valuation date for the sale of 6,329 and 10,632 sq. yards of the lands at the rate of Rs. 13.15 per sq. yard (Rs. 15.72 per sq. metre). Subsequently the assessee sold the remaining part of the lands also at the same price. The information relating to the sale price of Rs. 15.72 per sq. metre on 1 April 1982 was received by the assessing officer from the assessee on 7 April 1983. As the sale price is relevant for the valuation of wealth for the assessment year 1982-83, the wealth-tax assessment completed on 11 July 1982 was required to be re-opened. No action was, however, taken by the assessing officer. This resulted in under-valuation of assets by Rs. 24,30,930 and short-levy of tax of Rs. 1,06,248.

The Ministry of Finance have accepted the mistake.

(h) The net wealth of an individual, for assessment years 1976-77 to 1978-79, included certain immovable properties, which he held in joint ownership in part and the remaining as sole owner. In the previous year relevant to the assessment year 1979-80, the assessee sold a portion of the joint ownership property and the entire sole ownership property to a builder and returned a consideration of Rs. 4,00,000 for the joint ownership property admeasuring about 1220 square metres and Rs. 1,00,000 for the sole ownership property admeasuring 2864 square metres. This was accepted by the department while completing the assessments for the above three assessment years in March 1981, July 1982 and March 1983 respectively. It was observed in audit, in October 1984 that the department had not referred the valuation of the properties to the departmental valuer though both the properties fell under the same cadastral survey and the department should have adopted the value of the sole ownership property also at the rate of sale of the joint ownership property. Had this been done, the value of sole ownership property would be Rs. 9,39,392. Omission to do so resulted in under-assessment of wealth of Rs. 7,21,856 for each of the assessment years 1976-77 and 1977-78 and Rs. 5,13,457, for the assessment year 1978-79 and an aggregate short levy of tax of Rs. 90,353 (including additional wealth-tax of Rs. 35,598 leviable for the assessment year 1976-77).

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(i) The net wealth of an individual, for the assessment year 1984-85 *inter alia,* included his one-half share in a plot of land (in a metropolitan town) measuring 1,210 square yards. While completing the assessment for the assessment year 1984-85 in August 1984, the assessing officer adopted the value of the assessee's one-half share in the plot of land at Rs. 1,70,000, the value working to Rs. 140 per square yard. It was seen in audit (December 1985) that in respect of the same area and locality, the District Valuation Officer in another case, had determined the value of the plot at Rs. 1,314 per square yard as on 4 December 1981 relevant to the assessment year 1982-83. On the basis of the value of the plot at Rs. 1,314 per square yard in the same area as determined by the District Valuation Officer in another case, the value of the plot owned (1210 square yards) by the assessee, worked out to Rs. 15,89,940 as against Rs. 1,70,000 adopted by the department. The incorrect valuation adopted by the department resulted in under-assessment of wealth by Rs. 14,19,940 and short levy of tax of Rs. 59,440.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(j) In the wealth-tax assessments of a Hindu undivided family, for the assessment years 1978-79 to 1980-81 completed in April 1980, the value of one of the properties was adopted at Rs. 2,08,250, Rs. 2,13,300 and Rs. 2,13,250 respectively as returned based on the cost of land purchased at Rs. 15,000 in March 1972 and cost of construction spread over three years from the year 1975 to 1978. In the case of the other property the approved valuer had valued the land in the same locality at Rs. 3.50 per square yard according to which cost of land itself worked out to Rs. 98,000. The cost of construction spread over from the year 1975 to 1978 also did not represent the market value relevant to the assessment years 1978-79 to 1980-81 due to rise in prices. The assessee also had returned the value of another property situated in an industrial area comprising land measuring 5,223 square yards with buildings constructed on area of 536 square yards, at Rs. 90,000 which was adopted while completing the assessments. The valuation of this property as on 31 March 1975 relevant to the assessment year 1975-76 had been done at Rs. 87,113 by the approved valuer. Thus the value assessed at Rs. 90,000, for the assessment years 1978-79 to 1980-81 did not represent the market value due to sharp rise in the prices. The non-adoption of higher value resulted in under assessment of wealth of Rs. 6,37,471 and short levy of tax of Rs. 53,679.

The Ministry of Finance have accepted the mistake.

(k) An individual sold an immovable property (situated in a Metropolitan city) in the financial year 1983-84 for a consideration of Rs. 11,48,611 after obtaining a clearance certificate for sale of property from the department in January 1983 under income-tax Act, *i.e.*, immediately before the valuation date relevant to the assessment year 1983-84. In the wealth-tax assessment of the individual, for the assessment year 1983-84, completed in May 1984, the assessing officer adopted the value of the said property at Rs. 4,50,000 instead of the agreed market value of Rs. 11,48,611. The incorrect valuation adopted resulted in under assessment of wealth by Rs. 6,98,611 and short levy of tax of Rs. 33,265.

The Ministry of Finance have accepted the mistake.

(l) Five assessees owned agricultural land in a village near Baroda city (Gujarat). A part of the land in respect of the four assessees was acquired by the Government during the previous years relevant to the assessment year 1979-80 (three cases) and 1980-81 (one case). Compensation at the rate of Rs. 30,250 in one case and at the rate of Rs. 32,000 per acre in the three cases was paid. According to the report of the approved valuer, the land was situated at a distance of 8 Km from Baroda city and was of light black loam of good fertility, irrigated, tobacco producing and connected by pucca tar road with the city. The value of the land before and after acquisition was taken at a very low rate ranging from Rs. 6,200 to Rs. 13,430 per acre in the assessments for the assessment years 1978-79 to 1980-81, completed between November 1982 to March 1983. Even if the land is valued at the rate at which the compensation was paid, there was under valuation of the asset in all these cases to the extent of Rs. 16,76,860 with consequent short levy of tax of Rs. 35,577 for the assessment years 1978-79 to 1980-81.

The department has accepted the objection in four cases.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) The methods generally adopted to estimate the market value of any building are the 'land and building method' and 'income-capitalisation method'. It has been judicially held (100-ITR-621) that the 'Income capitalisation method' is ideally suited for valuation of commercial properties.

While computing the net wealth of an individual, for the assessment years 1981-82 to 1984-85, between February 1982 and November 1984, the assessing officer adopted the value of buildings and godowns let out for commercial purposes at Rs. 11,00,000 for each of the assessment years. The net rental income assessed in respect of these properties for the purposes of income-tax was Rs. 1,88,814, Rs. 1,91,212, Rs. 2,10,669 and Rs. 2,40,307 for the assessment years 1981-82 to 1984-85 respectively. On the basis of yield and capitalisation method adopted generally by the department, the fair market value of the properties worked out to Rs. 18,88,140, Rs. 19,12,120, Rs. 21,06,690 and Rs. 24,03,070 for the assessment years 1981-82 to 1984-85 respectively. The failure to adopt correct market value resulted in total under-assessment of wealth by Rs. 39,10,020 and a short levy of tax of Rs. 1,50,699 in the aggregate.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Under the Wealth-tax Act, 1957, the value of a house property belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may, at the option of the assessee, be taken 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 next following the date on which he became the owner of the house or on the valuation date relevant to the assessment year commencing on the 1 April 1971, whichever valuation date is later.

A Hindu undivided family owned a residential house property and also a vacant site adjacent to it. Upto the assessment year 1974-75, these properties were valued separately and assessed to wealth-tax. While the house property was valued at Rs. 3,39,610, the value of vacant site was adopted as Rs. 1,40,000 for the assessment years 1971-72 and 1972-73 and at Rs. 1,80,000 for assessment years 1973-74 and 1974-75. From the assessment year 1976-77 and onwards, the assessee opted to adopt the value of the property as on 31 March 1971 under the provisions of the Act. The assessee returned the value of house property at Rs. 3,39,610 and the value of vacant site at Rs. 1,00,000 as on 31 March 1971 for the assessment years 1976-77 to 1982-83 and the same was accepted by the assessing officer while completing the assessments between August 1980 and July 1983.

It was pointed out in audit (June 1984) that the option to adopt the value as on 31 March 1971 is available only for the residential house property and

not for the vacant site which was a separate property and also valued for wealth-tax separately upto the assessment year 1974-75 and as such the vacant site was required to be valued at the market rate under the provisions of the Act.

The Ministry of Finance have accepted the mistake in principle.

(iv) Under the Wealth-tax Act, 1957, the Wealth-tax Officer may refer the valuation of any asset to a valuation officer. The Act also provides that the order of the valuation officer in respect of the asset shall be binding on the assessing officer.

For the assessment year 1979-80, two individuals returned their one-third shares in an immovable property at Rs. 1,15,717 each. While completing the assessments of the individuals in March 1984, the assessing officer adopted the value of the one-third share in respect of each individual at Rs. 5,50,000 adopting the value of the whole property at Rs. 16,50,000 on the basis of a valuation report (December 1983) by the District Valuation Officer determining the value of the property at Rs. 33,00,000 as on September 1982. On a reference (February 1983) by another assessing officer (who completed the assessments of the individuals for the previous assessment years 1977-78 and 1978-79) the value of the property had been estimated (July 1983) by the Departmental Valuation Officer at Rs. 44,78,000 as on the valuation date (31 March 1979). On this basis the share of each of the two assessees in the property worked out to Rs. 14,92,666 as against Rs. 5,50,000 adopted in the assessments. The adoption of incorrect valuation resulted in under-assessment of wealth of Rs. 18,85,332 and a short levy of wealth-tax of Rs. 56,408.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) The Wealth-tax Act, 1957, provides that subject to the rules made in this behalf 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. As per executive instructions issued by the Central Board of Direct Taxes in June 1970 where the value of a property in respect of any assessment year is shown at a figure which is more than that the declared consideration in respect of an earlier year by more than 25 per cent, the assessments of the earlier years should be reopened for re-valuation of the property even though the higher valuation in the subsequent years was attributable to the adoption of a different basis for valuation.

(a) In the assessment of a Hindu undivided family, for the assessment year 1975-76, completed in March 1980, the value of two urban properties were adopted at Rs. 80,000 and Rs. 1,00,000 respectively as returned by the assessee with a note that the value of the properties would be subject to revision later on. In the assessmnt for the subsequent assessment year 1976-77 completed in March 1981 the value of one property was adopted at Rs. 2,33,631 and of another property at Rs. 74,080.

A scrutiny of the assessment records of the assessee for the assessment year 1979-80 revealed (July 1985) that the department had referred the valuation of these properties to the Departmental Valuation Officer and the valuation officer had determined (March 1982) the value of these properties at Rs. 2,57,000 and Rs. 6,51,200 respectively as on 31 March 1977. The department completed the assessments for the assessment year 1977-78 and onwards on the basis of the valuation report received by the assessing officer on 15 March 1982.

The assessments for the earlier assessment years 1975-76 and 1976-77 were, however, not reopened under the executive instructions of the Board, within the time limit prescribed under the Act though the value adopted in those years were subject to revision at a later date.

On the basis of the values determined by the Departmental Valuation Officer and adopted by the Department, for the assessment year 1977-78 and onwards, the value of the above two properties considering 10 per cent appreciation each year, worked out to Rs. 7,50,574 and Rs. 8,25,631 as against Rs. 1,80,000 and Rs. 3,07,711 adopted for the assessment years 1975-76 and 1976-77 respectively. The omission to re-open the assessments thus resulted in under assessment of wealth of Rs. 10,88,494 and short levy of wealth tax of Rs. 51,102 (including additional wealth tax of Rs. 27,359).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The Wealth-tax assessments of a Hindu undivided family of the specified category for the assessment years 1976-77, 1977-78, 1980-81 and 1981-82 were completed in February 1977, January 1982 and August 1982 determining the net wealth as Rs. 13,54,000, Rs. 15,93,800, Rs. 25,83,300 and Rs. 24,61,600 respectively, which included the value of certain agricultural lands belonging to the assessee at Penang estimated at $ 1,40,000, $ 2,00,000 and $ 2,50,000 by the Wealth-tax Officer Audit scrutiny revealed that in the assessment for the assessment years

1978-79 and 1979-80 the value of these lands had been adopted at $ 3,90,625 and $ 3,12,500 by the Wealth-tax Officer and the value of the asset adopted in the assessments for the earlier assessment years 1976-77, 1977-78, 1980-81 and 1981-82 was disproportionately low. The department had, however, not taken any action to reopen the assessments for the assessment years 1976-77, 1977-78, 1980-81 and 1981-82 in terms of the Board's instructions of June 1970 to adopt the correct market value.

The department has revised the wealth-tax assessments for the assessment years 1976-77 and 1977-78 in March 1986 and for 1980-81 and 1981-82 in January 1986 raising an aditional demand of Rs. 52,231 for both the assessment years.

The internal audit party of the department checked the assessment but the omission escaped its notice.

The Ministry of Finance have accepted the mistake.

(c) For the assessment years 1977-78 to 1979-80 the fair market value of a site measuring 3,030 square metres in a city was adopted at Rs. 30,300 in the assessments (January 1982) as returned by a Hindu undivided family, on the ground that this property came within the purview of Urban Land Ceiling Act. It was, however, seen in audit (July 1985) that the fair market value of the said property was estimated by the assessing officer at Rs. 9,44,972 (March 1985) on the subsequent valuation date relevant to the assessment year 1980-81 on the finding that there was an oral partition on 1 January 1982. This indicated that property had actually not come within the purview of Urban Land Ceiling Act. The Wealth-tax Officer did not utilise this information for re-opening the assessments for the assessment years 1977-78 to 1979-80 so as to determine the correct valuation of the property for those assessments. Estimating the rate of increase in the value of immovable properties in cities at ten per cent per annum, there was under valuation of the property to the extent of Rs. 6,79,673, Rs. 7,50,670 and Rs. 8,28,766 for the assessment years 1977-78 to 1979-80 respectively involving an aggregate tax effect of Rs. 40,164.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) Under the Wealth-tax Act, 1957, where an assessee is a partner in a firm, the value of his interest in the net assets of the firm is to be included in his net wealth. The Wealth-tax Rules, 1957, provide that where the market value of any asset exceeds its book value the former is to be substituted for the book value in such valuation. It has been judicially held (100 ITR 621) that the income capitalisation method is ideally suited for estimating the market value of commercial properties.

Four individuals were partners in a registered firm having their share of 30,22,22 and 26 per cent respectively during the assessment years 1981-82 to 1983-84. The income-tax records of the firm showed that the firm owned several immovable properties which were let out to Government offices/ banks etc. A few of them were also used for its own business in bidi-leaves and manufacture of bidies. The book value of all these immovable properties was shown in the balance sheet as on Diwali 1980 at Rs. 2,13,487. On 27 October 1981 (Diwali 1981), the properties were revalued at Rs. 4,29,856. The wealth-tax assessments for the assessment years 1981-82 to 1983-84 in respect of the four partners were completed by the Wealth-tax Officer between September 1984 and March 1985 (except in one case in which the assessment for the assessment year 1983-84 was pending) adopting the book value of the immovable properties. The net maintainable rent in respect of these properties was Rs. 1,35,793. On the basis of the income capitalisation method, the market value of the let out properties would work out to Rs. 13,57,930. Due to omission to adopt this value for the purpose of wealth-tax assessments, the net wealth of the assessees was under-assesed to the tune of Rs. 33,01,000 involving total short levy of tax of Rs. 31,170 for the assessment years 1981-82 to 1983-84.

The comments of the Ministry of Finance are awaited (December 1986).

B. *Shares, debentures etc.*

Under the Wealth-tax Act, 1957, 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.

An assessee was hoding 1,693 shares of 'A' company and 750 shares of 'B' company. In the assessment of the assessee for the assessment year 1979-80, completed in March 1984, the assessing officer estimated the value of shares of 'A' company at the rate of Rs. 203.06 per share and those of 'B' company at the rate of Rs. 502.21 per share (with reference to relevant Balance Sheets of the companies) as against Rs. 74.61 and Rs. 28.47 per share respectivelv returned by the assessee. 'A' company was holding 14,125 shares of 'B' company, which was its subsidiary company. However, while computing the value of shares of 'A' company at Rs. 203.06 per share, the value of 14,125 shares of 'B' company was not considered at the estimated rate of Rs. 502.21 per share.

The mistake resulted in under-assessment of wealth of Rs. 44,67,827 and a short-levy of wealth-tax of Rs. 1,51,086.

The Ministry of Finance have contended (November 1986) that the valuations of unquoted shares has to be made in accordance with Rule ID of Wealth-tax Rules, 1957 (adopting the book value of these assets shown in the balance sheet of each company). This position is, however, not consistent with the provisions of the Act according to which the basic principle of the valuation is the market value of the property on the valuation date.

C. *Partner's share interest in partnership firm.*

Under the Wealth-tax Act, 1957, where an assessee is a partner in a firm, the value of his interest in the net assets of the firm is to be included in his net wealth. The Wealth-tax Rules, 1957, provide that where the market value of any asset exceeds its book value by more than 20 per cent, the market value is to be substituted for book value. The Act also provides that the valuation done by the Departmental Valuation Officer on a reference by the assessing officer, is binding on the Wealth-tax Officer.

In the case of two individuals who were partners in a firm (having 20 per cent share each), the wealth-tax assessments for the assessment years 1978-79, 1979-80 and 1980-81 to 1983-84 were completed in March 1983, March 1984 and October 1984 respectively, adopting the share interest in the firm, as their capital balances on the last day of the previous year (Diwali) as shown in the books of the firm. The firm owned a building which was used as a hotel (lodging business). The deed of partnership effective from 1 January 1977 povided, *inter alia,* that the hotel building would belong to the two assessee partners and in the event of retirement or dissolution of the firm, other partners would not be entitled to the share in the assets of the firm but would be entitled to their capital plus accumulated profits only.

The value of the hotel building as per the books of the firm on Diwali 1977 and 1978 was Rs. 6,81,500. As against this, the Department Valuation Officer on a reference from the assessing officer in July 1978, determined the market value of the building on 31 March 1977 at Rs. 12,03,800 and on 31 March 1978 at Rs. 12,59,200. The valuation reports of the Departmental Valuation Officer were overlooked by the assessing officer while completing the wealth-tax assessments for the assessment years 1978-79, 1979-80, 1980-81 to 1983-84 between March 1983 and October 1984. The difference between the market value of the building and the book value exceeded 20 per cent and as such the market value was to be substituted for the purposes of wealth-tax assessments of the partners. On the basis of the values of Rs. 12,03,800 for the assesment year 1978-79 and Rs. 12,59,200 for the assessment year 1979-80 as determined by the Departmental Valuation Officer, allowing an annual increase of 10 per cent for appreciation in value in subsequent years (1980-81 to 1983-84) there was total under-assessment of wealth of Rs. 49,95,686 and consequent short levy of tax of Rs. 79,375 for the assessment years 1978-79 to 1983-84 in both these cases.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

D. *Incorrect valuation of life interest.*

In the wealth-tax assessment of an individual who was the sole beneficiary of a trust, for the assessment year 1980-81 completed in March 1985, while working out the value of life interest in the trust of the assessee at Rs. 12,91,179, the assessing officer determined the average income at Rs. 1,09,324 instead of the correct amount of Rs. 1,98,020 due to incorrect adoption of the period of income as 24 months instead of only 13 months and 8 days. The correct value of life interest on the basis of the average income of Rs. 1,98,020 however, worked out to Rs. 23,37,824 instead of Rs. 12,91,179 arrived at by the department. The incorrect valuation of life inteest resulted in under assessment of wealth by Rs. 9,08,821 (the value of life interest being restricted to the corpus of the trust) and a short levy of wealth-tax of Rs. 43,277.

The Ministry of Finance have accepted the mistake.

4.06 *Incorrect computation of net wealth.*

Under the Wealth-tax Act, 1957, the net wealth of an assessee 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.

(i) In the Wealth-tax assessments of two individual assessees for the assessments years 1974-75 to 1978-79 completed between March 1979 and March 1981 the following omissions were noticed :—

(a) Amounts of Rs. 3,00,000, Rs. 3,00,000, Rs. 11,04,857, Rs. 11,04,857 and Rs. 10,40,807 payable to a firm (in which the assessees were partners with a share of 50 per cent each) by its branch office for the assessment years 1974-75 to 1978-79 respectively were not shown as assets in firm's balance-sheets which resulted in under statement of assets and consequent under assessment of partner's capital balances by Rs. 38,50,521 in aggregate.

(b) Development Rebate Reserve of Rs. 71,001 standing in the balance sheets for each of the assessment years 1974-75 to 1978-79 was not considered as wealth which led to under-assessment of wealth by Rs. 3,55,005 in aggregate.

(c) Goodwill valuing Rs. 1,91,276, Rs. 3,23,630, Rs. 3,33,868 and Rs. 3,01,846 for the assessment years 1975-76 to 1978-79 was not considered although the same was a chargeable wealth of a firm as going concern which led to total under-valuation of asset by Rs. 11,50,620.

(d) Under valuation of closing stock to the tune of Rs. 3,69,882, Rs. 3,83,875 and Rs. 8,01,497 for the assessment years 1974-75, 1976-77 and 1977-78 respectively resulted in under-valuation of asset by Rs. 15,55,254 in aggregate.

(e) Gift to a minor son to the extent of Rs. 83,125 for each of the assessment years 1974-75 to 1976-77 was not taken in the wealth of one partner which led to total under-assessment of wealth by Rs. 2,49,375.

(f) Excess alowance of exemption to the tune of Rs. 71,754 on account of assessee's interest in the assets forming part of an industrial undertaking led to under-assessment of wealth in the case of other partner for the assessment year 1976-77.

These mistakes led to a total under-assessment of wealth by Rs. 72,32,529 and an aggregate short-levy of wealth-tax to the extent of Rs. 1,55,017 for the assessment years 1974-75 to 1978-79.

The department has accepted the objection.

The comments of Ministry of Finance on the paragraphs are awaited (December 1986).

(ii) While computing the net wealth of an individual for the assessment year 1978-79 in March 1983, the assessing officer incorrectly adopted the value of immovable and movable assets at Rs. 1,18,81,049 and Rs. 52,43,685 instead of the correct value of Rs. 1,84,81,049 and Rs. 54,43,685 respectively. The mistake resulted in under-assessment of wealth by Rs. 68,00,000 leading to short-levy of tax of Rs. 2,26,908.

The Ministy of Finance have accepted the mistake.

(iii) In computing the net wealth of an individual, for the assessment year 1977-78, in March 1983, the assessing officer incorrectly took the value of jewellery at Rs. 1,70,000 instead of at the correct value of Rs. 17,00,000 as determined in the assessment order. The mistake resulted in under-assessment of wealth by Rs. 15,30,000 involving short-levy of tax of Rs. 51,739.

The Ministry of Finance have partly accepted the objection.

(iv) In computing the net wealth of an individual, for the assessment year 1977-78, in March 1982, the assessing officer incorrectly worked out the assessee's 80 per cent share in the net wealth of Rs. 56,07,351 of the partnership firm, at Rs. 34.85 lakhs instead of the correct amount of Rs. 44.85 lakhs. Further, the value of an immovable property included in the net wealth was incorrectly adopted at Rs. 4,04,181 instead of at Rs. 9,04,181 adopted in the earlier wealth-tax assessment for the assessment year 1974-75. These mistakes resulted in under-assessment of wealth by Rs. 15,00,000 and short levy of tax of Rs. 50,725.

The Ministry of Finance have accepted the mistake.

4.07 *Incorrect exemptions and deductions.*

(i) Under the provisions of the Wealth-tax Act, 1957, the term asset includes property of every description but does not include animals. Further, the Act provides for exemption in respect of assets being tools, implement and equipment used for the cultivation, conservation, improvement or maintenance of agricultural land or for the raising, harvesting of any agricultural or horticultural produce on such land.

In the wealth-tax assessment of an individual, for the assessment year 1980-81, completed in March 1985, the assets such as land and buildings, farm machineries, equipments, car and vehicles etc. valued at Rs. 4,62,759 used in the business of 'Poultry Farming' were incorrectly exempted treating them as having been used for the cultivation, conservation etc., of agricultural land. The incorrect exemption resulted in under-assessment of wealth by Rs. 4,62,759 and short-levy of tax of Rs. 22,036.

The Ministry of Finance have accepted the mistake.

(ii) Under the provisions of the Wealth-tax Act, 1957, as applicable prior to the assessment year 1975-76, the value of agricultural land included in the net wealth was not subject to the levy of tax to the extent of Rs. 1.50 lakhs. However, this special basic exemption limit in respect of agricultural land was removed from the assessment year 1975-76 onwards with the result that the value of agricultural land was to be aggregated along with the other assets specified in the Act such as Bank deposits, Post Office deposits, Units of Unit Trust of India etc., and the basic exemption was to be limited to Rs. 1.50 lakhs (Rs. 1.65 lakhs with effect from 1 April 1983) in respect of these assets. The Central Board of

Direct Taxes issued instructions (November 1973 and April 1979) emphasising the need for proper co-ordination amongst the assessment records pertaining to different direct taxes with a view to prevent cases of evasion of tax for lack of co-ordination.

An individual owned a piece of land measuring 21.5 bighas. In the wealth-tax assessment of the individual, for the assessment years 1976-77 to 1981-82, one half of the land was assessed as agricultural and the other half of the land as non-agricultural. While completing the wealth-tax assessments for these assessment years between December 1980 and February 1984, the assessing officer allowed exemption of Rs. 1.50 lakhs for each of the above assessment years in respect of the agricultural land. But the income-tax assessment records of the assessee for the last fourteen assessment years disclosed that the assessee had not returned any agricultural income from the agricultural portion of land assessed in the wealth-tax assessments and the land was apparently non-agricultural in nature. The exemption allowed by the department was, therefore, irregular and the same resulted in under-assessment of wealth of Rs. 9,00,000 and short levy of tax of Rs. 21,493.

The Ministry of Finance have accepted the mistake.

4.08 *Mistakes in application of rates of tax/avoidable mistakes*

A—Mistakes in application of rates of tax.

(i) From the assessment year 1974-75 the Schedule to the Wealth-tax Act, 1957, was amended to provide for a higher rate of tax for every Hindu undivided family (specified category) having at least one member with assessable net wealth exceeding rupees one lakh upto the assessment year 1979-80 and rupees one lakh and fifty thousands from the assessment year 1980-81 and subsequent years. Other cases of Hindu undivided family attract tax at lower rates.

In the wealth-tax assessment cases of fourteen Hindu undivided families, for the assessment years between 1974-75 and 1984-85, completed between November 1981 and March 1985, the prescribed higher rates of tax were not applied on the total assessed net wealth of Rs. 363.48 lakhs pertaining to these assessment years even though one member of each of these families had taxable wealth and was assessed to wealth-tax in the same or another ward for these assessment years. The omission resulted in aggregate short-levy of tax of Rs. 2.68 lakhs.

The Ministry of Finance have accepted the mistakes in nine cases and their comments in respect of the remaining five cases are awaited (December 1986).

(ii) Under the Wealth-tax Act, 1957, where the shares of the beneficiaries in a private trust are indeterminate or unknown, wealth-tax is levied as if the persons on whose behalf or for whose benefit the assets are held are an individual at the rates specified in the Schedule to the Act or at the flat rate of three per cent, whichever is more beneficial to revenue.

While completing the wealth-tax assessments of a private family trust, for the assessment years 1981-82 to 1984-85 in March 1985, the assessing officer computed the net wealth of the trust at Rs. 4,69,000, Rs. 4,65,100, Rs. 4,72,400 and Rs. 5,27,200 respectively and levied an aggregate amount of tax of Rs. 14,430 by applying the lower rates prescribed in Schedule to the Act instead of the higher uniform rate of three per cent, which was more beneficial to revenue. The tax leviable as per the uniform rate of three per cent for the four assessment years worked out to Rs. 56,322. The mistake in the application of the incorrect rate of tax resulted in short levy of tax of Rs. 41,892.

The department has accepted the objection.

The comments of Ministry of Finance on the paragraph are awaited (December 1986).

B. Avoidable mistakes in computation of net wealth.

The wealth-tax assessments of an individual for the assessment years 1969-70, 1970-71 and 1974-75 were completed in March 1985. In computing the net wealth, for the assessment years 1969-70 and 1970-71, the assessing officer incorrectly totalled the gross wealth at Rs. 17,44,066 and Rs. 19,88,347 instead of the correct amount of Rs. 27,44,066 and Rs. 29,88,347 respectively. Further for the assessment year 1974-75, the assessing officer due to an arithmetical error incorrectly arrived at the net wealth as Rs. 26,87,072 instead of the correct net wealth of Rs. 36,87,072. These mistakes resulted in under-assessment of wealth of Rs. 30 lakhs and a short levy of tax of Rs. 1,58,987.

The Ministry of Finance have accepted the mistake.

4.09 *Non-levy of additional wealth-tax.*

Under the Wealth-tax Act, 1957, before its amendment by the Finance Act, 1976, where the net wealth of an individual or a Hindu undivided family included buildings or lands (other than business premises) or any rights therein, situated in an urban area, additional wealth-tax was leviable on the value of such urban assets exceeding the prescribed limits. From the assessment year 1971-72 onwards, additional wealth-tax was leviable on the aggregate value of all urban assets situated in an urban area with a population of 10,000 or more.

The net wealth of six individuals and a Hindu undivided family, for the assessment years 1968-69 to 1976-77, assessed between September 1974 and March 1985, *inter alia,* included urban immovable properties valued at Rs. 273.51 lakhs (in one case value not included) in which additional wealth-tax was not levied/correctly levied by the department. This resulted in an aggregate under-charge of tax of Rs. 12,26,907 in these years.

The Ministry of Finance have accepted the objection in six cases. Their comments in the remaining one case are awaited (December 1986).

4.10 *Short levy of penalty*

Under the provisions of the Wealth-tax Act, 1957, penalty is leviable where the assessing officer is satisfied that any person has concealed the particulars of any assets or furnished inaccruate particulars of any assets or debts. The minimum penalty leviable shall be a sum not less than the amount representing the value of the asset in respect of which particulars have been concealed.

An individual did not file the return of wealth for the assessment year 1975-76 and did not also respond to the notice issued by the department in March 1978. The Wealth-tax Officer completed the assessment in March 1980 to the best of his judgement on a total wealth of Rs. 1,33,600. For concealment of wealth a penalty of Rs. 1,336 was levied against the minimum penalty of Rs. 1,33,600 correctly leviable.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

4.11 *Miscellaneous*

(i) *Adoption of incorrect status*

Under the Wealth-tax Act, 1957, the net wealth of the estate of a deceased person is chargeable to tax in the hands of the executor or executors. Separate assessments are to be made in respect of the net wealth as on each valuation date as is included in the period from the date of death of the deceased to the date of complete distribution to the beneficiaries of the estate according to their several interests.

A lady assessee died on 26 October 1962. The estate left by her (comprising of gold, silver and cash) was assessed to wealth-tax for the assessment years 1964-65 to 1978-79 separately treating her daughter-in-law as the executor of the estate of the deceased. The wealth-tax assessments of the daughter in-law in respect of her individual wealth were also done separately for these assessment years. There was nothing on record to show that the deceased had left any will, written or oral, which required to be got executed. The entire estate of the deceased devolved on her daughter-in-law, being her sole legal heir and was therefore, required to be included in her individual net wealth. The mistake resulted in short-levy of wealth-tax of Rs. 51,545 for the assessment years 1972-73 to 1978-79.

The Ministry of Finance have accepted the mistake.

(ii) *Non-completion of assessment within the time limit*

Under the Wealth-tax Act, 1957, as amended by the Taxation Laws (Amendment) Act, 1975, assessments relating to the assessment year 1975-76 and subsequent assessment years are to be completed within four years from the end of the relevant assessment year or one year from the date of the filing of a return or a revised return, whichever is later.

(a) For the assessment year 1975-76 a return was filed in the name of a deceased assessee, Karta of a Hindu undivided family, in September 1975. The assessing officer completed the assessment in March 1981 on the basis of that return on a reasoning that a notice was issued in the name of the deceased's wife being the only member of the Hindu undivided family then living, to regularise the receipt of return and in compliance to that notice assessee's counsel had intimated that the return already filed may be deemed to have been filed. It was seen in audit (December 1985) that the assessee had preferred an appeal against that order on the ground that the assessment completed by the Wealth-tax Officer was beyond the time allowed by the provisions of Wealth-tax Act and the appeal was allowed. No appeal was preferred against the appellate order. Thus the non completion of assessment within the prescribed time limit resulted in loss of revenue of Rs. 97,566.

The Ministry of Finance have accepted the mistake.

(b) In response to the notices served on an assessee individual in March 1980 and March 1981, he filed the returns of wealth, for the assessment years 1973-74 to 1978-79 in September 1980 and for the assessment years 1979-80 in July 1981 declaring a net wealth of Rs. 3,41,604, Rs. 3,85,345, Rs. 4,29,154, Rs. 2,84,446, Rs. 2,61,540, Rs. 3,23,571 and Rs. 3,58,057 for the seven assessment years. The department served notices on the assessee on different dates between December 1980

and December 1981 asking him to produce evidence in support of the returned wealth but did not take further action for the completion of the assessments till the omission was pointed out by audit in July 1985. In the meanwhile the assessee sold an immovable property for Rs. 18.00 lakhs in July 1981. On the basis of this sale consideration, the valuation of the said property included in the net wealth of the assessee for all the seven assessment years was required to be suitably increased. Like-wise the market value of the jewellery as on the valuation dates should have been considered for assessment to wealth-tax. However, none of the assessments for the seven assessment years were completed before the expiry of the statutory limitation period and as a result wealth aggregating to Rs. 92,44,300 escaped assessment leading to loss of revenue of Rs. 1,56,505 for the seven assessment years, besides additional wealth tax of Rs. 90,399 leviable on urban immovable assets included in the net wealth of the assessee for the four assessment years 1973-74 to 1976-77.

The department stated in April 1986 that since the limitation for completing the assessments had already expired, no further action was possible.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(c) An individual, filed his wealth-tax return for the assessment year 1978-79 in November 1979. The assessment should have been completed on or before 31 March 1983. The taxable wealth and the tax payable was determined at Rs. 16,39,400 and Rs. 30,312 respectively as per a typed copy of an assessment order dated 31 March 1983. However, it was neither signed by the assessing officer nor a demand was raised against the assessee. The failure to complete the assesment within the time limit led to a loss of revenue of Rs. 30,312.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) *Incorrect reduction of tax*

Under the wealth-tax Act, 1957, no appeal shall be admitted unless at the time of filing of the appeal, the assessee has paid the tax due on the net wealth returned by him. The appellate authority may, however, for reasons to be recorded in writing, waive this condition on an application made by the assessee.

For the assessment years 1963-64 to 1975-76, five assessees returned net wealth of Rs. 1,51,86,539 in their wealth-tax returns and tax amounting to Rs. 1,58,463 was payable by the assessees on this returned wealth. In the assessments completed for these years between March 1979 and February 1980, the net wealth of the five assessees was assessed at Rs. 2,05,46,786 (the assessed net wealth in two cases not included) raising a tax demand of Rs. 2,93,365. The assessees preferred appeals against the assessments and as a result of the appeal orders, passed in October 1983, February and March 1984, the net wealth of these assessees was revised at Rs. 1,69,97,030 and the tax demand was reduced to Rs. 2,03,057. The amount of tax thus reduced was Rs. 90,308. It was noticed in audit that the assessees had not paid the tax on their returned wealth nor had made any application for waiver of the condition of payment of tax on the returned wealth. The assessing officers did not bring this fact to the notice of the appellate authorities and the reduction in the tax effect thus allowed was not in accordance with the provision of the Act. The omission resulted in loss of revenue of Rs 90,308.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

B—GIFT TAX

4.12 Gift-tax is levied on the aggregate value of all gifts made by a person during the relevant previous year. All transfers of property which are made without adequate consideration in money or money's worth are also liable to tax unless specially exempted by the Gift-tax Act, 1958. The term 'property' for the purpose of the Act connotes not only tangible movable and immovable property including agricultural land but also other valuable rights and interests.

4.13 In the financial years 1981-82 to 1985-86 gift-tax receipts vis-a-vis the budget estimates were as given below :

Year	Budget Estimates	Actuals
	(In crores of rupees)	
1981-82	6.25	7.74
1982-83	6.75	7.71
1983-84	8.50	8.84
1984-85	8.50	10.86
1985-86	10.00	11.66

4.14 Particulars of cases finalised, pending assessments and arrears of demand are as given below :

Year	Number of assessments completed during the year	Number of cases pending assessment at the end of the year	Arrears of demand pending collection at the end of the year
			(In crores of rupees)
1981–82	68,964	53,100	31.16
1982–83	74,163£	47,741£	21.90£
1983–84	82,450**	43,870.**	27.21
1984–85	83,577	38,185	26.62
1985–86	10,813*	5,973*	9.91*

£Figures furnished by Ministry of Finance in March/ April 1984 have been adopted.

**Figures furnished by Ministry of Finance in March 1985 have been adopted.

*Provisional.

4.15 During the test audit of assessments made under the Gift-tax Act, 1958, conducted during the period 1 April 1985 to 31 March 1986 following types of mistakes were noticed :

(i) Gifts escaping assessment.

(ii) Non-levy of tax on deemed gifts.

(iii) Incorrect valuation of gifted properties and mistakes in computation of gifts.

(iv) Omission to aggregate gifts for purpose of calculation of tax.

A few important cases illustrating these mistakes are given in the following parapraghs :

4.16 *Gifts escaping assessment*

(i) Under the provisions of the Gift-tax Act, 1958, a non-resident individual is liable to be charged to tax on the value of property gifted by him, if the property is situated in India. The Central Board of Direct Taxes issued instructions in May 1981 laying down guidelines for determining whether a remittance of foreign exchange or foreign currency from abroad to a donee in India would constitute gift of property situated in India for the levy of gift-tax. According to the instructions, where the property in foreign exchange or currency is delivered to the donee in India i.e. where the cheque or bank draft is sent by the donor to the donee in India on his own by post or otherwise, the gift would attract liability to gift-tax.

During the period June 1975 to February 1978, a non-resident individual remitted a sum of Rs. 3,95,500 by bank remittances to his sister, a resident in India. As the title to the amounts remitted from abroad passed on to the donee only in India, the non-resident donor was liable to gift-tax in India. However, gift-tax amounting to Rs. 76,625 was not levied by the department.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

((ii) Under the Gift-tax Act, 1958, gift is a transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth. Further, under the Act ibid the term "transfer of property" has been defined to mean any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and includes, inter alia, the creation of a trust.

An assessee company started business in December 1979 and took over the assets and liabilities of a firm, for a consideration of 2,000 fully paid equity shares of Rs. 100 each issued to the partners of the firm. As on the date of taking over, based on the statement of affairs as on 31 March 1980 the net liability of the firm stood at Rs. 68,085, which was taken over by the company for a purchase consideration of Rs. 2,00,000 (value of 2,000 shares of Rs. 100 each) and as such was chargeable to gift-tax on a total gift of Rs. 2,68,085. Neither the assessee company had filed any return of gift nor had the department called for the same. The mistake resulted in non-levy of gift-tax of Rs 47,271 for the assessment year 1981-82.

The Ministry of Finance have accepted the mistake.

(iii) Under the provisions of the Gift-tax Act, 1958, gift-tax is leviable on the aggregate value of all gifts made by a person during the relevant previous year.

An individual had executed settlement deeds in April 1980 and December 1980 settling his properties amounting to Rs. 1,92,000 and one-fifth shares of interest of Rs. 31,833 in a building in favour of his sons. Audit scrutiny revealed (August 1983) that no gift-tax return had been filed by the assessee nor any notice issued by the assessing officer to call for the return. The gifts aggregating to Rs. 2,23,833 attracted levy of gift-tax of Rs. 37,457, which was not levied.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

4.17 *Non-levy of tax on deemed gift*

(a) Under the Gift-tax Act, 1958, where the property is transferred otherwise than for adequate consideration, the amount by which the market value of the property on the date of transfer exceed the declared consideration is deemed to be a gift made by the transferor and is chargeable to gift-tax. The Act further provides that the value of the property shall be estimated to be the price which it would fetch if sold in the open market on the date on which the gift was made

(i) While completing the income-tax assessment of an assessee for the assessment year 1981-82, the Income-tax Officer had, inter-alia, observed in the assessment order that the assessee had transferred 48,000 (45,000+3,000) shares in two limited companies, held by him as stock-in-trade to two registered firms in March 1981 and May 1979 as capital at their book value of Rs. 19.65 and Rs. 5.75 per share respectively. It was observed in audit in January 1986 that the market values of these shares quoted in stock exchange were Rs. 96 and Rs. 605 respecti ely on the date of transfer. The difference between the market value on the date of transfer and the value at which the shares were held as stock-in-trade on that date and so transferred was not however, treated as deemed gift attracting gift-tax. The omission resulted in escapement of gift of Rs. 35,25,750 (34,35,750+90,000) with consequent non-levy of gift-tax of Rs. 17,88,812 (Rs. 17,79,562+Rs. 9,250).

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) It has been judicially held (102 ITR 248) that conversion of preference shares into ordinary shares or vice-versa amounts to transfer by way of exchange liable to capital gains tax.

During the previous year relevant to the assessment year 1976-77, an assessee converted 388 equity shares which in the previous year relevant to assessment year 1975-76 were valued at the rate of Rs. 5,130 per share by the assessing officer for wealth-tax purposes, into 388 second preference shares of Rs. 1,010 each. However, the amount by which the market value of 388 shares on the date of transfer exceeded the value of consideration received was not treated as deemed gift made by the assessee and taxed. This resulted in under-assessment of gift of Rs. 15,98,560 and a non-levy of gift-tax of Rs. 5,03,280.

The Ministry of Finance have accepted the objection in principle.

(iii) A building owned by three persons was transferred by them to a firm in the previous year relevant to assessment year 1979-80 as their share capital. The value of the building was declared as Rs. 2,70,000 and the credit given to each in their respective share capital account was Rs. 90,000. The property was valued by the Departmental Valuation Officer at Rs. 10.26 lakhs as on 31 March 1978. The difference of Rs. 7,56,000 between the fair market value and the declared consideration for which it was transferred was required to be taxed as deemed gift in the hands of these three partners. Failure to do so resulted in non-levy of gift-tax of Rs. 1,82,520 in the aggregate in respect of the assessment year 1979-80.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) A scrutiny of the wealth-tax assessment records of an assessee indicated a decrease in the value of wealth of moveable property from Rs. 17.29 lakhs in assessment year 1974-75 to Rs. 10.17 lakhs in assessment year 1975-76. The difference in value was attributed to sale of certain shares of the full value of Rs. 11.80 lakhs in the assessment year 1974-75 for a consideration of Rs. 5.26 lakhs in the previous year relevant to assessment year 1975-76. The difference in value between the sale consideration and the full value of the shares was not considered as deemed gift by the Gift-tax Officer on the plea that the assessee sold shares on 14 December 1974 at a value supported by the valuation certificate and the loss in the transaction claimed by the assessee in the income-tax assessment was ignored (January 1980) and as such, no gift was involved. It was observed that the assessing officer had ignored the loss claimed by the assessee for the purpose of income-tax assessment and the valuation by the approved valuer was not also accepted by the Gift-tax Officer and the shares had been transferred for a consideration lesser than the real value. Hence the difference in value of Rs. 6.54 lakhs between the face value of shares and their sale consideration should be treated as deemed gift and charged to tax. The omission to do so resulted in non-levy of the gift-tax of Rs. 1,51,185.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(v) Three partners of a firm, two individuals and a private limited company shared the profits in the ratio of 45 : 35 : 20 per cent. The firm was dissolved on 31 January 1981 and all the assets of the firm were taken over by the company at the book value. Audit scrutiny revealed (July 1984) that the aggregate market value of certain assets taken over

was Rs. 15,13,245 as against the book value of Rs. 7,61,768. The difference of Rs. 7,51,477 between the book value of the assets and the market value constituted deemed gift attracting gift-tax in the hands of two individuals. However, the department had not initiated the gift-tax proceedings. The omission resulted in non-levy of gift-tax of Rs. 1,10,700.

The department has accepted the omission.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) The income-tax assessment records of an individual for the assessment year 1982-83 disclosed that the assessee had sold two godowns similar in all respects and situated in the same place measuring 191.6 square yards and 178 square yards respectively in the previous year relevant to the assessment year 1982-83 for Rs. 40,000 and Rs. 45,000 respectively. The former property was valued by the Deputy Collector, Valuation, Registration and Stamps Department at Rs. 1,09,902. On the same basis, the market value of the second property worked out to Rs. 1,02,100. The consideration for transfer was, therefore, less than the fair market value in both cases by Rs. 69,902 and Rs. 57,100 respectively. This difference of Rs. 1,27,002 between the sale consideration and the fair market value was required to be treated as a deemed gift and brought to gift-tax. This was not done resulting in non levy of gift-tax of Rs. 36,850.

The Ministry of Finance have accepted the mistake.

(b) The Central Board of Direct Taxes have issued instructions (November 1973 and April 1979) emphasising the need for proper co-ordination amongst the assessment records pertaining to different direct taxes with a view to bring to tax cases of evasion of tax.

(i) In the previous year, relevant to the assessment year 1981-82, a body of individuals (comprising of mother and five sons) sold a plot of land measuring about 12 Cottahs, situated in a metroplitan city, by a deed of conveyance for a consideration of Rs. 8,70,000. The market value of this plot of land was determined by the departmental valuer at Rs. 20,25,000 in the assessment year 1979-80 and the same value was adopted by the Wealth-tax Officer in the assessments to wealth-tax. The excess of the market value over the consideration received thus, attracted levy of gift-tax. However, neither the assessee had filed any gift-tax return nor had the department called for the same while computing the capital gains tax in the income-tax assessment of the assessee, for the assessment year 1981-82, in February 1983. The omission led to an escapement of gift by Rs. 11,55,000 (20,25,000—8,70,000) and non-levy of gift-tax of Rs. 3,16,500.

The Ministry of Finance have accepted the mistake.

(ii) The income-tax assessment records of a private limited company, for the assessment year 1980-81 disclosed that the company had written off an amount of Rs. 4,02,216 towards interest on term loan granted to another private limited company under the Company's Board's resolution. The amount of interest foregone constituted deemed gift attracting levy of gift-tax. However, neither the assessee had filed the gift-tax return nor had the department initiated any gift-tax proceedings. The omission resulted in escapement of gift by Rs. 4,02,216 and non-levy of gift-tax of Rs. 82,050.

he department has accepted the omission.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) The income-tax assessment records of a private limited financing company, for the assessment year 1982-83 disclosed that the company had not charged interest of Rs. 3,75,000 for the period from 1 July 1980 to 30 September 1981 on loans upto Rs. 25 lakhs advanced by it to another company. The surrender of the right to receive the interest constituted deemed gift attracting levy of gift-tax in the hands of the financing company. However, neither the assessee had filed the gift-tax return nor had the department initiated gift-tax proceedings. The omission resulted in escapement of gift by Rs. 3,75,000 and non-levy of gift-tax of Rs. 74,000.

The department has accepted the omission.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) An individual gifted one-tenth of her share in a commercial let out property to the two sons of her brother, during the previous year relevant to the assessment year 1980-81 and returned the value of the gift at Rs. 50,000. While completing the assessment in December 1982, the assessing officer adopted the value of the gift at Rs. 60,100 and added a further sum of Rs. 16,000 being the value of the leasehold interest and levied gift-tax on the total value of the gift of Rs. 76,100.

During the local audit of the ward, in June 1983, the income-tax assessment records of the company (Association of persons, tenancy in common) for the assessment year 1979-80, completed in October 1979

disclosed that the aforesaid property fetched a rental income of Rs. 3,08,890 and the assessee's one-tenth share of rental income worked out to Rs. 30,889 per annum. The value of the whole property on the basis of the rental income worked out to Rs. 36 lakhs (twelve times of the rental income) and assessee's one-tenth share therein Rs. 3.60 lakhs. The incorrect valuation of property resulted in under-assessment of gift by Rs. 2.84 lakhs and short levy of gift-tax of Rs. 48,516.

The Ministry of Finance have accepted the mistake in principle.

(c) Under the Gift-tax Act, 1958, the value of transactions such as release, discharge, surrender, forefeiture or abandonment of any debt, contract, an actionable claim or of any interest in property, if not bonafide, are deemed gifts. The Central Board of Direct Taxes issued instructions in March 1976 and May 1977 clarifying that when a partnership firm is reconstituted either with the same old partners or on retirement of one of the partners or on admission of new partners or on conversion of a sole proprietorship into a partnership and the profit sharing ratios of the partners are revised, any interest surrendered or relinquished by one or more of such persons (without adequate consideration in money or money's worth) in favour of others would attract levy of gift-tax.

(i) As per the partnership deed executed on 16 September 1981 a partnership was re-constituted during the previous year ended in October 1981 relevant to the assessment year 1982-83 and two new partners were admitted into the partnership. Two of the existing partners, who had 50 per cent share and 30 per cent share in the firm, surrendered 30 per cent and 10 per cent respectively of their share interest in the firm in favour of the incoming partners on reconstitution of the firm. This resulted in realignment of profit sharing ratio of the partners of the firm. The surrender of the interest was without consideration in money or money's worth and, therefore, constituted deemed gift, attracting levy of gift-tax. But no action was initiated by the department to assess the gift involved in the relinquishment of profits sharing rights. Taking into account three years' purchase value of the net average profits of the firm of the last five assessment years 1977-78 to 1981-82, the value of deemed gift that escaped assessment worked out to Rs. 37,23,442 and consequent non-levy of gift-tax of Rs. 15,39,320.

The income-tax assessment of the firm, for the assessment year 1982-83, completed in March 1985 was checked by the Internal Audit Party of the department in October and November 1985, but the omission to initiate gift-tax proceedings against the two partners was not pointed out.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) A partnership firm having three partners was dissolved with effect from 30 September 1976 and the assets and liabilities were divided by the partners in proportion to their capital contribution. One of the partners received as part of his share *inter alia*, an estate, the book value of which was Rs. 1,50,297 as per the firms books, which the assessee sold (August 1978) for a sum of Rs. 43 lakhs. The department reopened the wealth-tax assessments of the partner, for the assessment year 1970-71 and onwards to adopt the correct market value which was estimated in the assessment at Rs. 40 lakhs on the date of dissolution. Thus, the property (Estate) valued at Rs. 40 lakhs belonging to the firm was given away in specie to one of the partners at book value resulting in the other two partners actually releasing their interest to the extent of their share of difference between market value and book value in favour of one of the partners and this constituted deemed gift attracting levy of gift-tax. It was noticed in audit (January 1984) that neither the two partners had filed any return of gift-tax nor had the department called for the same. The omission resulted in under-assessment of gift of Rs. 25,66,468 and non-levy of gift-tax of Rs. 7,35,586.

The department has accepted the mistake in one case.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) A partnership firm consisting of thirteen partners (one of which was a private company and another a minor admitted to the benefits of partnership) was reconstituted on 16 February 1979, consequent on the retirement of four female partners. By a deed of retirement, and of partnership both dated 16 February 1979, one of the existing partners namely, the company acquired by payment of Rs. 30 lakhs, the sole right to receive the capital profit or loss, goodwill and appreciation in the value of assets and goodwill in business. The payment was to be made to the retiring four female partners at Rs. 25.20 lakhs, and to two of the continuing partners at Rs. 4.80 lakhs. The assets were, however, not re-valued at this stage. The purchase consideration received by these six persons in relinquishment of their right in favour of the company was inadequate,

considering the fact that (i) on that date the goodwill alone worked out to Rs. 20,81,919 and (ii) after 2 years, on the dissolution of the firm on 17 March 1981 the assets having a book value of Rs. 1,41,87,160 as on the date were valued at Rs. 2,69,24,324 by a private registered valuer and the appreciation in value amounting to Rs. 1,27,37,164 was distributed among the then existing partners. In the light of the valuation of the assets at Rs. 2.69 crores on 17 March 1981 their valuation alone as on 16 February 1979 on which the four partners retired would not be less than Rs. 30 lakhs. Accordingly, the amount of Rs. 30 lakhs paid by the company partners could at best be only towards appreciation in the value of the assets. The value of the goodwill amounting to Rs. 20,81,919 was completely left out of the consideration in money or money's worth and such abandonment of the claim constituted deemed gifts chargeable to gift-tax. This resulted in escapement of a deemed gift to the same extent. The gift-tax leviable for the assessment year 1980-81 in the hands of the six persons was Rs. 4,09,006. The Gift-tax officer, however, did not bring this deemed gift to tax.

The firm was again reconstituted on 1 July 1980 by virtue of a deed of partnership. In view of the failure of the company partner, to bring in the agreed capital, it gave up its exclusive right acquired by it on 16 February 1979, and agreed to share with other partners of the firm, its right in the surplus including the goodwill on the dissolution of the firm and also capital profits and losses, in proportion to their respective profit sharing ratio. The partnership was dissolved on 17 March 1981 and under the deed of dissolution, the company took over the entire business by paying to other partners a sum of Rs. 81,51,783 representing only their share in the excess on revaluation of assets. The goodwill on the date of dissolution which worked out to Rs. 44,97,414 was not taken into consideration resulting in other partners surrendering their share to the extent of Rs. 27,88,211 in favour of the company giving rise to a deemed gift by them for the assessment year 1982-83. The Gift-tax Officer did not, however, bring this deemed gift also to tax. The non-levy of gift-tax was Rs. 5,61,200 in the hands of nine partners for the assessment year 1982-83.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) A partnership firm with three partners sharing profits equally, was reconstituted, during the previous year relevant to the assessment year 1983-84 with the retirement of a partner having one-third share and the admission of his son to the benefits of the partnership. The retiring partners thereby surrendered his 33-1/3 per cent share in favour of his son (incoming partner) and one of the existing partners his 28-1/3 per cent share in favour of another partner. The surrender of interest was without consideration in money or money's worth and constituted deemed gift attracting levy of gift-tax. The department had not, however, initiated any gift-tax proceedings. Taking into account two years purchase value of the average profits of the last three assessment years 1980-81 to 1982-83, the value of deemed gift worked out to an aggregate amount of Rs. 9,89,572 and the omission resulted in non-levy of gift-tax of Rs. 2,09,387.

The Ministry of Finance have accepted the objection in principle.

(v) During the previous year relevant to assessment year 1980-81, an individual who held twenty-five per cent share of interest in a registered firm retired therefrom and received an amount of Rs. 77,489 representing the balance to the credit of his account in the books of the firm. It was noticed in audit (July 1985) that bills receivable to an extent of Rs. 25,08,880 outstanding on the date of the assessee's retirement were omitted to be considered in computing his share of interest as the assessee was following cash system of accounting for income-tax purposes. The entire amount of Rs. 25,08,880 was appropriated by the remaining partners in the next year on realisation. The surrender of the retiring partners' share of interest amounting to Rs. 6,27,220 (25 per cent of Rs. 25,08,880) was therefore, liable to gift-tax. However, neither had the assessee filed the return of the gift nor had the department initiated any gift-tax proceedings. The escapement of deemed gift of Rs. 6,27,220 resulted in non-levy of gift-tax of Rs. 1,43,166 for the assessment year 1980-81.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vi) A partnership firm having two individuals and one trustee of a private trust with equal shares was reconstituted on 1 July 1978 (relevant to the assessment year 1980-81). The trustee partner retired from the firm and three trustees of three private trusts newly entered the partnership. The profit sharing ratios of the two existing partners were also reduced from 33-1/3 per cent to 18 per cent each and the three new trustees partners were allotted shares of 34, 15 and 15 per cent respectively. The corpus of each of the three trusts was only Rs. 2,500 which was invested in the firm as capital. The average assessed profits of the last five years (1975-76 to

1979-80) in the case of the firm was Rs. 4,56,540. Considering the value of the assets of the firm, the profits earned and value of its goodwill (Rs. 10,80,000) based on super profits, the capital invested by the new partners was inadequate. The retiring partner did not receive anything for surrender of their right to share in profits except that the amount of Rs. 61,818 standing to his credit as capital on 30 June 1978 which was treated as loan to the firm.

The value of 64 per cent of share interest thus surrendered by the three original partners attracted levy of gift-tax. Neither the assessee had filed any return of gift nor had the department called for the same. This resulted in escapement of gift totalling to Rs. 6,91,200 in the three cases with consequent non-levy of gift-tax of Rs. 1,17,490 for the assessment year 1980-81. Penalty provisions for non-filing of the returns were also attracted.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vii) From the wealth-tax assessment of an individual, for the assessment year 1979-80, completed in January 1984, it was noticed that the assessee who was the sole owner of a proprietory estate business consisting of two coffee estates, converted it into a partnership firm by admitting his two major sons as partners and transferred fifty per cent share in the estates to the sons without any consideration. The Wealth-tax Officer treated the conversion of fifty per cent share in favour of the sons as a transfer for wealth-tax purposes and also for purpose of gift-tax and had determined the value of the share transferred at Rs. 4,06,405. The department, however, omitted to initiate gift-tax proceedings and the assessee also had not filed the gift-tax return. The omission resulted in non-levy of gift-tax of Rs. 81,850.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(viii) During the previous year relevant to the assessment year 1983-84, a registered firm was reconstituted with the retirement of five of the seven partners. The remaining two partners admitted two other partners and continued the business. It was noticed in audit (December 1985) that one of the retiring partners was vested with the exclusive right over the goodwill of the firm, which calculated at three years' purchase of the average profit of the last five years, worked out to Rs. 3,30,960. This right was relinquished by him through a release deed executed, in November 1982, in favour of the remaining two partners for no consideration in money or money's worth. As the right over the value of goodwill belonged exclusively to this retiring partner, the entire value of goodwill surrendered/relinquished constituted deemed gift of Rs. 3,30,960. Neither the assessee had filed any gift-tax return nor had the department called for the same. The omission resulted in non-levy of gift-tax of Rs. 62,990.

The Ministry of Finance have accepted the objection in principle.

4.18 *Incorrect valuation of gifted properties and mistakes in computation of gifts*

Under the Gift-tax Act, 1958, the value of any property, other than cash, transferred by way of gift shall be the price which it would fetch if sold in the open market on the date on which the gift was made. Gifts made by any person to any institution established for a charitable purpose are exempt from gift-tax if donations made to such institution qualify for deduction under the Income-tax Act, 1961.

(a) In the gift-tax assessment of an individual for the assessment year 1977-78, completed in March 1982, the value of gifted property (one eighth share in an estate) as on the date of gift (24 March 1976) was taken as Rs. 1,27,806. However, in the wealth-tax assessment of another co-owner of the estate for the same assessment year, completed in November 1980 in the same ward, the value of his one-eighth share in the same estate as on the 31 March 1977, had been arrived at Rs. 8,76,146 on the basis of the price of Rs. 103 lakhs at which the estate was sold in September 1980. The omission to estimate the value of the gifted property based on its market value at the time of sale resulted in under-assessment of gift of Rs. 7,48,340 and a short levy of tax of Rs. 2,33,567.

The case was checked by the internal audit of the department in August 1982 but the mistake was not noticed.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) The provisions of the Gift-tax Act, 1958, are pari/materia with those contained in Estate Duty Act, 1953 in regard to the valuation of unquoted equity shares. The instructions issued by the Central Board of Direct Taxes under the Estate Duty Act for valuation of shares, are, therefore, equally applicable to cases under the Gift-tax Act. Under the Estate Duty Act, the Board have issued instructions in May and July 1965 that the value of unquoted equity shares

should be determined on the basis of market value and not the book value of assets of the company. The Board reiterated their instructions of May and July 1965 in October 1974 and May 1975.

The provisions relating to the valuation of shares under the Wealth-tax Act, 1957 and the rules made thereunder are accordingly not applicable to valuation under the Gift-tax Act.

The Central Board of Direct Taxes issued instructions (November 1973 and April 1979) emphasising the need for proper coordination amongst assessment records pertaining to different direct taxes with a view to bring to tax cases of evasion of tax.

During the previous year relevant to the assessment year 1979-80, an individual gifted 18,000 unquoted equity shares of a private limited company of face value of Rs. 10 each. While completing the gift-tax assessment, in March 1984, the assessing officer adopted the value of these shares on the date of gift at Rs. 2,52,000 at Rs. 14 per share. In the wealth-tax assessment of the assessee, for the assessment year 1978-79, completed in September 1982, the assessing officer worked out the value of these shares at Rs. 27.65 per share as on 31 March 1978 (the date nearest to the date (26 June 1978) of gift) after allowing a discount of 15 per cent towards non-declaration of dividends, as contemplated under the Wealth-tax Rules, 1957. As the wealth-tax rules of valuation are not applicable for gift-tax purposes the correct market value of each share worked out to Rs. 32.53 without considering the deduction of 15 per cent towards non-declaration of dividends and on that basis the value of 18,000 shares would work out to Rs. 5,85,540 as against Rs. 2,52,000 adopted by the department. The incorrect valuation adopted thus resulted in under assessment of gift by Rs. 3,33,540 and short levy of tax of Rs. 97,412.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

4.19 *Omission to aggregate gifts for purpose of calculation of tax.*

Under the gift-tax Act, 1958, as amended by the Taxation Laws (Amendment) Act, 1975, with effect from 1 April 1976, taxable gifts made by an assessee in a previous year are to be charged to tax after aggregating them with the taxable gifts, if any, made during the preceding four previous years (excluding the gifts made before 1 June 1973) at the rates of tax applicable to the assessment year in hand. From the gift-tax so computed, gift-tax on the taxable gifts of the preceding four previous years reckoned at the same rate will be deducted and the balance would represent the gift-tax payable for the year.

(a) The gift-tax assessments of an individual for the assessment years 1981-82 and 1982-83 were completed in March 1985 determining the taxable gifts at Rs. 1,70,000 and Rs. 1,55,000 respectively. Audit scrutiny (June 1985) revealed that while computing the tax payable by the assessee, the taxable gifts amounting to Rs. 2,25,000 made by the assessee during the previous year relevant to the assessment year 1980-81 was not aggregated for rate purposes and the tax payable worked out as provided under the law. The omission resulted in short levy of gift-tax of Rs. 35 750.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(b) In the gift-tax assessment of a private limited company, for the assesment year 1978-79, finalised on 20 March 1985, the taxable gift was determined as Rs. 2,00,634 on which gift-tax of Rs. 31,658 was levied. While computing the tax payable by the assessee, the taxable gifts amounting to Rs. 6,26,370 made by the assessee during the previous year relevant to the assessment year 1977-78 were, however, not aggregated with the above gifts for the assessment year 1978-79 and gift-tax levied under the Act thereon. The omission resulted in short levy of gift-tax of Rs. 28,532.

The department has accepted the mistake.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986)

(c) The gift-tax assessment of a specified Hindu undivided family, for the assessment year 1979-80 was completed in March 1985. The taxable gift was determined at Rs. 5,92,410. While computing the gift-tax payable by the assessee, the taxable gifts amounting to Rs. 2,04,900 made by the assessee during the previous year relevant to the assessment year 1977-78 were, however, not aggregated with the above gifts for the assessment year 1979-80 and gift-tax levied under the above provisions of the Act thereon. The omission resulted in a short levy of gift-tax of Rs 27,745.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(d) The gift-tax assessments of an individual, for the assessment years 1981-82 and 1982-83 were com-

pleted in March 1985, determining the taxable gifts as Rs. 1,60,200 and Rs. 47,000 respectively. While computing the tax payable by the assessee, the taxable gifts amounting to Rs. 1,70,000 made by the assessee during the previous year relevant to the assessment year 1980-81, were, however, not aggregated with the above gifts for the assesment years 1981-82 and 1982-83 and gift-tax levied under the above provisions of the Act thereon. The omission resulted in short levy of gift-tax of Rs. 23,060.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

C—ESTATE DUTY

4.20 *Law and procedure*

In the case of every person dying after 15 October 1953, the Estate Duty Act, 1953, provides for levy of estate duty upon the principal value of all property including agricultural land which passes on the death of a person at the rates prescribed under the Act. The levy of estate duty was discontinued by the Estate Duty (Amendment) Act, 1985, in respect of estate passing on death occurring on or after 16 March 1985.

Receipts from estate duty during the financial years 1981-82 to 1985-86 vis-a-vis the Budget Estimates are as under :

Year	Budget estimates	Actuals
	(In crores of rupees)	
1981–82	15.00	20.31
1982–83	17.00	20.38
1983–84	19.00	26.46
1984–85	20.00	24.37
1985–86	22.50	22.26

Under the Estate Duty Act, every Accountable Person is required to deliver within six months of the death of the deceased, to the Controller an account in the prescribed form and verified in the prescribed manner, of all properties in respect of which estate duty is payable.

The Act does not, however, prescribe a time-limit for the completion of any provisional, regular or re-assessment, though in the case of re-assessment, no proceedings could be commenced after the expiration of 3 years from the date of assessment.

In December 1982, the Central Board of Direct Taxes stressed the need to complete provisional assessments in all cases without delay and in October 1985, in view of the discontinuance of the estate duty, instructions were issued for completion of the assessments with a returned principal value not exceeding Rs. 3 lakhs by 31 December 1985.

Report of Tax Administration

The study conducted by the Economics Administration Reforms Commission (1981-82) revealed that the bulk of the revenue derived from estate duty came from relatively small estates and the pendency dated back even ten years or more. The Commission also observed that the assessment of larger estates is a time-consuming affair and with speedy assessments, not only will the total revenue go up but also the share of larger estates in it.

Commenting on the absence of a statutory time-limit for completion of assessments under the Act the Commission felt that it induces a sense of complacency in the Administration and in the Accountable Person also, who after obtaining probate, letters of administration etc., adopt dilatory tactics so that uptodate and other information required for finalising the assessment may be withheld with the passage of time. The Commission had recommended that the officer who was assessing the wealth tax and income-tax cases of the deceased should be required to take up the assessment of estate duty and the imposition of a statutory time limit of four years for finalising estate duty assessments.

Recommendation of the Public Accounts Committee.

In their 178 Report (1983-84) the Public Accounts Committee emphasized the urgent need for clearing the backlog of assessments under a time-bound programme, particular attention being paid to bigger cases.

(ii) *Statistical data*

The particulars of the assessments finalised, the assessments pending and the arrears of estate duty demand in respect of the years 1981-82 to 1985-86 are as given below :

Year	No. of assessments		Arrears of tax demand (In crores of rupees)
	Completed	Pending	
1981–82	35,257	36,581	30.73
1982–83	38,483	35,561	34.31
1983–84	37,688	34,477	4.45
1984–85	36,856	34,399	41.12
1985–86	—	12,262	36.04

Note :—

Figures for 1981-82 to 1984-85 as furnished by the Ministry of Finance.

(iii) *Review*

A test-check of the estate duty records maintained in the estate duty offices was conducted in audit during 1985-86, particularly with reference to the procedure followed by the department regarding the filing of accounts by the Accountable Persons, the disposal of the accounts so delivered by the department by completion of assessments and the recovery of arrear demands during the years 1980-81 to 1984-85. The review revealed the following :

(a) *Filing of accounts*

(i) Information of death were not regularly received from Revenue authorities of the State Governments.

(ii) Statements due under the Act from companies regarding particulars of deceased persons were not received in many cases.

(iii) According to executive instructions of August 1970 and May 1973, the Income-tax/Wealth-tax Officers are required to pass on information of deaths of persons coming to their notice during the course of assessments, which was not generally complied with. The Board have also not evolved any procedure by which the vital information is regularly received by the officers assessing estate duty. Assessments were accordingly made on the basis of accounts filed by the Accountable Persons.

There was thus no machinery which existed in the department to ensure that the estate duty accounts are filed in all cases. Besides, there were considerable delays in the filing of accounts ranging from 3 months to 13 years.

The statement below gives the number of charges (out of 18 states) where the information was not received as required under the Act.

Exchange of information (State Govts.)	Statements from companies	Life Insurance	Information from IT/ WT officers	Newspaper reports
9	11	8	6	7

(b) *Provisional assessments*

Estate duty is due from the date of death of the deceased and the Estate Duty Act authorises the Controller to make in a summary manner, a provisional assessment of the estate duty payable by the person delivering the account on receipt of the account of the properties on which estate duty is payable and to grant to the Accountable Person a certificate of having paid the duty payable or furnished adequate security for payment of duty.

The test check in audit revealed that provisional assessments were not generally completed suo moto but only on receipt of request from the Accountable Persons for issue of the certificates and there were delays extending upto 43 months in the completion of the assessments. In 1338 cases no provisional assessments were completed till the end of 1984-85 delaying the recovery of large amount of revenue of approximately Rs. 163.65 lakhs due to Government.

(c) *Arrears of Assessments*

Unlike the Other Direct Taxes, in the Estate Duty Act, 1953, no time limit has been laid down for completion of the estate duty assessments or re-assessments. In the absence of any statutory time limit the proceedings tend to drag on, causing hardship to the Accountable Persons and non-recovery of revenue due to Government. The Accountable Persons after obtaining probates, letters of administration on the basis of provisional assessments, are naturally not keen in the finalisation of assessments.

As on 31 March 1986 the test check revealed that 12,262 estate duty assessments were pending finalisation. Yearwise pendecy is as follows :

Year	Number of assessments pending
1981–82 and earlier years	4,754
1982–83	1,307
1983–84	1,597
1984–85	2,130
1985–86	2,474

The pendency in assessments is watched through the Blue Book but the test-check revealed that the register was not maintained in the proper form as for Income-tax/Wealth-tax and many important columns were not filled in. No new registers were also opened for old pending cases every year.

Ratio/Trend Analysis

The trend of the assessment completed indicates that out of a total of 1,04,063 assessments completed during the five years 1980-81 to 1984-85 involving a total revenue of Rs. 9,135.28 lakhs, 1,01,236 (97.28%) belonged to the category of smaller estates involving only Rs. 5,356.29 lakhs and 2,827 bigger cases (2.72%) yielded an estate duty of Rs. 3,778.99

lakhs. The review has revealed that on an average 565 (bigger cases) and 20,248 (smaller cases) assessments were being finalised every year in the ratio of about 1 : 40.

At the end of 1984-85, the pendency in estate duty assessments was 21,538 cases involving a revenue of Rs. 1,829.62 lakhs, of these 19,971 cases (90.27%) involving a duty of Rs. 249.93 lakhs related to cases of smaller estates of value less than Rs. 5 lakhs. The other 1,567 cases (9.73%) accounted for the bulk of the revenue of Rs. 1,579.69 lakhs to be raised and collected.

In October 1985, the Central Board of Direct Taxes prescribed a time-frame for completion of the pending assessments where the returned value did not exceed Rs. 3 lakhs, expeditiously. According to these instructions, all such cases should finally be approved in a summary manner, if a notice had not been issued or in a like manner, if a notice had been issued, by 31 December 1985/31 March 1986. The pendency on 31 December 1985/31 March 1986 was 10,799/6,093 cases respectively.

Some of the important and interesting cases are :

Gujarat

A. The first regular assessment was drafted in 1968 computing the provisional value of estate at Rs. 90 lakhs. Due to controversy regarding the status in which the properties were held by the deceased, (date of death 2 April 1965) the case was pending for 10 years till 1975 when the Board gave directions for adopting the status as 'Individual'. Accordingly, the assessment was framed and forwarded to the Controller of Estate Duty, Ahmedabad in April 1976. But no action was taken as the jurisdiction was transferred to the Controller of Estate Duty, Rajkot (Commissioner of Income-tax, Rajkot). The draft assessment order was again sent by the assessing officer to the Deputy Controller of Estate Duty in October 1983 but was returned by him in February 1985. A fresh assessment order was then submitted in February 1986. The assessment is still pending. Thus the assessment remained pending even after 11 years of receipt of the directions from the Board. According to the draft assessment order on the principal value of estate determined at Rs. 90,00,000 estate duty of Rs. 66,15,000 (approx.) was payable. Taking into account the provisional duty of Rs. 7,40,000 paid by the Accountable Person a sum of Rs. 58.75 lakhs due to Government is locked up besides the interest.

B. The assessment of the deceased (date of death 7 September 1962) was completed in July 1974 on an estate of Rs. 38,70,400 which was challenged in appeal regarding abatement of debt of Rs. 3,46,753, deduction of estate duty as liability on the date of death and inclusion of lineal descendants share and was set aside by the Tribunal on the question of abatement. The assessment in the meantime was reopened for revaluation of the shares of private limited companies under the law and the matter was referred to valuation cell. The valuation cell wanted the details of machinery etc. The assessment proceedings are pending as the information called for from the Accountable Person in February 1984 is still awaited.

In 13 cases in this charge, the Accountable Persons, paid during 1980-81 voluntarily some amount of estate duty but did not follow it up with filing of the estate duty accounts. The department did not also issue notices for filing the accounts. The initiation of proceedings under the Estate Duty Act had been barred by virtue of the limitation under the Act. The extent of revenue lost is not ascertainable for want of details.

In addition, in four cases where the returned value of estate exceeded Rs. 20 lakhs in each case, in six cases where it exceeded Rs. 10 lakhs in each case and in 30 cases between Rs. 5 lakhs and Rs. 10 lakhs, the assessments had not been finalised. The records did not indicate any specific reason for the delays in these cases.

Uttar Pradesh

C. An estate duty account showing the principal value of the estate at Rs. 6,97,020 (date of death October 1974) was filed in September 1975. A provisional assessment was completed in September 1975 creating a demand of Rs. 7,29,940. On being referred to the valuation cell in December 1977 the valuation of six immovable properties and another three in June 1980, the reports were received from the valuation cell in September 1980 and June 1983 valuing the properties at Rs. 17,21,000 against Rs. 3,10,900 returned, the increase in valuation being Rs. 14,10,000. A notice was issued to the Accountable person in March 1985 after 20 months of the receipt of the valuation reports and after 7 years from the date of receipt of 1st valuation report. The assessment is still pending for over 10 years.

D. The Accountable Person filed in November 1985 (Date of death December 1954) a return showing the principal value of estate as minus Rs. 3,85,334.

The final assessment was completed after the lapse of over 27 years on a principal value of Rs. 15,61,654 in March 1983. The assessment was cancelled by the Appellate Controller in February 1984 on the ground that the assessment had not been completed within reasonable time. The department appealed in May 1984 and the appellant moved a petition for remission of estate duty to the Central Board of Direct Taxes. The results are awaited (duty Rs. 2,98,388).

E. An Account showing the principal value of the estate as minus Rs. 53,122 was filed in May 1960 (Date of death August 1959). Provisional assessment was made in October 1961 on Rs. 1,52,834 and exparte assessment was made in March 1977 after 10 years on an estate of Rs. 18,78,252 (duty payable Rs. 1,99,655). The assessment was set aside in March 1978 but notice was issued to the Accountable Person in February 1980 with no further action. Meanwhile, the Accountable person died in December 1982 The Accountable Person expressed inability to furnish any information as their PAI ROKAR also died in December 1983. The case is pending for over 27 years.

F. In the case of the deceased (date of death January, 1976), the estate duty account was filed in September 1976 on a minus amount of Rs. 5,24,403. In October 1980, the Assistant Controller of Estate Duty reported to his higher authority that on the basis of the available evidence estate duty payable in this case would work out to Rs. 20,83,500. The department could not explain the delay in processing the case upto August 1985. When the case was posted for hearing in September 1985 the assessee had not co-operated and the assessment is still pending (delay of 10 years).

G. The account of the estate of the deceased (date of death December 1960) was filed in August 1961 and May 1963 by the Accountable Persons, the mother and the widow, showing an estate of Rs. 11,63,629. Notice was issued for the first time to the Accountable Person in August 1969, *i.e.*, after eight years of the receipt of return and the regular assessment was completed in June 1972 on an estate of Rs. 35,99,156. The net demand raised was Rs. 7,27,976. The assessment was set aside by the Appellate Controller in June 1974 on the ground that the Hindu undivided property having been taken in computing the estate of the deceased, its Karta was not provided with any opportunity to represent his case resulting in breach of natural justice and a fresh assessment was ordered. Fresh notice was issued to the Karta in August 1974. A reply to the notice was received in September 1974, but the case remained dormant from October 1974 to February 1985. In the meantime the Karta of Hindu undivided family died in November 1979 and the notice issued to the widow of the deceased in March 1985 could not be served as she was reported to be in Africa. Notice issued to the brother of the deceased as Karta of Hindu undivided family in September 1985 was replied to in October 1985 stating that the matter was pending before the Supreme Court for decision on legal issues. The assessment had thus, not been finalised even after 25 years of the death of the deceased.

Calcutta

H. An estate owner died in April 1964. Account showing value of estate of Rs. 17,65,432 was submitted in April 1965. The provisional assessment was completed in January 1967 on an estate of Rs. 41.24 lakhs which was reduced to Rs. 17,64,432 (December 1969) and the estate duty payable as Rs. 5,12,216. The regular assessment is pending. The total value of the estate of the deceased's father was Rs. 4,55,60,566, 1/6 thereof being over Rs. 75 lakhs.

I. In the case of a person who died in October 1963, estate duty return was filed in August 1964 with principal value of estate as Rs. 14.93 lakhs. Provisional demand was raised in September 1964. The department started collecting particulars from the Accountable Person from August 1967. Clearance certificate was issued in January 1971. Notice under section 58(2) was issued in June 1971 after about eight years calling for certain particulars regarding building including valuation reports. A show cause notice was issued to the Accountable Person in June 1971 to appear on 28-7-1971. Since then no action was taken till July 1977 *i.e.* for 6 years when again a notice was issued and the case was heard twice in August 1977 when Accountable Person filed the particulars called for. He was asked to file more particulars regarding valuation report, balance sheet etc. Dates fixed for hearing in December 1977 but the Accountable Person did not appear. No action was taken till September 1980 for about 3 years. The case was then fixed for hearing twice in 1980-81 when Accountable Person was asked to file some documents regarding Income-tax/Wealth-tax liabilities, L.I.P. certificates and basis of valuation of immovable properties. The Accountable Person appeared in April 1981 and furnished the papers asked for. The case was fixed for August 1981 and no one appeared. In February 1982 the Accountable Person turned up and discussed the case when it was adjourned for 19-2-1982 but no one appeared. Hearings were fixed up for 23-6-1982, 17-7-1982 and 7-2-1983 when

Accountable Person appeared and discussed the case. In March 1983, the Assistant Controller submitted a draft assessment order to the Deputy Controller. In March 1985 after about 2 years, the Deputy Controller returned the case for further examination on certain points regarding valuation of shares and immovable properties and fixed assets and directed the Assistant Controller to resubmit the case early. No further action to assess the case had been taken. The case is pending for over 22 years.

J (i) Estate duty return in respect of a noted industrialist who died in June 1983 was submitted in January 1984 returning a principal value of estates of Rs. 13.58 lakhs. The provisional assessment was made in January 1984 itself. The Deputy Director of Inspection. Special Investigation in letter of May 1985 advised the Assistant Controller that the Public Accounts Committee was insisting that the assessment should be completed with top priority, he was requested to ensure early disposal of this and two other related cases. The case was heard in February 1984 and was adjourned to April 1984. The case is pending still after the issue of povisional demand in January 1984, there was only one hearing till date.

(ii) The return in respect of the second industrialist (mentioned in the Deputy Director of Inspection's letter) who died in January 1982 was filed in November 1982. Provisional assessment was made in February 1983. The Assistant Controller issued a letter in February 1983 calling for 17 items of the documents including a certified copy of the Will dated January 1982. Attempts were made to collect the demand. In February 1983, the Accountable Person asked for stay of the demand till probate is granted. The same was, however, not granted. In February 1984, the provisional demand was paid in full. A notice to the Accountable person to produce evidence on 27-1-1984 was issued on 13-1-1984. The Accountable Person sought adjournment and the case was fixed for 24-2-1984. The case was examined and the Accountable Person was asked to file/produce some more documents/evidence. No further hearing was made and the case has not been pursued despite Public Accounts Committee's recommendations.

(iii) In the third case, the return was filed in May 1983 (date of death 27-6-1982). Provisional Assessment was made in June 1983. The Accountable Person in response to notice appeared in January 1984 and sought adjournment upto 24-2-1984. The Accountable Person appeared and filed some papers. The case was adjourned till March 1984 and the Accountable Person was requested to furnish some other details. The case stands there. No further action seems to have been taken after March 1984.

K. In this case Estate Duty return of a person who expired in April 1963, was filed in May 1963 (estate was Rs. 10 lakhs). Provisional assessment was made in June 1963. The file which was originally with Deputy Controller was transferred to the Assistant Controller in July 1964. Efforts were made to collect the demand when the file was transferred to another ward in July 1968. In 1968, the case was fixed 4 times for hearing but there was no compliance. On the request of Accountable Person in December 1968, the case was fixed for hearing in 1969, but again there was no compliance. Show cause notice was issued in March 1970. In 1971, the file was transferred to another ward who made a reference to Government solicitor in March 1974 seeking his advice as to whether the assessment could be finalised. The facts are as under :

The deceased executed two Wills on 14 December 1959 and the other on 4 March 1963. Both were registered. In the first Will he appointed his three sons (other than the eldest) to be the executor and legatee of the estate. By the subsequent Will of March 1963, the deceased revoked all earlier Wills and appointed his eldest son to be sole executor and sole beneficiary of his estate. Two testamentary suits were field in the High Court by the contesting parties and by an order of the Court, One Bar-at-law was appointed Administrator pending grant of probate. The suits have not so far been decided by the Court. Two accounts have been filed regarding this estate, one by the executor as per Will of December 1959 and the other by the executor of the Will of March 1963. Similar properties were disclosed in the two accounts. The Administrator was treated as an Accountable Person under the law and was requested to submit an account of the estate but no account had been filed. The Accountable Person, however, furnished particulars of the estate from time to time. In the circumstances, the Assistant Controller sought the advice of the Government Solicitor as to whether there may be any legal impediment in disposing of the assessment proceedings at the present stage and in case the disposal is not considered against the interest of the department. Opinion was also sought as to on whom the assessment should be made.

The Government solicitor in his letter of September 1974 advised that the Assistant Controller may proceed against the executors after giving notices and may complete the assessment. So far as the Administrator is concerned, the Assistant Controller may

proceed under Section 58(4) against him after another notice. When the case will be fixed finally, notice should be given to all the Accountable Persons. However, if the returns are not accepted as valid he may proceed exparte. Before taking any action on the Solicitor's advice, the file was again transferred to the other ward where the first action was taken in January 1979 fixing hearing on 24-1-1979. No one attended and in June 1979, show cause notice was issued. The case was again fixed for hearing on 17-1-1981, 28-1-1981 and April 1981. There had been no action till July 1984, when the file stood transferred to another ward and the case was fixed for 10-12-1984 and 5-11-1985. The next date was fixed for 15-5-1986. Regular assessment has not been made even after a lapse of more than two decades. The case was tossed 5 times from one ward to another and even after receipt of the categorical opinion of the Solicitor in September 1974, the assessment had not been finalised as yet.

L. The Accountable Person submitted the return of estate duty in respect of a person who died in December 1966, in May 1967. The provisionsal assessment completed in May 1967 (on the returned estate of Rs. 33.37 lakhs) raising demand of Rs. 18,43,280 was revised in March 1973 raising an additional demand of Rs. 1.55 lakhs. After a series of discussion/hearings with the Accountable Person, the Assistant Controller in November 1975 decided to include the value of a certain property according to the Will of the deceased's wife as the deceased had full interest in the said property. The Department referred the case to the departmental valuation cell for valuation of the said property and the Accountable Person after due show cause notice was proceeded under the Act for not disclosing the interest in the property and not showing the valuation thereof. While endorsing a copy of the report in April 1976 to the Accountable Person, the cell advised the value of the property at Rs. 10 lakhs. The Accountable Person objected to the proposed valuation and its inclusion in the principal value of the estate. In March 1978 under Article 226 of the Constitution, the Accountable Person filed a writ of Mandamus not to include the said property, not to levy estate duty and not to impose any penalty. The Accountable Person also prayed for interim injunction restraining the department from including this property in estate duty. The High Court allowed the injunction and was also pleased to issue 'Rule Nishi'—calling upon the department to show cause why appropriate writs should not be issued for an order declaring the property not liable to duty. In April 1978, the department filed the comments and on 10 April 1978 it was ordered by the High Court that inferim order already granted will continue till disposal of 'Rule Nishi'. The respondent shall, however, have the liberty to complete the assessment, but shall not communicate and enforce such order of assessment. The petitioner shall not alienate or encumber the property till disposal of the Rule The Assistant Controller in letter of June 1978 asked for the opinion of the Government Advocate if in view of the High Court's order of April 1978, the assessment could be concluded by including the property in dispute and also can Accountable Persons' be consulted in the matter. In July 1978, the Senior Counsel advised 'we should better keep the assessment in abeyance till hearing of the Rule subject of course to the provision of limitation, which I believe is not applicable in this case'. The Central Government Advocate, however, stated that as per the modified order of the High Court assessment could be completed including the value of the property. The Government advocate tried to put the case in view of the modified order of the High Court but the Hon'ble Court declined to entertain the prayer. The case has not so far come up for hearing. The department had pursued the case with the Government Advocate in June 1982, December 1982, December 1985, February 1986 and March 1986. The final assessment has not yet been done. The High Court in order of April 1978 permitted the department to complete the assessment. The department was not to serve the demand notice. The Government advocate opined that the assessment could now be completed. The same was not completed between 1978 and 1986. In case the department felt any doubt, they could have approached the court for permission to complete the assessment. No such calrification was sought for 8 years from the Court of Law.

M. In this case a person died in July 1959 and the Accountable Person filed a return showing a deficit estate of Rs. 10,28,355 in December 1960. Subsequently the Accountable Person filed a revised return showing a deficit estate of Rs. 17,79,712. As, however, the estate declared was a deficit one, no provisional asesssment could be made. The Accountable Person, however, admitted that in the deficit return filed, unpaid tax liability had been claimed on estimated basis and some were disputed in appeal and as such the Accountable Person felt that the estate would definitely turn into surplus. Accordingly, the Accountable Person paid a total sum of Rs. 13,500 as estate duty on *ad hoc* basis. No provisional assessment was made by the department. The value of estate as returned was a negative figure due to

deduction of tax liability on estimated basis. The income-tax, wealth-tax and gift-tax liability as on the date of death were not ascertained in consultation with Income-tax Officer/Wealth-tax Officer and Tax Recovery Officer. All the officials belonged to the same department and so the reasons for failure to ascertain tax liability and compute provisional assessment are not known. In pursuance of notice the Accountable Person attended from time to time. There had been no movement of the case for the whole of the years 1965 to 1968, 1970 to 1971, 1976 to 1977, 1982, 1984 to 1985, *i.e.* for 11 years, out of the total pendency of the case for 25 years. The Accountable Person, however, produced all the statement of accounts, documents and relevant evidences in support of the return which were examined and was heard on different dates. In the meantime the assessment file was transferred to other jurisdictions. In C-Ward from the date of filing of the return, Transfer to B-Ward from 21 December 1960, Transfer to Deputy Controller of Estate Duty from December 1962, Transfer to F-Ward from June 1978, Transfer to H-Ward from April 1983 till date.

While the jurisdiction of the file was with F-ward, the Assistant Controller sent a draft assessment order in August 1981 to the Deputy Controller of Estate Duty proposing to complete the assessment on a net principal value of Rs. 60,22,100 involving duty of Rs. 18,06,395. It appears that the Deputy Controller of Estate Duty returned the draft assessment order in February 1983 after about two years with the observation that the Accountable Person had submitted objections to the proposed draft assessment order and directed to go through these objections according to law after allowing the Accountable Person reasonable opportunity of being heard and thereafter submit a revised order of assessment, if called for. Since the receipt of the Deputy Controller's letter of February 1983 the department proposed to issue a notice fixing the case for hearing on 26 May 1983. But the notice could not be served and the tear off acknowledgement slip bear the following remark "out of Calcutta, June 6th and 7th will come". Another notice was issued fixing 9 June 1983 and in response Accountable Person appeared on 21 June 1983 and the case was partly discussed with him when the hearing was adjourned to 7 July 1983. Since then, no action appears to have been taken till date. It would appear from the above that the delay in finalising the case is mainly due to transfer of jurisdiction of the case to different assessing officials. Even after the draft assessment order was returned by the Deputy Controller the objections raised by the Accountable Person were not settled during the last three years.

N. In this case of a person who expired in December 1969 a return showing net principal value of Rs. 19,14,002 was filed in February 1972. The provisional assessment was made, raising a demand of Rs. 12,819. The deceased in this case died leaving his wife (since died) 3 sons and 5 married daughters. The estate duty return was, however, filed by one of his sons and the other sons and daughters did not file any return though notices were issued to all of them. The only Accountable Person also in a letter of May 1972 stated, *inter alia*, that he did not find any possibility of satisfying the Assistant Controller's notice now or in future and requested Assistant Controller to issue similar notice or notices to other legal heirs as they are also jointly and severally responsible and accountable for the estate of the deceased. Considering the facts Assistant Controller again issued notices to all the legal heirs fixing hearing on 27 August 1975. In reply, the eldest son of the deceased wanted to know the particulars of the estate filed by the other son which was refused. The daughters and one daughter-in-law intimated that they are not interested in the assets left by the deceased. The legal heirs of the deceased were not having good relationship among themselves and the Accountable Person (2nd son) was also deliberately delaying matters and not making any real attempt to comply with the requisitions and having failed to comply with notice lastly fixed for hearing on 28 November 1977, the Assistant Controller of Estate Duty sent a draft assessment order to Deputy Controller of Estate Duty in November 1977 determining the net principal value of Rs. 41,82,147 and a duty of Rs. 24,41,502 was determined thereon. In the file containing the draft assessment order in the order sheet Assistant Controller observed as follows "6-2-1978 discussed with Deputy Controller not approved. Further instructions will be given, 7-2-1978 Received back assessment records from the Deputy Controller office".

No written instructions could be found in the records till April 1980 when the Deputy Controller in his letter of April 1980 observed as follows.

> "The draft it seems, was not approved by the Deputy Controller of Estate Duty. The assessment was framed mainly on the strength of the Wealth-tax return of the deceased for the assessment year 1964-65. The deceased in question died in December 1969. The Income-tax as well as Wealth-tax assessments upto the date of death must have been finalised by the Income-tax Officer by now. You are advised to requisition the

complete Income-tax and Wealth-tax records of the deceased and scrutinise the same. Fresh notice of hearing should be served. The Accountable Person should be given an opportunity of being heard again. Draft assessment order should be submitted at an early date."

The Assistant Controller of Estate Duty, however, prior to receipt of Deputy Controller's letter of April 1980 requested the Wealth-tax Officer where the deceased was assessed to complete the Wealth-tax assessment of the deceased and on 23 April 1980 sent a requisition for having the Income-tax/Wealth-tax/Gift-tax files of the deceased. Subsequently, notices were issued once each in 1980 and 1981 and twice in 1983 fixing the case for hearing. None appeared and no action has been taken since then.

In this case it appears that the Accountable Persons are non-cooperative and excepting one, who had filed the returns, others had never cooperated.

In the circumstances Assistant Controller of Estate Duty rightly decided in November 1977 to complete the assessment. But the said order was not approved by Deputy Controller in April 1980 directing to complete the assessment after consulting the Income-tax/Wealth-tax records of the deceased upto the time of death. This simple direction was also given after considerable lapse of time. In this case death occurred in December 1969 and all Income-tax/Wealth-tax assessments upto assessment year 1970-71 must have been completed long ago. Even after lapse of six years from receipt of instructions of Deputy Controller the assessment had not been finalised.

O. A person expired in May 1964 and a return was filed in February 1965. The provisional assessment was completed on 2 March 1965 on a net principal value of estate of Rs. 9,07,530. Notice was issued fixing the date on 10 March 1965. On 7 August 1965, the Accountable Person appeared and was asked for some particulars. On 27 October 1965 the Accountable Person prayed for time upto 4 December 1965. The case was fixed on 23 August 1968 and the case was adjourned upto 20 September 1968. On 29 October 1968 the Inspector was deputed to scrutinise the Income-tax and Wealth-tax records. Again the case was fixed on 18 February 1969, 10 March 1969 and refixed on 28 January 1972. For valuation of immovable properties the case was referred to valuation cell and their report was also received. A revised return was filed in May 1977 and provisional assessment was revised and the provisional duty was paid. Again the case was taken up in April 1983 fixing different dates for hearing in 1983 and the last one on 20 May 1986. The case was not attended to for nearly three years at this stage. In this case the Deputy Controller in his letter of 13 August 1976 addressed to the Assistant Controller of Estate Duty wanted to know the assessment position of the case. Further, Deputy Controller in his letter of September 1976 addressed to the Assistant Controller Estate Duty expressed his dissatisfaction for non-completion of assessment. Deputy Controller further stated that there was no progress of the assessment from March 1976 to September 1976. He also directed to complete the assessment by December 1976.

It appears that the Department coud not assess the case till date. The assessee filed a revised return when it was confronted with the valuation made by the departmental valuer. There was delay in referring the case to the valuation cell, reasons for which are not apparent from records.

P. In this case a person died in May 1965 and a return was filed in May 1969. The Provisional Assessment was made raising a demand of Rs. 1,31,097. Soon after raising the provisional demand, the department started efforts to collect the same from various parties. The efforts continued till 1979 and excepting realisation of a sum of Rs. 30 from a Bank Account, nothing could be realised. No attempt was made to finalise the regular assessment. It was only in November 1977 a notice was issued which was duly complied by the Accountable Person. Later two other notices were issued in 1979 and two in 1980, but none attended in response to notices. On 5-9-1980, the Assistant Controller wrote in the order sheet as follows :

"I would like to make an assessment in this case. Inspector will please bring the Income-tax/Wealth-tax records of the deceased from the Central Circle". On 5-9-1981 the Assistant Controller wrote in the order sheet as follows. "Mr. . . . . , Inspector please report, How is that the section informs me that you have not noted the above enquiry. This is an old matter. I would like to speak with you". No action on the case appears to have been taken till date. From the observation of the Assistant Controller it appears that the assessment could be completed on verification of Income-tax/Wealth-tax records. But the department has not been able to do the same during the last 5 years and the case is pending for the last 17 years since May 1969.

Q. In this case the person died in June 1966 and a return showing net principal value of Rs. 11,22,703 was filed in May 1967. A provisional assessment was

made. Since then, notices under section 58(2) were issued fixing hearing of the case on different dates in 1973, 1974, 1975 and 1976. Representative of the Accountable Person appeared once in November 1977 and then in February 1979 and filed some papers. The case was refixed in January 1980 and then in July 1980 when none appeared. Showcause notices for non compliance were also issued in September 1980 and August 1981 but no penal action taken. No further action is seen in the file since then and regular assessment is yet to be made. The assesment is pending for more than 18 years.

R. In this case, the person expired in November 1953. Deceased had 9/80 share in the Trust Estate of a certain person which had in 1920 been settled on trust reserving for himself a sum of Rs. 200 p.m. out of the income of the Trust. By an order of Calcutta High Court, an official trustee was appointed for the management of the said Estate and such arrangement continued upto August 1956 when by an order of the Hon'ble High Court, the widow and sons of the deceased were appointed as trustees and the official trustee was discharged from further acting as trustee of the said estate. An estate duty account was filed by the official trustee in May 1954 and the same not being in the prescribed form, the Representatives were asked to file Estate Duty accounts in the proper form relating to the estate of the deceased. On being asked to comply with the statutory notices issued by the department, an application under article 226 of the Constitution was filed by the Accountable Person before the Hon'ble High Court. The High Court in 1970 vacated all the interim orders. After the disposal of the above matter, the Accountable Persons started taking time on the plea that they were yet to receive certified copy of order passed by the Hon'ble High Court. After a lapse of sufficient period, the Accountable Person requested the department for furnishing certified copy of the return filed by the official trustee which could be handed over to the Accountable Person as also inspecting of the relevant papers made by the Accountable Person in May 1977. Now the Accountable Person came out with the contention that since the accounts and relevant papers of the estate related to the period of death and immediately thereafter were not handed over to the Accountable Persons by the official trustee at the time of handing over charge of the estate in 1956, they are not in a position to comply with the notices issued by the department for the estate duty assessment of the deceased. And a title suit was filed in the city civil court by the Accountable Person as plaintiff and official trustee, Union of India, through Assistant Controller, Estate duty and Assistant Controller of Estate Duty, C-ward, Calcutta respectively as defendant No. 1, 2 and 3. The said title suit has recently been dismissed for default on 17-2-1986 after contest.

It appears from the above facts that there had been no injunction from any court of law asking the department not to complete the assessment. The assessment is the oldest one pending with the department in as much as the Estate Duty Act, 1953 came into force from 15-10-1953 and the deceased in this case expired on 20-11-1953 and so this case is pending for more than 32 years. It is also interesting to note that the department had already collected the particulars of properties owned by the deceased. As a matter of fact the department prior to intervention of High Court intimated to the Accountable Person in letter dated 10-5-1963 that they propose to complete exparte assessment taking the value of 11 properties at Rs. 9,21,579. Further in the department's letter of 23-12-1975, it was decided to complete the assessment exparte at Rs. 12,00,000 in case of non-compliance. Pendency of litigation between official trustee and Accountable Persons before city civil court could not have prevented the department, from making exparte assessment. No provisional assessment was made in this case and yet regular assessment was not made so far.

S. In this case a person expired in March 1969. The Accountable Person filed a return in December 1969 showing movables of Rs. 54,59,694 (which mainly included shares Rs. 5,69,938, Bank Balance Rs. 16,175, book Debts Rs. 47,43,467, Motor cars etc. Rs. 49,341 and others) and immovables of Rs. 3,53,250. The Accountable Person also claimed liability of Rs. 80,64,845 which mainly included sundry creditors, bank overdrafts and Income-tax/Wealth-tax/Gift-tax liabilities. It appears from the assessing officer's noting in the order sheet that on 19-8-1969, the authorised representative appeared and asked for a provisional certificate. The note states, the deceased assigned a life insurance policy of Rs. 25,000 in favour of the department. The provisional cetificate was issued on 27-8-1969 incorporating all the movable assets and showing the liabilities. After issue of the said certificate, no action was taken to finalise the assessment till July 1971 when a notice was issued fixing hearing on 24-8-1971. The authorised representative, however, appeared on 16-9-1971 and the Assistant Controller ordered to put up the case in December 1971. The case was lost sight of till 27-11-1974 when the Assistant Controller asked the office to fix the case and accordingly on 26-12-1974 authorised repre-

sentative appeared and requested for an adjournment which was granted till 9-1-1975 when authorised representative was asked to appear with all relevant papers as requisitioned. The authorised representative, however, appeared on 13-1-1975 and again requested for an adjournment which was granted till 29-1-1975 wherein it was specifically stated that no further adjournment would be granted. The authorised representative/Accountable Person did not appear on the specified date (29-1-1975). The case was again lost sight of till 18-8-1976 on which date the Assistant Controller again fixed the case on 24-8-1976 and informed the Accountable Person that if he did not attend, the case will be completed exparte. The Authorised representative appeared on the specified date and the case was discussed. The Accountable Person was asked to file papers listed on 2-9-1976 on which date the authorised representative appeared and he was again asked to file books of Accounts, Challans for payment of tax, Balance Sheet for 1966, details of gift, etc. and the case was adjourned to 2-11-1976. On 4-11-1976 the authorised representative appeared and filed death certificate. Bank statements were checked. On the same date Assistant Controller ordered to send notice alongwith forms 39, 40, 41 (for controlled co.). No such notice seems to have been issued. The file was again lost sight of till 29-9-1980 (excepting on 4-10-1977 and 2-11-1977, Assistant Controller ordered for sending requisition for Income-tax file) on which date a notice was issued fixing 9-10-1980 for hearing. None appeared on the specified date and the case was again lost sight of till 15-2-1983 when the case was again fixed for hearing on 1-3-1983. No body appeared on the specified date and no action has been taken since May 1986. Regular assessment has not yet been made.

From the trend of events as chronologically given from the order sheet, it appears that though the Accountable Person has not shown adequate interest for completing of the assessment the department also had not pursued the case properly. The liabilities on date of death consisted of sundry creditors, bank overdraft and tax dues (Income-tax and Wealth-tax). It is not clear why the above details could not be gathered from Income-tax and Wealth-tax assessments of the assessee, which must have been completed long time ago.

Bombay

T. The assessee died in July 1977 and the estate duty return was filed in Febuary 1978 returning gross estate of Rs. 27.13 lakhs and net estate of Rs. 8.87 lakhs. Based on this the Accountable Person worked out the duty payable at Rs. 1.95 lakhs and paid Rs. 0.67 lakhs after claiming reliefs etc. But no provisional/regular assessment has so far been completed for over 8 years.

U. An assessee died in June 1969 and the estate duty return was filed in September 1972 on an estate of Rs. 25.73 lakhs. Provisional demand of Rs. 11.63 lakhs was raised and the principal estate included immovable properties at Ghatkopar, Bombay declared at Rs. 2.85 lakhs and agricultural lands declared at Rs. 22.48 lakhs. The valuation cell valued the properties at Rs. 7.74 lakhs and Rs. 38.59 lakhs respectively. The increase in valuation which would fetch an additional revenue of Rs. 17.85 lakhs had not been given effect to. The department stated that shortage of manpower and some more details required for the assessment had delayed the assessment.

Madras

V. In this charge, in 16 cases where the dates of death occurred between August 1969 and April 1981 and the principal values of estates ranged between Rs. 5 lakhs and Rs. 40 lakhs the assessments are pending with delays ranging from 5 to 17 years except for a few hearings. There were no indication of any valid reasons for the inordinate delays as evidenced from the records. In a few cases the Income-tax/Wealth-tax extracts are yet to be collected.

Madhya Pradesh

W. In this charge, the delays in completing the assessments/reassessments ranged from 1 to 15 years. In many cases, the assessments were reopened as a result of audit objections. In two cases of the opened cases, notices were either not issued or were not served on the Accountable Persons within the statutory time limits of 3 years laid down under the Act. This resulted in loss of revenue of Rs. 6.29 lakhs.

X. The assessee died in December 1961. Assignment was made on a net estate of Rs. 64.94 lakhs under Section 57 in December, 1962. Regular assessment was made in March 1973 on a net estate of Rs. 2.77 crores. Gross demand of Rs. 1.04 crores and interest of Rs. 2.55 lakhs was raised. The Controller of Estate Duty (A) set aside the assessment in January 1977 and the Appellate Tribunal directed a fresh assessment in January 1978. In February 1980, the assessment of December 1962 was restored. Fresh assessment is still pending even after 8 years and notice was issued in December 1984 after 8 years. No effective action was taken till date involving large revenue. The case is also not watched through the Pendency Register.

Bihar

Y. In this case the accounts were filed on 15 April 1978 showing the principal value of estate of Rs. 7,77,782 (date of death 16-7-1977). The provisional assessment was, however, completed only in April 1986 after it was pointed out in audit.

Notices under the Act were issued requiring attendance for the first time in November 1981 followed up by a series of notices. Neither several petitions submitted by the Accountable persons nor his presence on various occasions yielded any results during 1982—86. The Accountable Person had mentioned in his return that the valuation reports in respect of authorised Government valuer would be furnished at the time of assessment. Though the wealth-tax assessment was completed in March 1982 for the valuation date ending March 1977 and the Appellate Assistant Commissioner's orders thereon were passed in October 1982, the information regarding the valuation was neither collected nor the assessment finalised.

Z. In this case (Date of death 22-11-1976) three persons declared separately to be heirs to the property and claimed themselves individually as Accountable person. Of the three, one submitted a return in February 1980 showing the principal value of estate as Rs. (—) 37.23 lakhs. Another submitted a return in December 1977 and a revised return in September 1979 (principal value Rs. 34,123). The third Accountable person (Trustees) had not submitted any return so far. For quite sometime, exact amount of jewellery lying in a treasury was not known. But after its weighment in July 1980 in the presence of Government representative its value was ascertainable. During February 1978 to November 1985 no conclusive steps were taken to collect the details and to obtain a statement of account from the trustee.

Kerala

AA. The original assessment determining a principal value of estate (date of death July 1964) and the duty payable at Rs. 55.14 lakhs and Rs. 35.81 lakhs (revised order of February 1982) was set aside by the Appellate controller in March 1983 with directions to make a fresh assessment which is still awaited.

BB. Provisional assessment was made in June 1981 on a principal value of estate of Rs. 7,71,180 and duty payable of Rs. 1,53,557. The regular assessment is pending as the instructions of Central Board of Direct Taxes regarding jurisdiction of the estate duty officer in the case is awaited.

Orissa

CC. The deceased died in May 1974 and the assessment was completed in March, 1979 on an estate of Rs. 37.04 lakhs and estate duty payable of Rs. 21.27 lakhs. The Commissioner of Income-tax (A) set aside the assessment in September 1981 and remanded the case to the assessing officer. There is no action to date to finalise the assessment.

Punjab

DD. In this case the provisional assessment was made in October 1962 and the regular assessment in January 1967. The assessment was set aside in September 1967 and in March 1968, the Assistant Controller sent a draft assessment order to the Deputy Controller which was returned in August 1976. The Assistant Controller had assured the Controller that the assessment would be completed by March 1979 but it was still pending.

Karnataka

EE. In a case a draft assessment under Section 58(4) of the Estate Duty Act was proposed and sent to the Accountable Person in October 1977 as the Accountable Person failed to file the account inspite of repeated reminders. The draft assessment has not been finalised so far.

(d) *Arrears of demands.*

As at the end of March 1986 the arrears in demands amounted to Rs. 36.4 crores in respect of 26,771 cases, of which 64 cases (0.26 per cent) with duty arrears of Rs. 5 lakhs and above accounted for Rs. 5.99 crores (16.62 per cent). The yearwise particulars of the arrears of demands are as under :—

1981–82 and earlier years	Rs. 9.15 crores
1982–83	Rs. 2.40 crores
1983–84	Rs. 4.07 crores
1984–85	Rs. 8.61 crores
1985–86	Rs. 11.81 crores

A few important cases of arrears are discussed below :

Calcutta

A. The Accountable Person filed the Estate Duty return in July 1970 (date of death of deceased--April 1970). Provisional assessment was completed in July 1970, regular assessment was completed in June 1979, nearly after 9 years of the provisional assessment and a net demand of Rs. 45,19,787 was raised. Certificate for recovery of the outstanding demand under the Estate Duty Act was issued in December

1979 and again a fresh certificate was issued in March 1980. Attachment notices were issued to the various authorities for realisation of the outstanding dues. Income-tax officer/Wealth-tax officer were also approached in this connection. Tenants were also told to make payments of duty towards estate duty payments.

In September 1974, the Accountable Person entered into an agreement for sale of one of the properties for a consideration of Rs. 16,50,000 and received Rs. 1,65,000 towards earnest money. However, the Accountable Person was restrained from selling the property by the High Court's orders of November 1975. The Court in the order of September 1976 allowed the letting out of the property under certain terms and conditions. The property was let out and the lessee agreed to pay Rs. 5,00,000 and Rs. 4,000 per month for 5 years upto 31 March 1982 towards payment of estate duty. From April 1982, the lessee agreed to pay Rs. 2,000 p.m. as rent and Rs. 2,000 to be adjusted against the lump sum payment. This arrangement had the approval of the department.

A notice under the orders of the Sub-ordinate Judge for sale was published in a leading newspaper in July 1982 and the date of auction was fixed in August 1982. However, the High Court in their order of March 1984 set aside the order of the lower Court and directed that the sale could be made subject to the first charge that is subsisting under the statute, including the estate duty. The department took up the matter with the certificate officer in May 1985. The action is pending. 59,000 kg. of silver and 11.830 kg. of gold seized by the Income-tax Officer for appropriation towards Income-tax/Wealth-tax liabilities were not considered for sale and adjustment of these estate duty demands. Out of the demand of Rs. 45,19,785 raised in June 1979 an amount of Rs. 40,60,720 is still pending.

B. In this case on completion of the regular assessment, a demand of Rs. 25,80,060 was raised in July 1983. A certificate for recovery under the Estate Duty Act was issued in March 1985. The revised demand after adjustments etc. stood at Rs. 22,99,927 on 31 March 1985.

In August 1983, the Accountable Person preferred an appeal before the Appellate Controller, who in his orders of March 1985 confirmed almost the entire additions made by the Assistant Controller. The Accountable Person then preferred an appeal before the Tribunal and also made a stay petition which the Appellate Controller rejected in his orders of January 1986. The department thereafter realised Rs. 11,11,192 from the State Bank of India by issue of notice under the Estate duty Act, Out of the revised demand of Rs. 22,99,927 an amount of Rs. 11.84 lakhs was still outstanding on March 1986.

The estate duty records have revealed that the Accountable Person is trying to sell the deceased's Tea Estate at Assam and the department is still to get the opinion of the Government Pleader if the sale proceedings could be attached in the hands of the purchaser. A decision is also still to be taken on Controller of Estate Duty's request to consider sale proclamation of a property of the deceased.

C. In another case, a demand of Rs. 68,87,636 was raised on completion of regular assessment in November 1975. The Accountable Person preferred an appeal against the assessment and prayed for demand being kept in abeyance till the results of the appeal. The Assistant Controller agreed to stay the collection till the restraining order issued by the U.K. Court prohibiting remittance of the proceeds of U.K. Bonds held by the deceased is withdrawn. On withdrawal of the order, the Accountable Person deposited Rs. 5 lakhs in June 1976, Rs. 25 lakhs in September 1976 and Rs. 10 lakhs in January 1977. A certificate was issued for recovery of outstanding demand of Rs. 28,87,636. This demand was, however, reduced by the Controller of Estate Duty (Appeal) to Rs. 20,83,828 vide his order of October 1980. As a result of Tribunal's orders of July 1983, the demand was revised to Rs. 21,83,439. The demand notice was issued in January 1984. The Accountable person in his letter of April 1985 had stated that in a connected case, he will get a refund of Rs. 44,06,828 from the department and requested to keep the demand in abeyance. The Assistant Controller intimated the position of the case to the Controller stating that the Appellate Controller's orders in both the cases are awaited. On the request of the Accountable Person, the Assistant Controller requested the certificate officer to keep the demand in abeyance till the decision in the appeals. This had the approval of the Controller. An amount of Rs. 21,83,439 is still pending recovery.

Calcutta

D. A demand of Rs. 17,17,525 was raised in respect of the deceased in May 1974. Certificate for recovery of the demand was issued in March 1976. The Accountable Person preferred an appeal against the assessment and accordingly the Recovery Officer was requested to stay the recovery pending disposal

of the appeal. The Appellate Assistant Controller set aside the assessment in his orders of March 1977 and the set aside assessment was completed in July 1980 and demand of Rs. 24,76,584 raised. Aggrieved with the orders, the Accountable Person filed an appeal before the Commissioner of Income-tax (Appeal) who vide orders of March 1981, allowed further relief and the assessment was revised in April 1981 and a demand of Rs. 12,940.63 (including interest) was raised. A certificate for recovery was issued in May 1981. The Accountable Person further filed an appeal before the Income-tax Appellate Tribunal and the Tribunal in their orders of July 1982 directed the Controller of Estate Duty (Appeals) for redetermination of the value of certain properties. In the meantime the Accountable Person obtained an interim injunction from the High Court for stay of collection proceedings till the disposal of appeal. The Tribunal restored the case to the Controller of Estate Duty (Appeal) in July 1982 but the case was not taken up for disposal by the appellate authority. A demand of Rs. 11,36,169 is accordingly pending recovery.

E. An ex-parte assessment was completed in the case of the deceased in March 1982 and a demand for Rs. 15,99,073 was raised. The demand notice was served by affixation on 8 April 1982 for payment of the demand by 7 April 1982. The Accountable Person thus got no opportunity to pay the demand within the stipulated time. Attachment notices were also issued to all the tenants of the house on 29 April 1982. The Assistant Controller also issued recovery certificate to the Recovery Officer on 27 April 1982. An amount of Rs. 9,000 was recovered from the tenants. The Accountable Person filed a writ petition against the attachment order as the demand notice was served only after the payment date was over and the High Court granted interim injunction on 17 May 1982. Another writ was filed by the Accountable Person for restraining the department from collection of the demand. The case was sent to Inspecting Assistant Commissioner (Judicial) on 25 February 1985. The irregular and delayed issue of the demand notice on the Accountable Person resulted in pendency of demand for over 4 years.

F. The Assistant Controller completed the assessment in January 1981 on the deceased who died in January 1955. Due to certain dispute amongst the legal heirs, the estate was kept under the management of the Receiver appointed by the High Court. Before making the assessment, the Solicitor to the Central Government was consulted on the legal aspects of the case in the department's letter of January 1976. A demand of Rs. 1,69,346 was raised as a result of assessment completed in January 1981 and demand notice was issued in April 1981 to all the Accountable Persons, including the Receiver. Certificate of recovery was also issued. The Receiver agitated before the certificate officer stating *inter alia,* that the whole proceedings were illegal as no prior leave of the High Court was sought by the department. He also denied his personal liability for the payment of estate duty, being the liability of the heirs of the deceased. The department moved the High Court on 9 February 1984 and the High Court vide orders of 8 March 1985 observed as follows :

"Leave is given to the Assistant Controller of Estate duty to correct the certificate dated 24 March 1982 in terms of prayer(v) of the petition and to issue a fresh notice of the demand on the Receiver under the corrected certificate in accordance with law and proceed thereupon. It is declared that the attachment levied earlier under the incorrect certificate is ineffective". Accordingly a corrected certificate was issued to the certificate officer on 4 April 1985.

The department ignored the advice of the Government Solicitor who in letter of January 1976 opined that permission of the High Court was needed before start of recovery proceedings against the Receiver appointed by the Court of Law. This resulted in delay of nine years in recovery proceedings against the Receiver. The Deartment also had not sent the fresh demand notice as ordered by the High Court.

Bombay

G. According to the arrear reports as at 31 March 1985, a demand of Rs. 41.74 lakhs raised against the assessee during regular assessment was pending recovery. As per the Board's instructions of October 1985 the jurisdiction of the case was transferred from Bombay to Indore in February 1986. The department stated that there was only one property situated in Indore for adjustment against the demand.

H. Provisional assessment was completed in July 1971 (date of death July 1961) Estate duty of Rs. 1.39 lakhs including penalty was pending. The regular assessment was completed in March 1975 raising an additional demand of Rs. 5.56 lakhs (revised to Rs. 5.98 lakhs in April 1976) against which the Accountable Person paid only Rs. 10,000. The recovery is pending with the State Revenue authority.

Gujarat

I. In this case the assessment was completed in March 1983 and a demand of Rs. 14,15,247 was raised. The payment of demand was stayed by the Inspecting Assistant Commissioner in September 1983

pending Appellate decision and subject to payment of Rs. 50,000 towards demand by 15 October 1983, which was duly paid by the Accountable Person. The first appeal was decided by the Appellate Assistant Commissioner on 21 March 1984 reducing the demand to Rs. 5,02,524. The Accountable Person again requested for stay of collection proceedings pending decision by the Tribunal on the appeal filed by him. There is no indication of any orders passed in this regard or any further collection. In the meantime on 8 February 1985, the assessment has been reopened to include the value of shares and jewellery held in a company.

J. The assessment in this case was finalised in 1967-68 and a demand for Rs. 79,14,167 (including interest) was raised. At the end of 1981-82, there was still a balance of Rs. 13,61,799 to be collected, the collection upto that date being Rs. 63,42,235. The Accountable Person claimed relief under Section 50-B of the Act on account of tax on capital gains on the properties transferred after the death of the deceased which was rejected by the Central Board of Direct Taxes in August 1980 mainly because the properties were not transferred within the stipulated time. The Collector was requested by the department to collect the arrears by means of attaching and disposing of the properties of the deceased by issue of recovery certificates. No recovery is still made due to prolonged correspondence between the department, the Recovery Officer and the Accountable Person. In March 1986, the interest payable on the arrear demand had been estimated at Rs. 13 lakhs upto December 1977.

Rajasthan

K. Based on a search conducted in June 1981, gold ornaments, jewellery, silver etc., were seized. Assessments were completed in April 1983 raising demand of Rs. 14,92,000. Assets worth Rs. 20 lakhs seized lying for purpose of recovery of Income-tax/Wealth-tax/Estate duty were partly auctioned in August 1983. However, the High Court stayed the proceedings. The Commissioner of Income-tax (Appeal) in June 1984 remanded the appeal back to Assistant Controller for report. The report remains to be sent. Decision of the High Court in the disposal of the appeal is still awaited. The demand of Rs. 15,22,000 (including interest) is still outstanding.

Kerala

L. The assessment of estate duty was completed in April 1980 on an estate of Rs. 30.58 lakhs. The demand of Rs. 13.98 lakhs having remained unpaid it was certified for recovery in May 1980. The recovery is kept in abeyance pending Central Board of Direct Taxes order on Section 71 petition.

Haryana

M. Original assessment was completed in February, 1982 on an estate of Rs. 2,37,550 creating a demand of Rs. 17,632 which was reopened in September 1982. The Accountable Person filed revised return at Rs. 94,940 in June 1983. The assessment was completed in March 1985 under section 58(4)/59 on a net principal value of estate of Rs. 48,89,439 and a net demand of Rs. 31,11,392 was raised. In March 1985, the Collector was asked to recover the amount. The Accountable Person went in appeal in June 1985 for stay of demand to Controller of Estate Duty (Appeal), where the appeal is pending.

Madras

N. In this charge, there are 6 cases with arrears exceeding Rs. 5 lakhs with total value exceeding Rs. 88.24 lakhs, 3 of them exceeding Rs. 10 lakhs. An arrear demand of Rs. 6,95,000 relating to the year 1970-71 is pending in one case. The estate composed of Indian as well as foreign assets. In view of the restrictions on foreign exchange remittances, the Accountable Person had approached the Commissioner of Income-tax to keep the balance amount in abeyance. The Commissioner of Income-tax's orders are awaited. The interest upto March 1986 was Rs. 6,91,937. In another case an arrear demand of Rs. 10.46 lakhs raised during 1983-84 on provisional assessment is pending. In the third case, a demand of Rs. 46.06 lakhs raised during 1984-85 is pending as there are no liquid assets and recovery certificate has been issued to the Revenue Authorities. It is seen that the immovable properties are in possession of a third party under an agreement for sale. The Commissioner of Income-tax is examining the question of implicating all the parties under joint and several liability. The assessment is under appeal to Commissioner of Income-tax (Appeals) which is pending. In two cases of arrears of Rs. 6 91 lakhs and Rs. 11.40 lakhs raised in 1984-85 where recovery certificates had been issued further action is pending. In the last case an arrear of Rs. 6.45 lakhs is under appeal to Commissioner of Income-tax (Appeal).

Madhya Pradesh

O. In this case (date of death 25-4-1980) a return was filed on 8-5-1981 and a provisional assessment was made on 11-5-1981. Revised returns were filed on 1-3-1982 and 11-6-1985. The regular assessment is pending. Out of the provisional demand of Rs. 59

lakhs upto March 1986, Rs. 37 lakhs was paid leaving a balance of over Rs. 21 lakhs. The Controller of Estate duty had stayed the balance demand in September 1982 and ordered that the Accountable person should pay Rs. 20 lakhs by 15 March 1985 and balance by 30 September 1985 together with interest at 12 per cent which the Accountable Person failed to comply. The Assistant Controller requested the Collector to withold 65 kgs. of silver articles under safe custody. The Controller of Estate Duty in his letter dated 3-7-1985 quoting Board's order ordered release of the articles and complete the assessment in a just and fair manner and further ordered postponement of sale of properties. The interest leviable upto March 1986 was Rs. 18.56 lakhs. In the procedings the Controller of Estate Duty seems to have exceeded the jurisdiction under the Act (Section 70).

P. The assessee died in May 1978. The return was filed in May 1979 and a provisional assessment was made in that month. In December 1984, a reference was made to the valuation cell for valuation of the immovable properties whose report was received in June 1985. However, the final assesment is pending. Out of a demand of Rs. 14.38 lakhs, a sum of Rs. 8.88 lakhs is pending as on 1-4-1985. The Accountable Person had agreed for appropriation of dividend of Rs. 1,79,082 from shares worth Rs. 12,97,809 in Indian companies. Due to delayed action only a sum of Rs. 2.25 lakhs was realised and there was no action to appropriate the bank balances. The operation of the demand was stayed by Controller of Estate duty upto 30-9-1981 which was extended upto December 1982 at 4 per cent interest. The Accountable Person had not complied with the order and was liable for interest of Rs. 7.52 lakhs and penalty of Rs. 8.88 lakhs. No recovery had been made on the recovery certificate issued to the Collector in March 1981 for Rs. 11,68,031.

Q. The assessee died in August 1961 and regular assesment was made in March 1970 raising a demand of Rs. 17.12 lakhs. The net demand as a result of appeal was Rs. 5.60 lakhs. No amount has since been paid by the Accountable Person though he was allowed instalments. The department has also not pursued the case promptly. The interest and penalty leviable was Rs. 3.58 lakhs and Rs. 5.60 lakhs respectively. The case was to be reopened for escapment of jewellery in Pakistan amounting to Rs. 5.32 lakhs. In February 1979 the Wealth-tax Officer completed the assessment for assessment year 1961-62 but corresponding action in respect of estate duty was not taken. Estate duty of Rs. 4.52 lakhs seems to have been lost to Government due to time-bar. The Income-tax Appellate Tribunal set aside the assessment in September 1976 but the set aside assessment is still not completed.

Conclusions

1. There is no mechanism in the department to ensure the compliance by the Accountable Persons of the filing of the estate duty accounts, wherever due. Inordinate delays in the filing of returns were common.

2. There is no statutory time-limit prescribed under the Act, as in the case of other Direct Taxes laws for completion of assessments with the result there is a tendency to delay the process of finalisation of assessments. The test-check has revealed a number of cases where the pendency dated back to the 1960. In over 1,300 cases, even provisional assesments were pending as at the end of 1984-85, involving a duty of approximately Rs. 1.63 crores.

3. The trend of completion of assessments revealed that bigger cases contributing to the bulk of the revenue did not get adequate attention, thereby minimising the possibility of prompt collection of revenue and giving scope for large remissions by efflux of time.

4. Unlike the other Direct Taxes, there is no separate recovery administration for collection of estate duty, tax recovery being effected by the State Revenue Department. Delays and want of prompt pursuance in the departmental machinery and lack of proper coordination with the State Revenue departments had led to large amounts remaining uncollected.

5. The maintenance of the basic records/ registers called for improvement.

4.21 During the test audit of assesments made under the Estate Duty Act, 1953, conducted during the period from 1 April, 1985 to 31 March 1986, the following types of mistakes resulting in under-assesment of duty were noticed :

(i) Incorrect computation of principal value of estate.

(a) lack of correlation amongst various assessment records, and

(b) incorrect computation or under valuation of the principal value of estate

(ii) Estate escaping assessment.

(iii) Incorrect valuation of assets.
  (a) unquoted equity shares, and
  (b) immovable properties.
(iv) Incorrect grant of reliefs|deductions.
(v) Non-levy of interest.
(vi) Miscellaneous.

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

4.22 *Incorrect computation of principal value of estate*

(a) *Lack of correlation amongst various assessment records*

The matter regarding the necessity of correlation of assessments made under various direct taxes has been consistently stressed upon, and the need for maintaining a proper correlaton amongst the various assessment records has been emphasized by the Public Accounts Committee (101st Report Seventh Lok Sabha 1981-82), as also by the Central Board of Direct Taxes vide their instructions issued in November 1973 and April 1979, with a view to preventing cases of evasion of estate duty. Non-observance of these instructions resulted in incorrect computation of principal value of estate and undercharge of duty.

In the estate duty assessment of a deceased (died in November 1979) completed in January 1983, the value of immovable properties owned by the deceased was taken as Rs. 82,400, although according to the information available in the assessment records, the properties had been valued at Rs. 1,63,713 for wealth-tax purposes as on 31 December 1978, the valuation date immediately preceding the date of death of the assessee. Further, a sum of Rs. 30,932 due to the deceased from a private limited company, disclosed in the estate duty return filed by the Accountable Person, was omitted to be included in the principal value of the estate. The mistakes resulted in under-assessment of the principal value of the estate by Rs. 1,12,245 and a short levy of estate duty of Rs. 30,074.

The Ministry of Finance have accepted the mistake.

(b) *Incorrect computation of the principal value of estate*

A few cases where the principal value of the estate was incorrectly computed are given below :

(i) Under the provisions of the Estate Duty Act, 1953, property which the deceased was competent to dispose of at the time of his death shall be deemed to pass on his death, and estate duty is leviable on the full value of such property.

In the estate duty assessment completed in June 1978 (revised in May 1980) of a partner in a firm, who died on 4 January 1975, a sum of Rs. 3,34,826 was included as his share of book profit in the firm upto the date of his death. The firm's assessment was revised in September 1976 for the assessment year 1976-77 and the deceased partner's correct share income was determined as Rs. 6,42,514 from the net allocable income of Rs. 1,84,17,362 of the firm after deducting the income-tax of Rs. 65,85,302 calculated on the firm's total income. The correct share income of Rs. 6,42,514 should have, therefore, been included in the estate passing on his death, instead of Rs. 3,34,826 which represented only his share of the book profits of the firm. The mistakes resulted in under-assessment of the principal value of the estate by Rs. 3,07,688 with a consequent under-charge of estate duty of Rs. 1,65,404, besides short levy of interest of Rs. 4,561 for belated delivery of the estate duty account.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) Under the provisions of the Estate Duty Act, 1953, property in which the deceased had an interest at the time of his death, shall be deemed to pass on death to the extent to which a benefit accrues or arises by the cesser of such interest, including a coparcenary interest in the joint property of a Hindu family. The value of such property shall be determined based on the price which it would fetch, if sold in the open market.

In the estate duty assessment made in January 1981, of a person who died in March 1979, the principal value of the estate was short-computed by Rs. 1,59,813 due to omission to include in the estate the value of the share interest of the deceased in partnership firms (Rs. 53,329), of one-fourth share in premium for insurance of Hindu undivided family members paid out of Hindu undivided family divisible fund (Rs. 2,137), income-tax refund of Rs. 694, exclusion of Rs. 25,000 received on partial partition and of linear descendants share of Hindu undivided family assets amounting to Rs. 50,000; excess deduction of value of self occupied property portion by Rs. 27,000 and excess allowance of wealth-tax liability by Rs. 1,653. The aggregate under-valuation of the estate by Rs. 1,59,813 resulted in short levy of estate duty of Rs. 36,923.

The Ministry of Finance have accepted the mistake.

4.23 *Estates escaping assessment*

A few cases where estates escaped assessment thereby leading to undercharge of duty, are given below :

(i) Under the provisions of Estate Duty Act, 1953, estate duty shall be due from the date of death of the deceased, and the Controller may, at any time, after receipt of the account delivered under the provisions of the Act proceed to make in a summary manner, a provisional assessment of estate duty payable by a person delivering the account, on the basis of the account so delivered.

In the case of a person who died in December 1982, the provisional assessment was completed in September 1984 determining the value of estate at Rs. 2,19,941. The details furnished by the Accountable Person, however, showed the value of the estate as Rs. 3,19,941. As a result, the principal value of estate was computed short by Rs. 1 lakh.

In another case, the principal value of the estate of a deceased person (who died on 8 February 1983), whose provisional assessment was completed in September 1984, was determined at Rs. 7,19,902. Even though enhanced compensation of Rs. 4,62,300 awarded by the Tribunal on 22 January 1983 for the land of the deceased, acquired by the Improvement Trust was disclosed by the Accountable Person in March 1984, the assessing authority failed to include the amount in the principal value of the estate. As a result the value of the estate was computed short by Rs. 4,62,300.

These mistakes resulted in short levy of estate duty by Rs. 1,71,449.

The Ministry of Finance have accepted the mistake.

(ii) The Estate duty account of a person who died in November 1983 filed by the Accountable Person in May 1984 included 3 per cent Government Promissory Notes of the value of Rs. 1,00,000. The market value of the said Government Promissory Notes was taken at Rs. 71,706 in the estate duty assessment made in September 1984 and also in the assessment revised in November 1984. On a notice for realisation of a part of duty raised by the department being served in December 1984 on the Banker of the deceased, the latter *inter alia*, confirmed that 3 per cent Government Promissory Notes valuing Rs. 4,00,000 of the deceased were lying in their safe custody but the estate duty assessment was not revised on the basis of the above information. This resulted in the estate of the deceased being under-assessed by Rs. 2,15,118 (being the market value of 3 per cent Government Promissory Notes for Rs. 3,00,000) and undercharge of duty by Rs. 72,874. Further, the assessing officer also omitted to include Rs. 26,669 representing one third share in the total Hindu undivided family assets of Rs. 80,006 included in the wealth-tax assessment of the Hindu undivided family. The above omission resulted in an under-assessment of estate by Rs. 26,669.

The aggregate under-assessment of estate worked out to Rs. 2,41,787 with consequent short levy of duty of Rs. 83,541. As the Accountable Person had concealed the particulars of assets of the deceased, minimum penalty of Rs. 14,574 was also leviable for such concealment.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) Under the Estate Duty Act, 1953, property in which the deceased or any other person had an interest, ceasing on death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cessor of such interest.

A person who died in September 1981 (assessment completed in December 1982) had three-sixteenth share in a firm. The balance sheet of the firm as on 31 October 1980 showed a balance of Rs. 8,59,749 under the head 'provisions'. The share of the deceased in 'provisions' worked out to Rs. 1,61,203. Since the provisions are not against accrued liability but are in the nature of reserves and formed part of the capital of the partners in the firm, the share interest of the partner in the 'provisions' was required to be included in the principal value of the estate. Omission to include the share in the 'provisions' resulted in under-assessment of estate by Rs. 1,61,203 and a short levy of duty of Rs. 64,480.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) A male Hindu who, for the time being is the sole surviving coparcener of a Hindu undivided family govered by the Mitakshara School of Hindu law, is competent to alienate the common property of the family in the same way and to the same extent as his separate property and the alienation cannot be questioned by the female members of the family or by a son, if any, born to or adopted by him subsequent

to the alienation. Female members of such a family also cannot call for a partition and do not have a right of share in such common property. On the death of such a sole coparcener, the whole of the common property of the family alongwith his separate property passes for levy of estate duty, as he has power of disposition over these properties. This settled position of law was reiterated in Board's circulars of October 1959 and July 1976.

In the estate duty assessment completed in March 1985, in respect of a sole coparcener of a Hindu undivided family, who died in March 1968, the assessing officer included Rs. 88,462 only being one half of the total value of Rs. 1,76,925 of the property of the Hindu undivided family in the estate of the deceased, incorrectly excluding the other half as belonging to his wife. The principal value of his estate was, thus, computed short by Rs. 88,463 resulting in short levy of duty of Rs. 26,539. Further, penal interest amounting to Rs. 37,333 leviable for late submission of the estate duty return was not charged.

The Ministry of Finance have accepted the mistake.

(v) In the estate duty account filed in respect of a deceased, who had died in May 1979, a sum of Rs. 3,00,000 being fixed deposits made in a bank on 5 September 1975 for 10 years by the deceased, was shown and the amount was taken into account by the assessing officer while making the assessment in August 1983. The bank in its letter of 13 June 1979 had informed that no interest had been paid on these deposits. However, the interest accruing on the deposits till death was a property and was includible in the estate. But the amount of accrued interest was neither returned by the Accountable Person nor was determined by the assessing officer. Even if the rate of interest is taken as 12 per cent per annum, there was under-assessment of estate by Rs. 1,32,375 resulting in short levy of duty by Rs. 56,320.

The Ministry of Finance have accepted the mistake.

(vi) Under the provisions of Estate Duty Act, 1953, a disposition made by a person within a period of two years prior to his death, is to be treated as property deemed to pass on death. It has been judicially held that where, on a partition of a Hindu undivided family, a deceased coparcener had taken less than his due share, there would be a disposition in favour of the relatives to the extent of share less taken by the deceased. Further, as per Hindu Law, provision must first be made for joint family debts and for maintenance of dependent female members before arriving at the property available for partition.

A Hindu undivided family consisting of the Karta of the family, his wife and son effected a partition in October 1971 of its property valuing Rs. 23,22,767 in which the share of the karta was determined as Rs. 10,39,248 and that of the son as Rs. 12,83,519. It was noticed that the share of the karta was erroneously worked out inclusive of the provision of Rs. 2,26,250 made for the maintenance of the wife of the karta under the Hindu Law. In the estate duty assessment made in May 1983 of the karta of the Hindu undivided family who died in November 1971, the assessing officer included an amount of Rs. 9010 only in the estate on account of unequal partition of the family. The correct amount includible was, however, Rs. 1,22,135 after deducting the properties of value of Rs. 2,26,250 set apart for maintenance of the wife of the karta from out of the joint family property. This resulted in under-assessment of the estate of the deceased by Rs. 1,13,125 and a consequent short levy of estate duty of Rs. 45,676 including interest.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(vii) In the assessment of the estate of a deceased (who died on 19 November 1982) the value of the benefit accruing under the Air Force Group Insurance scheme amounting to Rs. 3,11,220 was omitted to be included in the principal value of the Estate of the deceased. The omission resulted in incorrect determination of principal value as Rs. 87,088 instead of Rs. 3,98,308 and under-assessment of estate duty of Rs. 39,575.

The department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

4.24 *Incorrect valuation of assets*

A. *Unquoted equity shares*

Under the provisions of the Estate Duty Act, 1953 and the instructions issued by the Central Board of Direct Taxes in October 1974 and May 1975, unquoted equity shares of a private company are to be valued on the basis of the market value of the assets including goodwill of the company as on the date of death. One of the established methods of computation of goodwill of a business is the super-profits method, under which the average profits for a period of three to five years are capitalised at a number of years' purchase.

In the estate duty assessment of a deceased who died on 5 May 1980 completed in October 1982, the deceased's property consisting of 225 shares in a private limited company was valued on the basis of the company's balance sheet as on 30 June 1979 and the value per share was arrived at Rs. 1,110 per share. As the deceased died on 5 May 1980, the balance sheet as on 30 June 1980 would have provided for a more realistic assessment of the company's financial position and consequently of the value of its shares and the value per share would have been arrived at Rs. 2,056. Adoption of the balance sheet of June 1979 resulted in under-assessment of estate by Rs. 2,12,850 and a short levy of duty of Rs. 57,819.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

B. *Immovable properties*

(i) Under the provisions of the Estate Duty Act, the principal value of any property is estimated to be the price which in the opinion of the Controller, it would fetch if sold in the open market at the time of deceased's death. Goodwill of a business constitutes property and the market value of goodwill of a business is generally valued on the basis of the 'super profits' method in which its average super profits are capitalised at the appropriate numbers of years' purchase.

In the estate duty assesment of a deceased person (died in May 1982) the value of goodwill of the firm in which he was a partner was determined by the Accountable Person at Rs. 23,53,092 equivalent to the total of the profits of the firm in the preceding three years, reduced by the income-tax payable thereon by the firm as well as by the partners on their shares and accepted by the department in the assessment made in November 1982. The value was worked out with reference to the provision in the partnership deed in regard to the valuation of goodwill in case of retirement or in the event of death of a partner, which was subject to condition that the legal representative of the retiring or deceased partner was not admitted to the benefits of the partnership. The provision in the partnership deed regarding the valuation of goodwill was, however, not applicable as the minor son of the deceased was admitted to the benefits of partnership. The goodwill should, accordingly, have been valued with reference to the provisions of the Estate Duty Act which under the super-profits method worked out to Rs. 72,99,600 with the deceased's share (18½ per cent) at Rs. 13,50,422 as against Rs. 4,35,322 accepted by the department. This resulted in under assessment of the value of the dutiable estate by Rs. 9,15,100 and a short levy of estate duty of Rs. 1,90,830.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) A lady owning a house and being used by her as residence died on 12 December 1978. In the estate duty return filed in September 1979 the Accountable Person declared the value of this house at Rs. 2,86,719 but later increased it to Rs. 3,09,000 and finally decreased the same to Rs. 1,06,600 on the basis of valuation reports from two different valuers filed by him after 10 September 1979. For wealth-tax assessment (assessment year 1978-79) the value of this house as on 31 March 1978, while it was still under construction was declared by the assessee at Rs. 2,79,808 (land Rs. 90,000 plus cost of construction Rs. 1,89,808) and accepted as such by the department. At the request of the Estate Duty Officer, the departmental valuer determined the fair market value of this house at Rs. 3,82,500 as on 12 December 1978. The registered valuer had determined the value of the property in accordance with the procedure prescribed in the Wealth-tax Rules but had adopted a very low notional letting value without assigning any reasons, which had led to the low valuation of the property. The same should, therefore, have been rejected. However, in the estate duty assessment completed on 7 December 1984, the assessing officer accepted the same, rejecting the departmental valuation. This resulted in short computaion of principal value of the estate by Rs. 2,75,900 and short levy of estate duty by Rs. 84,012 including interest for late filing of return by Rs. 1,241.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iii) According to the instructions issued by the Central Board of Direct Taxes in August 1974, the assessing officer should ordinarily take the value of an immovable property in the estate duty assessments in conformity with the value estimated by the departmental valuation officer. In case the assessing officer disagrees with the value estimated by the departmental valuer, he may take up the matter with the Controller of Estate Duty who may issue necessary instructions in consultation with the Regional Valuation Officer.

A person who died in March 1974 was a co-owner of certain immovable properties with one-seventh share in such properties. In the estate duty assessment of the deceased completed in June 1978,

the value of the immovable property was taken as Rs. 26,23,699 by the assessing officer and the share of the deceased person at one-seventh in the property was taken at Rs. 3,74,814. It was, however, noticed that the valuation of the same property had been referred to the departmental valuation officer, in June 1976 who had valued the property at Rs. 44,67,030. On this basis the share of the deceased worked out to Rs. 6,38,147. As there was a huge difference of Rs. 18,43,331 between the two values, the assessing officer should have sought the instructions of the Controller of Estate Duty in terms of the Board's instructions of August 1974. The omission to do so resulted in under assessment of the estate by Rs. 2,63,333 (Rs. 6,38,147—Rs. 3,74,814) and a short levy of estate duty of Rs. 79,000.

The Departmet has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(iv) In the estate duty assessment (completed in November 1983) of a person who died in September 1976, the value of house properties together with land appurtenant thereto was adopted in the principal value of estate as Rs. 2,26,000 as determined by the valuation officer of the department. It was noticed in audit that the area covered by the buildings together with the land appurtenant thereto admeasuring 2,769 square meters was not valued at the market rate of Rs. 71.29 per square metre, but was valued at Rs. 10 per square metre, as applicable to vacant land held in excess of the ceiling fixed under the Urban Land (Ceiling and Regulation), Act 1976. This resulted in short computation of principal value of the estate by Rs. 1,74,250. Further, the agricultural land and coconut trees valued at Rs. 14,721 was omitted to be included in the principal value of the estate. The mistakes resulted in short levy of estate duty of Rs. 52,343.

The Ministry of Finance have accepted the objection in principle.

4.25 *Incorrect grant of reliefs/deductions.*

Under the provisions of the Estate Duty Act, 1953, where any court fees have been paid under any law for obtaining probate in respect of any property on which estate duty is payable, the amount of estate duty payable is required to be reduced by an amount equal to fifty per cent of the court-fees so paid, if the death occurred between 1 July 1960 and 31 March 1964. The Act was amended by Finance Act 1964 to allow the relief equal to the full amount of court fees paid.

In the estate duty assessment of person who died in January 1961, revised in January 1986 relief for court fees paid was allowed at cent per cent amounting to Rs. 88,880 instead of the correct amount of Rs. 44,440 at 50 per cent of the court fees paid. The incorrect allowance of deduction resulted in short levy of estate duty of Rs. 44,440.

The Ministry of Finance have accepted the mistake.

4.26 *Non-Levy of interest.*

Under the provisions of the Estate Duty Act, where the demands of estate duty are allowed to be paid in instalments, interest is payable at the rates fixed by the Assistant Controller of Estate Duty.

In the estate duty assessment completed in May 1984 and revised in July 1985 and October, 1985 in respect of a person who died in December 1982, the Accountable Person was directed to pay the estate duty demand of Rs. 3,05,996 in instalments subject to payment of interest at 12 per cent per annum. Accordingly, the entire demand was paid in several instalments between May 1984 and December 1985 but no action was taken to levy interest. The interest payable worked out to Rs. 36,800 (approx) which was not levied.

The Department has accepted the objection.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

4.27 *Miscellaneous.*

(i) Under the provisions of the Estate Duty Act, 1953 where any estate duty, penalty or interest is due in consequence of any order passed under the Act, the Assistant Controller of Estate Duty shall serve upon the person accountable or other person liable to pay such duty, penalty or interest, a notice of demand in the prescribed form specifying the sum so payable and the time within which it shall be payable.

In the case of a person who died in July 1974, a provisional assessment of the estate duty payable was made in October 1976 and a demand notice for Rs. 1,19,444 was served on 3 November 1976. The assessment was revised on 18 November 1976 and a notice of the revised demand for Rs. 1,26,082 was issued but was not served. This was followed by a regular assessment on 28 July 1977 when a demand of Rs. 1,47,383 was determined. The notice of demand for Rs. 1,47,383 was also not served and, therefore, no demand was legally created. As such

the Accountable Persons had no liability to make the payment. The Accountable Persons had also not made any payment inspite of the issue of revenue recovery certificates by the assessing officer in December 1976 and March 1979 to the State Revenue authorities. The result was that the demand of Rs. 1,47,383 was outstanding even after a lapse of eight years.

The correspondence on record revealed that the Accountable Persons had stated in December 1976 and again in August 1977 that they would not be able to make the payment of duty until the sale of the immovable property of the deceased. They had in fact been requesting for postponement of the duty. Since no valid notice of demand had been served, it was not possible to order payment of the duty in instalments subject to payment of interest. The interest that could have been charged upto 31 March 1986 amounted to Rs. 50,600. Further due to non-service of the demand notice, no penalty for default in payment of the duty could also be levied. The amount of maximum penalty leviable was Rs. 1,47,383. Recovery proceedings started in December 1976 and March 1979 were also not validly taken.

The comments of the Ministry of Finance on the paragraph are awaited (December 1986).

(ii) In the case of a person who died in June 1983, provisional assessment of estate duty was completed in October 1984, and revised in December 1984, determining the value of the estate at Rs. 8,39,219 the estate duty payable was erroneously worked out at Rs. 1,36,765 as against the correct amount of Rs. 1,66,765 resulting in short levy of estate duty of Rs. 30,000.

The Department has accepted the objejction.

The comments of the Ministry of Finance on the paragraph are awaited. (December 1986).

(iii) In the case of a person who died in April 1974, assessment of estate duty was completed in May 1984, determining the value of the estate at Rs. 11,83,445 on which estate duty of Rs. 2,95,229 including interest for delay in delivering accounts was leviable. While working out the net duty payable, the department erroneously adopted the amount of duty already paid as Rs. 2,32,890 instead of Rs. 1,95,890 actually paid. This resulted in short-levy of duty of Rs. 37,000. The assessment was revised in July 1984 and November 1984, and again in May 1985 but the mistake remained unnoticed.

The Ministry of Finance have accepted the mistake.

(R. S. GUPTA)
Director of Receipt Audit-I

New Delhi
The 20-4-1987 1987.

Countersigned

T. N. Chaturvedi

(T. N. CHATURVEDI)
Comptroller and Auditor General of India

New Delhi
The 21 APR 1987 1987.

ERRATA

Page No.	Para No.	Column No.	Line	For	Read
1	1.01	1	10 from bottom	309.18	309.19
1	1.02	2	12 from top	61,08	61.08
1	1.02(i)	2	1 from bottom	100.0	10.00
4	1.05(iv)(a)	2	9 from bottom	folows	follows
5	1.05(v)	1	26 from top	assesment	assessment
8	1.07	1	23 from top	10.07.01	1.07.01
8	1.07.01(i)(c)	2	35 from top	365.72	365.79
8	1.07.01(i)(d)	1	1 from bottom	4,163.67	1,163.67
8	1.07.01(i)(d)	2	3 from bottom	6,444	1,444
15	1.07.03 5.III (b) Case G	2	4 from bottom	12.70 lakhs	Rs. 12.70 lakhs.
20	1.07.03	1	15 from bottom	Octboer	October
20	1.07.03	2	11 from bottom	proclaimation	proclamation
22	1.07	1	2 from top	with payment	without payment
23	1.08(e)(i)	14	from bottom	Particuals	Particulars
24	1.08(ii)(d)	1	from bottom	Fince	Finance
35	1.15.08	2	6 from bottom	then	their
37	1.15.10	1	22 from bottom	authorities	authorities.
39	1.15.11(c)	2	22 from top	in	is
40	1.15.11(e)	2	11 from top	determinde	determined
43	1.15.13(b)	1	24 from top	Rs. 65.619	Rs. 65,619
43	1.15.14	1	4 from bottom	assesse	assessee
45	1.15.16	1	19 from bottom	comping	coming
46	1.15.17(vi)	1	21 from top	are available	are not available
46	1.16	2	26 from top	assessees,	assessees.
49	1.17(c)	3	3 from top	1980-81a	1980-81
49	1.17(d)	—	12 from bottom	Delete S. No. 4 and dash there against.	
50	1.17(iii)(a)	1	18 from top	maihinery	machinery
51	1.17(iii)(b)(B)	1	27 from top	had	has
51	1.18(i)	2	1 from bottom	82,32.97	8,232.97
53	2.04	1	1 from bottom	Provisieail	provisional
53	2.06	2	5 from bottom	arithmotical	arithmetical
54	2.06(iii)	2	19 from top	as	are
54	2.06(iii)	2	20 from top	CIT. CIT's	C.I.T.
67	2.18	1	8 from top	certified	clarified.
70	2.21(i)(a)	2	15 from top	subsequent	substantial
72	2.22(iii)	2	1 from bottom	Rs. 11,74,840	Rs. 11,74,849
80	2.30	2	19 from bottom	agreement	Government.
82	2.31	1	15 from bottom	tazable	taxable
87	2.32(xi)(a)	1	6 from bottom	thes	these
90	2.33	1	10 from top	C.I.T.'	C.I.T.
92	2.33(ii)(b)	1	9 from bottom	registeration	registration
93	2.33(iii)	2	12 from top	distributiors	distributors
93	2.33(iii)	2	23 from top	increase	income
94	2.33(iv)(b)	1	19 from top	1982,	1982 and
94	2.33(vi)(a)	2	8 from bottom	provius	previous
97	2.33(vi)(k)	2	20 from top	aid	said
98	2.33(vi)(l)	1	20 from top	11,91,500	11,81,500
98	2.34	2	18 from top	than	then
99	2.34(e)	2	7 from top	1982-83. The	1982-83 the
103	2.37(x)	2	13 from bottom	alowed	allowed
104	2.37(xiv)	2	15 from top	Rs fl	Rs
107	2.39(i)(e)	2	27 from top	its	it is
108	2.39(ii)	2	14 from bottom	Polention	Potential
111	2.39(ix)(a)	1	3 from bottom	cour	Court
113	2.42	2	13 from bottom	cariage	carriage
119	2.43	1	9 from bottom	sucee-	succe-
124	2.43(v)	1	7 from bottom	year 1975-76	for the assessment year 1975-76
130	2.47(iii)	1	6 from top	he	the
133	2.50(ii) (item 9)	1	6 from bottom	C	G
133	2.50(ii) (item 10)	2	1 from top	H 01	10.H
139	2.57	2	24 from top	hall	shall
144	2.64	2	1 from bottom	these	there
146	2.06	1	26 from top	2.06	2.66
146	2.06	1	22 from bottom	exceed	exceed
146	2.06	1	13 from bottom	levy if	levy of
146	2.06	2	23 from top	enployed	employed

Page No.	Para No.	Column No.	Line	For	Read
146	2.06	2	4 from top	credil	credit
146	2.06	2	5 from top	asove	above
147	2.06(b)	1	5 from top	reserved	reserve
147	2.06(d)	1	9 from bottom	general reserve the general reserve,	general reserve, the general reserve
148	2.67(b)	1	20 from top	1976-71	1976-77
150	2.69(a)	1	28 from top	1,16,987	1,16,897
150	2.69(b)	2	6 from top	fo	for
150	2.69(b)	2	21 from bottom	no	non-
152	3.06(i)	1	20 from top	comsuted	computed
171	3.16(iii)(b)	1	21 from bottom	underchange	undercharge
171	3.16(iv)	2	26 from top	engery	energy
178	3.20(i)	1	3 from top	thereo	thereto
178	3.20(iii)	2	8 from bottom	retarms	returns
180	3.20(i)	1	24 from bottom	exting wishment	extinguishment
181	3.21(ii)(b)	1	21 from bottom	pruchased	purchased
			19 from bottom	1,10,700	1,10,000
			16 from bottom	renal	rental
181	3.21(ii)(c)	2	24 from top	Delete "on" between Finance and have	
184	3.22(i)(h)	2	20 from bottom	betwteen	between
186	3.24(i)	1	9 from bottom	Incomet-ax	Income-tax
186	3.23	1	14 from bottom	registeration	registration
189	3.26(iii)	2	25 from top	far	for
201	3.38	2	7 from bottom	much	made
202	3.40	2	21-22 from bottom	the income-tax	that
205	4.01	1	21 from top	153.49	153.44
205	4.02	1	35 from top	136.93	136.93*
206	4.04(iii)(b)	2	8 from bottom	underassessments	Underassessment
212	4.05A(v)(b)	1	14 from top	aditional	additional
212	4.05A(vi)	2	6 from top	26	20
212	4.05B	2	15 from bottom	hoding	holding
213	4.05C	1	19 from bottom	January	February
213	4.05C	2	4 from top	assesment	assessment
213	4.05D	2	25 from bottom	inteest	interest
216	4.09	1	6 from top	in	on
217	4.11(ii)(b)	1	18 from top	even	seven
217	4.11(iii)	2	23 from top	comnents	comments
219	4.17(a)(i)	1	23 from top	pacti ely	pectively
220	4.17(b)(ii)	2	18 from top	he	The
222	4.17(c)(iv)	2	21 from top	ccount	account
			32 from top	per cen	per cent
223	4.18(b)	2	8 from bottom	pari/materia	pari materia
224	4.19	1	3 from bottom	nade	made
224	4.19	1	2 from bottom	able	cable
224	4.19(a)	2	15 from top	35750	35,750
225	4.20	2	1 from bottom	Fnance	Finance
225	4.20	2	6 from bottom	4.45	34.45
226	4.20	2	23 from bottom	Pendecy	Pendency
227	4.20	2	2 from top	1962	1972
227	4.20	2	3 from bottom	1985	1955
229	4.20	1	23 from top	povisional	provisional
230	4.20	2	18 from bottom	calrification	clarification
233	4.20	2	11 from bottom	cetificate	certificate
235	4.20	2	21 from bottom	36.4	36.04
237	4.20	2	23 from bottom	Deatment	Department
238	4.20	2	12 from bottom	691	6.91
239	4.20	1	9 from top	withold	withhold
241	4.23	2	6 from bottom	govered	governed
245	4.27	2	5 from top	the	. The

PAG. 68.II 85-86
1900—1987 (DSK. III)

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, RING ROAD, NEW DELHI-110064
AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI-110054
1987