P. A. C. No. 508

PUBLIC ACCOUNTS COMMITTEE
(1975-76)

(FIFTH LOK SABHA)

TWO HUNDRED AND ELEVENTH REPORT

ESTATE DUTY

DEPARTMENT OF REVENUE
& INSURANCE

[Paragraphs relating to Estate Duty included in Chapter IV of the Reports of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

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NEW DELHI

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21-11-1973
13-4-1976

*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library.

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (1975-76)

CHAIRMAN

Shri H. N. Mukerjee—*Chairman*

MEMBERS

2. Shri T. Balakrishniah
3. Shri Chandulal Chandrakar
4. Shri Chandrika Prasad
5. Shri Darbara Singh
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19. Shri Gulabrao Patil
20. Shri T. K. Srinivasan
21. Dr. K. Mathew Kurian
22. Shri Rabi Ray

SECRETARIAT

Shri Avtar Singh Rikhy—*Additional Secretary.*

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

Shri N. Sunder Rajan—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Two Hundred and Eleventh Report on Paragraphs relating to Estate Duty included in Chapter IV of the Reports of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II-Direct Taxes.

2. The relevant Reports of the Comptroller and Auditor General of India for the years 1971-72 and 1972-73 were laid on the Table of the House on 25th April, 1973 and 8th May, 1974 respectively. The Public Accounts Committee (1973-74) examined the paragraphs relating to Estate Duty included in the Report of the Comptroller and Auditor General for the year 1971-72 at their sitting held on the 21st November, 1973. In respect of Paragraphs 71(i)&72 of the Report of the Comptroller & Auditor General for the year 1972-73, discussed in Chapter II & V of this Report, relevant information had been obtained by the Public Accounts Committee (1974-75). The Public Accounts Committee (1975-76) considered and finalised this Report at their sitting held on 13th April, 1976. The minutes of these sittings form Part II* of the Report.

3. For facility of reference, the conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the conclusions/recommendations have also been reproduced, in a consolidated form, in Appendix II to the Report.

4. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1973-74) and (1974-75) in taking evidence and obtaining information for this Report.

5. The Committee also place on record their appreciation of the assistance rendered to them in the examination of the Audit Reports by the Comptroller and Auditor General of India.

6. The Committee would also like to express their thanks to the officers of the Ministry of Finance for the cooperation extended by them in giving information to the Committee.

NEW DELHI; H. N. MUKERJEE,

April 15, 1976 *Chairman,*

Chaitra 26, 1898 (*Saka*) *Public Accounts Committee.*

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CHAPTER I

INCORRECT COMPUTATION OF THE PRINCIPAL VALUE OF THE STATE

Audit paragraph

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

1.2. In one case, while valuing the share of a deceased partner in the goodwill of the firm on the basis of average profit, the total of the profit was wrongly taken as Rs. 2,73,943 instead of Rs. 3,73,943. This resulted in under-assessment of the value of the estate by Rs. 26,750 and short-levy of duty of Rs. 6,711.

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

[Paragraph 54(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

1.4. Estate Duty is leviable on property "passing on death" of a person. Goodwill of a firm in which the deceased was a partner is also property and the deceased's share in the goodwill is therefore includible in the estate.

1.5. The value of the goodwill depends upon the standing of the firm which is reflected in the profits earned by it over a period. It is, therefore, the practice to ascertain the value of goodwill of a business on the basis of the average profit of business for a number of past years. The Board in their circular No. 7-D of 1957 dated 4.5.1957 have issued detailed instructions regarding valuation of goodwill. Under this method, normally the average profit of the past five years is capitalised. The number of years 'purchase' adopted for the purpose of capitalisation is taken between 2 and 5 years. Generally it is taken as 'three years' purchase unless a particular case requires adoption of a different figure.

1.6. The Committee were informed by Audit that in this case although the Assistant Controller of Estate Duty had followed correctly the instructions of the Board in applying the principle of valuation of goodwill, he committed a mistake in striking the total

of profits of the past five years and adopted a total of Rs. 2,73,943 as against Rs. 3,73,943 as under:

	Calculation Asstt. Controller of Estate Duty	Correct Calculation
	Rs.	Rs.
Total profits of 5 years	2,73,943	3,73,943
Average	54,788	74,788
Less 10% as Managerial remuneration	5,478	7,478
Balance	49,310 Say 49,000	67,310 Say 67,000
Capitalised at 3 years purchase	1,47,000	2,01,00
50% share of the deceased	73,750	1,00,500
Difference	26,750	

1.7. The Committee desired to know the basis for taking the profits of five years for the valuation of goodwill. In a note furnished to the Committee, the Department of Revenue & Insurance stated as follows:

"A deceased partner's interest in the goodwill of a firm, passes on his death and is assessable to estate duty. The widely used method of evaluation of goodwill is laid down in Annexure 'A' (4th Method) to Board's Circular No. 7-D of 1957 dated 4.5.1957; it is known as 'valuation at a number of years purchase of past net profits and relevant extracts are reproduced below for ready reference:

(i) Calculate the average of the past 5 years profits after making adjustment for reasonable management remuneration. For stock it should be examined whether the method of valuation is consistantly employed at each accounting year.

(ii) Determine the number of years purchase at which to capitalise. The number of years purchase is usually 2 to 5 years.

(iii) Multiply (i) by (ii) to arrive at the goodwill'."

1.8. Explaining the circumstances in which the mistake had occurred in this case, a Member of the Central Board of Direct Taxes stated in evidence:

> "The total of five years profit shown at Rs. 2,73,943 should have been shown as Rs. 3,73,943. Therefore, average of this came to Rs. 54,000—less Management Remuneration 10 per cent came to Rs. 5,000 from Rs. 7,000 and in that way the average of three years was capitalised at a reduced rate. The mistake is in totalling the profit of the company for five years. It should have been Rs. 3,73,000 instead of Rs. 2 lakhs and the other things followed from that."

In a note furnished subsequently to the Committee in this regard, the Department of Revenue & Insurance informed the Committee as follows:

> "While valuing the 50 per cent share of Shri C. B. Shah (deceased) in the goodwill of the firm in which he was partner, on the basis of 3 years purchase of the average profit of 5 years' profits, the share was inadvertently valued at Rs. 73,750 as against the correct value of Rs. 1,00,500 due to arithmetical mistake in taking the total of past 5 years' profits, as Rs. 2,73,943 against the correct total of Rs. 3,73, 943. This resulted in the under-assessment of the value of the estate by Rs. 26,750 involving short-levy of Rs. 6,711."

1.9. When asked whether the mistake could be deemed to be a typographical error, the witness replied:

> "It seems to be a totalling error of five years profit."

He added that it seemed that the assessing officer had made the additions but did not check up.

1.10. When the Committee pointed out that such mistakes could not be accepted as accidental, the Finance Secretary stated during evidence:

> "The officer had made a large number of mistakes in other cases also. We have made an enquiry."

1.11. In reply to another question on the action taken against the officer concerned, the Member, Central Board of Direct Taxes stated:

> "The entire assessments made by this particular officer have been reviewed A lot of mistakes had been noted in his

case. I am talking of the revenue audit. We have had the entire assessments done by him reviewed. That review showed that seven more major mistakes were committed by this officer, which were found out on review by the Commissioner, Bombay. The *bona fides* of this officer have been referred to the SPE for enquiry. In the meantime, he has been taken off the assessment work."

1.12. The Committee desired to know whether the officer was now in India and the Finance Secretary stated:

"He went on study leave and has come back."

1.13. In subsequent note, the Committee were informed by the Department of Revenue & Insurance that the enquiry against the officer by the SPE was still on and that its outcome would be known in due course.

1.14. The Committee asked whether the case commented upon by Audit had been checked by the Internal Audit. In a note, the Department of Revenue & Insurance replied:

"The case was not checked by Internal Audit; at the relevant time audit of Estate Duty cases was attended to by the staff of Deputy Controllers of Estate Duty and there was paucity of such staff for audit work."

1.15. The Committee regret that, in this case, although the assessing officer had followed correctly the instructions of the Central Board of Direct Taxes for determining the value of goodwill, he committed a mistake in striking the total of the profits of five years, which resulted in the under-valuation of the interest of the deceased in the goodwill of the firm by Rs. 26,750 and consequential short-levy of estate duty of Rs. 6,711. 'A large number of mistakes' are stated to have been made by the officer in other cases also, some of which have been referred to elsewhere in this Report, necessitating an enquiry by the Special Police Establishment into his bano fides. **The Committee desire that the enquiry should be completed soon, in case this has not already been done. If** malafides **are established, appropriate action should be taken against the concerned officer. The Committee would await a further report in this regard.**

1.16. The Committee are unable to accept the plea that this case could not be scrutinised by the Internal Audit on account of paucity of staff. The Committee emphasise the importance of strengthening the Internal Audit Department and urge that its machinery be adequately geared up so that such lapses do not go undetected.

1.17. The Committee note that an additional demand has been raised for the duty short-levied and would like to be informed whether the demand has since been recovered.

Audit Paragraph:

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

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

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

[Paragraph 54(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

1.21. The Committee learnt from Audit that Section 44 of the Estate Duty Act 1953 allows deductions of debts and encumbrances in arriving at the net value of the estate. The income-tax assessed on the deceased but remaining unpaid is a debt due by the deceased and would therefore be deductible. Where income-tax payable on the income derived by the deceasd upto the date of death had not been assessed during his life time, the tax is nevertheless a debt due though it would be quantified only when the assessment is made. This debt is deductible under Section 44 of the Estate Duty Act. Similarly, all taxes which are yet to be assessed such as wealth-tax etc., and those outstanding for payment on the date of death are encumbrances on the estate and are deductible.

1.22. The Committee desired to know whether the mistakes reported by Audit in these five cases had occurred because of negligence or on account of non-availability of information relating to other direct taxes. In a note furnished to the Committee, the Department of Revenue and Insurance stated:

"The mistakes in the above five cases occurred on account of incorrect allowance of tax liability as detailed below:

Sl. No.	Deduction allowed by Assistant Controller of Estate Duty	Actual liability for taxes	Under-assessment of estate	Short-levy of duty
	Rs.	Rs.	Rs.	Rs.
1	2,67,583	1,81,591*	86,192	12,074
2	16,175	8,855	7,320	1,884
3	11,696	6,069	5,627	1,407
4	18,012	5,439	12,573	3,134
5	..	..	3,586	1,076
TOTAL			1,15,298	19,575

It will be seen that the major mistake is in the case at serial No. 1.

In cases at serial Nos. 1 and 4, mistakes occurred for ACED's failure in not coordinating the information available in the Income-tax records with Estate Duty records. Instructions for such co-ordination have since been issued *vide* Board's Instruction No. 544 dated 8-5-1973. (Copy reproduced in Appendix I).

In Sl. No. 2, Inspector's report available on Estate Duty records shows that liability was only Rs. 8,855 yet deduction allowed was Rs. 16,175. This happened due to an erroneous impression on the part of ACED. The total tax liability of Rs. 8,855 included income-tax Rs. 7,320 and balance other taxes. It appears, ACED thought that Rs. 7,320 was for income and Rs. 8,855 was for other taxes. So wrongly aggregated the two figures and deducted Rs. 16,175 (Rs. 7,320+8,855).

In Sl. No. 3 deduction allowed for 1967-68 was Rs. 3,210 against an ultimate refund of Rs. 8,410.**

In Sl. No. 5, deduction was allowed twice, in determining the Principal Value of the HUF estate.

*The Committee were, however, informed by Audit that the actual liability for losses should be Rs. 1,81, 391.

**The Committee were informed by Audit that the deduction allowed for 1967-68 was Rs. 3,217 against an ultimate refund of Rs. 2,410.

The above facts show that the mistakes occurred due to non-coordination and want of sufficient care and lack of application of mind by the ACED."

1.23. In cases where a particular amount was allowed as deduction on account of estimated tax liabilities which subsequently, on assessment, happens to be different, the Committee asked how the Department ensured that the estate duty assessments are duly rectified. In a note, the Department of Revenue and Insurance replied:

"A rectification register u/s 61 of Estate Duty Act is being generally maintained by ACED on the same lines as section 154 register for income-tax. When tax liabilities are taken subject to rectification, an entry is made in the Rectification Register, which is reviewed periodically and rectificatory action taken to ensure that rectification of the estate duty assessment is made when the actual tax liability is determined."

1.24. As regards the latest position relating to the recovery of additional Estate Duty due from the assessees concerned, enquired into by the Committee, the Department stated in a notice, as follows:

"Additional demand of Rs. 12,075 was raised and collected in the case of late Shri G. I. Patel. Position in other 4 cases is as under:

	Name of the assessee	Demand raised as a result of rectificatory action	
1.	Mrs. Goolbai K. Ookerji	Rs. 1,884	Demand has been recovered.
2.	Vasanji Hemraj	Rs. 3,369	
3.	T.P. Desai	Rs. 3,143	
4.	Smt. Indrabai Madhavdas. Refund of Rs. 125·61 issued. (The final revision of the assessment resulted in a refund)."		

1.25. To another question whether these cases had been checked in Internal Audit, the Department replied:

"All the cases (except Vasanji Hemraj) were not checked in internal audit. At the relevant time, internal audit of estate duty cases was handled by the staff of the Deputy Controller. He has reported that these cases could not be

checked due to paucity of trained staff. The arrangement for internal audit of estate duty assessments has since been reviewed. The work has now been entrusted to IAPs from December 1972 when the strength of IAPs has also been increased.

The case of Vasanji Hemraj was checked by the IAP but it failed to detect the mistake."

In this connection, the Committee learnt from Audit that according to their records, the assessment of T.P. Desai was also checked by Internal Audit.

1.26. Since such mistakes could have occurred in Wealth- tax assessments also, the Committee desired to know whether in these cases, reported by Audit, the deceased persons were also wealth-tax assessees and, if so, the deductions allowed on account of tax liabilities in their Wealth-tax assessments. A note furnished in this regard by the Department of Revenue and Insurance in respect of one of the assessees, Shri G. I. Patel, is reproduced below:

"Information as regards G.I. Patel is as per the note attached. Information is being collected regarding other cases. Information will be sent shortly."

As regards the other cases, the Department stated that the requisite information was being collected. The note furnished in regard to Shri G. I. Patel is reproduced below:

"Shri G. I. Patel died on 20-12-1962. For W.T. purposes, his valuation date is 31st March. His last W.T. assessment before his death was for A. Y. 1962-63 (valuation date 31-3-1962). A perusal of the assessment order shows that the following amounts have been deducted for tax liabilities:

Taxes paid/payable on account of settlement debited to account in F.Ys. 1960-61 and 1961-62	Rs. 4,58.487
W.T. liabilities for A.Ys. 1958-59 to 1961-62 and 1962-63 . . .	Rs. 7.584/-

The amount of Rs. 4,58,487 has been deducted from concealed income/wealth of Rs. 5,70,000 as per settlement in January 1971.

As the valuation date for the W.T. assessment is different from the date of death, correct liability pointed out by Audit for E.D. assessment will not be the same for W.T. assessment."

1.27. This Audit paragraph refers to instances where deductions admissible, under Section 44 of the Estate Duty Act, on account of tax liabilities of the assessees, had not been correctly worked out. While in two cases, the Assistant Controller of Estate Duty had failed to correlate the information available in the relevant Income-tax records with the Estate Duty records, in a third case, the assessing officer had allowed a deduction of Rs. 16,175 towards tax liabilities against the actual liability of Rs. 8,855. The total tax liability of Rs. 8,855 in this case included Rs. 7,320 towards Income tax and the balance towards other taxes. The assessing officer, however, thought erroneously that Rs. 7,320 represented the Income-tax liability and Rs. 8,855 the liability on account of other taxes, and then aggregated the two amounts. In a fourth case, a deduction of Rs. 3,217 had been allowed by the assessing officer against an ultimate refund of Rs. 2,410 while in a fifth case, the tax liability was deducted twice in determining the principal value of a HUF estate. These mistakes resulted in under-assessment of the principal value of the estates to the extent of Rs. 1.15 lakhs and consequential short-levy of Estate Duty of Rs. 19,575.

1.28. Admittedly, these mistakes had occurred on account of non-coordination and lack of application on the part of the officers concerned. The Committee have been repeatedly emphasising the need for effective coordination and correlation between the assessments relating to the different direct taxes and for greater vigilance in the finalisation of assessments. That such mistakes should continue to recur despite the Committee's concern and the plethora of instructions issued from time to time is highly regrettable. The Committee hope that at least after the issue of further instructions in this regard on 8 May 1973, such mistakes would become a thing of the past. The Committee would like to know whether any action has been taken against the assessing officers involved in these lapses.

1.29. It is distressing that though two of the cases reported by Audit were checked in Internal Audit, the mistakes had gone undetected. In respect of the other three cases, the now-too-familiar plea of 'paucity of trained staff' has been offered. This is a very unsatisfactory state of affairs. Now that a review has taken place and the

work of internal audit has been transferred from the staff of the Deputy Controller of Estate Duty to regular Internal Audit parties, the Committee expect more effective and meaningful results.

1.30. The Committee learn that the tax liabilities had been correctly deducted in the relevant wealth-tax assessment of one of the assessees. Since it is likely that similar mistakes, as noticed in the Estate Duty assessment, might have occurred also in the wealth-tax assessments of the other four assessees, the Committee would like to know whether the relevant assessments have been thoroughly scrutinised.

Audit paragraph:

1.31. The estate of a deceased person, included a seven-storey house property, out of which one floor was used as residence by the deceased. In the estate duty assessment the assessing officer took the capital value of the property as Rs. 5,49,030 being 16-2/3 times the net annual return of the rented out property (Gross: Rs. 59,364 minus outgoings), and after reducing the reform Rs. 78,432 (being 1/7th capital value as exempt for self-occupation), included the balance of Rs. 4,70,598 in the principal value of the estate. In arriving at the net annual return of the property, the assessing officer had erroneously deducted an amount of Rs. 1,171 being expenditure relating to self-occupied portion thereby reducing the capital value of the let out portion by Rs. 19,509 (1171 X 16.66). Further, the deduction of Rs. 78,432 as aforesaid, was not in order as the capitalised value of Rs. 5,49,030 was based on annual rental income of the portion let out.

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

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

[Paragraph 54(vi) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

1.34. Section 5 of the Estate Duty Act lays down that estate duty is leviable on the principal value of property passing or deemed to pass on death. Under Section 36 of the Act, the principal value of any property shall be 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 death of the deceased. The value of house property depends upon a variety of factors such as cost and quality of material used, size of the plot, situation and last, but not the least in importance is its yield *i.e.* the rental value. There are different methods of estimating the market value of house property, but in cases where it cannot be ascertained by a direct method it is estimated by the capitalising of yield. According to the introductions issued by the Central Board of Direct Taxes (valuation for wealth-tax purposes), where capitalisation of yield method is adopted, the net annual value is to be determined by allowing the following deductions from the gross maintainable rent:

(i) Municipal Taxes.

(ii) Repairs.

(iii) Collection charges.

(iv) Annual land revenue or ground rent.

(v) Insurance premia.

This net annual value is then to be multiplied by number of years purchase.

1.35. Further, under Section 33 (i) (n), one house or part thereof exclusively used by the deceased for his residence, is not to be included in the principal value of the estate. to the extent of Rs. 1 lakh. Therefore, if a part of the house is eligible for exemption, the annual value in respect thereof as also the deductions relating thereto are to be ignored if the net result is less than Rs. 1 lakh.

1.36. The Committee learnt from Audit that in this case the value of the house was estimated on the basis of yield method *i.e.* the capitalisation of annual rental value. The house had seven floors one of which was self-occupied. Under the Estate Duty Act the value of that portion of the house which was used as residence by the deceased was not to be included in the estate. According to the valuer's certificate of 5th March, 1968 the rent 'realised' was Rs. 59,364, which obviously would not include the self-occupied portion. The net annual value after allowing deduction on account of house tax, repairs, collection charges etc. was determined at Rs. 32,955. This

was capitalised at 6 per cent *i.e.* at 16-2|3 years purchase and the capital value thus worked out to Rs. 5,49,030. From this a sum of Rs. 78,432 was deducted on account of 1|7th capital value as exempt for self-occupation of one floor. This deduction of Rs. 78,432 was not in order as according to the valuer's certificate the gross rent of Rs. 59,364 was that which was 'realised' and, accordingly, the national annual value of self-occupied portion would not be included therein.

1.37. Further, while allowing deductions out of Rs. 59,364 a sum of Rs. 1,171 (the proportionate amount of Municipal tax in respect of the self-occupied portion) was also deducted, though the gross amount did not include the annual value of self-occupied portion. The capital value of the property was thus further reduced by Rs. 19,509. Total under-assessment of value of estate was Rs. 97,941 (78432+19,509).

1.38. The Committee further learnt from Audit that the objection in this case had not been accepted by the Ministry who had stated that the valuer in his letter of March 1972 had informed that there was a typing error in the original valuation report dated 5 March, 1968 and the rent of Rs. 59,364 was in respect of the entire building including the self-occupied portion.

1.39. Explaining, during evidence, the reasons for not accepting the Audit objection, the Finance Secretary stated:

> "At the time Audit drew up this note, it was done on the basis that the valuer's report said, 'rent realised' on the property, and, therefore, the Audit note is correct. But later on it was found out that the valuer has said that the word 'realised' is a mistake for 'realisable'. He has taken into account the gross monthly rent received for them. Actually, the valuer had taken into account the valuation of the self-occupied premises."

1.40. To a question whether the mistake in the valuation report had been detected after the assessment was completed, the witness replied in the affirmative. The Committee were informed by Audit in this connection that the assessment in question had been scrutinised by Revenue Audit in January 1972 and that after the mistake had been pointed out, the letter alleging a mistake in the original valuation report had been obtained from the valuer in March

1972. **When the Committee drew attention to this fact, the Finance Secretary replied:**

"**I will see the valuation report. If what you say is correct, it is a very serious matter.**"

1.41. In a note subsequently furnished in this regard explaining the basis on which the valuer had clarified, in March 1972, that the figure originally given by him was rent 'realisable' and not rent 'realised', the Department of Revenue & Insurance stated:

"The valuer realised the mistake when a query letter was issued by the Assistant Controller of Estate Duty. In his reply dated 23rd March, 1972 he had explained that the word 'realised' used in his letter of 5th March, 1968 was a typing mistake for the word 'realisable'. He had given a list of 12 tenants; the gross monthly rent received from them was Rs. 4516. He had added Rs. 481|- for self-occupied portion and had calculated the gross rent realisable as below:

Gross rent received from 12 tenants	Rs. 4516
For self-occupied portion	Rs. 431
	Rs. 4947 x 12
	Rs. 59,364

On the basis of above figures, the valuer stated that in valuing the property he had taken into account the rent receivable for the 6th floor flat."

1.42. The Committee were also informed by the Department that the Commissioner of Income-tax was being asked to have a fresh valuation of the property done by the Department's Valuation Cell. Subsequently a copy of the report of the District Valuation Officer was furnished by the Department who stated that the difference between his valuation and that of the assessee's valuer was nominal. In his letter dated 19 December, 1973, the District Valuation Officer had stated:

"Immediately on receipt of your letter on December 14. the Chartered Accountants M|s. D. N. Dastur & Co. were contacted on phone for furnishing the particulars required for

valuation. It was intimated by the firm on December 15 that they were not in a position to supply the details and Shri Soli Shroff be contacted. Accordingly, his office was contacted on that date by you and also by me on phone. His representative, Shri Ramesh Patel, met me on December 17 and 19, and furnished particulars to the extent readily available with him. The property was also inspected on December 17. As the plans of the building are not available, rough measurements were taken with tape by my staff. In the absence of detailed plans, it is not possible to give an accurate valuation, but based on the particulars available on record, my valuation report is forwarded. It is believed that this will serve the purpose of replying to the audit objection.

As the difference between my valuation and that of the assessee's valuer is nominal, it is presumed that a more accurate report will not be necessary. In case, however, it is needed, this office may please be informed accordingly.

It is, however, pointed out that the valuation done by the assessee's valuer was not correct, because the value of the owner occupied portion was also considered by him on the basis of rent realisable in proportion to the rent being actually realised from tenants in the remaining part of the building. However, the difference between my valuation and his valuation has been narrowed down, because of the different rate adopted by me for capitalisation of the rental income, considering the then prevailing rates of interest on giltedged securities."

The valuation report of the District Valuation Officer is reproduced below:

"... *Rented Portion :* *Income :*		*Per Annum*
Rent at Rs. 4515·88 p.m.		Rs. 54,191
Outgoings		
Municipal taxes :	Rs. 14,498	
Repairs at 10% of rent :	Rs. 5,419	
Management and collection charges, at 6% of rent	Rs. 3,252	
Insurance	Rs. 345	
Lift maintenance	Rs. 1,200	
Pump running and maintenance	Rs. 600	
Miscellaneous	Rs. 500(—)	Rs. 25,814
Net annual income		Rs. 28,377
Capitalising at 7% with redemption of capital at 3½%, capital value .		Rs. 4,05,791

B. *Owner occupied portion* :		
6th floor construction cost reported by owner	Rs.	93,626
Proportionate area of land 75 sq. yds. at Rs. 750 per sq. yd.	Rs.	56,250
Capital value	Rs.	1,49,876
C. Fair market value of property (A+B)	Rs. Say Rs.	5,55,667 5,55,700"

1.43. The Committee desired to know the rent actually realised from the property and whether the assessing officer had ascertained this by independent evidence. In a note, the Department of Revenue & Insurance stated:

"According to the list of tenants given by the valuer, the aggregate rent realised from the let out portion was Rs. 4516|- p.m. *i.e.* Rs. 54,192 per year as stated above. It is not in indicated on records that the rents received had been verified by the Assistant Controller of Estate Duty independently."

1.44. The Committee enquired into the gross annual value of the property adopted for Income-tax purposes and whether any deduction had been allowed for the self-occupied portion. In a note, the Department of Revenue & Insurance replied:

"The gross annual value for the assessment year 1965-66 was adopted at Rs. 49,997/- for purpose of Income-tax.*

No deduction was claimed by the deceased (J.P.C. Shroff) for the self-occupied portion and hence not considered in Income-tax and Wealth-tax assessments."

1.45. To another question whether the assessing officer had correlated the Estate Duty assessment with the Income-tax assessment, the Finance Secretary replied in evidence:

"He should have done it. I will go through it very carefully because the valuation report does not say whether the

*The Committee were informed by Audit in this connection that the gross annual value for the purpose of Income-tax assessment was adopted as Rs. 49,997 for the entire property even for Assessment Year 1968-69.

amount was included, that is, the amount for the self-occupied property."

In a note furnished subsequently to the Committee in this regard, the Department of Revenue & Insurance stated:

"The Income-tax records were scrutinised in August 1968 by an Inspector but he had not noted the details of self-occupied property *viz.* its gross annual value and the deduction allowed for Income-tax purposes."

1.46. It would be seen from paragraphs 2.8 and 2.10 of this Report that the Officer who had handled this case had been responsible for the mistakes in seven other cases commented upon in the Audit Report and that his case has been referred to the Special Police Establishment for an enquiry as the Department was not 'quite satisfied about the *bonafides*'.

1.47. This is a case where the value of house property estimated by the 'capitalisation of yield method' had been incorrectly computed for Estate Duty purposes, resulting in an under-assessment of the principal value of the estate by Rs. 97,941 and consequent short-levy of duty of Rs. 29,383. The house property had been assessed by the Assistant Controller of Estate Duty on the basis of the valuation certificate furnished by the assessee's valuer on 5 March, 1968, according to which the rent 'realised' was Rs. 59,364, which obviously would include the notional annual value of the portion occupied by the deceased. The assessing officer, however, after capitalising the annual rental value less admissible deductions on account of taxes, repairs, collection charges, etc. at 16-2/3 years purchase, deducted therefrom an amount of Rs. 78,432 as representing the exemption admissible for self-occupation. According to Audit, this deduction was not in order as the capitalised value computed on the basis of the annual rental income related only to the portion actually let out in view of the fact that the valuer had taken account only the gross rent actually 'realised'.

1.48. The Audit objection has, however, not been accepted by the Ministry on the ground that according to a subsequent clarification by the valuer in March 1972, there was a typing error in his original valuation report of 5 March, 1968 and that the gross rent of Rs. 59,364 represented the rent 'realisable' (and not rent 'realised') and appertained, therefore, to the entire building including the self-occupied portion. This letter, strangely, was obtained four years after the original valuation report, (on the basis of which the assessment was

completed, had been furnished by the valuer and that too after the mistake was pointed out by the Revenue Audit in January 1972. It is also not clear from the assessment records whether the assessing officer had independently verified the rents received. Besides, the deceased does not appear to have claimed any deduction for the self-occupied portion for the purposes of Income-tax, and if any such deduction had been claimed on this account, it had not been correlated either by the Assistant Controller of Estate Duty or the Inspector concerned. In the circumstances and also in view of the fact that the bonafides of the officer who had assessed this case are suspect and an enquiry by the Special Police Establishment is pending, the Committee cannot accept the explanation now offered, which can at best be considered to be an after-thought. The Committee would await the outcome of the enquiry which, they presume, should have been completed by now.

1.49. No doubt, at the Committee's instance, a fresh valuation of the property in question has been done by the District Valuation Officer and the difference between his valuation and that of the assessee's valuer is seen to be nominal. The Committee, however, find that the assessee's valuer had adopted the capitalisation rate at 6 per cent (16.66 times) whereas the District Valuation Officer has adopted a rate of 7 per cent (14.3 times). The Committee would like to be informed of the reasons for the District Valuation Officer adopting the lower multiple and whether the Ministry concur therewith. Further, according to the District Valuation Officer's report, the value of the self-occupied portion alone (6th floor) is Rs. 1,49,876, by adopting the 'cost of construction method' for valuation. It would be worthwhile to examine whether the Valuation Officer had estimated the value of the entire building by this method, for it is not unlikely that the value computed on this basis would be much more than the value actually assessed by adopting the 'capitalisation of yield method'.

1.50. The Committee learn from Audit that the gross annual value of the entire property was adopted as Rs. 49,997 even for the asssessment year 1968-69. However, according to the District Valuation Officer's Report, the actual rent realised from the rented portion of the property was Rs. 54,191. Since a lower value has apparently been adopted in the Income-tax assessment, the Committee would like to know whether any steps have been taken by the Department to revise the relevant Income-tax assessments.

1.51. Under Section 33(1)(n) of the Estate Duty Act, 1953, one house or part thereof exclusively used by the deceased for his residence is not to be included in the principal value of the estate to

the extent of Rs. 1 lakh. In the original Estate Duty assessment in this case, the entire value of the 6th floor had been exempted as its value as then estimated (Rs. 78,432) was below the exemption limit of Rs. 1 lakh. Since the 6th floor has subsequently been valued by the District Valuation Officer at Rs. 1,49,876, which is above the exemption limit, the value of this portion in excess of Rs. 1 lakh will, in any case, have to be added to the estate. The Committee would, therefore, like to be informed whether the earlier assessment has at least been revised to levy duty on the value of the self-occupied portion in excess of the exemption limit.

1.52. From the foregoing paragraphs, it is evident that the property in question has been valued differently for the purposes of the different Direct Taxes, and that there has been little or no coordination between the different assessing officers. The Committee desire that action should be taken to revise the direct tax assessments, wherever necessary, and to realise the additional taxes due, alongwith whatever consequential action may ensue.

CHAPTER II

ESTATE ESCAPING ASSESSMENT

Audit Paragraph

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

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

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

[Paragraph 55(i)(a) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

2.4. Under Section 5 of the Estate Duty Act, 1953, Estate Duty is leviable on the principal value of all property which passes on the dath of a person. Section 2(15) of the Act defines property to include any interest in moveable or immoveable property.

2.5. The net principal value of the estate is worked out by taking into account all properties and interest in properties and deducting therefrom all exemptions and allowances as admissible under the Act. If the decreased was a partner in a firm, the value of his interest in the firm as well as in the goodwill of the firm is property passing on death. Similarly, the refunds of any tax due to the deceased is a property passing on death and is includible

in the estate. The Committee learnt from Audit that it had been clarified by the Central Board of Direct Taxes in their circular No. 4/40/57-ED dated 16 December, 1958 that "any repayment of the tax due to the estate of the deceased in respect of a period upto the date of death would, therefore, correctly form part of the estate chargeable to Estate Duty in the same way as any income-tax liability of the deceased relating to a period prior to his death but determined after the death is allowed as a debt deductible from the value of the estate."

2.6. The Committee were informed by Audit that in this particular case, quite a number of avoidable mistakes in the computation of the value of the estate had come to notice. These were as follows:

(a) *Failure to include refund of tax in the estate*

Two refunds were issued on 30 November, 1968 (Rs. 1,24,744 for assessment year 1964-65, Rs. 3,10,201 for assessment year 1967-68) and another refund (Rs. 70,085 for assessment year 1963-64) was issued on 14 April, 1970. For the refund of Rs. 1,24,744 the Assistant Controller of Estate Duty had himself asked the Income-tax Officer on 29 April, 1969 to adjust it against the estate duty dues. Let in the assessment made on 31 January, 1970, this amount was not added to the estate.

Further, for the assessment year 1967-68 a deduction (Rs. 40,812) on account of tax liability had been allowed. As ultimately, the assessment for this year resulted in refund, this deduction was not admissible. Thus for assessment year 1967-68, besides adding the refund of Rs. 3,10,201 to the estate the deduction of Rs. 40,812 was also to be withdrawn.

(b) *Incorrect computation of the value of interest in the firm*

The deceased in this case was a partner in two firms. The following mistakes were committed in valuing this interest:

(i) In one firm the profits which accrued upto the date of death were not included in the estate. The Estate escaping assessment was Rs. 33,540.

(ii) Both the firms were maintaining a charity account in their books to which a certain proportion of profits was

transferred. It was held in the wealth-tax assessment of the deceased that these charity accounts did not amount to a trust and that the partners had full domain over the corpus of the trust. In the Wealth-tax assessments, therefore, the share of the deceased in these charity accounts was added to the wealth.

In the estate duty assessment, however, no such addition was made. The Estate escaping assessment was Rs. 24,043.

(iii) In one firm the assessee had 1/6th share. While valuing the goodwill of the firm it was taken as 16 per cent instead of 16.67 per cent. Estate short assessed was Rs. 2100.

(c) *Incorrect deduction on account of liability for Annuity Deposit.*

The provisions relating to Annuity Deposit were substantially amended from the assessment year 1967-68 and the payment of Annuity Deposit was no longer a statutory obligation. Accordingly, the liability towards Annuity Deposit did not constitute a debt under Section 44 of the Estate Duty Act. In this case, however, a deduction of Rs. 21,260 was allowed on this score for assessment year 1967-68.

2.7. As a result of these mistakes, the estate of the deceased was under-assessed as follows:

(i) Refunds of tax not added.		
1963-64	70,085	
1964-65	1,24,744	
1967-68	3,10,201	5,05,030
(ii) Share of profit in one firm omitted to be included		33,540
(iii) Deceased's share in the partnership incorrectly determined		24,043
(iv) Value of goodwill in the firm wrongly computed		2,100
(v) Deduction on account of Annuity Deposit irregularly allowed		21,260
TOTAL		5,85,973

The short-levy of duty on account of these mistakes amounted to Rs. 4,27,413.

2.8. The Committee learnt from Audit that quite a large number of assessments completed by the officer who had handled this parti-

cular case were found to be having shortcomings. The Committee, therefore, enquired whether the mistakes highlighted in any of the other paragraphs included in the Audit Report were attributable to this officer. A representative of the Central Board of Direct Taxes replied that the officer was responsible for six other cases in the current Audit Report. The Committee were informed by Audit in this connection that the cases commented upon in paragraphs 54(i), 54(ii) (two out of the five cases), 54(iii), 54(v), 54(vi), 55(i)(a) and 59(ii) of the Report for the year 1971-72 and in paragraphs 82(i), 82(ii), 82(iii) (a) and 85 included in the Report for the year 1970-71 had been handled by this officer.

2.9. While furnishing information in respect of paragraphs 82(ii) to 85 of the Audit Report for the year 1970-71, the Department of Revenue & Insurance had stated, in their letter dated 21 November, 1972, that the officer who had handled the cases was a senior officer who had worked as an Income-tax Officer, Class II from 1 October, 1954 and Income-tax Officer Class I from 1 December, 1962 and that the Central Board of Direct Taxes had directed the concerned Controller of Estate Duty to have all the Estate Duty assessments completed by this officer examined. The Committee desired to know whether this examination had been completed and, if so (a) in how many cases, including those reported by Audit, mistakes had been noticed, (b) the tax effect of these mistakes, and (c) the number of assessments completed by the officer during the period under examination. In a note, the Department stated:

"The report of the Controller of Estate Duty has since been received. The requisite information is as under:

(a) 26 cases of these 19 cases were reported by the Audit.

(b) In 19 cases reported by the Audit the aggregate tax effect was Rs. 5.32 lakhs. Information regarding 7 cases detected in the course of Departmental review of the work of this officer is not readily available; this information is being collected and will be furnished as soon as available.

(c) 297 assessments."

2.10. When asked whether the mistakes in this case could be considered *bona fide*, the Finance Secretary replied in evidence:

"We have referred this officer's case to the Special Police Establishment because we are not quite satisfied about the *bona fides*."

2.11. To another question whether this particular case had been checked in Internal Audit, the witness replied:

> "The Internal Audit were not conducting audit of estate duty cases at all. They were supposed to be seen by the staff of the Deputy Controller's office, but it has not worked at all. Last year we transferred this work to the Internal Audit. So, only from last year the Internal Audit will be looking into the estate duty cases also."

2.12. The Committee take a serious view of the number of avoidable mistakes in the computation of the value of the estate that have come to notice in this case, resulting in the under-assessment of the principal value of the estate by Rs. 5,85,973 and consequential short-levy of duty of Rs. 4,27,413. The officer who handled the case was an experienced officer with about 16 years service at the relevant time. Prima-facie, **therefore, it would appear that either the officer was grossly negligent in the discharge of his duties or that the mistakes were deliberate and** mala-fide. **What is distressing is that the same officer has been responsible for the mistakes and omissions in as many as 8 cases commented upon in this Audit Report and four other cases included in the Audit Report for the year 1970-71. A review of all the Estate Duty assessments completed by this particular officer has disclosed that out of 297 assessments completed by him, mistakes were detected in 26 cases out of which 19 had been reported by the Revenue Audit, involving an aggregate tax effect of Rs. 5.32 lakhs. All this has necessitated a probe into the** bona fides **of the officer by the Special Police Establishment. The performance of the officer, thus, makes truly distressing reading. The Committee have no doubt that action would be taken against the delinquent officer for the lapses detected and established so as to serve as a deterrent to others.**

2.13. The Committee presume that the assessment in this particular case would have been revised by now and the duty under-assessed recovered. This needs to be confirmed.

Audit Paragraph

2.14. The principal value of the estate of a deceased person who died on 7th June, 1964, was determined as Rs. 38,38,864 in July 1967 and was subsequently reduced to Rs. 21,95,768 in August 1971 due to appellate and rectificatory orders. The estate *inter-alia* included shares from various companies. A comparison of the list of shares

attached to the assessment order with the intimations received from the principal officers of certain companies regarding share-holdings of the deceased revealed (February 1972) that the value of 720 shares held by the deceased in a company had been omitted from the principal value of the estate. The omission resulted in under-charge of estate by Rs. 17,381 with a consequent short-levy of duty of Rs. 14,938.

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

[Paragraph 55(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

2.16. Shares and investments held by a deceased constitute property passing on death and, therefore, the value thereof is to be included in the Estate. The Committee learnt from Audit that in this case, while completing the Estate Duty assessment, the Estate Duty Officer had omitted to include the value of 720 shares (Rs. 17,381) in the estate of the deceased although the principal officer of the company had informed the assessing officer, in a letter dated 25 June, 1964, that these shares had been held by the deceased as a joint holder with his daughter.

2.17. Since the information relating to these shares was apparently available on the records of the assessing officer, the Committee desired to know how this had been missed while completing the assessment. In a note, the Department of Revenue & Insurance stated:

> "The ACED (Assistant Controller of Estate Duty) had to go through voluminous details including the list of shares owned by the deceased. The list of assets and liabilities ran into a very large number. The principal value was originally assessed at Rs. 38.39 lakhs. While examining such a large number of items, the ACED, who himself collected the information and brought it on record missed to include the value of 720 shares of Indian Iron & Steel Co. Ltd. valued at Rs. 17,381. The ACED's explanation shows that this happened due to obvious inadvertance."

2.18. To another question whether the Department had verified whether the assessee had been returning these shares for the purposes of wealth-tax, the Department replied:

> "The deceased did not return the value of these shares for his wealth-tax assessments.

The assessee died on 7-6-1964. The time for initiating action for assessment year 1964-65 u/s 17(1)(a) expired on 31-3-1972, and, therefore, no action is possible now."

2.19. The Committee desired to know the name of the assessee in this case, the charge where the assessment had been done and the latest position in regard to the recovery of the additional demand of Rs. 14,938. In a note, the Department of Revenue & Insurance informed the Committee that the assessment which related to Late H. H. Sir Kaiser Shamsher Bahadur Rana had been completed by the Estate Duty Officer, New Delhi and that the additional demand raised had been collected by adjustment against a refund due on 28 July 1972.

2.20. The Committee are concerned to note that while computing the principal value of an estate, the value of 720 shares held by the deceased in a company had been omitted to be included in the estate by the Estate Duty Officer, resulting in under-assessment of the value of the estate by Rs. 17,381 and consequential short-levy of duty of Rs. 14,938. With a little more care, a simple mistake like this could well have been avoided.

2.21. What causes greater concern to the Committee is that the value of these shares had not been returned by the deceased in his wealth-tax assessments and since the time-limit for initiating action under Section 17(1)(a) expired on 31 March, 1972, no action is possible now to revise the relevant wealth-tax assessment. Apparently, there has been a failure to correlate the assessments under the various direct tax laws. That this should be so despite repeated exhortations of the Committee in the past is regrettable. However, since these shares had been held by the deceased jointly with his daughter, the Committee would like to know whether they have at least been assessed in the hands of the joint holder. The Committee would also like to be informed whether any wealth-tax assessment was made on the executors/administrators of the estate of the deceased till the estate was completely distributed and, if so, whether the shares have been assessed to tax in their hands.

Audit Paragraph

2.22. Under Estate Duty Act, 1953, property in which the deceased or any other person had an interest on death, is deemed to pass on death to the extent to which a benefit accrues or arises by the cessation of such interest.

2.23. A person, who died in May 1969 had life interest in the income from the estate of her pre-deceased husband and this interest was valued at Rs. 6,11,845 for wealth-tax purposes. The interest, however, was omitted to be included in the principal value of the estate, which resulted in short-levy of duty of Rs. 1,85,888. The Ministry have stated that the matter is under examination.

[Paragraph 71(1) of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

2.24. If the deceased had an interest in property, which interest-ceased on death, the value of the benefit accruing as a consequence of this cesser is includible in the estate, for purposes of levy of Estate Duty. Under Section 40 of the Estate Duty Act, if the deceased was entitled to the whole of the income from the property, the value of the entire property will be taken as the value of the benefit accruing by the cesser of interest. In the instant case, the Committee learnt from Audit that the deceased was the sole beneficiary of the income from the Indian Estate of her late husband. The value of the estate as computed for wealth-tax was Rs. 6,11,845, consisting mainly of shares valued at Rs. 5,16,470, and accordingly the entire value was liable to estate duty as the value of benefit ceasing on her death. This was omitted to be included in the estate resulting in short levy of duty of Rs. 1,85,888.

2.25. The Committee enquired whether the accountable person was required to show the source of income of the deceased, if so, the Committee wanted to know the source that was shown in this case. The Department of Revenue & Insurance, in a note, submitted to the Committee, stated:

> "The accountable person was required to give the source of income in reply to a questionnaire issued by the Assistant Controller and the A. P. gave the reply 'not known'."

2.26. When asked whether the deceased was an income-tax assessee, and if so, whether it was not possible to trace the source of income to the estate of her late husband, the Ministry, in a note, replied that she was an income tax assessee and it was possible to trace the source on scrutiny of the records.

2.27. The Committee desired to know in whose hands the income from and wealth of the estate of the husband was being taxed for

income-tax, wealth-tax purposes. The Department of Revenue & Insurance, in a note, stated:

> "The income from the estate of the late husband was being assessed in the hands of the Administrator to the estate appointed by the executors and trustees of the will of the late . . .
>
> The wealth of the estate of the late husband was also being taxed in the hands of the Administrator."

2.28. The Committee enquired whether the deceased was a wealth-tax assessee and whether the value of life interest was being included in her wealth. The Department of Revenue and Insurance, in a note, replied:

> "The late Mrs.......was a wealth-tax assessee. The life interest was not being included in her wealth."

2.29 When asked as to how the value of the estate left by the deceased was being assessed to wealth-tax after her death, the Department of Revenue & Insurance, in a note, stated:

> "No assessments have been made. The concerned officer has been asked to take necessary action."

2.30. Since it had been stated in the Audit paragraph that the Audit objection was under examination, the Committee desired to know the present position. The Department of Revenue & Insurance, in a note, stated:

> "The principal value of the estate has been re-assessed by including the value of life interest of the deceased in the estate left by the pre-deceased husband."

2.31. The Committee are concerned to note in this case that failure to include the life interest of the deceased in the income of her pre-deceased husband, valued at Rs. 6.12 lakhs, in the principal value of the estate had resulted in a short-levy of Rs. 1.86 lakhs. It appears that no attempt had been made by the assessing officer to ascertain independently the source of income of the deceased apart from merely relying on the statement made by the accountable person. Since the deceased was admittedly also an income-tax assessee, it should have been possible for the assessing officer to trace the source of income by a scrutiny and correlation of the relevant

income-tax assessments. That this was not done would indicate that the assessment had been completed in a perfunctory manner. The Committee take a serious view of the lapse and desire fixation of responsibility for taking suitable action.

2.32. It is significant that the accountable person in this case had stated, in reply to a questionnaire issued by the Assistant Controller of Estate Duty, that the source of income was 'not known'. The Committee desire that the case should be re-examined with a view to ascertaining if this statement made by the accountable person was bonafide or was intended to suppress the relevant facts before the assessing officer. In case the accountable person is found to have made a false declaration with a view to concealing the value of the estate and thereby evading tax, penal action, in accordance with the law, should be initiated.

2.33. The Committee note that the principal value of the estate has been re-assessed by including the value of the life interest of the deceased in the estate left by the pre-deceased husband. The Committee would like to be informed of the value of the demand raised as a result of the re-assessment and the position of recovery of the tax due.

CHAPTER III

INCORRECT ALLOWANCE OF EXEMPTION

Audit paragraph:

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

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

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

[Paragraph 56 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

3.4. Under Section 33 (1) (n) of the Estate Duty Act, 1953, "one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed Rs. 1 lakh if such house is situated in a place with population exceeding 10,000 and the full principal value thereof in any other case" is exempt from Estate Duty. Under this Section, the exemption is admissible only in respect of properties belonging to the deceased and passing on death. The Committee learnt from Audit that in this case, though the house property belonged to a Trust and not to the deceased who had only a life interest therein, the exemption of Rs. 1 lakh had been allowed, under Section 33 (1) (n), which was irregular. The Committee were also informed that the additional demand of Rs. 30,000 had since been collected.

3.5 The question whether interest in property such as life interest also would be exempt under Section 33 (1) (n) of the Estate Duty Act came up for consideration before the Public Accounts

Committee (1972-73) during the course of their examination of paragraph 82 (*iii*) (a) of the Report of the Comptroller & Auditor General of India for the year 1970-71, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee, in paragraphs 4.27 and 4.28 of their 88th Report (Fifth Lok Sabha), had then observed:

> "4.27. Under the Easte Duty Act exemption from duty for the self-occupied house is admissible only in respect of properties belonging to the deceased and passing on his death. Although the properties did not belong to the deceased who had only life interest therein, exemption was irregularly given in two cases leading to the short-levey of tax of Rs. 80,000 as mentioned in the Audit paragraph. The Committee have been given to understand that the Law Ministry also have opined that the provision of Section 33(1)(n) does not speak of 'interest in property' but property itself. Hence the inclusion of life interest for exemption under this Section does not appear to be legally valid. The Committee presume that the assessments have since been revised and additional demand recovered."

> "4.28. The Central Board of Direct Taxes will do well to conduct a test check in other charges to see whether similar mistakes have been committed. The position in law should also be clarified for the guidance of the Estate Duty Officers."

In their Action Taken Note on the above observations, the Department of Revenue and Insurance stated in October, 1973, that as the legal position in this regard was not free from doubt, the question of issuing instructions to the field officers on the scope of Section 33 (1)(n) and the test-check in other charges suggested by the Committee would be considered on receipt of a final opinion from the Law Ministry. When asked whether the test check had since been conducted, the Finance Secretary replied in evidence:

> "The whole matter seems to be a matter of doubt. The Bangalore and Cuttack Income-tax Tribunals have given their decisions against the Department. When we asked the Ministry of Law about their opinion that was given at the level of the Deputy Legal Advisor or Assistant Legal Advisor. Now, we have requested the Ministry of Law to clarify the issue as to whether the view taken by the Tribunal is correct. If that view is correct, then this check is not necessary. Moreover, since the Tribunal has

given its decision, it is necessary to get some decision at a higher level in the Ministry of Law.

A representative of the Central Board of Direct Taxes added in this context:

"The Law Ministry has just said that they would go into this case more deeply and we will be discussing with them."

3.6. In reply to another question why the assessment in the present case had been revised if the legal position was in doubt, the Finance Secretary stated:

"This assessment has been revised and the higher duty has been levied. But the main thing is that the Tribunal have decided against the Government. But, in other cases, Bombay Tribunal have decided in favour of the Government. There are two conflicting decisions."

3.7. The Committee desired to know whether the final opinion of the Law Ministry had been received. In a note, the Department of Revenue & Insurance informed the Committee as follows:

"A final opinion of the Ministry of Law is not available as yet. The Committee will be furnished with a copy of the opinion as soon as it is available: the matter is being pursued."

3.8. The Committee learnt from Audit that though the assessment had been rectified in this case, the addition of Rs. 1 lakh had, however, been deleted subsequently by the Appellate Assistant Commissioner in an appeal decided on 28 May, 1973 and a refund of Rs. 30.000 was made on the 11 May, 1973. The Committee, therefore, desired to know the grounds on which the appeal had been allowed. The representative of the Central Board of Direct Taxes stated in evidence:

"A.A.C. has already decided on the basis of the decision of the Cuttack Tribunal Bench. We have gone in an appeal to the Tribunal. This matter is kept alive. So, the AAC has decided the appeal adopting the Cuttack Bench's decision which is against the Department."

3.9. Under Section 33(1)(n) of the Estate Duty Act, exemption from Easte Duty in respect of a house or part thereof exclusively used by the deceased for his residence is admissible only in respect of properties belonging to the deceased and passing on his death.

In the present case the house property in question belonged to a Trust and the deceased had only a life interest therein. In the light of an opinion given earier by the Law Ministry (with reference to two similar cases commented upon in the Audit Report for the year 1970-71) that the provision of Section 33(1)(n) does not speak of 'interest in property' but property itself, the Committee had felt, in paragraph 4.27 of their 88th Report (Fifth Lok Sabha) that the inclusion of life interest for exemption under this Section did not appear to be legally valid. In paragraph 4.28 of the Report, the Committee had accordingly desired that the position in law should be clarified for the guidance of the Estate Duty Officers, in addition to conducting a test check in other charges to see whether similar mistakes had taken place.

3.10. The Committee have been informed that the legal position in this regard is not entirely free from doubt and that different Tribunals have expressed different views on the subject. A deeper examination of the legalities thus becomes necessary. Much time, however, has elapsed and the Committee urge that the final opinion of the Ministry of Law should be obtained, if it has not already been done, and the correct legal position intimated to the assessing officers. The latest position in this regard should be communicated forthwith to the Committee. It should also be examined whether any amendment to the law is necessary to make it clear whether the expression 'property' in Section 33(1)(n) of the Act means only property or includes also interest in property.

CHAPTER IV

INCORRECT COMPUTATION OF VALUE OF BENEFITS FROM A CONTROLLED COMPANY

Audit paragraph:

4.1. Under the Estate Duty Act, if the deceased had transferred any property to a controlled company and a benefit had accrued to him from that company in the three years preceding his death, a proportion of the net assets of the company is deemed to be his property passing on death. This proportion is ascertained by comparing the aggregate value of the benefits accruing to him in the last three years with the aggregate amount of the net income of the company in the relevant period. Further, in working out the aggregate income for this purpose no deduction is admissible in respect of payment of interest on debentures in the company and correspondingly, no deduction is to be made for liabilities in respect of these debentures while computing the net assets of the company.

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

[Paragraph 57 of the Report of the Comptroller and Auditor-General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

4.3. Under Section 17 of the Estate Duty Act:

"(1) Where a deceased has made to a controlled company a transfer of any property........and any benefits accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death........

(2) The extent to which the assets of the company are to be included, shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of company for the said years......"

4.4. A 'controlled company' defined in Section 17(4)(i) is a company:

"which at any relevant time was... under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested."

4.5. The Committee learnt from Audit that if a person had transferred certain property to a controlled company and had received any benefit from the company within 3 years preceding his death, then a slice of the value of the assets of the company is to be included in the estate as under:

Value of assets of the company	Aggregate value of benefits received by the deceased in the three years. Aggregage net income of the company in the three years.

4.6. The Estate Duty (Controller Companies), Rules, 1953, *inter alia*, lay down the method of computation of the value of assets, the value of the benefits and the net income of the company. Under Rule 10 which deals with 'Determination of value of assets of company', an allowance is to be made from the principal value of the assets "for all liabilities of the company...... other than—

(a) Liabilities in respect of shares in or debentures of the company........"

Under Rule 9 which deals with 'Determination of net income or loss of company', the income of the company from its various sources as computed in accordance with the provisions of the Indian Income-tax Act is to be aggregated. But,

> "(3) In making the computation, no deduction from the income of the company shall be made in respect of
>
> (a) ....
>
> (b) ....
>
> (c) ....interest on debentures in the company......"

4.7. To sum up, the amount to be included in the estate would thus be:
[Assets— (liabilities—debentures)] XValue of benefit received by the assessee. Assessed income —interest on debentures.

4.8. From the above simplified version of the Rules it is evident that if the amount of debentures is understated or omitted the value of the slice to be included would be under-assessed. and conversely if the value of debentures is overstated, the value of slice would be overassessed.

Similarly, if the amount of interest on debentures is under-stated or omitted, the value of slice would be over-assessed, conversely, if it is overstated, the value of slice would be under-assessed.

4.9. The Committee were further informed by Audit that in this particular case, the Appellate Tribunal held that certain payments of interest (Rs. 10,47,875) should be treated as 'interest on debentures' and added to assessed income. Obviously, therefore, the amount to which this interest related should have been treated as 'debentures' and deducted from liabilities. This was not done with the result that net figure of assets was understated. Also, included, in this amount of Rs. 10,47,875 was an interest of Rs. 1,06,817. This amount was again added to income, which led to further under-assessment.

4.10. The Committee desired to know the total value of the assets of the controlled company in this case. In a note, the Department of Revenue & Insurance stated:

> 'As per order u/s 61 of the Estate Duty Act passed on 20-6-73, the net value of the assets of the controlled company

computed in accordance with the Estate Duty (Controlled Companies) Rules, 1953 was Rs. 1,00,26,588."

4.11. To another question relating to the number of assessments under the Estate Duty Act in which the provision relating to the interest in a controlled company had been applied, the Department replied:

"This information is not readily available as the Department does not maintain any separate statistics regarding inclusion of interest in controlled companies."

4.12. With reference to this particular case, commented upon by Audit the Finance Secretary stated during evidence:

"This is a very complex case which, I think, even the Tribunal has not been able to understand."

When the Committee pointed out, in this connection, the desirability of taking necessary steps, the witness replied:

"We shall take it up. It took me some time to understand it as to what has happened. Now the assessee seems to be under the impression that the case has been decided in his favour. If we give effect to the order of the Tribunal, it comes to the enhancement of the duty. I am told that the Tribunal can pass an order enhancing the duty only after giving a notice of enhancement which is done in the case."

He added:

"We shall have to change this law."

4.13. The Committee, therefore, asked whether, in view of the fact that the provisions relating to interest in controlled companies appeared to have been borrowed from the English Act, it would be necessary to review these provisions with a view to modifying them to suit Indian conditions and to make them more effective. In a note, the Department of Revenue & Insurance replied:

"The provisions in sections 17 to 20 of the Estate Duty Act and the Estate Duty (Controlled Companies) Rules, are broadly on the lines of similar provisions in the Estate Duty Act of the U.K. Certain variations were, however, made from the corresponding provisions of the U.K. Act to suit Indian conditions. The suggestion is, however, being further examined."

4.14. Under Section 17 of the Estate Duty Act, if a deceased had transferred any property to a controlled company and a benefit had accrued to him from that company in the three years preceding his death, a proportion of the net assets of the company, which is determined by comparing the aggregate value of the benefits accruing to the deceased in the last three years with the aggregate amount of the company's net income in the relevant period, is deemed to be property passing on death and is assessable to Estate Duty. Under Rules 9 and 10 of the Estate Duty (Controlled Companies) Rules, 1953, in working out the aggregate income of the company for this purpose, no deduction is admissible in respect of payment of interest on debentures in the company and correspondingly no deduction is to be made for liabilities in respect of these debentures while computing the net assets of the company. In the present case, the Appellate Tribunal had held that certain payments of interest should be treated as 'interest on debentures' and added to assessed income. However, while giving effect to the Appellate order, the amount to which this interest related had not been treated as 'debentures' and deducted from the liabilities. An interest of Rs. 1,06,817 had also been erroneously added twice to the income. As a result of these mistakes, the principal value of the estate was under-assessed by Rs. 8.15 lakhs and an amount of Rs. 1.82 lakhs short-levied as duty.

4.15. While admitting the mistakes, the Ministry has, however, stated that this was 'a very complex case' and the legal position complicated. The Committee have also been informed that the legal provisions relating to interest in controlled companies are broadly based on similar provisions in the Estate Duty Act of the United Kingdom with variations to suit Indian conditions and that the law in this regard might have to be changed. The Committee would, therefore, recommend that this entire question should be reviewed and necessary changes brought about soon in the Act and the rules framed carefully so as to remove all ambiguities. The Committee would also await a report on the recovery of the additional duty due in the present case.

CHAPTER V

OTHER TOPICS OF INTEREST

Audit Paragraph

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

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

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

[Paragraph 58 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

5.4. The Committee learnt from Audit that the estate of the deceased, *inter alia*, included a house property. In the estate duty assessment the value of the house property was taken as Rs. 2,34,600 taking the fair rent of the property at Rs. 1,550 pm. It was found that there were two valuation reports in respect of this house property, both purported to have been prepared and signed by the same valuer on the same day. One of the reports showed the fair rent at

Rs. 1850 p.m. and in the other it was shown as Rs. 1550 p.m. In the wealth-tax assessment, the value of the house property was adopted taking the fair rent of the property at Rs. 1850 whereas in the estate duty assessment the lower rent Rs. 1550 was adopted.

5.5. The failure to co-ordinate the two assessments resulted in an anomalous situation in that by adopting the lower rent, the value of the house property was determined at Rs. 2,34,600 in estate duty but in wealth-tax assessment which was based on higher rental, the property was valued at Rs. 2,03,000.

5.6. The Committee were also informed by Audit that in the same assessment, there was over-valuation of estate by Rs. 12,880 on account of the following mistakes:

(a) While deducting the liability of Rs. 2,42,703 from the assets of Rs. 9,80,961 the balance was struck as Rs. 7,48,258 instead of Rs. 7,38,258. Thus there was over-valuation of Rs. 10,000.

(b) The fair rent of another building in which the deceased had 1/5th share was taken as Rs. 14,678 instead of Rs. 13,678. 1/5th share of the capital value of the building was taken as Rs. 42,282 as against Rs. 39,402. The over-valuation was Rs. 2880.

5.7. The Committee desired to know how two different valuation reports for the same property could have been issued by the same valuer on the same day. A representative of the Central Board of Direct Taxes stated in evidence:

"One was for Estate Duty purpose and the other was for wealth-tax purpose. One was as on 31st March, 1968 and the other was as on 10th October, 1968."

5.8. The Committee asked where the property was situated. The witness replied:

"At Calcutta. In 1968, the rent would have fallen considerably."

He clarified further:

"I think, at that time in Calcutta quite disturbed conditions were prevailing which might have contributed towards lesser value."

5.9. When asked the reasons for adopting two different values for assessment under the two direct taxes, the witness replied:

> "The valuation for estate duty was on a different date. There are two dates. The valuation for wealth-tax was on 31st March, 1968. The date of death was 7 months later. In that period of time, he considered that unrented units would be of a less value and he has taken a lesser rental for those unrented units. With regard to rented units, the same rent has been taken in both the cases."

The Finance Secretary, however, stated in this connection:

> "I am not able to say why this has been reduced and the assessment order does not state very clearly that the officer had applied his mind and had satisfied himself that there was a justification for reducing the rent. If that was so, I could have said that there was some justification. On the basis of the record, I am not able to say....I would not like to surmise as to what were the conditions at that time."

5.10. The Committee desired to know when the two assessments had been completed and whether the variation in value had not struck the officer who made the later assessment. In a note, the Department of Revenue and Insurance stated:

> "The estate duty assessment was made on 15th March, 1971 and the wealth-tax assessment for 1968-69 was made on 27th May, 1972. The two assessments were made by different officers. There is nothing on record to show that the variation in rental value was noticed by the Wealth-tax Officer who made the latter assessment."

5.11. Since it had been stated by the Finance Secretary that there were no recorded reasons in the assessment order justifying the adoption of a lesser value for Estate Duty assessment, the Committee asked whether the reasons had been gone into. The representative of the Central Board of Direct Taxes replied:

> "I must say that this is just a surmise."

The Finance Secretary stated in this context:

> "The Commissioner reported that this was due to the dull market conditions. The Assessment Officer should have recorded the reasons as to why he was accepting the view."

5.12. The Committee, therefore, desired to know whether it would not be desirable to instruct the assessing officers that they should always record their reasons for taking a particular point of view, especially if their view differed from the ordinarily accepted views on a subject. The Finance Secretary stated in evidence:

"I have found out in several cases, that agricultural lands have been treated as non-agricultural lands and no reasons have been given. They have just treated them as non-agricultural lands. It is very necessary to record the reasons in the assessment order, as to why the officer has accepted a particular view. We shall issue very clear instructions."

5.13. Referring to the statement made in evidence that on account of disturbed conditions in Calcutta in 1968, rents of residential accommodation had fallen, the Committee desired to know whether this had been actually verified in view of the fact that conditions in Calcutta had considerably improved during the relevant period. In a note, the Department of Revenue and Insurance stated:

"The representative of the Accountable Person had stated that the fair rental as on 10th October, 1968 for the unrented properties was estimated at a low figure, on account of dull condition of property market. However, there was no change in the rentals of the properties let out in this case. As the lower rental was inadevertently adopted by the Assistant Controller of Estate Duty, there was no occasion to investigate the valuer's estimate."

5.14. An interesting feature of this particular case was that though in the wealth-tax assessment, the figure of gross rental adopted was higher, i.e. Rs. 1,850 p.m., the value determined was only Rs. 2,03.000. On the other hand, in the estate duty assessments, the lower gross rental of Rs. 1,550 p.m. gave a higher value of Rs. 2,34,600. The Committee, therefore, desired to know whether different bases of computation had been adopted in the two assessments. The representative of the Central Board of Direct Taxes stated in evidence:

"It will be a multiple of the rental value."

5.15. The Committee were informed by Audit in this connection that not only was the gross rental value adopted diffrently in the two assessments but the method of computation was also different which were not in accordance with the instructions issued on the subject by the Central Board of Direct Taxes in June, 1970, The two

computations, furnished to the Committee by Audit, are indicated below:

Estate Duty (Assessment made on 15-3-1971)			*Wealth-tax* (Assessment made on 27-5-1972)	
Gross annual rental (Rs. 1550 p.m.)	Rs. 18,600		Gross annual rental Rs. 22,200 (Rs. 1850 p.m.)	
Deduct			Deduct Corp. Taxes— Rs. 6660	
Municipal tax	1,149		Misc. Rs. 3330	9,990
Repairs @ 10% as per valuer's report	1,860			
				12,210
Collection etc. @ 5% as per valuer's report	930	3939	Value taken as 16-2/3 times i.e. Rs. 2,03,000	
		14661		
Value taken as 16 times	2,34,576			
i.e.	2,34,600			

5.16. Under the executive instructions issued by the Central Board of Direct Taxes, in June, 1970, the annual value is to be arrived at as under:

Gross maintainable rent	—
Less municipal taxes	..
Balance	..
Less repairs	1/6th
Less collection charges	6%
Net	

5.17. The Committee desired to know whether the deduction on account of collection charges was allowed as a matter of course and whether, in view of the fact that in this particular case, half the property had been let out and the other half self-occupied, any verification had been carried out to ascertain that the collection charges were actually incurred. In a note, the Department of Revenue and Insurance confirmed that the collection charges were not deducted as a matter of course and stated:

"The valuation of immovable properties on the rental basis is being made in accordance with the instructions contained in Board's circular No. 5-D(WT) of 1960 dated 17th May, 1960, which lays down that collection charges are to be allowed at the actual amount spent upto a maximum of 6 per cent of the annual value. Assistant Controller of

Estate Duty has deducted collection charges etc. at 5 per cent as per valuer's report. There is no indication on record about verification of actual expenses."

5.18. The Committee enquired into the actual rent of the portion which was let out. In a note, the Department replied:

"In the income-tax returns for assessment year 1968-69 the annual gross rental for the let out portion was shown at Rs. 6,180 which was accepted."

5.19. The Committee desired to know the annual value adopted in the Income-tax assessment of the relevant year of this particular assessee. In a note, the Department stated:

"In the income-tax assessment the gross rental for the let out portion was taken at Rs. 6,180/- and after deductions, the net income was computed at Rs. 4,186/-. Gross rental value for self-occupied portion was taken at Rs. 3,090/- and the net income, after deductions, was computed at Rs. 1,288/-."

5.20. The Committee learnt from Audit that even for the assessment year 1969-70, the assessee's Income-tax assessment, completed on 30 November 1971, had been made on the basis of annual value of Rs. 3,493 for the let out portion and Rs. 3,493 for the self-occupied portion, even though the valuer's certificate adopting Rs. 1,850 p.m., i.e. Rs. 22,200 as the annual rental value was issued on 14 December, 1968 for the purpose of wealth-tax assessment for assessment year 1968-69.

5.21. This is yet another instance of under-assessment arising out of failure to correlate the assessments under the different direct tax laws. The Committee are surprised that two valuation reports had been issued in respect of the same house property, both purporting to have been prepared and signed by the same valuer on the same day, one showing the fair rent at Rs. 1,850 p.m. and the other at Rs. 1,550 p.m. While the lower rent of Rs. 1,550 had been adopted in the estate duty assessment, the higher rent of Rs. 1,850 p.m. had been adopted for the purposes of wealth-tax. The adoption of the lowed rent had resulted in an under-valuation of the estate by Rs. 48,900. It was, however, contended by the Department that the higher rent was as on 31st March 1968, and the lower one was as on 10 October 1968, and that as rents in Calcutta might have fallen considerably during the intervening period of time on account of dis-

turbed conditions then prevailing in the city, the Estate Duty Officer had, perhaps, considered that the unrented units would be of a lesser value and had taken the lesser rental for those unrented units. It is clear from the evidence that the alleged fall in rents in Calcutta was little more than a hypothetical deduction based only on a 'surmise'. Besides, in the absence of any recorded reasons, it is not clear from the assessment order whether the officer had at all applied his mind and satisfied himself that there was a justification for reducing the rent. The Committee have been informed that since the lower value had been inadvertantly adopted by the assessing officer, there was also no occasion to verify the valuer's estimate. The Committee are not impressed by this rather peculiar explanation. The Committee, therefore, desire that the matter should be gone into thoroughly in order to determine the precise factual position and take corrective action as may be necessary.

5.22. The Committee are concerned that in several cases, the assessing officers do not record their reasons for taking a particular point of view, as a result of which it becomes difficult subsequently to determine the rationale for the adoption of such a view, especially if it happens to differ from the ordinarily accepted view on a subject. The Committee would, therefore, urge the Central Board of Direct Taxes to issue necessary instructions to the assessing officers and ensure that adequate reasons for arriving at a particular conclusion are invariably recorded by them.

5.23. The Committee are given to understand that in the assessee's Income-tax assessment for the assessment year 1969-70, completed on 30 November, 1971, the annual value of the house had been adopted as Rs. 3,493 for the rented portion and Rs. 3,493 for the self-occupied portion even though the valuer had certified the rent at Rs. 1,850 p.m. for wealth-tax purposes on 14 December 1968, on the basis of which the annual rental value would work out to Rs. 22,200. Since this implies that the assessee's income has also been under-assessed, the Committee desire that the entire assessment of taxes (Income-tax, wealth-tax, Estate Duty etc.) payable by the assessee should be reviewed and necessary rectificatory action taken and the Committee informed.

Audit Paragraph

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

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

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

[Paragraph 59(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes]

5.27. Under Section 9 of Estate Duty Act, 1953:

"property taken under a disposition made by the deceased purporting to operate as an immediate gift intervives.... which shall not have been bona fide made two years or more before death of the deceased, shall be deemed to pass on death."

Accordingly, in the case of gifts and dispositions made within two years preceding the death, the property gifted is includible in the estate. However, if such gifts are made bona fide more than two years prior to the death, the value thereof is not to be included in the estate as property deemed to pass on death.

5.28. The Committee were informed by Audit that in this case the deceased died in March 1969. He made a gift of Rs. 50,000 in December 1966 to his wife (*i.e.* more than two years prior to his death). Therefore, this gift is not includible in the estate as it is not governed by Section 9 of the Act. The mistake resulted in over-charge of estate by Rs. 50,000 with a consequential excess levy of duty of Rs. 14,617.

5.29. In paragraph 54(v) of the Audit Report for 1970-71, a case of undervaluation of an estate as a result of an omission to include the value of a gift made within two years of the death of the deceased had been reported. In the present case, however, there was an overvaluation of the estate by the inclusion of gifts made more than two years before the death of the deceased. The Committee learnt from Audit that both these cases had been assessed by the same officer.

5.30. The Committee, therefore, desired to know whether the Department had investigated these mistakes with a view to ascertain-

ing how such obviously patent mistakes had been committed and whether these could be attributed to carelessness and negligence or a lack of knowledge of law. In a note, the Department of Revenue and Insurance stated:

> "This case as well as the case reported in para 54(v), *viz.*, of Shri J. J. Anjaria (deceased) were handled by the same officer. This officer's case has been referred to the CBI and a review of his work is also in progress. When these enquiries are completed, it will be known whether these mistakes were committed due to carelessness/negligence/lack of knowledge of law or due to some other reasons."

5.31. The Committee desired to know the latest position in regard to the rectification of the assessment in this case. In a note, the Department stated:

> "The rectification u/s 61 in the above case was completed on 21st March, 1973 which resulted in a net refund of Rs. 11,759."

5.32. This is a case of over-assessment, of the principal value of an estate, to the extent of Rs. 50,000, by the inclusion of gifts made by the deceased more than two years prior to his death. The Committee are distressed that such a patent mistake should have been committed by the assessing officer. What is more surprising is that in another case, the same officer should have omitted to include in the estate the value of a gift made within two years preceding the death of the deceased, while, under Section 9 of the Estate Duty Act, 1953, it should have been included in the estate. The Committee are perturbed by the intriguing series of mistakes committed by this particular officer, mistakes which have been referred to elsewhere in this Report. This appears to be a case where disciplinary action, apart from whatever inquiry might be going on is called for without delay.

Audit Paragraph

5.33. Section 37 of the Estate Duty Act, 1953, lays down that the value of shares in a private company where alienation is restricted, is to be ascertained "by reference to the value of the total assets of the company." It is only when the value cannot be so ascertained that the said Section prescribes the value being estimated to be what the shares would fetch if sold in the open market. "The value by reference to the total assets of the company" has been explained by the Central Board of Direct Taxes to mean the break-up value *i.e.* the surplus of the assets over the liabilities divided by the paid-up

capital. It was also clarified by the Board in 1965 that it is the market value of the assets of the company and not the book value thereof that would be taken into account in determining the value of the shares by the break-up value method.

5.34. In 1967, the Board framed a new rule under the Wealth-tax Act for the valuation of unquoted equity shares. This rule contemplated the determination of the break-up value of the shares on the basis of the book value, and not the market value of the assets of the company. The rule apparently, derived authority from the Wealth-tax Act which provides for making a rule for the determination of "the net value of the assets of the business as a whole having regard to the balance sheet of such business...." Despite the clear difference in the relevant phraseology of the two Acts as quoted above, the Board, in March, 1968, extended by executive instructions, the application of the said Rule framed under the Wealth-tax Act to the valuation of such shares for purposes of Estate Duty under the Estate Duty Act.

5.35. It was pointed out in Audit in April, 1972 that the relevant language of the Estate Duty Act being altogether different from that of the Wealth-tax Act, by executive instructions, to the Estate Duty Act would not appear to be legal. The value on the basis of the book value of the assets, instead of the market value thereof, can lead to anomalous results leading some times to under-valuation and hence loss of revenue.

5.36. It was also pointed out that in a case where two private companies hold shares of each other the valuation of such shares by the break-up value method would create a problem, as the break-up value of the appropriate shares of one company would depend upon the break-up value of the other which would drive the Controller of Estate Duty to find out break-up value of the first company which again is not possible as that in turn depends on the value of the shares of the second company. It was suggested that in view of these difficulties the Board should evolve an equitable formula under the Estate Duty Act.

5.37. No formula has so far been devised. The Ministry have stated that the matter is being examined.

[Paragraph 72 of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts Volume II, Direct Taxes]

5.38. The Committee were given to understand by Audit as follows:

"The Eastate Duty Act provides that the value of shares of a private company should first be ascertained with reference to the value of the total assets of the company. But, where this method is not practicable, the market value should be estimated by the Controller of Estate Duty. On the other hand, the Wealth Tax Act provides that the value of an asset would be the market value subject to the Rules made in this behalf; the Rules made for the valuation of unquoted shares lay down that this value should be arrived at on the basis of the value of the assets and liabilities as shown in the balance sheet. The essential difference between the two provisions thus is:

Under Estate Duty Act	*Under Wealth Tax Act/Rules*
(i) The value of a share is to be calculated with reference to *value* of the assets of the company.	The value of a share is to be calculated with reference to the book figures as shown in the balance sheet.
(ii) The value of the total assets of the company is to be taken *i.e.* even if an asset (say, goodwill) is not disclosed in the balance sheet, its value has to be included in the computation.	The value of only those assets which appear in the balance sheet is to be taken.

5.39. The Committee enquired whether the provisions in the two Act, *viz.*, the Estate Duty Act and the Wealth Tax Act were in *pari-materia*. The Ministry of Finance (Department of Revenue & Insurance) in a note submitted to the Committee, replied as follows:

"The basic principle underlying valuation for the purposes of Wealth-tax and Estate Duty Acts is the same—the prinicipal being the test of sale in the open market. Under both the Acts there are also rules for valuation of certain assets. There are, however, certain differences between the two Acts. For example, under the Wealth-tax Act the method of valuation of unquoted equity shares of companies other than Investment Companies and Managing Agency Companies as prescribed in rule ID of Wealth-tax Rules is with reference to the book value of the assets and liabilities as shown in the balance sheet of the companies where as the method of valuation of shares in a private company alienation of which is restricted is prescribed in Section 37 of the Estate Duty Act. In terms of that Section where the Articles of Association of a private company contains restrictive provisions as to

the alienation of shares, the value of the shares if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they are sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, etc."

5.40. The Committee asked if the two provisions were not in *pari-materia*, how the method laid down for Wealth-tax could be extended to Estate Duty assessments. The Committee also enquired whether this question was examined at the time of issue of instructions of March 1968. The Ministry of Finance (Department of Revenue & Insurance), in a note, replied :

"There was a suggestion in 1968 from the Reserve Bank of India to the effect that the valuation of assets for the purpose of Wealth-tax and Estate Duty in the case of the same individual should be made on a uniform basis. This suggestion was examined and later the then Deputy Prime Ministry stated in paragraph 42 of the Budget Speech for 1968-69 (Part B) as under :

'Further, I propose also to have administrative instructions issued to secure that, as far as possible, the same value is adopted for an asset for the purposes of income-tax, wealth-tax, gift-tax and estate-duty'.

Following this proposal in the Budget Speech, Circular ID/ED of 1968 dated the 26th March 1968 was issued."

5.41. The Committee desired to know the circumstances leading to the amendment of the Wealth-tax Act and the promulgation of Rule 1-D. The Committee also enquired whether a specific decision was taken on the question that in applying the break-up value method, the book value and not the market value of the assets would be taken. The Ministry, in a note stated :

"The words 'subject to any rules made in this behalf' were inserted in Section 7(1) of the Wealth-tax Act by Wealth-tax (Amendment) Act, 1964 with effect from 1-4-1965. Rule ID was prescribed so as to ensure uniformity and simplicity in the method of valuation of unquoted equity shares. A specific decision was taken on the question that in applying break-up value method the book value and not the market value of the assets would be taken*".

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*The Committee were, however, informed by Audit that according to the orders of the then Finance Minister on the relevant file, the market value of the assets was to be adopted.

5.42. When the assets were valued on the basis of book figures and not on the basis of market value of the assets of the company, the Committee desired to know how the result would reflect the value that the shares could fetch if sold in the open market. The Ministry, in a note, stated :

> "Rule 1D was framed after a study of 107 public limited companies. The break-up value based on book figures of assets of these companies was compared with the market quotations of the shares of these companies. In a large number of the cases, the break-up value on the basis of book figures was found to be more than the quoted value."

5.43. To a question regarding the circumstances in which the market value of an asset might diverge from the Book Value as shown in the balance sheet, the Ministry, in a note, replied :

> "The market value of an asset may diverge from the book value as shown in the balance sheet if there is any appreciation/extraordinary depreciation in the value of that asset."

5.44. The Committee enquired whether a company would show a value in the books which was higher than the market value, the Ministry, in a note, stated :

> "It is possible that a company may show a value in the books which is higher than the market value. This may be done when the company wants to raise its reserves or when a company wants to borrow on mortage of properties."

5.45. The Committee desired to know whether it was possible for a company to have an asset which was not disclosed in its balance sheet and if so, whether the computation on the basis of the balance sheet figures alone, would reflect the market value of a share. The Ministry, in a note, stated:

> "It appears the only asset which a company may have and yet does not disclose in the balance sheet is goodwill. As stated earlier the method prescribed in Rule 1D was arrived at after a study of 107 public limited companies and in a majority of the cases the market value on the basis of quotations was less than the break-up value of the shares worked out on the basis of book value of the assets and liabilities."

5.46. The Committee asked whether there was any difficulty in adopting the market value of assets for the purpose of valuation of shares under the Wealth-tax Act. The Ministry, in a written reply, stated :

> "The object of prescribing Rule 1D was to ensure uniformity and simplicity in the matter of valuation of unquoted shares. Apart from the fact that the method prescribed would not yield any materially wrong picture of the value of the shares in a large number of cases as revealed by the study of 107 public limited companies adoption of market value of assets for the purpose of valuation of shares would lead to delay, litigation etc."

5.47. The Committee desired to know whether the present method of book figures would be advisable in a case where the company's assets comprised of immovable properties which were acquired a long-time ago. The Ministry, in a note, stated:

> "It is true that in some cases where companies owned vast immovable properties, the value of the shares would be more or less accordingly as the market value of the assets or book value of the assets is taken but as stated earlier the object was to ensure uniformity as simplicity."

5.48. The Committee enquired into the reasons for excluding the goodwill of a company from the computation. The Ministry, in a note, explained :

> "If the goodwill of a company is shown in the balance sheet, naturally it will be taken into account while computing the value of the shares under Rule 1D. If the goodwill is not an asset shown in the balance sheet then it will not be taken. If goodwill is to be taken even in these cases, differences of opinion would arise first as regard to the existence of the goodwill and secondly in regard to its valuation. As the object was to ensure uniformity and simplicity, there is no provision for inclusion of goodwill if it is not shown in the balance sheet."

5.49. The Committee desired to know how the value of the shares of the two companies, both of which hold shares of each other, would be computed, if the principle of market value of the assets of the company were to be adopted. The Committee also enquired into the present position in regard to modifying the instructions issued

in March 1968 which was stated to be under examination of the Ministry. The Ministry, in a note, stated:

"Circular 1D/ED of 1968 dated 26-3-1968 has been modified by Instruction No. 771 dated 29-10-1974. In this instruction it has been stated that the contents of Circular No.1D/ED of 1968 would not apply to valuation of shares covered by Section 37 of the Estate Duty Act and that the valuation of shares under Section 37 would be governed by Board's letters dated 3rd May, 1965 and 5th July, 1965 issued from File No. 25A/3/65-ED. Further detailed instructions have been drawn up regarding the method of computation of value of shares in each other and the principle of market value of assets is to be adopted. These are under consideration."

5.50. **The Committee are suprised to note that though the provisions relating to the valuation of shares of a private company in the Estate Duty and Wealth Tax Acts are not in** pari materia **and despite the clear difference in the relevant phraseology of the two Acts, the Central Board of Direct Taxes had, in March 1968, extended by executive instructions, the application of the Rule framed in this regard under the Wealth-tax Act to the valuation of such shares for purposes of Estate Duty under the Estate Duty Act. While the Committee can understand the need for securing uniformity and simplicity in the valuation of assets for the purpose of Wealth-tax and Estate Duty, they would emphasise that these objectives should not have been achieved in a manner that apparently ignored the difference in language, pattern and context of the statutory provisions governing the methods of valuation under the two Acts.** Prima facie, **it would seem that the Central Board of Direct Taxes had adopted a simplistic approach in dealing with the issue and the Committee are doubtful how far executive instructions issued in this regard could be considered legal. The Committee note that perhaps on more careful thought these instructions have now been modified and the Rule framed under the Wealth-tax Act will no longer apply to the valuation of shares covered by Section 37 of the Estate Duty Act. The Committee trust that in future such decisions would be arrived at only after a comprehensive considerations of all legal and other aspects.**

5.51. **Since it has been pointed out by Audit that the computation of value on the basis of the book value of the assets, instead of the market value thereof, could lead to anamalous results leading**

sometimes to undervaluation and consequential loss of revenue, the Committee would like to be assured that there has been no loss of revenue in the cases in which the value of shares of a private company had been assessed, for purposes of levy of Estate Duty, on the basis of the executive instructions issued in March 1968. The Committee, therefore, desire that such cases decided and settled on this basis between 1968 and 1974 should be reviewed and the tax incorrectly foregone recovered, and the Committee informed.

5.52. Incidentally, the Committee have been informed that 'a specific decision' was taken that in applying the break-up value method, the book value and not the market value of the assets would be taken. It is, however, understood from Audit that according to the final orders passed by the then Finance Minister on the relevant file, the market value of the assets was to be adopted. The Committee would, therefore, like this discrepancy to be reconciled and the correct factual position intimated early.

5.53. The Committee have been informed that detailed instructions have been drawn up regarding the method of computation of the value of shares in a case where two or more companies hold shares in each other and the principle of market value of assets is to be adopted and that these instructions are under consideration. Since an important question of principle is involved here, the Committee desire that the instructions should be finalised carefully and the implications clearly explained to the assessing officers. The Committee would await a further report in this regard.

5.54. For lack of time, the Committee have not been able to examine some of the paragraphs relating to Estate Duty included in Chapter IV of the Reports of the Comptroller & Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee expect, however, that the Department of Revenue & Insurance and the Central Board of Direct Taxes will take necessary remedial action in these cases, in consultation with the Statutory Audit.

NEW DELHI;
April 15, 1976.
Chaitra 26, 1898 (*S*).

H. N. MUKERJEE,
Chairman,
Public Accounts Committee.

APPENDIX I

(*Vide* paragraph 1.22)

COPY *Instruction No.* 544.

F. No. 301|126|72-E.D.

GOVERNMENT OF INDIA/BHARAT SARKAR

CENTRAL BOARD OF DIRECT TAXES

(KENDRIYA PRATYAKSHA KAR BOARD)

New Delhi, the 8*th May*, 1973.

To

All Commissioners of Income-tax.

Sir,

SUBJECT: *Proper Co-ordination between the Assistant Controllers of Estate Duty and the Income-tax Officers|Wealth-tax Officer| Gift-tax Officer—Instructions regarding—.*

I am directed to invite your attention to Board's Instruction No. 172 dated 15th May, 1970 (issued from file No. 4|69|69-ED) which were reiterated in Instruction No. 494 dated 10th January, 1973 (issued from file No. 309|6|72-ED) on the above subject.

2. A case in which the value of an immovable property adopted in estate duty assessment widely varied from its value returned for wealth-tax assessments came to the notice of the Board recently. The deceased died on 18-10-1967. In the estate duty assessment completed on 31-10-1969 the value of the property was taken at Rs. 60,000|. The value of the property was shown at Rs. 1,93,000|- (based on the report of an approved valuer) in the wealth-tax returns for the assessment years from 1966-67 onwards. The wealth-tax returns were filed by the legal representatives of the deceased in September, 1969 *i.e.* before the completion of the estate duty assessment on 31-10-1969. The under-valuation of the property resulted in short assessment of the estate duty by Rs. 1,33,000|- involving duty of Rs. 32,000|- and odd. This loss of revenue would not have arisen if the wealth-tax records of the deceased had been scrutinised by the Assistant Controller of Estate Duty. There may be other instances of this type.

3. The Board, therefore, desire that you should impress upon the Assistant Controllers of Estate Duty the need for looking into the income-tax, wealth-tax and gift-tax records of the deceased to ensure that the estate duty assessment is not at variance with the information available in those records.

4. The Board also wish to reiterate their instructions in F. No. 309|6|72-E.D. dated 10-1-1973. The Income-tax Officers|Wealth-tax Officers should promptly pass on the information about the death of any of their assessees, the principal value of whose estate duty is likely to exceed Rs. 50,000|-, to the Assistant Controller of Estate Duty. They should also communicate to the Assistant Controller of Estate Duty any further information which may be received and which may be relevant to the estate duty assessment of the deceased.

Yours faithfully,
Sd|- Balbir Singh,

Copy forwarded to:—

1. All Additional Commissioners of Income-tax.
2. Directors of Inspection (I.T. & Audit)/(Investigation)/(RS&P).
3. Comptroller & Auditor General of India.
4. Bulletin Section in the DI (RS&P).
5. All Officers and Sections in the Technical Wing of the CBDT.

Sd/- S. Bapu,
Under Secretary,
Central Board of Direct Taxes.

NOTE

Shri G. I. Patel died on 20-12-1962. For W.T. purposes, his valuation date is 31st March. His last W.T. assessment before his death was for A. Y. 1962-63 (valuation date 31-3-1962). A perusal of the assessment order shows that the following amounts have been deducted for tax liabilities:—

Taxes paid payable on account of settlement debited to account in F.Ys. 1960-61 & 1961-62	Rs.	4,58,487
W.T. liabilities for A.Ys. 1958-59 to 1961-62 & 1962-63	Rs.	7,584/-
		Rs. 4,66,071/-

The amount of Rs. 4,58,487|- has been deducted from concealed income|weath of Rs. 5,70,000|- as per settlement in January, 1971.

As the valuation date for the W.T. assessment is different from the date of death, correct liability pointed out by Audit for E.D. assessment will not be the same for W.T. assessment.

APPENDIX II

Statement Showing Conclusions/Recommendations

S. No.	Para No.	Ministry/ Department	Conclusion/ Recommendation
1	2	3	4
1	1.15	Finance (Rev. & Ins.)	The Committee regret that, in this case, although the assessing officer had followed correctly the instructions of the Central Board of Direct Taxes for determining the value of goodwill, he committed a mistake in striking the total of the profits of five years, which resulted in the under-valuation of the interest of the deceased in the goodwill of the firm by Rs. 26,750 and consequential short-levy of estate duty of Rs. 6,711. 'A large number of mistakes' are stated to have been made by the officer in other cases also, some of which have been referred to elsewhere in this Report, necessitating an enquiry by the Special Police Establishment into his *bona fides*. The Committee desire that the enquiry should be completed soon, in case this has not already been done. If malafides are established, appropriate action should be taken against the concerned officer. The Committee would await a further report in this regard.
2	1.16	—do—	The Committee are unable to accept the plea that this case could not be scrutinised by the Internal Audit on account of paucity of

1	2	3	4
			staff. The Committee emphasise the importance of strengthening the Internal Audit Department and urge that its machinery be adequately geared up so that such lapses do not go undetected.
3	1.17	Finance (Rev. & Ins.)	The Committee note that an additional demand has been raised for the duty short-levied and would like to be informed whether the demand has since been recovered.
4	1.27	—do—	This Audit paragraph refers to instances where deductions admissible, under Section 44 of the Estate Duty Act, on account of tax liabilities of the assessees, had not been correctly worked out. While in two cases, the Assistant Controller of Estate Duty had failed to correlate the information available in the relevant Income-tax records with the Estate Duty records, in a third case, the assessing officer had allowed a deduction of Rs. 16,175 towards tax liabilities against the actual liability of Rs. 8,855. The total tax liability of Rs. 8,855 in this case included Rs. 7,320 towards Income-tax and the balance towards other taxes. The assessing officer, however, thought erroneously that Rs. 7,320 represented the Income-tax liability and Rs. 8,855 the liability on account of other taxes, and then aggregated the two amounts. In a fourth case, a deduction of Rs. 3,217 had been allowed by the assessing officer against an ultimate refund of Rs. 2,410 while in a fifth case, the tax liability was deducted twice

			in determining the principal value of a HUF estate. These mistakes resulted in under-assessment of the principal value of the estates to the extent of Rs. 1.15 lakhs and consequential short-levy of Estate Duty of Rs. 19,575.
4	1.28	—do—	Admittedly, these mistakes had occurred on account of non-coordination and lack of application on the part of the officers concerned. The Committee have been repeatedly emphasising the need for effective coordination and correlation between the assessments relating to the different direct taxes and for greater vigilance in the finalisation of assessments. That such mistakes should continue to recur despite the Committee's concern and the plethora of instructions issued from time to time is highly regrettable. The Committee hope that at least after the issue of further instructions in this regard on 8 May, 1973, such mistakes would become a thing of the past. The Committee would like to know whether any action has been taken against the assessing officers involved in these lapses.
5	1.29	—do—	It is distressing that though two of the cases reported by Audit were checked in Internal Audit, the mistakes had gone undetected. In respect of the other three cases, the now-too-familiar plea of 'paucity of trained staff' has been offered. This is a very unsatisfactory state of affairs. Now that a review has taken place and the work of internal audit has been transferred from the staff of the Deputy Controller of Estate Duty to regular Internal Audit parties, the Committee expect more effective and meaningful results.

1	2	3	4
7	1.30	Finance (Rev. & Ins.)	The Committee learn that the tax liabilities had been correctly deducted in the relevant wealth-tax assessment of one of the assessees. Since it is likely that similar mistakes, as noticed in the Estate Duty assessments, might have occurred also in the wealth-tax assessments of the other four assessees, the Committee would like to know whether the relevant assessments have been thoroughly scrutinised.
8	1.47	—do—	This is a case where the value of house property estimated by the 'capitalisation of yield method' had been incorrectly computed for Estate Duty purposes, resulting in an under-assessment of the principal value of the estate by Rs. 97,941 and consequent short-levy of duty of Rs. 29,383. The house property had been assessed by the Assistant Controller of Estate Dtuy on the basis of the valuation certificate furnished by the assessee's valuer on 5 March, 1968, according to which the rent 'realised' was Rs. 59,364, which obviously would not include the notional annual value of the portion occupied by the deceased. The assessing officer, however, after capitalising the annual rental value less admissible deductions on account of taxes, repairs, collection charges, etc. at 16-2/3 years purchase, deducted therefrom an amount of Rs. 78,432 as representing the exemption admissible for self-occupation. According to Audit, this deduction was not in order as the capitalised value computed on the basis of the annual rental income related only to the portion actually let out

			in view of the fact that the valuer had taken account only the gross rent actually 'realised'.
9	1.48	—do—	The Audit objection has, however, not been accepted by the Ministry on the ground that according to a subsequent clarification by the valuer in March 1972, there was a typing error in his original valuation report of 5th March 1968 and that the gross rent of Rs. 59,364 represented the rent 'realisable' (and not rent 'realised') and appertained, therefore, to the entire building including the self-occupied portion. This letter, strangely, was obtained four years after the original valuation report, (on the basis of which the assessment was completed), had been furnished by the valuer and that too—after the mistake was pointed out by the Revenue Audit in January 1972. It is also not clear from the assessment records whether the assessing officer had independently verified the rents received. Besides, the deceased does not appear to have claimed any deduction for the self-occupied portion for the purposes of Income-tax, and if any such deduction had been claimed on this account, it had not been correlated either by the Assistant Controller of Estate Duty or the Inspector concerned. In the circumstances and also in view of the fact that the *bonafides* of the officer who had assessed this case are suspect and an enquiry by the Special Police Establishment is pending, the Committee cannot accept the explanation now offered, which can at best be considered to be an after-thought. The Committee would await the outcome of the enquiry which, they presume, should have been completed by now.

1	2	3	4	5
10	1.49	Finance (Rev. & Ins.)	No doubt, at the Committee's instance, a fresh valuation of the property in question has been done by the District Valuation Officer and the difference between his valuation and that of the assessee's valuer is seen to be nominal. The Committee, however, find that the assessee's valuer had adopted the capitalisation rate at 6 per cent (16.66 times) whereas the District Valuation Officer has adopted a rate of 7 per cent (14.3 times). The Committee would like to be informed of the reasons for the District Valuation Officer adopting the lower multiple and whether the Ministry concur therewith. Further, according to the District Valuation Officer's report, the value of the self-occupied portion alone (6th floor) is Rs. 1,49,876, by adopting the cost of construction method' for valuation. It would be worthwhile to examine whether the Valuation Officer had estimated the value of the entire building by this method, for it is not unlikely that the value computed on this basis would be much more than the value actually assessed by adopting the 'capitalisation of yield method'.	
11	1.50	—do—	The Committee learn from Audit that the gross annual value of the entire property was adopted as Rs. 49,997 even for the assessment year 1968-69. However, according to the District Valuation Officer's	

			Report, the actual rent realised from the rented portion of the property was Rs. 54,191. Since a lower value has apparently been adopted in the Income-tax assessment, the Committee would like to know whether any steps have been taken by the Department to revise the relevant Income-tax assessments.
12	1.51	—do—	Under Section 33(1) (n) of the Estate Duty Act, 1953, one house or part thereof exclusively used by the deceased for his residence is not to be included in the principal value of the estate to the extent of Rs. 1 lakh. In the original Estate Duty assessment in this case, the entire value of the 6th floor had been exempted as its value as then estimated (Rs. 78,432) was below the exemption limit of Rs. 1 lakh. Since the 6th floor has subsequently been valued by the District Valuation Officer at Rs. 1,49,876, which is above the exemption limit, the value of this portion in excess of Rs. 1 lakh will, in any case, have to be added to the estate. The Committee would, therefore, like to be informed whether the earlier assessment has at least been revised to levy duty on the value of the self-occupied portion in excess of the exemption limit.
13	1.52	—do—	From the foregoing paragraphs, it is evident that the property in question has been valued differently for the purposes of the different Direct Taxes, and that there has been little or no coordination between the different assessing officers. The Committee desire

1	2	3	4
			that action should be taken to revise the direct tax assessments, wherever necessary, and to realise the additional taxes due along with whatever consequential action may ensue.
14	2.12	Finance (Rev. & Ins.)	The Committee take a serious view of the number of avoidable mistakes in the computation of the value of the estate that have come to notice in this case, resulting in the under-assessment of the principal value of the estate by Rs. 5,85,973 and consequential short-levy of duty of Rs. 4,27,413. The officer who handled the case was an experienced officer with about 16 years service at the relevant time. *Prima facie*, therefore, it would appear that either the officer was grossly negligent in the discharge of his duties or that the mistakes were deliberate and malafide. What is distressing is that the same officer has been responsible for the mistakes and omissions in as many as 8 cases commented upon in this Audit Report and four other cases included in the Audit Report for the year 1970-71. A review of all the Estate Duty assessments completed by this particular officer has disclosed that out of 297 assessments completed by him, mistakes were detected in 26 cases out of which 19 had been reported by the Revenue Audit, involving an aggregate tax effect of Rs. 5.32 lakhs. All this has necessitated a probe into the *bona fides* of the officer by the Special Police Establishment. The performance of the offier, thus, makes truly distressing reading. The

			Committee have no doubt that action would be taken against the delinquent officer for the lapses detected and established so as to serve as a deterrent to others.
15	2.13	—do—	The Committee presume that the assessment in this particular case would have been revised by now and the duty under-assessed recovered. This needs to be confirmed.
16	2.20	—do—	The Committee are concerned to note that while computing the principal value of an estate, the value of 720 shares held by the deceased in a company had been omitted to be included in the estate by the Estate Duty Officer, resulting in under-assessment of the value of the estate by Rs. 17,381 and consequential short-levy of duty of Rs. 14,938. With a little more care, a simple mistake like this could well have been avoided.
17	2.21	—do—	What causes greater concern to the Committee is that the value of these shares had not been returned by the deceased in his wealth-tax assessments and since the time-limit for initiating action under Section 17(1) (a) expired on 31 March 1972, no action is possible now to revise the relevant wealth-tax assessment. Apparently, there has been a failure to correlate the assessments under the various direct tax laws. That this should be so despite repeated exhortations of the Committee in the past is regrettable. However, since these shares had been held by the deceased jointly with his daughter, the Committee would like to know whether they have at least been assessed in the hands of the joint holder. The Committee would

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			also like to be informed whether any wealth-tax assessment was made on the executors|administrators of the estate of the deceased till the estate was completely distributed and, if so, whether the shares have been assessed to tax in their hands.
18	2.31	Finance (Rev. & Ins.)	The Committee are concerned to note in this case that failure to include the life interest of the deceased in the income of her pre-deceased husband, valued at Rs. 6.12 lakhs, in the principal value of the estate had resulted in a short-levy of Rs. 1.86 lakhs. It appears that no attempt had been made by the assessing officer to ascertain independently the source of income of the deceased apart from merely relying on the statement made by the accountable person. Since the deceased was admittedly also an income-tax assessee, it should have been possible for the assessing officer to trace the source of income by a scrutiny and correlation of the relevant income-tax assessments. That this was not done would indicate that the assessment had been completed in a perfunctory manner. The Committee take a serious view of the lapse and desire fixation of responsibility for taking suitable action.
19	2.32	—do—	It is significant that the accountable person in this case had stated, in reply to a questionnaire issued by the Assistant Controller of Estate Duty, that the source of income was 'not known'. The Committee desire that the case should be re-examined with a view

			to ascertaining if this statement made by the accountable person was *bonafide* or was intended to suppress the relevant facts before the assessing officer. In case the accountable person is found to have made a false declaration with a view to concealing the value of the estate and thereby evading tax, penal action, in accordance with the law, should be initiated.
20	2.33	—do—	The Committee note that the principal value of the estate has been re-assessed by including the value of the life interest of the deceased in the estate left by the pre-deceased husband. The Committee would like to be informed of the value of the demand raised as a result of the reassessment and the position of recovery of the tax due.
21	3.9	—do—	Under Section 33(1) (n) of the Estate Duty Act, exemption from Estate Duty in respect of a house or part thereof exclusively used by the deceased for his residence is admissible only in respect of properties belonging to the deceased and passing on his death. In the present case the house property in question belonged to a Trust and the deceased had only a life interest therein. In the light of an opinion given earlier by the Law Ministry (with reference to two similar cases commented upon in the Audit Report for the year 1970-71) that the provision of Section 33(1) (n) does not speak of 'interest in property' but property itself, the Committee had felt, in paragraph 4.27 of their 88th Report (Fifth Lok Sabha) that the inclusion of life interest for exemption under this Section did not appear to be

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			legally valid. In paragraph 4.28 of the Report, the Committee had accordingly desired that the position in law should be clarified for the guidance of the Estate Duty Officers, in addition to conducting a test check in other charges to see whether similar mistakes had taken place.
22	3.10	Finance (Rev. & Ins.)	The Committee have been informed that the legal position in this regard is not entirely free from doubt and that different Tribunals have expressed different views on the subject. A deeper examination of the legalities thus becomes necessary. Much time, however, has elapsed and the Committee urge that the final opinion of the Ministry of Law should be obtained, if it has not already been done, and the correct legal position intimated to the assessing officers. The latest position in this regard should be communicated forthwith to the Committee. It should also be examined whether any amendment to the law is necessary to make it clear whether the expression 'property' in Section 33(1)(n) of the Act means only property or includes also interest in property.
23	4.14	—do—	Under Section 17 of the Estate Duty Act, if a deceased had transferred any property to a controlled company and a benefit had accrued to him from that company in the three years preceding his death, a proportion of the net assets of the company, which is determined by comparing the aggregate value of the benefits accuring to the deceased in the last three years with the aggregate amount of

			the company's net income in the relevant period, is deemed to be property passing on death and is assessable to Estate Duty. Under Rules 9 and 10 of the Estate Duty (Controlled Companies) Rules, 1953, in working out the aggregate income of the company for this purpose, no deduction is admissible in respect of payment of interest on debentures in the company and correspondingly no deduction is to be made for liabilities in respect of these debentures while computing the net assets of the company. In the present case, the Appellate Tribunal had held that certain payments of interest should be treated as 'interest on debentures' and added to assessed income. However, while giving effect to the Appellate order, the amount to which this interest related had not been treated as 'debentures' and deducted from the liabilities. An interest of Rs. 1,06,817 had also been erroneously added twice to the income. As a result of these mistakes, the principal value of the estate was under-assessed by Rs. 8.15 lakhs and an amount of Rs. 1.82 lakhs short-levied as duty.
24	4.15	—do—	While admitting the mistakes, the Ministry has, however, stated that this was 'a very complex case' and the legal position complicated. The Committee have also been informed that the legal provisions relating to interest in controlled companies are broadly based on similar provisions in the Estate Duty Act of the United Kingdom with variations to suit Indian conditions and that the law in this regard might have to be changed. The Committee would, therefore, recommend that this entire question should be reviewed and necessary changes brought about soon in the Act and the rules framed carefully so as to remove all ambiguities. The Committee would

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			also await a report on the recovery of the additional duty due in the present case.
25	5.21	Finance (Rev. & Ins.)	This is yet another instance of under-assessment arising out of failure to correlate the assessments under the different direct tax laws. The Committee are surprised that two valuation reports had been issued in respect of the same house property, both purporting to have been prepared and signed by the same valuer on the same day, one showing the fair rent at Rs. 1,850 p.m. and the other at Rs. 1,550 p.m. While the lower rent of Rs. 1,550 had been adopted in the estate duty assessment, the higher rent of Rs. 1,850 p.m. had been adopted for the purposes of wealth-tax. The adoption of the lower rent had resulted in an under-valuation of the estate by Rs. 48,900. It was, however, contended by the Department that the higher rent was as on 31 March, 1968, and the lower one was as on 10 October, 1968, and that as rents in Calcutta might have fallen considerably during the intervening period of time on account of disturbed conditions then prevailing in the city, the Estate Duty Officer had, perhaps, considered that the unrented units would be of a lesser value and had taken the lesser rental for those unrented units. It is clear from the evidence that the alleged fall in rents in Calcutta was little more than a hypothetical deduction based only on a 'surmise'. Besides, in the absence of any recorded reasons, it is not clear from the assessment order whether the officer had at

			all applied his mind and satisfied himself that there was a justification for reducing the rent. The Committee have been informed that since the lower value had been inadvertantly adopted by the assessing officer, there was also no occasion to verify the valuer's estimate. The Committee are not impressed by this rather peculiar explanation. The Committee, therefore, desire that the matter should be gone into thoroughly in order to determine the precise factual position and take corrective action as may be necessary.
26	5.22	—do—	The Committee are concerned that in serveral cases, the assessing officers do not record their reasons for taking a particular point of view, as a result of which it becomes difficult subsequently to determine the rationale for the adoption of such a view, especially if it happens to differ from the ordinarily accepted view on a subject. The Committee would, therefore, urge the Central Board of Direct Taxes to issue necessary instructions to the assessing officers and ensure that adequate reasons for arriving at a particular conclusion are invariably recorded by them.
27	5.23	—do—	The Committee are given to understand that in the assessee's Income-tax assessment for the assessment year 1969-70, completed on 30 November, 1971, the annual value of the house had been adopted as Rs. 3,493 for the rented portion and Rs. 3,493 for the self-occupied portion even though the valuer had certified the rent at Rs. 1,850 p.m. for wealth-tax purposes on 14 December, 1968, on the basis of which the annual rental value would work out to Rs. 22,200. Since this implies that the assessee's income has also

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			been under-assessed, the Committee desire that the entire assessment of taxes (Income-tax, Wealth-tax, Estate Duty etc.) payable by the assessee should be reviewed and necessary rectificatory action taken and the Committee informed.
28	5.32	Finance (Rev. & Ins.)	This is a case of over-assessment, of the principal value of an estate, to the extent of Rs. 50,000, by the inclusion of gifts made by the deceased more than two years prior to his death. The Committee are distressed that such a patent mistake should have been committed by the assessing officer. What is more surprising is that in another case, the same officer should have omitted to include in the estate the value of a gift made within two years preceding the death of the deceased, while, under Section 9 of the Estate Duty Act, 1953, it should have been included in the estate. The Committee are perturbed by the intriguing series of mistakes committed by this particular officer, mistakes which have been referred to elsewhere in this Report. This appears to be a case where disciplinary action, apart from whatever inquiry might be going on is called for without delay.
29	5.50	—do—	The Committee are surprised to note that though the provisions relating to the valuation of shares of a private company in the Estate Duty and Wealth Tax Acts are not in *pari materia* and despite the clear difference in the relevant phraseology of the two

			Acts, the Central Board of Direct Taxes had, in March 1968, extended by executive instructions, the application of the Rule framed in this regard under the Wealth-tax Act to the valuation of such shares for purposes of Estate Duty under the Estate Duty Act. While the Committee can understand the need for securing uniformity and simplicity in the valuation of assets for the purpose of Wealth-tax and Estate Duty, they would emphasise that these objectives should not have been achieved in a manner that apparently ignored the difference in language, pattern and context of the statutory provisions governing the methods of valuation under the two Acts. *Prima facie,* it would seem that the Central Board of Direct Taxes had adopted a simplistic approach in dealing with the issue and the Committee are doubtful how far executive instructions issued in this regard could be considered legal. The Committee note that perhaps on more careful thought these instructions have now been modified and the Rule framed under the Wealth-tax Act will no longer apply to the valuation of shares covered by Section 37 of the Estate Duty Act. The Committee trust that in future such decisions would be arrived at only after a comprehensive considerations of all legal and other aspects.
30	5.51	—do—	Since it has been pointed out by Audit that the computation of value on the basis of the book value of the assets, instead of the market value thereof, could lead to anomalous results leading sometimes to undervaluation and consequential loss of revenue, the Committee would like to be assured that there has been no loss of

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			revenue in the cases in which the value of shares of a private company had been assessed, for purposes of levy of Estate Duty, on the basis of the executive instructions issued in March 1968. The Committee, therefore, desire that such cases decided and settled on this basis between 1968 and 1974 should be reviewed and the tax incorrectly foregone recovered, and the Committee informed.
31	5.52	Finance (Rev. & Ins.)	Incidentally, the Committee have been informed that 'a specific decision' was taken that in applying the break-up value method, the book value and not the market value of the assets would be taken. It is, however, understood from Audit that according to the final orders passed by the then Financial Minister on the relevant file, the market value of the assets was to be adopted. The Committee would, therefore, like this discrepancy to be reconciled and the correct factual position intimated early.
32	5.53	—do—	The Committee have been informed that detailed instructions have been drawn up regarding the method of computation of the value of shares in a case where two or more companies hold shares in each other and the principle of market value of assets is to be adopted and that these instructions are under consideration. Since an important question of principle is involved here, the Committee desire that the instructions should be finalised carefully and the implications clearly explained to the assessing officers. The Committee would await a further report in this regard.

32	5.54	—do—	For lack of time, the Committee have not been able to examine some of the paragraphs relating to Estate Duty included in Chapter IV of the Reports of the Comptroller & Auditor General of India for the years 1971-72 and 1972-73, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee expect, however, that the Department of Revenue & Insurance and the Central Board of Direct Taxes will take necessary remedial action in these cases, in consultation with the Statutory Audit.

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