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PUBLIC ACCOUNTS COMMITTEE (1972-73)

(FIFTH LOK SABHA)

FIFTY-FIRST REPORT

[Chapter IV of Audit Report (Civil) Revenue Receipts, 1970 and Report of the Comptroller and Auditor General of India for 1969-70, Central Government (Civil) Revenue Receipts-relating to Income Tax]

LOK SABHA SECRETARI
NEW DELHI

August, 1972 Bhadra, 1894 (Saka)
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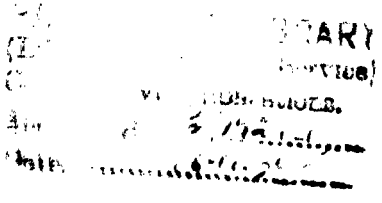

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(1972-73)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Fifty-First Report of the Public Accounts Committee (Fifth Lok Sabha) on Chapter IV of Audit Report (Civil), Revenue Receipts, 1970 and Report of the Comptroller and Auditor General of India for the year 1969-70, Central Government (Civil), Revenue Receipts relating to Income Tax.

2. The Audit Report (Civil), Revenue Receipts, 1970 was laid on the Table of the House on the 19th May, 1970 and the Report of the Comptroller and Auditor General of India for 1969-70, Central Government (Civil), Revenue Receipts was laid on the Table of the House on 21st July, 1971. The Public Accounts Committee (1971-72) examined the paragraphs relating to Income Tax at their sittings held on the 8th, 11th, 12th, 13th and 14th October, 1971. This Report was considered and finalised by the Public Accounts Committee (1972-73) at their sitting held on the 24th August, 1972 (AN). Minutes of the sittings form part II* of the Report.

3. A statement showing the summary of the main conclusions recommendations of the Committee is appended to the Report (Appendix). For facility of reference, these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the Comptroller and Auditor General of India.

5. 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;
30*th August*, 1972.
8*th Bhadra*, 1894 (*S*).

ERA SEZHIYAN,
Chairman,
Public Accounts Committee.

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

CHAPTER I

TAX COLLECTIONS

Corporation Tax and Taxes on income other than Corporation Tax

Audit Paragraph

1.1. The total proceeds from both Corporation Tax and Taxes on Income other than Corporation Tax (excluding the portion of Income-tax which was assigned to the State Governments) for the year 1969-70 amounted to Rs. 508.66 crores. The figures for the three years 1967-68, 1968-69 and 1969-70 are as follows:—

(In crores of rupees)

	1967-68	1968-69	1969-70
Taxes on Income other than Corporation Tax (Gross proceeds)	325·89	378·47	448·45
Deduct share of net proceeds assigned to States	174·52	194·51	293·18
NET	151·37	183·96	155·27
Add Corporation Tax	310·51	299·77	353·39
	461·88	483·73	508·66

1.2. The gross receipts under Taxes on Income other than Corporation Tax during 1969-70 went up by Rs. 69.98 crores when compared with the receipts during 1968-69. The collections of Corporation Tax during the same period registered an increase of Rs. 53.62 crores.

(ii) The total number of assessees in the books of the department as on 31st March, 1970 was 29,10,341. As compared to the previous year ending 31st March, 1969 there was a rise of 2,36,880 cases. The figures status-wise are:—

	As on 31st March, 1969	As on 31st March, 1970
Individuals	21,46,330	23,65,765
Hindu Undivided Family	1,44,056	1,49,775
Firms	3,39,921	3,50,879
Companies	26,668	27,734
Others	16,486	16,188
TOTAL	26,73,461	29,10,341

(iii) Category-wise number of assessees is indicated in the following table—

	As on 31st March, 1969	As on 31st March, 1970
Business cases having income over Rs. 25,000 . . .	1,37,324	1,61,485
Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,37,265	1,60,009
usiness cases having income over Rs. 7,500 but not exceeding Rs. 15,000	3,25,392	3,67,233
All other cases except those mentioned in category below and refund cases	11,45,254	12,22,767
Government salary cases and non-Government salary cases below Rs. 18,000	9,28,266*	9,98,847@
	26,73,461	29,10,341

[Paragraph 33—of the Report of the Comptroller and Auditor General—1969-70—Central Government (Civil)—Revenue Receipts]

1.3. The Committee drew attention of the witness to the fact that from 1965-66 to 1968-69, there was a shortfall in the collection of corporation tax as compared with the budget estimates as indicated below vide 4-III of CAG's Report for the year 1969-70:—

Year	Budget Estimates	Actual	Shortfall/ Excess (in crores)	Percentage of Variation
1965-66	371·60	304·84	(—)66·76	(—)18·00
1966-67	372·07	330·80	(— 41·27	(—)11·09
1967-68	350·00	310·51	(—)39·49	(— 11·28
1968-69	320·35	259·77	— 60·58	— 0·22
1969-70	326 20	353·39	( )27·19	(+) 8·34

1.4. The collection of tax on income exceeded the budget estimates as follows:

Year	Budget Estimates	Actual	Excess (in crores)	Percentage of variation
1966-67	292·90	306·63	13·73	4·69
1967-68	290·00	325·89	35·89	12·38
1968-69	319·65	387·47	58·82	18· 40
1969-70	362·30	448·45	86·15	23·78

*Includes 'No demand' salary cases numbering — 3,90,990.
@Includes 'No demand' salary cases numbering — 3,95,354.

1.5. The Committee wanted to know the reasons for the persistent over-estimation in the case of corporate tax and under-estimation in regard to tax on income. The Ministry, in a note submitted to the Committee, stated: "Ever since the Chinese aggression in 1962 Indian economy has been in a state of flux. The recession generated after that has proved to be an unsettling factor. Another factor which affected the stability of the economy was the Indo-Pak conflict in 1965." In addition to the above factors which made the question of correct estimation of budgetary receipts a somewhat difficult task, other important factors which contributed to the same were the changes effected under Finance Acts, 1965, 1966 and 1968 in respect of corporate income and the exact impact of these changes could not be foreseen with any amount of precision at the time of framing the estimates. It may, however, be pointed out that the variations in the actual collections as compared to the revised budget estimates were much less excepting for the year 1968-69. The figures for the relevant years are given below:—

Year	Budget Estimates (in crores)	Revised Estimates (in crores)	Actuals (in crores	Percentage shortfall as against budget estimates	Percentage shortfall as against revised estimates
1965-66 . .	371·60	330	304·84	18	7·6
1966-67 . .	372·07	345	330·80	11·09	4·1
1967-68 . .	350·00	319	310·51	11·28	2·66
1968-69 . .	320·35	322	299·77	6·4	6·9

1.6. During evidence, the Finance Secretary explained as follows:—

> "The reasons for sudden variation particularly in respect of corporate tax are not so much any changes in rates etc. as the total charge in the economic conditions prevailing in the country during those particular years. These were the years when industrial recession was being noticed: these were the years of severe drought when the corporate sector had suffered at various points. For instance, there was a very big slump in the engineering and jute industries. There was a recession which affected both the current and arrear collection in the industries which were in considerable difficulties in making payments at that time. There were increases in the wage bills and expenses on account of raw materials of the

various companies, which again reduced their profitability. If you would recollect, these were the years when there was a very sharp rise in prices over a few months. The wages were also escalating at that particular moment. This resulted in a total reduction in corporate tax. This situation continued for two or three years. On the other hand, as far as individual income-tax is concerned, because of larger deductions at source in the case of the employees, the wage-bills increasing meant also a large deduction of income-tax. So, the receipts under that head increased considerably."

1.7. The witness added: "You will notice that even the estimates made of corporation taxes continued in the years also to decline. Even at the budget stage, it was estimated that there would be a fall. In 1966-67, it was Rs. 372 crores while in 1967-68, it was Rs. 350 crores and in 1968-69, it was Rs. 320 crores. So, it was foreseen that there was going to be a fall. The question was the extent of the fall.

On the other hand, as far as income-tax was concerned fall was not anticipated. In one year, the estimate was Rs. 290 crores, then it was raised to Rs. 319 crores and then to Rs. 362 crores."

1.8. When asked to state the total amount of tax realised during 1967-68 and 1968-69 from individuals, Hindu undivided families, firms, companies and others, the Ministry, in a written note stated: "The Department is not maintaining any separate statistics regarding the realisation of tax from the five categories mentioned above. The statistics are maintained only regarding the collections made under the following heads:

(i) Corporation Tax.

(ii) Taxes on Income other than Corporation Tax.

It is, therefore, regretted that the information asked for cannot be furnished in the required form since the compilation of statistics categorywise would necessitate the scrutiny of individual files of each and every tax-payer."

1.9. The Committee enquired whether there was any machinery either in the Ministry or in the circles of the Income-tax Department to assess amount of tax on income collected category-wise (i.e. businesss cases involving over Rs. 25,000; cases having income over Rs. 15,000 but not exceeding Rs. 25,000; cases having income over

Rs. 7,500 but not exceeding Rs. 15,000; all other cases except those Government and non-Government salary and refund cases; and Government salary and non-Government salary cases below Rs. 18,000, so that projections could be easily made whenever any change was effected in the tax structure. The Chairman, Central Board of Direct Taxes stated: "I am sorry but we do not keep it in that form. The form in which it is normally maintained is what is known as the 'Demand Collection Register' which gives the number of cases disposed of by the Income-tax Officer, the amount of demand raised in each case etc. The Register includes all types of cases disposed of."

1.10. The witness added: "The information regarding what we call Category I cases—that is, where the business income is more than Rs. 25,000—is available with each Ward of the Income-tax Officer concerned. That makes the basis of the estimates for the budget. The Director of Research also collects information regarding company cases and he tries to collect their current balance sheets so that when the projections from below come up to the Board, the Board takes into account the economic trends and considers whether the budget is based largely on the figures of the past—because what is available with the Income-tax Officers is information regarding categories of cases and the approximate amount which was collected in past years. So, considering the economic trends, which would be reflected in the current year, an adjustment is made at the Board's level. The Director of Inspection (RSP), that is, Research, Statistics and Publications obtains the balance sheets of bigger companies also so as to know the trend. The budget largely depends upon the advance tax collections and, therefore, the law imposes on the tax payer the duty to file a revised advance tax estimate, if the income is likely to exceed the amount on the basis of which the original advance tax was demanded. It is only about December or so that a more or less reasonable picture can be had."

1.11. The Committee pointed out that whenever the Finance Bill was introduced in Parliament and when any change was contemplated in the tax structure, the rate of tax on income slabs was being revised i.e. upto 7500, 7500 to 15000, 15000 to 25000 and above. The Committee enquired whether it was not necessary that the Department should have statistics with regard to the number of assessments that fell under each category alongwith the amount of tax collected therefrom so that the impact of the tax variation could be easily known. The witness stated: "I appreciate the necessity that we should be in a position to budget as precisely as possible but the point is that in these cases, which reflect the

categories I and II for example, in the year, say, 1970-71 we raised advance tax in respect of these categories I and II. In this, some items of category III also are included. Now, this provides us with largely a barometer for the measurement of the tax potential.

Now, when the assessment is made, I quite agree that there may be a slight variation. But in this figure which has been built up from the charges of the Income-tax Officers, we do, generally, take into account as against advance tax, what would be the approximate contribution that the department would be making on the basis of the assessments when finally made. This is coupled with the fact, the question I think becomes simpler on this ground that now the assessee is required to revise his estimate of advance taxes. Previously the position was that the assessee was not bound to revise the tax payable upwards, he could only revise it downwards."

1.12. The witness added: "We have got our annual statistics. Unfortunately, those statistics have not been compiled up-to-date. I am told that for the year 1967-68, it is due to be published in a fortnight's time and for the year 1968-69, it is half-way through. For the year 1970, unfortunately, it will take quite some time and I must admit that the department does suffer from certain difficulties which I would very much wish you to reckon with." The Finance Secretary added: "The position is the same that the annual statistics are available, but they have not been compiled. However, we can build up that and that is quite obvious indeed."

1.13. Pointing out that framing the budget and effecting changes in the tax structure was an annual feature, the Committee enquired how the Department could get a precise estimate without the basis of the demand made and tax collected categorywise. The witness stated: "The point was that broad points are available under these and then base those figures for working out the demand made and the amount collected categorywise. But this complication was out of date for a few years. Again this can be done and with the classification and distribution among the different income groups and different ranges, if an extrapollation is made, I think, a fair accuracy one could get."

1.14. The Committee pointed out that according to the Report of the Working Group on the Central Direct Taxes Administration of the Administrative Reforms Commission, there were at present three agencies collecting information and conducting research on various problems of taxation namely the Tax Research Unit attached to the Economic Affairs Department, the Tax Planning Section,

functioning under the Central Board of Direct Taxes and the Directorate of Statistics, Research and Publications functioning as an attached office under the Board. The Committee desired to know their functions and the effort made to bring about coordination among them. The Finance Secretary stated: "The functions of these three units are complementary to each other. The Unit in the Department of Economic Affairs takes the total picture with regard to tax receipts more based on the economic trend in the country as to how the tax receipts may grow in different categories and different items; whether under incometax, corporation tax or excise tax and customs and various other sources of revenue. The Department of Economic Affairs is a different unit altogether. The Tax Planning Unit which is directly under the Board of Revenue which looks into this matter in greater detail the affairs of direct taxes."

1.15. The Committee drew attention to the observation of the Working Group that there was no coordination among these agencies and that these should be amalgamated and brought under the direct control of the senior member. The witness stated: "The co-ordination between the two is absolutely essential. But there is no doubt that they should not pull in different directions and not mak use of statistics. But the other one relatnig to Tax Planning and the Directorate of Statistics which are both under the Central Board of Direct Taxes, they can certainly be brought together as more coherent group. There is no contradiction as far as statistics are concerned. The Unit under the Department of Economic Affairs is slightly different in the sense that it does not deal with income tax and so on, but it also deals with customs and excise duty as also other taxes. But the two Units, i.e., Tax Planning and the Statistics Unit under the Department of Direct Taxes can certainly be brought together."

1.16. The witness added: "We have not been able to build up as good a Statistical Organisation as we ought to. The organisation is not upto-date. They are not using the best machines and modern aid. We should go ahead in such a complex system. We should be able to make use of the machines and computers, because with such a large number of data to be processed, it is no longer possible to do mechanically; it must take use of machines and modern aid."

1.17. When enquired whether the Department had thought of introducing computers in the system of collection and compilation of statistics, the Chairman, Central Board of Direct Taxes stated: "We used to compile our satistics on the Hollerith machine and we

even now do it. Our 1967-68 annual review was prepared on computers if I remember correctly. We got most of our cards punched outside, because we did not have enough facilities for punching, we got it compiled in the computer centre. As far as my recollection goes, we got it compiled there. The delay was primarily in the punching of cards. What we find is that in view of the workload that has increased enormously, we would have gone in for computers. We have already got arrangements with the Computer Centre at Ramakrishna Puram. The Government have got their own computer centre which would process these things. We have already had discussions on this ground. But the delay occurs because the information which is fed....is compiled on the basis of the form prepared by the clerks on the completion of the assessments. These have to be translated into the punching cards and that is delaying the whole process. But we have arrangements with the Computer Centre."

1.18. The Finance Secretary added: "We must use computers now. The volume of work has increased so much, the number of assessees is so large and the amount of information needed is so varied with regard to the classes and classification of income groups that this processing cannot be done other than by computers. The more quickly we go to the computers for this purpose—may be this will need a change in the type of information which has to be fed back to us and that will have to be examined—the better it will be. But there will always be a delay of about a year because it will have to be after the completion...What is completed in March, 1971 would be available more or less six months later. But even that will be much better than the present delay. We are trying to go in for computers as quickly as possible. We should try and see whether we cannot expedite this proposal."

1.19. The Committee drew attention of the witness to the letter dated the 7th September, 1971 from the Ministry, in reply to a query of the Committee, wherein it was stated that "no statistics regarding the classification of companies into manufacturing concerns, trading companies and investment companies were maintained and hence it would not be possible to easily compile the total tax demanded and the tax collected from these different types of companies," and pointed out that the Department did not have the statistics category-wise classification with the result that they were unable to study the impact of any change in the tax structure which led to variation between estimates and actuals to the extent of 25 per cent. The witness stated: "While I accept the deficiency in the statistical return, my submission is that when there is a situation of

serious fluctuation in the total economy, when there is no stability either with regard to the rate of growth or industrial production, it becomes extremely difficult to forecast as to what the trends are likely to be."

1.20. When pointed out that in U.K., though they were also subjected to very many stresses and strains due to depression and so on, yet the extent of variation between budget estimates and actuals was less than two to three per cent plus or minus, the Finance Secretary stated: "While I agree that we must take every possible measure to improve our statistical base and the whole statistical system and there is need for very considerable improvement and strengthening the department, the units and also the whole procedure, at this stage I cannot confidently say that we should be able to bring the variation to as low as 5 per cent. My own personal feeling is that there are so many fluctuations and changes taking place that it is not possible to envisage with that much of accuracy. But their system to be far more accurate than ours. Apart from deputing some people, we can certainly take up a detailed study of this subject."

1.21. The Committee drew attention of the witness to the recommendations of the Committee in their 27th Report wherein it was stressed that variation exceeding three to four per cent should be regarded as a matter of concern requiring remedial measures and pointed out that the steps taken by the Ministry, pursuant to the above recommendation, to fill up the deficiency in the collection of statistics, showed no improvement. When asked for the reasons, the witness stated: "We have tried to move forward, but unfortunately what was thought of could not be implemented for one reason or the other; Questions like 'how could this be done' and 'it is not possible' and so forth arose. But I agree that this needs considerable improvement and a fresh study and a fresh analysis of the whole system. All these measures that have been taken have obviously not met the situation and therefore still more measures are needed. Those were certain measures which were taken and which have not met the situation. This needs a fresh examination and study which will show where we are and how we are going wrong."

1.22. The Ministry in a note, further stated: "It is admitted that the Ministry have sometimes not been able to furnish certain statistics in the form required by the Committee. The main reason for this is that such statistics are not maintained by the Department. However, the Ministry intend to take steps to maintain in future statistics in the form required by the Committee. For this pur-

pose they intend to convene a meeting of the representatives of the C&AG and the Department to agree upon the type of statistics and the manner in which the same should be maintained. Once this is done it would be possible for the Department to issue instructions to the Commissioners of Income-tax to collect such statistics as a matter of course. It is hoped that this suggestion would meet the approval of the Committee."

1.23. The need for preparing accurate estimates of taxes on income has been engaging the attention of the Committee from time to time. In paragraph 4 of their very first Report on Revenue Receipts viz. Ninth Report (1962-63), the Committee had observed that an overall variation exceeding 3 to 4 per cent should be regarded as a matter of concern requiring special remedial measures. During the years 1965-66 to 1968-69 there was over-estimation in regard to Corporation Taxes to the extent of 18.09 per cent in 1965-66, 11.09 per cent in 1966-67, 11.28 per cent in 1967-68 and 6.42 per cent in 1968-69. In the case of income-tax there was under-estimation to the extent of 4.69 per cent in 1966-67, 12.38 per cent in 1967-68, 18.40 per cent in 1968-69 and 23.78 per cent in 1969-70. In paragraph 2 of their 27th Report (1964-65) the Committee had emphasised that effective steps should be taken to fill up the deficiency in collection of reliable statistics of economic growth so that estimates of revenue are prepared on a realistic basis. The Committee regret, however, that the Ministry of Finance have not been able to make much headway in this direction. They desire that the Ministry should build up a sound statistical base without further delay.

1.24. At present, there are three agencies collecting information and conducting research on tax problems viz. (i) Tax Research Unit attached to the Department of Economic Affairs, (ii) Tax Planning Section, functioning under the Central Board of Direct Taxes and (iii) Directorate of Statistics, Research and Publications functioning as an attached office under the Central Board of Direct Taxes. The Working group of Administrative Reforms Commission observed that there was no coordination among these three agencies and that these should be amalgamated and brought under the direct control of the senior member of the Board incharge of Tax Planning and Assessment. Ample time has elapsed for Government to have considered the Administrative Reforms Commission's recommendations in this respect in a comprehensive manner. The Committee feel that on grounds of efficiency and economy this suggestion is of sufficient importance to merit early action. As a first step in this direction the Units under the Central Board of Direct Taxes could be amalgamated forthwith.

1.25. It is significant that at present the Central Board of Direct Taxes do not have up-to-date statistics which in the opinion of the Committee are an essential prerequisite for making reasonably accurate forecasts of tax receipts. For instance, the Board do not have latest figures of income-tax collected in respect of various income brackets. The Board do not also maintain separate statistics of taxes realised from individuals, Hindu undivided families, firms, companies and others and of number of and taxes realised from various companies such as manufacturing concerns, trading companies and investment companies. The Committee desire that the Board should maintain up-to-date statistics pertaining to all the categories in order to assess the impact of taxation measures at the time of preparing the budget estimates.

1.26. The Committee also desire that the Ministry should study the methods adopted for estimation of revenue receipts in U.K. and other countries where the variation between budget estimates and actuals is not significant in spite of fluctuations in economic conditions and growth. It is needless to point out that incorrect estimation may result sometimes in avoidable revision/imposition of tax levies.

1.27. The number of assessees on record at the end of the years 1964-65 to 1969-70 are as under:—

Year	Total number of assessees	Percentage increase/decrease in the number of assessees when compared with previous year
1964-65	21,26,398	36
1965-66	24,31,536	14
1966-67	27,02,282	11
1967-68	27,08,464	0.2
1968-6	26,73,461	—1.3
1969-70	29,10,341	8.9

1.28. The Committee pointed out that the number of assessees which was keeping an upward trend upto the year 1967-68, had come down during 1968-69 by 35,003 when compared with the year 1967-68 and enquired about the reasons for the decline. The Finance Secretary stated: "Except in 1969, when it had gone down by a few thousands, in every year it has gone up by some lakhs." He added: "As a result of the survey undertaken in 1964—66, there was a very big addition to the number. As a result of this survey, we

added subsequently something like 10 lakhs people. Three lakhs of people had to be removed. But subsequently they found that they were not income tax liable."

1.29. In reply to a question, the Chairman, Central Board of Direct Taxes stated: "There is a reduction. Now if you see our statistics as on 31-3-68, we had one under Category I, 1,29,989 cases and in March, 1971, this has increased to 1,77,553. As I said that the emphasis has changed during this year and we tried to bring in more and more bigger cases. So, we started our usual double process, because those cases which are petty cases and which do not involve unnecessary surcharge etc. In 1968, there is a continuous increase in category I case." The number of business cases with income of Rs. 25,000 was 1,29,989* as on 31st March, 1968 1,37,324 as on 31st March, 1969, 1,61,485 as on 31st March, 1970 and 1,77,553 as on 31-3-1971. The witness added: "You will see the same trend so far as category II cases are concerned. So far as category III cases are concerned, you will find the same trend but there is not much of an increase, while category IV shows a small increase only, because our efforts in those years were concentrated more on bigger cases."

1.30. The Finance Secretary added: "If you see the grand total, you will see that in fact there has been an addition in the numbers. The grand total of 27 lakhs which came down to 26,73,000 went up in 1970 to about 29 lakhs and in 1971 to about 30 lakhs. That indicates that there has been an addition of about 3 lakhs people, who are completely new."

1.31. Drawing attention to the fact that about 10 lakhs assessees were added and that 3 lakhs of them had to be removed subsequently as they were not liable to pay income-tax, the Committee wanted to know the years in which these were removed indicating the category-wise break-up. The Ministry, in a note, stated: "In the course of the general survey conducted in 1965, a very large number of infructuous cases also were added to the number of assessees on the Department's registers. This was due to the fact that the survey officials had been making a rough and ready estimate of the income earned by the small assessees and later, on scrutiny, many of them were found to have income below the taxable limit. When this fact came to the notice of the Central Board of Direct Taxes, they issued instructions under their F.No 81|114|68-IT(B) dated 25-11-1968 to remove the infructuous cases

*According to Audit the figure is 1,23,089.

from the General Index Register. This led to the removal of nearly 4 lakhs cases in three years as per the details given below:—

Year	No. of cases removed from the GIR	No. of cases added as a result of external survey	Net reduction in the number of cases
1968-69	1,38,842	14,922	1,23,920
1969-70	1,31,404	58,255	73,149
1970-71	1,48,055	60,689	87,366
	4,18,301	1,33,866	2,84,435

The cases could obviously relate to only category 5."

1.32. The Committee pointed out that in many professions, people may try to evade the tax, especially the professional lawyers, doctors, Engineers, contractors etc. The Committee enquired whether any concerted efforts had been made in this regard by the Department. The Chairman, Central Board of Direct Taxes, stated: "Our survey operations do have a look to see whether certain doctors or other persons are submitting their returns or not. This is a job we do, but I would not say, case by case."

1.33. The witness added: "Our SIB Branches which are attached to the Commissioners collect a lot of information from the various Departments. We also consult the telephone directory and so on and so forth."

1.34. The Committee desired to be furnished with the statistical information collected by the Special Investigation Branches, with regard to four categories *viz.* lawyers, doctors, contractors and engineers in the cities of Delhi, Madras. Bombay and Calcutta indicating against each category the total number and the number of those who were submitting their returns. The witness stated: "I stand open to correction. I had said that we collect information from various organisations and departments. It is left to the initiative of the Commissioner. Whether he does collect the information or not, he has got a branch for this work. This year he may be collecting information regarding a certain class of people; next year he may be collecting information regarding contractors; the third year he may be collecting information with regard to certain businessmen.". The Finance Secretary added: "We will try to get the information on the different classes of people we have already got

and also collect information with regard to the total number of doctors in three or four big selected centres, because we cannot take it up for the whole country."

1.35. The Committee enquired about the special steps taken by the Department to make survey work more efficient and more useful to the Department. The Chairman, Central Board of Direct Taxes stated: "I may agree that the work of the Internal Survey leaves much to be desired, one of the reasons being that the officers have had too much of a workload which does result in neglect of certain functions.....In spite of the fact that the SIB Branches are allotted specific work, as observed very rightly, in practice the commissioners used to make use of these Branches for other work also."

1.36. The witness added: "What happens is that we have now got an Assistant Director in charge of Intelligence, whose job is to collect information which could not be collected by the SIB Branch which collects more or less mechanically certain types of information. Gradually the functions of the Intelligency Units have been expanded and those of the SIB have become more or less routine."

1.37. The witness further stated: "I must be very frank and say that we were aware of this problem. We have from time to time, though not in a systematic manner, conducted surveys. But the whole problem is, while I will have to be rather frank as to my feelings, that we are suffering from a certain unplanned and chronic shortage of staff. For example, we have this year to complete very large number of assessments because the time limit for completion of assessments was reduced from four years to two years. What happened was that we had to divert some of our staff in order to see that this work is attended to and naturally some other work does suffer. For example, when we go on surveys we do not have any fluid staff available only for the purpose of surveys and sometimes we have to draw field officers, inspectors and so on and divert them towards the surveys. So, what has happened is that the Department has not grown in a planned manner anticipating its future requirements. It is living on the basis of its requirements from time to time as and when a problem comes up. So, we have carried on surveys; it is not that we have not. Today also we carry on surveys but it is on selective basis. There are two systems. One is the internal survey and the other door-to-door survey, which was last conducted, if I remember correctly, in 1965."

1.38. In reply to a question the witness stated that the survey was conducted all over India. When asked to state about the scope, the nature of information collected and the results of the survey, the

Finance Secretary stated: "I am not sure whether any particular proforma was advised to indicate the whole points but since there was a general complaint that people were escaping assessment, our people were asked to make a sort of door-to-door, lane to lane survey to see whether the people are submitting income-tax returns or not..... We have got information as to the end result the end result we have got as to what was the total number of the categories assessed. But the point. . .raised was what was the experience, how it was conducted, what was the result and so on and now we have still to see the report from the different Commissioners; we will analyse, coordinate and correlate and if it is available in a document form, we will send that to you. If it is not available, we will make a study of it and prepare a document and then make it available to you."

1.39. The Committee find that the number of assessees has increased from 21,26,398 in 1964-65 to 29,10,341 in 1969-70. There was an increase of 36 per cent in 1965-65, 14 per cent in 1965-66, 11 per cent in 1966-67, 0.2 per cent in 1967-68 and 8.9 per cent in 1969-70, while there was a decrease of 1.3 per cent in 1968-69. The Committee were informed that the decrease in 1968-69 was due to removal of some 4 lakh assessees found not liable to income-tax out of 10 lakh new assessees added as a result of a special survey undertaken in 1964-65. The Committee were further informed that although there was overall reduction in 1968-69, there was continuous increase in the higher income cases. The number of business cases with income over Rs. 25,000 increased from 1,23,989 as on 31.3.1968 to 1,37,324 as on 31-3-1969, 1,61, 485 as on 13-3-1970 and 1,77,553 as on 31-3-1971. The Committee welcome the change in emphasis in enrolment of new assessees and hope that the surveys will concentrate on cases with revenue potential so that time and labour are not spent on cases which are subsequently to be removed from the registers.

1.40. The Committee are concerned to be informed that the "work of the internal survey leaves much to be desired." The Committee desire the Central Board of Direct Taxes to look into the matter with a view to ensuring proper deployment and utilisation of staff with clear directions and objectives.

1.41. The Committee need harly point out that in evaluating the work of survey done by officers in the field, the tax potential of the cases detected should receive more importance than the total number of new assessees added.

1.42. Pointing out that under the Income-tax Amendment Act, 1970, the assessees were required to make their own assessment of

income and tax payable, the Committee enquired whether it was applicable to small income cases. The Chairman, Central Board of Direct Taxes, stated: "Not exactly so, I may clarify—when the assessees submit the return and if the net tax payable by the assessee is more than Rs. 500 on the basis of his return within one month he should make the self-assessment and then pay the tax, it is not along with the return."

1.43. When asked whether in such cases the Income-tax Officers accepted the assessments without calling for the assessees, the witness replied: "I would not say that this is absolutely correct. I may explain the changes brought about by the Taxation Laws (Amendment) Act, 1970. What happens is that on analysis it was found that about 80 per cent of the cases are small income cases. This is on a rough calculation." The Committee pointed out that in 1970-71 number of cases under small assessment scheme was 21 lakhs and odd and the number of cases where assessees had to be called was 5 lakhs which was 25 per cent. The witness stated: "This report would not reflect the present position which is prevalent after the 1970 Amendment Act came into force. Previously on an *ad hoc* basis and with the approval of the CAG we had introduced what we called a summary assessment scheme whereby the income-tax officers were directed to complete the assessments in small cases after making such adjustments as were apparent on the face of the return without calling for the assessee. That was the position. In some cases he would have to call for the assessees particularly, if a notice had been issued already for submission of return, he would not be in a position to close the case. The initial hurdles—I should put it.

This scheme which was called the small assessment scheme had certain restrictions—restrictions from this point of view that if there was any defect in a case or it was new case even though it was small, the assessee would have to be called for likewise there were certain restrictions built in the scheme with a view to safeguard the interests of revenue. So, even though apparently the case fell under the small Income Scheme, the Income-tax Officer, in view of the instructions issued would have to call the assessee for the purpose."

1.44. When further pointed out that according to the report of Working Group of Central Direct Taxes Administration of the Administrative Reforms Commission the amount of revenue in the small income cases which constituted 80 per cent of the total assessees, would not exceed 4 per cent of the total assessed in a year, the witness stated: "To take care of this major reforms have been made by the Department. You will be pleased to know that we have made

sufficient advance in this direction. Previously, under the small income scheme, the ITOs were directed to complete the assessment on the basis of the returns without calling the assessee. This has been embodied in the Act vide Income Tax Amendment Act, 1970 which became effective from 1.4.1971."

1.45. The witness added: "I may also be permitted to point out that sometimes an assessee may have to be called for by the Income-tax Officer even when this scheme is in operation."

1.46. The Committee desired to know how far the procedure had been simplified to avoid harassment to parties. The Finance Secretary stated: "As far as individuals are concerned, there have been considerable simplifications, but as far as companies are concerned, the simplifications might not have reached the same stage, but I think, as an individual person filing a return, I find the form now much simpler."

1.47. The Chairman, Central Board of Direct Taxes added: "We have introduced straight line deductions to treat a certain percentage of out going as admissible expenditure with the result that the computation of income as well as tax calculations have become pretty simple. The problem is not so much for the small assessees, for whom the return is simple. For the bigger assessees and companies, the form has to be complicated."

1.48. The Committee desire that the working of small income scheme should be kept under watch. The objective of the scheme is that the Department should not waste its time and energy in disposal of cases which have no revenue potential. The Committee trust that the procedures evolved by Government help to achieve this objective. In particular, it should be ensured that on the one hand the scheme is not exploited by some unscrupulous high income assessees masquerading themselves as small income assessees and on the other hand genuine small income assessees are not subjected to harassment by being asked to appear before the Income Tax authorities. The Committee trust that Audit would conduct a review of the scheme and include their findings in their future Report.

1.49. The Committee were informed that there has been considerable simplification in procedure as far as individuals are concerned but the simplification might not have reached the same stage as far as other categories are concerned. The Committee desire that the question of simplification in procedures should be kept under constant study so that maximum possible simplification can be achieved as early as possible keeping in view the basic objective of avoiding harassment to parties without detriment to the interests of revenue.

1.50. When asked to state whether the Functional Scheme of distribution of work had been fully extended to all the income-tax charges and whether any appraisal of the scheme had been made by the Department, the Ministry, in a note, stated: "The Functional Scheme has been introduced in 104 ranges comprising almost all income-tax offices with six or more Income-tax Officers. It covers about 50 per cent of the strength of the officers in the country. The extension of the scheme to income tax circles with five ITOs has been left to the discretion of the Commissioners of Income-tax and they have been asked to examine the feasibility of separating the collection function alone, if extension of the full functional scheme is not possible in such circles. The extension of the scheme to circle with lesser number of Income-tax Officers is not considered feasible.

"The working of the income-tax offices under the Functional Scheme is kept under constant supervision by the Commissioners of Income-tax. Besides, the O. & P., Division of the Central Board of Direct Taxes reviews its working every month. Its officers also visit the field units and carry out on the spot review of their working. These appraisals show that the scheme is working well. Experience has shown that the system has resulted in not only increased disposal of assessment and collection of taxes but also adequate and timely attention to other important aspects of work like rectification of mistakes, giving effect to appeal orders, Audit objections etc.

"A few difficulties too have been noticed e.g., the non-availability of files due to their excessive movement through various functional cells, delay in issue of demand notices and failure to give proper credit for prepaid taxes in a number of cases. Some procedural changes are considered necessary for removing these defects. Some changes will also be called for because of the revised assessment procedure introduced by the Taxation Laws (Amendment) Act, 1970 (No. 42 of 1970) in the framework of the functional scheme.

"The necessary changes have been formulated and the Commissioners of Income-tax asked to send their comments on these proposals. They are likely to be finalised soon."

1.51. The Committee note that the functional scheme of distribution of work which has been introduced in 104 ranges has resulted in not only increasing the disposal of assessments and collection of taxes but also paying adequate and timely attention to other important aspects of wohk like rectification of mistakes, disposal of audit objections, giving effect to appeal order etc. But there are also certain difficulties regarding non-availability of papers, delay in issue of demand notices and failure to give credit for prepaid

taxes. The Committee desire that the procedural changes considered necessary for removing these deffects should be made without delay.

Cost of Collections

1.52. Pointing out that the total expenditure on collections during 1968-69 was Rs. 10.72 crores, the Committee desired to know how much of this related to (i) assessment of small income cases and (ii) assessment of cases other than small income cases. The Ministry, in a note, stated: "The small income case would normally fall under categories III, IV and V. Since no separate statistics have been maintained regarding the expenditure on collection relating to each category, it is not possible for the Ministry to furnish the information asked for and to bifurcate the total expenditure of Rs. 10.72 crores on collections during 1968-69 into expenditure relating to assessment of small income cases and of cases other than small income cases."

1.53. In paragraph 1.10 of their 110th Report (Fourth Lok Sabha), the Committee desired that a pilot "time and motions study should be conducted in selected ranges to determine the cost of collection in respect of various incom brackets vis-a-vis revenue realised. In a written reply, the Ministry stated: "A survey was conducted on the lines suggested by the Audit in two representative Ranges/ Circles in West Bengal, Bombay City, Gujarat, Delhi and Madras Charges, one of which should be having mostly important Category I and II cases and other having mostly the remaining moderate category cases. The two sets of cases are termed as "Big income cases' and 'Small income cases'; this was a practicable line to be drawn for the purpoes of a broad categorisation for such a pilot study. The data collected in this pilot study for the year 1968-69 and 1969-70 is given below:

Year	No. of cases	Amount of demand raised	Cost of Collection	Cost per case	Percentage to demand raised
		(In 000 rupees) Rs.			
1968-69					
(i) Big Income cases: . .	17,231	38,46,62	33.03	191·63	0·86
(ii) Small Income cases . .	196,521	4,62,32	25,77	13·11	5·57
1969-70					
(i) Big Income Cases . .	21,676	48,14,34	37,39	172·41	0·78
(ii) Small Income Cases . .	212,508	5,30,32	28,71	13·51	5·41

The results are that while the cost of collection of a 'Big income case' was Rs. 191.63 during the year 1968-69 it came down to Rs. 172.41 in the year 1969-70 whereas in 'Small income case, it had nominally gone up from Rs. 13.11 in 1968-69 to Rs. 13.5I in 1969-70. The per centage of cost of collection in relation to demand raised during the period in the two groups of cases is 0.86 in 1968-69 and 0.78 in 1969-70 for the 'Big income cases' and 5.57 and 5.41 respectively for the 'Small income cases'. It may be observed that the cost of collection per case in 'Small income cases' is also reasonably low, considering the nature of these cases.

The cost of collection for the two income brackets put together works out to Rs. 27.50 and Rs. 28.23 per case respectively for the years 1968-69 and 1969-70; the percentage of cost in relation to revenue being 1.36 and 1.24. As against these results disclosed by pilot study comprising equal number of circles of Big and Small income cases, the percentage of cost of collection to revenue as on All India basis works out to 1.73 and 1.97 on the basis of statistics available in the Audit Report, 1970 and the C&AG's Report for the year 1969-70.

The above statistics relating to pilot study have been arrived at without taking into account expenditure incurred on office accommodation, maintenance of building, furniture, proportionate supervision charges, etc., which could not be determined due to practical difficulties.

In the end it may be mentioned that due to introduction of 'Summary assessment scheme' the results of above study may not be a pointer for the cost of collection at present stage. The exact impact of 'Summary assessment Scheme' as to the cost of collection can, however, be known only after a couple of years or so. The expectation obviously is that the cost of collection on 'Small income cases' will register decline."

1.54. The Committee find that the pilot study carried out by the Central Board of Direct Taxes has revealed that in big income cases the percentage of cost of collection to demand raised worked out to 0.86 per cent and 0.78 per cent in 1968-69 and 1969-70 respectively while in small income cases the perctantages were 5.57 and 5.41. The obvious conclusion is that cost of collection as percentage of the demand is much more in respect of small income cases as compared with big income cases. The Ministry have pointed out that

with the introduction of 'Summary Assessment Scheme' the results of the earlier study may no longer hold good. The expectation obviously is that the cost of collection on 'Small Income Cases' will register decline. The Committee desire that impact of the 'Summary Assessment Scheme' on the cost of collection may be watched through further studies with a view to taking additional measures towards reduction of cost of collection in small income cases.

CHAPTER II

RESULTS OF TEST-AUDIT IN GENERAL

Audit Paragraph

2.1. The test-audit during the period from 1st September, 1968 to 31st August, 1969 revealed under-assessment of tax of Rs. 687.19 lakhs in 12,418 cases and over-assessment of tax of Rs. 100.92 lakhs in 3,496 cases. Besides these various defects in following prescribed procedure, also came to the notice of audit.

2.2. Of the total 12,418 cases of under-assessment, short-levy of tax of Rs. 537.46 lakhs was noticed in 840 cases. The remaining 11,578 cases accounted for under-assessment of tax of Rs. 149.73 lakhs.

(ii) The under-assessment of tax of Rs. 687.19 lakhs is due to the mistakes categorised broadly as below :

		No. of cases	Amount in lakhs of rupees.
1	Mistakes due to carelessness or negligence and mistakes committed in tax computation	2,518	56·59
2	Incorrect computation of income from 'salary'	166	4·04
3	Incorrect computation of income from 'business"	1,368	129·79
4	Mistakes in computing depreciation and development rebate	807	132·03
5	Irregular exemptions and excess reliefs given	499	32·02
6	Incorrect relief from tax on newly established industrial undertakings	38	24·64
7	Failure to rectify partners' assessments on completion of firms' assessments	82	6·86
8	Incorrect computation of tax payable by companies	56	19·59
9	Non-levy of additional tax on section 23A/104 companies	67	49·64
10	Income escaping assessment	804	26·70
11	Omission to levy or incorrect levy of penal interest	2,501	63·06
12	Other lapses	3,512	142·13
		12,418	687·19

[Paragraph 46 of the Audit Report 1970]

2.3. In the course of test audit carried out during the period from 1st September, 1969 to 31st August, 1970, under-assessment of tax of Rs. 858.92 lakhs in 6,997 cases and over-assessment of tax of Rs. 191.41 lakhs in 6004 cases were noticed. Besides these, several defects in following the prescribed procedure also came to the notice of Audit.

2.4. Of the total of 16,997 cases of under-assessment there was short levy of tax of Rs. 644.80 lakhs in 1096 cases alone. The remaining 15901 cases accounted for under-assessment of tax of Rs. 214.12 lakhs.

(ii) The under-assessment of tax of Rs. 858.92 lakhs is due to mistakes categorised broadly under the following heads:

		Amount (In Lakhs of Rs.)
1	Avoidable mistakes involving considerable revenues	76·16
2	Incorrect application of lower rate of tax on unearned income	15·46
3	Incorrect determination of income under house property	15·35
4	Incorrect determination of income from business and profession	129·31
5	Mistakes in computing depreciation and development rebate	79·77
6	Incorrect levy of tax on companies	202·66
7	Non-levy of additional tax for non-distribution of dividends	44·60
8	Incorrect relief from tax to newly established industrial undertakings	17·21
9	Income escaping assessment	49·03
10	Irregular grant of refunds	12·47
11	Non-levy or incorrect levy of penal interest and penalty	100·88
12	Other lapses	116·02
		858·29

[Paragraph 34 of the Report of the Comptroller and Auditor General 1969-70—Central Government (Civil)—Revenue Receipts.]

2.5. The Committee pointed out that the Revenue Audit who had test checked the assessments during 1969-70 found defects in about 23,000 cases (including 6004 cases of over-assessments mentioned in paragraph 48 of the Report of the C&AG for the year 1969-70). The representative of the Board stated: "As a result of a study made of test check audit, we find that out of 74,000 and odd cases with incomes above Rs. 50,000, the audit test check was done in a

little over 46,000 cases. So the test check made by audit is not 10 per cent of the main revenue yielding cases, but much more. Also the revenue that was supposed to be under charged in these cases was Rs. 3.09 crores and Rs. 1.48 crores was the revenue over-charged. What was accepted by the Department in these cases was quite different. It was Rs. 1.78 crores as against Rs. 3.09 crores and Rs. 0.77 crore as against Rs. 1.48 crores Audit have shown the figures. But do these represent the first figures? They do not represent the final outcome because the department very often differ from audit and do not accept audit objections. Consequently, taken as they are compared to the gross total, it does not represent 10 per cent."

2.6. The Committee wanted to know the number of cases wherein rectification could not be carried out because of time-bar together with the amount of tax involved therein out of the under-assessment of tax of Rs. 687.19 lakhs and Rs. 858.92 lakhs pointed out in the Audit Report, 1970 and in the Report of C&AG for 1969-70 respectively. The information furnished by the Ministry is as under:

	"No. of cases in which rectification got time barred before the receipt of the audit objection	Amount involved (in thousand)	No. of cases in which rectification got time-barred after the receipt of the audit objection	Amount involved (in thousand)
*Audit Report, 1970 . .	8	139	1	39
@Report of C & AG for 1969-70	6	392	1	20

*The position relating to two Commissioners' charges in Orissa and Calcutta (Central) is yet to be verified.

@The position relating to two Commissioners' charges at West Bengal III and Calcutta (Central) is yet to be verified.

The figures given above relate to cases involving tax effect of Rs. 10,000 and above in each case. The Ministry do not have information in respect of cases involving tax effect of less than Rs. 10,000 in each case."

2.7. The Committee desired to know about the improvements made in the working of the Internal Audit Department. The Member of the Board stated: "The number of internal audit parties was increased slightly during the year 1969-70 but they are still insufficient to conduct more or less a concurrent audit of all cases. The internal audit parties are organised under Assistant Commis-

sioners for audit in the cities of Bombay, Calcutta, Madras and Delhi and from this year Additional Commissioners too have been looking after the internal audit. They are headed by a Chief Auditor who is an ITO Class I while the rest of the audit parties consist of UDCs, Head Clerks or Inspectors supervising the individual parties."

2.8. Asked if any period was prescribed for disposal of audit objections, the witness stated. "There is actually no period prescribed for the disposal of audit objections, because they vary from range to range and the number of cases handled by a particular officer." When pointed out by the Committee that instructions were issued in October, 1966 and September, 1969 prescribing a time-limit of 3 months, the witness stated: "We have prescribed a time-limit of 3 months for audit objections to be disposed of by the Income-tax officer and that has been reiterated relatively recently."

2.9. Asked about the level at which objections raised by the Internal Audit were dealt with, the Member of the Board stated: "The Audit objections are disposed of at the Income-tax Officer's level because he is the person who is responsible for the rectification of the assessment that has been made by him irrespective of whether the mistake has been pointed out by the revenue audit or internal audit."

2.10. When enquired by the Committee whether it was obligatory on the part of the Income-tax Officer to carry out the correction or suggestion made by the Internal Audit, the witness stated: "As far as internal audit is concerned it is mainly one of arithmetical calculation; it is not a question of discretion. When it is a question of misapplication of the law or something like that, he would agree with it, but if he does not agree, we take up the case with the Assistant Commissioner."

2.11. The CBDT in their circular dated 31st August, 1968, while pointing out that the delay in taking up audit sometimes made it impossible to rectify the mistakes that were detected due to expiry of the limitation period and that such delays defeated the very purpose of setting up the Internal Audit Parties, desired that the International Audit Parties should take up the checking of assessments, particularly those involving large revenue, soon after the assessments had been completed. For ensuring timely action regarding the mistakes pointed out by the Revenue Audit Parties, the Board have already prescribed a register under their letter No. F. No. 83/71/65-IT(B) dated the 19th February, 1966. A similar regis-

ter should be used by the Chief Auditors for a follow-up action of the Internal Audit cases as well.

2.12. In their circular dated 15th September, 1969, the Board desired "the programme of work of the Internal Audit Parties be drawn up, with the approval of the respective Commissioners of Income-tax, in such a manner that the cases which are most likely to be scrutinised by the Revenue Audit may be looked into as promptly as possible. Past experience shows that the assessments completed during the months of February and March are most prone to error. It will be an ideal target to check all category I assessments completed in these two months by the 30th June following. Assessments on a total income of Rs. 1,00,000 or more made in any other months may also be got checked within three months of the date of the assessments."

2.13. Drawing attention of the witness to the above circulars, the Committee asked whether any review was conducted regarding the actual implementation. The Finance Secretary stated: "We will call for a complete report." The Ministry, in a note, stated: "No special review regarding the actual implementation of the instructions was conducted since the Director of Inspection (IT and Audit) undertakes a monthly review of the performance of the Internal Audit Parties."

2.14. When enquired whether the reports of the Internal Audit were made available to statutory audit, the Member, Central Board of Direct Taxes, replied: "They are not made available as such, but the statutory audit sees a number of cases audited by internal audit. Actually they audit those cases as well as other cases..... The monthly report has details of number of cases. It does not give a sort of analysis which would be helpful to the Revenue Audit.

2.15. In reply to a question, the witness stated that the report was made available to the Revenue Audit whenever they had asked for it and that the Department had no complaints from Revenue Audit that they had not been given the reports of the Internal Audit.

2.16. It was pointed out that in the customs side every single case that had been scrutinised by internal audit was known to have been so scrutinised when the Statutory Audit went through files. Whereas in the case of income-tax the Revenue Audit found it very difficult to know whether a particular case was scrutinised by Internal Audit or not. As per existing instructions, every case that had been scrutinised by internal audit should be stamped as such

but in practice this was not being done. The Finance Secretary stated: "That can be introduced. That can be reiterated."

2.17. It was further pointed out that on the customs side they had produced a report based on Internal Audit. On the income-tax side, this was not being done. On being suggested that if the monthly reports were comprehensive and more elaborate these could be more helpful to the statutory audit in verifying some of the cases, the Member, Central Board of Direct Taxes, stated: "It is a very good idea. We will do it. Uptil now it has not been done."

2.18. The Committee desired to know the total number of cases checked by the Internal Audit category-wise, the number of cases and amount of under-assessments detected during the years 1968-69, 1969-70 and 1970-71. The Ministry, in a note, stated: "The Ministry do not have category-wise details of the total number of cases checked by the Internal Audit. However, the following data may meet the requirements:

Assessment Year	Total No. of assessments checked	No. of cases in which under-assessment was detected	Amount involved (Rs. in lakhs)	No. of cases in which over-assessment detected	Amount involved (Rs. in lakhs)
1968-69	2,38,988	26,159	353·08	7,972	134·13
1969-70	2,77,332	29,746	607·79	11.123	173·02
1970-71	2,54,142	40,106	1.230.71	17.120	397·43

2.19. The Committee wanted to know the number of cases reported by the Internal Audit which were found acceptable and cases where rectification had been effected and tax recovered. The Ministry, in a note, furnished the information as follows:

	I		II	
	No. of cases in which Internal Audit objections were accepted		No. of cases out of Col. I in which rectification has been effected and tax recovered/refunded	
	Under-assessment	Over-assessment	Under-assessment	Over-assessment
1968-69	11,286	3,455	8,850	3,248
1969-70	18,388	6,479	14,122	5,531

2.20. When the Committee called for the position of mistakes detected in Internal Audit but in respect of which rectificatory action was not initiated as on 31st March, 1970, the Ministry had stated that the tax involved in the pending objections as on 31st March, 1970 was Rs. 352.74 lakhs. The Committee learnt from Audit that in 28 Commissioners' charges, mistakes pointed out in 44,237 cases were outstanding as on 31st August, 1970. The approximate tax involved in the outstanding objections was Rs. 7.81 crores (under-assessment) and Rs. 2.54 crores (over-assessment). When asked to confirm the figures and to state whether the outstanding objections of the Internal Audit were less than three months old, the Ministry, in a note, stated: "The Directorate of Income tax Audit has reviewed the position regarding the rectification of errors pointed out by the Internal Audit Parties. It shows that cases involving only 20 per cent of the aggregate tax realisable on rectification were rectified during 1970-71, while the corresponding percentage for 1971-72 was a little less than 30 per cent. The aggregate tax involved is not less than what the Audit had reported. The Ministry noticed that rectification have in most of the cases not been done within three months of the raising of objections by the Internal Audit. They are alarmed at the inadequacy of the rectification of errors pointed out by the Internal Audit and propose to take some effective measures early."

2.21. When enquired by the Committee whether the department was as prompt in initiating rectificatory action on the over-assessment cases as it was done in cases of under-assessment, the witness stated: "The Board would like the officers to be quick on both sides. As a matter of fact, we undertake drives for giving refunds. We put registers in our officers wherein, if in any cases refund is due, the assessee can record so, so that the Commissioner can take action in this respect. Our attempt is to give refunds as quickly as possible. In spite of that if some individual officer fails to do that, that is a different matter."

2.22. Under Section 285(A) of the Income-tax Act, 1961, a contractor is required to furnish to the Income-tax Officer particulars of any contract awarded to him if its value exceeds Rs. 50,000. In a written reply, the Ministry of Finance stated that the number of cases during the year 1969-70 in which information has been furnished by the contractors in pursuance of the provisions of Section 285A of the Income-tax Act, 1961, is 1068. The Committee asked whether there was any obligation on the part of the persons who gave contracts to furnish information to the Income-tax Depart-

ment so as to enable the Department to check whether the provisions and Section 285A were being properly followed by the contractors. The Ministry replied in the negative. During evidence, the Chairman, Central Board of Direct Taxes, stated: "It is true there is no correlation at the moment of giving the contract and accounting of the information by the contractor but whenever the various Government organisations make payments to the contractor, we receive intimations from them so that indirectly we would know that such and such a contractor received so much payment."

2.23. When suggested that the obligation should also be imposed on the authorities and asking the contractor to give the necessary information to the Income-tax Department so that things could be tied up in regard to income and award in the case of contracts, the witness stated: "I think it is a good suggestion. I must admit and I think it would be better to tie it up."

2.24. In reply to a question, the witness stated: "Section 285A in operation has created some problems which I would like to place before you because the general impression about this Section is that it requires information for all contracts to be given. That is the general feeling but the Section as it is worded is a very restricted one. The contractor has to furnish information only in respect of a contract for the construction of a building or the supply of goods or services in connection therewith. The Section as it is worded has been interpreted to mean literally the construction of buildings and buildings alone."

2.25. The Committee enquired whether there was any proposal to amend either the Section 285A or to introduce a new Section to cover not only the persons who took the contract but also who awarded it. The witness stated: "The Section has existed for the last six years. I do not know how it got to be so. This has been noted and we shall examine it."

2.26. The Committee feel concerned over the increase in the number of cases of under-assessment and over-assessment detected by Revenue Audit during the period 1st September, 1969 to 31st August, 1970. There were 16,997 cases of under-assessment of tax amounting to Rs. 858.92 lakhs and 6,004 cases involving an over-assessment of tax of Rs. 191.41 lakhs during the period 1st September, 1969 to 31st August, 1970, as against 12,418 cases of under-assessment involving tax of Rs. 687.19 lakhs and 3,496 cases of over-assessment involving tax of Rs. 100.92 lakhs detected during the period from 1st September, 1968 to 31st August, 1969. Of the total

of 16,997 cases of under-assessment of tax detected during the period 1st September, 1969 to 31st August, 1970, there was short levy of tax of Rs. 644.80 lakhs in 1096 cases alone, while there were 840 such cases involving short levy of Rs. 537.46 lakhs during the period 1st September, 1968 to 31st August, 1969.

2.27. The increasing number of cases of under-assessment and over-assessment detected by Revenue Audit points to the need of intensification of checks by Internal Audit. The Committee were informed that although the number of Internal Audit Parties was increased slightly during the year 1969-70, they were still insufficient to conduct more or less a concurrent audit of all cases. From the figures furnished to them, the Committee find that the total assessments checked by the Internal Audit Parties decreased from 2.77,332 in 1969-70 to 2.54,142 in 1970-71. However, the cases of under-assessments detected by the Internal Audit increased from 29,746 involving short levy of tax amounting to Rs. 607.79 lakhs to 40,106 cases involving tax of Rs. 1230.71 lakhs in 1970-71. The number of cases of over-assessments increased from 11,123 involving tax of Rs. 173.02 lakhs to 17,120 involving tax of Rs. 397.43 lakhs. The Committee are not satisfied about the progress of rectification of the errors pointed out by the Internal Audit Parties. According to the review conducted by the Directorate of Income Tax Audit, cases involving only 20 per cent of the aggregate tax realisable on rectification were rectified during 1970-71, while the corresponding percentage for 1971-72 was a little less than 30 per cent. The Ministry have also noticed that rectifications in most of the cases have not been done within the prescribed period of three months of the raising of objections by the Internal Audit. The Ministry are greatly concerned at the inadequacy of the rectification of errors pointed out by the Internal Audit and they propose to take some effective measures early. The Committee hope that effective measures will be taken by the Department to ensure that rectification of under-assessments and over-assessments detected by Internal Audit is made within the time limit of 3 months.

2.28. The Committee find that according to the instructions issued by the Board in August, 1968, the Internal Audit Parties are required to take up checking of assessments, particularly those involving large revenues, soon after the assessments had been completed. According to the instructions issued in December, 1969, the Internal Audit Parties are required to take all category I assessments completed in the rush period of February and March by the 30th June following and the assessments on total income of one lakh or more made in any other month are required to be checked within three months of the date of the assessment. The Committee have been

informed that no special review regarding the actual implementation of the instructions was conducted since the Director of Inspection undertakings a monthly review of the performance of Internal Audit Parties. The Committee suggest that an immediate review of the working of the Internal Audit should be undertaken by the Board to find out how far they are carrying out the prescribed checks and bringing to notice cases of under or over assessment requiring rectification. The Board should also ensure that the rectification of the lapses is done promptly.

2.29. The Committee learn that the assessments checked by the Internal Audit Parties are not being stamped, with the result that it is difficult for Revenue Audit to know whether the assessments have been checked by the Internal Audit Parties. The monthly reports of the Internal Audit Parties are also not being made available to the Revenue Audit as a matter of course. The Committee consider that there should be proper coordination between the Internal Audit Parties and Revenue Audit so as to have maximum impact on revenue collecting organisation. This can be achieved by making the checks exercised by the Internal Audit more comprehensive and thorough and by making their Reports available contemporaneously to the Revenue Audit. The Committee would further suggest that the scope and nature of checks to be exercised by Internal Audit should be reviewed at least once in six months by the Board of Direct Taxes in consultation with Revenue Audit so as to make the checking more effective and pointed.

2.30. The Committee have in the various sections of this Report as well as of the 50th Report referred to inadequacies and lapses of Internal Audit and have also indicated the lines on which the Internal Audit check could be strengthened. They hope that Government would take due note of these and take appropriate action early.

2.31. According to the provisions of Section 285(A) of the Income-tax Act, 1961, a person undertaking a contract for construction of a building or for supply of goods or services in connection with it for more than Rs. 50,000 is required to furnish particulars of the contract to the Income-tax Officer concerned. The Committee were informed that during the year 1969-70, information was furnished by 1068 contractors. The Committee suggest that it should be examined whether the authority awarding the contract should also be required to send necessary information to the Income-tax Department so that necessary action can be taken against the contractors failing to send the particulars to the Income-tax Officer.

2.32. Further the Committee note that at present the provisions of this Section is restricted to building contractors only. The Direct Taxes Enquiry Committee in paragraph 2.223 of their final report have recommended that the scope of this provision should be extended to apply to all contractors. The Committee desire that decision on this important recommendation should be taken without delay.

(a) Mistakes due to carelessness or negligence and mistakes committed in Tax Computation

Audit Paragraph

2.33. In the Audit Reports on Revenue Receipts for the years 1966 and 1967, under assessment caused by mistakes committed in arriving at the total income were pointed out. Commenting on this, the Public Accounts Committee had remarked:—

(1) "This Committee regret to note the careless and negligent manner in which the assessment of a case in a high income group had been made. They suggest that special steps should be taken to avoid such costly mistakes in cases relating to high income groups . . ."

(2) "The Committee are surprised how Rs. 3,46,890 instead of Rs. 4,46,894 was taken while computing income from business which resulted in under-charging of tax of Rs. 45,002. Such mistakes point to the need for careful checking of all figures in computing income for tax."

[Paragraph 47(a) of the Audit Report, 1970.]

2.34. Under-assessment of tax on account of mistakes due to carelessness or negligence and mistakes in tax computation were commented upon in the Audit Reports on Revenue Receipts from 1964 onwards. Figures for the years 1965 to 1970 and for the current Audit Report are as follows:

Year of Audit Report	No. of cases	Amount of under-assessment (in lakhs of Rs.)
1965	1786	38·57
1966	1059	41·86
1967	1455	35·81
1968	2612	33·99
1969	2650	52·21
1970	2518	56·69
1969-70	2719	76 16

2.35. According to Audit, the cases included in this category are such that had the assessing officers been little more vigilant, the mistakes could have been avoided altogether.

2.36. In spite of repeated recommendations of the Public Accounts Committee to ensure that such mistakes do not recur, it is seen that the mistakes due to carelessness or negligence are keeping an upward trend.

2.37. The Committee enquired about the special steps proposed to be taken by the Department to prevent such costly mistakes in the assessments of big income cases. The Member, Central Board of Direct Taxes stated: "The number of mistakes may kindly be considered in relation to the assessments that have been completed between 1965 and 1969. Nearly double the number of assessments are being done now than in 1965. The number of mistakes in relation to the number of assessments done does not show any increase due to carelessness on the part of the department. Some mistakes seem to be inevitable. Where you have a very large amount of work, it is not possible to go through in greater details. We are trying to bring these down to the minimum, but there may be some cases where there may be human errors."

2.38. The Committee desired to know whether the Central Board of Direct Taxes had issued any instructions prescribing counter-check on the draft assessment orders before they were finalised and issued to assessees. The Committee also enquired without any machinery existed in the Board to ensure that such instructions were strictly followed. The witness stated: "We have this system of calculation being checked by one clerk. We have now issued instructions that in cases involving an income of over Rs. 1 lakh the Income-tax Officer should himself check the calculation."

2.39. The instructions issued on the 13th December, 1971 by the Central Board of Direct Taxes after the Committee took evidence in October, 1971 *inter alia* contains the following:—

> "Before signing assessment orders, Income-tax Officers must satisfy themselves about the arithmetical accuracy of the total income determined by them. When the total income exceeds Rs. 9,999, they must write in words, as well as figures, the amount of total income. Arithmetical mistakes in the computation of total income detected later in such cases will be treated as instances of gross negligence on their part."

"The clerks concerned with the calculations of tax must ensure that they take the correct total income as determined by the Income-tax Officers. The Head-Clerks Supervisors, who are required to check such calculations, must also tally the total income taken for the purpose of calculating the tax with that shown in the relevant assessment order. If there is any error in transcribing the total income, the responsibility will be that of the concerned clerks, Head-Clerks and Supervisors."

2.40. As regards the strict compliance of the above instructions, the Ministry, in a note stated: "The Inspecting Assistant Commissioners of Income-tax are required to inspect the work of Income-tax Officers. Any failure on the part of the latter to follow the Board's instructions is adversely commented on and possible rectificatory action is taken."

2.41. The Committee learnt from Audit that the following instructions were laid down in the Departmental manual for checking of calculations of income-tax demand:

"All tax calculations of demand or refunds will be made by one clerk and checked by another before the issue of demand notices or refund orders. In cases of income over Rs. 10,000 or refund of over Rs. 1,000 either the Head Clerk or the Supervisor should check and initial the assessment form. The Income-tax Officer's responsibility does not cease on that; he must satisfy himself that calculations are being properly made. He is, therefore, advised that he should personally recheck demands in cases with income over Rs. 1 lakh and refunds with Rs. 10,000."

2.42. During the evidence the Committee enquired whether these instructions were followed by the Income-tax Officers. The Member, Central Board of Direct Taxes stated: "The position is that in some of the cases, the Income-tax Officers, due to pressure of work at the last stages, when he has a large number of cases which he must dispose of, have no time to check the calculations. The other is that there are some mistakes, but the Department does not think that these mistakes are really of a very great magnitude. Out of the mistakes, i.e. 969 mistakes that have been pointed out by the revenue audit due to carelessness and negligence, we find that only 30 mistakes were in cases involving a tax effect of over ten thousand rupees in the year 1966. Similarly in 1967, out of 1198, mistakes only 56 mistakes had tax effect of over ten thousand. In the year

1968, out of 1317 there were only 38 cases, where the tax involved was more than ten thousand. In 1969, out of 1428 cases, only in 67 cases the amount of tax was over ten thousand. These figures were supplied to us when we wrote to the Audit."

2.43. Despite the concern expressed by the Committee in their successive Reports over the mistakes committed in the computation of tax which went undetected, the number of such cases has shown a steady rising trend in recent years. The number of cases which was 1,786 in 1965 went upto 2,719 in 1969-70. From the nature of the mistakes examined by the Committee there can be only one conclusion that either there was no effective check in the Department of the mistakes were not bona-fide. **The Committee note that the Department had issued some instructions on the 13th December, 1971 after the Committee took evidence. The Committee would content themselves with the observation that the effectiveness of performance depends on the implementation of instructions of which there was no dearth even earlier.**

Audit Paragraph

2.44. While assessing the case of an individual on 21st March, 1967 for the assessment year 1962-63, the total income was worked out at Rs. 3,77,030 but tax was calculated on Rs. 2,77,030 only. This together with other mistakes in calculation of tax led to a short-levy of tax of Rs. 99,467. Report regarding rectification and recovery of the tax is awaited.

[Paragraph 47(a) (iii) of the Audit Report, 1970]

2.45. In this case, though the Income-tax Officer took the total income as Rs. 3,77,030, tax was levied only on a sum of Rs. 2,77,030. Thus no tax was levied on an income of Rs. 1 lakh.

2.46. The Committee enquired whether the assessment had since been rectified and the additional demand pointed out recovered. The Ministry in a note stated: "The assessment has been rectified, raising an additional demand of Rs. 52,006|-, as against Rs. 99,467|- reported by the Revenue Audit. The difference is due to the Income Tax Officer's detection of the two more errors in the course of the rectification proceedings; these had not been commented on by Audit. As the assessee is contesting the original assessment in appeal, time has been granted for deferring the payment of the additional demand till the disposal of this appeal."

2.47. The Committee pointed out that the assessment for the assessment year 1962-63 was taken up on 21st March, 1967, when it was about to become time-barred and completed in March, 1967. The Committee wanted to know the reasons for not taking up the case for completion much earlier. The Ministry, in a note, stated that there was no particular reason for taking up the assessment late and that the usual reason of heavy pressure of work was responsible for the delay.

2.48. When asked whether the case was looked into by Internal Audit, the Ministry, in a note, replied that the case could not be audited by the Internal Audit Party before it was taken up by Audit.

2.49. The Committee regret the failure in this case which resulted in a short levy of Rs. 52,006. They expect that the persons found at fault will be suitably dealt with.

2.50. The rush of assessments in March, 1967 was partly responsible for this failure. The Committee wish to reiterate their after repeated suggestion that assessments in high income brackets should as far as possible be completed earlier in the year.

2.51. The Committee would like to be informed of the recovery effected in this case.

2.52. In a number of cases, the Committee have been informed that the Internal Audit could not audit them before they were taken up by the Statutory Audit. This in the opinion of the Committee is quite unsatisfactory. They wish to stress that the programme of Internal Audit should be so arranged as to cover all the circles without delay so that when Statutory Audit proceeds with their Audit they would have an aopportunity to review the work of the Internal Audit also.

Audit Paragraph

2.53. Mistakes committed in tax computation were noticed in a large number cases; a few instances are given below:

(i) For the assessment year 1963-64 completed on 21st March, 1968, the super-tax payable by an assessee was taken as Rs. 14,069 against the correct figure of Rs. 1,40,690. This, together with short-levy of interest of Rs. 3,165 for delayed submission of the income-tax return, accounted for under-assessment of Rs. 1,29,786 by way of

tax. The department have since raised additional demand for the amount. Report regarding recovery of the demand is awaited.

[Paragraph 47(b)(i) of the Audit Report, 1970.]

2.54. In the case reported in the paragraph against the correct figure of Rs. 1,40,690 towards super-tax for the assessment year 1963-64, the amount was taken as Rs. 14,069 only. In other words, the unit digit was omitted which had resulted, together with the short levy of interest of Rs. 3,165 for belated submission of the income-tax return, in under-assessment of tax of Rs. 1,29,786. The Ministry had accepted the mistake and an additional demand of Rs. 1,29,786 was raised.

2.55. The Committee enquired whether the additional demand had since been recovered. The Ministry in a note submitted to the Committee stated: "Against the additional demand of Rs. 1,29,786, the assessee had paid an amount of Rs. 10,000 only. Recently, two of the firms in which the assessee is a partner have been allowed substantial relief, as a result of which the additional demand will be considerably reduced.

2.56. The Committee pointed out that the instructions were laid down in the departmental manual that tax calculations made by a clerk were checked by another before the issue of demand notice and that in respect of demands in cases with income over Rs. 1 lakh the calculations should be checked by the Income-tax Officer himself. The Committee desired to know whether those instructions had been carried out in the case under reference. The Member, Central Board of Direct Taxes, stated: "The position is that in some cases the Income-tax Officers, due to pressure of work at the last stages, when he has a large number of cases which he must dispose them off, have no time to check the calculations."

2.57. The Chairman, Central Board Direct Taxes, added: "In this case the Income-tax Officer did not check the calculations. His explanation was asked for. He explained that the super tax was correctly assessed but in carrying over this figure, the last digit, zero, was omitted. The head clerk was also there, but he also failed to check and detect this mistake. The Income-tax Officer found that the mistake had occurred when the clerk carried forward the figure."

2.58. To a further question, the witness added: "We must say that it is negligence. We cannot escape this fact."

2.59. The Member, Central Board of Direct Taxes further stated: "When this case came to our notice, we have been repeatedly issuing instructions regarding checking and rechecking of these cases."

260. When pointed out that the mistake was committed in a central circle where the number of assessments expected to be completed in a year would be comparatively less than in other circles and where only experienced officers could be posted, the witness stated: "The Department took a very serious view of the mistakes of this nature committed in the Central Circle with the result that we had an enquiry as to the number of mistakes that might have been committed and we found that no other major mistakes had been committed."

2.61. That a mistake of this type leading to underassessment of Rs. 1,29,786 in this case, should have occurred in a Central Circle causes some uneasiness. As admittedly there has been negligence in checking, the Committee hope that the Department will take due note of it against the persons found remiss in the discharge of their responsibilities. They would like to know the completion of the recovery in this case.

Audit Paragraph

2.62. In cases of two Indian companies in which the public were not substantially interested, tax for the assessment years 1964-65 and 1965-66 was calculated at the effective rate of 50 per cent instead of at 60 per cent as laid down in the Finance Acts for the years. This led to under-assessment of tax of Rs. 2,74,305 in the two cases. Report regarding rectification and recovery of the tax is awaited.

[Paragraph 47(b)(ii) of Audit Report, 1970.]

2.63. During evidence the Committee enquired whether the mistakes in the two cases had since been rectified and the additional demand recovered. The Chairman, Central Board of Direct Taxes, stated: "There are two cases. One is that of Walford Transport Ltd., and the other is that of Hindustan General Insurance Society Ltd." In one case we had raised a demand of Rs. 1,16,000. Ultimately the demand payable after all adjustments was Rs. 9916 this has been collected by adjustment. In the case of the Hindustan General Insurance Society Ltd., there were two assessments involved; one was for 1964-65 and the other was for 1965-66. For both the assessment years tax was collected at the effective rate of 50 per cent instead of 60 per cent. In an order dated 30th April, 1966, effect was given to the AAC's order of 27th July, 1965 for the assessment year 1964-65. The AAC in his order, which has been accepted by the Department, had given a clear finding that the company was one in which the public was substantially interested. As the

lower rate of tax was applied in pursuance of an appellate order the Income-tax Officer's action cannot be questioned."

2.64. It was pointed out that the Ministry in a letter to Audit stated that in the case of Hindustan General Insurance Society Ltd., rectificatory action for assessment year 1964-65 had become time-barred even prior to the receipt of the Audit objection and that the assessment for the year 1965-66 had been rectified under Section 154 raising an additional demand of Rs. 2,40,270.

2.65. It is learnt from Audit that the loss of revenue was Rs. 30,943 due to failure to rectify the assessment for the year 1964-65 before it become time-barred.

2.66. The Committee also learnt from Audit that the Income-tax Officer received the query on 6th January, 1969, i.e., two months before the expiry of the time limit *viz.* March 1969. If so, action could have been taken either under Section 154 or 147(b) of Income tax Act for rectification and the loss of revenue averted.

2.67. The Committee desired to know the reasons for not taking prompt action on the Audit query. The witness stated: "I should say that we are at fault here. When we accepted the Audit objection they had said that it had become time-barred and this was accepted on the basis of incorrect and incomplete facts reported to the Commissioner of Income-tax. Then we started calling for the explanation of the ITO. The position that he has pointed out now is different. So, we certainly feel guilty and we should have intimated these facts to the Auditor General, which we have failed to do. But these are the facts which have been brought to our notice later by the ITO when we started pursuing the matter with him and calling for his explanation....This was a lapse. In 1964-65, the AAC had held this to be a company in which the public was substantially interested."

2.68. In a note submitted to the Committee, the Ministry further stated: "In the case of the Hindustan General Insurance Society Ltd., the Audit objection for the assessment year 1964-65 had been originally reported to be acceptable; but, on the basis of supplementary information received from the Commissioner of Income-tax, the objection was found by the Ministry to be unacceptable. For this year, tax was calculated at the effective rate of 50 per cent instead of 60 per cent, in an order dated 30-4-66 which had been made u|s 143(3)251 to give effect to the AAC's order dated 27-7-65. The AAC in his order, which was accepted by the Department, had given a clear finding that the company was one in which the public were

substantially interested. As the lower rate of tax was applied in pursuance of an appellate order, the ITO's action could not be questioned, nor could the assessment be revised."

2.69. The Committee wanted to know the means to find out whether a particular company was a company in which public was substantially interested. The Member, Central Board of Direct Taxes stated: "From the tax return you cannot make out whether the company is a widely held company or not. You can only do so if you have got the average list of share-holders of the company."

2.70. When the Committee suggested prescribing a column in the return to put the onus on the assessee to indicate the nature of the company, the Chairman, Central Board of Direct Taxes stated: "I appreciate the suggestion. There has been unfortunately a lot of discussion as to simple return and a small return. But all these things, really speaking, should be embodied in the return so that the Income-tax Officer should know whether the company satisfies the prescribed condition or not. The system of collecting the data and then giving a conclusion should be dispensed with. I very much welcome the suggestion which we should follow suit *vis-a-vis* what is happening in other countries also. The return of income today has a reduced bulk due to public demand. But it should not be allowed to sacrifice certain minimum requirement of the law. What the assessee or company would submit in the return of the income would be necessary for the Income-tax Officer at a later date to ascertain its correct status? I do feel that this type of mistake would happen if we do not elaborate the return calling for such information."

2.71. The witness further added: "I would certainly think of this. There are not only paragraphs but there are many more paragraphs where the Department will have to see how this mistake could be avoided in future. In one case the Income-tax Officer makes an enquiry and probably goes on the basis of its past record and comes to the conclusion that it is a private company, when the facts of the matter might have changed. The suggestion that you have made is really good and it will help us in future to avoid such cases."

2.72. The Committee enquired whether it was really necessary or justified now to have the subtle distinction between public companies and closely held public companies, considering the fact that the rate of taxation was more or less equal now and there was only a difference of about 10 per cent. The witness stated: "We shall examine it and see whether it is necessary."

2.73. The Committee find that at the present the onus lies on the Department to determine whether a company is one in which public are substantially interested or not. It takes considerable effort and time to do it. The Committee, therefore, suggest that an additional column should be provided in the income-tax return to put a onus of the assessee to indicate the nature of the company.

2.74. The Committee feel that while a valid distinction could be made between a public company and a private company as defined in the Companies Act, the basis for differential treatment for taxation of profits of a closely held public company needs to be elucidated. They would like Government to examine the feasibility and economics of dispensing with the subtle distinction between a public company and a closely held public company for the purpose of taxation of profits, as promised during evidence. The outcome of the examination may be intimated to them.

Audit Paragraph

2.75. The income voluntarily disclosed by assessees under section 24 of the Finance (No. 2) Act 1965, is taxable at the rates laid down in the Finance Act 1965. The entire income is deemed to be earned income and surcharge is to be levied if the earned income exceeds Rs. 1 lakh. In the case of a declarant, an individual, assessed on a disclosed income of Rs. 9,62,828 surcharge on earned income in excess of Rs. 1 lakh was not levied. This resulted in under-charge of tax of R. 74,376. The omission in this case has since been rectified. It has been suggested to the Ministry that a review of all cases settled under the Voluntary disclosure Schemes to find out whether tax and surcharges have been correctly calculated would be desirable.

[Paragraph 47(b) (iii) of the Audit Report (Civil)—Revenue Receipts, 1970.]

2.76. In this paragraph the omission to levy surcharge on earned income in excess of Rs. 1 lakh in a case has been pointed out. The under-assessment of tax was Rs. 74,376. Though there was a specific provision in the Finance (No. 2) Act 1965, that the income voluntarily disclosed should be treated as earned income the Income-tax Officer overlooked to levy the surcharge leviable under the Finance Act. The Committee learnt from Audit that the Ministry had accepted the mistake and that the additional demand of Rs. 74,736 created on rectification had also been collected.

2.77. The Committee drew attention of the witness to the Audit paragraph wherein it was mentioned that a suggestion had been

made to the Ministry that a review of all cases settled under the voluntary Disclosure Scheme to find out whether tax and surcharge had been correctly calculated would be desirable.

2.78. The Chairman, Central Board of Direct Taxes, stated: "A review was made and the result was that similar errors were found in 13 cases. On rectification an additional demand of Rs. 38,243 was made out of which a sum of Rs. 25,257 has been recovered. An amount of Rs. 1,692 could not be recovered due to time-bar."

2.79. When enquired by the Committee whether any instructions had been issued for the check of assessments completed on income voluntarily disclosed by the Internal Audit of the Department, the Ministry, in a note, submitted to the Committee, replied in the negative. The Committee wanted to know whether the case under reference had been checked in Internal Audit. The Ministry in a note stated: "The Internal Audit parties are neither properly equipped nor have they the requisite status for checking the assessments done under the Voluntary Disclosure Scheme with the approval of the respective Commissioners of Income-tax."

2.80. The Committee are concerned to find errors in a number of cases of assessments under the voluntary disclosure scheme. These assessments are at present not being checked by the Internal Audit parties. The Committee note that Internal Audit parties are neither properly equipped nor have they the requisite status for checking these assessments. They would like Government to ensure that assessment in respect of voluntary disclosure scheme are thoroughly checked in internal audit to obviate any mistakes.

Audit Paragraph

2.81. In the assessment of a company for the assessment year 1967-68 (completed in March 1969) the Income-tax Officer disallowed expenditure of Rs. 2,00,000 as it did not relate to the business carried on by the assessee. The amount so disallowed was not, however, taken into account while computing the taxable income resulting in short-levy of tax of Rs. 1.10,000. The assessment was checked in Internal Audit but the omission was not noticed. The Ministry have stated that the mistake has been accepted and additional demand raised. Report of recovery is awaited.

[Paragraph 35(a) of the Report of the Comptroller and Auditor General—1969-70—Central Government (Civil)—Revenue Receipts.]

2.82. Pointing out that as per Audit para, the assessment was checked in Internal Audit but the omission was not noticed, the

Committee enquired whether the Ministry had looked into the failure of the Internal Audit in this case. The Chairman, Central Board of Direct Taxes stated: "The Board has called for the explanation of the concerned Income-tax Officer and warned the officer to be more careful in future. Regarding the person concerned in the Internal Audit, unfortunately, he has retired from service and as such his explanation could not be called for."

2.83. The Committee learnt from Audit that the assessee referred to in the Audit paragraph had income exceeding Rs. 4 crores. The Committee desired to know whether arrangement existed in the Department in regard to counter check of assessments of such high income group case and whether any such counter check was exercised in the case under reference. The Ministry in a written reply, stated: "There was undoubtedly a failure in checking the computation of the total income. Instructions have already been issued by the Board for prevention of mistakes of this nature."

2.84. As regard the special steps taken by the Department to prevent such mistakes in future, the Ministry in a note stated: "From the trend of the reports made by both the Revenue Audit and the Internal Audit, the Board feel that while the calculation of tax is being checked and rechecked in most cases, the same attention is not being paid to the summing up of the total income of assessees. What seems to have happened in most of the cases is that without checking the computation of total income, the persons concerned with the calculation of tax and those entrusted with the rechecking of such calculations, had proceeded to do their Job. After the last PAC meeting, the Board issued instructions for preventing such lapses."

2.85. As to the recovery of the additional amount of Rs. 1.1 lakhs, the Ministry, in a note, stated that it had been fully recovered.

2.86. The Committee are glad to learn that after they took evidence of the Ministry in this case, instructions have been issued for preventing lapses in the check of computation of income of assessees which had not been given in the past the care it deserved. They would like to watch the improvements through future Audit Reports.

Audit Paragraph

2.87. The income-tax leviable on a company of its income of Rs. 24,22,810 for the assessment year 1964-65 (assessment completed in March, 1969) was calculated by the department at Rs. 4,05,752 as

against Rs. 6,05,752 correctly leviable. This resulted in short-levy of tax of Rs. 2,00,000, and excess payment of interest of Rs. 35,900 on the advance tax paid in excess by the assessee. The Ministry have accepted the mistake. Report regarding rectification and recovery of Rs. 2,35,900 is awaited

[Paragraph 35(b) of the Report of the Comptroller and Auditor General—1969-70—Central Government (Civil)—Revenue Receipts.]

2.88. The Ministry in a note submitted to the Committee stated that the additional demand of tax of Rs. 2,35,900 was fully recovered during the period 16th October, 1970 to 25th January, 1971.

2.89. The Committee pointed out that the case belonged to high income group and the assessment was completed in the month of March, 1969 and enquired whether there was any counter-check on the assessment and calculation of tax before the demand for the tax was raised. The Ministry, in a note submitted to the Committee stated that the tax calculaion made by the Upper Division Clerk was checked by a Head-Clerk, but the later failed to check the mistake.

2.90. The Committee learnt from Audit that according to the instructions contained in the office Manual of the Department, all cases with income over Rs. 1 lakh should be counter-checked by the Income-tax Officer. The Committee desired to know whether such a check was exercised in the case under reference. The Ministry, in a note submitted to the Committee stated: "The Income-tax Officer did not counter-check the tax calculations. He had, however, clearly indicated in the assessment order the rates of tax to be charged and the various rebates to be allowed. His failure to check the tax calculation is partly explained by his pre-occupation with limitation assessments, 8 of which he had to dispose of in March, 1969."

2.91. During evidence, the Chairman, Central Board of Direct Taxes stated: "In this case we are not satisfied with the explanation. Since the mistake looks so serious, we asked the Commissioner to make complete review. He reviewed 206 assessments made by this income-tax Officer and noticed that the mistake was only in one case out of a disposal of 206."

2.92. The Committee pointed out that this case was done in a group circle or a circle in a group charge, and that the main objective in creating group charges, was to ensure greater accuracy in tax assessments and for that purpose the Inspecting Assistant Com-

missioner was pre-checking assessment orders before these were issued. The Committee wanted to know the Circumstances in which the mistake went unnoticed. The witness replied: "He has failed very badly." The Ministry in a note submitted to the Committee further stated: "The Inspecting Assistant Commissioner in the group charges do not have any Inspectors to assist them. They remain fully occupied with—

(1) solving the legal and accountancy problems raised by the ITOs in their ranges,

(2) considering the proposals for the levy of additional tax on companies u/s 104,

(3) disposing of penalties for concealment of income exceeding Rs. 1,000 and

(4) general supervision and inspection.

It is not possible for them to re-check tax calculations."

2.93. The Committee were informed that the case under reference was not checked by Internal Audit of the Department.

2.94. Pointing out that under the general instructions, the Internal Audit Parties were expected to exercise hundred percent check on all the assessments with income over Rs. 50,000, the Committee wanted to know the reasons for not taking up the case under reference for checking in Internal Audit. The witness replied: "I am sorry to say that the explanation of the Internal Audit was not called for." The witness further added: "We asked the Commissioner the question whether the case was earlier checked by internal audit and, if not, the reasons therefor. The Commissioner's reply is 'No'. The explanation of the Supervisor for not checking the case has been obtained. But, unfortunately he has not forwarded the explanation." When asked by the Committee about the action taken by the Board against Internal Audit for this lapse, the witness replied: "We had asked the Commissioner to get the explanation of the people concerned. The Commissioner says "the explanation of the supervisor for not checking this case has been obtained" and the matter lies there".

2.95. This is yet another case of mistake going unnoticed in the assessment belonging to high income group made in the month of March. The Committee are inclined to take a serious view of such mistakes especially in a group charge, the object in creation of which was to ensure greater accuracy in tax assessments. They

hope that the persons responsible for failure will be suitably dealt with.

(b) **Incorrect determination of income from business and profession.**

Audit Paragraph

2.96. Various types of mistakes noticed in computation of income under the head 'business' were reported in the earlier Audit Reports on Revenue Receipts. A few types of mistakes noticed during the period under review are detailed in the succeeding sub-paragraphs:

(a) Incorrect application of the provisions of the Income-tax Act in assessments of insurance companies:

The profits and gains of business of insurance including capital gains are computed in accordance with the rules contained in the First Schedule to the Income-tax Act. The profits and gains are taken to be the balance of the profits disclosed by the annual accounts, copies of which are furnished to the Controller of Insurance under the Insurance Act, 1938 subject to certain adjustments. In such cases the provisions in the Income-tax Act relating to the computation of income under the various heads including capital gains are not operative.

2.97. An insurance company sold certain house properties for Rs. 16,00,000 and incurred an expenditure of Rs. 34,500 on brokerage and legal charges. The department, while computing the income from the sale took the cost price of the properties as on 1st January, 1954 at Rs. 14,95,968. The amount of Rs. 69,532 being the excess of net sale price over the cost price was assessed to tax. As computation of profits on the basis of the fair market value as on 1st January, 1954 is permissible only in determining income under the head "capital gains" and not for determining income of insurance companies, the procedure adopted by the department was not correct. The book value of the property on the date of sale being only Rs. 4,28,160 and the assessee having incurred expenses of Rs. 34,500 on the sale, the assessable profit would correctly amount to Rs. 11,37,340 instead of Rs. 69,532 assessed by the department. Consequently income was under-assessed by Rs. 10,67,808 and the undercharge of tax was Rs. 6,72,719 for the assessment year 1963-64 (assessment completed in March 1965). The Ministry have accepted the mistake. Report regarding rectification and recovery is awaited.

[Paragraph 38(a) of the Report of the Comptroller and Auditor General—1969-70—Central Government (Civil)—Revenue Receipts.]

2.98. Various types of mistakes noticed in computation of income under the head "business" were reported in all the earlier Audit Reports on Revenue Receipts. Inspite of the fact that special attention of Government was repeatedly drawn to these types of mistakes the number of mistakes and the tax under-assessed therein, are keeping an upward trend. The total number of cases and the tax under-assessed under this type of mistakes in the Audit Reports from 1965 to the latest one are as follows:—

Year of Audit Report	No. of cases	Amount of tax under assessed (in lakh of rupees)
1965	803	36·32
1966	1015	87·60
1967	1223	58·86
1968	1103	91·86
1969	1225	89·28
1970	1368	129·29
1969-70	2427	129·31

2.99. In the case of General Insurance Companies the assessments are made under the provisions of the First scheduled to the Income-tax Act. The other provisions in the Income-tax Act relating to assessments of various other categories of persons are not applicable to the Insurance companies.

2.100. In the case under examination, while assessing the capital gains of a General Insurance Company, the Department mistakenly substituted the value of the asset as on 1st January, 1954 as the cost price of the property, to arrive at the capital gains instead of the actual cost price. This kind of substitution is not admissible to General Insurance Companies as such a provision does not figure in the first schedule to the Income-tax Act. The incorrect application of the Law resulted in under assessment of income of Rs. 10,67,808 with consequent short-levy of tax of Rs. 6,72,719 for the assessment year 1963-64. The mistake was accepted by the Ministry.

2.101. During evidence, the Committee enquired whether the assessment had been rectified and the additional demand pointed out recovered. The Member, Central Board of Direct Taxes stated: "It is not rectification but it is reopening from the point only for which

rectification is to be carried out. The assessment has been reopened under Section 147(a) and the re-assessment is still pending."

2.102. The Committee desired to know whether any instructions were issued by the Central Board of Direct Taxes clarifying the provisions of the Law applicable to General Insurance Companies. The Ministry in a note submitted to the Committee stated that instructions were issued by the Board in August, 1967.

2.103. The Committee were informed by Audit that the assessment was checked by the Internal Audit but the mistake was not noticed by them. The Committee wanted to know whether the Board had laid down any instructions regarding the assessment of Insurance Companies for the guidance of the Internal Audit. The Ministry, in a note, stated: "The assessment was made on 24-3-1965. Till the end of May, 1969 the Internal Audit parties were not checking the legal points. Hence the mistake was not noticed by the Internal Audit Party which looked into this case. Even now the Internal Audit Parties are not equipped for scrutinising the assessments of the Insurance companies which are of a highly complex nature."

2.104. When asked by the Committee whether the Ministry had ordered for a general review of all the assessments of the Insurance Companies with a view to find out similar case, if any, as they are under examination, to enable timely rectification of the assessments and recovery of the demands, if any, under-assessed the Ministry in a written reply stated that no snch general review had been ordered yet.

2.105. It is disquieting that the number of cases in which mistakes were noticed by Audit in computation of income under the head "business" has increased three-fold during the last seven years. The under-assessment noticed in such cases during the year 1969-70 alone amounted to Rs. 129.31 lakhs. The deterioration of the position, despite the special attention having been drawn repeatedly to these types of mistakes does not speak well of the Department. The Committee accordingly trust that Government would analyse the nature of repetitives mistakes and take appropriate action to avoid recurrence.

2.106. The incorrect assessment of income arising out of the sale of house property by an Insurance Company which resulted in short-levy of tax to the tune of Rs. 6,72,719 lakhs, reveals ignorance of the Provisions of Income-tax Act applicable to General Insurance Companies. The Committee note that instructions were issued by

the Board in August, 1967 clarifying the position in law. They however, desire that general review of all assessments of the Insurance Companies with a view to finding out whether there were similar mistakes, should be undertaken. The results of such a review and reassessment of the case referred to above may be reported to the Committee.

2.107. The Committee, note that Internal Audit Parties are not equipped for scrutinising the assessments of the Insurance Companies, which are stated to be complex nature. As the need for the check is all the more in complicated assessments, the Committee would urge Government to ensure that Internal Audit Parties are adequately equipped soon to take all types of assessments.

Audit Paragraph

2.108. (i) Cost of production of a film was Rs. 30,25,579 and amortisation thereof was decided to be allowed in three assessment years 1966-67, 1967-68 and 1968-69 in the case of a firm on the basis of receipts from the film during the relevant previous years. Accordingly, the amortisation was worked out as Rs. 24,20,463 for the assessment year 1966-67, Rs. 3,32,814 for the assessment year 1967-68 and Rs. 2,72,302 for the assessment year 1968-69. Though for the assessment year 1966-67, the amortisation allowance was correctly allowed, for the assessment year 1967-68, a sum of Rs. 6,09,209 was allowed as amortisation allowance instead of Rs. 3,32,814. The grant of excess amortisation allowance resulted in short-levy of tax of Rs. 1,63,650 in the hands of the firm and its partners. The Ministry have accepted the mistake. Report regarding rectification and recovery of the tax is awaited.

[Paragraph 38(c) (i) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil)—Revenue Receipts.]

2.109. The Committee asked how the normal practice of taking 3 years as the life of a film was not followed in this case. The Chairman, Central Board of Direct Taxes stated: "There was a circular which says that the film producers have urged that no longer is the effective life of film for three years as was presumed by the Income-tax Department. Last year the Board decided on the representation of the various film producers that amortisation should be given the cost of it in one year. Earlier the practice was 3 years."

2.110. The Committee were informed by Audit that there was a case in the Madras High Court wherein it was decided that normally

the life of a film should be taken as 3 years unless there was a proof that the film would not last for more than three years and that the decision of the Madras High Court was brought to the notice of the Central Board of Direct Taxes in May, 1970. The Committee wanted to know the action taken in this regard. The Ministry in a note submitted to the Committee stated: "In their letter dated 7th May, 1970 the Revenue Audit had brought to the notice of the Board the Madras High Court decision in the case of M|s. Gemini Picture Circuit Ltd. (33 ITR 547) observing that the normal life of a picture was three years. This they did in connection with the Board's instructions dated 4th October, 1969 issued from F. No. 9|80|69-IT(AI) stating that because 'of the changed situation regarding the minimum guarantee system operating in the film industry at present, it is perhaps inappropriate to resort to the inflexible rule in every case of amortisation of the cost of film over a period of 3 years'. The Board accepted the position that the effective and earning life of a large majority of the present day films seldom exceeded one year. Accordingly, in partial modification of the Board's Circular No. 4 (XI-3)D of 1959 dated 9th April, 1969, it was directed that if a producer did not wish to write off the cost of the film in his books over a period of 3 years, he might be permitted to write off the entire cost in the year in which the film was released. On his doing so the entire cost of the film was to be allowed as an admissible deduction in the year in which the picture was released and cost of the film written off.

Before issuing the modified instruction in October, 1969, the matter had been considered at length by the entire Board. The modification of the earlier instructions was mainly due to the change of circumstances, in particular, relating to the average life of a film. The judgment of the Madras High Court referred to by the Revenue Audit was delivered on December 6, 1957. The position has changed radically since then. For example, in the past, hardly any producer took out more than 3 to 4 copies of a print for exhibition in different parts of the country. On account of the smaller number of prints the films did continue to be run and have an effective earning life of 3 years or so. However, the present practice followed by the producers is to make 50 to 100 prints and release them simultaneously in a larger number of cinema houses all over the country. This evidently results in the effective and earning life of a film being drastically cut down to something less than a year.

However, on receipt of the Audit's letter the matter is being considered 'de novo' on merits. A preliminary study on the basis of particulars collected in respect of a number of the films showed that

in the vast majority of cases 80 to 90 per cent of the receipts from exhibition of films are netted in the very first year. Further there was no positive evidence to show that by allowing cent per cent amortisation of the cost of production in the first year itself, there is any serious danger of loss of revenue.

The Board recently gathered further information in respect of some more films (which may not be top class films) and a final decision is likely to be taken early in the matter. As soon as that is done the Committee will be informed of the outcome."

2.111. When asked whether the assessments of the firm and all its partners had since been revised and additional demand raised. The Ministry, in a note, stated: "The assessments of the firm and both its partners have been revised. The additional demand raised as a result of the Audit objection in the case of the firm and one of the partners stands fully realised. In the case of the other partner Rs. 7,623 remains to be collected after adjustment of advance tax and refund due to the assessee."

2.112. Pointing out that the aggregate amortisation allowances granted in the two years 1966-67, and 1967-68 had exceeded the cost of production, the Committee enquired whether the Ministry had issued any instructions regarding maintenance of a continuous record, like the depreciation chart to enable the Income-tax Officer to keep a watch that the total amortisation allowance granted did not exceed the cost of production of film. The Ministry, in a written note, stated: "The Ministry have not issued any instructions regarding the maintenance of a continuous record like the depreciation chart to enable the Income-tax Officers to keep a watch that the total amortisation allowance does not exceed the cost of production. The Board are considering the question of issuing instructions to this respect."

2.113. When enquired whether executive instructions issued accord with the judicial view on this subject and whether any safeguards had been taken that profits earned by producers and distributors were not kept away from taxation the Ministry stated: "The executive instruction of the Board issued in October, 1969 may appear to be contrary to the views of the Madras High Court in the case of the Gemini Pictures Circuit Ltd. (38 ITR 547). But the apparent conflict would perhaps be resolved on considering the changed circumstances."

2.114. When asked whether the assessment was looked into by the Internal Audit, the Ministry, in a note, stated the case was checked

by the Internal Audit but they failed to detect the error and that the concerned official had explained that checking of 'amortisation' was not covered in the check sheet then in vogue.

2.115. The Committee find that on account of incorrect grant of amortisation allowance taking the life of a film to be 2 years resulted in a short levy of Rs. 1,63,650 in the hands of the firm and its partners. The additional demand raised as a result of Audit objections in the case of the firm and one of the partners stands fully realised. The Committee would like to know the settlement in the case of the other partner.

2.116. The instructions issued by the Board in October, 1969, allowed write-off of the entire cost of a film in the year in which it was released. Though this was not in accordance with the judicial view on the subject given in 1957, the Department have expressed that the position has radically changed since then. However on Audit objection raised in May, 1970, the matter is stated to be taken for consideration 'de novo' on merits. The Committee would like to know the final decision taken in this regard early.

2.117. In this case the aggregate amortisation allowance granted in the two years 1966-67 and 1967-68 had exceeded the cost of production of the film. The Committee are unhappy to note that the Ministry have not issued any instructions so far regarding the maintenance of the continuous record, like the depreciation chart to enable the assessing officer to keep a watch that the total amortisation allowance does not exceed the cost of production. The Committee wish that this should be done early.

2.118. Although this case was checked by the Internal Audit, they failed to detect the errors for the reason that checking of amortisation was not covered in their check sheet then in vogue. The Committee hope that this lacuna has since been removed.

Audit Paragraph

2.119. (iii) The Income-tax Rules provide for allowance of actual cost of replacement of certain depreciable assets on which no depreciation is allowable. Consumable stores, however, are allowed as revenue expenditure to the extent they are consumed in manufacturing process.

2.120. In a case certain items of depreciable assets, actual cost for replacement of which was allowable under the Rules were treated by the assessee as expenditure on stores and accordingly the cost of

actual consumption of these store items was debited to the Profit and Loss Account. From the assessment year 1960-61, however, the department considered that the items were not in the nature of consumable stores and allowed a deduction in respect of the cost of replacement of such assets. However, the amount debited to the Profit and Loss Account as cost of consumption was not added back resulting in under-assessment of income of Rs. 7,02,141 with consequent under-charge of tax of Rs. 3,42,715 for the assessment years 1960-61 and 1967-68. The Ministry have accepted the mistake. Report regarding rectification and recovery of the tax is awaited.

[Paragraph 38(c)(iii) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil)—Revenue Receipts.]

2.121. The Committee enquired whether the assessments for the year 1960-61 and 1967-68 were rectified and additional demand recovered. In a note the Ministry stated: "The assessment for 1967-68 was rectified on 20th February, 1971 and an additional demand of Rs. 1,07,009 was recovered by adjustment on 14th July, 1971. The assessment for 1960-61 could have been rectified latest by 31st March, 1965, but the Audit objection was received by the Department only on 30th March, 1970. Hence, no rectification for this year was possible."

2.122. As for the position in regard to assessments from 1961-62 to 1966-67, the Ministry, in a note, stated that the Revenue Audit looked into the assessments for these years as well and had not reported any mistakes.

2.123. This is a sad case where although the income-tax officer rightly treated the cost of replacement of certain items of depreciable assets as allowable deduction, he failed to add back the cost debited to the Profit and Loss Account while completing the assessments for the years 1960-61 and 1967-68. The effect of this failure was an under-charge of tax of Rs. 3,42,715. The mistake was not noticed before Audit pointed it out in March, 1970 with the result that assessment for 1960-61 could not be rectified as it became time-barred. The Committee desire to be informed whether the case was looked into by Internal Audit and if so, how the mistake was not detected by them. The Committee would also like Government to examine whether similar mistakes were made in the assessments for the years 1961-62 to 1966-67 and take suitable action.

Audit Paragraph

2.124. A firm carried on the profession of solicitors and the accounts of the firm were maintained on cash basis. On death o

retirement of a partner or partners, the firm was reconstituted making provision in the revised partnership deeds for payment to the retired partners or legal heirs of deceased partners as the case may be, appropriate shares of profits attributable to the work done by the old firm when the retired deceased persons were partners. Payments made to retired deceased partners were allowed as deduction in computing the total income of the firm for the assessment years 1958-59 to 1967-68 as per orders of the Commissioner of Income-tax of September, 1965 based on equity, even though the provisions of law did not permit such deduction. The incorrect deduction allowed to the firm resulted in under assessment of tax of Rs. 51,711.

[Paragraph 38 (c) (iv) of the Report of the Comptroller and Auditor General of India for the year 1969-70 Central Government (Civil) Revenue Receipts.]

2.125. Pointing out that as per Audit paragraph, the Commissioner's instructions of September, 1965, based on equity derived no authority from the Income-tax Act, the Committee enquired whether the legal implications of the Commissioner's orders in the case had been examined. In a written reply, the Ministry stated: "The objection has not been accepted by the Ministry because of the following reasons:

(i) The payments made to the retired deceased partners represented the share of profits which were attributable to the work done by the firm prior to the retirement death of the concerned partners. The firm is assessed on cash basis. Hence normally not the entire profits attributable to the work done by the firm in any particular year would be assessed to tax. A part would be assessed in later years on the basis of actual receipt.

(ii) The payments were made on the basis of partnership deed executed at the time of reconstitution of the firm following the retirement death of a partner.

(iii) The payments to the erstwhile partners constitute overriding charges which have to be allowed following the decision's in the cases of I.C.I. (India) Pvt. Ltd. *Vs.* C.I.T. (58 IT 649) and C.I.T. *Vs.* Bansidhar (67 ITR 374)."

2.126. In reply to a question, the Ministry, in their written reply stated that the assessments for the years 1958-59 to 1967-68 were made on various dates between 21st February, 1959 and 13th October, 1967, following the instructions of the commissioner and that the payments in the hands of the recipients were subjected to tax.

2.127. The Committee learnt from Audit that the Audit wrote a letter in March, 1971 to the Ministry pointing out certain authorities applicable in the case. When asked whether those points had been examined the Ministry, in a written note, stated: "The Audit referred to the decision in an English case [McCash & Hunter V. Commissioner of Inland Revenue (36 TC 170)], the facts in which are, in the opinion of the Ministry, clearly distinguishable. However, it is proposed to seek the opinion of the Ministry of Law on the point raised by the Audit."

2.128. When enquired by the Committee whether the procedure laid down in the Commissioner's instructions were being uniformly applied to all similar cases arising in the various charges, the Ministry in a note replied that it would be difficult to furnish the information without reviewing the cases of the firms of professional persons in the different Commissioner's charges and that such a review would be undertaken after settling the Audit objection in consultation with the Ministry of Law.

2.129. The Committee note that although the accounts of the solicitors firm were maintained on cash basis, payments representing the share of profits made to retired partners or legal heirs of the deceased partners were allowed as deduction in computing the total income of the firm for assessment years 1958-59 to 1967-68. The Committee understand that assessing officer had acted as per the orders of the Commissioner of Income-tax issued in September, 1965. They would like to be informed whether the orders were being uniformly applied to all similar cases arising in the various charges in this circle and what was the position in this regard in other circles. They also desire that the opinion of the Ministry of Law regarding the validity of these orders should be obtained without delay and communiciated to them.

2.130. The action taken on the basis of the opinion of the Ministry of Law, as may be nesessary, may also be reported to the Committee.

(c) Mistakes in computing depreciation and development rebate

Audit Paragraph

2.131. The various types of mistakes that frequently occurred in the allowance of depreciation and development rebate were reported in the previous years' Audit Reports. During the period under review incorrect grant of depreciation and development rebate was found in 807 cases involving under-assessment of tax of Rs. 132.03 lakhs.

(Para 50 of the Audit Report, 1970).

2.132. The Public Accounts Committee had repeatedly drawn the attention of the Ministry to the need to avoid mistakes in computation of depreciation and development rebate. The mistakes have continued to occur involving considerable revenue and during the year under report 1119 cases of under-assessment of tax due to incorrect allowance of depreciation and development rebate involving Rs. 79.77 lakhs were noticed in test-check.

[Paragraph 39 of the Report of the Comptroller and Auditor General—1969-70—Central Government (Civil)—Revenue Receipts.]

2.133. The table below shows the number of cases in which mistakes in computing depreciation and development rebate admissible were pointed out in Audit and the under-assessments of tax resulting therefrom:—

Year	No. of cases	Amount of under-assessment of tax (in Lakhs of Rs.)
1963	574	29·13
1964	678	33·83
1965	2084	75·97
1966	978	368·42
1967	892	97·85
1968	630	41·94
1969	759	93·80
1970	807	132·09
1969—70	1119	79·77

2.134. When asked about the measures proposed to be taken to prevent such mistakes in future, the Ministry of Finance (Department of Revenue and Insurance), in a written note submitted to the Committee stated *inter alia*.

"The increase in the number of mistakes reported by the Audit may have been due to only a larger coverage by them rather than increasing incident of the mistakes."

2.135. In their 21st Report (1963-64) the Public Accounts Committee suggested that besides strengthening the internal Audit checks, the staff dealing with calculation of depreciation allowances should be adequately trained. The Committee enquired about the nature

and period of training prescribed for the staff in regard to the checking of depreciation and development rebate allowances. The Ministry, in a note, submitted to the Committee in March, 1972 stated that the training of the Internal Audit Party was organised by the concerned Additional Commissioners of Income-tax. The manner and the period of training had not been prescribed by the Board and the Director of Inspection (I.T. and Audit) was being asked to do so.

2.136. In paragraph 1.69 of their 46th Report, the Public Accounts Committee recommended that suitable instructions containing comprehensive details should be issued to all the Income-tax Officers for calculation of development rebate and depreciation allowance. From the Ministry's reply of November, 1966, it is learnt that such compendium of various instructions, issued from time to time on development rebate, was issued by the Board in October, 1965. Regarding depreciation, the Board stated that a compendium of instructions would be prepared and would be issued to the Income-tax Officers.

2.137. In a note submitted to the Committee in March, 1972, the Ministry stated: "The depreciation rates have been simplified with effect from 1-4-1970. It should not be difficult for the field officers to apply these rates. Regarding Development Rebate, items for checking have been exhaustively indicated in the Internal Audit Manual and this has been followed up by the issue of elaborate check-sheets."

2.138. In paragraph 1.195 of their 117th Report (Fourth Lok Sabha) the Committee observed as under:—

> ".....In paragraph 3.66 of their 73rd Report (Fourth Lok Sabha) the Committee had stressed the need for the rationalisation of the provisions of the Act bearing on depreciation and development rebate. Pursuant to this recommendation, Government have framed and published draft rules to replace the existing rates of depreciation by consolidated rates on Industry-wise basis and invited public opinion thereon. The Committee trust that in the light of suggestions received from the trade and industry, Government will be able to work out a simple and rational rate schedule."

2.139. In paragraph 1.175 of the said Report, the Committee further observed that the important industries like scooters and automobiles, electronic equipments etc., industry-wise rates of depreciation had not been prescribed in the draft rules referred to above. The Committee desired that Government should consider the question of laying down suitable rates of depreciation in respect of those

industries also at an early date. In their action taken note submitted to the Committee in December, 1970, the Ministry stated that the above recommendation of the Committee was under active consideration of the Government.

2.140. It is learnt from Audit that the draft rules have been finalised by Government and have been brought into effect with effect from 1st April, 1970 and that the new rules also do not provide for industry-wise rates of depreciation in respect of large number of industries. When asked about the action taken or proposed to be taken by the Ministry in laying down industry-wise rates of depreciation, the Ministry in a note submitted to the Committee stated: "Regarding the Committee's recommendations that for important industries like scooters and automobiles, electric equipment etc., industry-wise rate of depreciation may be prescribed, it may be stated that the question is still under the consideration of the Government. It may, however, not be possible to fix industry-wise rates, because the percentage of machinery entitled to different rates of depreciation may not be the same in the case of all the concerns running a particular type of industry."

2.141. In paragraph 1.109 of their 3rd Report on Audit Report 1966, the Committee observed that the Central Board of Direct Taxes had issued orders that a special review should be conducted in all the charges (other than Bombay) with a view to check correctness of the calculations of the development rebate and depreciation allowances. The Committee desired to know the results of the review. The Ministry, in a note, submitted to the Committee, stated that it had not been possible to follow up the reviews because of the inadequacy of man-power (particularly of trained hands) which had been kept fully occupied with the disposal of current and arrear work.

2.142. In paragraph 1.126 of their 3rd Report, the Committee recommended that having regard to the large number of assessments in which the mistakes in grant of depreciation allowance and development rebate were noticed, each Inspecting Assistant Commissioner should check a certain number of cases of each Income-tax Officer under his charge at regular intervals. The Board in their letter dated 18th May, 1968 brought the recommendation of the Committee to the notice of the Commissioners. The Committee wanted to know whether Inspecting Assistant Commissioners carried out the scrutiny as recommended by the Committee. The Ministry, in a note submitted to the Committee stated: "The Committee had made

a similar recommendation at para 1.197 of their 117th Report, in pursuance of which instructions have been issued requiring the Inspecting Assistant Commissioners of Income-tax to check a percentage of the cases involving substantial amount of depreciation and development rebate. It is not yet known to what extent they were able to pay attention to this additional aspect of their work."

2.143. The Committee pointed out that the mistakes in computing depreciation and development rebate had accounted for under-assessment of tax of Rs. 79.77 lakhs in 1,119 cases. The Committee desired to know the number of cases where rectifications had been so far carried out and the additional demand raised. The Committee also wanted to know the number of cases where rectifications could not be carried out due to time bar and the revenue involved therein. The Ministry, in a written note, stated: "Out of 1,119 cases, 137 were the cases involving a tax effect of Rs. 10,000 or more in each case. The aggregate amount of under-charge reported in these cases is Rs. 61.68 lakhs. The Ministry have called for information about the 137 cases and this will be furnished to the Committee as soon as they are compiled in the Ministry. The Committee might perhaps like to leave the question of verification of the latest position in the remaining 982 cases to the lower formations of the Audit."

2.144. In a further communication to the Committee, the Ministry informed the latest position of the 137 cases referred to above as under:—

"(i) In 58 cases the mistake have been rectified and an additional demand of Rs. 11,36,677 raised, of which Rs. 6,36,302 pertaining to 30 cases has been collected. In 28 cases, collection is pending.

(ii) In 48 cases, involving an aggregate tax of Rs. 17,17,844, as reported by the Audit, the objection has not been accepted.

(iii) Rectification is barred by time in two cases involving Rs. 33,439.

(iv) The objections in 29 cases are still under consideration."

2.145. While vetting the Ministry's reply, the Revenue Audit have reported that the position is as under:—

	No. of cases	Amount Rs.
(a) Accepted	34	19,76,342
(b) Time barred	4	98,714
(c) Not accepted by Ministry but pursued by them.	9	5,20,791
(d) Reply still due from the Ministry	67	28,15,740
(e) Not accepted and under verification by A.g's	23	7,56,048
	137	

2.146. The two-fold increase in the number of cases in which mistakes in computing depreciation and development rebate noticed by Audit clearly indicates that the steps taken by the Department in pursuance of the observations made by the Committee in the successive reports have not been effective enough. The Ministry has held that "the increase in the number of mistakes reported by Audit may have been due to only a larger coverage by them rather than increasing incidence of the mistakes". The Committee regret their inability to accept this interpretation of the Ministry which displays an excessively complacent attitude. In this connection, they would like to refer to the suggestion contained in the 3rd Report (Fourth Lok Sabha) that a special review should be conducted in all the charges with a view to checking correctness of the calculations of the development rebate and depreciation allowances. The Ministry has pleaded that it had not been possible to follow up the reviews because of the inadequacy of man-power. This is a plea which the Committee find it difficult to accept. In the opinion of the Committee only a complete review and proper follow up action would reveal the degree of efficiency of the department in this regard. They accordingly hope that the Ministry will take adequate follow-up action in all cases speedily.

2.147. The Committee note that the new rules brought into effect from the 1st April, 1970 do not provide for industry-wise rate of depreciation in respect of a large number of industries. The Ministry has explained in this connection that it may not be possible to fix industry-wise rates because the percentage of machinery entitled to different rates of depreciation may not be the same in the case of all the concerns running a particular type of industry. In a case examined by the Committee, they have noticed that there has been

some controversy regarding determination of rate applicable to printing machinery. The Committee would, therefore, suggest that Government should examine as to how far the rules regarding depreciation allowance could be rationalised further to place matters beyond doubt.

2.148. The Committee have been reiterating that each Inspecting Assistant Commissioner should check a certain number of cases of each Income-tax Officer under his charge at regular intervals. They note that although some instructions have been issued in this regard, it is not yet known as to what extent Inspecting Assistant Commissioners were able to pay attention to such a test-check. The present position is quite unsatisfactory. The Committee hope that the Ministry will ensure that instructions are followed in letter and spirit.

Audit Paragraph

2.149. The Income-tax Rules 1922/1962 do not provide any specific rate of depreciation in respect of printing machinery in the absence of which the general rate of 7 per cent is to be applied. It was noticed in three cases that depreciation on printing machinery was allowed for the assessment years 1960-61 to 1967-68 at the rate of 10 per cent as against the correct rate of 7 per cent. When the adoption of the incorrect rate of depreciation with the resultant underassessment of tax of Rs. 93,225 was pointed out, the department revised the assessment in two cases resulting in additional demand of Rs. 23,225. The report of revision in the remaining case involving additional demand of Rs. 70,000 is awaited.

[Paragraph 50(a) of the Audit Report (Civil)-1970 Revenue Receipts.]

2.150. When asked by the Committee about the circumstances in which the mistakes had occurred, the Ministry of Finance (Department of Revenue and Insurance) in a written note submitted to the Committee, stated: "The mistakes are due not to either carelessness or negligence but to the fact that there was some controversy about the correct rate of depreciation to be applied to printing machinery. One view was that rate of printing machinery like litho works, colour and off-set printing machinery, etc., should be the same as prescribed for electric machinery since the same were operated with the aid of electric motors. Another view was that the machinery would be entitled to depreciation prescribed for "newspaper production plant and machinery."

2.151. The Ministry further added: "It will not be correct to say where specific rates of depreciation for an industry as a whole have

not been laid down only the general rate of depreciation is applicable. The Ministry feel that if there is no specific rate prescribed for the industry as a whole, the rates prescribed for the individual items of plant and machinery have to be applied to such individual items. If no specific rate has been prescribed for any individual item, only then the general rate will have to be applied. The Audit have agreed to this interpretation of the depreciation schedule *vide* their letter No. 17|45 Rev.|531-69-1 dated 24-6-1971. In the circumstances, the depreciation allowed to the assessees in question may have to be further revised.

2.152. The Committee enquired whether the additional demand of Rs. 23,225 raised in two cases as a result of revision of assessments had since been recovered. The Committee also desired to know whether the assessment in the third case had since been rectified and additional demand recovered. The Ministry of Finance (Department of Revenue and Insurance) in a note submitted to the Committee stated: "In the case of M s.——, an additional demand of Rs. 12,547 was raised under Section 154, but this order was cancelled by the Appellate Assistant Commissioner holding that there have been no mistake apparent from records. The decision has been accepted by the Department and action u s 263 cannot be taken because of limitation. In the other case, that of Shri————, the additional demand raised was Rs. 13,605; it has been collected."

In the third case, the additional demand raised is Rs. 51,447 as against Rs. 70,000 reported by the Audit. The difference is due to numerous revisions which have taken place in the cases of the partners of the firm. The additional demand has been recovered in full both in the case of the firm and its partners.

2.153. Drawing attention to the fact that in the three cases and in a number of assessments the depreciation was wrongly allowed as pointed out in the paragraph, the Committee enquired whether the Ministry had issued any instructions to the Commissioners to undertake a review of all similar cases so that mistakes, if any, could be rectified before they became time-barred. The Ministry, in a written note to the Committee stated that as already pointed out the adoption of a different rate of depreciation was due not to any mistake but to a difference in the interpretation of the depreciation schedule. As such, no general review was called for.

2.154. According to the Ministry mistakes noticed in these cases are due not to either carelessness or negligence but to the fact that there was some controversy about the correct rate of depreciation

to be applied to the printing machinery. It is unfortunate that the controversy in this regard was not considered till June, 1971. As per the interpretation now given if there is no specific rate prescribed for the industry as a whole, the rates prescribed for individual items of plant and machinery have to be applied to such individual items and if no specific rate has been prescribed for any individual item, then the general rate will apply to such individual items. The Committee trust that suitable instructions in the matter have been issued by the Central Board of Direct Taxes in consultation with Audit.

2.155. The Committee are unable to agree with the view of the Ministry that no general review was called for. They accordingly suggest that it should be undertaken now to find out whether there have been cases of incorrect application of rate of depreciation in the light of the interpretation referred to above so that the relevant assessments which have not become time-barred may be rectified.

Audit Paragraph

2.156. While reviewing the assessment of a company for the assessment years 1962-63 to 1966-67, the following mistakes were found in the allowance of development rebate:

(i) Development rebate of Rs. 17,96,669 was allowed for the assessment years 1962-63 and 1963-64 on road transport vehicles even though it was not admissible on such assets under the law.

(ii) Development rebate of Rs. 24,30,912 was incorrectly allowed for the assessment years 1963-64 to 1966-67 as the machinery for which the rebate was allowed was not put to use either in the year in which it was installed or in the immediately succeeding year.

2.157. On a review undertaken by the department about the correctness of the development rebate allowed in the various assessment years, as suggested in Audit, the department found that besides the incorrect grant of development rebate of Rs. 42,27,581 pointed out above, development rebate of Rs. 62,26,780 was found to have been wrongly granted as the prescribed conditions in the statute was not satisfied by the assessee. The total development rebate incorrectly allowed thus amounted to Rs. 1,04,54,361 during the assessment years 1962-63 to 1966-67. The carried-forward losses would be reduced by this amount and the tax effect would be

reflected in the year in which profits are assessed. The Ministry have accepted the mistakes and rectified the assessments.

[Paragraph 50(b) of the Audit Report (Civil), Revenue Receipts, 1970.]

2.158. Development rebate to the extent of Rs. 1.05 crores was incorrectly allowed in the case reported in the paragraph for the assessment years 1962-63 to 1966-67. The mistakes have been accepted and the assessments rectified reducing the carried forward losses to the extent of Rs. 1.05 crores.

2.159. During evidence, the Chairman, Central Board of Direct Taxes explained the position as under: "This case is that of a public sector undertaking. In the case of public sector undertakings, the return or the statement filed by it is and should be accepted by the Department at its face value without there being any need to probe into it."

In this case the figures were tallied with by the department officer, the ward officer alongwith the company representatives. Certain incorrect claims regarding the development rebate were made in the statement filed by the company employees in the course of the assessment proceedings.

2.160. The Committee desired to know the reasons for relaxing the standard of scrutiny in the case of the public sector undertaking. The witness replied: "The facts as presented by a public sector undertaking will have to be accepted on their face value because there is no personal interest for anybody to twist the facts. They are acceptable more readily than in the case of any other individual or any other company. The law applied is the same....the calculation is the same. If the statements of facts which are given on the return are found to be incorrect or the claims made or those facts are incorrect, they would be equally liable to prosecution."

2.161. When asked by the Committee whether it was not the duty of the department to exercise the same scrutiny in respect of facts submitted by the public sector undertakings as in the case of any other assessees, the witness stated: "The Department does not check all its assessees and in applying the test check every item of each company from every aspect cannot certainly be undertaken by the department. Therefore, while checking the accounts, the Income-tax Officer would be influenced—(not that the Department say so) by the thought that while applying this check he need not test check them because these are from certified auditors".... In the case of

audited accounts our enquiry is much less compared to non-audited accounts.... This is the first time or the second time that the facts presented are not in consonance with requirements of the Law."

2.162. The Committee were informed by audit that the assessments for all the years were checked in Internal Audit but still the mistake was not pointed out by them.

2.163. The Committee regret that incorrect allowance of development rebate totalling upto Rs. 1.05 crores for the assessment years 1962-63 to 1966-67 relating to a Public Sector Undertaking was not detected although all the assessments were checked by the Internal Audit. The Committee would like to know the action taken for the failure in this regard.

2.164. The Committee do not appreciate any relaxation in the standard of scrutiny of tax returns submitted by Public Sector Undertakings. They accordingly trust that the Ministry will issue suitable instructions to all the assessing authorities.

(d) Irregular exemptions and excess reliefs given

Audit Paragraph

2.165. In the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members or a cottage industry or the marketing of the agricultural produce of its members or the purchase of agricultural implements, seeds or other articles intended for agriculture for the purpose of supplying them to its members or the proceeding without the aid of power of the agricultural produce of its members, the whole of the amount of profits of business attributable to any one or more of such activities are exempt from tax. In the case of a society engaged in activities other than those specified above so much of its income attributable to such activities as does not exceed Rs. 15,000 is exempt from tax.

2.166. Two co-operative societies besides carrying on activities the income from which is exempt from tax, were also carrying on the business of sale of commodities such as groceries, foodgrains, running a rice mill, an oil mill, a petrol pump and the manufacture of agricultural implements. The income attributable to the latter activities, though chargeable to tax, was incorrectly exempted from tax by the assessing officer. If the income is brought to tax, an additional revenue of Rs. 2,60,967 would accrue for the assessment years 1960-61 to 1967-68. The Ministry have accepted the mistake in one

case involving a tax effect of Rs. 1,19,110 and their reply in the other case is awaited.

[Paragraph 51(a) of the Audit Report (Civil), Revenue Receipts, 1970].

2.167. The Audit paragraph states that in one case the Ministry had accepted the mistake and the Ministry's reply in the other case was still awaited. In regard to the other case, the Committee were given to understand by Audit that though the assessment were rectified by the Assessing Officers to give effect to the mistake pointed out in Audit, the Ministry have not accepted the Audit contention on the ground that the sale of groceries etc. on credit was fully covered by the term "Providing credit facilities to its Members". It was also learnt from Audit that the legal position was clarified to the Ministry in September, 1970 and the Ministry's reply thereto was still awaited.

2.168. The Committee enquired whether it was the intention of the Ministry to exempt from tax the profits from sale of goods on credit. The Committee also wanted to know the opinion of the Ministry of Law as to whether this was covered by the existing provisions. The Ministry, in a note, stated: "Under the provisions of Sec. 80P (formerly Sec. 81) of the Income-tax Act, 1961, the business income of a Co-operative Society engaged in banking business or providing credit facilities to its members is exempt from tax. In the instant case the assessee, which is an apex cooperative society, was providing to its constituent members which are all primary cooperative societies, money and goods on credit. It was charging interest separately, at the close of each year, on the outstanding balances due by the member societies in respect of the goods supplied on credit or cash advances made to them for the purchase of goods in the outside market. The interest thus charged was, in the view of this Ministry, earned entirely by offering 'credit facilities' to the members of the society. Accordingly, they consider the action of the Income-tax Officer in allowing the assessee relief u|s 80(1)(a)—to be correct. It has not been the intention of the Ministry to exempt from tax the profits from the sale of goods on credit."

2.169. During evidence, the Chairman, Central Board of Direct Taxes, stated: "A meeting between the representative of the C&AG and the Ministry of Law has to be arranged....because any difference between Audit and the department will be discussed along with the Ministry of Law by both the representatives. But we have not held the meeting.....A meeting was attempted to be arranged on four occasions but somehow, for want of convenience of one party or the other, it could not materialise."

2.170. The Committee further learnt from Audit that an Appellate Tribunal had held in a case that sale of goods on credit to its members did not amount to providing credit facilities to the members as contemplated under the Act. The Committee also learnt from Audit that the Commissioner of Income-tax on a revision petition filed by the assessee had also taken the same view that mere supply of articles on credit basis did not amount to "providing credit facilities to the Members" as contemplated under the Act. The Committee enquired whether the decision of the Tribunal was accepted by the Department. The witness stated: "The Commissioner in the present case seems to have agreed with the Audit. But the Board will have to issue instructions. The word here is 'credit facilities'; it is not money lending or banking. So here also the society provides credit facilities. The department accepted the Tribunal's decision because it is in favour of the department and therefore it is for the assessee to take up the matter in appeal. But in fairness the department wanted to examine this issue fully before issuing instructions."

"The present position is that we have not issued instructions; we want to get it clarified by the Ministry of Law."

2.171. When asked whether the Board still desired to contend that the intention of the Act as it was worded, was to give the concession also to the sale of commodities on credit, the witness replied: "It is not a question of our wishing. Our interpretation was that the word 'credit facilities' would include it. Now having come to this decision, when there is an honest difference of opinion between revenue and Audit, it is better that we clear it....We would like to be on firmer grounds as to the interpretation because, after all, in law there can be difference of opinion and one never could say which interpretation is right."

2.172. To a question, the witness stated: "The department can go in appeal after the Tribunal's order if it is against the revenue interests of the Department. When the decision is against the assessee, he should go in appeal. The department did not go beyond the stage of the Tribunal because the decision is in favour of the Department."

2.173. The Committee note that an Appellate Tribunal had already held in a case that sale of goods on credit to its members by a co-operative society did not mean providing credit facilities, as contemplated under the Act. It is unfortunate that although the matter was brought to the notice of the Ministry in September, 1970 by Audit, the opinion of the Ministry of Law has not yet been taken with the result that no instructions clarifying the position have been issued to

the lower formations of the Department. The Committee hope that it will be done without further delay.

(e) Incorrect relief from tax on newly established industrial undertaking

Audit Paragraph

2.174. A company set up a new industrial undertaking which started producing articles in the previous year relevant to the assessment year 1958-59. The assessee was, therefore, entitled to relief governing income of new industrial undertaking upto the assessment year 1962-63. The departmental, however, allowed relief even for the assessment years 1963-64 and 1964-65. As a result of the incorrect allowance of the relief, tax was undercharged to the extent of Rs. 9,00,509 for the assessment years 1963-64 and 1964-65. The mistake also led to consequantial under-charge of Super Profits tax of Rs. 2,18,085 for the assessment year 1963-64 and under-charge of Sur-tax of Rs. 1,73,377 for the assessment year 1964-65. The case was reported to the Ministry in August, 1969. Reply is awaited (March, 1970).

[Paragraph 52 of the Audit Report (Civil) Revenue Receipts, 1970.]

2.175. The Ministry of Finance in a written note submitted to the Committee stated that the assessments for the years 1963-64 and 1964-65 had since been revised. The assessee company had made 'ad hoc' payments of Rs. 3 lakhs for 1963-64 and Rs. 2 lakhs for 1964-65. The collection of the balance had been stayed till the disposal of the first appeal.

2.176. When asked about the action taken on the share-holders assessments as the relief might have been given on the dividend income, the Ministry stated that the Income-tax Officer had been instructed to take possible remedial action in the case of the shareholder.

2.177. The Commitee was informed by Audit that in another case assessed in Calcutta a similar mistake was committed with resultant under-assessments of tax of Rs. 2,12,292. The Committee wanted to know whether the Ministry had thought of ordering a review of all assessments from 1960 onwards wherein industrial holiday benefit was given to ensure that the benefit was not extended for a period of more than five years. The Ministry, in a note submitted to the Committee stated: "The Ministry have been experiencing difficulty in some marginal cases as to what exactly constitutes a new industrial

undertaking" which is entitled to the relevant relief. In one of the cases relating to the Madras charge, the Ministry have referred the question to the Ministry of Law whose decision is awaited. In another case relating to the West Bengal charge, an assessee set up a salt manufacturing unit and subsequently it set up a caustic soda and soda ash manufacturing unit. Since the entire salt production of the assessee was utilised in the manufacture of caustic soda and soda ash, the Revenue Audit are of the view that the two units are part and parcel of a single "new industrial undertakings". The Ministry are, however, of the view that the two units are to be treated as two separate "new industrial undertakings" and accordingly relief for a period of five years has to be allowed separately to each one of them from the date of commencement of production. This matter may also have to be referred to the Ministry of Law for their opinion. A review of similar cases can only be thought of after the doubt facing the Ministry are cleared by the Ministry of Law."

2.178. The Committee are unable to understand how the Income-tax Officer over-looked the fact that the tax relief on newly established industrial undertakings is admissible only for a period of five years from the year in which production started and allowed the relief beyond the stipulated period for the assessment years 1963-64 and 1964-65 which resulted in under-assessment of tax to the tune of Rs. 13,53,971. They, however, wish to be informed of the outcome of the appeal preferred by the assessee in this case.

2.179. The Committee were informed by the Ministry that the Income-tax Officer had been instructed to take remedial action in the case of share holders' assessments. The action taken in this regard may be reported to the Committee.

2.180. The Committee note that the Ministry have been experiencing difficulty in some marginal cases as to what exactly constitutes a 'new industrial undertaking' and that the matter has been referred to the Ministry of Law whose opinion is still awaited. The Committee desire that the matter should be got clarified without further loss of time and suitable instructions issued for the guidence of assessing officers.

2.181. The Committee also trust that on the basis of the opinion obtained from the Ministry of Law, the past cases of assessments will be reviewed to ensure that the benefit of industrial holiday was correctly extended. Further as regards cases other than marginal ones, a review should be immediately conducted with a view to rectifying under assessments, if any.

Audit Paragraph

2.182. No tax is payable by an assessee on that portion of profits and gains derived by it from a newly established industrial undertaking which do not exceed six per cent of the capital employed in such undertaking. To get this concession the following conditions, besides others, have to be fulfilled:

(i) The relief is admissible for the assessment year relevant to the previous year in which the undertaking begins to manufacture and for assessment years immediately succeeding.

(ii) Allowances like depreciation, development rebate etc. are to be deducted from income before relief is applied.

(iii) Relief is not admissible on expension/extension to the industrial undertaking already existing.

2.183. In the following paragraphs illustrative cases where in the aforesaid requirements were not fulfilled are given:—

(a) A new industrial undertaking commenced production in the previous year relevant to the assessment year 1958-59 and hence the exemption from tax was admissible for the five assessment years from 1958-59 to 1962-63. However, the relief was incorrectly allowed in the assessment years 1963-64 and 1964-65, resulting in under-charge of tax of Rs. 14,31,687. The paragraph was forwarded to the Ministry in October, 1970 and their reply is awaited.

[Paragraph 42 (a) of the Report of Comptroller & Auditor General of India—1969-70—Central Government (Civil)—Revenue Receipts.]

2.184. The Committee were informed by Audit that the Ministry have not furnished a reply to the paragraph sent to them in October, 1970. The Committee wanted to know whether the mistake pointed out in the paragraph had been accepted, and if so, the additional demand pointed out therein had been recovered. The Ministry of Finance, in a note submitted to the Committee, stated: "The objection is acceptable only to the extent that the capital employed in the assessee company's salt manufacturing unit has incorrectly enjoyed the benefits of the relief u/s 84 for the assessment years 1962-63 to 1964-65. In the Ministry's view, the two units set up, one for the manufacture of salt and the other for manufacturing soda ash and

caustic soda are independent of each other and self-contained ones. The reasons are stated below:—

(i) The licence granted by the Ministry of Commerce and Industry was 'for the establishment of a new industrial undertaking for the manufacture of soda ash and caustic soda' and not for the manufacture of salt for which no licence was required.

(ii) The salt unit commenced production in the period relevant to the assessment years 1957-58 and the salt produced was sold in the open market as a part of it being carired as closing stock, as well.

(iii) The two units were located at a distance of 1 Km. from each other.

(iv) The new industrial undertaking for the manufacture of soda ash and caustic soda went into production only in the period relevant to the assessment year 1960-61.

(v) For the year in which soda ash and caustic soda were produced for the first time (assessment year 1960-61) the assessee had filed separate profit and loss accounts for the two units. Subsequently, however, a single account was filed presumably because the entire production of salt was utilised by the assessee itself in the manufacture of soda ash and caustic soda.

(vi) The investment in the salt unit is Rs. 28 lakhs, only as compared to an investment of Rs. 3 crores in the other unit.

The Audit's doubt will have been induced by an incorrect action by the Income-tax Officer himself viz., the inclusion of the capital relating to the salt manufacturing unit in the capital base with reference to which the relief u/s 84 was allowed for the assessment years 1963-64 and 1964-65. The proper course for him would have been to separately allow relief to the salt manufacturing unit for the assessment years 1957-58 to 1961-62 and to the unit manufacturing caustic soda and soda ash for the assessment years 1960-61 to 1964-65."

2.185. The Ministry regretted the delay in replying to the Audit. They would, however, like to point out that the facts of the case were so involved that a good deal of time was taken in sifting them.

2.186. It is learnt from Audit that the mistake pointed out in the paragraph has been accepted by the Income-tax Officer and

remedial action taken. The Committee enquired whether consequent excess relief credit to share-holders of the company was withdrawn. If it was so, the Committee wanted to know the additional tax that accrued to the Government. In a written note, the Ministhy stated: "The assessments for 1963-64 and 1964-65 will have to be revised for reasons altogether different from that raised by the Audit. For the assessment years 1960-61 to 1962-63, the unit manufacturing soda ash and caustic soda was eligible for large amounts of depreciation, which, in the absence of available profits from the same unit, were set-off against the other profits of the assessee. Following the decision in the cases of Asoke Motors Ltd. [41 ITR 397] and Rajapalayam Mills Ltd. V CIT [78 ITR 677], the depreciation relating to the same unit which remains unabsorbed will have to be adjusted against the profits for the assessment years 1963-64 and 1964-65. This would mean considerably less relief u/s 84 to the company for these two years. As appeals are pending before the Appellate Assistant Commissioner against the assessment for these 2 years, it is proposed to request him to set aside the assessments so that appropriate relief u/s 84, if any, could be computed.

So far, no action has been taken for the withdrawal of relief given to the share-holders of the company."

2.187. The Committee have in the preceding recommendation referred to the controversy as to what constitutes 'a newly established undertaking' on which an opinion of the Ministry of Law has been sought. They trust that suitable action will be taken in this case on receipt of the opinion of the Ministry of Law.

Audit Paragraph

2.188. In the assessments of a company for the years 1962-63, 1965-66 and 1967-68, development rebate of Rs. 23,17,314 was not deducted from the profits and gains and the relief was allowed on the profits and gains arrived at before deduction of the development rebate. This resulted in excess relief of Rs. 10,72,447 with consequent undercharge of tax of Rs. 5,72,569 and Rs. 30,997 by way of interest allowed on excess payment of advance tax. The department have since raised a demand of Rs. 6,03,566 after rectifying the mistake. Report of recovery is awaited.

[Paragraph 42(b) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil)—Revenue Receipts.]

2.189. Under Section 85(5) of Income-tax Act, 1961, to allow tax holiday reilef, the profits and gains of an industrial undertaking should be computed in accordance with the provisions contained in Chapter IV D thereof. In other words the reilef is to be calculated on the net profits and gains arrived at after deducting the development rebate and other allowances.

2.190. In the case reported in the paragraph the relief was allowed on profits and gains arrived at before deduction of the development rebate. This accounted for excess relief of Rs. 10,42,447 to the company for the assessment years 1962-63, 1965-66 and 1967-68 and the short levy of tax was Rc. 6,03,566. The mistake was accepted by the Ministry.

2.191. An additional demand of Rs. 6,03,566 was raised on the assessee company on 17.10.70 in respect of the three assessment years in question. The company which is owned by the Government, filed appeals against the rectificatory orders. Pending decision of the appeals, it was allowed time for payment of the demand. Recently, it has paid Rs. 50,000. The balance is yet to be collected. The question of enforcing recovery is being attended to.

2.182. The Committee desired to know whether the tax relief was properly calculated during the intermediary assessment years 1963-64, 1964-65 and 1966-67. The Ministry in a note, stated that the Revenue Audit looked into the assessment for these years and found no similar mistakes.

2.193. The tax holiday reilef incorrectly allowed before deducting development rebate from the profits and gains of a Government owned company resulted in a short levy of over Rs. 6 lakhs. The Committee note that the additional demand has already been raised, but the assessee has gone in appeal. The Committee may be informed of the outcome.

2.194. The Committee would also like to know the results of an independent review of the Department as to whether the tax relief was properly calculated for the assessment years 1963-64, 1964-65 and 1966-67 in respect of this company.

Audit Paragraph

2.195. A company set up a new industrial unit which started production in the previous year relevant to the assessment year 1959-60 and relief in respect of the income of the unit was allowed upto the end of the assessment year 1963-64. The department allowed

the relief in respect of the income of the unit for a further period of four years from 1964-65 to 1967-68 on the ground that there was substantial expansion in the industrial unit.

2.196. The Act provides for allowance of relief only to a newly started industrial undertaking for a period of five years and not to any expansion/extension to the existing undertaking which already enjoyed such benefit. Further allowance of relief beyond the period of five years on the expanded activities of the unit resulted in under-assessment of tax of Rs. 4,88,000 for the assessment years 1964-65 to 1967-68. The paragraph was forwarded to the Ministry in October, 1970 to which a reply is awaited (March, 1971).

[Paragraph 42(c) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil) —Revenue Receipts].

2.197. The Committee wanted to know whether the Ministry had since accepted the mistake pointed out in the Audit paragraph. The Ministry, in a note, stated: "The objection has been accepted in principle, but the Audit were requested not to press the objection because of the following reasons:

(i) On a strict interpretation of the provisions of Section 15-C of the Income-tax Act, 1922, and the corresponding provisions of Section 84 of the Income-tax Act, 1961 (which were later substituted) with effect from 1st April, 1968 by Section 80J, it seems that the examption can be allowed-ed only in respect of the income from a new industrial undertaking, or a new or additional unit of the same, and not on the income from any extension of the existing units, even though substantial. This leads to the anomalous position that while a substantial increase in production (comparable to that of an economically viable industrial unit) of the same commodities achieved through a separate unit of production entitles an assessee to exemption u|s 80J, he will be denied the benefit in respect of the increase in production to the same extent effected through a substantial expansion of the existing unit.

(ii) In the instant case, the expansion of the existing unit was very substantial (the value of the plant and machinery increased by 15.5 per cent and this led to the increase or in production by nearly 300 per cent. The following data

would indicate the extent of increase in the accounting period relevant to the assessment year 1964-65:

Item	Value before expansion	Value after expansion	Increase
	Rs.	Rs.	
Plant and machinery	14,15,000	36,23,000	152·5%
Buildings	2,54,000	9,80,000	282%
Production (No. of valves)	3,60,000	14,00,000	290%

It might well be argued that such substantial expansion can be construed as an addition. In fact, the Ministry wished to have this view examined by the Ministry of Law in consultation with the Audit and a joint discussion was arranged on 26th August, 1971, but at the Audit's suggestion, a consideration of the matter was put off till after the PAC meeting scheduled to be held in October, 1971.

(iii) Though the utilisation of the existing unit of production, even after substantial expansion, seems to disqualify an assessee from claiming relief u/s 80J, the utilisation in a new unit of buildings, machinery and plant, which had been used in an old industrial unit, is permissible under Explanation to Section 80J(6) previously Explanation to Section 84(3), the only restriction put is that the value of the old buildings, machinery and plant should not exceed 20 per cent of the value of such assets in the new unit. In the instant case, the value of the old buildings utilised for the enlarged production works out to 20.6 per cent of the total value of such buildings and the corresponding percentage of the value of old plant and machinery works out to 26.2 per cent of the total value of such assets.

(iv) After the completion of the assessment for 1967-68, the Income-tax Officer had some second thoughts about the admissibility of the relief under Section 84 for the assessment years 1964-65 to 1967-68 and he referred the matter for the instruction of the Commissioner of Income-tax. The latter held that the relief was admissible for all the three assessment years in question in view of the Board's instructions contained in their circular C.B.R. No. C.68(

50 dated 1st April, 1950. The CIT's view was based on the following observations made in the Board's circular:

(1) The concession was intended to be given to undertakings which were calculated to make addition to the existing output; and

(2) The additional unit should be capable of being regarded as truly representing "an economically industrial unit and should compare favourably in size and importance with an average unit in the same class of industry in the country."

The Commissioner of Income-tax felt since the Board's circular nowhere specified that eligibility to relief under Section 84 would depend on setting up an entirely new unit, such relief should be given for substantial expansions resulting in an increase of industrial output to an extent comparable with that of an average unit in the same class of industry in the country."

2.198. The Committee learnt from Audit that Central Board of Direct Taxes in their reference dated 9th July, 1970 expressed the following opinion in regard to granting of relief on expansion/extension.

"Even substantial expansion which does not change the identity of the business or its continuity will not entitle the business to fresh lease of tax holiday. Any decision to the contrary will be disastrous for revenue and would confer absolutely unintended reliefs. All that the assessee would need to do would be to extend the business every five years (which normally he would do even otherwise) and claim perpetual tax holiday. The Board, therefore, do not think that there is any need to change the law."

2.199. The Committee desired to know whether the case fell within the criterion laid down by the Board for not qualifying for relief. The Ministry, in a note, stated: "The facts of the instant case were rather peculiar. The expansion of the unit was substantial, resulting in the increase in production by nearly 300 per cent. Had a separate unit been set up and the increase in production was about one-sixth of what it actually was, the assessee would have been eligible for relief under Section 84."

2.200. The Committee wanted to know whether the Board at any time had issued instructions that substantial expansion/extension to the existing Industrial Undertaking would entitle the assessee to tax

holiday relief under the Law and whether the instructions derived authority from the Law. The Ministry in a note stated that the erstwhile C.B.R. had issued instructions vide circular No. C.69(1)-IT|50 dated 1st April, 1950 and added: "These instructions could be construed to afford relief for substantial expansions resulting in substantial increase in industrial output. Strictly speaking, however, such an interpretation would not be in conformity with the law."

2.201. When enquired by the Committee whether the Department allowed uniformly in all cases the tax holiday relief wherever substantial expansion|extension had taken place, the Ministry, in a written reply stated: "As already stated, the particular case had some striking features, which are not normally noticed in the case of expanding|extending industrial units. The Ministry are not in a position to state whether a similar treatment was meted out to any other industrial unit."

2.202. The Committee note that in this case tax holiday relief was allowed for a further period of 5 years consequent on the expansion of the new industrial unit. It is unfortunate that this was based on the erstwhile Central Board of Revenue's circular issued in April, 1950, which according to the Ministry, could be interpreted in a way that may not be in the conformity with the law. Although the Audit objection has been accepted in principle, the Ministry have stated that 'it might well be argued that such substantial expansion can be construed as addition' and that they wished to have this view examined by the Ministry of Law in consultation with Audit. The Committee accordingly desire that the matter should be considered and clear instructions in conformity with law issued expeditiously, in consultation with Audit. The Committee consider that it is most undesirable to allow the prolongation|virtual perpetuation of tax holiday in this indirect manner.

(f) Failure to rectify partners' assessments on completion of firms' assessments

Audit Paragraph.

2.203. Under the provisions of the Income-tax Act, the assessments of partners of a firm could be completed by taking their share income from the firm provisionally subject to rectification later if the final share income is not known at the time of assessment. However, the assessments of the partners taking the correct share income should be completed within four years from the date of the final order passed in the case of firm. With a view to watching that timely action is taken to revise the partners' assessments, the erstwhile

Central Board of Revenue had prescribed a register called 'register of cases of provisional share incomes' to be maintained in each income-tax office.

2.204. In paragraph 35 of the Audit Report (Civil) on Revenue Receipts, 1963 and para 66 of the Audit Report (Civil) on Revenue Receipts, 1964 a large number of cases of failure to ascertain and adopt the correct share income of partners on completion of firms' assessments were reported. Similar lapses, some involving loss of revenue to Government, continued to occur and a few such cases are narrated below:

(a) The income of an assessee for the assessment year 1959-60 was computed on 21st May, 1963 adopting the share of income from a firm of which the assessee was a partner as Rs. 1,00,825. The assessment of the firm in a different Commissioner's charge was completed on 27th February, 1964 and the share of the partner amounting to Rs. 2,28,231 was intimated to the Income-tax Officer assessing the partner on 31st August, 1966. However, no timely action was taken to revise the assessment of the partner resulting in non-assessment of income of Rs. 1,27,406 and non-levy of tax of Rs. 93,643. As the rectification had become time-barred the Government suffered a loss of revenue of Rs. 93,643.

(b) The assessment of a partner for the assessment year 1962-63 was completed on 28th February, 1967. The firm's assessment was completed in the same ward on 31st July, 1964 and the final share income was determined as Rs. 56,069. Failure to revise the partner's assessment resulted in loss of revenue of Rs. 28,034. The rectification had become time-barred on 31st July, 1968.

(c) The assessment of a partner in a firm for the assessment year 1963-64 was completed in April, 1964 taking the share income provisionally as Rs. 14,473. In August, 1965, the correct share income was intimated by the Income-tax Officer assessing the firm as Rs. 3,26,516. In February, 1968, i.e., after a lapse of two and a half years, a notice was issued to the assessee calling for the objection, if any, for the revision. On a representation made by the assessee that an appeal against the assessments of the firm was pending, the matter was taken up with the Income-tax Officer assessing the firm. Though necessary clarification was received from the Income-tax Officer assessing the firm in March, 1966, the assessment of the partner was not revised adopting the correct share income till November, 1968 when the omission was pointed out. The assessment was

thereafter rectified and additional demand of Rs. 2,39,067 raised. Report regarding recovery is awaited.

[Paragraph 53 of the Audit Report (Civil), Revenue Receipts, 1970]

2.205. Expressing their concern over the fact that in spite of the recommendations of the Public Accounts Committee in their 21st Report (1963-64) and in 28th Report (1964-65), such mistakes as had been pointed out in the Audit paragraph were continuing to occur resulting in loss of revenue to Government, the Committee desired to know the special steps proposed to be taken to prevent such lapses in future. The Ministry in a note submitted to the Committee, stated: "The Board have repeatedly issued instructions requiring the maintenance of a register for noting cases where share income has been provisionally added. In spite of this, stray cases are likely to occur where the Board's instructions have not been faithfully carried out.

Instructions already exist to the effect that the Income-tax Officer assessing the firm should send the share intimation in duplicate to the Income-tax Officer assessing the partners, who is expected to return one copy of the same to the Income-tax Officer assessing the firm after noting therein the fact of the completion/amendment of the partner's assessment."

2.206. The witness, during evidence, stated: "We will reiterate our instructions and see that they are properly followed."

2.207. Referring to the case mentioned in sub-para (a) of the Audit paragraph, the Committee pointed out that though, the Income-tax Officer, assessing the firm intimated the final share income on 31st August, 1966, no prompt action was initiated by the ITO assessing the partner for rectification and that the rectification of the partners' assessment become time-barred on 27th February, 1968, resulting in a loss of revenue of Rs. 93,643 to Government. The Committee wanted to know the reasons for not taking timely action to revise the assessment of the partner. The Chairman, Central Board of Direct Taxes, stated: "The position in this case is that the I.T.O. was asked to explain as to how he had omitted to rectify the partner's assessment and his explanation has been that, in this case, the addition was made in the case of the firm on account of "*hundi*" loans which were being contested in appeal. The assessee's representative attended and opposed the proposed rectification on the ground that a sum of Rs. 1,10,000 has been added to the income of the firm on account of *hundi* loans. This was being contested in appeal. The ITO should have rectified it without waiting for the

result of the assessment of the firm. But he acceded to the request of the assessee since this was being contested in appeal and would be in a position to rectify the assessment of the partner later.

Actually what happened is this. This case has been set-aside When the assessment is remade, he will automatically include this in the hands of the partner. Of course, the ITO should have rectified it...that is an extenuating circumstances which explains his line of thinking."

2.208. The Committee desired to know whether there were any instructions from the Board to concede to the request of the assessees in such cases, the witness stated: "There are no such instructions. The Income-tax Officer should have implicitly rectified the partner's assessment. But....in respect of *hundi* loans wherever they are added, the ITOs know that usually they are set-aside. So, the ITO says, 'I will wait till the Appellate Commissioner passes the order rather than raise the demand on rectifying the assessment of the partner'. I will not call this a justifiable procedure adopted by him."

2.209. The Committee further pointed out that though the assessment of the firm was completed on 27th February, 1964, the share income of partner was communicated only on 30th August, 1966, *i.e.*, after a lapse of about 2-1|2 years. The Committee wanted to know the reasons for the inordinate delay in communicating the share income and also whether any time-limit was fixed by the Board with which the ITO assessing the firm should communicate to the ITO assessing the partner, the particulars of the share income. The Ministry, in a written reply, stated: "The Ministry agree that there was an inordinate delay in the communication of the share income by the Income-tax Officer assessing the firm. The firm was assessed at Bombay and the partner was assessable in the charge of the CIT, Nagpur. Circumstances leading to the delay are being looked into.

No time-limit has been fixed by the Board within which the ITO assessing the firm should communicate to the ITO assessing the partners the particulars of the share income, but it is expected that he should do so as soon as the firm's assessment is completed."

2.210. When enquired whether a note of the pending action was kept in the prescribed register called Register of cases of Provisional share Income and whether the assessment was looked into by Internal Audit, the Ministry, in a note, stated: "For the assessment year 1959-60, the ITO assessing the partner had actually initiated action u|s 154|155 for rectifying the assessment. So he did not make any entry in the Register of Cases for Provisional Share Income. The

C.I.T. has issued instruction reiterating the maintenance of the prescribed register.'

2.211. The Committee pointed out that in the case referred to in sub-para (b) of the Audit paragraph, though the assessments of the firm and of the partner were completed in the same ward and the assessment of the firm preceded that of the partner, no cognisance of the share income was taken while completing the partners' assessment which resulted in a loss of revenue of Rs. 28,034 to Government. The Committee wanted to know the circumstances in which the share income escaped assessment. The Chairman, Central Board of Direct Taxes, stated: "The officer has explained that when he completed the assessment of the partner, the assessee company had not disclosd in its return any share of profit from the firm and therefore, he could not notice the omission."

2.212. Elaborating further, he added: "The company was a partner in the firm. Now, the company had not declared that it had a share income from the firm with the result that the ITO while making the assessment of the company was not aware that the company had a share income from the firm."

2.213. To a further question, the witness admitted that it was certainly a lapse.

2.214. The Committee desired to know the action taken by the Department internally against the erring Income-tax Officers in such cases. The witness replied: "In the present case, he has been asked to be careful in future."

2.215. The witness added: "We take into account the quantum of work and the problems that he has to tackle before we take a stronger action. But, normally, in the initial stages, a warning which acts as a reformative action, probably would serve the purpose.

In a general way the solution lies in having more training facilities in the department and having large number of Audit parties. The quantum of work should also be manageable. At present we expect quite a lot from them from every point of view and we have sometimes not the heart to take action when we find they have lapsed."

2.216. When suggested that before taking disciplinary action against an officer, his past record and the fact whether lapses were bonafide or malafide may be taken into account, the witness stated: "Instructions in this regard will be amplified... the records of the officer move with him....We do pass some remarks on the CR of

the officer if the overall record of the officer calls for such a warning because if an entry is made on the CR it would affect his future career and, therefore, if he makes consistently mistake and if you find the officer overall negligent, then we will also make an entry in the CR and not because of a mistake in a single case."

2.217. To a question regarding corruption in the Income-tax Department, the witness stated: "I won't say that there is no corruption. If we come to know of specific cases, we will certainly have them investigated and take action as we have done in such cases."

2.218. The witness added: "We may not get information from the assessees. But there are ways in which the information leaks out. CBI is there to look after such cases. CBI itself makes enquiries in a fairly large number of cases."

2.219. The Ministry in a written note further stated: "The number of corruption cases under investigation by the C.B.I. during the years 1969-70 and 1970-71 are stated below:

Year	No. of cases
1969-70	51 (Gazetted 29, Non-gazetted 19)
1970-71	43 (Gazetted 24, Non-gazetted 19)"

2.220. While expressing their concern about the inordinate delay that had occurred at every stage of assessment commented upon in the case mentioned in sub-para (c) of the Audit para, the Committee pointed out that though the intimation for the final share income was communicated in August, 1965, the ITO, assessing the partner served a notice only in February, 1968, *i.e.*, after a lapse of 2-1/2 years. Again though necessary clarifications were received in March 1966, the assessment of the partner was not revised till November, 1968 when the omission was detected in Revenue Audit. The Committee wanted to know the reasons for the inordinate delay in initiating action on obtaining the clarification and whether any time-limit was fixed by the Board for taking action on intimation of final share income received in an Income-tax Officer. The Ministry in a note submitted to the Committee stated:

> "In this case the original assessment was completed in April, 1964 adopting a provisional figure of share income from a firm. The Income-tax Officer assessing the firm communicated the correct share income on completion of the firm's assessment in August, 1965, but this intimation was not put up to the Income-tax Officer till June, 1966, when he

was transferred. His successor issued a notice u|s 155 on 2.2.68 but revised the partner's assessment only on 12.11.68. The Ministry regret the delay that had occurred.

The Board have not fixed any time-limit for taking action on intimation of final share income received in an Income-tax Office. The Income-tax Officer is permitted under the law to rectify the partner's assessment within a period of 4 years from the date of the final order passed in the case of the firm....The concerned Income-tax Officer was unable to explain satisfactorily the inordinate delay. He has been 'severely warned'."

2.221. The Committee enquired when the assessment was rectified and whether the additional demand of Rs. 2,39,067 has since been rectified. The Ministry, in a note, replied: "The assessment was revised on 12-11-68 raising an additional demand of Rs. 2,39,067. This was, however, reduced on 11-9-1969 to only Rs. 17,780 in pursuance of a settlement arrived at in the assessee's group of cases. This amount has been collected by adjustment against the refunds due for the assessment years 1964-65 and 1965-66."

2.222. When asked by the Committee whether a note of the pending action had been kept in the prescribed register for watching the rectification of provisional share incomes, the Ministry in a written note replied: "A proper entry does not seem to have been made in the prescribed register. When this fact came to the notice of the Commissioners of Income-tax at Madras, they jointly issued a circular, asking the Income-tax Officers under their jurisdiction to maintain the register properly and also review it periodically."

2.223. In reply to the recommendation of the Committee in their 28th Report (1964-65), the Ministry stated that "as desired by the Committee a review of cases regarding failure to ascertain and adopt the correct share income of partners on completion of the firms assessment was conducted in the Commissioners' charges in Gujarat and Madras and similar review was being made in the remaining Commissioners' charges." Drawing attention to that the Committee enquired whether the review was completed in other Commissioners' charges. The Ministry, in a written reply, stated: "It is regretted that the matter of review contemplated for other Commissioners' charges was not pursued by the Board; this appears have been due to the inadequacy of staff."

2.224. The Committee regret to find that there is no satisfactory arrangement to ensure timely revision of the partner's assessment, provisionally completed, after the final share incomes become known.

Although the erstwhile Central Board of Revenue had prescribed a register called 'register of cases of provisional share incomes' to be maintained in each income-tax office, the register is not being maintained properly. Inordinate delays have occurred both in intimating the correct share of income by the officer assessing the firm's income and in taking timely action by the officer assessing the partner's income. The Committee, therefore, suggest that there should be a similar register through which the timely intimation of the correct share of income to the officer assessing the partner's income can be ensured. This would also help to watch the action taken to revise the partner's assessment, which is already required to be intimated to the officer assessing the firm's income. Further it is desirable to have a time-limit both for such an intimation to be sent and for revising the partner's assessment on receipt thereof. The proper maintenance of the register already prescribed and the one now suggested by the Committee and adherence to the time-limit to be laid down, should be checked by the Inspecting Assistant Commissioners as also by the Internal Audit so as to ensure that the interests of revenue are properly safeguarded.

2.225. In the case referred to in sub-para (a) of the Audit Paragraph, the action of the Income-tax Officer in deciding at the request of the partner to wait till the Appellate Commissioner passed the order on the appeal of the firm, instead of raising the demand after rectifying the assessment of the partner, is admittedly unjustified. The Committee hope that suitable action will be taken against the Officer responsible for this lapse. They would also like to know the circumstances leading to an inordinate delay of 2-1|2 years on the part of the Officer assessing the firm's income, in communicating the partner's share.

2.226. In respect of the case mentioned in sub-para (b), although the firm's assessment was completed before the assessment of the partner's income was taken up, the share of the partner was not taken into account. It is, therefore, for the Department to consider how it could be ensured that such intimation received in advance of the assessment of the partner's income is not lost sight of.

2.227. The Committee, however, find that in this case the partner himself did not disclose his share of the firm's income in his return. As prima facie non-disclosure of the share of the firm's income by the partner after it became known, appears to be a case of concealment of income, the Committee suggest that this aspect

may be examined in consultation with the Ministry of Law and Audit and suitable instruction issued for the guidance of the Assessing Officers.

(g) Incorrect computation of tax payable by companies

Audit Paragraph

2.228. As per the Finance Acts 1964 to 1967, a concessional rate of taxation was provided for companies mainly engaged in manufacturing activities. For the assessment years 1964-65 to 1967-68, a company was charged at the concessional rate of tax applicable for companies mainly engaged in manufacture even though the income was mainly from purchase and sale of goods in the assessment year 1964-65 and from royalties in the assessment years 1965-66 to 1967-68. The mistake resulted in under-charge of tax of Rs. 1,13,320 for the four assessment years. The department have accepted the mistake. Report regarding rectification and recovery of tax is awaited.

[Paragraph 54(a) of the Audit Report (Civil) Revenue Receipts, 1970.]

2.229. During evidence, the Member, Central Board of Direct Taxes informed the Committee that the assessment had since been rectified and demand of Rs. 1.13,404 had been recovered.

2.230. When asked to state the action taken by the Department against the Income-tax Officer in this case, the witness stated "This officer has been associated with a number of audit objections. A review was ordered into the cases done by him and we are still awaiting the result of the review. This is not the only case where he has made an under-assessment."

2.231. In a note, the Ministry stated: "The Income-tax Officer concerned was transferred about two years back from Calcutta to Bombay. A review of his work at both the places is being made. Progress in this respect has been halted because of the urgency of clearing the limitation assessments. The review will be concluded by the end of May, 1972. The Ministry expect to communicate the results of the review to the Committee shortly thereafter.

2.232. To a question, the witness stated that it was the same officer who had done assessments for all the four years.

2.233. The wrong application of concessional rate of tax applicable to companies mainly engaged in manufacture to the income of a company mainly derived from purchase and sale of goods and from

royalties in this case resulted in a short-levy of Rs. 1.13 lakhs. The Committee understand that the assessing officer concerned has been associated with a number of audit objections. They would like to be apprised of the results of the review of all cases of mistakes committed by him and the action taken on the basis thereof.

Audit Paragraph

2.234. Mistakes in applying rates of tax on companies as contained in the Finance Acts of various years were reported in paragraphs 44, 46, 49, 56 and 54 of the Audit Reports on Revenue Receipts 1966, 1967, 1968, 1969 and 1970 respectively. Similar mistakes were noticed during the period covered by this Report.

[Paragraph 40 of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government Revenue Receipts.]

2.235 The Committee were given to understand by Audit that under-assessment of tax on account of incorrect computation of tax payable by companies was noticed in 135 cases involving a sum of Rs. 202.66 lakhs. The number of cases and the tax under-assessed in the previous Audit Reports and in the current Audit Report is as follows:

Audit Report	No. of cases	Under-assessment of tax (Rs. in lakhs)
1966	127	22·5
1967	115	41·91
1968	94	29·20
1969	66	49 88
1970	56	19·59
1969—70	135	202·66

2.236. It was noticed from the above table that the mistakes in the levy of tax on companies were on the increase.

2.237. The Committee were informed by Audit that the Income-tax Officers-in-charge of companies' circles were senior and experienced officers having comparatively lesser number of income-tax assessments to be completed in a year than their counterparts in other circles. In spite of that the number of mistakes pointed out by Audit every year was very considerable. The Committee desired to know the special steps proposed to be taken by the Depart-

ment in preventing such mistakes in future. The Chairman, Central Board of Direct Taxes stated: "We have contemplated to give training to the officers in Company Circle, because it involves great many technicalities about the tax rates etc. Unfortunately, we have not been able to undertake the necessary training. Secondly because of the quick promotions, the senior officers in the Company Circles are within the experience range of four or five years. Only from those who are available for posting in the Company Circle, we post them. They have to look to various other aspects also."

"As a matter of fact we do not have phoper training facilities We conduct, during office hours, some sort of training, but it has to be placed on a more sound basis."

2.238. To a question, the witness replied: "It will be at the earliest, in view of the gravity of the problem."

2.239. The Committee learnt from Audit that Central Board of Direct Taxes were issuing detailed instructions on every annual Finance Act and that large number of mistakes detected in Audit indicated that those instructions were not made use of by the Assessing Officers. The Committee enquired whether the Ministry had drawn attention of the Assessing Officers to this aspect. The Ministry, in a note submitted to the Committee, stated: "Though the Central Board of Direct Taxes have been issuing detailed instructions on every annual Finance Act, the import of some of the new provisions or amendments is sometimes not quite clear to the Income-tax Officers. For their benefit, particularly those who are engaged in the assessment of companies or are handling cases in the Central Circles, the Board propose to arrange for some suitable training following the passing of the Finance Acts."

2.240. The Committee referred to para 1.177 of their 3rd Report (Fourth Lok Sabha) wherein it was recommended that in respect of cases relating to companies particularly falling under high income groups the Board should take steps to get the assessments checked in Internal Audit within a reasonable time after the assessment were completed. In reply to the above recommendation, the Ministry have stated: "The recommendation of the PAC are noted. The scope of Internal Audit was revised and enlarged vide instructions issued under Board's circular F. No. 83|40|61-IT(B) dated the 17th March, 1966. It has already been prescribed that the Internal Audit Parties should check the totals and also check if the total income was computed in accordance with the return and accounts and other materials available on the record. As a result of these instruc-

tions, mistakes of the type mentioned in para 34(e) of the Audit Report, 1966, are not likely to occur again."

2.241. When pointed out that in spite of the steps taken by the Ministry, pursuant to the recommendation of the Committee, the mistakes in the levy of tax on companies had assumed alarming proportion, the witness stated: "We have enlarged it gradually, because I think in the last two years we have added about 20 Audit parties. At the same time we shall have to enlarge it more in order to see that these big cases are taken up immediatly."

2.242. The Committee pointed out that in reply to the Committee's recommendation in paragraph 3.112 of their 73rd Report (1969-70) the Ministry agreed to have a review of all assessments for the assessment years 1964-65 to 1967-68 in regard to incorrect levy of super-tax on total incomes of Rs. 1 lakh or over. When asked about the results of the review, the Ministry, in a note replied: "The results of the review will be intimated to the Committee by the end of June, 1972. At present, the field officers are busy almost entirely with the completion of the limitation cases for 3 years, which will be getting time barred after 31-3-1972."

2.243. The Committee pointed out that a number of provisions in the Income-tax Act exclusively related to companies and there was in addition sur-tax Act for companies. If all the provisions concerning company assessments were separately codified, it would not only simplify the codes but also reduce the size of the present Income-tax Act considerably. The Committee enquired whether the Ministry had considered the aspect. The witness stated: "It, in other words, would mean that you would suggest two Acts, one for the Corporation Tax, embodying a part of the Income-tax law and the other for non-corporate assessees. This would mean repetition of the various sections also....It seems to be an excellent suggestion; we will examine it."

2.244. The Committee desired to know whether there had been any enquiry so far in the structure of corporate taxation taking into account the economic effects of the system with a view to seeing whether the tax system had achieved the objectives of economic growth and social justice. The Ministry, in a note, stated: "No special enquiry into the structure of corporate taxation *vis-a-vis* its effects on economic growth or in achieving social justice had been made in recent years.

2.245. The Committee have been repeatedly stressing the need to exercise special care in assessing tax on companies. Notwith-

standing the steps stated to have been taken in this regard, the mistakes in the levy of tax on companies have assumed alarming proportions in as much as the number of cases in which errors were noticed during 1969-70 was 135 involving under-assessment to the tune of Rs. 202.66 lakhs. That, this was so in-spite of comparatively lesser number of assessments handled in Company Circles by senior and experienced officers, is disturbing. As admittedly there is need to impart adequate training to the officers in Company Circles in view of "great many technicalties" involved in the company assessments, the Committee suggest that there should be regular refresher courses for these officers after the passage of each Finance Act and issue of dtailed instruction thereon. The Committee would like such training courses to be held on a systematic basis and without delay.

2.246. The Committee need hardly emphasise in this connection that the Internal Audit should be suitably equipped and strengthened to take up effectively the big company assessments immediately after they are completed.

2.247. In pursuance of the Committee's earlier recommendation contained in their 73rd Report (Fourth Lok Sabha), the review of all assessments for the assessment years 1964-65 to 1967-68 in regard to incorrect levy of super tax on total income of Rs. 1 lakh and over, is in progress. The Committee would await a report in this regard.

2.248. At the present a number of provisions in the Income-tax Act exclusively relate to companies and there is a separate Surtax Act for companies. To a suggestion of the Committee that in order to simplify matters and facilitate easy reference there could be two separate Acts, one for the corporate sector and the other for non-corporate sector, the Chairman, Central Board of Direct Taxes reacted saying that it seemed to be an 'excellent suggestion'. The Committee hope that this aspect will be examined and necessary follow-up action taken early In this connection the Committee would like to mention that it is not necessary to load the Income-tax Act with the provisions relating to Companies as the number of company assessees is only 27,734 out of a total number of 29,10,341 assessees (as on 31st March, 1970).

2.249. With the various rebates and concessions the structure of corporate taxation is expected to be designed in such a way as to promote economic growth and to ensure social justice. The Committtee were informed that no study had been undertaken to know how far these twin objectives have been realised. The Committee

would, therefore, commend such a study which would be helpful in formulating future taxation policy.

(h) Non-levy of additional tax on section 23A/104 companies

2.250. When accumulated profits and reserves representing accumulation of past profits exceed either the aggregate of paid-up and loan capital which is the property of share-holders, or the value of fixed assets as shown in its books, whichever is greater, the company has to distribute as dividents 90 per cent of its distributable income.

2.251. In the case of a company acting as managing agents which should have distributed as dividends 90 per cent of its distributable income, action to levy additional super-tax was not taken for the assessment years 1961-62 to 1963-64 on the assumption that the prescribed percentage was 60 and that the accumulated profits and reserves did not exceed the share capital or fixed assets. For the purpose of this comparison, the department treated the investments in shares as fixed assets. As investments in shares are not fixed assets their value should have been excluded from the cost of fixed assets. In that event the accumulated profits and reserves would have exceeded both the amount of share capital and fixed assets and the percentage applicable for the distribution of dividends would be 90 as against 60 considered by the department. However, action under section 23A/104 for the assessment years 1961-62 to 1963-64 was dropped resulting in short-levy of tax of Rs. 1,65,032. The Ministry have stated that it would not be unreasonable to hold shares in this case as fixed assets. Shares are not treated as "fixed assets" either under the provisions of the Companies Act or under the Income-tax Act.

[Paragraph 55 of the Audit Report (Civil) Revenue Receipts—1970.]

2.252. The Ministry clarified the legal position in regard to levy of additional tax for non-distribution of dividends, as follows:

> "The object of Sections 23A|104 is to prevent avoidance of tax by Share-holders of a company in which the public are not substantially interested. An individual might avoid the high incidence of tax by transferring to a private company, in return for shares, the source of his income and by securing that, intstead of an dividends being declared, the profits made by the company should be allowed to accumulate in its hands for being ultimately

distributed in a capital form, which would not be assessable as income. So, if a private company fails to distribute a prescribed minimum percentage of dividends, it is made liable to additional tax."

2.253. The Committee was given to understand by Audit that according to the balance sheet of a company, in the form Part I of Scheduled VI to the Companies Act, 1956, investments in shares were required to be shown under "Investments" and not under "Fixed Assets". In the form of balance sheet under "Fixed Assets" following had been stated: "Distinguishing as far as possible between expenditure upon (a) goodwill, (b) land (c) buildings, (d) lease holds (e) railways sidings (f) plant and machinery (g) furniture and fittings (h) development of property (i) patents, trade mahks and designs (j) live stock and (k) vehicles.

2.254. The Committee asked for the reasons for treating investments in shares as "Fixed Assets". The Chairman, CBDT stated: "The question whether these assets are fixed or not is not free from doubt. The Companies Act has prescribed the form in which the balance sheet should be prepared for the purposes of Company Law and not for the purpose of Income-tax Act."

"Carter, who is one of the authorities on accounts in his book states that fixed assests are those acquired and held permanently for the purpose of earning income. The same assets may be either fixed or floating according to the nature of business. Thus investments would be floating asset to a stock broker, but fixed asset to an ordinary trader. Lease has also been visualised as a fixed asset by the above mentioned authority on accounts and therefore shares can also be treated as fixed assets in certain circumstances including those in the present case."

2.255. It was pointed out that according to Carter the fixed assets were those acquired and held permanently for the purpose of earning income as for example long term machinery lease etc., which had got some significance. If the Department feel that there was no definition of fixed assets for the purpose of income-tax, the normal course would be to refer to the Companies Act, where it was defined. If the Department wanted to take the view not to accept the definition stated in the Companies Act, the proper course should be to take the opinion of the Ministry of Law or, if necessary, to introduce a definition in the Income-tax Act in consultation with that Ministry.

2.256. The Committee learnt that that the Ministry had referred the issue whether "investments in shares" were to be treated as

"Fixed Assets" or not for the opinion of the Ministry of Law in September, 1970.

2.257. The Committee enquired whether the Law Ministry had furnished the opinion. The witness stated: "They have written that the case may be discussed at a meeting which may be attended by the Director of Revenue and Audit..... We had arranged for a meeting with the Law Ministry, but it did not materialise."

2.258. The Ministry, in a note submitted to the Committee, stated: "The matter has already been discussed in a meeting with the Ministry of Law in which a representative of the C & AG was also present. The opinion of the Ministry of Law is awaited."

2.259. When enquired whether the view taken in the case under examination had been applied uniformally, the witness stated: "It is the Income-tax Officer who, while making the assessment, judges, whether this will form fixed assets or not.... uniform instructions will be issued after we receive the Law Ministry's opinion."

2.260. It was pointed out that it was a not matter in which the point at issue could have arisen only now for discussion. If the department felt that a meeting of the three parties (including Audit and Ministry of Law) would take too much time, the matter should have been referred to the Ministry of Law in writing furnishing a statement of the case alongwith the comments of the Revenue Audit for their opinion. The delay of one year in this case could not be justified. The witness stated: "The change, in the procedure suggested I think will be helpful in expediting it."

2.261. The Committee note that there is a difference of opinion between the Audit and the Ministry of Finance regarding the treatment of investment in shares as fixed assets and that the opinion of the Ministry of Law in the matter is awaited. The Committee may be informed of the opinion of the Ministry of Law.

2.262. It is regrettable that the opinion of the Ministry of Law was sought for belatedly. The Committee desire that in such cases the position should be got clarified expeditiously and instructions issued to ensure that uniformity is observed in all the charges.

(i) Income escaping assessments

Audit Paragraph

2.263. Two assessees, lawyers by profession, received form their clients a sum of Rs. 43,891 in reimbursement of "boarding and lodging expenses" during the previous years relevant to the assessment

years 1960-61 to 1963-64. The assessees did not account for this sum in their returns of income for the said years. In one of the cases in the assessment order for the assessment year 1963-64 the Income-tax Officer held that the amounts received were not taxable and excluded it from total income. Since the expenses claimed by the assessees in earning the income from profession had been allowed separately and as the receipt of Rs. 43,891 was towards personal expenses, the same should have been brought to tax.

[Paragraph 56 (c) of the Audit Report (Civil) Revenue Receipts—1970].

2.264. The Committee enquired whether the assessments had been rectified in both the cases for all the four years and the demands recovered. The Chairman, Central Board of Direct Taxes stated that the Department had replied to the audit that their objection was not accepted.

2.265. When enquired by the Committee whether it was justified in allowing the amounts received for boarding and lodging expenses being excluded from the taxable income, the witness stated: "The point is this. The lawyer has received a substantial fee that is a lakh and half and he was required by the exigencies of work to stay in Kashmir for which he was paid boarding and lodging expenses. Now this particular fee, just like an officer going on tour, is not a part of his income."

2.266. It was pointed out that the daily allowance drawn by the Government Servants while on tour was specifically exempted from tax statute, whereas for the professionals there was hardly any interpretation in the Income-tax Rules to exclude the boarding and lodging expenses. When asked to state the clear position, the witness stated: "I do not know where I am erring, but I would like to say this that all expenses which are paid to the extent that they are required for the parties would be exempt and the balance liable to be taxed. Now in this case, when a person has paid boarding and lodging charges, when he is going out for conducting a case away from his home, we do not become so meticulous and say that this is actually incurred and all that. We presume that what has been paid has been spent by him."

2.267. When enquired whether the amounts in question were shown by the lawyers as expenses without including them as income, the Ministry in a written note stated: "That the amounts had neither been claimed as expenses nor shown as receipts by the two

assessees. In other words, the receipts under these heads were treated as exactly balancing the expenses."

2.268. When asked whether the views of the Ministry of Law were obtained on the Audit objection in this case, the Ministry, in a written note, stated that a reference to the Ministry of Law had already been made on 18th December, 1971, and a copy of the reference sent to the Comptroller and Auditor General of India. Their opinion was awaited.

2.269. The Committee desired to be furnished with the information regarding the total number of advocates practising in the various High Courts and Supreme Court in India and the number of persons who were borne on the books of the Income-tax Department as assessees. The Ministry, in a note, stated that they did not have the figures readily and that those would be collected, from the different Commissioners' charges and furnished to the Committee.

2.270. The question whether the amount received from the clients by lawyers towards personal expenses could be excluded from total income as non-taxable is stated to have been referred to the Ministry of law. The Committee would like to be apprised of the opinion of the Ministry of Law.

2.271. Although the Committee desired to have the information regarding the total number of advocates practising in the various High Courts and Supreme Court and the number of persons who were borne on the books of the Income-tax Department as assesssees, the information is still awaited. The Committee trust that on the basis of the information to be collected, the department would make a suhvey to ensure that there is no evasion of tax.

2.272. Further Government may consider the feasibility of asking the various courts to furnish to the Income-tax Department periodically information regarding cases decided by them and the persons who appeared as solicitors or advocates for both sides so that the Department may be in possession of necessary information to verify the correctness of the returns filed by persons of these professions.

(j) Omission to levy or incorrect levy of penalty

2.273. The Income-tax Act, 1961 contains a number of provisions for levy of penalty for various kinds of defaults. On a review of the assessments with a view to find out whether the penalty provisions were correctly applied, it was found that in a number of cases,

(i) due to mistakes in calculations, penalty was short-levied; and

(ii) penalty provisions were not invoked at all.

2.274. A few illustrative cases are given below under the two categories.

(a) Mistakes in calculation of penalty.

(i) For delay in filing returns of income by nine months in one case and fifty two months in another, penalty of Rs. 2,22,804 was levied. Penalty at the prescribed rate of two per cent of tax for every month of delay subject to a maximum of fifty per cent of the tax correctly worked out to Rs. 5,19,506. Penalty short-levied was Rs.2,96,702. The short-levy has been accepted by the Ministry in both the cases. Report regarding rectification and recovery is awaited.

(ii) In the case of a firm, penalty was calculated on the basis of tax payable by it instead of on the tax that would have been payable if it had been an unregistered firm. Further the period of default was nine months but the department fixed the delay as five months. The mistakes resulted in short-levy of penalty of Rs. 94,396 for the assessment year 1962-63. The Ministry have accepted the mistake. Report regarding retification and recovery is awaited.

(iii) An assessee who filed return of income for the year 1958-59 in January, 1961 was assessed on income of Rs. 2,26,968 in November, 1962. The minimum penalty leviable for the failure to furnish return by the due date worked out to Rs. 76,840 at the rate prescribed in the Act whereas a penalty of Rs. 3000, only was levied. The short-levy of penalty was Rs. 73,840. The Ministry have accepted the mistake. Report regarding rectification and recovery is awaited.

(v) An assessee who assessment for 1967-68 was completed in February, 1969 was found to have concealed particulars of his income of Rs. 17,000. A penalty of Rs. 350 only was imposed as against the minimum penalty of Rs. 17,000 which was leviable under the Act. The amount of penalty short-levied was Rs. 16,650. Ministry's reply to the paragraph forwarded in October, 1970 is awaited (March 1971).

[Paragraph 46 of the Report of the Comptroller and Auditor General—1969—70—Central Government (Civil)—Revenue Receipts].

2.275. The Committee enquired whether the penalty orders had been rectified in all the cases referred to in sub-paras (i), (ii) and (iii). The Ministry, in a note, stated:

Sub-para (i)

"In the case of late Shri——— the penalty order was rectified and an additional demand of Rs.89,750|- raised; but it has not been recovered as the assessee left behind no assets. The penalty order in the case of————(in liquidation), was set aside by the A.A.C. A fresh assessment has not been made yet."

Sub-para (ii)

"In the case of————, the penalty order was cancelled by the Commissioner of Income-tax under Section 263 for enabling the Income-tax officer to pass a fresh penalty order. But the relevant assessment has meanwhile been set aside by the A.A.C.; hence a fresh penalty order has not been passed."

Sub-para (iii)

"Rectificatory action in the case of M|s.....could have been taken only upto 24.7.67; but the audit objection was received three years after this date when no action was possible."

2.276. The Committee wanted to know the basis on which a penalty of Rs.3000|- only was levied in the case referred to in sub-para (iii). The witness stated: "This is penalty under section 28(1) (c). Here the Income-tax officer had proposed a higher penalty but the inspecting Assistant Commissioner whose approval is needed before imposing the penalty came to the conclusion that on the facts of the case a penalty of Rs. 3,000 was reasonable. Then the assessee went in revision and the penalty was further reduced to Rs. 2,000 by the Commissioner."

To a question the witness stated: "The restriction as to the minimum penalty of 20 per cent applies to concealment of income."

2.277. The Committee pointed out that as per Audit, the minimum penalty leviable for the failure to furnish the return by the due date worked out to Rs. 76,840 at the rate prescribed in the Act, the witness read from the brief:

> "The objection has been accepted, but the matter may have to be reconsidered in consultation with the Ministry of Law. Under Section 297(2)(g) any proceedings for the

levy of penalty in respect of any assessment which is completed on or after 1-4-62 should be initiated and imposed under the provisions of the new Act."

2.278. He further stated: "The new Act lays down 2 per cent of tax for every month. Where the proceedings for the levy of penalty under section 28(1)(a) of the old Act had been initiated before the commencement of the new Act as in this case, it is not certain whether the provisions of section 297(2)(g) would be operative."

2.279. The Ministry, in a note, submitted to the Committee, added: "In this case, the Income-tax Officer was of the view that the provisions of Section 297(2)(g) were not applicable, because the Section contemplated the initiation of penalty proceedings as well as imposition thereof, only in respect of assessments completed on or after 1-4-62, and not the cases in which the penalty proceedings had already been initiated before 1-4-62. This view of the law taken by the Income-tax Officer is quite plausible. A reference made to the Ministry of Law about this matter is pending with them.

On the basis of the provisions obtaining till 31-3-62, the Income-tax Officer proposed the levy of a penalty of Rs. 50,235/- under Section 28(1)(a) of the Income-tax Act, 1922. When this proposal was sent for approval to the Inspecting Assistant Commission of Income-tax, he held that on the facts and circumstances of the case, it would be fair to levy a penalty of Rs. 3,000|- only. The assessee went in a revision petition to the Commissioner of Income-tax, who scaled it down to Rs. 2,000|-."

2.280. It was pointed out that the Ministry in their reply dated 15th March, 1971, informed Audit that "the audit objection regarding the under charge of tax had been accepted by the Ministry and that the assessment in question had not been rectified and a further communication would follow." But it was stated during evidence that the matter might have to be considered in consultation with the Ministry of Law as it was not certain whether provisions of section 297(2)(g) would be operative where the proceedings for the levy of penalty under section 28(1)(a) of the old Act had been initiated before the commencement of the Act.

2.281. When asked whether the above change was made after 15th March, 1971 and whether the Audit was informed of it, the witness stated: "I am informed that it was done after 15th March, 1971. I quite agree that in fairness audit should have been informed. I am told that we got this information only a week back....I quite agree it is a mistake."

Sub-para (v)

2.282. The Ministry, in a note, stated: "The objection has not been accepted by the Ministry in this case and hence, no rectificatory action has been taken. In case the Audit view is endorsed by the Ministry of Law, with whom a reference is pending, rectificatory action under Section 154 can be taken upto June 8, 1973."

2.283. In a note furnished to the Committee, the Ministry stated: "In the present case, the return of income had been filed on 11-7-1967, which was before the amendment of Section 271(1)(c) brought about by the Finance Act 1968 with effect from 1-4-1968. Till this amendment, the minimum penalty for concealment of income was 20 per cent of the tax sought to be evaded. After this amendment, the minimum penalty for a similar default would be equal to the concealed income itself. The Income-tax Officer was of the view that since the return had been filed prior to 1-4-68, the substantive provisions for the levy of penalty could not be stiffer than that permissible under the law obtaining till 31-3-68. The penalty of Rs. 350/- levied by him was above the minimum of 20 per cent of the tax sought to be evaded."

2.284. In regard to levy of penalty under the various amended provisions of the Act from time to time, the Committee asked whether the Board had issued, any instructions laying down as to when the default was said to have occurred and whether the amended provisions would apply to all the pending cases on the relevant date. The Committee also wanted to know whether the date of filing of the return or the date of assessment was to be taken for purpose of levy of penalty and whether the Law Ministry had been consulted in regard to this aspect of the Law. The Ministry, in a note, stated: "The Ministry are of the view that the crucial date for the purpose of the procedural matters for levy of penalty is the date of the relevant assessment, but the substantive provisions for the levy of penalty cannot be related to this date.

The provisions relevant for determining the quantum of penalty will be those obtaining at the time of committing the offence. This matter is under consideration of the Ministry of Law and the Audit for several months. A final opinion has not yet been communicated to this Ministry."

2.285. The Committee pointed out that in the case referred to in sub-para (v), a penalty of Rs. 350|- only was imposed which was lower than even 20 per cent of value of concealed income *viz.*, Rs. 17,000|-. When asked to state how a penalty of Rs 350|- only

was levied, the Chairman, CBTD stated: "The penalty claim is governed by Section 28(1)(c) of the Income-tax Act, 1922. The normal procedure is that the ITO takes the assessed income and the return income, calculates the tax on both. The difference is the difference of tax arising on account of concealed income and 20 per cent thereof. In this situation, there are inherent anomalies. If in the assessee's return the income was shown as Rs. 1 lakh, and the assessed income is Rs. 2 lakhs in which is included the concealment of Rs. 5,000, that is one aspect; but the law as it was then worded was that one should take the difference."

2.286. Elaborating further, the witness added: "If an item of Rs. 5,000 only was discovered that would be concealment, and if there was some item representing the difference of the reserve added and depreciation or difference or anything like that added, the calculation was based on the assessed and the return of income and the difference in tax, and then 20 per cent of that was charged, even if the concealed amount was Re. 1. That was the normal practice. But sometimes it hit the department and sometimes it hit the assessee." He went on to say "Really speaking where you find that a certain item on account of a deliberate attempt on the part of the assessee has been wrongly stated and wrongly represented or misrepresented and if we unearth it, it would be concealed income. If the assessee has claimed a depreciation of 10 per cent and we are of the opinion that it should be six per cent, this would be added to the assessment of the assessee. Similarly, if the assessee has made a reserve which is disclosed, we add it.....In the return of income, he would show it after deduction of those claims which are deductable. When the Income tax Officer makes an assessment, there would be a difference of opinion. For example, he might say that the salaries are heavy and he makes an addition. This is no concealment."

2.287. The Committee pointed out that omission to levy or incorrect levy of penalty in large number of cases had been brought to the notice of the Committee in paragraphs 59 of Audit Report 1969, 58(a) of Audit Report 1970 and also in the current Audit Report. In view of the wide-spread mistakes in the levy of penalty, the Committee wanted to know whether the Board had compiled a compendium of all the instructions issued on penalty provisions in the Income tax Act and issued it to Income tax Officers for their guidance. The Ministry, in a written reply stated: "No compendium of instructions as such has been prepared. However, the instructions issued by the Board from time to time are circulated

among the Officers and their circulars are also printed in the C.B.D.T. Bulletin, which is made available to all officers."

2.288. The Committee desire to be informed of the rectification and recovery of penalty imposed in one of the two cases mentioned in sub-para (a) (i) and in the case mentioned in sub-para (a) (ii) of the Audit Paragraph.

2.289. As regards sub-para (iii) the Committee were informed that although Audit were told earlier that the Ministry had accepted the mistake, the question regarding the applicability of the provisions of Section 297(2) (g) of the new Income-tax Act to the cases of penalty proceedings initiated before 1-4-1962, had been subsequently referred to the Ministry of Law. The Committee would like to be informed of the views of the Ministry of Law as also the action taken to rectify and recover the penalty, if required.

2.290. In regard to sub-para (v) the Committee understand that the question whether the date of filing of the return or the date of assessment was to be taken for the purpose of levy of penalty was under consideration of the Ministry of Law. The Committee may be apprised of the final decision taken in the matter after obtaining legal opinion as also the action to rectify and recover additional penalty if needed.

2.291. The Committee find that there is some confusion as to what exactly constitutes concealed income.*

2.292. In view of the mistakes committed and the prevailing confusion in regard to levy of penalty the Committee wish to suggest that the Board should consider the feasibility of bringing out a compendium of instructions on penalty provisions in the Income-tax Act for the guidance of the Assessing Officers.

(k) Non-levy or incorrect levy of penal, interest

Audit Paragraph

2.293. Non-levy|incorrect levy of penal interest under the various provisions of the Act was pointed out in the earlier Audit Reports.

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*The Committe have dealt with this matter in some detail elsewhere in the Report.

During the period under review it was noticed that in 3,395 cases interest of Rs. 91.12 lakhs was not levied as indicated below:

	No. of cases	Amount (In lakhs rupees)
(i) For delay in submission of return of income	991	25·75
(ii) For short/non-payment of advance tax	1522	38 30
(iii) For non-payment of tax by the due dates	882	27·07
	3395	91 12

[Paragraph 45 of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil) Revenue Receipts.]

2.294. Non-levy of penal interest or incorrect levy of penal interest under various provisions of the Act was commented upon in all the earlier Audit Reports. The statement below compares the mistakes noticed and reported in the earlier Reports with the position brought out in the current Audit Report:

Year of Audit Report	No. of cases	Amount of interest omitted to be levied (In lakhs of rupees)
1963	327	5·00
1964	632	6.64
1965	523	9.08
1966	1297	17.72
1967	1834	32.60
1968	2064	40.48
1969	2566	63.56
1970	2501	63.06
1969-70	3395	91 12

2.295. The Committee wanted to know the special steps proposed to be taken by the Department to reduce the number of cases in which the mistakes were committed in levy of interest. The Ministry, in a note submitted to the Committee, stated: "From time to time, the Board have issued instructions emphasising the need of exercising vigilance in the matter of charging interest under the various provisions of the Act. Taking due note of the Audit Reports, 1970 and for the year 1969-70, which showed a large number of cases in which interest under various sections of the Act had not been charged, the Board have issued instructions recently, desiring that

the relevant provisions may be brought to the notice of the officers who should also be asked to invariably record in the main body of the assessment orders the fact of their having waived or reduced the interest where they are doing so."

2.296. The Ministry in a further note added: "The Ministry share the Committee's concern at the increase in the number of cases in which interest was not levied or short levied. They would, however, like to state that out of 339 cases mentioned in the Audit paragraph, only 165 cases relate to assessments involving tax effect of Rs. 10,000|- and above. The Central Board of Direct Taxes contemplate taking measures to ensure that wherever interest is chargeable, it should be done more or less in automatic manner."

2.297. While commenting on the non-levy of penal interest reported in the Audit Report, 1968, the Public Accounts Committee in para 5.85 of their 73rd Report (Fourth Lok Sabha) had observed as under:

"The Committee are concerned over the heavy increase in the matter of cases of non-levy|incorrect levy of penal interest..... The recurrence of such cases suggest the need to streamline the existing procedure. The Committee would in this connection like the Ministry to examine the suggestion made by the working group of the Administrative Reforms Commission in their report on the Central Board of Direct Taxes Administration for interest calculations to be made with reference to the complete months rather than days and for rounding off the calculations. This would help considerably to simplify the work.

Work would also be simplified if the varying rates of interest now in existence for different kinds of default could be rationalised and tabulators used for the purposes of calculations."

2.298. On the above recommendation, the Ministry in their letter dated 12th November, 1969 had given the following reply:

"The Ministry have decided to accept the suggestion of the working group, referred to in the paragraph 5.85. Clauses 66(b), 78, 84 and 88 of the Income-tax Amendment Bill seek to empower the Central Board of Direct Taxes to make rules of procedure for calculating interest chargeable from and payable to assessees under various direct taxes Acts. This rule will include a provision for rounding off to whole months the period for which the interest is to be calculated and also specify the circumstances in which and

the extent to which petty amounts of interest chargeable from assessees may be ignored. The rates of interest now in force for different kinds of defaults and also interest payable on excess demand etc., have been generally fixed at 9 per cent per annum under the direct taxes Acts. All types of interests under the Income-tax Act are being sought to be fixed at 9 per cent under clause 67 of Income-tax Amendment Bill, 1969. The Commissioners of Income tax have been delegated powers for purchasing tabulators according to the requirements of the respective charges."

2.299. Drawing attention to this the Committee enquired whether the Board had acquired the necessary powers to make rules of procedure for calculating interest chargeable from and payable to assessees and whether necessary rules had been framed covering all the aspects. The Ministry, in a note, stated: "The CBDT have assumed powers with effect from 1-4-71 to frame rules for regulating the calculation of interest. This would include rounding off of the period for which such interest is to be calculated and satisfying the circumstances in which, and the extent to which, petty amounts of interest payable by assessees would be ignored. This would ensure the exclusion of a large number of petty cases from the category liable to be charge interest."

Section 139 of the Income-tax Act, 1961 has already been amended by the Taxation Laws (Amendment) Act, 1970 so as to rationalise the provisions relating to the charging of interest for delayed submission of return or failure to furnish return.

It is expected that the steps taken would reduce the scope for mistakes of this nature very appreciably.

2.300. The Committee desired to know the number of cases out of the 3395 cases mentioned in the Audit paragraph, wherein interest had been collected and the amount involved therein. The Ministry, in a written reply, stated: "Out of 3,395 cases referred to in the Audit paragraph only 165 items relate to cases with a tax effect of Rs. 10,000|- and above in each case, the aggregate tax involved being Rs. 49.28 lakhs. Of these, only about 23 cases were specifically brought to the notice of this Ministry in the shape of draft audit paragraphs. Information in respect of these 165 items has been called for from the respective Commissioners and will be furnished as soon as available. This is likely to take some time, because in order to report the latest position, the Commissioners will have to collect data from the concerned Income-tax Officers individually.

In respect of the Audit objection in the remaining 3,230 cases, which involve tax effect of less than Rs. 10,000/- in each case, the aggregate tax involved wherein is Rs. 41.84 lakhs only, the Ministry find it impracticable to keep a watch because of the large number of cases involved. Such cases are dealt with by the concerned Accountant General and the Commissioners of Income-tax. The Committee may perhaps like to leave the checking of rectification and recovery of tax in these cases to the Audit."

2.301. There has been a steady increase in the number of cases of omission to levy or incorrect levy of penal interest reported in the successive Audit Reports. The number of such cases during the year 1969-70 was 3395 involving a sum of Rs. 91.12 lakhs. Of this 165 items involved Rs. 10,000 and above each and the aggregate tax in these cases amounted to Rs. 49.28 lakhs. The recovery in these cases may be reported to the Committee.

2.302. The Committee trust that with a rationalisation of rate of interest and the procedure for the levy, such large scale mistakes or omission as have been noticed in the past, should not occur. The Committee note in this connection that the Central Board of Direct Taxes have assumed powers with effect from 1st April, 1971 to frame rules for regulating the calculations of interest. They desire that necessary rules simplifying and streamlining the procedure should be framed without delay.

(1) Irregular grant of refunds

Audit Paragraph

2.303. In paragraph 46 of the Audit Report on Revenue Receipts, 1966, it was reported that wrong or double credit for advance tax paid formed a good part of excess refunds made by the department and a few specific instances were also given under the paragraph. Such cases of excess refunds arising from double credit for advance tax paid were noticed during the test-check in the year under review. The total amount of excess refund in six cases amounted to Rs. 5,11,141 out of which the Ministry have stated that Rs. 4,65,100 have since been realised.

[Paragraph 44 (a) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil) Revenue Receipts.]

2.304. The Committee enquired whether the excess amount refunded to the assessees had been realised in the remaining two cases also. The Ministry, in a written reply, stated that demands had been raised and collected in both the cases.

2.305. The Committee pointed out that in paragraph 46 of the Audit Report on Revenue Reciepts, 1966, several cases of excess refunds due to wrong or double credit for advance tax were pointed out and that in paragraph 1.190 and 1.193 of their Third Report (1967-68) the Committee made suitable recommedations for the proper maintenance of records with a view to preventing irregular refunds. The Committee learnt from Audit that out of six cases, refunds of Rs. 5,01,141, in five cases were made subsequent to the Committee's recommendations which showed that the Committee recommendations and action taken thereon had proved to be of little avail. The Committee wanted to know the special steps proposed to be taken by the Department so that the lower formations might strictly adhere to the instructions issued by the Central Board of Direct Taxes.

2.306. The witness stated: "I quite agree that this is not a very happy state of affairs and the Board will ask the Additional Commissioner to devise procedures which may prevent the double allowance of credit and those types of mistakes."

2.307. In a note submitted to the Committee, the Ministry added: "In para 46 of the Audit Report, 1966, only three specific instances were given. Of the 6 cases reported in the Audit Report for 1969-70, 4 cases were disposed of by the same Income-tax Officer in the same charge. The instances do not suggest that the malady is widespread. Even so, the Ministry regret the lapses.

The Central Board of Direct Taxes have asked the Director of Inspection (I.T. & Audit) to consider the advisability of prescribing a procedure which may prevent the double allowance of credit on the basis of the same challan. Various suggestions are under his consideration."

2.308. The Committee were given to understand by Audit that according to the existing procedure, suitable entries should be made under the signature of the ITO in the refund case in the assessment| refund form. When asked whether such a note was kept in all the six cases, the Ministry in a note stated that no refund could have been issued unless the Income-tax Officer had made the entries in the refund form under his signature.

2.309. The Committee further learnt from Audit that according to the procedure laid down in the Office Manual, as soon as regular assessment was made, the advance tax paid was transferred from the "Register of Demand and collection of advance payments" to

the "Register of Demand and Collection" and columns 35 and 36 of the Register for advance payments were filled in whenever excess tax advance was refunded to assessees. The Committee enquired whether the procedure was followed in all the six cases. The Ministry, in a note, stated: "Out of the six cases, 4 relate to the various Army Welfare Funds. In these 4 cases, the assessees had shown in their return the consolidated amount of advance tax paid as well as the tax deducted at source from Interest on Securities etc. The entire amount has erroneously been treated by the Income-tax Officer as tax deducted at source, for which the assessees were given credit. The mistake lay in allowing the credit for advance tax separately again. The cross entries in the two registers, the Committee have in view, could not lead to the detection of this mistake.

Proper entries in the Demand and Collection Register were made in all the 6 cases, but entries in columns 35 and 36 of the Register for advance tax payments were not made in 2 cases and in 4 others, these were not required to be made."

2.310. The Committee pointed out that as per existing instructions all refund cases involving refund of Rs. 500 and above were required to be checked by the Inspecting Assistant Commissioner. The Committee enquired whether such a check was carried out in the cases under examination. The witness stated: "This procedure was devised long back when the question of refund of Rs. 500 was thought substantial. Somehow this is not being followed. It was not in existence earlier. Instructions exist, but they have not been revised and they have fallen into disuse."

2.311. The Ministry, in a note added: "The old practice has fallen into disuse, because the limit fixed is too low and the IACs are fully kept occupied with other types of work."

2.312. The Committee are unhappy over the recurring cases of considerable excess refunds arising from double credit of advance tax paid due to some mistake or the other. They desire that bonafides or otherwise of such mistakes should be carefully gone into for stringent action wherever necessary.

2.313. Various suggestions in regard to the steps to be taken to prevent double allowance of credit are stated to be under consideration of the Director of Inspection (I.T. and Audit). The Committee need hardly stress that a foolproof procedure in this regard should be evolved expeditiously.

2.314. Incidentally the Committee note that the existing instructions that all refund cases involving a sum of Rs. 500 and above

should be checked by the Inspecting Assistant Commissioner have fallen into disuse and that the limit fixed for the check is considered to be "to low". The Committee wish to point out that it is undesirable to allow such important instructions to be ignored. The limit could have been suitably revised in order to ensure strict observance of the instructions. The Committee trust that the Board would review the observance or otherwise of such long standing instructions in the light of changed context and take appropriate action.

(m) Extra Legal Concessions and loss of Revenue

Audit Paragraph

2.315. As per sections 147(b) and 154 of the Income-tax Act, 1961 no re-assessment or rectification is possible after the expiry of the prescribed period. In respect of 601 mistakes pointed out in audit upto the assessment year 1962-63, corrective action was not taken within the prescribed period resulting in loss of revenue of Rs. 12,20,112.

2.316. In two other Commissioners' charges similar corrective action was not taken in respect of mistakes in 43 items pointed out in audit, resulting in loss of revenue of Rs. 61,000. The paragraph was forwarded to the Ministry in October, 1970 and their reply is awaited (March, 1971).

[Paragraph 50(b) of the Report of Comptroller and Auditor General—1969-70—Central Government (Civil)—Revenue Receipts.]

2.317. The Committee enquired whether the omission to take corrective action in time in the large number of cases pointed out in the Audit Paragraph was investigated. The Chairman, Central Board of Direct Taxes, stated: "The figures are being compared with the audit. Some analysis was made as far as the Bombay charge was concerned and it is found that the result is like this: Out of 526 items, relating to the Bombay charges, only 15 items had a tax effect of Rs. 10,000 and above. Of these cases, the position regarding six items is stated in the reply to the AGI on 20-7-71 and no reply has been received till 23-9-71. A number of items have been pending with AG for further verification. In order to know whether the action was taken or not, a reconciliation was attempted from Madras, Poona and from the Bombay charge, the Board collected information in regard to 98 mistakes and that is how the mistake or the position has been analysed."

2.318. In a note submitted to the Committee the Ministry added: "On attempting a verification of the figures reported by the Audit,

the Ministry find that these are not verified ones. Thus, it was mentioned in the Audit Report that rectificatory action had got time barred in respect of 601 items involving a revenue loss of Rs. 12,20,112; but the Audit have later stated that the correct number of items is 580 and the tax involved is Rs. 11,89,823. The difference is rather large for the Bombay City III charge for which the revised number of cases is 14 less than that reported originally and the amount too is less by Rs. 26,400. A reconciliation is being made in consultation with the Audit. From the information received so far, it appears that the position is not as alarming as reported. For example, the position in respect of 28 out of 43 items involving an amount of Rs. 61,000 relating to the Madras charges is as under:

	No.	Amount Rs.
(a) Items since cropped by the A. G.	2	5,165
(b) Objections not accepted	3	8,430
(c) Rectificatory action taken within time	14	13,197
(d) Rectificatory action had got time barred even before the receipt of the Audit objections.	2	2,040
(e) Rectificatory action got time barred after the receipt of the Audit objection.	7	6,557
Total	28	35,389

The position regarding the remaining 15 cases is being ascertained.

Similarly, the position in respect of 55 items involving an amount of Rs. 66,646 relating to the Poona charges is as under:

	No.	Amount (in Rs.)
(a) Cases tranferred to other charges	14	26,036
(b) Cases relating to an abolished circle which are not traceable.	3	3,598
(c) Rectificatory action taken within time	29	32,315
(d) Rectificatory action got time-barred even before the receipt of the audit objections'	4	1,440
(e) Rectificatory action got time-barred after the receipt of audit objections.	5	3,257
Total	55	66,646

It is proposed to have the register of pending audit objections reconciled once every six months with the records maintained by the Audit.

Whether there is any lacuna and if so, how it can be covered will be considered in consultation with the audit."

2.319. Pointing out that the 601 mistakes mentioned in the first paragraph of the audit para, related to the assessment upto the assessment years 1962-63, the Committee wanted to know the position in regard to the mistakes pointed out in the same Commissioner's charge upto 31st March, 1971. The Ministry, in a written note, stated: "The Committee evidently want information in respect of audit objections relating to assessment years 1963-64 and onwards in respect of which rectificatory action got time-barred. It is regretted that the information is not available with the Ministry. At least 95 per cent of the objections relate to cases with a revenue effect of less than Rs. 10,000 in each case, which are left to be settled between the local A.Gs and the Commissioners. It seems that the Commissioners of Income-tax were not having proper registers maintained regarding the objections raised by the Audit during the first few years of their scrutiny of revenue receipts. Without the help of such registers, the required information can be collected only by referring to each and every assessment file. The files too have not remained with the same Income-tax Officers or even in the same Ward. There have been several transfers of jurisdiction over a period of years. It will be very difficult to identify even with the materials available with the Revenue Audit which are the particular cases in respect of which no timely action for rectification was taken. In the circumstances, the Committee may perhaps like to dispense with the information. The Ministry propose to probe deeper into the matter with the help of Revenue Audit."

3.320. The Committee were informed by Audit that the paragraph reflected the position, in regard to seven Commissioner's charges. The Committee enquired whether enquiries were made to find out the loss of revenue on the same account in other Commissioners' charges. The Ministry, in a note, stated: "Although no specific enquiries have been made to find out the loss of revenue on the same account in other Commissioners' charges, the Board have requested the Commissioners to furnish figures regarding 87,071 cases involving mistakes which were reported in the Audit Reports for the six years from 1966 to 1971. This has been done as the Board are most anxious to put the records straight regarding the revenue audit objections."

2.321. The Committee desired to know the time limit prescribed by the Board for taking corrective action on the mistakes pointed out by the statutory Audit and also whether the time limit was

strictly followed by the Income-tax Officers. The Ministry, in a note, stated: "Although no specific time limit has been prescribed by the Board for taking corrective action on the mistakes pointed out by the statutory audit, as a result of the Committee's observations in its Third Report a letter was addressed to all Commissioners of Income-tax by the D.I. (I.T.) emphasising the need to rectify the mistakes pointed out by the Revenue Audit expeditiously."

2.322. The Committee pointed out that on the basis of the recommendation of the Public Accounts Committee, the Board in their Circular instructions dated 19h February, 1966, prescribed a register to be maintained in the Commisioner's offices for ensuring timely action on the mistakes pointed out by the Revenue Audit Parties watched by the Commissioners. The Ministry, in a note, stated: "The Ministry regret to state that the maintenance of the prescribed registers has been often quite faulty; but existing slackness can be remedied by the method of periodic reconciliation, once every six months with the records maintained by the Audit."

2.323. The Committee learnt from Audit that excluding the Commissioners' charges at Calcutta, Delhi, Madras and Bombay, the Department replies to the mistake pointed out by the Revenue Audit parties were due in 14592 cases including 2495 local audit Reports as on 31st May, 1971. The Committee enquired about the reason for such heavy accumulation of cases and the steps, that had been taken or proposed to be taken to settle audit objections promptly. The witness stated: "The Director of Inspection in charge of Income-tax makes a monthly review of the revenue audit objections; he collects these statistics and gives his comments also on them. He sends it to the Board and they are sent to the respective commissioners also."

2.324. To a question, the witness added: "The Director of Inspection in charge of Income-tax is a part of the Board. He on behalf of the Board carried out the review. These functions have been entrusted to him and he carries out the review.'

2.325. The Ministry, in a note further stated: "Since copies of these (reviews) are being marked to all the Commissioners, Additional Commissioners and I.A.C. (Audit), they are expected to take into account the comments and suggestions made by the Director of Inspection. As such the Board normally do not make any observations thereon. The reviews are meant mainly for the benefit of the field officers."

2.326. As regards the steps taken, the Ministry, in a note, stated: "The position in respect of the current objections is very encouraging.

As to past accumulations, the D.I. (IT) is being asked to ascertain the causes and take effective remedial steps."

2.327. The Committee, after going through the information furnished to them, find that the procedure for taking the action after receipt of the Audit objections is anything but satisfactory. No specific time limit has been prescribed for taking corrective action on the mistakes pointed out by Audit. Although a register has been prescribed in February, 1966 for ensuring timely action, following an earlier recommendation of the Committee, the maintenance of the register has been admittedly 'often quite faulty'. According to the Ministry, the existing slackness can be remedied by a method of periodic reconciliation once every six months with the records maintained by Audit. The Committee further regret to learn from Audit that excluding the Commissioners' charges at Calcutta, Delhi, Madras and Bombay, the Department's replies to the mistakes pointed out by the Audit parties were due in 14,592 cases as on 31st May, 1971. The Committee would like to know the position in the remaining four charges also. It is obvious that the monthly review of Audit objections conducted by the Director of Inspection has not been effective at all. The situation is quite alarming and serious. The Committee trust that such unsatisfactory state of affairs shall not be allowed to prevail and that effective and prompt action on Audit objections will be ensured to safeguard the interests of revenue. The manner in which the position can be remedied may be settled in consultation with Audit. In this connection, the Committee feel that it is desirable to fix a time-limit for taking corrective action on the mistakes reported by Audit. In any case all the pending objections should be settled within a period of three years. The progress made in this regard may be reported to Committee. The results of the overall review of the action taken on the mistakes reported in the successive Audit Reports may also be intimated to the Committee.

(n) Other Lapses

Audit Paragraph

2.328. An assessee was entitled to refund of tax of Rs. 10,94,031 for the assessment years 1945-46 to 1951-52 consequent upon appellate orders passed between January, 1953 and July, 1963. The refunds for all the years were made in April, 1968 and interest of Rs. 2,99,902 had to be paid to the assessee for the delay in giving effect to the appellate orders and issue of refunds.

[Paragraph 47(a)(ii) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil)—Revenue Receipts.]

2.329. The Committee asked for the reasons for the delay in giving effect to the Appellate orders and in making the consequent refunds. The Ministry, in a note submitted to the Committee, stated: "The Appellate orders related to the assessment years 1945-46 to 1951-52. Two of these orders seem to have been passed in 1953, 3 in 1952 and 2 in 1963. But all these orders were given effect to only in April, 1968. The principal reason for the unconscionable delay in giving effect to the appellate orders was perhaps the frequent change of Income-tax Officers having jurisdiction over this case. In a period of 39 months from 1-4-62 to 1-7-65 as many as 9 ITOs held the particular charge. They, however, notice that while giving effect to the appellate orders, the Income-tax Officer had inadvertently allowed interest for the assessment years 1946-47, 1948-49, 1949-50 and 1950-51, for which the assessment orders had been passed before the commencement of the new Act from 1-4-62. This was not admissible. Accordingly, they have directed the withdrawal of interest amounting to Rs. 5.49 lakhs irregularly paid to the assesssee for these years. The interest payable for the remaining three assessment years 1945-46, 1947-48 and 1951-52 is Rs. 1,83,556".

2.330. The Committee desired to know whether the Ministry had taken steps to find out the number of similar cases where the Appellate orders were not given effect to for more than five years. The Ministry, in a note, stated: "As delays in giving effect to appellate orders are normally brought to the notice of the higher authorities by the assessees entitled to relief no specific steps have been taken to review how many appellate orders have not been given effect to for more than 5 years. It seems that in the instant case the assessee was dead and his executors were not bothering the ITOs for promptly giving effect to the appellate orders."

2.331. It is regrettable that refunds arising out of appellate orders passed between January, 1953 and July, 1963, were made only in April, 1968 in this case. According to the Ministry, the principal reason for the unconscionable delay in giving effect to the appellate orders was "perhaps the frequent change of Income-tax Officers." The Committee note that between 1st April, 1962 and 1st July, 1965, on an average an Income-tax Officer held the charge concerned for a period of 4-1|3 months only. The Committee need hardly point out that such frequent transfers are not conductive to efficiency; they would therefore like Government to review the position in all the charges and ensure reasonable tenure of officers in the interest of continuity and good work especially in view of heavy arrears of work accumulated in the Department. Further they desire that there should be a procedure in built in the system it-

self whereby it could be ensured that pending matters are not lost sight of notwithstanding the change in incumbency of the assessing authority.

2.332. The Committee further desire to suggest that the feasibility of fixing a suitable time limit for giving effect to appellate orders should be considered.

Audit Paragraph

2.333. Interest at the prescribed rates is payable by Government to an assessee if the total advance tax paid by the assessee during a financial year exceeds the tax determined on regular assessment. The Act does not provide for enhancement of interest once determined due to subsequent reduction of income assessed to tax.

2.334. In a case for assessment years 1959-60 to 1962-63 the amount of interest paid to the assessee was increased while giving effect to appellate decisions and carrying out the rectifications of mistakes. The incorrect enhancement resulted in excess payment of interest of Rs. 2,69,643 for the four assessment years. The paragraph was forwarded to the Ministry in October, 1970 and their reply is awaited (March, 1971).

[Paragraph 47(b) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil)—Revenue Receipts].

2.335. At the instance of the Committee, the Ministry, in a note submitted to the Committee, clarified the term 'regular assessment' as follows:—

> "The expression 'regular' assessment has been defined under Section 2(40) of the Income-tax Act, 1961 as the assessment made under section 143 or 144. Assessment of income, it will be noticed, cannot be made under any other section. However, such assessments may be rectified or revised on one or other of the following grounds:
>
> (a) rectification u|s 154 for correcting errors apparent from the records;
>
> (b) revision under section 147|148;
>
> (c) cancellation u|s 146 on the assess's establishing that he had sufficient cause for not filing a return or not

producing the books of account or evidence called for by the Income-tax Officer; and

(d) revision as a result of appellate orders."

2.336. The Committee pointed out that section 215(3) of the Act provided for reduction of interest payable by an assessee under the circumstances listed therein. Neither under Section 215 nor under Section 214 there is an analogous provision for the enhancement of interest payable by the assessee or by Government and enquired about the effect of absence of such provision in the two sections. The Ministry in a written reply explained as follows:—

"Section 215(3) provides that where as a result of rectification or revision due to appellate decision, the amount on which interest was payable by an assessee, is reduced, the interest shall be reduced accordingly and the excess interest paid refunded. Section 214, which provides for Government's paying interest to the assessees on the excess of the advance tax paid over the tax determined on regular assessments, does not have any similar provision for reducing the quantum of interest or enhancing it as a result of the variation of the amount on which the interest was payable, as a result of rectification or revision consequent to appellate orders. The question is: can the absence of such a provision for variation of interest in section 214 mean that even where the quantum of tax on regular assessment has been given credit for lesser amount than the tax computed by him, the Income-tax Officer is precluded from revising the interest in the assessee's favour, or in a contrary situation in the Government's favour? The Ministry feel that when as a result of an order u|s 154 rectifying any arithmetical mistake coming to, or brought to the notice of the Income-tax Officer, the quantum of tax payable on regular assessments or the quantum of tax given credit for is varied, it will be within the competence of the Income-tax Officer to vary the interest, exercising his powers under Section 154.

It will perhaps be inconsistent not to apply the same principle as for rectification u|s 154, just stated, to the reduction of the assessee's tax liability as a result of appellate orders. The Law Ministry have opined that if regular assessment is modified in appeal, it is the order passed in appeal which takes the place of regular assessment and interest would have to be calculated on that basis. This opinion was

based on the well known doctrine of Merger. However, the date upto which the interest is to be calculated has necessarily to be the date of the regular assessments, that is, the assessment made originally before rectification or revision."

2.337. The Committee desired to know whether the Ministry has accepted the Audit objection reported in the instant case and if so, the recovery made from the assessee towards excess interest. The Ministry, in their written reply, stated:

"The Ministry propose to have the entire question of the payment of interest by the Government to assessees and charging of interest from assessees by the Government in respect of excess advance tax paid, or the shortfall of advance tax, as the case may be, re-examined thoroughly in consultation with the Audit and the Ministry of Law."

"As a precautionary measure, the assessments in question have been revised under Section 35 of the Income-tax Act, 1922| Section 154 of the Income-tax Act, 1961, and an additional demand of Rs. 2,69,643 raised. This has also been collected; but the assessee has filed appeals disputing the validity of the rectificatory orders."

2.338. The Committee are of the opinion that on equity whether Government paid interest to the assessee or vice versa the criterion should be the same. Section 215(3) of the Income-tax Act, 1961, provides for reduction of interest payable by an assessee as a result of variation of the amount on which the interest was payable on rectification or revision whereas Section 214 which provides for Government's paying interest to the assessee does not have a similar provision for reducing the quantum of interest as a result of rectification or revision. The Committee accordingly desire that the difference in language between sections 214 and 215 should be looked into. Further neither under Section 214 nor under Section 215 there is a provision for the enhancement of interest payable. The Committee note that the Ministry propose to have the entire question of payment of interest by Government to assessees and charging interest from assessees by Government in respect of excess advance tax paid or the shortfall of advance tax as the case may be re-examined thoroughly in consultation with the Audit and the Ministry of Law. The Committee trust that this will be done expeditiously and appropriate amendments to the relevant sections of the Act made, as necessary.

(o) Over-assessment

Audit Paragraph

2.339. A statement showing the total number of cases of over-assessment with the tax involved, noticed in test-audit during the five years 1966 to 1970 is given below:

Year	No. of cases	Amount (In lakhs of Rs.)
1966	1408	36·88
1967	2014	65·89
1968	2392	58·73
1969	2972	85·25
1970	3496	100·92

[Paragraph 59 of Audit Report (Civil), Revenue Receipts, 1970].

Audit Paragraph

2.340. Over-assessment of tax of Rs. 191.41 lakhs was noticed in 6004 cases. The various types of mistakes leading to over-charge of tax were mentioned in the earlier Audit Reports on Revenue Receipts.

[Paragraphs 48 of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil)—Revenue Receipts]

2.341. The various types of mistakes leading to overcharge of tax were brought to notice in the earlier Audit Report. From 1408 cases with tax effect of Rs. 36.88 lakhs in 1966, the number of cases of over-assessments reported in the Report for the year 1969-70 has arisen to 6004 with a tax effect of Rs. 191.41 lakhs. This shows that over-assessment of tax continues to be serious problem in the Department.

2.342. While commenting on the increase in the number of cases of over-assessments the Public Accounts Committee, in paragraphs

1.54 to 1.56 of their 100th Report (Fourth Lok Sabha) observed as follows:—

> "....In the light of these findings the Committee feel that over-assessments continue to be a serious problem in the department."

> "In their 73rd Report (Fourth Lok Sabha), the Committee had also suggested a study of over-pitched assessments in important revenue circles in the light of the judgments of Tribunal and courts. The Committee note that the Government have not initiated a study on these lines on the ground that any patent and manifest over-assessments are not likely to be noticed for the first time by Tribunals and that the Courts are concerned with questions of law. The Committee are unable to accept this reasoning. The question of law cannot be considered in isolation from questions of fact. The Committee would, therefore, like to reiterate their suggestions in para 4.26 of their 3rd Report (Fourth Lok Sabha)."

> "The Committee note that the Board of Direct Taxes have instructed the Commissioners to ensure that tendency to make fictitious additions should be particularly looked into during inspection of ITOs work and wherever necessary defaulting officers pulled up. The Committee trust that these instructions would be promptly implemented. They also hope that the Ministry will keep the position under constant watch and, if necessary, take further steps as may become necessary to curb the tendency to overpitch demands which the Committee have deprecated in successive reports on direct taxes."

2.343. Drawing attention to the above recommendations, the Committee desired to know the special steps proposed to be taken by the Ministry to arrest the menance of over-assessment of tax in a very large number of cases. The Ministry, in a written note, stated:

"The number of cases of over-assessment detected by the Revenue Audit over the years 1966 to 1971 as against the total number

of cases checked by them is given below:—

Year	No. of over-assessment cases reported by Audit	Total number of cases checked by Audit	Percentage of figures in col. 2 to those in col. 3
1	2	3	4
1966	1408	1,41,271	1·00
1967	2014	1,69,008	1·19
1968	2382	2,02,899	1·18
1969	2972	2,36,309	1·26
1970	3496	2,59,269	1·35
1971	6004	2,74,000	2·19

It will be noted from the above statistics that the percentage in the last colum stood between 1 to 1.5 per cent for the years 1966 to 1970. In the year 1971, however, it increased to over 2 per cent. There has been very considerable increase in the pressure of work-load in the Department as will be seen from the fact that whereas in 1965-66, the total number of assessments completed was 23.89 lakhs, in 1969-70 it rose to over 37 lakhs *i.e.*, an increase of over 50 per cent. The Income-tax and other direct taxes laws have also become more complicated over the years. All the same the Ministry share the Committee's concern about the increase in the number of cases of over-assessment and the amount involved therein, even after making allowance for the fact that not every case of over-assessment reported by the Audit is accepted by the Audit is accepted by the Department. The Ministry have carried out sample study of appellate orders to find out the extent and nature of avoidable over-assessments and having regard to these studies made, instructions have been issued to the Income-tax Officers to be extremely careful in framing assessments so that there is no avoidable over-pitching; the supervising authorities have also been alerted to keep a close watch and pull up the erring officers."

2.344. In pursuance of the recommendations made by the Public Accounts Committee in paragraph 1.54 to 1.56 of their 100th Report (Fourth Lok Sabha) the Ministry have taken the following action: "The Government have undertaken a pilot study of over-pitched assessment as reflected in the judgements of the Income-tax Appellate Tribunals and courts. The initial study is being made in respect of the cases arising from two important Ranges of Inspecting Assistant Commissioners of Income-tax at Delhi. It is proposed to extend the study in several other important Ranges of Ins-

pecting Assistant Commissioners of Income-tax at Bombay, Calcutta and Madras. The results of the studies will be communicated to the Committee in due course."

2.345. The Committee wanted to know in how many cases out of these 3496 mentioned in the Audit Report, 1970, the assessments could not be rectified and refunds made to the assessees due to the time-bar. The Ministry, in a note, stated: "Where amounts of tax paid are clearly refundable to assessees, the Government have not been taking the plea of limitation. In respect of orders passed under the old Act, the Government have been allowing extra-legal relief with the concurrence of the C&AG. For orders passed under the Income-tax Act, 1961, the Board have assumed powers under Section 119 to allow rectifications of orders which may result in refund even after the statutory time limit for such rectification is over. Hence, there is not likely to be any case out of the 3496 mentioned in the Audit paragraph, where assessments could not be rectified and refunds made to the assessees due to time-bar."

2.346. When asked by the Committee to state the number of cases in which over-assessments were pointed out by the Internal Audit for 1968-69, the Ministry in a written note replied that during 1968-69, the Internal Audit reported over-assessment involving an amount of Rs. 98.10 lakhs in 8061 cases.

2.347. The Committee note a persistent tendency to overpitch tax demands which has of late shown disconcerting increase despite the fact that Government's attention has been repeatedly drawn to the seriousness of this problem in successive Reports on direct taxes. The number of cases and the amount involved which were 1408 and Rs. 36.88 lakhs respectively in 1966 have jumped to 6004 and Rs. 191.41 lakhs respectively in 1968-70. In terms of percentage of cases to the total number of cases checked by Audit, the details of which have been furnished by the Ministry, the increase during this period has been from 1.00 per cent to 2.19 percent. Such an extremely undersirable trend has to be curbed. The Committee take a serious view of over-assessments as they invariably involve needless harassment to the assessees which should be scrupulously avoided. In this connection the Committee would like to know the results of the pilot studies in important ranges of Inspecting Assistant Commissioners of Income Tax and the concrete steps taken on the basis thereof.

Audit Paragraph

2.348. In ten cases, over-assessment of tax of Rs. 4,99,809 was noticed due to avoidable mistakes in computation of total income

The Ministry have accepted the mistakes in all cases. Report regarding rectification and refund of the tax is awaited.

(ii) In six cases, over-assessment of tax of Rs. 6,52,752 was noticed due to mistakes in applying the correct rates of tax and calculation of tax payable by the assessees. In four cases, involving tax of Rs. 3,54,723 the Ministry have accepted the mistake. In the remaining two cases Ministry's reply is awaited (March, 1971).

(iii) Losses under the head 'profits and gains of business' can be carried forward and set-off against income, if any, under the same head in the subsequent year. If it cannot be set off in the subsequent year it can be carried forward for adjustment for a period of eight years. The business loss brought forward from earlier year is to be first set off against income of current year and only thereafter unabsorbed depreciation brought forward should be set off against the balance of income, if any.

2.349. In two cases the provisions of law as mentioned above were not observed resulting in excess levy of tax of Rs. 2,22,231 and incorrect carry forward of unasorbed depreciation of Rs. 2,33,066 in one case for adjustment in future years. The Ministry have accepted the mistake in one case. Reply of the Ministry in the other case forwarded to them in October, 1970 is awaited (March, 1971).

[Paragraph 48(c) of the Report of the Comptroller and Auditor General of India for the year 1969-70—Central Government (Civil)—Revenue Receipts.]

2.350. The Committee enquired whether the mistakes had been rectified in all the assessments and the tax overcharged refunded. The Ministry, in a written note, stated: "Paragraph No. 48(c)(i) to (iii) of the Audit Report for 1969-70 cover 18 cases, in 17 of which the Ministry have accepted the Audit objection. In 16 such cases, the amounts overcharged have either been refunded or adjusted against demand; only in one case the assessment could not be revised, because the written down value of assets coming down from a past assessment yet to be re-computed."

2.351. The Committee learnt from Audit that in a number of cases the mistakes had remained unnoticed by the Internal Audit. The Committee desired to know whether, in the light of the mistake brought to notice in Audit Report, the Department had evolved any measures to tighten up the assessment procedures and also for counter-check of assessments before they were finalisd and demands issued. The Ministry, in a note, stated: "Out of the 18

cases reported in the Audit paragraphs relating to over-assessment, only 4 are reported to have been looked into by the Internal Audit parties. In one such case, they did not specifically comments on the item of over-assessment later on pointed out by the Revenue Audit, because it had been brought to the notice of the Income-tax Officer by the assessee. Their failure to detect the mistake in three other cases is regrettable.

2.352. In most of the cases the mistake lay in not checking the computation of income. The IAPs had in the past been confining their attention almost entirely to the computation of tax. Instructions have already been issued to the Income-tax Officers directing them to satisfy themselves about the arithmetical accuracy of the computation of income before they proceed to calculate the tax."

2.353. The Audit Paragraph has brought out 18 cases of over-assessments to the extent of Rs. 13.75 lakhs due to mistakes either in computing total income or in application of rates of tax and calculation of tax or in setting off losses carried forward from previous year against current year's income. While the Committee note that the Ministry have accepted the mistakes in 17 cases and that the assessments have been rectified in 16 cases, they would like action to be taken to rectify the assessment in the remaining case.

2.354. That the assessment procedures and the counter check of assessment need to be strengthened is clearly indicated from the foregoing. In this connection the Committee regret to learn that the Internal Audit failed to notice the mistakes in three out of four cases reviewed by them. The Committee hope that suitable action would be taken for their failure. . . .

(p) Other topics of interest

Audit Paragraph

2.355. According to the Income-tax Act, 1961, the Commissioner of Income-tax can reduce or waive the minimum penalty imposable if the disclosure of income made by a declarant is full. If to the amount disclosed additions are made by the department on account of concealed income, the disclosure cannot be said to be full. In such cases under the Act the minimum imposable penalty cannot either be reduced or waived. It was noticed that in 177 cases relating to five different Commissioners' charges, the minimum imposable penalty was either reduced or waived though the disclosures were not full. The total amount of disclosure in 177 cases was Rs. 3.12 crores and the amount finally accepted/assessed was Rs. 4.97

crores. The reduction or waiver of minimum penalty in these 177 cases is contrary to the provisions of the Income-tax Act.

[Paragraph 60(a)(i) of Audit Report (Civil), Revenue Receipts, 1970.]

2.356. The Committee pointed out that as per the Audit paragraph in 177 cases relating to five different Commissioners' charges, the minimum imposable penalty was either reduced or waived though the disclosures were not full and the reduction or waiver of minimum penalty was contrary to the provisions of the Income-tax Act. The Committee wanted to know how this happened. The Chairman, Central Board of Direct Taxes, stated: "The point is that disclosures is not full and is concluded from the fact that the disclosed amount was different and smaller than assessed amount."

2.357. Elaborating further, the witness stated: "There is a difference between disclosed amount and the income assessed. The conclusion is that the disclosure was not full. Now this aspect of the matter was analysed and in respect of various cases we find that for example, in one case the variation arises because of gross profit. In other cases, working out of peak *hundi* loan is there. There are five cases of this type. There was a difference of opinion between the Department and the assessee. What happens is this that the assessee says that his *hundi* loans are not correct and, therefore, he works out his peak *hundi* loans or the amount that he would like to be assessed."

2.358. To a question, the witness stated: "We come to the conclusion that it is not full on the basis that the income assessed is higher than the one returned. I am explaining why this difference arises, which in no way reflects on the fulness of the disclosure. For example, suppose there is a building and the assessee says that he had built it for Rs. one lakh and it is a concealed asset, but the Income-tax Officer says that he is not going to accept it but he would take it as Rs. 2 lakhs. So far as the assessee is concerned, he has disclosed it. There is a difference of opinion and the ITO forces his view-point and makes the assessee agree to a higher figure."

2.359. When enquired by the Committee whether the Department considered it as voluntary disclosure meriting the concessions given under Section 271(4A) of the Income-tax Act, the witness stated: "The point is this. He has disclosed an asset. There is a difference of opinion with regard to the value ... There are two things here. One is the fact or the item which is the subject of concealment and the other is the quantification of the concealment which is subject to a process of evaluation. To continue with my example of *hundi* loans,

these cases appear from year to year and the quantum of what is embeded as concealment under this Section is always a matter on which there is a difference of opinion."

2.360. Pointing out that the Income-tax Act empowered the Commissioner of Income-tax in his discretion to reduce or waive the amount of minimum penalty imposable under the Act on an assessee who voluntarily and in good faith made full disclosure of his concealed income, the Committee enquired whether the Ministry of Law was consulted in regard to exact significance of the words 'Voluntarily and in good faith made full and true disclosure of concealed income'. The witness stated: "We have consulted the Law Ministry and issued specific instructions on the subject in a very elaborate circular explaining what is voluntary disclosure, what is disclosure etc."

2.361. The Committee were informed by Audit that the Board issued the detailed circular dated 29th September, 1969, explaining Section 271(4A) its scope and its applicability. In one paragraph they had dealt with where it could be deemed to be full disclosure and where it could not be so deemed. According to Audit, the cases mentioned in the Audit paragraph were not covered even by that circular so that even in terms of that circular the concealment was established and it was not a *bona-fied full* disclosure.

2.362. When pointed out by the Committee that as long as the Section 271(4A) remained unchanged, and unless the Department were fully satisfied that the full disclosure was made in good faith, there was no justification to grant concessions contemplated in the Act, the witness stated: "Absolutely strictly and literally speaking, it was not envisaged in a case where the income assessed is more than what the income declared is. But I would only like to add that in the realities of the situation, the assessee says that he has incurred expenses on his personal living at Rs. 10,000, but since we evaluate the income, the ITO calculates and says that he should have spent Rs. 20,000, and so he adds another Rs. 10,000 to his income. Like that, he goes on making variations from what the assessee has declared and that is how these differences arise... Strictly and literally speaking, I would say that it would not fall under the Section . . . this is one of the incentives to the assessee to come to a settlement by reducing the penalty or waiving it.

2.363. In reply to a question, the witness deposed: "When it is a question of coming to a settlement, when both sides agree, there is no point in going on appeal. The party agrees primarily because he would have had to pay a large penalty; when the penalty is waived, he does not mind the additions made by the Department."

"That is the only incentive, for the party to come for a settlement, because it knows that it will have some remission in penalty."

"On the basis of the data he volunteers and comes up for a settlement on his income. He declares a certain income. The department subjects it to a closer scrutiny and on various grounds, where a difference of opinion arises, the department computes their income. The party agrees because he still feel that he will have remission in penalty and the department also comes to a settlement with him because it is the easier way in which, without litigation, they would be able to collect the tax."

2.364. It was pointed out that the Commissioner of Inocme-tax had exceeded his legal powers in accepting the settlement and waiving the penalty. What he could have done was not to add up to the undisclosed income. But having recorded on the file a certain quantum of undisclosed income and to say, "I waive the penalty" was illegal. The witness stated: "He (Commissioner of Income-tax) is wrong, but he has acted to safeguard the interests of revenue."

2.365. The Committee wanted to know the percentage of voluntary disclosures found to be correct by the Income-tax Department during the years 1969-70 and 1970-71. The Ministry furnished a statement showing the requisite percentage in 29 charges separately for 1969-70 and 1970-71. The average percentage of voluntary disclosures found to be correct by the department during the years 1969-70 and 1970-71 are as under:—

1969-70	..	..	25.32 per cent
1970-71	..	..	39.35 per cent

2.366. The Committee find that the Commissioner of Income-tax had not followed the provisions of Section 271(4A) of the Act as clarified by the Board in their circular dated 29th September, 1969, in waiving or reducing the minimum penalty in as many as 177 cases where the voluntary disclosures were not full. Admitting that the action of the Commissioner was wrong, the representative of the Central Board of Direct Taxes averred that he had acted to safeguard the interests of revenue. According to him it is one of the incentives to the assessees to come to a settlement by reducing the penalty or waiving it. He further pleaded that when an assessee disclosed his concealed assets the difference in valuation thereof did not reflect on the fulness of the disclosure. The Committee are unable to fully share this view especially as in these 177 cases the amount finally accepted|assessed was Rs. 4.79 crores as against the disclosed income of Rs. 3.12 crores only. In any case concession shown in the matter

of levy of penalty in such cases is not in conformity with the law as it stands now. Any review of the position in order to provide for concession where there could be honest difference of opinion regarding valuation should take into account the need to deter effectively deliberate underestimation of assets disclosed.

Audit Paragraph

2.637. Under Section 214 of the Income-tax Act, if on regular assessment it is found that the advance tax paid by an assessee is in excess of the tax determined on regular assessment, the assessee is entitled to interest on the excess advance tax so paid. The interest is payable at a specific percentage on the amount by which the aggregate sum of instalments of advance tax paid during any financial year exceed the amount of tax determined on regular assessment. It was noticed in Audit that the department while calculating interest payable to assessees on the excess advance tax so paid, levied the interest on the difference between the advance tax paid and the tax determined on regular assessment reduced by the tax deducted at source. On the language of the provisions of Section 214, there is no warrant for this type of determination of interest by deducting the tax deducted at source. The adoption of incorrect method of computation of tax on which interest was payable by the department resulted in excess payment of interest of Rs. 9.80 lakhs in 75 cases in 12 Commissioners' charges.

[Paragraph 60(b) of Audit Report (Civil), Revenue Receipts, 1970]

2.368. At the instance of the Committee, the Ministry of Finance, in a note submitted to the Committee, Clarifying the provisions in the Income-tax Act regarding payment of interest to assessees on advance tax paid in excess, stated as follows:—

"The opinion given by the Ministry of Law in this respect is reproduced below:—

"Section 214 provides for the payment of interest on the amount by which the aggregate amount of any instalment of advance tax paid during any financial year exceeds the amount 'of the tax determined on regular assessment'. The point discussed in this file is whether the expression 'tax determined on regular assessment' means the gross tax or the tax arrived at after giving credit to the tax deducted at source.

2. Under Section 199, tax deducted at source is deemed to be paid on behalf of the person concerned and credit is given to the person in the assessment made for the

immediately following assessment year. Under Section 205, where tax is deducted at source, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income. This shows that the expression 'tax determined on regular assessment' must necessarily be the tax after giving credit to the tax deducted at source.

3. Reference may be made in this connection to the definition of the words 'regular assessment' in Section 2(40) as meaning the assessment made under Section 143 or Section 144. Under Section 143, the Income-tax Officer has to make the assessment in the manner specified therein and 'shall determine the sum payable by' the assessee. The same words occur in Section 144 also. Obviously, it is only the amount which is actually payable by the assessee for the relevant assessment year that is determined by the Income-tax Officer. In determining this amount, the Income-tax Officer has necessarily to deduct the advance tax for which there is already a credit under Section 199. He cannot make a demand in respect of the amounts already credited as advance tax.

4. For the above reasons, the reasonable view to take would be that interest is to be calculated only on the difference between the advance tax and the tax actually determined any payable by the assessee on assessment under Section 143 or Section 144. It is relevant to note in this connection that advance tax is itself calculated after giving credit to the tax deducted at source."

2.369. When enquired by the Committee whether an assessee was entitled for interest on tax deducted at source, the Ministry, in a written reply, stated: "The assessee is paid interest on the total amount of tax paid by him in excess of the tax determined to be payable by him. The interest is payable by the Government from the first day of April following the financial year in which the advance tax has been paid to the date of the regular assessment. It is not that interest is paid to the assessee from the date of the deduction of tax at source right upto the date of regular assessment."

2.370. The Committee desired to know the difference in procedure in regard to interest payable by Government under Section 214 and interest payable by assessee to Government under Section 215 with reference to the exact provision of the Act. The Committee was

given to understand by Audit that Section 215 of the Income-tax Act which prescribed the conditions under which interest would become payable by assessees to Government clearly stipulated that the tax determined on the basis of the regular assessment should be "reduced by the amount of the tax deductible at source." The Committee wanted to know whether there was such a provision under Section 214, if not, the authority for reducing the tax determined on regular assessment by the tax deducted at source. The Ministry, in a note, stated: "There is apparent difference between the provisions of Sections 214 and 215 in the treatment of the tax deducted at source. Section 215(5) defines 'assessed tax', an expression used in Sections 215, 217 and 273 only. In this definition 'assessed tax' means the tax determined on the basis of regular assessment as reduced by the amount of tax deducted at source. From this, it might at first sight appear that Section 214 does not provide for the adjustment of the tax deducted at source. This will, however, be incorrect. It will be noticed that Section 214 does not use the expression 'assessed tax'. This Section provides for the payment of interest by which the aggregate amount of the instalments of the advance tax paid during any financial year exceeds the amount 'of the tax determined on regular assessment'. The Law Ministry advised that the expression 'tax determined on regular assessment' must necessarily be the tax after giving credit for the tax deducted at source as required under Section 205. In their opinion the expression used in Section 214 refers to the net tax payable. In this connection, it may be noted that advance tax is itself calculated after giving credit for the tax deducted at source."

2.371. Admittedly there is an apparent difference in the matter of treatment of tax deducted at source between the provisions of Sections 214 and 215 governing payment to and charging interest from assessees for the excess or deficiency in the advance tax paid. While Section 215(5) clearly stipulated that tax determined on the basis of regular assessment should be reduced by the amount of tax deductible at source, for the purpose of charging interest from the assessee, there is no corresponding provision in Section 214. However, the Committee learn that the Ministry of Law have opined that the expression "tax determined on regular assessment" used in Section 214 must necessarily be the tax after giving credit for the tax deducted at source. They further learn that advance tax is itself calculated after giving credit for the tax deducted at source. Government may consider the question of amending Section 214 suitably to place matters beyond doubt. In the meanwhile, suitable instructions should be issued to avoid any divergence in practice in regard to payment of interest under Section 214.

the position obtaining in regard to similar omission in other Income-tax Offices in the same charge and in other Commissioner's charges. The Ministry, in a note, submitted to the Committee stated:

"The Ministry have not been able to collect full information regarding all the cases, but C.I.T., Kerala has reported that in respect of 35 cases relating to his charge the Audit comments were unjustified because some of the persons had no taxable income, some payments made at any one time did not exceed Rs. 400, and in others, payments had been made before the provision was introduced in the Act.

The Ministry, however, admit that there may have been some lapses, and keeping in view the omissions pointed out in the Audit Paragraph and the difficulties experienced by the field officers, the Board are reviewing the whole matter of tax deductions at source including those made under section 194-A. Amongst others, the Board are considering the following changes:—

(a) The obligation to deduct tax at source may be made applicable for cases in bigger cities only when the payment of interest exceeded Rs. 1,000 "at any one time", instead of the present limit of Rs. 400.

(b) A penal clause may be introduced whereby non-deduction of tax at source on interest paid, will entail disallowance of interest, which otherwise is an admissible deduction from the total income.

(c) Insurance of letters by the Income-tax Officers to the assessees other than individuals and H.U.Fs. borne on the list of advance tax payers and other big assessees informing them about their obligations under the law and requesting them to deduct the tax and deposit the same in the Treasury within the prescribed time limit.

(d) Creation of separate Cells to deal exclusively with matters connected with the deduction of interest at source."

2.379. Inviting the attention to the short-recovery of Rs. 4289 in three cases mentioned in sub-para 1(ii) of the Audit paragraph, the Committee desired to know the extent of total short-recovery that had come to the notice of the Department, as a result of a review if any undertaken by the Department in the light of the Audit para. The Ministry, in a written note, replied: "Information will have to be collected. No review has been undertaken as yet. However, as stated above, the whole matter of tax deduction at source is to be reviewed."

2.380. The Committee pointed out that though according to the Law, persons who recovered tax from interest payment should remit it to the credit of Government by the 7th day of the month following that in which the deduction was made, delay of three days to 6 months was noticed in 27 cases. The Committee wanted to know the action proposed to be taken to insist on prompt remittance of tax collected to Government account. The Ministry, in a note, stated that the apprehensions of the Committee would be kept in view while reviewing the whole position.

2.381. From sub-paragraph (2), the Committee learnt that the Income-tax Department itself was a defaulter in recovery of tax due from interest payments. Though instructions were issued by Central Board of Direct Taxes clarifying the legal position in March, 1968, the Department did not appear to have followed the instructions. According to the paragraph in 49 cases, tax amount of Rs. 1,19,857 was not deducted. The Committee desired to know whether a review had been undertaken to find out the total interest payments made by the Department from 1-10-1967 to 31st August, 1971 to know the total interest paid and the tax not recovered from it. The Ministry, in a note, stated: "The Ministry agree that technically the Department is also liable to deduct tax at source on interest paid by it to the assessee, but feel that it would be a futile exercise involving a lot of avoidable accounting and administrative work. As such, they are considering an amendment to this effect. No such review has been undertaken."

2.382. The Committee pointed out that it was stated that where interest was credited to the account of a payee, the tax was to be deducted at the time of crediting the account and not at the time of payment. The Committee desired to know the machinery by which the Government ensured that in all cases where the obligation was to deduct tax at source at the time of crediting interest, it was properly and promptly fulfilled by the person concerned. The Ministry, in a note, stated: "At present, the Government does not have any machinery by which they may ensure that the obligation to deduct tax at source at the time of crediting interest is properly and promptly fulfilled. But this aspect will also be kept in view while making the necessary changes. The success of a measure like this largely depends upon its compliance by the persons concerned. One of the methods by which this can be ensured would be to take deterrent measures to make such a default unrewarding."

2.383. The Committee are distressed to note the non-deduction or short deduction of tax at source on interest payments and delayed

remittance of tax deducted which also did not attract the penal provisions of the Act. It is strange that Income-tax Department itself is a defaulter in this regard. Such serious lapses noticed in test check of cases by Audit should have compelled the Department to undertake a review in all the charges to find out the extent of failure and to take appropriate action including rectification and recovery which, however, surprisingly enough were not done. The Committee expect that such review should be done without further delay and the results intimated to them.

2.384. Unless deterrent measures are taken to make such defaults unrewarding, the defaults are bound to recur. The Committee would, therefore, like to know why penal provisions were not invoked in respect of cases pointed out by Audit and whether there were similar laxities in other cases.

2.385. The Committee note that the Central Board of Direct taxes are reviewing the whole matter of tax deductions at source including those made under Section 194A with a view to making certain changes. The Committee hope that expeditious steps would be taken to ensure correct and timely deduction of tax at source as well as its prompt remittance. The Committee would await the outcome of the review of the position by the Board.

2.386. According to the Ministry, although technically the department is also liable to deduct tax at source on interest paid by it to the assesssee, it would involved a lot of avoidable accounting and administrative work. The Committee understand that an amendment to the Act in this regard is under consideration. They wish to observe that any change that is made should provide adequate check to see that the assessees do not escape the tax liability on the interest paid to them by the Department.

CHAPTER III

ARREARS OF ASSESSMENTS*

3.1. (i) As on 31st March 1970, 13.21 lakhs cases were outstanding with Income-tax officers pending assessment. The position of pendency of assessments for the last three years is indicated below:—

Year	As on 31-3-1968	As on 31-3-1969	As on 31-3-1970
1965-66 and earlier years .	5,57,897	1,81,019	21,667
1966-67	5,64,555	1,77,343	1,26,106
1967-68 . . .	12,07,198	3,58,599	1,34,461
1968-69	..	8,67,696	2,91,309
1969-70	..	..	7,48,264
TOTAL .	23,29,650	15,84,657	13,21,807

(ii) Category-wise break-up of pending cases is as follows:—

	As on 31-3-1969	As on 31-3-1970
(i) Business cases having income over Rs. 25,000	1,62,683	1,67,423
(ii) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000 . . .	1,49,159	1,41,929
(iii) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000 . . .	3,10,633	2,69,468
(iv) All other cases except those in category (v) and refund cases.	7,15,396	5,42,856
(v) Small income Scheme cases, Government Salary cases and non-Government salary cases below Rs. 18,000.	2,46,786	2,00,131
	15,84,657	13,21,807

*The figures were furnished by the Ministry.

(iii) The status-wise break-up of the pending cases is as given below:—

Status	Number of assessments pending on 31-3-70
(i) Individuals	10,18,762
(ii) H.U.F.	81,817
(iii) Firms	1,83,813
(iv) Companies	23,730
(v) Others	13,685
TOTAL	13,21,807

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

Financial year	No. of assessments for disposal	Number of assessments completed			%	Number of assessments pending at the end of the year
		Out of current	Out of arrears	Total		
1	2	3	4	5	6	7
1965-66	45,58,556	14,59,776	9,29,251	23,89,027	52·4	21,69,529
1966-67	47,65,607	13,32,672	10,85,422	24,18,094	50·7	23,47,513
1967-68	48,86,204	13,31,493	12,25,061	25,56,554	52·3	23,29,650
1968-69	49,99,237	16,73,474	17,41,106	34,14,580	68·3	15,84,657
1969-70	48,79,697	21,34,814	14,23,076	35,57,890	72·9	13,21,807

(The percentage in column 6 represents cased disposed of to total number of assessments for disposal).

(v) Category-wise break-up of the total number of assessments completed during the years 1968-69 and 1969-70 is given below:—

	1968-69	1969-70
(i) Business cases having income over Rs. 25,000	1,95,124	2,29,640
(ii) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,75,109	2,13,026
(iii) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	4,33,066	4,89,431
(iv) All other cases except those mentioned in category (v) and refund cases	18,25,744	17,95,308
(v) Small income Scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000	7,85,537	8,30,485
	34,14,580	35,57,890

(vi) The number of assessments completed and demand raised month-wise during 1969-70 is as below:—

Months	Number of assessments completed	Demand raised during the month (in crores of Rs.)
April, 1969	59,458	13·96
May	75,230	15·60
June	1,15,000	15·15
July	2,25,780	26·05
August	2,86,461	35·30
September	3,22,196	43·96
October	3,13,436	44·05
November	3,22,047	43·56
December	3,51,584	58·10
January, 1970	4,43,259	73·23
February	4,75,759	92·95
March	5,67,680	245·10

[Paragraph 52 of the Report of C&AG for the year 1969-70—Central Govt. (Civil)—Revenue Receipts.]

3.2. As on 31st March, 1970, 13.22 lakhs assessments were pending without completion. The corresponding position as on 31st March, 1969 was 15.85 lakhs. The Ministry had intimated the total number of assessment pending as on 31st March, 1971, was 12.39 lakhs.

3.3. The Committee were given to understand by audit that though on 31st March, 1970 the total number of pending cases came

down to 13.22 lakhs from 15.85 lakhs as on 31st March, 1969, the percentage of pendency in high income cases went up as shown below:—

	As on 31-3-69 (in lakhs)	Percentage of total pendency	As on 31-3-70 (in lakhs)	Percentage of total pendency
Total pendency	15·85	..	13·22	..
Pendency in categories I & II (*i.e.* with income over 15,000 in each case) .	3·12	20	3·09	23

3.4. The pendency in categories I & II cases went up from 20 per cent as on 31-3-69 to 23 per cent as on 31-3-1970. On the analysis of the break up of the pending cases, status wise, it was noticed as against 23310 company assessments pending as on 31-3-1969, the number of assessments pending on 31-3-70 was 23,730. The arrears in company assessments had thus gone up during the year under Report.

3.5. The Committee further learnt from audit that the number of assessments completed and demands raised during the last three months of the financial year 1969-70, March 1970 and the rest of the period was as follows:—

	No. of assessments completed	Percentage of total assessments completed	Amount of demand raised (in crores)	Percentage to total demand raised
During the months Jan.-March, 1970	14,86,698	42	411·28	58
March, 1970	5,67,680	16	245·10	35
During the remaining period . . .	20,71,192	58	295·73	42

3.6. The position of assessments completed in March, 1970 is compared below with the corresponding position in March, 1969:

	No. of assessments completed	Percentage to total assessments completed	Amount of demand raised (in crores)	Percentage to total demand raised
March, 1969	4,75,254	14	233·65	34
March, 1970	5,67,680	16	245·10	35

3.7. Though only 42 per cent of assessments were completed in the last three months of the financial year 1969-70, the demand raised

during the same period represented 58 per cent of the total demand raised during the year.

3.8. The number of assessments completed in March, 1970 was about 16 per cent of the total assessments. The demand raised, however, was Rs. 245.10 crores *i.e.* 35 per cent of the total demand. The analysis showed that high income groups assessments were continued to be taken up for completion in the last three months of the financial year and especially in the month of March, 1970.

3.9. In paragraph 1.42 and 1.43 of their 117th Report (Fouth Lok Sabha) while expressing their dis-satisfaction on the increase in pending assessments of bigger cases, the Committee urged the Central Board of Direct Taxes, to draw up a suitable programme of priorities for disposal of assessments so that those cases which had high revenue potentiality, receive greater attention at the hands of assessing officers. Pursuant to the above recommendation, the Ministry issued suitable instructions to the Commissioners' of Income-tax in July 1970, as under:

> "The Board have carefully considered the question of drawing up a suitable programme of priorities for the disposal of category I assessments. During the current year all the assessments relating to the assessment year 1966-67 will have to be finalised to save the time bar whereas during the financial year 1971-72 there would be three time-barring assessments *viz.*, assessments relating to assessment years 1967-68, 1968-69 and 1969-70. Thus, unless a systematic programme is drawn up for the disposal of these assessments the Income-tax Officers may not be able to devote adequate time to the examination of cases involving larger revenue, during the financial year 1971-72. In order to avoid such a contingency the Board have decided that a large number of Category I cases should be disposed of during the current year itself and in any case all Category I assessments for the assessment years 1966-67 and 1967-68 should be disposed of during the year itself. This will normally leave behind only the time barring assessments for 1968-69 and 1969-70 for disposal during the year 1971-72. You may, therefore, take immediate steps to ensure that the above instructions are implemented and the pendency of Category I cases is brought down considerably by the end of 1970-71."

3.10. During evidence, the Finance Secretary, explained: "I have the statistics and figures given by the Audit and we are also painfully aware of the fact that somehow or other, the bigger cases come to be completed only during the close of the financial year. This is a fact which cannot be denied but there are reasons for it, which I would like to place before you."

3.11. The Chairman, CBDT added: "One thing is as to the steps taken I have issued a directive to the Income-tax Officers and the Commissioners that all big cases involving substantial revenue must be completed before the 31st December this year."

3.12. Elaborating further, he stated: "The point is that the Department had a large backload of arrears. Statistically it was staggering. So the first reaction was to reduce the number and while trying to do that, it must but natural that attempt was made to dispose of the small cases and try to complete them first so that the statistics looked impressive. Now in order to break this, I want small cases to be taken up in the last quarter of the financial year and the big cases to be completed before the 31st December, because after all statistics would be for the entire financial year. There is another aspect, which I must bring out here. This is about the instructions to complete the cases of bigger assessees well before the time limit—say by 31st December. But earlier too, as far back as my memory goes in the years 1953 or 1954 instructions were issued in regard to the time barring cases which were required to be completed before or about end of the relevant financial year. But despite the clear directive from the Chairman in those days. the cases dragged on till 31st March. And there is a reason for which I don't think, it is fair to blame the department only. The point is, that these cases are usually big cases represented by eminent lawyers who as you know, have a knack of dragging on the cases by argumentation and by various pleas, they just drag on.

Now the Income-tax Officer has an option if he does not give an adjournment, and that is to make and *exparte* ordtr. But it is generally dangerous because in such a case, an *exparte* assessment has no meaning. So I should say that is one of the actual difficulties which, I as an officer, have also experienced despite anxiety to complete the cases in time. That is one aspect.

The other is that so far as the current year's assessment is concerned, the time for filing returns in respect of those accounting years which close after December, may be extended by some period that is upto next September or December without charging interest

and thereafter the assessees has to represent to get the time limit extended, on payment of interest.

Therefore, in those bigger cases which are current, the Income-tax Officer would have time from January, February, or March because most of the assessees do ask for the maximum time-limit. If the department refuses extension of time-limit they will certainly feel that the Department has not been fair to them. So, on payment of interest of 9 per cent they get the extension of the time and even if we raise the interest rate, they may not bother. By and large, the tendency of the bigger assessees regarding submission of income-tax returns, is to delay till the closing period of the financial year.

Now in order to meet the budget targets, the Income-tax Officers would certainly like to take up disposal of bigger cases as soon as they are received but despite the efforts right from the year 1955, I believe it may be even earlier, the odd position still persists."

3.13. In reply to a question the witness stated: "We have been constantly issuing instructions to the Commissioners and the Officers that by 31st December, they must complete all the big cases. If the assessees do not come to the office and if they do not cooperate under various pretexts which are most ingenuous ones, the officer can, of course, decide the case *exparte* and close it. But certainly, he would be risking the revenue he has not got the full facts of the case. The case may have to be reopened because the assessee says that enough opportunity was not given. This is the general practice."

3.14. Pointing out that 23,730 company assessments were reported to be outstanding as on 31-3-70 the Committee asked for the reasons for not completing them in time. The witness stated: "It is not the real situation that you have pointed out. The number of pending company cases is no doubt 23,310 but there may be more than 3 or 4 assessments involved in a case."

3.15. The Finance Secretary, added: "The reasons for large number of pending cases of firms and companies are that it is worthwhile to study in detail as to why they are being delayed. There may be various reasons; sometimes a company may be in liquidation; sometimes the party may not be interested in completing its assessment. From the revenue point of view, they are more important than the individual cases."

3.16. When suggested that the Law should be amended so as to enforce that before a case was reopened under section 146 or even

before an appeal was made, the assessee should pay a certain portion of the tax assessed upto the undisputed amount and that amount should be paid before the reopening could be considered, the witness stated: "This is a very good suggestion. But a certain portion, may be, 20 per cent or 30 per cent, something has to be examined. It will not be possible to introduce in this Bill, but we will have to consider it in the main Finance Bill. I do not think that they will permit any new clause to be included at this stage."

3.17. In reply to a question the witness added: "An amendment can be introduced only in respect of matters which are already introduced. Something which is outside the purview, cannot be introduced."

3.18. The Committee desired to know the number of Income-tax Officers on rolls as on 1-4-68, 1-4-69, 1-4-70 and 1-4-71 and the average number of disposal per I.T.O. during 1967-68, 1968-69, 1969-70 and 1970-71.

3.19. The Ministry in a note furnished the information as under:

Date	No. of Income-tax Officers on assessment duties	No. of Income-tax Officers on the rolls of the Department
1-4-68	1,701	1,988
1-4-69	1,912	2,464
1-4-70	2,056	2,494
1-4-71	2,234	2,788

Average No. of assessments disposed of per I.T.O. on assessment duty.

	1967-68	1968-69	1969-70	1970-71
Income-tax	1,503	1,789	1,738	1,568
W.T. & G.T.	64	66	104	101
TOTAL	1,567	1,855	1,842	1,669

3.20. The Committee wanted to know the number of cases wherein the completion of regular assessments became time-barred during 1968-69 to 1970-71 and the approximate tax effect involved in them. The Ministry, in a note, stated that they had no information about any regular assessments having became time-barred during the years 1968-69, 1969-70 and 1970-71.

3.21. The Committee note that the number of cases of pending assessments came down from 23.30 lakhs as on 31-3-1968 to 15.85 lakhs as on 31-3-1969, 13.22 lakhs as on 31-3-1970 and 12.39 lakhs as on 31-3-1971. Although there is a progressive improvement in the position of pendency of assessment cases since 1968-69, the pendency in categories I and II (i.e., with income over 15,000 and above in each case) continues to be heavy. As on 31st March, 1970 out of the total pendency of 13.22 lakhs cases the number of categories I and II cases pending was 3.09 lakhs which worked out of 23 per cent. The percentage of such cases was 20 per cent as on 31st March, 1969. As against 23.310 company assessments pending as on 31st March, 1969, the number of assessments pending on 31st March 1970 was 23,730. Another unsatisfactory feature is that there was rush of completion of assessments and raising of demands towards the end of the financial year. The number of assessments completed in March 1970 was about 16 per cent of the total assessments but the demand raised however, was 35 per cent of the total demands for the year. The analysis of the demands showed that high income groups assessments were continued to be takn up for completion in the last three months of the financial year and especially in the month of March. In paragraphs 1.42 and 1.43 of their 117th Report (Fourth Lok Sabha), the Committee, while expressing their dissatisfaction over the increase in pending assessments of bigger cases, urged the Central Board of Direct Taxes to draw up a suitable programme of priorities for disposal of assessments, so that those cases which had high revenue potentiality receive greater attention at the hands of the assessing officers. The Committee were informed that the Board have issued necessary instructions to the assessing officers that all big cases involving substantial revenue should be completed before 31st December and the smaller cases to be taken up in the last quarter of the financial year. The Committee have, however, been informed about the difficulties in finalisation of bigger cases before December. One of the difficulties as explained by the representative of the Ministry is that "usually big cases represented by eminent lawyer.....just drag on." An other difficulty is that the assessees seek extension of time on payment of interest. The Committee are concerned over the plea of helplessness of the department in completing the assessment cases a bigger assessees before December. They, however, find that the Working Group of the Administrative Reforms Commission have come to the conclusion on the basis of a case study that the total number of adjournments granted by the Income-tax Officer on his own is much higher than the number of adjournments asked for by the assessees. The Committee, therefore, desire that government

should seriously consider this matter in all its aspects and take effective measures, to discourage dilatory tactics on both sides—assessees and the Assessing authorities—so that bigger assessments may be completed speedily.

3.22. The Committee suggset that it should also be examined whether in cases which are sought to be reopened by the assessees under Section 146 of the Income Tax Act or before an appeal is made, the assessees should be required to deposit a certain portion of the tax which should not be less than that pertaining to the undisputed income. The Committee would further stress that in all cases of assessment/reassessment it would be desirable if the payment of tax on undisputed portion of income is made a condition precedent to filing appeals.

3.23. The Committee find that the number of income tax officers attending to assessment duties has progressively increased from 1701 as on 1st April, 1968to 1912 as on 1st April, 1969, 2056 as on 1st April, 1970 and 2234 as on Ist April, 1971. The effect of this appears to have been the reverse of what might have been expected. The average number of assessments disposed of per Income Tax Officer on assessment duty has decreased from 1855 in 1968-69 to 1842 in 1959-70 and 1669 in 1970-71. No satisfactory explanation for this phenomenon has been adduced by the Ministry. The Committee suggest that the reasons for decrease in the average number of assessments particularly during the year 1970-71 may be investigated by the department.

3.24. The Committee need hardly stress that the Department should also give adequate attention to the revenue collected and the accuracy displayed in assessment.

3.25 The Working Group of the Administrative Reforms Commission suggested that for cases of incomes above Rs. 50,000 there should be a hundred per cent check and that they must be compulsorily audited by Chartered Accountants who should append a complete list of points examined by them. Referring to the difficulty regarding inadequacy of Chartered Accountants to undertake compulsory audit, the working group had observed, "Today the number of practising Chartered Accountants is nearly 5,000 and with fresh candidates passing every year, the position will be much easier in future. In fact, compulsory audit might encourage younger Chartered Accountants to take to tax practice and it will equally be helpful to the tax payers and the Department".

3.26. The Administrative Reforms Commission in their Report observed, "We agree that audit by qualified Chartered Accountant would be helpful in relieving the assessing authority of the need to make routine checks and enabling him to concentrate on the broader aspects of the determination of the assessees correct liability. However, we are not sure whether audit made compulsory by law would not delay the submission of returns. Further, the number of Chartered Accountants being limited, it may not be possible for all assessees to secure their service except at heavy cost or at the cost of detailed scrutiny."

3.27 The Committee asked whether in view of the fact that the number of Chartered Accountants had increased considerably, it was not feasible that all returns involving income of more than Rs. 1 lakh should be certified by Chartered Accountants so that the onus of responsibility was placed on them and the work of the Department in checking of the returns was facilitated. The Finance Secretary stated: "I think, it would be a good measure in the case of returns above Rs. 1 lakh, whether of companies or individuals, that they are accompanied by a Chartered Accountant's certificate, that the assessment has been made according to law and the amount deducted or proposed to be deducted is according to law. I think it would be a good idea and it would certainly help". The witness added, "We could devise some method. We may have discussion with him (C&AG), the Company Law Department and the President of the Chartered Accountants Institute. We might be able to find some way out."

3.28. Now that the number of Chartered Accounts has increased considerably, the Committee would suggest that suitable method should be devised to have all returns of income involving more than Rs. 1 lakhs certified by Chartered Accountants subject to appropriate conditions and terms so that the Income-tax Officers may concentrate attention on broader aspects of determing correctly the tax liability. The Committee would like this matter to be examined early by Government in consultation with all concerned.

CHAPTER IV

ARREARS OF TAX DEMANDS.*

Audit Paragraph

4.1. (i) The total effective demand of tax outstanding on 31st March, 1970 was Rs. 682.56 crores (which excludes a demand of Rs. 158.14 crores, the collection of which had not fallen due on 31st March, 1970). Of this, the net effective arrears representing recoverable demands was Rs. 591.18 crores. The balance of Rs. 91.38 crores comprised the following:

(Rs. in crores)

1.	Reduction expected on account of :		
	(a) D.I.T. relief	7·31	
	(b) Appellate relief	29·70	
	(c) Protective assessments	6·46	
			43·47
2.	Irrecoverable dues which will be written off ultimately :		
	(a) from persons who have left India	11·48	
	(b) from companies in liquidation	81·20	
	(c) from cases pending before certificate officers	28·33	47·91
			91·38

4.2. The net effective arrears of Rs. 591.18 crores included:

(a) Rs. 91.48 crores being the amount of advance tax relating to the demands included in the gross demand;

(b) Rs. 6.15 crores being the amount of tax stayed by appellate authorities|High Courts|Supreme Court as on 31st March, 1970; and

(c) Rs. 23.55 crores being the amount pending disposal of appeals wherein stay has been granted other than those included in (b) above.

*The figures were furnished by the Ministry.

(ii) The following table shows the net effective arears pending without recovery as at the close of five years ending 31st March, 1970:—

Net effective arrears as on	(Rs. in crores)
31st March, 1966	244·67
31st March, 1967	337·70
31st March, 1968	410·05
31st March, 1969	537·98
31st March, 1970	591·18

(iii) The figures of corporation tax, income-tax and interest comprised in the gross arrears of Rs. 840.70 crores and the years to which they relate are shown below:—

(Figures in crores of rupees)

	Corporation tax	Income-tax	Interest	Total
(i) Arrears of 1959-60 and earlier years	4·77	55·53	1·99	62·29
(ii) 1960-61 to 1967-68	50·61	195·33	17·59	263·43
(iii) 1968-69	42·33	91·91	11·69	145·93
(iv) 1969-70	157·15	191·67	20·23	369·05
TOTAL	254·76	534·44	51·50	840·70

(iv) The table below shows the number of assessees from whom gross arrears of Rs. 840.70 crores are due, classified on the basis of assessed income :—

Arrear demand	No. of assessees	Total arrears (in crores of Rs.)
Upto Rs. 1 lakh in each case	16,21,589	439·46
Over Rs. 1 lakh upto 5 lakhs in each case	4,913	107·99
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case	814	62·72
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case	488	69·04
Over Rs. 25 lakhs in each case	244	151·49
TOTAL	16,28,048	840·70

(v) The table below shows the number of cases and the amount of income-tax stayed on appeals and revision petitions as on 30th June, 1969 and 30th June, 1970:—

	No. of cases in which tax was stayed		Amount of tax stayed (in lakhs of rupees)	
	30-6-69	30-6-70	30-6-69	30-6-70
(a) Before Appellate Assistant Commissioners	6,677	7,130	3,464	5,386
(b) Before Income-tax Appellate Tribunals	908	1,127	948	1,635
(c) Before High Courts	674	603	3,774	3,125
(d) Before Supreme Court	53	29	74	37
(e) Revision petitions before Commissioners of Income-tax	171	178	99	135

(vi) The total demand of tax certified to Tax Recovery Officers for recovery as on 31st March, 1970 was Rs. 486.55 crores. Yearwise details of the demand certified and recovery made by the Tax Recovery Officers to end of 1969-70 is given below:—

(In crores of Rs.)

Year	Amount Certified	Amount recovered	Balance
1966-67 and earlier years	172·63	24·52	148·11
1967-68	102·24	28·90	73·34
1968-69	158·59	41·49	117·10
1969-70	174·31	26·31	148·00
			486·55

[Paragraph 53 of the Report of CAG for the year 1969-70—Central Government (Civil)—Revenue Receipts.]

4.3. As on 31st March, 1970, the gross arrears of income tax amounted to Rs. 840.70 crores. The position of outstanding tax as at the end of March, 1966 to March, 1970 is as follows:

Year ending	Arrears outstanding (in crores)	Net effective arrears (in crores)
March, 1966	381·88	244·67
March, 1967	541·73	337·70
March, 1968	622·61	410·05
March, 1969	774·40	537·98
March, 1970	840·70	591·19

4.4. The Committee wanted to know the distinction between the terms 'Gross arrears' and 'Net effective arrears' of income-tax. The Chairman, CBDT, explained: "We first call the gross arrears according to the Income Tax Demands Register. From this we deduct certain arrears because they are not effective arrears, for example, the D.I.T. Relief and Appellate Relief and demand against protective assessments, irrecoverable dues which may be from persons who left India or from companies under liquidation. These are the figures which in our opinion are not recoverable at all. But they are maintained because of procedural requirements. For example regarding the persons who have left India, we are maintaining in our records the figure of gross arrears but none of these arreas are recoverable. Now we have been giving the figures of net arrears which are a little different from net effective arrears. But to a certain point of time we were giving figures of net effective arrears. Later we gave figures of net arrears. This change was brought about from 1968. I would like to explain to you how we arrive at this new category of net arrears. If a demand has not fallen due or if certain demand has been stayed either by the Assistant Commissioner, Tribunal, Commissioner, or the Income-tax Officer so long as the demand has been stayed we are not in a position to recover it. Therefore, from the gross arrears we deduct all those demands which are not due, which are covered by advance tax, which are stayed *i.e.* demands for paying which extension of time is given these are the figures which we deduct from the gross arrears because at a particular point of time we are not in a position to recover such arrears."

4.5. The Committee desired to know the reasons for accumulation of arrears of tax inspite of the systems of deduction at source, payment of advance tax and self-assessment. The Finance Secretary stated: "If advance collection at source has been made, then the difference should narrow down gradually. It should be practically equal to the demand. In some cases, these are also due to the new provisions of law. Penalties are added. We will have to investigate all this."

4.6. When enquired whether the figures of the gross arrears, compiled by the department, were scrutinised by Internal Audit, the witness state: "Previously we used to assign this to the internal audit, but later on we found that due to the enlargement of its functions, the internal audit could not do this task and, therefore, as a measure of expediency we make it a practice to ask another office to check up these figures."

4.7. In reply to a question, the witness stated that the net arrears were Rs. 374 crores for 1967-68, Rs. 435 crores for 1968-69, Rs. 507 crores for 1969-70 and Rs. 499 crores for 1970-71. He added that *"for the first time in 1970-71, the growth is arrested and we have been tying to bring it down further."*

4.8. The Witness added: "Every year, the collection, out of arrears demand have been rising. During the last three years it is 101 crores, 129 crores, 159 crores." "The total collection has gone up from 678 crores to 801 crores to 838 crores. The budget collection has not remained steady. Part of the budget collection is due to arrears and part is in current grant."

4.9. In a note furnished to the Committee, the Ministry of Finance have stated the following position of net effective arrears as on 31st March, 1971:—

(In crores of Rs.)

(i) Total effective arrears (excluding a demand of Rs. 129·32 crores which had not fallen due)	609·45	
(ii) Net effective arrears worked out as below:—		
Effective arrears [as at item 29(i)]	609·45	
Deduct		
(i) Advance tax included in the gross demand awaiting adjustment	4·66	
(ii) Amount of tax collection of which had been stayed by appellate authoristies/High Courts/Supreme Court as on 31-3-71	63·04	
(iii) Reduction expected on account of :—		
(a) DIT Relief	7·49	
(b) Appellate relief allowed by Courts	15·05	
(c) Appellate relief by I.T. authorities including amounts under protective assessments	62·77	153·01
	153·01	456·44
(iv) Irrecoverable dues which may have to be written off ultimately:		
(a) From persons who have left India	12·16	
(b) From companies in liquidation	9·62	
(c) From cases pending before certificate officers	34·84	56·62
		399·82

4.10. The Committee pointed out that a sum of Rs. 47.91 crores, representing dues which would be written off ultimately, was shown as arrears and included in the total effective demand of tax outstanding as on 31st March, 1970, and enquired whether there was

any time limit for write off and removal of the amount from the list of bad debts. The Finance Secretary stated: "It goes on for a very long time. It is only when all processes have been exhausted and everybody says that now there is no means of getting it that proceedings for write off are taken, and even they take a long time. Even after the reports are received from all tax collecting or gathering authorities that these cannot be cleared or that the man is not available or that he is dead or that there is no property and so on a very involved process has to be gone through before these are finally written off. It is a very long process unfortunately, but there has been some slight improvement on this question of write off of some of these bad debts. In fact, this year's report itself mentions that a comparatively larger number of cases were written off, and it rose in percentage from 0.0...0.2. or something of that sort, in terms of amounts as well as number of cases. But it would be good if we could get rid of these things from the books. It is no use showing the irrecoverable demands in the books."

4.11. The Committee drew attention of the witness to the Report of the Administrative Reforms Commission on Central Direct Taxes Administration wherein at page 9, the following have been stated in regard to write off or irrecoverable demands:

> "No useful purpose is secured by keeping these in the books as irrecoverable arrears. It only creates a misleading picture of the recoverable content of these arrears. The proper thing to do in the circumstances is to write off the irrecoverable demands. There is, however, a reluctance to write off these demands reluctance which is attributed by this group to a fear among the income-tax authorities that their action in writing off would be open to criticism in Parliament and elsewhere. This fear should be removed by an assurance that the write-off of arrears clearly proved as irrecoverable is the proper thing to do..." In this connection they have made the following recommendation:
>
> "Recommendation No. 3: We recommend that action should be taken for expediting writing off of outstanding demands if they are found clearly to be irrecoverable. Such demands should be scrutinised by a Committee consisting of the Commissioner, the inspecting assistant commissioner and the income-tax officer concerned, if the amount to be written off does not exceed Rs. 2 lakhs where such amounts range between Rs. 2 lakhs and

Rs. 5 lakhs, a committee for scrutiny should consist of the commissioner and the Director of Inspection. Where higher amounts are involved, the commissioner and the Director of Inspection should scrutinise the cases and put them up to the board for disposal."

4.12. The Committee enquired whether any action had been on the recommendation of the Administrative Reforms Commission. The Finance Secretary replied: "These Committees have been constituted with slight variations, and they are going through the cases and making recommendations."

4.13. The Chairman, Central Board of Direct Taxes added: "I may just detail how we have done it. With a view to accelerating the pace of write-off, the zonal committees are required to meet once in two months in multi-commissioner's charges. Where there is a single Commissioner another commissioner from adjacent charge is also on the committee. Up to a limit of Rs. 1 lakh the Commissioner has the power to write off. Thereafter, if the arrears are over Rs. 1 lakh but up to Rs. 5 lakhs, it is examined by zonal committee which sends through the Director of Research Statistics and Publications, a report to the Board. The Director examines it and then the concerned Member of the Board has the power to allow a write off."

4.14. When enquired about the criterion for declaring the arrears as irrecoverable, the Finance Secretary, stated: "The following kinds of inquiries are made before a write-off action is taken up. First, it has to be examined if there are any connected cases which give a clue to the assets of the Assessee. Secondly, we have to see whether the assessee was a benamidar could be pursued. Thirdly, we have to see the present sources of income of the assessee and then the net worth of the assessee. This is done by actual survey and investigation. We have also to see the earlier steps which had been taken for recovery and with what result, whether any immovable moveable property had been attached and so on. After all these have been done, if there are no substantial assets from which recovery can be made, then write off action is taken. It is a fairly complicated procedure, especially when inter-connected companies or inter-connected cases or benamidars have to be pursued. This happens particularly in the case of company arrears."

4.15. The Committee desired to know when these zonal committees had been constituted, the year-wise number of cases reviewed by them, the numbers of cases recommended by them for write-off

and the number of cases together with the amount written off. The Ministry, in a note, submitted to the committee stated: "The Zonal Committees to go into the question of write off were constituted in the last quarter of 1968. The Ministry regret that they do not have readily available data for furnishing the number of cases reviewed by the Zonal Committees for 1968-69 onwards and the number of cases recommended by them for write off. The number of cases of arrears over Rs. 1 lakh and the amounts written off year-wise are as under:—

	No. of cases	Amount written off (in crores of Rupees)
1969-70	30	1·57
1970-71	77	3·65

4.16. When asked for the number of cases of over Rs. 1 lakh written off one year prior to the constitution of the zonal committee, the Ministry, in a written reply, furnished the information as under:—

	No. of cases	Amount written off (in crores of Rs.)
1967-68	7	0·32"

4.17. Pointing out that the net effective arrears of Rs. 591.19 crores included a sum of Rs. 91.48 crores being the amount of advance tax relating to the demands included in the gross demand, the Committee enquired whether the advance tax of Rs. 91.48 crores was still to be realised or having been realised but not adjusted against regular demands. The Chairman, CBDT stated: "To the extent, my understanding goes, this 91.48 crores was advance tax paid but not adjusted." In a written reply the Ministry of Finance stated: "It is confirmed that the amount of Rs. 91.48 crores represents advance ax paid but not adjusted. Before 1969-70 collections of advance tax were credited to a separate minor head 'advance payments of tax'. On completion of regular assessments, adjustment memos were prepared in the income-tax offices and were sent to the Treasury Officers for adjustment of advance tax to final revenue heads. Only after receipt of the adjustment memos from the Treasury Officers credit for tax so adjusted was allowed against the demand raised. This system was, however, discontinued with effect from 1969-70 in respect of Taxes on Income other than Corporation Tax and with effect from 1970-71 in respect of Corporation Tax also. Under the existing instructions credit for advance tax paid is given at the time when the assessments are completed."

4.18. The Committee wanted to know the authorities who granted the stay orders in respect of tax amounting to Rs. 23.55 crores involved in pending appeals. The Chairman, CBDT stated: "Administratively the Commissioner of income tax does authorise the Income-tax Officer to stay. But legally and statutorily, the Commissioner has no right to stay and the person who can stay is only the Income-tax Officer."

4.19. The witness added: "This is a discretion which is vested in him. When the High Court under writ directs him to exercise his discretion in dispute, the Income-tax Officer is bound to follow it and if he fails to exercise this discretion which is vested in him, the Court can compel him to exercise that discretion."

4.20. The Finance Secretary further added: "Section 220(3) says that without prejudice to the provisions contained in sub-section 2, on an application made by the assessee before the expiry of the date, the Income-tax Officer may extend the time for payment or allow payment by instalments subject to such conditions as he may think fit to impose in the circumstances of the case. This is a residuary clause and I do not think that one can withdraw this discretion from the Income-tax Officer. Very often such action is taken at the discretion or on behalf of the superior authority; may be in some cases even the court has directed the income-tax officer to give time. Usually these will be amounts which are in dispute which the assessee says he is not liable to pay. Asked whether their power in the hands of the Income-tax Officer could not act as an instrument of corruption the witness stated: "Wherever such time has been allowed there should be a review by somebody superior to see whether the discretion has been properly exercised."

4.21. Pointing out that while the appellate authorities, High Courts, Supreme Court had given stay order for Rs. 6.15 crores, the other authority of the department granted stay for Rs. 23.55 crores, the Committee enquired whether any study of this was made. The witness stated: "We can make a random review; we can ask our inspection directorate to make a random check of a few cases, how and in what type of cases stay had been permitted." The Ministry, in a written note, stated that a random check of the cases in which the stay of demand had been permitted by the Income-tax Officers was proposed to be made early in the beginning of the new financial year.

4.22. The Committee drew attention of the witness to the fact that as on 30th June, 1970, 9067 cases were pending before the

Appellate Assistant Commissioners of Income tax Tribunals High Courts, and Supreme Court and Commissioners of Income-tax wherein collection of Income-tax was stayed involving a demand of Rs. 103.18 crores. The Committee wanted to know the steps taken by the Board in expediting the appeals pending before the Appellate Assistant Commissioners and the Tribunals. The Chairman, CBDT, stated: "We have issued clear directive to the income-tax officers and Inspecting Assistant Commissioners to approach Appellate Assistant Commissioners to take up cases in which large amounts are involved for out of turn disposal. The Tribunal is under the Law Ministry and even in respect of cases pending before the Tribunal we have asked our Commissioners to contact the tribunal and see that those cases where large amounts are involved are taken out of turn."

4.23. The Committee pointed out that the general impression among the public was that the Department went in appeal in most of the cases indiscriminately and these were rejected by the courts. The witness replied "There are cases where questions of law are involved. Till the matter was decided by the Supreme Court, the Department had to go in appeal in every such case and at least file an application to the Supreme Court. There are some such cases in which hinges a large number of similar cases. These had given rise to a spate of appeals because the department must keep its remedy alive. What we did was that wherever the amount involved was more than Rs. 5000 we necessarily filed an application to the High Court just to keep our rights alive. When an important question of law of general application is being argued out before the Supreme Court the Department has to go in appeal to keep its rights alive. We have given clear directives to the Commissioner not to go in appeal in small cases or where small amounts are involved."

4.24. When it was suggested that the Department should consult the Attorney General, the witness stated: "I think the recent change must be pleasant; on the advice of the CAG we have referred a matter to the Attorney General on a question of law. We have departed from the past."

4.25. The Ministry, in a note, submitted to the Committee that "The following steps have been taken for expediting the appeals pending before the Appellate Assistant Commissioners:—

(i) The strength of....Appellate Assistant Commissioners has been increased and in the recent past 45 more posts of Appellate Assistant Commissioners have been added.

(ii) The disposal of appeals by the Appellate Assistant Commissioners is being constantly watched. In the monthly review the Additional Commissioners in whose charges very good disposals are achieved by Appellate Assistant Commissioners or there are appreciable shortfalls from the target, are personally addressed by D.I. (IT).

(iii) Instructions have been issued for making balanced, well-reasoned and realistic assessments and the defaulting I.T.Os. will be pulled up and adversely commented. This should reduce the number of appeals being filed.

(iv) Commissioners of Income-tax have been instructed that while writing Annual Confidential Report on Appellate Assistant Commissioners of Income-tax, they may consider the Appellate Assistant Commissioners' disposal of appeals involving tax demand of Rs. 50,000 and above in Bombay and Calcutta charges and Rs. 25,000 and above in other charges. It has been further decided that the central charges at Delhi and Madras should also be treated at par with Bombay and Calcutta charges (including central). It will give an incentive to the Appellate Assistant Commissioner for expeditious disposal of such appeals and clearing the way thereby for prompt recovery of relevant tax demand.

(v) Commissioners and Additional Commissioners have been instructed that they should obtain from the Income-tax Officers list of cases where large demands are kept in abeyance pending the disposal of appeals and supply them to the Appellate Assistant Commissioners with a request for out of turn disposal.

So far as the Tribunal are concerned, they are under the Control of Ministry of Law and Justice. In order to cope with the increasing flux of appeals and mounting arrears Ministry of Law and Justice have instructed the Members of the Tribunal to take following measures:—

(i) to duly exercise their powers singly to dispose of appeals in cases not exceeding the amount of Rs. 40,000;

(ii) to give a target disposal of 150 cases per Bench per month (the present rate of disposal is about 120 cases per Bench per month);

(iii) to observe more strictness in granting adjournment of case.

(iv) to dictate orders in small cases in open courts;

(v) to dictate orders outside the court hours or on Saturdays;

(vi) to sit for five hours every day from Monday to Friday for hearing of cases.

(vii) Apart from these, more Benches are being created and the fee for filing appeal before the Tribunal has been raised from Rs. 100 to Rs. 125.

4.26. In an earlier report a recommendation was made by the Committee with regard to expeditious disposal of cases pending before the Courts to which a reply gas given by the Central Board of Direct Taxes that the Commissioners were approaching the Chief Justice of the respective Courts to constitute additional or special Benches to expeditiously dispose of these cases. The Committee desired to know the result and the progress so far made in the disposal of cases showing the number of cases (year-wise) and the amount involved. The Ministry, in a written note have stated: "The Commissioners had informal discussions with Chief Justices of many States and the response from some of the Chief Justices was quite favourable. The Ministry regret that they do not have any readily available figures showing the progress made in the disposal of cases and the amount involved as a result of the Commissioners approaching the Chief Justices of various High Courts. The Ministry of Law were also consulted and they commented as under:—

"The question as to which cases pending in each High Court should be given priority for disposal is entirely a matter to be decided by the Chief Justice of the High Court. It would be inappropriate for Government to issue any directions or instructions in this behalf lest it be misconstrued as interfering with the independence of the Judiciary. There is no question of Government setting up special Benches of High Courts exclusively to deal with tax cases. Whether Special Bench should be set up for the disposal of a particular type of cases is a matter to be decided by the Chief Justice of the High Court. The Government Counsel in important cases can no doubt pray to the Court for early disposal of the case."

4.27. While the above is the position strictly according to rules, in practice it is within the discretion of the Chief Justice of the Supreme Court or of the High Court concerned to constitute from time to time Benches specially for hearing tax cases and allied matter. In the Supreme Court such Benches are constituted from

time to time and some of the High Courts where there are large number of tax cases pending, also do the same. The general question of arrears of overall work before High Courts and Supreme Court is for the Ministry of Law and Justice to consider. It is well known that there is accumulation of work before High Courts and Supreme Court and the Law Commission in their report on Reform of Judicial Administration had recommended that the strength of the High Courts may be increased where necessary, for expeditious disposal of cases. The matter falls within the purview of the Ministry of Law and Justice for taking suitable action from time to time.

4.28. According to Audit under the Law, interest was leviable at 9 per cent in all cases and that from sub-paragraph (iii) of the Audit paragraph it was noticed that arrears of Rs. 51.50 crores towards the interest was recoverable from assessees. The arrears outstanding pertaining to the period 1959-60 and the earlier years as on 31st March, 1970 was Rs. 62.29 crores. Presuming the amount to be outstanding from 1959-60, interest at 9 per cent under Section 220(2) on the outstanding of Rs. 62.29 crores for the period from 1959-60 to 1969-70 *i.e.*, for the period of 11 years, worked out of Rs. 62 crores. Even without taking into account (i) the arrears of 1960-61 and for the subsequent years and (ii) interest leviable under various other Sections of the Act on arrears of Rs. 62.29 crores relating to 1959-60 and earlier years, interest of Rs. 62 crores was leviable. The figure of Rs. 51.50 crores indicated in the paragraph showed that interest as stipulattd in the Act was not levied by the department in a very large number of cases. The Committee enquired whether the Ministry had conducted a review of the position regarding levy of interest. The Chairman, CBDT explained: "Supposing a certain debt is a bad debt, a businessmen need not go on debiting the interest because ultimately that bad debt alongwith the interest may have been written off. Here under the law, there is no compound interest.

Here in this case, the rate of interest is simple. Once we have issued against this tax a certificate for recovery to the Tax Recovery Officer, the question of interest to be recovered will arise only when the Tax Recovery Officer will report back to the department as to the date on which he has recovered the amount. At this stage, the department or he would calculate the interest. As a matter of fact, I have a feeling that we can probably change the procedure whereby the interest is charged only at the last so that you have a correct figure of tax and interest. Today this is not being charged regularly. I must admit."

4.29. He added: "I quite agree that it does not present a correct picture. Some officers charge interest and some do not. They

wait till the whole tax is recovered. The Board have given instructions but they do not seem to be complied with."

4.30. When asked about the date from which the interest was to be levied, the witness stated: "The question of interest does not arise because interest begins to be calculated when the tax falls into arrears. From the end of that year to the year in which demand is raised, the collecting Department charges interest, but after the end of the year the demand should go to the Tax Recovery Officers for collection and then they were passed on to the Income-tax Officer. And then he will calculate at that time—when he finds that the recovery was done at this stage may be by instalments, he will calculate the interest." 'The Tax Recovery Officer will collect the demand which has been assigned to him for collection. When he collects the demand, he will communicate to the officer and on that, it is the officer who will raise the demand with interest."

4.31. Elaborating further the witness added: "I would like to place the position a little more clearly. Up to the time the Income Tax Officer issued a certificate for recovery of the demand which is outstanding, he will include the tax arrears plus interest to that time. Then it is passed on to T.R.O. for recovery. He knows the dates on which the payments are made. When he comes to the end of it, he will charge interest because it may also form a part of his recovery. That is the procedure."

4.32. When suggested to check up the calculations of interest on arrears of tax demands of over Rs. 1 lakh each to see whether it had been correctly done, the Finance Secretary stated: "I also accept the suggestion that we can go through the figures."

4.33. In a note the Ministry stated: "During the current financial year assessments relating to three assessment years would be getting time-barred. The checking of calculations of interest on arrears of Tax demand exceeding Rs. 1 lakh in each would be undertaken in the beginning of the new financial year."

4.34. Referring to the cases involving tax of Rs. 1 lakh or more, the Committee enquired whether it was not possible for the department to settle these cases quickly. The Finance Secretary stated: "The Board makes a special study of these cases because there are usually big company cases, and there is a quarterly review to see what action is being taken in respect of these cases." He added: "We will certainly ask for a special review of these cases."

4.35. The Committee wanted to know the experience of the Board of the working of the Tax Recovery Officers, their impact on the

arrears of income-tax since the system came into existence. The Finance Secretary stated: "The total collection of arrears demand have been improving in the last three years and in 1970-71 it was about Rs. 159 crores. This system came into existence three years ago. I am afraid we have not got separate figures of collection made by the Tax Recovery Officers but the total recoveries made has been gradually improving."

4.36. When asked whether the collections referred to in sub-para (vi) of the Audit paragraph were made by the Tax Recovery Officers of the Department, the witness replied: "I presume in this case TRO will include State certificates officer also, because he is also called tax recovery officer. I am speaking subject to correction but I do not think this refers only to the tax recovered by the officers appointed by the Board of Direct Taxes."

4.37. In reply to a question, the witness added: "I will give you some figures. Last year upto June 1970 we collected Rs. 77 crores against arrears. This year during the same period we collected Rs. 88 crores. This year during the same period we collected arrear collection."

4.38. When enquired by the Committee whether the total collection of Rs. 88 crores was made both the Tax Recovery Officers and Revenue Officers, the witness stated: "There is a little bit of doubt, whether we have taken over all the cases which were with the State Officers at various stages of processing on the appointment of the Departmental Tax Recovery Officers. But I think this figure is probably more relevant. Last year we had only *i.e.*, in 1969, 18 Departmental Recovery Officers in the whole country. In 1970 this number has increased to 68 Departmental Tax Recovery Officers. The total impact of the work of the Departmental Tax Recovery will not be possible to be kept for one or two years because 18 Tax Recovery Officers had been in the whole country."

4.39. At the instance of the Committee the Ministry, in a note, stated the position of recovery in regard to the amount of Rs. 486.55 crores mentioned in sub-para (vi) of the audit paragraph as under: "The total amount of tax collected by the Tax Recovery Officers in all the Commissions' charges during the year 1970-71 was Rs. 42.70 lakhs. This amount includes recovery made out of the amount of Rs. 486.55 crores mentioned in paragraph 53(vi) of the Audit Report. Separate figures of collection made out of Rs. 486.55 crores are not available."

4.40. The Committee enquired about the position regarding taking over the tax recovery work from the State Governments. The

Finance Secretary stated: "We are now taking it over directly ourselves. We have now appointed special tax recovery officers in the Department and have in fact appointed some additional commissioners to be specially in charge of tax recovery, and we are taking up the work directly instead of through the State Government officials."

4.41. The Chairman, CBDT added: "We have taken over fully in all the charges of Commissioners except the following wherein it has been taken over partly: "West Bengal, Madhya Pradesh, Uttar Pradesh, Orissa and Bihar."

4.42. It was pointed out whether there was proper coordination between the Tax Recovery Officers and the Assessing Officers so that where the payments had been made, the Tax Recovery Officer was informed. The Finance Secretary stated: "That is all within the same Department; there should be greater coordination. We will have to watch that."

4.43. The Committee wanted to know the arrangements existed at present in the Department for effecting reconciliation between the amount of tax deducted at source (salary, dividends etc.) and the amount remitted to Government Account every year and to arrive at the closing balance to amount collected but not credited to Government Account. The Chairman, CBDT stated: "We do not reconcile with the Treasury, but the statements of deductions of tax at source and payment thereof, are required to be submitted to the Department and are verified. If we find that either tax which was to be deducted is not deducted or if deducted is not paid, we launch prosecutions for the default."

4.44. The Committee learnt from Audit that a system of reconciliation was in vogue in U.K. and that the same was brought to the notice of the Central Board of Direct Taxes by audit in July, 1970. The Committee wanted to know the action taken in this regard. The witness stated: "U.K. has really very good system because the payers are given a specific number similarly the employees also have a number. From the payer's number and the statements of the payees, there is always a reconciliation possible. We have recently started this permanent account number system which it is our intention in course of time to extend to all these aspects."

4.45. It was enquired whether the Department had considered the feasibility of amending the law on the lines prevalent in the United States by which the tax due including interest, penalty, were made a lien on the property of the assessee so that he did not escape tax

by transferring the property. The Finance Secretary stated: "That is a good suggestion and we will consider it. It certainly saves the stage of attachment because attachment becomes automatic and the next stage recovery of proceeds by sale of property would become easier."

4.46. The Committee pointed out that under the Income-tax Act, interest was payable to Government by assessees for delay in payment or short payment of advance tax, delay in filing of returns etc. at 9 per cent per annum whereas the market rate of interest on borrowings was much more and suggested that there was a need to increase the rate so that it would act as a real deterrent to the assessees who fail to comply with the statutory provisions. The Finance Secretary stated: "I think there is a point for examination." Asked to state the rate of interest charged by the Nationalised Banks for the loans advanced by them, the Ministry stated in a written note: "The bulk of bank credit (around 75 per cent) is provided at the interest rate range 9-1|2 per cent to 11 per cent. The exceptions to this are as follows:—

* * * * *

"The highest lending rate now is 12 per cent charged on loans against the security of the commodities covered by the Reserve Bank's Selective Credit Control. At present the commodities which have been prescribed a minimum lending rate of 12 per cent are cotton and kaps, oil seeds and vegetable oils. In addition, some banks adopt this rate in respect of loans sanctioned to sectors with low social priority such as hire purchase, finance houses, etc."

4.47. In the Finance Act, 1972, passed after the Committee took evidence, the rate of interest of 9 per cent was substituted by 12 per cent in the Income-tax, Wealth-tax and Gift-tax Acts.

4.48. The Committee note with some satisfaction that the effective arrears of tax demand (excluding the demands not fallen due) came down to Rs. 609.55 crores as on 31st March, 1971 from Rs. 682.56 crores as on 31st March, 1970. The Committee were informed that for the first time in 1970-71 the growth of arrears has been arrested. During the last three years collections from arrears demand has risen from Rs. 101 crores to Rs. 129 crores and 159 crores, while the total collection (both arrears and current) increased from 678 crores to Rs. 801 crores and Rs. 830 crores. The Committee stress that no efforts should be spared to recover the arrears.

4.49. It is significant that a sizable amount of arrears continued to be outstanding, in spite of introduction of systems of deduction at

source, payment of advance tax and self assessment. The Finance Secretary agreed during evidence that these measures should have resulted in narrowing the difference between the demands and collection and he promised to investigate the matter. The Committee desire that this question should be thoroughly examined with a view to taking effective measures without delay to obviate accummulation of current demands.

4.50. The effective arrears included irrecoverable dues amounting to Rs. 47.91 crores at the end of 1969-70 and Rs. 56.6 crores at the end of 1970-71. The Administrative Reforms Commission observed that "no useful purpose is secured by keeping these in the books as irrecoverable arrears" and that, "action should be taken for expediting writing off of outstanding demands if they are found clearly to be irrecoverable". The Committee were inormed that the Zonal Committees were constituted in 1968 to go through such cases and they were required to meet once in two months to accelerate the pace of writing off. The Committee were not furnished with the figures regarding number of cases reviewed by the Zonal Committees from 1968-69 onwards and recommended for write off. The Committee recommend that in order to watch the progress of work done by Zonal Committees, the Board should get necessary returns periodically which should be properly scrutinised in the interests of speeding up work.

4.51. The Committee wish to reiterate the observations of the Administrative Reforms Commission that outstanding demands should be written off only if they are found clearly to be irrecoverable exhausting all avenues open to the Department.

4.52. The Committee find that as on 31st March, 1970, tax amounting to Rs. 23.55 crores had been stayed by the Departmental officers pending disposal of appeals. The Committee were informed that under Section 220(3) of the Income-tax Act, the Income Tax Officer has discretion to extend the time for payment of tax or allow payment by instalment. During evidence, the Finance Secretary agreed that there should be a review by another officer to see whether the discretion has been properly exercised by the Income-tax Officer. The Committee were informed that a random check of cases in which the stay of demand had been permitted by the Income-tax Officers was proposed to be undertaken early in the current financial year. Considering that a sizable amount of tax has been stayed by the Income-tax Officers, the Committee desire that the review should be completed expeditiously, and the Committee informed of the result and the action taken in pursuance thereof, if any.

4.53. The Committee find that the number of cases under appeal before the Appellate Assistant Commissioners in which tax was stayed increased from 6,667 (involving tax of Rs. 34.6 crores) to 7,130 cases as on 30th June, 1970 (involving tax of Rs. 53.86 crores). This is in spite of the fact that the Department has taken some steps for expediting the disposal of the appeals pending before the Appellate Assistant Commissioners such as increasing the number of Appellate Assistant Commissioners, requesting the Appellate Commissioners to take up large demands for out of turn disposal etc. The cases in which tax was stayed by the Income tax Tribunals increased from 908 (involving tax of Rs. 9.48 crores) as on 30th June, 1969 to 1,127 (involving tax of 16.35 crores) as on 30th June 1970, in spite of certain measures taken by the Ministry of Law. The Committee desire that the number of pending appeals with the Appellate Assistant Commissioners and Tribunals should be kept under watch and further necessary steps taken to speed up disposal of the pending appeals.

4.54. The Committee note that in pursuance of their earlier recommendation, the Commissioners had informal discussions with the Chief Justice of many States regarding constitution of additional or special benches to dispose of income tax cases pending before the courts. The Committee have been informed that the response from some of the Chief Justices was quite favourable. The Committee desire that efforts should continue to be made in this direction. The Committee appreciate the Ministry's point that there is accummulation of work before the High Courts and Supreme Court and the Law Commission have recommended that the strength of High Courts may be increased where necessary. The Committee trust that Government will take suitable action on the recommendation of the Law Commission in the interest of more expeditious disposal of pending income tax cases.

4.55. The Committee find that an interest of Rs. 51.50 crores is included in the total gross arrears of Rs. 840.70 crores. The amount outstanding pertaining to the period 1959-60 and the earlier years as on 31st March, 1970 was Rs. 62.29 crores. Interest at 9 per cent under Section 220(3) on the outstanding of Rs. 62.29 crores for the period from 1959-60 to 1969-70 i.e., for the period of 11 years worked out to Rs. 62 crores. Even without taking into account (i) the arrears of 1960-61 and for the subsequent years and (ii) interest leviable under various other Sections of the Act on arrears of Rs. 62.29 crores relating to 1959-60 and earlier years, interest of Rs. 62 crores was leviable. The Chairman, Central

Board of Direct Taxes admitted that "some officers charge interest and some do not. They wait till the whole tax is recovered. The Board have given instructions but they do not seem to be complied with." The Finance Secretary agreed to the suggestion that the calculation of interest on arrears of tax demands of over Rs. 1 lakh each could be checked to see whether it had been correctly done. The Ministry have intimated subsequently that this check would be undertaken in the beginning of the current financial year. The Committee desire that the review of the calculations of the interest of tax demand of over Rs. 1 lakh should be completed expeditiously and the result intimated to them. The Committee also desire that the Board should ensure that the instructions issued by them from time to time regarding charging of interest are complied with by the Income-tax Officers and the Tax recovery officers.

4.56. The Committee note that the work regarding taking over of tax recovery work from the State Governments has been completed in all the Commissioners' charges except West Bengal, Madhya Pradesh, Uttar Pradesh, Orissa and Bihar where it has been taken over partly. The Committee trust that the work in the remaining charges would be taken over as early as possible. The Committee would like to know the progress made in this behalf. The Committee hope with the taking over of tax recovery work there would be proper coordination between the tax Recovery Officers and the Assessing Officers. The Board should closely watch the impact of taking over this work on the arrears of tax demand and take necessary measures to improve the system.

4.57. The Committee learnt from Audit that a system of reconciliation between the amount of tax deducted at source and the amount remitted to Government account was in vogue in Britain and that the same was brought to the notice of the Central Board of Direct Taxes by Audit in July, 1970. The Committee were informed that the Board had recently started the system of giving permanent account number to each assessee. The Committee desire that the system followed in Britain should be studied and a procedure devised to arrive at a satisfactory system of reconciliation.

4.58. The Committee suggest that the Department should consider the feasibility of proposing amendments to the law on the lines prevalent in the United States by which tax due including interest, penalty etc., could be given a lien on the property of the assessee so that he could not escape tax by transferring the property.

4.59. During evidence the Finance Secretary agreed with the Committee that there was a need to increase the present rate of interest of 9 per cent payable to Government by the assessees for delay in payment or short payment of advance tax, delay in filing returns etc., so that it may act as a real deterrent to the assessees who fail to comply with the statutory provisions. The Committee are glad to note that in the Finance Act, 1972, passed subsequently, this suggestion of the Committee had been carried out and the rate of interest raised to 12 per cent in the Income-tax, Wealth-tax and Gift-tax Acts.

CHAPTER V

FRAUDS AND EVASIONS*

Audit Paragraphs

5.1

(1) No. of cases in which penalty under section 28(1)(c), 271(1)(c) was levied in 1968-69	2),148
(2) No. of cases in which prosecution for concealment of income was launched	23
(3) No. of cases in which composition was effected without launching prosecution	..
(4) Concealed income involved in (1)	Rs. 50,12,31,000
(5) Total amount of penalty levied on (1)	Rs. 13,69,22,000
(6) Extra tax demanded on concealed income in item (4)	Rs. 22,32,45,000
(7) Cases out of (2) in which convictions were obtained	4
(8) Composition money levied in respect of cases in (3)	..
(9) Nature of punishment in respect of (7)	In one case—Six months simple imprisonment. In the second case— Under section 277 fine of Rs. 300 or rigorous imprisonment for six weeks. Under section 193, rigorous imprisonment for six months and a fine of Rs. 500, in default to undergo rigorous imprisonment for a further period of 2 months. Under section 196 six months rigorous imprisonment and a fine of Rs. 500. In the third case— Sentenced to a fine of Rs. 1,000. in default to undergo rigorous imprisonment for 3 months. In the fourth case— A fine of Rs. 500 was imposed.

*The figures were furnished by the Ministry.

[Paragraph 67 of the Audit Report (Civil), Revenue Receipts, 1970].

Audit Paragraph

5·2

(1) Number of cases in which a penalty under Section 28(1)(c)/271(1)(c) was levied in 1969-70	27,682
(2) Number of cases in which prosecution for concealment of income was launched	40
(3) Number of cases in which composition was effected without launching prosecution	13
(4) Concealed income involved in (1)	Rs. 60,53,22,000
(5) Total amount of penalty levied on (1)	Rs. 15,03,00,000
(6) Extra tax demanded on concealed income in item (4)	Rs. 29,94,67,000
(7) Cases out of (2) in which convictions were obtained	3
(8) Composition money levied in respect of cases in (3)	Rs. 1,11,000
(9) Nature of punishment in respect of (7)	In one case—a fine of Rs. 1,000 and one days, simple imprisonment till the rising of the court. In the second case—one days' imprisonment till the rising of the court and fine of Rs. 150. In the third case—six months' rigorous imprisonment.

[Paragraph 59 of the Report of Comptroller and Auditor General of India, 1969-70—Central Government (Civil)—Revenue Receipts].

5.3. Pointing out that nominal punishments had been imposed during 1968-69 and 1969-70 on the persons convicted of frauds, the Committee enquired whether the law had not been suitably amended. The Member of the Board stated, "From 1st April, 1964, the law relating to false statements in declaration was changed and a minimum imprisonment of six months was made and maximum of 2 years rigorous imprisonment. There is a rider about the minimum—that unless they are otherwise satisfied. If it is the first offence, the courts may let off the offender. If the offence is prior to 1st April, 1964, there is no question of compulsory imprisonment. The court can levy a fine or imprisonment. The revised position is applicable after 1st April, 1964. In respect of the earlier cases, it is fine or im-

prisonment." The Finance Secretary stated, "Even after the amendment, there has been a major porblem with us. The courts have been giving very nominal sentences of fine and nominal sentences of imprisonment till the rising of the court invoking the provision of Offenders Act for such offences. The main reason here is that a minimum penalty of six months and a maximum penalty of 2 years has been prescribed. Apparently this still comes within the purview of the First Offenders' Act. Unless the maximum imprisonment is perhaps three years or more, they can invoke this First Offenders' Act." The Committee asked whether the Board was satisfied about the position, the Finance Secretary stated, "It becomes so difficult to go in appeal for enhancement of sentence. The experience is that one has to go to the High Court. I do not think that the Board even if they are not satisfied, they have taken up the matter in appeals."

5.4. The Committee pointed out that the figure of 40 prosecutions during the year 1969-70 appeared to be low as compared to 27,682 cases in which penalties were levied. The Finance Secretary stated, "We do not go for prosecution unless we are absolutely clear that we have got a clear case and the same would be upheld in the court of law. A case being set aside or acquittal has a worse effect than in securing a conviction. First a very thorough screening is made to see that the case will stand in a court of law." The Member of the Board stated, "We take the opinion of lawyers and counsel on the criminal side, and only if we are convinced with the oral evidence and documentary evidence and everything is certain that we go in for prosecution." He added, "A large number of the cases involve small sums. So we have taken up only the really important cases." The Committee asked whether prosecutions were launched in all cases recommended by the Law Officers, the Finance Secretary stated "if the party come before the case has actually been filed in the Court or when it is contemplated that prosecution could be taken against the party and the party explains and deposit the due and shows that it is not interested in tax evasion, the Board may well consider this case and there may be no prosecution launched even though the Law Department may have said that this is a fit case. But,..... once the case has been filed in a Court of law and the prosecution has started and then the party comes for compounding, it will be of no use." Asked if any uniform procedure had been laid down acting on the advice of the Law Officers in such cases; the Finance Secretary stated, "There can be no rule or procedure laid down. This has to be judged in each individual case when it comes up. I submit that this kind of decision has to be a decision on an individual case whether to prosecute or not." The Member of the Board stated that, "Ordinarily, every case for prosecution goes to the Member Incharge of

the Investigation. I mean legally the Commissioner compounds but administratively, it is referred to the Board as to the composition fees, etc." Asked if the case was referred to the Ministry, the witness stated, "In case of difficulty, the Board may take their advice."

5.5. In a written reply, the Ministry of Finance stated that during 1969-70 and 1970-71 the Board declined to authorise launching of prosecution in 2 and 8 cases respectively. The reasons were one or other of the following:

(i) Evidence was inadequate.

(ii) The case was petty.

(iii) On the facts and circumstances of the case, the levy of stiff penalty or penalty of composition was preferable.

During the year 1970-71 prosecutions were launched (complaints filed) as under:—

	No. of cases
(i) Under Sec. 277/278 of the Income-tax Act, 1961	24
(ii) Under Sec. 276 of the Income-tax Act.	181

5.6. The Committee pointed out that the amount of concealed income disclosed during 1969-70 was Rs. 60.50 crores but the levy of penalty amounted to Rs. 15.03 crores only. The Committee asked the reasons for the penalty being less than the concealed income although according to the Act the minimum penalty should be equal to the concealed income. The Finance Secretary stated, "The difference in that assessment is that according to the interpretation whether the penalty is to be imposed on the date to which the assessment relates. If the assessment is relating prior to the amendment, then the penalty would not be of the amount. If the assessment was of the earlier year, then the penalty will be according to the law which was at that time prevailing. That is why the difference law which was at that time prevailing. That is why the difference is there between the two." The Member of the Board stated "prior to 1st April, 1968, maximum was 150 per cent of the tax and the minimum was 20 per cent of the tax. From 1st April, 1968 it was minimum 100 per cent of the concealed income and 200 per cent maximum of the concealed income." The Committee drew attention to the following judgment in Jain Brothers cases:

"It is obvious that for the imposition of penalties it is not the assessment year or the date of the filing of the return which is important, but it is the satisfaction of the income-tax authorities that a default has been committed by the assessee which would attract the provisions relating to the

> penalty. Whatever the stage at which the satisfaction is reached, the scheme of sections 274(1) and 275 of the Act of 1961 is that the order imposing the penalty must be made up to the completion of the assessment. The crucial date, therefore, for the purpose of penalty is the date of such completion."

The Member of the Board stated, "The question is whether the penalty was imposable under the new Act or the old Act. That was the main point at issue and not what the quantum of penalty should be. Under this interpretation, by applying the provisions of section 297(2)(G) as interpreted by the court, it was decided that the provisions of the 1961 Act would apply. But as to the quantum of penalty, the question was not decided." The witness quoted Article 20 of the Constitution:

> "No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of such offence."

5.7. The witness added, "The offence is committed when the assessee submits the return of income and after the return of income which has been submitted prior to 1st April, 1968, the quantum will be determined on the basis of the law provided in the Constitution. But whether such an action could be done under the new or the old Act is decided by the Supreme Court with reference to section 297(2)(g) of the Act."

5.8. The witness further stated, "In this connection, we have also approached the Law Ministry for their opinion....We will get the issue examined with them alongwith a representative of the C. & A.G. The Law Ministry's opinion has not been directly obtained on this audit objection, but in another file they have expressed an opinion akin to the views of the Board. They had said in case there was an audit objection on the issue, the matter might be discussed alongwith a representative of the audit. They were reluctant to consider any matter which was the subject of audit report till it was considered by the PAC. Hence the meeting was postponed. But we will take it up later."

5.9. Subsequently in a written reply, the Ministry of Finance stated "the Law Ministry have advised that the crucial date for determining the quantum or penalty is the date of filing of the return and not the date of passing the assessment order."

5.10. The Committee note that the number of cases in which prosecution for concealment of inome was launched was 23 in 1968-69, 40 in 1969-70 and 24 in 1970-71. The Committee are of the view that these figures of prosecutions are unimpressive when compared with the number of cases in which penalties were imposed. The Direct Taxes Enquiry Committee have recommended that the Department should completely reorient itself to a more vigorous prosecution policy in order to instil wholesome respect for the tax laws in the minds of the tax payers. Where there is a reasonable chance of securing a conviction, the tax dodger should invariably be prosecuted. The Committee desire that effective measures should be taken by the Department to ensure that prosecutions are launched in all suitable cases so that this may act as deterrent to tax evasion.

5.11. The Committee find that convictions could be obtained only in 4 cases in 1968-69 and 3 cases in 1969-70. The punishments awarded in these cases were nominal, such as fines or imprisonment ranging from one day to six months. According to the Law amended from 1st April, 1964 the minimum imprisonment was six months and maximum two years. The Committee were informed that unless the maximum imprisonment was fixed as three years or more the provisions of the First Offenders' Act can be invoked. The Committee desire that the question of enhancing the provision of imprisonment under the Income Tax Act may be carefully examined and necessary amendment to the Act made.

5.12. The Committee find that during the year 1969-70, the penalty imposed amounted to Rs. 15.03 crores which was much less than the concealed income of Rs. 60.50 crores, although according to the Income-tax Act the minimum penalty should be equal to the concealed income. The Committee were informed that this difference may be due to some of the assessments being for the period prior to 1-4-1968 when the minimum was 20 per cent of the tax. The Committee, however, find that according to the judgment in Jain Brothers case the crucial date for the purpose of penalty is the date of completion of the assessment and not the assessment year The Ministry of Finance have stated that according to the Law Ministry the crucial date for determining the quantum of penalty is the date of filing of the return and not the date of passing the assessment order. The Committee suggest that in view of judgment in the Jain Brothers case the matter should be further examined in consultation with the Attorney General. The Committee would like to know the outcome of the examination.

CHAPTER VI

VOLUNTARY DISCLOSURES UNDER SECTION 271(4A)*

Audit Paragraph

6.1. With a view to encourage voluntary disclosure of undisclosed income, Section 271(4A) was inserted in the Income-tax Act, 1961 by the Income Tax (Amendment) Act, 1965. This sub-section empowers the Commissioners, in their discretion, to reduce or waive the amount of minimum penalty imposable in the case of persons who have voluntarily and in good faith made full and true disclosure of their concealed income. The following Table shows the number of persons who have voluntarily disclosed concealed income during 1968-69, assessments completed during the year and the total number of cases outstanding without finalisation as on 31st March, 1969.

	Rs.	
(1) No. of declarants who gave voluntary disclosures during 1968-69	1348	
(2) Amount of income declared	1295	lakhs
(3) No. of cases in which the disclosed income was held already the detected	127	lakhs
(4) Income involved in (3) above	167	lakhs
(5) No. of cases in which the assessments have been completed	783	
(6) Amount of income involved in cases in (5) above	1097	lakhs
(7) Amount of tax levied in cases in (6) above	260	lakhs
(8) Amounts recovered out of (7) above	95	lakhs
(9) No. of cases in which levy of penalty have been waived or reduced	482	
(10) Amount of income involved in (9) above	49	lakhs
(11) No. of cases in which full amount of penalty was levied	200	
(12) Amount involved in cases in (11) above	30	lakhs.
(13) No. of cases outstanding without finalisation on 31-3-1969	1511	
(14) Yearwise details of (13) above	Not available.	

[Paragraph 66 of the Audit Report (Civil), Revenue Receipts—1970]

*The figures were furnished by the Ministry.

Audit Paragraph

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	Rs.	
(1) No. of declarants who gave voluntary disclosures during 1969-70	908	
(2) Amount of income declared	630	lakhs
(3) No. of cases in which the disclosed income was held already detected	202	
(4) Income involved in (3) above	125	lakhs
(5) No. of cases in which the assessments have been completed	442	
(6) Amount of income involved in cases in (5) above	377	lakhs
(7) Amount of tax levied in cases in (6) above	155	lakhs
(8) Amount recovered out of (7) above	54	lakhs
(9) No. of cases in which levy of penalty was wavied or reduced.	172	
(10) Amount of income involved in (9) above	94	lakhs
(11) No. of cases in which full amount of penalty was levied	106	
(12) Amount involved in cases in (11) above	16	lakhs
(13) No. of cases outstanding-without finalisation on 31-3-1970	155	
(14) Year-wise details of (13) above		
1965-66	271	
1966-67	289	
1967-68	205	
1968-69	169	
1969-70	621	
Total	1555	

[Paragraph 60 of the Report of Comptroller and Auditor General of India—1969-70, Central Government (Civil)—Revenue Receipts.]

*The figures were furnished by the Ministry.

6.3. The Committee desired to know the reasons for delay in the finalisation of old cases of disclosures relating to the period as early as 1965-66. The Member of the Board stated that, "Anybody at any time can come and disclose any income that he has concealed and the Department can take that as an indication of the *bona fide* of the person and Commissioners are given the power to reduce or waive the penalty that will be otherwise attracted. But there is no such provision under any section of the Act as such under which a person comes forward and a disclosure is accepted. The reason is that the acceptance of a disclosure is merely as agreed assessment between the Department and the party..... There is, generally, an argument as to what percentage should be considered to be genuine.... In this process it takes quite a long time to determine what is acceptable both to the assessee and the party." The Chairman of the Board added, "The assessee comes up for settlement largely with a view to have some mitigation as to the quantum of penalty involved and, secondly, where he wants that the income is not an income of 1 year but that it may be spread back and that spread-back will depend upon the facts of each case. Sometimes, he would like to spread back to 16 years and we refuse it. Sometimes, he would like to spread back to 8 years. All that depends upon the evidence that he produces as to what portion of the income which has come to the surface is relatable to the year concerned. And that takes time". The witness added, "as a matter of fact, the Income-Tax law does not provide for any machinery for the so-called settlement, the sense in which the word is being used. Section which is known as Disclosure Section only permits the Commissioner to waive or reduce the penalty. It is a general policy matter whereby the income is spread on the facts of each case."

6.4. The Committee asked whether any time limits have been fixed for finalisation of the case after the disclosure is made. The Chairman of the Board stated, "The Board has issued instructions but frankly speaking the interpretation of section 271(4A)—the literal interpretation according to law—has led the Department to issue some instructions whereby the progress of disclosures has been slowed down. We have issued a circular instructions at length explaining exactly what is a voluntary disclosures, etc. That is must be voluntary, that is before the Department has detected. Now, the question is what is detection by the Department and whether the disclosure is correct and complete. According to the law, there should not be a difference of even a rupee, if it is correct and complete and the very fact that the Department has assessed an amount at a figure a little higher than what he has given for settlement is interpreted to mean that Section 271(4A) does not apply to a case

like this. If such problems arise, the Department had to take a completely legalistic view and that is why in subsequent years settlement of disclosures has slackened its pace."

6.5. The Committee pointed out that during the year 1968-69 only an amount of Rs. 95 lakhs out of the tax amounting to Rs. 260 lakhs was recovered and during 1969-70 the amount recovered was Rs. 54 lakhs out of tax of Rs. 155 lakhs. The Chairman of the Board stated, "these cases of so-called settlement of voluntary disclosures involve large amounts and a large number of problems. When this settlement is made, the assessee is not in a position to pay the tax immediately. Therefore, an arrangement is made in the sense that you allow instalments to the assessee for gradual payment. Otherwise, settlement could never be reached, if you dictate 'Immediately you should pay'. So in most of these cases involving large amounts the Department would be giving some reasonable instalments for payment. That is why....as against these amounts of tax involved, only a portion has been collected. The rest would be collected in course of time." The witness added, "At the time when we make a settlement, naturally the assssee agrees to the scheme of payments and when the time for payment comes, he finds that he is not in a position. There are a variety of such things. The Department starts pressing for the recovery and obviously the matter drags on". The Committee desired to be furnished with a statement showing the total amount of tax levied in respect of voluntary disclosures and the amount recovered and whether the recovery was made according to the settlement. The information is still awaited.

6.6. The Committee asked whether the Board have reviewed the position if the Voluntary disclosures scheme introduced under Section 274 had proved advantageous *vis-a-vis* the flexibility in determing concealed income provided under Section 34(1)(B) of the old Act. The Chairman of the Board stated, "In my opinion, I think if this disclosure scheme was to be made really effective and in order to expedite both collection of taxes and assessment a lot of flexibility has to be left to the Department". I entirely agre there. Asked if any steps have been taken to amend the law, the witness stated, "I have recently initiated certain steps in this direction. With voluntary disclosure scheme we should have a vigorous enforcement machinery. Instead of continuously resisting or fighting. if an assessee wants to settle forthwith it will help expedite recovery of taxes and assessment. I have reviewed it and I contemplate some changes worthwhile." The witness added, "The solution lies.....

in making an amendment in the law which makes it a little elastic. At present these powers are non-existent. If he does something it is not legal in terms of 271(4)(A). In case where the income assessed is more than what has been declared, it is still open to objection. That is why I say that the law needs a little more amount of elasticity". Asked about the level at which cases were disposed of, the witness stated that at present, "Upto Rs. 50,000 Commissioner is the final authority; more than Rs. 50,000 has to be referred to the Board".

6.7. Referring to the 1555 pending cases, the witness stated, "We will do our best. What has been voiced here will give us more courage to act".

6.8. Justifying the need for having vigorous enforcement machinery, the Chairman of the Board stated, "Wherever this voluntary disclosure of income is there—say in U.S.A. and U.K. they have got a very vigorous enforcement machinery—what happens is that when we have a racket or fictitious hundi broken, we find a large number of people coming up for settlement. On the one side our effort should be to make these searches which are enough to make the majority of those affected and run up for disclosure. It should be two way effort. Thus if these disclosures could be accepted..... without much hesitation as to whether there is any information on the record or whether it is detected by the department or whether it is voluntary without entering into any sort of controversy if the Department takes 100 per cent correct when one comes up with voluntary disclosures, it would have saved the time of the Department and secured prompt payment."

6.9. The Committee desired to know whether in 202 cases referred to in para 60 of the Report of C&AG for 1969-70 in which the disclosed income had already been detected, the income was charged to tax in the normal course and if so the amount of tax demanded and recovered. In a written reply, the Ministry of Finance have stated, "Information as desired was called for in respect of all these cases, but so far it has been received regarding only 142 cases. The income in these cases was subjected to regular assessment. In 123 cases assessments have been completed and a demand of Rs. 39 lakhs raised,—out of which Rs. 26.81 lakhs has since been collected. Assessments are pending in 19 cases."

6.10. The Committee find that the voluntary disclosures of undisclosed income under Section 271(4A) of the Income Tax Act

made during the years 1968-69 and 1969-70 were rather disappointing. During 1968-69 the number of declarants was 1348, declaring an income of Rs. 12.95 crores and during 1969-70 the number of cases was 908 declaring an income of Rs. 6.30 crores. These cases included 127 cases in the year 1968-69 in which the disclosed income had already been detected, while there were 442 such cases in 1969-70. The Committee are not satisfied with the progress of completion of assessment cases of voluntary disclosures. The number of assessments completed in 1968-69 was 783 and those completed during 1969-70 was 442. As on 31st March, 1970, there were 1,555 outstanding cases without finalisation. This figure includes cases which relate to earlier years including 1965-66. The recovery of tax made in cases of completed assessments was also not satisfactory. During the year 1968-69 only an amount of Rs. 95 lakhs out of tax Rs. 260 lakhs levied was recovered and during 1969-70 an amount of Rs. 54 lakhs was recovered out of tax of Rs. 155 lakhs. The Committee were informed during evidence that in order to expedite the assessment and collection of taxes under the Voluntary Disclosure Provisions, a lot of flexibility should be left to the Department. Further there should be a vigorous enforcement machinery. The Committee find that the Direct Taxes Enquiry Committee (1971) have in their final report suggested that to ensure that the settlement is fair, prompt and independent, there should be a high-level machinery for administering the provisions, which would also incidentally relieve the field officer of onerous responsibility and the risk of having to face adverse criticism which has been responsible for the slow rate of disposal of disclosure petitions. The Direct Taxes Enquiry Committee have recommended that the settlement may be entrusted to a separate body within the Department, to be called the Direct Taxes Settlement Tribunal. The Committee desire that effective steps should be taken to finalise the cases pending under the Voluntary Disclosures Scheme. For this purpose, the Department should seriously consider to what extent flexibility is needed to expedite settlement of the cases and also whether it is necessary to create another body to be trusted with this work as recommended by the Direct Taxes Enquiry Committee. The Committee desire that the matter should be examined expeditiously. The Committee expect the Department to ensure that full recovery is effected without delay in cases which have already been finalised. The Committee would like to be informed of concrete steps taken to achieve this objective.

CHAPTER VII

DEDUCTION OF TAX AT SOURCE BY COMPANIES ON DIVIDENDS DISTRIBUTED*

Audit Paragraph

(1) Number of company assessees :—			
As on 1st April, 1969		26,668@	
As on 1st April, 1970		27,734@	
(2) Number of companies which had made the prescribed arrangements for declaration and payment of dividends within India :			
As on 1st April, 1969			20,64
As on 1st April, 1970			21,129
(3) Number of companies which have distributed dividends during 1969-70			5,449
(4) Amount involved in (3) above	Rs.	12184	lakhs
(5) Number of cases out of (3) in which the statement prescribed in Rule 37(2) was received.			5,424
(6) Amount of deduction shown in the statement in (5) above	Rs.	2772	lakhs
(7) Number of cases out of (5) in which the tax deducted was remitted into banks			5,424
(8) Amount involved in (7) above	Rs	2771	lakhs
(9) Number of cases out of (7) in which the tax deducted was remitted after one week of deduction or receipt of challan		90	
(10) Number of cases out of (5) above where the returns prescribed in section 286 were not received, when the dividend paid in case of a company exceeds Re. 1 and in the case of others Rs. 5,000		54	
(11) Number of companies out of (3) above which have neither — deducted tax at source nor furnished the statement prescribed in Rule 37(2)		1	

*The figures were furnished by the Ministry.

@These are provisional figures.

[Paragraph 58 of the Report of the Comptroller and Auditor General of India—1969-70—Central Government (Civil), Revenue Receipts]

7.2. The Committee wanted to know the action that had to be taken by the Board against the companies who failed to deduct tax at source from the dividends distributed by them. The Finance Secretary stated: "We have been prosecuting companies which have been defaulting and the prosecutions have been successful. Any amount as fine has an impact on the company because it brings it into dis-repute." The Chairman, CBDT added: "In 1968-69 for non-deduction of tax at source or not deducting it in full we filed 408 cases. 237 were convicted 19 acquitted, 5 withdrawn, 19 compounded and 72 are still pending in courts. In 1969-70, we filed 314 complaints out of which 135 were convicted, 7 were withdrawn 15 were compounded and 65 are pending before courts. In 1970-71 the relevant figures are 181 convictions, 2 acquitals, 10 withdrawals, 38 compounded and 43 pending before courts. We have been prosecuting and the effect is that now we have a fewer cases of evation."

7.3. Referring to 54 cases where returns prescribed in Section 286 were not received, the Committee enquired about the position. The witness stated: "It is now seen that in about 35 cases further action is not necessary either because returns are found to have been sent in time or the dividend declared was less than 5,000 in some non-company cases or the delay was of a very short period or because taxes were promptly paid and statement under 37(2) filed in time, leaving only a technical fault. Action under 276 i.e. for prosecution in respect of 19 cases is under contemplation. That is being examined."

7.4. The Ministry, in a note, further stated: "It is a statutory obligation on the part of the assessees to file the prescribed returns on or before the 15th day of June, in each year. Failure to do so renders the person concerned to a fine which may extend to Rs. 10 for every day during which the default continues. This has proved to be a sufficient deterrent, as would be evident from the fact that during the year 1969-70 the number of assessees who defaulted in filing the prescribed returns within time was only 54 out of 5,549 companies which had declared dividends during that year. No other steps would seem to be necessary."

7.5. The Committee pointed out that out of the tax of Rs. 2772 lakhs deducted at source in 5452 cases, only a sum of Rs. 2771 lakhs was remitted into Government Accounts and enquired whether the balance of Re. 1 lakh had since been recovered. The Finance Secretary stated that the balance had now been fully recovered.

7.6. The witness added: "Out of the dividend declared in 1969-70, only 87,000 was not paid and the rest was remitted into the bank. This amount has now been recovered. Prosecution in one case has already been initiated for not paying in time the bank." The time allowed for remitting the amount to bank was stated as one week.

7.7. The Committee asked about action that had to be taken for failure to remit the tax within the prescribed time limit, the Finance Secretary stated, "If it happens in one particular month, perhaps no action is taken. If it is regularly found that the man is not depositing the amount in time, then the prosecution is done." The witness added: "We must have a system to ensure that the payments are made in time by the parties. We prosecute afterwards when we get a default. That is afterwards."

7.8. The Ministry, in a written note stated: "There were no arrears of tax deducted during 1969-70. However there were 90 cases in which tax deducted was remitted after one week of the date of deduction or receipt of challan."

7.9. In reply to a question the witness stated: "The composition cases have been very few." In reply to question regarding rate of interest for delay in payment the witness added that the interest charged for the late remittance of tax was 9 per cent and that if it was compounded their composition fee was a minimum of 15 per cent."

7.10. The Committee desired to know about the arrangements that existed at present to ensure that the entire tax deducted at source had been remitted to Government account. The Ministry, in a note, stated: "The assessees have to furnish a statement prescribed in Rule 37(2) of the Income-tax Rules, 1962 showing the deductions of tax at source and the remittance made to the Government. Only on receipt of such statements can a reconciliation be made regarding the tax deducted at source and that remitted to Government accounts."

7.11. When asked about the cases in which companies had not rendered the statement prescribed under Rule 37(2), the witness stated: "The actual number of such companies is only 1, as would be evident from col. 11 of the para 58 of the Report of the Comptroller and Auditor General for the year 1969-70. The Income-tax Act does not provide for any penal action against the failure of any company to file the statement referred to in Rule 37(2) of the Income-tax Rules, 1962."

7.12. The Committee note that for non-deduction or part-deduction of tax from dividends at source by companies, there were convictions in 237 cases in 1968-69, 135 cases in 1969-70 and 181 cases in 1970-71. The Committee learnt with satisfaction that as a result of prosecutions launched against defaulting companies, cases of defaults have declined. The Committee desire that the Department should devise a system whereby tax deducted by companies is remitted to Government within the prescribed period of one week. In 1969-70, there were 90 cases in which tax was remitted after one week of deduction or receipt of challan. The Committee suggest that the Department should take stringent action against the parties who failed to remit tax deducted within the prescribed time.

7.13. The Committee also desire that the Department should enforce strictly the provisions in the existing law that the companies should submit statement of the tax deducted and tax remitted in time so that necessary check can be exercised. The Committee stress that no laxity should be shown in enforcing these provisions.

CHAPTER VIII

RE-OPENED AND SET-ASIDE CASES*

Audit Paragraph

8.1. Under Section 146 of the Income-tax Act, 1961, the Income-tax Officer is empowered to cancel his own assessment and to make fresh assessment under certain conditions. Similarly an Appellate Assistant Commissioner, the Appellate Tribunal and the Commissioner of Income-tax have powers to set aside the assessments made by Income-tax have powers to set aside the assessments. The following table shows the number of assessments cancelled|set-aside and which require finalisation on 31st March, 1969:—

Assessment Year	Number of cases			
	Section 146	Section 251	Section 254	Section 263
Upto 1961-62	474	2,518	162	1,031
1962-63	288	1,366	40	37
1963-64	417	1,063	40	39
1964-65	430	716	32	23
1965-66	234	620	24	30
1966-67	204	486	9	22
1967-68	229	457	7	28
1968-69	315	466	11	68
TOTAL	2,591	7,692	325	1,278

*The figures were furnished by the Ministry.

[Paragraph 65 of the Audit Report (Civil), Revenue Receipts, 1970]

8.2. The Committee enquired about the reasons for the accumulation of cases even pertaining to the period as early as 1961-62. The witness replied: "I share your misgiving. Previously there was no time limit. These set-aside assessments are really difficult cases and therefore since there was no time limit, each one passed it on to his successor, thinking that he would complete it."

8.3. Elaborating further, the witness added: "To illustrate what type of cases are usually set aside, hundi is the greatest plague of the department. There will be thousands of hundies mostly for Rs. 5,000 to 10,000 introduced in the accounts. The officer would be required to cross-examine the hundi-holder and hundi broker before he can say that a particular hundi is genuine or not. Very often one or the other does not appear and so he just cannot act. Without cross-checking even if he doubts the genuineness of the hundi he cannot add as he would be doing something which is incorrect in law and the appellate body will set aside the assessment saying that the assessee should have been given an opportunity to cross-examine. So, hundi has become almost a nightmare."

8.4. The Finance Secretary added: "Some of the cases are so complicated that some of the officers who made initial assessment, which have been set aside in appeal, do not have the courage to go through the cases again. . . . . We must find a way out of the impasse."

8.5. The Committee were informed by the Audit that necessary instructions were issued by the Central Board of Direct Taxes in September and October, 1968. When asked about the impact of the instructions issued, the Finance Secretary stated: "Nothing is visible."

8.6. In a note submitted to the Committee, the Ministry further stated: "The Board have not undertaken any special review of the nature contemplated by the Committee. By and large, the Board's instructions are followed scrupulous. Besides, with effect from 1.4.71 a time-limit of two years has been set for the finalisation of re-opened assessments; this is counted from the end of the financial year in which the order u|s 146, 255(1), 254(1), 263(1) or 264(1) as the case may be, is passed."

8.7. The Committee desired to know the steps proposed to be taken by the Department to expedite the completion of the re-assessments in the pending cases. The Chairman, Central Board of Direct Taxes, stated: "You cannot keep the sword hanging too long. That is why the Department has issued instructions to complete the set-aside assessments within a period of 2 years and the law has been amended to see that the set-aside assessments are closed within 2 years."

8.8. The Committee wanted to know the present position of the outstanding as on 31st March, 1971, in respect of the four items shown in the Audit paragraph. The Ministry, in a note, furnished the information as under:

"The position as on 31st March, 1971 in respect of the four items shown in the Audit paragraph is given below:—

Assessement Year	Number of cases			
	Section 146	Section 251	Section 254	Section 263
1964-65 and earlier years . .	1,415	5,312	365	194
1965-66 . . .	707	994	27	49
1966-67 . . .	465	611	37	42
1967-68 . . .	273	499	14	48
1968-69 . . .	252	570	8	44
1969-70 . . .	394	633	27	27
1970-71 . . .	453	365	25	35
	3,959	8,984	503	439"

8.9. When suggested to depute a special officer to get through those cases so that the other pending cases could be brought within the time limit and those that could not be really effectively pursued, be written off, the Finance Secretary stated: "That is very good suggestion."

8.10. The Committee are concerned to note the delay of several years in disposal of re-opened and set-aside cases. As on 31st March, 1971, there were 3,959 cases pending under Section 146; 8,984 cases under Section 251; 503 cases under Section 254 and 439 cases under Section 263 of the Income-tax Act, 1962. Some of the cases pertain to the period 1964-65 and earlier years.

8.11. The Committee note that with effect from 1st April, 1971, a time-limit of two years has been fixed for finalisation of re-opened assessments to be counted from the end of the financial year in which the order has been passed under Section 146, 255(1), 254(1), 263(1) or 264(1) as the case may be. The Committee suggest that some time-limit should also be fixed for disposal of old cases which pertain to the period prior to 1st April, 1971. The Board should pay special attention to the disposal of the old cases. The Committee would like to be informed about the progress made in the finalisation of the old cases (year-wise).

NEW DELHI;
30th *August*, 1972
8th *Bhadra*, 1894 (*S*)

ERA SEZHIYAN,
Chairman,
Public Accounts Committee.

APPENDIX

Summary of main conclusions/Recommendations.

Sr. No.	Para No. of Report	Ministry/Department concerned	Recommendations
1	2	3	4
1	1.23	Finance (Deptt. of Revenue & Insurance)	The need for preparing accurate estimates of taxes on income has been engaging the attention of the Committee from time to time. In paragraph 4 of their very first Report on Revenue Receipts *viz.* Ninth Report (1962-63), the Committee had observed that an overall variation exceeding 3 to 4 per cent should be regarded as a matter of concern requiring special remedial measures. During the years 1965-66 to 1968-69 there was over-estimation in regard to Corporation Taxes to the extent of 18.00 per cent in 1965-66, 11.09 per cent in 1966-67, 11.28 per cent in 1967-68 and 6.42 per cent in 1968-69. In the case of income-tax there was under-estimation to the extent of 4.69 per cent in 1966-67, 12.38 per cent in 1967-68, 18.40 per cent in 1968-69 and 23.78 per cent in 1969-70. In paragraph 2 of their 27th Report (1964-65) the Committee had emphasised that effective steps should be taken to fill up the deficiency in collection of reliable statistics of economic growth so that estimates of revenue are prepared on a realistic basis. The Committee regret, however, that the Ministry of Finance have not been able to make much headway in this direction.

			They desire that the Ministry should build up a sound statistical base without further delay.
2	1.24	—do—	At present, there are three agencies collecting information and conducting research on tax problems *viz.*, (i) Tax Research Unit attached to the Department of Economic Affairs, (ii) Tax Planning Section, functioning under the Central Board of Direct Taxes and (iii) Directorate of Statistics, Research and Publications functioning as an attached office under the Central Board of Direct Taxes. The working group of Administrative Reforms Commission observed that there was no coordination among these three agencies and that these should be amalgamated and brought under the direct control of the senior member of the Board in-charge of Tax Planning and Assessment. Ample time has elapsed for Government to have considered the Administrative Reforms Commission's recommendations in this respect in a comprehensive manner. The Committee feel that on grounds of efficiency and economy this suggestion is of sufficient importance to merit early action. As a first step in this direction the Units under the Central Board of Direct Taxes could be amalgamated forthwith.
3	1.25	—do—	It is significant that at present the Central Board of Direct Taxes do not have up-to-date statistics which in the opinion of the Committee are an essential prerequisite for making reasonably accurate forecasts of tax receipts. For instance, the Board do not have latest figures of income-tax collected in respect of various income brackets. The Board do not also maintain separate statistics of taxes realised from individuals, Hindu undivided families, firms, companies and

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			others and of number of and taxes realised from various companies such as manufacturing concerns, trading companies and investment companies. The Committee desire that the Board should maintain up-to-date statistics pertaining to all the categories in order to assess the impact of taxation measures at the time of preparing the budget estimates.
4	1.26	Finance (Rev. & Ins.)	The Committee also desire that the Ministry should study the methods adopted for estimation of revenue receipts in U.K. and other countries where the variation between budget stimates and actuals is not significant in spite of fluctuations in economic conditions and growth. It is needless to point out that incorrect estimation may result sometimes in avoidable revision|imposition on tax levies.
5	1.39	-do-	The Committee find that the number of assessees has increased from 21,26,398 in 1964-65 to 29,10,341 in 1969-70. There was an increase of 36 per cent in 1964-65, 14 per cent in 1965-66, 11 per cent in 1966-67, 0.2 per cent in 1967-68 and 8.9 per cent in 1969-70, while there was a decrease of 1.3 per cent in 1968-69. The Committee were informed that the decrease in 1968-69 was due to removal of some 4 lakh assessees found not liable to income-tax out of 10 lakh new assessees added as a result of a special survey undertaken in 1964-65. The Committee were further informed that although there was overall reduction in 1968-69, there was continuous increase in the higher

			income cases. The number of business cases with income over Rs. 25,000 increased from 1,23,989 as on 31st March, 1968 to 1,37,324 as on 31st March, 1969, 1,61,485 as on 31st March, 1970 and 1,77,552 as on 31st March, 1971. The Committee welcome the change in emphasis in enrolment of new assessees and hope that the surveys will concentrate on cases with revenue potential so that time and labour are not spent on cases which are subsequently to be removed from the registers.
6	1.40	--do--	The Committee are concerned to be informed that the "work of the internal survey leaves much to be desired." The Committee desire the Central Board of Direct Taxes to look into the matter with a view to ensuring proper deployment and utilisation of staff with clear directions and objectives.
7	1.41	-do-	The Committee need hardly point out that in evaluating the work of survey done by officers in the field, the tax potential of the cases detected should receive more importance than the total number of new assessees added.
8	1.48	-do-	The Committee desire that the working of small income scheme should be kept under watch. The objective of the scheme is that the Department should not waste its time and energy in disposal of cases which have no revenue potential. The Committee trust that the procedures evolved by Government help to achieve this objective. In particular, it should be ensured that on the one hand the scheme is not exploited by some unscrupulous high income assessees masquer-

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			ading themselves as small income assessees and on the other hand genuine small income assessees are not subjected to harassment by being asked to appear before the Income Tax authorities. The Committee trust that Audit would conduct a review of the scheme and include their findings in their future Reports.
9	1 49	Finance (Rev. & Ins.)	The Committee were informed that there has been considerable simplification in procedure as far as individuals are concerned but the simplification might not have reached the same stage as far as other categories are concerned. The Committee desire that the question of simplification in procedures should be kept under constant study so that maximum possible simplification can be achieved as early as possible keeping in view the basic objective of avoiding harassment to parties without detriment to the interests of revenue.
10	1.51	—Do—	The Committee note that the functional scheme of distribution of work which has been introduced in 104 ranges has resulted in not only increasing the disposal of assessments and collection of taxes but also paying adequate and timely attention to other important aspects of work like rectification of mistakes, disposal or audit objections, giving effect to appeal orders etc. But there are also certain difficulties regarding non-availability of papers, delay in issue of demand notices and failure to give credit for prepaid taxes. The

			Committee desire that the procedural changes considered necessary for removing these defects should be made without delay.
11	1.54	—do—	The Committee find that the pilot study carried out by the Central Board of Direct Taxes has revealed that in big income cases the percentage of cost of collection to demand raised worked out to 0.86 per cent and 0.78 per cent in 1968-69 and 1969-70 respectively while in small income cases the percentages were 5.57 and 5.41. The obvious conclusion is that cost of collection as percentage of the demand is much more in respect of small income cases as compared with big income cases. The Ministry have pointed out that with the introduction of 'Summary Assessment Scheme' the results of the earlier study may no longer hold good. The expectation obviously is that the cost of collection on 'Small Income cases' will register decline. The Committee desire that impact of the 'Summary Assessment Scheme' on the cost of collection may be watched through further studies with a view to taking additional measures towards reduction of cost of collection in small income cases.
12	2.26	—do—	The Committee feel concerned over the increase in the number of cases of under-assessment and over-assessment detected by Revenue Audit during the period 1st September, 1969 to 31st August, 1970. There were 16,997 cases of under-assessment of tax amounting to Rs. 858.92 lakhs and 6,004 cases involving an over-assessment of tax of Rs. 191.41 lakhs. During the period 1st September 1969 to 31st August, 1970, as against 12,418 cases of under-assessment involving tax of Rs. 687.19 lakhs and 3,496 cases of over-assessment involving tax of Rs. 100.92 lakhs detected during

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			the period from 1st September, 1968 to 31st August, 1969. Of the total 16.997 cases of under-assessment of tax detected during the period 1st September, 1969 to 31st August, 1970, there was short levy of tax of Rs. 644.80 lakhs in 1096 cases alone, while there were 840 such cases involving short levy of Rs. 537.46 lakhs during the period 1st September, 1968 to 31st August, 1969.
13	2.27	Finance (Rev. & Ins.)	The increasing number of cases of under-assessment and over-assessment detected by Revenue Audit points to the need of intensification of checks by Internal Audit. The Committee were informed that although the number of Internal Audit Parties was increased slightly during the year 1969-70, they were still insuficient to conduct more or less a concurrent audit of all cases. From the figures furnished to them, the Committee find that the total assessments checked by the Internal Audit Parties decreased from 2,77,332 in 1969-70 to 2,54,142 in 1970-71. However, the cases of under-assessments detected by the Internal Audit increased from 29,746 involving short levy of tax amounting to Rs. 607.79 lakhs to 40,106 cases involving tax of Rs. 1230.71 lakhs in 1970-71. The number of cases of over-assessments increased from 11,123 involving tax of Rs. 173.02 lakhs to 17,120 involving tax of Rs. 397.43 lakhs. The Committee are not satisfied about the progress of rectification of the errors pointed out by the Internal Audit Parties.

		According to the review conducted by the Directorate of Income Tax Audit, cases involving only 20 per cent of the aggregate tax realisable on rectification were rectified during 1970-71, while the corresponding percentage for 1971-72 was a little less than 30 per cent. The Ministry have also noticed that rectifications in most of the cases have not been done within the prescribed period of three months of the raising of objections by the Internal Audit. The Ministry are greatly concerned at the inadequacy of the rectification of errors pointed out by the Internal Audit and they propose to take some effective measures early. The Committee hope that effective measures will be taken by the Department to ensure that rectification of under-assessments and over-assessments detected by Internal Audit is made within the time limit of 3 months.
14 . 2 28	—Do—	The Committee find that according to the instructions issued by the Board in August 1968, the Internal Audit Parties are required to take up checking of assessments, particularly those involving large revenues, soon after the assessments had been completed. According to the instructions issued in December, 1969, the Internal Audit Parties are required to take all category I assessments completed in the rush period of February and March by the 30th June following and the assessments on total income of one lakh or more made in any other month are required to be checked within three months, of the date of the assessment. The Committee have been informed that no special review regarding the actual implementation of the instructions was conducted since the Director of Inspection undertakes a monthly review of the performance of

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			Internal Audit Parties. The Committee suggest that an immediate review of the working of the Internal Audit should be undertaken by the Board to find out how far they are carrying out the prescribed checks and bringing to notice cases of under or over assessment requiring rectification. The Board should also ensure that the rectification of the lapses is done promptly.
15	2·29	Finance (Rev & Ins)	The Committee learn that the assessments checked by the Internal Audit Parties are not being stamped, with the result that it is difficult for Revenue Audit to know whether the assessments have been checked by the Internal Audit Parties. The monthly reports of the Internal Audit Parties are also not being made available to the Revenue Audit as a matter of course. The Committee consider that there should be proper coordination between the Internal Audit Parties and Revenue Audit so as to have maximum impact on revenue collecting organisation. This can be achieved by making the checks exercised by the Internal Audit more comprehensive and thorough and by making their Reports available contemporaneously to the Revenue Audit. The Committee would further suggest that the scope and nature of checks to be exercised by Internal Audit should be reviewed at least once in six months by the Board of Dirtect Taxes in consultation with Revenue Audit so as to make the checking more effective and pointed.

16	2.30	—do—	The Committee have in the various sections of this Report as well as of the 50th Report referred to inadequacies and lapses of Internal Audit and have also indicated the lines on which the Internal Audit check could be strengthened. They hope that Government would take due note of these and take appropriate action early.
17	2·31	—do—	According to the provisions of Section 285(A) of the Income-tax Act, 1961, a person undertaking a contract for construction of a building or for supply of goods or services in connection with it for more than Rs. 50,000 is required to furnish particulars of the contract to the Income-tax Officer concerned. The Committee were informed that during the year 1969-70, information was furnished by 1068 contractors. The Committee suggest that it should be examined whether the authority awarding the contract should also be required to send necessary information to the Income-tax Department so that necessary action can be taken against the contractors failing to send the particulars to the Income-tax Officer.
18	2·32	—do—	Further the Committee note that at present the provisions of this Section is restricted to building contractors only. The Direct Taxes Enquiry Committee in paragraph 2.223 of their final report have recommended that the scope of this provision should be extended to apply to all contractors. The Committee desire that decision on this important recommendation should be taken without delay.

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19	2.43	Finance (Rev & Ins)	Despite the concern expressed by the Committee in their successive Reports over the mistakes committed in the computation of tax which went undetected, the number of such cases has shown a steady rising trend in recent years. The number of cases which was 1,786 in 1965 went upto 2,719 in 1969-70. From the nature of the mistakes examined by the Committee there can be only on conclusion that either there was no effective check in the Department or the mistakes were not *bona-fide*. The Committee note that the Department had issued some instructions on the 13th December, 1971 after the Committee took evidence. The Committee would content themselves with the observation that the effectiveness of performance depends on the implementation of instructions of which there was no dearth even earlier.
20	2·49	—do—	The Committee regret the failure in this case which resulted in a short levy of Rs. 52,006. They expect that the persons found at fault will be suitably dealt with.
21	2.50	—do—	The rush of assessments in March, 1967 was partly responsible for this failure. The Committee wish to reiterate their oft repeated suggestion that assessments in high income brackets should as far as possible be completed earlier in the year.

22	2·51	—do—	The Committee would like to be informed of the recovery effected in this case.
23	2·52	—do—	In a number of cases, the Committee have been informed that the Internal Audit could not audit them before they were taken up by the Statutory Audit. This in the opinion of the Committee is quite unsatisfactory. They wish to stress that the programme of Internal Audit should be so arranged as to cover all the circles without delay so that when Statutory Audit proceeds with their Audit they would have an opportunity to review the work of the Internal Audit also.
24	2·61	—do—	That a mistake of this type leading to underassessment of Rs. 1,29,786 in this case, should have occurred in a Central Circle causes some uneasiness. As admittedly there has been negligence in checking, the Committee hope that the Department will take due note of it against the persons found remiss in the discharge of their responsibilities. They would like to know the completion of the recovery in this case.
25	2·73	—do—	The Committee find that at the present the onus lies on the Department to determine whether a company is one in which public are substantially interested or not. It takes considerable effort and time to do it. The Committee, therefore, suggest that an additional column should be provided in the income-tax return to put a onus of the assessee to indicate the nature of the company.

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26	2·74	Finance (Rev. & Ins.)	The Committee feel that while a valid distinction could be made between a public company and a private company as defined in the Companies Act, the basis for differential treatment for taxation of profits of a closely held public company needs to be elucidated. They would like Government to examine the feasibility and economics of dispensing with the subtle distinction between a public company and a closely held public company for the purpose of taxation of profits, as promised during evidence. The outcome of the examination may be intimated to them.	
27	2·80	—do—	The Committee are concerned to find errors in a number of cases of assessments under the voluntary disclosure scheme. These assessments are at present not being checked by the Internal Audit parties. The Committee note that Internal Audit parties are neither properly equipped nor have they the requisite status for checking these assessments. They would like Government to ensure that assessments in respect of voluntary disclosure scheme are thoroughly checked in internal audit to obviate any mistakes.	
28	2·86	—do—	The Committee are glad to learn that after they took evidence of the Ministry in this case, instructions have been issued for preventing lapses in the check of computation of income of assessees which had not been given in the past the care it deserved. They would like to watch the improvements through future Audit Reports.	

29	2·95	—do—	This is yet another case of mistake going unnoticed in the assessment belonging to high income group made in the month of March. The Committee are inclined to take a serious view of such mistakes especially in a group charge, the object in creation of which was to ensure greater accuracy in tax assessments. They hope that the persons responsible for failure will be suitably dealt with.
30	2·105	—do—	It is disquieting that the number of cases in which mistakes were noticed by Audit in computation of income under the head "business" has increased three-fold during the last seven years. The under-assessment noticed in such cases during the year 1969-70 alone amounted to Rs. 129.31 lakhs. The deterioration of the position, despite the special attention having been drawn repeatedly to these types of mistakes does not speak well of the Department. The Committee accordingly trust that Government would analyse the nature of repetitive mistakes and take appropriate action to avoid recurrence.
31	2·106	—do—	The incorrect assessment of income arising out of the sale of house property by an Insurance Company which resulted in short-levy of tax to the tune of Rs. 6,72,719 lakhs, reveals ignorance of the Provisions of Income-tax Act applicable to General Insurance Companies. The Committee note that instructions were issued by the Board in August, 1967 clarifying the position in law. They, however, desire that general review of all the assessments of the Insurance Companies with a view to finding out whether there

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			were similar mistakes, should be undertaken. The results of such a review and reassessment of the case referred to above may be reported to the Committee.
32	2·107	Finance (Rev. & Ins.)	The Committee note that Internal Audit Parties are not equipped for scrutinizing the assessments of the Insurance Companies, which are stated to be of complex nature. As the need for the check is all the more in complicated assessments, the Committee would urge Government to ensure that Internal Audit Parties are adequately equipped soon to take up all types of assessments.
33	2·115	-do-	The Committee find that on account of incorrect grant of amortisation allowance taking the life of a film to be 2 years resulted in a short levy of Rs. 1,63,650 in the hands of the firm and its partners. The additional demand raised as a result of Audit objections in the case of the firm and one of the partners stands fully realised. The Committee would like to know the settlement in the case of the other partner.
34	2·116	—do—	The instructions issued by the Board in October, 1969, allowed write-off of the entire cost of a film in the year in which it was released. Though this was not in accordance with the judicial view on the subject given in 1957, the Department have expressed that

			the position has radically changed since then. However, on Audit objection raised in May, 1970, the matter is stated to be taken for consideration '*de novo*' on merits. The Committee would like to know the final decision taken in this regard early.
35	2·117	—do—	In this case the aggregate amortisation allowance granted in the two years 1966-67 and 1967-68 had exceeded the cost of production of the film. The Committee are unhappy to note that the Ministry have not issued any instructions so far regarding the maintenance of the continuous record, like the depreciation chart to enable the assessing officer to keep a watch that the total amortsiation allowance does not exceed the cost of production. The Committee wish that this should be done early.
36	2·118	-do-	Although this case way checked by the Internal Audit, they failed to detect the errors for the reason that checking of amortisation was not covered in their check sheet then in vogue. The Committee hope that this lacuna has since been removed.
37	2·123	-do-	This is a sad case where although the income-tax officer rightly treated the cost of replacement of certain items of depreciable assets as allowable deduction, he failed to add back the cost debited to the Profit and Loss Account while completing the assessments for the years 1960-61 and 1967-68. The effect of this failure was an under-charge of tax of Rs. 3,42,715. The mistake was not noticed before Audit pointed it out in March, 1970 with the result that assessment for 1960-61 could not be rectified as it became time-

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			barred. The Committee desire to be informed whether the case was looked into by Internal Audit and if so, how the mistake was not detected by them. The committee would also like Government to examine whether similar mistakes were made in the assessments for the years 1961-62 to 1966-67 and take suitable action.
38.	2·129	Finance (Rev. & Ins.)	The Committee note that although the accounts of the solicitors firm were maintained on cash basis, payments representing the share of profits made to retired partners or legal heirs of the deceased partners were allowed as deduction in computing the total income of the firm for assessment years 1958-59 to 1967-68. The Committee understand that assessing officer had acted as per the orders of the Commissioner of Income-tax issued in September, 1965. They would like to be informed whether the orders were being uniformly applied to all similar cases arising in the various charges in this circle and what was the position in this regard in other circles. They also desire that the opinion of the Ministry of Law regarding the validity of these orders should be obtained without delay and communicated to them.
39.	2·130	—do—	The action taken on the basis of the opinion of the Ministry of Law, as may be necessary, may also be reported to the Committee.
40.	2·146	—do—	The two-fold increase in the number of cases in which mistakes in computing depreciation and development rebate noticed by

Audit clearly indicates that the steps taken by the Department in pursuance of the observations made by the Committee in the successive reports have not been effective enough. The Ministry has held that "the increase in the number of mistakes reported by Audit may have been due to only a larger coverage by them rather than increasing incidence of the mistakes". The Committee regret their inability to accept this interpretation of the Ministry which displays an excessively complacent attitude. In this connection, they would like to refer to the suggestion contained in the Third Report (Fourth Lok Sabha) that a special review should be conducted in all the charges with a view to checking correctness of the calculations of the development rebate and depreciation allowances. The Ministry has pleaded that it had not been possible to follow up the reviews because of the inadequacy of man-power. This is a plea which the Committee find it difficult to accept. In the opinion of the Committee only a complete review and proper follow up action would reveal the degree of efficiency of the department in this regard. They accordingly hope that the Ministry will take adequate follow-up action in all cases speedily.

41. 2·147 —do— The Committee note that the new rules brought into effect from the 1st April, 1970 do not provide for industry-wise rate of depreciation in respect of a large number of industries. The Ministry has explained in this connection that it may not be possible to fix industry-wise rates because the percentage of machinery entitled to different rates of depreciation may not be the same in the case of all the concerns running a particular type of industry. In a

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			case examined by the Committee, they have noticed that there has been some controversy regarding determination of rate applicable to printing machinery. The Committee would, therefore, suggest that Government should examine as to how far the rules regarding depreciation allowance could be rationalised further to place matters beyond doubt.
42.	2·148	Finance (Rev. & Ins.)	The Committee have been reiterating that each Inspecting Assistant Commissioner should check a certain number of cases of each Income-tax Officer under his charge at regular intervals. They note that although some instructions have been issued in this regard, it is not yet known as to what extent Inspecting Assistant Commissioners were able to pay attention to such a test-check. The present position is quite unsatisfactory. The Committee hope that the Ministry will ensure that instructions are followed in letter and spirit.
43.	2.154	do.	According to the Ministry mistakes noticed in these cases are due note to either carelessness or negligence but to the fact that there was some controversy about the correct rate of depreciation to be applied to the printing machinery. It is unfortunate that the controversy in this regard was not considered till June, 1971. As per the interpretation now given if there is no specific rate prescribed for the industry as a whole, the rates prescribed for indivi-

			dual items of plant and machinery have to be applied to such individual items and if no specific rate has been prescribed for any individual item, then the general rate will apply to such individual items. The Committee trust that suitable instructions in the matter have been issued by the Central Board of Direct Taxes in consultation with Audit.
14.	2.155	—do—	The Committee are unable to agree with the view of the Ministry that no general review was called for. They accordingly suggest that it should be undertaken now to find out whether there have been cases of incorrect application of rate of depreciation in the light of the interpretation referred to above so that the relevant assessments which have not become time-barred may be rectified.
15.	2.163	—do—	The Committee regret that incorrect allowance of development rebate totalling upto Rs. 1.05 crores for the assessment years 1962-63 to 1966-67 relating to a Public Sector Undertaking was not detected although all the assessments were checked by the Internal Audit. The Committee would like to know the action taken for the failure in this regard.
16.	2.164	—do—	The Committee do not appreciate any relaxation in the standard of scrutiny for tax returns submitted by Public Sector Undertakings. They accordingly trust that the Ministry will issue suitable instructions to all the assessing authorities.

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47.	2.173	Finance (Rev. & Ins.)	The Committee note that an Appellate Tribunal had already held in a case that sale of goods on credit to its members by a co-operative society did not mean providing credit facilities, as contemplated under the Act. It is unfortunate that although the matter was brought to the notice of the Ministry in September, 1970 by Audit, the opinion of the Ministry of Law has not yet been taken with the result that no instructions clarifying the position have been issued to the lower formations of the Department. The Committee hope that it will be done without further delay.
48.	2·178	-do-	The Committee are unable to understand how the Income-tax Officer over-looked the fact that the tax relief on newly established industrial undertakings is admissible only for a period of five years from the year in which production started and allowed the relief beyond the stipulated period for the assessment years 1963-1964 and 1964-65 which resulted in under-assessment of tax to the tune of Rs. 13,53,971. They, however, wish to be informed of the outcome of the appeal preferred by the assessee in this case.
49.	2.179	-do-	The Committee were informed by the Ministry that the Income-tax Officer had been instructed to take remedial action in the case of shareholders' assessments. The action taken in this regard may be reported to the Committee.

50.	2·180	-Do-	The Committee note that the Ministry have been experiencing difficulty in some marginal cases as to what exactly constitutes a 'new industrial undertaking' and that the matter has been referred to the Ministry of Law whose opinion is still awaited. The Committee desire that the matter should be got clarified without further loss of time and suitable instructions issued for the guidance of assessing officers.
51.	2.181	-Do-	The Committee also trust that on the basis of the opinion obtained from the Ministry of Law, the past cases of assessments will be reviewed to ensure that the benefit of industrial holiday was correctly extended. Further as regards cases other than marginal ones, a review should be immediately conducted with a view to rectifying under-assessments, if any.
52.	2.187	-Do-	The Committee have in the preceding recommendation referred to the controversy as to what constitutes 'a newly established undertaking' on which an opinion of the Ministry of Law has been sought. They trust that suitable action will be taken in the case on receipt of the opinion of the Ministry of Law.
53.	2.193	-Do-	The tax holiday relief incorrectly allowed before deducting development rebate from the profits and gains of a Government owned company resulted in a short levy of over Rs. 6 lakhs. The Committee note that the additional demand has already been raised, but the assessee has gone in appeal. The Committee may be informed of the outcome.

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54.	2.194	Finance (Rev. & Ins.)	The Committee would also like to know the results of an independent review of the Department as to whether the tax relief was properly calculated for the assessment years 1963-64, 1964-65 and 1966-67 in respect of this company.
55.	2.02	-Do-	The Committee note that in this case tax holiday relief was allowed for a further period of 5 years consequent on the expansion of the new industrial unit. It is unfortunate that this was based on the erstwhile Central Board of Revenue's circular issued in April, 1950, which according to the Ministry, could be interpreted in a way that may not be in conformity with the law. Although the Audit objection has been accepted in principle, the Ministry have stated that 'it might well be argued that such substantial expansion can be construed as addition' and that they wished to have this view examined by the Ministry of Law in consultation with Audit. The Committee accordingly desire that the matter should be considered and clear instructions in conformity with law issued expeditiously, in consultation with Audit. The Committee consider that it is most undesirable to allow the prolongation/virtual perpetuation of tax holiday in this indirect manner.
56.	2.24	-Do-	The Committee regret to find that there is no satisfactory arrangement to ensure timely revision of the partner's assessment,

			provisionally completed, after the final share income becomes known. Although the erstwhile Central Board of Revenue had prescribed a register called 'register of cases of provisional share incomes' to be maintained in each income-tax office, the register is not being maintained properly. Inordinate delays have occurred both in intimating the correct share of income by the officer assessing the firm's income and in taking timely action by the officer assessing the partner's income. The Committee, therefore, suggest that there should be a similar register through which the timely intimation of the correct share of income to the officer assessing the partner's income can be ensured. This would also help to watch the action taken to revise the partner's assessment, which is already required to be intimated to the officer assessing the firm's income. Further it is desirable to have a time-limit both for such an intimation to be sent and for revising the partner's assessment on receipt thereof. The proper maintenance of the register already prescribed and the one now suggested by the Committee and adherence to the time-limit to be laid down, should be checked by the Inspecting Assistant Commissioners as also by the Internal Audit so as to ensure that the interests of revenue are properly safeguarded.
57.	2.225	-Do-	In the case referred to in sub-para (a) of the Audit Paragraph, the action of the Income-tax Officer in deciding at the request of the partner to wait till the Appellate Commissioner passed the order on the appeal of the firm, instead of raising the demand after rectifying the assessment of the partner, is admittedly un-

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			justified. The Committee hope that suitable action will be taken against the officer responsible for this lapse. They would also like to know the circumstances leading to an inordinate delay of 2-1|2 years on the part of the Officer assessing the firm's income, in communicating the partner's share.
58.	2.226	Finance (Rev. & Ins.)	In respect of the case mentioned in sub-para (b), although the firm's assessment was completion before the assessment of the partner's income was taken up, the share of the partner was not taken into account. It is, therefore, for the Department to consider how it could be ensured that such intimation received in advance of the assessment of the partner's income is not lost sight of.
59.	2.227	-Do-	The Committee, however, find that in this case the partner himself did not disclose his share of the firm's income in his return. As *prima facie* non-disclosure of the share of the firm's income by the partner after it became known, appears to be a case of concealment of income, the Committee suggest that this aspect may be examined in consultation with the Ministry of Law and Audit and suitable instruction issued for the guidance of the Assessing Officers.
60.	2.233	-Do-	The wrong application of concessional rate of tax applicable to companies mainly engaged in manufacture to the income of a company mainly derived from purchase and sale of goods and from royalties in this case resulted in a short-levy of Rs. 1.13 lakhs. The Committee understand that the assessing officer concerned has been

			associated with a number of audit objections. They would like to be apprised of the results of the review of all cases of mistakes committed by him and the action taken on the basis thereof.
61.	2·245	(Finance Rev. & Ins.)	The Committee have been repeatedly stressing the need to exercise special care in assessing tax on companies. Notwithstanding the steps stated to have been taken in this regard, the mistakes in the levy of tax on companies have assumed alarming proportions inas-much as the number of cases in which erros were noticed during 1969-70 was 135 involving under-assessment to the tune of Rs. 202.66 lakhs. That, this was so inspite of comparatively lesser number of assessments handled in Company Circles by senior and experienced officers, is disturbing. As admittedly there is need to impart adequate training to the officers in Company Circles in view of "great many technicalities" involved in the company assessments, the Committee suggest that there should be regular refresher courses for these officers after the passage of each Finance Act and issue of detailed instructions thereon. The Committee would like such training courses to be held on a systematic basis and without delay.
62.	2.246	-Do-	The Committee need hardly emphasise in this connection that the Internal Audit should be suitably equipped and strengthened to take up effectively the big company assessments immediately after they are completed.
63.	2.247	-Do-	In pursuance of the Committee's earlier recommendation contained in their 73rd Report (Fourth Lok Sabha), the review of all assessments for the assessment years 1964-65 to 1967-68 in regard to

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			incorrect levy of super tax on total income of Rs. 1 lakh and over, is in progress. The Committee would await a report in this regard.
64.	2.248	Finance (Rev. & Ins.)	At the present a number of provisions in the Income-tax Act exclusively relate to companies and there is a separate Sur-tax Act for companies. To a suggestion of the Committee that in order to simplify matters and facilitate easy reference there could be two separate Acts, one for the corporate sector and the other for non-corporate sector, the Chairman, Central Board of Direct Taxes reacted saying that it seemed to be an 'excellent suggestion'. The Committee hope that this aspect will be examined and necessary follow-up action taken early. In this connection the Committee would like to mention that it is not necessary to load the Income-tax Act with the provisions relating to Companies as the number of company assessees is only 27,734 out of a total number of 29,10,341 assessees (as on 31st March, 1970).
65	2·249	Do.	With the various rebates and concessions the structure of corporate taxation is expected to be designed in such a way as to promote economic growth and to ensure social justice. The Committee were informed that no study had been undertaken to know how far these twin objectives have been realised. The Committee would, therefore, commend such a study which would be helpful in formulating future taxation policy.

66.	2·261	Do.	The Committee note that there is a difference of opinion between the Audit and the Ministry of Finance regarding the treatment of investment in shares as fixed assets and that the opinion of the Ministry of Law in the matter is awaited. The Committee may be informed of the opinion of the Ministry of Law.
67.	2·262	Do.	It is regrettable that the opinion of the Ministry of Law was sought for belatedly. The Committee desire that in such cases the position should be got clarified expeditiously and instructions issued to ensure that uniformity is observed in all the charges.
68.	2.270	Do.	The question whether the amount received from the clients by lawyers towards personal expenses could be excluded from total income as non-taxable is stated to have been referred to the Ministry of Law. The Committee would like to be apprised of the opinion of the Ministry of Law.
69.	2·271	Do.	Although the Committee desired to have the information regarding the total number of advocates practising in the various High Courts and Supreme Court and the number of persons who were borne on the books of the Income-tax Department as assessees, the information is still awaited. The Committee trust that on the basis of the information to be collected, the department would make a survey to ensure that there is no evasion of tax.
70.	2·272	Do.	Further Government may consider the feasibility of asking the various courts to furnish to the Income-tax Department periodically information regarding cases decided by them and the persons

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			who appeared as solicitors or advocates for both ides so that the Department may be in possession of necessary information to verify the correctness of the returns filed by persons of these professions
71.	2·288	Finance (Rev. & Ins.)	The Committee desire to be informed of the rectification and recovery of penalty imposed in one of the two cases mentioned in sub-para (a) (i) and in the case mentioned in sub-para (a) (ii) of the Audit Paragraph.
72.	2.289	Do.	As regards sub-para (iii) the Committee were informed that although Audit were told earlier that the Ministry had accepted the mistake, the question regarding the applicability of the provisions of Section 297 (2) (g) of the new Income-tax Act to the cases of penalty proceedings initiated before 1st April, 1962, has been subsequently referred to the Ministry of Law. The Committee would like to be informed of the views of the Ministry of Law as also the action taken to rectify and recover the penalty, if required.
73.	2·290	Do.	In regard to sub-para (v) the Committee understand that the question whether the date of filing of the return or the date of assessment was to be taken for the purpose of levy of penalty was under consideration of the Ministry of Law. The Committee may be apprised of the final decision taken in the matter after obtaining legal opinion as also the action to rectify and recover additional penalty if needed.

74.	2.291	Do.	The Committee find that there is some confusion as to what exactly constitutes concealed income*.
75.	2·292	Do	In view of the mistakes committed and the prevailing confusion in regard to levy of penalty the Committee wish to suggest that the Board should consider the feasibility of bringing out a compendium of instructions on penalty provisions in the Income-tax Act for the guidance of the Assessing Officers.
76.	2·301	Do.	There has been a steady increase in the number of cases of omission to levy or incorrect levy of penal interest reported in the successive Audit Reports. The number of such cases during the year 1969-70 was 3395 involving a sum of Rs. 91.12 lakhs. Of this 165 items involved Rs. 10,000 and above each and the aggregate tax in these cases amounted to Rs. 49.28 lakhs. The recovery in these cases may be reported to the Committee.
77.	2·302	Do.	The Committee trust that with a rationalisation of rate of interest and the procedure for the levy, such large scale mistakes or omission as have been noticed in the past, should not occur. The Committee note in this connection that the Central Board of Direct Taxes have assumed powers with effect from 1st April, 1971 to frame rules for regulating the calculations of interest. They desire that necessary rules simplifying and streamlining the procedure should be framed without delay.

*The Committee have dealt with this matter in some detail elsewhere in the Report.

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78.	2·312	Finance (Rev.& Ins.)	The Committee are unhappy over the recurring cases of considerable excess refunds arising from double credit of advance tax paid due to some mistake or the other. They desire that bonafides or otherwise of such mistakes should be carefully gone into for stringent action wherever necessary.
79	2.313	Do.	Various suggestions in regard to the steps to be taken to prevent double allowance of credit are stated to be under consideration of the Director of Inspection (I.T. and Audit). The Committee need hardly stress that a foolproof procedure in this regard should be evolved expeditiously.
80.	2.314	Do.	Incidentally the Committee note that the existing instructions that all refund cases involving a sum of Rs. 500/- and above should be checked by the Inspecting Assistant Commissioner have fallen into disuse and that the limit fixed for the check is considered to be "too low". The Committee wish to point out that it is undesirable to allow such important instructions to be ignored. The limit could have been suitably revised in order to ensure strict observance of the instructions. The Committee trust that the Board would review the observance or otherwise of such long standing instructions in the light of changed context and take appropriate action.

81.	2 327	Do.	The Committee, after going through the information furnished to them, find that the procedure for taking the action after receipt of the Audit objections is anything but satisfactory. No specific time-limit has been prescribed for taking corrective action on the mistakes pointed out by the Audit. Although a register has been prescribed in February, 1966 for ensuring timely action, following an earlier recommendation of the Committee, the maintenance of the register has been admittedly 'often quite faulty'. According to the Ministry, the existing slackness can be remedied by a method of periodic reconciliation once every six months with the records maintained by Audit. The Committee further regret to learn from Audit that excluding the Commissioners' charges at Calcutta, Delhi, Madras and Bombay, the Department's replies to the mistakes pointed out by the Audit parties were due in 14,592 cases as on 31st May, 1971. The Committee would like to know the position in the remaining four charges also. It is obvious that the monthly review of Audit objections conducted by the Director of Inspection has not been effective at all. The situation is quite alarming and serious. The Committee trust that such unsatisfactory state of affairs shall not be allowed to prevail and that effective and prompt action on Audit objections will be ensure to safeguard the interests of revenue. The manner in which the position can be remedied may be settled in consultation with Audit. In this connection, the Committee feel that it is desirable to fix a time-limit for taking corrective action on the mistakes reported by Audit. In any case all the pending objections should be settled within a period of three years. The progress made in this regard may be reported to

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			Committee. The results of the overall review of the action taken on the mistakes reported in the successive Audit Reports may also be intimated to the Committee.
82.	2·331	Finance (Rev. & Ins.)	It is regrettable that refunds arising out of appellate orders passed between january, 1953 and July, 1963, were made only in April, 1968 in this case. According to the Ministry, the principal reason for the unconscionable delay in giving effect to the appellate orders was "perhaps the frequent change of Income-tax Officers." The Committee note that between 1st April, 1962 and 1st July, 1965, on an average an Income-tax Officer held the charge concerned for a period of 4-1|3 months only. The Committee need hardly point out that such frequent transfers are not conducive to efficiency; they would therefore like Government to review the position in all the charges and ensure reasonable tenure of officers in the interest of continuity and good work especially in view of heavy arrears of work accumulated in the Department. Further they desire that there should be a procedure in built in the system itself whereby it could be ensured that pending matters are not lost sight of notwithstanding the change in incumbency of the assessing authority.
83	2·332	Do.	The Committee further desire to suggest that the feasibility of fixing a suitable time-limit for giving effect to apppellate orders should be considered.

84.	2.338	Do.	The Committee are of the opinion that on equity whether Government paid interest to the assessee or *vice-versa* the criterion should be the same. Section 215(3) of the Income-tax Act, 1961, provides for reduction of interest payable by an assessee as a result of variation of the amount on which the interest was payable on rectification or revision whereas Section 214 which provides for Government's paying interest to the assessee does not have a similar provision for reducing the quantum of interest as a result of rectification or revision. The Committee accordingly desire that the difference in language between Section 214 and 215 should be looked into. Further neither under Section 214 nor under Section 215 there is a provision for the enhancement of interest payable. The Committee note that the Ministry propose to have the entire question of payment of interest by Government to assessees and charging interest from assessees by Government in respect of excess advance tax paid or the shortfall of advance tax as the case may be re-examined thoroughly in consultation with the Audit and the Ministry of Law. The Committee trust that this will be done expeditiously and appropriate amendments to the relevant sections of the Act made, as necessary.
85	2.347	Do.	The Committee note a persistent tendency to overpitch tax demands which has of late shown disconcerting increase despite the fact that Government's attention has been repeatedly drawn to the seriousness of this problem in successive Reports on direct taxes. The number of cases and the amount involved which were 1408 and Rs. 36.88 lakhs respectively in 1966 have jumped to 6004

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			and Rs. 191.41 lakhs respectively in 1969-70. In terms of percentage of cases to the total number of cases checked by Audit, the details of which have been furnished by the Ministry, the increase during this period has been from 1.00 per cent to 2.19 per cent. Such an extremely undesirable trend has to be curbed. The Committee take a serious view of over-assessments as they invariably involve needless harassment to the assessees which should be scrupulously avoided. In this connection the Committee would like to know the results of the pilot studies in important ranges of Inspecting Assistant Commissioners of Income Tax and the concrete steps taken on the basis thereof.
86	2·353	Finance (Rev. & Ins.)	The Audit Paragraph has brought out 18 cases of overassessments to the extent of Rs. 13.75 lakhs due to mistakes either in computing total income or in application of rates of tax and calculation of tax or in setting off losses carried forward from previous year against current year's income. While the Committee note that the Ministry have accepted the mistakes in 17 cases and that the assessments have been rectified in 16 cases, they would like action to be taken to rectify the assessment in the remaining case.
87	2·354	Do.	That the assessment procedures and the counter check of assessment need to be strengthened is clearly indicated from the foregoing. In this connection the Committee regret to learn that the

			Internal Audit failed to notice the mistakes in three out of four cases reviewed by them. The Committee hope that suitable action would be taken for their failure.
88	2·366	Do.	The Committee find that the Commissioner of Income-tax had not followed the provisions of Section 271(4A) of the Act as clarified by the Board in their circular dated 29th September, 1969, in waiving or reducing the minimum penalty in as many as 177 cases where the voluntary disclosures were not full. Admitting that the action of the Commissioner was wrong, the representatives of the Central Board of Direct Taxes averred that he had acted to safeguard the interests of revenue. According to him it is one of the incentives to the assessees to come to a settlement by reducing the penalty or waiving it. He further pleaded that when an asessee disclosed his concealed assets the difference in valuation thereof did not reflect on the fulness of the disclosure. The Committee are unable to fully share this view especially as in these 177 cases the amount finally accepted assessed was Rs. 4.79 crores as against the disclosed income of Rs. 3.12 crores only. In any case concession shown in the matter of levy of penalty in such cases is not in conformity with the law as it stands now. Any review of the position in order to provide for concession where there could be honest difference of opinion regarding valuation should take into account the need to deter effectively deliberate under-estimation of assets disclosed.
89	2·371	Do.	Admittedly there is an apparent difference in the matter of treatment of tax deducted at source between the provisions of

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			Sections 214 and 215 governing payment to and charging interest from assessees for the excess or deficiency in the advance tax paid. While Section 215(5) clearly stipulated that tax determined on the basis of regular assessment should be reduced by the amount of tax deductible at source, for the purpose of charging interest from the assessee, there is no corresponding provision in Section 214. However, the Committee learn that the Ministry of law have opined that the expression "tax determined on regular assessment" used in Section 214 must necessarily be the tax after giving credit for the tax deducted at source. They further learn that advance tax is itself calculated after giving credit for the tax deducted at source. Government may consider the question of amending Section 214 suitably to place matters beyond doubt. In the meanwhile, suitable instructions should be issued to avoid any divergence in practice in regard to payment of interest under Section 214.
90.	2·383	Finance (Rev. & Ins.)	The Committee are distressed to note the non-deduction or short deduction of tax at source on interest payments and delayed remittance of tax deducted which also did not attract the penal provisions of the Act. It is strange that Income-tax Department itself is a defaulter in this regard. Such serious lapses noticed in test check of cases by Audit should have compelled the Department to undertake a review in all the charges to find out the extent of failure and to take appropriate action including rectification and recovery

			which, however, surprisingly enough were not done. The Committee expect that such review should be done without further delay and the results intimated to them.
91	2·384	Do.	Unless deterrent measures are taken to make such defaults unrewarding, the defaults are bound to recur. The Committee would therefore, like to know why penal provisions were not invoked in respect of cases pointed out by Audit and whether there were similar laxities in other cases.
92	2·385	Do.	The Committee note that the Central Board of Direct Taxes are reviewing the whole matter of tax deductions at source including those made under Section 194A with a view to making certain changes. The Committee hope that expeditious steps would be taken to ensure correct and timely deduction of tax at source as well as its prompt remittance. The Committee would await the outcome of the review of the position by the Board.
93	2·386	Do.	According to the Ministry, although technically the department is also liable to deduct tax at source on interest paid by it to the assessee, it would involve a lot of avoidable accounting and administrative work. The Committee understand that an amendment to the Act in this regard is under consideration. They wish to observe that any change that is made should provide adequate check to see that the assessees do not escape the tax liability on the interest paid to them by the Department.

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94.	3.21	Finance (Rev. & Ins.)	The Committee note that the number of cases of pending assessments come down from 23.30 lakhs as o 31-3-1968 to 15.85 lakhs as on 31-3-1969, 13.22 lakhs as on 31-3-1970 and 12.39 lakhs as on 31-3-1971. Although there is a progressive improvement in the position of pendency of assessment cases since 1968-69, the pendency in categories I and II (*i.e.* with income over 15,000 and above in each case) continues to be heavy. As on 31st March, 1970 out of the total pendency of 13.22 lakhs cases the number of categories I and II cases pending was 3.09 lakhs which worked out of 23 per cent. The percentage of such cases was 20 per cent as on 31st March, 1969. As against 23,310 company assessments pending as on 31st March, 1969, the number of assessments pending on 31st March, 1970 was 23,730. Another unsatisfactory feature is that there was rush of completion of assessments and raising of demands towards the end of the financial year. The number of assessments completed in March, 1970 was about 16 per cent of the total assessments but the demand raised however, was 35 per cent of the total demands for the year. The analysis of the demands showed that high income groups assessments were continued to be taken up for completion in the last three months of the financial year and especially in the month of March. In paragraphs 1.42 and 1.43 of their 117th Report (Fourth Lok Sabha), the Committee, while expressing their dissatisfaction over the increase in pending assessments of bigger cases, urged the Central Board of Direct Taxes to draw up

a suitable programme of priorities for disposal of assessments, so that those cases which had high revenue potentiality receive greater attention at the hands of the assessing officers. The Committee were informed that the Board have issued necessary instructions to the assessing officers that all big cases involving substantial revenue should be completed before 31st December and the smaller cases to be taken up in the last quarter of the financial year. The Committee have, however, been informed about the difficulties in finalisation of bigger cases before December. One of the difficulties as explained by the representative of the Ministry is that "usually big cases represented by eminent lawyer just drag on." Another difficulty is that the assessees seek extension of time on payment of interest. The Committee are concerned over the plea of helplessness of the department in completing the assessment cases of bigger assessees before December. They, however, find that the Working Group of the Administrative Reforms Commission have come to the conclusion on the basis of a case study that the total number of adjournments granted by the Income-tax Officer on his own is much higher than the number of adjournments asked for by the assessees. The Committee, therefore, desire that government should seriously consider this matter in all its aspects and take effective measures, to discourage dilatory tactics on both sides—assessees and the Assessing authorities—so that bigger assessments may be completed speedily.

55. 3·22 do. The Committee suggest that it should also be examined whether in cases which are sought to be reopened by the assessees un-

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			der Section 146 of the Income Tax Act or before an appeal is made, the assessee should be required to deposit a certain portion of the tax which should not be less than that pertaining to the undisputed income. The Committee would further stress that in all cases of assessment|reassessment it would be desirable if the payment of tax on undisputed portion of income is made a condition precedent to filing appeals.
96.	3·323	Finance (Rev. & Ins.)	The Committee find that the number of income tax officers attending to assessment duties has progressively increased from 1701 as on 1st April, 1968 to 1912 as on 1st April, 1969, 2056 as on Ist April, 1970 and 2234 as on 1st April, 1971. The effect of this appears to have been the reverse of what might have been expected. The average number of assessments disposed of per Income Tax Officer on assessment duty has decreased from 1855 in 1968-69 to 1842 in 1969-70 and 1669 in 1970-71. No satisfactory explanation for this phenomenon has been adduced by the Ministry. The Committee suggest that the reasons for decrease in the average number of assessments particularly during the year 1970-71 may be investigated by the department.
97.	3·24	do.	The Committee need hardly stress that the Department should also give adequate attention to the revenue collected and the accuracy displayed in assessment.

98.	3·28	Do	Now that the number of Chartered Accountants has increased considerably, the Committee would suggest that suitable method should be devised to have all returns of income involving more than Rs. 1 lakh certified by Chartered Accountants subject to appropriate conditions and terms so that the Income-tax Officers may concentrate attention on broader aspects of determining correctly the tax liability. The Committee would like this matter to be examined early by Government in consultation with all concerned.
99.	4·48	Do.	The Committee note with some satisfaction that the effective arrears of tax demand (excluding the demands not fallen due) came down to Rs. 609.55 crores as on 31st March, 1971 from Rs. 682.56 crores as on 31st March, 1970. The Committee were informed that for the first time in 1970-71 the growth of arrears has been arrested. During the last three years collections from arrears demand has risen from Rs. 101 crores to Rs. 129 crores and 159 crores, while the total collection (both arrears and current) increased from 678 crores to Rs. 801 crores and Rs. 830 crores. The Committee stress that no efforts should be spared to recover the arrears.
100.	4·49	Do.	It is significant that a sizable amount of arrears continued to be outstanding, in spite of introduction of systems of deduction at source, payment of advance tax and self assessment. The Finance Secretary agreed during evidence that these measures should have resulted in narrowing the difference between the demands and collection and he promised to investigate the matter. The Committee desire that this question should be thoroughly examined with a view to taking

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			effective measures without delay to obviate accumulation of current demands.
101.	4·50	Finance (Rev. & Ins.)	The effective arrears included irrecoverable dues amounting to Rs. 47.91 crores at the end of 1969-70 and Rs. 56.6 crores at the end of 1970-71. The Administrative Reforms Commission observed that "no useful purpose is secured by keeping these in the books as irrecoverable arrears" and that, "action should be taken for expediting writing off of outstanding demonds if they are found clearly to be irrecoverable". The Committee were informed that the Zonal Committees were constituted in 1968 to go through such cases and they were required to meet once in two months to accelerate the pace of writing off. The Committee were not furnished with the figures regarding number of cases reviewed by the Zonal Committees from 1968-69 onwards and recommended for write off. The Committee recommend that in order to watch the progress of work done by Zonal Committees, the Board should get necessary returns periodically which should be properly scrutinised in the interest of speeding up work.
102.	4·51	Do	The Committee wish to reiterate the observations of the Administrative Reforms Commission that outstanding demands should be written off only if they are found clearly to be irrecoverable after exhausting all avenues open to the Department.

103. 4.52	Do.	The Committee find that as on 31st March, 1970, tax amounting to Rs. 23.55 crores had been stayed by the Departmental officers pending disposal of appeals. The Committee were informed that under Section 220(3) of the Income-tax Act, the Income Tax Officer has discretion to extend the time for payment of tax or allow payment by instalment. During evidence, the Finance Secretary agreed that there should be a review by another officer to see whether the discretion has been properly exercised by the Income-tax Officer. The Committee were informed that a random check of cases in which the stay of demand had been permitted by the Income-tax Officers was proposed to be undertaken early in the current financial year. Considering that a sizable amount of tax has been stayed by the Income-tax Officers, the Committee desire that the review should be completed expeditiously, and the Committee informed of the result and the action taken in pursuance thereof, if any.
104. 4.53	Do.	The Committee find that the number of cases under appeal before the Appellate Assistant Commissioners in which tax was stayed increased from 6,667 (involving tax of Rs. 34.64 crores) to 7,130 cases as on 30th June, 1970 (involving tax of Rs. 53.86 crores). This is in spite of the fact that the Department has taken some steps for expediting the disposal of the appeals pending before the Appellate Assistant Commissioners such as increasing the number of Appellate Assistant Commissioners, requesting the Appellate Commissioners to take up large demands for out of turn disposal etc. The cases in which tax was stayed by the Income tax Tribunals increased from 908 (involving tax of Rs. 9.48 crores) as on 30th June, 1969 to 1,127

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			(involving tax of 16.35 crores) as on 30th June, 1970, inspite of certain measures taken by the Ministry of Law. The Committee desire that the number of pending appeals with the Appellate Assistant Commissioners and Tribunals should be kept under watch and further necessary steps taken to speed up disposal of the pending appeals.
105.	4.54	Finance (Rev. & Ins.)	The Committee note that in pursuance of their earlier recommendation, the Commissioners had informal discussions with the Chief Justices of many States regarding constitution of additional or special benches to dispose of income-tax cases pending before the courts. The Committee have been informed that the response from some of the Chief Justices was quite favourable. The Committee desire that efforts should continue to be made in this direction. The Committee appreciate the Ministry's point that there is accummulation of work before the High Courts and Supreme Court and the Law Commission have recommended that the strength of High Courts may be increased whrere necessary. The Committee trust that Government will take suitable action on the recommendation of the Law Commission in the interest of more expeditious disposal of pending income tax cases.
106.	4.55	Do.	The Committee find that an interest of Rs. 51.50 crores is included in the total gross arrears of Rs. 840.70 crores. The amount outstanding pertaining to the period 1959-60 and the earlier years as on

31st March, 1970 was Rs. 62.29 crores. Interest at 9 per cent under Section 220(3) on the outstanding of Rs. 62.29 crores for the period from 1959-60 to 1969-70 *i.e.*, for the period of 11 years worked out to Rs. 62 crores. Even without taking into account (i) the arrears of 1960-61 and for the subsequent years and (ii) interest leviable under various other Sections of the Act on arrears of Rs. 62.29 crores relating to 1959-60 and earlier years, interest of Rs. 62 crores was leviable. The Chairman, Central Board of Direct Taxes admitted that "Some Officers charge interest and some do not. They wait till the whole tax is recovered. The Board have given instructions but they do not seem to be complied with." The Finance Secretary agreed to the suggestion that the calculation of interest on arrears of tax demands of over Rs. 1 lakh each could be checked to see whether it had been correctly done. The Ministry have intimated subsequently that this check would be undertaken in the beginning of the current financial year. The Committee desire that the review of the calculations of the interest of tax demand of over Rs. 1 lakh should be completed expeditiously and the result intimated to them. The Committee also desire that the Board should ensure that the instruction issued by them from time to time regarding charging of interest are complied with by the Income-tax Officers and the Tax recovery officers.

107.	4·56	Do.

The Committee note that the work regarding taking over of tax recovery work from the State Governments has been completed in all the Commissioners' charges except West Bengal, Madhya Pradesh, Uttar Pradesh, Orissa and Bihar where it has been taken over partly.

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			The Committee trust that the work in the remaining charges would be taken over as early as possible. The Committee would like to know the progress made in this behalf. The Committee hope with the taking over of tax recovery work there would be proper coordination between the tax Recovery Officers and the Assessing Officers. The Board should closely watch the impact of taking over this work on the arrears of tax demand and take necessary measures to improve the system.
108.	4·57	Finance (Rev. & Ins.)	The Committee learnt from Audit that a system of reconciliation between the amount of tax deducted at source and the amount remitted to Government account was in vogue in Britain and that the same was brought to the notice of the Central Board of Direct Taxes by Audit in July, 1970. The Committee were informed that the Board had recently started the system of giving permanent account number to each assessee. The Committee desire that the system followed in Britain should be studied and a procedure devised to arrive at a satisfactory system of reconciliation.
109.	4·58	Do.	The Committee suggest that the Department should consider the feasibility of proposing amendments to the law on the lines prevalent in the United States by which tax due including interest, penalty etc. could be given a lien on the property of the assessee so that he could not escape tax by transfering the property.

0. 4.59	-Do-	During evidence the Finance Secretary agreed with the Committee that there was a need to increase the present rate of interest of 9 per cent payable to Government by the assessees for delay in payment or short payment of advance tax, delay in filing returns etc. so that it may act as a real deterrent to the assessees who fail to comply with the statutory provisions. The Committee are glad to note that in the Finance Act, 1972, passed subsequently, this suggestion of the Committee had been carried out and the rate of interest raised to 12 per cent in the Income-tax, Wealth-tax and Gift-tax Acts.
111. 5.10	-Do-	The Committee note that the number of cases in which prosecution for concealment of income was launched was 23 in 1968-69, 40 in 1969-70 and 24 in 1970-71. The Committee are of the view that these figures of prosecutions are unimpressive when compared with the number of cases in which penalties were imposed. The Direct Taxes Enquiry Committee have recommended that the Department should completely reorient itself to a more vigorous prosecution policy in order to instil wholesome respect for the tax laws in the minds of the tax payers. Where there is a reasonable chance of securing a conviction, the tax dodger should invariably be prosecuted. The Committee desire that effective measures should be taken by the Department to ensure that prosecutions are launched in all suitable cases so that this may act as deterrent to tax evasion.
112. 5.11	-Do-	The Committee find that convictions could be obtained only in 4 cases in 1968-69 and 3 cases in 1969-70. The punishments awarded in these cases were nominal, such as fines or imprisonment ranging from one day to six months. According to the Law amended from 1st

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			April, 1964 the minimum imprisonment was six months and maximum two years. The Committee were informed that unless the maximum imprisonment was fixed as three years or more the provisions of the First Offenders' Act can be invoked. The Committee desire that the question of enhancing the provision of imprisonment under the Income-tax Act may be carefully examined and necessary amendment to the Act made.
113.	5·12	Finance, (Rev. & Ins.)	The Committee find that during the year 1969-70, the penalty imposed amounted to Rs. 15.03 crores which was much less than the concealed income of Rs. 60.50 crores, although according to the Income-tax Act the minimum penalty should be equal to the concealed income. The Committee were informed that this difference may be due to some of the assessments being for the period prior to 1st April, 1968 when the minimum was 20 per cent of the tax. The Committee, however, find that according to the judgement in Jain Brothers case the crucial date for the purpose of penalty is the date of completion of the assessment and not the assessment year. The Ministry of Finance have stated that according to the Law Ministry the crucial date for determining the quantum of penalty is the date of filing of the return and not the date of passing the assessment order. The Committee suggest that in view of judgment in the Jain Brothers case the matter should be further examined in consultation with the Attorney General. The Committee would like to know the outcome of the examination.

114.	6·10	-Do-

The Committee find that the voluntary disclosures of undisclosed income under Section 271(4A) of the Income Tax Act made during the years 1968-69 and 1969-70 were rather disappointing. During 1968-69 the number of declarants was 1348. Declaring an income of Rs. 12.95 crores and during 1969-70 the number of cases was 908 declaring an income of Rs. 6.30 crores. These cases included 127 cases in the year 1968-69 in which the disclosed income had already been detected, while there were 442 such cases in 1969-70. The Committee are not satisfied with the progress of completion of assessment cases of voluntary disclosures. The number of assessments completed in 1968-69 was 783 and those completed during 1969-70 was 442. As on 31st March, 1970, there were 1,555 outstanding cases without finalisation. This figure includes cases which relate to earlier years including 1965-66. The recovery of tax made in cases of completed assessments was also not satisfactory. During the year 1968-69 only an amount of Rs. 95 lakhs out of tax of Rs. 260 lakhs was recovered out of tax of Rs. 155 lakhs. The Committee were informed during evidence that in order to expedite the assessment and collection of taxes under the Voluntary Disclosure Provisions, a lot of flexibility should be left to the Department. Further there should be a vigorous enforcement machinery. The Committee find that the Direct Taxes Enquiry Committee (1971) have in their final report suggested that to ensure that the settlement is fair, prompt and independent, there should be a high-level machinery for administering the provisions, which would also incidentally relieve the field officer of onerous responsibility and the risk of having to face adverse criticism which has been responsible for the

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			slow rate of disposal of disclosure petitions. The Direct Taxes Enquiry Committee have recommended that the settlement may be entrusted to a separate body within the Department, to be called the Direct Taxes Settlement Tribunal. The Committee desire that effective steps should be taken to finalise the cases pending under the Voluntary Disclosures Scheme. For this purpose, the Department should seriously consider to what extent flexibility is needed to expedite settlement of the cases and also whether it is necessary to create another body to be entrusted with this work as recommended by the Direct Taxes Enquiry Committee. The Committee desire that the matter should be examined expeditiously. The Committee expect the Department to ensure that full recovery is effected without delay in cases which have already been finalised. The Committee would like to be informed of concrete steps taken to achieve this objective.
115	7·12	Finance (Rev. & Ins.)	The Committee note that for non-deduction or part-deduction of tax from dividends at source by companies, there were convictions in 237 cases in 1968-69, 135 cases in 1969-70 and 181 cases in 1970-71. The Committee learnt with satisfaction that as a result of prosecutions launched against defaulting companies, cases of defaults have declined. The Committee desire that the Department should devise a system whereby tax deducted by companies

			is remitted to Government within the prescribed period of one week. In 1969-70, there were 90 cases in which tax was remitted after one week of deduction or receipt of challan. The Committee suggest that the Department should take stringent action against the parties who failed to remit tax deducted within the prescribed time.
116	7·13	Do.	The Committee also desire that the Department should enforce strictly the provisions in the existing law that the companies should submit statement of the tax deducted and tax remitted in time so that necessary check can be exercised. The Committee stress that no laxity should be shown in enforcing these provisions.
117	8.10	Do.	The Committee are concerned to note the delay of several years in disposal of re-opened and set-aside cases. As on 31st March, 1971, there were 3,959 cases pending under Section 146; 8,984 cases under Section 251; 503 cases under Section 254 and 439 cases under Section 263 of the Income-tax Act, 1962. Some of the cases pertain to the period 1964-65 and earlier years.
118	8·11	Do.	The Committee note that with effect from 1st April, 1971, a time-limit of two years has been fixed for finalisation of re-opened assessments to be counted from the end of the financial year in which the order has been passed under Section 146, 255(1), 254(1), 263(1) or 264(1) as the case may be. The Committee suggest that some time-limit should also be fixed for disposal of old cases which pertain to the period prior to 1st April, 1971. The Board should pay special attention to the disposal of the old cases. The Committee would like to be informed about the progress made in the finalisation of the old cases (year-wise).

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