P. A. C. No. 543

PUBLIC ACCOUNTS COMMITTEE (1977-78)

(SIXTH LOK SABHA)

FOURTH REPORT

INCOME TAX

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Paragraphs relating to Income Tax included in Chapter III of the Reports of the Comptroller and Auditor General of India for the years 1973-74 and 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.]

Presented in Lok Sabha on

Laid in Rajya Sabha on

LOK SABHA SECRETARIAT
NEW DELHI

September, 1977/ Asvina, 1899 (S)

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CORRIGENDA

CORRIGENDA TO FOURTH REPORT OF PAC (1977-78) (SIXTH LOK SABHA) ON INCOME TAX, PRESENTED ON 21 NOVEMBER 1977.

Page	Para	Line	For	Read
(i)	-	17	Importations	Imputations
(i)	-	27	Karuvilla	Kuruvilla
3	1.8	11-12	Delete "had issued notices only on under section 274(2)"	
10	1.20	6	Cneck	Check
15	1.26	18	Mallikarjune	Mallikarjuna
17	1.30	4	recevied	received
17	1.31	6	Insert "during 1974-75" after the word 'whether'	
24	2.12	12	Insert 'was' after the word 'order'	
24	2.12	13	Delete "is reproduced in Appendix IV"	
27	2.16	5	Inudian	Indian
31	2.22	18	acturity	activity
32	2.24	17	ICMR	ICMF
33	2.26	25	af	of
34	2.27	6	Appendix V	Appendix IV
34	2.28	4	not	Note
35	2.30	15	Delete "qua Government"	
36	2.30	7	in	is
36	2.30	10	tha	that
36	2.30	12	wil	will
36	2.30	12	withdraw	withdrawn
40	2.40	10	Delete "for to"	
46	3.12	4	After the word 'on', insert 'that date'	
46	3.12	19	made	make
50	2.23	13	throught	Throughout
50	2.23	13	Delete 'percentage of recovery'	
56	3.34	9	out	at
58	3.41	4	Delete 'is'	
60	3.45	10	After the word 'delivered', insert '23,875 tons as against 28,172.6 tons and'	
60	3.45	10	23,834.6	23,874.6
69	3.63	9	conduct	conducted
75	4.13	4	After 'by', insert "Internal Audit Parties during"	
86	6.13	10	tow	two
86	6.13	10	Committee view this case of inordinate	Central Board of Direct Taxes
119	-	15	After the word 'whether', insert 'during 1974-75'.	

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PART II*

Minutes of the sitting of the Public Accounts Committee held on:—

16-11-1976 (FN)

16-11-1976 (AN)

17-11-1976 (FN)

13-9-1977 (FN)

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PUBLIC ACCOUNTS COMMITTEE
(1977-78)

Shri C. M. Stephen—*Chairman*

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SECRETARIAT

Shri B. K. Mukherjee—*Joint Secretary.*

Shri Bipin Behari—*Senior Financial Committee Officer.*

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*Ceased to be a member of the commiittee on his appointment as Minister of state w.e.f. 14-8-77.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Fourth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraphs relating to Income Tax included in Chapter II of the Reports of the Comptroller & Audit General of India for the years 1973-74 and 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.

2. The Reports of the Comptroller & Auditor General of India for the years 1973-74 and 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes were laid on the Table of the House on 9 May 1975 and 14 May 1976 respectively. The Public Accounts Committee (1976-77) examined the paragraphs relating to Income Tax at their sittings held on 16 and 17 November, 1976, but could not finalise the Report on account of dissolution of the Lok Sabha on 18 January, 1977. The Public Accounts Committee (1977-78) considered and finalised this Report at their sitting held on the 13 September, 1977 based on the evidence taken and the further written information furnished by the Department of Revenue and Banking. The Minutes of the sittings form Part II* of the Report.

3. A statement containing conclusions|recommendation of the Committee is appended to this Report (Appendix V). 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 Commendable work done by the Chairman and Members of the Public Accounts Committee (1976-77) in taking evidence and obtaining information on this Report.

5. The Committee also 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.

6. The Committee would also like to express their thanks to the Department of Revenue & Banking (now Department of Revenue), Ministry of Finance for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
September 30, 1977.
Asvina 8, 1899 (S).

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

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CHAPTER I

LOSS OF REVENUE DUE TO ADOPTION OF INCORRECT PROCEDURE

Audit paragraph

1.1. No penalty under the Income-tax Act can be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard.

1.2. In two cases, an Inspecting Assistant Commissioner of Income-tax passed penalty orders without giving a reasonable opportunity of being heard to the assessees, with the result that the orders passed by him were challenged by the assessees before the Tribunal, and the Tribunal struck down the orders holding them as bad in law. Failure to comply with the mandatory requirements of law on the part of the departmental authorities thus resulted in loss of revenue of Rs. 63,796.

1.3. In one of these cases the procedure adopted by the Inspecting Assistant Commissioner was peculiar. He fixed the date of hearing at such a short notice that the assessee was enabled to get away on a plea of technicality. Even the Appellate Tribunal was constrained to remark thus:

> "It is indeed unfortunate that a senior officer like the Inspecting Assistant Commissioner who levied the penalties failed to comply with the express requirement of law. It is unfortunate for two reasons. First, when the assessee informed him that the notice fixing the hearing on 9 March, 1972 was received after the expiry of the time fixed for hearing, he had sufficient time to give another hearing to the assessee. It is true that the penalty proceedings were getting time-barred by 31 March, 1972, but he had three weeks before him by that time and in fact he waited till 27 March, 1972 to finalise the penalty proceedings. Within that time he could have easily given a notice of another hearing to the assessee. Second, from the material on record and the admission of the assessee before the Income-tax Officer and the Appellate Assistant Commissioner, there appears to be a clear case for levying penalty under Section 271(1)(c) of

the Act and the Inspecting Assistant Commissioner has thrown away the case by what we may describe as his negligence to comply with an express requirement of law."

1.4. While accepting the objection in principal, the Ministry in their reply (February 1975) have stated that the Additional Commissioner of Income-tax had taken note of the lapse of the Inspecting Assistant Commissioner concerned and the explanation of the Officer is under consideration. No remedial action is stated to be possible at this stage.

[Paragraph 42(iii) of the Report of the Comptroller and Auditor General of India for the year 1973-74, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.].

1.5. The Committee learnt from Audit that the two cases cited in the Audit paragraph related to penalty proceedings under Section 271 of the Income-tax Act, 1961, for concealment of income. Under Section 271 of the Act, any person who has concealed particulars of his income or furnished inaccurate particulars thereof is liable to a penalty. Till the assessment year 1967-68, the minimum penalty leviable under this Section was 20 per cent of the amount of tax which would have been avoided on the concealed income. From 1 April, 1968, the Act was amended to enhance the minimum penalty to an amount equivalent to the income concealed. [The Taxation Laws (Amendment) Act, 1975, has once again brought down the minimum penalty to the tax avoided].

1.6. Section 274(1) of the Act provides that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. It is a well settled principle of law that if such opportunity to show cause is not given to the assessee, the imposition of the penalty would be invalid.

1.7. In cases where the minimum penalty imposable exceeds Rs. 1,000 (from 1 April, 1971, where the amount of concealed income exceeds Rs. 25,000), the Income-tax Officer concerned shall refer the case to the Inspecting Assistant Commissioner, who is competent to impose the necessary penalties in such cases.

1.8. The Committee were given to understand by Audit that a limitation period of two years is available for completing these penalty proceedings and that in these two cases the Inspecting Assistant Commissioner concerned had fixed the first hearing of the proceedings only in the last month of the limitation period and

then rushed through the proceedings disregarding the assessees' requests for adjournment even though the notices were actually served on the assessees after the date and time fixed for the hearing. The Committee, therefore, desired to know whether there could be any justification whatsoever in disregarding the assessees' requests for adjournment and completing the penalty proceedings. In a note furnished in this regard, the Department of Revenue & Banking informed the Committee that in the first case relating to M/s. Mallikarjuna Cloth Stores, Rajam, though penalty proceedings under Section 271(1)(c) of the Income-tax Act were referred to the Inspecting Assistant Commissioner had issued notices only on under Section 274(2) for the assessment years 1965-66 to 1968-69, the Inspecting Assistant Commission had issued notices only on 3rd March, 1972 fixing the hearing in respect of penalty proceedings for all the years on 9th March, 1972. The Department further stated that the notice was served on 9 March, 1972 (according to the assessee at 2.00 P.M.) while the assessee had been asked to appear at 11.00 A.M. on that day and that the assessee had on the same day sent a telegram to the Inspecting Assistant Commissioner requesting for an adjournment of hearing, followed by a letter dated 10th March, 1972 requesting for an opportunity of being heard. The Inspecting Assistant Commissioner had, however, without giving any further notice of hearing, finalised the proceedings on 27th March, 1972 and imposed penalty under Section 271(1)(c) for different years amounting to Rs. 94,500, which was later on cancelled by the Income-tax Appellate Tribunal by their order dated 31 May, 1973 as being vitiated in law and, therefore, illegal and invalid. The Department added:

> "In the Mallikarjuna case, on receipt on 10th March, 1972 of the assessee's telegram asking an adjournment, the IAC would have been well advised to formally intimate the fresh date of hearing."

1.9. As regards the second case referred to in the Audit paragraph, the Department of Revenue & Banking informed the Committee, in a note, that in this case, relating to Shri K. Ramachandra Rao, Narasimapatnam, the Inspecting Assistant Commissioner (the same officer who had handled the earlier case) had fixed hearings for penalty proceedings under Section 271 of the Act read with Section 274 on 18th January, 1972 for the assessment year 1967-68 and that this notice was, however, served on the assessee only on 19 January, 1972, whereupon the assessee, by his letter dated 19 January, 1972, had requested for an adjournment on the ground that the notice was served on him after the date of hearing and

that his Auditor had gone to Nagpur and was expected back only on 25 January, 1972. The Department further stated that the assessee's letter was received by the Inspecting Assistant Commissioner on 21 January, 1972, who, however, without passing any order on this letter and without giving any further opportunity to the assessee, passed the penalty order imposing a penalty of Rs. 4,100 under Section 271(1)(c) of the Act. The Department added:

> "In the second case, the IAC waited for three days before passing the order on 21 January, 1972. The assessee's request for adjournment was received on that date after finalisation of the proceedings. The IAC should have checked up before finalisation of the proceedings whether notice had been served before the date of hearing."

1.10. Asked whether time was still available in these cases for giving a second hearing and, if so, why the Inspecting Assistant Commissioner had rushed through the proceedings, the Department of Revenue & Banking replied, in a note, as follows:

> "Time was available for giving second hearing.
>
> In the Mallikarjuna case, the IAC did wait for more than two weeks before passing the penalty order but failed to intimate a fresh date of hearing to the assessee.
>
> In the second case, *viz.* K. Ramachandra Rao, the IAC waited for three days beyond the date fixed for hearing before passing the order. The IAC did not, however, check up before finalisation of proceedings whether the notice had been served before the date of hearing.

1.11. The Committee learnt from Audit that the Income-tax Appellate Tribunal, Hyderabad Bench 'B', while cancelling the order of penalty in the case by their order dated 29 January, 1974, had observed as follows:

> "Under Section 274(1), the Inspecting Assistant Commissioner is bound to provide the assessee with a reasonable opportunity of being heard. In this case, it is not disputed by the Revenue that the notice issued by the Inspecting Assistant Commissioner fixing the case for hearing on 18 January, 1972 was actually served on the assessee only on 19 January, 1972. The said notice is, therefore, clearly invalid. The assessee has requested the Inspect-

ing Assistant Commissioner on the very next day, that is, 20 January, 1972, to provide him with an opportunity of being heard. The Inspecting Assistant Commissioner does not even make a reference to this request in his order of penalty. On the other hand, in paragraph 2 of his order, he has discussed the explanation said to have been filed by the assessee before the Income-tax Officer and has sought to reject it. This is not a case where the proceedings were getting time-barred by 21 January, 1972. The assessment order in this case was passed on 20 March, 1970. The Inspecting Assistant Commissioner had ample time before him to comply with the requirement of law in this respect. The requirement under Section 274(1) is mandatory. Non-compliance thereof is fatal to the validity of the order of penalty. We are, therefore, clearly of the view that the order of penalty deserves to be cancelled and we hereby cancel it."

1.12. With reference to the failure of the Inspecting Assistant Commissioner to observe the provisions of the law in regard to levy of penalty in these two cases, the Chairman, Central Board of Direct Taxes stated during evidence:

"*Prima facie*, in this case, since a high powered tribunal had commented so severely and adversely against this person, I personally think that there is no room for taking any view other than the one that he was guilty of gross negligence."

1.13. The Committee desired to know whether the Department/ Central Board of Direct Taxes had reviewed the other proceedings completed by this particular officer and, if so, what the findings of the review were. A representative of the Central Board of Direct Taxes stated in evidence:

"In this case, we asked Commissioner, Andhra Pradesh to make a review of the penalty cases. In seven cases including these two, he made similar mistakes. Charge-sheet is issued to him and show cause notice, why disciplinary action and adequate punishment should not be awarded. The total number of cases was 239. This officer's name is Mr....."

Asked when the Commissioner had completed the enquiry in this case, the witness replied that the enquiry report from the Commis-

sioner of Income-tax, Andhra Pradesh was dated 6 February, 1976. In a note furnished subsequently, the Department of Revenue & Banking informed the Committee that "necessary memorandum alongwith the Statement of Imputations" was despatched on 3 May, 1976, that in his representation received on 3 December, 1976 the officer had denied the imputations and that his representation "was under examination."

1.14. The Department of Revenue & Banking also furnished, at the Committee's instance, details of the other five similar cases handled by the officer which had been included, alongwith the two cases commented upon by Audit, in the Statement of Imputations of misconduct on which action was proposed to be taken against the officer, which are reproduced in Appendix I. The Committee found that in one of those five cases (Shri V. V. Ramanaji, Anakapalli) also, the penalty proceedings had been quashed by the Appellate Tribunal who in their Appellate Orders dated 28 September 1973, had observed as follows:

> "There is no doubt that the authority imposing the penalty should hear the party who is to be penalised or to give that party reasonable opportunity of being heard. When this elementary principle of natural justice is violated by the IAC by giving notice as he did in this case the order of penalty is clearly vitiated."

1.15. According to the Audit paragraph, while accepting the objection in principle, the Ministry in their reply (February 1975) had stated that "the Additional Commissioner of Income-tax had taken note of the lapse of the Inspecting Assistant Commissioner concerned and the explanation of the officer is under consideration." Since it, however, appeared that action against the officer was yet to be taken in a conclusive manner even after the lapse of nearly two years, the Committee desired to know the purpose sought to be achieved by the Department's reply to Audit. The Chairman of the Central Board of Direct Taxes stated in evidence:

> "This observation that this lapse had already come to our notice was made only with a view to say that audit did not find out this mistake, we had ourselves found it out."

1.16. The Committee, however, understood that in spite of the fact that severe strictures had been passed by the Appellate Tribunal on the performance of this particular officer, he had been promoted as a Commissioner of Income-tax while the investigations were in progress. The Committee, therefore, desired to know why the

officer had been promoted if according to the Department they themselves had found lapses in his performance even earlier than in February 1975. A representative of the Central Board of Direct Taxes stated in evidence:

> "Promotion is made by Departmental Promotion Committee. This was done before the issue of the charge-sheet."

Asked when the Departmental Promotion Committee had met, the witness replied:

> "If I remember right, it met in December 1975."

In a note furnished subsequently in this regard, the Department of Revenue & Banking informed the Committee that while the concerned Departmental Promotion Committee had met on 8 October 1975, the report of the Commissioner of Income-tax mentioning the name of Shri....as the concerned officer responsible for the alleged lapses was received in the Board's office on 23 December 1974.

In view of the fact that the lapses committed by this particular officer and the strictures passed by the Tribunal had apparently been in the Department's knowledge even prior to February 1975, the Committee desired to know why these facts had not been brought to the notice of the Departmental Promotion Committee. The witness statetd in evidence:

> "Departmental Promotion Committee takes into account the confidential rolls. In this case there was no charge-sheet at that time."

The Chairman of the Central Board of Direct Taxes added in this context:

> "I shall explain the position regarding the selection of an individual. When the DPC meets, it has before it the confidential reports of the concerned officers and the integrity certificate. Now, if the confidential reports till the latest year indicate that his work has been outstanding, very good or good or whatever it is, that man with outstanding and very good reports is selected by the DPC. If his reports have been found to be very good and, if he has got an integrity certificate, then the DPC selects him. Therefore if he had committed some default, maybe, four or five years thereafter, if it has come to the surface, then action would be taken against him if it is found that he has

committed that lapse. But, the DPC has to be guided by the confidential reports which it has before it."

To another question whether the lapses committed by the officer in these seven cases had not been adversely commented upon in the confidential report, the Chairman of the Central Board of Direct Taxes replied:

"Entry is made after a person is convicted or found guilty or to have committed default. Those character rolls would not show any lapse on his part. Those rolls were very good. We had the Vigilance clearance also. It is because of those factors that he was considered fit for promotion by the DPC. Now, the developments which are before this hon. Committee came to the notice. Of course, they have not come to the notice of the DPC when the DPC selections took place."

Asked in this context whether the Departmental Promotion Committee was not aware when it met that strictures in a number of cases had been passed by the Tribunal against this officer, the witness replied:

"Unfortunately, the DPC did not know that."

He added:

"This matter was being handled in another section. Unfortunately they did not communicate it to the DPC."

Clarifying the position further, the witness stated:

"Of course, you might say that there was no coordination between various sections under the Board. But, as it is, this matter is being dealt with in one section while the character rolls are being maintained in another section. That section was not aware of this fact that these were the lapses reported against this gentleman. Even otherwise, I personally feel that unless the person is given an opportunity to explain his points of view, and, thereafter, some decision is taken. we should not consider that person to be guilty."

1.17. Asked whether this did not imply that the agency responsible for supplying the Departmental Promotion Committee with all relevant material in regard to the performance of the officials being considered for promotion, had defaulted seriously, the Chairman of the Central Board of Direct Taxes replied:

"While it appeared so, the Section concerned did not inform the Establishment Section, I mean—that such strictures

had been passed. Probably they did not do so because they might have felt that unless an opportunity was given to him to explain his conduct and thereafter some view is taken, a person should not be adjudged guilty at that stage."

To another question in this context whether the witness would not concede that the Departmental Promotion Committee should also take into account, while considering the suitability of officials for responsible posts, not only proven misconduct but also investigations in progress or reports in regard to lapses or failures of different types which reflect on the efficiency of the officials, he replied:

"If there is a general suspicion as such, the DPC cannot take notice of it."

he added:

"There is a column in the character roll regarding integrity and if there is an adverse observation in regard to that person, he will certainly not be selected."

The witness informed the Committee further that in this case "there has been no entry in the character roll."

1.18. Asked to indicate the latest position of the disciplinary proceedings stated to have been launched against this particular officer, the Department of Revenue & Banking, in a note dated 15 March 1977 informed the Committee as follows:

"The case was referred to the Union Public Service Commission for advice in accordance with the rules, on 14 January 1977. The Commission's advice is awaited."

1.19. In this context, the Committee desired to know whether officers, particularly at the senior level in the Central Board of Direct Taxes and the Central Board of Excise and Customs, who were under a cloud or suspicion or about whose bonafides rumours were afloat, had been promoted to more responsible positions. The Finance Secretary stated in evidence:

"I am not aware of any case where a person who has been found guilty, or suspected of any corrupt practice or otherwise, has been given promotion. Because, I happen to be on each one of the departmental promotion committees dealing with senior posts. There have been a number of cases where the CBI enquiries have been going

on and there the practice has been to put the recommendations of the Committee in a sealed cover, untill the CBI enquiry is over and the man is either removed from the cloud of suspicion, or certain action is being taken against him. In fact, I would make bold to mention, in continuation of our earlier discussions, that we have found a distinct bias in Government at the highest level to ensure that promotion takes place on the basis of merit, rather than on the basis of seniority. In fact, when one or two cases went up to the Appointments Committee of the Cabinet, they remarked: since this has been approved by the DPC, we agree to it but on the other hand we would have wanted much greater weight to be put on merit ratner than on seniority. If a man is under a cloud, almost certainly this would immediately have attracted the attention of both the DPC and also the highest levels of Government."

The Committee were, however, informed during evidence by a representative of the Central Board of Direct Taxes that while an officer whose integrity was suspect could be considered for promotion provisionally pending completion of the investigations into the conduct of the officer, in regard to other cases of enquiry which did not involve a charge of lack of integrity, this procedure was not in vogue.

1.20. Asked whether any CBI enquiry was pending against this particular officer, the Chairman, Central Board of Direct Taxes replied:

"Not to my knowledge."

He added:

"I will check up. If it were there, I would have known it."

The witness subsequently informed the Committee as follows:

"....the Deputy Secretary in charge of Administration has been contacted and he says he is also not aware of any CBI enquiry being conducted."

The Committee thereupon asked whether any CBI enquiry was ever conducted against this officer. The witness replied:

"That will have to be checked up if something had happened 20 or 25 years ago."

He, however, added:

> "Suppose the CBI enquiry had been conducted and if he had been convicted, then it would have found place in his records. If CBI had conducted an enquiry and later on, it was dropped, it makes no difference....I was saying that if it was within our knowledge that there was a CBI enquiry against him, we would have taken due notice of that. If there is a person against whom CBI enquiry was held and he had come for adverse notice, I shall be the last person to consider his case for Commissioner of Income-tax."

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

> "According to the records maintained in this Department, the CBI has not registered any case for enquiry against Shri.."

1.21. On the Committee pointing out that while this was a case where an official had apparently not been punished for his inefficiency but had on the contrary been rewarded by a promotion there also appeared to be instances where honest officials in the Income-tax Department, particularly those handling assessments of the monopoly houses, had been transferred or had been wrongly victimised for their honesty and hard work, the Chairman of the Central Board of Direct Taxes replied:

> "I am not aware of even one case of this type. If a case is brought to my notice, I will certainly look into it and intimate the result of my enquiry to the Committee."

He added:

> "I can say with all the humility I possess that I am not aware of a single case where good work has been punished."

Asked whether the witness could assure the Committee that as far as he was aware that good, honest and conscientious work when it affected the interests of those who were at the top of our economy and command influence in political life would not be punished but would be rewarded, he replied:

> "I give you this assurance that such officers will not only not be punished but they will be duly recognised."

1.22. The Committee desired to know in how many other cases, Tribunals or Courts had passed strictures against the department's

officers for similar lapses. In a note, the Department of Revenue & Banking stated:

> "No separate record of such cases has been maintained. Whenever a case involving a serious lapse on the part of a departmental officer comes to notice, appropriate action is taken.
>
> The two cases referred to in para 42(iii) of the C&AG's Report along with another case of penalty for concealment of income in which the Tribunal had passed strictures are amongst the cases included in the charge-sheet issued to the officer concerned.
>
> Recently, in another case, the Income Tax Appellate Tribunal have adversely commented regarding the manner in which a penalty order was passed by the Income Tax Officer. The Officer's explanation has been called for."

1.23. The Public Accounts Committee have been repeatedly expressing concern over the rush of proceedings towards the end of the limitation period which inevitably resulted in the completion of the cases in haste and without adequate scrutiny. As early as in 1964, the Public Accounts Committee (1964-65), in paragraph 7 of their 28th Report (Third Lok Sabha) had pointed out that the rush of assessments in the month of March was a contributory factor or was being cited as such for mistakes arising out of carelessness or negligence. Again, the Public Accounts Committee (1972-73), in paragraphs 2.50 and 2.95 of their 51st Report (Fifth Lok Sabha) had reiterated their oft-repeated suggestion that assessments, particularly those in high income brackets should, as far as possible, be completed earlier in the year. The Department had then informed the Committee in March 1973 [Vide page 47 of the 150th Report (Fifth Lok Sabha)] that instructions had been issued in this behalf in November 1970 requesting the Commissioners of Income-tax to ensure that the Income-tax Officers planned their work in such a way that assessments of cases involving large incomes were not crowded into the last month and the last week of the financial year. Reverting to this subject in paragraph 1.72 of their 119th Report (Fifth Lok Sabha), the Public Accounts Committee (1973-74) had observed, *inter alia*, that they had received an impression that "the Income-tax Officers act with alacrity when they want to and other cases are put off till these are about to become time-barred" and had recommended that the Department should give serious thought to this problem and take steps to normalise the position soon. Reviewing the position once again in paragraph 5.21 of their 186th Report (Fifth Lok Sabha), the Public Accounts Committee (1975-76) had

pointed out, *inter alia,* that the Department was "yet to take firm and effective steps to ensure proper planning of the work of the Income Tax Officers so as to avoid the assessments, at least in big income cases, being rushed through towards the end of the year or the end of the limitation period."

1.24. Since the cases commented upon in the present Audit paragraph also appeared to suggest that there was no perceptible improvement in the situation, the Committee desired to know what concrete steps had been taken in this regard. The Chairman of the Central Board of Direct Taxes stated in evidence:

> "It is a fact that in the past, this practice was being followed that time-barring cases were being taken up at the fag end of the year. But in May 1974, we drew up an action plan which prescribes quotas for various types of assessments to be completed according to a time-bound programme."

Another representative of the Board added in this context:

> "The action plan has laid down certain targets. These are split into quarterly targets and are reviewed. In 1972-73 and 1973-74 upto December of the financial year, 52 to 54 per cent of the time barring assessments were completed. In 1974-75, the percentage shot up to 73.2. In 1975-76, it was about the same. In the current year there has been further improvement. Last year upto September 1975, 44.9 per cent of the time barring assessments were completed. This year upto September 55.8 per cent of the time barring assessments have been completed. The target laid down is that all time barring assessments should be completed by December 1976."

Asked if it had been examined whether the officers had been deliberately delaying the completion of the proceedings within the time limit so that after the expiry of the limitation period, the assessees may have an opportunity to get such hastily-completed proceedings quashed by Tribunals or courts and thus avoid taxes, the Chairman of the Central Board of Direct Taxes replied:

> "Whatever be the motive—*mala fide* or *bona fide*—for making assessments at the fag end of the year, we are now trying to ensure that time barring assessments are completed well before the end of the year."

In a note subsequently furnished in this regard, the Department of Revenue & Banking have stated:

> "Since the beginning of financial year 1974-75, the Department has started the practice of formulating an Action Plan which contains a time bound programme of work required to be done in specified areas during each financial year. The progress made by each Commissioner in different areas of work is reviewed by the Chairman at the end of each quarter.
>
> While formulating the Action Plan and laying down the targets in various areas of work, a high priority is given to the early disposal of time-barring assessments. The following table would indicate the progress in this regard:

	1972-73	1973-74	1974-75	1975-76
(i) Total No. of time barring assessments completed .	5,13,935	5,41,388	5,73,138	5,78,974
(ii) No. of time barring assessments completed upto 31 December . . .	2,60,753	2,94,664	4,19,511	4,20,390
(iii) Percentage of the time barring assessments completed upto December . . .	52·4%	54·4%	73·2%	72·6%

> The above figures show that with the introduction of 'Action Plans' the disposal of time-barring assessments by the end of December has increased by more than 20 per cent. The disposal of time-barring assessments upto 30 September in the current year has risen to 55.8 per cent from 44.9 per cent in the last year."

The Department of Revenue & Banking also furnished at the Committee's instance, statements indicating, year-wise, the targets envisaged under the Action Plan and the actual achievements since the introduction of the Plan, which are reproduced in Appendix II.

1.25. In another note, the Department also informed the Committee that apart from the quarterly review by the Board of the implementation of the Action Plan, a system of frequent surprise visits of Income-tax Offices by Inspecting Assistant Commissioners/Commissioners had also been introduced and that "action against the

erring officers coupled with better planning and supervision" should contribute in preventing such lapses.

Asked why instances of the types commented upon in the Audit paragraph should continue to recur in spite of all the remedial measures stated to have been taken, the Department of Revenue & Banking, in a note replied:

> "The cases of the type commented upon in the Audit paragraph reflect an individual's failure to observe the provisions of law and the prescribed procedure. Every effort is being made to eliminate the occurrence of such lapses."

1.26. Section 274(1) of the Income-tax Act, 1961, provides that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard and it is a well settled principle of law that if such opportunity to show cause is not given to the assessee, the imposition of the penalty would be invalid. The Committee are concerned to note that in these two cases commented upon by Audit as well as in five other cases, a senior officer of the status of Inspecting Assistant Commissioner of Income-tax had, in utter disregard of the mandatory provisions of the law, rushed through the penalty proceedings ignoring the assessees' requests for adjournments with the result that the orders in three of the cases were quashed on appeal as being bad in law by the Income-tax Appellate Tribunal who had also passed strictures against the officer. The failure to observe the prescribed procedure resulted in loss of revenue of Rs. 65,896 in these three cases. Admittedly, adequate time was available for giving second hearings in these cases. Thus, in the first case referred to by Audit (M/s. Mallikarjune Cloth Stores), the Inspecting Asssistant Commissioner had waited for more than two weeks before passing the impugned order but had failed to intimate a fresh date of hearing to the assessee. Similarly, in the second case (Shri K. Ramachandra Rao), though the officer had waited for three days beyond the date fixed for hearing before passing the penalty order, he did not, however, verify before finalising the proceedings whether the notice had been served before the date of hearing. The Committee take serious view of these entirely unwarranted and costly lapses.

1.27. Though the Chairman of the Central Board of Direct Taxes conceded that since the Appellate Tribunal had commented severely and adversely against the officer, there was no room for taking any view other than the one that "he was guilty of gross negli-

gence", the Committee are distressed to find that principled and conclusive action is yet to be taken against the officer for these lapses even after the passage of more than two years since they were highlighted by Audit. On the other hand, the Committee learnt with concern that instead of penalising the officer for his negligence which besides costing the exchequer dearly must have also caused considerable hardship to the assessees, the Department have promoted him as Commissioner of Income-tax. This, in the Committee's view, is not in keeping with canons of propriety. It has, however, been contended by the Department that the officer had been promoted by the Departmental Promotion Committee before a formal charge-sheet was issued to him and that these developments had not been brought to their notice when the selections took place by the section handling the case. It has also been stated that there was no entry in regard to these lapses in the Officer's character rolls which were 'very good' and that he was considered fit for promotion by the Departmental Promotion Committee on the basis of these facts and in the absence of any adverse observations about his integrity after obtaining vigilance clearance.

1.28. The Committee have carefully considered the explanation offered in this regard and find that while the Departmental Promotion Committee met only on 8th October, 1975, the report of the Commissioner of Income-tax holding the officer responsible for the lapses had been received in the Board's office as early as 23 December 1974 itself. In fact, the Department have admitted that they themselves had found lapses in the officer's performance even before Audit pointed them out, and had also stated (February 1975) in reply to the Audit paragraph that the Additional Commissioner of Income-tax had "taken note" of the officer's lapse and that his explanation was "under consideration". It is also significant in this context that the Income-tax Appellate Tribunal had passed strictures against the officer as early as on 31 May 1973, 28 September 1973 and 29 January 1974. These must have come to the notice of the Central Board of Direct Taxes, particularly since a senior officer of the Department was involved. Besides, the draft Audit paragraph and replies thereto would have presumably been processed at the level of the Chairman and Members of the Board. The Committee are, therefore, not very impressed with the arguments advanced before them by the Department and would like a thorough probe to be conducted into the circumstances in which the officer had been promoted as a Commissioner even while investigations into the lapses committed by him were still in progress and all

relevant material in regard to the performance of the officer were not made available to the Departmental Promotion Committee to enable them to arrive at a proper conclusion about his suitability. They would await a further detailed report in this regard.

1.29. The Committee desire that there should be better coordination between the various sections within the Department so as to ensure that at the time of considering a person for promotion, the Departmental Promotion Committee has before it all the latest facts is regard to the conduct and efficiency of an officer.

1.30. The Committee have been informed that necessary memorandum alongwith the statement of imputations was despatched on 3 May 1976 to the officer who had denied the imputations in his representation recevied on 3 December 1976 and that the case had been referred to the Union Public Service Commission on 14 January 1977 for advice in accordance with the rules. While stressing the need for expediting the final action in this long-pending case, the Committee would also reiterate their recommendation contained in paragraph 4.31 of their 187th Report (Fifth Lok Sabha) that Government should ensure that the assessing officers in a sensitive area like the Income-tax Department have the confidence that conscientious and capable work would receive recognition and approbation merited by it and that deflection from the path of duty would not be countenanced.

1.31. The Committee regard it as an illustrative case of, to say the least, gross negligence on the part of a responsible officer which not only led to loss of substantial revenue but also caused considerable harrasment and hardship to the assessee. They would like the Government to undertake a survey in order to find out as to whether there have been any more cases of this type which may have resulted in loss of revenue and harrasment to tax-payers. The Committee would like to be informed of the results of the survey at an early date."

1.32. Incidentally, the Committee learn that while an officer whose integrity is suspect can be considered for promotion provisionally pending completion of the investigations into this conduct such a procedure is not in vogue in respect of inquiries not involving a charge of lack of integrity. Since an Officers' efficiency is as im-

portant as his conduct, it would appear that investigations into failures or lapses which reflect on the efficiency of an officer which might be in progress at the time of selections by the Departmental Promotion Committee may be suitably taken into account. They would, like this matter to be examined urgently, in consultation with the Department of Personnel and the Union Public Service Commission. The Committee would like to be informed of the decision taken.

1.33. It also appears that in these two cases cited by Audit, the Inspecting Assistant Commissioner had fixed the first hearing of the penalty proceedings only in the last month of the limitation period and then rushed through the proceedings disregarding the assessees' requests for adjournment even though the notices were actually served on the assessees after the date and time fixed for the hearings. That this should have been so despite the steps stated to have been taken by the Department in response to the repeated concern expressed by the Public Accounts Committee over the tendency to postpone completion of the proceedings towards the end of the limitation period is regrettable. The Committee have been informed in this context that since the beginning of the financial year 1974-75, the Department has started the practice of formulating an 'Action Plan' which contains a time-bound programme of work required to be done in specified areas during each financial year and that while prescribing targets in various areas of work, a high priority is given to the early disposal of time-barring assessments. It has also been claimed by the Department that after the introduction of the 'Action Plan', the percentage of time-barring assessments completed up to December had gone up from 52.4 and 54.4 per cent respectively in 1972-73 and 1973-74 to 73.2 and 72.6 per cent respectively in 1974-75 and 1975-76 and that for the financial year 1976-77, a target to complete all time-barring assessments by December 1976 has been laid down. While the Committee would like to be apprised of the extent to which the targets for 1976-77 have actually been achieved, they, however, find that the 'Action Plan' does not contain any programme for the expeditious completion of penalty proceedings. Besides, what the Committee had in mind while recommending that an order of priorities of work should be prescribed was that timely attention should be paid to the big income cases with a view to ensuring that these were not postponed till these were about to become time-barred. It is not clear to the Committee how the 'Action Plan' constitutes fixation of such priorities. Since, under this plan, an Income-tax Officer could dispose of 75 per cent of company cases and 70 per cent of non-company cases as the case may be and still leave out the real

big income cases as part of the remaining 25 per cent or 30 per cent, they would like the Central Board of Direct Taxes to re-examine this aspect and ensure proper planning of the work of Income-tax Officers so as to complete in time and on priority basis the high income group assessments expeditiously.

CHAPTER II

IRREGULAR EXEMPTION IN THE CASE OF A FEDERATION OF COTTON MILLS

Audit paragraph

2.1. Under the provisions of the Income-tax Act, 1961, income from property held under trust wholly for charitable purposes, is exempt to the extent to which the income is applied for such purposes in India. However, the Act permits trusts to accumulate or set apart income for future application, provided the trust specifies, by notice in writing given to the Income-tax Officer, indicating the purpose for which the income is being accumulated or set apart and the period, not exceeding ten years, for which it is to be accumulated or set apart, and the money so accumulated or set apart is invested in specified securities within the time prescribed. These provisions apply also to societies and companies formed without a profit motive, for charitable purposes.

2.2. A Cotton Mills Federation, claiming to be charitable institution, had accumulated an amount of Rs. 1,09,50,000 during the period 1962 to 1971 for the purposes of acquiring a building. During the previous year relevant to the assessment year 1972-73, the institution paid an amount of Rs. 80,00,000 out of the accumulated balance of Rs. 1,09,50,000 to a firm of contractors and architects. The assessing officer allowed exemption in respect of the sum so paid treating it as having been utilised for the purpose for which it was accumulated, in the year immediately following the specified period, even though the institution had not acquired any building in that year *viz.*, accounting year 1971-72 and the amount had ceased to remain invested in specified securities. This irregular exemption resulted in an under-assessment of income by Rs. 80,00,000 in the assessment year 1972-73, leading to a short levy of tax of Rs. 78,20,000.

2.3. The Ministry have stated (March 1976) that the audit objection is under active consideration.

[Paragraph 45 of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

2.4. Under the provisions of Section 11 of the Income-tax Act 1961, income derived from property held under trust wholly for charitable purposes is exempt from tax to the extent to which such income is applied to such purposes in India. There is also provision for permitting the Trusts to accumulate or set apart sums for future application to such purposes provided the Trust had given due notice, in writing, to the Income Tax Officer indicating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years.

2.5. The Committee learnt from Audit that the Audit paragraph highlights a case where a federation (the Indian Cotton Mills Federation) treated as a charitable institution accumulated certain income for the maximum period of ten years with the object of acquiring a building but in spite of taking action towards that end during the period of accumulation, advanced an amount of Rs. 80 lakhs to a firm of contractors and architects for the purchase of a building only in the last year so as to avoid the amount being taxed under the law for its not being utilised for the specified purpose. The contractors kept the amount in their books as an advance from the federation till they utilised it on the purchase of a building and on its renovation in the subsequent two or three years which fell beyond the period allowed under the law.

2.6. A note furnished, at the Committee's instance, by the Department of Revenue & Banking indicating the main legal provisions relating to the assessment of income of charitable and religious trusts and the amendments introduced in this regard in recent times is reproduced in Appendix III.

2.7. The Committee enquired into the legal provisions in regard to the accumulation of income and its utilisation by religious and charitable trusts. In a note, the Department of Revenue & Banking have stated:

> "Under the 1961 Act, it was recognised that under certain situations the trust may not be in a position to spend its income in the year in which it was earned. Therefore, the Act contained a provision (sub-sec. 2 of section 11) to enable the trust to accumulate or set apart the income of the trust to be spent in future years. Accordingly this income can be accumulated or set apart for a period not exceeding 10 years. If the assessee wishes to accumu-

late this income it will have to fulfil certain conditions. These are:

(i) A notice in writing should be submitted to the ITO in the prescribed manner specifying the purpose for which the income is being accumulated or set apart.

(ii) The money so accumulated is invested in Government securities or in other securities specified in the Act. With effect from 1st April, 1971 this provision was amended and the assessee could now deposit the money in Post Office Saving Bank or in any bank or with a Financial Corporation.

Rule 17 prescribed the manner in which the application for accumulation should be submitted. The application must be in form No. 10. It must be submitted before the expiry of the time allowed in sub-section (i) or sub-section (ii) of section 139 for furnishing the return of income."

2.8. Asked whether it was intended that the utilisation should take place primarily during the period of accumulation or only at the end of the period, the Department, in a note replied:

"Sub-section (3) of section 11 provides that if any income is applied to purposes other than charitable or religious or the income ceases to be accumulated or set apart for application thereof and is not utilised in the year immediately following the expiry of the period allowed, it shall be deemed to be income of the previous year in which it is so applied or ceased to be so accumulated or of the previous year immediately following the expiry of the period given in form No. 10."

To another question in regard to the time limit, if any, prescribed for this purpose after the actual and specified period of accumulation, the Department replied that this was one year. Asked whether there was any provision for the extension of this time limit, the Department replied in the negative.

2.9. Since in this particular case commented upon by Audit, the amount accumulated under Section 11(2) had only been advanced to the firm of contractors without actual acquisition of the building within the time limit prescribed for the purpose, the Committee desired to know whether the Department's view was that it

constituted utilisation of the accumulated income for the specified purpose and could be exempt from tax. A representative of the Central Board of Direct Taxes stated in evidence:

> "If it were for the purchase of property straightaway, it could be regarded as correct application of income. But in this case there was no purchase then, the money was only given to a firm of engineers and contractors for finding out a building. We do not think that this can be regarded as application of income."

He added:

> "As regards the application of income, we were not sure of the facts.....We had been going on the basis that a sum of Rs. 80 lakhs had been utilised for the purchase of property and it was only later that we came to know that it was not utilised for the purchase of property but it was only paid to the contractors. This information came to us later."

He informed the Committee further that the income had to be utilised before 31 December, 1971 and that was why the federation had made the payment prior to that date.

2.10. Elaborating further the views of the Department on this case, the witness stated:

> "We are of the opinion that the application of income should be tantamount to 'expenditure'. In this case, Rs. 80 lakhs was paid to contractors for the purchase, if they did not purchase it they had to return the money to the ICMF. That means it was only an advance and not an expenditure, though this was interest-free and the contractor was not to pay interest on it."

Asked whether the Department was, therefore, treating this amount as an advance to the contractors and not as an item of expenditure on the purchase of a building, the witness replied:

> "That is our view."

2.11. Asked whether the Department proposed to treat the non-utilisation of the accumulated income for the specified purpose within the prescribed period as a mere technical lapse or whether any *mala fide* intentions could be imputed to the Indian Cotton Mills

Federation, the representative of the Central Board of Direct Taxes replied:

> "I do not think there was any *mala fide* intention on the part of ICMF. But at the same time we cannot treat it as only a technical flaw, because the law has stipulated that the money set apart or accumulated for utilisation for charitable purposes should be utilised within one year from the close of the period of accumulation and that ended on 31 December, 1971. Therefore, it had to be spent before that. No power has been given to any ITO or higher authority for condoning the delay."

To another question whether any specific charge had been made against the Indian Cotton Mills Federation that they had violated the provisions of the Income-tax Act by not utilising the accumulated income within the prescribed period, the witness replied:

> "So far, such a charge has not been made, but it will be made when the assessment is reopened and notice is issued to the assessee. At the time of the original assessment, the claim was accepted by the Income-tax Officer."

2.12. The Committee desired to know when the return for the Assessment Year 1972-73 was filed by the Indian Cotton Mills Federation. In a note, the Department of Revenue & Banking informed the Committee that the relevant return was filed on 31 July, 1972. Asked what was the nature and extent of the scrutiny exercised by the Income Tax Officer at the assessment stage and whether the point about the utilisation of the accumulation was considered at that stage, the Department replied:

> "ITO was satisfied that a sum of Rs. 80 lakhs had been properly utilised for acquiring the building to house the activities of the Federation."

A copy of the relevant assessment order furnished by the Department, at the Committee's instance, is reproduced in Appendix IV.

2.13. Asked when the building in question was actually acquired by the Indian Cotton Mills Federation, the representative of the Central Board of Direct Taxes replied in evidence:

> "The conveyance agreement was registered on 5th January, 1973 and the actual payment was made on 29th December,

1971. The party to whom the payment was made was able to locate a suitable building only in August 1972. The cost of the building was Rs. 40 lakhs and, thereafter in that year Rs. 8,12,000 was spent for renovation."

He added:

"The building has been purchased and also partly occupied. The total amount of money incurred upto 3 November, 1976 was about Rs. 73 lakhs. Some more money has to be spent and one or two floors have to be re-modelled."

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

"A cheque of Rs. 80 lakhs was paid by the assessee to M/s. Gharzi Eastern Limited, a firm of contracts and architects and the payment was made by way of cheque on 29 December, 1971. M/s. Gharzi Eastern Ltd. were able to locate the building only in August 1972. The assessee got the possession of the premises on 22 November, 1972. The building was purchased for Rs. 40 lakhs. The cost of stamp duty and other expenses came to Rs. 8.12 lakhs. The Sale Deed was lodged for registration on 5 January, 1973. Thereafter expenses were incurred for renovation, air-conditioning of the premises. Upto the year 31 March 1975 for which the balance sheet is available, a total amount of Rs. 22 lakhs has been spent for renovation and air-conditioning etc. The total amount spent as purchase price, stamp duty, renovation etc. upto 3 November, 1976 was Rs. 73,78,523."

2.14. The Committee desired to know how the advance of Rs. 80 lakhs paid to the contractors had been treated in their books of accounts. The representative of the Central Board of Direct Taxes stated in evidence:

"It was treated as an advance. Every year what was spent was deducted and what was unspent was shown as advance."

Asked whether the taxes due from the contractors had been correctly assessed and collected, the witness replied:

"That information is not available with me."

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

> "In the Balance Sheet of M/s. Gherzi Eastern Limited for 31 December 1971 Rs. 80 lakhs has been shown on the liability side as advance from a client and the cash and bank balance was Rs. 82,63,062.96.

	31-12-1972	31-12-1973	31-12-1974	31-12-1975	3-11-1976
Advance,, from client		26,45,849	17,36,259	8,53,048	6,21,477

> The amount actually spent by M/s. Gherzi for and on account of ICMF are debited to this account. The balance is shown as a liability. Neither the amount received by M/s. Gherzi from ICMF nor the amount incurred by Ms/. Gherzi for purchasing the property and for renno-vating the same have been shown as either income or claimed as expenses in the assessment of M/s. Gherzi. This is obviously because the rennovations are not com-pleted. If on completion of the rennovations, it is found that the expenditure is less than the receipt, the excess receipt will be treated as the income of M/s. Gherzi and subjected to tax. The interest accruing on the deposit is treated as income of M/s. Gherzi Eastern Ltd."

2.15. Apart from this specific case commented upon by Audit, the general question that arises is whether an organisation like the Indian Cotton Mills Federation could be treated as a charitable institution so as to qualify for tax concessions and exemptions. The Committee, therefore, desired to know whether the claim of the Federation, which only comprised of business interests and championed the cause of the textile industry, to be a charitable institution was justified and the basis on which it was treated as such by the Income-tax Department. The representative of the Central Board of Direct Taxes stated in evidence:

> "The ICMF was treated as a charitable organisation on the basis of Supreme Court decision in the case of the Andhra Chamber of Commerce. The objects of the ICMF and the Andhra Chamber of Commerce are almost identical.

The primary object of the Andhra Chamber of Commerce was:

'To promote and to protect trade, commerce and industries, to aid, stimulate and promote the development of trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof'.

The ICMF has 51 objects. Out of them, the main object is similar to the object of the Andhra Chamber of Commerce and it is:

'To promote and to protect trade, commerce and industries of India in general and more particularly in respect of the cotton textile industry and allied industires and trade'."

The witness added:

"This has been done in the case of the Andhra Chamber of Commerce. As I said, the decision in that case was given by the Supreme Court. 'Charitable purpose' has been defined in the Income-tax Act as relief of the poor, education medical relief and any other object of general public utility not involving the carrying of an activity for profit."

2.16. The Committee desired to know when the Indian Cotton Mills Federation was recognised as a charitable trust and from which year it had been exempt from Income-tax Act. In a note, the Department of Revenue & Banking stated:

"The Inudian Cotton Mills Federation has been exempt from income-tax under section 11 of the Income-tax Act, 1961 from the assessment year 1961-62. The Federation was exempted after considering the Supreme Court Judgement in the case of Andhra Chamber of Commerce which inter *alia* had stated that promotion, protection of trade, commerce and industry, to aid, stimulate and promote development of trade, commerce and industry in India or in part thereof, constitute the objects of general public utility. The examination of the constitution of the Federation revealed that its principal object was to promote and protect India's trade, commerce and industry in general and cotton textile industry and alied industries and trades in particular. Considering the dominant objects of the Federation it was felt that the case was governed by the decision of the Supreme Court in the case of Andhra Chamber of Commerce w.e.f. 1-4-1961.

2.17. When the Committee pointed out in this context that the Supreme Court decision in the case of the Andhra Cahmber of Commerce (55 ITR 1122) was with reference to the provisions of the Income-tax Act, 1922 which appeared to have been amended considerably in the Income-tax Act 1961, the representative of the Central Board of Direct Taxes stated:

> "There is one difference between the definition in the 1922 Act and the 1961 Act. Under the 1922 Act, if it is an object of general public utility it would be a charitable purpose, whereas under the 1961 Act, if a trust is carrying on an activity for profit, such a trust is not entitled to be regarded as charitable."

The Committee, therefore, asked whether the ICMF could be considered as an organisation which was not carrying on an activity of profit. The witness replied:

> "On the basis of the record I can say with certainty that the ICMF is having certain activities of profit, but unfortunately this aspect was not considered by the Income-tax Officer."

He added:

> "....I have never justified the action of the Income-tax Officer. What I have said is that it was wrongly done. The entire department takes responsbility in the matter and we are seriously concerned about it."

2.18. The Committee enquired whether before recognising ICMF as a charitable trust, any independent evaluation was made by the Department of the activities claimed to have been undertaken by the Federation in order to make sure that the ICMF was in fact entitled to exemptions admissible to charitable and religious trusts. The witness replied:

> "From the objects contained in the Memorandum of Association, it is seen that the objects satisfy the conditions laid down by the Supreme Court in the case of Andhra Chamber of Commerce subject, of course, to the change in law. As I said earlier, the case of Andhra Chamber of Commerce is under the 1922 Act. In the 1961 Act there has been a change and because of the change in the 1961 Act, the Federation is not entitled to exemption."

To another question whether the ICMF had been assessed to tax before the Supreme Court decision in the Andhra Chamber of Commerce case was delivered, the witness replied:

> "The Federation was started on 18 March 1958. In the first year it had no income. The first assessment year was 1960-61 and the second was 1961-62 these assessments were made. The subsequent assessments were pending when the Supreme Court decision in the Andhra Chamber of Commerce case came and on the basis of that decision we said that this was an institution which was a charitable institution and, therefore, exempt under section 11."

2.19. Asked whether the ICMF had been registered as a charitable trust, the representative of the Central Board of Direct Taxes replied:

> "Yes, in pursuance of the amendment made in 1973."

He added:

> "This was on the basis of an Amendment which was introduced by the Finance Act, 1972, with effect from 1-4-1973, an assessee who claims exemptions under sections 11 and 12 has to apply for this registration and that has to be done before the first day of July 1973 or before the expiry of the period of one year from the date of creation of the Trust. They had accordingly applied in time, but the certificate has been issued only in January 1975."

The witness also informed the Committee that the certificate of registration was issued on 21, January, 1975.

2.20. The Committee desired to know whether at the time of registering ICMF as a charitale trust, the applicability of Section 11 of the Income-tax Act, 1961 and the correctness of extending the benefits under the section to the Federation were not examined. The representative of the Central Board of Direct Taxes stated in evidence:

> "When an application for registration is submitted, the ITO does not examine in detail whether the Trust is entitled to exemption. Only on the basis of the information that is furnished to the ITO at that stage, the registration is done. He does not go into the details."

He added:

> "The registration has to be in the office of the Commissioner of Income-tax whereas the assessment is done by the Income-tax Officer. Therefore, there is no correlation between the registration and the assessment at that stage."

2.21. Clarifying the position, the Chairman of the Central Board of Direct Taxes, however, stated:

> "It is a fact that the provisions of law have been misapplied in this case and the Andhra Pradesh Chamber of Commerce case has also been wrongly applied. Unfortunately, the amendment made in the law was not taken into account in applying the Andhra Chamber of Commerce case to this. Now, this matter has been placed beyond all doubt by the two recent judgements of the Supreme Court."

2.22. The Committee learnt that the significance of the expression "not involving the carrying on of any activity for profit" in the definition of "charitable purpose" contained in Section 2(15) of the Income-tax Act, 1961, had been examined by the Supreme Court in great detail in the cases of Sole Trustee Lok Shikshana Trust *Vs.* C.I.T. Mysore (101 ITR 234) and Indian Chamber of Commerce Vs. C.I.T. West Bengal (101 ITR 797). In his judgment on the latter case delivered on 17 September 1975, Mr. Justice Krishna Lyer had observed, *inter alia*, as follows:

> ".....Chambers of Commerce dot this country and, by and large, they have the same complex of objects. They exist to promote the trading interests of the commercial community and, after the Andhra Chamber of Commerce case, have been regarded as pursuing charitable purposes. This expression, defined in Section 2(15), is a term of art and embraces objects of general public utility. But, under cover of charitable purposes, a crop of camouflaged organisations sprung up. The mask was charitable, but the heart was hunger for tax-free profit. When Parliament found this dubious growth of charitable chameleons, the definition in Section 2(15) was altered to suppress the mischief by qualifying the broad object of 'general public utility' with the additive 'not

involving the carrying on of any activity for profit'. The core of the dispute before us is whether this intentional addition of a 'cut-back' clause expels the Chamber from the tax exemption zone in respect of the triune profit-fetching sub-enterprises undertaken by way of service or facilities for the trading community."

The judgement goes on to observe:

"Notwithstanding the possibility of obscurity and of dual meanings when the emphasis is shifted from 'advancement' to 'object' used in Section 2(15), we are clear in our minds that by the new definition the benefit of exclusion from total income is taken away where in accomplishing a charitable purpose the institution engages itself in activities for profit."

Again, in the former case, the Supreme Court had held that in the definition of 'charitable purpose' the word 'profit' does not denote 'private profit' and profit motive being a normal incident of business activity where the acturity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the Court would be well justified in assuming that the object of the trust involves the carrying on of an activity for profit.

2.23. The Committee asked whether in view of the changed circumstances prevailing after the Supreme Court judgements referred to above, any action had been taken to cancel the registration of ICMF as a charitable trust. The representative of the Central Board of Direct Taxes replied during evidence:

"We have issued instructions to the Income Tax Officer to reopen the assessments and when the assessments are reopened, assessments will be made treating them as non-charitable."

Asked when the Income-tax Officer had been directed to reopen the assessments of ICMF, the witness replied that these instructions were issued "very recently" on 28 October 1976 and added that the instructions were that this case should be reviewed in the light of the Supreme Court's decision in the cases of Lok Shikshana Trust and Indian Chamber of Commerce. As regards the cancellation of the registration of ICMF as a charitable trust, he stated:

"I will have to examine about cancellation."

2.24. In view of the fact that Parliament had taken steps by amending the act to prevent the mischief ensuing from the Supreme Court decision in the Andhra Chamber of Commerce case a long time ago and the correct legal position had also been unambiguously spelt out by the Supreme Court in September 1975 itself, the Committee desired to know why the question of re-opening the assessments of ICMF should have been postponed till October 1976. The representative of the Central Board of Direct Taxes stated in evidence:

> "There are two issues in this. One is whether the income is exempt in view of the Supreme Court decision in these two cases and the other is regarding the application of income. As regards the application of income, we were not sure about the facts. As regards the first issue, it was a question of issuing general instructions and therefore we did not issue separate instructions in the case of ICMR."

However, in a note furnished subsequently in this regard, the Department of Revenue & Banking stated:

> "The question of reopening the assessments had to be considered after taking into account the legal issues involved and the facts of the case."

2.25. Asked whether this, therefore, implied that instructions had been issued for reviewing the cases of other Chambers of Commerce and Charitable trusts also and for reopening the assessments wherever found necessary, the witness replied:

> "Yes, we have issued instructions for reviewing all such cases all over India."

He added:

> "We have issued instructions for reviewing all the cases of Charitable Trusts in the light of the two decisions of the Supreme Court and we have called for a report about the action taken after reviewing the cases. We will ensure that the decisions of the Supreme Court are observed in all these cases and that assessments are reopened."

To another question as to when these instructions were issued, the witness replied that they were issued "very recently". Explain-

ing, at the Committee's instance, the reasons for the delay in issuing these instructions, he stated:

> "There were certain complicated points which required consideration; because one point was left open by the Supreme Court and that was whether the words 'not involving the carrying on of any activity for profit' would apply to the three categories—education, medical relief and relief of poverty. This had to be discussed and we thought that we should refer to this in the circular also. So, this was a matter for discussion and consideration. But, none-the-less, I agree with you that these instructions should have been issued earlier."

2.26. In a note furnished subsequently in this regard, the Department of Revenue & Banking informed the Committee that the instructions were issued on 7 November, 1976 and added:

> "The two decisions of the Supreme Court in the case of Sole Trustee Lok Shikshana Trust (101 ITR 234) and Indian Chamber of Commerce (101 ITR 796) set at rest the controversy regarding the scope and meaning of the expression 'not involving the carrying on of any activity for profit'. The decisions very explicitly laid down the law which is reflected in the observations of Shri Krishna Iyor J. at page 803 of 101 ITR 796 ..... 'We are clear in our minds that by the new definition benefits of exclusion from the total income is taken away where in accomplishing a charitable purpose an institution engages itself in activities of profit'. In view of the unambiguous exposition of the law by the Supreme Court, it was not necessary for the Board to issue instruction to the field officers as soon as the two decisions came out. The Two decisions were reported in the ITR and were well within the knowledge of the field officers. The Cs.I.T. are expected to review the cases in the light of the two Supreme Court's judgements on their own.
>
> During the course of the year 1976, on receipt of some reference from a Commissioner, the Board thought it desirable by way af abundant caution that the Commissioner should be specifically instructed to bring to the notice of the officers working in their charge these two decisions and that they should further ask the ITOs to undertake a

review of the completed cases in the light of the pronouncement of the Supreme Court for taking remedial action wherever called for and feasible."

2.27. The Department also furnished, at the Committee's instance, copies of the Instructions No. 1024 dated 7 November, 1976 issued in this regard and of the letter [D.O. No. 6601-M(II)IT/67] dated 28 October 1976 to the Commissioner of Income-tax, Bombay, on the question of re-opening of the assessments of ICMF, which are reproduced in Appendix V.

2.28. Since it had been stated that a review of similar cases had been ordered by the Central Board of Direct Taxes, the Committee enquired when the results of the review were expected and its out come in case it had already been complete. In a not, the Department of Revenue & Banking replied:

"Reports indicating the result of the review have not been received from all the Commissioners of Income-tax. The outcome of the review will be intimated as soon as the result of the review are received."

2.29. The Committee desired to know the total income of ICMF during each of the last five years and how it had been utilised. In a note, the Department of Revenue & Banking have furnished the following information in this regard:

"The total income of the assessee federation during each of the last five years and its utilisation are as follows:

(1) Assessment year 1975-76—Assessment is pending

The information as per return of income is as follows :—

	Rs.
Aggregate of receipts	39,42,454
Amount applied to charitable purposes	37,73,837
Surplus accumulated	1,68.617
(Notice of accumulation given)	
(2) Assessment year 1974-75—Assessment completed.	
Income computed	30,07,758
Expenditure on objects of federation	25,88,094
Surplus	4,19,664
(Notice of accumulation given)	

(3) Assessment year 1973-74—Assessment completed.	Rs.
Income computed	54,17,214
Expenditure on objects of federation	18,08,074
Surplus allowed to be accumulated	36,09,140
(Notice of accumulation given)	
(4) Assessment year 1972-73—Assessment completed.	
Income computed	38,53,499
Expenditure on the objects of the federation	24,66,934
Surplus allowed to be accumulated	13,86,565
(Notice given).	
(5) Assessment year 1971-72—Assessment completed.	
Income computed	39,56,790
Expenditure on the objects of the federation	39,93,493

2.30. Asked during evidence whether the record of the Indian Cotton Mills Federation was so free from blame as to evoke a sense of sympathy and support even to the extent of granting substantial tax exemptions, a representative of the Commerce Ministry replied:

"I would not go to that extent."

He added:

"It certainly gives us an organisation of the federation of these units, with which Government can hold dialogues from time to time on matters concerning the industry in a better form and manner than it would be if the federation had not existed."

In this context, the Finance Secretary intervened and stated:

"May I intervene for a minute.

Shri....made clear the reasons for keeping ICMF in the picture. We do not want that Government qua Government be directly involved in subsidising exports and hence intervention of the ICMF. I do not know how the scheme has worked. I can give only the basic concept of the scheme. At one stage ICMF was being allowed to levy a

charge on imported cotton. Here it was not the intention that ICMF should be making any money on its own. Similarly, Government has been giving cash assistance to be contributed and disbursed through the ICMF in order to subsidise our textile exports and also not to fall within the mischief of the anti-dumping laws. How ethical or otherwise it was in a different issue. But competition is very fierce in international trade & commerce. Some of these measures have to be taken. As the Officer Incharge of Revenue Department I am most happy tha the provisions of Section 2 clause 15 wil be tightened up and various tax exemption concessions wil be withdraw hopefully. In my other capacity I am also a little apprehensive that while the fact that some of the moneys which should otherwise have gone to the financing of the exports or subsidising exports will have to be made good again out of public revenues. Really speaking the withdrawal of the tax concessions may result in additional demands being put forward. To some extent gains to the exchequer would be counter-balanced by additional demand on the Government.

All this has been said merely for the information of the Committee.

2.31. The amendment of the law in 1973 to provide for the registration of charitable and religious trusts and for the compulsory audit of such trusts with an income exceeding Rs. 25,000, had been made in pursuance of the recommendations of the Public Accounts Committee contained in their 121st Report (Fourth Lok Sabha). The law has also been amended from 1 April, 1977 to specify the manner in which the funds of such trusts should be invested. Asked whether the amended provisions of the law had been fully implemented. the Department of Revenue & Banking replied in the affrmative. The Committee also desired to know how many trusts were registered with the Income-tax Department. In an interim reply, the Department informed the Committee that this information was "being collected."

2.32. Asked how many of these trusts were subjects to compulsory audit, the Department, in a note, replied:

"Information not available. To obtain this information the assessment records of all the cases will have to be gone through. This will take a lot of time."

2.33. The Committee desired to know how many trusts had been set up by big industrial houses. In another note, the Department stated:

> "Information not available. Trusts are not set up by Industrial houses, they are set up by the individuals connected with these houses. To obtain this information the files of all the trust cases, all over the country, will have to be scrutinised and verifications made as to whether the settler is connected with any big industrial house. This will take a lot of time."

2.34. According to the provisions of Section 11(1)(a) of the Income-tax Act, 1961, as they stood prior to their amendment by the Taxation Laws (Amendment) Act, 1975, income derived from property held under trust wholly for charitable purposes is exempt from tax to the extent such income is applied to such purposes in India. Section 11(2) of the Act also permits Trusts to accumulate or set apart sums for future application to such purposes provided the Trust had given due notice, in writing, to the Income-tax Officer indicating the purpose for which the income is being accumulated or set apart and the period for which it is to be accumulated which shall in no case exceed ten years, and the money so accumulated or set apart is also invested in specified securities within the time prescribed. The Committee note that in the present case relating to the Indian Cotton Mills Federation, treated as a charitable institution, the Federation had accumulated certain income (Rs. 1.10 crores) during the period 1962 to 1971 with the express object, inter alia, of acquiring a building to house the activities of the ICMF Research Association and the All India Federation of Cooperative Spinning Mills. Though the accumulated income had to be utilised for the specified purpose before 31 December, 1971, the assessee Federation had initiated action towards that end only on 29 December, 1971 and advanced an amount of Rs. 80 lakhs to a firm of contractors and architects, who kept the amount in their books as an interest-free advance from the Federation till they utilised it on the purchase of a building and on its renovation only in the subsequent years which clearly fell beyond the period allowed under the law. Yet, surprisingly enough, overlooking the fact that the Federation had not actually acquired the building but had merely advanced the amount to the contractors, the Income-tax Officer had incorrectly exempted from tax the amount so advanced treating it has having been utilised for the purpose for which it was accumulated, which resulted in a short-levy of tax of Rs. 78.20 lakhs for the assessment year 1972-73.

2.35. While conceding that to qualify for exemption from tax, the application of income should be tantamount to 'expenditure' and it would, therefore, be incorrect in this case to have treated the advance to the firm of contractors and architects as application of the accumulated income to the specified purpose, the Central Board of Direct Taxes have nevertheless contended that the Income-tax Officer " was satisfied that a sum of Rs. 80 lakhs had been properly utilised for acquiring the building for housing the activities of the Federation." The Committee, however, find on the basis of the evidence and the fact that the assessment has been re-opened that the assessing officer had not examined in detail whether the income accumulated had in fact been actually utilised for acquiring the building. Admittedly, the information that the amount was not utilised for the purchase of property but was only paid as an advance to the contractors was available only later. This is an aspect which should have correctly been gone into ab initio by the assessing officer, particularly in view of the fact that the amount of Rs. 80 lakhs had been paid by the Federation only two days prior to the expiry of the period stipulated in the Act for utilisation of the accumulated income. It would appear, prima facie, that the Federation's claim had been accepted by the assessing officer without any genuine scrutiny. The Committee take an extremely serious view of this costly failure and would like the circumstances in which the lapse had occurred to be gone into in detail with a view to taking appropriate action against the officer concerned. It may also be examined whether any clarificatory instructions for the guidance of the assessing officers are necessary.

2.36. A more important and basic issue arising out of this case is whether an institution like the Indian Cotton Mills Federation comprising only of business interests and primarily concerned with the promotion and protection of the cotton textile industry and whose activities evidently have no real connection at all with the idea of charity can be treated as a charitable organisation so as to qualify for tax concessions and exemptions. The Committee have been informed that the Indian Cotton Mills Federation has been exempt from Income-tax under Section 11 of the Act from the assessment year 1961-62 onwards on the basis of the judgement of the Supreme Court in the Andhra Chamber of Commerce case. In that case, the Supreme Court had held that the objects of the Chamber, viz. 'to promote and to protect trade, commerce and industries, to aid, stimulate and promote the development of trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof', constituted 'objects of general public utility'

and hence were covered by the definition of 'charitable purpose' in Section 2(15) of the Act. It has been stated that since the main object of the Indian Cotton Mills Federation, viz. 'to promote and to protect trade, commerce and industries of India in general and more particularly in respect of the cotton textile industry and allied industries and trade' was also similar to the objects of the Andhra Chamber of Commerce, the Supreme Court decision had been applied to the Federation also and recognition accorded to it as a charitable institution with effect from 1 April, 1961. However, while doing so, the fact that the Supreme Court decision in the case of the Andhra Chamber of Commerce was with reference to the provisions of the Income-tax Act, 1922 and that the definition of 'charitable purpose' had been amended in the Income-tax Act, 1961, which is applicable in the present case, to exclude activities carried on for profit though they might be of public utility, appears to have been lost sight of.

2.37. While the Chairman of the Central Board of Direct Taxes has been good enough to admit during evidence that "the provisions of law have been misapplied in this case" and that "the amendment made in the law was not taken into account in applying the Andhra Chamber of Commerce case", it is not very clear to the Committee why the applicability of Section 11 of the Income-tax Act, 1961, and the correctness of extending the benefits under the Section to the Indian Cotton Mills Federation were not examined at the time of registering the Federation as a charitable trust in 1973 as required under an amendment to the Act introduced with effect from 1 April 1973 by the Finance Act, 1972. It should have at least been possible to remedy the situation after the legal position in this regard had been placed beyond all doubt by the clear and unambiguous judgements of the Supreme Court in the cases of Sole Trustee Lok Shikshana Trust Vs. C.I.T. Mysore (101 ITR 234) and Indian Chamber of Commerce Vs. C.I.T. West Bengal (101 ITR 797), which admittedly were well within the knowledge of the field officers and the Commissioners of Income-tax were also expected to review the cases in the light of court decisions and judgements on their own. Having due regard to the large sums of money incorrectly exempted from tax as having been applied to charitable purposes and the influence known to be wielded by the Indian Cotton Mills Federation, the Committee would like to be satisfied that the initial misapplication of the law in this case as well as the subsequent inaction on the part of the Department were bonafide errors and unavoidable. They accordingly recommend that a thorough probe should be conducted into the handling of this case from time to time and the circumstances in which the Federation was exempted from tax

for a number of years to the detriment of revenue by incorrectly treating it as a charitable institution. The Committee would await a detailed report in this regard.

2.38. Though late than never, instructions have now been issued to the Income-tax Officer, on 28 October 1976, to reopen the assessments of Indian Cotton Mills Federation and to review the case in the light of the Supreme Court judgements in the cases of Lok Shikshana Trust and the Indian Chamber of Commerce. In view of the large revenue implications of this case, the Committee would urge the Department to complete the review of past assessments expeditiously and to take conclusive action to realise the taxes due. While re-opening the assessments, it may also be examined whether the violation by the Federation of the provisions of the Act relating to the application of the accumulated income was deliberate and *malafide*. The Committee were informed during evidence that the question of cancellation of the Indian Cotton Mills Federation as a Charitable trust would be gone into. The Committee would like to know the result of the examination.

2.39. The Committee have been informed that instructions have also been issued on 7 November 1976 for reviewing all cases of charitable trusts in the light of the pronouncements of the Supreme Court so as to take remedial action wherever called for. As these judgements are likely to have wide repercussions on the entire question of charitable trusts, the Committee need hardly emphasise the importance of completing this review early. They would like to be apprised soon of the outcome of the review and the steps taken to realise the tax short-levied in each case and the amount of tax realised.

2.40. In pursuance of the Committeee's recommendations relating to Charitable and Religious Trusts contained in their 121st Report (Fourth Lok Sabha) and the recommendations of the Direct Taxes Enquiry Committee, the legal provisions relating to the assessment of trusts have been amended from 1 April, 1973 to provide for the registration of trusts and a compulsory audit of such trusts with an income exceeding Rs. 25,000. The law has also been further amended from 1 April 1977 to specify the manner in which the funds of such trusts should be invested. It, however, appears that the Central Board of Direct Taxes have not thought it fit to for to review how far the amended provisions of the law have been actually implemented. In view of the fact that trusts are known to be used as a medium of tax avoidance and a number of individuals connected

with large industrial and business houses have also set up religious and charitable trusts ostensibly for charitable purposes, the Committee feel that it would be worthwhile to undertake a review in this regard with a view to taking necessary remedial measures to tighten the procedure wherever found necessary. The adequacy of the existing machinery with the Department to enforce the amended provisions of the law also needs to be gone into so as to take timely corrective measures.

2.41. Incidentally, the Committee find that the Direct Taxes Enquiry Committee had also made a number of far-reaching recommendations in regard to the control and regulation of public trusts so as to ensure that trusts were not exploited to subserve private ends and to check misuse of charitable institutions. The Committee would like to be informed in some detail of the specific action taken in pursuance of these recommendations.

CHAPTER III

INCOME ESCAPING ASSESSMENT

Audit Paragraph

3.1. On a study made by the Directorate of Investigation (Central Board of Direct Taxes) of the effect of partial decontrol of sugar from November, 1967, it was found, *inter alia*, that most of the sugar mills in the country had made abnormal profits. The quantum of profits made by each mill for the season October 1967 to September, 1968 as estimated by the Directorate was communicated to the Commissioners of Income-tax by the Central Board of Direct Taxes in October, 1968 with the remark that since the actual sale price of free market sugar was much higher than Rs. 300 per quintal, the profits for tax purposes might be, at least, twenty per cent higher than those estimated by the Directorate.

3.2. A co-operative sugar manufacturing society disclosed gross profits of Rs. 33 lakhs and Rs. 9.5 lakhs for the previous years ended 30th June, 1968 and 30th June, 1969, relevant to the assessment years 1969-70 and 1970-71 respectively, and the assessments for the two years were completed in March, 1971 (revised in October, 1972) and January, 1973 on the basis of these profits. The profits made by the society as estimated on the basis of the data collected and circulated by the Board in October, 1968, would, however, be Rs. 60 lakhs and Rs. 37.5 lakhs for the said two assessment years. The shortfall of Rs. 55 lakhs for the two years, involving a tax revenue of over Rs. 22 lakhs, apart from the penalty leviable for non-disclosure of income, was not looked into, while completing the assessments for the two years.

3.3. The Registrar of Co-operative Societies, while auditing the accounts of the society, had pointed out that, in spite of a substantial reduction of more than Rs. 38 lakhs in the purchase price of cane, due to fall in price from Rs. 110 per ton to Rs. 90 per ton for the year ended 30th June, 1969, relevant to the assessment year 1970-71, the society had shown a net loss of Rs. 12 lakhs, which required to be probed further.

3.4. The Ministry have stated (March, 1976) that the audit objection is under active consideration.

[Paragraph 46(i) of the Report of the C&AG of India for the year 1974-75, Union Government (civil), Revenue Receipts, Volume II, Direct Taxes.]

(i) Scheme of Partial Decontrol of Sugar

3.5. There was complete control on sugar, both with regard to price and distribution from April 1963 to 22 November, 1967. Partial decontrol of sugar was introduced with effect from 23 November 1967.

3.6. The basic features of the partial decontrol scheme were as under:

"(i) The minimum price of sugar-cane was fixed at Rs. 2.75 per maund (Rs. 7.37 per quintal) for a recovery of 9.4 per cent or less with 2 paise per maund (5.36 paise per quintal) for every increase of 0.1 per cent in recovery above 9.4 per cent.

(ii) A quantity equal to 60 per cent of the production was to be procured from the sugar factories from their production from 1st October 1967 to 30 September, 1968 at a fixed levy price. Factories were free to sell the balance 40 per cent of the production anywhere in India at the free market price to releases from factories authorised by the Government of India.

(iii) The entire stock of sugar out of the production till the 30th September 1967 would continue to be controlled as before and releases were to be made on the existing basis till November 1967.

(iv) The levy price was to be fixed according to the schedules of the Sugar Enquiry Commission for the 5 zones recommended by it having regard to the minimum price of the sugarcane and reduction in excise duty."

3.7. The Scheme of partial decontrol of sugar continued to be in force except for break from 24 May 1971 to 30 June 1972 when sugar was decontrolled.

3.8. According to the information received from the Department of Revenue and Banking at present 65 per cent of the production is being released as levy sugar and balance 35 per cent as free sale. The levy and free sale quotas are released with reference to the production during the sugar year (October—September). The quantities of levy and free sale sugar which remain undespatched at the end of the particular sugar year are released subsequently for de-

livery as levy and free sale sugar as the case may be. This, it has been stated, ensures that the delivery of levy and free sale sugar out of the production during the sugar year is ultimately in the prescribed ratios irrespective of the period of release.

(ii) Profitability Study

3.9. The Committee understand from Audit that a study of the estimated profits by certain sugar factories as a result of partial decontrol of sugar from November, 1967 was made by the Directorate of Investigation (Central Board of Direct Taxes). It was estimated that 55 sugar factories in various zones had each made a profit of more than 30 lakhs as a result of partial decontrol. The estimated profits were, it is learnt, worked out by the Directorate on the following considerations:—

(i) Estimated production of sugar for the sugar season 1967-68.

(ii) 40 per cent of the production to be released for free sale.

(iii) Average free sale price upto 15-6-68.

(iv) Average realisation for 40 per cent of sugar, taking balance realisations of Rs. 300.00 per quintal.

(v) 60 per cent of levy sugar, sold at the levy price.

(vi) Average price realised for 60 per cent of 'levy sugar'.

(vii) All realisations in respect of entire production for 1967-68.

(viii) Estimated ex-factory price for 1967-68 on the basis of actual cane price paid.

(ix) Loss or gain per quintal.

(x) Total quantity of loss or gain.

(iii) Instructions governing assessment of Income of sugar mills

3.10. In order to bring to the notice of the assessing officers the prevalent impression of the sugar industry having made abnormal profits as a result of partial de-control of sugar and the consequent need for examination of the accounts of sugar mills and sugar dealers with care and to suggest the lines of enquiry, the Central Board of Direct Taxes issued a Circular on 28 October 1968.

3.11. It was made clear to the Assessing Officers that:

"The estimate of profits arrived at is based on the assumption that the average sale price of free sale of sugar after

15-6-68 was Rs. 300 per quintal. The quantum of profit will vary if the average price of free sale sugar was more than Rs. 300. However, from the press reports, it appears that actual price of sugar in free sale went upto Rs. 400 per quintal and even above. As such, the quantum of profit would be estimated to be at least 20 per cent more than shown in the enclosed statement.

The study is strictly of confidential nature. It is accordingly requested to ensure that the estimate of profits shown in the annexure form only a starting point of enquiry into the cases of respective sugar mills. Similarly the other data given here provide only clues which need to be followed up and cannot be treated as evidence."

3.12. The aforesaid Circular had called upon the assessing officers to adopt broad outlines for detecting tax evasion in the cases of sugar mills and sugar dealers contained in Chapter XXIX of the Book "Investigation of Accounts" issued by the Directorate of Inspection (Research, Statistics and Publication) in 1964. The assessing officers were to look into and scrutinise the following points at the time of assessment of sugar mills:—

"(1) As the sugar mills claim to have paid prices higher than the minimum prescribed by the Government for purchase of sugarcane, strict proof regarding such purchases and amounts paid is essential. It has also been alleged that sugarcanes are under-weighed and recoveries from sugarcane are shown at reduced figures. It is, therefore, necessary to carry out sample checks in respect of weighments and laboratory analysis of sugar recovery from various samples of sugarcanes.

(2) There is also scope for understatement of sales in respect of free sale of sugar. It is possible that the entire quantity actually released by the Government for free sale may not have been accounted for by the sugar mills which will need verification from the accounts of the sugar mills. Particulars regarding the actual release by the Government for free sale in respect of various sugar factories could be obtained from the Directorate of Sugar and Vanaspati, Jamnagar House, New Delhi. As the prices of free sale sugar have been varying from time to time, it is also likely that the mills may not have record-

ed full prices of sale by showing sales when the prices of free sale sugar ruled at a lower level. As such, the dates of release of sugar by the Government for free sale and the prevailing open market price as on should be tallied from the accounts. The prevailing open market price for free sugar would be available from newspaper reports and trade journals and a compilation of prices is being made in this Directorate.

(3) The Directorate of Sugar and Vanaspati has also particulars regarding the stocks held by various sugar mills as on 22-11-67 (the date of partial de-control), as also the production made by the various factories. The relevant particulars may be obtained from the Directorate. As the extra profits made by the sugar mills may not have gone to the coffers of the companies concerned but to the Managing Directors or other persons in charge of the mills, it would be necessary to scrutinise their personal cases also with great care. It may be appropriate to call for wealth statements in such cases and made independent enquiries regarding the assets acquired by them during the relevant years."

(iv) Underassessment of Income of a Cooperative Sugar Society

3.13. Audit paragraph mentions the case of a Cooperative Sugar Mfr. Society whose income was not assessed on the basis of the data collected and circulated by the Central Board of Direct Taxes in their Circular of 28 October 1968 resulting in loss of tax revenue of Rs. 22 lakhs. The facts of this case are narrated below in the succeeding paragraphs.

3.14. The assessee company in this case is (M/s Ambur Cooperative Sugar Mills Ltd., Vadapudupet), a cooperative society engaged in the manufacture of sugar. Its Chief Executive Officer is called the Managing Director. Prior to 6 July 1971, the name of this company was "The North Arcot District Cooperative Sugar Mills Ltd." and its Chief Executive Officer was called the General Manager.

3.15. The Mill started production on November 25, 1960. The initial plant and machinery was supplied by a firm of West Germany. During the accounting year ending 30 June 1968, a new unit was installed which increased the capacity from 800 metric tons per day to 1250 metric tons per day. Machinery for this plant was supplied by a firm of Poona.

3.16. The assessee society assessed to income-tax by the first Income-tax Officer, Vellore, disclosed the following profits for the assessment years 1969-70 and 1970-71:

Assessment year	P.Y.E.	Gross Profits	Net Profit	Income Returned	Income assessed	Production Qntls.	Sales Qntls	Value Rs.
1969-70	30 June, 1968	32,82,508	8,13,475	77,44,65 (38,44,77 on revision)	11,15,630 (439640 on revision)	1,18,189	1,27,286	24,077,651
1970-71	30 June, 1969	9,52,321	Loss 12,17,331	Loss 10,83,286	Loss 10,87,211	16,35,37	11,19,57	22,840,630

3.17. The Committee understand from Audit that in the Board's Circular of 28 October 1968, it was indicated that on evaluation of the various factors and the price levels, the assessee society should have made a profit of Rs. 67.94 lakhs for the period from 1 October 1967 to 30 September 1968. This was supplemented with the remark that the quantum of profit could be estimated to be atleast 20 per cent more than that shown in the Circular in as much as the sale price of the free market sugar was much higher than the price of Rs. 300/- adopted for arriving at the estimated profit noted in the circular. This meant that the profit of the assessee for the period from 1 October 1967 to 30 September 1968 could be around Rs. 80 lakhs and hence for the period ending 30 June 1968 relevant for the assessment year 1969-70, the profits on proportionate basis, would be a around Rs. 60 lakhs. As against this quantum of Rs. 60 lakhs determined from the data collected by the Central Board of Direct Taxes and communicated to the assessing authorities the profits disclosed by

the assessee and adopted for assessment for the assessment year 1969-70 was Rs. 33 lakhs. Thus, for the assessment year 1969-70 profits to the extent of Rs. 27 lakhs would appear to have not been disclosed.

3.18. Similarly, for the year ended 30 June 1969 relevant to the assessment year 1970-71, the profits disclosed by the assessee fell short of the profits that would have accrued calculated on the basis of data furnished by the Central Board of Direct Taxes by over Rs. 28 lakhs as noted below:

No. of quintals of sugar produced for the year ended 30 June 1969 relevant to the assessment year 1970-71	1,63,537	
No. of quintals of sugar sold for that period	1,11,957	
Quantity of sugar sold in free market—40% of 1,63,537 quintals	65,415	quitals
Balance of sugar sold for levy	46,542	,,
TOTAL	1,11,957	,,

	Rs.
Sale value of free market sugar 65415 quintals @ Rs. 300	1,96,24,500
Sale value of levy sugar 46542 quintals @ 130/-	60,50,460
Total sale value of 1,11,957 quintals of sugar	2,56,74,960
Sales as per accounts	2,28,40,630
Difference	28,34,330

3.19. Audit para states that the shortfall of Rs. 55 lakhs for the two years, involving a tax revenue of Rs. 22 lakhs, apart from the penalty leviable for non-disclosure of income, was not looked into, while completing the assessments or the two years.

3.20. At the time of local audit on 31 October, 1973 the Income Tax Officer did not accept the audit objection.

3.21. Subsequently in his letter dated 24 July 1974 the Income Tax Officer intimated that the assessment for the assessment year 1969-70 was reopened and that the effect could be given only after the reassessment was done.

3.22. In his communication date 28 July 1975, the Income Tax Officer had sent the following reply to Audit:

> "In this paragraph the Audit has mentioned that the C.B.D.T. Circular F. No. Inv. III/DL(13)/68 dated 29-10-1968 has not been taken notice of and the case required further investigation. At page 3 of the Circular reads as below:
>
> 'The study is strictly of confidential nature. You are accordingly requested to ensure that the estimate of profits

shown in the annexure can form only a starting point of enquiry into the cases of respective sugar mills. Similarly the other data given here provides only clues which need to be followed up and cannot be treated as evidence.'

As can be seen from the extracted portion, the Circular is a 'confidential' one and cannot be treated as evidence and hence it cannot also form basis for Audit objection. Secondly it has been mentioned in the Audit objection itself that the copy of the C.B.D.T. Circular had been filed in 1968-69 Misc. Records. Though an elaborate note had not been left on the points discussed in the Circular in the relevant Miscellaneous records, the fact that it had been filed in the file itself would go to show that it had been taken into consideration while completing the assessment. Even considered from this angle also, there is no scope for the audit.

Even on the facts of the case furnished below there has been no under-assessment. In the circular referred to above, the assessee's income has been estimatetd at Rs. 67.94 lakhs. As per the particulars furnished at page 3 of the Circular referred to above, the estimated profit has been worked out on the following presumptions.

(1) 40 per cent of the production to be released for free sale.

(2) Average sale price of free sale was about Rs. 300 per quintal.

(3) The entire production had been released.

(4) The average cane purchase price would be about 73.7 per cent to 76.9 per M.T. But it had also been stated that the average sugar purchase price paid by the factories varied from Rs. 85/- to Rs. 100/- per M.T.

In the present case as per the particulars furnished below none of the above presumptions would apply. All the free sale sugars were sold to the highest bidder in the sealed tender.

The free market price of sugar on 27-7-1968 as per the News paper 'Dinamani' was Rs. 290 to Rs. 292. As per extract from the 'Financial Express' dated 14-7-1968 the current market varied from Rs. 285 to Rs. 300 per Qtl. The details regarding the entire sales of free market sugar have been obtained and all are to verifiable parties and there is no suspicious sales. The additional subsidy paid in

respect of purchase of sugar can had also been approved by the Registrar of Cooperative Societies.

Thus neither the purchase nor the sales of free sugar can be disputed. Even at that time of original assessment for 1969-70 and 1970-71 the out-turn from the various mills have been furnished by the assessee and when compared with the other factories, the assessee's outturn was found favourable. The low rate of out-turn mentioned in the Departmental Audit Report relates to the manufacture in June 1969. As April, May and June at this part of the areas would be a summer one, higher yielding in these months cannot be expected. However, the average throught the season of 8·47 percentage of recovery in 1970-71 compare favourably with the average recovery in the other factories. Thus the production also cannot be disputed. In the circumstances, there is no scope to suspect the trading result.

I am furnishing below the relevant details. As can be seen therefrom the free sugar did not work out to 40 per cent of the production. The free sugar can be shifted from the factory only as and when release orders have been received from the Civil Supplies Authorities and not based upon production. In this view of the matter there is no under assessment in 1969-70 and 1970-71 and hence this objection may also be dropped.

STATISTICAL PARTICULARS

	1969-70	1970-71
Cane crushed (M.T.)	1,14,530	1,92,242
Sugar produced—Qtls. (Qtl.—bag)	1,18,189	1,63,537
Recovery (percentage)	10·31	8·47
Cost production (per Qtl.)	160·56	165·22
Purchase price of Sugarcane		
Price fixed by Govt. and paid (per M.T.)	76·90	79·60
Further cane subsidy paid after getting permission from Registrar of Co-operative Societies to registered cultivators (M.T.)	33·10	10·40
To unregistered cultivators	23·10	Nil
Sales : Total (Value) in Rs.	2,40,77,651	2,28,40,630
Total (Quantity) in Qtls.	11,26,789	1,11,957

	1969-70	1970-71
Average rate	Rs. 190	204
Sale of free sugar (Qts.)	27,333	44,393
Sale of free sugar (Value)	Rs. 90,93,530	1,22,73,562
Average Sale	Rs. 332·69	276·48
Sale of levy sugar		
Quantity (Qtls.)	99,456	67,564
Price (Rs.)	1,49,84121	105,66,668
Gross Profit	32,82,508	9,52,0[illegible]1

As the facts of this case very from the hypothesis on the basis of which the estimated profit have been worked out in the C.B.D.T. Circular, the trading results are also not in conformity with the Circular. As the entire purchase and sales are verifiable and the recovery percentage is also fair when compared with other Mills, no further action is called for to the trading results. Hence this objection may be DROPPED".

3.23. The Inspecting Assistant Commissioner of Income Tax (Audit) Madras, while forwarding the Income Tax Officers' reference cited above, desired that the audit objection should be withdrawn. The Ministry also sent a reply to the Audit on the same lines on 22 March, 1976.

3.24. Details of income returned and assessed in respect of this Sugar Mill are given below:

	Date of filing return (revised return date in bracket)	Income returned (income shown in revised return in brackets)	Income assessed	Date of assessment
1969-70	5,11-69 (18-11-69) (16-3-71) (23-3-71)	Rs. 8,13,476 Rs. 4,41,653 Rs. 4,04,465 Rs. 3,84,477)	11,15,630 (Business)	31,3,1971
1970-71	18-4-70 (17-10-71)	Loss Rs. 14,52,840 Loss Rs. 10,93,286	Loss 10,87,211 (Business)	30-1-73

3.25. The Committee have informed that the Ambur Cooperative Sugar Mill had so far been assessed upto assessment year 1973-74 only. The relevant figures are as under:—

Asst. Year		Date of assessment	Income assessed
1971-72	(i)	29-3-74 (Loss)	Rs. 6,13,281 u/s 143(3)
	(ii)	20-8-76 (Loss)	Rs. 1,69,029 u/s 147(a)
1972-73		25-3-75 (Profit)	Rs. 4,32,245 set of by b/f losses hence not taxed.
1973-74		21-8-76 (Profit)	Rs. 82,06,580 u/s 143(3)—after deducting b/f losses. Development rebate and Depn.

3.26. It would be seen that in this case, Audit have objected to the assessments for the years 1969-70 and 1970-71 relying on the basis stipulated in the Circular of 28 October 1968. The Department of Revenue and Banking has, however, contended, in a note, that "the circular could not be construed as imposing any norms of profits for being applied uniformly in all cases", and that each case was expected to be examined on its merit because it was clearly stated that the field officers were: "to ensure that the estimate of profits shown in the annexure form only a starting point of enquiry into the cases of respective sugar mills. Similarly the data given here provide only clues, which need be followed up and cannot be treated as evidence".

3.27. As regards the assessment year 1969-70, the Department have pointed out that:

"(i) The actual cane price assumed to have been paid by the factories in the Madras Region was at the rate of Rs. 85 to Rs. 100 per M.T. *i.e.* at an average of Rs. 92.5 per M.T. The Society, however, actually paid Rs. 110 per M.T. *i.e.* at Rs. 17.5 per M.T. more than assumed in the Circular. On 1,14,530 M.T. of cane crushed in this year the society has therefore paid Rs. 20,04,275/- (1,14,530x17.5) over and above the amount assumed in the Circular.

(ii) The Circular assumed that 40 per cent of the production was released for free sale. On the total production of 1,18,189 quintals of sugar this would have amounted to only 27,333 quintals. There was thus a shortfall of 19,943 quintals. The average rate at which free sugar was sold was Rs. 332.79 per quintal. As against this the cost of production per quantial in this year was Rs. 160.56. Thus the

short fall of 19,943 quintals of sugar for free sale, as aforesaid, caused a diminution of the profits of the society to the extent of Rs. 34,30,196 (19,943 x 172)."

3.28. The Department have estimated that had the two aforesaid assumptions made in the Circular been fulfilled, the income of the Cooperative Sugar Society for the assessment year 1969-70 would have increased by Rs. 54,34,471/- as against the shortfall of Rs. 27 lakhs estimated by audit.

3.29. In so far as the assessment year 1970-71 is concerned, the Department have stated that even assuming that the Board's Circular of 1968 was applicable to this year as well, the position would be as follows:—

"(i) According to the assumption made in the Circular of 1968, the society should have sold 40 per cent of the total production of 1,63,537 quintals of sugar. This would have amounted to 65,415 quintals. But the sale of free sugar was only 44,393 quintals in this year. Thus there was a shortfall of 21022 (65415—44393) quintals in sale of free sugar. The cost of production in this year was Rs. 165 per quintal and the average rate of sale of free sugar was Rs. 276 per quintal. The shortfall of 21022 quintals of sugar for free sale, as aforesaid, caused a dimunition in the Society's profits to the extent of Rs. 23,33.442 (21022 x 111).

(ii) Yet another factor relevant for this year as against the preceding year is the low recovery of sugar from the sugarcane, which fell from 10.31 per cent to 8.47 per cent this year. On the total cane of 1,92,242 metric tons crushed in this year the lower recovery account for lower production of sugar by 35,372 quintals"

3.30. Asked what records were called for and scrutinized by the assessing officer in this case, the Department have intimated:

"(i) For the assessment year 1969-70, the assessee society furnished the (i) Balance Sheet as on 30-6-68, (ii) Manufacturing, Trading and Profit and Loss Account for the year ended 30-6-68, (iii) schedule for manufacturing expenses, (iv) schedule for trading expenses, (v) schedule for misc. expenses and misc. income, (vi) summary of sugar stock position, and (vii) summary of income tax for the assessment year 1969-70. The Income-tax Officer called for further details regarding the claim for relief u|s 80J of the Income-tax in respect of the 2nd Unit installed during the accounting year. He also called for Registrar's approval

for payment of additional price of Rs. 33.10 per M.T. for registered cane and Rs. 23.10 per M.T. for unregistered cane as 'cane supply subsidy' and also evidence of having paid the same to various parties, together with complete addresses in respect of parties who were paid over Rs. 10,000 each. Details of 4 other Co-operative Sugar Factories in the State during the season 1967-68 regarding the percentage recovery, cane crushed and sugar bagged were also obtained. Regarding the purchase price, a copy of letter of the Co-operative Department of the Government of Tamil Nadu stating that vide its Memo No. 55182/Mi C30|68|6 Industries, Labour and Housing dated 11-10-1968 the Government has permitted the mills to pay Rs. 110 per ton of cane supply for the 1967-68 season was also obtained.

(ii) For the assessment year 1970-71, the assessee filed copies of the audited Manufacturing, Trading and Profit and Loss Account and Balance Sheet together with a copy of audit certificate issued by the Registrar of Co-operative Societies, Madras for the year ended 30th June, 1969. Further details of Manufacturing, Trading and Profit and Loss Account and Balance Sheet together with the cost sheet with explanatory notes were also filed. These were scrutinized by the Income-tax Officer. Further particulars called for by him *e.g.*, details regarding seven other comparable sugar mills in respect of recovery of sugar etc., were also furnished by the assessee."

3.31. Asked whether the accounts of the assessee Society for the year 1969-70 and 1970-71 were test audited, the Department have stated:

"The audited accounts were test audited by the District Co-operative Audit Officer, Vellore, for the assessment year 1969-70 and by the Deputy Chief Audit Officer in the Office of the Registrar of Co-operative Societies for the assessment year 1970-71."

3.32. The Committee wanted to know whether in the case of this Co-operative Sugar Society, the assessing officer had before making the assessments for the years 1969-70 and 1970-71 made an investigation on the lines suggested by the Central Board of Direct Taxes in their Circular of October, 1968 and if not, what were the reasons for the omission. In reply, the Department have invited attention of

the Committee to the fact that in his reply dated 28 July 1975 to the A.G., Madras, the then Income Tax Officer had stated:

> "..... It has been mentioned in the Audit objection itself that the copy of the Central Board of Direct Taxes's circular had been filed in 1968-69 miscellaneous records. Though an elaborate note had not been left on the points discussed in the circular in the relevant miscellaneous records the fact that it had been filed in the file itself would go to show that it had been taken into consideration while completing the assessment."

3.33. The Committee enquired whether investigations were carried out on the lines suggested by the Board in their Circular of 28 October 1968 in other cases and if so, what additional income, if any; was brought out for the purpose of levy of tax. The Department of Revenue and Banking have stated in a note that:

> "No instructions were issued to report back the number of cases in which investigations were carried out on the lines suggested in the circular. Accordingly, information about additional income brought out for the purposes of tax, demand involved and the amount recovered is not available."

3.34. According to the information furnished by the Department to the Committee the whole-sale price of free sale sugar varied in different zones. It was Rs. 336 per quintal in Delhi Zone against Rs. 275 per quintal in Madras Zone on 22 July 1968. It was Rs. 365 per quintal in Delhi Zone as against 325 per quintal in Madras Zone on 31st August 1968. Even within the Madras Zone, the prices varied according to the quality and location. Thus on 13 July 1968 the Parry, Madurai, Amravati and Kothari Sugars were reported to be selling out Rs. 300, Rs. 278, Rs. 310 and Rs. 282 per quintal respectively. On 14 August 1968, the same varieties were reported to be selling at Rs. 295, Rs. 304, Rs. 300 and Rs. 305 per quintal respectively.

3.35. It was stated in the Board's circular of October, 1968 that while the estimate of profits as given therein was based on the assumption that the average sale price of free sale of sugar after 15 June 1968 was Rs. 300 per quintal, such price had, it appeared from the press reports, gone upto Rs. 400 per quintal and even above. The Committee, therefore, enquired whether as suggested in the Circular, the assessing officer had while making the assess-

ments for the years 1969-70 and 1970-71 taken into consideration the prices of free sale sugar as were reported in the press reports. In reply, the Department have explained that:

> "The figures reported in the papers are generally the wholesale selling rates which are invariably higher than the ex-factory prices at which sugar is sold by the mills to the whole-sellers at the factory premises. Ex-factory price includes the sale price of sugar and Excise duty, while the wholesale price also includes transport charges, other local incidental charges like octroi, storage etc., and a margin of profit for the whole-sellers."

3.36. The Committee wanted to know whether the assessee society had during the years 1969-70 and 1970-71 purchased the cane at the price fixed by Government. In reply, the Department have stated that the purchase of sugarcane in both the years had been made as per the rates prescribed by the Government. The Department furnished in this regard the following particulars:

	1969-70	1970-71
	Rs.	Rs.
Price fixed by Govt. and paid (per M.T.) .	76·90	79·60
Further cane subsidy paid after getting permission from the registrar of co-operative Societies :		
a) for Registered cane	33.10	10.40
b) for unregistered cane	23·10	Nil

3.37. The Committee enquired if the sugar mills were free to give any amount of subsidy over and above the prices fixed by Government. In reply, the Department have explained that:

> "Price fixed by the Government of India is only the minimum. The Mills can pay additional cane price over and above the minimum price with the prior approval of the State Government."

3.38. Asked what were the consideration on which the Registrar of Co-operative Societies had accorded permission to such subsidy, the Department have stated in a note:

> "It has not been possible to obtain from the State Government the considerations which weighed with them to

fix the quantum of subsidies in the relevant years. However, as mentioned in para 7.8 of the report of the Tariff Commission on "Cost Structure of the Sugar Industry and the Fair Price for Sugar", "because of the drought the year 1966-67 turned to be worst in the decade for the sugar industry. Production of cane fell by about 22 per cent and that of sugar by about 40 per cent as compared to 1965-66. Further, prices of Gur and Khandsari, which were not controlled rose to high levels. The utilization of cane by sugar factories fell from about 31 per cent of the total production in 1965-66 to 23 per cent in 1966-67, while the share of Gur and Khandsari, rose from 57 per cent to 65 per cent. The outlook for 1967-68 was even more gloomy due to a further fall in the area under cane by about 11 per cent.". It is, therefore, apparent that because of the diversion of already reduced quantity of sugarcane to Gur and Khandsari, incentive had to be provided to the cane-growers to supply cane to the mills."

3.39. The Committee asked how had the Department satisfied itself that payments stated to have been made by the Society to the registered and unregistered cultivators of sugarcane were genuine. The Department have replied in a note:

"Major portion of purchase of sugarcane is from registered cultivators. The subsidy or the additional price is paid only after getting the approval of the concerned authorities. The full addresses of the cane suppliers are also reported to be available. Hence the supply prices paid by the mill to the suppliers were accepted as genuine."

3.40. The Committee wanted to know how the recovery of sugar from sugar cane in the assessment years 1969-70 and 1970-71 in the case of this cooperative sugar society compared with the other comparative mills. The Department have stated, in a note that "the recovery of sugar from sugarcane in both the years compared favourably with the results shown by most of the other comparative mills as would be apparent from the following table":

	1969-70	1970-71
1	2	3
	%	%
The Madhurantakam Co-operative Sugar Mills .	9 55	7·75
The Kalakurachi Co-operative Sugar Mills .	10·10	8·97

1	2	3
E.I.D. Parry Ltd.	8·52	7·89
South India Steels and Sugars Ltd. . .	9·10	7·50
National Co-operative Sugar Mills Ltd. . .	8·85	7·30
Kothari Sugars & Chemicals Ltd. . . .	8·59	7·12
Aruna Sugars Ltd.	10·12	8·41
Ambur Sugar Mills	10·31	8·47

3.41. The Committee enquired whether before completing the assessments, the Department had made a reference to the Registrar of Co-operative Societies who, during audit of the manufacturing account of the Society, had felt that is poor recovery (8.47 per cent)) from sugarcane during 1970-71 as compared with previous year (10.31 per cent) required "further probing." In reply, the Department stated:

> "No reference was made to the Registrar of Co-operative Societies before completing the assessments. No further enquiry was initiated by the Co-operative Department either."

3.42. The Committee asked if the assessee society had obtained 'Cash Credits' and if so, from which source. The Department have replied:

> "There are no 'cash credits' obtained by the assessee from any member or third parties. The Society had credit facilities with the State Bank of India, Madras State Cooperative Bank and Industrial Finance Corporation of India. Besides , Madras Government had invested in the share capital of the Society and considerable paid-up capital was contributed by the member cane-growers. The position in respect of each on the relevant dates is as follows:

Borrowings under Cash Credit	30-6-1967	30-6-1968	30-6-1969
1	2	3	4
State Bank of India	4,51,979·29	28,48,084·36	1,04,624·36
Madras State Co-operative Bank . .		7,68,940·12	14,50,931·57

1	2	3	4
Long term borrowings;			
Industrial Finance Corporation . .	30,00,000	25,00,000	20,900,000
Madras State Co-operative Bank . .	35,00,000	30,00,000	25,00,000
Share Capital			
Cane growers	25,00,000	50,23,000	51,22,000
Government of Tamil Nadu . .	30,00,000	30,00,000	30,00,000

3.43. Asked if the figures of sale of free sugar were checked up at the time of assessment with the actual releases made by the Directorate of Sugar and Vanaspati:

> "Figures of sale of free sugar were not checked up at the time of assessment with the actual releases made by the Directorate of Sugar and Vanaspati."

3.44. The Committee learnt that in their reply dated 22 March, 1976 to Audit, the Department had indicated that in the years relevant to the assessment years 1969-70 and 1970-71, while the sales of levy sugar by the Society worked out to around 60 per cent of the production, sales of free sugar fell far below 40 per cent. (27,333 and 44,339 quintals as against 47,276 and 65,415 quintals respectively). The Committee enquired if shortfall in sale was due to lack of market demand or whether the stocks were held back deliberately by the society. The Department explained in a note that:

> "As mentioned in the circular of 1968, the factories could sell 40 per cent of the production anywhere in India at the free market price but this was subject to releases made from time to time from factories as authorised by the Government. The shortfall in the sale of free sugar was, therefore, attributable to the short releases made by the Government during the relevant period. In spite of there being a market demand for the free sugar, it was not within the powers of the mills to sell it unless releases have been made by the Government."

3.45. Asked whether the figures of production of sugar of the society were checked up with the Directorate of Sugar before making the assessments and if not whether the same were checked up subsequently, the Department have stated:

> "The figures of production and sales were not checked up with the Directorate of Sugar before making the assessments. These have, however, now been checked up and according to the records of Directorate of Sugar, the assessee had produced 28,039 tons and despatched/ delivered 23,834.6 tons respectively, disclosed before the Income Tax authorities for the period 1-7-1967 to 30-6-1969."

3.46. Since it was quite likely that the extra profits made by the Sugar Mills might not go to the coffers of the companies concerned but to the Managing Directors or other persons in charge of the Mills, the Central Board of Direct Taxes had in their circular of October, 1968 instructed the assessing officers that 'it would be necessary to scrutinise their personal cases also with great care'. It was suggested therein that 'it may be appropriate to call for wealth statements in such cases and make independent enquiries regarding their assets acquired by them during the relevant years.'

3.47. The Department were asked to state whether in any case of assessments of sugar producers, the Department had scrutinised the personal cases of Managing Directors etc., with a view to determining whether extra profits made by the factories were diverted to them. In reply it has been stated that "in the circular of 1968, no instructions were issued to the field officers to report back the number of cases in which investigations were carried out on the lines suggested therein." The Department have, however, made available to the Committee details of two cases where personal assessments were stated to have been scrutinised and additions made on the basis given in the circular of 1968. In one case, though the assessee (a Managing Director of a Sugar Mill) had returned a loss of Rs. 10,62,982 for the assessment year 1970-71, assessment on an income of Rs. 16,81,091 was made and even criminal complaint launched in the Court of the City Magistrate, Meerut. In the meantime, the assessee is reported to have died. In the second case of a Managing Director of another Sugar Mill, additions made in the assessment years 1967-68 to 1970-71 amounted to Rs. 5,51,500.

3.48. While discussing the Sugar Rebate Scheme on the Central Excise side, the Public Accounts Committee had, in paragraph 4.58 of their 155th Report (1974-75), observed as follows:

> "That the Sugar industry has, on all accounts, enriched itself in an unlimited way by the scheme of levy and free sale sugar, introduced in 1967, is of common knowledge. The price for sugar fixed by the Tariff Commission also ensure a fair return on the capital. Government themselves have admitted before the Committee that the margin available to the industry on free sale sugar would be 'anybody's guess'. There is no control on the price of free sale sugar which has brought in enormous profits to the industry, in which process the consumers have been allowed to be exploited. The profits derived by the industry on free sale sugar have also apparently not been taken into account in determining the percentage of varying rates of rebate allowed from time to time. The Tariff Commission had also observed that 'corrective action' would have to be taken by Government if, 'taking advantage of pressure of demand, free market sugar tends to show a consistent unjustifiable spurt in prices' and that the aim should be to keep the industry' under some discipline so that its overall return on all sugar (whether released under levy or sold in free market) approximates to the return intended'. Even the Supreme Court had observed in its judgement in the case of Anakapalle Cooperative Agricultural and Industrial Society Ltd. and Others *Vs.* Union of India that "it has not been denied that the majority of sugar producers have made profits on the whole and have not suffered losses."

3.49. The Committee enquired whether in the light of aforesaid observations of the Public Accounts Committee, the Department of Revenue and Banking/Central Board of Direct Taxes had attempted an analysis of the profits earned, returned and assessed to Income Tax during the period 1968 to 1975, after partial decontrol of sugar in 1967. The Department have stated:

> "No such analysis has been made. Sugar is only one segment of industry in India. The Central Board of Direct Taxes does not have the man-power to undertake such task."

However, the Committee have been informed that an attempt has been made to gather some information in respect of additions

made in the cases of sugar mills. Details of some readily available cases where additions were made on the basis of guidelines contained in the circular of 1968 are given below:

SUGAR MILLS IN WHOSE ASSESSMENTS ENQUIRIES CONDUCTED/ ADDITIONS WERE MADE ON THE BASIS OF THE GUIDELINES GIVEN IN THE CIRCULAR.

S. No.	Name of the assessee	Assessment year / Accounting year ending	Additions made
1	Godavari Sugar Mills Ltd. Factory at Kopergaon, Ahmednagar.	1969-70 31-5-1968	(i) Addition of Rs.56,68,112 was made on account of inflation in sugarcane price.
			(ii) Addition of Rs. 27,02,285 was made on account of undervaluation of closing stock of sugar.
2	S.B. Sugar Mills, Meerut.	1970-71 30-6-1969	Addition of Rs. 1,50,000 was made on account of understatement of sale price.
3	Pannii Sugar Mills (P) Ltd., Bulandshahr.	1970-71 30-8-1969	Addition of Rs. 5,74,426/- was made on account of understatement of selling price and a sum of Rs. 24,00,000 was added on account of suppression of production.
4	Kanian Sugar Mills Pvt. Ltd., Amroha.	1969-70 30-6-1968	Addition of Rs. 1,00,000 was made on account of understatement of selling price.
		1970-71 30-6-1969	Addition of Rs. 30,00,000 was made on account of understatement of selling price.
5	Jaswant Sugar Mills Ltd., Meerut.	1970-71	Addition of Rs. 22,50,000 was made on account of low recovery.
		1971-72	Addition of Rs. 58,27,000 was made on account of low recovery.
6	The India Sugar and Refineries Ltd., Bombay.	1969-70 30-6-1968	Addition of Rs. 17,45,548 in all was made in the trading results of free sugar, commission to Hospet Sugar Syndicate, disallowance of claim for additional sugar cane price, valuation of closing stock etc.

3.50. This case relates to assessment of income of a cooperative society (viz. M/s Ambur Cooperative Sugar Mills Ltd., Vadapudupet, engaged in the manufacture of sugar. This Society had disclosed gross profits of Rs. 33 lakhs and 9.5 lakhs for the years ended 30 June 1968 and 30 June 1969, relevant to the assessment years 1969-70 and 1970-71 respectively, and the assessments for the two years were completed in March, 1971 (revised in October, 1972) and January 1973 on the basis of these profits. The Committee find that based on a study made by the Directorate of investigation, the Central Board of Direct Taxes had in their Circular of 28 October, 1968 to the Commissioners of Income Tax circulated data which indicated that consequent on the introduction of the scheme of partial decontrol of sugar from 23 November, 1967 which permitted the Sugar Mills to sell 40 per cent of their production anywhere in India at the free market price subject to releases from factories authorised by the Government of India, Sugar Mills had made abnormal profits. Assuming the average free sale price of sugar after 15 June 1968 to be Rs. 300/- per quintal, according to the terms of the Circular this Society should have made a profit of Rs. 67.94 lakhs for the period from 1 October 1967 to 30 September 1968. Assuming, on the basis of press reports, that the actual price of free sale sugar was Rs. 400/- per quintal or more, the quantum of profit, according to the Circular, could be estimated to be atleast 20 per cent more. On this basis the profit of the assessee society for the period from 1 October 1967 to 30 September 1968 should be around Rs. 80 lakhs and hence for the period ended 30 June 1968, relevant for the assessment year 1969-70, the profits on proportionate basis, should be around Rs. 60 lakhs. It would thus appear that for the assessment year 1969-70, assessee society had not disclosed profits to the extent of Rs. 27 lakhs. If the same basis as given in the aforesaid Circular is adopted for the year ended 30 June 1969, also, relevant to the assessment year 1970-71, the profits disclosed by the society would also appear to fall short by over Rs. 28 lakhs for that year. Thus there was a shortfall of Rs. 55 lakhs for the assessment years 1969-70 and 1970-71, involving a tax revenue of Rs. 22 lakhs, apart from the penalty leviable for disclosure of Income.

The Government, however, maintained that the assumptions contained in the Board's circular letter of 1968 were not true in the case of the assessee Society and there were no grounds for reopening the assessments already made for the years 1969-70 and 1970-71. The

Government have based their contention on the following grounds:

(i) that the average sale price of Rs. 300/- per Qt. for free-sale sugar mentioned in the circular was not true in the case of the society in the assessment year 1970-71;

(ii) that the free-sale sugar actually sold by the society did not amount to 40 per cent of the total production as assumed in the circular, because the actual sale was subject to authorisation by the Directorate of Sugar and Vanaspati which were for far less quantity;

(iii) that the recovery of sugar from the cane purchased was less in 1970-71 which enhanced the cost of production and reduced the profitability;

(iv) that the availability of sugar-cane during the assessment years was comparatively less due to drought situation and, therefore, the society had to purchase cane at a price substantially higher than fixed by Government. This also enhanced the cost of production and reduced profitability.

Each of these grounds have been discussed in the following paragraphs.

3.51. The Committee note that the estimate of profit indicated in the Board's circular of October 1968 was based on the assumption that the average sale price of free-sale sugar after 15 June 1968 was Rs. 300/- per quintal. Indicating the probable profits earned by each sugar mill, the circular advised the Assessing Officers that according to the press reports the price of sugar had gone up to Rs. 400/- and above and, therefore, the quantum of profits should be atleast 20 per cent more than that estimated in the circular. In this connection the Department of Revenue and Banking have pointed out that in the assessment year 1969-70, the Society sold free-sale sugar at Rs. 332.79 per quintal but the profitability was less because—

(i) the quantity of free-sale sugar actually sold by the society was only 23 per cent of the total production as against 40 per cent assumed in the circular: and

(ii) the society purchased cane at a price higher than that assumed in the circular.

In the assessment year 1970-71, the Department have pointed out that the average rate of sale of free sugar was Rs. 276/- per quintal and that the cost of production had also gone up from Rs. 160/- per quintal in 1969-70 to Rs. 165/- per quintal. Besides, during this year

also the quantum of free-sale sugar actually sold is stated to have been only 27 per cent of the total production as against 40 per cent assumed in the circular. The Committee also find that in his communication dated 28 July 1975 to Audit, the Income-tax Officer has contended that there has been no 'suspicious sale' and that the entire free-sale sugar was sold to the highest bidder in the sealed tender and to verifiable parties. The Committee would, however, like Government to satisfy themselves by way of abundant caution that all the sales were genuine and at the declared price and that no attempt was made by the assessee to cover up any part of the profits so as to evade tax.

3.52. The Committee note that in his reply dated 28th July, 1975, the Income-tax Officer had sought to defend the assessments of income made by him on the ground that the assumptions on the basis of which profit of this Society for the period 10 October 1967 to 30 September 1968 was estimated as per the Board's Circular of October 1968, to be Rs. 67.94 lakhs did not apply in this case. One of the assumptions made in the Circular was that 40 per cent of the production of sugar would be released for free sale. This Society is stated to have sold in the free market 27,333 quintals of sugar, i.e. 23 per cent of the production of 1,18,189 quintals in 1969-70. In 1970-71, the free sale sugar was said to be 44,393 quintals, i.e. 27 per cent of the production of 1,63,337 quintals. The Committee have been informed by the Department that the "figures of sale of free sugar were not checked up at the time of assessment with the actual releases made by the Directorate of Sugar and Vanaspati." Even the figures of production were not checked up with the Directorate of Sugar before making the assessments. In view of this, the Committee cannot accept as conclusive the assessment of the I.T.O., based as it was on data supplied by the Society itself. The Committee would like the Central Board of Direct Taxes to impress upon the assessing officers the need to scrutinise all the material facts with reference to official sources at the time of assessment itself.

3.53. The Committee note that during 1969-70 the Society paid, with the approval of Government, a subsidy to the cane-growers over and above the Government fixed price of Rs. 76.90 per M.T., at Rs. 33.10 per M.T. to the registered growers and Rs. 23.10 per M.T. to the unregistered growers. During 1970-71, the subsidy, over and above the Government fixed price of Rs. 79.60 per M.T., was Rs. 10.40 per M.T. for registered growers only. The Government have admitted that, as additional price was paid only after getting the approval of the concerned authorities and also because full addresses of the cane suppliers were reported to be available,

the supply prices paid by the mill to the suppliers were accepted as genuine. The Committee consider it unfortunate that the cane prices paid to the growers were accepted by the Income-tax Officer as genuine without even making a test-check with the growers to establish the veracity of the claim of the Society.

3.54. The Committee note the claim of the Society that during 1970-71, recovery of sugar was only 8.47 per cent as against 10.30 per cent in 1969-70. In this connection, the Committee would like to draw attention to the book "Investigation of Accounts" brought out by the Board in 1964 which had, while giving broad outlines for detecting tax evasion in the cases of sugar mills and sugar dealers, referred to the allegation of under-weighment of sugar-cane as also under-statement of recoveries from sugar-cane and had cautioned that "it is necessary to carry out sample checks in respect of weighment and laboratory analysis of sugar recovery from various samples of sugarcanes." The Committee understand that while auditing the manufacturing accounts of this Society, the Registrar of Co-operative Societies had felt that the alleged poor recovery required "further probing". The Committee are surprised that at the time of assessment of income-tax payable by the Society neither the ITO himself exercised any test-checks nor made any reference to the appropriate authorities to verify the contention of the Society.

3.55. The Board's circular of 1968 pointed out that "as the extra profits made by the sugar mills may not have gone to the coffers of the companies concerned but to the managing directors or other persons in charge of the mills, it would be necessary to scrutinise their personal cases also with "great care" and suggested that "it may be appropriate to call for wealth statements in such cases and make independent enquiries regarding the assets acquired by them during the relevant years." The Committee are surprised at the interpretation placed on the Circular by the Department of Revenue and Banking who have contended that "in the circular of 1968, no instructions were issued to the field officers to report back the number of cases in which the investigations were carried out on the lines suggested therein." This shows a dismal lack of coordination between the Board and the field officers.

The Committee feel that it should be the concern of the Department to see that instructions are not only issued but are actually followed in the field for otherwise the very purpose of issuing such instruction would be defeated. The Committee would like to know whether the personal assessments of General Manager and the Managing Director of this assessee Society were investigated on the lines indicated by the Board in their Circular of 1968 and if not why this requirement was overlooked in this particular case.

3.56. After considering the facts placed before them, the Committee are left with a feeling that the Income-tax Officer concerned did not attach to the circular of the Board indicating the lines on which assessment in respect of sugar mills should be made, the importance that it deserved. They are unable to share the view expressed by the Income-tax Officer that "the fact that it (circular) had been filed in the file itself would go to show that it had been taken into consideration while completing the assessment." This laconic approach has to be deprecated.

3.57. In view of the deficiencies and lacuna pointed out in the earlier paragraphs, the Committee feel that there is scope for an in-depth inquiry into the profitability of the assessee society during the assessment years 1969-70 and 1970-71.

3.58. The Board's circular of 1968 gave a list of 55 factories in different zones of the country each of which had made an estimated profit of over Rs. 30 lakhs. The circular prescribed very specific inquiries to be made in the case of sugar factories such as strict proof of payment for purchases of cane at prices higher than those prescribed by the Government, sample checks in respect of weighment of cane and laboratory analysis of sugar recovery from various samples of sugar-cane, coordination of sales of free sale sugar with the quantities released for free sale by the Directorate of Sugar and Vanaspati, Government of India, verification of free market prices prevailing on the dates of release as ascertained from that Directorate, verification of stock and production particulars with the details obtained from the Directorate of Sugar etc. The need and the effectiveness of these inquiries are apparent from the fact that in the case of 6 sugar mills, according to the data furnished by the Department of Revenue and Banking, additions amounting to as much as Rs. 2.44 crores were made on the basis of investigations carried out in accordance with the guidelines prescribed in the Board's circular. The Committee cannot therefore but deplore the complacency with regard to the strict observance of these guidelines in the case of assessee society."

3.59. The Tariff Commission had, felt that 'corrective action' would have to be taken by Government if, 'taking advantage of pressure of demand, free market sugar tends to show a consistent unjustifiable spurt in prices', and that the aim should be to keep the industry under some discipline. In the case of Anakapalla Cooperative Agricultural and Industrial Society Ltd. and other Vs. Union of India the Supreme Court in its judgement delivered on 6 November 1972, had observed that it had not been denied that the majority

of producers had made profits on the whole and had not suffered losses. During the course of examination of the subject of Sugar Rebate Schemes, Government had themselves admitted before the Committee that the margin available to the sugar industry on free sale sugar would be "anybody's guess". In paragraph 4.58 of 155th Report (1974-75) on Sugar Rebate Scheme, the Committee had accordingly observed: "that the sugar industry has, on all accounts, enriched itself in an unlimited way by the scheme of levy and free sale sugar, introduced in 1967, is of common knowledge." The Committee understand that so far the Central Board of Direct Taxes have not attempted an analysis of the profits earned, returned and assessed to Income-tax by the Sugar Industry during the period 1968 to 1975. The Committee have been informed that the Board "does not have the manpower to undertake such task."

The Committee feel that such a study should be undertaken to dispel once for all the public misgivings about the state of the sugar industry which, it has been alleged, has enriched one segment of the industry only. It is for the Government to devise the machinery as also the parameters of the inquiry.

Audit Paragraph

3.60. The Income-tax Act provides that if an assessee is found to be the owner of any money, jewellery or other valuable article, the value of such article is not recorded in the assessee's books of account and the assessee is not able to offer a satisfactory explanation about the source of the article, the value of the article may be deemed to be the income of the assessee for the relevant financial year.

3.61. On the search of the premises of a cine artist in November, 1970, undisclosed assets in the form of jewellery valued at Rs. 2,33,730 were found. While completing the assessment for the relevant assessment year 1971-72, in December, 1973, the assessing officer included a part only of the undisclosed assets, amount to Rs. 1,15,430. The omission to include the balance amount of Rs. 1,18,300 in the assessment for the assessment year 1971-72 resulted in short levy of tax of Rs. 1,10,370.

3.62. The Ministry have stated (March 1976) that the audit objection is under active consideration.

[Paragraph 46(iv) of the Report of the C&AG of India for the year 1974-75 Union Government (Civil).]

3.63. The Audit paragraph points out that while searching the premises of a cine artist in November 1970, though undisclosed assets in the form of jewellery valued at Rs. 2,33,730 were found the assessing officer (Madras Circle) while computing the assessment in December, 1973 for the relevant assessment year 1971-72 included only a part of the undisclosed assets (Rs. 1,15,430) resulting in short levy of tax of Rs. 1,10,370. The Committee learnt from Audit that the Ministry have not accepted this objection on the ground, that though the search was conduct on 1 November, 1970, a part of the jewellery (Rs. 1,18,300) was found to have been pledged on 3 October, 1969 and this part was, therefore, includable for the assessment year 1970-71.

3.64. The Committee desired to know the articles found when the search was conducted in this case on 1-11-1970 and whether any part of the articles so found could be deemed to have been found in any other financial year than the one in which these articles were actually found as a result of that search. In reply, the Department stated:

> "In the course of the search, jewellery valued at Rs. 1,70,430 was found in the premises of the assessee. Since in her wealth tax return she had been declaring jewellery of the value of Rs. 55,000, the difference of Rs. 1,15,430 was included in her total income for the assessment year 1971-72 as she was not able to offer any satisfactory explanation about the nature and source of its acquisition. Besides documentary evidence was also found indicating that certain items of jewellery were pledged to a money lending firm on 3-10-1969, which was separately valued at Rs. 1,18,300. There could, therefore, be no doubt that jewellery, valued at Rs. 1,18,300 was owned by the assessee at least on 3-10-1969. This date fell in the financial year 1969-70 relevant for the assessment year 1970-71."

3.65. The relevant provisions of the Income-tax Act in this regard are as follows:

> "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable articles and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source or acquisition of the money, bullion, jewellery or

. other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value, of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

3.66. The Committee asked whether the Ministry of Law were consulted as to the exact meaning of the phraseology "where in any financial year the assessee is found to be the owner" used in Section 69A of the Income-tax Act. The Department have replied:

"The Ministry of Law have not been consulted with regard to the interpretation of the phraseology "found in any financial year" as it has not been considered necessary."

3.67. Since only a portion of undisclosed income was taxed during the year 1971-72, the Committee wanted to know when the balance amount of undisclosed income would be taxed. The Department replied in a Note that:

"Out of the total undisclosed jewellery valued at Rs. 2,33,730 a sum of Rs. 1,15,430 was taxed in the assessment year 1971-72. The balance amount of Rs. 1,18,300 is to be taxed in the assessment year 1970-71. The relevant assessment has been set aside by the Commissioner of Income-tax under section 263 to assess the value of part of the jewellery in 1970-71. The Income-tax Officer has been directed to finalise the fresh assessment very early."

3.68. The Committee regret to find that on the search of the premises of a Cine Artist on 1st November, 1970, while undisclosed assets in the form of jewellery valued at Rs. 2,33,730 were found, the assessing officer, while completing the assessment for the relevant year 1971-72 in December, 1973 included only a part of the undisclosed assets amounting to Rs. 1,15,430. The omission to include the balance amount of Rs. 1,18,300 resulted in short levy of tax to the extent of Rs. 1,10,370. According to the Department of Revenue and Banking, though the search was conducted in this case on 1 November, 1970, part of the jewellery (Rs. 1,18,300) was found to have been pledged on 3rd October, 1969 and was, therefore, includable in the assessment year 1970-71. The Committee have doubts if the action of the assessing officer in not including a part of the undisclosed assets was in keeping with the provisions of the law.

They feel that this was a fit case in which the Department should have sought the opinion of the Ministry of Law (which was not done) as to whether under section 69A of the Income Tax Act it was open not to include a part of the undisclosed assets in the assessment of the relevant financial year. The Committee recommend that Ministry of Law may be consulted even now in the matter so that there may be no ambiguity whatsoever about intention, scope and application of the law in the instant case and in the cases arising in future.

CHAPTER IV

AVOIDABLE MISTAKES, INVOLVING CONSIDERABLE REVENUE

Audit Paragraph

4.1. Where any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Income-tax Act, 1961, the Income-tax Officer is required to serve upon the assessee a notice of demand specifying the sum payable. According to the instructions issued by the Board, such demand notices should be served within a fortnight and in the case of particularly obstructive assessees within a month, of the passing of the relevant order.

4.2. It was noticed during the audit of a ward on 20th December, 1974, that in a case where the Department completed the assessments for the assessment years 1967-68 to 1969-70 on 30-1-1974 with a total tax demand of Rs. 19,239, the relevant demand notices were not served on the assessee till the date of audit, *i.e.*, even after a period of nearly 11 months.

4.3. In their reply, the Ministry have intimated that as a result of rectification, additional demand of Rs. 19,239 has been raised (October, 1975). Report regarding collection is awaited (March, 1976).

[Paragraph 55(ii) of the Report if the C&AG of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Vol. II, Direct Taxes].

4.4. In pursuance of the Public Accounts Committee's recommendation contained in Paragraph 2.242 of the 87th Report (Fifth Lok Sabha), relating to Income Tax, the Board had reiterated on 22 September, 1973 their earlier instructions issued on 22 March, 1971 to the effect that every effort should be made to secure the service of demand notice within a fortnight and in the case of particularly obstructive assessees within a month, of the passing of the assessment order. Duty was also cast upon the Internal Audit parties to check upon delays in this regard. The Audit paragraph gives details of a case where these instructions were not followed.

4.5. The Committee desired to know that when the assessments for the assessment years 1967-68 to 1969-70 were completed by the Department in this case on 30 January, 1974 why were the demand notices not issued till 10 June, 1975. In reply, the Department of Revenue and Banking have, in a note, stated:

> "The ITO made the assesments u/s 143/146 on 30th January, 1974. At the relevant time, functional scheme was in operation. Since it was the end of the month, there was a large number of assessments for calculation of taxes with the Calculation Cell. It has been reported that the Calculation Cell could attend only to the time-barring assessments of 1971-1972 and this case was left to be done later."

4.6. The Committee asked why the demand notices were not issued even when Audit had pointed out the lapse on 20 December, 1974. The Department have, in a note, explained:

> "When the Audit pointed out on 20-12-74 the non-issue of demand notices for these three years, a question which exercised the ITO's mind was whether assessment orders signed on 30th January, 1974 were legal or not because no tax had been determined as payable as required u/s 143(3) of the Income-tax Act, 1961. In the meantime, the ITO who had passed the order in January, 1974 had been transferred and the successor was not sure whether he could issue demand notices in respect of orders passed by his predecessor."

4.7. Asked if the amount of tax due has since been collected in this case, the Department stated:

> "The demand has not been collected because an appeal is pending against the assessment."

4.8. In a subsequent note, the Department have intimated that:

> "Appeals for all the three years have since been disposed of. The total demand stands at Rs. 16,223/- after giving effect to the appellate orders."

4.9. The Committee desired to know if delay of more than 16 months in the issue of demand notices in this case would entail any loss of interest. The Department replied that:

> "The question of loss of interest will not arise in cases where the final demand after adjusting pre-assessment taxes paid is insignificant or where the taxes are paid within the time allowed under the law."

4.10. Since delays in issue of demand notices had been repeatedly pointed out by Audit in the past [*vide* paragraph 49(a) of Audit Report 1969-70, paragraph 55 of Audit Report 1970-71, and paragraph 11.5(ii) of Audit Report 1973-74] the Committee wanted to know the steps the Ministry proposed to take to see that demand notices were served promptly. In reply, the Department of Revenue and Banking have in a note stated that Instructions issued on 22-3-1971 have already been reiterated by the Central Board of Direct Taxes by issue of Instructions No. 852 dated 14-7-75 which *inter-alia* provide that:

> "Recently some cases have come to the notice of the Board when it was found that there was delay of more than one year in the service of the demand notices and challans. Such lapses are commented upon very adversely by the PAC.
>
> The existing procedure already provides a machinery for securing the objective of timely issue and service of demand notices and challans. The date of the assessment order and the date of service of the demand notice are required to be noted in cols. 4 and 27 of the Demand and Collection Register respectively. Entries made in these columns enable the supervisory authorities to pin-point lapses in this respect. The Board feel that the Head Clerks and the Income Tax Officers are not scrutinising the demand and collection registers periodically, particularly the entries in cols. 4 and 27.
>
> The Board desire that the Income Tax Officers should personally scrutinise DCRs at the close of every month to ascertain whether in respect of assessments completed in the preceding month, service of demand notices have been made and entered in the DCR. The Range IACs should also keep a watch on this aspect of the ITOs work and scrutinise the DCRs once in every quarter in respect of local circles. In respect of mofussil charges, the verification of the DCRs should be made by the IACs when they visit such charges on tour."

4.11. On 8 July, 1976, Central Board of Direct Taxes, have issued further instructions (No. 974 dated 8 July 1976) which stipulate that:

> "With the replacement of functional scheme by the unitary system, the Income-tax Officers are required to write the Demand and Collection Register themselves as per Board Instruction No. 937 (F. No. 225/26/76/IIA. II) dated 18

March, 1976. The Income Tax Officers should ensure that the columns in the Demand and Collection Register for noting the dates of issue and services of demand notices are filled in. Periodical verification of the Demand and Collection Register and scrutiny of the notice-Service register will enable the Income-tax Officer to exercise proper control over the important work. Inspecting Assistant Commissioners by means of test check should ensure that the Income Tax Officers exercise proper control over this work."

4.12. The Committee enquired if it was not the duty of Internal Audit parties to check delays in the issue of demand notices on completion of assessment. The Department confirmed in a note that:

"The Internal Audit Parties are expected to point out mistakes of this type. The check sheet prescribed for Internal Audit Parties both for company as well as non-company cases contains the following query:

'Was demand notice promptly issued/validly served'."

4.13. The Committee asked how many cases of delay in the issue of demand notices were detected by the Internal Audit Parties during 1975-76. In reply, the Department stated that the number of cases detected by the year 1975-76 in which there was delay of more than 60 days Commissioner-wise was as under:

	CIT's Charge	No. of cases
1.	Assam	17
2.	Delhi	8
3.	Gujarat	14
4.	Karnataka	7
5.	Kerala	3
6.	Orissa	17
7.	Poona	54
8.	Patiala & Rohtak	128
9.	West Bengal	1
10.	All other charges	Nil
	TOTAL	249

4.14. Asked that if it was the duty of the Internal Audit party to check such delays, why was this case not checked by them. The Department replied:

> "This case was not checked by the Internal Audit at all, being a non-priority case."

4.15. The Committee find that in this case the assessment for assessment years 1967-68 to 1969-70 was completed by the Income Tax Officer on 30 January, 1974 but demand notices specifying the sum payable were not served on the assessee till 10 June, 1975. The Department have explained that at the time these assessments were completed, functional scheme was in operation and it being the close of the month, the Calculation Cell was busy with a large number of assessments for calculation of taxes. It is further stated that the Calculation Cell "could attend only to the time barring assessments of 1971-72 leaving this case to be done later". It has also been stated that in the assessments made, tax payable was not determined and consequently the Income Tax Officer was in doubt whether such assessment orders could be treated as legal or not. In the meantime the Income Tax Officer who had made these assessments was stated to have been transferred and, according to the Department, the successor was not sure whether he could issue demand notices in respect of orders passed by his predecessor. The Committee are not satisfied with this explanation. The Board has already issued executive instructions on 22 March, 1971 to the effect that every effort should be made to secure the service of demand notice within a fortnight and in the case of particularly obstructive assessees within a month of the passing of the assessment order. These instructions were reiterated by the Board on 22 September 1973. The existing procedure provides for noting down of the dates of assessments and service of demand notice in the "Demand and Collection Register". It appears that entries in this Register were not scrutinised periodically by the Income Tax Officers concerned otherwise such a delay would not have escaped their attention. The Committee are perturbed to find that during the year 1975-76 alone, the Internal Audit were able to detect 249 cases of delay of more than 60 days in the issue of demand notices. The Committee are therefore inclined to believe that executive instructions issued by the Board were honoured more in the breach than in observance. The Committee recommend that Government should review the existing control mechanism and try to bring about improvements so as to plug loopholes for possible malpractices resulting in loss to the national exchequer.

CHAPTER V

MISTAKES COMMITTED WHILE GIVING EFFECT TO APPELLATE ORDERS

Audit Paragraph

5.1. In the assessment of a registered firm engaged in the business of film production and assessed in a Central Circle, for the assessment year 1965-66 completed in September, 1969, an addition of Rs. 1,03,000 was made by the Department to the income returned by the assessee, on the ground that the value of the closing stock of three films produced during the year was under-stated at Rs. 4,80,000. On appeal by the assessee, the Appellate Assistant Commissioner set aside the assessment in August, 1972 for being re-done. In the re-assessment made in July, 1973, the closing stock value was adopted as Rs. 2,39,750 in accordance with the executive guidelines issued in September, 1972.

5.2. For the assessment year 1966-67, the assessee returned an income of Rs. 64,310 after deducting from the gross income the sum of Rs. 5,83,000 as the opening stock value of the three films as determined originally as the closing stock for the assessment year 1965-66. In the assessment completed in February, 1971, the Income-tax Officer disallowed certain interest payments and expenses and worked out the total income as Rs. 2,93,089 which was finally determined on best judgement as Rs. 3,50,000.

5.3. The assessment for the assessment year 1966-67 which was based on the opening stock value of Rs. 5,83,000 was, however, not revised when the re-assessment for the earlier year, 1965-66, was made subsequently in July, 1973 when the closing stock value was reduced to Rs. 2,39,750. The omission resulted in under-assessment of income of Rs. 3,43,250 for the assessment year 1966-67 with consequent short levy of tax of Rs. 2,00,000.

5.4. The Ministry have accepted the objection in principle (December, 1975).

(Paragraph 56 of the Report of the C&AG of India for the year 1974-75 ,Union Government (Civil), Revenue Receipts, Vol. II, Direct Taxes).

5.5. In paragraph 61 of their 21st Report (Third Lok Sabha), the Committee, while expressing surprise at the defective manner in which the Appellate Tribunal Orders was given effect to by the Income Tax Officer in a case resulting in short assessment of tax amounting to Rs. 104 lakhs, suggested that revision of assessments done as a result of orders of an appellate authority involving large sums should be scrutinised by some higher authority to avoid the possibility of such mistakes occurring. In compliance with this recommendation of the Committee, the Central Board of Direct Taxes issued instructions in July 1964 (vide paragraph 5.101 of the 73rd Report (Fourth Lok Sabha). In paragraph 10.5 of their 186th Report (Fifth Lok Sabha) the Committee observed:

> "It would appear that the mistakes in giving effect to appellate orders continue to occur, first, because the Ministry has not been able to ensure a proper spacing of work with the result that the rush of work at the end of the year has become a recurring phenomenon and, secondly, because the Central Board of Direct Taxes has not been able to secure compliances even with their own instructions, issued at the instance of the Committee."

5.6. This Audit paragraph has brought out another case of negligence/carelessness on the part of assessing officer in giving effect to Appellate orders. According to facts placed before the Committee, the assessee firm had, in the income returned by it for the assessment year 1965-66, stated the value of the closing stock of three films produced during the year at Rs. 4,80,000. While completing the assessment in September, 1969 the value of the closing stock was increased by the Department to Rs. 5,83,000/-. On appeal by the assessee this assessment was, however, set aside in August 1972 and in the reassessment made in July 1973, the closing stock was adopted as Rs. 2,39,750 in accordance with the executive guidelines issued by the Central Board of Direct Taxes on 18 September 1972.

5.7. According to these guidelines (which modified the provisions contained in the Board's circular of 9th April 1959 and 4th October 1969) amortisation of cost of production and cost of acquiring distribution rights was to be regulated as under:—

> (i) In allowing cost of amortisation of 'A' class feature films (i.e. where cost of production including cost of production and advertisement expenses incurred by the producer is Rs. 35 lakhs and above) the value of the film will be depreciated by 60 per cent in the first year, 25 per cent in

the second year and 15 per cent in the third year on time basis as elucidated in Board's circular dated 9th April, 1959.

(ii) The effective life of feature films in 'B' (cost of production between Rs. 10 to 30 lakhs) and 'C' (cost of production below Rs. 10 lakhs) categories was found to be normally of one year, the entire cost of production may be allowed in the very first year of production if the film was released in the first half of the accounting year, and if it was released in the latter half of the accounting year, the value of the film should be taken at 50 per cent of the cost of production at the end of that accounting year and the balance 50 per cent should be adjusted in the second year.

(iii) The cost of acquiring distribution rights should be treated in the hands of the distributor in the same way as the cost of production is treated in the hands of the film producer.

(iv) In cases where the producer or the distributor disposes of the exploitation rights of an 'A' class film on mixed basis *i.e.* some territories on minimum guarantee and others on outright sale, the deduction for the cost of production should be effected in the same proportion as the amount of outright sale bears to total receipts. The remaining balance of the cost of production should be amortised on above lines.

5.8. These guidelines were further modified by the Board in their circular No. 154 dated 5th December, 1974.

5.9. The Committee desired to know how the mistake occurred in the case reported in the Audit paragraph. In reply, the Department of Revenue and Banking, in a note, explained:

"In the assessment for 1965-66 (completed on 27.9.69) the figure of closing stock was originally adopted at Rs. 5,83,000/-. The assessment was set aside by the Appellate Assistant Commissioner on 17.8.72 and in the fresh assessment made on 30.7.73 the figure of closing stock was taken at Rs. 2,39,750/-. In the original assessment for 1966-67 made on 12.2.71 the figure of opening stock was taken at Rs. 5,83,000/-. As a consequence of fresh assessment for the year 1965-66 in which the figure of closing stock was revised to Rs. 2,39,750/, consequential revision of the figure of opening stock in the assessment

for 1966-67 was not taken resulting in under-assessment of income by Rs. 3,43,250.

Follow up action to revise the figure of closing stock for 1966-67 could not be taken because by the time the fresh assessment for 1965-66 was completed on 30.7.73 the appeal against the assessment for 1966-67 had already been dismissed by the Appellate Assistant Commissioner on 29.3.73. No action u/s 263 was, therefore, possible. Action u/s 147(b) was already barred by time."

5.10. The Committee desired to know what were the precise grounds on the basis of which the assessee had appealed against the assessment for assessment year 1965-66. In reply, the Department of Revenue and Banking have intimated that the following grounds were taken in appeal by the assessee before the Appellate Assistant Commissioner:—

(i) Disallowance of interest of Rs. 40,045 on the debit balances in the accounts of partners was wrong;

(ii) The addition of Rs. 2,63,137 being expenditure not proved to have been incurred was wrong;

(iii) Addition of Rs. 1,03,000/- made towards the closing stock was wrong.

5.11. Asked on what basis the Appellate Assistant Commissioner set aside the assessment for 1965-66 on 17 August, 1972, the Department have intimated:—

"The Appellate Assistant Commissioner set aside the assessment for 1965-66 on the basis of the Tribunals orders setting aside the assessments for 1961-62 to 1963-64 on the question of disallowance of interest on debit balances in the accounts of partners."

5.12. The Committee desired to know whether this case was looked into by the Internal Audit Party and if so why they could not detect this simple mistake not involving any point of law. The Department of Revenue and Banking in a written note explained:—

"The Internal Audit Party checked the assessment for 1965-66 on 4.5.71 and for 1966-67 on 6.5.71. Thus at the time of checking the assessment for 1966-67 the original assessment for 1965-66 was alive and therefore there was no occasion to point out any mistake."

5.13. As regards rectification and collection of the additional demand in this case the Department of Revenue and Banking have in a note informed:—

> "The assessment for 1966-67 has been cancelled by the Tribunal *vide* its order dated 31-5-75. The fresh assessment is pending finalisation."

5.14. In a subsequent note (March 1977) the Department have intimated that instructions for early finalisation have been given to the Income Tax Officer.

5.15. The Committee find that in the case of a firm engaged in the business of film production, in the assessment for 1965-66 completed on 27th September 1969, the value of the closing stock of 3 films produced during the year was stated by the assessee firm at Rs. 4.80 lakhs but viewing it as an under statement, the Department increased it to Rs. 5.83 lakhs. Accordingly in the original assessment for 1966-67 made on 12 February 1971 the figure of opening stock was taken as Rs. 5.83 lakhs. However, on a appeal of the assessee the assessment for 1965-66 was set aside by the Appellate Assistant Commisioner on 17th August 1972. In the fresh assessment made on 30 July 1973 for 1965-66 the figure of closing stock was taken at Rs. 2,39,750/- in accordance with executive guidelines issued by the Central Board of Direct Taxes on 18 September 1972. Consequential action to revise the figure of opening stock in the assessment for 1966-67 was not taken by the Department. Admitting the resultant under-assessment of income of Rs. 3,43,250/- and short levy of tax of Rs. 2.00 lakhs, the Department has pleaded that follow up action to revise the figure of opening stock could not be taken in this case because "by the time the fresh assessment for 1965-66 was completed on 30 July 1973 the appeal against the assessment for 1966-67 had already been dismissed by the Appellate Assistant Commissioner on 29 March 1973". The Committee understand that consequent on cancellation of the assessment for 1966-67 by the Tribunal on 31 May, 1975, instructions have been issued to the ITO for early finalisation of this assessment. The Committee would like the case to be finalised without delay. The Committee regret that the Department had not been sufficiently alert in closely following up the case resulting in the mistake which would have caused a loss of Rs. 2.00 lakhs to the exchequer.

CHAPTER VI

NON-COMPLETION OF SET ASIDE ASSESSMENT

Audit Paragraph

6.1. The taxable income of an assessee for the assessment year 1960-61 was determined at Rs. 5,04,914 in March, 1965. This included an income of Rs. 4,60,000 from undisclosed sources (credit under hundi loans). In March 1966, the Appellate Assistant Commissioner remanded the case to the assessing officer with the direction to submit the remand report within six months. As no remand report was submitted in spite of reminders, the Appellate Assistant Commissioner set aside the assessment in March, 1968. It was pointed out by Audit in July 1970 that the set aside assessment had not been completed although the assessment was to be done within two years and delay would cause erosion of evidence in regard to the income from undisclosed sources. In September, 1970, the Commissioner of Income-tax informed Audit that as huge hundi loans were raised by the assessee, their verification would take quite a bit of time.

6.2. It was seen in July, 1975 that the assessment for the year 1960-61 had not been completed. It was also seen that the assessments for the subsequent six years from 1961-62 to 1966-67 were also set aside in November, 1968 and January, 1972, but none of the assessments was re-made, although tax of Rs. 8,17,670 and additional tax (under Section 10 4 of the Act) of Rs. 80,180 (total Rs. 8,97,850) was payable by the assessee in pursuance of the original assessments. The assesee had paid tax of Rs. 4,22,680, but the Income-tax Officer, consequent on the setting aside of the assessments, allowed refunds of Rs. 2,24,950, leaving revenue exceeding rupees seven lakhs unassessed and unrealised.

6.3. The Ministry have accepted the objection in principle (February, 1976).

[Paragraph 60 of the Report of the C&AG of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Vol. II, Direct Taxes].

6.4. Sub-section (2A) of Section 153 (inserted by Act 42 of 1970 w.e.f. 1.4.1971) of the Income Tax Act provides for completion of set

aside assessments within 2 years from the end of the financial year in which order of Appellate Assistant Commissioner has been received. Prior to this amendment, the Central Board of Direct Taxes had issued a Circular on 15 October, 1968 which stated that:

> "It has been decided by the Board that the assessments which have either been re-opened under Section 146 or which have been set aside in appeal, should normally be completed within a period of 2 years. The period of two years will be reckoned from the date on which the Income-tax Officer passes the order accepting the application of the assessee under Section 146 to re-open the assessment or from the date of receipt of the appellate order setting aside the assessment."

6.5. On 22 February, 1973, the Central Board of Direct Taxes issued instructions directing the Commissioners of Income Tax to get all set aside assessments for 1970-71 and earlier years completed by 30 July, 1973.

6.6. Commenting upon delay on the part of an Income Tax Officer in taking action on the orders of the Appellate Assistant Commissioner, the Supreme Court, in the case of ITO, 'A' Ward, Calcutta and another Vs. Ramnaryan Bhojnagarwala (1976) 103 ITR (Supreme Court) had observed:

> "....indeed administrative officers and tribunals are taking much longer time than is necessary, thereby defeating the whole purpose of creating quasi-judicial tribunals calculated to produce quick decisions, especially in "fiscal matter". (Such delay) 'amounts to indicipline subversive of the rule of law'."

6.7. Audit paragraph gives details of a case where there was an inordinate delay of 8 years in finalising set aside assessments even though the original assessments had created a large tax demand and part of it paid by the assessee had been refunded. The dates of

original assessments and dates on which orders setting the assessments were passed in this case are given below:

Assessment year	Date of Original assessment	Date of AACs rder setting aside the assets
1960-61	29-3-65 u/s 154 14-2-67	29-3-68
1961-62	15-3-66	29-11-68
1962-63	25-3-67	25-1-72
1963-64	23-3-68 u/s 154 24-1-72	25-1-72
1964-65	30-8-68 u/s 154 24-1-70	25-1-72
1965-66	16-10-69 u/s 154 16-12-70	25-1-72
1966-67	12-3-70	25-1-72

6.8. The Committee desired to know as to why the assessments for assessment years 1960-61 and 1961-62 set aside on 20 March 1968 and 29 November 1968 were not completed in this case, though according to executive instruction issued by the Board in October 1968 and under Sub-Section (2A) of Section 153 of the Income Tax Act which took effect on 1 April, 1971, these were required to be completed within 2 years. In reply, the Department of Revenue & Banking have, in a note, explained:

> "After the assessment for 1960-61 was set aside on 20.3.68 and for 1961-62 on 29.11.68 by the A.A.C. the assessee filed a settlement petition on 1.2.1969 before the Commissioner of Income-tax, which was rejected on 2.2.70. While the set aside assessments for 1960-61 and 1961-62 were pending, the assessments for the years 1959-60 and 1962-63 to 1966-67 were also set aside by the A.A.C. on 25.1.72. The first set aside assessment for 1959-60 required extensive verification of Hundi loans and the assessments for the year 1960-61 onwards could not be completed until the assessment for the year 1959-60 was finalised. Verification of Hundi loans caused the delay in completion of the assessments."

6.9. The Committee have been informed that in this case the assessments have since been completed upto the assessment year

1974-75. Asked whether the assessee is in arrears and if so to what extent, the Department has stated:

> "The arrears are to the tune of Rs. 4.78 lakhs. The demand has been stayed till the disposal of appeals by the A.A.C. who has been asked to dispose of the appeals on a priority basis."

6.10. In a subsequent note, the Department intimated that:

> "The Appellate Assistant Commissioner of Income-tax has since set aside the assessments for the assessment years 1959-60 to 1966-67 in January 1977 and directed the Income-tax Officer to make fresh assessments. Fresh assessments are still pending."

6.11. When asked if any security had been taken from the assessee to ensure recovery of arrears, the Department replied:

> "No security was considered necessary as the assessee was cooperative with the Income-tax Department. However, the Range, Inspecting Assistant Commissioner has been directed to obtain adequate security to cover the arrears in this case."

6.12. The Audit had pointed out that a refund of Rs. 2,24,960 was allowed to the assessee who was in arrears. Asked to indicate the reasons for refunding the amount, the Department of Revenue and Banking have explained:

> "Refund of the aggregate amount of Rs. 1,94,551 was granted for the assessment years 1962-63, 1963-64, 1965-66 and 1966-67 when the original assessments were set aside in appeal. Since these assessments were set aside, the excess over advance tax paid by the assessee was refunded."

6.13. The Committee note that the income tax assessment case of an assessee for the assessment year 1960-61, determining in March, 1965 his taxable income at Rs. 5,04,914 (including an income of Rs. 4,60,000 from undisclosed sources), was remanded to the assessing officer in March 1966 with the direction to submit the remand report within six months and when, even after repeated reminders, a remand report was not received, the assessment was set aside by the Appellate Assistant Commissioner in March 1968. On Audit pointing out in July 1970 that the set aside assessment should have

been completed within two years and that delay would cause erosion of evidence in regard to the income from undisclosed sources, the Commissioner of Income Tax is stated to have informed Audit in September 1970 that as huge hundi loans were raised by the assessee, their verification would take "quite a bit of time". Surprisingly enough, the set aside assessment was not completed even upto July, 1975 despite the fact that the executive instructions issued by the Central Board of Direct Taxes on 15 October, 1968 had clearly enjoined that set aside assessments should be completed within tow years. The Committee view this case of inordinate directed the Commissioners of Income Tax on 22 February, 1973 to get all set aside assessments for 1970-71 and earlier years completed by 30 July, 1973. The delay in this case was thus not only a clear disregard of executive instructions but was also in violation of Subsection (2A) of Section 153 (inserted by Act 42 of 1970 w.e.f. 1 April 1971), which had provided for set aside assessments being completed within two years. The Committee view this case of inordinate delay with serious concern and recommend that responsibility for this delay may be fixed. The Committee also recommend that concrete measures be taken to tone up tax administration and put an end to such delays.

6.14. The Committee also find that assessments for six years from 1961-62 to 1966-67 were set aside in November, 1968 and January, 1972, but none of these was re-made, although tax of Rs. 8,17,670 and additional tax of Rs. 80,180 aggregating Rs. 8,97,850 was payable by the assessee in pursuance of the original assessments. The assessee had paid Rs. 4,22,680 only. Instead of taking action to recover the arrears due from the assessee, a refund of the aggregate amount of Rs. 1,94,551 representing the excess over advance tax paid by the assessee was allowed to the assessee for the assessments years 1962-63 to 1966-67 leaving revenue exceeding rupees seven lakhs as unassessed and unrealised. The Committee are unhappy at this action especially when no security covering the arrears due from the assessee was taken beforehand and it was only later that the Assistant Commissioner was directed to obtain adequate security. The Committee have been informed that in January 1977 assessments for assessments years 1959-60 to 1966-67 have all been set aside by the Appellate Assistant Commissioner and that the ITO has been directed to make fresh assessments. The Committee would like the reassessment for these years to be made on a priority basis so that this case which is hanging fire for well over 15 years is finalised. The Committee also recommend that suitable instructions should be issued to the field staff not to make refunds to tax deposits in cases where reassessments are pending.

6.15. For lack of time, the Committee have not been able to examine some of the paragraphs relating to Income Tax included in Chapter III of the Report of the Comptroller & Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee expect, however, that the Department of Revenue and Banking and the Central Board of Direct Taxes will take necessary remedial action in these cases, in consultation with the statutory Audit.

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

NEW DELHI;
September 30, 1977
Asvina 8, 1899 (*Saka*)

APPENDIX I

(*Vide paragraph* 1.14)

STATEMENT GIVING DETAILS OF THE SEVEN CASES

(i) *Shri B. Narayana Murthy Amadalavalasa:*

The penalty proceedings u/s 271(1)(c) of the Income-tax Act for the assessment year 1965-66 in this case were referred by the Income-tax Officer to the Inspecting Assistant Commissioner of Income-tax under Section 274(2) of the Income-tax Act on 31st December, 1969. The I.A.C. took action in this case only on 31st May, 1791 posting the case for hearing on 7th June, 1971. The notice of hearing was served on the assessee on 8th June, 1971. The assessee on the same day requested for adjournment. Another notice by the I.A.C. Shri 'X' was issued on 14th December, 1971 fixing the case for hearing on 20th December, 1971. This notice was served on the assessee on 21st December, 1971. Shri 'X' finalised the proceedings on 29th December, 1971 without giving the assessee reasonable opportunity as required by express provisions of law and without checking whether the previous notice had been served on the assessee in time or not. Thus, Shri 'X' failed to take up the said penalty case in time and to give reasonable opportunity of being heard to the assessee.

(ii) *M/s. Vaddadi Yerriah Srikakulam:*

The penalty proceedings u/s 271(1)(c) of the assessment year 1968-69 in this case were referred by the Income-tax Officer to the I.A.C. on 16th October, 1969. The last statutory date for passing the said penalty order was 14th October, 1971. The I.A.C. took up this case after considerable delay on 31st May, 1971 when he issued a notice to the assessee posting the case for hearing on 7th June, 1971. This notice was served on the assessee on 4th June, 1971. On 7th June, 1971, the assessee sent a telegram requesting for more time on the ground that the relevant order of the Income-tax Officer has been set aside by the A.A.C. The I.A.C. passed orders on 11th October, 1971 imposing a penalty of Rs. 8,000/- and refusing the adjournment on the ground that the proceeding would get barred by time on 14th October, 1971. Shri 'X' did not give reasonable opportunity to the assessee to substantiate his claim nor

did he verify whether the said assessments had been set aside by the A.A.C. The I.T.A.T. cancelled the penalty on the ground that the A.A.C. had set aside the assessment on the basis of which the penalty proceedings were initiated. The imposition of penalty without giving opportunity to the assessee and without verifying the contentions raised in assessee's letter of adjournment is an act of gross negligence on the part of Shri 'X'.

(iii) *M/s. Balla Mrutyunjayam & Sons, Palakonda*:

The I.A.C. issued a notice u/s 274(2) read with Section 271(1)(c) dated 3rd March, 1973 posting the case of this assessee for hearing on 20th March, 1973 for the assessment year 1969-70. This notice was served on the assessee on 13th March, 1973. On the date of hearing the assessee sent a telegram requesting for an adjournment on the ground that he was ill. The I.A.C. passed an order on 21st March, 1973 refusing the request for the adjournment and levying a penalty of Rs. 29,000/-. The I.A.C., thus, did not grant to the assessee a reasonable opportunity of being heard before imposing the said penalty as required by the express requirement of law.

(iv) *K. Chinnamalliah, Rajahmundry*:

In this case, the penalty proceedings u/s 271(1)(c) of the I.T. Act for the assessment year 1965-66 were referred by the I.T.O. to the I.A.C. under section 274(2) on 11th January, 1972. The last statutory date for passing the penalty order was 19th February, 1972. The I.A.C. issued a notice under section 274(2) read with Section 271 of the I.T. Act on 25th January, 1972 posting the case for hearing on 2nd February, 1972. The notice was served on the assessee on 29th January, 1972. On the date of hearing, the assessee sent a telegram seeking adjournment on the ground that he was sick. The I.A.C. passed the penalty order u/s 271(1)(c) on 11th February imposing a penalty of Rs. 10,000/- without giving any intimation to the assessee with reference to his telegram. Thus, Shri 'X' failed to give reasonable opportunity of being heard to the assessee before imposing the said penalty as required in the express requirements of law.

(v) *Shri V. V. Ramanaji, Anakapalli*:

In this case, the I.A.C. Shri 'X' issued a notice u/s 274(2) read with Section 271 of the I.T. Act on 31st May, 1971 posting the case for hearing on 7th June, 1971 for the assessment year 1968-69. This notice was returned unserved by the postal authorities on the ground that the address of the assessee was not known. The I.A.C.

issued another notice on 26th October, i.e. after a lapse of about 5 months, posting the case on 4th November, 1971. This notice was served on the assessee on 4th November, 1971. On the same day the assessee sent a telegram for adjournment on the ground that the notice was just received and he was unable to put in appearance. The I.A.C. without responding to the assessee's application passed penalty order u/s 271(1)(c) on 12th November, 1971 imposing a penalty of Rs. 2,100/-. The Appellate Tribunal cancelled the penalty on merits and also on the ground that no reasonable opportunity was given to the assessee before imposing penalty. The I.T.A.T. in their appellate orders in I.T.A. No. 1022/HYD/71-72 dated 28th September, 1973 observed as follows:

> "There is no doubt that the authority imposing the penalty should hear the party who is to be penalised or to give that party reasonable opportunity of being heard. When this elementary principle of natural justice is violated by the I.A.C. by giving notice as he did in this case the order of penalty is clearly vitiated."

(vi) *M/s. Mallikarjuna Cloth Stores, Rajam*:

In this case penalty proceedings under section 271(1)(c) of the I.T. Act were referred to the I.A.C. by the Income-tax Officer u/s 274(2) for the assessment years 1965-66 to 1968-69. The I.A.C. Shri 'X' issued notices on 3rd March, 1972 fixing the hearing regarding the penalty proceedings for all the years on 9th March, 1972. This notice was served on the assessee on 9th March, 1972 and the assessee on the same day sent a telegram to the I.A.C. requesting for an adjournment of hearing. The telegram was followed by a letter dated 10th March, 1972 requesting for an opportunity of being heard. The I.A.C. Shri 'X' without giving any further notice of hearing, finalised the proceedings on 27th March, 1972 and imposed penalty u/s 271(1)(c) for different years amounting to Rs. 94,500/-. The I.T.A. Tribunal in their order I.T.A. Nos. 63 to 66/Hyd/72-73 dated 31st May, 1973 cancelled the above penalties on the ground that the I.A.C. did not give the assessee an opportunity of hearing and as such, an express requirement of law was not complied with, making the penalty proceedings illegal and invalid. In the course of their order, the Appellate Tribunal observed:

> "It is indeed unfortunate that a senior officer like the I.A.C. who levied the penalties failed to comply with the express requirement of law. It is unfortunate for two reasons. First when the assessee informed him that the

notice fixing the hearing on 9th March, 1972 was received after the expiry of the time fixed for hearing, he had sufficient time to give another hearing to the assessee. It is true that the penalty proceedings were getting time barred by 31st March, 1972 but he had three weeks before him by that time and in fact, he waited till 27th March, 1972 to finalise the penalty proceedings. Within that time he could have easily given a notice of another hearing to the assessee. Second from the material on record and the admissions before the I.T.O. and the A.A.C., there appears to be a clear case for levying penalty u/s 271 (1) (c) of the Act and the I.A.C. has thrown away the case by what we may describe as his negligence to comply with an express requirement of law. In the circumstances, we are constrained to hold that the penalties levied by the I.A.C. were vitiated in law and are, therefore, illegal and invalid."

Shri 'X' thus, by his act of gross negligence has caused a revenue loss to the tune of Rs. 70,703/- in the case.

(vii) *K. Ramachandra Rao, Narasimapatnam*:

In this case, the I.A.C. Shri 'X' had fixed hearing for penalty u/s 271 read with Section 274 of the I.T. Act on 18th January, 1972 for the assessment year 1967-68. However, this notice was served on the assessee on 19th January, 1972. The assessee by his letter dated 19th January, 1972 requested for an adjournment on the ground that his auditor had gone to Nagpur and was expected back only on 25th January, 1972. The assessee also stated that the notice was served on him after the date of hearing. The assessee's letter was received by the I.A.C. on 21st January, 1972. However, the I.A.C. without passing any order on this letter, and without giving any further opportunity to the assessee passed the penalty order imposing a penalty u/s 271 (1) (c) of the I.T. Act to the tune of Rs. 4,100/-. This penalty was cancelled by the Appellate Tribunal on the same ground on which penalty in the case of M/s. Mallikarjuna Cloth Stores, Rajam was cancelled.

Thus, Shri 'X', by his act of gross negligence caused loss of Rs. 4,100/- to the Government revenue in this case.

APPENDIX II

(*Vide* paragraph 1.24)

STATEMENTS SHOWING THE OBJECTIVES LAID DOWN FOR THE FINANCIAL YEARS 1974-75 TO 1976-77 AND PERFORMANCE STATISTICS FOR 1974-75 AND 1975-76 *VIS-A-VIS* THE QUANTIFIED OBJECTIVES UNDER THE ACTION PLAN

ACTION PLAN FOR 1974-75

List of objectives Set

ASSESSMENTS

Part 'A'

Income-tax

1. Dispose of all time-barring assessments by 31-12-74.
2. Dispose of 75% of all non-company category I scrutiny cases.
3. Dispose of 90% of all company cases with income above Rs. 5,000.
4. Pass orders in all cases liable for action u/s 104.
5. Reduce output of NA cases by 50% as compared to 1973-74.
6. Reduce pendency of Income-tax assessments to 80% as compared to last year.
7. Dispose of all arrear summary assessments by 31-7-74.

Wealth-tax

8. Dispose of 50% of all Wealth-tax cases with declared wealth of more than 5 lakhs.
9. Reduce pendency of wealth-tax cases by 20% as compared to last year.

Gift-tax

10. Reduce pendency by 20% as compared to last year.

Sur-tax

11. Dispose of all Sur-tax assessments in cases where relevant income-tax assessments have been completed.

Estate Duty

12. Reduce pendency by 15% as compared to last year.

Part 'B'

Collections

13. Issue notices in all company and non-company cases liable for payment of advance tax.

14. Collect at least 85% of gross current demand through adjustment/collection/reduction.

15. Collect at least 45% of gross arrear demand through adjustment/collection/reduction.

16. Optimize collection of tax deduction at source.

Wealth-tax

17. (a) Arrear Demand—Collect 1/3rd of the adjusted arrear demand.

(b) Current Demand—Collect 2/3rd of the gross adjusted demand.

Gift-tax

18. (a) Arrear Demand—Collect 40% of the adjusted arrear demand.

(b) Current Demand—Collect 60% of the current adjusted demand.

Estate Duty

19. (a) Arrear Demand—Collect 25% of the adjusted arrear demand.

(b) Current Demand—Collect 40% of the current adjusted demand.

Part 'C'

Supporting Objectives

20. Dispose of all rectification and 146 applications and give effect to appellate and revisionary orders within two months of their receipt.

21. Dispose of 90% of all applications for voluntary disclosures/settlements pending on 1-4-1973.

22. Dispose of 2/3rd of the total work-load of settlement cases by the end of the year.

23. Dispose of all refund applications well within the prescribed time limit and issue refund vouchers to the assessees along with orders granting the refunds.

24. Dispose of 90% of all Revision Petitions received upto 31-12-1974.

ACTION PLAN FOR 1975-76

List of objectives set

Part 'A' *ASSESSMENTS*

Income-tax

1. Dispose of all time-barring assessments by 31-12-75.

2. Dispose of 75% of all non-company category I scrutiny cases, ensuring disposal of 60% of the total work-load by 31-12-1975.

3. Dispose of 90% of 11 company cases with income above Rs. 5,000/-, ensuring disposal of 75% of the total workload by 31-12-1975.

4. Pass orders in all cases liable for action u/s 104.

5. Reduce output of N.A. cases by 20% as compared to last year.

6. Reduce pendency of Income-tax assessments to 85% of the pendency carried forward on 1-4-1975.

7. *Summary and Salary Assessments*:

   (i) Dispose of 95% of the total workload.

   (ii) Dispose of all arrear summary assessments by 31-7-1975.

8. *Search and Seizure cases*:

   Dispose of assessments in all cases where searches were completed on or before 31-12-1974.

9. *Wealth-tax*

   (i) Improve disposal of Wealth-tax assessments by 10% as compared to last year.

   (ii) Dispose of—

      (a) all arrear assessments pertaining to the assessment year 1972-73 and earlier years.

(b) 50% of assessments pertaining to assessment year 1973-74 onwards (including current workload) with declared wealth exceeding Rs. 5 lakhs.

10. *Gift-tax*

Improve output by 10% as compared to last year.

11. *Sur-tax*

Dispose of all Surtax assessments in cases where relevant income-tax assessments have been completed.

12. *Estate Duty*

Improve output by 10% as compared to last year.

Part 'B' *COLLECTIONS*

Income-tax

13. Issue notices in all company and non-company cases liable for payment of advance tax.

14. Collect at least 85% of gross current demand through adjustment/collection/reduction.

15. Collect at least 45% of gross arrear demand through adjustment/collection/reduction.

16. Optimise collection of tax deduction at source.

17. *Wealth-tax*

(a) Arrear demand—Collect 1/3rd of the adjusted arrear demand.

(b) Current demand—Collect 2/3rd of the current adjusted demand.

18. *Gift-tax*

(a) Arrear demand—Collect 40% of the adjusted arrear demand.

(b) Current demand—Collect 60% of the current adjusted demand.

10. *Estate Duty*

(a) Arrear demand—Collect 25% of the adjusted arrear demand.

(b) Current demand—Collect 40% of the current adjusted demand.

20. *Tax Recovery Certificates with T.R.Os.*

(i) Reduce the number of Tax Recovery Certificates received upto 31-3-75 by 30%.

(ii) Reduce the gross outstanding demand by 40%.

Part 'C' *SUPPORTING OBJECTIVES*

21. Dispose of all rectification and 146 applications and give effect to appellate and revisionary orders within two months of their receipt.

22. Dispose of all refund applications well within the prescribed time limit and issue refund vouchers to the assessees alongwith orders granting the refunds.

23. (i) Dispose of 80% of Voluntary Disclosures/Settlement Petitions pending on 1-4-1975.

(ii) Dispose of 50% of Voluntary Disclosures/Settlement Petitions received from 1-4-1975 to 31-10-1975.

24. Dispose of all Revision Petitions received upto 31-10-1975.

ACTION PLAN FOR 1976-77

List of objectives set

PART A ASSESSMENTS

Income-tax

1. *Time barring assessments*

Dispose of all assessments by 31-12-1976.

2. *Non-company category I scrutiny assessments*

Dispose of 70% of all assessments, ensuring the disposal of 50% of the total workload by 31-12-1976.

3. *Company cases with income above Rs.* 5,000

Dispose of 75% of the total workload, ensuring the disposal of 60% of the total workload by 31-12-1976.

4. *Search and seizure cases*

Dispose of—

(i) all assessments in cases where searches were completed on or before 31-12-1974.

(ii) 50% of the workload other than that in (i) above.

5. *Summary and Salary assessments*

Dispose of—

(i) 90% of the total workload.

(ii) all arear summary assessments by 30-9-1976.

6. *Total income-tax assessments*

Reduce pendency to 90% of that carried forward on 1-4-1976.

7. *N.A. Cases*

Reduce output by 20% as compared to last year.

8. *Surtax*

Dispose of all Surtax assessments in cases where relevant income-tax assessments have been completed.

9. *Wealth-tax*

Dispose of—

(i) all arrear assessments pertaining to the assessment year 1973-74 and earlier years;

(ii) 60% of assessments pertaining to assessment year 1974-75 and onwards with declared wealth exceeding Rs. 5 lakhs; and

(iii) Ensure disposal of 50% of total workload.

10. *Gift-tax*

Dispose of 90% of the workload.

11. *Estate Duty*

Improve output by 10% as compared to last year.

COLLECTIONS

Part B

12. *Income-tax*

(a) Issue notices in all company and non-company cases liable for payment of advance tax.

(b) Collect at least 85% of gross current demand through adjustment/collection/reduction.

(c) Collect at least 45% of gross arrear demand through adjustment/collection/reduction.

(d) Optimise collection of tax deducted at source.

13. *Wealth-tax*

(a) Arrear Demand—Collect 1/3rd of the adjusted arrear demand.

(b) Current Demand—Collect 2/3rd of the current adjusted demand.

14. *Gift-tax*

(a) Arrear Demand—Collect 40% of the adjusted arrear demand.

(b) Current Demand—Collect 60% of the current adjusted demand.

15. *Estate Duty*

(a) Arrear Demand—Collect 25% of the adjusted arrear demand.

(b) Current Demand—Collect 40% of the current adjusted demand.

SUPPORTING OBJECTIVES PART C

16. *Rectification Claims etc.*

Dispose of all rectification claims and 146 applications and give effect to appellate and revisionary orders within two months of their receipt.

17. *Refund Claims*

Dispose of all refund applications well within the prescribed time limit and issue refund vouchers to the assessees along with orders granting the refunds.

18 *Voluntary Disclosure/Settlement petitions*

Dispose of—

'(i) 80% of the pendency as on 1-4-1976.

(ii) 50% of the current workload.

19. *Revision Petitions*

Dispose of—

(i) All Revision Petitions pending on 1-4-1976.

(ii) 50% of the current workload.

20. *Audit objections*

Dispose of—

(i) all major irregularities relating to Revenue and Internal Audit pending on 1-4-1976, by 30th September, 1976.

(ii) 50% of the current workload of major irregularities relating to Revenue and Internal Audit.

Statement Showing the Action Plan performance during the years 1974-75 and 1975-76 in Non-Central Charges

I. ASSESSMENTS (Figures in brackets are for 1973-74)

Area of action	Year	Workload	Expected disposal as per Action plans of Cs.I.T.	Disposal during the year	Percentage of col. 5 to col. 4
1	2	3	4	5	6
(a) *General*—					
1. Income-tax	1974-75	5501468 (41543281)	3905062	3850904 (3431985)	98·6%
	1975-76	5753748	3804813	4024947	105·8%
2. Wealth-tax	1974-75	488547 (465518)	296153	253458 (235250)	85·6%
	1975-76	508011	276262	264645	95·8%
3. Gift-tax	1974-75	91031 (76390)	50074	65233 (55553)	130.3%
	1975-76	104108	58530	74107	126·6%
4. Estate Duty	1974-75	52876 (43229)	32129	32752 (28267)	101·9%
	1975-76	60379	37376	34653	92·7%
(b) *Specific areas*—					
(i) Non-company Cat. I scrutiny assts.	1974-75	414240	264248	261645	99·0%
	1975-76	455641	261661	294381	112·5%
(ii) Company assts. with income over Rs. 5,000	1974-75	37515	25399	23459	92·4%
	1975-76	33002	23514	19806	84·2%
(iii) Time-barring asstts.	1974-75	558799	488296 by 31-12-74	4155866 by 31-12-74	85·2%
	1975-76	577826	500161 by 31-12-75	418440 by 31-12-75	83·6%
(iv) Asstts. in cases where searches were completed on or before 31-12-74	1974-75	Not covered by Action Plan 1974-75			
	1975-76	10050	7107	6602	92·9%

1	2	3	4	5	6
(v) Summary assts.	1974-75	3278578	Not covered by A.P.	2630037	80%
	1975-76	2991920	2537402	2493677	98·2%
(vi) Arrear summary assts.	1974-75	902345	902345	897759	99·5%
	1975-76	652531	652531	639445	98%
(vii) Wealth-tax assts for '72-73 and earlier years.	1974-75	Not covered by Action Plan		1974-75	
	1975-76	87878	49087	41852	85·3%
(viii) Wealth-tax assts with wealth over Rs. 5 lakhs.	1974-75	16580	9236	8593	93·0%
	1975-76	15123	8068	7034	115·9%
(ix) Sur-tax	1974-75	3569	1890	1521	80·5%
	1975-76	3794	1672	1432	85·6%
(x) N.A. & filed cases.		Year	Total disposal of I.T. assts. during the year	No. of N.A. & filed cases	Percentage to total disposal
		1974-75	3850904 (3431985)	634495 (624052)	16·6% (18·1)
		1975-76	4024947	576130	14·3

(xi) Pendency figures

	Income-tax	Welath-tax	Gift-tax	Estate Duty
(a) At the close of 1974-75	1650564 (1711296)	235089 (230268)	25798 (20837)	20124 (14962)
(b) At the close of 1975-76	1728801	243366	30001	25726

II. DEMAND AND COLLECTION

(a) *Notice u/s 210 issued*	1974-75	1975-76
(i) Company cases	11527 (10669)	11680
(ii) Others	756264 (584365)	817015
(iii) Total	767791 (595034)	828695

	Year	Total demand for collection	Collection expected as per plan	Collection made during the year	%age of collection (col 4 to col. 3)
	1	2	3	4	5
(b) *Arrear Demand*—					
1. Income-tax	1974-75	734·43 (723·45)	330·49	275·10 (255·03)	83·2%
	1975-76	838·91	377·51	307·38	81·4%
2. Wealth-tax	1974-75	22·54 (17·51)	7·51	5·25 (5·52)	69·9%
	1975-76	59·46	19·80	6·28	31·7%
3. Gift-tax	1974-75	2·67 (2·59)	1·07	0·95 (1·12)	88·8%
	1975-76	2·94	1·18	1·10	93·2%
4. Estate Duty	1974-75	11·34 (12·35)	2·83	2·53 (2·79)	89·4%
	1975-76	13·38	3·34	3·33	99·7%
(c) *Current Demand*—					
(i) Income-tax	1974-75	1017·00 (798·14)	864·45	706·39 (547·11)	81·7%
	1975-76	1155.48	982·16	322·69	83·7%
(ii) Wealth-tax	1974-75	66·41 (28·95)	44·29	18·55 (18·10)	41·9%
	1975-76	39·36	26.21	20·97	80·0%
(iii) Gift-tax	1974-75	4·00 (3·59)	2·40	2·30 (2·04)	95·8%
	1975-76	4·55	2·73	2·67	97·8%
(iv) Estate Duty	1974-75	9·24 (8·05)	3·70	4·44 (2·05)	120·0%
	1975-76	11·29	4·52	5·36	118·6%

	Year	Workload	Expected disposal/ collection as per Cs-IT's Action Plan	Disposal/ Collection during the year	Percentage of Col. 4 to 3
	1	2	3	4	5
(d) *Tax Recovery Certificates*	1974-75	Not covered by Action Plan 1974-75			
	1975-76	2043785	522889	466483	89·2%
Certified amount in (crores of rupees)	1974-75	Not covered by Action Plan 1974-75.			
	1975-76	783·69	215·87	281·30	130·3%
(e) *Returns u/s* 206—					
(i) No of returns	1974-75	64994	Optimum possible	45209	*69·5%
	1975-76	83843	Do.	45814	*54·6%
(ii) No. of entries	1974-75	1730721	Do.	803220	*46·4%
	1975-76	2271963	Do.	1036203	*45·6%
		(* percetage of cols. 4 to 2)			
III. SUPPORTING OBJECTIVES					
1. Rectification Claims	1974-75	278446	244741	202461	82·7%
	1975-76	300634	272812	240077	88·0%
2. Applellate/Revisionary orders	1974-75	132677	125587	123771	98·6%
	1975-76	143075	137708	135254	98·2%
3. Application u/s 146	1974-75	13926	12464	11506	92·3%
	1975-76	19313	17898	17231	96·3%
4. Refund Claims u/s 237	1974-75	91435	94786	84558	99·7%
	1975-76	89072	84087	83589	99·4%
5. Voluntary Disclosures/Settlement Petitions	1974-75	22177	14785	11506	77·8%
	1975-76	23136	1157	11726	106·1%
6. Revision Petitions	1974-75	24574	19672	15673	79·7%
	1975-76	19917	13646	13061	95·7%

APPENDIX III

(*Vide* Paragraph 2.6)

NOTE INDICATING THE MAIN PROVISIONS OF THE LAW RELATING TO THE ASSESSMENTS OF INCOME OF CHARITABLE AND RELIGIOUS TRUSTS

In order to appreciate the main provisions relatnig to the assessment of income of charitable and religious trusts, and the manner in which it has been amended in recent years, it may be worthwhile to consider what the law was under the 1922 Act, before it as amended by the 1961 Act. *w.e.f.* 1-4-1962.

The provisions for the exemption of income of charitable and religious trusts which were in force prior to 1-4-1962 are contained in sec. 4(3) (i) and 4(3) (ii) of the 1922 Act. Under these provisions any income derived from property held under trust or other legal obligation wholly for charitable purpose was exempt, in so far as such income was applied or accumulated for application to such purposes within the taxable territories. In a case where the property was held in part only for such purposes the income applied or finally set apart for application thereto was exempt.

Income derived from business carried on on behalf of a religious or charitable institution was exempt if the income was applied wholly for the purpose of the institution and either (i) the business was carired on in the course of the actual carrying out of a primary purpose of the institution or (ii) the work in connection with the business was mainly carried on by the beneficiaries of the institution. It was also provided that if such income was applied to purposes other than charitable or religious or ceased to be accumulated or set apart for application thereto it would be deemed to be the income of the year in which this was so applied or ceased to be accumulated or set apart.

Section 4(3) (ii) of the 1922 Act gave exemption to any income of religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

"Charitable purpose" was defined to include relief of the poor, education, medical relief and the advancement of any other object of general public utility.

The salient features of the major changes made in these provisions by the I.T. Act 1961 can be summarised as follows:

I. Under the 1922 Act, income from property held under trust was eligible for exemption even if such income was not spent, but merely accumulated. This defeated the very purpose of exemption. So, under the 1961 Act it is provided that if the income not spent during the year exceeded 25 per cent of the total income or Rs. 10,000 whichever is higher the amount not spent will be taxed. Under an amendment to the I.T. Act made by the Finance Act, 1970 *w.e.f.* 1-4-71 the income applied during the first 3 months of the immediatey succeeding previous year can be deemed to be income applied during the earlier previous year at the option of the assessee. The Taxation Laws (Amendment) Act, 1975 modified the explanation to section 11(1) to take care of cases where the income is not received during the year or cannot be applied for charitable or religious purposes for any other reason. The explanation provided that where the income has not been received, then at the option of the assessee the amount applied during the previous year the income was received or during the immediately following previous year as does not exceed the income not received shall be deemed to be applied in the year in which the income is derived. Similarly, in a case where income cannot be applied for any reason, at the option of the assessee the income applied in the immediately succeeding year is deemed to have been applied in the year in which the income was derived. It was also provided by sub-section (1B) that if the income not received in the account year but re-

Changes in respect of application of income.

Amendment *w.e.f.* 1-4-71.

Amendment *w.e.f.* 1-4-76.

ceived later is not applied in the year of receipt or the year immediately following it is deemed to be the income of the previous year immediately following the previous year in which the income was received. Similarly in a case where the income is not applied for any reason other than non-receipt of income and at the option of the assessee the income applied on the immediately succeeding year is deemed to have been applied in the year in which the income was derived, such income if not applied in the immediately succeeding year is deemed to be the income in the previous year immediately following the previous year in which the income was derived.

Amendment reg. application of income. Finance Act, 1970 *w.e.f.* 1-4-71.

The provisions regarding application of income were amended by Finance Act, 1970 *w.e.f.* 1-4-71. The provision which existed till then, which enabled the trust to accumulate upto Rs. 10,000 or 25 per cent of its income whichever is greater without attracting tax liability was removed with the result that if the entire income of the trust is not spent during the account year or within 3 months thereafter the amount not spent was made liable to tax.

Taxation Laws (Amendment) Act, 1975.

This position which continued upto 1-4-76 was changed by the Taxation Laws (Amendment) Act, 1975. This allowed a trust to accumulate its income upto 25 per cent of its income, without applying to the I.T.O.

Provisions reg. accumulations under the 1961 Act.

Under the 1961 Act it was accepted that under certain conditions the trust may not be in a position to spend its income in the year in which it was earned. Therefore, the Act contained a provision to enable the trust to accumulate or set apart the income of the trust to be spent in future years. According to this, income can be accumulated or set apart for a period not exceeding 10 years. If the assessee wishes to accumulate its income it will have to fulfil certain conditions. These are:

(i) A notice in writing should be submitted to the I.T.O. in the prescribed manner specifying the

purpose for which the income is accumulated or set apart.

(ii) The money so accumulated is invested in Govt. securities or any other security specified in the Act. With effect from 1-4-1971, this provision was amended and an assessee could now deposit the money in P.O. saving bank or in a bank or with a financial corporation, in addition to the modes allowed earlier.

Rule 17 prescribes the manner in which the application for accumulation should be submitted. The application must be in Form No. 10. It must be submitted before the expiry of the time allowed under sub-section (i) or sub-section (ii) of sec. 139 for furnishing the return of income.

Sub-section 3 provides that if any income is applied to purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application thereto and is not utilised in the year immediately following the expiry of the period allowed, it shall be deemed to be the income of the previous year in which it is so applied or ceases to be so accumulated or of the previous year immediately following expiry of the period given in form No. 10.

Change made by Taxation Laws (Amendment) Act, 1975.

The Taxation Laws (Amendment) Act, 1975 has inserted sub-section (3A) to sec. 11 with effect from 1-4-76. According to this sub-section where due to circumstances beyond the control of the assessee, the income accumulated or set apart cannot be applied for the purpose for which it is accumulated or set apart, the I.T.O may, on an application made to him, allow the assessee to apply such income for such other object as is specified in the application.

Change in definition.

II. The second, change is regarding the definition of charitable purpose. In the 1922 Act charitable purpose was defined as relief of the poor, education, medical relief and advancement of any other object of general public utility. The 1961 Act

added the words "not involving an activity for profit". The import of these words has been subject matter of litigation. The Supreme Court in two recent decisions has clarified the scope of this section.

These words qualify the last purpose *i.e.* an object of general public utility and not the first three purpose *viz.* relief of the poor, education and medical relief. A trust whose objects are confined to relief of the poor, education or medical relief can carry on an activity for profit including a business. However, the Taxation Laws (Amendment) Act, 1975 introduced Sec 13(1) (bb). This section provides that the exemption under section 11 will not be available in the case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any business to any income derived from such business, unless the business is carred on in the coure of the actual carrying out of a primary purpose of the trust or institution.

Property held in part on trust for benefit of a particular religious community.

III. The third departure from the 922 Act is that exemption is not available if the trust property is held in part only for charitabe purposes [Sec. 11 (1) (b)] or the trust is for the benefit of any particular religious community or caste [Sec. 13 (b)]. However, this does not apply to trusts created before 1--1962.

Provisions to prevent diversion of income or funds.

IV. The fourth change is that many provisions have been introduced in the statute to ensure that the income or funds of the trust are not diverted for the benefit of the settlor or any one connected with it. These provisions are contained in Sec. 13. Under this section if any part of the income or any property of the trust is used or applied directly or indirectly for the benefit of any person referred to in sub-section (3), the in-come of such trust is not eligible for exemption This sub-section covers the author of the trust or founder of the institution, any person ho has made a substantial contribution to the trust or institution and where the author, founder or person is a HUF, a member of the family and a relative of such person

and any concern in which such persons have substantial interest. Under sub-sec. (2), income is deemed to have been used or applied for the benefit of a person referred to in sub-sec. (3) in certain circumstances. Under expanation (1) a lineal descendant of a brother or sister is also treated as a relative.

Amendment made by Finance Act, 1972.

These provisions were amended by Finance Act of 1972. It *inter-alia* included any trustee of the trust or manager of the institution among the persons mentioned in sub-sec. (3). It also inserted a comprehensive definition of relative.

Amendment made by Taxation Laws (Amendment) Act 1975.

The Taxation Laws (Amendment) Act 1975 introduced a new clause, clause (d) *w.e.f.* 1-4-1977. According to this, in the case of a trust for charitable or religious purposes or a charitable or religious institution any income assessable for assessment years 1979-80 and subsequent years will be exempt only if its funds are invested or deposited or remain deposited or invested in any previous year commencing after 1-4-1978 in the forms or modes specified in sub-sec. 5. The gist of sub-section 5 is as follows:

In a case where the funds referred to in clause (d) is represented by:

(i) Corpus of the trust or institution immediately before 1-6-1973 or

(ii) The original corpus (being assets other than cash) of any trust or institution created on or after 1-6-73 or any contributions otherwise than in cash made to any trust on or after 1-6-1973 with a specific direction that they shall form part of the corpus of the trust or the institution.

The investment can be in any form or made other than investment in equity shares-in a company which is not a Govt. company or a corporation established by or under a Central Act, State or provincial Act.

(iii) In a case where the original corpus (being cash) of a trust or institution created after 1-6-73 or

any cash contributions made to any trust or institution on or after 1-6-73 with direction that they shall form part of the corpus of the trust the investment should be in the following form:

1. Saving certificates or Govt. Securities.
2. Post Office Savings Bank.
3. Deposit in State Bank or a nationalised bank.
4. Investment in Unit Trust.
5. investment in debentures, of a company or a corporation where both the principal and interest are fully guaranteed by the Central or State Govt.
6. Investment or deposit in any Govt. company.

(iv) If the funds do not represent either of the above, the deposit should be either in saving certificates Govt. securities, P.O. Saving bank in S.B.I. or a nationalised bank and investment in Unit Trust.

Voluntary contributions.

V. Under section 12 as it stood before 1-4-73, any income of a trust for charitable or religious purpose or institution derived from voluntary contributions and applicable solely to such purposes was exempt. However, if such contributions are made to another trust or institution whose income is exempt under section 11 such contributions will constitute income for the purpose of section 11 in the hands of the recipient trust or institution. The Finance Act, 1972 amended the definition of income; voluntary contributions received by a trust created wholly or partly for charitable or religious purpose or by an institution established wholly or partly for such purposes other than contributions made with a specific direction that they shall form part of the corpus of the trust or institution was included in the definition of income. Simultaneously, section 12 was also amended and it was provided that such voluntary contributions received by a trust or institution created or established wholly for charitable and religious purposes shall for the purposes of section 11, be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the

provision of section 11 and section 13 of the Income-tax Act, 1961 shall apply.

VI. Finance Act, 1972 introduced section 12A which provided that the provisions of section 11 and 12 will not apply if the person in receipt of the income does not make an application for the registration of the trust of institution in the prescribed form and in the prescribed manner to the Commissioner of Income-tax before the 1st of July, 1973 or before the expiry of a period of one year from the date of the creation of the trust or institution whichever is later. The Commissioner was given powers to admit an application for registration filed after the expiry of the period aforesaid. It was also provided that if the total income of the trust or institution exceeds Rs. 25,000 in any year the accounts of the trust must be audited by an accountant as defined in section 288(2) and the person in receipt of the income furnishes with the return of income a report such audit in the prescribed form. The rule concerned is 17A and the application is to be submitted in form No. 10A.

Provision for Compulsory Registration and Audit.

APPENDIX IV

(*Vide* paragraph 2.27)

O. V. Kuruvilla

Member

D.O. 6601-M(II)IT/76

DEPARTMENT OF REVENUE AND BANKING
CENTRAL BOARD OF DIRECT TAXES

28th October 1976.

My dear Chidambram

SUBJECT—*Draft Para Indian Cotton Mills Federation, Bombay.*

I am enclosing herewith a copy of a note given by Shri M. B. Rao, Jt. Secretary and Legal Adviser, Ministry of Law. A persual of the note would show that according to him the exemption should not have been given to the Indian Cotton Mills Federation Bombay for the assessment year 1972-73. You are requested to re-open the assessment in the light of the opinion of Shri Rao, if this has not already been done.

The assessments made in this case not only for the year assessment year 1972-73 but also for the other years should be reviewed in the light of the Supreme Court's decision on the case of Lok Sikshana Trust and Indian Chamber of Commerce cases.

The action taken in pursuance of this in the case of Indian Cotton Mills Federation may please be intimated.

Yours sincerely,

Sd/- O. V. Kuruvilla.

Shri V. Chidambram,

Commissioner of Income-tax, Bombay City-IV,

Aayakar Bhawan; Meharshi Karve Road, Bombay-400020.

Copy along with a copy of the above note of Shri Rao sent to Shri D. Lakshminarayanen, I.A.C. Income-tax Office, M. K. Road; Bombay-20 for immediate action.

Sd/- O. V. Kuruvilla.

Member (I.T.)

INSTRUCTION No. 1024

F. No. 279/105/76-ITJ

Government of India

Central Board of Direct Taxes

New Delhi the 7th November, 1976.

To

All Commissioners of Income-tax.

Sir,

SUBJECT:—*Section* 2(15) *of the Income-tax Act*, 1961—*Meaning of the expression "net involving the carrying on of any activity for profit." Supreme Court Judgements—Instructions—regarding.*—

Section 2(15) of the Income-tax Act, 1961 defines "charitable purpose" as under:

> "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.

2. In the definition of "charitable purpose" the expression "not involving the carrying of any activity for profit" was added in the 1961 Act. The significance of this expression has been examined by the Supreme Court in the great detail in the cases of Sole Trustee Lok Shikshana Trust Vs. C.I.T. Mysore (101 ITR 234) and Indian Chamber of Commerce Vs. C.I.T., West Bengal etc. (101 ITR 797). Commenting on this expression, their Lordships, in the case of the Indian Chamber of Commerce Vs. C.I.T. West Bengal etc. observed:

> "Notwithstanding the possibility of obscurity and of dual meaning when the emphasis is shifted from 'advancement' to 'object' used in section 2(15), we are clear in our minds that by the new definition the benefit of exclusion from total income is taken away where in accomplishing a charitable purpose the institution engages itself in activities for profit."

The Supreme Court emphasised that if in the advancement of the objects of general public utility a trust resorts to carrying on of any activity for profit, then necessarily section 2(15) cannot confer exemption. I Lok Shikshana Trust, their Lordships Khanna J., and Gupta J. observed:

"Ordinarily, profit motive is a normal incident of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying of any activity for profit....."

3. The test which has been laid down by the Supreme Court for determining whether a particular activity of general public utility is covered by the definition of "charitable purpose" or not is: (a) Is the object of the assessee one of general public utility? (b) Does the advancement of the object involve activities bringing in moneys? (c) if so, are such activities undertaken, (i) for profit, or (ii) without profit? It was observed by the Supreme Court that if (a) and (b) are answered affirmatively, and clause (i) is also answered affirmatively, the claim for exemption collapses and the benefit of section 11 will not be available to the entire income. However, if such activity is undertaken without profit motive, the object will be charitable purpose within the meaning of section 2(15).

4. These two decisions of the Supreme Court may kindly be brought to the notice of the officers working in your charge. You may also kindly direct them to carry out a review of the completed cases in the light of the pronouncement of the Supreme Court and take remedial action wherever called for and feasible. A report indicating the result of the review may please be sent to the Board by 1st January, 1977 without fail.

Yours faithfully,

Sd/-

(O. N. Mehrotra)

Secretary, Central Board of Direct Taxes.

Copy forwarded to:

1. All Directors of Inspection, New Delhi and Director I.R.S.(D.T.) Staff College, Nagpur.
2. A.D.I. (P&PR) (Bulletin) 4 copies.
3. The Comptroller and Auditor General of India 20 copies.
4. Shri N. B. Rao, Jt. Secretary and Legal Adviser, Ministry of law, New Delhi.
5. All Officers and Sections in CBDT.

Sd/- O. N. Mehrotra

Secretary, Central Board of Direct Taxes.

APPENDIX V

Statement of Conclusions/Recommendations

Sl. No.	Para No of Report	Ministry Department	Conclusions Recommendations
1	2	3	4
1	1.26	Ministry of Finance (Department of Revenue)	Section 274(1) of the Income-tax Act, 1961, provides that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard and it is a well settled principle of law that if such opportunity to show cause is not given to the assessee, the imposition of the penalty would be invalid. The Committee are concerned to note that in these two cases commented upon by the Audit as well as in five other cases, a senior officer of the status of Inspecting Assistant Commissioner of Income-tax had, in utter disregard of the mandatory provisions of the law, rushed through the penalty proceedings ignoring the assessees' requests for adjournments with the result that the orders in three of the cases were quashed on appeal as being bad in law by the Icome-tax Appellate Tribunal who had also passed strictures against the officer. The failure to observe the prescribed procedure resulted in loss of revenue of Rs. 65,896 in these three cases. Admittedly, adequate time was available for giving second hear-

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			ings in these cases. Thus, in the first case referred to by Audit (M/s. Mallikarjune Cloth Stores), the Inspecting Assistant Commissioner had waited for more than two weeks before passing the impugned order but had failed to intimate a fresh date of hearing to the assessee. Similarly, in the second case (Shri K. Ramachandra Rao), though the officer had waited for three days beyond the date fixed for hearing before passing the penalty order, he did not, however,verify before finalising the proceedings whether the notice had been served before the date of hearing. The Committee take serious view of these entirely unwarranted and costly lapses.
2	1.27	Ministry of Finance (Department of Revenue)	Though the Chairman of the Central Board of Direct Taxes conceded that since the Appellate Tribunal had commented severely and adversely against the officer, there was no room for taking any view other than the one that "he was guilty of gross negligence", the Committee are distressed to find that principled and conclusive action is yet to be taken against the officer for these lapses even after the passage of more than two years since they were highlighted by Audit. On the other hand, the Committee learnt with concern that instead of penalising the officer for his negligence which besides costing the exchequer dearly must have also caused considerable hardship to the assessees, the Department have promoted him as Commissioner of Income-tax. This, in the

			Committee's view is not in keeping with canons of propriety. It has, however, been contended by the Department that the officer had been promoted by the Departmental Promotion Committee before a formal charge-sheet was issued to him and that these developments had not been brought to their notice when the selections took place by the section handling the case. It has also been stated that there was no entry in regard to these lapses in the Officer's character rolls which were 'very good' and that he was considered fit for promotion by the Departmental Promotion Committee on the basis of these facts and in the absence of any adverse observations about his integrity after obtaining vigilance clearance.
3	1.28	Do.	The Committee have carefully considered the explanation offered in this regard and find that while the Departmental Promotion Committee met only on 8th October, 1975, the report of the Commissioner of Income-tax holding the officer responsible for the lapses had been received in the Board's office as early as 23 December 1974 itself. In fact, the Department have admitted that they themselves had found lapses in the officer's performance even before Audit pointed them out, and had also stated (February 1975) in reply to the Audit paragraph that the Additional Commissioner of Income-tax had "taken note" of the officer's lapse and that his explanation was "under consideration". It is also significant in this context that the Income-tax Appellate Tribunal had passed strictures against the officer as early as on 31 May 1973, 28 September 1973 and 29 January 1974. These must have come to the notice

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			of the Central Board of Direct Taxes, particularly since a senior officer of the Department was involved. Besides, the draft Audit paragraph and replies thereto would have presumably been processed at the level of the Chairman and Members of the Board. The Committee are, therefore, not very impressed with the arguments advanced before them by the Department and would like a thorough probe to be conducted into the circumstances in which the officer had been promoted as a Commissioner even while investigations into the lapses committed by him were still in progress and all relevant material in regard to the performance of the officer were not made available to the Departmental Promotion Committee to enable them to arrive at a proper conclusion about his suitability. They would await a further detailed report in this regard.
4	1.29	Ministry of Finance (Department of Revenue)	"The Committee desire that there should be better coordination between the various sections within the Department so as to ensure that at the time of considering a person for promotion, the Departmental Promotion Committee has before it all the latest facts in regard to the conduct and efficiency of an officer."
5	1.30	Do.	The Committee have been informed that necessary memorandum alongwith the statement of imputations was despatched on 3 May 1976 to the officer who had denied the imputations in his representation received on 3 December 1976 and that the case had been referred to the Union Public Service Commission on 14 Jan-

			uary 1977 for advice in accordance with the rules. While stressing the need for expediting the final action in this long-pending case, the Committee would also reiterate their recommendation contained in paragraph 4.31 of their 187th Report (Fifth Lok Sabha) that Government should ensure that the assessing officers in a sensitive area like the Income-tax Department have the confidence that conscientious and capable work would receive recognition and approbation merited by it and that deflection from the path of duty would not be countenanced.
6	1.31	Do.	The Committee regard it as an illustrative case of 'to say the least' gross negligence on the part of a responsible officer which not only led to loss of substantial revenue but also caused considerable harassment and hardship to the assessee. They would like the Government to undertake a survey in order to find out as to whether there thave been any more cases of this type which may have resulted in loss of revenue and harassment to tax-payers. The Committee would like to be informed of the results of the survey at an early date.
7	1.32	Do.	Incidentally, the Committee learn that while an officer whose integrity is suspect can be considered for promotion provisionally, pending completion of the investigations into his conduct, such as procedure is not in vogue in respect of enquiries not involving a charge of lack of integrity. Since an officer's efficiency is as important as his conduct, it would appear that investigations into failures or lapses which reflect on the efficiency of an

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			officer which might be in progress at the time of selections by the Departmental Promotion Committee may be suitably taken into account. They would, like this matter to be examined urgently, in consultation with the Department of Personnel and the Union Public Service Commission. The Committee would like to be informed of the decision taken.
8	1.33	Ministry of Finance (Department of Revenue)	It also appears that in these two cases cited by Audit, the Inspecting Assistant Commissioner had fixed the first hearing of the penalty proceedings only in the last month of the limitation period and then rushed through the proceedings disregarding the assessees' requests for adjournment even though the notices were actually served on the assessees after the date and time fixed for the hearings. That this should have been so despite the steps stated to have been taken by the Department in response to the repeated concern expressed by the Public Accounts Committee over the tendency to postpone completion of the proceedings towards the end of the limitation period is regrettable. The Committee have been informed in this context that since the beginning of the financial year 1974-75, the Department has started the practice of formulating an 'Action Plan' which contains a time-bound programme of work required to be done in specified areas during each financial year and that while prescribing targets in various areas of work, a high priority is given to the early disposal of time-barring assessments. It has also been claimed by the Department that after the introduction of the 'Action Plan',

the percentage of time-barring assessments completed upto December had gone up from 52.4 and 54.4 per cent respectively in 1972-73 and 1973-74 to 73.2 and 72.6 per cent respectively in 1974-75 and 1975-76 and that for the financial year 1976-77, a target to complete all time-barring assessments by December 1976 has been laid down. While the Committee would like to be apprised of the extent to which the targets for 1976-77 have actually been achieved, they, however, find that the 'Action Plan' does not contain any programme for the expeditious completion of penalty proceedings. Besides, what the Committee had in mind while recommending that an order of priorities of work should be prescribed was that timely attention should be paid to the big income cases with a view to ensuring that these were not postponed till these were about to become time-barred. It is not clear to the Committee how the 'Action Plan' constitutes fixation of such priorities. Since, under this plan, an Income-tax Officer could dispose of 75 per cent of company cases and 70 per cent of non-company cases as the case may be and still leave out the real big income cases as part of the remaining 25 per cent or 30 per cent, they would like the Central Board of Direct Taxes to re-examine this aspect and ensure proper planning of the work of Income-tax Officers so as to complete in time and on priority basis the high income group assessments expeditiously.

9	1.34	Do.	According to the provisions of Section 11(1)(a) of the Income-tax Act 1961, as they stood prior to their amendment by the Taxation Laws (Amendment) Act, 1975, income derived from property held under trust wholly for charitable purposes is exempt from tax to

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the extent such income is applied to such purposes in India. Section 11(2) of the Act also permits Trusts to accumulate or set apart sums for future application to such purposes provided the Trust had given due notice, in writing, to the Income-tax Officer indicating the purpose for which the income is being accumulated or set apart and the period for which it is to accumulated which shall in no case exceed ten years, and the money so accumulated or set apart is also invested in specified securities within the time prescribed. The Committee note that in the present case relating to the Indian Cotton Mills Federation, treated as a charitable institution, the Federation had accumulated certain income (Rs. 1.10 crores) during the period 1962 to 1971 with the express object *inter alia* of acquiring a building to house the activities of the ICMF Research Association and the All India Federation of Cooperative Spinning Mills. Though the accumulated income had to be utilised for the specified purpose before 31 December, 1971, the assessee Federation had initiated action towards that end only on 29 December, 1971 and advanced an amount of Rs. 80 lakhs to a firm of contractors and architects, who kept the amount in their books as an interest-free advance from the Federation till they utilised it on the purchase of a building and on its renovation only in the subsequent years which clearly fell beyond the period allowed under the law. Yet, surprisingly enough, overlooking the fact that the Federation had not actually acquired the building but had merely advanced the amount to the contractors, the Income-tax Officer had incorrectly exempted from tax the amount so advanced

			treating it as having been utilised for the purpose for which it was accumulated, which resulted in a short-levy of tax of Rs. 78.20 lakhs for the assessment year 1972-73.
10	2.35	Ministry of Finance (Department of Revenue)	While conceding that to qualify for exemption from tax, the application of income should be tantamount to 'expenditure' and it would, therefore, be incorrect in this case to have treated the advance to the firm of contractors and architects as application of the accumulated income to the specified purpose, the Central Board of Direct Taxes have nevertheless contended that the Income-tax Officer "was satisfied that a sum of Rs. 30 lakhs had been properly utilised for acquiring the building for housing the activities of the Federation." The Committee, however, find on the basis of the evidence and the fact that the assessment has been re-opened that the assessing officer had not examined in detail whether the income accumulated had in fact been actually utilised for acquiring the building. Admittedly, the information that the amount was not utilised for the purchase of property but was only paid as an advance to the contractors was available only later. This is an aspect which should have correctly been gone into *ab initio* by the assessing officer, particularly in view of the fact that the amount of Rs. 80 lakhs had been paid by the Federation only two days prior to the expiry of the period stipulated in the Act for utilisation of the accumulated income. It would appear, *prime facie* that the Federation's claim had been accepted by the assessing officer without any genuine scrutiny. The Committee take an extremely serious view of this costly failure and would like the circumstances in which the lapse

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			had occurred to be gone into in detail with a view to taking appropriate action against the officer concerned. It may also be examined whether any clarificatory instructions for the guidance of the assessing officers are necessary.
11	2.36	Ministry of Finance (Department of Revenue)	A more important and basic issue arising out of this case is whether an institution like the Indian Cotton Mills Federation comprising only of business interests and primarily concerned with the promotion and protection of the cotton textile industry and whose activities evidently have no real connection at all with the idea of charity can be treated as a charitable organisation so as to qualify for tax concessions and exemptions. The Committee have been informed that the Indian Cotton Mills Federation has been exempt from Income-tax under Section 11 of the Act from the assessment year 1961-62 onwards on the basis of the judgement of the Supreme Court in the Andhra Chamber of Commerce case. In that case, the Supreme Court had held that the objects of the Chamber, viz. 'to promote and to protect trade, commerce and industries, to aid, stimulate and promote the development of trade, commerce and industries and to watch over and protect the general commercial interests of India or any part thereof', constituted 'objects of general public utility' and hence were covered by the definition of 'charitable purpose' in Section 2(15) of the Act. It has been stated that since the main object of the Indian Cotton Mills Federation, viz. 'to promote and to

			protect trade, commerce and industries of India in general and more particularly in respect of the cotton textile industry and allied industries and trade' was also similar to the objects of the Andhra/Chamber of Commerce, the Supreme Court decision had been applied to the Federation also and recognition accorded to it as a charitable institution with effect from 1 April 1961. However, while doing so, the fact that the Supreme Court decision in the case of the Andhra Chamber of Commerce was with reference to the provisions of the Income-tax Act, 1922 and that the definition of 'charitable purpose' had been amended in the Income-tax Act, 1961, which is applicable in the present case, to exclude activities carried on for profit though they might be of public utility, appears to have been lost sight of.
12	2.37	Do.	While the Chairman of the Central Board of Direct Taxes has been good enough to admit during evidence that "the provisions of law have been misapplied in this case" and that "the amendment made in the law was not taken into account in applying the Andhra Chamber of Commerce case", it is not very clear to the Committee why the applicability of Section 11 of the Income-tax Act, 1961 and the correctness of extending the benefits under the Section to the Indian Cotton Mills Federation were not examined at the time of registering the Federation as a charitable trust in 1973 as required under an amendment to the Act introduced with effect from 1 April 1973 by the Finance Act, 1972. It should have at least been possible to remedy the situation after the legal position in this regard had been placed beyond all doubt by the clear and unambiguous judge-

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			ments of the Supreme Court in the cases of Sole Trustee Lok Shikshana Trust Vs. C.I.T. Mysore (101 ITR 234) and Indian Chamber of Commerce Vs. C.I.T. West Bengal (101 ITR 797), which admittedly were well within the knowledge of the field officers and the Commissioners of Income-tax were also expected to review the cases in the light of court decisions and judgements on their own. Having due regard to the large sums of money incorrectly exempted from tax as having been applied to charitable purposes and the influence known to be wielded by the Indian Cotton Mills Federation, the Committee would like to be satisfied that the initial misapplication of the law in this case as well as the subsequent inaction on the part of the Department were bonafide errors and unavoidable. They accordingly recommend that a thorough probe should be conducted into the handling of this case from time to time and the circumstances in which the Federation was exempted from tax for a number of years to the detriment of revenue by incorrectly treating it as a charitable institution. The Committee would await a detailed report in this regard.
13	2.38	Ministry of Finance (Department of Revenue)	Though late than never, instructions have now been issued to the Income-tax Officer, on 28 October 1976, to reopen the assessments of Indian Cotton Mills Federation and to review the case in the light of the Supreme Court judgements in the cases of Lok Shikshana

			Trust and the Indian Chamber of Commerce. In view of the large revenue implications of this case, the Committee would urge the Department to complete the review of past assessments expeditiously and to take conclusive action to realise the taxes due. While reopening the assessments, it may also be examined whether the violation by the Federation of the provisions of the Act relating to the application of the accumulated income was deliberate and *malafide*. The Committee were informed during evidence that the question of cancellation of the Indian Cotton Mills Federation as a Charitable trust would be gone into. The Committee would like to know the result of the examination.
14	2.39	Do.	The Committee have been informed that instructions have also been issued on 7 November 1976 for reviewing all cases of charitable trusts in the light of the pronouncements of the Supreme Court so as to take remedial action wherever called for and feasible. As these judgements are likely to have wide repercussions on the entire question of charitable trusts, the Committee need hardly emphasise the importance of completing this review early. They would like to be apprised soon of the outcome of the review and the steps taken to realise the tax short-levied in each case and the amount of tax realised.
15	2.40	Do.	In pursuance of the Committee's recommendations relating to Charitable and Religious Trusts contained in their 121st Report (Fourth Lok Sabha) and the recommendations of the Direct Taxes

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			Enquiry Committee, the legal provisions relating to the assessment of trusts have been amended from 1 April, 1973 to provide for the registration of trusts and a compulsory audit of such trusts with an income exceeding Rs. 25,000. The law has also been further amended from 1 April, 1977 to specify the manner in which the funds of such trusts should be invested. It, however, appears that the Central Board of Direct Taxes have not thought it fit so far to review how far the amended provisions of the law have been actually implemented. In view of the fact that trusts are known to be used as a medium of tax avoidance and a number of individuals connected with large industrial and business houses have also set up religious and charitable trusts ostensibly for charitable purposes, the Committee feel that it would be worthwhile to undertake a review in this regard with a view to taking necessary remedial measures to tighten the procedures wherever found necessary. The adequacy of the existing machinery with the Department to enforce the amended provisions of the law also needs to be gone into so as to take timely corrective measures.
16	2.41	Ministry of Finance (Department of Revenue)	Incidentally, the Committee find that the Direct Taxes Enquiry Committee had also made a number of far-reaching recommendations in regard to the control and regulation of public trusts so as to ensure that trusts were not exploited to subserve private ends and to check misuse of charitable institutions. The Committee would like to be

			informed in some detail of the specific action taken in pursuance of these recommendations.
17	3.50	Do.	This case relates to assessment of income of a cooperative society (*viz.* M|s Ambur Cooperative Sugar Mills Ltd., Vadapudupet, engaged in the manufacture of sugar. This Society had disclosed gross profits of Rs. 33 lakhs and 9.5 lakhs for the years ended 30 June, 1968 and 30 June, 1969, relevant to the assessment year 1969-70 and 1970-71 respectively, and the assessments for the two years were completed in March, 1971 (revised in October, 1972) and January, 1973 on the basis of these profits. The Committee find that based on a study made by the Directorate of investigation, the Central Board of Direct Taxes had in their Circular of 28 October, 1968 to the Commissioners of Income Tax circulated data which indicated that consequent on the introduction of the scheme of partial decontrol of sugar from 23 November, 1967 which permitted the Sugar Mills to sell 40 per cent of their production anywhere in India at the free market price subject to releases from factories authorised by the Government of India, Sugar Mills had made abnormal profits. Assuming the average free sale price of sugar after 15 June, 1968 to be Rs. 300/- per quintal, according to the terms of the Circular this Society should have made a profit of Rs. 67.94 lakhs for the period from 1 October, 1967 to 30 September, 1968. Assuming, on the basis of press reports, that the actual price of free sale sugar was Rs. 400/- per quintal or more, the quantum of profit, according to the Circular, could be estimated to be at least 20 per cent more. On

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this basis the profit of the assessee society for the period from 1 October, 1967 to 30 September, 1968 should be around Rs. 80 lakhs and hence for the period ended 30 June, 1968, relevant for the assessment year 1969-70, the profits on proportionate basis, should be around Rs. 60 lakhs. It would thus appear that for the assessment year 1969-70, assessee society had not disclosed profits to the extent of Rs. 27 lakhs. If the same basis as given in the aforesaid Circular is adopted for the year ended 30 June, 1969, also, relevant to the assessment year 1970-71, the profits disclosed by the society would also appear to fall short by over Rs. 28 lakhs for that year. Thus there was a shortfall of Rs. 55 lakhs for the assessment years 1969-70 and 1970-71, involving a tax revenue of Rs. 22 lakhs, apart from the penalty leviable for disclosure of Income.

The Government, however, maintained that the assumptions contained in the Board's circular letter of 1968 were not true in the case of the assessee Society and there were no grounds for reopening the assessments already made for the years 1969-70 and 1970-71. The Government have based their contention on the following grounds:

(i) that the average sale price of Rs. 300/- per Q for free-sale sugar mentioned in the circular was not true in the case of the society in the assessment year 1970-71;

(ii) that the free-sale sugar actually sold by the society did not amount to 40 per cent of the total production as assumed in the circular, because the actual sale was subject to authorisation by the Directorate of Sugar and Vanaspati which were for far less quantity;

(iii) that the recovery of sugar from the cane purchased was less in 1970-71 which enhanced the cost of production and reduced the profitability;

(iv) that the availability of sugar-cane during the assessment years was comparatively less due to drought situation and, therefore, the society had to purchase cane at a price substantially higher than fixed by Government. This also enhanced the cost of production and reduced profitability.

Each of these grounds have been discussed in the following paragraphs.

18	3.51	Ministry of Finance (Department of Revenue)	The Committee note that the estimate of profit indicated in the Board's circular of October, 1968 was based on the assumption that the average sale price of free-sale sugar after 15 June, 1968 was Rs. 300/- per quintal. Indicating the probable profits earned by each sugar mill, the circular advised the Assessing Officers that according to the press reports, the price of sugar had gone up to Rs. 400/- and above and, therefore, the quantum of profits should be at least 20 per cent more than that estimated in the circular. In this connection,

the Department of Revenue and Banking have pointed out that in the assessment year 1969-70, the Society sold free-sale sugar at Rs. 332.79 per quintal, but the profitability was less because—

(i) the quantity of free-sale sugar actually sold by the society was only 23 per cent of the total production as against 40 per cent assumed in the circular; and

(ii) the society purchased cane at a price higher than that assumed in the circular.

In the assessment year 1970-71, the Department have pointed out that the average rate of sale of free sugar was Rs. 276/- per quintal and that the cost of production had also gone up from Rs. 160/- per quintal in 1969-70 to Rs. 165/- per quintal. Besides, during this year also the quantum of free-sale sugar actually sold is stated to have been only 27 per cent of the total production as against 40 per cent assumed in the circular. The Committee also find that in his communication dated 28 July, 1975 to Audit, the Income-tax Officer has contended that there has been no 'suspicious sale' and that the entire free-sale sugar was sold to the highest bidder in the sealed tender and to verifiable parties. The Committee would, however, like Government to satisfy themselves by way of abundant caution that all the sales were genuine and at the declared price and that

			no attempt was made by the assessee to cover up any part of the profits so as to evade tax.
19	3.52	Do.	The Committee note that in his reply dated 28th July, 1975, the Income-tax Officer had sought to defend the assessments of income made by him on the ground that the assumptions on the basis of which profit of this Society for the period 10 October, 1967 to 30 September, 1968 was estimated, as per the Board's Circular of October 1968, to be Rs. 67.94 lakhs did not apply in this case. One of the assumptions made in the Circular was that 40 per cent of the production of sugar would be released for free sale. This Society is stated to have sold in the free market 27,333 quintals of sugar, *i.e.*, 23 per cent of the production of 1,18,189 quintals in 1969-70. In 1970-71. The free sale sugar was said to be 44,393 quintals, *i.e.* 27 per cent of the production of 1,63,337 quintals. The Committee have been informed by the Department that the "figures of sale of free sugar were not checked up at the time of assessment with the actual releases made by the Directorate of Sugar and Vanaspati." Even the figures of production were not checked up with the Directorate of Sugar before making the assessments. In view of this, the Committee cannot accept as conclusive the assessment of the I.T.O., based as it was on data supplied by the Society itself. The Committee would like the Central Board of Direct Taxes to impress upon the assessing officers the need to scrutinise all the material facts with reference to official sources at the time of assessment itself.
20	3.53	Do.	The Committee note that during 1969-70 the Society paid, with the approval of Government, a subsidy to the cane-growers

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			over and above the Government fixed price of Rs. 76.90 per M.T., at Rs. 33.10 per M.T. to the registered growers and Rs. 23.10 per M.T. to the unregistered growers. During 1970-71, the subsidy, over and above the Government fixed price of Rs. 79.60 per M.T., was Rs. 10.40 per M.T. for registered growers only. The Government have admitted that, as additional price was paid only after getting the approval of the concerned authorities and also because full addresses of the cane suppliers were reported to be available, the supply prices paid by the mill to the suppliers were accepted as genuine. The Committee consider it unfortunate that the cane prices paid to the growers were accepted by the Income-tax Officer as genuine without even making a test-check with the growers to establish the veracity of the claim of the Society.
21	3.54	Ministry of Finance (Department of Revenue and Banking)	The Committee note the claim of the Society that during 1970-71, recovery of sugar was only 8.47 per cent as against 10.30 per cent in 1969-70. In this connection, the Committee would like to draw attention to the book "Investigation of Accounts" brought out by the Board in 1964 which had, while giving broad outlines for detecting tax evasion in the cases of sugar mills and sugar dealers, referred to the allegation of under-weighment of sugar-cane as also under-statement of recoveries from sugar-cane and had cautioned that "it is necessary to carry out sample checks in respect of weighment and laboratory analysis of sugar recovery from various samp-

les of sugarcanes." The Committee understand that while auditing the manufacturing accounts of this Society, the Registrar of Co-operative Societies had felt that the alleged poor recovery required "further probing". The Committee are surprised that at the time of assessment of income-tax payable by the Society neither the ITO himself exercised any test-checks nor made any reference to the appropriate authorities to verify the contention of the Society.

22 3.55 Do.

The Board's circular of 1968 pointed out that as the extra profits made by the sugar mills may not have gone to the coffers of the companies concerned but to the managing directors or other persons in charge of the mills, it would be necessary to scrutinise their personal cases also with great care" and suggested that "it may be appropriate to call for wealth statements in such cases and make independent enquiries regarding the assets acquired by them during the relevant years." The Committee are surprised at the interpretation placed on the Circular by the Department of Revenue and Banking who have contended that "in the circular of 1968, no instructions were issued to the field officers to report back the number of cases in which the investigations were carried out on the lines suggested therein." This shows a dismal lack of coordination between the Board and the field officers.

The Committee feel that it should be the concern of the Department to see that instructions are not only issued but are actually followed in the field for otherwise the very purpose of issuing such

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			instruction would be defeated. The Committee would like to know whether the personal assessments of General Manager and the Managing Director of this assessee Society were investigated on the lines indicated by the Board in their Circular of 1968 and if not why this requirement was overlooked in this particular case.
23	3.56	Ministry of Finance (Department of Revenue and Banking)	After considering the facts placed before them, the Committee are left with a feeling that the Income-tax Officer concerned did not attach to the circular of the Board indicating the lines on which assessment in respect of sugar mills should be made, the importance that it deserved. They are unable to share the view expressed by the Income-tax Officer that " the fact that it (circular) had been filed in the file itself would go to show that it had been taken into consideration while completing the assessment." This laconic approach has to be deprecated.
24	3.57	Do.	In view of the deficiencies and lacuna pointed out in the earlier paragraphs, the Committee feel that there is scope for an in-depth inquiry into the profitability of the assessee society during the assessment years 1969-70 and 1970-71.
25	3.58	Do.	The Board's circular of 1968 gave a list of 55 factories in different zones of the country each of which had made an estimated profit of over Rs. 30 lakhs. The circular prescribed very specific inquiries to be made in the case of sugar factories such as strict

proof of payment for purchases of cane at prices higher than those prescribed by the Government, sample checks in respect of weighment of cane and laboratory analysis of sugar recovery from various samples of sugar-cane, coordination of sales of free sale sugar with the quantities released for free sale by the Directorate of Sugar and Vanaspati, Government of India, verification of free market prices prevailing on the dates of release as ascertained from that Directorate, verification of stock and production particulars with the details obtained from the Directorate of Sugar etc. The need and the effectiveness of these inquiries are apparent from the fact that in the case of 6 sugar mills, according to the data furnished by the Department of Revenue and Banking, additions amounting to as much as Rs. 2.44 crores were made on the basis of investigations carried out in accordance with the guidelines prescribed in the Board's circular. The Committee cannot therefore but deplore the complacency with regard to the strict observance of these guidelines in the case of assessee society."

26	3.59	Do.	The Tariff Commission had, felt that 'corrective action' would have to be taken by Government if, 'taking advantage of pressure of demand, free market sugar tends to show a consistent unjustifiable spurt in prices', and that the aim should be to keep the industry under some discipline. In the case of Anakapalla Cooperative Agricultural and Industrial Society Ltd. and other *Vs.* Union of India the Supreme Court in its judgement delivered on 6 November 1973, had observed that it had not been denied that the majority

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			of producers had made profits on the whole and had not suffered losses. During the course of examination of the subject of Sugar Rebate Schemes, Government had themselves admitted before the Committee that the margin available to the sugar industry on free sale sugar would be "anybody's guess". In paragraph 4.58 of 155th Report (1974-75) on Sugar Rebate Scheme, the Committee had accordingly observed: "that the sugar industry has, on all accounts, enriched itself in an unlimited way by the scheme of levy and free sale sugar, introduced in 1967, is of common knowledge." The Committee understand that so far the Central Board of Direct Taxes have not attempted an analysis of the profits earned, returned and assessed to Income-tax by the Sugar Industry during the period 1968 to 1975. The Committee have been informed that the Board "does not have the manpower to undertake such task." The Committee feel that such a study should be undertaken to dispel once for all the public misgivings about the state of the sugar industry which it has been alleged. has enriched one segment of the industry only. It is for the Government to devise the machinery as also the parameters of the inquiry.
27	3.68	Ministry of Finance (Department of Revenue and Banking)	The Committee regret to find that on the search of the premises of a Cine Artist on 1st November, 1970, while undisclosed assets in the form of jewellery valued at Rs. 2,33,730 were found, the assessing officer, while completing the assessment for the rele-

vant year 1971-72 in December, 1973 included only a part of the undisclosed assets amounting to Rs. 1,15,430. The omission to include the balance amount of Rs. 1,18,300 resulted in short levy of tax to the extent of Rs. 1,10,370. According to the Department of Revenue and Banking, though the search was conducted in this case on 1 November, 1970, part of the jewellery (Rs. 1,18,300) was found to have been pledged on 3rd October 1969 and was, therefore, includable in the assessment year 1970-71. The Committee have doubts if the action of the assessing officer in not including a part of the undisclosed assets was in keeping with the provisions of the law. They feel that this was a fit case in which the Department should have sought the opinion of the Ministry of Law (which was not done) as to whether under section 69A of the Income Tax Act it was open not to include a part of the undisclosed assets in the assessment of the relevant financial year. The Committee recommend that Ministry of Law may be consulted even now in the matter so that there may be no ambiguity whatsoever about intention, scope and application of the law in the instant case and in the cases arising in future.

38 4.15 Do.

The Committee find that in this case the assessment for assessments years 1967-68 to 1969-70 was completed by the Income Tax Officer on 30 January, 1974 but demand notices specifying the sum payable were not served on the assessee till 10 June, 1975. The Department have explained that at the time these assessments were completed, functional scheme was in operation and it being the close of the month, the Calculation Cell was

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			busy with a large number of assessments for calculation of taxes. It is further stated that the Calculation Cell "could attend only to the time barring assessments of 1971-72 leaving this case to be done later". It has also been stated that in the assessments made, tax payable was not determined and consequently the Income Tax Officer was in doubt whether such assessment orders could be treated as legal or not. In the meantime the Income Tax Officer who had made these assessments was stated to have been transferred and, according to the Department, the successor was not sure whether he could issue demand notices in respect of orders passed by his predecessor. The Committee are not satisfied with this explanation. The Board has already issued executive instructions on 22 March, 1971 to the effect that every effort should be made to secure the service of demand notice within a fortnight and in the case of particularly obstructive assessees within a month of the passing of the assessment order. These instructions were reiterated by the Board on 22 September 1973. The existing procedure provides for noting down of the dates of assessments and service of demand notice in the "Demand and Collection Register". It appears that entries in this Register were not scrutinised periodically by the Income Tax Officers concerned otherwise such a delay would not have escaped their attention. The Committee are perturbed to find that during the year 1975-76 alone, the Internal Audit were able to detect 249 cases of delay of more than 60 days in the issue of demand notices. The Committee are therefore in-

clined to believe that executive instructions issued by the Board were honoured more in the breach than in observance. The Committee recommend that Government should review the existing control mechanism and try to bring about improvements so as to plug loopholes for possible malpractices resulting in loss to the national exchequer.

20 5 15 (Ministry of Finance (Department of Revenue)

The Committee find that in the case of a firm engaged in the business of film production, in the assessment for 1965-66 completed on 27th September 1969, the value of the closing stock of 3 films produced during the year was stated by the assessee firm at Rs. 4.80 lakhs but viewing it as an under statement, the Department increased it to Rs. 5.83 lakhs. Accordingly in the original assessment for 1966-67 made on 12 February 1971 the figure of opening stock was taken as Rs. 5.83 lakhs. However, on a appeal of the assessee the assessment for 1965-66 was set aside by the Appellate Assistant Commissioner on 17th August 1972. In the fresh assessment made on 30 July 1973 for 1965-66 the figure of closing stock was taken at Rs. 2,39,750/- in accordance with executive guidelines issued by the Central Board of Direct Taxes on 18 September 1972. Consequential action to revise the figure of opening stock in the assessment for 1966-67 was not taken by the Department. Admitting the resultant under-assessment of income of Rs. 3,43,250/- and short levy of tax of Rs. 2.00 lakhs, the Department has pleaded that follow up action to revise the figure of opening stock could not be taken in this case because "by the time the fresh assessment for 1965-66 was completed on 30 July

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			1973 the appeal against the assessment for 1966-67 had already been dismissed by the Appellate Assistant Commissioner on 29 March 1973." The Committee understand that consequent on cancellation of the assessment for 1966-67 by the Tribunal on 31 May, 1975, instructions have been issued to the ITO for early finalisation of this assessment. The Committee would like the case to be finalised without delay. The Committee regret that the Department had not been sufficiently alert in closely following up the case resulting in the mistake which would have caused a loss of Rs. 2.00 lakhs to the exchequer.
30	6.13	Ministry of Finance (Department of Revenue)	The Committee note that the income tax assessment case of an assessee for the assessment year 1960-61, determining in March, 1965 his taxable income at Rs. 5,04,914 (including an income of Rs. 4,60,000 from undisclosed sources) was remanded to the assessing officer in March 1966 with the direction to submit the remand report within six months and when, even after repeated reminders, a remand report was not received, the assessment was set aside by the Appellate Assistant Commissioner in March 1968. On Audit pointing out in July 1970 that the set aside assessment should have been completed within two years and that delay would cause erosion of evidence in regard to the income from undisclosed sources, the Commissioner of Income Tax is stated to have informed Audit in September 1970 that as huge hundi loans were raised by the

assessee, their verification would take "quite a bit of time". Surprisingly enough, the set aside assessment was not completed even upto July 1975 despite the fact that the executive instructions issued by the Central Board of Direct Taxes on 15 October 1968 had clearly enjoined that set aside assessments should be completed within a period of two years. In fact, the Board had specifically directed the Commissioners of Income Tax on 22 February 1973 to get all set aside assessments for 1970-71 and earlier years completed by 30 July 1973. The delay in this case was thus not only a clear disregard of executive instructions but was also in violation of Sub-section (2A) of Section 153 (inserted by Act 42 of 1970 w.e.f. 1 April 1971) which had provided for set aside assessments being completed within two years. The Committee view this case of inordinate delay with serious concern and recommend that responsibility for this delay may be fixed. The Committee also recommend that concrete measures be taken to tone up tax administration and put an end to such delays.

31	6.14	Do.	The Committee also find that assessments for six years from 1961-62 to 1966-67 were set aside in November, 1968 and January, 1972, but none of these were re-made, although tax of Rs. 8,17,670 and additional tax of Rs. 80,180 aggregating Rs. 8,97,850 was payable by the assessee in pursuance of the original assessments. The assessee had paid Rs. 4,22,680 only. Instead of taking action to recover the arrears due from the assessee, a refund of the aggregate amount of Rs. 1,94,551 representing the excess over advance tax paid by the assessee was allowed to the assessee for the assessment years

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			1962-63 to 1966-67 leaving revenue exceeding rupees seven lakhs as unassessed and unrealised. The Committee are unhappy at this action especially when no security covering the arrears due from the assessee was taken beforehand and it was only later that the Assistant Commissioner was directed to obtain adequate security. The Committee have been informed that in January 1977 assessments for assessment years 1959-60 to 1966-67 have all been set aside by the Appellate Assistant Commissioner and that the ITO has been directed to make fresh assessments. The Committee would like the reassessment for these years to be made on a priority basis so that this case which is hanging fire for well over 15 years is finalised. The Committee also recommend that suitable instructions should be issued to the field staff not to make refunds of tax deposits in cases where reassessments are pending.
32	6.15	Ministry of Finance (Department of Revenue)	For lack of time, the Committee have not been able to examine some of the paragraphs relating to Income Tax included in Chapter III of the Report of the Comptroller & Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes. The Committee expect, however, that the Department of Revenue and Banking and the Central Board of Direct Taxes will take necessary remedial action in these cases, in consultation with the statutory Audit.

GMGIPMRND—LS II—1943 LS—17-10-77—1150.