P.A.C. No. 414

PUBLIC ACCOUNTS COMMITTEE
(1973-74)

(FIFTH LOK SABHA)

HUNDRED AND NINETEENTH REPORT

[Chapter III of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes, relating to Income-tax].

LOK SABHA SECRETARIAT
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(24th April, 1974)

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Page	Para	Line	For	Read
10	1.34	5-8	The Feb 1973. This would seem to indicate that the film circle is with reference to the concealed income/wealth/ gifts detected, under	The Committee, therefore suggest that the working of the film circles in the country since their inception should be critically examined with reference to the concealed income/wealth/ gifts detected under
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(1973-74)

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Shri M. S. Sundaresan—*Deputy Secretary.*

Shri T. R. Krishnamachari—*Under Secretary.*

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*Elected on 29-11-73 *vice* Shri D. S. Afzalpurkar died.

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Hundred and Nineteenth Report of the Committee (Fifth Lok Sabha) on Chapter III of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II Direct Taxes—relating to Income-tax.

2. The Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes was laid on the Table of the House on the 25th April, 1973. The Committee examined the paragraphs relating to Income-tax at sitting held on the 8th December, 1973 (FN). This Report was considered and finalised by the Committee at their sitting held on the 22nd March, 1974 (F. N.). Minutes of the sittings form Part II* of the Report.

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

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

5. The Committee would also like to express their thanks to the Officers of the Ministry of Finance for the co-operation extended by them in giving information to the Committee.

NEW DELHI;
22nd March, 1974
1st *Chaitra*, 1896 (*S*)

JYOTIRMOY BOSU,
Chairman,
Public Accounts Committee.

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REPORT

CHAPTER I

AVOIDABLE MISTAKES INVOLVING CONSIDERABLE REVENUES

Audit paragraph.

1.1. The total income of a film star for the assessment year 1967-68 (assessment completed on 13-1-1972) was computed at Rs. 1,56,264 instead of at Rs. 2,56,264. This resulted in under-assessment of income of Rs. 1 lakh involving a short-levy of tax and interest of Rs. 1,05,362. Though the case was checked by departmental internal audit party, the mistake was not noticed.

1.2. The Ministry have reported (December, 1972) that the mistake has been rectified and the additional demand of tax of Rs. 1,05,362 has been raised. Report regarding the recovery of tax is awaited (February, 1973).

[Paragraph 26(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes]

1.3. Referring to the mistake reported in the Audit paragraph, the Committee wanted to know how this mistake had occurred. The Joint Secretary, Ministry of Finance (Revenue & Insurance) stated: "I submit that this error has taken place in the computation of total income." The Finance Secretary added: "I am not able to explain as to how this has happened. This is a case of carelessness."

1.4. The Committee pointed out that the case was seen by the Internal Audit Party but the error was not detected. When asked for the action taken against the officials concerned, the Joint Secretary stated: "In the case of the Income-tax Officer, we are taking action against him. As far as the Internal Audit Party is concerned, we called for an explanation from the concerned Head Clerk and have given him a warning and a copy of the warning has been placed in his character roll."

1.5. The Ministry, in a note, further added: "The case was checked by the Head Clerk of the Internal Audit Party and he failed to point out the mistake. He has expressed regret for the mistake.

The Commissioner of Income-tax has cautioned the Head Clerk to be more careful in future."

1.6. The Committee wanted to know whether the additional demand of Rs. 1,05,362 raised had since been collected. The witness stated: "A sum of Rs. 75,000 has been collected in September, 1973 . . . various actions have been taken in enforcing the collections from this assessee. But it is a fact that some demands have remained outstanding so far."

1.7. The Finance Secretary added: "The recovery procedure is taken in stages. You cannot recover an amount of Rs. 4 lakhs by attaching a bank balance when the bank balance is not there. Following ownership flats were attached on 15-2-1973. Ashoka Apartment, Napeon Sea Road, Bombay and the value of this flat—the purchase consideration—is Rs. 1,15,000. Flat No. 101 Narayan Dhablokar Road, Bombay and the value is Rs. 1,00,000 and flat in Devi Dutta Cooperative Societies, Grand Stand, Bombay. Various proceedings are being taken against the assessee. Even a notice was issued to him to show cause why he should not be committed to Civil Prison. He arranged to sell the vacant flat at Devi Dutta Co-operative Society and then he paid the amount of Rs. 75,000. Now the whole procedure has to be gone into."

1.8. The Committee enquired whether the assessee was in arrears of tax; if so, they wanted to know the total amount of arrears and the action taken by the Department in enforcing recovery from the assessee. The Ministry, in a note submitted to the Committee, stated:

"According to the information presently available with the Board, Shri....was in arrears of tax of about Rs. 2.78 lakhs as in September 1973. The arrears related to the assessment years 1962-63, 1967-68 to 1969-70 and were after considering the following adjustments:—

(i) Refund claimed by the assessee for assessment year 1966-67 —Rs. 50,661.

(ii) Reduction in demand as a result of orders of Additional CIT setting aside orders for assessment years 1963-64 to 1965-66.

The present position is being ascertained from the CIT Bombay and will be intimated to the Audit.

Action taken for enforcing recovery.

Bank accounts with the Bank of India at Andheri and Santacruz Branches were attached in October, 1972. Three ownership flats owned by the assessee at Bombay were attached by the Tax Recovery Officer in February, 1973. Due to certain legal complications the assessee was allowed to sell through private negotiations the flat at Bandra. The sale proceeds of Rs. 75,000 were adjusted in September, 1973 against arrears. The second flat namely the Ashoka Apartment was attached but the Cooperative Housing Society had objected to the attachment placing reliance on a Bombay High Court's decision. The licensee of this flat had filed a suit in small Causes Court for fixation of standard rent in place of leave and licence compensation. In November, 1973 the Tax Recovery Office has attached that the compensation payable by the defaulter and which is lying deposited in the court. The third flat is self-occupied by the assessee and the title deeds are in the custody of TRO as security.

A notice under Rule 73(1) (a) of Part V of the Second Schedule to the Income-tax Act, 1961, was issued to the defaulter asking him to show cause why he should not be committeed to Civil prison. However, in view of the cooperation extended by the assessee, i.e. arranging for the sale of vacant flat at Bandra and other factors like outstanding demands being considerably reduced (due to setting aside by the Additional CIT I of orders for the years 1963-64 to 1965-66 and the claim for refund of about Rs. 50,000 in the year 1966-67 which is pending verification) the drastic action of committing the assessee to Civil prison has been kept in abeyance for the time being."

1.9. The Committee were given to understand by Audit that in this case the due date for the filing of the return was 30.6.1967. The return was received only on 24.12.1971 i.e. after a delay of 4-1|2 years. The Department had issued notices calling for the return but there was no response. The Committee enquired whether any penalty was imposed for filing the return after a delay of 4½ years. The Joint Secretary, Ministry of Finance (Revenue and Insurance) stated: "The penalty action has been initiated. The notice was issued on 27.6.1968 and the penalty proceedings are still pending."

1.10. When asked for the time taken to complete the penalty proceedings, the witness replied: "There is still time available; it has not become time-bared. The time limit will expire on January, 1974." He added: "According to my information, the penalty proceedings have not yet been completed. We will find it out from Commissioner." In reply to a question the witness stated: 'In this

case other penalties have been levied for the assessment years 1963-64, 1964-65 and 1965-66. For the year 1963-64 the penalty imposed was Rs. 19,000 and odd. For the late return under Section 271(1) (a), the penalty imposed for 1964-65 was Rs. 13,000 and odd. For 1965-66, the penalty imposed was Rs. 10,000 and odd.

1.11. When asked whether it had not occurred to the higher officers to tell the Commissioner that the time limit was coming closer and he should take action, the Finance Secretary stated: "I am sorry to say that I have not been able to understand yet the various procedures followed by the Income-tax Officers in issuing notices, making recoveries, issuing orders, penalties etc. and I intend to go into this very thoroughly. It appears that when the order of assessment is passed, at the same time the Income-tax Officer does not also take action in regard to penalties. He generally keeps it until there is an appeal. After the appeal is decided upon, then he takes up the question of penalty."

1.12. The Committee wanted to know whether this assessee had filed his Wealth-tax returns upto 1971-72. The Joint Secretary stated that he had not filed any return so far. He added: "Notices have been issued under Section 17 of the Wealth-tax Act in February 1973, asking him to furnish the returns for the assessment years 1968-69 to 1971-72."

1.13. The Committee pointed out that it was established that the assessee had wealth and certain flats owned by the assessee in Bombay were attached as a result of recovery proceedings. Even when the Department were aware of the existence of such properties no strict action had been taken by them against the assessee for his failure to submit any Wealth-tax returns in respect of the flats so far. Notices had been served under Section 17 of the Wealth-tax Act only in February 1973 asking him to furnish the returns for the assessment years 1968-69 to 1971-72. The Committee desired to know the circumstances under which this had happened and also the steps proposed to be taken by the Department to ensure these kinds of lapses did not recur in future. They also wanted to know the Department's assessment of the wealth owned by the assessee. The Ministry in a note stated: "Three flats attached by the TRO were acquired by the assessee during 1964-65. The Income-tax assessments for years 1963-ment year 1966-67. Notice calling for the Wealth-tax returns for the year 1966-67 was made in June 1971. The assessee appears to have filed a personal balance sheet only in the proceedings for the assessment year 1966-67. Notice calling for the wealth-tax returns for the years 1968-69 to 1972-73 have already been issued. The ITO is re-

quired to initiate the Wealth-tax action if during the course of Income-tax proceedings it appears that the assessee is having wealth which may be liable to wealth-tax.

The Department's assessment of the wealth of Shri....will be available only after Wealth-tax returns are filled/assessments are made; the position shall then be intimated to the Committee."

1.14. The steps taken by the Ministry in this regard are as under:

"The Board had by a D.O. letter No. 328|33|71-WT dated 26th April, 1971, directed that in the cases of all individuals (including persons having salary income) and Hindu Undivided families in which the declared or the assessed income for the latest assessment year exceeded Rs. 40,000 from all sources and which were not hitherto assessed to wealth-tax, notices calling for returns of wealth for the assessment year 1971-72 should be issued.

The Board had noticed that during the searches conducted under Section 132 of the Income-tax Act, 1961 a substantial amount of unexplained jewellery as well as assets held in the shapes of immovable properties had been discovered. These assets were alleged to be owned by individuals|partners|coparceners who, though assessed to income-tax, were not wealth-tax assessees, although on the basis of the assets discovered they should have been assessed to wealth-tax. The Board, therefore, by their Instruction No. 497 dated 17th January 1973 (File No. 328|135|72-WT) directed that whenever, during the course of examination of accounts the Income-tax Officers found that any individuals, especially ladies, possessed assets including immovable property but excluding jewellery of the book value of about Rs. 80,000 they should call for a return of wealth from the person concerned under Section 14(2) of the Wealth-tax Act to ensure that they do not escape assessment to wealth-tax.

In the light of the recommendation made by the Public Accounts Committee (1972-73) (Audit Report, 1970—50th Report, para 2.9) the Board had, on 8th February, 1973 (F. No. 326|2|73-WT) ordered a review of all cases of individuals with business income of Rs. 15,000, assessed or returned to ensure that all persons liable to wealth-tax were submitting their returns.

The Board had already issued insstructions on 17th December, 1969 for a census of houses in major cities and towns. Thereafter, instructions were issued in the Board's letter F. No. 326/6/70-WT dated 12th January, 1971 for a planned programme of survey. In spite of these instructions for survey the Board were of the opinion on the basis of the available statistics regarding the number of wealth-tax assessees at different slabs of wealth that there was considerable scope for adding to the number of wealth-tax assessees. Accordingly, by their letter F. No. 323|32|73-WT dated 20th July, 1973, the Board directed that a survey of house properties with annual letting value of Rs. 5,000 or more should be immediately undertaken in the Commissioners' charges."

1.15. The Committee learnt from Audit that the assessee referred to in the Audit paragraph was assessed in the specially created Film Circle at Bombay. The Committee desired to know the composition of the Film Circles. The Member, Central Board of Direct Taxes stated: "There is one Inspecting Assistant Commissioner-in-charge of the Film Range in Bombay. He has got about half-a-dozen Income-tax officers. It is called Film Circle Bombay. It is concerned with film artistes, producers and others. In Madras, there are two Income-tax Officers who are dealing with all the cases of the film artistes. In Calcutta, it is not exactly segregated, because there are not many cases of film artistes, as in Bombay and Madras."

1.16. As regards Bombay he added: "There is a whole range because the number of film stars and producers is the largest there ...."

1.17. The Committee asked for the total number of film stars assessed in the Film Circle at Bombay. The witness state: "191 are film stars. Apart from the film stars there are 187 producers; 52 directors and 138 distributors....All the people who are connected with the film work are assessed in the Film Circle except a few selected cases which are assessed in the Central Circle. There are only two cases in Bombay which are assessed in the Central Circle. Out of those two, one which was assessed centrally was decentralised because she is no longer acting in the films now."

1.18. The Committee wanted to know the date on which the Film Circle at Bombay was created and whether any special instructions had been issued to the Income-tax Officers for assessment of film stars. The Ministry of Finance (Department of Revenue and Insurance) in a note submitted to the Committee stated: "The Film Circle

in Bombay was created on 8th August, 1964 *vide* Notification No. 53 dated 28th July, 1964."

1.19. As regards issue of instructions, the Joint Secretary, Ministry of Finance (Department of Revenue and Insurance) stated: "The Commissioner at Bombay has issued the following instructions to the Income-tax Officers in the Film Circle:

(1) to refer to the Valuation Cell cases of immovable properties owned by film stars;

(2) to treat the cases of film stars and producers as investigation cases and consider prosecution if there is concealment; and

(3) the document seized during raids on the premises of the film stars are under scrutiny and will be processed for prosecution, wherever called for."

1.20. The Committee desired to know the amount of concealed income detected by the Film Circle, Bombay, the number of cases wherein penalties were levied and prosecutions launched and the arrears of tax collected. The Member, Central Board of Direct Taxes stated: "The concealed income added during the three assessment years *i.e.* 1970-71, 1971-72 and 1972-73 was: Rs. 47,70,000 in the first year, Rs. 77,57,000 in the second year and Rs. 65,98,000 in the third year. This is, however, not the achievement of Film Circle in Bombay alone, this is the overall position for the entire film industry .....It includes other places, Madras, Calcutta etc. We are not maintaining these Circle-wise."

1.21. With regard to penalties, the witness stated: "For the same three years i.e. 1970-71, 1971-72 and 1972-73, these were Rs. 11.24 lakhs, Rs. 9.20 lakhs and Rs. 19.83 lakhs."

1.22. The witness added: "Last year a number of searches were conducted in the case of film stars at Bombay. Out of these 21 were prominent and certain prosecutions were launched in Madras. In the Bombay Circle, the assessments are not yet finalised. The prosecutions are under consideration but they have not yet been launched. Incriminating documents were found in a number of cases but cash and jewellery were found in comparatively a small number of cases. Cash worth Rs. 5,63,000 and jewellery worth Rs. 21.25 lakhs....There were searches earlier also, but last year it was massive."

1.23. When asked whether any prosecution was launched, the witness replied in the affirmative. He added: "In 1970-71, five pro-

secutions were launched, in 1971-72 no prosecution was launched and in 1972-73 three prosecutions were launched."

1.24. The Committee pointed out that in their reply dated 31-7-1973 to item 22 of an advance questionnaire sent to the Ministry on 17th July, 1973, the Ministry had stated that the number of cases of concealment of Rs. 50,000 or more detected and prosecution advised for the year 1970-71 were 10 and the cases in which prosecution had been filed were 7 and that similarly for the year 1971-72 cases where prosecution was advised were 8 and cases in which prosecution was filed were 6. But according to the witness, the cases where prosecutions were launched were 5 during 1971-72 and none in 1971-72.

1.25. When asked to clarify, the witness stated: "The information I have given just now is about the number of prosecutions approved. One was approved in 1971-72 whereas the number given earlier was the number launched.....There is some time lag between the two. Because even after approval, some further evidence has to be gathered and before a complaint is filed, it takes a little time for the Commissioner because the Prosecution Counsel has also to be consulted."

1.26. When asked to state the correct position and to indicate the number of cases in which prosecution was launched against film stars during 1970-71, 1971—73 the Ministry, in a note, stated: "In item 78 of the Advance Questionnaire of the PAC relating to paragraph 63 of the Audit Report, 1970-71 and in item 22 of the Advance Questionnaire relating to Audit Report for 1971-72, the PAC had asked for the particulars of cases of concealment of Rs. 50,000 or more detected and prosecution advised. This Ministry interpreted this as meaning the number of prosecutions approved in 1970-71 where the concealed income was over Rs. 50,000 and the number launched out of the same either in that year or subsequently. The Ministry informed that 10 prosecutions were approved in 1970-71 out of which 7 were launched till the time of reporting. Similarly, for 1971-72, the number of prosecutions approved during the year was given as 8 and number launched out of the 8 till the time of reporting was given as 6.

During oral evidence it was stated that 5 cases of prosecution in respect of film artistes and others connected with the film industry were launched in respect of 1970-71 and none in respect of 1971-72.

The figures given in reply to the Advance Questionnaire related to prosecutions where concealment involved was Rs. 50,000 or more, irrespective of whether they were film artistes or not. The figure of 5 prosecutions given during oral evidence related to prosecutions

launched during 1970-71 as also in subsequent years but as a result of searches carried out in the case of film artistes and connected persons during that year.

The correct position of prosecutions launched against film stars during the years 1970-71 to 1972-73 is as under:

1970-71	1
1971-72	Nil
1972-73	4"

1.27. Referring to the penalties, the Committee pointed out that the penalty imposed during 1970-71 was only Rs. 11.24 lakhs whereas the concealment was Rs. 42.70 lakhs and that the minimum penalty should be as much as the concealed income.

1.28. When asked for the action taken by the Department in this regard, the witness stated: "The figures relates to penalties actually enforced it does not include the penalties which have not been enforced. For 1970-71 there has been a change in the limitation period; we could wait after the expiry of the period for six months till the date of receipt of the appeal order. There are some cases where appeal decisions are awaited. Penalties have not been imposed because the law allows that the limitation may be extended to that extent."

1.29. The Finance Secretary added: "Generally the practice has been to wait for the result of the appeal."

1.30. The Committee enquired whether the Central Board of Direct Taxes had ever assessed the achievements of the film Circles in the country. If so, they desired to know the evaluation of the working of all the Circles since their inception, *inter-alia* indicating (i) concealed income detected, (ii) penalties levied, (iii) prosecution launched, and (iv) arrears of tax collected. The information is still awaited (April, 1974).

1.31. Drawing attention of the witness to the instructions stated to have been issued by the Commissioner of Income-tax, Bombay to the Income-tax Officers in the Film Circle, Bombay, wherein it was stated that cases of immovable properties had to be referred to the Valuation Cell, the Committee wanted to know the number of cases that had been referred to the Valuation Cell from 1964 to 1973, out of those the number of cases completed and results reported, the number of assessments that had been revised because of the difference in valuation and the additional demand raised and collected. The witness stated the information was not available.

1.32. The Committee note that the total income of a film star for the assessment year 1967-68 was computed at Rs. 1,56,284 instead of

at Rs. 2,56,264. It is not for the first time that a mistake of this type has come to the notice of the Committee. Year after year a number of mistakes have been brought out in the Audit Reports which are attributed to carelessness and negligence and the Committee have been expressing their concern. One Common interesting feature of these mistakes was the dropping of one lakh of rupees from the total income. Many of the cases in which mistakes of this nature occurred were in high income bracket and were assessed in important Special Wards. In paragraph 2.43 of their 87th Report the Committee had come to the conclusion that either there was no effective check in the Department or the mistakes were not bona-fide. In this case as the mistake had occurred in a Film Circle specifically created to scrutinise the cases of film stars properly, the bona-fides of the mistakes should be carefully gone into for appropriate action.

1.33. The assessee filed the return in December, 1971 after a delay of 4½ years and yet neither penalty nor interest has been levied so far. The Committee receive an impression that the Department have developed a mentality to postpone the penalty proceedings till they are about to become time-barred. The Finance Secretary stated that it appeared to him that when the order of assessment was passed the ITO did not at the same time take action in regard to penalties and that he generally kept in until there was an appeal. The Committee are not happy over this state of affairs. They desire that the procedures followed by the ITOS should be critically studied with a view to (a) ensuring that final orders are passed expeditiously, (b) taking steps to see that the interests of revenue are safeguarded and (c) invoking the penalty provisions effectively and in time.

1.34. The Committee are surprised to find that in this case, although the assessee was found to possess assesable wealth a notice was served on him under Section 17 of the Wealth-tax Act only in February 1973. This would seem to indicate that the Film Circle is not functioning with the speed and efficiency as it ought to be. The February 1973. This would seem to indicate that the Film Circle is Committee, therefore, suggest that the working of the Film Circles with reference to the concealed income/wealth/gifts detected, undervaluation of assets found out, penalties levied, prosecutions launched and arrears of tax collected. On the basis of such an examination steps should be taken to make the Circles really effective. The Committee would like to have a detailed report in this regard.

Audit paragraph.

1.35. The income of a registered firm for the assessment year 1966-67 was to be allocated in the hands of its three partners. In doing

so, the income actually included in the partners assessments was Rs. 17,12,331 instead of Rs. 18,02,712. Further, in the case of one partner due to a totalling error, the interest received by him from two firms was taken less by Rs. 100,000. These mistakes resulted in aggregate under-charge of tax and interest of Rs. 1,40,010 in the hands of three partners.

1.36. The Ministry, while accepting (February, 1973) the under-charge of tax, have stated that the assessment of the firm for the assessment year 1966-67 has been set aside in appeal and that rectificatory action in cases of the partners will be taken after fresh assessment is made in the firm's case.

[paragraph 26(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil)—Revenue Receipts, Volume II—Direct Taxes].

1.37. The Committee wanted to know the circle in which the firm and the partners were being assessed. They also enquired whether the group was one of those referred to the Income-tax Investigation Commission. The Ministry of Finance (Department of Revenue and Insurance), in a note furnished to the Committee, stated: "The cases were assessed in Central Circle, Calcutta. This group was referred to the Income-tax Investigation Commission."

1.38. The Committee asked whether it was not the duty of the Income-tax Officer-in-charge of this group to exercise great care in finalising the assessment. The Ministry, in a note, stated:

> "The ITO should have normally exercised great care in finalising the assessments of this group and that he did exercise some care in completing the assessment of the firm is evident from the fact that he determined the total income at Rs. 30,41,684 as against the returned income of Rs. 1,40,653. It is, however, to be appreciated that the cases in question were received on transfer in January 1971 and the ITO had to complete the assessments in March, 1971, i.e., within the period of two months."

1.39. The Committee enquired whether the case was looked into by the Inspecting Assistant Commissioner or by the Internal Audit Party or by any other departmental authority and if so whether this mistake was detected. The Ministry, in a note, stated:

> "The cases were not looked into by the IAC. The cases were not checked by the Internal Audit Party either. The cases were completed on 24-3-1971 and reported to the IAP in Auril 1971 but the A.G. (Audit) Party took up the inspec-

tion in April 1971. Hence the Department had no chance to check up the cases before the audit by Revenue Audit.

[Period of Audit: 1-4-1971 to 10-5-1971]".

1.40. Pointing out that as per audit paragraph, the assessment of the firm had been set aside on appeal, the Committee wanted to know the ground of the appeal and the date on which the appeal was filed. They also enquired whether the assessment had been reframed. The Ministry, in a note, stated:

"The appeal in respect of the firm was instituted on 27-4-1971. The main ground of the assesssee was that the additions on account of closing stock (Rs. 4,73,342) and cash credits (Rs. 8,72,300) were made without giving adequate opportunity. The assessment has not yet been reframed."

1.41. When asked for the views of the Board on the AAC's orders and whether any appeal had been filed against the AAC's orders, the Ministry, in a note, stated:

"There is no reason to consider that the AAC's orders is objectionable. The AAC has set aside the assessment mainly on the ground that no adequate opportunity was given to the assessee to cross-examine the creditors. Besides, the withdrawals made earlier were not taken into account to determine the exact quantum of addition on account of cash credit. The addition on account of closing stock was held to be not based on any accepted principles of accountancy. Moreover the assessment has been set aside and the Department has still an opportunity to defend its position. Therefore, no appeal has been filed."

1.42. In this case a mistake in allocating the firm's income among its partners and a totalling error have resulted in under-charge to the extent of Rs. 1.40 lakhs. The Committee take a serious view of mistakes which could be attributed to anything besides carelessness and negligence. That these have occurred in a Central Circle in an important case which had to be referred to the Income-tax Investigation Commission, is distressing. The Committee, therefore, feel that the case requires a thorough investigation by the Board to find out how such mistakes could happen in a Central Circle. They would await the result of the investigation.

1.43. Incidentally the Committee understand that the assessment of the firm has been set aside in an appeal which was preferred after Statutory Audit had gone into the case. The Committee would await the details of the re-assessment.

Audit paragraph.

1.44. According to the terms of settlement between the department and an assessee, certain sums including an amount of Rs. 1,00,000 representing moneys received by the assessee from outsiders towards commision, were to be brought to tax during the assessment year 1965-66. Though this sum of Rs. 1,00,000 was shown in the assessment order dated 23rd March, 1970 as income to be assessed, it was omitted to be included in the total income. This omission resulted in short-levy of tax to the extent of Rs. 88,652 (including Rs. 19,880 on account of short-levy of interest). On this being pointed out, the department revised the assessment on 11th January, 1971 raising an additional demand of tax of Rs. 68,772 only as the rectification for short-levy of penal interest is not provided for under the Act. Report regarding recovery of the additional demand is awaited (January 1973).

[Paragraph 26(iii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil)—Revenue Receipts, Volume II—Direct Taxes].

1.45. The Committee enquired whether the assessee had paid all the taxes or he was in arrears. The Ministry of Finance (Department of Revenue and Insurance), in a note submitted to the Committee, stated:

> "The additional tax of Rs. 68,777 demanded on rectification of the mistake pointed out by the Audit has been realised. Insofar as the interest u/ss 130 and 215 amounting to Rs. 19,880 is concerned, it has not been realised as there is no provision in law to enhance the interest once levied on an upward revision of the assessment."

1.46. According to the Audit paragraph this case was settled under the Income-tax Act. The Committee were given the understand that there was no such provision in the Income-tax Act and that the Taxation Laws (Amendment) Bill 1973 contained a provision conferring powers of settlement in Members of the Central Board of Direct Taxes. When asked under what authority of law this settlement had been arrived at, the Ministry of Finance (Department of Revenue and Insurance), in a note submitted to the Committee, stated:

"The Commissioner finalised the assessment in this case on the basis of correspondence/discussions the assessee had with the Department in the course of assessment proceedings. It is only an agreed assessment. There is no provision in law for settlement of cases as such. It would be preferable to term this as an agreed assessment than use the word 'settlement'."

1.47. The Ministry, in a note, stated that the settlement was with a group of which the assessee was a member.

1.48. The Committee desired to know the nature of concealment in this case and the terms of settlement. The Ministry, in a written note, stated:

"The settlement referred to in the Audit para was for three years 1965-66, 1966-67, 1967-68. The basis was unaccounted investments and unaccounted tax payments. The unaccounted investments and payments were worked out by the ITO after investigation at Rs. 42,26 lakhs. Resources to the tune of Rs. 11.23 lakhs were explained. Balance was Rs. 31.03 lakhs. This was to assessed in the three years in the hands of the assessee and his three brother, constituting the J.K.K. group."

1.49. When enquired by the Committee whether this case was one of the cases assessed in a Central Circle, the Ministry in a note answered in the affirmative.

1.50. The Committee asked for the circumstances in which the simple mistake had occurred. The Ministry, in a note, explained: "In this case, the assessee filed a settlement petition which was processed by the ITO and his report to IAC was sent on 3-1-1970. The instructions regarding the finalisation of settlement were received on 13-3-1970. There were as many as 50 assessments to be finalised as a result of the settlement, 23 of which were getting time-barred on 31-3-1970. All these assessments were finalised between 13-3-1970 and 31-3-1970 including the case in question. The mistake due to magni-

tude of work had inadvertantly crept in. The ITO has regretted it". The Committee learnt from Audit that this case was not seen by Internal Audit Party.

1.51. This is yet another case in which Rs. 1 lakh escaped assessment. Although it was shown in the assessment order as income to be assessed, it was omitted to be included in the total income. Regettably the case had not been looked into by Internal Audit. The Committee trust that suitable action will be taken in the matter.

1.52. The Committee have been informed that the assessments for the years 1965-66 to 1967-68 were made after discussion with the group consisting of the assessee and his three brothers. The Committee would in connection refer to their recommendation in paragraph 2.60 of their 50th Report (Fifth Lok Sabha) and reiterate that the settlement made without authority of law would be irregular. The Committee would like to know whether there was any defect in the settlement and whether the group had paid all the taxes up-to-date.

Audit Paragraph.

1.53. Under the Income-tax Act, prior to assessment year 1968-69, capital gains in the hands of non-corporate assessees were charged to tax at concessional rate. From the assessment year 1968-69, a straight deduction of a specified proportion of the long-term capital gains included in the gross total income of the asseessee is allowed while working out the total income. In the case of a film star for the assessment year 1968-69 (assessment completed on 17-6-1971), though the deduction of a specified proportion of capital gains was correctly allowed, tax on capital gain included in the total income was charged at the concessional rate as applicable to earlier assessment years instead of calculating the tax on the total income as reduced, at the rates precribed in the Finance Act, 1968. This resulted in short-levy of tax of Rs. 2,02,141.

1.54. The Ministry have reported (December 1972), that the mistake has been rectified and the additional tax demanded. Report of recovery of the additional demand of tax is awaited.

[Paragraph 26(iv) of the Report of the Comptroller and Auditor General of India for the year 1971-72 Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes].

1.55. Prior to the assessment year 1968-69, in the case of individuals capital gains relating to lands and buildings were charged to tax at a concessional rate (3|4th of average rate of tax subject to a minimum of 15 per cent. This provision was omitted with effect from 1-4-1968; a straight deduction in respect of long term capital gains (Rs. 5000 plus 45 per cent of balance) was allowed and the remaining amount was included in the gross total income of the assessee. With effect from 1-4-1968, the tax is chargeable on the whole of the total income including capital gains (as reduced) applying the full rates of tax and no separate treatment in the calculation of tax is to be given to capital gains. In this case, not only was the deduction allowed from capital gains under the new provision but also the tax was charged at concessional rates under the old provision. This resulted in short change of tax of Rs. 2,02,349.

1.56. The Committee wanted to know the circumstances in which the mistake had occurred. The Joint Secretary, Ministry of Finance (Department of Revenue and Insurance) stated: "With effect from 1968-69, we changed the system of calculating the tax on capital gains and the mistake occurred while calculating tax on capital gains derived by the assessee for this year."

1.57. The Committee learnt from Audit that the case was seen by the Internal Audit Party, but the mistake was not detected. The Committee asked for the reasons for not detecting the mistake. They also wanted to know the circumstances under which the Internal Audit could not detect the lapse and whether it was because the staff were unaware of the amendment. The Joint Secretary, Department of Revenue and Insurance stated: "The information is that in April, 1972, the Head Clerk of the Internal Audit Party checked 96 cases. This particular file was made available to him only on the 29th April, 1972 when the Revenue Audit had started their check up; and it was audited on the same day by him and the file was sent to the Income-tax Officer for being sent to the Revenue Audit. The Head Clerk attributed his mistake to over-sight and hurry. He probably was trying to justify his action. We are not satisfied ourselves; that is why he was warned. A copy of the warning issued to him has been placed in his character roll."

1.58. The Committee pointed out that in this case the law as amended was correctly applied in framing the assessment, but the amendment seemed to have been lost of at the stage of calculation of tax. The Committee enquired whether it was not an indication that the staff employed on calculation of tax were not aware of the

amendment in Law. The Department of Revenue and Insurance, in a note furnished to the Committee, stated: "The officials who made the calculation of tax have explained that the mistake was committed through oversight and the rate of tax for assessment year 1967-68 was applied instead of the tax rates applicable as per the Finance Act, 1968. The Commissioner of Income-tax, Bombay has issued a circular dated 8-6-1973 regarding the change in the law on this point effective from assessment year 1968-69."

1.59. The Committee wanted to know the date on which the return was due, the date on which the return was actually filed and the date on which the assessment was completed. The witness stated: "The return was due on 30th June 1968 and it was filed on the 4th November 1968. The assessment was made on the 17th June 1971 *i.e.*, after more than 2-1|2 years. The time-limit was 3 years from the end of assessment year."

1.60. When asked whether any interest was levied for late filing, the Ministry, in a note, stated. "Interest u/s 139 for late filing of the return does not appear to have been charged either at the time of original assessment in June, 1971 or rectification made in September, 1972."

1.61. The Committee pointed out that in Board's circular dated 23rd October 1970 had stated that in their earlier letter dated the 31st December 1968, the Board had already instructed the Commissioners of Income-tax that 'a serious notice should be taken of any Income-tax Officers' failure to check tax calculations of Income-tax in the cases where the total income was Rs. 1 lakh or over'. This assessment was made on 17th June 1971. The Committee wanted to know the action taken in this case. The Ministry, in a note, stated: "According to the procedure, the I.T.O. should have checked the tax calculation. Apart from this case, this I.T.O., has committed mistakes in some other cases. He has been asked to be more careful in two cases. In other cases, his detailed explanation has been called for."

1.62. The Committee were given to understand that the Ministry had intimated that the rectification of the mistake was done resulting in the raising of an additional demand of Rs. 2,02,141. A sum of Rs. 43,000 had been collected and for the balance of the demand, the assessee had been allowed to pay in instalments.

1.63. The Committee asked for the date on which the demand notice was issued, the date on which the tax was payable and whether it was paid in full. They also enquired whether the assessee had paid the additional tax raised as a result of audit objection.

The Ministry, in a note, stated: "The Demand Notice is dated 7th July, 1971, and was served on 10-7-1971. The Tax was payable within 35 days. The demand was fully realised in July, August 1971."

1.64. As regards the additional tax, the Ministry, in a note, stated that it had been collected in full.

1.65. Referring to the time taken by the Department in completing the assessment, the Committtee pointed out that the return was filed on the 4th November, 1968 but the assessment was completed by the Department on the 17th June, 1971 *i.e.* after a period of 2-1/2 years. When a return was in front of the Department, it was not clear why they took a long time for completing the assessment. The delay would give the assessee an excuse that he had money earlier but not subsequently. It could also be very inconvenient to those who were really anxious to pay the Income-tax. To this, the Finance Secretary stated: "That is correct. There is a back-log of old cases and we have been reducing it."

1.66. The Committee further pointed out that as per the figures shown in the Audit Report regarding the number of assessments completed and demands raised month-wise during 1970-71 and 1971-72, the number of assessments completed in April was 59,688 and 57,408 in May 75,078 and 75,737; in June and subsequently it started rising and in the month of March it was 5,27,289 and 4,94,111 respectively. This was repeated year after year. The Committee enquired whether there was any check or supervision to see that the work was evenly distributed and not kept pending till November. The Member, Central Board of Direct Taxes state: "As far as the point *viz.* of assessments being completed when they are about to be time-barred, is concerned, there is considerable scope for improving the working of the organisation. As far as the current assessments are concerned, the returns of income become due by the end of June or July. Sometimes, they are delayed even beyond these dates."

1.67. The Committee asked whether it was not possible for the Department to take up the arrears of assessments (running into 12.38 lakhs at the end of 1970-71) in the months of April, May and June. The witness stated: "There are certain other factors *e.g.* carry forward of arrears which has to be attended to in the early part of the year; we have to do the issue of advance tax notice, issue of notices for calling for the returns etc. Moreover, in the early part of the year, the number of Income tax officers is comparatively smaller because many of the officers go on leave then. Then it is in this part of the year that the transfers take place and when the transfer take place the I.T.Os. have to be granted the joining time."

1.68. When pointed out that it was not a proper explanation as all officers would not go on leave during that period and that the staffing of the Department must be based upon all the factors, the Finance Secretary, stated: "There are some problems in the early part of the year. So far as the staffing question is concerned, I have been asked to look into it and as soon as I am free from PAC and Plan work I will devote myself to this work. I would go further and say that apart from staffing every Income-tax officer will have to plan his work also."

1.69. In this case while the law regarding capital gains as amended w.e.f. 1968-69 was correctly applied to in framing the assessment, it was lost sight of at the stage of calculation of tax. The Committee find that the Commissioner of Income-tax, Bombay has issued a circular on 8th June, 1973 pointing out the change in the law. The Committee desire that the assessments involving capital gains relating to the assessment years from 1968-69 onwards completed prior to the issue of this circular should be checked to see whether similar mistakes had been committed while calculating tax. The action taken in this regard may be reported to them.

1.70. In this case the return was due from the assessee on 30th June, 1968 but it was filed on 4th November, 1968. Interest under Section 139 should have, therefore, been levied which unfortunately was not done both at the time of original assessment in June 1971 as also at the time of rectification made in September, 1972. The lapse in this regard should be gone into for appropriate action.

1.71. Another aspect of this case which causes concern to the Committee is that the assessment was completed by the Department 2 1|2 years after the receipt of the return. Such delays could be very inconvenient to the assessees who are really anxious to pay the income-tax. There seems to be no planning at all in the Department to ensure that all the assessments are taken up promptly.

1.72. The Committee have received an impression that the ITOs act with alacrity where they want to and other cases are put off till these are about to become time-barred. The figures reported in paragraph 7(iv) of the Report of the C&AG (1971-72) speak eloquently of the utter lack of planning. The number of assessments completed during 1970-71 and 1971-72 was as low as 59,688 and 57,408 respectively in April and 55,078 and 55,737 respectively in May and it started rising gradually thereafter. The number of asessments completed in the month of March during these years was 5.37 lakhs and 4.94 lakhs respectively. That the performance is so poor in the beginning of a year despite the carry-over of the pending assess-

ments to the extent of over 12 lakhs in number shows that something is seriously wrong somewhere. The Committee are convinced that with proper orientation and planning it should be possible not only to overtake the arrears but also to complete the assessments in time. They accordingly desire that the Department should give serious thought to this problem and take steps to normalise the position soon. The Committee would like to be informed of concrete measures taken to improve the rate of disposal of cases in the beginning of the financial year and to eliminate the undue rush towards the end of the financial year.

CHAPTER II

IRREGULAR COMPUTATION OF INCOME FROM SALARIES

Audit paragraph

2.1. An assessee who was provided with rent-free quarters by Government under the rules governing the conditions of his appointment claimed a deduction of a sum of Rs. 1,700 under Section 16(v) of the Income-tax Act, from his total income on the ground that he was using 1|3rd of the accommodation for his official purposes. Under Section 16(v) of the Income-tax Act only those amounts which are actually expended by the assessee and which he is required by the conditions of his appointment to spend out of his remuneration wholly, necessarily and exclusively for the purpose of his duties are admissible for deduction. The assessee, in this case, was not entitled to claim the deduction because he never spent any amount out of his remuneration; nor did the regulations governing his employment provide any specific condition relating to use of any part of his residential accommodation for official purposes.

2.2 The matter was reported to the Government in August, 1972. The Ministry have sent an interim reply intimating that the Law Ministry are being consulted.

[Paragraph 27 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes]

2.3. The Committee wanted to know the actual claim made by the assessee in regard to the house rent deduction. The Ministry of Finance (Department of Revenue and Insurance), in a note submitted to the Committee, stated: "In Annexure I to the return, the assessee claimed one-third of the value of free furnished accommodation for use for official purposes. The standard rent of the accommodation was Rs. 5,105. The one-third amount came to Rs. 1,700."

2.4. The Committee enquired under what Section the relief was granted. The Member, Central Board of Direct Taxes, stated: "The claim made was under Section 16(v) of the Income-tax Act on the ground that the amount had been spent wholly necessarily. That Section provides that any expense which has been incurred only

necessarily and exclusively for the performance of duties will be allowed to be deducted from the salary. That is not the Section, however, under which relief was actually granted. It was granted on the general interpretation that when a part of the building which was allotted to him was used for official purpose that part was excluded in determining the perquisites that should be assessed in the hands of the assessee."

2.5. When asked whether that was the view of the Department even today, the witness replied in the affirmative.

2.6. The Committee wanted the date on which the Income-tax return was put in by the assessee and the date on which the assessment was completed. The Ministry, in a note, furnished the information as under: "The return was filed on 28-6-1971 and the assessment was completed on 5-11-1971."

2.7. The Committee enquired whether this was a case completed under the Small Income Scheme and under the Small Income Scheme whether the Income-tax Officer was prevented from scrutinising the return. The Ministry, in a note, explained: "The assessment was completed by the Income-tax Officer with the approval of his Inspecting Assistance Commissioner.

In the consolidated instructions issued by the Board on Small Income. Cases vide Circular No. 22D(v-69) of 1968 (F. No. 81|114|68-IT(B) dated 25-11-1968 all Government salary cases irrespective of income returned|assessed in the past were covered by the Scheme. The general procedure in cases where returns are received, is that income declared therein will be accepted u|s 143(1) after making obvious adjustments for the inadmissible items of expenditure claimed by the assessee or any other adjustments which may be considered necessary. The assessments will be made on the basis of the statements and accounts accompanying the return. The general instructions given in the Circular may also be kept in view before accepting the returned income.

These instructions clearly indicate that even in small income cases the ITO is expected to look into the return and the accompanying statements before accepting the returned incomes."

2.8. The Committee wanted to know the Section under which this assessment was completed and whether there was any discussion between the assessee and the Income-tax Officer prior to the completion of the assessment. The Member, Central Board of Direct Taxes stated: "The discussion had taken place before the assessment was completed between the Inspecting Assistant Commissioner and the assessee."

2.9. The Ministry, in a note, further stated: "The assessment was completed u|s 143(1). The matter was discussed by the Inspecting Assistant Commissioner with the assessee prior to the completion of the assessment."

2.10. When asked whether it was in order, the witness stated: "When he sought the guidance of the Inspecting Assistant Commissioner, the ultimate decision had to be his own. Whenever he finds any difficulty in interpreting any section, he seeks the guidance of the Inspecting Assistant Commissioner."

2.11. The Committee enquired whether the assessee had made any claims to this for any year prior to 1971-72. The Ministry, in a note, stated: "In an application dated 25-4-1972 lying in the miscellaneous folder for assessment year 1972-73, the assessee has requested for rectification u|s 154 and refund for the assessment year 1970-71 and earlier assessment years. Action on the assessee's application is pending."

2.12. When asked whether any other colleague of the assessee had made similar claim prior to 1971-72, the Ministry, in a note, replied in the affirmative.

2.13. The Committee learnt from Audit that the Ministry had since replied that the Law Ministry was consulted in the matter, who opined that even though the claim was not admissible under the Section quoted by the assessee, the Income-tax Officer's action could be justified on the ground that he had powers to estimate a portion of the house for purposes of official duties.

2.14. According to Audit, apart from the fact that there was no evidence at all that the Income-tax Officer consciously applied the provisions of Rule 3, the Rule would not permit the evaluation of a portion of a residence for the purpose of addition to the salary income. Under Rule 3 what is to be valued is the perquisite represented by rent-free residential accommodation. Rule 4 of the relevant Service Rules clearly stipulates that every person shall be entitled, without payment of rent, to the use of a furnished residence throughout his term of office and for a period of 15 days immediately thereafter. And the explanation to the Rule provides that for the purpose of the Rule, residence includes staff quarters and other buildings appurtenant thereto. It is, therefore, clear that the rent-free perquisite under the service Rules, is the total value of the residence. There is no authority or warrant for the Department to split it into two and value only that which is for residence leaving out a portion for official purpose.

2.15. The Committee desired to know the circumstances that led the Income-tax Officer to accept the claim and whether the officer had applied his mind fully to this issue with reference to relevant rules and orders on the subject. The Ministry, in a note, stated: "As already stated....the Income-tax Officer completed the assessment after obtaining the approval of his Inspecting Assistant Commissioner. The latter had discussed the matter with the assessee before the completion of the assessment."

2.16. The Committee learnt from Audit that the Ministry had intimated that the matter was referred to the Attorney General of India at the instance of the Law Minister. The Committee enquired whether the Attorney General was consulted on this point. The witness replied in the negative. He further stated that only the matter was referred to him.

2.17. The Committee desired to know the opinion given by the Attorney General of India in this regard. The witness stated: "There are two points raised by the assessee. One point is that the entire residence which was allotted to him would be completely tax-free on the ground that it was a privilege that he was enjoying and not a perquisite. On that point, the Attorney General did give his opinion." The Finance Secretary added: "The specific issue which was referred to the Attorney General was that the official residence ....was a privilege and, therefore, exempt from the Income-tax. He has said that even though he works there, it cannot be stated to be a residence which is given to him for his official work and therefore cannot be taken out of the purview of the Income-tax Act which has a special section for adding value of the perquisites enjoyed by the ....There are similar cases of others also."

2.18. The Committee enquired whether, carried to a logical conclusion, the view taken by the Department would not mean that every individual who was using a room in his residence for doing official work, was entitled to this deduction. The witness stated: "Whatever the view that may be presented, the whole income-tax practice has been to exempt the accommodation which is used specifically for official work and is being used for office purpose."

2.19. The Committee pointed out that if given publicity, this would mean that a large number of people would become entitled to a very large amount of money and that evidently it was not known whether they would be entitled to it or not. By virtue of employment, if a person was asked to maintain an office in the residence, then probably the value of such residence had got to be deducted out of the total income; but if he used the building for residential pur-

poses, he was not entitled to it. To this, the Member, Central Board of Direct Taxes stated: "We shall refer this point to the Attorney General."

2.20. The Finance Secretary added: "The Attorney General's opinion is not very clear. We shall have to refer it specifically."

2.21. The Ministry in a note submitted to the Committee further stated that the matter had been referred to the Ministry of law for taking up with the Attorney General.

2.22. The Committee enquired whether it was proper to treat high salary income cases as the Small Incomes, when there would be a natural inducement in many cases to avoid tax, particularly because of heavy slice of tax that had to be paid at the higher income brackets. The Ministry, in a note, stated: "The Small Income cases Scheme in operation before 1-4-71 under administrative instructions and the statutory summary assessment scheme operating thereafter as per amended Section 143(1) have the objective that the limited man-power available for assessment work should be utilised to the best advantage and that while business income cases in upper brackets as yielding much of the income-tax revenue should be subjected to detailed assessment scrutiny, the other cases should be disposed of in summary manner to spare time and effort for the former and more worthwhile cases. Even for cases completed under summary assessment scheme, selective detailed scrutiny subsequently for a percentage of these cases is provided to act as a deterent against misuse of this scheme."

2.23. Referring to the cases of company directors and company executives where sole or main income was from salaries, the Committee enquired whether they were also assessed as salary cases and brought under the Small Income Scheme and if so, whether it would be proper to do that. The Ministry, in a note furnished to the Committee, stated:

> "Cases of company directors and executives forming part of a groupp of cases (the company, its subsidiaries, connected concerns etc.) in which detailed investigations for detecting tax evasion are considered necessary for any reason, are excluded from the purview of summary assessment scheme vide para 2(v) of the Board's Instruction No. 289 F. No. 385|32 '71-IT.B dated 20-4-71. Further, as para 2(iii) of Board's Instruction No. 426 F. No. 233|1|72-A&PAC dated 14-6-72 where difference in the value of perquisites declared by the assessee in the return and determined in the completed assessments for earlier years is substantial (exceeds Rs. 1000), the case will fall for detailed scrutiny."

2.24. This is a case where on amount of Rs. 1,700 was excluded in determining the value of perquisite represented by provision of rent-free residential accommodation and in reckoning the total income liable to tax on the ground that the assessee was using for his official purposes one-third of the rent-free accommodation provided by Government. Although the assessee claimed the deduction under Section 16(v), the action of the ITO in allowing deduction is justified under the provision of Rule 3 of the Income-tax Rules governing the valuation of the perquisites of the rent-free accommodation.

2.25. The Committee learn that there have been similar cases of such claims which have been allowed. As the Attorney General's opinion obtained in this connection is stated to be not very clear, the Committee desire that the specific question of admissibility of such deductions while computing the perquisites of rent-free accommodation having regard to the provisions of Income-tax Act and Rules and other relevant rules should be referred to him. The Committee would await his opinion on the question.

CHAPTER III

INCORRECT LEVY OF TAX ON CAPITAL GAINS

Audit paragraph

3.1. A land property which passed on to an assessee on her husband's death on 19-1-1960 was compulsorily acquired by a city corporation for Rs. 2,47,928 during the previous year relevant to the assessment year 1969-70. A capital gain accuring to the assessee as a result of the acquisition of her land by the corporation was computed by the department by deducting the fair market value of the asset as on 1-1-1954 from the compensation awarded. The fair market value as on 1-1-1954 was adopted as Rs. 1,07,835. It was noticed in Audit that the market value of the same property as on 19-1-1960 had been taken as Rs. 12,500 only in the Estate duty assessment of the assessee's husband, concluded in August 1962. Considering the general upward trend in the market value of land properties, the value of the assessee's land as on 1-1-1954 would not have been more than the assessed value as on 19-1-1960. The sum of Rs. 1,07,835 adopted as fair market value as on 1-1-1954 was, therefore, apparently excessive. Even if the entire value of Rs. 12,500 adopted as the cost of land in 1960 had been taken as market value in 1954, there would have been additional levy of tax of Rs. 39,160 on the capital gains.

3.2. The Ministry have reported (December 1972) that action under Section 263 of the Income-tax Act has been proposed and the assessment is being revised. Further report is awaited.

[Paragraph 29(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes]

3.3. The Committee wanted to know whether the Estate Duty assessment of the assessee's husband which was on record in this case was not looked into by the Income-tax Officer. The Member, Central Board of Direct Taxes stated: "The wealth-tax records had been scrutinised before finalising income-tax but the Income-tax Officer was not aware of the Estate Duty assessment because he had not looked into that."

3.4. When asked for the action taken against the Income-tax Officer, the witness stated: "The Income-tax Officer in this particular

case has been warned for not being careful to look at the other records. These are stray cases where there has been lapse. We can say that he should be warned in the first instance. If the same sort of instance recurs then further action would be taken."

3.5. The witness further stated: "We have issued general remedial measures regarding this and we have brought out a statement of matters that should be looked into of all the acts where there can be co-related and what the Income-tax Officers should do when he comes across such circumstances."

3.6. The Committee asked for the circumstances in which the Income-tax Officer had accepted the value of the property at Rs. 1.07 lakhs whereas its value had been declared and assessed at Rs. 12,500 only in the Estate Duty Assessment of the assessee's husband. The Department of Revenue and Insurance in a written note submitted to the Committee, stated: "As the Income-tax Officer was not aware that the value of the property had been declared and assessed at Rs. 12,500 in the estate duty assessment, he estimated the value of the property at Rs. 1,07,835 as on 1-1-1954 at the rate of Rs. 13 per sq. yard."

3.7. The Committee learnt from Audit that under the provisions of the Income-tax Act, an option was given to the assessee to substitute the fair market value as on 1st January, 1954 for the cost of acquisition in respect of properties acquired prior to that date. The Committee enquired whether the Department had issued any guidelines to the Income-tax Officers to verify the correctness of the value declared by assessees as on that date, having regard to the general tendency to inflate the value so as to reduce the liability to capital gains. The witness stated: "No specific guidelines have been issued to the Income-tax Officers. When an assessee makes a claim it is the duty of the Income-tax Officer to verify the claim."

3.8. The Committee pointed out that it was understood that the area of the land was 8295 square yards lying within the corporation limits of the Bangalore City and its value was declared and assessed in the Estate Duty assessment only at Rs. 12,500. The Committee enquired whether the Department was satisfied that the land was valued correctly. The witness stated: "I do not think the land has been valued correctly. We have instructed the Commissioner that he should call for the supplementary statement of the Estate Duty officer from the assessee."

The Ministry, in a note, further stated: "As the writ petition against the Income-tax proceedings is pending, the Commissioner of Income-tax raised some doubts about the advisability of calling

for supplementary account under the estate duty proceedings. The position has since been clarified and the Commissioner has been asked to get the supplementary account called for. Further information is awaited from the Commissioner and will be furnished to the Committee."

3.9. When enquired whether the Internal Audit Party had looked into the case, the Ministry, in a written note, replied in the negative. They added that before the Internal Audit Party could screen all priority cases in this Circle, the Revenue Audit took up this case for checking.

3.10. The Committee learnt from Audit that the rectificatory action initiated by the Department had been stayed by the High Court while admitting assessee's writ petition. The Committee wanted to know the grounds on which the assessee filed writ petition. The witness stated: "The High Court has not so far taken up the petition but the ground on which the writ petition is filed is that it is agricultural land and as such capital gains tax is not applicable."

3.11. The Ministry, in a note, added: "Latest position is being ascertained and the Committee will be informed accordingly."

3.12. The Committee were given to understand by Audit that the assessee had filed an appeal on 22-5-1972 against the Income-tax Officer's assessment order dated the 28th December, 1971. The Committee enquired whether this appeal was within the time-limit prescribed in Section 249(2) of the Income-tax Act. The Ministry, in a note, stated: "The appeal was out of time. Before the appeal was taken up by the AAC, the assessment was set aside by the Commissioner u/s 263 of the I.T. Act."

3.13. This is a deplorable case of failure to correlate income-tax records of the assessee with the Estate Duty assessment records of the assessee's husband. The land property which was valued as on 19-1-1960 as Rs. 12,500 for the purpose of Estate Duty was valued as Rs. 1.08 lakhs as on 1-1-1954 for the purpose of capital gains. The Committee, however, find that the assessee has filed a writ petition against the revision of the income-tax assessment on the ground that the land being agricultural, capital gains tax is not applicable.

3.14. The Committee do not think at all that the land measuring 8295 sq. yds. which is lying within the corporation limits of Bangalore city was valued correctly for the purpose of Estate Duty. This view has also been shared by the representative of the Central Board of Direct Taxes. The Committee accordingly stress that the supplementary account under the Estate Duty proceedings should

be called with a view to checking the correctness of the valuation and taking appropriate action.

Audit paragraph

3.15. A registered firm made a voluntary disclosure of Rs. 20,60,000 in May, 1965. The said amount was stated to represent the surplus assets of the firm over and above those appearing in the books and was held outside the firm's books of account partly in the form of cash and partly in the form of silver bars and coins which were stated to have been purchased several years ago. The silver bars and coins were sold for a total consideration of Rs. 2,07,600 in June 1965 and the sale proceeds were divided equally among the eight partners of the firm and credited directly to their capital accounts in the books of the firm. The capital gains arising from the sale were estimated by the Income-tax Officer at Rs. 1,03,800 representing 50 per cent of the sale considerations. The capital gains were not included in the total income of the firm but were apportioned among the eight partners and assessed in their hands after allowing the initial deduction of Rs. 5,000 separately in the hands of each partner. This irregular method of assessment of the capital gains resulted in short-levy of tax by Rs. 25,899 in the hands of the firm and its partners.

3.16. The Ministry have stated (January 1973) that the audit objection has been accepted. Further report is awaited.

[Paragraph 29(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes]

3.17. The Committee wanted to know the voluntary disclosure scheme under which the disclosure in this case was accepted. The Department of Revenue and Insurance, in a note furnished to the Committee, stated: "The disclosure in this case was accepted under the voluntary Disclosure Scheme as laid down in Section 68 of the Finance Act 1965. Under this Scheme, the rate of income-tax chargeable in respect of the amount disclosed was 60 per cent on such amount. If the tax on the amount declared was paid before 1-4-1965 the rate of tax was 57 per cent."

3.18. When asked for the procedure of assessment of the firm and its partners, the Ministry, in a note, explained: "The assessee is a registered firm. The procedure for the assessment of a registered firm and its partners is to be found in Section 182 of the I.T. Act, 1961. It is briefly narrated below:

'In the case of a registered firm, after assessing total income of the firm—(i) the income-tax payable by the firm itself

shall be determined; and (ii) the share of each partner in the income of the firm shall be included in his total income and assessed to tax accordingly'."

3.19. The Committee enquired whether the Income-tax Officer had explained as to why he could not follow the correct procedure. The Ministry, in a note, stated:

"The Income-tax Officer has said that in his opinion after the silver was disclosed, it must have been credited to partners' accounts and capital gains made on its sale would accrue to the individual partners and not to the firm. The Income-tax Officer's explanation has not been accepted."

3.20. The Committee asked whether the case was seen by the Internal Audit Party and if so, the reasons for not detecting the mistake. The Ministry in a note explained: "The IAP Supervisor had checked the case. He did not detect the mistake. He has explained that he was under the bonafide impression that the Income-tax Officer must have ascertained the taxability of the capital gains as belonging to the partners and not to the firm. His explanation has not been found satisfactory and he has been warned."

3.21. The Committee desired to know the latest development of recovery of tax. The Ministry, in a note, stated: "The remedial action has not yet been completed. A further report will be sent as soon as the remedial action is completed and the recovery of tax is effected."

3.22. The Committee find that the capital gains were not included in the total income of the firm but were apportioned among the partners and assessed in their hands after allowing the initial deduction of Rs. 5,00 separately in each case. This irregular method of assessment of the capital gains resulted in short-levy of tax by Rs. 25,899. The Committee understand that the Department has not accepted the explanation of the ITO that as the sale proceeds must have been credited to the partners' account the capital gains accrued to them.

3.23. The Committee regret that although the acceptance of the Audit objection has been communicated by the Ministry in January 1973, the remedial action has not yet been completed. The Committee would like to have an explanation for this delay, as also a report on the recovery of the additional tax.

Audit paragraph

3.24. An assessee constructed a house for Rs. 78,000 by borrowing Rs. 65,000 from his Provident Fund account as a non-refundable advance and added to it Rs. 13,000 from his own savings. He sold the house for Rs. 1,25,000 and as he did not obtain prior permission of the Government for this sale, under the provisions of the relevant Provident Fund Rules, he had to pay back to the Provident Fund the entire amount withdrawn together with interest thereon, amounting to Rs. 27,932. While returning his income from capital gains on the sale of the house, the assessee deducted from the sale price of Rs. 1,25,000 not only the cost of construction of Rs. 78,000 but also the interest of Rs. 27,932 which he had paid to his own Provident Fund account. This claim was accepted by the Income-tax Officer who taxed him for capital gains only on an amount of Rs. 19,068. There is no provision in law for allowing the deduction of interest on money borrowed for investment in a capital asset from capital gain according on the sale of that asset. Further, the interest paid in this particular case was an interest paid to the assessee's own provident fund account and not to any third party. The deduction of interest claimed and allowed was, therefore, irregular.

3.25. The Ministry have replied that action has been taken to rectify the assessment.

[Paragraph 29(iv) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil) —Revenue Receipts, Volume II—Direct Taxes]

3.26. The Committee wanted to know the basis on which the Income-tax Officer allowed the interest paid by the assessee to his own Provident Fund account as an expenditure for working out the capital gains. The Ministry of Finance (Department of Revenue and Insurance) stated:

"The assessee claimed the deduction of interest of Rs. 27,932 in the statement of computation capital gains filed with

the return. A gist of the computation is as below:

	Rs.	Rs.
Sale price		1,25,000
Less		
Loan from P.F.	65,000	
Investment from personal savings	13,000	
Interest to P.F.	27,932	
		1,05,932
		19,068
Less		5,000
		14,068
45 per cent of balance		6,330
Amount of taxable capital gains		7,738

The return was accepted and the assessment was completed u/s 143 (1)."

3.27. The Committee asked for the date on which the return was due and the date on which the return was filed. The Ministry, in a note, stated:

> "The return was due on 30-6-1968. It was filed on 25-7-1968. There was a delay of 25 days. No penal action was initiated for late submission of the return because as per Board's instructions of October 1963, penalty u/s 271(1)(a) is calculated in terms of complete months and fractions of a month are being ignored."

3.28. When enquired whether the assessment had been revised and the assessee had paid the tax on reassessment, the Ministry, in a note stated:

> "The up-to-date position of the case from the beginning of the audit objection is as below:
>
> Half-margin note was issued by R.A.P. on 26-11-71 but case was not included in LAR. It was taken up with Chairman by Addl. Dy. C&AG *vide* d.o. letter dated 16-8-1972. Subsequent events are:

Reference to C.I.T. by Dir. (PAC)	8-9-72
Reply received from CIT	10-11-72
Ref. made to Law Ministry	27-11-72
Opinion of Law Ministry received	20-12-72
Acceptance of objection communicated to Audit	1-1-73
CIT asked to take remedial action	2-1-73
Notice u/s 147(b) issued	26-3-73
Hearing fixed on	8-6-73

The case was adjourned to second week of July 1973 at assessee's request."

"The date of hearing in second week of July 1973 was 9-7-73. Further details are as below:

Date of hearing	Adjourned to	Reasons
9-7-73	28-7-73	Assessee's counsel was out of station.
28-7-73	14-8-73	Assessee applied for intimation of ground for reopening of assessment. Reply was sent on 7-8-73 after IAC's approval Case was refixed on 14-8-73.
14-8-73	1-9-73	Assessee was out of station.
24-8-73		Assessee filed writ petition under Articles 226 and 227 of the Constitution in High Court of Delhi praying for quashing of notice issued u/s 148.
29-8-73		Court admitted writ for consideration and stayed further proceedings in the meanwhile. The case came up for hearing on 21-9-73 Shri B.N. Kirpal Standing Counsel attended Court and intimated the Department that this case will be fixed for hearing some time in February, 1974.
		The writ petition is pending before the High Court. ITO will be able to proceed further only after the High Court's decision.

3.29. The assessee constructed a house meeting the expenditure partly by a non-refundable advance from his Provident Fund Account. As he did not obtain prior permission of the Government for the sale of the house, he had to refund the amount together with interest of Rs. 27,932 to the Provident Fund Account. Strangely enough, the I.T.O. allowed his claim for the deduction of the interest also while arriving at the capital gains. As the interest paid to his own account cannot be regarded as an item of expenditure, the circumstances under which it was allowed to be deducted should be gone into with a view to taking appropriate action.

3.30. The Committee find that the assessee has filed a writ petition in the High Court of Delhi challenging the action taken by the Department for rectifying the assessment. The Committee would await the outcome.

CHAPTER IV

IRREGULAR RELIEFS AND EXEMPTIONS GIVEN

Audit paragraph

4.1. (i) Under the provisions of the Income-tax Act, a percentage of the profits of a new industrial undertaking is exempt from tax and that portion of dividend which is deemed to have been paid out of the exempted portion of the profits of the company is exempt from tax in the hands of the shareholders. Under the provisions of the Income-tax Rules, it is necessary to indicate specifically in the certificates to be given by the Income-tax Officers the percentage or that part of the dividend qualifying for the exemption. These requirements have not been observed in the following cases noticed in audit.

(a) For the assessment year 1967-68, the portion of profits of the business of a company exempt under the relevant provision of the Act was determined as Rs. 6,69,290 and the percentage of dividend qualifying for exemption was notified as 21.41 per cent. There was a revision of the assessment of the company which resulted in the reduction of the exempted portion of the profits to Rs. 2,48,832 and the percentage of dividend qualifying for exemption to 7.96 per cent. But the revised certificates indicating the reduced percentage of dividend income that would qualify for exemption was omitted to be issued. When this omission was pointed out, the revised certificates were issued on 10th August 1971 as a result of which a sum of Rs. 4,20,458 became taxable in the hands of the shareholders. The correct amount of additional demand due to the issue of revised certificates could not be ascertained in view of the large number of shareholders all over India.

4.2. The Ministry have stated (January 1973) that the revised percentage has been communicated to all the concerned Income-tax Officers and the tax-effect can be determined in the assessment cases of shareholders.

[Paragraph 30(i)(a) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

4.3. The provisions of the law are set out in para 30(i). They are contained in Section 80(j) of the Income-tax Act. In order to remove a hardship that may arise in deducting tax from the dividend paid to shareholders in full, where the whole or a part of a com-

pany's profits are exempted from income-tax (as a result of concession available to new industrial undertakings), a provision is made in Section 197(3) to enable the principal officer of the company to apply to the I.T.O. assessing the company to determine the appropriate portion of the profits of the remittance on which tax is not payable by the shareholder. It is a common practice now-a-days to obtain the certificate in advance and pay the dividend to shareholders by either not deducting tax at all or by deductin gtax at a low figure, when the shareholder's assessment is completed, the dividend warrant produced by him also shows a certificate issued by the company in which the company certifies that only a certain portion of the profit is assessable and the balance is exempt from tax. On the basis of this certificate, the ITO completes assessment. However, when the assessment of the company is taken up and completed it is found more often that the income of the company is enhanced, or the exempt-portion is reduced. The result is that the certificate originally issued by the company becomes invalid and the shareholder is assessable at a figure higher than the figure for which the original certificate was issued. The department at present has no machinery to keep track of such cases and reopen the assessments of the shareholders to get the extra tax payable by them.

4.4. Referring to the case reported in sub-para (a) of the Audit paragraph the Committee wanted to know when was the dividend declared by the company. The Joint Secretary, Ministry of Finance (Department of Revenue and Insurance) stated that dividend was declared in the Annual General Meeting held on the 19th December, 1966.

4.5. The Committee enquired whether the dividend was declared before the Income-tax Officer computed the relief or afterwards and whether the application from the Principal Officer of the company under Section 197(3) was received by the Income-tax Officer. The witness stated: "The company wrote on 29th November 1967 requesting the Income-tax Officer to determine the percentage of tax-holiday dividends. On that application it appears that the Income-tax Officer did not pass any order. Then in March 1969, the company agam requested for a certificate under Rule 20 for determining the exempt portion of the dividend and on 22nd April 1969, the Income-tax Officer issued a certificate under Rule 20 to the effect that 21.41 per cent of the dividend would be entitled to the benefit of tax-holiday dividents."

4.6. The Committee pointed out that the original certificate was issued in April 1969 and the assessment of the company was revised in March 1970, whereas the Revenue Audit pointed out the mis-

takes in June 1970 and that the revised certificate was, however, issued in August 1971. The Committee asked for the reasons for the delay of more than one year in this case in issuing the revised certificate. The witness stated that no satisfactory explanation for this delay had been forthcoming.

4.7. The Ministry of Finance (Department of Revenue and Insurance) in a note submitted to the Committee added: "Commissionor of Income-tax Madras has been requested to communicate the reasons for the delay and to forward the explanation of the ITO. On its receipt, further action shall be considered."

4.8. The Committee wanted to know the steps taken by the Department to ensure that the revised percentage had been taken into account in th assessment or reassessment of the shareholders, as the shareholders were spread all over the country. The Ministry in a note tated: "While forwarding the revised certificate under Rule 20 reducing the percentage of exempted dividends to 7.96 per cent to the company on 10-8-1971, the ITO wrote a letter to the principal officer of the company requesting him to issue a circular letter to all the shareholders intimating them the reduction in the percentage of tax holiday dividend. He also called for list of shareholders and a report of the action taken by the company.

(On 15-11-1967 the company had issued a circular letter to shareholders intimating its claim before the ITO for rebate at the rate of 21.95 per cent. It was made clear that ITO had yet to determine the exact percentage. On 26-5-1969 the company issued a circular letter to shareholders intimating that the percentage of exempted dividends was 21.41 per cent).

The ITO sent a letter dated 20-3-1972 to ITO, Calcutta assessing M/s. Tube Investment, Barmingham, informing him about the revised certificate and suggested revision of the assessment. T.I. Birmingham held 60 per cent (1,50,000) shares of the assessee company. C.I.T., Madras issued a circular letter on 22-3-1972 to all ITOs and IACs in his charge and to all other Cs.I.T. Intimating the revised per centage of tax holiday dividends and suggesting rectification in the case of the shareholders (wherever necessary).

Incidentally it may be mentioned that at the time of assessment, M/s. T.I. Birmingham Ltd., were not allowed any rebate in respect of the aforesaid dividends from M/s. T.I. of India and as such no rectification was necessary in that case on the basis of the reduced percentage of tax holiday dividends.

C.I.T. Madras was asked to ascertain the result of rectification in the case of shareholders who had claimed exemption in respect of dividends of this company for the assessment year 1967-68 at the higher percentage of 21.41 per cent. He has reported that rectification/revision has already been done in the case of persons holding 19,135 shares and assessed in Madras raising additional demand of Rs. 12,700.

C.I.T. Madras has further reported on 12-11-1973 that in some other cases rebate was not allowed at the time of original assessment. This appears to be due to the reasons that in the dividend warrant, the assessee company had not indicated the percentage of dividends entitled to exemption and had recorded a note that such percentage shall be intimated later.

C.I.T. Madras has been requested to ensure that remedial action is taken in all appropriate cases by the officers to whom such revised percentage was communicated."

4.9. The Committee enquired whether the Ministry had obtained a report that in the case of the shareholders concerned the assessments had been reopened and the extra tax recovered. The witness replied in the affirmative. He added: "It appears that out of a total number of shares *viz.*, 2.5 lakhs, 1.5 lakh shares were held by the Tube Investments Ltd., Birmingham, which was assessed at Calcutta. While assessing the company no relief was given in the matter of tax holiday dividends because the original dividend certificate issued by the company the percentage of tax holiday dividend was not mentioned. Later on, they claimed it in a separate request but that is pending. To this extent there has been no loss of revenue. The Commissioner has reported that in the cases of some shareholders who held 19,135 shares, rectificatory action has been taken raising a demand of Rs. 12,700. In respect of other shareholders, the position is being ascertained."

4.10. The Ministry in a note further stated: "The up-to-date position is being ascertained from CIT, Madras and will be intimated as soon as it is received."

4.11. Under the provisions of the Income-tax Act, a percentage of the profits of a new industrial undertaking is exempt from tax and that portion of dividend which is deemed to have been paid out of the exempted portion of the profits of the company is exempt from tax in the hands of the shareholders. The Committee understand that a certificate is obtained in advance from the ITO assessing the company, showing the percentage of dividend qualifying for exemption. However, when the assessment of the company is completed or revised and the exempted portion is altered, the certificat originally issud becomes invalid and the shareholder's assessments require re-

vision. The Department does not seem to have any machinery at present to keep track of such cases and ensure the reopening of the assessments of the shareholders to collect the extra tax payable by them. The Committee suggest that this lacuna should be remedied soon.

4.12. In the case reported in the Audit paragraph, although revision of the company assessment in March, 1970 resulted in the reduction of the percentage of dividend qualifying for exemption from 21.41 per cent to 7.96 per cent, revised certificate was not issued till August, 1971. In the meanwhile, Audit had also pointed out the omission in June, 1970. The reason for this inordinate delay should be ascertained expeditiously and the Committee advised as to what action has been taken against the persons responsible.

4.13. The Committee find that assessments of the shareholders holding 1.69 lakhs out of 2.5 lakhs shares of the company have been revised. The Committee would await the position in regard to the remaining shareholders' assessments.

Audit paragraph

4.14. In the cases of two companies, it was observed that the Income-tax Officer issued the exemption certificate in respect of dividends distributed out of the profits of new undertakings ranging between 8-1|3 per cent and 100 per cent in the case of one company for the assessment years 1965-66 to 1968-69, and between 20 per cent and 25 per cent in the case of other company for the assessment years 1965-66 and 1966-67. Accordingly, no tax was deducted at source from such exempted portion of the dividends paid to the shareholders by the two companies. Subsequently the Income-tax Officer at the time of making regular assessments for the respective assessment years held that the profits of the assessee companies were not entitled to aforesaid exemptions from tax except in the case of one company for the assessment year 1968-69 where the profits were exempted to the extent of 69.6 per cent. However, no steps were taken by the department to cancel or modify the exemption certificates with the result that dividend income to the extent of Rs. 17.22 lakhs escaped income-tax in the hands of shareholders. A test-check of the Income-tax assessments of 31 shareholders of the aforesaid two companies revealed that Income-tax to the extent of Rs. 2.36 lakhs was undercharged from them during the relevant assessment years. The Ministry have stated (January, 1973) that the action for re-opening the assessments of the shareholders is being taken.

[Paragraph 30(i)(b) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil)—Revenue Receipts—Volume II—Direct Taxes].

4.15. Referring to the case reported in sub-para (b) of the Audit paragraph, wherein it was stated that no steps were taken in the Department to cancel or modify the exemption certificates wrongly given with the result that the dividend income to the extent of Rs. 17.22 lakhs had escaped tax in the hands of the shareholders, the Committee wanted to know the Circle in which the cases of these Companies were assessed. The Ministry of Finance (Department of Revenue and Insurance), in a note submitted to the Committee stated that the cases were assessed in Central Circle, Meerut.

4.16. The Committee enquired whether the Principal Officer of the Company had made any application for issue of certificates of exemption under Section 197(3). They also wanted to know the date on which the certificate was given and the date on which the actual assessments were completed. The Ministry, in a note, stated: "The Principal Officers of the companies made applications for the issue of certificates u|s 197(3) and the certificates were issued by the Income-tax Officer with slight reductions in the percentage, as shown below:—

	Year	Date of application	Date of issue of certificates	Date of completion of assessment
Modi Industries Limited	1965-66	3-4-65	26-4-65	24-3-70
	1966-67	7-4-66	7-5-66	26-3-71
	1967-68	25-4-67	6-5-67	10-3-72
	1968-69	9-5-68	17-5-68	10-3-72
Modi Spinning	1965-66	24-10-64	12-11-64	24-3-70
	1966-67	10-11-65	22-10-65	26-3-71

4.17. When asked about the findings of the Income-tax Officer in this assessment in regard to exemption claims for new industrial undertakings, the Ministry, in a note, stated: "In Modi Industries Ltd., exemption u|s 84 (80J) in respect of new industrial undertakings was claimed in respect of Electrode Unit for 3 years from 65-66 to 67-68 and, for the Steel Unit for the years 67-68 and 68-69. While completing the assessments the I.T.O. disallowed the claim in respect of Electrode Unit for all the 3 years. In respect of the Steel Unit, there was a loss for the year 1967-68 and the claim was conceded to the extent of 69.6 per cent for the year 1968-69. In the case of Modi Spinning, the claim was made in respect of Abhor Ginning Press and this claim was disallowed for both the years 1965-66 and 1966-67."

4.18. The Committee asked for the reasons for the lapse on the part of the Income-tax Officer in not cancelling the certificates already issued, when he found that those certificates were wrongly issued.

4.19. The Ministry, in a note, explained: "On completion of the assessments, it was found that the certificates issued u|s 197(3) were wrongly issued. The I.T.O. did not, however, take any steps to cancel the certificates. He explained that under the law, there was no provision for cancellation|modification of the certificate issued u|s 197(3). C.I.T. did not accept the explanation."

4.20. The Committee wanted to know the date on which the Revenue Audit raised the objection before the Income-tax Officer and the Income Tax Officer's reply to audit objection. The Ministry, in a note, stated: "The half margin note was received by the I.T.O. on 17th June, 1972. No reply was sent by him. The L.A.R. was received on 22nd August, 1972 and on 5th September, 1972. Ministry accepted the objection on 31st January, 1973 on receipt of the I.T.O.'s report on the draft para."

4.21. The Committee drew attention of the witness to the last sentence of sub-para (b) of the audit paragraph wherein it was stated that a test-check of the Income-tax assessments of 31 shareholders of the aforesaid two companies revealed that the income-tax to the extent of Rs 2.36 lakhs was undercharged from them during the relevant assessment years and that action for re-opening the assessments of the shareholders was being taken.

4.22. The Committee wanted to know the present position regarding re-opening of the assessments of the shareholders. The Member, Central Board of Direct Taxes stated: "They have been re-opened. The additional tax has been charged; but the collection has not been made. The shareholders have filed appeals against the assessments."

4.23. When asked for the grounds for the appeal, the witness replied: "They have done it because the appeal of the company against the rejection of the relief claim under Section 80.J has now been allowed by the Appeallate Assistant Commissioner."

4.24. The Ministry, in a note, further stated: "CIT (Central), Delhi wrote to all the Commissioners of Income-tax in whose charges the shareholders possessing more than 1000 shares were assessed. This letter in both the cases was issued on 6th February,

1973. In respect of the 31 shareholders assessed in his own charge in the Central Circle, Meerut, assessments were re-opened u|s 147(b) and all these assessments have since been completed. These re-assessments are under appeal before the AAC.

It may be mentioned that in the case of Modi Industries the appeal on this point has been allowed by the AAC for the assessment year 1964-65 and the AAC's decision has been accepted. Similarly, the assessee's claim for assessment year 1965-66 has been allowed by the A.A.C. In respect of Modi Spinning, the claim of the assessee for exemption has been allowed by the Appellate Tribunal for the year 1965-66."

4.25. The Ministry, in a note, added: "As per the last Report received from the Commissioner, the appeals are still pending."

4.26. Pointing out that since the likelihood of many cases where the income of a shareholder or the income eligible for relief might undergo many changes as a result of rectification or refund on appeal etc., the Committee enquired whether it would not be necessary for the Department to evolve a machinery to ensure that the original certificates issued were cancelled/modified and then the shareholders' assessments were re-opened with a view to levying the differential tax. The Ministry, in a note, stated: "Detailed instructions have been issued by the Board regarding the procedure to be adopted in such cases. Income-tax Officers assessing the companies have been instructed to take great care while issuing certificates u|s 197(3). They have also been asked to make it clear that the certificates issued are provisional and subject to modification later on. They have been asked to inform the companies concerned to make suitable endorsements to this effect on the dividend warrants. They have also been instructed to review these provisional certificates immediately on completion of the regular assessments. If they find that on the basis of the assessment there has been a lesser deduction of tax on dividends as per the provisional certificate, they should remedy the situation by issuing intimations to the concerned Commissioners of Income-tax in whose charges the shareholders are assessed and the Commissioners of Income-tax should be requested to have the assessments of the shareholders reopened u|s 147(b). Income-tax Officers assessing the shareholders, are also required to maintain a register showing the names of the shareholders assessed by them for purposes of watching action u|s 147.

It may be mentioned that such modifications in the shareholders' assessments are required to be made not only on completion of the assessments, but on rectifications, appeal decisions etc. and in view of the huge number of shareholders in the numerous companies

which are entitled to this exemption, it is impracticable to revise the shareholders' assessments a number of times. It is necessary to devise a machinery to ensure that on cancellation|modification of the original certificates, the assessments of the shareholders are modified. This is being examined."

4.27. When asked whether the Department had thought it worthwhile to conduct a review of cases of all the big companies in which the certificates were issued to find out in how many cases underassessment had taken place and how many cases the differential tax could still be recovered, the Ministry, in a note, stated: "It is certainly necessary to have a review made of all the cases in which such certificates have been issued, but, in view of the large number of companies involved and the huge number of shareholders as also the fact of engages in the holdings as well as modifications made in the assessment of the companies as a result of assessment|rectification/appeal etc., it would involve considerable energy, labour and time. However, the question of amending the law in this regard will be examined."

4.28. This is yet another case of non-revision of the exemption certificates issued under Section 197(3) which resulted in underassessment of dividend income to the extent of Rs. 17.22 lakhs in the hands of the shareholders. While the Committee await a report regarding the recovery of the tax due, they consider that notwithstanding the difficulties pointed out by the Ministry, it is worthwhile to undertake a review of cases of all big companies in which such certificates were issued to find out in how many cases under-assessment had taken place and to recover the differential tax wherever possible. The Committee are surprised that the Department have not so far thought on these lines. The Committee would await the results of the review.

4.29. The Committee would like Government to review the existing statutory provisions on the subject with a view to amend the law, as necessary, to obviate recurrence of such cases.

Audit paragraph

4.30. In determining the total income of a person deduction subject to prescribed limits is admissible under the Income-tax Act in respect of contributions to any provident fund set up by the Central Government and sums deposited in a ten-year or fifteen-year account under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959. This deduction is available only to individuals and not to other categories of assessees. In the assessments for 1969-70 and 1970-71 in five cases assessed in the status of Hindu Undivided

Family, deduction in respect of such contributions and deposits was incorrectly allowed which resulted in under-assessment of income by Rs. 29,072 and consequential short-levy of tax of Rs. 21,026.

4.31. The Ministry have replied (November 1972) that the assessments have been revised and the additional tax collected.

[Paragraph 30(iv) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil)—Revenue Receipts, Volume II—Direct Taxes].

4.32. The Committee desired to know the reason behind limiting the relief for subscription to Public Provident Funds and the Cumulative Time Deposit only to individuals. The Ministry of Finance (Department of Revenue and Insurance), in a note, submitted to the Committee, stated:

"The provision for allowing rebate on sums deposited in 10 years or 15 years accounts under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959 was originally made in section 87 of the Income-tax Act, 1961 through the Finance (No. 2) Act, 1962. The benefit of the new provision was available only in the case of individuals and did not extend to Hindu undivided families right from the beginning.

The provision for allowing deduction in respect of contributions to the Public Provident Fund was made through the Finance Act, 1968 and its operation was restricted to individuals only.

The question of extending the tax relief in respect of long term savings to Hindu Undivided families with reference to contributions to Public Provident Fund accounts and Cumulative Time Deposits, etc. was considered in 1971 but it was felt that there was not adequate justification for extending this concession to H.U. Families."

4.33. The Committee enquired whether the Department had issued adequate instructions and provided machinery to see to the compliance of these instructions to ensure that as the law stands today, subscription to Public Provident Funds and the Cumulative Time Deposit Scheme were not extended to assessess other than individuals. The Ministry, in a note, stated:

"In the instructions on the Finance (No. 2) Act, 1962, it was stated that individuals were entitled to make deposits under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959. Similarly, in the circular issued on the Finance Act, 1968, it was stated that the membership of the Public Provident Fund is open to every individuals and that individuals participating in the Fund will be eligible

for the same tax concessions as are available to participants in Government Provident Funds.

Instructions have now been issued again bringing to the notice of the officers the correct position in law."

4.34. In their instruction No. 553 dated 7th June 1973, the Central Board of Direct Taxes have, *inter-alia* stated:

"Instances have come to the notice of Board that deductions under section 80C(1) have been allowed in the assessments of Hindu undivided families also in respect of contributions to the Public Provident Fund set up by the Central Government and/or deposits in a 10/year or 15/year account under the Post Office Saving Bank (Cumulative Time Deposits) Rules, 1959. This is not in accordance with the law. Provisions about a Hindu undivided family are contained in 80C(2)(b) of the Income-tax Act, 1961 under which a Hindu undivided family is entitled to deductions only in respect of any sums paid in the previous year by the assessee out of its income chargeable to tax, to effect or to keep in force an assurance on the life of any member of the family.

80C (2)(f) permits the deduction of sums deposited in 10 year or 15 year account only to an individual and not a H.U.F.

Necessary clarifications may please be issued to the Income-tax Officers working in your charge. Past assessments may also be reviewed to the extent feasible to withdraw the excess relief, if any, allowed in such cases."

4.35. To a question regarding conducting of review in selected big cities, the Ministry, in a note, stated:

"While bringing the correct position in law to the notice of the officers as per above noted instruction No. 553 they were asked to review the past assessments to the extent feasible to withdraw the excess relief, if any, allowed in such cases. Later, the Commissioners were asked vide letter dated 18-9-1973 to send report on the results of this review to the Board; the position is being watched."

4.36. The provisions of Income-tax law relating to allowance of deduction from total income for subscription to Public Provident Funds and the cumulative deposit schemes are confined only to individuals. However, deductions were allowed in 5 cases assessed in the status of Hindu Undivided Family resulting in short-levy of tax of Rs. 21,026. The lapse of the ITO and the failure of the Internal Audit Party to detect the mistake may be suitably dealt with. The Committee would await the results of a general review of the position in all the Circles and the action taken on the basis thereof.

4.37. The Committee suggest that Government should consider whether there is any worthwhile reason for limiting the relief for contribution to Public Provident Fund and cumulative time deposit only to individuals.

Audit paragraph

4.38. Under Section 176(4) of the Income-tax Act where any profession is discontinued in any year for any reason, any amount received in respect of income earned by such profession, after such discontinuance is deemed to be the income of that person in the year of its receipt and shall be charged to tax accordingly. An assessee was practising as a lawyer and he realised in the previous year for the assessment year 1970-71, after the cessation of his profession, fees relating to the period when he carried on the profession. Under the provisions of the Act aforesaid, the amount fell to be assessed in the assessment for the year 1970-71. However, the assessee claimed that as the amount received by him was 'due long ago and was time-barred at the time of receipt', the said provisions of the Act did not apply and, therefore, he was not including it in the total income assessable to tax. This claim was accepted by the department.

4.39. Section 176(4) of the Income-tax Act, taxes such fees as and when they are received even after the discontinuance of the profession and the presence or absence of right of recovery thereof is not a relevant consideration.

4.40. The matter was taken up with the Ministry in August 1972 and a reply has been received that the matter has been referred to the Law Ministry.

[Paragraph 30(v) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes]

4.41. The Committee were given to understand by Audit that in part IV of the Income-tax return for the assessment year 1970-71 the assessee claimed that the amount was not taxable since when he received it, it had become time-barred for him to prefer a claim. The assessee was following the cash method of accounting and thus under the provisions of the Income-tax Act, the income of Rs. 11,200 was assessable to tax in the assessment year 1970-71. The Committee enquired whether the claim of the assessee obviously was not incorrect and whether it was not the duty of the Income-tax Officer to point it out to the assessee. The Finance Secretary stated: "I do not think the claim was properly made."

4.42. The Ministry of Finance (Department of Revenue and Insurance) in a note submitted to the Committee, further stated: "The Income-tax Officer has stated that assessment was completed under the Small Income Scheme. Part IV of the return where the exemption was claimed escaped his notice."

4.43. The Committee learnt from Audit that the mistake had been rectified under Section 154 of the Income-tax Act and the additional demand of Rs. 8007 since collected. The Committee desired to know the steps taken by the Department to ensure that lawyers and doctors who received outstanding fees after they ceased to earn in the profession were properly brought to tax. The Member, Central Board of Direct Taxes stated: "There are no special instructions in respect of persons who have discontinued their profession. At present we can rely upon the Income-tax Officer to find out the fact that a person has received such fees as a result of the general scrutiny that he may make on his own of the books of accounts or the increase in wealth etc. That is the natural scrutiny that an Income-tax Officer makes usually for any kind of income that he is supposed to detect and assess." The witness added: "We will examine the question whether we can issue directives to the Income-tax Officers that wherever a person discontinues his profession, the Income-tax Officer should obtain a statement from the person concerned regard to the outstanding fees so that he can follow this up. Or in the alternative we may introduce a column in the return of income."

4.44. The Ministry, in a note, further stated: "Whether it will suffice to issue instructions to the Income-tax Officers that wherever a person discontinues his profession, the ITO should obtain a statement from the person concerned in regard to the outstanding fees so that he can follow them up or in the alternative a column may be introduced in the return of income to ensure that the receipt of professional income is disclosed every year after the discontinuance of the profession, is under active consideration of the Board."

4.45. The Committee enquired whether this assessee was a wealth-tax assessee and whether he had shown the outstanding fees in his wealth-tax return before they were realised. The witness stated: "He has not shown these in his wealth-tax returns."

4.46. The Committee find that there is a specific provision in the Income-tax Act, 1961 to assess income received after cessation of profession. In this case although the assessee realised such an income be showed it in part IV of his return and claimed that the amount was not taxable since when he received it, it had become time-barred for him to prefer a claim. As he was following the cash method of ac-

counting the amount was assessable to tax. The Finance Secretary stated during evidence that he did not think that the claim was properly made. However, the ITO is reported to have stated that the assessment was completed under the Small Income Scheme and that part IV of the return where the exemption was claimed escaped his notice. This raises a general question whether it is advisable to complete the assessment of big salary cases under the Small Income Scheme. The Committee desire that this question should be examined critically.

4.47. In view of what has happened in this case the Committee desire that the Board should consider a general review of similar cases of completed assessments involving income received after the cessation of profession.

4.48. In order that the income received after the cessation of profession may not escape notice, the Committee suggest that wherever a person discontinues his profession the ITO should obtain a statement from him showing the outstanding fees . . Further, there should be a column in the return of income, to ensure that the receipt of professional income is disclosed year after year after the discontinuance of the profession which can be checked with reference to the statement of outstanding fees obtain by the ITO.

4.49. Incidentally the Committee understand that in this case the assessee had not shown the outstanding fees in his wealth-tax returns before they were realised. If it was required to be assessed to wealth-tax notwithstanding the maintenance of account on cash basis, suitable action may now be taken to levy wealth-tax. Further, general instructions may also be issued for the guidance of the assessing officers in future.

CHAPTER V

INCOME ESCAPING ASSESSMENT

Audit paragraph

5.1. A registered firm dealing in diamonds opened an office in a foreign country with the permission of the Government of India. The profits derived from the foreign office were, however, not included in the firm's total income, but the partners were assessed to income-tax directly on their respective shares of the branch profits as reduced by a part of the profits required to be reserved under the regulations of the foreign country. The department took the view that inasmuch as the foreign branch was treated as a private company for purposes of foreign income-tax, the same was to be considered as an entity independent of the registered firm. The material on record in the form of correspondence with the Government of India by the firm which made the application for opening a branch office, absence of any evidence suggesting principal to principal relationship and the manner in which transactions were recorded in the books indicated that the office in the foreign country was merely a limb of the Indian firm. The status of the foreign office for purpose of taxation in that country was in this case neither material nor determinative of the distribution of income for purposes of Indian income-tax. Omission to assess the profits of the foreign office in the hands of the firm, apart from the partners, led to an aggregate under-assessment of income of Rs. 4,39,061 in the hands of the firm in assessment years 1967-68 to 1969-70. Further, as the entire profits earned by the foreign concern were not credited to the partners but only the net amount after reserving a portion of the profits under the rules existing in the foreign country as aforesaid, the profits so reserved in accounts were also not brought to charge to Indian income-tax subject to double income-tax relief in the hands of the firm or its partners. This led to under-assessment of income of Rs. 67,207 in assessment years 1967-68 to 1969-70. The aggregate short-levy of tax in the hands of the firm and the partners amounted to Rs. 56,916.

5.2. The Ministry have replied that the two partners have floated a 'company' in the foreign country and so the assessee firm has nothing to do with the company. In Audit's view, the assessee firm is liable to pay tax on its income including deemed income whatever be the channel of income.

[Paragraph 31(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil)—Revenue Receipts, Volume II—Direct Taxes].

5.3. The Committee learnt from Audit that the partners of the firm approached the Government of India for granting permission to them to open an office at Antwerp (Belgium) and the permission was refused in the beginning. The Committee desired to know the reasons for such refusal and the considerations for granting the required permission later on to the firm. The Ministry of Finance (Department of Revenue and Insurance), in a note furnished to the Committee, stated: "The reasons for refusal in the beginning and the considerations for granting the permission later are not known to the Board. However, if the Committee so desires, these will be ascertained from the Reserve Bank of India."

5.4. The Committee wanted to know the nature of the evidence produced on the basis of which the Department came to the conclusion that the two partners invested their personal funds for the foreign business and not the funds of the firm. They also enquired whether the evidence had been placed on record. The Ministry, in a note, replied: "It is seen from copies of partners accounts on record that the two partners withdrew sums of Rs. 10,553/- each in S.Y. 2022 (relevant to assessment year 1967-68) from their accounts in the books of the Indian firm for the purpose of investment in setting up the office in Antwerp. The narration is 'Antwerp office deposit'."

5.5. The Committee pointed out that it appeared that the department had come to the conclusion that there was a relation as between principal to principal in respect of the firm in India and the business abroad. The Committee desired to know the facts and circumstances leading to this conclusion. The Ministry, in a note, stated:

"The Belgian concern is a company under the Belgium Commercial Code. The Consul General of Belgium has clarified that PVBA (a suffix used by the Belgian concern) stands for a society of persons with limited liability. It is seen that Belgium Commercial Code provides among others for a commercial concern as private limited company—a commercial concern possessing legal personality distinct from that of their members.

From the copy of an order issued on 6-10-1966 by the Registrar of Commerce, Antwerp, it appears that the concern is described as 'Persons Company with Limited Liability' and Shri and Shri possessed the total and respectively each 70 'Social parts' (shares).

From the certificate of the 'fiscal consultant' it appears that such concerns are described as 'private partnership limited'.

In all cases, the real relationship between the parties has to be looked into on the basis of any agreement or arrangement subsisting between them. However, where—

(a) the purchases made by the resident are outright or on his own account;

(b) the transactions between the resident and the non-resident are made at arm's length and at prices which would be normally chargeable to other customers;

(c) the non-resident exercises no control over the business of the resident and sales are made by the latter on his own account; or

(d) the payment to the non-resident is made on delivery of documents and is not dependent in any way on the sales to be effected by the resident;

it can be inferred that the transactions are as between principal-to-principal.

In the present case, according to the CIT, the transactions are on principal-to-principal basis."

5.6. When asked for the precise status of the foreign branch, the Ministry, in a note, stated:

"The Belgian concern is a company under the Belgium Commercial Code. Under section 2(17) of the Income-tax Act it could make an application to the Board for being declared as a company for purposes of the Indian Income-tax Act (such declaration is ordinarily made by the Board in the case of any entity which possesses the ordinary characteristics of company limited by shares and which is a legal person according to the laws of the country in which it is incorporated). However, no such application has been made in this case. Hence, the status will be that of an Association of Persons.

From the assessment year 1971-72 onwards, the Belgian concern would be automatically treated as a company in terms of the amended section 2(17) of the Income-tax Act.

As an A.O.P. for the assessment years 1967-68 to 1969-70 and 1970-71, it will be resident in India since (on the basis of information available) its control and management is not situated wholly without India.

As a company for the assessment year 1971-72 and onwards it will be non-resident as its control and management (on the basis of information available) is not situated wholly within India."

5.7. The Committee enquired whether the partners had applied for double Income Tax relief; if so, in what capacity *viz.* as individual or as partners. The Ministry, in a note, stated:

"D.I.T. relief was neither claimed nor allowed in respect of the assessments for the years 1967-68 to 1969-70. Shri and Shri have asked for rectification of their individual assessments by giving credit for the tax paid by them in Belgium. They have been asked by the ITO to apply for Double Income Tax relief with necessary evidence to establish the claim.

They had applied for D.I.T. relief for the first time for assessment year 1970-71 but it has not been allowed as they have not yet filed any proof in support of the tax paid in Belgium."

5.8. The Committee desired to know whether there was any court's decision which could have been applied to such a case and if so, whether the assessing officer had considered that. The Ministry, in a note, stated: "The facts of this case are rather peculiar and there does not appear to be any case law which is directly applicable to these facts. There is nothing on record to show that the I.T.O. considered applying any case law to the facts of this case."

5.9. To a question, the Ministry, in a note, stated: "No specific instructions have as such been issued on this subject."

When asked why the application of Section 92 of Income-tax Act, 1961 could not be invoked in the present case, the Ministry, in a note, replied: "C.I.T. has categorically stated that there is nothing on record to show that either purchases from or sales to the Belgian concern were made at a concessional rate. The provisions of section 92 cannot, therefore, be applied. However, as the CIT's report did not indicate whether the accounts have been scrutinised for this purpose, he has already been requested on 22-10-1973 to get the accounts test-checked with a view to consider the applicability of section 92 of the Act."

5.10. The Committee enquired whether it was not correct to say that facts of the present case had been stretched too far so as to justify the tax evasion on foreign income. The Ministry, in a note, stated: "The question involved is one of drawing reasonable inference on the facts as they exist in the light of the law of Belgium and India."

5.11. The Committee regard this as a typical case of avoidance of tax. By establishing a branch in a foreign country and treating it as a separate entity the assessee firm had sought to reduce its income artificially in India and avoided tax on the foreign income. The Committee stress that the matter should be examined in all its aspects in

consultation with the Ministry of Law and the loophole, if any, in the Act plugged.

5.12. In the meanwhile, the question of invoking Section 92 of the Act in this case should be examined expeditiously and the result intimated to the Committee.

Audit paragraph

5.13. By a deed dated 8th January, 1969 an assessee, the Karta of a Hindu Undivided Family, assigned and impressed 50 per cent of his interest in the firm in which he was a partner with the character of joint family property. The assessee's share of the income of the registered firm for assessment years 1970-71 and 1971-72 was equally divided and a moiety each was assessed directly in the hands of the assessee as individual and the Hindu Undivided Family with the assessee as Karta. As the assignment of the individual interest in favour of the joint family did not create an overriding title for diversion of income at source, as judicially interpreted, the assessment of the share income separately in the hands of the assessee and the Hindu Undivided Family was not in order.

5.14. Similar assignments were made by the assessee's two relatives who were the other partners in the same firm and their share incomes were similarly bifurcated and separately assessed in their hands as individuals and on their respective joint families. The resultant under-assessment of tax in all the three cases for assessment years 1970-71 and 1971-72 amounted to Rs. 41,416.

5.15. The Ministry of Finance have replied (February, 1973) that the assessments in question have been revised. Report regarding recovery of tax is awaited.

[Paragraph 31(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil)—Revenue Receipts, Volume II—Direct Taxes].

5.16. It is understood from Audit that under the Income-tax Act, all income which accrues or arises to the assessee or is received by him is taxable in his hands. However, it has been held by the courts that in cases where there is an overriding title which diverts the income to some other person before it reaches the assessee, the income so diverted is not taxable in the assessee's hands but in the hands of the person who actually receives it.

5.17. Diverson of income is, however, to be distinguished from application of income. If under an agreement or obligation an assessee is required to apply the income received by him in a particular

way, *e.g.*, payment of maintenance allowance to a separated wife under court's orders, it is not diversion at source—the income would continue to be his as held by the Supreme Court.

5.18. In the case reported, the assessee (Karta of H.U.F.) by a deed dated 9-1-1969 assigned 50 per cent of his interest in the firm, as partner in his individual capacity, to the H.U.F. The assessee's share income of Rs. 31,350 from the registered firm for the assessment years 1970-71 and 1971-72 was equally divided and one half of it was assessed in the hands of the assessee as individual and the other half in the hands of the H.U.F. As the assignment of the individual interest in favour of the H.U.F. did not create overriding title for diversion of income at source but was only application of income, the entire income was assessable in his hands. The assessment of half of the share income in the hands of the H.U.F. was not in order and resulted in under assessment of tax. Similar assignments were also made by the two relations of the assessee who were other partners of the same firm and were also assessed in the same manner as the assessee cited above. This irregular assessment resulted in short assessment of tax aggregating to Rs. 41,416.

5.19. The Committee further learnt from Audit that the Ministry, while accepting the objection, had intimated that reassessment proceedings under Section 147(b) for assessment year 1970-71 were taken and notice under Section 108 issued, but the assessees filed a writ petition before the High Court and had obtained interim stay.

5.20. The Committee enquired whether the mistake had occurred because of lack of knowledge of the correct legal position and if so, whether the Ministry would consider issuing general instructions explaining the correct legal position. The Ministry of Finance (Department of Revenue and Insurance), in a note submitted to the Committee, replied in the affirmative. The Ministry further stated: "It can be said that the mistake occurred due to incorrect appreciation of the legal position. The case was referred to the Ministry of Law and their opinion has been obtained. The question of issue of general instructions on the subject for the guidance of the field officers is under consideration."

5.21. To a question the Ministry, in a note, replied: "Two of the cases were checked by the Internal Audit Party but they did not point out the mistake noted by the Revenue Audit. As the issue involved in the cases was rather debatable, it was not considered necessary to call for the explanation of the IAP officials."

5.22. The Committee wanted to know the position under the Gift-tax Act. They also enquired whether the payment of 10 per cent of

share profits every year to H.U.F. would amount to gift under amended provisions of Gift-tax Act and whether the Ministry were considering this aspect also. The Ministry, in a note, stated: "The Law Ministry have advised that the declaration in these cases is **ab initio** void and cannot be acted upon. Therefore, the question of levy of Gift-tax does not arise."

5.23. As the assignment of the individual interest in favour of the H.U.F. did not create an overriding title for diversion of income at source but was only application of income, the assessment of half of the share of income in the hands of the H.U.F. in the cases reported in the Audit paragraph was not in order. The irregular assessments resulted in short-levy of tax aggregating to Rs. 41,416. The Committee desire that general instructions clarifying the position in law should be immediately issued for the guidance of the field officers. Further, a test-check of similar past assessments with a view to rectifying them is also called for.

5.24. The Committee understand that the assessees have filed writ petition before the High Court and obtained interim stay. The outcome may be reported to the Committee.

Audit paragraph

5.25. The Income-tax Act provides that where a deduction was granted to an assessee in any year towards a loss or expenditure and the same is recouped by him subsequently, the amount so received is chargeable as business profits of the 'previous year' in which the recoupment was obtained. In one case, the claim of a registered firm for exempting a sales tax refund of Rs. 50,726 was allowed in its assessment for the assessment year 1970-71 on the ground that the department of sales tax has issued notice claiming back the amount. On a verification by Audit with reference to the sales tax assessment records, it was found that there was no question of the amount being paid back to Government as stated by the Income-tax Officer. Due to non-inclusion of the sales tax refund in the assessee's income, there was an under-charge of tax by Rs. 22,270.

5.26. The Ministry have replied (November, 1972) that rectificatory action has been initiated as a protective measure.

[Paragraph 31 (iii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil)— Revenue Receipts, Volume II—Direct Taxes].

5.27. The Committee wanted to know how the Income-tax Officer had satisfied himself that the sales-tax refund was to be repaid to

State Government. The Committee also enquired whether the Income-tax Officer had asked the assessee whether he had accepted the demand. The Ministry of Finance (Department of Revenue and Insurance), in a note furnished to the Committee, stated: "In part IV of the IT return the assessee had shown sales tax refund of Rs. 50,726.72 and had stated that it was not taxable as the Department of Sales-tax had issued notice claiming back the amount. The ITO before passing the assessment order does not appear to have asked the assessee whether he had accepted the demand."

5.28. The Committee learnt from Audit that the refund was allowed to the assessee under the provisions of Mysore Sales-tax Act 1957 but not under the Central Sales-tax Act. The Committee enquired whether any efforts had been made to find out the correct position from the Sales-tax Department. The Ministry in a note stated: "The ITO is maintaining liaison with the Commercial Tax Officer in the matter. In reply to ITO's letter the CTO-I Circle, Devangeri (by his letter dated 12-2-72) had informed the ITO that the refund of Rs. 50,726.72 was granted to the assessee under proviso to section 5(4) of the MST Act, 1957 for the period 1-7-64 to 30-6-67 and that 'notices have been issued to the assessee under the provisions of CST Act, 1956 requiring him to show cause as to why the mistake apparent from the records should not be rectified'. CIT Bangalore by letter dated 7-8-73 had reported that the matter was still under examination by sales-tax authorities. In the first week of November 1973 information was received that the sales-tax authorities had initiated recovery proceedings against the assessee firm. Further details are awaited."

5.29. The Committee further learnt from Audit that the Ministry had intimated that the assessments both in the cases of the firm and its partners had been revised under Section 263 as a protective measure raising an additional demand of Rs. 10,176. When asked to state the latest position of the case and whether the assessee had accepted the revised assessment, the Ministry, in a note, stated: "The assessment was revised on 22-1-73 u|s 263 of IT Act, 1961. The assessee had not filed any appeal against the above order till second week of June 1973. The assessee therefore appears to have accepted the revision of the assessment."

5.30. The Committee desired to know whether there was any system by which the Income-tax Officers got the information regarding the refunds obtained by the assessees so as to bring them to assessment. The Ministry, in a note, stated: "Any refund obtained by the assessee from the Sales-tax Department is to be shown as receipt

in the books of the assessee and will consequently be reflected in the Profit and Loss account of the taxpayer. In the Income-tax Return also there is a specific column provided for showing such refund .....There is at present no system in vogue for collecting information from the Sales-tax Department direct. However, this matter will be considered by the Board."

5.31. The Committee learnt from Audit that the case was looked into by the Internal Audit Party but the mistake was not pointed out by them. When asked for the circumstances in which the mistake had escaped the notice of the IAP, the Ministry in a note stated: "The case was checked by the IAP but it did not raise any objection on this point because refund had not been brought to tax in accordance with the circular instructions issued by the CIT, Mysore. These instructions have since been revised."

5.32. This is a case of an assessee trying to get advantage from both the Sales-tax Department and the Income-tax Department and the latter acquiescing in it. The failure to charge the refund of the sales-tax under Section 41(1) of the Income-tax Act 1961 resulted in a short-levy of Rs. 22,270. Audit had brought it to light on verifying the relevant sales-tax records. It is a pity that there is no coordination between the Sales-tax Department and the Income-tax Department. The Committee accordingly recommend that there should be a system of collecting information from the Sales-tax Department direct to ensure that all the refunds are properly brought to tax.

5.33. Incidentally the Committee find that the irregularity in this case was not objected to by the Internal Audit Party as the refund had not been brought to tax in accordance with the circular instructions issued by the Commissioner of Income-tax. The responsibility for issuing such a patently wrong instruction should be gone into for taking appropriate action, besides conducting a general review of the assessments registered dealers in this Circle. The Committee would await a report in this regard.

CHAPTER VI

NON-LEVY/INCORRECT-LEVY OF PENAL INTEREST

Audit paragraph

6.1. During the period under review, omission to levy or incorrect levy of penal interest was noticed in 2012 cases involving revenue of Rs. 54.52 lakhs as indicated below:

	No. of cases	Amount (in lakhs of Rupees)
(i) For short/non-payment of advance-tax	885	33·34
(ii) For delay in submission of return of income	818	14·47
(iii) For non-payment of tax by the due dates	309	6·71
TOTAL	2012	54·52

[Paragraph 32(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

6.2. In paragraph 2.294 of the 51st Report of the Committee (Fifth Lok Sabha), it has been stated: "Non-levy of penal interest or incorrect-levy of penal interest under various provisions of the Act was commented upon in all the earlier Audit Reports. The statement below compares the mistakes noticed and reported in the earlier Reports with the position brought out in the current Audit Report:

Year of Audit Report	No. of Cases	Amount of interest omitted to be levied (in lakhs of Rupees)
1963	327	5·00
1964	632	6·64
1965	523	9·08
1966	1297	17·72
1967	1834	32·60
1968	2064	40·48
1969	2566	63·56
1970	2501	63·06
1969-70	3395	91·12"

6.3. The position regarding omission to levy or incorrect levy of penal interest brought out in the Audit Reports for the years 1970-71 and 1971-72 is as under:

Year of Audit Report	No. of cases	Amount of interest omitted to be levied (in lakhs of (Rupees)
1970-71	2493	67·05
1971-72	2012	54·52

6.4. The Income-tax Act has several provisions for imposition of interest with a view to ensuring stricter compliance by the assessees with provisions of the Act relating to assessment and collection. The interest is leviable (i) for short/non-payment of advance-tax, (ii) for delay in submission of return of income and (iii) for non-payment of tax by the due dates. The Income-tax Department is evidently lax in applying these provisions and year after year lapses involving huge revenue are brought to the notice of the Committee. In this connection they would refer to paragraph 2.294 of their 51st Report (Fifth Lok Sabha). Audit have brought out during the years 1970-71 and 1971-72 2493 and 2012 cases respectively involving amount of interest omitted to be levied to the extent of Rs. 67.05 lakhs and Rs. 54.52 lakhs. The Committee have been exhorting the Ministry to ensure that the penal provisions are properly enforced. The Ministry does not seem to have come to grips with the problem. Having regard to the fact that non-levy of interest has become chronic, the Committee consider that there is need for a general review of all cases where assessments for more than Rs. 50,000 have been completed, at least for the past three years. This review should be undertaken urgently and the results Communicated to the Committee.

CHAPTER VII

FAILURE TO LEVY PENALTY

Audit paragraph

7.1. Having received prior information, the premises of a firm and its partners were searched in January, 1967 and thereafter the firm submitted a 'disclosure petition' in February, 1967 to the Commissioner of Income-tax showing concealed income of Rs. 4,34,275 covering assessment years 1961-62 to 1966-67. Another amount of Rs. 28,,392 attributable to a mistake in the assessee's accounts was also disclosed.

7.2. The firm was constituted in May, 1960 with ten partners on the dissolution of another firm having eleven partners. Nine partners of the defunct firm also disclosed unaccounted income of Rs. 4,82,000 for the assessment years 1955-56 to 1960-61.

7.3. According to the terms of settlement arrived at between the assessee and the department, the concealed income was determined at Rs. 5,48,000 (including the amount attributable to mistake in assessee's accounts) for the firm and at Rs. 5,52,000 for the partners of the defunct firm and assessed to tax. In addition, a penalty of Rs. 88,636 at 10 per cent of the tax sought to be evaded was also levied under Section 271(4A) of the Income-tax Act, 1961.

7.4. A sum of Rs. 30,000 being 7 1|2 per cent of the additional tax levied was paid to an informer as a reward for furnishing information which led to the detection of the concealed income.

7.5. As the disclosure was made only after a search of the premises of this firm and its partners, it would not be a voluntary disclosure made in good faith. As such the conditions laid down for the reduction or waiver of penalty under Section 271(4A) of the Income-tax Act, 1961 having not been fulfilled in this case, the minimum penalty leviable was 20 per cent of the tax sought to be evaded under Section 271(i)(c). This irregular reduction resulted in short-levy of penalty of Rs. 88,636.

[Paragraph 33(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

7.6. Under the Income-tax Act, if a person conceals the particulars of his income, he is liable to penalty in addition to the tax payable on the concealed income. The minimum penalty upto assessment year 1968-69 was 20 per cent of tax sought to be evaded. There is, however, a provision in the Act under which the minimum penalty for concealment can be reduced or waived if the assessee, prior to detection by the Income-tax Officer of the particulars of concealed income, makes voluntarily and in good faith, a full and true disclosure of such particulars.

7.7. In the case reported in this sub-paragraph, an anonymous letter regarding concealment of income by the firm was received by the Department in March 1966 and the firm's books were impounded. Subsequently, various letters were received giving specific information and details of concealment were given by an informer. The premises of the firm as well as residential houses of the partners were searched simultaneously on 28-1-1967. Consequent on this search, the firm and 9 partners came forward with disclosure petition in February 1967 disclosing an income of Rs. 4,62,567 covering assessment years 1961-62 to 1966-67. Nine partners of a defunct firm, on dissolution of which the present firm was formed, also disclosed concealed income of Rs. 4,82,000 for assessment years 1955-56 to 1960-61.

7.8. A settlement was then reached and the concealed income was determined as Rs. 5,52,000 in the case of the defunct firm and its partners and Rs. 5,48,000 in respect of the new firm and its partners. The total additional tax demand on the concealed income was worked out as Rs. 3,98,732 in both the cases and the informer was paid a reward of Rs. 30,000 calculated at the rate of 7½ per cent of the additional tax demand.

7.9. According to Audit, despite the fact that the disclosure had been made after the searches and that the informer had claimed and was paid reward for supplying information, minimum rate of penalty viz. 20 per cent was reduced to 10 per cent treating it as having been made prior to detection of the concealed income by the Department. The undercharge of penalty due to this reduction is Rs. 88,636.

7.10. The Committee were given to understand by Audit that the Ministry had not accepted the objection for the following reasons.

(i) The disclosure was treated as voluntary on the basis of the Board's instructions of 1965. (According to these instructions 'detection, means determination of concealed income, *i.e.*, final conclusions.

These instructions which did not appreciate correctly the legal position were subsequently withdrawn).

(ii) The major portion of the additional income assessed was credits in fictitious names and alleged defects in the accounts and cash introductions etc. Had the assessment been made in the ordinary way i.e. otherwise than by way of settlement, the assessee could have gone in appeal and possibly got some of the additions knocked off.

(iii) In the light of the Supreme Court decision in Commissioner of Income-tax, West Bengal V|s M|s. Anwar Ali (76 ITR 696) and the later decision in Commissioner of Income-tax Madras Vs. Khodey Eswara and Sons (83 ITR 369) there would have been no case for penalty and if any penalty had been levied it would have been set aside by the Tribunal.

7.11. According to Audit, these decision related to the position under the 1922 Act. From 1st April, 1964 a new explanation was added to Section 271 of the Income-tax Act 1961 under which if the returned income was less than 80 per cent of the income determined on assessment the assessee was deemed to have concealed the income and the onus was on him to prove that it was not because of fraud or negligence.

7.12. The Committee enquired, as the disclosure made only after a search of the premises of this firm and its partners, whether this could be described as a voluntary disclosure made in good faith. They also wanted to know the basis on which the Department had proceeded in the matter. The Member, Central Board of Direct Taxes stated that that was treated as voluntary because it was made before detection. The Finance Secretary added: "The Department has been considering that every disclosure which is made before the concealed income is established after the seizure or search is carried out, is a voluntary disclosure. It is not conclusive after the search is carried out that there has been evasion of tax." The Member, Central Board of Direct Taxes further stated: "This was treated as a voluntary disclosure on the basis of a circular issued by the Board in 1965 defining what is voluntary and what is detection."

7.13. The witness added: "The circular is dated 26th November 1965 and it says that detection implies that the Income-tax Officer has detected concealed income on the basis of some material evidence and that the more fact that the Income-tax Department has noticed certain books of accounts etc. through which concealment of income could be suspected, will not, therefore by itself, tantamount to detection of concealment."

7.14. The circular dated 26th November 1965 issued by the Central Board of Direct Taxes has, *inter-alia*, stated:

"The Commissioner is authorised, under Section 271(4A) of the Income-tax Act, to waive or reduce the statutory minimum penalty imposable under section 271(1) of the Act, if the following three conditions are satisfied, viz., that—

(i) the assessee has, voluntarily and in good faith, made full disclosure of his income prior to detection by the Income-tax Officer of the concealment of the particulars of such income or of the inaccuracy of particulars furnished in respect of such income;

(ii) the assessee has cooperated in any enquiry relating to the assessment of such income; and

(iii) he has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of any order passed under the Income-tax Act in respect of the relevant assessment year.

The scope of the above provisions has been considered in consultation with the Ministry of Law. The question as to whether disclosures of income has been made prior to the detection of the concealment has to be decided on the facts of each case. Detection implies that the Income-tax Officer has determined the concealed income on the basis of some materials in his possession. The mere fact that the Income-tax Department is in possession of certain books of account etc., from which concealment of income could be established will not, therefore, by itself, be tantamount to a detection of the concealment. A disclosure has to be regarded to have been made voluntarily and in good faith if it has been freely, without compulsion, and no *mala fides* can be imputed to it. For this purpose, it is immaterial whether the disclosure has been made under the apprehension that the concealment of income will be ultimately detected by the Income-tax Officer. However, it will be open to the Commissioner, under section 271(4A) of the Act, to take into account the facts and circumstances under which the disclosure has been made and the measure of cooperation from the assessee in the subsequent enquiry and in respect of the payment of tax demanded in deciding whether the penalty should be completely waived or, if not, to what extent the penalty imposable should be reduced.

Having regard to the position explained above, it is considered that in the types of cases referred to.... penalty should not be waived as a matter of course under section 271 (4A) but a re-

duced penalty may be levied as stated in those paragraphs unless the Commissioner is satisfied that, having regard to the extent of cooperation from the assessee in the enquiry and in payment of the taxes demanded, a complete waiver of the penalty is justified.

Whether the disclosure has been made before the concealment of income was detected....., but the Income-tax Officer is satisfied that the disclosure was made in consequence of the fact that certain incriminating material against the assessee (such as concealed account books or documents, spurious Hundi transactions, entries regarding cash credits, commission, brokerage interest etc. in third party's accounts, or seized assets) has come into the possession of any other income-tax authority or other Government authority, there may be a penalty upto 10 per cent of the tax sought to be evaded in respect of income which could be determined from such material."

7.15. When asked to state the circumstances that led to the issue of these instructions, the Ministry of Finance (Department of Revenue and Insurance) in a note submitted to the Committee, stated:

"The scope of section 271(4A) was examined in consultation with the Ministry of Law since there was certain reference from the field authorities. There was also a Board's meeting on this subject and the circular was issued thereafter."

7.16. The Committee learnt from Audit that the instructions contained in the Board's circular dated 26th November, 1965, which did not appreciate correctly the legal position, were subsequently withdrawn.

In reply to a question, the witness stated that the Board's circular dated 26th November, 1965 was withdrawn in September, 1969 and the case reported in the Audit paragraph related to 1968.

7.17. The Committee wanted to know the instructions contained in the revised circular issued in September, 1969. The witness stated: "It did not cancel the circular in so many words but comprehensive instructions were issued in September 1969 in supersession of the previous instructions. The relevant portion of the circular regarding waiver or reduction of penalty reads as follows:

'No waiver or reduction of penalty is possible in cases where there is discovery of unaccounted cash'.

(In this case there was no discovery of unaccounted cash).

'If the incriminating material is of a nature which by itself establishes that the income has been concealed by the assessee, the discovery of such material before disclosure would amount to detection of cancelled income'.

For example, if in the course of search two sets of accounts are found, one being in accordance with the income he has declared and the other being different, it can be said that *prima-facie* the material which has been seized can be treated as detection of concealment."

7.18. When asked to state the circumstances under which the revised instructions were issued in supersession of those issued in 1965, the Ministry, in a note, stated: "The circular was issued with the approval of the Chairman. The circular was issued on the basis of the advice given by the Law Ministry in respect of certain points referred to them. The advice of Law Ministry was given by the then Additional Secretary."

7.19. The Committee pointed out that so far as penalties were concerned the following conditions must be satisfied namely the disclosure should be voluntary made in good faith; it should be made prior to the detection by the Income-tax Officer of the concealment or particulars of income in respect of which the penalty was imposable. The dictionary meaning of 'voluntary' was 'proceeding from his own free will without compulsion or legal obligation' and the secondary meaning was 'not prompted by fear or inducement'. The Committee enquired whether it was not correct to say that the assessee disclosed it not voluntarily but consequent upon fear that the information had got into the hands of the Income-tax Officer which would result in the discovery of the concealed income. The witness stated: "There was certainly fear of detection on the part of the assesssee but there was no actual detection. The books were impounded on the 12th January, 1967. The books were impounded for a closer scrutiny of the accounts because there were cash credits in the books of accounts amounting to Rs. 2 lakhs which the partners present were not able to properly explain. They said that the partner who was not present that day may be able to give a proper explanation. Therefore, the I.T.O. thought it best to impound the books; but before he had an opportunity to examine the books within 15 days the search took place on the 20th January, 1967 and again, before all the books of accounts came into the possession of the I.T.O., some books were seized from the assessee's native place in Rajasthan and before even these went into the possession of the I.T.O., the assessee came on 14th February, 1967 and made this disclosure."

7.20. To a question, the witness stated: "The search was made on 20th January and the disclosure was in February. The I.T.O. had no opportunity to go into the books of accounts to find out any

incriminating material at that time....The cash credits are to the tune of Rs. 8½ lakhs. They stood in the names of certain persons, which the assessee accepted because he agreed for a settlement."

7.21. The Committee desired to know the purpose for which the settlement was made when it was opened to the Department to find out the facts without accepting the disclosure. The Committee also enquired whether it was a general practice followed in such cases. The witness stated: "A decision was already given by the Calcutta High Court which was subsequently confirmed by the Supreme Court. Because we would not have been able to sustain the penalty whereas by coming to an agreement we got 10 per cent."

7.22. The Ministry, in a note, further stated: "The amount of Rs. 11 lakhs (approximately) added as a result of settlement included a sum of about Rs. 8,35,000 on account of fictitious credits which were admitted by partners|firm to be their|its income. The admission was only because there was a settlement. If the assessments had proceeded in the normal course, the additions would have been contested and if our past experience is any indication the department would have found itself caught in an unending litigation with uncertain results.

In view of the fact that the additions were mainly on account of alleged fictitious credits, there were doubtful chances of success in sustaining these additions and imposing penalties thereon, especially in view of the Calcutta High Court's decision in the case of Anwar Ali at that time (65 ITR 95) which was later confirmed by Supreme Court. (76 ITR 25—Short notes).

The settlement in each case u|s 271(4A) is decided on merits in accordance with law depending upon the facts and circumstances of the case and the instructions prevalent at the time."

7.23. Drawing attention of the witness to the Audit paragraph wherein it was stated that a sum of Rs. 30,000 being 7½ per cent of the additional tax was paid to the informer as reward, the Committee asked for the basis on which the amount was paid to the informer. The Ministry, in a note, stated: "The information furnished by the informer enabled the department to a great extent to arrive at a settlement resulting in an additional demand of Rs. 3,98,732. (This demand related only to tax and not penalty). Initially, the Commissioner had paid an interim reward of Rs. 10,000. In April 1969, the Commissioner reported that out of the additional demand mentioned above, the assessee had already paid Rs. 2,53,210 and had been allowed instalments to pay the balance. In view of this, he recommended that reward @ 7½ per cent may be paid to

this informer on this additional demand. This worked out to Rs. 29,904. He recommended that the total reward in a round sum at Rs. 30,000 may be granted to him in full and final settlement of his reward claim. The Board approved the proposal of the Commissioner to pay the balance of Rs. 20,000. (F. No. 12|15|68-IT|Inv.)"

7.24. The Committee wanted to know the nature of information provided by the informer and that contained in the impounded books and whether it was such that on its basis the I.T.O. could have reasonably believed that there was concealment. The Ministry, in a note, stated: "As per CIT's report, the main allegations against the assessee firm and partners contained in the anonymous petition as well as other communications received from the informer are as follows:

(i) That the assessee-firm had branches at Jowai, Barapani and Shillong and also petrol depots at Nalbari, Barpeta etc.;

(ii) That the assessee-firm secured bridge contract work worth about Rs. 9 to 10 lakhs in Nalbari;

(iii) Black money transactions are entered in accounts marked 'VR';

(iv) The firm earns black money by making short supply of petrol to various purchasers and by taking excess delivery from Gauhati Refinery;

(v) More than 10 lakhs of black money is invested in Assam Auto Agency;

(vi) Expenses in oil tank accounts are inflated;

(vii) Sale proceeds of tractors and in motor department are suppressed;

(viii) Some other concerns have invested black money with the assessee.

(ix) The original books in R. N. 2022 and 2023 contained entries of unaccounted income amounting to Rs. 8,42,000;

(x) M/s. Auto Trade Transport Agencies have five tank lorries to carry petrol;

(xi) Payments made to bank are not noted in the account books;

(xii) Residential buildings have been built at Sujangarh, Shillong etc.;

(xiii) Expenditure of each partner is about Rs. 25,000; Gold can be seized if a raid is conducted.

The ITO impounded the books of accounts produced on 12-1-67 in the course of assessment proceedings for the assessment year 1966-67 on the ground that the partners who produced the books could not disclose the identity of the persons in whose names there were certain credits. The partners present at the time of hearing averred that only the other partner who did not come on that date could provide necessary clarifications. From the records, it is seen that the I.T.O. did not examine the impounded books and a search took place within 16 days i.e. on 28-1-1967.

Considering the circumstances leading to the impounding of books, it can only be said that the I.T.O. had a mere suspicion about some credits and that he had not come to any specific findings."

When asked whether the action taken by the Department in this particular case was legally correct, the witness stated: "The matter was decided on the basis of the prevailing instructions."

7.25. The Committee further enquired whether the Department was still of the view that the instructions of 1965 under which this case was decided, were issued on solid justifiable grounds. The Member, Central Board of Direct Taxes, stated: "These instructions which were issued in 1965 were issued in consultation with the Ministry of Law. Those instructions, according to the Ministry of Law, gave the legal position at that time. Subsequent instructions modified those instructions. The Ministry of Law said that unless detection is actual there is no detection."

7.26. Elaborating further, the witness added: "The Law Ministry said that unless detection is actual, unless it is quantified and unless you have seen this, there is no detection. You may have all the material over there. But you have not detected that. The Law Ministry said that merely having something in your possession does not mean that there is detection. That being the position at that stage, we have not detected any thing. There was an application for disclosure. That has not been detected by us and therefore it was a voluntary disclosure. That was the feeling at that time."

7.27. The Committee pointed out that when the instructions were issued in 1965, they were issued under certain circumstances and it was understandable. When it came to individual cases the Department had to apply their mind to consider whether this would be the most wise course of action. The proper course of action in

this case would be that the Department should have said to the person who came to disclose his concealed income that the Department would not accept his disclosure at that point of time and that he should wait till a final decision was taken in the matter. To this, the witness stated: "It is possible." The Committee drew attention of the witness to Section 139 which places legal obligations on all persons, having taxable income, to disclose their income in the prescribed form. The Committee pointed out that in the context in which the word 'voluntary' has been used in Section 271 (iv)(a), it is only reasonable to infer that the disclosure should be one which is not prompted by fear or inducement of any kind. To this the witness stated: "The enforcing authorities might have had different views. Some might have felt that voluntary disclosure means something which comes entirely from the heart of the man and somebody might have felt that as long as a person comes forward and discloses, it should be treated as a voluntary disclosure. This was the interpretation which the Law Ministry has given at that time and this was the interpretation which was followed."

7.28. When suggested that there should be a clear understanding of the points and circulars should also be issued in a much more precise manner and that Government should reconsider the matter as in fact it was proper to accept the Audit point, the Finance Secretary stated: "We shall reconsider that."

7.29. When further suggested that in future if the Department was able to establish concealment on the basis of books of accounts impounded, they should not go in for this type of disclosure or make an assessment on the basis of the assessee's voluntary disclosure, the Finance Secretary stated: "There are practical problems relating to the detection of concealment. You know something has been concealed. You impound books of accounts. You have to go carefully to find out what concealment has taken place. Not only that, according to the decisions of the High Courts, in spite of the explanations which are there, they have cast the duty of proving the concealment on the department itself and in many cases, it is very difficult to discharge the duty of proving that concealment has taken place. Therefore, if the Department gets a disclosure before concealment is detected, they have developed a practice of treating it as voluntary disclosure and settling it. I shall review the position."

7.30. The Committee pointed out that it was learnt from Audit that from 1st April 1964, a new explanation was added to Section

271 of the Income-tax Act, 1961 under which if the returned income was less than 80 per cent of the income determined on assessment, the assessee was deemed to have concealed the income and the onus was on him to prove that it was not because of fraud or negligence.

7.31. The Committee wanted to know the purpose for which the explanation was added from 1-4-1964 and whether it did not shift the burden of proving the concealment of income from the department to the assessee so that now the assessee had to prove that there was no concealment. The Ministry, in a note, stated: "The explanation to Section 271(1) introduced with effect from 1-4-64 was intended to cast on the assessee the burden of proving that the omission to disclose true income did not proceed from any fraud or gross or wilful neglect in cases where the returned income is less than 80 per cent of the income."

7.32. Section 139 of the Income-tax Act, 1961, places the legal obligation on all persons having taxable income to disclose their income in the prescribed form. The explanation to Section 271(1) introduced w.e.f. 1-4-1964 casts on the assessee the burden of proving that the omission to disclose true income did not proceed from any fraud or gross or wilful neglect in cases where the returned income is less than 80 per cent of the income. In the context in which the word 'voluntary' has been used in Section 271(4A), it is only reasonable to infer that the disclosure should be one which is of one's own free will and not prompted by fear or inducement of any kind.

7.33. The Committee find in this case that having received information, the Income-tax authorities carried out search of the premises of the firm and its partners. Only thereafter the firm and its partners submitted a 'disclosure petition'. The disclosure was treated as 'voluntary' and a penalty of Rs. 88,636 at 10 per cent of the tax sought to be evaded was levied as against the minimum of 20 per cent. The Department has justified the reduction of penalty under Section 271(4A) in terms of instructions issued in 1965. The Committee find that the instructions of 1965, which did not appreciate correctly the legal position, were subsequently superseded by instructions issued in 1969.

7.34. There would appear to be some serious failure in the system of filing of instructions which makes an oversight of such importance possible. The Committee suggest that the whole

matter should be reconsidered and clear instructions issued defining the scope of Section 271(4A). Further, the guidelines should be laid down regarding the acceptance of the 'voluntary' disclosures of the assessees especially in cases where the Department has information regarding evasion and is carrying on investigations.

CHAPTER VIII

OTHER LAPSES

Audit paragraph

8.1. In para 58(d) of the Audit Report on Revenue Receipts, 1970 instances of under-assessment of tax on account of failure to convert foreign currency to Indian Rupees were given. While conducting the Audit of another income-tax charge, a similar failure to convert foreign income into Indian currency was noticed in respect of two assessees who returned foreign income in Ceylon Rupees. This resulted in an under-charge of tax of Rs. 1,30,600.

8.2. The Ministry have replied (November, 1972) that the assessments have been revised and that the actual amount of additional tax liability on this account would be only Rs. 69,491, the difference being mainly due to double income-tax relief, to which the assessees were eligible. Having regard to the frequent changes in exchange rates, particularly after 1966, it would appear appropriate if the Ministry were to conduct a review of such cases where substantial tax is involved.

[Paragraph 34(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

8.3. The foreign income of the assessees returned by them in Ceylon Rupees was not converted into Indian Rupees at the ruling rates of exchange for the assessment years 1967-68 and 1968-69. Instead the income in Ceylon currency was adopted. As the conversion rate was 64 Ceylon Rupees=100 Indian Rupees, in 1967-68 and 80 Ceylon Rupees=100 Indian Rupees in 1968-69, the income of Rs. 1,89,508 and Rs. 2,27,385 in Ceylon Rupees would come to Rs. 2,96,094 and Rs. 2,84,231 Indian Rupees for the assessment years 1967-68 and 1968-69 respectively. The omission to convert Ceylon currency into Indian currency resulted in income of Rs. 1,06,592 (for a.y. 1967-68) and Rs. 56,846 (for a.y. 1968-69) escaping tax leading to short assessment of tax of Rs. 1,30,600 in the two assessment years. The Committee were given to understand by Audit that although the cases were looked into by Internal Audit Party, yet the mistakes were not detected by them.

8.4. The Committee wanted to know the reasons for not converting the foreign income returned by the assessee in Ceylon Rupees into Indian Rupees. The Committee also asked for the circumstances in which the mistake escaped the notice of the Internal Audit. The Ministry of Finance (Department of Revenue and Insurance) in a note furnished to the Committee explained: "The assessees in their returns of income had disclosed the share income from Ceylonese firms separately from the Indian income, describing the former as foreign income. It was not indicated that the foreign income was expressed in terms of Ceylonese Rupees and not Indian Rupees. In the circumstances the ITOs and IAPs omitted converting the amount into Indian Rupees."

8.5. When asked about the recovery of the additional demand raised, the Ministry in a note replied in the negative. The Ministry further stated: "The additional demand raised is attributable to Ceylon income and recovery has been stayed u/s 220(7) of the I.T. Act due to restrictions on remittances of money from Ceylon to India."

8.6. Pointing out that similar cases were reported by Audit in para 53(a) of Audit Report, 1970, the Committee enquired whether the Ministry had thought of having a review of such cases conducted wherein foreign income was taxable under the Indian Law. The Ministry, in a note, stated: "Board have ordered a review of all cases involving foreign income of Rs. 10,000 in the case of non-corporate assessees and Rs. 5,000 in case of corporate assessees."

8.7. The Committee pointed out that the mistake was pointed out in October 1970 whereas the assessment was revised on 11-1-1972. When asked for the reasons for the delay, the Ministry in a note explained: "Show cause notice for rectification was issued on 27-5-71 calling the assessee to file his objection (if any) on 18-6-71. On that date the representative of the assessee sought an adjournment on the ground that the person who was to appear before the ITO was indisposed. On 14-10-71 another notice was issued fixing the hearing for 29-10-71. On 1-12-71 another notice was issued for assessment year 1967-68 fixing hearing for 8-12-71. In this notice, it was stated that it was proposed to adopt correct income from Ceylon after converting it into Indian Rupee. On 24-11-1971 the assessee filed a letter stating that in all the previous years Ceylonese Rupee used to be taken for assessment; however, there was no objection to ITO adopting any basis which was proper in the eyes of law. On 18-12-71 a no objection letter dated 8-12-71 was received from the assessee. The assessments were rectified on 11-1-1972."

8.8. The Audit paragraph brings out the failure to convert foreign income into Indian currency which resulted in considerable undercharge of tax. Such instances have been reported by Audit earlier also. The explanation for the failure of the official and Internal Audit Party in this case is far from satisfactory. As the assessees had shown the foreign income separately, surely it ought to have been checked up whether it was in foreign currency. It seems highly improbable that this was just a simple case of oversight. The Committee desire that appropriate action should be taken against the persons concerned. Further, as the assessee is reported to have stated that in all the previous years Ceylonese Rupees used to be taken for assessment, the Committee would like to know whether there was undercharge of tax in these years also.

8.9. The Committee learn that the Board have ordered a review of all cases involving foreign income of Rs. 10,000 in the case of non-corporate assessees and Rs. 5,000 in the case of corporate assessees. The results of the review as also the disciplinary action taken in glaring cases of negligence may be reported to the Committee.

Audit paragraph

8.10. Under the Income-tax Act, 1961 where the advance-tax paid by an assessee exceeds the amount of tax payable as determined on regular assessment, refund of the excess is to be granted within a period of six months from the date of assessment, failing which the Central Government has to pay interest at the prescribed rate on the amount refundable for the period of delay in granting refund. In a case, refund of Rs. 5,31,840 due to an assessee relating to the assessment years 1963-64 to 1964-65 was granted after the expiry of the prescribed time-limit of six months resulting in payment of avoidable interest of Rs. 31,091.

[Paragraph 34(iii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

8.11. The Committee wanted to know the circumstances in which the refund could not be authorised within the stipulated time of six months. The Ministry of Finance (Department of Revenue and Insurance), in a note submitted to the Committee stated: "The Income-tax Officer has explained that the case was in a Ward of a Functional Unit. It was the first year of introduction of the Functional Scheme. He was looking after collection work of more than ten Assessing Officers. He has accepted that there was delay. His explanation was not found satisfactory and he has been warned."

8.12. The Committee pointed out that in the course of evidence before them while considering paragraph 52(b) of the Audit Report 1970-71, it was stated that a study was being undertaken for the reasons for delay. The Committee enquired whether the study had been completed. They also desired to know whether the study had covered all the cases where refunds were delayed or covered only those cases where there was delay in authorising refunds arising out of appellate orders. The Ministry, in a note submitted to the Committee, stated: "At Board's request, a study was conducted by the Director of Inspection (Research, Statistics and Publications) by undertaking sample checking of refunds in Bombay, Calcutta, Madras, Delhi, Ahmedabad and Lucknow Charges to examine:

(a) whether during the last three years refund claims have been kept pending for valid reasons;

(b) whether interest has been paid on late refunds wherever due, and if not;

(c) the reason for not paying such interest to the refundees.

The study covered following types of cases:—

(i) Refund cases arising out of the orders passed in appeal or other proceedings (rectifications, etc.); and

(ii) Direct refunds under section 237.

Cases selected include all categories of refund cases including cases of refunds of above Rs. 5 lakhs, direct refund cases of all categories and of intermediate refund cases.

A total number of 509 cases of refunds were examined out of which refund were issued late in 33 cases including two cases which were referred to the C.I.T. u|s 241 for withholding of the refunds as the facts and circumstances of the case warranted withholding of refunds. Out of balance 31 cases, interest has been paid in five cases only for late payment of refunds and no interest was paid in 26 cases for late payment of refunds. Instructions have been issued to the Commissioners of Income-tax in respect of whose charges, the study was conducted, to take necessary action. Instructions have also been issued by the Board that the I.A.Cs. should be directed that in course of inspections carried out by them, they should find out those cases in which interest was not paid in delayed refunds though it was due and to fix the responsibility for such omission."

8.13. The Committee were given to understand that the Direct Taxes Enquiry Committee (Wanchoo Committee) had also obser-

ved that: "There is a general complaint that refund claims are not settled expeditiously and there is considerable delay in issuing refund notices. We find that instructions have been issued from time to time that claims should be disposed of with expedition and that refund vouchers should invariably accompany the order which gives rise to the refund."

8.14. When asked for the action taken on the above recommendation, the Ministry, in a written note, stated: "Regarding Wanchoo Committee's recommendation that Refund Voucher should accompany the order, instructions already exist in the Manual of Procedure for Functional Unit that no notice u|s 156 will be signed without signing the Refund Voucher."

8.15. The Committee enquired whether the Internal Audit were commenting on such cases of avoidable expenditure. The Ministry, in a written note, replied: "The scope of check by Internal Audit is coterminus with Revenue Audit. Internal Audit Parties are therefore expected to comment on such cases of avoidable expenditure."

8.16. A representation was received by the Committee from an assessee in November 1973 regarding inordinate delay of 7 years in issuing the refund voucher for the refund due to her. The facts of the case briefly are as under:—

The petitioner is an assessee of Income-tax Department ever since the assessment year 1945-46. An amount of Rs. 37035.46 was realised from her as income-tax in excess in respect of the assessment year 1957-58. On her appeal before the Appellate Assistant Commissioner of Income-tax, the AAC held on 4-7-1966 that the relevant assessment order was illegal. The directions of the AAC were carried out by the I.T.O. on 26-11-1966 that the said amount of Rs. 37035.92 was refundable to her. Despite her repeated reminders and personal requests, the relevant refund voucher for Rs. 37035.92 was issued to her only on 19-9-1973, i.e., after a period of nearly 7 years.

8.17. When asked to furnish a detailed note on the subject *inter-alia* indicating the reasons for the delay of about 7 years in issuing the refund voucher, the Ministry of Finance (Department of Revenue and Insurance), in a note, stated: "Smt.....declared an income of Rs. 17,988 by way of 75 per cent share from firm of M/s.....during the assessment year 1957-58. It was accepted by the Income-tax Officer. In the course of Wealth-tax assessment proceedings for the year 1957-58, it was noticed that the assessee had declared cash balance of Rs. 60,000 as on 13-4-1957, the valua-

tion date for the assessment year 1957-58 for Wealth-tax purposes. In her explanation, the assessee submitted that she has the following sources from which the cash has come:—

1. Withdrawal from M/s .....for the last 13 years	Rs. 57,398
2. Income from agriculture for the last 10 years @ Rs. 2,500 per year	Rs. 25,000
3. Rent collections	@ 500
	Rs. 82,898
Less :	
(*a*) Amount spent for making ornaments	Rs. 7,200
(*b*) Personal and other expenses for the last 13 years	Rs. 15,698
	Rs. 22,898
	Rs. 60,000

The Income-tax Officer thereupon asked the assessee to produce evidence in support of the sale proceeds of agriculture and to appear before him for cross-examination regarding the facts of having all the money at home. The explanation given by the assessee regarding the extent of her expenses, her agricultural income and purchases of ornaments was not accepted by the Income-tax Officer in the absence of what he considered as adequate evidence. The Income-tax Officer, therefore, added the whole amount of Rs. 60,000 as income from undiclosed sources in his assessment order dated 13-8-1962 after re-opening the original assessment under Section 34.

The assessee preferred an appeal against the assessment order before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner by his order dated 4-7-1966 deleted the addition on a technical ground without going into the merits of the case. The ground given by the A.A.C. is that income from undisclosed source is to be assessed on financial year basis as per provisions of the law. Since the cash balance appears on 13-4-1957, it fell for consideration in the assessment year 1958-59. This decision of the A.A.C. was accepted by the Department.

The decision of the A.A.C. dated 4-7-1966 was received by the Income-tax Officer on 29-8-1966 and the direction of the A.A.C. was carried out by the I.T.O. on 20-11-1966. Under Section 244 of the Income-tax Act, the effect of the appellate order must be given within six months of the date of the A.A.C's order and this was done within six months. There appears to be no particular reason for delay in giving effect to the A.A.C's order from the date of receipt, *i.e.*, 29-8-1966 to 20-11-1966 except that the officials concerned were attending the other work.

The refund was worked out on the file but it was not issued to the assessee, the reason being that in view of the finding of the A.A.C., the assessments for the assessment year 1958-59 was to be re-opened to tax the amount of Rs. 60,000 as undisclosed income during the assessment year 1958-59. Notice under section 148 was issued on 20-11-1966, the date when the appeal effect for the assessment year 1957-58 was given. The assessee moved a petition dated 6-5-1967 to the Commissioner of Income-tax, West Bengal III requesting that the refund due for the assessment year 1957-58 may be granted to the assessee. The Commissioner by his letter dated 26-5-1967 issued instructions to the Income-tax Officer that the assessment for the assessment year 1958-59 may be completed immediately and the resultant demand should be adjusted against the refund due for 1957-58. The case was taken up for hearing on 8-6-1967 but it was adjourned after being heard in part only. Due to frequent changes in the incumbents of the office the assessment escaped the attention of the Income-tax Officer and ultimately the assessment was completed on 30-1-1971 on an income of Rs. 83,270 including the sum of Rs. 60,000 as income from undisclosed sources for the assessment year 1958-59. The assessee went in appeal against this addition also and the A.A.C. by his order dated 28-8-1972 deleted the addition accepting the explanation of the assessee as given above. The Department has filed an appeal against the order of the A.A.C. before the Tribunal on 6-1-1973. The assessee again moved a petition before the Commissioner of Income-tax on 21-5-1973 for grant of refund. The I.T.O. asked for the permission of the Commissioner of Income-tax for withholding the refund u/s 241 as in his opinion there was likelihood of the demand that is to be raised in 1958-59 not being collected in case the refund was issued for 1957-58. However, the Commissioner of Income-tax did not agree with the same and in view of the sound financial position of the assessee issued instructions for granting of refund by his letter dated 10-8-1973. A refund voucher was accordingly issued for Rs. 37,035.92 on 29-8-1973. The interest of Rs. 22,900/- has now been granted to the assessee on 16-11-73.

No review has been carried out for subsequent assessment years. However, it is reported that the income returned has been accepted in the subsequent years with only slight modifications.

Commissioner of Income-tax, West Bengal in whose jurisdiction the case falls, is satisfied with the explanation given by the I.T.O. for the delay in giving effect to the appellate order and issue of refund voucher. However, the Board considers it necessary to examine the facts further to fix the responsibility. Suitable action will, if necessary, be taken against the erring officials."

8.18. Drawing attention of the witness to the above, the Committee enquired whether there was not any time-limit in issuing refund vouchers. The Member, Central Board of Direct Taxes stated: "There is a time limit. It is within six months of the passing of the appellate orders."

8.19. When asked for the reasons for the delay, the witness stated: "There is a lapse on the part of the Income-tax Officer in not having acted quickly in this case."

8.20. Pointing out that this was a criminal delay and that in cases of refunds there was a time-limit of six months to carry out the appellate orders, the Committee wanted to know the steps taken by the Board to ensure that the instructions, issued by the Department were strictly complied with by the assessing officers. The witness stated: "The Inspecting Assistant Commissioners have been instructed that while carrying out the inspections they should look into some of the cases and wherever there is delay, they should instruct the officers."

8.21. When asked whether any action had been taken against those persons who took all these years to give orders of refund, the witness stated: "We shall fix responsibility."

8.22. The Finance Secretary, added: "So far as this case is concerned, there has been a delay of six to eigth years and I also consier that it is a serious offence and we shall take serious action against the officers responsible."

8.23. A representation received from an assessee has shown that there has been a delay of over 7 years in giving refund on the basis of an appellate order. Only after the matter was taken up with the Central Board of Direct Taxes, interest amounting to Rs. 22,900 was paid to the assessee for the belated refund. The Committee consider that the inordinate delay in this case calls for severe disciplinary action. Indeed, a thorough inquiry and study is necessary to establish how a refund due on an appellate order can remain unpaid for as many as seven years. Such refunds should be paid with the utmost promptness and procedures should be evolved to ensure that this invariably happens.

8.24. The Committee have dealt with the problem of belated refunds in paragraph 2.234 of their 87th Report (Fifth Lok Sabha). A study of 509 cases of refunds in important charges has revealed that refunds were made belatedly in 31 cases of which no interest was paid in 26 cases. The Committee take a serious view of the

delay in making refunds and the non-payment of interest. It is quite evident that such publicised refund drives have'nt helped to any great extent.

Audit paragraph

8.25. Under the Annuity Deposit Scheme introduced from 1-4-1964 assessees over seventy years could opt out of the scheme without attracting additional liability. The option was to be exercised, in the case of persons who became liable to the scheme for the assessment year 1964-65 by 30th September, 1964 and this date could be extended with the prior approval of Inspecting Assistant Commissioner. Option once exercised applied to all succeeding assessment years.

8.26. An assessee who became liable to make an annuity deposit for the assessment year 1964-65 neither made the deposit nor opted out of the scheme. She wrote to the assessing officer on 8-10-1967 requesting him to exempt her from making the deposit. The assessing officer ignored this letter and in the original assessment for 1964-65 allowed a deduction of Rs. 2,03,860 on account of the annuity deposit required to be made by her. For the assessment year 1965-66 she made an annuity deposit of Rs. 2,50,000 on 20-3-1965 and in the original assessment completed on 1-1-1968, a deduction of Rs. 2,53,634 was allowed on account of the deposit required to be made by her. Subsequently, she represented that being over seventy years old when the Annuity Deposit Scheme became applicable to her, she wanted to opt out of the scheme and requested that the delay in making the declaration be condoned. The declaration was accepted with the prior approval of the Inspecting Assistant Commissioner and the deductions of Rs. 2,03,860 and Rs. 2,53,634 allowed in the assessments for 1964-65 and 1965-66 were withdrawn on 25-3-1969. The assessee applied on 15-4-1969 for the refund of the deposit of Rs. 2,50,000 for assessment year 1965-66 which had been made by mistake. Instead of refunding the deposit, the Income-tax Officer restored the deduction of Rs. 2,53,634 by revising the assessment for 1965-66 again on 24-5-1969, which resulted in under-assessment of income by Rs. 2,53,634 and the consequent short-levy of tax of Rs. 1,89,077.

8.27. The Ministry have replied that the mistake has been rectified. Report of collection of the tax is awaited (February, 1973).

[Paragraph 34(v) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

8.28. The Committee wanted to know the date on which the assessee filed her option for getting out of the Annuity Deposit Scheme

because of her age and the action taken on her letter. The Ministry of Finance (Department of Revenue and Insurance), in a note submitted to the Committee, stated:

"Income-tax records show that on 15-4-1969 the assessee had filed a letter to the Income-tax Officer stating *inter-alia* that the assessee was not liable to deposit annuity deposit being over 70 years of age and through mistake she had deposited Rs. 2.5 lakhs on 20-3-1965. The letter dated 15-4-1969 contained by way of enclosures copies of letters dated 8-10-1967 and 18-1-1968 (stated to have been handed over personally to the ITO on 9-10-67 and 25-1-68 respectively) and an application in form 6B claiming refund of Rs. 2.5 lakhs for the assessment year 1965-66. The originals of these earlier letters are not on record.

The other application on the file is dated 30-4-69 in which it is stated that as the assessee was over 70 years of age, she desired exemption under section 280X(i) of Income-tax Act for assessment year 1964-65 and onwards. For want of sufficient knowledge she had failed to give the required notice before the prescribed date though an application for the same was submitted at the time of assessment. It was requested that the irregularity may be condoned.

The Income-tax Officer sent a report dated 12-5-1969 to I.A.C. Jabalpur giving in brief the facts of the case and seeking the IAC's approval for condonation of the delay in filing the application by the assessee for non-payment of annuity deposit for the assessment years 1964-65 and 1966-67 to 1968-69.

IAC's approval was communicated to the ITO by letter dated 16-5-1969."

8.29. When asked for the date on which the assessment for 1964-65 and 1965-66 were completed, the Ministry, in a note submitted to the Committee, furnished the information as under:

"The regular assessment for the assessment year 1964-65 was completed on 21-11-1967 and that for the assessment year 1965-66 was completed on 1-1-1968."

8.30. The Committee desired to know the circumstances for which the application filed in October 1967 was taken up for consideration in 1969. The Ministry in a note stated: "As explained the application stated to have been personally handed over to the ITO in October, 1967 is not on record. The ITO had referred the matter to the IAC in may 1969 apparently on receipt of assessee's letter dated 15-4-1969 and 30-4-1969."

8.31. The Committee asked for the reasons for not ordering the amount of Rs. 2.5 lakhs to be refunded to her when the assessments were revised by the Income-tax Officer. The Ministry, in a note, stated:

"Assessment for 1965-66 was made on 1-1-1968. In the assessment order, no deduction was made for annuity deposit but this was done in the I.T. 30.

Assessment for the year 1965-66 was revised u/s 154 by order dated 30-4-1968 to revise the share of the assessee consequent on a change in the income of the firm M/s. The order was signed by the then ITO but I.T. 30 was not prepared nor was it entered in the Demand and Collection Register.

The successor ITO came across the above mentioned order and get the assessment form prepared and signed it on 25-3-1969. The tax was calculated on the gross income. (The assessment form was prepared by the clerk without deducting annuity deposit payable).

The assessee could have opted out of the annuity deposit scheme by filing an application by 30-9-1964. However, the application was admittedly filed after that late and as such it could be accepted by the Income-tax Officer only with the prior approval of I.A.C. Approval of the I.A.C. was communicated to the ITO only on 16-5-1969. Therefore in the order dated 30-4-1968 and the tax computation made on 25-3-1969, deduction for annuity deposit payable should have been allowed u/s 280-0 and annuity deposit should have been separately demanded. The tax calculation on the gross income without deduction for (and separate levy of) annuity deposit was, therefore, wrong.

Under the circumstances the assessee was not legally entitled to refund of the annuity deposit on the basis of the rectification order dated 30-4-1968/tax calculation dated 25-3-1969.

The assessee's application for exemption from the Annuity Deposit Scheme was accepted by the Income-tax Officer with the approval of the IAC in May, 1969 and, therefore, refund of the annuity deposit could be ordered only thereafter. Rectification was done on 1-9-72 under section 154 to give effect to the audit objection and deduction u/s 280-0 was withdrawn. The annuity deposit paid previously was ordered to be refunded (November, 1973)."

8.32. The Committee enquired whether it was correct in law to have restored the deduction instead of allowing her the refund. The Ministry, in a note, replied:

"Tax calculation made on 25-3-1969 on the basis of rectification order dated 30-4-68 was wrong. Tax should have been charged on the income after making a deduction for annuity deposit.

Rectification order dated 24-5-1969 was also erroenous in as much as by that date the ITO had accepted the assessee's request for opting out of the Annuity Deposit Scheme and as such the tax should have been charged on the gross income without considering annuity deposit. To conclude, both the orders, *i.e.*, dated 30-4-1968| 25-3-69 and 24-5-69 were wrong."

8.33. When asked whether the Department was aware that there was a general complaint that communications addressed to the Income-tax Officers were not replied to promptly or even acknowledged, the Ministry, in a note, explained "Receipts are issued by the Income-tax Department whenever any return, document or communication is delivered in the normal course at the Receipt Counters in the Income-tax Office. Communications addressed by taxpayers to the ITOs are, by and large, attended to fairly promptly, although occasional lapses may occur due to misfiling of papers, rush of work, etc."

8.34. The Committee desired to know whether the Department had taken any steps in the matter of creating confidence in the minds of the assessees that documents and letters sent by them were properly filed, promptly looked into and taken into consideration while completing assessments. The Ministry, in a note, stated: "The Income-tax Department is keenly aware of the need for improving its public relations and its public image. The Board have also taken several steps in recent years to improve its image and to bridge the confidence gap between the taxpayers and the tax officials. Detailed instructions have been issued by the Board in Office Manual Volume II, Section II (page 94) laying down the procedures for the maintenance of Receipt Registers, putting up of the dak to the ITOs, distribution of dak among concerned staff members and for watching the disposal of receipts noted therein. The Department has recently introduced a system of allotting Permanent Accounts Numbers to the taxpayers and it is expected that if the Permanent Account Numbers are duly quoted by taxpayers on their challans, letters etc., the problem of misfiling of papers would be reduced very considerably."

8.35. This paragraph illustrates the manner in which communications addressed to the ITO are ignored when framing assessments causing inconvenience and possible harassment to the assessees. It also illustrates the manner in which the provisions of law are ignored.

8.36. The assessee applied for exemption from payment of annuity deposit on the ground that she had crossed the age of 70 years. This application was made in October, 1967. The option was, however, ignored while making assessment, subsequently in November, 1967. Strangely enough, it is now reported that the application stated to have been personally handed over to the ITO is not on record. The Committee desire that the matter should be investigated with a view to fixing responsibility. The Committee need hardly point out that there is a need to improve the public image of the Income-tax Department and such instances which undermine the confidence of the public should be taken serious note of.

8.37. On the basis of another letter dated 15th April, 1969 from the assessee, IAC's approval for condonation of the delay in filing the application for non-payment of annuity deposit was obtained on 16th May, 1969. However, while revising the assessment for the year 1965-66 on 25th March, 1969, the tax was calculated on the gross income without making a deduction for annuity deposit which was clearly wrong. Further, rectification order dated 24th May, 1969 was also erroneous inasmuch as by that date the ITO had accepted the assessee's request for opting out of the Annuity Deposit Scheme. The Committee desire that these lapses should be gone into for taking appropriate action.

CHAPTER IX

OTHER TOPICS OF INTEREST

Audit paragraph

9.1. The Public Accounts Committee in para 1.32 of their 51st Report (5th Lok Sabha) pointed out that in many professions, people may try to evade tax especially the professional lawyers, doctors, engineers, contractors etc. The Committee enquired whether any concerted efforts had been made in this regard by the department. The department promised to collect the information with regard to the total number of the doctors, lawyers etc., in three or four selected centres.

9.2. A test check was conducted in one Commissioner's charge in the year 1972 and it revealed that against 2,700 lawyers who were enrolled and practising only 327 lawyers were assessed to income-tax.

[Paragraph 35(i) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

9.3. In 1971, in paragraph 1.32 of their 51st Report (Fifth Lok Sabha), the Committee had desired to have information with regard to four categories, *viz.*, lawyers, doctors, contractors and engineers in the four cities of Bombay, Calcutta, Delhi and Madras, indicating against each category their total number and number of those who were submitting their returns. The Ministry of Finance (Department of Revenue and Insurance) in their reply dated the 15th November, 1973 have furnished the information in regard to doctors and lawyers as under:

"The information since collected from the Commissioners concerned at Delhi, Bombay, Calcutta and Madras regarding doctors and lawyers is given below:

	Delhi	Bombay	Calcutta	Madras
(i) No. of doctors practising	1130	12,044	7,793	3,117
No. of doctors on General Register of the Department	636	7,689	3,643	1,904
(ii) No. of lawyers enrolled with Bar Associations	1496	5,382	1,346*	2,740
No. of lawyers on General Index Register of the Department	703	3,831	Not yet available**	393

*Does not include those enrolled with Bar Council ; that information is being collected and will be furnished soon.

**Being collected."

9.4. The Ministry, in a further note, stated:

"The requisite information since collected is given below:

No. of advocates enrolled with the various Bar Associations	43,190
No. of such advocates verified to be assessed to tax	7,404

The verification of above noted provisional figures is, however, still not complete. The Commissioner have addressed the persons concerned. The Commissioners are being asked to pursue the verification vigorously and take appropriate action as may be indicated as a consequence of the information gathered."

The following position emerges from the above information:

Category (1)	Total No, in four cities (2)	No. on G.I.R. of the Deptt. (3)	Percentage of (3) to (2) (4)
Doctors	24,084	13,872	57·6
Lawyers	43,194	7,404	17·1

As regards the other two categories, the Ministry, in their reply dated 15th November 1973, have stated that similar information regarding contractors and engineers is being collected and will be furnished to the Committee as soon as available."

9.5. Pointing out that out of the total of 43,190 lawyers in the four major cities *viz.* Bombay, Calcutta, Delhi and Madras, only 7404 were verified to be assessed to tax, the Committee enquired whether the Department were satisfied that the remaining 35,786 lawyers were not liable to pay income-tax, in other words their annual income was less than Rs. 5,000 and if so, they wanted to know the steps taken by Government to ensure that there was no tax evasion in those cases. The Member, Central Board of Direct Taxes stated: "Some of them have been examined and some of them are under examination. It has been found that some of them are not liable to tax. Some of them who are borne on the Bar Council Registers are not practising. They are salaried employees or they have retired."

9.6. The witness added: "We have examined the position in the four major cities. In Delhi we have got 1496 lawyers practising; in Bombay 5382 and in Calcutta 1346. The figures are not complete because the Bar Council has not given the information.

9.7. The Committee wanted to know whether any fact finding survey was conducted as suggested by them to see that there was no evasion of tax in those categories. The Member, Central Board of Direct Taxes state: "On 3rd June, 1972, the Chairman (CBDT) had addressed a special letter to the Commissioners regarding the survey of salaried employees and professional persons, which stated that during the last few years the field of the survey was limited. Very little effort had been put in for tapping the sources which could yield good results and that it was necessary to pay attention to this sector of taxpayers. It also urged that each salary circle has to maintain a register. Later on in his d.o. letter, he has said that similar attention should be paid to the discovery of new assessees. A record of persons in the professions published by professional organisations like the Indian Medical Association, Bar Council etc. should prove useful. He has said 'I have no doubt that this work will be attended to properly'."

9.8. The witness added: "The Commissioners of Income-tax were asked to undertake a survey and the figures quoted are as a result of that survey. In the meantime new assessees have been brought to book. It is a continuing process."

9.9. To a question the witness replied: "We would be able to complete the survey within about six to eight months."

9.10. The Committee enquired whether any machinery had been devised to see that professional people like lawyers, doctors, engineers and architects etc. were brought to the income-tax net and the income returned by them was true and correct. The Member, Centre Board of Direct Taxes, stated: "The doctors and lawyers do not maintain, as a general rule, any accounts. As far as lawyers are concerned they produce a book which is a sort of diary containing the cases that he had undertaken. It may or may not show all the cases. The law is sought to be amended to make these professional people keep some sort of account. That procedure is being processed in the Bill that is before the Select Committee."

9.11. In reply to a question, the witness added: "The doctors do not keep any regular account and the Income-tax Officer tries to check and verify the bank passbook for assessment.... We are trying to amend the law to make it obligatory on their part to keep the account. At present there is no compulsion. Once we do that we will have something to go on. There is no other way at present except to examine their passbooks etc.

I will tell you a case about a skin specialist in Calcutta. He was showing less income. In that particular case we sent some people, he has caught while accepting some fees, but not showing to the Income-tax Department. His income was one lakh of rupees. That can be done sometimes, but that is time-consuming process. We want to bring in some sort of uniformity by asking them to keep the account, which can be verified. At present there is no basis. We cannot do such things in every case."

9.12. The Committee wanted to know the number of Doctors, Lawyers and Engineers were assessed to wealth-tax.

9.13. From the information furnished by the Ministry, it is seen that 3389 doctors, 1419 lawyers and 346 Engineers are at present assessed to Wealth tax.

9.14. After the Committee raised in 1971 the question of evasion of tax by the professional lawyers, doctors, engineers, contractors etc., the Department had taken some steps to assess the position. The information relating to the four major cities of Delhi, Bombay, Calcutta and Madras so far gathered reveals that out of 24,084 practising doctors and 43.190 lawyers enrolled with Bar Associations, only 13,872 and 7,404 respectively are on the General Index Register of the Department, which confirms the fears of the Committee. The Committee have, however, been informed that some of the lawyers who are borne on the Bar Council Registers are not practising. The actual number of practising lawyers should be ascertained immediately. The Committee are not convinced that the earnings of a doctor or a lawyer who has been actively practising for some years will ordinarily fall below the limit of exemption for income-tax. Therefore, the cases of practising doctors and lawyers who have not been filing their returns should be immediately gone into with a view to assessing them to tax. The action taken in this regard may be reported to the Committee. The Committee further desire that the survey in this regard should cover other areas also as early as possible.

9.15. The information in regard to contractors and engineers is stated to be still under collection. The Committee desire that the position in regard to other professional categories, such as architects, chartered accountants etc. should also be ascertained after getting information from the concerned institutes. The whole survey in regard to all the categories should be completed before June, 1975 and the results as well as action taken to assess them to income-tax/ wealth-tax should be intimated to the Committee. In this connec-

tion the Committee note that at present only 3389 doctors, 1419 lawyers and 346 engineers are assessed to wealth-tax.

9.16. It is surprising that although several decades have passed, the Department has not organised itself in a manner that would ensure that tax due from the members of various professions is fully recovered. The question has quite clearly been ignored so far. It is regrettable that it needed prodding by this Committee for the Department to undertake a survey now. The Committee would like to be informed of the concrete steps proposed to be taken as a result of the survey to see that the professionals are assessed to tax properly. It is necessary that a special machinery is devised and set up for this purpose with utmost expedition. What the machinery should is for the Government to decide. One of the suggestions could be to set up separate special circles for the different professionals, which should be really effective unlike the Fiim Circles.

Audit paragraph

9.17. In para 2.145 of their 29th Report (4th Lok Sabha), the Public Accounts Committee have taken a serious view of the device adopted by some Incom-tax Officers in making irregular collection of amounts from assessees to make good the shortfall of budget estimates. Again, in para 2.18 of their 76th Report (4th Lok Sabha) the Public Accounts Committee have advised the Central Board of Direct Taxes to keep a special watch in this connection.

9.18. During the local audit of an income-tax office in May, 1972 it was seen that a sum of Rs. 50,000 was collected from each of the two assessees on 30th March, 1971 and refunded to them on 2nd April, 1971 although their regular assessments for the year to which the payments purported to relate had been completed before 30th March, 1971 and no tax was due on that date in respect of those assessment years. It appears that the amounts were got deposited only for the purpose of inflating figures of tax collected for statistical and budgetary purposes in view of the fact that a sum of rupees one lakh was collected and refunded in different financial years, but within a period of three days.

[Paragraph 35(ii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

9.19. The Committee were given to understand by Audit that this case occurred in an 'A' Ward and that the ITO contended that

the payments had been made by the assessees voluntarily. The Committee were informed by the Ministry of Finance (Department of Revenue and Insurance) in a note submitted to them, that this Ward was manned by a Senior Income-tax Officer who was now an Assistant Commissioner.

9.20. In paragraphs 2.17 and 2.18 of their 76th Report (Fourth Lok Sabha) the Committee had taken a serious view of the irregular practices followed in some offices of the Department to ask the assessees to pay substantial amounts 'voluntarily' in the last days of the financial year to make up the deficiency in budgetary targets and to refund the same without demand in the beginning of the next financial year. The Central Board of Direct Taxes in their instructions dated the 9th December, 1967 took a serious view of such irregular collections and decided that such practices on the part of the Income-tax Officer should be stopped forthwith.

9.21. When asked whether the Officer was not aware of the Board's instructions of 1967, the Ministry in a note stated that the Officer was expected to be aware of the above instructions issued in 1967.

9.22. The Committee desired to know the action taken by the Board in this particular case. The Ministry in a note stated: "No other mistake is noted in this officer's ledger card. The C.I.T. cautioned the ITO for the above mistake. In view of the seriousness of the mistake the CIT has been asked to obtain the officer's detailed explanation with reference to the assessment records and send the same with his comments to the Board for considering further action."

9.22. The Committee wanted to know the exact procedure for budgetary allocations which compelled the officers to resort to such irregular devices and whether the procedure needed a reappraisal. The Ministry in a note stated: "After the budget estimates for a year are approved by the Parliament, the Commissioners of Income-tax are intimated the amounts expected to be collected by them. The allocation of the budget amongst the Commissioners is made on the basis of—

(i) the estimates submitted by them;

(ii) the earlier year's collections;

(iii) the effect of new levies, if any, for the year; and

(iv) revenue potential of each Commissioner's charge.

On their part, the Commissioners allocate the budget amongst the various ranges of the IACs on practically the same basis. The IACs

carry out the same exercise in respect of the Income-tax circles under them.

Notwithstanding the allocation of budget amongst the various authorities including the ITOs, there are clear instruction to ensure that no artificial collections are made by the officers. The instructions issued on 9th December, 1967, reiterated subsequently, are to the following effect:

(i) no artificial collections of any type should be made;

(ii) no refunds should be withheld for the purpose of reaching the budget; and

(iii) an Income-tax Officer will be judged not on the basis whether he has reached the budget target allotted to him but on the basis whether he has taken all possible steps (a) to raise all due demands (*e.g.*, by completing higher category assessments in time, by revising advance tax demands as a result of subsequent higher assessments and by making provisional assessments whenever called for), and (b) to collect the collectible demands.

Action will be taken against any Income-tax Officer, who is found to have collected demands in such irregular manner in future."

9.24. Despite the concern expressed by the Committee and strict instructions issued by the Central Board of Direct Taxes in pursuance of their observations, the practice of making irregular collection of amounts from the assessees to make good the shortfall of the budget estimates continues. The Board should therefore consider seriously as to what prompts the Tax Officials to resort to this highly undesirable practice and take suitable steps to put an end to it.

9.25. The Committee are surprised at the contention that the payments referred to in the Audit paragraph had been made by the assessees voluntarily. The Committee would suggest that the assessments of the obliging assessees completed by this ITO should be carefully examined to see whether any favouritism had been shown to them. The Committee also consider it important to undertake a review of substantial collections made at the end of the financial year without raising demands and refunded in toto at the beginning of the subsequent year in all the Circles. Such a review may indicate whether there was any collusion between the assessees and the assessing authorities.

CHAPTER X

WRITE-OFF

Audit paragraph

10.1. The case of an assessee who was prosecuted for holding gold worth Rs. 66,300 without satisfactory explanation was brought to the notice of an Income-tax Officer in September, 1954 by the Director of Inspection (Investigation). A report regarding concealment of income and its assessment to tax was called for by the Commissioner of Income-tax in December, 1954. The Income-tax Officer, however, completed the investigation to initiate action under Section 147 of the Income-tax Act and sought permission to start proceedings under Section 147 only in March, 1964. The assessment was completed in December, 1964 and demand raised in February, 1965. But tax could not be realised as the assessee had by then disposed of the confiscated gold returned to him in 1959 by the Customs Department. The Commissioner ultimately sanctioned the write-off of tax arrears of Rs. 68,944 in October, 1970.

10.2. There was a delay of over ten years in the income-tax office for taking action as per the directions of the Commissioner and in finalising the assessment which led to the irrecoverability of the arrears.

10.3. The Ministry have replied that owing to the difficulties in finding the real owner of the gold, the assessment proceedings were delayed and that there was excusable delay till February, 1961.

[Paragraph 36 of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes].

10 4. The Committee wanted to know the reasons for the delay of nearly 10 years by the Income-tax Officer to initiate action in this case after receipt of report of concealment from the Director of Inspection (Investigation). The Ministry of Finance (Department of Revenue and Insurance) in a note submitted to the Committee stated: "There was no delay of 10 years in initiating action in this case after receipt of report from the Director of Investigation. Enquiries were started immediately thereafter and the information gathered led to the belief that the assessee was merely a carrier and

that the gold really belonged to his father-in-law. Enquiries were started against the father-in-law and due to circumstances beyond the ITO's control these could not be concluded immediately thereafter. The assessee was always considered as a Benamidar and any assessment to be made on him was to be only a protective one."

10.5. The Committee desired to know the circumstances under which the gold confiscated from the assessee was returned to him in 1959. The Ministry in a note stated: "The gold was confiscated by the Collector of Customs, Calcutta. Against this the assessee filed an appeal to the Central Board of Revenue who dismissed the same. Thereafter, a revision petition was filed to the Central Government which ordered the release of the gold. While releasing the gold, the Additional Secretary to the Government of India passed the following order:

> 'Having regard to all the facts and circumstances of the case, the Government of India are pleased to give the benefit of doubt to the petitioner and direct that revision application be admitted and the gold under confiscation released to the petitioner'."

10.6. When asked whether the Income-tax Department was not informed about return of gold proposed by the Customs Department, the Ministry in a note stated: "The Income-tax Department was not informed about the return of the gold by the Customs Department. It is only in his sworn statement before the ITO on 29th July, 1963 that the assessee stated that the gold was released by the Government in 1959."

10.7. The Committee pointed out that as per Audit paragraph the assessment was completed in December, 1964 and demand raised in February 1965, thus a time-lag of two months between the assessment and the raising of demand. When asked how it happened, the Ministry in a note stated: "The assessment was completed on 23rd January, 1965 and not in December, 1964. Date of service of notice of demand was 8th February, 1965."

10.8. The Committee are greatly concerned about the utter lack of coordination between the Central Excise and Customs authorities and the Income-tax Department which resulted in this one case alone in a loss of revenue of Rs. 69,000. The case of the assessee who was prosecuted for holding gold worth Rs. 66,300 without satisfactory explanation was brought to the notice of the Income-tax Officer in September, 1954. However, after completion

of the investigation to initiate action under Section 147, the permission to start proceedings was sought only in March, 1964. In the meanwhile, the assessee had disposed of the confiscated gold returned to him in 1959 by the Customs Department. Regrettably the Customs Department did not keep the ITO informed of the release of the gold. The fact came to notice only in July, 1963. The demand raised in February, 1965 thus become irrecoverable.

10.9. There are two points which clearly emerge. Why should it have taken ten years for the Income-tax Officer to take any action in this matter? Clearly something is grossly wrong somewhere in the organisation. Secondly, ought there not to be a regular exchange of information between the Customs Department and the Income-tax Department, both of which come under the Ministry of Finance, so that the concealment of income may come to notice and the tax thereon recovered promptly?

10.10. The Committee would like to be apprised of action taken by the Ministry and the Central Board of Direct Taxes.

CHAPTER XI

OVER ASSESSMENTS

Audit paragraph

11.1. The Income-tax Act provides that an assessee not having been assessed previously, shall, if his total income of the previous year corresponding to the assessment year immediately following exceeds the prescribed limit send estimate of his total income, on the basis of which he shall pay advance tax. Failure to do so renders him liable to penal interest calculated in the manner laid down in the Act.

11.2. In the assessment for 1950-51, completed on 30th March, 1971, a person was assessed to tax amounting to Rs. 1,57,250 including a sum of Rs. 66,099 levied as penal interest by treating him as a new assessee. Actually, he had already been assessed for 1946-47 in 1947. The levy of penal interest was, thus, an overcharge to the extent of Rs. 66,099.

11.3. The Ministry have accepted the objection. The assessment in question is stated to have been rectified and amount of demand reduced by Rs. 66,000.

[Paragraph 37(iii) of the Report of the Comptroller and Auditor General of India for the year 1971-72, Union Government (Civil), Revenue Receipts, Volume II—Direct Taxes]

11.4. The Committee enquired whether the assessee in this case was on the General Index Register of the Department. They also wanted to know whether any notice calling for the return of income for the year 1950-51 was issued to him and any follow-up action taken. The Ministry of Finance (Department of Revenue and Insurance) in a written note submitted to the Committee, stated: "The assessee was on the GIR of the Department. No notice u/s 22(2) was issued to the assessee for 1950-51. There was no follow-up action."

11.5. Asked as to when the Department had come in possession of the information that income had escaped assessment, the Ministry in a note replied: "The Department came to know about the two bank accounts containing large cash deposits in 1955 when the assessment for 1945-46 was reopened u/s 34."

11.6. The Committee asked for the reason for issuing the notice only in February 1967 when the action was going to become time-barred. The Ministry in a note stated: "There appears to be some failure to take concurrent action for all the years. There is no material or record to indicate reasons for such failure."

11.7. It is indeed amazing that it took 16 years to issue a notice calling for return of income relating to the assessment year 1950-51 from the assessee. The action was taken only when it was about to become time-barred. As the assessee had been assessed in 1947 the Department should not have lost track of him and should have issued notice calling for the return promptly on the basis of the entries in the general index register. Further, the assessment was completed on the penultimate date of March 1971 and it would have presumably become time-barred after 31st March, 1971. The Committee take a very serious notice of the inordinate delay which is hardly excusable. They trust that deterrent action will be taken for the laxity.

11.8. The Committee would like to know whether the Internal Audit checked the assessment in this case and detected the incorrect levy of penal interest. If the mistake was not detected, the action taken against the persons responsible may be reported to the Committee.

11.9. The Committee presume that the income of the assessee relating to the years prior to and after 1950-51 has also been brought to tax. This may be confirmed.

CONCLUSION

11.10. The Committee would like sepcifically to invite of the Government to paragraphs (*) which bring to light gross shortcomings in the way in which tax collecting machinery is functioning. These shortcomings are not inescapable. They must account for very serious loss of revenue to Government; if they can be overcome by organisational improvements and greater supervisory efficiency, the revenue for direct taxes would without doubt substantially increase. There is no excuse for continued existence of sure inefficiency, carelessness and negligence, not to speak of corrupt practices.

NEW DELHI;
22*nd March*, 1974.
1*st Chaitra*, 1896 (*S*).

JYOTIRMOY BOSU,
Chairman,
Public Accounts Committee.

* 1.32 to 1.34; 1.72; 4.11; 4.46 to 4.48; 5.11—5.12; 5.32—5.33; 6.4; 7.32 to 7.34; 8.8—8.9 and 9.14 to 9.16.

APPENDIX

APPENDIX

Summary of main Conclusions/Recommendations

No. Sl.	Para No. of the Report	Ministry Concerned	Recommendations
1	2	3	4
1	1.32	Finance Rev. & Insurance	The Committee note that the total income of a film star for the assessment year 1967-68 was computed at Rs. 1,56,264 instead of at Rs. 2,56,264. It is not for the first time that a mistake of this type has come to the notice of the Committee. Year after year a number of mistakes have been brought out in the Audit Reports which are attributed to carelessness and negligence and the Committee have been expressing their concern. One common interesting feature of these mistakes was the dropping of one lakh of rupees from the total income. Many of the cases in which mistakes of this nature occurred were in high income bracket and were assessed in important Special Wards. In paragraph 2.43 of their 87th Report the Committee had come to the conclusion that either there was no effectlve check in the Department or the mistakes were not *bonafide*. In this case as the mistake had occurred in a Film Circle specifically created to scrutinise the cases of film stars properly, the *bonafides* of the mistakes should be carefully gone into for appropriate action.

2	1.33	Finance Rev. & Insurance	The assessee filed the return in December, 1971 after a delay of 4½ years and yet neither penalty nor interest has been levied so far. The Committee receive an impression that the Department have developed a mentality to postpone the penalty proceedings till they are about to become time-barred. The Finance Secretary stated that it appeared to him that when the order of assessment was passed the ITO did not at the same time take action in regard to penalties and that he generally kept it until there was an appeal. The Committee are not happy over this state of affairs. They desire that the procedures followed by the ITOs should be critically studied with a view to (a) ensuring that final orders are passed expeditiously, (b) taking steps to see that the interests of revenue are safeguarded and (c) in voking the penalty provisions effectively and in time.
3	1.34	-do-	The Committee are surprised to find that in this case, although the assessee was found to possess assessable wealth a notice was served on him under Section 17 of the Wealth-tax Act only in February, 1973. This would seem to indicate that the Gilm Circle is not functioning with the speed and efficiency as it ought to be. The Committee, therefore, suggest that the working of the Film Circles in the country since their inception should be critically examined with reference to the concealed income|wealth|gifts detected, undervaluation of assets found out, penalties levied, prosecutions launched and arrears of tax collected. On the basis of such an examination steps should be taken to make the Circles really effective. The Committee would like to have a detailed report in this regard.

1	2	3	4
4	1.42	Finance Rev. & Ins.	In this case a mistake in allocating the firm's income among its partners and a totalling error have resulted in under-charge to the extent of Rs. 1.40 lakhs. The Committee take a serious view of mistakes which could be attributed to anything besides carelessness and negligence. That these have occured in a Central Circle in an important case which had to be referred to the Income-tax Investigation Commission, is distressing. The Committee, therefore, feel that the case requires a thorough investigation by the Board to find out how such mistakes could happen in a Central Circle. They would await the result of the investigation.
5	1.43	-do-	Incidentally the Committee understand that the assessment of the firm has been set aside in an appeal which was preferred after Statutory Audit had gone into the case. The Committee would await the details of the re-assessment.
6	1.51	-do-	This is yet another case in which Rs. 1 lakh escaped assessment. Although it was shown in the assessment order as income to be assessed, it was omitted to be included in the total income. Regrettably the case had not been looked into by Internal Audit. The Committee trust that suitable action will be taken in the matter.
7	1.52	-do-	The Committee have been informed that the assessments for the years 1965-66 to 1967-68 were made after discussion with the group consisting of the assessee and his three brothers. The Committee would in connection refer to their recommendation in paragraph

			2.60 of their 50th Report (Fifth Lok Sabha) and reiterate that the settlement made without authority of law would be irregular. The Committee would like to know whether there was any defect in the settlement and whether the group had paid all the taxes up-to-date.
8	1.69	Finance Rev. Ins.	In this case while the law regarding capital gains as amended w.e.f. 1968-69 was correctly applied to in framing the assessment, it was lost sight of at the stage of calculation of tax. The Committee find that the Commissioner of Income-tax, Bombay has issued a circular on 8th June, 1973 pointing out the change in the law. The Committee desire that the assessments involving capital gains relating to the assessment years from 1968-69 onwards completed prior to the issue of this circular should be checked to see whether similar mistakes had been committed while calculating tax. The action taken in this regard may be reported to them.
9	1.70	-do-	In this case the return was due from the assessee on 30th June, 1968 but it was filed on 4th November, 1968. Interest under Section 139 should have, therefore, been levied which unfortunately was not done both at the time of original assessment in June, 1971, as also at the time of restification made in September, 1972. The lapse in this regard should be gone into for appropriate action.
10	1.71	-do-	Another aspect of this case which causes concern to the Committee is that the assessment was completed by the Department 2½ years after the receipt of the return. Such delays could be very inconvenient to the assessees who are really anxious to pay the income-tax. There seems to be no planning at all in the Department to ensure that all the assessments are taken up promptly.

1	2	3	4
11	1.72	-do-	The Committee have received an impression that the ITOs act with alacrity where they want to and other cases are put off till these are about to become time-barred. The figures reported in paragraph 7(iv) of the Report of the C&AG (1971-72) speak eloquently of the uttar lack of planning. The number of assessments completed during 1970-71 and 1971-72 was as low as 59,688 and 57,408 respectively in April and 55,078 and 55,737 respectively in May and it started rising gradually thereafter. The number of assessments completed in the month of March during these years was 5.37 lakhs and 4.94 lakhs respectively. That the performance is so poor in the beginning of a year despite the carry-over of the pending assessments to the extent of over 12 lakhs in number shows that something is seriously wrong somewhere. The Committee are convinced that with proper orientation and planning it should be possible not only to overtake the arrears but also to complete the assessments in time. They accordingly desire that the Department should give serious thought to this problem and take steps to normalise the position soon. The Committee would like to be informed of concrete measures taken to improve the rate of disposal of cases in the beginning of the financial year and to eliminate the undue rush towards the end of the financial year.
12	2.74	-do-	This is a case where an amount of Rs. 1,700 was excluded in determining the value of perquisite represented by provision of rent-free residential accommodation and in reckoning the total

				income liable to tax on the ground that the assessee was using for his official purposes one-third of the rent-free accommodation provided by Government. Although the assessee claimed the deduction under Section 16(v), the action of the ITO in allowing deduction is justified under the provision of Rule 3 of the Income-tax Rules governing the valuation of the perquisites of the rent-free accommodation.
13	2 25	Finance	Rev. & Ins.	The Committee learn that there have been similar cases of such claims which have been allowed. As the Attorney General's opinion obtained in this connection is stated to be not very clear, the Committee desire that the specific question of admissibility of such deductions while computing the perquisites of rent-free accommodation having regard to the provisions of Income-tax Act and Rules and other relevant rules should be referred to him. The Committee would await his opinion on the question.
14	3 13	-do-		This is a deplorable case of failure to correlate income-tax records of the assessee with the Estate Duty assessment records of the assessee's husband. The land property which was valued as on 19-1-1960 as Rs. 12,500 for the purpose of Estate Duty was valued as 1.08 lakhs as on 1-1-1954 for the purpose of capital gains. The Committee, however, find that the assessee has filed a writ petition against the revision of the income-tax assessment on the ground that the land being agricultural, capital gains tax is not applicable.
15	3.14	-do-		The Committee do not think at all that the land measuring 8295 sq. yds. which is lying within the corporation limits of Bangalore city was valued correctly for the purpose of Estate Duty. This

1	2	3	4
			view has also been shared by the representative of the Central Board of Direct Taxes. The Committee accordingly stress that the supplementary account under the Estate Duty proceedings should be called with a view to checking the correctness of the valuation and taking appropriate action.
16	3.22	Finance Rev. & Ins.	The Committee find that the copital gains were not included in the total income of the firm but were apportioned among the partners and assessed in their hands after allowing the initial deduction of Rs. 5,000 separately in each case. This irregular method of assessment of the capital gains resulted in short-levy of tax by Rs. 25,899. The Committee understand that the Department has not accepted the explanation of the ITO that as the sale proceeds must have been credited to the partners' account the capital gains accrued to them.
17	3 23	-do-	The Committee regret that although the acceptance of the Audit objection has been communicated by the Ministry in January 1973, the remedial action has not yet been completed. The Committee would like to have an explanation for this delay, as also a report on the recovery of the additional tax.
18	3.29	-do-	The assessee constructed a house meeting the expenditure partly by a non-refundable advance from his Provident Fund Account. As he did not obtain prior permission of the Government for the sale of the house, he had to refund the amount together with interest

			of Rs. 27,932 to the Provident Fund Account. Strangely enough, the I.T.O. allowed his claim for the deduction of the interest also while arriving at the capital gains. As the interest paid to his own account cannot be regarded as an item of expenditure, the circumstances under which it was allowed to be deducted should gone into with a view to taking appropriate action.
19	3.30	-do-	The Committee find that the assessee has filed a writ petition in the High Court of Delhi challenging the action taken by the Department for rectifying the assessment. The Committee would await the outcome.
20	4.11	-do-	Under the provisions of the Income-tax Act, a percentage of the profits of a new industrial undertaking is exempt from tax and that portion of dividend which is deemed to have been paid out of the exempted portion of the profits of the company is exempt from tax in the hands of the shareholders. The Committee understand that a certificate is obtained in advance from the ITO assessing the company, showing the percentage of dividend qualifying for exemption. However, when the assessment of the company is completed or revised and the exempted portion is altered the certificate originally issued becomes invalid and the shareholder's assessments require revision. The Department does not seem to have any machinery at present to keep track of such cases and ensure the reopening of the assessments of the shareholders to collect the extra tax payable by them. The Committee suggest that this lacuna should be remedied soon.

1	2	3	4
21	4.12	Finance Rev. & Ins.	In the case reported in the Audit paragraph, although revision of the company assessment in March 1970 resulted in the reduction of the percentage of dividend qualifying for exemption from 21.41 per cent to 7.96 per cent, revised certificate was not issued till August, 1971. In the meanwhile, Audit had also pointed out the omission in June 1970. The reason for this inordinate delay should be ascertained expeditiously and the Committee advised as to what action has been taken against the persons responsible.
22	4.13	-do-	The Committee find that assessments of the shareholders holding 1.69 lakhs out of 2.5 lakhs shares of the company have been revised. The Committee would await the position in regard to the remaining shareholders' assessments.
23	4.28	-do-	This is yet another case of non-revision of the exemption certificates issued under Section 197(3) which resulted in under-assessment of dividend income to the extent of Rs. 17.22 lakhs in the hands of the share-holders. While the Committee await a report regarding the recovery of the tax due, they consider that notwithstanding the difficulties pointed out by the Ministry, it is worthwhile to undertake a review of cases of all big companies in which such certificates were issued to find out in how many cases under-assessment had taken place and to recover the differential tax wherever possible. The Committee are surprised that the Department have not so far

			thought on these lines. The Committee would await the results of the review.
24	4.29	Finance (Rev. & Ins.)	The Committee would like Government to review the existing statutory provisions on the subject with a view to amend the law, as necessary, to obviate recurrence of such cases.
25	4.36	-do-	The provisions of Income-tax law relating to allowance of deduction from total income for subscription to Public Provident Funds and the cumulative deposit schemes are confined only to individuals. However, deductions were allowed in 5 cases assessed in the status of Hindu Undivided Family resulting in short-levy of tax of Rs. 21,026. The lapse of the ITO and the failure of the Internal Audit Party to detect the mistake may be suitably dealt with. The Committee would await the results of a general review of the position in all the Circles and the action taken on the basis thereof.
26	4.37	-do-	The Committee suggest that Government should consider whether there is any worthwhile reason for limiting the relief for contribution to Public Providend Fund and cumulative time deposit only to individuals.
27	4.46	-do-	The Committee find that there is a specific provision in the Income-tax Act, 1961 to assess income received after cessation of profession. In this case although the assessee realised such an income he showed it in part IV of his return and claimed that the amount was not taxable since when he received it, it had become time-barred for him to prefer a claim. As he was following the cash method of accounting the amount was assessable to tax. The Finance Secretary

(1)	(2)	(3)	(4)
			stated during evidence that he did not think that the claim was properly made. However, the ITO is reported to have stated that the assessment was completed under the Small Income Scheme and that part IV of the return where the exemption was claimed escaped his notice. This raises a general question whether it is advisable to complete the assessment to big salary cases under the Small In-Come Scheme. The Committee desire that this question should be examined critically.
28	4.47	Finance (Rev. & Ins.)	In view of what has happened in this case the Committee desire that the Board should consider a general review of similar cases of completed assessments involving income received after the cessation of profession.
29	4.48	-do-	In order that the income received after the cessation of profession may not escape notice, the Committee suggest that wherever a person discontinues his profession the ITO should obtain a statement from him showing the outstanding fees. Further, there should be a column in the return of income, to ensure that the receipt of professional income is disclosed year after year after the discontinuance of the profession which can be checked with reference to the statement of outstanding fees obtained by the ITO.
30	4.49	-do-	Incidentally the Committee understand that in this case he assessee had not shown the outstanding fees in his wealth-tax returns before they were realised. If it was required to be assessed

			to wealth-tax notwithstanding the maintenance of account on cash basis, suitable action may now be taken to levy wealth-tax. Further, general instructions may also be issued for the guidance of the assessing officers in future.
31.	5.11	-do-	The Committee regard this as a typical case of avoidance of tax. By establishing a branch in a foreign country and treating it as a separate entity the assesssee firm had sought to reduce its income artificially in India and avoided tax on the foreign income. The Committee stress that the matter should be examined in all its aspects in consultation with the Ministry of Law and the loophole, if any, in the Act plugged.
32.	5.12	-do-	In the meanwhile, the question of invoking Section 92 of the Act in this case should be examined expeditiously and the result intimated to the Committee.
33.	5.23	-do-	As the assignment of the individual interest in favour of the H.U.F. did not create an overriding title for diversion of income at source but was only application of income, the assessment of half of the share of income in the hands of the H.U.F. in the cases reported in the Audit paragraph was not in order. The irregular assessments resulted in short-levy of tax aggregating to Rs. 41.416. The Committee desire that general instructions clarifying the position in law should be immediately issued for the guidance of the field officers. Further, a test-check of similar past assessments with a view to rectifying them is also called for.

(1)	(2)	(3)	(4)
34.	5.24	Finance (Rev. & Ins.)	The Committee understand that the assessees have filed writ petition before the High Court and obtained interim stay. The outcome may be reported to the Committee.
35.	5.32	-do-	This is a case of an assessee trying to get advantage from both the Sales-tax Department and the Income-tax Department and the latter acquiescing in it. The failure to charge the refund of the sales-tax under Section 41(1) of the Income-tax Act, 1961 resulted in a short-levy of Rs. 22,270. Audit had brought it to light on verifying the relevant sales-tax records. It is a pity that there is no coordination between sales-tax Department and the Income-tax Department. The Committee accordingly recommend that there should be a system of collecting information from the Sales-tax Department direct to ensure that all the refunds are properly brought to tax.
36.	5.33	-do-	Incidentally the Committee find that the irreguarlity in this case was not objected to by the Internal Audit Party as the refund had not been brought to tax in accordance with the circular instructions issued by the Commissioner of Income-tax. The responsibility for issuing such a patently wrong instruction should be gone into for taking appropriate action, besides conducting a general review of the assessments of registered dealers in this Circle. The Committee would await a report in this regard.

37	6.4	-do-	The Income-tax Act has several provisions for imposition of interest with a view to ensuring stricter compliance by the assessees with provisions of the Act relating to assessment and collection. The interest is leviable (i) for short/non-payment of advance-tax, (ii) for delay in submission of return of income and (iii) for non-payment of tax by the due dates. The Income-tax Department is evidently lax in applying these provisions and year after year lapses involving huge revenue are brought to the notice of the Committee. In this connection they would refer to paragraph 2.294 of their 51st Report (Fifth Lok Sabha). Audit have brought out during the years 1970-71 and 1971-72 2493 and 2012 cases respectively involving amount of interest omitted to be levied to the extent of Rs. 67.05 lakhs and Rs. 54.52 lakhs. The Committee have been exhorting the Ministry to ensure that the penal provisions are properly enforced. The Ministry does not seem to have come to grips with the problem. Having regard to the fact that non-levy of interest has become chronic, the Committee consider that there is need for a general review of all cases where assessments for more than Rs. 50,000 have been completed, at least for the past three years. This review should be undertaken urgently and the results communicated to the Committee.
38.	7.32	-do-	Section 139 of the Income-tax Act, 1961, places the legal obligation on all persons having taxable income to disclose their income in the prescribed form. The explanation to Section 271(1) introduced w.e.f. 1-4-1964 casts on the assessee the burden of proving that the omission to disclose true income did not proceed from any fraud or

(1)	(2)	(3)	(4)
			gross or wilful neglect in cases where the returned income is less than 80 per cent of the income. In the context in which the word 'voluntary' has been used in Section 271(4A), it is only reasonable to infer that the disclosure should be one which is of one's own free will and not prompted by fear or inducement of any kind.
39.	7.33	Finance (Rev. & Ins.)	The Committee find in this case that having received information the Income-tax authorities carried out search of the premises of the firm and its partners. Only thereafter the firm and its partners submitted a 'disclosure petition'. The disclosure was treated as 'voluntary' and a penalty of Rs. 88,636 at 10 per cent of the tax sought to be evaded was levied as against the minimum of 20 per cent. The Department has justified the reduction of penalty under Section 271(4A) in terms of instructions issued in 1965. The Committee find that the instructions of 1965, which did not appreciate correctly the legal position, were subsequently superseded by instructions issued in 1969.
40.	7.34	-do-	There would appear to be some serious failure in the system of filing of instructions which makes an oversight of such importance possible. The Committee suggest that the whole matter should be reconsidered and clear instructions issued defining the scope of the Section 271(4A). Further, the guidelines should be laid down regarding the acceptance of the 'voluntary' disclosures of the assessees especially in cases where the Department has information regarding evasion and is carrying on investigations.

41.	8.8	-do-	The Audit paragraph brings out the failure to convert foreign income into Indian currency which resulted in considerable undercharge of tax. Such instances have been reported by Audit earlier also. The explanation for the failure of the official and Internal Audit Party in this case is far from satisfactory. As the assessees had shown the foreign income separately, surely it ought to have been checked up whether it was in foreign currency. It seems highly improbable that this was first a simple case of oversight. The Committee desire that appropriate action should be taken against the persons concerned. Further, as the assessee is reported to have stated that in all the previous years Ceylonese rupee used to be taken for assessment, the Committee would like to know whether there was undercharge of tax in these years also.
42.	8.9	-do-	The Committee learn that the Board have ordered a review of all cases involving foreign income of Rs. 10,000 in the case of non-corporate assessees and Rs. 5,000 in the case of corporate assessees. The results of the review as also the disciplinary action taken in glaring cases of negligence may be reported to the Committee.
43.	8.23	-do-	A representation received from an assessee has shown that there has been a delay of over 7 years in giving refund on the basis of an appellate order. Only after the matter was taken up with the Central Board of Direct Taxes, interest amounting to Rs. 22,900 was paid to the assessee for the belated refund. The Committee consider that the inordinate delay in this case calls for severe disciplinary action. Indeed, a thorough inquiry and study is necessary to estab-

(1)	(2)	(3)	(4)
			lish how a refund due on an appellate order can remain unpaid for as many as seven years. Such refunds should be paid with the utmost promptness and procedures should be evolved to ensure that this invariably happens.
44.	8. 24	Finance (Rev. &. Ins.)	The Committee have dealt with the problem of belated refunds in paragraph 2.234 of their 78th Report (Fifth Lok Sabha). A study of 509 cases of refunds in important charges has revealed that refunds were belatedly in 31 cases of which no interest was paid in 26 cases. The Committee taken, a serious view of the delay in making refunds and the non-payment of interest. It is quite evident that such publicised refund drives have'nt helped to any great extent.
45.	8 35	-do-	This paragraph illustrates the manner in which communications addressed to the ITO are ignored when framing assessments causing inconvenience and possible harassment to the assessees. It also illustrates the manner in which the provisions of law are ignored.
46.	8.36	-do-	The assessee applied for exemption from payment of annuity deposit on the ground that she had crossed the age of 70 years. This application was made in October, 1967. The option was, however, ignored while making assessment subsequently in November, 1967. Strangely enough, it is now reported that the application stated to

have been personally handed over to the ITO is not on record. The Committee desire that the matter should be investigated with a view to fixing responsibility. The Committee need hardly point out that there is a need to improve the public image of the Income-tax Department and such instances which undermine the confidence of the public should be taken serious note of.

47. 8.37 -do-

On the basis of another letter dated 15-4-1969 from the assessee, IAC's approval for condonation of the delay in filing the application for non-payment of annuity deposit was obtained on 16th May, 1969. However, while revising the assessment for the year 1965-66 on 25th March 1969, the tax was calculated on the gross income without making a deduction for annuity deposit which was clearly wrong. Further, rectification order dated 24th May, 1969 was also erroneous inas-much as by that date the ITO had accepted the assessee's request for opting out of the Annuity Deposit Scheme. The Committee desire that these lapses should be gone into for taking appropriate action.

48. 2.14 -do-

After the Committee raised in 1971 the question of evasion of tax by the professional lawyers, doctors, engineers, contractors etc., the Department had taken some steps to assess the position. The information relating to the four major cities of Delhi, Bombay, Calcutta and Madras so far gathered reveals that out of 24,084 practising doctors and 43,190 lawyers enrolled with Bar Associations, only 13,872 and 7,404 respectively are on the General Index Register of the Department, which confirms the fears of the Committee. The Committee have, however, been informed that some

(1)	(2)	(3)	(4)
			of the lawyers who are borne on the Bar Council Registers are not practising. The actual number of practising lawyers should be ascertained immediately The Committee are not convinced that the earnings of a doctor or a lawyer who has been actively practising for some years will ordinarily fall below the limit of exemption for income-tax. Therefore, the cases of practising doctors and lawyers who have not been filing their returns should be immediately gone into with a view to assessing them to tax. The action taken in this regard may be reported to the Committee. The Committee further desire that the survey in this regard should cover other areas also as early as possible.
49.	9.15	Finance (Rev. & Ins.)	The information in regard to contractors and engineers is stated to be still under collection. The Committee desire that the position in regard to other professional categories, such as architects, chartered accountants etc. should also be ascertained after getting information from the concerned institutes. The whole survey in regard to all the categories should be completed before June 1975 and the results as well action taken to assess them to income-tax| wealth-tax should be intimated to the Committee. In this connection the Committee note that at present only 3,389 doctors, 1,419 lawyers and 346 engineers are assessed to wealth-tax.
50.	9.16	-do-	It is surprising that although several decades have passed, the Department has not organised itself in a manner that would ensure

that tax due from the members of various professors is fully recovered. The question has quite clearly been ignored so far. It is regrettable that it needed prodding by this Committee for the Department to undertake a survey now. The Committee would like to be informed of the concrete steps proposed to be taken as a result of the survey to see that the professionals are assessed to tax properly. It is necessary that a special machinery is devised and set up for this purpose with utmost expedition. What the machinery should is for the Government to decide. One of the suggestions could be to set up separate special circles for the different professionals, which should be really effective unlike the Film Circles.

51. 9.24 -do- Despite the concern expressed by the Committee and strict instructions issued by the Central Board of Direct Taxes in pursuance of their observations, the practice of making irregular collection of amounts from the assessees to make good the shortfall of the budget estimates continues. The Board should therefore consider seriously as to what prompts the Tax Officials to resort to this highly undesirable practice and take suitable steps to put an end to it.

52. 9.25 -do- The Committee are surprised at the contention that the payments referred to in the Audit paragraph had been made by the assessees voluntarily. The Committee would suggest that the assessments of the obliging assessees completed by this ITO should be carefully examined to see whether any favouritism had been

(1)	(2)	(3)	(4)
			shown to them. The Committee also consider it important to undertake a review of substantial collections made at the end of the financial year without raising demands and refunded in toto at the beginning of the subsequent year in all the Circles. Such a review may indicate whether there was any collusion between the assessees and the assessing authorities.
53.	10.8	Finance (Rev. & Ins.)	The Committee are greatly concerned about the utter lack of coordination between the Central Excise & Customs authorities and the Income-tax Department which resulted in this case alone in a loss of revenue of s. 69,000. The case of the assessee who was prosecuted for holding gold worth Rs. 66,300 without satisfactory explanation was brought to the notice of the Income-tax Officer in September 1954. However, after completion of the investigation to initiate action under Section 147, the permission to start proceedings was sought only in March 1964. In the meanwhile, the assessee had disposed of the confiscated gold returned to him in 1959 by the Customs Department. Regrettably the Customs Department did not keep the ITO informed of the release of the gold. The fact came to notice only in July 1963. The demand raised in February 1965 thus became irrecoverable.
54.	10.9	-do-	There are two points which clearly emerge. Why should it have taken ten years for the Income-tax Officer to take any action in this matter? Clearly something is grossly wrong somewhere in the

			organisation. Secondly, ought there not be a regular exchange of information between the Customs Department and the Income-tax Department, both of which come under the Ministry of Finance, so that the concealment of income may come to notice and the tax thereon recovered promptly?
55.	10.10	-do-	The Committee would like to be apprised of action taken by the Ministry and the Central Board of Direct Taxes.
56.	11.7	-do-	It is indeed amazing that it took 16 years to issue a notice calling for return of income relating to the assessment year 1950-51 from the assessee. The action was taken only when it was about to become time-barred. As the assessee had been assessed in 1947 the Department should not have lost track of him and should have issued notice calling for the return promptly on the basis of the entries in the general index register. Further, the assessment was completed on the penultimate date of March 1971 and it would have presumably become time-barred after 31st March 1971. The Committee take a very serious notice of the inordinate delay which is hardly excusable. They trust that deterrent action will be taken for the laxity.
57.	11 8	-do-	The Committee would like to know whether the Internal Audit checked the assessment in this case and detected the incorrect levy of penal interest. If the mistake was not detected, the action taken against the persons responsible may be reported to the Committee.

(1)	(2)	(3)	(4)
58.	11.9	Finance (Rev. & Ins.)	The Committee presume that the income of the assessee relating to the years prior to and after 1950-51 has also been brought to tax. This may be confirmed.
			CONCLUSION
59.	11.10	-do-	The Committee would like specifically to invite of the Government to paragraphs (*) which bring to light gross shortcomings in the way in which tax collecting machinery is functioning. These shortcomings are not inescapable. They must account for very serious loss of revenue to Government; if they can be overcome by organisational improvements and greater supervisory efficiency, the revenue for direct taxes would without doubt substantially increase. There is no excuse for continued existence of sure inefficiency, carelessness and negligence, not to speak of corrupt practices.

*1·32 to 1.34; 1.72; 4.11; 4.46 to 4.48; 5.11—5.12; 5 32—5 33; 6.4; 7.32 to 7.34; 8.8—8.9; and 9.14 to 9.16.

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