P. A. C. 380

PUBLIC ACCOUNTS COMMITTEE
(1972-73)

(FIFTH LOK SABHA)

EIGHTY-SEVENTH REPORT

[Chapter IV of the Report of the Comptroller and Auditor General of India for the year 1970-71, Union Government (Civil), Revenue Receipts—relating to Income-tax.]

LOK SABHA SECRETARIAT
NEW DELHI
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Corrigenda to Eighty Seventh Report of Public Accounts Committee (1972-73) presented to Lok Sabha on 26th April, 1973.

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Page	Para	Line	For	Read
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134	-	6	fleld	field
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162	-	2	(Page -)	(Page 95)
164	-	2	(Page -)	(Page 150)
174	Sr.No. 13 Para 2.19	7	Delete the words - "receive an impression"	
176	-	5	re-revis-ed	revised
195	Sr.No. 61 Para 3.28	2	180.76	180.75
200	Sr.No.73 Para 6.6.	2	1,92	1.92

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(1972-73)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Eighty-Seventh Report of the Committee (Fifth Lok Sabha) on Chapter IV of the Report of the Comptroller and Auditor General of India for the year 1970-71, Union Government (Civil), Revenue Receipts, relating to Income Tax.

2. The Report of the Comptroller and Auditor General of India for the year 1970-71, Union Government (Civil), Revenue Receipts was laid on the Table of the House on the 14th April, 1972. The Committee examined the paragraphs relating to Income-tax at their sittings held on the 27th October, 1972 (After-Noon) and 30th October, 1972 (both fore-noon and after-noon). This Report was considered and finalised by the Committee at their sitting held on the 24th April, 1973 (Fore-Noon). Minutes of the sittings from part II* of the Report.

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

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

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

NEW DELHI;
24th April, 1973.
4th Vaisaka, 1895 (*S.*)

ERA SEZHIYAN,
Chairman,
Public Accounts Committee.

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

CHAPTER I

CORPORATION TAX AND TAXES ON INCOME OTHER THAN CORPORATION TAX,

Audit Paragraph

1.1. (i) The total proceeds from both Corporation Tax and Taxes on income other than Corporation Tax (excluding the portion of Income-tax which was assigned to the State Governments) for the year 1970-71 amounted to Rs. 484.50 crores. The figures for the three years 1968-69, 1969-70 and 1970-71 are as follows:

	1968-69	1969-70	1970-71
Taxes on income other than Corporation Tax (Gross proceeds)	378·47	448·45	473·17
Deduct share of net proceeds assigned to States	194·51	293·18	359·09
NET	183·96	155·27	114·08
Add Corporation Tax	299·77	353·39	370·52
	483·73	508·66	484·60

The gross receipts under Taxes on Income other than Corporation Tax during 1970-71 went up by Rs. 24.72 crores when compared with the receipts during 1969-70. The collections of Corporation Tax during the same period registered an increase of Rs. 17.13 crores.

(ii) The total number of assessees in the books of the department as on 31st March, 1971 was 30,12,570.* As compared to the previous year ending 31st March, 1970 there was a rise of 1,02,229 cases. The figures status-wise are:

	As on 31st March, 1970	As on 31st March, 1971
Individuals	23,65,765	24,25,769
Hindu Undivided Family	1,49,775	1,51,695
Firms	3,50,879	3,87,433
Companies	27,734	28,221
Others	16,188	19,452
	29,10,341	30,12,570

*Figures are as furnished by the Ministry.

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

	As on 31st March, 1970	As on 31st March, 1971
Business cases having income over Rs. 25,000	1,61,485	1,77,553
Business cases having income over Rs. 7,500 but not exceeding Rs. 25,000	1,60,009	1,68,187
Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	3,67,233	3,86,517
All other cases except those mentioned in category below and refund cases	12,22,767	12,64,091
Government salary cases and non-Government salary cases below Rs. 18,000	9,98,847†	10,16,222‡
TOTAL	29,10,341	30,12,570

[Paragraph 42 of the C. & A.G. of India for the Year 1970-71 Union Government (Civil) Revenue Receipts]

1.2. The total number of assessees in the books of the Department as on 31st March, 1971 was 30,12,570. The corresponding position as on 31st March, 1970 was 29,10,341. The status-wise split up of the increase of 1,02,229 in the number of assessees is as follows:—

	Increase in the number of cases
Individuals	60,004
H.U.F.	1,920
Firms	36,554
Companies	487
Others	3,264
	1,02,229

1.3. About 60 per cent of the number of assessees occurred in the category of individuals. Asked why the number of company assessees had not increased as much as the increase in the individual cases, the Ministry, in a note stated that Director of Inspection (RS&P) was undertaking a study to look into this phenomenon and his findings would be communicated in due course.

†Includes 'No demand'. Salary cases numbering 3,95,354.

‡Includes 'No demand' Salary cases numbering 3,69,765.

1.4. The total number of assessees borne on the books of the Department as on 31st March, 1971 was 30,12,570 as against 29,10,341 as on 31st March, 1970. About 60 per cent of the increase in the number of assessees occurred in the category of 'individuals'. The number of company assessees did not show any significant increase. The Director of Inspection is stated to be looking into this Phenomenon. The Committee would await his findings.

Collection of Surcharge (Union)

1·5 The details of variations under the various minor heads for the years 1969-70 and 1970-71 are indicated in the following statement:

(In lakhs of rupees)

	1969-70				1970-71			
	Budget Estimates	Actuals	Increase (+) Shortfall (—)	Percentage of variation	Budget Estimates	Actuals	Increase (+) Shortfall (—)	Percentage of variation
*	*	*	*	*	*	*	*	*
IV. Taxes on Income Other than Corporation Tax								
(i) Ordinary collections*	3,39,21	4,17,97	78,76	23·22	4,06,50	4,43,65	37,15	9·14
(ii) Surcharge (Union)	12,59	17,88	5,29	42.02	16,25	17,18	93	5·72
* *	*	*	*	*	*	*	*	*

*The actuals against Ordinary collections include receipts under minor head 'Receipts in England'.

Para 6 of the Report of the Comptroller and Auditor General of India for the year 1970-71, Union Government (Civil), Revenue Receipts).

1.6. The Committee pointed out that for the year 1970-71, Budget Estimates for surcharge (Union) were Rs. 16.25 crores and the actuals were 17.18 crores whereas the ordinary tax collection shown as per Budget Estimates amounted to Rs. 406.50 crores and actuals amounted to Rs. 443.65 crores. The Committee were of the view that the Sur-charge (Union) should be around 10 per cent of the tax which would amount to over Rs. 40 crores. The Committee desired to know whether surcharge on Income-tax as given in the Budget Estimates and actual calculations was the proper amount in accordance with the Act.

1.7. The Committee also wanted to know as to why the Budget Estimates should not at least be in line with the actual rate of surcharge. The Member, CBDT stated: "The assessments completed during 1970-71 may be of 1970-71 or may be of earlier years also."

1.8. The Finance Secretary added: "If I understand you correctly, the point is if some of it getting wrongly classified and going into ordinary income-tax calculations, then it is not forming part of surcharge which goes to Union. Now, instead of that, you say, we put the whole of it in one and then deduct surcharge from that....We may find a solution. There is one point more that is that the rate of surcharge is different upto Rs. 15,000, it is 10 percent and above Rs. 15,000|- it is 15 percent."

1.9. The Ministry, in a note, stated:

"The rate of 10 per cent surcharge on Income-tax was introduced only in 1969-70 and the ordinary collections of Income-tax for 1970-71 referred to by the Committee would also include the collections relating to other earlier years (upto 1968-69) for which the surcharge was leviable at varying rates. Secondly, upto 1969-70 the position was that the amount relating to advance tax was first credited to the minor-head "Advance payment of tax" and thereafter on completion of the assessment the amount relating to the surcharge (Union) was transferred to sub-head "Surcharge Union". As such, the amounts credited to the sub-head "Surcharge Union" would mostly represent the amount transferred from the head "Advance payment of tax" on completion of assessments. In terms of Board's Instruction No. 101|1969 dated 27-8-1969 the collection of Income-tax with effect from 1969-70 is not to be credited to the head "Advance payment of tax", but is to be split up into two parts—one representing Advance payment of Income-tax and the other representing advance payment of surcharge and accounted for separately nuder distinct sub-heads—"Advance payment of tax"—"Income-tax" and "Advance payment of tax surcharge (Union)". Since for advance

tax payments, blank challans are issued without indicating Income-tax and Surcharge payable respectively, it appears that the proper classification of the advance tax between the Income-tax and Surcharge (Union) has not been made by assessees while filling in the challan and almost the entire collection has been put by them under Income-tax head.

In this connection, it may be stated that the budget estimates for these minor heads are attempted on the basis of actual collections for the previous year and also the actual collections for the first six months of the current year. Since the actual collections and surcharge (Union) is less than 10 per cent of the ordinary collections for the two reasons mentioned above, the budget estimates also accordingly fall short of 10 per cent. To avoid mis-classification the Board are devising methods which will be intimated when finalised."

1.10. The budget estimates and actuals of surcharge (Union for the year 1970-71 were Rs. 16.25 crores and Rs. 17.18 crores respectively. As the surcharge is a minimum of 10 per cent of tax and the estimated tax collections and the actuals were Rs. 406.50 crores and Rs. 443.65 crores respectively the surcharge estimates and actuals should have exceeded Rs. 40 crores. It is obvious that estimates have not been prepared with care and there has misclassification on a large scale. As it affects the Union's share of income-tax receipts suitable method should be devised to classify and account for the sucharge correctly.

Cost of collection.

1.11. The Committee learnt from Audit that the cost of collection for the years 1967-68 to 1970-71 was as follows:—

Year	Gross collections	Expenditure on collections (Rs. in crores)
1967-68	636·40	11·70
1968-69	678·24	13·40
1969-70	801·84	15·77
1970-71	843·69	18·89

1.12. Between 1967-68 and 1970-71 though the revenue had gone up only by about 33 per cent the cost of collection had gone up by

61 per cent. Further, for the year 1970-71 the percentage of expenditure on collection to total revenues collected was 2.2 whereas in earlier years the percentage remained less than 2.

1.13. The number of Income-tax Officers engaged on assessments during the financial years 1957-58 to 1970-71 as intimated by the Ministry to the Committee last year were as follows:

Year	No. of I.T.O.s on assessment duty
1957-58	1128
1958-59	1191
1959-60	1238
1960-61	1253
1961-62	1289
1962-63	1306
1963-64	1334
1964-65	1429
1965-66	1548
1966-67	1648
1967-68	1701
1968-69	1912
1969-70	2056
1970-71	2234

1.14. The Committee pointed out that the cost of collections of revenue of Rs. 843.69 crores during 1970-71 amounted to Rs. 18.89 crores. For the collection of revenue of Rs. 636.40 crores in 1967-68 the Department expended Rs. 11.70 crores. Though the revenue had gone up by only 33 per cent between the two periods 1967-68 and 1970-71, the expenditure on collection went up by 61 per cent. The Committee enquired whether the Ministry looked into the disproportionate increase in the cost of collection and if so, the proposals that had been formulated to bring down the percentage of cost of collection. The Finance Secretary stated: "In the last 12 years, starting with 2.1 per cent it came down to 1.8 per cent, 1.3 per cent and again went up. Justification cannot be sought for one year. If a period of five to eight years is taken into account, it would be a better indication....what I am saying is that if this is projected for a few more years, the increase in staff may not be in the same proportions, but the return of collections may be higher."

1.15. In reply to a question, the witness added: "I would submit that advance tax payment has not reduced the work of the Income-tax Officer, when he has to review the total income-tax collections in the following year."

1.16. The Ministry in a note further stated:

"Between 1967-68 and 1970-71, the cost of collection of Corporation Tax and Taxes on Income etc. rose from Rs. 11.70 crores to Rs. 18.89 crores or by Rs. 7.19 crores. The annual rise was the highest during 1970-71 when it was Rs. 3.12 crores; it was Rs. 2.37 crores during 1969-70 and only Rs. 1.70 crores in 1968-69. The increase in cost of collection over the period 1967-68 to 1970-71 was highlighted in a study made in December, 1971.

The heavy increase during 1970-71 and 1969-70 was mainly for the following reasons:

(i) During 1970-71 a sum of Rs. 94.92 lakhs was paid as Interim Relief sanctioned by the Government with effect from 1st March, 1970.

(ii) 3,822 new posts were created during 1969-70 and another 865 were created during 1970-71 with a view to meet the growing requirements of the Department.

The impact of the expansion during these two years was felt during 1971-72. For the year 1971-72 the figure of expenditure on the collection of Corporation Tax and Taxes on Income etc. is not separately known. However, provisional figure of the total amount of expenditure during 1971-72 for the collection of all Direct Taxes| Duty is Rs. 21.44 crores. The corresponding figure for the year 1970-71 is Rs. 19.43 crores. There was, thus, an increase of Rs. 2.01 crores in expenditure or an increase of 10.3 per cent. Collections on account of all the Direct Taxes during 1971-72 were Rs. 1.041 crores while the corresponding figure for 1970-71 was Rs. 865 crores (both the figures are provisional). This shows an increase of Rs. 176 crores or 20 per cent. It will, therefore, be soon that while during the period 1967-68 to 1970-71 the percentage increase in expenditure was almost double of the percentage increase in revenue the percentage increase in revenue during 1971-72 was approximately double of the percentage increase in expenditure."

1.17. The Committee pointed out that the percentage of collection to total revenues for 1970-71 was 2.2 whereas for the earlier years the percentage was less than 2 and wanted to know whether the Board

had formulated or contemplated any scheme by which the work could be quickened and the cost of collection decreased. The Chairman, Central Board of Direct Taxes stated: "In the last one year we have taken steps to see that the assessments are completed at least under the summary assessment scheme. This time we have gone a step further and have sent officers to the spot to help the assessees and make assessments on the spot. This is a new programme we have started with a view to see that a large number of tax-payers pay their taxes as early as possible. The emphasis has been changed a little and this is an important change we are bringing about in the case of investigations, because we would like to safeguard the interests of Government and see that people do not deceive, with the result that bigger cases are directed to be thoroughly investigated and strong action is to be taken wherever necessary. Our central investigation takes up, on an average, a hundred cases a year. I have studied both the U.K. and U.S. organisations and nowhere in the World this job of investigation is allowed to be done in more than two or three or at the most five cases. Investigation of big cases involves many aspects; it is a long-term trial with the tax-payers. If such big cases are thoroughly investigated, it acts as a deterrent to the others. Now, we have therefore directed our Central Commissioners that we will not press them for a certain number of cases but we will be satisfied if they do these investigations thoroughly and bring the tax-payers to book. Now this number, especially bigger cases, may go down but by the end of next year we might expect more disposals. We have recently created a Directorate for Organisation and Management which will study all these problems and see and ascertain even the workload, within the funds what could be expected from him, the type of cases and other things."

1.18. The Committee pointed out that in paragraph 58(v) of the Audit Report, the category-wise split up of assessments completed during 1970-71 was shown as under:

	No. of assessments completed
I. Business cases having income over Rs. 25,000	2,42,522
II. Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	2,21,817
III. Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000.	4,93,821
IV. All other cases except in item V below	16,79,708
V. Small income scheme cases, Government salary cases etc.,	8,54,295
TOTAL	34,92,163

1.19. Category I and II cases account for only 13 per cent of total assessments completed. The balance 87 per cent account for cases with incomes less than Rs. 15,000, salary cases etc.

1.20. The Committee wanted to know the number of Income-tax Officers required for completion of category I and II assessments totalling 4,64,339 as per the standard prescribed by the Department. The Committee also desired to know the approximate revenue involved in these 4,64,339 cases and also the approximate expenditure incurred on the deployment of the Income-tax Officers required for completion of 4,64,339 assessments. The Ministry in a note stated:

"No criteria have been prescribed for the disposal expected from the officers in terms of the number of assessments. Standards regarding disposal of assessments in forms of standard units have, however, been prescribed.

The number of units involved in category I and category II assessments disposed of in 1970-71 cannot be easily worked out as separate figures for the disposal of company cases where income assessed ranged between Rs. 5 lakhs and Rs. 15 lakhs and above and non-company cases where income assessed ranged between Rs. 1 lakh and Rs. 5 lakhs and Rs. 5 lakhs and above are not available. The number of officers deployed would depend upon the class and experience of officers to whom category I and category II cases are assigned for disposal. In view of these difficulties the number of officers required for the disposal of 4,64,339 category I and category II assessments cannot easily be worked out.

The demand raised in respect of category I and category II assessments is entered in the Demand and Collection Register by and I.T.O. along with the disposal of other cases. No separate record is kept with regard to the demand raised in respect of category I and category II cases alone. It would, therefore, take incommensurate labour and time to get the information regarding revenue involved in these cases from the field officers who do not have it in readily available form.

The approximate expenditure that would be incurred on the deployment of ITOs required for the completion of 4,64,339 category I and category II assessments cannot be worked out for the above reasons. The expenditure on the salary of the ITOs concerned would depend upon their class and length of service. Moreover, as the exact number of officers required for completion of these assessments cannot be worked out the staff requirement etc. can also not be worked out."

1.21. The Committee were given to understand by Audit that the Ministry with their letter dated 28th June, 1972 furnished the status-wise and category-wise amount of tax collected during 1969-70 and 1970-71 as under:

Status-wise	1969-70	1970-71
	(In crores of rupees)	
Individual	284·90	308·71
H. U. F.	27·98	32·66
Firms	63·58	66·19
Companies	350·36	373·40
Others	6·19	7·56
	733·01	788·52

Category-wise	1969-70	1970-71
	(In crores of rupees	
Category I		
Business cases having income over Rs. 25,000	449·36	497·02
Category II		
Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	106·40	110·73
Category III		
Business cases having income over Rs. 7 500 but not exceeding Rs. 15,000	57·01	59·36
Category IV		
All other cases except those mentioned in category below and refund cases	76·00	71·62
Category V		
Government salary cases and non-Government salary cases below Rs. 18,000	44·24	49·79
TOTAL	733·01	788·52

Category I and II cases accounted for 77 per cent of total revenues. The remaining categories accounted for the balance 23 per cent of total collections.

Evaluation of work of Income-tax Officer

1.22. The Committee desired to know the number of cases which an Income-tax Officer normally expected to finalise in a financial year and the revenue he was supposed to collect for the Exchequer

in a year. The Chairman, Central Board of Direct Taxes stated: "There cannot be any question of revenue to be collected by an Income-tax Officer. The normal expectation is that an average Income-tax Officer Class I is expected to give about 300 standard units. In case of Income-tax Officer Class II, the expectation is above 250....These are the minimum standards....The Commissioners are to evaluate the performance of each Income-tax Officer."

1.23. When asked to explain the standard units, the Ministry in a note, stated as follows:

"Standard Unit is a unit for measuring the work done by the Income-tax Officer. The unit is fixed as shown below:

For Assessment Work

Category I :	
(a) *Non-company cases* :	
Income over Rs. 25,000 but not exceeding Rs. 1 lakh	1 unit
Income over Rs. 1 lakh but not exceeding Rs. 5 lakhs	2 units
Income over Rs. 5 lakhs	3 units
(b) *Company cases :*	
Income over Rs. 25,000 but not exceeding Rs. 5 lakhs	1 unit
Income over Rs. 5 lakhs but not exceeding Rs. 15 lakhs	2 units
Income over Rs. 15 lakhs	3 units
Category II 4 cases are equal to	1 S. U.
Category III : 8 cases are equal to	1 S. U.
Category IV : 15 cases are equal to	1 S.U.
Category V	1 S.U.

1.24. The Committee enquired in how many cases the Income-tax Officers exceeded the departmental/Board's expectations. The witness deposed: "Whether he has reached the expectations or not, is left to the judgment of the Commissioner."

1.25. The Committee wanted to know whether the Board had any Job Evaluation Cell and if so, any general study of the evaluation of the efficiency of the Income-tax Officers was made as per the standard units prescribed by the Department, with a view to classify them. The witness stated: "Not in that way. That is left to the Commissioners. He looks to the performance of each individual

Income-tax Officer before he writes his confidentials....The Board lays down the policy and the Commissioners are to follow."

1.26. The Ministry in a note submitted to the Committee stated: "There is no Job Evaluation Cell in the Board and the work of the officers is evaluated by their superiors on the basis of (i) the officer's output in terms of units prescribed by the Board and (ii) the quality of the officer's work."

1.27. The Committee desired to be furnished with a detailed note/statement showing the Committees appointed by Government to go into the structure of Direct Taxes and other matters since Independence and their terms of reference, the recommendations of each of the above Committees and the action taken thereon by Government. The Ministry, in a note, stated: "The matter is under examination and a further report will be sent in due course."

1.28. The gross collection of income-tax went up by 33 per cent from Rs. 636.40 crores in 1967-68 to Rs. 843.69 crores in 1970-71 while the expenditure on collection went up by 61 per cent from Rs. 11.70 crores to Rs. 18.89 crores during the same period. Thus the percentage of cost of collection has increased. The number of Income-tax Officers on assessment duty had increased from 1701 to 2234. The Committee are not satisfied that there was any need for this increase of officers for assessment work in view of the simplification in assessment procedures brought about in recent years. They find that about 89 per cent of the assessees are in the categories III to V*. The assessments in these cases do not require much effort on the part of the assessing officers.

1.29. The Committee note that 71 per cent of the revenue is collected from 11 per cent of the total number of assessees falling in categories I and II*. It is on these cases that the Income-tax Officers should naturally concentrate. They should investigate thoroughly big cases to unearth concealment of income. There should be a greater emphasis on survey work to bring substantial tax dodgers within the income-tax net.

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*Category I—Business cases having income over Rs. 25,000.

Category II—Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000

Category III—Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000

Category IV—All other cases except those mentioned in category (V) below and refund cases.

Category V—Small income scheme cases, Government salary cases and non-Government salary cases below Rs. 18,000.

1.30. An Income-tax Officer Class I is expected to do about 300 'standard units' of assessments. No specific study appears to have been conducted to ascertain the performance of the assessing officers against the yardstick prescribed which may itself need revision in the light of the "summary assessment" procedure introduced recently. Unfortunately the Central Board of Direct Taxes do not seem to have any machinery for a systematic and continuous study of the methods and procedures of work, job-evaluation and determination of norms of work for various officials and for proper assessment of performance of the officials against the norms. The Committee consider that there ought to be such a machinery. In this connection it may be recalled that the Wanchoo Committee had felt that "the performance of management in the Income-tax Department has not been satisfactory and calls for improvement."

1.31. In view of the constant search for greater and greater equity in the incidence of tax, the need to raise additional revenue, the desire to achieve various socio-economic objectives through tax laws and the growing modern and complex industrial economy, the ambit of Direct Tax laws has become wider and more complex. Almost every year a large number of amendments are incorporated into the tax laws on a continuous search for greater rationalisation, for checking tax-evasion and for devising appropriate measures to give effect to economic policies of Government. All this goes to show that the administrative, managerial and other problems of the Department are bound to increase many fold resulting in still greater work-load and lesser efficiency unless suitable measures are taken immediately in improve the administrative machinery. Various expert bodies have looked into the Tax Administration from time to time and had suggested measures to strengthen it. The Committee are unable to form a correct judgment of the efficacy of the steps taken by Government in pursuance of the recommendations of such bodies as the details called for by them have not been regrettably furnished so far (April 1973). The Committee would await a report in this regard. It is really a matter of regret that the Administrative aparatus still continues to be weak. The Committee find that the Wanchoo Committee in their report have made several useful suggestions in the Chapter on "Tax Administration" which should be gone into without delay in order to implement such of them as would strengthen tax collecting machinery.

Recruitment of Income Tax Officers

1.32. The Committee wanted to know the method of recruitment of Income Tax Officers. The Finance Secretary, stated:

"Direct Recruits Class I come through UPSC competitive examination. Class II officers are promoted from among inspectorates after departmental examination after general review of record of service and antecedents".....very few class II have been recruited directly. Their number is very small".

1.33. The witness added: "There is a composit examination for all class I services other than those class I Services which are classified as completely technical like engineering services, medical and some other services, which are specially classified as not part of general class I.....Income Tax comes along with Excise, Audit and Accounts, Railway Accounts, Defence Accounts, Postal Services, Contonement Services etc. There are about 6 or 10 services".

1.34. In reply to a question, the witness deposed: "Recruitment goes according to choice. For instance there are different types of papers. There is one basic core set of papers. For IAS, IFS etc., they have to give some additional papers other than the basis core. For I.P.S. etc., they give a slightly lesser number of papers. Recruitment is dependent upon the person saying to which service he wants to opt after he qualifies. He indicates his choice of service in advance. The persons may say: "I prefer Revenue Service; I prefer Audit and Accounts; I prefer Railways etc. As far as possible, according to the gradation in the merit list, attempt is made to give the service that a person wants. If the first choice cannot be given, the second choice is given".

1.35. The Committee enquired whether the Board had made any study of the quality of officers allotted to the Income Tax Service as a result of the combined competitive examination, and what type of candidates opt for this service. The Chairman, CBDT stated: "The situation was something like this. Previously income tax service was being allowed people from the lowest of the list of candidates, almost from the bottom. Thereafter the Department took it up with the Ministry and now we are getting people also from the top according to their choice as well as down below. But previously, somehow or other, this used to be assigned a little lower priority. That was in the past".

1.36. The Ministry in a note submitted to the Committee, further stated: "No study has been undertaken regarding the relative merits of the officers allotted to the I.R.S. (Income-tax) or the type of candidates who opt for this service. The procedure at present followed by the U.P.S.C., for the allotment of candidates to various services is to first arrange all the successful candidates in the

order of merit and then, taking each one of them strictly in that order, allot him to the service which is his first choice. This process is continued till all the vacancies in each service are filled, if necessary, by allotment of candidates according to their second/third preferences and so on. This is a rule of thumb from which no deviation is made. The existing procedure is supported by an observation of the Supreme Court to the effect that in regard to the allotment of candidates to the various Services, the combined Competitive Examinations should be treated as so many different examinations, conducted separately for each of the various Services. As was stated by the Finance Secretary during his evidence, the choice of candidates for a particular Service depends upon the attractiveness which that Service has for a particular candidate. In this respect, it may be noted that the Wanchoo Committee have recommended improvement in the service conditions of the Income-tax Service and connected matters. These issues are at present before the Pay Commission and if the Wanchoo Committee's recommendations are accepted, the Government hope that even better quality of candidates will opt for this Service".

1.37. When asked whether it would not be desirable to have a minimum qualification instead of taking a raw hand and training him, the Finance Secretary stated: "The minimum qualification question has been discussed and examined at some length. But for certain reasons, some of the best students may be going to some services and not necessarily to some other services".

1.38. The Committee enquired whether the Board had considered to have a separate competitive examination for Income Tax Service, making certain specific subjects like Law, Accountancy, Commerce etc., compulsory instead of clubbing with other Services. The Ministry, in a note, submitted to the Committee stated:

"The Government feel that it is arguable whether a simple Law Graduate should be considered in any way better equipped to deal with the Tax laws than, say, a post-graduate who is intellectually more gifted and better equipped to assimilate the essentials of the Tax laws during the period of his initial training and thereafter from practical experience of actual assessment work. Similarly, an Accountancy, or Commerce graduate may be deficient in various other qualities which are essential attributes of a successful officer. However, an important matter like this cannot be decided without subjecting it to a study by some special agency. It is understood, however, from the Department of Personnel that the Administrative Reforms Commission have recommended in their report to-

'Personnel Administration' the setting up of a Committee to go into the question of speedier methods of recruitment etc."

1.39. Pointing out that the Income Tax Service was an important service, depending largely on the integrity and efficiency of the persons chosen, the Committee wanted to know the reasons for not making the conditions of service attractive so that the quality of candidates opting for the service should be bettered. The Finance Secretary stated: "If the younger entrants do not consider that the Income Tax service is an attractive service, there is not much of a future in this; there are so many difficulties that the C.B.I., is very much after them and so on, then they may not be attracted towards this service. We should make the people understand that there are promotion chances in this service also and there are better prospects and so on".

1.40. The witness added: "The Wanchoo Committee has made certain specific recommendations for making the Income Tax Service at par with the Indian Administrative Service. They have said that the pay scales and prospects should be improved to that extent. We have not been able to take any decision on these recommendations because the matter is also under the consideration of the Pay Commission. There have been several representations from various associations and organisations. So we will be able to take some decision after the Pay Commission's Report is available".

1.41. The Committee enquired whether the Board had made any study of the qualifications of the existing officers and how far these qualifications were helpful for the nature of work being done by these officers. The witness stated: "I made a random check and I find, if I were to consider the basic qualification of Commerce, Commerce as the basic qualification there is no body in Commerce. There were some with Mathematics, some with Literature, some with History, some with Political Science and a few with Chemistry and a very few with Organic Chemistry".

1.42. When suggested that some sort of aptitude study should be made even after recruitment on which basis interchange between various services could be effected, the witness stated: "Perhaps it might be possible but it is quite difficult because each of them will say that we don't want this man or that man".....UPSC and Department of Personnel have attempted to make a study since the direct recruitment came in. But there is a possibility of making further assessment on this. If I believe my recollection I

saw a detailed examination or some report on this. But we have to assess this matter further".

1.43. The Ministry, in a written note, submitted to the Committee, further stated: "As stated by the Finance Secretary during his evidence, a number of difficulties would be involved in having an inter-change after a particular candidate has been allotted to a particular service. As far as a study of the qualifications of the existing officers is concerned, it may be worthwhile to postpone the same till the report of the Pay Commission is released so that the entire matter of recruitment and training may be revised".

1.44. When pointed out that in U.K., they were having separate recruitment for income tax and some training was given, the witness stated: "The Circumstances in U.K. are slightly different because very few people go to Government service there. They are even prepared to take university students directly. But in our case some 8,000 of the top most students from the various States intend to appear at the competitive examination and in that also, I believe only 300 or 400 are taken into the Class I Service".

1.45. The Committee wanted to know the officer incharge of the Central Circle and whether it was not a fact that Central Circles was at present mostly headed by I.T.Os. Class II. The Member, CBDT stated: "He would be a class I officer. The sanctioned strength is about 1200 Class I. The number of Class I I.T.Os actually working is only half. That is an anomaly existing in this Department. There is the seniority question between one and two".

1.46. The Committee desired to know the sanctioned strength both in respect of class I and class II Income Tax Officers, and also the existing vacancies in Class I I.T.O. year-wise since 1966. The Ministry, in a note, submitted to the Committee, furnished the information as under:

	Sanctioned Strength
Class I	1205
Class II	1738
TOTAL	2943
	Existing Vacancies
Class I	455
Class II	(—) 434
TOTAL	21

Year-wise existing vacancies in Class I since 1966.

Figures before 1968 not readily available.

1-4-1968	264
1-4-1969	316
1-4-1970	512
1-4-1971	582
1-4-1972	489
1-4-1973	467

1.47. The Committee asked for the reasons for not filling up the vacancies in Class I and for posting Class II officers to perform the work of higher responsibility. The Chairman, CBDT stated: "I perfectly agree that this is a problem that has got to be resolved."

1.48. The Ministry, in a note, stated:

"There has been considerable increase recently in the sanctioned strength of Income Tax Officers Class I, Assistant Commissioners of Income Tax, Additional Commissioners of Income Tax, Commissioner of Income Tax. Secondly, the appointments to the grade of I.T.O. Class I are regulated by fixed quotas for direct recruitment and promotion from Class II. Large scale direct recruitment through the I.A.S., etc., examination cannot be resorted to so as not to dilute the quality of candidates to be taken. Similarly it is not possible to make promotions from Class II in excess of the quota."

1.49. The Ministry, in a further note submitted to the Committee added: "upto 1950, the quotas for direct recruitment and promotions to the Income-tax Services (Class I) were 80 per cent and 20 per cent respectively. These quotas were revised for a priod of five years in the first instance to 66-2|3 per cent and 33-1|3 per cent respectively under the Ministry of Finance's letter dated 18-10-1951. Although the letter referred to the revision of the quotas "for a period of five years in the first instance", no orders were issued subsequently either continuing the quotas prescribed therein or reverting it back to the earlier percentage or modifying it further However, the intention was that the quotas should continue until further orders with the result that the same percentage continued to be followed even beyond 1956. This fact has been accepted by the Supreme Court in their recent judgment delivered on 16-8-1972.

In 1959/60, the Government decided to upgrade 214 posts in Class II to Class I and fill them up exclusively by promotion of officers belonging to Class II. This was done mainly to remove stagnation prevailing in Class II ranks. The Government's understanding was that this was not inconsistent with the rule regulating recruitment and that it was open to them to fill certain posts exclusively by promotion simultaneously with the continued operation of the quota rule of 1951 which was being followed as a guideline. This understanding continued to hold the field until the Supreme Court's judgment dated 22-2-1967 in the case of Shri S. G. Jaisinghani, wherein the Court directed the Government to adjust the seniority of the appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with the law after adjusting the recruitment for the period 1951 to 1956 and onwards in accordance with the quota rule prescribed in the letter dated 18-10-1951. The Government construed the mandamus to mean that the quota rule of 1951 was to be applied to all vacancies including those which arose as a result of the upgradation of 214 posts from Class II to Class I. The Government accordingly issued a revised seniority list on 15-7-1968.

The revised seniority list dated 15-7-1968 was challenged in several High Courts. On an appeal filed against the judgement of the Delhi High Courts the Supreme Court in their judgement dated 16-8-1972 accepted as true the fact that the quota rule of 1951 was being followed as a guide line even after 1956, and that, therefore, the quota was lawfully continued beyond that year. However, the Court held that the quota rule collapsed on 16-1-1959 with the massive deviation therefrom resulting from the Government's decision to upgrade 214 posts from Class II to Class I and fill them up exclusively by promotion.

In view of what is stated above, it is submitted that the Government have all these years been basing their actions on the understanding that the quota rule of 1951 continued to hold the field even after 1956. It is only because the Supreme Court held in August, 1972 that the quota rule collapsed early in 1959 that the need has arisen for a fresh rule to be framed for being applied from that year.

It is true that the working strength of Income tax officers (Class I) falls short of the sanctioned strength by about 450. These vacancies have arisen and have remained vacant because of a long drawn litigation between the direct recruits and the promotees

the direct recruits insisting that the number of promotees promoted each year should not be in excess of the quota of 33-1|3 per cent which was laid down by the Government in 1951. The matter has now been finally decided by the Supreme Court and new seniority rules, as desired by that Court, are under preparation. An effort would be made to fill in as many of these vacancies as possible under the new rules.

Steps are under way to frame fresh quota rule in compliance with the Supreme Court's judgment dated 16-8-1972 to be applied from 1959 onwards. These steps would regulate the position up to the end of the current year. Thereafter, the situation will be assessed and fresh quotas for future application will be prescribed, keeping all aspects of the matter in view including the need for filling up the existing vacant posts in the class I and removing stagnation, in the Class II ranks.

During evidence, the Chairman CBDT stated: "Now that the Supreme Court has decided and given us six months time, we will be framing the rules as required by the Court. According to that, we will be framing the seniority of Class I with the result that we know that these are the total number of vacancies. We want to fill them up at the earliest. The Court's decision came only two months back and I hope I will be in a position to finalise it very soon".

1.50. The witness added: "The Supreme Court gave the decision. Then the decision was interpreted by the Department and seniority list was drawn up. It was hoped that this was the end of it. This seniority list was challenged by the promotees and the direct recruits. That was partly a difficulty in interpretation of the directive of the court. The matter went to the Delhi High Court. The question has not been so easy a solution."

1.51. The witness added: "As soon as I took over I called both the sides and wanted to evolve a formula to resolve the issue. Naturally both the sides would be zealous about guarding their interest. So what I wanted to do, did not materialise. Even now in the implementation, I have called both sides to give me their view points so that the rules may not be debated."

1.52. In reply to a question the witness stated: "In the beginning the quota was supposed to be 80:20. Thereafter it was changed to 66 2|3 : 33 1|3. Then to solve the problem, the Board thought of 50 : 50. That did not materialise."

1.53. When asked whether the Board had received any representation from the Class II Income Tax Officers and if so whether it was examined carefully by the Board, the witness stated: "We have received from both sides. The associations meet us and we have examined them. Since the matter was pending before the Supreme Court, we waited. The first thing that I did was to bring both parties together but I could not succeed. .....I hope we shall now be in a position to solve the problem."

1.54. The Committee wanted to know whether it was a fact that Class II officers on promotion to Class I in established Central Services excluding I.T. Department, are entitled to two additional increments with effect from 1-4-1969, and if so the reasons for excluding the I.T. Services. The Ministry, in a note stated: "The Government have since issued order with the Ministry of Finance (Department of Expenditure) O.M. No. 2(24), E III(A)/70, dated 12-10-1972, allowing ITOs promoted from Class II to Class I, two advance increments as were earlier allowed to officers of some other services."

1.55. A review of the position of arrears of assessments and tax demands as also the mistakes and lapses committed by the assessing officers has convinced the Committee of the need for qualitative strengthening of the Income-tax Department.

1.56. Class I officers are recruited through the competitive examination conducted by the Union Public Service Commission which is common for all the Central Services Class I. The Committee got an impression that often candidates obtaining high positions do not opt for the Income-tax Service. It has been explained that the choice of candidates for a particular service depends upon the attractiveness which that service has for a particular candidate. The Committee do not see any reason why the Income-Tax Service should not be made at least as attractive as any other Central Service both in terms of emoluments as also in terms of carrier prospects. They would accordingly suggest that a study of the position of the Income-tax services vis-a-vis other services should be undertaken so that steps could be taken to improve carrier prospects of the former.

1.57. The Committee note that although the strength of Class I officers is 1205 the number of men in position is only 750. Appointments to the grade of Income-tax Officer Class I are stated to have been regulated by fixed quotas for direct recruitment and promotion from Class II. It has been explained that Class I posts have

remained vacant because of a long drawn litigation between the direct recruits and the promotees. As the matter is stated to have been finally decided by the Supreme Court, the Committee trust that there will be no further delay in filling up these posts. It is also necessary to ensure that there is no stagnation in the Class II grade.

CHAPTER II

TEST AUDIT IN GENERAL

(a) *Avoidable Mistakes involving considerable Revenues*

Audit Paragraph

2.1. For the assessment year 1965-66 (completed on 30th March, 1970) the total income of an assessee was arrived at a loss of Rs. 24,02,614. In arriving at this loss, Rs. 23,50,528 already debited in the accounts of the assessee towards payments of interest on borrowed capital was again deducted by the Income-tax Officer. The double deduction of the expenditure together with two other minor mistakes in computation of income accounted for not excess computation of loss of Rs. 21,81,203 carried forward for adjustments against future years' profits. The Ministry have accepted all the mistakes. Report regrading the net reduction in carried-forward loss is awaited.

[Paragraph 44(b) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil) Revenue Receipts].

2.2. The Committee desired to know whether the assessment had been rectified and if the net reduction in the carried forward loss for adjustment against future years' losses. The Member, CBDT stated that the assessment was rectified and the loss was reduced to two lakhs.

2.3. The Committee asked for the circumstances in which the mistake had occurred and also the officer responsible and the action taken against him. The witness replied: "As far as this case is concerned, we called for the explanation of the Income Tax Officer, on 17th December, 1971 on receipt of the draft audit para....He gave the explanation on 25th May, 1972. He explained that the case was transferred to him due to change in jurisdiction and that he got the case very late. The Additional Commissioner of Income Tax commented that the explanation of the Income Tax Officer was not satisfactory and as such he was warned to be more careful." The witness further stated: "One of the several cases noticed was this and the Board suggested that Commissioner may consider a general review of all assessments made by the Income Tax Officer."

2.4. The Committee wanted to know the inome returned by the assessee and the income computed. The Committee also enquired whether the draft assessment order was subjected to precheck before it was finalised. The Ministry, in a note stated: "The assessee returned a loss of Rs. 1,44,25,076|-. The loss computed by the Income-Tax Officer was Rs. 24,02,614|-. The assessment order was not subjected to any pre-audit."

2.5. When asked whether the Ministry had contemplated prescribing counter-check of the computation of income before the assessment was finalised, the Ministry in a note replied in the negative.

2.6. The Committee desired to know the status in which the assessment was made in the case under examination. The Committee also enquired whether the assessee was liable to wealth-tax and if so the present position in regard to Wealth-tax assessments. The Ministry in a note, stated: "The assessment was made in the status of an individual; the assessee being a statutory corporation. The question whether the assessee is liable for the wealth-tax is under examination. Wealth-tax proceedings in respect of the assessment year 1962-63 were initiated on 30-3-1971. The assessee had not admitteed liability for wealth-tax on the ground that the status of the assessee should be that of a "company". If the Government decides to declare the assessee corporation as a 'company' under the provisions of section 2(b) (iia) of the Income-tax Act, there would be no liability for wealth-tax."

2.7. The Committee wanted to know the reasons for taking up for completion of the assessment in this case at the fag end of the prescribed time limit. The Ministry, in a written reply stated: "The case mentioned in para 44(b) was assessed in a ward which had jurisdiction over a large number of higher income cases. Owing to pressure of work the officer did not take up this case (which was not a revenue—yielding one) earlier."

2.8. The Committee learn from Audit that the Audit objection was sent to the Department in August 1970 but the rectificaion was effected only in September 1972 *i.e* after a lapse of two years. The Committee wanted to know the reasons for the delay of two years in rectifying the assessment. The Member CBDT stated: "The mistake was rectified and the loss was recomputed in September, 1972. We came into picture when para comes to us. Revenue Audit Parties are all over the country. They raise objection with Income-Tax Officer at first stage. For first time it comes to the

Income Tax Officer's notice. If he accepts, it is settled; if he does not accept he argues with them. If it is accepted it is included in the list of the Deputy Accountant General to Commissioner concerned. At that time the Board does not know."

2.9. When asked whether the Audit was not obliged to send intimation to Board, the witness replied: "He is not obliged at that stage. He deals with the Commissioner. That is more or less at the state level. That is, the Commission in whose charge, the officer is responsible. "....The first information that comes to us is only the draft audit para and that was received in 1971."

2.10. It was pointed out that according to normal and well understood procedure, the aduit objection was raised at junior level in August 1970. He replied in September, 1970. In December, 1970 simultaneously a copy came to the Directorate of Inspection, the Directorate attached to the Board. The Director knew that the Income-tax Officer at ground level had accepted it. After that no attempt had been made.

2.11. In reply to a question, the witness stated that the directorate Ispection was one of the attached offices of the Board and the Director of Inspection in-charge of the Directorate was under the Board's executive control.

2.12. The Committee enquired whether it was not the duty of the Director to bring the Audit objection to the attention of the Board immediately on its receipt in his Directorate. The witness replied: "He does not bring to our notice at all."

2.13. The Committee pointed out that the Director of Inspection was attached to the Board and he was an instrument of the Board. The copy of the objection was sent to the Director of Inspection so that he might pursue straightaway. There was certain lacuna because one of the objects of such audit notes being sent to the Directorate of Inspection was that the Board should come to know of it. He was himself expected to pursue it. The Income-Tax Officer accepted the objetion in September 1970. Therefore the Board should have come to know of it earlier than the audit paragraph as it was an important objection involving heavy sum. The Committee wanted to know what the Director of Inspection was expected to do in these matters. The witness stated: "The Director of Inspection keeps an overall-check of the working of audit *i.e.*, interal audit and the paras of the objections that come from them. They do not go individually into the merits of the case. They pursue with the Commissioner".

2.14. When asked about the action taken by the Director of Inspection on the copy of the objection sent by the Office of the Comptroller and Auditor General of India in December, 1970, the witness replied: "At the present moment the Directorate does not go into the merits of any case. They merely keep a check whether the Commissioner has satisfied himself with the audit or whether he has attended to the Audit para."

2.15. The Ministry, in a note submitted to the Committee, stated: "The reference from the Revenue Audit stated to have been sent under their OAD (R)/263 dated 30-12-1970 does not appear to have been received in the Directorate. A registered letter No. AOD-Rev. I-IT-3-3481 dated 10-2-71 was received from AG Bihar on 18-2-1971 which contained extracts of Important Irregularities in respet of local audit reports issued during the month of December 1970 for Bihar and Orissa circles. Para 2 of this communication pertained to the case of Bihar State Road Transport Corporation for the Assessment Year 1965-66 which was the subject matter of para 44(b) of C & AG's report for 1970-71. The action taken by the Directorate on the aforesaid communication is indicated below:—

1. 18-12-1971

   Register letter of A.G. Bihar No. OAD-Rev-I-IT 3-3481 dated 10-2-1971 received containing extracts of important irregularities in respect of L.A.R. issued during December 1970 for Bihar and Orissa Circles.

2. 3-3-1971

   Directorate's letter No. M-34|Bihar-7|70|DTT|18351 dated 23-2-1971/3-3-1971 issued to C.I.T. Bihar drawing attention to the audit objections mentioned by the AG and requesting him to settle them expeditiously.

3. 31-8-1971

   Para relating to Bihar State Road Transport Corporation shown as pending by the C.I.T. in the statement for the month of July 1971—Directorate's letter No. M-35|2|71 DIT|7895 dated 27|31.8.1971 issued requesting the C.I.T. for expediting the disposal of various paras including that relating to the assessee under consideration.

(4) 30-12-1971

Objection not settled. Reminder of even number dated 30-12-71 issued to C.I.T. Bihar.

5. 22-1-1972

Letter of IAC (Audit) Kanpur No. BP|5|71-71|3224 dated 22-1-1972 received informing that the final report had been sent to the AG Bihar for settlement.

6. 25-3-1972

Directorate's letter of even number dated 25-3-1972 issued to AG Bihar requesting him to expedite disposal of various paras including that of Bihar Road Transport Corporation. This had been shown as pending with AG in the monthly statement received from C.I.T.

7. 1-7-1972

Letter No. OAD. Rev|1.ITR Misc. 573 dated 27-6-72 received from AG Bihar (Ranchi) stating that the latest position in respect of all the cases mentioned in our letter had been intimated to IAC (Audit) Kanpur.

8. 13-9-1972

Letter No. M-35|PAT|72|DIT|110224 dated 13-9-1972 issued to AG Bihar for expediting the disposal of various paras including that of Bihar State Road Transport Corporation (in the Statement for the month of July 1972 this para had been shown pending with the AG).

In response to a suggestion that the Directorate of Inspection should be made more effective so that they could pursue the audit objections till they were finally disposed of, and with that the Board would have an useful instrument right at Delhi, the witness stated: "We will take note of this suggestion."

2.16. The Committee note with concern the serious mistake in the computation of income in this case. Overlooking the fact that the assessee had already debited his accounts relevant for the assessment year 1965-66 with expenditure of Rs. 23,50,528 towards interest on borrowed capital, the Income-tax Officer allowed a further deduction of the amount which resulted in excess carry forward of loss for adjustment against future years' profits. The

Committee have been informed that the Income-tax Officer responsible for this case has been warned to be more careful. As this is one of the several cases of mistakes noticed in this Income-Tax Officer's work, a general review of all assessments made by him should be carried out and the result of the review and the action taken in the light thereof may be reported to the Committee.

2.17. Mistakes in the computation of income which were examined by the Committee from year to year point to the need of having a countercheck of assessment orders. At present there is an arrangement only for the countercheck of arithmatical calculation of tax. The Committee regret that the Central Board of Direct Taxes do not see the need for prescribing a countercheck of the computation of income. As stressed elsewhere in this report, in the opinion of the Committee such a check before the assessments are finalised is essential.

2.18. Incidentally the Committee find that although the assessment in the case referred to in the Audit paragraph was made in the status of an individual, wealth-tax proceedings in respect of the assessment year 1962-63 were initiated only on 30-3-1971. The reasons for this delay are not clear. However, the assessee, a statutory corporation, is stated to have not admitted liability for wealth-tax on the ground that the status should be that of a 'company'. The decision taken in this regard may be reported to the Committee.

2.19. Another aspect of this case to which the Committee considers it necessary to refer is the delay in taking action to rectify the mistake. The Revenue Audit raised the objection in August, 1970 but the rectification was effected only in September, 1972 in spite of the fact that it is the practice to inform the Directorate of Inspection of all the important irregularities notice in Audit. It is clear to the Committee receive an impression that he Directorate does not effectively watch the settlement of important Audit objections involving large sums. They accordingly desire that the working of the Directorate should be improved to serve as an effective insrtument of vigilance on behalf of the Board.

(b) *Incorrect assessment of income as salaries*

Audit Paragraph

2.20. Under the Income-tax Act, pension received or receivable by a person is chargeable to tax under the head 'salaries' only

when it is due from or paid or allowed by his employer or a former employer. Accordingly political pensions received by an assessee are chargeable to tax as income from other sources and not as 'salaries'. The incorrect assessment of political pension in a case as salary resulted in under-charge of tax Rs. 18,211 for two assessment years 1962-63 and 1963-64, while accepting the mistake the Ministry have stated that the assessment for the assessment year 1962-63 (tax involved Rs. 5,655) could not be rectified due to time-bar and the assessment for the assessment year 1963-64 is being rectified.

[Paragraph 45 of the Report of the C.&A.G. for the year 1970-71—Union Government (Civil)—Revenue Receipts).

2.21. The Committee wanted to know the definition of political pension. The Member C.B.D.T. stated: "It is being paid for political considerations and not on the basis of employer—employee relations."

The Committee learnt from Audit that political pensions were classified in Government accounts under '66-Territorial and Political pensions under which the following minor heads were being operated:

(a) Pension granted by the British India Government in lieu of resumed jagirs, lands and territories and for services rendered in 1857 movement.

(b) Pensions granted after Independence for political considerations.

(c) Pension to freedom fighters their dependents etc.

2.22. Asked to state the types of political pensions existing at present and whether they were being taxed, the Ministry in a note stated:

"Political pensions granted by the British Government and continued after independence were sanctiond for a variety of reasons and for varying durations. These grants were made:—

(i) to certain Rulers, who ceded the administration of their territories to the British Government and their successors e.g., Nawab Bahadur of Murshidabad and the Nawab of Carnatic (Prince of Arcot);

(ii) to the decendants of vanquished Rulers in India e.g., descendants of Tipoo Sultan.

(iii) to the dependents and relation of Rulers, whose States had been annexed by the British Government owing to failure of heirs or for other reasons e.g., Satara, Tanjore, Nagpur and Oudh.

(iv) from the interest on sums deposited by or loaned from the Kings of Oudh. (These are known as Oudh Wasikas):

(v) in lieu of certain hereditary offices abolished by Government due to a change in the form of Government e.g. Deshmukhs and Deshpandians of Berar and Zamindars of Nimar.

(vi) in lieu of the territories or jagirs|estates resumed e.g., the Malabar Malikhanas, Raje of Khurda's pension.

(vii) in appreciation of "Useful service" rendered to the British Government e.g., the pensions granted to the Aga Khan and the Gosain family of Bundelkhand.

(viii) in commutation of rights to a percentage on the revenues of certain lands etc. on the transfer of sovereignty over such lands, as the result of a Treaty e.g. Certain Salianas, the Chauth Saranjam allowances, and the Wurshashan allowances. These grants were originally made by the former Indian Rulers and later confirmed by the British Government.

(ix) for charitable purposes (grants) originally made by former Rules and continued by British Government.

2. These pensions were; from the very beginning administered by the 'local' Governments. Orders were issued from time to time by the Government of India delegating powers to the local Governments for the administration of these payments. When the Government of India Act of 1935 came into force, the pensions payable to members of the family or servants of former Rulers of territories in India were taken over by the Crown Representative. The Crown Representative delegated powers to the Provincial Governors and Chief Commissioner. These arrangements continued till the transfer of power in August, 1947 when the Crown Representative's liability for the payment of political pensions was taken over by the Central Government.

3. The Government of India undertook a review of the political pensions in 1950-51. Certain broad principles were then laid down with the approval of the Cabinet according to which political pensions which were then in existence had to be reviewed. Instructions were accordingly issued to the State Governments in April, 1952 laydown the following criteria:—

(i) With regard to life grants, each case should be examined on its merits and grants should be continued only to those who have got no other means of subsistence.

(ii) Grants made in compensation for surrender of territory should continue on the existing basis.

(iii) Grants in perpetuity should be reviewed with reference to the purpose for which they were made. Ordinarily, no grants should be continued beyond the life time of the then grantees. In exceptional cases the period within which the grants may be extinguished may be extended, but, in no case should it exceed two or three generations.

(iv) Grants for charitable or public purposes may be reviewed with a view to ascertaining whether it is at all necessary to continue the grants and whether the funds are utilized for the purpose for which they were sanctioned.

Applying the above criteria, the following policy decisions were taken in regard to the more important categories of political pensions:—

(1) Pensions granted to descendants and dependents of former Ruling families in India.	There should be scaling down of allowances at present paid to the direct representatives of the former rulers otherwise than in accordance with the terms of the original settlement. Where the terms of the existing grants provide for a review of the pensions at the time of each succession, such review should be left over to be made as and when the occasion arises. The allowances paid to the relatives and dependents of these rulers should papse after the demise of the present recipients.
(2) Pensions granted to certain leading families, who were deprived of their means of livelihood by the extension of the British rule.	The pensions drawn by the existing beneficiaries should not be interfered with; all the grants including those which are at present treated as hereditary should however be treated as life grants, absolutely terminable on the demise of the existing holders.

(3)	Pensions granted by former Rulers in India the liability for the payment of which was taken over by the British Government as a result of transfer of the territory. These also include certain charitable grants to temples and similar institutions.	An exception may be made in the case of certain charitable grants which are paid to temple or other institutions serving the public; these should be continued of the existing terms subject to an annual verification by the State Go ernments concerned that the grants are utilised and needed for the specific purpose for which they were originally sanctioned.
(4)	Pensions granted in appreciation of 'useful services rendered to the British Government.'	Life time of the then present beneficiaries.

It may be added that according to the scheme of grant of pensions to the freedom fighters, we are sanctioning pensions to persons who contributed their mite to the freedom struggle. These pensions are also being paid under the same expenditure head viz., "66—Territorial and Political Pensions."

2.23. The Committee desired to know the nature of political pension involved in the case reported in the Audit paragraph and also the amount of pension.

The Ministry in their letter dated 24th November, 1972, stated: "It has been ascertained from the Commissioner that the assessee is in receipt of political pension of Rs. 60,000 *per annum* which was sanctioned by the Government of India *vide* Foreign Department No. 448/99 dated the 29th March, 1882. There is a mention of the sanction of this pension at page 96 of Nagpur Gazette Volume I, printed in 1908. This pension was sanctioned for the life of the assessee and his successors. It seems that the pension was sanctioned by the British Government for the "loyalty and noble behaviour of the assessee at the time of Indian Mutiny."

"The assessee is also in receipt of Rs. 26,000 par annum sanctioned by the State Government for a period of 21 years or life time of the assessee whichever is larger. This amount represents Muwaf Compensation for the loss of land revenue on the lands belonging to the assessee which were subjected to land revenue under C.P. and Berar Revocation of Land Revenue Exemption Act, 1948."

2.24. When asked to state the circumstances in which the mistake was committed, the witness stated: "In this case we got the information from Calcutta that the mistake was not in the assessment order itself because in the assessment order the Income Tax Officer had actually charged the pension under the head "Other Sources". But when the file went to the calculation circle, I.T.30. they included

this under the head "salary" as result of which it was charged to tax at a lesser rate."

2.25. The Committee learn from audit that after the mistake was pointed out for the assessment year 1962-63 in November, 1970, time was available for the department to revise the assessment. The Committee wanted to know the reason for not initiating timely action for the revision of the assessment for 1962-63. The Member C.B.D.T. stated: "The revision of assessment for 1962-63 could not take place because at the time of receipt draft para it was time-barred.....Even at the time when the audit objection was originally received in 1970, it was time-barred. It became time-barred actually in 1967."

2.26. The Committee enquired whether the assessment for the year 1963-64 had been rectified and if so, the additional demand revised and recovered. The witness stated: "That has been reopened." The Ministry, in a further note submitted to the Committee stated:

> "As there was no omission on the part of the assessee to disclose facts in the return of income, the failure to assess the political pension as 'income from other sources' cannot be rectified u/s 147(a) of Income-tax Act, 1961. Rectificatory action could have been taken only under the provisions of Section 147(b) for which the time limit expired on 31st March, 1968."

2.27. The Committee enquired whether any instructions were issued by the Department for classifying political pension under "Other Sources of Income" and not under "Salary". The witness replied in the affirmative.

2.28. The Ministry, in a note, further stated that instruction No. 470 was issued on 28th October, 1972.

2.29. In this case income from political pension was charged to tax as salary income instead of as 'income from other sources' resulting in short levy of tax of Rs. 18,211 recovery of which had become time-barred. The Committee desire that suitable action should be taken against the person found at fault.

2.30. The Committee incidentally understand that the assessee is in receipt of a pension of Rs. 60,000 per annum which was sanctioned by the British Government in 1882 to his predecessor in re-

cognition of his "loyalty and noble behaviour at the time of Indian Mutiny". It appears to be somewhat incongrous to continue such pensions after independence. Although political pensions granted to the ex-rulers and others by the British Government have been reviewed by Government in 1950-51, the Committee suggest that the pensions granted to ex-rulers for various reasons may be further reviewed in the light of the abolition of Privy Purses. The action taken may be reported to the Committee.

(c) *Incorrect computation of income from business*

Audit Paragraph

2.31. Any expenditure incurred after 29th February, 1964 by a company which results directly or indirectly in the provision of any benefits or amenity or perquisite whether convertible into money or not to an employee (have income over Rs. 7500 per annum) in excess of one-fifth of the salary payable to the employee is not allowable as a business expense. From 1st April, 1969 the restriction towards allowable expenditure was extended to all categories of employers limiting such expenditure to one-fifth of salary or Rs. 1,000 per month whichever is less in respect of each employee.

2.32. Under executive instructions issued by the Central Board of Direct Taxes in November, 1966 and October, 1969 bonus, commission or any other cash allowance paid as employee's regular salary was directed to be treated as part of employee's remuneration and not as perquisites. When it was pointed out by audit in December, 1970 that the executive instructions were contrary to Law, the Central Board of Direct Taxes withdrew in June, 1971 their circular instructions with immediate effect.

2.33. It was found in sixteen cases for the assessment years 1965-66 to 1970-71 income of Rs. 7,55,686 was short-assessed to tax due to the Board's executive instructions. The short-levy of tax involved in the sixteen cases was Rs. 4,82,184 (including sur-tax in two cases).

[Paragraph 46(a) of the Report of the C. & A.G. for the year 1970-71—Union Government (Civil) Revenue Receipts.]

2.34. In the circular dated 7th November, 1966, the Board issued instructions as follows:—

"(1) Reimbursement of medical expenses to employees by employers is a benefit or amenity or perquisite to be in-

cluded in the value of perquisites for the purposes of limiting the permissible deduction to 1/5th of the salary.

(ii) Where bonus and commission are paid as a part of employee's regular salary as agreed to between the company and the employee in terms of his contract of service, they should be treated as part of employee's remuneration and not as perquisites. Where commission or bonus is paid not as a part of the regular remuneration agreed to before hand but voluntarily and gratuitously and the payment is of a casual nature, then it will have to be regarded as a perquisite for the purposes of Section 40(c) (iii)."

2.35. The Circular issued by the C.B.D.T. on 29th October, 1969 read as follows:—

"The question whether bonus or commission paid to an employee should be included in the value of "any benefit or amenity or perquisite" for the purpose of limiting the deduction to one-fifth of the salary under Section 40(c) (iii)/40(a)(v) was examined by the Board and it was decided by them that "Salary, dearness allowance, bonus, commission or any other cash allowance payable to the employee in terms of his contract of service would be regarded as salary under Section 17(3)(iii) and not as "benefit or amenity" for the purposes of Section 40(c) (iii)/40(a)(v) of the Income Tax Act. Further only those cash payments would be covered by the expression "perquisites, amenities and benefits" which are paid to the employee voluntarily and gratuitously and not in terms of the specific provisions of his contract of employment. In other words, the employee concerned should not have been in a position to enforce the payment of these amounts in a Court of Law."

2.36. The Committee learnt from Audit that the validity of the Board's two circulars of 7th November, 1966 and 29th October, 1969 was examined in Audit in November, 1970 and it was found that the Circulars were not in strict accordance with the provisions of the Law, as the Income Tax Act did not provide for such an interpretation.

2.37. The Central Board of Direct Taxes in their Circular dated 29th June, 1971 issued instructions as follows:—

"The Board are advised that the instructions contained therein (in the two Circulars dated 7th November, 1966 and 29th October, 1969) are not in conformity with the provisions of Law.

Accordingly the Circular No. 32 dated 29th October, 1969 and department Circular No. 30-D of 1966 dated the 7th November, 1966 are hereby withdrawn with immediate effect.

The above instructions may please be brought to the notice of the assessing officers without delay."

2.38. The Board, had issued a Circular after consulting the Law Ministry in March, 1972 laying down instructions for the guidance of Income Tax Officers regarding treatment of bonus or commission as salary. The instruction No. 80 dated the 4th March, 1972 is reproduced at Appendix I. An extract is given below:—

"As regards the payment of bonus, the Board are advised that the payment of bonus will be treated as salary in the following types of cases:

(a) Payment of bonus made under a service agreement between the employer and the employee;

(b) Bonus paid pursuant to requirement of payment of Bonus Act, 1965. In such a case, the service agreement may be treated to have been modified to that extent;

(c) Where the bonus is paid in accordance with the decision of a trade association which is binding on its members; and

(d) Bonus paid under an award by a Labour Tribunal where the Award is binding on the employer and the employees.

If the bonus is paid gratuitously without there being any legal or contractual obligation, the payment is in the nature of a perquisite and has, among other perquisites, to be linked to 1/5 of the salary for allowance under Section 40(c)(iii)/40(a)(v)."

"As regards payment of commission to the employees, the question whether it forms part of "salary" or "Perquisite" has to be decided on the facts of each case. If the terms and conditions of service are such that Commission is paid not as a bounty or benefit but is paid as part and parcel of the remuneration for services rendered by the employee, such payment may partake the nature of salary rather than as a benefit or perquisite. If, however, on the terms and conditions of service either there is no obligation for the employer to pay the commission or it is a matter purely in the discretion of the employer, such payment should be treated as a benefit by way of addition to salary rather than in lieu of salary."

2.39. The Committee were given to understand by Audit that the Income Tax Appellate Tribunal, Bombay Bench, in the case of M/s. Delhi Pharmaceutical Distributors (P) Limited, Bombay, in their orders dated the 25th April, 1968 upheld the contention of the Department that bonus should also be brought within the purview of Section 40(c)(iii) in the following words:

"Section 40(c)(iii) clearly starts by saying that 'notwithstanding anything to the contrary in Sections 30 to 39' and is, therefore, a special section and would over-ride the provisions of Section 36 in the circumstances mentioned in Section 40(c)(iii). The wording in Section 40(c)(iii) is also very wide as including, 'any benefit amenity or perquisite' and would include bonus paid to the employees."

2.40. The Appellate Tribunal's views in the matter are in full accordance with the view expressed by the Law Secretary, in his opinion of 18th March, 1968 that "in view of the wide language used in Section 40(c)(iii) any payment made by employer-company in discharge of any obligation of the employee is to be treated as an expenditure resulting in the provision of any benefit or perquisite to an employee as contemplated by that Section."

2.41. The Committee desired to know whether the Ministry were aware of the Tribunal's findings on the issue before issuing the executive instructions in October, 1969. The Ministry, in a note, stated: "The Bombay Bench of the Appellate Tribunal held in the case of Delhi Pharmaceutical Distributors Private Ltd. that bonus is a perquisite for purposes of section 40(c)(iii). This decision was

given on 24th April, 1968. The Board was obviously aware of this decision at the time of issuing the instructions in October, 1969."

2.42. The Committee wanted to know the circumstances under which the Circulars dated the 7th November, 1966 and 29th October, 1969 were issued. The Committee also enquired whether the Ministry of Law was consulted before the issue of the Circulars in question. The Ministry in a note submitted to the Committee, stated as follows:—

"In 1966, Commissioners of Income-tax West Bengal-I and Bombay City-III raised the following points for Board's clarification:

(i) Whether "Bonus and commission" paid to the employees are to be excluded for the purposes of calculating ceiling of 20 per cent laid down in section 40(c)(iii) of the Income-tax Act, 1961.

(ii) The treatment of excess payment of bonus in contravention of the provisions of Payment of Bonus Act, 1965 for the purposes of section 40(c)(iii) of the Income-tax Act, 1961. Point No. (i) above was raised at the 6th meeting of the Direct Taxes Advisory Committee held in October, 1964 (item 17). At that meeting it was stated that such of the payments in the form of bonus and commission as are in the nature of remuneration would not be subject to the limit of 20 per cent prescribed in section 40(c)(iii) of the Income-tax Act. This item was also raised at the 8th meeting of the Direct Taxes Advisory Committee. The Committee was informed that the matter was under consideration.

Item No. (ii) has been discussed by the C.I.T., Bombay City-III in his letter dated 20th January, 1966 and his view is that any payments of bonus which may not exceed the limits of section 40(c)(iii) of the Income-tax Act, would still be disallowable if it contravenes the provisions of Payment of the Bonus Act, 1965.

In item 17 of the Minutes of the 6th Direct Taxes Advisory Committee meeting, it is stated that it was explained to the Committee that "with regard to the question whether bonus and commission would be subject to the

limit of 20 per cent prescribed in this section", the position was that "such of these payments as were in the nature of remuneration would not be subject to this restriction". Subsequently, in item 30 of the Minutes of the 8th D.T.A.C. meeting, when the same point was raised, the Committee was told that the matter was under consideration and that suitable instructions would be issued shortly.

The two points raised in para 1 above were examined further and it was decided that where bonus and commission are paid as a part of regular salary as agreed to between the employer and the employee, they should not be viewed as a perquisite for the purpose of section 40(c)(iii) of the Income-tax Act. On the other hand, where the payment is voluntary and gratitous, then it should be so included. This view was in conformity with the assurances given by the Finance Minister in the Eighth Meeting of the Direct Taxes Advisory Committee.

Regarding point (ii) above, it was decided that the question of disallowing the payment in the income-tax assessments solely on the ground that the company had committed a contravention of the Payment of Bonus Act, would not arise. However, the admissibility of the bonus paid, will have to be considered separately under section 36(1)(ii) of the Income-tax Act. The reason why the company actually paid a higher amount than what it was required to pay under the Payment of Bonus Act, 1965, will be a relevant consideration in determining whether the payment was reasonable u/s 36(1)(ii).

The Circular under consideration was also shown to the Ministry of Law; the Law Ministry stated as follows: "I agree with the conclusion drawn in ————'s note of 18th October, 1966. The Draft Circular seems to be in order and in conformity with Section 40(c)(iii)".

II. Circumstances under which Board's Circular No. 32 dated 29th October, 1969. [F. No. 10/93/68-IT(A-II)] was issued.

M/s. Pooran & Co., Solicitors represented to the Board on 4th November, 1968 that the Tribunal's decision in ITA

No. 10411 of 1966/67 in the case of I.T.O., Com. Cir.II(6) Bombay Vs. Delhi Pharmaceutical Distributors Pvt. Ltd. holding that payment of bonus falls within Section 40(c)(iii) and is consequently subject to the restrictions contained in the said section is not correct and should not be followed by the Department because it is unduly restrictive and besides this view in conflict with the view expressed by the Board in its communication in Cir.30D of 7th November, 1966. The party, therefore, requested that this clarification should stand subject to the modification that even where the bonus is paid voluntarily and gratuitously, the same should be regarded as part of the regular remuneration and not be subject to the limitations under section 40(c)(iii). In any event, it should be confirmed that bonus paid either in any express or an implied term of contract or conditions of service (which include practice followed by the employer) is not covered by the said sec. 40(c)(iii).

The point was examined by the Board in consultation with the Ministry of Law. The Law Ministry's advice in this respect was that bonus and commission could in no case, be included in computing the "expenditure" u/s 40(c)(iii), because even if it could be said to be covered by the term "benefit, amenity or perquisite" mentioned in sec. 4(c)(iii), the case would fall within the exemption contained in the first proviso to that clause, and could not, therefore, be taken into account for the purpose of the Computation.

According to the Law Ministry, bonus and commission constitute "profits in lieu of salary" within the meaning of sec. 17(3)(ii) of the Act and have, therefore, to be excluded from the computation.

In view of the decision taken by the Board in consultation with the Ministry of Law, it was decided by the Board that salary, dearness allowance, bonus commission or any other cash allowance payable to the employee in terms of his contract of service, would be regarded as salary u/s 17(3)(ii) and not as "benefit or amenity" for the purposes of section 40(c)(iii)/40(a)(x) of the Income-tax Act. Further, only those cash payments would be covered by the expression "perquisites, amenities and benefits" which are paid to the employee

voluntarily and gratuitously and not in terms of the specific provisions of his contract of employment. In other words, the employee concerned should not have been in a position to enforce the payment of these amounts in a court of Law."

2.43. When pointed out by the Committee that from the instructions issued by the Board on 29th June, 1971, it looked as though the Board had accepted the point of view that the instructions issued in 1966 and 1969 were not in conformity with the provisions of law, the Chairman, Central Board of Direct Taxes stated: "The point is this. When the circular of 1969 went to the Comptroller and Auditor General of India, it was objected to and they said that they would not include for the purposes of perquisites bonus and various other items. We referred the matter to the Law Ministry and the first reaction of the Law Ministry was that it is possible, but since it is a very important matter, the best thing is to withdraw the circular. But when we withdraw the circular, naturally we had to tell the field staff the reason why we are withdrawing the circular as indicated by the Audit."

2.44. The witness further deposed: "The Law Ministry mentioned in 1971 in deference to the C. & A.G.'s objection that as there is no authoritative decision in this regard, the view that is favourable to the revenue may be followed till such time as any adverse decision is pronounced by any higher court. In view thereof, they said the circular in question may be withdrawn. So we withdrew. "..... At the time when we withdrew the circular, we did not want to wait till the Court gave a finding. But since it was a very vital question, we started receiving a number of representations from the Commissioners and at a point of time many companies assessments were held up because these provisions applied to every company and this being a very fundamental issue, the question was again re-examined with the Law Ministry and the Law Secretary after going through the note of C. & A.G. gave its interpretation on the basis of which we issued the subsequent circular."

2.45. The witness further added: "Our circular was issued in 1972 after consultation with the Law Ministry. The 1969 circular was also in consultation with the Law Ministry. We knew the immensity of the problem. As a matter of fact I was also associated in the examination and I have stated that this is a very important matter and therefore we should not wait and we withdrew the

circular forthwith and re-examined the position as to what is correct. We placed before the Law Secretary C.A.G.'s whole noting and asked for his opinion. The matter was discussed by me and the Law Secretary personally and we discussed the whole aspect together. After that an officer of that Ministry drew up a note on his advice summarising the whole thing."

2.46. The Committee pointed out that the Board withdrew their circular instructions of November 1966 and October 1969 in June 1971 as the instructions were found in conflict with the Law and enquired whether any instructions were issued for re-doing of the assessments wherein the Board's instructions of November 1966 and October 1969 were followed by the Income Tax Officers. The Ministry, in a note stated:

> "After the withdrawal of the circulars in June, 1971, no instructions were issued by the Board for re-doing all the assessments where Board's instructions of November, 1966 and October 1969 had been followed. In fact, the matter was reconsidered in consultation with the Law Secretary and as pointed out it was found that the instructions of 1966 and 1969 were in conformity with the legal position and this position has been explained in detail in Board's circular No. 80 dated 4-3-1972. There was obviously, therefore, no question of issuing any instructions for re-doing the earlier assessments."

2.47. The Committee enquired whether the Revenue Audit was consulted before issuing the circular on 4th March 1972 after cancelling the circulars issued in 1966 and 1969. The Finance Secretary stated: "The circular was not shown to the C.&A.G."

2.48. The Chairman, Central Board of Direct Taxes added: "The file started with a note from the Comptroller and Auditor General. That note was placed before the Law Secretary. If he had any doubt, he would have called a representative of the C.&A.G. for discussion; we did not."

2.49. It was pointed out that the case was certainly presented by the Finance Ministry to the Law Ministry, but in presenting the case, since they were quoting a reference of the C.&A.G., they did not inform the C.&A.G. what the Law Ministry itself or the Finance Ministry itself was saying on the reference. But afterwards, they said that they had taken the Law Ministry's opinion, although the CAG was not aware of it. If he were aware of this at the proper time, he could have added something and even now because he was

not bound by the Law Ministry's opinion, he could insist that a reference should be made to the Attorney General. The presentation of the case should have been vetted by Revenue Audit.

2.50. The Committee wanted to know whether, before issuing the Board's circular in March, 1972, the Law Ministry had examined in detail the scope of the relevant section in the Income Tax Act and whether any categorical answer was given by them regarding inclusion or exclusion of bonus commission in salary for purposes of limitation under the Act. The Chairman, CBDT stated: "We gave the whole file drawing their attention to the note." The witness read out the reference made by the Board to the Law Ministry as under:—

"The instructions contained in the Board's Circular were objected to by the CAG of India who expressed the opinion that under Section 40(c)(iii) and 40(a)(v), all allowances whether in cash or in kind, bonus, commission, medical reimbursement, tax free element of the salary etc. whether paid voluntarily or under contractual obligation by an employer to an employee should be regarded as amenities, benefits or perquisites.... The matter was reconsidered in consultation with the Ministry of Law who in their note dated 11-6-1967 advised that the view which is favourable to the revenue may be followed till such time as an adverse decision is pronounced by any competent Court and that the circular in question should be withdrawn. We have accordingly withdrawn the circular. The question of issuing fresh instructions in order to clarify the position to the field officers was again taken up and the matter discussed with the Additional Legal Adviser. In his note dated 3-12-1971 the Additional Legal Adviser stated that in a case where bonus is paid not so much as bounty or benefit but is paid as part and parcel of the remuneration for services rendered by the employee such payment may partake of the nature of salary rather than as a benefit. If however, on the terms and conditions of service, either there is no obligation on the employer to pay the bonus or commission, or it is a matter purely in the discretion of the employer, then such payment should be treated as benefit paid by way of addition to salary rather than in lieu of salary. He further expressed the view that even if bonus is paid under a legal obligation, as for example, under the Bonus Act, so long as the terms and conditions of service of employment do not provide that it is a recompense for services rendered, such payment may be treated as a profit in addition to salary rather than a profit in lieu of salary." The witness went on; "The latest advice of the Ministry of Law is:

"Where bonus or commission is paid under the terms and conditions of service as part of the remuneration for ser-

vices rendered by the employee, it will not be regarded as an amenity or benefit or perquisite for purposes of Section 40(a)(v), where however, an employer is under no obligation to pay any bonus or commission under the terms and conditions of employment and the payment is made on the pure discretion of the employer such payment will be treated as benefit." We differed from the Law Ministry's opinion and we stated that if it was not under a contract, then it would be treated as a benefit but if it was a part of the contract, ther it would not be. The Law Ministry had gone further and therefore we said:

"We however feel that where bonus is paid under a statute, as for example, the payment of bonus Act 1965, it should not be regarded as benefit perquisite or amenity but the statute would be deemed to have modified the service agreement in this behalf. The position in regard to bonus paid under various other circumstances is also not free from doubt. Bonus may become payable under the service agreement between the employer and the employee under a statutory obligation in accordance with the provisions of the payment of Bonus Act, in terms of decisions of trade associations, as for example the Indian Banks Association, in terms of awards of labour tribunals and purely gratuitously without there being any legal or contractual obligation for the payment. It could perhaps be urged that all payments of bonus except those under (v) cannot be treated as benefits emanating therefrom."

2.51. In reply to a question, the witness stated: "Our view was hat it was not in conformity with the CAG's view. Because we were not in agreement with the views of CAG. So we pointed out to the CAG the Law Ministry's poinion.

2.52 The Committee pointed out that the Comptroller and Auditor General sent a note to the Ministry for its consideration, the Ministry, if it did not agree, should have informed the CAG saying that they proposed to consult the Law Ministry and obtain their opinion. Even when the Law Ministry's opinion was not in conformity with the views of the CAG, the Ministry should have informed the CAG about the opinion of the Law Ministry before issue of the circular so that CAG also would have had an opportunity of further explaining or revising his point of view or to ask that the matter be referred to the Attorney General. That would be the proper procedure

which should have been followed. The Finance Secretary stated: "I agree that that should have been the procedure." He further stated: "In such cases, it is always desirable to have a tripartite discussion. As you would recall, last year also this point we raised and it was said that there should be a tripartite discussion between the Auditor General, the Department and the Law Ministry and they should jointly sit down and sort out these legal problems; but we would be quite willing to take any other additional opinion."

2.53. The Committee learnt from Audit that in certain cases out of the 16 cases referred to in the audit para, perquisites of house rent allowance, car allowance, and expenditure incurred by the company on account of payment of rent, electricity, gas were not taken into account for limitation i.e. 1|5th of the salary. The Committee wanted to know whether the cases referred to in the paragraph related to the issue of bonus|commission only or to other perquisites as well. The Chairman, Central Board of Direct Taxes stated: "We have made it very clear in the circular that payments in the form of benefits or amenities such as reimbursement of medical expenses, provision of electricity, water gas payment of club bills, employment of domestic servant etc. would be part of perquisites..... These are perquisites and would be taxable. If the I.T.O had not done it, it is a mistake."

2.54. When asked to investigate the circumstances under which the perquisites of house rent allowance, car allowance etc were not taken into account for limitation as also to take action against the defaulting officers, the Finance Secretary stated: "We shall investigate the case and find out".

2.55. The Committee enquired whether the assessments had been rectified and the additional demand raised and recovered. The Ministry in a note stated: "They related to other perquisites as well. Out of the 16 cases, rectificatory action on the basis of audit objection in the case of M|s. Navroji Wadia Ltd. has already been taken as this case was not covered even by the Board's earlier circulars. As regards the remaining 15 cases, a view was expressed that rectification may not be possible in the context of the Supreme Court's decision in Navnitlal's case 56 ITR 198. However, on detailed consideration, the Ministry asked the income tax Department to have these cases also reviewed, having regard to the Revenue Audit objection and the Board's latest instructions dated 4-3-1972".

2.56. The Committee pointed out that the Supreme Court's decision had been given as early as 1964 and enquired whether the Ministry were not aware of that decision before issuing the circular.

The witness stated: "I agree that the letter (reply) is not appropriate. I do not think the Supreme Court decision justifies it; it is my view. We have now issued instruction (*i.e.* 27-10-72) that these cases may be rectified"

2.57 The Committee wanted to know the latest position about the rectification of the 16 cases and whether the Ministry had investigated these cases, if so, the action taken against the officers responsible. The Ministry, in a note submitted to the Committee furnished the latest position about the rectification of the 16 cases.

2.58 From the information furnished by the Ministry regarding rectification of the assessments of the 16 cases, the following position emerges:

(a) In one case rectification has already been done;

(b) In eight cases, no action was considered necessary as in those cases the provisions of Section 40(a) (v) were not attracted;

(c) In 6 cases, the information regarding rectification is awaited;

(d) In one case, no action was considered to be necessary as the amount involved is very small.

2.59 Any expenditure incurred by an employer directly or indirectly in the provision of any benefits, amenity or perquisite whether convertible into money or not, to an employee is allowed as deduction from business income only up to a limit of one-fifth of the salary of the employee or Rs. 1,000 per month whichever is less. Any expenditure incurred over the prescribed limit has to be disallowed in computation of the income of the employer. Under the executive instructions issued by the Central Board of Direct Taxes in November, 1966 and October, 1969, bonus, commission or any other cash allowance paid as an employee's regular salary was directed to be treated as part of the employee's remuneration and not as perquisite. When it was pointed out by Audit in December, 1970 that the executive instructions were contrary to law, the Board withdrew in June, 1971 their instructions with immediate effect. However, the fresh instructions issued in March, 1972 in consultation with the Ministry of law contemplate treating bonus given under certain conditions as salary. It is unfortunate that the Audit was not consulted in issuing these latest instructions. The Committee are of the view that the Audit should have been informed of the stand of the Ministry and when the matter was re-examined on the basis of

Audit objections, the Audit view should have been presented to the Law Ministry after showing it to Audit, and after affording Audit an opportunity to modify or expand its point of view in the light of the Board's views justifying a revised issue of instructions on the point. They trust that there will not in future be any such lapse; procedural though it is it is of vital importance.

2.60. As the matter stands, it has to be examined whether the Board's circular of March, 1972 correctly brings out the legal position. The Committee desire that the opinion of the Attorney General the Audit's point of view should be got vetted by the Comptroller and Auditor General of India.

Audit Paragraph

2.61 While computing income, the Income-tax Officer usually proceeds from net Profit and Loss account as the starting point and adds back the amount of depreciation charged to the Profit and Loss account. The amount of depreciation admissible under the Income-tax Act is thereafter allowed as deduction.

2.62 A company in its annual accounts for the years 1968-69 and 1970-71 debited depreciation on fixed assets and on township assets separately. The Income-tax Officer while computing the taxable income in December, 1969 added the depreciation relating to fixed assets but did not add back the depreciation relating to township assets. However, while computing the income for the two years depreciation on all assets including township assets as admissible under the rules was allowed. The excess allowance of depreciation amounting to Rs. 2,82,346 resulted in under-charge of tax of Rs. 1,55,287. The Ministry in their reply stated that the assessments have been rectified. Report regarding additional demand raised and collected is awaited.

[Paragraph 46(b) of the Report of the Comptroller and Auditor General of India for the year 1970-71 - Union Government (Civil) Revenue Receipts.]

2.63 The Committee desired to know whether the additional demand of tax had been raised and recovered. The Ministry of Finance in a written note submitted to the Committee confirmed that the additional demand had been collected. When asked to state the arrangements which the Income Tax Officer had for checking of assessment orders before they were finalise and issued to assessees, the Ministry stated: "There are no other formal arrangements for

checking of draft assessment orders before they are finalised and issued to assesses. The Income Tax Officers are themselves responsible for the accuracy of their orders."

2.64 Pointing out that a similar mistake was reported in para 61(c) of Audit Report 1965, the Committee enquired whether the Ministry had issued any instructions for avoidance of such mistakes. The Ministry, in a note submitted to the Committee stated: Following para 61(c) of Audit Report, 1965 and Public Accounts Committee's recommendations thereon *vide* paragraph 1.26 of their 46th Report (1965-66), instructions have been issued to all the Commissioners of income Tax by the Director of inspection (Income tax) *vide* letter No. M—30|3|66—D.I.T., dated the 20th September, 1966. The Board has also been issuing instructions as and when necessary regarding the correct allowance of depreciation and development rebate."

2.65. This is a case where the Income-tax Officer allowed depreciation on the township assets without first disallowing the depreciation already debited by the assessee in the profit and loss account. This accounted for excess allowance of depreciation of Rs. 2,82,346 resulting in short levy of tax of Rs. 1,55,287. The Committee had occasion to examine a similar case reported in the Audit Report, 1965. Despite issue of instructions in 1966 following the recommendation of the Committee contained in paragraph 1.26 of their 46th Report (1965-66), such a mistake has occurred again. The Committee would like to know whether the assessments in this case were checked by the Inspecting Assistant Commissioner/Internal Audit Party and if so, why the mistake was not detected.

2.66. The Committee learn that at the present there are no arrangements for checking up draft assessment orders before they are finalised and issued to the assessees. In view of the large number of mistakes in computation of assessable income that have been reported by Audit from year to year, the Committee desire that Government should consider the advisability of providing some kind of check of the draft assessment orders preferably a pre-check of Internal Auidt in big cases.

Audit Paragraph

2.67. A firm created bonus reserve as required under the Bonus Act, 1965, in addition to payment of bonus during the year. Under the Bonus Act, where the allocable surplus exceeds the amount of maximum bonus payable to the employees, the excess subject to the

prescribed limit, is carried forward for being utilised for payment of bonus in subsequent years. In addition to the expenditure incurred towards payment of bonus during the assessment years 1966-67 to 1969-70, the Income-tax Officer incorrectly allowed reserve of Rs. 1,18,282 created by the assessee towards bonus for future years as a business expenditure. This resulted in short-levy of tax of Rs. 79,761 in the hands of the firm and its partners. The Ministry have accepted the mistake and reported that the assessment of the firm was rectified raising additional demand of Rs. 22,349 which has also been collected. Report regarding action taken in the cases of partners is awaited from the Ministry (February, 1972).

[Paragraph 46(d) of the Report of Comptroller & Auditor General of India for 1970-71—Union Government (Civil)—Revenue Receipts.]

2.68. The Committee desired to know whether the assessments of the partners had been rectified and if so the additional demand raised and recovered. The Ministry of Finance, in a written note submitted to the Committee, stated: "The assessments of the partners have been rectified, raising an additional demand of Rs. 56,685 which has been recovered."

2.69. Learning from Audit that the four assessments were made by three Income Tax Officers and that all of them committed the same mistake the Committee enquired whether the Ministry had issued any instructions clarifying the provisions of the Bonus Act, 1965 and their impact on the provisions of the Income Tax Act for the guidance of the Income Tax Officers. The Ministry, in a note, stated: "Issue of the necessary instructions in the matter is under consideration."

2.70. At the instance of the Committee, the Ministry, in a written note, furnished the following information regarding the income of the firm for the three years 1966-67 to 1968-69 and the date of completion of the assessments:—

Assessment year	Income	Date of completion of assessments
	Rs.	
1966-67	2,34,886	30-9-1966
1967-68	2,04,095	16-4-1962
1968-69	3,25,619	26-5-1960

2.71. The relevant assessment were stated to have been taken up for scrutiny by audit in May, 1970. The committee wanted to know whether the assessment were subjected to scrutiny by the Internal Audit of the Department before Revenue Audit took up the case for scrutiny. The Ministry, in a written reply, stated that the case was not looked into by the Internal Audit Party.

2.72. When asked for the reasons, the Ministry stated: "After completion of the assessments for 1966-67, 1967-68 and 1968-69, the file was transferred to another circle, but the Internal Audit Party concerned with the predecessor circle over looked to intimate the successor circle's I. A. P. that the file had not been audited."

2.73. Although under the Income-tax Law only actual expenditure incurred towards payment of bonus is allowable as a deduction from taxable income, the I.T.O. allowed the bonus reserve created by the firm as per the Bonus Act, 1965 also as a business expenditure which resulted in under-assessment of income of Rs. 1,18,282 with the consequent short levy of Rs. 79,761. Regrettably the case was not looked into by the Internal Audit Party over a period of 3 years. The Committee feel that the provisions of the Bonus Act and their impact on the provisions of the Income-tax Act need to be clarified for the guidance of the Income-tax Officers. A general review of the past assessments involving bonus reserve is also called for so that mistakes of this kind, if any, could be rectified before these become time-barred.

(d) *Mistakes in computing depreciation and development rebate*

Audit Paragraph

2.74. Where an assessee had acquired any capital asset from a country outside India for the purposes of his business on deferred payment terms or against a foreign loan before the date of devaluation of the rupee *viz.* 6th June, 1966, the additional rupee liability incurred by him in meeting the instalments of the cost of the asset or of the foreign loan, falling due for payment after the date of devaluation, is allowed to be added to the original actual cost of the asset for the purpose of calculating the depreciation allowance.

2.75. A non-resident company had no foreign liability outstanding on the date of devaluation. However, the assessee claimed depreciation of Rs. 16,33, 305 for the assessment year 1968-69 after enhancing the written down value of the assets by the fall in the value of the rupee in relation to the pound sterling consequent upon the devaluation of rupee and the claim was allowed by the Income-tax

Officer. As no foreign liability was outstanding, the incorrect enhancement in the written down value resulted in excess allowance of depreciation by Rs. 11,03,158 for the assessment years 1967-68 and 1968-69 resulting in total short-levy of tax of Rs. 7,81,942. The Ministry have accepted the mistake. Out of the demand of Rs. 7,81,842 a sum of Rs. 2,53,614 remains to be collected.

[Paragraph 47(a) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts]

2.76. The Committee was given to understand by Audit that the Ministry, in their subsequent report dated 24th March, 1972, had intimated that the demand of Rs. 2,53,614 had also been recovered.

2.77. Pointing out that as no foreign liability was outstanding in respect of the assets, the conversion of the pound sterling into Indian Currency should have been done at the pre-devaluation rate only, the Committee wanted to know the circumstances in which the mistake was committed by the Income Tax Officer. The Member, Central Board of Direct Taxes stated, "It is the Income Tax Officer who did this. This is a non-resident company which maintains its accounts in the U.K. in sterling. It has got its subsidiary and it hires tabulating machines, etc. to the Indian Company, the hire received is converted into sterling. They draw up their profit and loss account in sterling and depreciation is also calculated in sterling. The Income Tax Officer took the depreciation as calculated by them in sterling and converted it at the higher rate after devaluation.....He should have been more watchful."

2.78. The Committee learnt from Audit that as a further development the assessee's appeal against the Income Tax Officer's order of rectification of the assessment for the assessment year 1967-68 had been dismissed by the Appellate Assistant Commissioner, where as in respect of the assessment for the assessment year 1968-69, the assessee's appeal was allowed by the Appellate Assistant Commissioner for the following reasons:

> "As regards the second contention namely depreciation should be calculated with reference to the sterling written down value of the assets are to be fully depreciated, I have already held that the written down value is to be worked out separately for each year and that in the case like this it should be worked out in sterling. The written down value so worked out should then be converted into rupee at the exchange rate as prevailing on the first day of the

accounting year. The Income Tax Officer is accordingly directed to recompute the written down value and depreciation on the above basis."

2.79. The Committee enquired whether the Ministry had accepted the above view, the witness stated: "The earlier Income Tax Officer who had become Appellate Assistant Commissioner, had committed the mistake. But this is a later development which has taken place only now.....The assessment involved were 1967-68 and 1968-69, previous years being calender year 1966 and calender year 1967. Devaluation came in June, 1966. In respect of both the years, in the first year the Appellate Assistant Commissioner confirmed the Income Tax Officers action. In the second year, he allowed the appeal."

2.80. Elaborating further, the witness stated: "He took the legal ground, that is, for the purposes of allowance, depreciation, the written down value should be on the first day of the accounting year. In the first year of the two, the first day of the accounting year was 1st January, 1966. This is a date before devaluation. In the second year, it was 1st January, 1967. This was after devaluation. Therefore, the higher written down value as computed after devaluation was admitted by the Appellate Assistant Commissioner for the second year, but not for the first year. .....We are not accepting. That is why we have gone on second appeal. The Department has filed a second appeal to the Tribunal."

2.81. When asked for the date and grounds on which the appeal to Tribunal had been filed by the Department, the Ministry of Finance, in a note submitted to the Committee stated:

> "The grounds of the Department's appeal before Tribunal are that the A.A.C. has erred in holding that the written down value of the assets of the assessee company which is a non-resident and which maintains its accounts in sterling should be worked out separately for each year and also in sterling. The A.A.C. has also erred in directing the Income Tax Officer to convert the written down value so worked out in sterling into rupees at the exchange rate as prevailing on the first day of the accounting year. The appeal is still pending."

2.82. The Ministry intimated the date on which the appeal to Tribunal had been filed as 30th April, 1972.

2.83. The Committee wanted to know whether there was any vigilance angle involved in this case. The witness stated: "No complaint has been made". The Ministry in their letter dated 25th November, 1972, further stated: "The Board requested the Director of Inspection (Inv.) to look into the matter and he in turn deputed his Additional Director (Vig) to go to Bombay to study the records and discuss the matter with the Commissioners to verify and determine whether any vigilance angle was involved in the assessment made by the Income Tax Officer concerned. The Additional Director accordingly went to Bombay and made an exhaustive study of the records as well as discussed the matter with the concerned Commissioners of Income-Tax. He has come to the conclusion that the mistake is attributable to carelessness and that there is no reason to doubt the Income Tax Officer's integrity and hence no vigilance angle is involved in the assessment made by him. The Income Tax Officer has been cautioned for the mistake."

2.84. The Ministry further added: "It may not be out of place to mention that consequent to the devaluation of the sterling in October 1967, the assessee on their own marked down the written down value of the assets; this step was in favour of the revenue. This shows that the company followed a consistent though in correct method of determining the written down value of its assets located in India."

2.85. The Committee enquired whether the Ministry had conducted any investigated to find out whether there were similar other cases in other income tax charges and if so the result of such investigation. The witness replied: "We have not made any review, no review has been ordered."

2.86. The witness added: "Only recently some instructions have gone about devaluation while reviewing the case."

2.87. The Ministry, in their letter dated 25th Nov., 1972, stated: "On a general basis, the Board have since issued instruction No. 474 (F. No. 228/11/72-ITAII) dated the 15th November, 1972 for review of cases for remedying similar mistakes in other cases."

2.88. When asked whether the Internal Audit looked into the case, the Ministry, in a written note, replied in the negative.

2.89 For the assessment year 1967-68 a non-resident company converted the written down value of assets from pound sterling to Indian currency and claimed the depreciation thereon. In view

of the devaluation of the Indian currency on 6-6-1966 the conversion was made by adopting the higher exchange value of pound sterling. As no foreign liability was outstanding in respect of the assets the conversion into Indian currency should have been done at the pre-devaluation rate only. The incorrect enhancement in the written down value claimed by the assessee and accepted by the Department resulted in excess allowance of depreciation for two years, 1967-68 and 1968-69, to the extent of Rs. 11,03,158. The total short levy of tax was Rs. 7,81,942. The Ministry have accepted the mistake and the entire additional demand has been recovered. However, the Income-tax Officer at fault, who became Appellate Assistant Commissioner, allowed the assessee's appeal. The Ministry have informed that the order of the Assistant Commissioner in this regard has been appealed againt. The Committee would like to know the outcome.

2.90. The Committee are of the view that it is grossly improper to allow an Income-tax Officer promoted as Appellate Assistant Commissioner to take congisance of and decide an appeal arising out of an order passed by him as the assessing officer. They would, therefore, like Government to issue suitable instruction.

2.91. The Internal Audit have not looked into this case. The circumstances under which such a big company assessment was not taken up for scrutiny by Internal Audit may be reported to the Committee.

2.92. The Committee find that the Central Board of Direct Taxes have issued instructions on 15-11-1972 for a review of the position in all the Circles with a view to remedying similar mistakes, if any. The results of the review and the action taken to rectify the mistakes may be intimated to the Committee.

Audit Paragraph

2.93. In the assessments for the years 1959-60 to 1961-62 and 1963-64 to 1965-66 of a company the total amount of depreciation allowed on the various assets including initial depreciation was not limited to the cost of the assets; and some of the assets included were sold away but the department considered only part of the sale proceeds on estimate basis as profits chargeable to tax. The correct procedure should be to treat the entire sale proceeds to the extent of the cost

of the assets as profits and the balance as capital gains, as the value of the assets was completely written down. The mistakes led to total short-levy of tax of Rs. 1,28,113 of which a sum of Rs. 83,942 relating to the assessment years upto 1961-62 proved to be loss of revenue due to rectification having become time-barred. The Ministry have accepted the mistakes. Report regarding rectification and recovery of the tax for the assessment years 1963-64 to 1965-66 is awaited.

[Paragraph 47(b) of the Report of Comptroller & Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts]

2.94. The Committee enquired whether the assessments for the years 1963-64 to 1965-66 had been revised and if so, the additional demand of tax raised and recovered. The Ministry, in a note, stated: "It has not been possible to revise the assessments for the assessment years 1963-64 to 1965-66 because of a writ petition filed by the assessee before the Gujarat High Court against the action taken by the Department for re-opening the assessment year 1962-63. The petition is pending, the court having issued an injunction rule."

2.95. Referring to the loss of revenue of Rs. 83,942 relating to the assessment years upto 1961-62, the Committee asked whether the Ministry had investigated into the circumstances leading to the loss of revenue. The Ministry, in a written reply, stated: "The rectificatory action for the assessment years 1959-60 to 1961-62 had become time barred even before the receipt of the audit objection. The mistake arose because while completing these assessments, the Income Tax Officer based the computation on the depreciation statement prepared by his predecessor in the assessment for the year 1957-58, in which there was no mention of the initial depreciation allowed."

2.96. The Committee pointed out that it was mentioned in the Audit paragraph that the Income Tax Officer estimated the profits on sale of assets out of the sale proceeds instead of arriving at the profits as laid down in the Income Tax Act. The Committee wanted to know the basis for the Income Tax Officer's action. The Ministry, in a written note, replied: "The I.T.Os action in estimating the profits on sale of assets instead of arriving at the profits as per procedure laid down in Income Tax Act, was not correct. He has been cautioned. It has been ascertained from the Department that this practice was adopted because the written down value of certain assets sold every year was neither known nor capable of being easily ascertained by the Income Tax Officer from record. It was difficult to keep track of all particulars of Written Down Value asset-

wise and accordingly when such assets were sold, the profit on sale of the assets was taken on estimate at 50 per cent of the sale price and taxed under Section 41(2) of the Act."

2.97. The Committee were given to understand that omission to restrict the total depreciation on assets to the total cost of the assets was commented upon in earlier Audit Reports as follows:—

Actual Report	Para No.
1963	25 (a) and (b)
1966	39 (b)
1967	42 (f)
1968	45 (b)

2.98. In paragraphs 46 and 47 of their 21st Report (1963-64), the Committee recommended as follows:—

Para 46 ".....The Committee regard this lapse as serious. It is regrettable that neither the Inspecting Assistant Commissioner nor the Internal Audit Party could find the defect for any of these years. Necessary remedial measures are essential to ensure unearthing of such mistakes in case of big assessees."

Para 47 "The observations of the Committee made in the previous case also apply to this case. The Committee hope that such mistakes will be avoided in future."

2.99. Drawing attention, the Committee pointed out that in spite of their recommendations, the excess grant of depreciation in the case under examination remained undetected. The Committee enquired whether the assessments were looked into at any time by the Internal Audit. The Ministry, in a written note, replied in the affirmative. It was further stated that the different assessments involved were checked by four Internal Audit Party Officials.

2.100. The Audit paragraph brings out two kinds of mistakes in the computation of depreciation and the profits chargeable to tax when assets were sold away, resulting in short levy of tax to the extent of Rs. 1,28,133 of which a sum of Rs. 83,942 became time-barred. The total amount of depreciation including initial depreciation granted on assests was not limited to the total cost of the assets as required under the law. Further, where certain assets were sold the profit on the sale of

assets was estimated as 50 per cent of the sale price, instead of treating the entire sale proceeds to the extent of the cost as profits and the balance as capital gains as the value of the assets was completely written down. The failure of the Internal Audit to detect the mistake should be suitably dealt with. The Committee would also like to know whether the Inspecting Assistant Commissioner had checked the assessments in this case and if so, how he failed to detect the mistake. In this connection it is of interest to note that omission to rectrict the total depreciation on an asset to the cost of asset was commented upon in a number of earlier Audit Reports.

2.101. The Committee are unable to appreciate the difficulty in keeping track of all particulars of written down value assetwise and resorting to estimation of profits on sale of assets when Audit could find the written down value from assessment records. The Committee cannot but take a serious view of such slackness of the assessing officers. It will be of interest to know whether the irregular practice of estimating the profit on sale of assets was followed in any other case in this ward and in other wards/circles and the action taken to rectify the mistake and recover the taxes as due.

Audit Paragraph

2.102. Under the provisions of the Income Tax Rules, 1962 extra shift depreciation is not admissible in respect of some items of machinery specified therein. Contrary to the Rules, the extra shift allowance was allowed in the following cases:

(i) A company engaged in the business of generation and distribution of electricity claimed extra shift allowance of Rs. 5.55 crores on hydro-electric unit and on certain electrical and other machinery for the assessment years 1967-68 and 1968-69 and it was allowed in full by the department. The assets were not entitled for extra shift allowance and the incorrect grant of allowance led to excess carry forward of loss at the end of the assessment year 1968-69 for adjustment against future years' profits. The Ministry have stated in reply that the incorrect extra shift allowance amounted to Rs. 13.42.297 in respect of barrages for the two assessment years 1967-68 and 1968-69. The amount of allowance incorrectly granted in relation to other machinery is being ascertained.

[Paragraph 47(c)(i) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil) —Revenue Receipts.]

2.103. The Committee wanted to know about the extra shift allowance and also the conditions governing its grant. The Ministry, in written reply, stated:

> "Extra shift allowance is an addition to the normal depreciation, granted to a concern which was worked double shift or triple shift. The grant of extra shift allowane is governed by the provisions of Appendix I to Rule 5 of the Income-tax Rules, 1962."

2.104. The Committee enquired whether in the case under examination, the assessee gave the particulars of various plant and machinery as per the desription laid down i nthe Income-tax Rules and as required under the provisions of the Act. The Ministry, in a written note, replied in the affirmative.

2.105. To a question, the Ministry in a note stated that extra shift allowance was not admissible in respect of barrages.

2.106. When asked to state how did the Income-tax Officer allow extra shift allowance on the item, the Ministry stated that the Income Tax Officer wrongly classified the barrage as falling under E(2)(a) of item III(iii) of Appendix I of Income Tax Rules instead of E(2)(b) of item III(iii).

2.107. The Committee enquired whether the extra shift allowance in respect of the other plant and machinery had been examined and if so, the position in regard to its admissibilities. The Ministry, in a note, replied in the affirmative. They further stated:

> "There is a difference of opinion between the Ministry and the Audit in the matter. The Audit have been apprised of the Ministry's views and told that if the position is not acceptable, the matter can be referred to Law Ministry; their reply is awaited. However, as a precautionary measure, the assessments have been revised in accordance with the Audit stand."

2.108. When asked whether the Income Tax Officer allowed extra shift allowance in respect of the same machinery commented upon by Revenue Audit, in respect of the earlier years, the Ministry, in a written note replied in the negative.

2.109. A case wherein extra shift allowance was claimed by the assessee to the extent of Rs. 5.55 crores and was allowed by the

Department for the assessment years 1967-68 and 1968-69 has been reported in the Audit paragraph. According to Audit, the assets were not eligible for extra shift allowance. The Committee further note from the reply of the Ministry that the ITO did not allow extra shift allowance in respect of these assets in earlier years. However, the Ministry have admitted the incorrect grant of extra shift allowance amounting to Rs. 13,42,297 in respect of barrages for the two assessment years and as regards the rest of the assets, there is stated to be a difference of opinion between the Ministry and Audit to be referred to the Ministry of Law, if necessary. As the assessee is stated to have given the particulars of various assets as per the description laid down in Income-tax Rules and as required under the provisions of the Act, the Committee desire that the correctness of the allowance granted should be determined in consultation with the Ministry of Law early.

Audit Paragraph

2.110. In the case of an assessee engaged in the business of manufacture of steel furniture and refrigerator components, body-building for buses etc., depreciation on plant and machinery was allowed for the assessment years 1961-62 to 1966-67 at the rate of 10 per cent instead of at the general rate of 7 per cent, as a separate special rate of depreciation is not prescribed for this type of industry. The excess allowance led to short-levy of tax of Rs. 7,08,000. Though as a precautionary measure the assessments have been revised and additional demand has been raised, the Ministry have stated that the rate originally applied is correct. However, in the absence of a special rate for the industry in question, only the general rate of 7 per cent is applicable.

[Paragraph 47(d) of the Report of Comptroller & Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts.]

2.111. The Committee wanted to know when the assessment were rectified and the additional demand of tax raised for all the years 1961-62 to 1966-67. The Committee also enquired whether the demand had since been recovered. The Ministry, in a written note stated:

> "The assessments for the assessment years 1963-64 to 1966-67 were rectified under section 154 of the Income-tax Act, 1961 raising an additional demand of Rs. 8,90,773/- but these were quashed in appeal by the Appellate Assistant Commissioner of Income-tax on the plea that there was

no mistake apparent from the records. The Department has taken the matter appeal to the Tribunal. As a precaution, alternative action under sec. 147(a) of the Act has also been initiated. For the assessment years 1961-62 and 1962-63, the department is exploring whether action for these two years involved income over Rs. 50,000 and could lie under section 147(a) with the Board's approval.

2.112. The Committee pointed out that from the Audit Paragraph it was seen that the Ministry had maintained that the depreciation allowed by Income Tax Officer was in order and enquired whether a special rate of depreciation was laid down for the type of industry mentioned in the audit Report. The Ministry, in a note, submitted to the Committee stated:

"On 14th March, 1972, the Ministry informed the Audit that while it was correct that depreciation should not have been allowed at flat rate of 10 per cent it was not correct to say that depreciation should be allowed only at 7 per cent. There is no special rate of depreciation prescribed for this type of machinery. On a detailed examination it is found that the plant and machinery in this case falls within two categories (a) General Plant and Machinery on which depreciation is allowable at the present rate of 7 per cent under itm III(i) of the Appendix I to Income-tax Rules and (b) Machine Tools which are entitled to depreciation at the rate of 12 per cent under item III *ibid.*"

2.113. Pointing out that similar mistakes as the one under consideration were brought to the notice of the Committee every year through Audit Reports, the Committee enquired about the special steps, proposed to be taken by the Ministry, to prevent such mistakes in future. The Ministry, i na written note, stated: "The Central Board of Direct Taxes *vide* Instruction No. 416 have already issued guidelines to the field officers in this regard".

2.114. The Committee would like to know the progress made in reopening the assessments in this case and the amount of additional demand created/recovered.

Audit Paragraph

2.115. Grant of development rebate on new plant and machinery owned by an assessee and used for the purposes of business, is subject to the following conditions besides other:

(1) If assets in respect of which development rebate is allowed are sold or transferred within a period of eight years

from the end of the previous year in which they were installed, the development rebate already granted has to be withdrawn.

(2) The development rebate reserve required to be created at the time of grant of the rebate must not be utilized for distribution as profits or dividends for a period of eight years next following. Infringement of this conditions results in withdrawal of the development rebate already granted.

(i) In the case of a company for the assessment year 1963-64 (assessment completed in January, 1967), development rebate of Rs. 2,01,197, was allowed on new plant and machinery. Though the plant and machinery was sold in previous year relevant to the assessment year 1964-65, the development rebate allowed to the assessee was not withdrawn resulting in short-levy of tax of Rs. 1,00,599. The Ministry have intimated that the assessment was rectified and the additional demand of Rs. 1,00,599 recovered.

[Paragraph 47(e)(i) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

2.116. The Committee wanted to know the reasons for the failure on the part of I.T.O. to make use of the information already available with him and deny the development rebate or withdraw the development rebate after it was granted. The Ministry, in a note, submitted to the Committee, stated: "The I.T.O. had obtained particulars of the assets sold by the assessee in respect of which development rebate already allowed was to be withdrawn and in fact passed appropriate orders in December, 1965 under Section 154 for the assessment years 1959-60 to 1961-62, with drawing development rebate on the ground noticed by his predecessor during assessment for 1962-63, when he came across information that relevant assets had been sold in assessment year 1964-65, warranting withdrawal of development rebate in earlier years. However, the assessment for 1963-64 (subject of audit) was pending at this time and the ITO thought he would make necessary adjustment at the time of completion of assessment. The assessment under Audit objection was completed by him much later in January, 1967 and due to time lag of over a year he lost sight of the need to withdraw the development rebate allowable in respect of assets sold."

2.117. The Committee desired to know the section under which the assessment was made and whether the I.T.O. enquired from the

assessee at the time of assessment whether the plant and machinery on which development rebate was being claimed was in his possession and was being used for the purpose of his business. The Ministry, in a written reply stated: "The relevant assessment for 1963-64 was completed under Section 143(3) of the Income-tax Act, 1961. As explained above, the I.T.O. did not make any enquiry in this respect."

2.118. To a question, the Ministry, in a note stated: "The return of income was filed subsequent to the date of the sale of the plant and machinery. The assessee did not intimate the ITO the fact about the sale of plant and machinery at the time filing of return of income".

2.119. The Committee enquired whether the Ministry had issued any special instructions to the Internal Audit to carry out a review of the assessments wherein development rebate was granted, to find out, whether any information was available in the assessment records to indicate that the assets were subsequently sold away within the prohibited period under the Income-tax Law. The Ministry, in a written reply, stated:

> "The Ministry have considered this matter and issued general instructions No. 368 (F.202|57|71-IT.AII) dated 3-1-1972 and the Income Tax Officers while completing assessments and the Internal Audit Parties while auditing the assessments will no doubt bear these instructions in mind."

2.120. The Committee wanted to know the time limit prescribed for the rectification of the assessment withdrawing the development rebate already granted and whether the rectification was made in the case under examination within the stipulated period in the law. The Ministry, in a note, stated:

> "The time limit is four years from the end of the previous year in which the sale or transfer takes place. Although the time limit for withdrawal of the development rebate became barred long before the Revenue Audit raised the objection the I.T.O. was able to rectify the mistake with the concurrence of the assessee."

2.121. Under the Income-tax Law if an asset on which development rebate was allowed, is sold away within a period of 8 years from the year of installation the development rebate allowed on the asset should be withdrawn. In the case reported in the Audit paragraph development rebate of Rs. 2,01,197 was allowed on new plant and machinery for the assessment year 1963-64 completed in January, 1967. However, information was available in the assessment

records that the plant and machinery was sold away in the previous years relevant to the assessment year 1964-65. Yet the ITO did not withdraw the development rebate granted to the assessee resulting in short levy of tax of Rs. 1,00,599. It is strange that the ITO overlooked the particulars available in the assessment records and did not also make enquiries from the assessee at the time of assessment whether the plant and machinery on which development rebate was being claimed was in his possession and was being used for the purpose of his business. These lapses on the part of the ITO should be suitably dealt with.

2.122. The Committee note that the return of income was filed subsequent to the date of the sale of plant and machinery and that the assessee did not intimate the ITO the fact about the sale at the time of filing of return. The Committee would like to know whether the assessee would attract any penalty for this suppression of information.

(e) *Incorrect levy of tax on capital gains*

Audit Paragraph

2.123. An assessee sold certain lands during the year relevant to the assessment year 1963-64 for Rs. 2,99,614. Capital gains on such sales were assessed by the department at twenty per cent of the sale price (*i.e.* Rs. 59,923) on the ground that the original cost of the land was not known. From the wealth-tax records of the assessee, it was found that the original cost of the land was Rs. 21,900 only and on this basis the long term capital gains correctly worked out to Rs. 2,77,714 as against Rs. 59,923 arrived at by the department. The under-assessment of capital gains of Rs. 2,17,791 accounted for short-levy of tax of Rs. 54,447. The Ministry have accepted the mistake.

[Paragraph 48(a) of the Reoprt of the C&AG for the year 1970-71—Union Government (Civil) Revenue Receipts]

2.124. The Committee wanted to know whether the assessment had been rectified and additional tax recovered. The Member, Central Board of Direct Taxes, stated: "It had been rectified and the additional tax was realised".

2.125. The Committee enquired whether there were any provisions in the Law supporting the action of the Income Tax Officer in estimating the capital gains at 1|5th of the sale value. The witness stated: "It is not a question of anything in the Law; it is a question of evidence. The Income Tax Officer has to determine the

capital gains on the evidence available." The Finance Secretary added: "These are no instructions to this effect from the Board".

2.126. The Committee pointed out that from the audit paragraph it was seen that the particulars of the book value of the assets were available in the wealth tax records of the assessee and asked why did not the Income tax officer carry out a coordinated study of the Income tax and wealth tax records of the assessee. The Member, Central Board of Direct Taxes, stated: "It was looked into. When he took up the assessment, wealth tax records were not available as they were sent to the Tribunal. But details were furnished in the income tax returns and therefore he checked them".

2.127. When asked whether the assessee was asked to state specifically his declaration in the wealth tax return, the witness stated: "He was asked verbally. He said that the information was not available". The witness further stated that there were two properties. The value of one property returned was Rs. 41,000 and the value adopted for wealth tax was Rs. 1,50,000. For the other property the assessee declared the value as 21,582 and this was accepted. The property valued at Rs. 21,582 was sold in full and the other property was sold in part. The Committee pointed out that Wealth Tax declaration must be obviously more than Rs. 2.99 lakhs. The Committee enquired whether the department could undertake a revision of the wealth tax assessment now. The witness replied in the affirmative.

2.128. The Committee wanted to know whether the question of revising the wealth tax assessments was considered earlier and if not the reasons therefor. The Ministry in a written note, stated:

The position regarding the revision of Wealth-tax assessment is as under:

(a) There is nothing on record to indicate that the question of revision of Wealth Tax assessments in respect of the two properties in question sold during the previous year relevant to Asst. Year 1963-64, was or was not considered for the asst. years prior to 1963-64.

(b) The two properties which are the subject matter of audit objection were being described in the Wealth Tax returns for all assessment years upto 1962-63 as under:—

(i) Agad Buildings with compound and gallery; and

(ii) Chittakhana near Warashia and Harniappa.

In the Wealth Tax return for assessment year 1963-64, the assessee does not appear to have indicated specifically the fact of the sale of the parts of the above properties except that the figures under the column of "total present value" in the "statement of immovable properties" were shown at reduced figures in respect of both the properties *i.e.*, Rs. 12,395 and Rs. 3,200 against Rs. 41,000 and Rs. 20,583 returned in the earlier years. The I.T.O., therefore, does not appear to have become aware of the sale of the relevant parts of the properties while making the Wealth Tax assessment for assessment year 1963-64. This is further apparent from the fact that the I.T.O. assessed the values of these two properties at the same figures as were adopted for the assessments of the earlier year, *i.e.*, at Rs. 1,50,000 and Rs. 20,583. For the Assessment year 1964-65 also, the values of the respective properties were assessed at the same figures.

(c) The I.T.O., does not appear to have become conscious of the sale of the portion of the "Agad" property mentioned at item (b) (i) above which had been sold for Rs. 2,36,047 even while making the Wealth Tax assessments for Assessment Year 1965-66 and 1966-67 (completed on 21-12-1966 and 12-1-1967). He appears to have become aware of the sale only during the course of I.T., assessment for Assessment Year 1963-64 which was completed on 8-3-1968. The question of revision of Wealth Tax assessments for Assessment Years prior to 1963-64 in respect of the valuation of this property could, therefore, possibly have attracted the ITO's attention for the first time only at that stage. But by the time, the time-limit for action u/s 17(b) had already expired for all the relevant Assessment Years and action 17(a) was out of the question because the assessee had already disclosed material information including the area of land, etc., in his Wealth Tax returns filed originally.

(d) The I.T.O., does appear to have become conscious of the sale of "Chittakhana" property—the smaller one at (b)—(ii) above which had been sold for Rs. 63,564 while making Wealth Tax assessment for Assessment Year 1965-66

(completed on 21-12-1966) as is evident from the statement detailing assessed values of immovable properties forming enclosure to the assessment order. The I.T.O., could have possibly considered revision of the Wealth Tax assessment in repect of this property for earlier years at that stage. Here the time limit for action u/s. 17(b) was available only for one year *i.e.*, for Assessment Year 1962-63. It is, however, not clear from records whether the I.T.O., at all considered the question of revision of the assessment for Assessment Year 1962-63.

(e) Although the time-limit prescribed u/s. 17(b) permitted action for Assessment Year 1962-63 in respect of the 'Chittakhana' property, it is felt that such action may not have been of much avail for the following reasons:—

(i) The difference between the sale price, being Rs. 63,564 and that already assessed being Rs. 20,583, was only Rs. 4,000 approximately.

(ii) The sale was made on different dates upto October, 1962.

After the Gujarat State had separated from the erstwhile Bombay State, on 1-5-1960, the price of land in the major cities of Gujarat especially Baroda and Ahmedabad rose very sharply. The value of the sold out property as on 31-3-1962, the relevant valuation date for Assessment Year 1962-63 may, therefore, have been much lower than Rs. 63,564|- and consequently the under-assessment may have been much lower than Rs. 40,000 with a very small consequential tax effect.

The values of the unsold portions of the two properties stand assessed adequately for the assessment years 1963-64 to 1966-67 upto which the Wealth Tax assessments have been finalised so far and they do not apparently need any revision in this regard. The unsold portion of the first property stands finally assessed at Rs. 1,50,000 for Assessment Year 1963-64 and at Rs. 1,08,600 for each of the Assessment Years 1964-65 and 1965-66. The value of Rs. 1,08,000 is based on the price of the unsold portion which it fetched on its sale on 29-9-1965 (*vide* also AAC's order dated 23-3-71). The unsold portion of the other property stands assessed at Rs. 20,583 for Assessment Year 1963-64 and for Rs. 10,000 for Assessment Years 1964-65 to 1966-67.

2.129. The Committee learnt from Audit that the assessment was not checked in Internal Audit. The Committee wanted to know the circumstances in which the file was not checked in Internal Audit. The Ministry, in a written reply, stated that the assessment in question was checked by the Internal Audit Party on 4th May, 1968.

2.130. An assessee owned two properties. The values returned by him for wealth-tax purposes were Rs. 41,000 and Rs. 20,583 respectively. A part of each of these assets was sold during the previous year relevant to the assessment year 1963-64 for Rs. 2,99,614. The Income-tax Officer, instead of arriving at the value of capital gain after deducting the original cost from the sale value, estimated it at 1/5th of the sale value on the ground that the original cost of the land was not known. Admittedly, he had no authority to estimate the capital gain in this manner. The assessee also does not appear to have given the relevant information on a verbal enquiry. The Committee desire that suitable action should be taken in the matter.

2.131. The value of one property adopted for wealth-tax purposes was Rs. 1,50,000 and the value of the other property was accepted as Rs. 20,583. As part of each of these properties has been sold for Rs. 2,99,614, the value of the properties should have been much more than this amount. While the under-assessment of capital gain has been rectified, no action could be taken in regard to the serious under-statement of wealth for the assessment years upto 1962-63. It is strange that the assessing officer did not notice the sale of the part of the assets, while making the wealth-tax assessment for the year 1963-64. As the assessee returned lower values for the properties, the assessing officer ought to have enquired into the matter. Further, he failed to correlate the income-tax records with the wealth-tax records. The Committee take a serious view of these lapses. They desire that appropriate action should be taken against the assessing officer.

2.132. Although the income-tax assessment in this case is stated to have been checked by Internal Audit on 4th May, 1968, the irregularity has not been apparently noticed by them. The failure should be suitably dealt with.

(f) *Irregular exemptions or excess reliefs given:*

Audit Paragraph

2.133. Where any property is held under Trust wholly for charitable or religious purposes, income from such property is exempt from tax to the extent it is applied for such purposes in India. Any

income from such property accumulated for application to such purposes in India in excess of twenty five per cent of the income or Rs. 10,000 whichever is higher, is chargeable to tax. The restrictions as regards accumulation of income do not apply for the period during which such accumulations are invested in Government securities.

2.134. In the case of a Trust, income in excess of twenty five per cent was held as exempt for assessment years 1965-66 to 1967-68 even though the money set apart was not invested in Government securities. In consequence the accumulated income in excess of twenty five per cent of the income or Rs. 10,000 whichever is higher had to be assessed to tax. The omission to do so resulted in short-levy of tax of Rs. 77,210 for the three years. The Ministry have accepted the mistake but have stated that the Board had since condoned the delay in making the required investment and that the assessee had made the required investment in Government securities.

[Paragraph 49(a) of the Report of the Comptroller and Auditor General of India for the year 1970-71, Union Government (Civil)—Revenue Receipts].

2.135. The Committee desired to know the provisions in the Income Tax Act regarding exemption of the income of trusts from tax, and also the conditions to be satisfied if accumulated income of a trust was to get exemption from levy of tax. The Ministry of Finance, in a written note, stated:

"Where any property is held under Trust for charitable or religious purposes, income from such property is exempt from tax to the extent to which such income is applied in the accounting year for such purposes in India. In certain special circumstances, income spent outside India for charitable or religious purposes by such trust is also covered by the exemption.

The following conditions must be satisfied:

(a) A notice in writing must be given to the Income-tax Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years should also be stated. According to the prescribed form namely

Form No. 10, before the expiry of six months commencing from the end of the relevant previous year the amount so accumulated will be invested as indicated in (b) below:

(b) The money so accumulated or set apart is:

(i) invested in any Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944 or in any other security which may be approved by the Central Government in this behalf, or

(ii) deposited in any account with the Post Office Savings Bank (including deposits made under the Post Office Time Deposits Rules, 1970) or a Banking company to which the Banking Regulation Act 1949 applies or a Co-operative Society engaged in carrying on the business of banking; or

(iii) deposited in an account with a financial corporation which is engaged in providing long term finance for industrial development in India and which is approved by the Central Government for the purpose of clause (viii) of sub-section (i) of Section 36."

2.136. The Committee pointed out that in the case under examination, the assessee issued a valid notice to the Income Tax Officer, on the basis of which the Income Tax Officer also granted exemption. Subsequently the assessee failed to invest the money in full in Government or approved securities. The Committee enquired whether the Board were competent under the Law to condone the omission at this stage. The Ministry in a written reply, stated that the Board had decided to condone the delay *vide* instructions contained in their circular dated 13th November, 1968.

2.137. The instructions contained in the Central Board of Direct Taxes Circular No. F.20|21|68-IT(AI) dated the 13th November, 1968, *inter-alia* read as follows:—

"Requests are received frequently from Trusts and other Charitable Institutions for relexation of the statutory time-limit for giving notice to the Income-tax Officer concerned and investment of the accumulated income or income set apart in Government securities as prescribed under section 11(2) of the Income-tax Act, 1961, and rule 17 of the Inome-tax Rules, 1962. In view of the hardship involved in certain genuine cases, the Board have decided, that such requests for condonation of delay in the

investment of the excess income in Government securities under section 11(2), may be entertained if the following five conditions are satisfied:—

(a) that the genuineness of the trust is not in doubt;

(b) that the failure to give notice to income tax Officer under section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight;

(c) that the trustees or the settler have not benefited by such failure directly or indirectly;

(d) that the trust agrees to deposit its funds in the prescribed securities prior to the issue of the Government sanction extending the time under section 11(2);

(e) that the accumulation or setting apart of income was necessary for carrying out the objects of the trust.

Necessary orders relaxing the time-limit will be issued by the Board in each case after taking into account the facts and circumstances of that case. The Board desire that such requests made by the Trusts and other instructions should be examined carefully in the light of the above conditions and cases where the Commissioner is satisfied that a strict operation of the time-limit would result in a genuine hardship may be referred to the Board for passing the necessary orders.

It is proposed to amend the law to secure for the Board necessary provisions to extent the period in appropriate cases. Pending such amendment, if Audit have raised or do raised any objection, the case may be brought to the notice of the Board without delay."

2.138. In reply to a question, the Ministry, in written reply stated: "The Revenue Audit conducted its scrutiny between 24-11-1969 to 10-12-1969. The assessee applied for condonation of delay on 16th March, 1970 and the Board issued condonation orders on 23rd October, 1970."

2.139. The Committee wanted to know the arrangements which the Department had to review such cases and take action in time for condonation of delay etc., wherever necessary, instead of waiting till the Revenue Audit pointed out the omission. The Ministry, in a note, submitted to the Committee, stated:

"Mostly the trusts depend upon donations from the public. for this purpose, the trusts obtain a certificate from the Commissioner of Income-tax under section 80G. According to Instruction No. 367 F. No. 176|47|70-II(AI) dated 3-1-1972, a certificate is to be issued initially for a period of one year and renewed after every three years. At the time of renewal of the certificate the assessing authorities go through the books of account and satisfy themselves that the provisions pertaining to the assessment of the trust are complied with. Further, according to the provisions of Section 139(4A), as amended by the Finance Act, 1970 every person in receipt of income derived from the property held under trust for charitable or religious purposes is required to file a return if the income of the trust exceeds the maximum amount exempt from tax."

2.140. According to the Income-tax Law every trust which accumulates income in excess of 25 per cent of the total income or Rs. 10,000 whichever is higher for application to charitable purposes within a period of 10 years, has to give a notice to the I.T.O., and invest accumulated income in Government or approved securities within six months comencing from the end of the relevant previous year, if the accumulated income is to get exemption from tax. In the case under examination the Trust's accumulated income was exempted from tax although the funds were not so invested in full in securities for the assessment years 1965-66 to 1967-68. The omission to withdraw the exemption resulted in short-levy of tax of Rs. 77,210. Significantly enough, after the Audit pointed out the omission, the assessee applied for condonation of delay in assessment and the Board condoned the delay. The action of the Board in this regard is of doubtful legality as they had themselves stated in their circular dated 13th November, 1968, that "it is proposed to amend the law to secure for the Board necessary provisions to extend the period (for investment) in appropriate cases." The Committee need hardly impress that if Government desire to exercise this discretionary power, necessary amendment to the relevant provisions of the Income-tax Act should be effected without delay.

2.141. They also feel that a suitable time-limit may be prescribed for entertaining applications for condonation of delay in investment. The Committee are not satisfied with the arrangements

which the Department has at the present to review such cases to see whether the investments have been made by the Trusts in time. They desire that there should be an annual review.

Audit Paragraph

2.142. The income-tax assessment of five shareholder of a company for the assessment year 1964-65 were completed in April, 1968 allowing relief provisionally at 82 per cent in respect of dividends received by them from the company, out of its profits attributable to a new industrial undertaking subject to revision after the completion of the assessment of the company. The income-tax assessment of the company for the assessment year 1964-65 was subsequently completed in March, 1969 in the same ward, on the basis of which the relief allowable in the hands of the shareholders worked out to 38 per cent only. Omission to revise the assessments of the shareholders withdrawing the excess relief already allowed resulted in short-levy of tax of Rs. 82,691. The department has since revised the assessments of all the five shareholders. The Ministry have replied that the Appellate Assistant Commissioner has reduced the income drastically and that this order is being contested by the department before the Appellate Tribunal. The only fault, according to the Ministry, that had occurred was the failure of the Income-tax Officer to record in the assessment file, the reasons for delaying consequential action in the cases of the shareholders.

[Paragraph 49(b) of the Report of Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

2.143. The Committee desired to know the stage at which the departmental appeal to the Appellate Tribunal stood at present. The Ministry of Finance, in a written reply, stated that the departmental appeal was pending before the Appellate Tribunal.

2.144. The Committee pointed out that according to the Ministry, the failure of the Income Tax Officer was the ommission to record the reasons for the delay in revising the assessments and wanted to know the procedure prescribed in regard to rectification of assessments in such cases where relief was allowed provisionally on profits attributable to tax-holiday so that the Income Tax Officer might not loose sight of the pending action. The Committee also enquired whether such procedure was followed by the Income Tax Officer in the case under consideration. The Ministry, in a note, stated: "No specific procedure has been prescribed to keep a watch

over such cases as Income Tax Officers are generally expected to be careful about these matters; the erring official has been cautioned".

2.145. When asked whether the revision of the assessments of the shareholders would get time barred if it was to wait appellate decisions, the Ministry, in a note, replied that the appellate order had since been received and rectificatory action completed in all the cases except one which too was being processed.

2.146. As regards the revision of assessments of the other shareholders of the company, the Ministry stated that rectificatory action was pending in respect of one share-holder only and it was being processed.

2.147. This Audit paragraph brings out the delay in rectifying the shareholders' assessments initially completed allowing relief provisionally at a certain percentage in respect of dividends received by them from the company, after completing of the assessment of the company. In order to keep a watch over such cases the Committe consider it necessary that a register of such cases should be maintained similar to the "register of cases of provisional share incomes" relating to partnership firms, so that the correct percentage of relief allowable may be ascertained from the officer assessing the company promptly. This procedure would help to rectify the provisional assessments of the shareholders before they become time-barred.

(g) *Incorrect computation of tax payable by companies*

Audit Paragraph

2.148. The Finance Acts 1964 and 1965 provided for levy concessional rates of tax on companies in which the public are substantially as one in which the public are substantially interested is that five or less persons should not hold its shares carrying more than 50 per cent of its total voting power at any time during the relevant previous year. But a company wholly engaged in the manufacture or processing of goods can be treated as one in which the public are substantially interested, even if five or less persons hold shares carrying more than 50 per cent but not more than 60 per cent of the total voting power. The word 'wholly' was substituted by 'mainly' from assessment year 1966-67.

2.149. In the case of a manufacturing company, five persons held more than 50 per cent though not more than 60 per cent of the

company's total shares. During the previous years relevant to the assessment years 1964-65 and 1965-66, the company had, besides income from manufacture, income from insurance commission and sales commission. As the assessee was not a wholly manufacturing company it was not entitled, prior to the assessment year 1966-67, to be treated as company in which the public were substantially interested. But the department incorrectly treated the company as one in which the public were substantially interested and levied concessional rates of tax for the two assessment years and this resulted in short-levy of tax of Rs. 5,47,906. The Ministry have accepted the mistake for both the years.

[Paragraph 50(a) of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil) Revenue Receipts].

2.150. The Committee enquired whether the assessments had been rectified and additional demand recovered. The Ministry, in a note, stated:

"On the service of a notice u/s 148 of Income-tax Act for the assessment year 1964-65, the assessee filed a Writ in the Calcutta High Court who by their order dated 21-11-1972 allowed the Department to complete the assessment but asked the Department that final order should not be communicated to the assessee till the disposal of Writ. The assessment has yet to be completed.

Action was taken under section 263 for the assessment years 1965-66 but the assessee moved the Calcutta High Court, who issued an interim rule staying further proceedings. The interim order was subsequently modified by the High Court. The proceedings u/s 263 have been dropped on the ground that the I.T.O.'s order u/s 154 dated 12-5-1970 had merged with the A.A.C.'s order dated 3-2-1972 and section 263 was, therefore, not applicable."

2.151. The Committee wanted to know the circumstances in which the company was incorrectly treated as one in which public was substantially interested. The Ministry in a written reply, stated that it was an error of judgment.

2.152. The Committee enquired whether the assessments were at any time checked by the Internal Audit, and if so the circumstances in which the mistake escaped their notice. The Ministry, in a

note, replied in the affirmative. They further stated that the Internal Audit Party did not take up the point as it involved complicated interpretation of factual circumstances in the context of legal provisions.

2.153. The Committee desired to know whether the Ministry had ordered for a review of company assessments to find out whether similar mistakes were committed. The Ministry stated:

> "The Ministry have not considered it necessary to order such a review because the mistake was based on the particular facts of the relevant case, i.e. whether the assessee company could be held as having 'income from insurance' and whether their process of washing utensils in a caustic soda bath could not be treated as a manufacturing process. On the answer to these factual questions depended the inference whether the company was a wholly manufacturing company."

2.154. The Committee find that in this case the mistake arose in determining whether the company was a 'wholly' manufacturing company. The mistake committed by the ITO is explained as an error of judgment. The Committee are unable to accept the position that "the Internal Audit Party did not take up the point as it involved complicated interpretation of factual circumstances in the context of legal provisions." This also shows that the Internal Audit is not effective enough. The Committee accordingly desire that the Internal Audit should be properly equipped to detect such mistakes also in future.

2.155. The Committee would like to leave the rectification of assessments and recovery of additional demand to be watched by the Ministry/Audit.

2.156. As regards a review of such past assessments the reply of the Ministry is not quite relevant. The idea is to find out the correctness or otherwise of application of the relevant section prior to its amendment w.e.f. 1-4-66. The Committee, therefore, desire that Government should reconsider the feasibility of ordering a general review in the interest of revenue.

Audit Paragraph

2.157. As a measure of encouragement for setting up industries in the priority sector, companies engaged in such industries are allowed rebate of tax at a higher rate under the Finance Acts 1964

and 1965. Two companies in which the public were not substantially interested but which derived income from manufacture of radio receivers, condensers, loud-speakers and radio parts, which industries were not listed in the Schedules to the two Finance Acts as priority industries, were incorrectly allowed tax rebate at the rates of 26 per cent and 35 per cent for the two assessment years 1964-65 and 1965-66 instead of at the rates of 20 and 30 per cent respectively resulting in short-levy of tax of Rs. 2,19,598. The Ministry justified the grant of higher tax rebate for the two years on the ground that the articles manufactured by them fell in the category of 'electronic communication equipment' and 'basic components such as valves, transistors etc.', mentioned in the Schedules to the Finance Acts. It was pointed out to the Ministry in November, 1971 that the articles manufactured by the two companies were not specifically mentioned in the Schedules to Finance Acts and that they cannot also be brought under any item specified therein. Further according to the Industries (Development and Regulation) Act, 1951, 'radio receivers' fall under the category of 'telecommunication' while 'electronic equipment' falls under 'electrical equipment' and as industries engaged in telecommunication are not listed in the Finance Acts, the two assessees were not to be treated as engaged in 'priority industries'.

[Paragraph 50(b) of the Report of Comptroller & Auditor General of India for the year 1970-71—Union Government (Civil) —Revnue Receipts.]

2.158. The Committee desired to know the provisions in the Finance Act in regard to priority industries and the intention behind providing concessional rates of tax to companies engaged in priority industries. The Member, Central Board of Direct Taxes stated: "Upto 1966, these priority industries were entitled to a special rebate of super tax on the profits derived from these articles.....It has been defined in the schedule in the Finance Act, 1964."

2.159. The Ministry, in a written note, further stated: "Before 1-4-1966, special rebate of super-tax was prescribed by Finance Acts 1964 and 1965 on profits derived from generation or distribution of electricity or manufacture or production of specified articles. From 1-4-1966 the provision for the grant of rebate was replaced by a stipulation in the Income-tax Act for a straight deduction of 8 per cent of the profits attributable to aforesaid "priority industries". This was reduced to 5 per cent by the Finance (No. 2) Act, 1971 with effect from 1-4-1972; the relief has been altogether omitted by the Finance Act, 1972 with effect from 1-4-1973.

The intention behind the relevant provisions was to give initial encouragement to certain industries which occupied an important place in our economy."

2.160. The Committee enquired whether it was the intention of the Government that the company engaged in the manufacture of radio receivers etc. should enjoy a higher tax rebate and if so whether necessary provisions were made in the list of articles furnished in the Finance Act. The witness stated: "A reference was made to the Electronics Department in this connection in November 1971 when the audit paragraph was received. There was some correspondence with the revenue audit and they said that radio receivers were not electronics communication components; it was tele-communication equipment. Therefore, with a view to getting a clarification of the position—a reply from the revenue audit was received in November 1971—and in the same month a reference was made to the Department of Electronics.—No reply was received. We reminded them. We understand that file was not readily available with the Department of Electronics."

2,161. The Finance Secretary stated: "We are preparing a second file for their use....Second reference is not immediately after that. They were issued several reminders. We have not received any reply from them."

2.162. The Committee pointed out that from the paragraph it was understood that radio receivers etc. were classified under the heading "Telecommunications" in the Industries (Development and Regulation) Act of 1951 and that 'telecommunication' equipment was not one of the articles specified in the list of priority articles contained in the Finance Act, 1964. The Committee wanted to know whether companies engaged in the manufacture of radio receivers etc. were treated as priority industries. The witness replied in the neagtive.

2.163. When asked about the views of the Ministry in this regard, the Ministry, in a written note, stated: "The Ministry were of the view that radio receivers fall under the category "electronic equipment etc." *vide* item 14 of Part IV of the First Schedule to Finance Act, 1964, item 18 of Part III of the First Schedule to Finance Act, 1965 and item 17 of V and VI Schedule to Income-tax Act and, as such, these equipments were entitled to necessary relief. The Department of Electronics to whom the matter was referred for their expert opinion have stated that the radio receivers are an equipment listed under item No. 6 of the Schedule I of the I.D.R. Act,

1951 and hence these are to be treated as "telecommunication equipment". Instructions are being accordingly issued elucidating the position as per Electronic Department's advice so that assessments are made (revised, if necessary and feasible) accordingly".

2.164. The Committee enquired whether concerns engaged in the manufacture of radio receivers uniformly treated as priority industries throughout the country. They also wanted to know the position particularly with regard to companies like Philips, Telerad, Murphy etc. The witness stated that no enquiries were made. The Finance Secretary added: "We have no information. We have to check up whether they have applied or not."

2.165. The Ministry, in a note, stated that the information was being collected and would be furnished in due course.

Pointing out that electronics equipment was classified under the category of electronics equipment under the Industries (Development and Regulation) Act of 1951 whereas radio receivers were classified under "telecommunication" equipment and that a distinction was thus kept between the radio receivers and electronic equipment in the Industries (Development and Regulation) Act of 1951, the Committee asked whether any attempt was made by the Ministry to find out the correct position when it was objected to by audit. The Finance Secretary stated: "There is no answer for that."

2.166. When suggested that on receipt of the audit para, the Ministry should apply their mind to assessing what would be the right action to take and also try to find out simultaneously the correct position while making references to other Departments for clarifications, the Member, Central Board of Direct Taxes stated: "We will do it."

2.167. The Committee learnt from Audit that in the hands of a non-resident company, the dividend income received from one of the two companies mentioned in the audit paragraph was charged to tax as dividend from non-priority industries. The Committee wanted to know that in such a case, how the concern which declared the dividends could to treated as a priority industry. The Member, Central Board of Direct Taxes stated: "Evidently both cannot be correct. One of them is wrong."

2.168. When asked whether any enquiry was made in this regard, the Ministry, in a note, stated:

"It has been ascertained that the non-resident company (which

is a shareholder in the two Indian companies) under consideration is Rank-Bush Murphy Ltd., London. For assessment year 1964-65 this company derived income from dividends from Murphy India Ltd., only. For 1965-66 and onwards it derives income from dividend from both the Indian companies. Section 85A granting deduction of tax on intercorporate dividend was introduced by the Finance Act, 1965. For 1965-66 the total income of the non-resident company was a loss. The question of deduction of tax on intercorporate dividend, therefore, did not arise. For assessment year 1966-67 income-tax on the income from dividend has been charged by the Income-tax Officer at 25 per cent and not at 15 per cent. Tax at 15 per cent in the case of a company which has not made the prescribed arrangements for the declaration and payment of dividends within India is to be charged under the proviso to Sec. 85A as it stood on the relevant time, only if the following conditions are satisfied:

(i) The dividend is received from an Indian company in which the public are not substantially interested; and

(ii) The Indian company is wholly or mainly engaged in certain priority industries mentioned in the Section.

In the instant case for assessment year 1966-67, both the Indian companies have been held as a "company in which the public are substantially interested" and the non-resident company has, therefore, been rightly taxed in respect of its dividend income at 25 per cent. There is thus no contradiction in the I.T.O.'s action in (i) treating the Indian companies as one engaged in priority industry and (ii) in taxing the income from dividend from these companies in the hands of the non-resident company at 25 per cent."

2.169. The Committee enquired whether the assessment had been rectified. The Finance Secretary stated: "No reassessments have been made. They have now been asked to make re-assessments."

2.170. When asked for the present position, the Ministry in a note stated: "Rectificatory action in the case of Mulchandani Electric & Radio Industries Ltd., for the assessment years 1965-66 to 1967-68 has been taken. Higher rebate of income-tax, deduction u/s.

80E and the higher rate of development rebate have been rectified; the consequential additional demand raised is as under:

Asst. Year	Addl. demand
	Rs.
1965-66 (I.T.)	1,05,879
1965-66 (Sur-tax)	14,833
1966-67 (I.T.)	1,37,754

On receipt of rectification show cause notices u|s 154, the company filed a writ petition bearing No. 780 of 1972 under Article 226 of the Constitution of India before the Bombay High Court. The petition was admitted on 30-11-1972 but interim relief was refused by the Court on the Department's Counsel stating that although rectification order and notices of demand be issued during the pendency of the petition, the said notices of demand will not be enforced nor will any interest or penalty be charged for non-payment of the demands as per notices.

Additional demand raised on similar rectificatory action in the case of M/s. M. R. Industries Ltd., is as under:—

Asst. year.	Additional demand raised
	Rs.
1965-66 (Income-tax)	1,09,565
1966-67 ,,	1,52,366
1967-68 ,,	1,95,346

2.171. Two companies manufacturing radio receivers, condensers, loudspeakers, radio parts etc. were treated as engaged in priority industries under the Finance Acts, 1964 and 1965 and higher rebate of tax was allowed. The Ministry were of the view that the radio-receivers fell under the category of "electronic communication equipment" eligible for necessary relief. The disagreement of Audit was reported to the Ministry in November, 1971. On receipt of this communication the Ministry do not appear to have applied their mind to the question. A reference was, however, made to the Department of Electronics. After considerable delay the Department of Electronics upheld the view of Audit. As, according to the Industries (Development and Regulation) Act, 1951, radio-receivers fall under the category of 'telecommunication equipment' while 'electronic equipment' falls under 'electrical equipment' and as industries engaged in telecommunication are not listed in the Finance Acts, the

position could have been examined independently by the Ministry of Finance. The Committee trust that in future there will be no avoidable delay in attending to Audit objections: in fact, in their view audit objections of this nature, that is where under-assessment is said to have occurred—should without exception be examined on a priority basis.

2.172. The Committee have been informed that instructions are being issued elucidating the position as per Electronic Department's advice for future guidance and review and revision, if necessary, of past assessments. The Committee do not think that there was uniformity in the matter of assessing the concerns engaged in the manufacture of radio-receivers. The action taken in the light of the review of the past assessments may be reported to them.

2.173. Additional demands to the extent of Rs.7,15,747 have been raised on the two companies for the assessment years 1965-66 to 1967-68. The Committee would like to know the position in respect of the assessment year 1964-65. Incidentally it is learnt that one company had filed a writ petition on receipt of rectification show-cause notices. The outcome of the case may be intimated to the Committee.

Audit Paragraph

2.174. Under the Finance Act, 1964 the value of any bonus or shares issued to shareholders by a company is taxed in the hands of the company at a fixed rate by way of reduction in the super-tax rebate admissible to it.

2.175. An Indian company issued to its equity shareholders bonus shares amounting to Rs. 23,43,750 during the previous year relevant to the assessment year 1964-65. The omission to levy tax on the issue of bonus shares resulted in under-charge of tax of Rs. 2,92,969 with conseqeuent short-levy of penal interest of Rs. 50,487 for the assessment year 1964-65 (assessment completed in March, 1969). While accepting the mistake the Ministry have reported that additional demand of Rs. 3,43,456 has been raised.

[Paragraph 50(d) of the Report of C.&A.G. for the year 1970-71 —Union Govt. (Civil)—Revenue Receipts.]

2.176. The Committee enquired whether the additional demand of Rs. 3,43,456 had since been recovered. The Member CBDT stated: 'There is no question of recovery because as a result of the Appellate order the total income has been reduced to a figure 'nil' and since the supertax itself leviable is nil and nil income, there is no question of levy."

2.177. Explaining further the Chairman, CBDT stated: "The manner in which the provision operates is like this. First of all gross tax is calculated and from that we give certain rebates. In some cases the rebate is reduced. One of them is on bonus on account of issue of bonus shares. Now if no tax is levied, there is no question of reduction of the tax charged on the income with reference to issue of bonus shares. So, that is why ultimately if the income is deleted or tax is not there then the question of reduction of rebate of tax does not come in. Then of course, the problem is simple, if there is no tax, there is no rebate, no withdrawal."

2.178. When asked for the reasons for not informing the Comittee the latest position the Finance Secretary stated: "Subsequent to that some information was called for." The Member CBDT added: "We have intimated to the Audit as 12th April, 1972 that as a result of the assessment the question of recovery of additional tax in the above case does not arise."

2.179. The Committee wanted to know the reasons for setting aside the assessment in question by the Appellate Assistant Commissioner. The Member, CBDT stated: "The I.T.O had rectified the assessment for the previous year as a result of which he withdrew the development rebate which was allowed and accordingly the total figure was 14 lakhs. In appeal the AAC accepted the assessee's contention that adequate reserve had been created in 1963-64 and therefore, the addition which was made consequently was deleted."

2.180. The Committee were given to understand by Audit that the Department had gone in appeal to the Tribunal. When asked for the grounds on which the appeal to the Tribunal was filed, the witness stated: 'We have accepted that part of AAC's decision. We have gone on some other point."

2.181. The Ministry in their letter dated 25th November, 1973 further stated: "It seems that the Committee formed an impression that the assessment in question had been set aside by the AAC, and wanted to know the reasons. This impression needs correction in view of the following elucidation:

For the assessment year under consideration, the assessee returned a loss of Rs. 11,23,131 which represented the carried forward unabsorbed development rebate. The Income Tax Officer, however, completed the assessment determining the net income at Rs. 77,260 on 20-1-1969. Subsequently, an order under Section 154 was passed with drawing a part of the development rebate that had been

carried forward from the earlier year, "the assessment for the earlier year had also been rectified withdrawing a part of the development rebate on the ground that inadequate reserve had been created. After the above noted rectification the income of the assessee stood at Rs. 14,38,917 for the year under consideration."

In appeal, the A.A.C. had held that for the earlier year 1963-64 adequate reserve had been created by the assessee and as such, it was entitled to the development rebate which had been withdrawn by the I.T.O. Besides the consequential effect of this issue in the year 1964-65 under consideration, a further relief of Rs. 6,61,713/- on other accounts was also allowed by the A.A.C. this year. As a result of this order, not assessable income was determined at 'Nil' for this year. The A.A.C.'s decision regarding the allowance of development rebate has been accepted by the Department, but an appeal has been filed before the Appellate Tribunal regarding the allowance of relief worth Rs. 6.03 lakhs (out of total other relief of Rs. 6.61 lakhs allowed) by the A.A.C. The outcome of the appeal before the Tribunal will be communicated to the Committee as soon as a decision is available."

2.182. The Audit had the following comments to offer:

> "The objection in this case briefly is that the department had not reduced the Super Tax rebate to the extent of 12½ of the face value of bonus shares issued in the year. Under the Finance Act, 1965, so much of the reduction as could not be given effect to in 1964-65 assessment was to be carried forward and reduced from the Super Tax rebate for 1965-66. So even if the income for 1964-65 was nil, the reduction of rebate should have been made in Assessment year 1965-66."

2.183. The Committee learnt from Audit that the assessment in the case under examination related to the assessment year 1964-65 and the assessment was completed on 21st March, 1969. The Committee wanted to know the various factors that led to the completion of the high income case only at the fag end of the limitation period of four years. The Ministry in a note, stated:

> "The Income-tax Officer had to complete a number of other time-barring assessments also, some of these cases being big and complicated. He should have, however, taken up the case earlier; he has been cautioned."

2.184. Pointing out that a similar mistake as in the Audit paragraph under examination, was reported in para 44 (b) of Audit Report, 1966, the Committee enquired whether the Ministry had investigated whether similar mistakes had occurred in other cases in other charges. The Ministry, in a written note, stated that the Ministry had not considered any general review necessary as these were obviously stray cases.

2.185. The Committee further learnt from Audit that though the assessment was completed on 21st March, 1969, the assessment was not subjected to internal audit scrutiny till the mistake was pointed out in revenue audit in September, 1970. The Committee enquired whether Standing instructions did not require that all company assessments should be scrutinised by the Internal Audit and if so, the circumstances in which the case under examination was not examined by internal audit for over eighteen months.

2.186. The Committee were also informed by Audit that the Central Board of Direct Taxes had issued instructions in September, 1969 laying down that all category I assessments completed in February and March should be arranged to be checked by the Internal Audit by the 30th June next following, in view of the fact that assessments completed during the months of February and March were most prone to error. The Committee wanted to know the action taken by the I.T.O. who made the assessment in the case under examination to get all the assessments completed by him in the month of February and March including the case under examination checked by Internal Audit as per Board's instructions. The Ministry, in a note, stated:

> "Although the file was requisitioned by the Internal Audit Party in July, 1970, it could not be made available as it was with the A.A.C. Since the I.A.Ps have a large backlog of other priority cases to look into, this case was possibly lost sight of. Instructions for "immediate audit" of bigger revenue yielding cases within one month from the date of passing the assessment order have been issued in June, 1972 and this should enable detection of mistakes in such cases promptly."

2.187. The Audit paragraph brings out the omission to levy tax by way of reduction of super-tax rebate at the rate of 12½ per cent of the face value of the bonus shares issued by a company for the assessment year 1964-65. The omission led to a total short-levy

of tax and interest to the extent of Rs. 3,43,456. Although the mistake has been accepted, additional demand could not be raised as consequent on an appellate order there is no super-tax to be levied. The Committee, however, understand that under the Finance Act, 1965, so much of the reduction as could not be given effect to in 1964-65 assessment was to be carried forward and reduced from the super-tax rebate for 1965-66. So, even if there was no income to be taxed for the year 1964-65 the reduction of rebate should have been made in the assessment year 1965-66. The Committee desire that the Ministry should look into this aspect and report to them the action taken to recover the amount.

(h) *Income escaping assessment*

Audit Paragraph

2.188. Under the provisions of the Income-tax Act, as clarified by judicial decisions distribution by a company to its shareholders of a right having monetary value is to be treated as dividend even though there is no actual distribution of the money and such dividend is chargeable to tax. The right to subscribe to the shares of a company at a price lower than that quoted in the market is a right having monetary value liable to tax.

2.189. An assessee which held shares in a company, was offered by virtue of its shareholding 1,26,303 additional shares of face value of Rs. 10 each in the company at Rs. 14 per share while the market price was Rs. 32.12 each. This right to subscribe to the shares was renounced by the assessee in favour of its own shareholders by a resolution in February, 1962. Thus the shareholders of the assessee acquired in February, 1962 the right to purchase the shares of the company at Rs. 18.12 per share less than the market price each. The shareholders were therefore, liable to be taxed on the monetary advantage derived by them in the acquisition of the shares calculated at the rate of Rs. 18.12 per share. The omission to tax the monetary advantage derived by two shareholders who acquired 70,500 shares resulted in underassessment of income of Rs. 12,77,460 involving short-levy of tax of Rs. 4,92,087 for the assessment years 1962-63 and 1963-64.

The Ministry have accepted the under-charge of tax.

[Paragraph 51(a) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

2.190. The Committee enquired whether the assessments of the two shareholders had been revised. If so, they wanted to know the additional demand of tax raised and recovered. The Ministry, in a note stated:

> The Audit objection in both the cases has been found to be unacceptable after further enquiries were made. As such, the question of revising the assessments and collecting the additional demand does not arise. The reasons for not accepting the Audit objection are given below:—
>
> (i) The first assessee is carrying on business of general insurance and as such its income is to be assessed in accordance with the special provisions of Section 44 of the Income-tax Act read with the First Schedule to the Act. According to the provisions of the First Schedule 'the profits and gains of any business of insurance..... shall be taken to be the balance of the profits disclosed by the Annual Accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance....' subject to certain adjustments. In view of the aforesaid provision, no separate additions can be made to the income of the assessee on account of 'deemed dividends', the relevant provisions in law for 'deemed dividends' not applying to life insurance business.
>
> (ii) The second assessee was not a shareholder of the company on the date on which the company renounced in his favour a part of its 'right' to subscribe to the shares. He became a shareholder of the company only in 1963 whereas the rights were renounced in February, 1962. As such there was no legal ground for treating the value of the 'rights' surrendered in his favour as a "deemed dividend" under Section 2(22) of the Income-tax Act, 1961."

2.191. The Committee wanted to know the number of shareholders who acquired similar right. They also desired to know whether the assessments in all their cases had been revised and if so, the additional demand raised. The Ministry, in a written reply, stated:—

> "There were 11 shareholders of the company and 28 others who acquired such rights. Remedial action is being taken

to assess the value of rights renounced by the company in favour of its 11 shareholders. Further comprehensive investigation in this group of cases has been ordered by the Ministry and its outcome will be intimated to the Committee in due course."

2.192. The Committee enquired whether the legal position pointed out in the Audit paragraph had been brought to the notice of all the assessing officers so that similar mistakes were not committed. The Ministry in a note, stated:

"A copy of the C. & A.G.'s Report has been forwarded to the all Commissioners, Additional Commissioners and Inspecting Assistant Commissioners of Income-tax for their general information and guidance. They are expected to take note of all such points."

2.193 The Committee learn that 11 shareholders of a company and 28 others acquired the right of the company to subscribe to the shares of another company at a price lower than that quoted in the market. Remedial action taken to assess the value of rights renounced by the company in favour of its share-holders may be reported to the Committee. Further the Committee note that comprehensive investigation in this group of cases has been ordered by the Ministry. The outcome of the investigation may also be reported to the Committee. They would in particular like Government to examine and inform the Committee, (i) whether the transfer of rights by the company to non-shareholders was without consideration and if so, the reasons therefor, (ii) whether there were any 'benami' transfers and (iii) whether the donor company may not be liable to gift tax.

Audit Paragraph

2.194. If any moneys kept outside India form part of trading transactions, the profit that arises on devaluation of currency is a revenue receipt.

2.195. A company whose business was that of exporting manganese ore and bauxites derived profit of Rs. 4,42,064 during the assessment year 1967-68, due to devaluation of the rupee in June, 1966, on moneys kept outside India for the purposes of conducting its trade activities. The profit was credited by the assessee to the Profit and Loss Appropriation Account for the relevant previous year. The omission to include these profits while computing income led to

short-levy of tax of Rs. 2,85,410 for the assessment years 1967-68 to 1970-71. The Ministry have accepted the mistake. Report regarding rectification and recovery is awaited.

[Paragraph 51(b) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts.]

2.196. The Committee enquired whether the assessment had been rectified and if so, the additional demand raised and collected. The Member, Central Board of Direct Taxes stated: "The Income Tax Officer started action under Section 147 to assess these profits, but the assessee went in a writ petition to the High Court and the High Court has given a stay order. We have recently instructed our standing counsel to move the High Court for vacating the injunction order.

2.197. When asked for the grounds for the stay order, the witness stated: "As far as information is available, the assessee said that the Income Tax Officer had no jurisdiction to start these proceedings under Section 147, that is to assess a particular portion of his declared income."

2.198. The Committee enquired whether, in case the stay order of the High Court was vacated, the Ministry was agreeing that it was a mistake. The witness admitted that there was no doubt that it was a mistake.

2.199. The Committee wanted to know whether the assessee had indicated the profits realised on devaluation of the rupee in his income tax return and if so, the circumstances in which the amount was not charged to tax at the time of assessment. The witness stated: "This was due to oversight on the part of the Income Tax Officer. He admits that it was due to his oversight.....The Income Tax Officer has been warned to be more alert in future. We propose to call for a further report."

2.200. The Ministry, in a note, further stated: "The assessee had indicated profits realised an devaluation of rupee, in part II of the income tax return (Statement of sums not included in part I and which assessee claims to be non-taxable). The Income Tax Officer failed to examine the taxability of the amount through oversight. He has been warned to be more alert in future."

2.201. When asked whether the punishment was adequate, the Finance Secretary stated: "In some cases, the Board has asked for disciplinary proceedings for higher penalty."

2.202. The Committee deseired to know whether there were standing instructions issued to Income Tax Officers for a thorough analysis of the various debits and credits in profit and loss Appropriation Account and if so, the circumstances in which such a scrutiny was not done in the case referred to in the audit paragraph. The Ministry, in a note, stated: "No specific instructions as such have been issued as the Income Tax Officers are expected to examine thoroughly all the relevant documents in the normal course of assessment work. The Income Tax Officer omitted to make proper scrutiny of the amount through oversight in this stray case."

2.203. The Committee wanted to know the name of the foreign bank in which the assessee had kept his balances and also the total balance at the credit of the assessee on 31st December, 1966 and 31st December, 1971. The Ministry, in a note, stated:

> "Information received from the assessee company indicated that it did not have any account in any foreign bank on 31st December, 1966 and 31st December, 1971. However, brief details available from an affidavit filed by the assessee in connection with the writ petition 809 of 1970 in relation to monies kept outside India indicate that the petitioner at the time of devaluation of the Indian Rupee on 6th June, 1966 was possessed of foreign exchange (Dollars & Sterling) the rupee equivalent of which prior to the devaluation of Indian Rupee on 6th June, 1966 was Rs. 7,68,807.40. As a consequence of devaluation the rupee worth of the said foreign exchange held by the petitioner on 6th June, 1966 became Rs. 12,10,871.66 In terms of rupee, therefore, the value of the goods imported by the assessee by purchasing the same from foreign exchange belonging to it went up by Rs. 4,42,064.26."

2.204. When pointed out that the assessment in question was scrutinised by Revenue Audit in November, 1969 and the first audit objection was sent to the Ministry in July, 1970 and that if it had gone to the Commissioner within two years, the matter might have been set right, the witness stated: "This point has been examined. Under Section 263, it could not be taken up by the Commissioner, because meanwhile the Appellate Assistant Commissioner had decided the appeal, on 23rd February, 1970. The local audit report was received in September, 1970. In fact, I am going to suggest that we should examine whether an amendment of the Law is necessary whereby the Commissioner should be able to exercise his power under 263

even though the Appellate Assistant Commissioner has meanwhile decided the appeal. So far as the legal position based on a Supreme Court decision has been that once the Appellate Assistant Commissioner gives a decision, the Commissioner, cannot exercise the power under 263."

2.205. According to Audit, the Appellate Assistant Commissioner intervening in the Income Tax Officer's order would not, in their view, prevent section 263 operating, because the Commissioner might call for and examine the record of any proceeding under the Act if he considered that any order passed by the Income Tax Officer was erroneous and he could rectify the order within two years.

2.206. The Committee were further given to understand by Audit that there was a view held that the Income Tax Officer's order merged with the Appellate Assistant Commissioner's order and therefore the Commissioner could not rectify that order under Section 263 because it had become Appellate Assistant Commissioner's order. But there was a contrary view held by Audit under which the Commissioner could pass an order under 263 and that Appellate Assistant Commissioner's order did not prevent the Commissioner from rectifying the Income Tax Officer's order.

2.207. Appellate Assistant Commissioner's order was on the point referred to Appellate Assistant Commissioner. So far as the Income Tax Officer's order was concerned, according to audit, it remained a separate order. The matter was referred to the Ministry of Law and was pending with them.

2.208. When the attention of the witness was drawn to the above contention, the witness stated: "The Department would also like to take the same view as expressed by Audit. But there is a contrary decision of the Bombay High Court in the case Tejaji Ram Farasram 23 ITR page 412 as approved by the Supreme Court in the case of Amrit Lal Bhogilal 34 ITR 130. They have taken the view that as soon as the Appellate Assistant Commissioner gives a decision the Income Tax Officer's order merges with the Appellate Assistant Commissioner's order. Therefore, I am suggesting that the Board should examine because now we are increasing the pace of disposal at the Appellate Assistant Commissioner level; within three or four months the appeals will be decided. This is quite a dangerous position from the Revenue point of view. The Board would examine whether Section 263 should be amended whereby the Commissioner should be able to revise such orders, even though the Appellate Assistant Commissioner had meanwhile decided, because the Appellate Assistant Commissioner is a lower authority than the Commissioner. Moreover

if the particular point had not been adjudicated by the Appellate Assistant Commissioner, there is no reason why the Commissioner should not go into it."

2.209. When asked whether the Supreme Court touched on this aspect in the judgement, the witness replied: "As far as I understand, the Supreme Court decision is that even though that particular point has not been dealt with by the Appellate Assistant Commissioner, the Commissioner cannot interfere."

2.210. To a question, the witness stated that the Supreme Court decision came in 1958.

2.211. The Committee enquired whether the Ministry had studied the decision in detail, its implications, and its effect on the revenue, and if so they wanted to know the reasons for not initiating any action in the matter. The Finance Secretary, stated: "Apparently the issue had not come up till now. Probably in the old days, appeals used to take a long time and such situation did not occur."

2.212. When asked whether immediate action would be taken to amend the law, the Member, Central Board of Direct Taxes stated: "We will examine the whole matter."

2.213. The moneys kept by an assessee outside India appreciated in value to the extent of Rs. 4,42,064 due to devaluation of the rupee in June, 1966. This profit was chargeable to tax as the funds formed part of trading transactions of the assessee. The omission to do so led to short-levy of tax of Rs. 2,85,140. The assessee had credited the profit to the Profit and Loss Appropriation Accounts. The Ministry have reported that when the Income-tax Officer started action under Section 147 to assess the profit the assessee went in a writ petition challenging the jurisdiction of the Income-tax Officer to assess a particular portion of his declared income under the said Section of the Income Tax Act. The Committee would await the outcome.

2.214. The Committee learn that at the time when the Audit objection was raised the Commissioner could have taken action to rectify the mistake under Section 263 within two years of the assessment but he could not do so as in the meanwhile the Appellate Assistant Commissioner had decided an appeal. According to the Ministry the legal position based on a Supreme Court Decision in 1958 is that the Commissioner cannot exercise the power under Section 263 once the Appellate Assistant Commissioner gives a decision. Further

the Committee have been informed that even though a particular point has not been dealt with by the Appellate Assistant Commissioner the Commissioner cannot interfere as the Income-tax Officer's order merges with the Appellate Assistant Commissioner's order. As this position is admittedly detrimental to the interest of revenue, the Committee are at a loss to understand why the issue had not been examined in the past 15 years with a view to amending the law, if necessary. After all the Appellate Assistant Commissioner is a lower authority and the Commissioner should be able to act under Section 263 even when a case has been decided by the Appellate Assistant Commissioner. The action to settle the matter may be reported to the Committee within six months.

Audit Paragraph

2.215. Any sum paid by an assessee as an employer by way of contribution towards an approved gratuity fund created for the exclusive benefit of his employees under an irrevocable trust is exempt from tax. However, income of such approved gratuity funds is not exempt from tax. In a case, the income receivable by the trustees of the Fund by way of interest from investments aggregating Rs. 1,29,864 for the assessment years 1967-68 to 1969-70 was incorrectly treated as exempt, resulting in non-levy of tax of Rs. 43,868. The Ministry have accepted the mistake. The assessments have been rectified and the additional demand of Rs. 43,868 also collected. Income realised by the Trust from its investments if added to the Corpus of the Trust may in equity deserve exemption but the law has not provided for such an exemption.

[Paragraph 51(c) of the Report of C&A.G. for the year 1970-71—Union Government (Civil)—Revenue Receipts].

2.216. The Committee enquired whether besides the case reported in the Audit Report, any other cases wherein income of gratuity funds was not charged to tax, were brought to the notice of the Ministry. The Ministry of Finance, in a written reply, stated that no other case had come to the notice of the Central Board of Direct Taxes.

2.217. The Committee were given to understand that the Law had been amended in 1972 exempting the income of approved gratuity funds from tax and it took effect from assessment year 1973-74. The Committee desired to know whether the Ministry had considered a review of assessments of trustees of gratuity

funds in all charges for carrying out necessary rectification if exemption from tax was incorrectly given in any case before the assessments got time-barred. The Ministry, in a note, stated that such a general review would involve in commensurate time and labour.

2.218. When asked whether the attention of the assessing officers had been specifically drawn to the fact that the income of gratuity funds was taxable, the Ministry, in a written reply stated that issue of suitable instructions on the subject was under consideration.

2.219. Though the income of approved gratuity funds was not exempt from tax upto 1972-73, a case wherein such income was incorrectly exempted for 3 assessment years from 1967-68 to 1969-70 is reported in this Audit paragraph. The Committee note that the additional demand of Rs. 43,868 has been recovered in this case and the Ministry are not in favour of undertaking a general review of similar assessments in all charges with a view to rectifying such mistakes on the ground that it would involve in commensurating time and labour." The least that can be done is to draw the attention of the assessing officers specifically to the fact that income of the gratuity funds was taxable upto 1972-73 so that there may not be any mistake in completing the pending assessments.

.. 2.220. The Government may consider whether income realised by a Trust from its investments if added to the corpus of the Trust may be given exemption by a statutory amendment.

(i) *Other Lapses*

Audit Paragraph

2.221. Where refund of tax becomes due to an assessee as a result of an order passed in appeal and the refund is not granted within six months of such order, the Central Government has to pay to the assessee simple interest at the prescribed rate on the amount of refund due for the period of delay beyond the said six months.

In a case, refunds due to an assessee as a result of appellate orders passed between May, 1964 to November, 1964, relating to the assessment years 1952-53 to 1956-57 were determined in April, 1968 after a lapse of more than three years. As a result, the Central

Government had to pay to the assessee Rs. 78,834 by way of interest. This payment of interest could have been avoided, had the refund been made within the prescribed time limit in the Act. In reply, the Ministry have stated that interest was paid for the use of the assessee's money by Government and such payment has not exceeded what the Government would have had to pay at the prevailing borrowed rate.

[Paragraph 52 (b) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

2.222. The Committee drew attention of the witness to the audit paragraph wherein it was stated that in a case refunds due to an assessee as a result of appellate orders passed between May 1964 to November 1964 relating to the assessment years 1952-53 to 1956-57 were determined in April 1698 after a lapse of more than three years with the result, the Government had to pay to the assessee Rs. 78,834 by way of interest. This payment could have been avoided had the refund been made within the prescribed time limit in the Act. In reply the Ministry had stated that interest was paid for the use of the assessee's money by Government and such payment had not exceeded what the Government would have had to pay at the prevailing borrowed rate. The Committee wanted to know whether the provisions of Income Tax Act requiring payment of interest in cases of delay in revising the assessment and making refunds, where intended to enable the Government to retain assessees money as long as possible and refund the money due with interest thereon only wherever it was convenient to the Income Tax Department. The Finance Secretary stated: "We would respectfully withdraw the reply." The Chairman, Central Board of Direct Taxes further added: "We have issued instructions in cases resulting in refunds because of appeals, rectification of assessments etc. Even if a single paisa is involved refund voucher should be sent along with the notice of demand. The Income Tax Officer should look into the refund cases so that refund applications are disposed of quickly, within three months. There are the instructions we have issued and we have prescribed a form. This is an indefensible reply."

2.223. At the instance of the Committee, the Ministry have forwarded a copy of the instruction No. 122 dated the 5th November, 1969 (Appendix II).

2.224. The Committee were given to understand by Audit that the purpose of the paragraph in the Audit Report was to enable the

Government to investigate into the inordinate delay in making the refunds and evolve steps for prevention of such delays in future. The Committee wanted to know whether such an investigation was made and if so the reasons that stood in the way of expeditious revision of assessments and making of refunds. The Committee also asked, if the delay was due to want of man-power, whether it would not be in the interest of the Department to augment the staff instead of making huge interest payments to assessees. The Ministry, in a note, stated: "The Director of Inspection (R.S.&P) has undertaken a survey in a few Commissioners' Charges in order to analyse the problem. This study has not yet been completed."

2.225. The Committee pointed out that non-revision of assessments consequent on Appellate decisions and making the consequent refunds not only necessities payment of interest but also render the position of arrears of income tax demands outstanding without recovery distorted. The Committee also drew attention to paragraph 3.17 of the Report of Central Direct Taxes Administration wherein the Working Group of the Administrative Reforms Committee stated as follows:—

> "It has been represented to us that in many instances when the assessees succeed on appeals before the AAC, the original tax demand in respect of which the tax remains unpaid pending appeal, is not reduced promptly and this tends to distort the picture of arrears. At present there are no regulations prescribing a time-limit for giving effect to appellate orders. We suggest that a time limit of three months should be laid down either by law or by executive instructions for implementation of all appellate orders. This would go to reduce the arrears."

2.226. The Committee wanted to know the action taken on the above suggestion of Working Group of the Administrative Reforms Committee. The Ministry, in a note, stated: "Section 244 of the Income-tax Act was amended with effect from 1-4-1971 to provide that interest shall be payable for delay beyond 3 months. This measure was followed up by Instruction No. 350 dated 4-12-1971."

2.227. The Committee pointed out that delay in revision of assessments in making refunds due to assessees caused much frustration to assessees and the department as a whole did not thereby carry a good image in the eyes of the Public. The Direct Taxes Enquiry Committee in their final report (December, 1971) had also stated that there was a general complaint that refund claims were

not settled expeditiously and that there was considerable delay in issuing refund vouchers. The Committee wanted to know the action proposed to be taken by the Government for early revision of assessments consequent on appellate decisions and to make the refunds to the assessees without loss of time. The Ministry, in a note stated:

> "As mentioned above the problem is being studied by D.I. (R.S.&P). The Commissioners have also been asked in December, 1972 to intimate the amounts of interest paid in 1970, 71 & 72 on refunds delayed beyond the prescribed period. As a result of these studies, suitable action will be considered. The Wanchoo Committee recommendations in the matter are also being examined."

2.228. In paragraph 65(b) of the Audit Report the number of cases under section 244 of the Act in which interest was paid to assessees is indicated to be 59 involving a sum of Rs. 6.11 lakhs. The corresponding position for the earlier years is as follows:

A. R.	Period	No. of cases	Amount of interest.
1968	1966-67	5	15,000
1969	1967-68	17	61,000
1970	1968-69	21	4,30,000
1969-70 . .	1969-70	52	2,92,000

It is seen from the table that during the year under review (1970-71) interest was paid in largest number of cases and the amount was also the highest when compared with the previous years. The Public Accounts Committee in para 5.79 of their seventy third Report (1968-69) recommended as follows:—

> "The Committee are not happy over the delay in refunding the moneys due to assessees as a result of appellate decisions. As on 31st March, 1967 there were 5050 such cases, 1,220 of them pending for more than one years. As a result of the delay in making the refunds Government had to pay interest amounting to Rs. 15,000 in five cases. The Committee would urge Government to take effective measures to ensure settlement of refund claims under Section 244 within the prescribed time-limit."

Inspite of the Committee's earlier recommendations, the position has not improved in any way. In 1970-71, interest of Rs. 6.11 lakhs was paid in 59 cases and as on 31st March, 1971 action is yet to be taken in 6728 cases.

2.229. Drawing attention to the above the Committee wanted to know the steps taken for the prompt revision of assessments and making of refunds. The Committee also asked for the position in 1971-72. The Member, Central Board of Direct Taxes stated: "I have taken some figures from some where 81 cases involving Rs. 9.31 lakhs for 1971-72. I am not able to locate where exactly I came across this figure." The witness added: "We have issued various departmental instructions that refunds should be made within three months. In the Law formerly there was a limit of six months from the date of the order. Now we have reduced it to three months from the end of the month in which the order is passed. If the refund is not given within that period, we have to pay interest. When we introduced this system we thought that this will be a great curb on delayed refunds."

2.230. The witness further stated: "We can undertake a study of the reasons which are holding us in most cases from refunding the amount in time. Perhaps we can then take some general measures. Six or seven years ago, a system was introduced whereby all these appellate orders were to be entered in a register in chronological order. As soon as appellate orders are received, we now enter them in the register because that is the first point of control whereby the Inspecting Assistant Commissioner can exercise control that refunds are given in time. We have also formed a special cell called ARR Cell so that the appellate orders receive prompt attention. Recently we have issued instructions that it would be the personal responsibility of the I.A.C. to see that there are no delays in this cell."

2.231. When pointed out that despite the above procedure was adopted six or seven years ago, the figures still showed an upward trend, the Finance Secretary stated: "Previously the cases were not known, they were not being looked into. Now this is being properly looked into. In the absence of that register we could not have even a watch over these cases. We were not paying any refund. They are now coming to surface and we shall be able to exercise some control over them."

2.232. The Committee wanted to know the total amount of refund due on the 6728 cases pending on 31st March 1971 shown in

paragraph 65(b) of the Audit Report. The Ministry, in a note, stated:

> "The amount of refund involved in 3466 cases disposed of out of the lot during 1971-72 was Rs. 146.86 lakhs; the amount involved in remaining cases will get quantified on completion of the cases."

2.233. The Committee are disturbed to note that inordinate delay takes place in revising the assessments and in allowing relief to the assessee concerned as decided by the appellate authorities in this case. The appellate orders were passed between May, 1964 and November, 1964 and the revision of the assessment took place only in April, 1968 with the result that the Department had to pay interest of Rs. 78,834 to the assessee. Expeditious action on the part of the Income-tax Officer could have avoided payment of interest. The circumstances under which the officer could not do so should be investigated.

2.234. The delay in giving refunds arising out of appellate orders seems to be fairly widespread. The number of cases of refunds under Section 244 of the Act in which interest was paid to assessees was 52 involving Rs. 2.92 lakhs in 1969-70, 59 involving Rs. 6.11 lakhs in 1970-71 and 81 involving Rs. 9.31 lakhs in 1971-72 respectively. Thus the position has tended to deteriorate over the years. The Committee have been given to understand that the problem is being studied by the Director of Inspection and that suitable action will be taken on the basis of the study. The Committee wish to emphasise that there should be normally no case where the refund due is not allowed within a period of 3 months from the date of appellate orders. In this connection it is worthwhile studying in depth the reasons for the delay in cases in which interest had to be paid during the three years 1969-70 to 1971-72 and take remedial action at least for the future.

j) *Procedural Defects—Inordinate delay in issue of notice of Demand*

Audit Paragraph

2.235. Where any tax, interest, penalty, fine or any other sum is payable in consequence of an order passed under the Income-tax Act, the Income-tax Officer serves upon the assessee a notice of demand specifying the sum to be payable within thirty five days of the service of the notice of demand.

(i) In a case the department rectified the assessment for the

assessment year 1963-64 in March, 1969, withdrawing the development rebate originally allowed and raised additional demand of tax of Rs. 14,73,727. However no demand notice was served on the assessee upto May, 1970 when the omission was pointed out in Audit. On further verification it was found that the demand notice was served on the assessee only on 9.12.71 and that the assessee had not made any payment till end of December, 1971. The case was referred to the Ministry in November, 1971 and their reply is awaited (February, 1972).

(ii) In another case, the assessment of a company for the year 1964-65 was rectified on 25th November, 1969 and the demand notice for Rs. 9,49,199 was prepared on the same date. The notice was, however, signed by the Income-tax Officer after a delay of about ten months, on 21.9.1970 and was served on the assessee on 24.9.1970. The tax has not been paid by the assessee so far (January, 1972).

[Paragraph 55 of the C. & A. G. of India for the year 1970-71—Union Government (Civil) Revenue Receipts].

2.236. The Committee desired to know whether the Ministry had issued any executive instructions laying down a time limit for the issue of demand notices after the completion of assessments. The Ministry, in a note stated:

"Instructions have been issued that every effort should be made to secure the service of the demand notice within a fortnight and even in the case of particularly obstructive assessee within a month, of the passing of an assessment order."

2.237. The Committee pointed out that in the first case the rectification was made in March, 1969 and omission to issue a demand notice was pointed out in May, 1970 but the demand notice was issued to the assessee in December, 1971. In the second case, there was delay of about ten months in issue of demand notice. Such delay in issue of demand notices had also been pointed out in paragraph 49(a) of the Audit Report 1969-70. The Committee wanted to know the circumstances in which the demand notice was not issued to the assessee for over 2 years in the first case. As regards the second case, the Committee enquired whether the delay was investigated and if so, the conclusions arrived at. The Ministry in a written reply stated:

"The Ministry ordered that the entire circumstances pertaining in these two cases should be investigated and necessary disciplinary proceedings considered against those considered at fault. The outcome of the investigation in the matter will be communicated to the Committee in due course."

2.238. In a subsequent note furnished to the Committee, the Ministry stated:

"In these cases of Messrs. Indian Iron & Steel Co., Ltd., and Messrs. Aluminium Corporation of India Ltd., the Audit pointed out inordinate delay in the issue of demand notices. In the first case, a rectification order was passed in March, 1969 withdrawing development rebate and raising additional demand of Rs. 14.73 lakhs; the demand notice was, however, served on the assessee only in December, 1971. In the second case, a rectificatory order was passed in November, 1969 withdrawing development rebate and raising an additional demand of Rs. 9.49 lakhs; the demand notice was, however, served in September, 1970. In the first case, the rectificatory order was cancelled by the A.A.C., but the Department has filed an appeal before the Tribunal. In the second case also, the A.A.C. has cancelled the rectificatory order and this decision has been accepted by the Department.

The Ministry have since issued instructions No. F. 236|22|70-A&PAC dated 22-3-71 (copy enclosed) emphasising the need for prompt issue and service of demand notices. At the instance of the Board, the D.I. (I.T. & Audit) has also issued instructions (copy attached) to the Commissioners for directing the IAPs to specifically look hereafter into the question of prompt issue and service of demand notices in cases audited by them and cases of default should be brought by them to the notice of the Commissioners of Income-tax for suitable action.

It would be observed from the above details that as things stand at present after appellate orders, there has been no revenue loss on account of delay in service of demand notices in the two cases. General remedial measures for preventing such delays have already been taken, as indicated above. The Commissioner has been asked to look into the lapse of the officials in this behalf in the two specific cases and to take necessary disciplinary notice;

the results of the Commissioner's enquiry and action will be intimated to the Committee in due course."

2.239. Further pointing out that there was inordinate delay in issue of demand notices involving huge sums of revenue and that delay in issue of demand notices not only postpone the realisation of moneys due to Government but also carried with it the risk of loss, the Committee wanted to know the steps proposed to be taken by the Government to prevent such delays in future. The Ministry stated:

"The Internal Audit have been specifically asked to make it a point to check such delays and bring the same to the notice of the Commissioners concerned for suitable action."

2.240. In two cases where inordinate delays had occurred in the issue of demand notices involving Rs. 24.23 lakhs which not only postponed the realisation of moneys due to Government but also carried with it the risk of loss of revenue, have been reported in this Audit paragraph. The Committee have been given to understand that the Ministry have ordered that the entire circumstances pertaining to these cases should be investigated and necessary disciplinary proceedings considered against those found at fault. The outcome of the investigation as also the action taken against the persons at fault may be communicated to the Committee within three months.

2.241. The Committee find that in the first case the Department has appealed against the decision of the Appellate Assistant Commissioner cancelling the rectificatory order whereas in the second case the decision of the Appellate Assistant Commissioner has been accepted. The Committee would like to know the circumstances under which the A.A.C's decision has been accepted in the second case.

2.242. The Committee understand that at present there is no time-limit for the issue of demand notices. They desire that a suitable time-limit should be laid down either statutorily or by executive instructions.

(k) *Other topics of interest*

Audit Paragraph

2.243. Development rebate is not allowed as a deduction while computing income from business unless an amount equal to seventy-five per cent of the development rebate to be actually allowed is debited to the Profit and Loss account of the relevant previous year and

credited to a reserve account. According to a Supreme Court Judgement, the entries in the account books are not an idle formality and the transfer to the reserve fund should be made at the time of making up the Profit and Loss account of the year for which development rebate is allowed.

2.244. The Central Board of Direct Taxes in their circular of October, 1965, relaxed the above provisions of the Act. According to the Board where provision is actually made at the prescribed rate of seventy-five per cent of the development rebate allowable according to the assessee's own bonafide computation but the amount so provided is found by the Income-tax Officer at the time of assessment to fall short because the development rebate actually allowable according to the Income-tax Officer's computation is larger than that computed by the assessee, the Income-tax Officer may condone the genuine deficiencies subject to the same being made good by the assessee through creation of additional adequate reserve in the subsequent years' books within the time allowed by the department.

2.245. These instructions of the Board are contrary to the provisions of the Act. Pursuant to the Board's instructions, in five cases relating to two Commissioners' charges, development rebate of Rs. 55.48 lakhs was allowed during the assessment years 1965-66 to 1967-68. The revenue involved in these five cases is Rs. 27.26 lakhs. Brief details of the cases are given below:

(i) In the assessments of four companies for the assessment year 1967-68, development rebate of Rs. 1,47,723 was allowed on the assessees' undertaking to make up the deficiency in the accounts for the subsequent year which were open. The revenue involved in these four cases was Rs. 83,770. The Ministry's reply to the paragraph forwarded in November, 1971 is awaited (February, 1972).

(ii) A company engaged in the production of iron and steel created development rebate reserve of Rs. 4.60 crores in its accounts for the assessment years 1965-66 to 1967-68 and the reserve entitled the company to obtain development rebate to Rs. 6.13 crores. The company before completion of the regular assessments for the three years filed revised claim of development rebate of Rs. 6.67 crores including there in the claim for development rebate on rolling mill rollers on the plea that the rollers were similar to those fixed in sugar works. In November, 1968, the Central Board of Direct Taxes issued instructions that rollers installed in sugar works constituted plant, and development

rebate would be admissible in respect of the actual cost of the rollers. As the original reserve created by the assessee was not sufficient to cover the development rebate claimed on rolling mill rollers the assessee created additional reserve for Rs. 71 lakhs in the accounts for 1968-69 relevant to the assessment year 1969-70. The development rebate allowed was Rs. 54 lakhs with a revenue effect of Rs. 26.48 lakhs for the three assessment years 1965-66 to 1967-68. The Ministry have accepted the mistake and have directed the department to take rectificatory action.

[Paragraph 56 of the Report of Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

2.246. The Committee wanted to know the provisions of the law in regard to grant of development rebate and also enquired whether the instructions issued by the Central Board of Direct Taxes in October, 1965, were in accordance with the law. The Ministry, in a written note stated: "Grant of development rebate is governed by the provisions of Sections 33 and 34 of the Income-tax Act, 1961."

"In October 1965 when the Central Board of Direct Taxes issued the instructions these were considered to be in accordance with law. These instructions were in part, however, found not to be in conformity with the judicial pronouncements since available."

2.247. Referring to assessments of four companies mentioned in Sub-para (i) of the audit paragraph, the Committee enquired whether the Ministry had accepted the mistakes in all the cases and arranged to rectify the concerned assessments. They also wanted to know the additional demand of tax recovered in the four cases. The Ministry, in a note, stated:

"The Ministry have accepted the Audit's observation that the Board's instructions dated 14th October, 1965 were not in conformity with the provisions of Law as subsequently interpreted by the Supreme Court. The assessments in three cases could not be rectified due to time bar. The assessment in the fourth case has been rectified raising an additional demand of Rs. 13,406|- in the hands of the firms and its partners."

2.248. Referring to the case mentioned in sub-para (ii) involving a tax effect of Rs. 26.42 lakhs, the Committee asked whether the assessments were revised and the additional demand of tax recovered. The Ministry stated:

"The assessments have been revised raising an additional demand of Rs. 30.04 lakhs as against Rs. 26.42 lakhs reported by the Audit. The assessee company has, however, filed a writ petition before the Bombay High Court, who have issued a Rule Nisi; the matter is pending."

2.249. When asked to state the action taken to withdraw the irregular circular instructions and for the rectification of the assessments wherein the Board's instructions were followed, the Ministry stated:

"In view of the Supreme Court's decision in the case of Indian Overseas Bank Ltd. (77 I TR, p. 512) and that of Gujarat High Court in the case of Surat Textile Mills Ltd. (80 ITR, p. 1), instructions have been issued [Instruction No. 469, dated 27-10-1972—F. 228|8|72-IT (A.II)—copy enclosed). superceding the portions of the instructions of 1965 which are not in conformity with these judicial pronouncements. These instructions also ask for review of the past assessments as may be feasible and for taking the above noted stand in pending appeals for securing necessary disallowance by way of enhancement.

Representations have, however, been received from trade associations as well as a Member of Parliament that the instructions contained in the Circular of 1965 brought out the correct intent of the law and it should be allowed to be followed even now and no attempt should be made to review the closed assessments. The advice of the Ministry of Law has been sought."

2.250. The Committee desired to know whether there was any machinery in the Central Board of Direct Taxes to review all the old circulars issued by the Board and withdraw such of them which were found to be contrary to the provisions of the Law. The Ministry, in a written reply, stated:

"There is no such machinery. However, when any doubt is expressed by any quarter, the implications of the particular circular are considered, sometime in consultation with the Ministry of Law, and necessary modification is made."

2.251. The Income-tax Act requires that to become entitled for development rebate the assessee should create a reserve equal to 75 per cent of the rebate to be allowed by debit to the profit and loss account of the previous year relevant to the assessment year and credit to a reserve account. In October, 1965, the Board relaxed this provision to allow for the deficiency in crediting to the reserve account being made good in the subsequent years. As the expression

used in Section 34(3) (a) of the Act is "the relevant previous year", this relaxation derived no authority from the Act. The Committee note that following judicial pronouncements on the subject the Board have issued revised instructions in October, 1972. These instructions inter alia contemplate a review of the past assessments. The action taken in this regard may be reported to the Committee.

2.252. Although the assessments referred to in sub-para (ii) of the Audit paragraph have been revised raising an additional demand of Rs. 30.04 lakhs, the assessee company is stated to have filed a writ petition before the Bombay High Court. The outcome may be reported to the Committee in due course.

2.253. The Committee understand that on receipt of certain representations the advice of the Ministry of Law has been sought in the matter. They would like to know whether the Ministry of Law were not consulted prior to the issue of the revised instructions in October, 1972. If consulted, it is not clear why they are again approached merely because representations have been received. The Committee have been noticing that the Ministry of Law are being approached to give advice on the same subject more than once This would, apart from embarrassing them, add to the burden of their work. If Government consider that the relaxation as contemplated earlier should be allowed, the best course would be to propose amendment to the relevant section of the Act.

.. 2.254. The Committee regret to note that there is no machinery in the Central Board of Direct Taxes to review all the old circulars issued by them and withdraw such of them as are found to be contrary to the provisions of the law. It is only when any doubt is expressed in any quarter that the implications of a circular are considered and necessary modification made. This position is obviously unsatisfactory. The Committee desire that judicial pronouncements on the Income-tax Law should be closely watched by the Board with a view to undertaking a suo moto review of the instructions periodically and issuing fresh instructions as may be necessary.

CHAPTER III

ARREARS OF TAX DEMANDS*

Audit Paragraph

3.1. (i) The total effective demand of tax outstanding on 31st March, 1971 was Rs. 609.45 crores (which excludes a demand of Rs. 129.32 crores, the collection of which had not fallen due on 31st March, 1971). Of this, net effective arrears representing recoverable demands was Rs. 399.82 crores. The balance of Rs. 209.63 crores comprised the following:

		(In crores of Rs.)
1. Reduction expected on account of :		
(a) D.I.T. relief	7·49	
(b) Appellate relief (c) Protective assessments	77·82	
		85·31
2. Irrecoverable dues which will be rewritten of ultimately :		
(a) from persons who have left India	12·16	
(b) from companies in liquidation	9·62	
(c) from cases pending before certificate officers	34·84	56·62
3. Amount of advance tax included in the net effective arrears relating to the demand included in the gross demand		4·66
4. Amount of tax stayed by appellate authorities/High Courts/ Supreme Court as on 31-3-1971 included in the net effective arrears.		63.04
		209·63

*Figures are as furnished by the Ministry.

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(ii) The figures of Corporation tax, income-tax and interest comprised in the gross arrears of Rs. 738.77 crores and the years to which they relate are shown below:—

(In crores of rupees)

	Corporation Tax	Income Tax	Interest	Total
(*i*) Arrears of 1960-61 and earlier years	4·65	50·37	1·51	56·53
(*ii*) 1961-62 to 1968-69 . .	66·28	207·80	22·89	296·97
(*iii*) 1969-70	40·54	99·53	13·80	153·87
(*iv*) 1970-71	63·42	147·29	20·69	231·40
	174·89	504·99	58·89	738·77

(iii) The table below shows the number of assessees from whom gross arrears of Rs. 738.77 crores are due, classified on the basis of assessed income:—

Arrear Demand	No. of assessees	Total arrears (in crores of rupees)
Up to Rs. 1 lakhs in each case	20,05,302	407·36
Over Rs. 1. lakh upto Rs. 5 lakhs in each case . . .	4,601	96·65
Over Rs. 5 lakhs upto Rs. 10 lakhs in each case . .	775	54·01
Over Rs. 10 lakhs upto Rs. 25 lakhs in each case .	474	71·17
Over Rs. 25 lakhs in each case	202	109·58
TOTAL	20,11,354	738·77

(iv) The table below shows the number of cases and the amount of income-tax stayed on appeals and revision petitions as on 30 June, 1970 and 30th June, 1971.

(In lakhs of rupees)

	No. of cases in which tax was stayed		Amount of tax stayed	
	30-6-70	30-6-71	30-6-70	30-6-71
(a) Before AACS .	7,130	7,693	5,386	3,847
(b) Before Tribunals . . .	1,127	1,019	1,635	1,126
(c) Before High Court . .	603	445	3,125	1,898
(d) Before Supreme Court . . .	29	24	37	59
Revision petitions before Commissioners of Income Tax . . .	178	193	135	297

(*b*) Appeals pending on 30th June, 1971*

		Income-tax appeals with Appellate Assistant Commissioners	Income-tax revisions peitions with Commissioners
(*a*)	Number of appeals/revision petitions	2,47,723	7,933
(*b*)	Out of appeals/revision petitions instituted during 1970-71	1,16,317	3,524
(*c*)	Out of appeals/revision petitions instituted in earlier years .	68,054	2,337

Year-wise break-up of appeal cases and revision petitions pending with Appellate Assistant Commissioners and Commissioners of Income-tax respectively for the periods ending 30th June, 1970 and 30th June, 1971 respectively with reference to the year of institution are indicated below:

Year of Institution	Appeals with Appellate Assistant Commissioners		Revision Petitions with Commissioner of Income-tax	
	30-6-1970	30-6-1971	30-6-1970	30-6-1971
1954-55	..	..	1	1
1956-57	2	2	..	..
1958-59	..	..	3	3
1959-60	7	..	10	7
1960-61	14	5	20	16
1961-62	55	37	18	13
1962-63	80	73	53	44
1963-64	181	93	90	71
1964-65	519	281	132	81
1965-66	948	502	143	74
1966-67	2,916	1,593	266	121
1967-68	10,105	5,364	462	187
1968-69	36,242	15,675	1,433	558
1969-70	1,24,708	40,429	4,646	1,161
1970-71	72,977	1,16,317	2,236	3,524
1971-72	..	..	..	2,072
TOTAL . .	2,48,754	1,80,371†	9,513	7,933

[Paragraph 57 of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

*Figures are as furnished by the Ministry.

†Does not include appeals filed between 1-4-71 to 30-6-71.

3.2. The Committee drew attention of the witness to para 9 of the Administrative Report of the Ministry of Finance for the year 1971-72, wherein the Ministry had stated as under:

> "There was no appreciable decrease in the arrears of Income Tax which stood at 499 crores as on 31st March, 1971 although realisation of taxes showed improvement. The bulk of the arrears outstanding are due to the hard core of tax arrears which was irrecoverable and have to be written off at same stage".

3.3. The Committee pointed out that according to the Audit Report the gross arrears as on 31st March, 1971 were Rs. 738.77 crores and net effective arrears were Rs. 399.82 crores, whereas in the Administrative Report of Ministry of Finance for 1971-72, it was stated that the net arrears as on 31st March, 1971 stood at Rs. 499 crores. The Committee wanted to know the correct figure of arrears as on 31.3.1971, pending realisation.

3.4. The Finance Secretary, stated: "Of that figure, there is a difference which has been persistent for a number of years between the figures or the method of calculating the net effective arrears according to the formula adopted by the Audit and the net arrears according to the formula adopted by the Department. These two figures have not been tallying for any year. But instead of that, for the purpose of the Committee, the figure which the Audit has adopted should be taken into consideration".

3.5. The Finance Secretary added: "I am afraid the figure *viz.* Rs. 399.82 as reported in the Audit Report as net effective arrears is wrong. What happens, in the table immediately following this figure at page 58, is if you take the same item 2 which shows book dues which will be written off. Then again (a) and (b) are also included in the (c) because of people who have left. Unfortunately, if instead of the word "from" it was said "other cases pending" they would have deducted these figures. What happens is that the total figure in Col. 2(c) includes 12.16 and 9.62 and therefore the total of 56.62 should really read as 34.84. Then there is one more error. The other error is in Sub-paragraph 4, that is, 63.64. This is also included under (i). (b) and (c). This thing should have been shown in the second Col. and not in the fourth Col. So, the grand total instead of 399, becomes 484.....This error has been persistently for some time. This error was detected more recently and we have written to the audit about this duplication".

3.6. The witness further stated: "The figure 484 which I just now gave for 1971, it compares with the figure 591 for 1970. According to us, 424 is the final figure for 1971-72. There are one or two reports still to come in. But the figure at the moment is 424 as against the figure of 48 for the last year....Both these figures are there according to one formula and this is the figure according to other formula".

3.7. The Committee desired to know how the figures of Rs. 499 crores was arrived at by the Department when according to the Audit Report, the net effective arrears representing recoverable demands was Rs. 399.02 crores as on 31st March, 1971. The Ministry in a note, stated: "This is due to the fact that the computation of net arrears by the Department and of net effective arrears by C.A.G. is different. This is explained below:—

Working out of net arrears and net effective arrears as per Department is as under :—

(In crores of rupees)

Net arrears		
Gross demand outstanding as on 31-3-1971		738·77
Less :		
(i) Amounts not fallen due	129·32	
(ii) Amounts awaiting adjustments/verification	4·66	
(iii) Amounts for which stay has been granted	77·82	
(iv) Amounts for which instalments have been granted	27·29	
		239·09
Net arrears		499·68

(In crores of rupees).

Working of the Effective Arrears as on 31-3-1971

Gross demand as on 31-3-1971		738·77
Less :		
(i) 100% of the amount not fallen due	129·32	
(ii) 100% of the amounts awaiting adjustment/verification	4·66	
(iii) 100% of the amounts for which stay has been granted	77·82	
(iv) 50% of the amounts for which instalments have been granted.	13·64	
(v) 80% of the amounts pending settlements of D.L.T. or other relief claims.	7·49	
(vi) 80% of the amount pending consideration of write off/scaling down petitions.	16·25	
(vii) 90% of the amounts due from companies under liquidation.	9·62	
(viii) 100% of the amounts due from persons who have left India etc.	12·16	270·96
		467·81

The difference between the net effective arrears according to Audit working at Rs. 399.82 crores and the effective arrears at Rs. 467.81 crores as per Departmental working is reconciled below:—

(In crores of rupees)

Net effective arrears as per Audit.		399·82
Add amounts deducted by Audit but not deducted in Departmental working :		
(i) Irrecoverable dues which will be written off ultimately from cases pending before Certificates Officers. .	34·84	
(ii) Amounts of tax stayed by Appellate authorities/H.C./S.C./as on 31-3-71	63·04	97·88
		497·70
Less amounts deducted by the Department but not deducted by the Audit:		
(i) 50% of the amounts for which instalments have been granted	13·64	
(ii) 80% of the amounts pending consideration of write off/scaling down petitions	16·25	29·89
Effective arrears as per Departmental working		167·81

3.8. When asked for the method adopted by the Department to arrive at the figure of gross arrears every year, the Chairman, CBDT stated: "Gross arrears are taken from the Demand and Collection Registers of each Income Tax Officer, who gives in his monthly progress Report gross arrears minus collections up to the end of the month." The witness added: "The total arrears on a particular date, that is to say, upto 31st March, 1971, we call a gross arrear. The demand minus collection upto that date even though this is the balance which is outstanding, it is not recoverable because certain amount might not have fallen due. Secondly where stay has been granted by an appellate authority even if it is an outstanding demand, it is not an arrear because we cannot collect it. The Act also itself says that when a instalment is granted, the assessee is in default so also item (2) where amount has been already paid as advance tax and it has been awaiting adjustment or verification".

3.9. In reply to a question, the witness stated: "One person's charge is counter-checked by another. At the end of the year, the arrears which are brought forward by one Inspecting Assistant Commissioner's range are checked by aonther Assistant Commissioner with the records".

3.10. The Finance Secretary added "One point to which the Chairman, CBDT referred was that there is already a system that at the end of the year one Inspecting Assistant Commissioner checks the records of arrears of the other Inspecting Assistant Commissioner. But the Board has also prescribed a system wherein an arrear sheet is attached in the case of larger assessees which is in a summary form mentioning how much amount is due from a particular person etc".

3.11. When suggested that the Ministry should, in consultation with the Audit, examine the present system with a view to make suitable improvement so as to obtain accurate figures, the witness replied: "If some improvement is possible, we shall be very happy to do so, so that we should be able to see as to what can be done".

3.12. In para 53(i) of Audit Report 1969-70, the recovery of the following amounts was stated to have been stayed as on 31-3-1970:

(In crores of rupees)

(i) Amount stayed by appellate authority/High Courts/ Supreme Court.	Rs. 6·15
(ii) Amount stayed by those other than (i) above. .	Rs. 23·55
	Rs. 29·70

3.13. For the year ending 31-3-1971, the amount of tax stayed by appellate authorities/High Courts/Supreme Court was Rs. 63.04 crores. The Committee wanted to know the reasons for the sudden spurt in the amount of tax stayed by appellate authorities/High Courts/Supreme Court from Rs. 6.15 crores on 31-3-1970 to Rs. 63.04 crores on 31-3-1971. The Committee also desired to know the figure of tax stayed by those other than appellate authorities, high Courts/ Supreme Court on 31-3-1971. The Ministry, in a note, stated:

> "The relevant extracts from paras 53(i) and 57(a) (i) of the C&AG's Report for 1969-70 and 1970-71 respectively are reproduced below:
>
> *Para* 53, *Arrears of tax demands*
>
> (i) The total effective demand of tax outstanding on 31st March, 1970 was Rs. 682.56 crores (which excluded a demand of Rs. 158.14 crores, the collection of which had not fallen due on 31st March, 1970). Of this, the net effective arrears representing recoverable demands was

Rs. 591.18 crores. The balance of Rs. 91.38 crores comprised the following:

	(Rs. in crores)	
1. Reduction expected on account of—		
(a) D.I.T. relief	7·31	
(b) Appellate relief	29·70	
(c) Protective assessments	6·46	
		43·47
2. Irrecoverable dues which will be written off ultimately:		
(a) from persons who left India	11·48	
(b) from companies in liquidation . . .	8·10	
(c) from cases pending before certificate Officers.	28·33	
		47·91
		91·38

The net effective arrears of Rs. 591.18 crores included:

(a) Rs. 91.48 crores being the amount of advance tax relating to the demands included in the gross demand.

(b) Rs. 6.15 crores being the amount of tax stayed by appellate authorities/High Courts/Supreme Court as on 31st March, 1970, and

(c) Rs. 23.55 crores being the amount pending disposal of appeals wherein stay has been granted other than those included in (b) above.

Para 57, *Arrears of tax demands*:

(a) (i) The total effective demand of tax outstanding on 31st March, 1971 was Rs. 609.45 crores (which excludes a demand of Rs. 129.32 crores, the collection of which had not fallen due on 31st March, 1971). Of this, net effective arrears representing recoverable demands was Rs. 399.82 crores. The balance of Rs. 209.63 crores comprised the following:

	(In crores of Rupees)	
1. Reduction expected on account of —		
(a) D.I.T. relief	7·49	
(b) Appellate relief. }	77·82	
(c) Protective assessments }		
		85·31.

2. Irrecoverable dues which will be written off ultimately—			
(a) from persons who have left India	12·16		
(b) from companies in liquidation	9·62		
(c) from cases pending before certificate officers	34·84		
		56·62	
3. Amount of advance tax included in the net effective arrears relating to the demand included in the gross demand		4·66	
4. Amount of tax stayed by appellate authorities/High Courts/ Supreme Court as on 31-3-1971 included in the net effective arrears		63·04	
		239·631	

[Certain figures indicated in para 57 above were revised as per attached copy of letter No. F. 231/5/71-A&PAC dated 5-10-1972 to Audit].

(II) The amount of Rs. 63.04 crores shown in the C&AG's Report for 1970-71, as tax stayed by appellate authorities etc. is also included in the overall amount of Rs. 77.82 crores shown in the same para 57(a) (i) of the Report again the combined head 'Appellate Relief' and 'Protective Assessments'. The Director of Inspection (Research, Statistics and Publication) who compiles his quarterly report from which the relevant figures were furnished for the C&AG's Reports for 1969-70 and 1970-71 changed the proforma for drawal of quarterly report on this specific point. Till 1969-70, for working out the net effective arrears, an estimated 50 per cent of the demand stayed by appellate and other authorities was deducted from the gross arrears to arrive at net effective arrears. However, from 1970-71 onwards, for more accurate reflection of the situation, the entirety of such stayed demand was adjusted from the gross arrears for arriving at net effective arrears. In this context, it will be seen that the amount of Rs. 29.70 crores shown against the head "Appellate Relief" in the C&AG's Report for 1969-70 represents only 50 per cent and the full amount stood at 59.4 crores which added to the amount of 6.46 crores shown against the head "Protective Assessments" gives a total of Rs. 65.86 crores as against the corresponding figures of Rs. 77.82 crores shown in the C&AG's Report for subsequent year 1970-71. The increase on this analysis does not remain very marked. Further, the limited increase to the above detailed extent in arrears

wherein stay had been granted by courts and Income-tax authorities was primarily due to the following facts:

(a) Since appeals take long to get finally decided, the arrears of a particular year where stay had been allowed pending appeal decision do not get reduced during the pendency of appeals. On the other hand, every year some addition is made under the head on account of such stay having been allowed in fresh appeal cases.

(b) As Additional Commissioners were appointed in 1970 at some places for sharing work of Commissioners, recovery work got expedited and hence more petitions for stay of demand got decided.

(c) Increasingly more assessees became aware of the fact that appellate authorities especially the Tribunal (After Supreme Court decision in the case of Mohd. Kunhi 71ITR815) were now granting stay in matters of collection of disputed demand and as such larger number of assessees took advantage of this.

(III) Information regarding the amount of tax stayed by those other than appellate authorities is not readily available; it will be collected and furnished in due course."

3.14. The Committee pointed out that in sub-para (ii) of the audit paragraph, the amount of interest due on 31-3-1971 was shown as Rs. 58.99 crores and that the amount of demands in arrears was Rs. 679.88 crores. The rate of interest for non-payment of dues was at 4 per cent upto 31-3-1965, 6 per cent from 1-4-1965 to 30-9-1967, 9 per cent from 1-10-1967 and 12 per cent from 1-4-1972. The Committee wanted to know the reasons for the low figure of interest outstanding as on 31-3-1971. The Finance Secretary stated: "In this particular case the interest that is shown here is the interest which the Income-tax Officer has charged till the date he has sent the tax recovery certificate. Then after that the interest which accrued is added by the Tax Recovery Officer. Because the Income-tax Officer having sent the tax recovery certificate does not know the date when the recovery will actually be made."

3.15. In reply to a question, the Member, CBDT, stated: "What we have shown is the interest outstanding. After the Income-tax

Officer issues a tax recovery certificate, it is the Tax Recovery Officer who collects the interest after the issue of the Tax Recovery Certificate."

3.16. The Committee pointed out that there seemed to be some sort of lacuna in the present system of calculating the arrears of interest etc. which gave an incomplete picture, and suggested that some methodology should be devised in consultation with Revenue Audit so as to arrive at a clear and complete picture of the arrears outstanding and interest realisable thereon at the close of each year. The Finance Secretary stated: "That of course, requires some modification."

3.17. Referring to the Table mentioned in Sub-paragraph (iii) of the Audit Paragraph, the Committee pointed out that the gross arrears of Rs. 738.77 crores were stated to have been due from 20.11 lakhs of assessees i.e. two thirds of the total number of assessees in the books of the Department. When asked to state the reasons, the Member CBDT stated: "I am afraid the way in which these figures have been compiled by he Income-Tax Officers is responsible for this large number. The Income-Tax Officer, may have a demand pending for one assessee for different years but for these different years he has got different entries in his demand collection register. When he is called upon to give the number of open entries, he does not make a compilation assessee-wise because those entries are spread over different places. If he makes an assessee-wise categorisation, he will get the correct number three or four lakhs assessees from whom demands may be outstanding.... These twenty lakhs cases referred to here come from the last ten or 12 years."

3.18. The Ministry in a note, further stated: "As explained during the course of the meeting the aforesaid figure possibly represents the number of arrear entries as there is no readily available source in the field indicating the total amount of arrears outstanding against an assessee at a particular time. However, D.I. (RS & P) has been asked to confirm this."

3.19. The Committee wanted to be furnished with particulars of cases in which arrears of Income-tax as on 31-3-1971 exceeded to 10 lakhs. The Ministry, furnished a list showing the names of the

assessees with amounts against whom arrears as on 31-3-1971 exceeded Rs. 10 lakhs, Commissioners' charge-wise. The following position emerged from the above list:—

Income-Tax arrears outstanding as on 31-3-1971

S. No.	Commissioner's charge	No. of assessees.	Amount (in lakhs
1.	Andhra Pradesh	4	71·99
2.	Andhra Pradesh II	1	56·14
3.	Assam	3	34·13
4.	Bhopal	5	66·02
5.	Bhopal	1	27·07
6.	Bihar	6	90·40
7.	Bombay City	87	1307·88
8.	Bombay City I	26	1535·42
9.	Bombay City II	12	549·25
10.	Bombay City III	5	159·12
11.	Bombay Central	44	689·93
12.	Bombay Central	30	2206·89
13.	West Bengal	181	2741·04
14.	West Bengal I	26	949·65
15.	West Bengal II	19	995·63
16.	West Bengal III	21	1147·22
17.	Calcutta Central	46	722·75
18.	Calcutta Central	37	2228·13
19.	Delhi charge	6	89·12
20.	Delhi Central	27	569·21
21.	Delhi I	2	422·59
22.	Delhi II	1	29·07
23.	Delhi III	2	172·37
24.	Delhi Central	15	895·44
25.	Gujarat	3	42·00
26.	Gujarat I	1	32·01
27.	Kanpur	16	259·30
28.	Kanpur	5	190·05
29.	Kerala	6	68·52

S. No.	Commissioner's charge	No. of assessees	Amount in lakhs
30.	Ernakulam	1	47·55
31.	Lucknow	2	26·47
32.	Madras	8	124·53
33.	Madras Central	12	180·56
34.	Madras Central	2	70·53
35.	Mysore	1	17·15
36.	Nagpur	1	13·05
37.	Vidarbha and Marathwada Nagpur	1	59·42
38.	Bhubaneshwar	2	27·44
39.	Poona	1	12·01
40.	Poona	2	111·94
41.	Punjab	7	11·52
42.	Patiala	2	57·57
43.	Rajasthan	3	37·63
44.	Jaipur	2	70·77
		689	19236·56
		689 or	192·37 crores.
	Total Number of assessees :		689
	Total arrears		192·37 crores.

3.20. When asked how much time the Department would take to finalise these cases, the Member CBDT stated: "Most of these cases are blocked up in litigation. In these cases the Board also looks into the reasons why these demands are pending and wherever the Board finds that there is some action which could be taken but which, has not been taken. the Board issues directions to the Commissioner to take particular action. But in most of the cases, either there are no assets or the assets are in dispute before various courts, sometimes writs are pending in High Courts. Sometimes there are assessees, private limited companies for whose shares we find no purchasers; sometimes we do not find bidders for immovable properties. In bigger cases, bigger fellows who can afford the fees of big lawyers go to the courts and hold up the collection."

3.21. The Committee learnt from Audit that as per Board's instructions of January, 1970 the realisation of revenues in cases wherein the individual arrears exceeded Rs. 25 lakhs was the responsibility of the Board.

3.22. Pointing out that according to Sub-para (iii) of the audit paragraph, 202 cases involving arrears of Rs. 109.58 crores were outstanding as on 31-3-1971, the Committee wanted to know the position of these 202 cases on 31-3-1972. The Ministry in a note, stated that out of 202 cases, 167 cases were pending as on 31-3-1972 with arrears of Rs. 92.80 crores.

3.23. When suggested that against each category reported in Sub-para (iii) of the audit paragraph, the amounts, recoverable and irrecoverable should be separately indicated, the Finance Secretary stated: "An abstract of that has been indicated in sub-para (i) where the gross has been reduced to the net figure of 484 which is out of 738 and 85 crores are mentioned in Sub-item of Sub-para (i), covering the kind of cases in dispute etc. and other categories of cases where they are almost irrecoverable which will be ultimately written off and included in Sub-para (2) as Rs. 56 crores. Sub-para (iii) relates to the gross arrears."

3.24. The Ministry, in a written note, further stated: "The DJ (RS & P) has been asked to study whether it would be feasible to do so and if so, he may devise ways and means of calling such information for the future."

3.25. In their 51st Report (Fifth Lok Sabha), the Committee had dealt with the problem of arrears of tax demands comprehensively and indicated the steps to be taken to obviate accumulation of arrears... ..

3.26. From the information now furnished to them, the Committee find that the arrears are not being computed on a uniform and scientific basis. According to the Audit paragraph the net effective arrears as furnished by the Ministry to the Audit on 31st March, 1971 were Rs. 399.82 crores whereas according to the version of the Ministry before the Committee the figure should be Rs. 467.81 crores. A third figure viz. Rs. 499 crores is mentioned in the Administrative Report of the Ministry of Finance (1971-72). Thus the figures vary widely. Further the basis for compilation of these figures has been changed from time to time. For instance till 1969-70 for working out the net effective arrears, an estimated 50 per cent of the demand stayed by appellate and other authorities was deducted from the

gross arrears to arrive at net effective arrears and from 1970-71 onwards the entire amount involved in such stayed demand was deducted from the gross arrears. The Committee had earlier pointed out that interest on arrears of demands had not been calculated and shown correctly. In view of all these the Committee suggest that some methodology should be devised in consultation with the Comptroller and Auditor General of India so as to arrive at a clear and complete picture of the arrears and interest realisable at the close of each year.

3.27. The total number of assessees borne on the books of the Department was 30,12,570 as on 31st March, 1971. According to the Audit paragraph the gross arrears of Rs. 738.77 crores were due from 20,11,354 assessees. This gives an impression that about two-thirds of the assessees were in arrears. The Ministry have stated that the figure 'possibly represents the number of arrear entries as there is no readily available source in the field indicating the total amount of arrears outstanding against an assessee at a particular time'. This shows that the figures are furnished to the Revenue Audit without detailed scrutiny. While the Committee await a report regarding the correct position, they are of the view that an assessee-wise compilation of arrears of substantial amounts, say, Rs. 1 lakh and more, is necessary and that it should be attempted forthwith.

3.28 According to the Audit paragraph, arrears in excess of Rs. 10 lakhs in each case were Rs. 180:75 crores due from 676 assessees. The Ministry have, however, intimated details working upto Rs. 192.37 crores due from 689 assessees. The discrepancy in figures should be reconciled.

3.29. It is regrettable that the Board does not have any satisfactory system of watching the recovery of arrears. The Committee, therefore, desire that the Board should set up a machinery for watching the recovery of arrears in excess of Rs. 10 lakhs in each case. They would suggest introduction of a ledger card system for each assessee which would bringing out the up-to-date position of arrears and a brief account of the measures taken to recover them.

. .3.30. The Committee would like to know the details of the cases of arrears in excess of Rs. 10 lakhs each as on 31-3-1972 and the steps taken to recover them in each case, duly verified by Audit.

57(b)—Appeals pending on 30th June, 1971.

3.31. The total number of cases pending with the Appellate Assis-

tant Commissioners on 30th June of each year for the five years ending 30th June, 1971 was as follows:—

As On	Total No. of cases.
30-6-1967	1,67,512
30-6-1968	2,00,928
30-6-1969	2,19,628
30-6-1970	2,48,754
30-6-1971	2,47,723

3.32. The Committee pointed out that out of 2,47,723 appeals pending before the Appellate Assistant Commissioners 68,054 cases were instituted before 1970-71. But from the yearwise analysis given in the audit paragraph, it was noticed that the number of such pending cases came to 64,054 only. When asked for the reasons for the difference, the Ministry, in a note, stated: "The figure 68,054 was a typographical mistake which is regretted; the correct figure is 64,054."

3.33. The Committee desired to know the number of Appellate Assistant Commissioners at the end of each year from 30th June, 1967 to 30th June, 1971. The requisite information, as given by the Ministry in a note, is as nuder:—

1967-68	148
1968-69	178
169-70	178
1970-71	193
1971-72	223

3.34. Poining out that two cases instituted in 1956-57 before the Appellate Assistant Commissioner were pending on 30th June, 1971 i.e. for over fourteen years, the Committee asked whether the Ministry looked into these cases and found out the difficulty, if any, in disposing of these cases. The Ministry, in a written note, stated that the two cases instituted in 1956-57 before the Appellate Assistant Commissioner and pending on 30th June, 1971, had since been disposed of.

3.35. The Committee learnt from Audit that the Board in their circular dated 4th August, 1971, issued instructions that 1050 old ap-

peals filed upto 31st March, 1966, should be disposed of by 31st December, 1971 and cases of this group kept pending for unavoidable reasons should be looked into by the Commissioners/Additional Commissioners so that there would be a clear slate by 31st March, 1972. The Committee desired to know the position of pendency on 31st March, 1972 in regard to appeals filed to end of 1965-66. The Ministry, in a note, stated: "Out of 1050 old appeals upto 1965-66, 375 have since been disposed of and 675 appeals are pending on 31st March, 1972".

3.36. The number of revision petitions pending with the Commissioners of Income Tax on 30th June, for the five years ending 30th June, 1971 was as shown below:—

As on	*No. of cases pending*
30-6-1967	6544
30-6-1968	7342
30-6-1969	7602
30-6-1970	9513
30-6-1971	7933

3.37. The Committee pointed out that one case for over fifteen years, three cases for over thirteen years and seven cases for over 12 years were outstanding on 30th June, 1971. The Committee wanted to know the reasons for such old cases of revision, petitions remaining undisposed of. The Ministry, in a note stated, that the reasons were not readily available and would be ascertained and furnished. Asked whether the Ministry had fixed any target date for the finalisation of all revision petitions by the Commissioners of Income Tax which were more than three years old on 30th June, 1971, the Ministry, in a note stated: "No target date has been fixed by the Ministry for the finalisation of pending revision petitions which are more than 3 years old as on 30th June, 1971. However, general instructions have been issued by the Central Board of Direct Taxes *vide* their letter F. No. 264/3/72/ITJ dated 11th July, 1972 to all Commissioners of Income-tax requesting them to give priority attention to the disposal of pending revision petitions. The Commissioners of Income-tax have been told that the target should be that at the end of the current year no Commissioner/Additional Commissioner should be left with a pendency of more than 100 revision petitions or half of the pendency at the beginning of the year, whichever works out to less."

3.38. Position of appeal and revision petition cases pending with the Appellate Assistant Commissioners is alarming. The number of cases, which was 1,67,512 as on 30th June, 1967 gradually increased to 2,47,723 as on 30th June, 1971. Further, a number of cases were pending for over 10 years. That this was so inspite of increase in the number of Appellate Assistant Commissioners from 148 to 223 during this period, causes concern. The Committee regret that the target date fixed by the Central Board of Direct Taxes for the disposal of old cases filed upto 31st March, 1966 has not been adhered to.

3.39. The position of revision petitions pending with the Commissioners of Income-tax is equally unsatisfactory. The number of cases pending as on 30th June, 1971 was 7933. The delay in disposal was to the extent of 15 years in one case, 13 years in 3 cases and 12 years in 7 cases. The Ministry are unable to state readily the reasons for such inordinate delays. No target date has also been fixed by the Ministry for the finalisation of pending revision petitions which are more than 3 years old.

3.40. The Committee have been emphasising the need to expeditiously dispose of appeals and revision petitions. They feel that appeals should be disposed of with expedition and that at any rate no appeal should remain pending beyond a period of 3 years. They accordingly desire that reasons for such heavy pendency as brought out in the foregoing paragraphs should be studied carefully. A suitable target date should be fixed for the disposal of cases pending for more than 3 years and steps taken to see that the cases are not allowed to accumulate for more than a period of 3 years in future. In disposing of the cases priority should be given to cases where the Appellate Assistant Commissioners and the Commissioners of Income-tax have stayed the recovery of tax. The Committee consider that the Board should also devise an effective system to keep a watch over the position with a view to taking timely action...

CHAPTER IV

ARREARS OF ASSESSMENTS*

Audit Paragraph

4.1. (a) (i) The number of assessments outstanding with Income-tax Officers without completion on 31st March, 1971 was 12.39 lakhs. The position of pendency of assessments for the last three years is as follows:—

Years	As on 31-3-1969	As on 31-3-1970	As on 31-3-1971
1966-67 and earlier years	3,58,362	1,47,773	22,725
1967-68 and earlier years	3,58,599	1,34,461	95,681
1968-69 and earlier years	8,67,696	2,91,309	1,27,934
1969-70 and earlier years		7,48,264	2,65,296
1970-71 and earlier years	..	..	7,27,193
TOTAL	15,84,657	13,21,807	12,38,829

The pendency of outstanding cases has thus been registering a decline.

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

	As on 31-3-1970	As on 31-3-1971
(a) Business cases having income over Rs. 25,000	1,67,423	1,67,189
(b) Business cases having income over Rs. 15,000 but not exceeding Rs. 25,000	1,41,929	1,31,221
(c) Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000	2,69,468	2,50,272
(d) All other cases except those mentioned in category (e) below and refund cases	5,42,856	5,17,877
(e) Small income scheme cases, Government salary cases and non-Government salary cases below, Rs. 18,000	2,00,131	1,72,270
TOTAL	13,21,807	12,38,829

*The figures are as furnished by the Ministry.

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

Status	No. of assessments pending on 31-3-1971
(a) Individual . .	9,52,749
(b) H. U. F.	74,428
(c) Companies	25,075
(d) Firms	1,71,462
(e) Others	15,115
	12,38,829

[Paragraph 58 (a) (i) (ii) (iii) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government. (Civil)—Revenue Receipts].

4.2. Referring to the 12.39 lakhs of assessments pending without finalisation on 31st March, 1971, the Committee wanted to know the approximate revenue locked therein. The Ministry, in a written note, stated that the requisite information was not readily available with them and its collection would involve incommensurate time and labour.

4.3. In reply to paragraph 1.42 of the Committee's 117th Report, the Ministry, in January, 1971 stated that the pendency on 31st March, 1971 would be 8.5 lakhs of assessments and 31st March, 1972 it would be further reduced at about two to three months' work-load. But on 31st March, 1971, the pendency turned out to be 12.39 lakhs assessments. When asked to state the position of pending assessment on 31st March, 1972 the Ministry intimated that as on 31st March, 1972, as many as 11,23,705 assessments were pending.

4.4. The Committee have been commenting from year to year about the unsatisfactory position of arrears of assessments. In reply to their observations contained in their 117th Report (Fourth Lok Sabha), the Ministry in January, 1971, stated that the pendency as on 31st March, 1971 would be 8·5 lakhs of assessments and that it would be further reduced at the end of the year 1971-72. The Committee regret to find that the pendency as on 31st March, 1971 actually turned out to be 12·39 lakhs of assessments. The position as on 31st March, 1972, as intimated by the Ministry, is that 11·24 lakhs of

assessments were pending. Thus the position continues to be unsatisfactory despite the assurance given to the Committee to improve it. The Committee nevertheless trust that every effort will be made to pull up the arrears and bring them down considerably during the current year. ..

4.5. The Committee have been laying stress on the timely finalisation of cases involving large revenue. They would like to know whether the Central Board of Direct Taxes have devised any machinery at least to watch finalisation of such cases.

4.6. Although the Committee desired to know the approximate revenue locked up in 12·39 lakhs of assessments pending without finalisation as on 31st March, 1971, the Ministry are not in a position to readily furnish the informaton. The Committee, therefore, wish to emphasise that attempt should be made to bring out the approximate amount of income-tax involved in the pending assessments and make it available to Audit for incorporation in the future Audit Reports as is done now in the case of other Direct Taxes.

CHAPTER V

OUTSTANDING CASES IN WHICH PENAL SUPER-TAX/INCOME-TAX is LEVIABLE FOR FAILURE TO DISTRIBUTE THE STATUTORY PERCENTAGE OF DIVIDEND*

Audit Paragraph

5.1.	(*a*)	No. of cases pending on 1st April, 1970	3,307
	(*b*)	No. of cases added during 1970-71	4,564
	(*c*)	No. of cases disposed of during 1970-71	6,063
	(*d*)	No. of cases pending on 31st March, 1971	1,808
	(*e*)	Approximate amount of additional tax involved :	Rs. 149.98 lakhs

Assessment year-wise details of the cases pending on 31st March, 1971 together with the amount of tax involved are shown below:

Assessment Year	No. of cases	Amount of tax (Rs. in 000)
1954-55	1	10
1955-56	5	253
1956-57	14	558
1957-58	12	788
1958-59	14	857
1959-60	16	783
1960-61	17	994
1961-62	16	1,149
1962-63	1	4
1963-64	7	192
1964-65	8	240
1965-66	14	260
1966-67	147	2,138
1967-68	391	1,865
1968-69	366	1,244
1969-70	364	1,795
1970-71	415	1,866
TOTAL	1,808	14,998

[Paragraph 59 of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

*Figures are as furnished by the Ministry.

5.2. Under the I.T. Act, if the ITO finds that profits and gains distributed as dividends by a company within 12 months following the previous year, are less than the statutory percentage of the distributable income of the company for the previous year, he should levy a penal tax on the undistributed income at the prescribed rates. The additional levy should be made before the expiry of four years from the end of the assessment year relevant to the previous year or before the expiry of one year from the end of the financial year in which the assessment is made, whichever is later. No such time limit is prescribed in respect of cases relating to the years prior to 1962-63 under the old Income-Tax Act. Though the Board had issued instructions that the time limit prescribed under the new law should be observed in respect of the cases under the old Act, 1808 such cases awaited finalisation on 30th March, 1971. The amount of tax involved therein was Rs. 149.98 lakhs.

5.3. The Committee learnt from Audit that in their Circular of 16th July, 1970, the Central Board of Direct Taxes issued instructions that all the cases under the old Act should be disposed of by the 30th September, 1970.

5.4. But on 31st March, 1971, the number of such cases was 95. The Committee desired to know the latest position. The Ministry in a note stated:

> "As the Committee have already been informed in reply to paragraph 1.33 of their 25th Report (Action taken—1971-72), out of 83 cases pending on 31st December, 1972 only 30 cases remained outstanding in July, 1972."

5.5. When asked, if cases under the old Act were still outstanding, whether the Ministry had enquired into the circumstances in which they could not be completed, the Ministry stated:

> "Only 30 such cases were outstanding in July, 1972 and the Commissioners concerned were asked to dispose them of expeditiously. The latest position is being ascertained regarding these cases and will be intimated to the Committee."

5.6. The Committee pointed out that under the I.T. Act, 1961, the penal levy should be made within a period of four years from the

end of the assessment year or before the expiry of one year from the end of the financial year in which assessment was made whichever was later. The assessment for the year 1965-66 should have been made by 31st March, 1970 and action for levy of penal tax should have been made by 31st March, 1971 at the latest. From the paragraph it was seen that 30 cases relating to the assessment years 1962-63 to 1965-66 were outstanding on 31st March, 1971. The Committee enquired whether these cases had not become time barred on 1st April, 1971 involving a loss of revenue of Rs. 6,96,000. The Ministry, in a written note stated:

> "The Commissioners concerned have been asked to look into the matter. The Committee will be apprised of the position in respect of these 30 cases on receipt of their replies."

5.7. The Committee further pointed out that action for levy of penal tax should be completed within a period of four years from the end of the assessment year or one year from the end of the year in which the assessment was made and that the rule was enacted when the period prescribed for completion of assessments was four years. Now as the period for the completion of assessments had been reduced to two years, the Committee enquired whether the Ministry were revising the provisions of the Law relating to levy of penal tax. The reply from the Ministry is still awaited.

5.8. The Committee learn that although no time-limit was prescribed under the Income-tax Act, 1922, for the levy of penal tax for failure to distribute the statutory percentage of dividends by companies, the Board had issued instructions that the time-limit of 4 years from the end of the assessment year or 1 year from the end of the financial year in which the assessment is made, whichever is later, as prescribed under the new Act should be observed in old cases also. Further, in July, 1970, the Board directed that all the cases under the old Act should be disposed of by 30th September, 1970. However, 30 such cases remained outstanding even as late as July, 1972. The delay in their disposal despite instructions from the Board does not speak well of all these concerned. It needs hardly any emphasis that these cases should be disposed of without further loss of time.

5.9. Despite the statutory requirement that the assessment for the year 1965-66 should have been made by 31st March, 1970 and action for the levy of penal tax should have been taken by 31st March, 1971 at the latest, it is seen from the Audit paragraph that 30 cases involving Rs. 6:96 lakhs relating to the assessment years 1962-63 to 1965-66 were outstanding on 31st March, 1971. The Committee would like to

know whether these cases have not become time-barred involving loss of revenue and if so, the reasons for the delay in thier disposal and fixing responsibility for this avoidable loss.

5.10. Now that the period of completion of assessments has been reduced from 4 years to 2 years, the Committee feel that the time-limit for the levy of penal tax should also be correspondingly curtailed in the interest of speedy realisation of penalty. They desire that this should be examined by the Ministry with a view to proposing necessary modification to the provisions of the law relating to levy of penal tax..

CHAPTER VI

ARREARS OF PENALTY PROCEEDINGS*

Audit Paragraph

6.1. Under the Income-tax Act, penalties are leviable for failure:

(a) to furnish the return without sufficient reasons,

(b) to comply with the requisition to produce books and documents,

(c) to disclose fully and correctly the particulars of income and

(d) in regard to payment of advance tax.

Unlike the provisions of the Income-tax Act, 1961 according to which all penalty proceedings should be completed within a period of two years from the date of the completion of the proceedings in the course of which the penalty proceedings have been initiated, the Income-tax Act, 1922 did not prescribe any time-limit for the completion of proceedings regarding levy of penalty. The following table shows the number of cases in which penalty proceedings have been initiated under the Income-tax Act, 1922 but pending on 31st March, 1971 and the approximate amount of penalty involved:

Year of assessment	No. of cases	Approximate amount penalty involved (Rs. in thousands)
1952-53 and earlier years	436	10,499
1953-54 and earlier years	87	832
1954-55 and earlier years	101	795
1955-56 and earlier years	117	1,565
1956-57 and earlier years	171	2,566
1957-58 and earlier years	242	1,412
1958-59 and earlier years	145	256
1959-60 and earlier years	131	534
1960-61 and earlier years	110	659
1961-62 and earlier years	57	53
TOTAL	1,597	19,171

*The figures are as furnished by the Ministry.

6.2. The sections of the Income-tax Act, 1922 under which the penalty proceedings in the outstanding 1,597 cases were initiated and the number of cases under each are as follows:

Sections	Number of cases
28 (1) (*a*)	373
28 (1) (*b*)	187
28 (1) (*c*)	764
18A (9)	265
28(2)	8

[Paragraph 61 of Report of the Comptroller and Auditor General of India for the year 1970-71 Union Government (Civil)—Revenue Receipts].

6.3. The Committee have learnt from Audit that in a few cases where penalty proceedings were kept pending for a long time the High Courts had quashed the proceedings holding them as vexatious. The Committee desired to know the number of cases outstanding under the old Act as on 31st March, 1972. In a written reply, the Ministry furnished the number of cases as 1099.

6.4. The Committee also desired to know the number of cases wherein penalty proceedings under the new Act were outstanding as on 31st March, 1972 and the amount of penalty involved therein. The Committee further called for the number of cases wherein penalty proceedings became time-barred between 1st April, 1969 to 31st March, 1972 and the amount of penalty lost by Government.

6.5. The Ministry, in a written note, stated:

> "The information required is not readily available from the Statistics as presently maintained by the Department and its collection from original sources will entail in commensurate expenditure of time and labour."

6.6. The Committee regret to note that as many as 1097 penalty proceedings involving Rs. 1,92 crores initiated under the Income-tax Act, 1922, were kept pending as on 31st March, 1971, as there was no time limit for the completion of the proceedings. The Committee understand that in a few cases where the proceedings were kept pending for a long time the High Courts had quashed the proceedings holding them as vexatious. It is unfortunate that the proceedings

against the defaulters are frustrated by administrative delay. The Committee, therefore, wish to recommend that a time-limit for the finalisation of all the pending cases should be fixed administratively which should not exceed one year from now. Cases involving large penalties should be given priority and the progress should be watched by the Board by prescribing suitable returns from the field officers.

6.7. It is surprising that the Ministry are not in a position to let the Committee know the extent of arrears of penalty proceedings under the Income-tax Act, 1961, as also the number of cases wherein the proceedings, which should have been finalised within 2 years, became time-barred. The Committee desire that the maintenance of statistics should be improved so as to bring out this information in future. The position in this regard will be watched through future Audit Reports.

CHAPTER VII

DEDUCTION|RELIEF ALLOWED UNDER INCOME-TAX ACT, 1961

Audit Paragraph

7.1. (i) Individuals and Hindu Undivided families resident in India and incurring any expenditure on the medical treatment of a handicapped dependent out of their income chargeable to tax are entitled from the assessment year 1965-66 to a deduction of Rs. 2,400 or Rs. 600 per annum as the case may be, subject to the conditions specified in the Act. The following table shows the number of cases and the amount of deduction allowed in the assessments for the assessment years 1966-67 to 1970-71 completed to end of 31st March, 1971:—

Assessment year	Individuals		Hindu undivided families	
	No.of cases	Amount of relief allowed Rs.	No. of cases	Amount Rs.
1966-67	24	23,000	1	1,000
1967-68	47	39,000	2	2,000
1968-69	86	71,000	3	3,000
1969-70	114	85,000	2	2 000
1970-71	300	1,87,000	10	8,000

(ii) The Finance Act, 1965 made a provision in the Income-tax Act whereby an Indian citizen who is resident in India and is a partner of a registered firm rendering professional service as chartered accountant, solicitor, lawyer or architect or such other professional service as the Central Government may notify is entitled subject to certain conditions to a deduction in the computation of the total income in respect of the amount paid by him during the previous year out of his income chargeable to tax as premia under an approved contract or contributions to an approved Fund for the purpose of securing for him a life annuity in old age. The deduction is subject

to a maximum in each case of Rs. 5,000 or one-tenth of the total income whichever is less. The table below indicates the number of cases and amount of relief afforded in the assessments for the assessment years from 1966-67 to 1970-71 completed to end of 31st March, 1971:—

Assessment year	No. of cases	Amount Rs.
1966-67	..	..
1967-68	..	..
1968-69	2	9,000
1969-70	4	17,000
1970-71	16	69,000

(iii) From the assessment year 1966-67 professors, teachers, research workers, of Indian citizenship who work for a short period during a financial year in a foreign University or other educational institutions and remain resident in India for tax purposes in that year are entitled to a deduction from such remuneration of an amount equal to 50 per cent thereof. The table below shows the number of cases and amount of relief allowed in the assessments for the assessment years 1966-67 to 1970-71 completed to end of 31st March, 1971:—

Assessment year	No. of cases	Amount Rs.
1966-67	4	26,000
1967-68	6	46,000
1968-69	13	2,24,000
1969-70	11	1,78,000
1970-71	13	2,37,000

(iv) Profits and gains from newly established industrial undertakings or ships or hotel business are exempt from tax up to an amount calculated at the rate of six per cent per annum on the capital employed in the undertaking or ship or hotel business. The tax holiday benefit in regard to ships was provided in the Act from the assessment year 1962-63 and in the case of hotel business set up after 31st March, 1961. The following table shows the number of cases in which the deduction was allowed in the assessments for

the assessment years 1966-67 to 1970-71 completed to end of 31st March, 1971:—

Assessment year	No. of Company cases				Persons other than companies	
	Hotels	Other than hotels	Amount of relief allowed in (000)		No. of cases	Amount of relief allowed in (000)
			Hotels	Other than hotels		
			Rs.	Rs.		Rs.
1966-67	3	129	1,91	1,90,21	37	4,49
1967-68	3	138	2,53	1,88,96	42	7,15
1968-69	4	136	3,24	3,01,07	36	7,05
1969-70	2	102	1,66	2,68,77	31	6,30
1970-71	13	243	10,06	8,44,35	11	37,03

(v) With effect from the assessment year 1964-65 foreigners who are resident in India and incur expenditure for the full time education of their dependent children abroad are entitled to a rebate of tax calculated at the average rate of tax applicable to the total income, on a sum of Rs. 2,000 per child, upto two children. From 1968-69 the relief is allowed by way of deduction in the computation of taxable income, of an amount of Rs. 1,500 for each child upto two children. During the financial year 1970-71, the relief was allowed in 638 cases involving a sum of Rs. 11,31,000.

(vi) In order to accelerate the pace of rehabilitation of displaced persons or repatriates from other countries of tax concession to newly set up industrial undertakings in India which provide employment mainly to such persons has been introduced in the Income-tax Act, 1961 to take effect from the assessment year 1968-69. In arriving at the total income of the new industrial undertaking a deduction is allowed of a sum equal to 50 per cent of the amount of profits of a year upto a limit of Rs. 1 lakh, subject to certain conditions. This deduction is available in respect of the assessment year relevant to the previous year in which the industrial undertakings begins to manufacture or produce articles and the nine immediately succeeding assessments. During the year 1970-71, the deduction was allowed in one case involving a sum of Rs. 2,000.

[Paragraph 62 of the Report of the Comptroller and Auditor General of India for the year 1970-71 Union Government (Civil)— Revenue Receipts.]

Sub-para (i)

7.2. The Committee pointed out that it was found from the Audit paragraph, that out of more than two and a half million individual

and Hindu undivided family assessees on rolls of the department, the relief was claimed and allowed in 310 cases during 1970-71. The Committee wanted to know whether any review had been undertaken to find out the necessity in continuing the relief in the statute in view of the paucity of assessees coming forward to avail it. The Ministry, in a written reply stated: "The relief referred to here was introduced for the first time in the Income-tax Act through a new section 80B (now section 80D) inserted by the Finance Act, 1965. Under this section individuals and Hindu undivided families resident in India and incurring any expenditure on the medical treatment (including nursing) of a handicapped dependent out of their income chargeable to tax are entitled to a specified deduction in respect of such expenditure in the computation of their total income for the assessment year 1965-66 and subsequent years. The object behind the allowance of this deduction was to remove a long-felt need for tax relief in the case of persons who are obliged to incur expenditure for the treatment of handicapped dependents. This being a humanitarian relief, it is not proper to judge its utility only on the basis of the number of assessees taking advantage of it. It has, therefore, not been considered necessary so far to undertake a review of this relief to find out whether the same should be continued or not. In fact, even the Direct Taxes Enquiry Committee (Wanchoo Committee) which reviewed the utility of various deductions presently allowed under Chapter VIA of the Income-tax Act did not consider it necessary to recommend deletion of this provision.

7.3. The Committee desired to know the extent to which the relief was expected to be availed of by assessees while introducing the Scheme in 1965 and also asked how did the actuals compare with the forecast. The Ministry in a note, stated: "Under section 80D of the Income-tax Act, 1961 (originally introduced as section 80B by the Finance Act, 1965), individuals and Hindu undivided families resident in India and incurring any expenditure on the medical treatment (including nursing) of a handicapped dependent are entitled, subject to certain conditions, to a specified deduction in respect of such expenditure in the computation of their taxable income. The amount of deduction is (a) Rs. 2,400 in a case where the handicapped dependent is admitted in a hospital, nursing home, medical institution etc., for not less than 182 days during the previous year and (b) Rs. 600 in any other case. As observed by the then Finance Minister in his Budget speech for 1965-66, some measure of tax relief in such cases would be 'justified on social grounds'. The table below shows the number of cases and the amount of deduction allow-

ed under this provision in the assessments for the assessment years 1966-67 to 1970-71:—

Assessment year	Individuals		H.U.Fs.	
	No. of cases	Amount of relief allowed Rs.	No. of cases	Amount Rs.
1966-67	24	23,000	1	1,000
1967-68	47	39,000	2	2,000
1968-69	86	71,000	3	3,000
1969-70	114	85,000	2	2,000
1970-71	300	1,87,000	10	8,000

An estimate of the number of cases in which tax relief under this provision would be claimed was not made by Government at the time of introducing this provision. As the tax relief granted under this provision is otherwise proper and justifiable, it does not appear to be necessary to consider any review of the existing tax concession on the ground that the benefits of this concession has not been availed of in many cases.

Sub-para (ii)

7.4. The Committee pointed out that though the Scheme was in effect from 1965 onwards, during the first three years (1965-66 to 1967-68), the deduction was not allowed even in a single case, in 1968-69. Out of over two million individual assessees, the relief was given only in two cases. Similarly in 1969-70, out of two million individual assessees, the relief was made available only in four cases, and that in 1970-71 the relief was availed of in sixteen cases. The Committee asked whether the Ministry had reviewed the provisions of the law with a view to make them more attractive so that there might be good response to the Scheme or to dispense with the Scheme in view of the poor response to it. The Ministry, in a written note, stated: "The provisions of law referred to here and those presently contained in Section 80E of the Income-tax Act, originally introduced as section 80C through the Finance Act, 1965. The deduction under this section was made available to a partner of a professional firm in respect of expenditure incurred by him as premium under approved contract or as contributions to an approved fund for the purpose of securing for him a life annuity in old age.

The idea was to enable these persons to provide for their future by offering them certain liberal incentives for savings in the year when they earn. Here also, the utility of the relief should not, having regard to the object behind the introduction of this provision, be judged merely by the number of assessees who take advantage of the same. Although no review of this particular provision has been undertaken departmentally, the Direct Taxes Enquiry Committee (Wanchoo Committee) has recently reviewed the deduction allowable under this Section, and they have not only approved of the retention of the same but also recommended extension of the benefit available under this section to all individuals engaged in business, profession or vocation, whether as proprietors or in partnership. The recommendation of the Wanchoo Committee is presently under examination.

7.5. In reply to a question, the Ministry in a note, replied that the recommendation of the Wanchoo Committee contained in para 5.40 of their Report regarding extension of the Scheme to cover all individuals engaged in business profession or vocations whether as proprietors or in partnership, was under consideration and that no final decision had yet been taken.

Sub-para (iii)

7.6. The Committee wanted to know the intention in framing the scheme. The Committee further enquired whether the purpose for which the scheme been framed, had been achieved and whether a review had been undertaken to find out the necessity of continuing the scheme in the present form. The Ministry, in a note, stated: "The scheme referred to here is the scheme of providing tax relief to professor and teachers or research workers of Indian citizenship, who work for a short period during a financial year in a foeign university or other educational institution and remain resident in India for tax purposes in that year. Previously, such persons were liable to tax in India on the whole of the remuneration received by them from the foreign university or educational institution without any allowance for the expenditure incurred by them out of such remuneration for meeting higher living costs and other essential expenditure in the foreign country. To relieve this hardship, a new section 80F (now section 80R) was inserted in the Income-tax Act by the Finance (No. 2) Act, 1967 providing that such persons will be entitled to a deduction in the computation of their total income of 50 per cent of the remuneration received by them from a foreign university or other educational institution, or any other association

or body established outside India which may be notified in this behalf by the Central Government in the Official Gazette. It was further provided that where such individual renders continuous service abroad for more than 36 months, the remuneration received by him for any period of service after the expiry of the said 36 months will not qualify for the above deduction.

Statistics given by C. & A.G. show that even though the number of cases covered was only 13 and 11 in 1968-69 and 1969-70, the amount of relief allowed was Rs. 2,24,000 and Rs. 1,78,000 respectively. Having regard to the catagory of assessees who can claim deduction under this section, the number of persons claiming the deduction is bound to be small, particularly when it is only recently that India has started exchanging teachers and professors with various countries of the world. Although a departmental review of the impact of this provision has not been made, the Direct Taxes Enquiry Committee (Wanchoo Committee) which reviewed the various deductions under Chapter VIA of the Income-tax Act did not consider it necessary to suggest deletion of the same."

7.7. When asked whether the Government was expecting a better response for availing the relief, the Ministry, in a note, replied: "Under section 80R of the Income-tax Act, a professor, teacher or research worker of India citizenship is entitled to a deduction, in the computation of his total income, of 50 percent of the remuneration received by him from a foreign university or other educational institution or any other association or body established outside India which may be notified in this behalf by the Central Government in the Official Gazette. However, where such person renders continuous service abroad for more than 36 months, the remuneration received by him for any period of service after the expiry of the aforesaid 36 months does not qualify for this deduction. [This provision was originally inserted as section 80F, retrospectively, from 1st April, 1966 by the Finance (No. 2) Act, 1967 and replaced by the same Finance Act by the existing section 80R with effect from 1st April, 1968]. This concession was provided in order to relieve hardship arising to such persons from the taxation of the whole of the remuneration received by them, in certain circumstances, without any allowance for the expenditure incurred by them out of such remuneration for meeting higher living costs and other essential expenditure in the foreign country. The Table below shows the number of cases and the amount of relief allowed under this provi-

sion in the assessments for the assessment years 1966-67 to 1971-72:—

Assessment year	No.of cases	Amount (Rs.)
1966-67	4	26,000
1967-68	6	46,000
1968-69	13	2,24,000
1969-70	11	1,78,000
1970-71	13	2,37,000
1971-72	10	1,16,000

It is difficult to anticipate the number of cases in which the benefit of this tax concession would be availed of by India professors, teachers, research workers etc.

Sub-para (iv)

7.8. The Committee was given to understand by Audit that whereas for new industrial undertakings the scheme of tax holiday relief was in existence from 1948-49, its application in regard to hotels was extended from the assessment year 1961-62 and that in respect of shipping industry it took effect from the assessment year 1962-63. The Committee further learnt from Audit that under the law, tax holiday relief to hotels industry was admissible if it was owned and run by an Indian Company with a paid up capital of not less than Rs. 5,00,000 subject to other conditions and that during the five year period 1966-67 to 1970-71, the relief was allowed in 25 cases.

7.9. The Committee wanted to know the intention in extending the scheme of tax holiday relief to hotel industry and whether the purpose for which it was enacted, was served. The Ministry, in a note, stated: "The intention in extending the scheme of tax holiday relief to hotel industry was to provide some tax incentives to this industry as it can play a useful role in the promotion of tourism in our country, hereby augmenting our foreign exchange earnings. The grant of this benefit is conditional upon the hotel fulfilling, *inter alia* the following conditions:—

(a) The business of the hotel is owned and carried on by a company registered in India with a paid-up capital of not less than Rs. 5 lakhs;

(b) The hotel is approved for the purpose of this tax concession by the the Central Government; and

(c) The hotel has such member and types of guestrooms and provides such amenities as may be prescribed, having regard to the population and the tourist importance of the place in which the hotel is located."

7.10. The Committee referred to the Budget Speech of the Finance Minister for the year 1971-72, wherein the Finance Minister stated as follows regarding development rebate:

"The practice of offering a development rebate in respect of new investments has had, I feel a foul play. I am, accordingly serving the required notice that no development rebate will be allowed on ships acquired or machinery or plant installed after 31st May, 1974....But I shall consider myself amply rewarded if advance notice of this change quickens the pace of investment in the remaining years of the fourth plan."

7.11. Pointing out that the tax holiday scheme was in vogue from 1948-49 long before the introduction of development rebate, the Committee enquired whether the Ministry had reviewed the necessity for the continuance of the scheme. The Ministry in a written note, stated: "The Income Tax Act, 1961 provides a 'tax holiday' for a specified period on profits derived by any taxpayer from a newly set up industrial undertaking manufacturing articles or operating a cold storage plant in India, as also profits derived by an Indian company from a ship owned by it or the business of an approved hotel carried on by it, subject to certain conditions. The 'tax holiday' consists in the exemption from tax of profits up to 6 per cent per annum of the capital employed in the undertaking, ship or hotel. Prior to the amendment of the Income tax by the Finance Act, 1969, the 'tax holiday' concession was available in the case of industrial undertakings going into production or operation upto March 31, 1971 and ships brought into use by Indian companies upto that date. (There is no such time limit in the case of approved hotels run by Indian companies.) Having regard to our continuing need for establishment of new industrial units and the expansion of our shipping fleet, the Finance Act, 1969 amended section 80J of the Income-tax Act so as to continue the concession of the 'tax holiday' for a further period of five years. Under the existing provisions of law, the 'tax holiday' concession will be available to industrial undertakings commencing production or operation, as also ships brought into use by Indian companies, at any time upto March 31, 1976. The question whether the 'tax holiday'

concession should be extended to industrial undertakings commencing production or operation or to ships brought into use by Indian companies after March 31, 1976 will be considered by this Ministry in due course."

Sub-para (v)

7.12. The Committee desired to know the intention behind this legislation and whether the conditions existed at the time of introduction of the scheme continued to exist now. The Ministry, in a note, stated: "Under section 87A and 99B inserted in the Income-tax Act, 1961 by the Finance Act, 1964 a foreigner, resident in India, was entitled to a rebate of income-tax and super-tax on sums spent by him on the full time education of a child aged not more than 21 years, in a university, college or school or other educational institution outside India. The limit of the amount qualifying for tax rebate was Rs. 2,000 (Rs. 4,000 if the foreigner had more than one dependent child receiving full time education abroad), or 25 per cent of his total income, whichever was less. The provision for rebate of tax in such cases was replaced by section 80E of the Income-tax Act by the Finance (No. 2) Act, 1967 which provides for a deduction in the computation of total income, of an amount of Rs. 1,500 for each such child, upto a maximum deduction of Rs. 3,000.

The rationale for providing the above mentioned tax concession to foreigner working in India was given by the then Finance Minister in his Budget Speech for the year 1964-65 in the following words:—

> "Our tax rates cause some hardship to foreigners working in India. Many of them find it necessary to keep their school going children in their own country. In Western countries there are liberal concessions in Income-tax amongst other things for children's education. In the U.K., it is fixed at £150 per child. I, therefore, propose to allow to resident assessees who are not citizens of India a rebate of Income-tax and Super-tax of a sum on Rs. 2,000 per child upto two children under 21 years of age receiving education outside India.
>
> Government is of the view that it is justifiable to continue this tax concession."

Sub-para (vi)

7.13. The Committee wanted to know the number of cases wherein the deduction was allowed in the assessment years 1968-69 and 1969-70. The Ministry in a note, stated: "Information regarding the years 1968-69 and 1969-70 is not readily available. However, this information for subsequent years 1970-71 and 1971-72 is available and is furnished below:—

Year	No. of cases	Amount involved Rs.
1970-71	1	2,000
1971-72 . .	3	22,000

7.14. Pointing out that in para 5.42 of their Report, the Wanchoo Commission had recommended the deletion of the Section dealing with the relief referred to in the Audit para, the Committee desired to know the action taken on the above recommendation of the Commission. The Ministry in a written note, stated that the recommendation of the Wanchoo Committee contained in para 5.42 of their Report, was under consideration and that no final decision had yet been taken.

7.15. The Audit paragraphs deals with the various deduction/reliefs allowed under Sections 80-D, E,F,H,J, and R of the Income-Tax Act, 1961. The Committee receive an impression that a review of the various provisions has not been conducted having regard to the objectives underlying them. Such a review is necessary to decide whether some of these concessions should be continued at all and whether any modification is necessary to achieve the objective better. The Committee find that the number of assessees availing of the concessions under Sections 80 E, H and R during 1970-71 was 16, 1 and 13 respectively. Thus it appears that either the concessions are not attractive enough or the assessees are not aware of the relevant provisions or there is no necessity to continue the concessions. The Ministry have stated that the Wanchoo Committee have gone into the utility of various concessions allowed under Chapter VI A of Income-tax Act. Nevertheless the Committee desire that a review of these concessions should be conducted by Government and action proposed to be taken on the lines indicated above may be reported to the Committee.

7.16. The Committee suggest that whenever Government decide to continue the concessions in the existing form or in a modified form wide publicity should be given through pamphlets in English, Hindi and other local languages particularly explaining the reliefs available to the common man.

CHAPTER VIII

FRAUDS AND EVASIONS*

Audit Paragraph

	Rs.
(1) 18 No. of cases in which penalty under section 28(1) (c)/271 (1) (c) was levied in 1970-71	23,625
(2) No. of cases in which prosecution for concealment of income was launched	74
(3) No. of cases in which composition was effected without launching prosecution	135
(4) Concealed income involved in(1)	70,69,00,000
(5) Total amount of penalty levied on (1)	14,08,00,000
(6) Extra tax demanded on concealed income in item (4)	24,49,00,000
(7) Cases out of (2) in which convictions were obtained	1
(8) Composition money levied in respect of cases in (3)	21,25,000
(9) Nature of punishment in respect of (7)	One month's rigorous imprisonment.

[Paragraph 63 of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts]

8.2. The total concealed income detected during the period and the amount of tax demanded and penalty levied for the four years from 1967-68 to 1970-71 are as follows:

Year	No. of cases	Concealed income detected	Amount of penalty levied	Amount of tax demanded
		(In crores of rupees)		
1967-68	32,951	40·19	10.06	17·40
1968-69	29,148	50·12	13·69	22·32
1969-70	27,682	60.53	15.03	29·95
1970-71	23,625	70·69	14·08	24·49

*The Figures are as furnished by the Ministry.

8.3. The Committee pointed out that the number of cases in which concealment of income was detected was showing a downward trend from 1967-68 whereas the amount of concealed income had shot up from Rs. 40.19 crores in 1967-68 to Rs. 70.69 crores in 1970-71. This indicated that tax evasion continued to be practised by assessees in higher income group. The Committee wanted to know the special steps taken by the Department to check tax evasion at higher income brackets. The Ministry, in a note, stated:

Legislative measures taken by the Ministry

As a result of the interim report submitted by the Wanchoo Committee, certain provisions for preventing tax evasion were enacted through the Taxation Laws (Amendment) Act, 1972. This Act provides for acquisition of immovable properties where they have been undervalued at the time of transfer, as such undervaluation facilitates generation and circulation of black money.

Independent of the Wanchoo Committee's Report, another provision made in the Taxation Laws (Amendment) Act, 1972 is that no suit to enforce any right in respect of any property held benami shall be instituted in any court by or on behalf of any person unless he has disclosed the income from the property in his income-tax return or has disclosed the property in his wealth tax return or he gives a notice containing certain prescribed particulars to the ITO.

Some measures against tax evasion have also been introduced by the Finance Act, 1972. These are:

(i) Tightening the provisions relating to exemption of income and wealth of charitable and religious trusts.

(ii) Taxation of casual and non-recurring income including winnings from, lotteries, cross-word puzzles, races, card games, etc.

(iii) Deduction of tax at source out of payments made to contractors by Government, local authorities, statutory corporations and companies.

(iv) A provision has been made to enable the Central Government to enter into tax treaties with foreign countries for exchange of information for preventing evasion or avoidance of all direct taxes and recovery thereof.

Through the Taxation Laws (Amendment) Act, 1970 which came into force from 1st April 1971 delay in filing a return of income where

net tax payable is in excess of Rs. 3,000 has been made punishable with one year's rigorous imprisonment or with fine or with both.

Wilful failure to produce books of accounts and documents has also been made punishable with rigorous imprisonment for a term which may extend to one year or with fine or with both.

Administrative Measures.

There has been a continuous increase in the number of searches made by the Income-tax Department. As against 195 searches in 1970-71, resulting in seizures of assets worth Rs. 140 lakhs, there were 516 searches in 1971-72 resulting in seizure of assets worth Rs. 243 lakhs. In 1972-73 for the first six months, the number of searches was 334 and seizure of assets Rs. 252 lakhs.

Prosecution for concealment of income in glaring cases of tax evasion is also being launched wherever there is a chance of success. The number of prosecutions in 1971-72 was 13. The number approved during the current year so far is very much more.

As a considerable amount of unaccounted money has been utilised for construction of new properties, an intensive survey has been ordered regarding newly constructed properties in urban areas.

Powers under Section 133A of the Income-tax Act are also being utilised more frequently and instructions have been issued to carry out an intensive survey of professional assessees who have escaped the tax net. Special instructions have also been issued regarding the tackling of tax evasion in the case of professional people.

In view of the summary assessment scheme which has been introduced statutorily from 1st April 1971, the available manpower is being utilised for better investigation of the bigger cases.

A special Cell has been created in the Directorate of Inspection (Investigation) for keeping a watch over the tax assessments of big business houses in the country. To start, with, the Cell will be dealing with only two industrial houses. As more experience is gained, it is proposed to cover more such houses. The Cell will collate all relevant information regarding these groups, give guidance to the officers assessing these groups and also conducts research into the techniques of tax evasion or avoidance practised such assessees."

8.4. Referring to the fact that out of 74 cases in which prosecution was launched, conviction was obtained in one case, the Committee

wanted to know the number of cases in which prosecution was launched were outstanding on 31st March, 1972. The Ministry in a note stated as follows:

"The prosecution launched were not in 74 cases but only in 23 cases. It has since been clarified by the Commissioners of Income-tax that they had included the number of complaints in each case as a prosecution case. The discrepancy in earlier information is regretted.

Out of 23 cases launched during 1970-71, 19 cases were still pending before the courts as on 31st March, 1972. In one more case, out of many assessments involved, conviction has been obtained in respect of one year before 31st March 1972."

8.5. The Committee desired to be furnished with the particulars of all cases where the income concealed was over Rs. 5 lakhs during 1970-71 viz. name of assessee, concealed income, tax involved, years to which the assessment related, penalty levied and action taken for prosecution etc. The Ministry in a note submitted the information which is reproduced at Appendix III. The following position emerges from the particulars furnished by the Ministry.

Year to which assessment relate	No. of cases	Concealed income	Tax involved	Penalty levied	Whether prosecution launched
		(In lakhs of Rupees)			
1	2	3	4	5	6
1948-49	2	39·02	35·80	24·81	No
1953-54	1	13·79	11·29	2·25	No
1955-56	1	5·08	2·20	0·45	No
1956-57	1	9·03	17·57	4·00	No
1957-58	3	49·22	30·45	19·60	No
1958-59	2	41·63	22·79	24·75	No
1959-60	3	27·72	14·91	3·20	No
1961-62	1	10·51	8·49	8·50	No
1962-63	4	83·56	61·44	48·71	No
1963-64	3	31·81	16·79	5·10	No
1964-65	48	462·58	317·41	154·38	No in 45 cases Yes in 1 case Being considered in 2 cases

1	2	3	4	5	6
1965-66	4	67·02	47·66	14·39	No.
1966-67	2	19·48	16·65	3·89	No
TOTAL	75	860·45	603·45	314·03	

Prosecution launched	1
Being considered	2
Not launched	72
	75

8.6. Referring to the 135 cases wherein composition money of Rs. 21.25 lakhs was levied, the Committee asked whether the Ministry had examined in all the cases whether prosecution could be launched. The Ministry, in a note, stated: "Since no compositions had been effected with the concurrence of the Board during 1970-71, the matter was taken up with the Commissioners concerned. They have now clarified that due to some misunderstanding in their office, the earlier figures had been furnished wrongly by them. The correct position, therefore, is that there were no compositions nor was any composition money levied in any of the cases during 1970-71. The mistake in earlier information furnished is regretted."

8.7. The Committee wanted to know the number and particulars of cases of tax offences detected during the three years ended 31st March, 1972, the number and particulars of cases that went to the court, the number and particulars of cases that were withdrawn from courts and reasons therefor and in regard to cases withdrawn from the courts, particulars of settlement/composition and the

amount recovered so far. The Ministry, in a note, furnished the information as under:

	1969-70	1970-71	1971-72
(i) The number and particulars of cases of tax offences detected during the year ended 31st March (prosecutions approved by the Board in the year under Section 277 of the Income-tax Act and the provisions of the IPC. The detection may have taken place in the same or earlier year(s) under the provisions of Section 277 of the Income-tax Act. .	14	8	2
I.P.C. . .	9	2	2
Section 277 and I.P.C.	13	14	11
(ii) The number and particular of cases that went to the court (prosecutions launched during the year). The prosecution may have been sanctioned in the same or eaiier years, Under the provisions of section 277 of the Income tax Act	13	8	1
I.P.C. . .	5	4	4
Section 277 and I.P.C. .	9	11	7
(iii) The number and particulars of cases that were withdrawn from courts (in the year) the reasons therefor (given below)	3	Nil	2
(iv) in regard to (iii), particulars of settelment/compositon and the amount recovered so far	Composition amounts given below. The sums have been paid before withdrawing the complaints		

CASES COMPOUNDED IN

	Amount of composition Rs.	Remarks
1	2	3
1969-70		
(a) M/s. M.B.T. & Co., Madras . .	5,00,000	A public institution inconvenience to a large number of employees (about 2,000) who might lose therir jobs if the firms is wound up.
(b) Shri V.A.Andrews, Bangalore	5,000	(a) concealment not intentional assessee illiterate, depending on employees: (b) full cooperation. (c) evidence to show that the assessee has com back to the path of rectitude.

1	2	3	4
	(c) S. S. Pai, Bombay	10,000	(a) Old assessments-1949-50, 1951-52-timelag in discovery and filing of complaint; (b) smallness of concealment.
1971-72			
	(a) M/s. B. N. Kamath & Co. Shimoga	28,000	Need to rely on the admissions of assessee lack of conclusive and independent evidence.
	(b) Shri K. V. Raju, Gadag.	17,250	(a) cooperation of the assessee: (b) small amount of concealment detected as against a very large sum voluntarily offered by the assessee for assessment.

8.8. The Committee desired to have information on the following points which is still awaited (March, 1973):

1. The particulars of cases of concealment of Rs. 50,000 or more detected and prosecution advised.
2. The particulars of cases in which prosecution had been filed.
3. The reasons for the difference between (1) and (2).
4. The number of cases in (2) where prosecution had been pursued and the results thereof.
5. The number of cases where prosecutions proceedings were found to be defective and appeals filed, but withdrawn.
6. The number of cases where search and seizures were conducted during the last three years.
7. Out of (6) how many resulted in obtaining documentary evidence of concealment.
8. How many out of (7) had been prosecuted.

8.9. In a note submitted to the Committee, it has been stated that during 1970-71 in one case, on the advise of the Law Ministry, it has been decided not to pursue the matter and that the Session Court was informed on 5th March, 1971 that Government did not wish to pursue the revision application. Since the letter was received by the court before registration, there was no question of withdrawal. The Committee desired to know in regard to this case as

well as in 5 cases (3 in 1969-70 and 2 in 1970-71) of withdrawal from courts, the circumstances leading to the withdrawal, the persons who initiated the proposal and the level at which the decision was taken. The matter is stated to be under consideration of the Government and no further reply had been received (March, 1973).

8.10. According to the information furnished by the Ministry and incorporated in the Audit paragraph the number of cases in which prosecution for concealment of income was launched during 1970-71 was 74 and the number of cases in which composition was effected without launching prosecution was 135. The Ministry have, however, intimated to the Committee that the number of cases in 1970-71 in which prosecution was launched was only 23 and that there was no case of composition. The Committee take a serious view of the carelessness in furnishing information to Audit. They desire that responsibility therefore should be fixed.

8.11. The Committee note that although the number of cases in which concealment of income was detected had come down from 32,951 in 1967-68 to 23,625 in 1970-71, the amount of concealed income had shot up from Rs. 40.19 crores to Rs. 70.69 crores This indicates that tax evasion continued to be practised by assessees in higher income group. The Committee have been stressing the need to launch prosecution in cases where there is a reasonable chance of proving the concealment. However, it is disappointing to find that out of 75 cases where the income concealed was over Rs. 5 lakhs during 1970-71 (vide Appendix III), **only in one case prosecution was launched and two other cases are stated to be under consideration. The decision taken in the two cases may be reported to the Committee. The Committee find that in these two cases penalty has been imposed. They would like to know since when the launching of prosecution is being considered and the section under which it is being considered. The Committee also would like to know whether the question of launching prosecution was considered in all the remaining cases and if so, the grounds on which it was decided not to launch prosecution. They would await detailed information especially in regard to 22 cases where the income concealed exceeded Rs. 1 crore.**

8.12. The Committee desired to have some information regarding prosecution advised in cases of concealment of Rs 50,000 or more, the cases where searches and seizures were conducted and the cases withdrawn from courts during the last three years. The information is still awaited (April, 1973). They, therefore, reserve their comments in regard to these cases.

CHAPTER IX

9.1. Deduction of tax at source by companies on dividends distributed.

Audit Paragraph

1. Number of company assessees:	
as on 1st April, 1970	28,465
As on 1st April, 1971	28,621
2. Number of companies which had made the prescribed arrangements for declaration and payment of dividends within India.	
As on 1st April, 1970	20,064
As on 1st April, 1971	20,236
3. Number of companies which had distributed dividends during 1970-71	4,153
4. Amount involved in (3) above	Rs. 16,388·00
5. Number of cases out of (3) in which the statement prescribed in Rule 37 (2) was received	4,106
6. Amount of deduction shown in the statement in (5) above	3,106·42 lakhs
7. Number of cases out of (5) in which the tax deducted was remitted into banks	4,100
8. Amount involved in (7) above	3,105·90 lakhs
9. Number of cases out of (7) in which the tax deducted was remitted after one week of deduction or receipt of challan	153
10. Number of cases out of (5) above where the returns prescribed in section 286 were not received when the dividend paid in case of a company exceeds Re. 1 and in the case of others Rs. 5,000	21
11. Number of companies out of (3) above which had neither deducted tax at source nor furnished the statement prescribed in Rule 37 (2)	2

[Paragraph 64 of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil) Revenue Receipts].

9.2. The Committee desired to know the arrangement which existed in the Department to reconcile that the total tax deducted at source from dividends had been remitted to Government. The

Committee also wanted to know the amount of tax remaining unremitted by Companies on 1st April, 1972. The Ministry, in a written note, stated:

> "At present no reconciliation is being made to ascertain that the total amounts of tax deducted at source by the companies from dividends declared have been remitted by them to the Government Account. However, action is being taken against specific defaulters, whenever noticed. The suggestion of the Revenue Audit in this regard that there should be a 'Central Control Accounts System' on the pattern prevailing in the United Kingdom is under the Board's consideration. Information regarding the tax remaining unremitted by companies as on 1-4-1972 is not readily available will be furnished later."

9.3. The Committee pointed out that the number of companies which had distributed dividends during the years 1966-67 to 1970-71 was as follows:—

Year	No. of companies	Amount of dividend distributed
		(in crores of rupees)
1966-67	7294	81·18
1967-68	6705	98·29
1968-69	6026	114·71
1969-70	5449	121·84
1970-71	4153	163·88

The number of companies which had distributed dividends had fallen from 7294 in 1966-67 to 4153 in 1970-71 whereas the amount of dividends distributed had risen from 81.18 crores to 163.88 crores during the same period.

9.4. The Committee enquired whether the Ministry had analysed the reasons and if so, the results of the analysis. The Ministry, in a note, stated that no analysis had been made so far.

9.5. The Committee learn that at present no reconciliation is being made to ascertain that total amounts of tax deducted at source by

the companies from dividends declared have been remitted by them to the Government account. The suggestion of Audit that there should be a "Central control accounts system" on the pattern prevailing in the United Kingdom is stated to be under the Board's consideration. The Committee desire that Government should come to a decision in the matter without delay.

9.6. The number of companies which had distributed dividends had fallen from 7294 in 1966-67 to 4153 in 1970-71 whereas the amount of dividend distributed had risen from Rs. 81.88 crores to Rs. 163.88 crores during the same period. This phenomenon requires examination. The results of the examination may be reported to the Committee.

CHAPTER X

REFUNDS*

Audit Paragraph

10.1. (a) Refunds under Section 243.

	Number of applications	Amount Rs. (000)
1. Number and amount of refund applications pending on 1st April, 1970	4,764	77,19
2. Number and amount for which refund applications were received during the year 1970-71	1,22,142	17,20,82
3. Number and amount of refunds made during 1970-71:		
Out of (1)	4,719	54,51
Out of (2)	1,14,988	16,53,62
4. Number of cases and amount of interest paid on refunds made during 1970-71:		
Out of (1)	1	5c
Out of (2)	26	2
5. Number of cases and amount of refund made on which no interest was paid	1,19,680	17,09,23
6. Number and amount of applications pending on 31st March, 1971	7,199	18,88
7. Break-up of cases mentioned at		
(i) Refunds outstanding for less than a year as on 31st March, 1971	7,159	67,48
(ii) Refunds outstanding between one year and two years as on 31st March, 1971.	16	7,75
(iii) Refunds outstanding for two years and more as on 31st March, 1971	24	14,65

*The figures are as furnished by the Ministry.

[Paragraph 65 (a) of the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Civil)—Revenue Receipts].

10.2. The number of cases and the amount of refunds made from 1966-67 to 1970-71 were as follows:—

Year	No. of Cases	Amount of Refunds (in crores of Rs.)
1966-67	73,444	2·85
1967-68	61,073	2·40
1968-69	81,166	3·60
1969-70	76,912	4·05
1970-71	1,19,707	17·08

10.3. The refunds made during the year 1970-71 happened to be the highest i.e. Rs. 17.08 crores. The Committee wanted to know the particulars of cases involving refunds of Rs. 1 lakh and above. The Ministry in a note, stated that the information was not readily available with them; it would be collected and furnished later.

10.4. The refunds made under Section 243 of the Act during the year 1970-71 were the highest ever, the number and amount being 1,19,707 and Rs. 17.08 crores respectively. As against this, a sum of Rs. 4.05 crores was refunded in 76,812 cases during the year 1969-70. Thus with only 54 per cent increase in the number of cases the amount refunded recorded an increase of 324 per cent. Although the Committee wanted to know the particulars of cases involving refunds of Rs. 1 lakh and above the Ministry are not in a position to readily furnish them. The Committee are inclined to feel that the unprecedented increase in the amount of refund reflects on the accuracy of the assessments made by the Department. Anyhow there is a need for examining the reasons for the increase. The result of the examination may be reported to the Committee.

ERA SEZHIYAN,
Chairman.
Public Accounts Committee.

NEW DELHI;
24th April, 1973.
4th Vaisakha, 1895 (*Saka*).

APPENDIX I

(Page)

Copy of Circular No. 80 (F. No. 13A/103/69-IT(AII) dated 4-3-1972 issued by the C.B.D.T. to all Commissioners/Addl. Commissioners of Income-tax etc.

SUBJECT:—*Benefit, amenity or perquisite allowed to employees by companies—Restriction imposed by Section 40(c) (iii) as substituted by Section 40(a) (v) of the Income-tax Act,* 1961.

Under Section 40(c) (iii) of the Income-tax Act, 1961 any expenditure incurred by a company after 29th February, 1964, which results directly in the provision of any benefit or amenity or perquisite, whether convertible into money or not, to an employee (including any sum paid by the company in respect of any obligation which but for such payment would have been payable by such employee) would be admissible as a deduction in computing the company's income, only to the extent of 1|5th of the amount of salary payable to the employee. Section 40(c) (iii) was replaced by Section 40(a) (v) with effect from assessment year 1969-70 and was applicable to all assessee employers, not restricted to companies only.

2. The question for consideration is whether the benefits given to the employees in the form of provision of medical facilities or reimbursement of medical expenses, electricity, gas, gardener, rent free accommodation, motor car and bonus or commission should form part of the 'salary' or whether they fall in the category of 'perquisite, amenity or benefit'. For the purpose of Section 40(c) (iii)|40(a) (v), the term 'salary' has to be taken as per the definition given in Rule 2(h) of Part A of the Fourth Schedule to the Income-tax Act, 1961. According to this definition the term 'salary' includes dearness allowance if the terms of employment to provide but excludes all other allowances and perquisite.

3. All payments in the form of benefits or amenities such as reimbursement of medical expenses, provision of electricity, water, gas at the residence of employees, payment of club bills of employees, provision of domestic servants, gardeners etc. would be

part of 'perquisite' which would be restricted to one-fifth in the assessment of the employers. The list of perquisites given above is only illustrative and by no means exhaustive.

4. As regards the payment of bonus, the Board are advised that the payment of bonus will be treated as salary in the following types of cases:

(a) payment of bonus made under a service agreement between the employer and the employee;

(b) Bonus paid pursuant to requirement of payment of Bonus Act, 1965. In such a case, the service agreement may be treated to have been modified to that extent;

(c) Where the bonus is paid in accordance with the decision of a trade association which is binding on its members; and

(d) Bonus paid under an award by a Labour Tribunal where the Award is binding on the employer and the employees.

If the bonus is paid gratuitously without there being any legal or contractual obligation, the payment is in the nature of a perquisite and has, among other perquisites, to be linked to 1/5th of the salary for allowance under section 40(c) (iii) |40(a) (v).

5. As regards payment of commission to the employees, the question whether it forms part of 'salary' or 'perquisite' has to be decided on the facts of each case. If the terms and conditions of service are such that commission is paid not as a bounty or benefit but is paid as part and parcel of the remuneration for services rendered by the employee, such payment may partake the nature of salary rather than as a benefit or perquisite. If, however, on the terms and conditions of service either there is no obligation for the employer to pay the commission or it is a matter purely in the discretion of the employer, such payment should be treated as a benefit by way of addition to salary rather than in lieu of salary.

6. These instructions are issued in supersession of the Board's Circular No. 32 (F. No. 10/93/68-IT.A2) dated 29th October, 1969 and may please be brought to the notice of all Income-tax Officers working in your charge.

APPENDIX II

(Page)

INSTRUCTION No. 122

F. No. 5|129|69-IT(A-II)

CENTRAL BOARD OF DIRECT TAXES

NEW DELHI, *the 5th November*, 1969.

From:

The Secretary,
Central Board of Direct Taxes.

To

All Commissioners of Income-tax

Sir,

SUBJECT: *Expeditious issue of refund vouchers and advice notes*

I am directed to invite your attention to Board's circular letter No. 5/31/68-IT(A-III) dated 24th September, 1968 on the above subject. While requesting you to impress upon the officers the need for attending to refund claims without delay, you were also required to ensure that the refund vouchers invariably accompanied the orders giving rise to the refund. The Board had even desired that deterrent action should be taken against the defaulting officials whenever cases of non-compliance with these instructions came to notice.

2. The Board has been receiving half-yearly statements of the progress made on this aspect of your work through D.I.R. (R.S.&P), New Delhi. The statement for the period 31st August, 1969 shows that in as many as 9010 cases, refund vouchers did not accompany the refund orders. The Board considers this position to be far from satisfactory. In fact there should not have been a single case in which the refund voucher had not accompanied the order giving rise to the refund cases have also come to the notice of the Board

where advice memos had not been issued simultaneously with the refund vouchers with the result that the refund vouchers were dishonoured.

3. The Board desires the Commissioners to give their personal attention to this important matter.

4. The Board have recently revised the proforma for the above half-yearly statement. The statements are, however, even now to be furnished to D.I.(R.S.&P) as instructed in Board's circular No. 5|20|68-IT(A.I) dated 30th April, 1968 but in the following form:—

(i) No. of orders passed resulting in refund (whether normal assessment or in rectification).

(ii) No. of orders issued accompanied with refund vouchers.

(iii) Balance.

(iv) Cases out of (iii), where refunds adjusted against tax due from assessees and hence vouchers not issued.

(v) No. of cases with reference to cases at (ii), where advice notes issued simultaneously.

5. These statements should always be sent to the D.I.(R.S.&P) on the due dates so that he, in turn, can send the consolidated statement to the Board in time.

Yours faithfully,

Sd.|- S. N. NAUTIAL,
Secretary, Central Board of Direct Taxes.

Copy forwarded to:—
D.I. (R.S.&P), New Delhi).

APPENDIX III

(Page.....)

Particulars of all cases where the income concealed was over Rs. 5 Lakhs during 1970-71 (Viz, name of assessee, concealed income, tax involved, years to which the assessment related, penalty levied, action taken for prosecution etc.)

Name of assessee	Concealed income (in thousands of rupees)	Tax involved (in thousands of rupees)	Years to which relates	Penalty levied (in thousands of rupees)	Whether prosecution launched
1	2	3	4	5	6
1. M/s. Structural Engineering Works Ltd. (in liquidation)	598	359	1964-65	70	No.
2. Shri K. J. Somaiya	622	539	1962-63	11	No.
3. M/s. Net India Mining Co. Ltd.	899	495	1964-65	109	No.
4. Rai Bhadur Kanwar Rajnath Malhotra	532	260	1963-64	60	No.
5. Daulatram Mohandas	509	438	1948—49	100	No.
6. M/s. India Hosiery Factory	688	561	1964-65	187	No.
7. M/s. Hashambhoy Jetha	802	661	1964-65	297	No.
8. M/s. Bhagchand Vishimdas	528	447	1964-65	90	No.
9. Shri P. M. Shah	609	595	1964-65	150	No.
10. M/s. Modi Pvt. Ltd.	1132	618	1964-65	150	Being considered
11. Shri Chiranjilal Shrilal Goenka	1555	1379	1964-65	800	-do-
12. M/s. Bastiram Narayandas	1329	1118	1964-65	500	No.
13. M/s. Bennet Coleman & Co. Ltd.	624	144	1959-60	50	No.

14. M/s. Baldota Bros	947	728	1959-60	145	No
15. Do.	1379	1129	1953-54	225	No
16. M/s. Filmistan P. Ltd.	903	1757	1956-57	400	No
17. M/s. Loknath Toleram	694	544	1964-65	700	No
18. Shri Dalip Kumar	857	732	1964-65	366	Yes
19. M/s. Maganlal Chhaganlal Pvt. Ltd.	585	375	1964-65	113	No
20. M/s Madhusudan Gordhandas & Co	4240	3469	1964-65	800	No
21. Do.	601	462	1957-58	10	No
22. M/s. V.D. Saraf (HUF)	1592	1231	1964-65	1593	No
23. M/s. Shivraj Fine Art Litho Works	1051	849	1961-62	850	No
24. M/s Vasant Fine Art Lihto Works	525	439	1964-65	220	No
25. M/s. Ramkrishna Ramnath (Firm), Kamptee	967	713	1964-65	357	No
26. M/s. R.B. Shreeram Durgaprasad	3429	2124	1957-58	1850	No
27. M/s. R.B. Shreeram Durgaprasad Pvt. Ltd.	3446	1910	1958-59	2400	No
28. Do.	500	292	1964-65	400	No
29. M/s. Hindustan Metal Works	1571	949	1964-65	1571	Nil
30. M/s. Singh Engg. Works Co. Ltd.	610	326	1965-66	145	Nil
31. M/s. Chittarmal Ram Dayal (R./F)	738	98	1964-65	200	Nil
32. Shri R. Dalmia.	4911	3659	1965-66	1000	Nil
33. Do.	898	712	1964-65	430	Nil
34. M/s. South Asia Industries P. Ltd.	767	412	1964-65	100	Nil

1	2	3	4	5	6
35. M/s.Edward Keventer(s) Pvt. Ltd.	716	408	1964-65	150	Nil
36. Shri Khilli Ram	697	531	1964-65	200	Nil
37. M/s. Rameshwar Das Prem Chand	2585	2039	1964-65	500	Nil
38. M/s DLF Housing & Construction (P) Ltd	916	392	1964-65	200	Nil
39. Shri Antar Singh Sawhney	1328	1043	1964-65	208	Nil
40. M/s Chaman Lal & Bros..	1635	1521	1964-65	304	Nil
41. F.C. Mehra	1835	734	1963-64	300	Nil
42. M/s Auoland Jute Co. Ltd.	942	471	1964-65	596	No
43. M/s. North Brook Jute Co. Ltd.	1403	841	1964-65	810	Do.
44. M/s Bansidhar Durgadatt	3393	3142	1948-49	2381	Do.
45. Do.	735	537	1964-65	269	Do.
46. M/s. Heavy Construction Corporation Private Ltd.	2325	1162	1962-63	660	Do.
47. Do.	690	345	1962-63	100	Do.
48. M/s. G. S. Atwal & Co. Asansol	627	517	1964-65	300	Do.
49. Shri Krishna Pvt. Ltd.	1477	886	1964-65	443	Do
50. Grand Smithy	1250	1091	1966-67	275	Do.
51. Hindi Galvanising & Engg. Co. Pvt. Ltd.	1231	738	1964-65	200	Do.
52. M/s. Jagadamba Ltd.	508	220	1955-56	45	Do.
53. Hindustan Tractors Ltd., Baroda	629	377	1964-65	100	Do.
54. Shri Abdul Rabiman	559	137	1964-65	32	No.

55. M/s. Mather Stores	1004	377	1964-65	90	No
56. M/s. C.J. Seth	578	504	1964-65	101	No
57. M/s. Tarapore & Co.	657	543	1964-65	110	No
58. B. R. Panthulu	521	39	1964-65	11	No
59. M/s. Agricultural Farms	606	363	1964-65	110	No
60. M/s. Dhanlaxmi Textile	822	592	1964-65	136	No
61. M/s. Vasu Films	698	574	1966-67	114	No
62. M/s Kolhapur Sugar Mills Ltd	892	459	1957-58	100	No.
63. Do.	717	369	1958-59	75	No.
64. Do.	1201	619	1949-60	125	No.
65. J. S. Parkar	4719	4098	1962-63	4100	No
66. M/s. Jain Steel Fabricators Pvt. Ltd.	514	318	1965-66	63	No
67. Agrind Fabrications Ltd.	949	569	1964-65	200	Nil
68. United Provinces Comml. Corporation	560	320	1964-65	150	Nil
69. Calcutta Properties Ltd.	811	486	1964-65	100	Nil
70. Hotels (1938) Pvt. Ltd.	519	311	1964-65	155	Nil
71. Rolls Print Co. Pvt. Ltd.	527	316	1964-65	260	Nil
72. M/s. Satyapal & Co. Ltd.	600	360	1964-65	200	Nil
73. M/s. Mcleod & Co. Ltd.	550	294	1964-65	300	Nil
74. M/s Sur Enamel & Stamping Works (P) Ltd.	667	463	1965-66	231	
75. M/s. Ram Lal Sibsahya	814	685	1963-64	150	Nil

APPENDIX IV

Summary of Main Conclusions/Recommendations

S. No.	Para No. of Report	Ministry/Department concerned.	Recommendations
1	2	3	4
1.	1.4	Finance (Deptt. of Revenue and Insurance)	The total number of assessees borne on the books of the Department as on 31st March, 1971 was 30,12,570 as against 29,10,341 as on 31st March, 1970. About 60 per cent of the increase in the number of assessees occurred in the category of 'individuals'. The number of company assessees did not show any significant increase. The Director of Inspection is stated to be looking into this phenomenon. The Committee would await his findings.
2.	1.10	Do	The budget estimates and actuals of surcharge (Union) for the year 1970-71 were Rs. 16.25 crores and Rs. 17.18 crores respectively. As the surcharge is a minimum of 10 per cent of tax and the estimated tax collections and the actuals were Rs. 406.50 crores and Rs. 443.65 crores respectively the surcharge estimates and actuals should have exceeded Rs. 40 crores. It is obvious that estimates have not been prepared with care and there has been misclassification on a large scale. As it affects the Union's share of income-tax receipts suitable method should be devised to classify and account for the surcharge correctly.

3.	1.28	Do	The gross collection of income-tax went up by 33 per cent from Rs. 636.40 crores in 1967-68 to Rs. 843.69 crores in 1970-71 while the expenditure on collection went up by 61 per cent from Rs. 11.70 crores to Rs. 18.89 crores during the same period. Thus the percentage of cost of collection has increased. The number of Income-tax Officers on assessment duty had increased from 1701 to 2234. The Committee are not satisfied that there was any need for this increase of officers for assessment work in view of the simplification in assessment procedures brought about in recent years. They find that about 89 per cent of the assessees are in the categories III to V*. The assessments in these cases do not require much effort on the part of the assessing officers.
4.	1.29	Do	The Committee note that 71 per cent of the revenue is collected from 11 per cent of the total number of assessees falling in categories and I and II*. It is on these cases that the Income-tax Officers should naturally concentrate. They should investigate thoroughly big cases to unearth concealment of income. There should be a greater emphasis on survey work to bring substantial tax dodgers within the income-tax net.

*Category I—Business cases having income over Rs. 25,000.
Category II—Business cases having income over Rs. 15.000 but not exceeding Rs. 25,000.
Category III—Business cases having income over Rs. 7,500 but not exceeding Rs. 15,000.
Category IV—All other cases except those mentioned in category (v) below and refund cases.
Category V—Small income scheme cases. Government salary cases and non-Government salary cases below Rs. 18,000.

1	2	3	4
5.	1.30	Finance, (Rev. & Ins.)	An Income-tax Officer Class I is expected to do about 300 'standard units' of assessments. No specific study appears to have been conducted to ascertain the performance of the assessing officers against the yardstick prescribed which may itself need revision in the light of the "summary assessment" procedure introduced recently. Unfortunately the Central Board of Direct Taxes do not seem to have any machinery for a systematic and continuous study of the methods and procedures of work, job-evaluation and determination of norms of work for various officials and for proper assessment of performance of the officials against the norms. The Committee consider that there ought to be such a machinery. In this connection it may be recalled that the Wanchoo Committee had felt that "the performance of management in the Income-tax Department has not been satisfactory and calls for improvement."
6.	1.31	Do	In view of the constant search for greater and greater equity in the incidence of tax, the need to raise additional revenue, the desire to achieve various socio-economic objectives through tax laws and the growing modern and complex industrial economy, the ambit of Direct Tax laws has become wider and more complex. Almost every year a large number of amendments are incorporated into the tax laws on a continuous search for greater rationalisation, for checking tax-evasion and for devising appropriate measures to give effect to economic policies of Government. All this goes to show

			that the administrative, managerial and other problems of the Department are bound to increase many fold resulting in still greater work-load and lesser efficiency unless suitable measures are taken immediately to improve the administrative machinery. Various expert bodies have looked into the Tax Administration from time to time and had suggested measures to strengthen it. The Committee are unable to form a correct judgment of the efficacy of the steps taken by Government in pursuance of the recommendations of such bodies as the details called for by them have not been regrettably furnished so far (April, 1973). The Committee would await a report in this regard. It is really a matter of regret that the Administrative apparatus still continues to be weak. The Committee find that the Wanchoo Committee in their report have made several useful suggestions in the Chapter on "Tax Administration" which should be gone into without delay in order to implement such of them as would strengthen tax collecting machinery.
7.	1·55	Do	A review of the position of arrears of assessments and tax demands as also the mistakes and lapses committed by the assessing officers has convinced the Committee of the need for qualitative strengthening of the Income-tax Department.
8.	1·56	Do	Class I Officers are recruited through the competitive examination conducted by the Union Public Service Commission which is common for all the Central Services Class I. The Committee got an impression that often candidates obtaining high positions do not opt for the Income-tax Service. It has been explained that the

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			choice of candidates for a particular service depends upon the attractiveness which that service has for a particular candidate. The Committee do not see any reason why the Income-Tax Service should not be made at least as attractive as any other Central Service, both in terms of emoluments and also in terms of career prospects. They would accordingly suggest that a study of the position of the Income-tax service *vis-a-vis* other services should be undertaken so that steps could be taken to improve the career prospects of the former.
9.	1.57	Finance (Rev. & Ins.)	The Committee note that although the strength of Class I Officers is 1205 the number of men in position is only 750. Appointments to the grade of Income-tax Officer Class I are stated to have been regulated by fixed quotas for direct recruitment and promotion from Class II. It has been explained that Class I posts have remained vacant because of a long drawn litigation between the direct recruits and the promotees. As the matter is stated to have been finally decided by the Supreme Court, the Committee trust that there will be no further delay in filling up these posts. It is also necessary to ensure that there is no stagnation in the Class II grade.
10.	2.16	Do	The Committee note with concern the serious mistake in the computation of income in this case. Overlooking the fact that the assessee had already debited his accounts relevant for the assess-

			ment year 1965-66 with expenditure of Rs. 23,50,528 towards interest on borrowed capital, the Income-tax Officer allowed a further deduction of the amount which resulted in excess carry-forward of loss for adjustment against future years' profits. The Committee have been informed that the Income-tax Officer responsible for this case has been warned to be more careful. As this is one of the several cases of mistakes noticed in this Income-tax Officer's work, a general review of all assessments made by him should be carried out and the result of the review and the action taken in the light thereof may be reported to the Committee.
11.	2 17	Do	Mistakes in the computation of income which were examined by the Committee from year to year point to the need of having a counter-check of assessment orders. At present there is an arrangement only for the counter-check of arithmatical calculation of tax. The Committee regret that the Central Board of Direct Taxes do not see the need for prescribing a counter-check of the computation of income. As stressed elsewhere in this Report, in the opinion of the Committee such a check before the assessments are finalised is essential.
12.	2.18	Do	Incidentally the Committee find that although the assessment in the case referred to in the Audit paragraph was made in the status of an individual, wealth-tax proceedings in respect of the assessment year 1962-63 were initiated only on 30th March, 1971. The reasons for this delay are not clear. However, the assessee, a statutory corporation, is stated to have not admitted liability for wealth-tax on the ground that the status should be that of a

1	2	3	4
			'company'. The decision taken in this regard may be reported to the Committee.
13.	2.19	Finance (Rev. & Ins.)	Another aspect of this case to which the Committee considers it necessary to refer is the delay in taking action to rectify the mistake. The Revenue Audit raised the objection in August, 1970 but the rectification was effected only in September, 1972 in spite of the fact that it is the practice to inform the Directorate of Inspection of all the important irregularities noticed in Audit. It is clear to the Committee receive an impression that the Directorate does not effectively watch the settlement of important Audit objections involving large sums. They accordingly desire that the working of the Directorate should be improved to serve as an effective instrument of vigilance on behalf of the Board.
14.	2.29	Do	In this case income from political pension was charged to tax as salary income instead of as 'income from other sources' resulting in short levy of tax of Rs. 18,211 recovery of which had become time-barred. The Committee desire that suitable action should be taken against the person found at fault.
15.	2.30	Do	The Committee incidentally understand that the assessee is in receipt of a pension of Rs. 60,000 per annum which was sanctioned by the British Government in 1882 to his predecessor in recognition of his "loyalty and noble behaviour at the time of Indian Mutiny".

			It appears to be somewhat incongrous to continue such pensions after independence. Although political pensions granted to the ex-rulers and others by the British Government have been reviewed by Government in 1950-51, the Committee suggest that the pensions granted to ex-rulers for various reasons may be further reviewed in the light of the abolition of Privy Purses. The action taken may be reported to the Committee.
16.	2.59	Do	Any expenditure incurred by an employer directly or indirectly in the provision of any benefits, amenity or perquisite whether convertible into money or not, to an employee is allowed as deduction from business income only up to a limit of one-fifth of the salary of the employee or Rs. 1,000 per month whichever is less. Any expenditure incurred over the prescribed limit has to be disallowed in computation of the income of the employer. Under the executive instructions issued by the Central Board of Direct Taxes in November, 1966 and October, 1969, bonus, commission or any other cash allowance paid as an employee's regular salary was directed to be treated as part of the employee's remuneration and not as perquisite. When it was pointed out by Audit in December, 1970 that the executive instructions were contrary to law, the Board withdrew in June, 1971 their instructions with immediate effect. However, the fresh instructions issued in March, 1972 in consultation with the Ministry of Law contemplate treating bonus given under certain conditions as salary. It is unfortunate that the Audit was not consulted in issuing these latest instructions. The Committee are of the view that the Audit should have been informed of the stand of

1	2	3	4
			the Ministry and when the matter was re-examined on the basis of Audit objections, the Audit view should have been presented to the Law Ministry after showing it to Audit, and after affording Audit an opportunity to modify or expand its point of view in the light of the Board's views justifying a re-revised issue of instructions on the point. They trust that there will not in future be any such lapse; procedural though it is, it is of vital importance.
17.	2.60	Finance (Rev. & Ins.)	As the matter stands, it has to be examined whether the Board's circular of March, 1972 correctly brings out the legal position. The Committee desire that the opinion of the Attorney General should be taken in the matter. In presenting the case to the Attorney General the Audit's point of view should be got vetted by the Comptroller and Auditor General of India.
18.	2 65	Do	This is a case where the Income-tax Officer allowed depreciation on the township assets without first disallowing the depreciation already debited by the assessee in the profit and loss account. This accuonted for excess allowance of depreciation of Rs. 2,82,340 resulting in short levy of tax of Rs. 1,55,287. The Committee had occasion to examine a similar case reported in the Audit Report, 1965. Despite issue of instructions in 1966 following the recommendations of the Committee contained in paragraph 1.26 of their 46th Report (1965-66), such a mistake has occurred again. The Committee would like to know whether the assessments in this case were checked by

			the Inspecting Assistant Commissioner Internal Audit Party and if so, why the mistake was not detected.
19.	2.66	Do	The Committee learn that at present there are no arrangements for checking up draft assessment orders before they are finalised and issued to the assessees. In view of the large number of mistakes in computation of assessable income that have been reported by Audit from year to year, the Committee desire that Government should consider the advisability of providing some kind of check of the draft assessment orders, preferably a pre-check of Internal Audit in big cases.
20.	2.73	Do	Although under the Income-tax Law only actual expenditure incurred towards payment of bonus is allowable as a deduction from taxable income, the I.T.O. allowed the bonus reserve created by the firm as per the Bonus Act, 1965 also as a business expenditure which resulted in under-assessment of income of Rs. 1,18,282 with the consequent short levy of Rs. 79,761. Regrettably the case was not looked into by the Internal Audit Party over a period of 3 years. The Committee feel that the provisions of the Bonus Act and their impact on the provisions of the Income-tax Act need to be clarified for the guidance of the Income-tax Officers. A general review of the past assessments involving bonus reserve is also called for so that mistakes of this kind, if any, could be rectified before these become time-barred.
21.	2·89	Do	For the assessment year 1967-68 a non-resident company converted the written down value of assets from pound sterling to

1	2	3	4
			Indian currency and claimed the depreciation thereon. In view of the devaluation of the Indian currency on 6-6-1966 the conversion was made by adopting the higher exchange value of pound sterling. As no foreign liability was outstanding in respect of the assets the conversion into Indian currency should have been done at the devaluation rate only. The incorrect enhancement in the written down value claimed by the assessee and accepted by the Department resulted in excess allowance of depreciation for two years, 1967-68 and 1968-69, to the extent of Rs. 11,03,158. The total short levy of tax was Rs. 7,81,942. The Ministry have accepted the mistake and the entire additional demand has been recovered. However, the Income-tax Officer at fault, who became Appellate Assistant Commissioner, allowed the assessee's appeal. The Ministry have informed that the order of the Assistant Commissioner in this regard has been appealed against. The Committee would like to know the outcome.
22.	2.90	Finance (Rev. & Ins.)	The Committee are of the view that it is grossly improper to allow an Income-tax Officer promoted as Appellate Assistant Commissioner to take cognisance of and decide an appeal arising out of an order passed by him as the assessing officer. They would, therefore, like Government to issue suitable instructions.
23.	2.91	Do	The Internal Audit have not looked into this case. The circumstances under which such a big company assessment was not taken up for scrutiny by Internal Audit may be reported to the Committee.

24.	2.92	Do	The Committee find that the Central Board of Direct Taxes have issued instructions on 15-11-1972 for a review of the position in all the Circles with a view to remedying similar mistakes, if any. The results of the review and the action taken to rectify the mistakes may be intimated to the Committee.
25.	2.100	Do	The Audit paragraph brings out two kinds of mistakes in the computation of depreciation and the profits chargeable to tax when assets were sold away, resulting in short levy of tax to the extent of Rs. 1,28,133 of which a sum of Rs. 83,942 became time-barred. The total amount of depreciation including initial depreciation granted on assets was not limited to the total cost of the assets as required under the law. Further, where certain assets were sold the profit on the sale of assets was estimated as 50 per cent of the sale price, instead of treating the entire sale proceeds to the extent of the cost as profits and the balance as capital gains as the value of the assets was completely written down. The failure of the Internal Audit to detect the mistake should be suitably dealt with. The Committee would also like to know whether the Inspecting Assistant Commissioner has checked the assessments in this case; and if so, how he failed to detect the mistake. In this connection it is of interest to note that omission to restrict the total depreciaion on an asset to the cost of asset was commented upon in a number of earlier Audit Reports.
26.	2.101	Do	The Committee are unable to appreciate the difficulty in keeping track of all particular of written down value assetwise and

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			resorting to estimation of profits on sale of assets when Audit could find out the written down value from assessment records. The Committee cannot but take a serious view of such slackness of the assessing officers. It will be of interest to know whether the irregular practice of estimating the profit on sale of assets was followed in any other case in this ward and in other wards/circles and the action taken to rectify the mistake and recover the taxes as due.
27.	2.109	(Finance, Rev. & Ins.)	A case wherein extra shift allowance was claimed by the assessee to the extent of Rs. 5.55 crores and was allowed by the Department for the assessment years 1967-68 and 1968-69 has been reported in the Audit paragraph. According to Audit, the assets were not eligible for extra shift allowance. The Committee further note from the reply of the Ministry that the ITO did not allow extra shift allowance in respect of these assets in earlier years. However, the Ministry have admitted the incorrect grant of extra shift allowance amounting to Rs. 13,42,297 in respect of barrages for the two assessment years and as regards the rest of the assets, there is stated to be a different of opinion between the Ministry and Audit to be referred to the Ministry of Law, if necessary. As the assessee is stated to have given the particulars of various assets as per the description laid down in Income-tax Rules and as required under the provisions of the Act, the Committee desire that the correctness of the allowance granted should be determined in consultation with the Ministry of Law early.

28.	2.114	Do	The Committee would like to know the progress made in reopening the assessments in this case and the amount of additional demand created/recovered.
29.	2.121		Under the Income-tax Law if an asset on which development rebate was allowed, is sold away within a period of 8 years from the year of installation the development rebate allowed on the asset should be withdrawn. In the case reported in the Audit paragraph development rebate of Rs. 2,01,197 was allowed on new plant and machinery for the assessment year 1963-64 completed in January, 1967. However, information was available in the assessment records that the plant and machinery was sold away in the previous year relevant to the assessment year 1964-65. Yet the ITO did not withdraw the development rebate granted to the assessee resulting in short levy of tax of Rs. 1,00,599. It is strange that the ITO overlooked the particulars available in the assessment records and did not also make enquiries from the assessee at the time of assessment whether the plant and machinery on which development rebate was being claimed was in his possession and was being used for the purpose of his business. These lapses on the part of the ITO should be suitably dealt with.
30.	2.122	Do	The Committee note that the return of income was filed subsequent to the date of the sale of plant and machinery and that the assessee did not intimate the ITO the fact about the sale at the time of filing of return. The Committee would like to know whether the assessee would attract any penalty for this suppression of information.

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31.	2.130	(Finance, Rev. & Ins.)	An assessee owned two properties. The values returned by him for wealth-tax purposes were Rs. 41,000 and Rs. 20,583 respectively. A part of each of these assets was sold during the previous year relevant to the assessment year 1963-64 for Rs. 2,99,614. The Income-tax Officer, instead of arriving at the value of capital gain after deducting the original cost from the sale value, estimated it at 1/5th of the sale value on the ground that the original cost of the land was not known. Admittedly, he had no authority to estimate the capital gain in this manner. The assessee also does not appear to have given the relevant information on a verbal enquiry. The Committee desire that suitable action should be taken in the matter.
32.	2.131	Do	The value of one property adopted for wealth-tax purposes was Rs. 1,50,000 and the value of the other property was accepted as Rs. 20,583. As part of each of these properties has been sold for Rs. 2,99,614, the value of the properties should have been much more than this amount. While the under-assessment of capital gain has been rectified, no action could be taken in regard to the serious understatement of wealth for the assessment years upto 1962-63. It is strange that the assessing officer did not notice the sale of the part of the assets, while making the wealth-tax assessment for the year 1963-64. As the assessee returned lower values for the properties, the assessing officer ought to have enquired into the matter. Further, he failed to correlate the income-tax records with the wealth-tax

			records. The Committee take a serious view of these lapses. They desire that appropriate action should be taken against the assessing officer.
33.	2.132	Do	Although the income-tax assessment in this case is stated to have been checked by Internal Audit on 4th May, 1968, the irregularity has not been apparently noticed by them. The failure should be suitably dealt with.
34.	2.140	Do	According the Income-tax Law every trust which accumulates income in excess of 25 per cent of the total income or Rs. 10,000 whichever is higher for application to charitable purposes within a period of 10 years, has to give a notice to the I.T.O. and invest accumulated income in Government or approved securities within six months commencing from the end of the relevant previous year, if the accumulated income is to get exemption from tax. In the case under examination the Trust's accumulated income was exempted from tax although the funds were not so invested in full in securities for the assessment years 1965-66 to 1967-68. The omission to withdraw the exemption resulted in short-levy of tax of Rs. 77,210. Significantly enough, after the Audit pointed out the omission, the assessee applied for condonation of delay in assessment and the Board condoned the delay. The action of the Board in this regard is of doubtful legality as they had themselves stated in their circular dated 13th November, 1968, that "it is proposed to amend the law to secure for the Board necessary provisions to extend the period (for investment) in appropriate

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			cases." The Committee need hardly impress that if Government desire to exercise this discretionary power, necessary amendment to the relevant provisions of the Income-tax Act should be effected without delay.
35.	2 141	Finance (Rev. & Ins.)	They also feel that a suitable time-limit may be prescribed for entertaining applications for condonation of delay in investment. The Committee are not satisfied with the arrangements which the Department has at the present to review such cases to see whether the investments have been made by the Trusts in time. They desire that there should be an annual review.
36.	2.147	Do	This Audit paragraph brings out the delay in rectifying the shareholders' assessments initially completed allowing relief provisionally at a certain percentage in respect of dividends received by them from the company, after completion of the assessment of the company. In order to keep a watch over such cases the Committee consider it necessary that a register of such cases should be maintained similar to the "register of cases of provisional share incomes" relating to partnership firms, so that the correct percentage of relief allowable may be ascertained from the officer assessing the company promptly. This procedure would help to rectify the provisional assessments of the shareholders before they become time-barred.

37.	2.154	Do	The Committee find that in this case the mistake arose in determining whether the company was a 'wholly' manufacturing company. The mistake committed by the ITO is explained as an error of judgement. The Committee are unable to accept the position that "the Internal Audit Party did not take up the point as it involved complicated interpretation of factual circumstances in the context of legal provisions." This also shows that the Internal Audit is not effective enough. The Committee accordingly desire that the Internal Audit should be properly equipped to detect such mistakes also in future.
38.	2.155	Do	The Committee would like to leave the rectification of assessments and recovery of additional demand to be watched by the Ministry|Audit.
39.	2.156	Do	As regards a review of such past assessments the reply of the Ministry is not quite relevant. The idea is to find out the correctness or otherwise of application of the relevant section prior to its amendment w.e.f. 1.4.66. The Committee, therefore, desire that Government should reconsider the feasibility of ordering a general review in the interest of revenue.
40.	2.171	Do	Two companies manufacturing radio receivers, condensers, loudspeakers, radio parts etc. were treated as engaged in priority industries under the Finance Acts, 1964 and 1965 and higher rebate of tax was allowed. The Ministry were of the view that the radio-receivers fell under the category of "electronic com-

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			munication equipment" eligible for necessary relief. The disagreement of Audit was reported to the Ministry in November, 1971. On receipt of this communication the Ministry do not appear to have applied their mind to the question. A reference was, however, made to the Department of Electronics. After considerable delay the Department of Electronics upheld the view of Audit. As, according to the Industries (Development and Regulation) Act, 1951, radio-receivers fall under the category of 'telecommunication equipment' while 'electronic equipment' falls under 'electrical equipment' and as industries engaged in telecommunication are not listed in the Finance Acts, the position could have been examined independently by the Ministry of Finance. The Committee trust that in future there will be no avoidable delay in attending to Audit objections: in fact, in their view audit objections of this nature, that is where under-assessment is said to have occurred—should without exception be examined on a priority basis.
41.	2·172	Finance (Rev. & Ins.)	The Committee have been informed that instructions are being issued elucidating the position as per Electronic Department's advice for future guidance and review and revision, if necessary, of past assessments. The Committee do not think that there was uniformity in the matter of assessing the concerns engaged in the manufacture of radio-receivers. The action taken in the light of the review of the past assessments may be reported to them.

42.	2·173	-Do-	Additional demands to the extent of Rs. 7,15,747 have been raised on the two companies for the assessment years 1965-66 to 1967-68. The Committee would like to know the position in respect of the assessment year 1964-65. Incidentally it is learnt that one company had filed a writ petition on receipt of rectification show-cause notices. The outcome of the case may be intimated to the Committee.
43.	2·187	-Do-	The Audit paragraph brings out the omission to levy tax by way of reduction of super-tax rebate at the rate of 12-1/2 per cent of the face value of the bonus shares issued by a company for the assessment year 1964-65. The omission led to a total short-levy of tax and interest to the extent of Rs. 3,43,456. Although the mistake has been accepted, additional demand could not be raised as consequent on an appellate order there is no supertax to be levied. The Committee, however, understand that under the Finance Act, 1965, so much of the reduction as could not be given effect to in 1964-65 assessment was to be carried forward and reduced from the super-tax rebate for 1965-66. So, even if there was no income to be taxed for the year 1964-65 the reduction of rebate should have been made in the assessment year 1965-66. The Committee desire that the Ministry should look into this aspect and report to them the action taken to recover the amount.
44.	2·193	-Do-	The Committee learn that 11 shareholders of a company and 28 others acquired the right of the company to subscribe to the shares of another company at a price lower than that quoted in the

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			market. Remedial action taken to assess the value of rights renounced by the company in favour of its share-holders may be reported to the Committee. Further the Committee note that comprehensive investigation in this group of cases has been ordered by the Ministry. The outcome of the investigation may also be reported to the Committee. They would in particular like Government to examine and inform the Committee, (i) whether the transfer of rights by the company to non-share-holders was without consideration and if so, the reasons therefor, (ii) whether there were any 'benami' transfers and (iii) whether the donor company may not be liable to gift tax.
45.	2·213	Finance (Rev. & Ins.)	The moneys kept by an assessee outside India appreciated in value to the extent of Rs. 4,42,064 due to devalution of the rupee in June, 1966. This profit was chargeable to tax as the funds formed part of trading transactions of the assessee. The omission to do so led to short-levy of tax of Rs. 2,85,140. The assessee had credited the profit to the Profit and Loss Appropriation Accounts. The Ministry have reported that when the Income-tax Officer started action under Section 147 to assess the profit the assessee went in a writ petition challenging the jurisdiction of the Income-tax Officer to assess a particular portion of his declared income under the said Section of the Income Tax Act. The Committee would await the outcome.

46.	2.214	-Do-	The Committee learn that at the time when the Audit objection was raised the Commissioner could have taken action to rectify the mistake under Section 263 within two years of the assessment but he could not do so as in the meanwhile the Appellate Assistant Commissioner had decided an appeal. According to the Ministry the legal position based on a Supreme Court Decision in 1958 is that the Commissioner cannot exercise the power under Section 263 once the Appellate Assistant Commissioner gives a decision. Further the Committee have been informed that even though a particular point has not been dealt with by the Appellate Assistant Commissioner the Commissioner cannot interfere as the Income-tax Officer's order merges with the Appellate Assistant Commissioner's order. As this position is admittedly detrimental to the interest of revenue, the Committee are at a loss to understand why the issue had not been examined in the past 15 years with a view to amending the law, if necessary. After all the Appellate Assistant Commissioner is a lower authority and the Commissioner should be able to act under Section 263 even when a case has been decided by the Appellate Assistant Commissioner. The action to settle the matter may be reported to the Committee within six months.
47.	2.219	-Do-	Though the income of approved gratuity funds was not exempt from tax upto 1972-73, a case wherein such income was incorrectly exempted for 3 assessment years from 1967-68 to 1969-70 is reported in this Audit paragraph. The Committee note that the

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			additional demand of Rs. 43,868 has been recovered in this case and the Ministry are not in favour of undertaking a general review of similar assessments in all charges with a view to rectifying such mistakes on the ground that it would involve in commensurating time and labour. The least that can be done is to draw the attention of the assessing officers specifically to the fact that income of the gratuity funds was taxable upto 1972-73 so that there may not be any mistake in completing the pending assessments.
48.	2 220	(Finance, Rev. & Ins.)	The Government may consider whether income realised by a Trust from its investments if added to the corpus of the Trust may be given exemption by a statutory amendment.
49.	2.233	-Do-	The Committee are disturbed to note that inordinate delay takes place in revising the assessments and in allowing relief to the assessee concerned as decided by the appellate authorities in this case. The appellate orders were passed between May, 1964 and November, 1964 and the revision of the assessment took place only in April, 1968 with the result that the Department had to pay interest of Rs. 78,834 to the assessee. Expeditious action on the part of the Income-tax Officer could have avoided payment of interest. The circumstances under which the Officer could not do so should be investigated.
50.	2·234	-Do-	The delay in giving refunds arising out of appellate or-

ders seems to be fairly wide-spread. The number of cases of refunds under Section 244 of the Act in which interest was paid to assessees was 52 involving Rs. 2.92 lakhs in 1969-70, 59 involving Rs. 6.11 lakhs in 1970-71 and 81 involving Rs. 9.31 lakhs in 1971-72 respectively. Thus the position has tended to deteriorate over the years. The Committee have been given to understand that the problem is being studied by the Director of Inspection and that suitable action will be taken on the basis of the study. The Committee wish to emphasise that there should be normally no case where the refund due is not allowed within a period of 3 months from the date of appellate orders. In this connection it is worthwhile studying in depth the reasons for the delay in cases in which interest had to be paid during the three years 1969-70 to 1971-72 and take remedial action at least for the future.

51. 2.240 -Do-

In two cases where inordinate delays had occurred in the issue of demand notices involving Rs. 24.23 lakhs which not only postponed the realisation of moneys due to Government but also carried with it the risk of loss of revenue, have been reported in this Audit paragraph. The Committee have been given to understand that the Ministry have ordered that the entire circumstances pertaining to these cases should be investigated and necessary disciplinary proceedings considered against those found at fault. The outcome of the investigation as also the action taken against the persons at fault may be communicated to the Committee within three months.

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52.	2.241	Finance (Rev. & Ins.)	The Committee find that in the first case the Department has appealed against the decision of the Appellate Assistant Commissioner cancelling the rectificatory order whereas in the second case the decision of the Appellate Assistant Commissioner has been accepted. The Committee would like to know the circumstances under which the A.A.C's decision has been accepted in the second case.
53.	2.242	Do	The Committee understand that at present there is no time-limit for the issue of demand notices. They desire that a suitable time-limit should be laid down either statutorily or by executive instructions.
54.	2.251	Do	The Income-tax Act requires that to become entitled for development rebate the assessee should create a reserve equal to 75 per cent of the rebate to be allowed by debit to the profit and loss account of the previous year relevant to the assessment year and credit to a reserve account. In October, 1965, the Board relaxed this provision to allow for the deficiency in crediting to the reserve account being made good in the subsequent years. As the expression used in Section 34(3)(a) of the Act is "the relevant previous year", this relaxation derived no authority from the Act. The Committee note that following judicial pronouncements on the subject the Board have issued revised instructions in October, 1972. These

			instructions *inter alia* contemplate a review of the past assessments. The action taken in this regard may be reported to the Committee.
55.	2.252	Do	Although the assessments referred to in sub-para (ii) of the Audit paragraph have been revised raising an additional demand of Rs. 30.04 lakhs, the assessee company is stated to have filed a writ petition before the Bombay High Court. The outcome may be reported to the Committee in due course.
56.	2.253	Do	The Committee understand that on receipt of certain representations the advice of the Ministry of Law has been sought in the matter. They would like to know whether the Ministry of Law were not consulted prior to the issue of the revised instructions in October, 1972. If consulted, it is not clear why they are again approached merely because representations have been received. The Committee have been noticing that the Ministry of Law are being approached to give advice on the same subject more than once. This would, apart from embarrassing them, add to the burden of their work. If Government consider that the relaxation as contemplated earlier should be allowed, the best course would be to propose amendment to the relevant section of the Act.
57.	2.254	Do	The Committee regret to note that there is no machinery in the Central Board of Direct Taxes to review all the old circulars issued by them and withdraw such of them as are found to be contrary to the provisions of the law. It is only when any doubt is expressed in any quarter that the implications of a circular are con-

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			sidered and necessary modification made. This position is obviously unsatisfactory. The Committee desire that judicial pronouncements on the Income-tax Law should be closely watched by the Board with a view to undertaking a *suo moto* review of the instructions periodically and issuing fresh instructions as may be necessary.
58	3.25	Finance (Rev. & Ins.)	In their 51st Report (Fifth Lok Sabha), the Committee had dealt with the problem of arrears of tax demands comprehensively and indicated the steps to be taken to obviate accumulation of arrears.
59.	3.26	Do	From the information now furnished to them, the Committee find that the arrears are not being computed on a uniform and scientific basis. According to the Audit paragraph the net effective arrears as furnished by the Ministry to the Audit on 31st March, 1971 were Rs. 399.82 crores whereas according to the version of the Ministry before the Committee the figure should be Rs. 467.81 crores. A third figure viz. Rs. 499 crores is mentioned in the Administrative Report of the Ministry of Finance (1971-72). Thus the figures vary widely. Further the basis for compilation of these figures has been changed from time to time. For instance till 1969-70 for working out the net effective arrears, an estimated 50 per cent of the demand stayed by appellate and other authorities was deducted from the gross arrears to arrive at net effective arrears and from 1970-71 onwards the entire amount involved in such stayed demand was

deducted from the gross arrears. The Committee had earlier pointed out that interest on arrears of demands had not been calculated and shown correctly. In view of all these the Committee suggest that some methodology should be devised in consultation with the Comptroller and Auditor General of India so as to arrive at a clear and complete picture of the arrears and interest realisable at the close of each year.

60. 3·27 Do

The total number of assessees borne on the books of the Department was 30,12,570 as on 31st March, 1971. According to the Audit paragraph the gross arrears of Rs. 738.77 crores were due from 20,11,354 assessees. This gives an impression that about two-thirds of the assessees were in arrears. The Ministry have stated that the figure 'possibly represents the number of arrears entries as there is no readily available source in the field indicating the total amount of arrears outstanding against an assessee at a particular time'. This shows that the figures are furnished to the Revenue Audit without detailed scrutiny. While the Committee await a report regarding the correct position, they are of the view that an assessee-wise compilation of arrears of substantial amounts, say, Rs. 1 lakh and more, is necessary and that it should be attempted forthwith.

61. 3·28 Do

According to the Audit paragraph, arrears in excess of Rs. 10 lakhs in each case were Rs. 180.76 crores due from 676 assessees. The Ministry have, however, intimated details working upto Rs. 192.37 crores due from 689 assessees. The discrepancy in figures should be reconciled.

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62.	3.29	Finance (Rev. & Ins.)	It is regretable that the Board does not have any satisfactory system of watching the recovery of arrears. The Committee, therefore, desire that the Board should set up a machinery for watching the recovery of arrears in excess of Rs. 10 lakhs in each case. They would suggest introduction of a ledger card system for each assessee which would bring out the up-to-date position of arrears and a brief account of the measures taken to recover them.
63.	3.30	Do	The Committee would like to know the details of the cases of arrears in excess of Rs. 10 lakhs each as on 31-3-1972 and the steps taken to recover them in each case, duly verified by Audit.
64.	3.38	Do	Position of appeal and revision petition cases pending with the Appellate Assistant Commissioners is alarming. The number of cases, which was 1,67,512 as on 30th June, 1967 gradually increased to 2,47,723 as on 30th June, 1971. Further, a number of cases were pending for over 10 years. That this was so inspite of increase in the number of Appellate Assistant Commissioners from 148 to 223 during this period, causes concern. The Committee regret that the target date fixed by the Central Board of Direct Taxes for the disposal of old cases filed upto 31st March, 1966 has not been adhered to.
65.	3.39	Do	3.39. The position of revision petitions pending with the Commissioners of Income-tax is equally unsatisfactory. The number of cases pending as on 30th June, 1971 was 7933. The delay in disposal

			was to the extent of 15 years in one case, 13 years in 3 cases and 12 years in 7 cases. The Ministry are unable to state readily the reasons for such inordinate delays. No target date has also been fixed by the Ministry for the finalisation of pending revision petitions which are more than 3 years old.
66.	3.40	Do	The Committee have been emphasising the need to expeditiously dispose of appeals and revision petitions. They feel that appeals should be disposed of with expedition and that at any rate no appeal should remain pending beyond a period of 3 years. They accordingly desire that reasons for such heavy pendency as brought out in the foregoing paragraphs should be studied carefully. A suitable target date should be fixed for the disposal of cases pending for more than 3 years and steps taken to see that the cases are not allowed to accumulate for more than a period of 3 years in future. In disposing of the cases priority should be given to cases where the Appellate Assistant Commissioners and the Commissioners of Income-tax have stayed the recovery of tax. The Committee consider that the Board should also desire an effective system to keep a watch over the position with a view to taking timely action.
67.	4·4	Do	The Committee have been commenting from year to year about the unsatisfactory position of arrears of assessments. In reply to their observations contained in their 117th Report (Fourth Lok Sabha), the Ministry in January, 1971, stated that the pendency as on 31-3-1971 would be 8.5 lakhs of assessments and that it would

			be further reduced at the end of the year 1971-72. The Committee regret to find that the pendency as on 31-3-1971 actually turned out to be 12.39 lakhs of assessments. The position as on 31-3-1972, as intimated by the Ministry, is that 11.24 lakhs of assessments were pending. Thus the position continues to be unsatisfactory despite the assurance given to the Committee to improve it. The Committee nevertheless trust that every effort will be made to pull up the arrears and bring them down considerably during the current year.
68.	4.5	Finance (Rev. & Ins.)	The Committee have been laying stress on the timely finalisation of cases involving large revenue. They would like to know whether the Central Board of Direct Taxes have devised any machinery at least to watch finalisation of such cases.
69.	4.6	Do.	Although the Committee desired to know the approximate revenue locked up in 12.39 lakhs of assessments pending without finalisation as on 31-3-1971, the Ministry are not in a position to readily furnish the information. The Committee, therefore, wish to emphasise that attempt should be made to bring out the approximate amount of income-tax involved in the pending assessments and make it available to Audit for incorporation in the future Audit Reports as is done now in the case of other Direct Taxes.
70.	5.8	Do.	The Committee learn that although no time-limit was pres-

			cribed under the Income-tax Act, 1922, for the levy of penal tax for failure to distribute the statutory percentage of dividends by companies, the Board had issued instructions that the time-limit of 4 years from the end of the assessment year or 1 year from the end of the financial year in which the assessment is made, whichever is later, as prescribed under the new Act should be observed in old cases also. Further, in July, 1970, the Board directed that all the cases under the old Act should be disposed of by 30th September, 1970. However, 30 such cases remained outstanding even as late as July, 1972. The delay in their disposal despite instructions from the Board does not speak well of all those concerned. It needs hardly any emphasis that these cases should be disposed of without further loss of time.
71.	5.9	Do.	Despite the statutory requirement that the assessment for the year 1965-66 should have been made by 31-3-1970 and action for the levy of penal tax should have been taken by 31-3-1971 at the latest, it is seen from the Audit paragraph that 30 cases involving Rs. 6.96 lakhs relating to the assessment years 1962-63 to 1965-66 were outstanding on 31-3-1971. The Committee would like to know whether these cases have not become time-barred involving loss of revenue and if so, the reasons for the delay in their disposal and fixing responsibility for this avoidable loss.
72.	5.10	Do.	Now that the period of completion of assessments has been reduced from 4 years to 2 years, the Committee feel that the time-limit for the levy of penal tax should also be correspondingly cur-

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			tailed in the interest of speedy realisation of penalty. They desire that this should be examined by the Ministry with a view to proposing necessary modification to the provisions of the law relating to levy of penal tax.
73.	6.6	Finance (Rev. & Ins.)	The Committee regret to note that as many as 1097 penalty proceedings involving Rs. 1,92 crores initiated under the Income-tax Act, 1922, were kept pending as on 31-3-1971, as there was no time limit for the completion of the proceedings. The Committee understand that in a few cases where the proceedings were kept pending for a long time the High Courts had quashed the proceedings holding them as vexatious. It is unfortunate that the proceedings against the defaulters are frustrated by administrative delay. The Committee, therefore, wish to recommend that a time-limit for the finalisation of all the pending cases should be fixed administratively which should not exceed one year from now. Cases involving large penalties should be given priority and the progress should be watched by the Board by prescribing suitable returns from the field officers.
74.	6.7	Do.	It is surprising that the Ministry are not in a position to let the Committee know the extent of arrears of penalty proceedings under the Income-tax Act, 1961, as also the number of cases wherein the proceedings, which should have been finalised within 2 years, became time-barred. The Committee desire that the maintenance

			of statistics should be improved so as to bring out this information in future. The position in this regard will be watched through future Audit Reports.
75.	7.15	Do.	The Audit paragraph deals with the various deduction/ reliefs allowed under Sections 80-D, E, F, H, J and R of the Income-Tax Act, 1961. The Committee receive an impression that a review of the various provisions has not been conducted having regard to the objectives underlying them. Such a review is necessary to decide whether some of these concessions should be continued at all and whether any modification is necessary to achieve the objective better. The Committee find that the number of assessees availing of the concessions under Sections 80 E, H and R during 1970-71 was 16, 1 and 13 respectively. Thus it appears that either the concessions are not attractive enough or the assessees are not aware of the relevant provisions or there is no necessity to continue the concessions. The Ministry have stated that the Wanchoo Committee have gone into the utility of various concessions allowed under Chapter VI A of Income-tax Act. Nevertheless the Committee desire that a review of these concessions should be conducted by Government and action proposed to be taken on the lines indicated above may be reported to the Committee.
76.	7.16	Do.	The Committee suggest that whenever Government decide to continue the concessions in the existing form or in a modified form wide publicity should be given through pamphlets in English, Hindi and other local languages particularly explaining the reliefs available to the common man.

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77.	8·10	Finance (Rev. & Ins.)	According to the information furnished by the Ministry and incorporated in Audit paragraph the number of cases in which prosecution for concealment of income was launched during 1970-71 was 74 and the number of cases in which composition was effected without launching prosecution was 135. The Ministry have, however, intimated to the Committee that the number of cases in 1970-71 in which prosecution was launched was only 23 and that there was no case of composition. The Committee take a serious view of the carelessness in furnishing information to Audit. They desire that responsibility therefor should be fixed.
78.	8·11	Do.	The Committee note that although the number of cases in which concealment of income was detected had come down from 32,951 in 1967-68 to 23,625 in 1970-71, the amount of concealed income had shot up from Rs. 40.19 crores to Rs. 70.69 crores. This indicates that tax evasion continued to be practised by assessees in higher income group. The Committee have been stressing the need to launch prosecution in cases where there is a reasonable chance of proving the concealment. However, it is disappointing to find that out of 75 cases where the income concealed was over Rs. 5 lakhs during 1970-71 (*vide* Appendix III), only in one case prosecution was launched and two other cases are stated to be under consideration. The decision taken in the two cases may be reported to the Committee. The Committee find that in these two cases penalty has been imposed. They would like to know since when the launch-

			ing of prosecution is being considered and the section under which it is being considered. The Committee also would like to know whether the question of launching prosecution was considered in all the remaining cases and if so, the grounds on which it was decided not to launch prosecution. They would await detailed information especially in regard to 22 cases where the income concealed exceeded Rs. 1 crore.
79.	8 12	Do.	The Committee desired to have some information regarding prosecution advised in cases of concealment of Rs. 50,000 or more, the cases where searches and seizures were conducted and the cases withdrawn from courts during the last three years. The information is still awaited (April, 1973). They, therefore, reserve their comments in regard to these cases.
80.	9.5	Do.	The Committee learn that at present no reconciliation is being made to ascertain that total amounts of tax deducted at source by the companies from dividends declared have been remitted by them to the Government account. The suggestion of Audit that there should be a "Central control accounts system" on the pattern prevailing in the United Kingdom is stated to be under the Board's consideration. The Committee desire that Government should come to a decision in the matter without delay.
81.	9 6	Do.	The number of companies which had distributed dividends had fallen from 7294 in 1966-67 to 4153 in 1970-71 whereas the amount of dividend distributed had risen from Rs. 81.88 crores to

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			Rs. 163.88 crores during the same period. This phenomenon requires examination. The results of the examination may be reported to the Committee.
82.	10.4	Finance (Rev. & Ins.)	The refunds made under Section 243 of the Act during the year 1970-71 were the highest ever, the number and amount being 1,19,707 and Rs. 17.08 crores respectively. As against this, a sum of Rs. 4.05 crores was refunded in 76,912 cases during the year 1969-70. Thus with only 54 per cent increase in the number of cases the amount refunded recorded an increase of 324 per cent. Although the Committee wanted to know the particulars of cases involving refunds of Rs. 1 lakh and above the Ministry are not in a position to readily furnish them. The Committee are inclined to feel that the unprecedented increase in the amount of refund reflects on the accuracy of the assessments made by the Department. Any how there is a need for examining the reasons for the increase. The result of the examination may be reported to the Committee.

MGIPND—LS II—451 LS—31-7-73— 1550.