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**ASSESSMENT OF SMALL SCALE
INDUSTRIAL UNDERTAKINGS**

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MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

**PUBLIC ACCOUNTS
COMMITTEE
1992-93**

TENTH LOK SABHA



समर्थन वरत

LOK SABHA SECRETARIAT
NEW DELHI

**THIRTY-SECOND REPORT
PUBLIC ACCOUNTS COMMITTEE
(1992-93)**

(TENTH LOK SABHA)

**ASSESSMENT OF SMALL SCALE INDUSTRIAL
UNDERTAKINGS**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**



सत्यमेव जयते

*Presented to Lok Sabha on 8 August, 1992
Laid in Rajya Sabha on 8 August, 1992*

**LOK SABHA SECRETARIAT
NEW DELHI**

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PUBLIC ACCOUNTS COMMITTEE
(1992-93)

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4. Shri K.C. Shekhar—*Under Secretary*

*Elected w.e.f. 23 July, 1992 vice Shrimati Krishna Sahi ceased to be a member of the Committee on her appointment as a Minister.

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Thirty Second Report of the Committee relating to Assessment of Small Scale Industrial Undertakings.

2. This Report is based on two audit paragraphs *viz.* para 2.03 of the Report (No. 5 of 1991) of the C&AG of India for the year ended 31 March, 1990 Union Government (Revenue Receipts—Direct Taxes) and para 1.03 of the Report (No. 4 of 1991) of the C&AG of India for the year ended 31 March, 1990 Union Government (Revenue Receipts—Indirect taxes).

3. Small Scale Sector has a vital role to play in the process of economic development through vast employment generation, promotion of exports, dispersal of industrial and economic activities and mitigation of regional imbalances. In order to enable the Small Scale units to become economically viable a host of tax concessions, excise duty concessions and other supportive facilities have been extended to them by the Government from time to time. In August 1991, the Government laid on the Table of the House a statement detailing the policy measures for promoting and strengthening the small, tiny and village industries. The Committee have stressed the need for effective implementation of these measures to promote the growth of the Small Scale Sector. Besides, noting that the Industrial Policy announced in July, 1991 envisages liberalisation of policies in various areas, the Committee have desired the Government to act cautiously so as to ensure that the process of liberalisation does not have any adverse effect on the interests of Small Scale Sector.

4 The Committee found that the definitions of the term 'Small Scale Industrial Undertakings' as given in the three statutes *viz.* the Income tax Act, 1961 the industries (Development and Regulation) Act, 1951 and the Banking Regulation Act, 1949 were at variance with one another. However, when the Committee examined the issue, the Department of Revenue initiated action in the matter and incorporated a suitable amendment in the Income tax Act, 1961 through the Finance Bill, 1992 adopting the same definition as exists for the purposes of the Industries (Development and Regulation) Act, 1951. In the case of Banking Regulation Act, 1949, the decision to amend the definition of the term was kept in abeyance in the wake of recommendation of Narasimham Committee that the Small Scale Sector except tiny sector might be excluded from priority sector. The Committee have expressed their disagreement with this view and have recommended that the existing level of investment limit *i.e.* Rs. 35 lakhs in Small Scale units and Rs. 45 lakhs for ancillary units, be retained for lending under priority sector. Preference may of course be given to meeting the requirements of tiny sector.

5. The Committee have been informed that no data regarding Small Scale Industrial Undertakings filing returns under the Direct Tax laws or the extent of concessions granted to them is available with the Department of Revenue as they are not a separate taxable entity under the Income tax Act. In the absence of this data with the Ministry of Finance, the Committee have been inclined to believe that changes in the range of fiscal concessions effected at the time of the Budget are based on the subjective assessment of the Ministry of Finance and the concerned administrative Ministry/Department and not based strictly on any rationale. The Committee have desired that on the lines of Central Excise, data relating to Direct Taxes should be computerised expeditiously to enable proper financial planning.

6. Registration of Small Scale unit is a pre-requisite for availing excise duty concessions while it is not so in the case of tax concessions under the Direct tax laws. The Committee have recommended that the income tax concessions should also be available to only registered units as it would help the Ministry in having definite information of not only the potential tax payers in the Small Scale Sector but also enable an assessment of the impact of fiscal concessions on the growth of that sector.

7. The Committee have noted that no serious attempt has ever been made by any Ministry to evaluate the impact of concessions/incentives etc. extended to the Small Scale Sector by them from time to time. Holding the view that extension of any incentive or concession should be followed up with a detailed evaluation to enable the Department to assess the efficacy of such incentives in terms of growth of the sector, the Committee have recommended that such evaluation be conducted by the Ministry of Finance/Department of Small Scale, Agro and Rural Industries. Besides, the Committee have also recommended setting up of an inter-Ministerial Monitoring Agency to ensure effective and efficient implementation of the policies and programmes drawn by various Ministries for the development of Small Scale Sector.

8. The Small Sector is faced with a problem of delayed payments and the Ministry are yet to introduce the proposed legislation to ensure prompt payment to the small units. The Committee have desired that the proposed bill may be expedited.

9. The Committee have noted that a large number of Small Scale units were not on the registers of the Income Tax Department. In this connection, the Committee have expressed the view that the Central Information Branches of the Department should be activated to identify potential tax payers in that sector. Survey of Industrial Complexes should also be undertaken jointly by the Central Excise Department and Income tax Department in this regard to deal effectively with the tax evaders and potential tax payers.

10. The Audit paragraphs under report were examined by the Public Accounts Committee (1991-92) at their sittings held on 7th, 8th and 22nd January, 1992.

The Committee considered and finalised this Report at their sitting held on 30 July, 1992. Minutes of the sittings form Part II* of the Report.

11. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix-VI). For facility of reference these have been printed in this type in the body of the Report.

12. The Committee place on record their appreciation of the assistance rendered to them in the examination of the audit paragraph by the office of C&AG of India.

13. The Committee would also like to express their thanks to the officers of the Department of Revenue and Economic Affairs in the Ministry of Finance and the Department of Small Scale and Agro and Rural Industries for the cooperation extended to them in giving requisite information.

NEW DELHI;
7 August, 1992

16 Sravana, 1914 (Saka)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

* Not printed. One cyclostyled copy laid on the Table of the House and 5 copies placed in Parliament Library.

PART I
REPORT

Assessment of Small Scale Industrial Undertakings

This Report is based on two audit paragraphs* i.e. Para 2.03 of the Audit Report (No. 5 of 1991) on Direct Taxes regarding Assessment of Small Scale Industrial Undertakings and Para 1.03 of the Audit Report (No. 4 of 1991) on Indirect Taxes regarding Exemption to Small Scale Industries.

A. Introductory

2. Small Scale Industries play a vital role in the development of our economy in view of its low capital requirement, export as well as vast employment generation potential apart from contributing towards development of backward regions and mitigation of economic disparities. The small scale sector accounted for nearly 30% of the gross value of output in the manufacturing sector and over 40% of the total export from the country besides providing employment opportunities to around 12 million people at the end of the Seventh Plan period.

3. The Industrial Policy statement of July, 1991 stated that "Government will provide enhanced support to the Small Scale Sectors so that it flourishes in an environment of economic efficiency and continuous technological upgradation." The thinking of the Government on the "Policy Measures for promoting and strengthening Small, tiny and village industries" was spelt out in greater detail in a statement made in the Lok Sabha in August 1991. Paras 1.2 and 1.3 of the above statement read:

"The primary objective of the Small Scale Industrial Policy during the nineties would be to impart more vitality and growth impetus to the sector to enable it to contribute its mite fully to the economy, particularly in terms of growth of output, employment and exports. The sector has been substantially delicensed. Further efforts would be made to deregulate and debureaucratise the sector with a view to remove all fetters on its growth potential, reposing greater faith in small and young entrepreneurs.

All statutes, regulations and procedures would be reviewed and modified wherever necessary, to ensure that their operations do not militate against the interests of the small and village enterprises."

*. Appendices I & II

4. The salient features of the policy statement are enumerated below:

- (i) De-regulation, de-bureaucratisation and simplification of statues, regulations and procedures;
- (ii) Increase in the investment limit in plant and machinery of tiny enterprises from Rs. 2 lakh to Rs. 5 lakh, irrespective of the location of the unit.;
- (iii) Inclusion of industry-related services and business enterprises, irrespective of their location, as small-scale industries;
- (iv) Ensuring both adequate flow of credit on a normative basis and quality of its delivery for viable operation of the SSI sector;
- (v) Setting up of a special monitoring agency to oversee the genuine credit needs of the Small Scale Sector;
- (vi) Introduction of suitable legislation to ensure prompt payment of small industries bills;
- (vii) Introduction of a scheme of Integrated Infrastructural Development (including technological back-up services) for small Scale Industries;
- (viii) Setting up of a Technology Development Cell in the Small Industries Development Organisation;
- (ix) Market promotion of SSI products through co-operative/public sector institutions, other specialised professional/marketing agencies and the consortia approach; and
- (x) Setting up of an Export Development Centre in the Small Industries Development Organisation.

B. Targets and Achievements

5. The Targets and achievements in terms of production and employment generated by the Small Scale Sector during the period 1988—91 are given below:

Year	Production (Rs. in crores)		Employment (lakh person)	
	Targets	Achievements	Targets	Achievements
1988-89	73125*	82400*	112.0	113.0
1989-90	80220	92080*	119.0	119.6
1990-91	15906@	155340@	126.3	124.3

*84-85 prices

@at current prices

According to the Deptt. of Small Scale Industries and Rural & Agro Industries, the number of both registered and unregistered small scale

units during the years 1988-89, 1989-90 and 1990-91 were 17.12 lakhs, 18.23 lakhs and 19.38 lakhs, respectively.

6. The Economic Survey, 1991-92 has, however, not painted a bright picture of the sector when it mentions that:

“The growth of the Sector during 1990-91 was relatively low because of the adverse impact of certain factors like import restrictions, credit squeeze and hike in interest rates. The combined adverse effects of these factors are likely to aggravate further during the current year. Production in the Small Scale Sector is expected to go up only by about 3 per cent this year as against 8.5 per cent in 1990-91. The growth in employment is also likely to be only marginal.”

C. Organisational Structure

7. The Small Industries Development Organisation (SIDO) headed by the Development Commissioner (SSI) under the Ministry of Industry was set up in 1954 to exclusively develop and promote the small scale sector. This is an apex body and the nodal agency for formulating, coordinating and monitoring the policies and programmes of the sector. The Development Commissioner (SSI) also advises and helps the State Governments in formulating and implementing appropriate policies and measures for promoting and strengthening Small Scale Industries. To integrate and better coordinate the problems and issues relating to the decentralised sector including the small scale sector, a separate department known as the Department of Small Scale Industries, Agro & Rural Industries was created in 1990 in the Ministry of Industry. The SIDO alongwith other organisations concerned with decentralised industry fall under the umbrella of this new department. According to the information furnished to the Committee the Department of Small Scale Industries and Agro & Rural industries maintains close liaison with the other Departments like Department of Industrial Development, DGTD, Ministry of Finance, Planning Commission, etc. and very often inter-ministerial meetings are held to sort out the problems connected with the Small Scale Sector.

8. The Committee have also been informed that every year the office of the Development Commissioner (SSI) received a number of representations from Industry Association and individual small scale units for modification of excise and customs duties, seeking concessions based on justification provided by them. These representations are analysed by the concerned technical officers dealing with the items and the economic Division in the Office of DC (SSI) and wherever found justified, appropriate recommendations are made to the Ministry of Finance. During the year 1989-90 the Development Commissioner (SSI) had sent 30 proposals to the Department of Revenue for their consideration in the Budget for 1990-91 and out of these proposals, 4 proposals were accepted either fully or partially by that Department.

D. Definition of Small Scale Industrial Undertakings

9. Small Scale Industrial Undertakings is defined with reference to the scale of investment in plant and machinery of an undertaking under the provisions of the Income Tax Act, 1961, the Industries (Development and Regulation) Act 1951 and the Banking Regulation Act, 1949.

10. According to Section 80 HHA of the Income Tax Act, 1961, "an industrial undertaking shall be deemed to be a small-scale industrial undertaking, if the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed, as on the last day of the previous year, for the purposes of the business of the undertakings does not exceed:—

- (1) In a case where the previous year ends before the 1st day of the August, 1980, ten lakhs rupees;
- (2) in a case where the previous year ends after the 31st day of July, 1980, but before the 18th day of March, 1985, twenty lakh rupees; and
- (3) in a case where the previous year ends after the 17th day of March, 1985, thirty-five lakh rupees."

11. On 2 April, 1991, the Ministry of Industry issued a Notification No. S.O. 232(E) under section 11 (B) of the Industries (Development and regulation) Act, 1951 prescribing criteria for determining the nature of an industrial undertaking as a small scale undertaking as follows:

I. "requirements to be complied with by an industrial undertaking for being regarded as small scale industrial undertaking:—

- (a) An industrial undertaking in which the investment in fixed assets in plant and machinery whether held on ownership terms or on lease or by hire purchase does not exceed rupees sixty lakhs.
- (b) In a case of an Industrial Undertaking referred to in (a) above the limit of investment in fixed assets in plant and machinery shall be rupees seventy five lakhs provided the unit undertakes to export at least 30 per cent of the annual production by the end of the 3rd year from the date of its commencing production.

II. Requirements to be complied with by an industrial undertaking for being regarded as ancillary undertaking:—

An industrial undertaking which is engaged or is proposed to be engaged in the manufacture of production of parts, components, sub-assemblies, tooling or intermediates, or the rendering of services, and the undertaking supplies or renders or proposes to supply or render not more than 50 per cent of its production or services, as the case may be to one or more other industrial undertakings and whose investment in fixed assets in plant and machinery whether held on ownership terms or on lease or on hire purchase does not exceed rupees seventy five lakhs.

‘Note—No small scale or ancillary industrial undertaking referred to above shall be subsidiary of or owned or controlled by any other industrial undertaking.’

12. As a consequence of issue of the aforementioned Notification, the term ‘Small Scale Industrial Undertaking’ was defined in clause (F) of subsection (12) of a new section 80-IA inserted in the Income tax Act, 1961 w.e.f. 1.4.1991 as follows:

“Small-scale industrial undertaking” means an industrial undertaking where the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed, as on the last day of the previous year, for the purposes of business of the undertaking does not exceed sixty lakh rupees and for this purpose the value of any machinery or plant shall be,—

- (i) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee; and
- (ii) in the case of any machinery or plant hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant.”

13. It will be seen from the above definition that Deptt. did not fully adopt the definition given in the Notification No. S.O. 232(E). When the Committee drew the attention of the Finance Secretary to this fact during evidence on 7.1.1992, he while agreeing with the view point of the Committee stated:

“We do feel the need for a uniform definition. Hence, again we feel that since we have a separate Department for Small Scale Industry in Government of India, their definition is what we should adopt. This is an official view among ourselves and this is what will be placed before our Minister also.”

14. Thus acknowledging the need for bringing about uniformity in the definition given under the two statutes, the Department of Revenue moved into the matter and incorporated an amending provision w.e.f. 1.4.1993 to the existing Section 801A(12) (f) of the Income Tax Act, 1961 in the Finance Bill, 1992 which reads as follows:

“Small Scale Industrial Undertaking means an industrial undertaking which is, as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B of the Industrial (Development and Regulation) Act, 1951.”

15. With this modification, there still remains one more definition of SSIU under the Banking Regulation Act, 1949 which is at variance with that given in the Notification No. S.O. 232(E) dated 2.4.1991. The definition as given under Section 5 (na) of the Banking Regulation Act, 1949 reads as follows:—

“(na) ‘Small-scale industrial concern’ means an industrial concern in which the investment in plant and machinery is not in excess of seven and a half lakhs of rupees or such higher amount not exceeding twenty lakhs of rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to the trends in industrial development and other relevant factors.”

16. Clause (na) was inserted in Section 5 of the Banking Regulation Act (BR Act), 1949 w.e.f. 1st February 1969. According to the Ministry of Finance this had been done in the context of extending ‘Social Control’ over Banks.

17. In reply to a question why the Banking Regulation Act, 1949 was not amended to bring the definition of ‘Small Scale Industrial Concern’ in line with that given in the Notification No. S.O.232(E) the Ministry of Finance (Deptt. of Economic Affairs) have stated that the Department of Banking Operations and Development (DBOD) of Reserve Bank of India has recently examined the question of amending the B.R. Act in line with the changes made by the Government in the definition of small scale industries and necessary steps would be initiated to amend section 5 (na) of the Act, suitably. The Ministry of Finance (Deptt. of Economic Affairs) have further stated that although the B.R. Act was not amended as and when the changes in the investment in plant and machinery were notified by the Government of India, the Banks have been directed by the Reserve Bank of India through circulars to adopt the revised norms for the purpose of classification under SSI in the priority sector. However, the RBI has not issued any circular for enhancing the limit as notified in the Gazette Notification No. S.O.232(E) dated 2.4.1991 because the decision in the matter had been kept in abeyance in view of the fact that the Narasimhan Committee set up by Government was making a review of the structure of financial system. In the meantime, according to the Ministry the Banks had been advised as a matter of clarification that till further instruction, SSI classification under priority Sector should be given only in respect of those units whose investments in plant and machinery does not exceed Rs. 305 lakhs (Rs. 45 lakhs in the case of ancillary units). RBI had also advised the Banks on 26 February, 1992 that there was no objection to the Banks financing units with investment in plant and machinery exceeding the aforementioned limit and such lendings would however be outside the purview of priority Sector.

18. The Ministry of Finance (Deptt. of Economic Affairs) have further informed that the Narasimham Committee in its Report has recommended for exclusion of Small Scale Industry, except the tiny sector for the priority Sector. The recommendation of the Committee are stated to be under consideration of the Government.

19. During evidence the Secretary, Deptt. of Economic Affairs while explaining why the definition of the term 'Small Scale Concern' was not amended, stated:

"I may mention to you frankly that when the Industrial Policy changed the definition of a small scale unit to Rs. 60 lakhs last year, in the banking system, we did not alter our definitions in terms of eligibility and so on for purposes of priority sector. From the industrial policy side, there was a good case for extending the limit to Rs. 60 lakhs because certain benefits relating to excise etc. would become available even to those units which have somewhat larger investment size. On the banking side, what we call small sector in the priority sector is still defined upto Rs. 30 lakhs level only. The main reason is that we want to avoid a situation in which larger units preempt credit from the smaller units because a unit having bigger investment is likely to be viewed as more credit worthy and thus it will have greater access to banks than a unit which has smaller investment. Had we changed the definition of priority sector from Rs. 30 lakhs to Rs. 60 lakhs, there would have been a serious problem whereby larger units stand to benefit more. That is why we have not changed the definition in the banking system in accordance with the change in the Industrial Policy."

20. So far as the Deptt. of Central Excise is concerned the expression 'Small Scale Industry' has been defined neither in the Central Excises and Salt Act, 1944 nor in the Central Excise Rules, 1944. However, for the purposes of availing the excise duty exemption/concessions provided for smaller units under Notification No. 175/86-Central Excises dated 1st March, 1986 as amended, two conditions have to be fulfilled namely;

- (i) The aggregate value of clearances for home consumption of all excisable goods in the preceding financial year by a manufacturer from one or more factories or from any factory by one or more manufacturers should not have exceeded rupees two hundred lakhs.
- (ii) The factory is an undertaking registered with the Director of Industries in any State or the Development Commissioner (Small Scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulations) Act, 1951."

21. In reply to a question as to why the limit of investment on Plant and Machinery in SSI had not been mentioned in the above Notification itself, the Central Board of Excise and Customs has informed:

"There had been central excise duty exemption notifications in the past based on the levels of capital investment on plant and machinery. While operating these notifications for considering the claims of exemption, several disputes were encountered by the assessing

authorities regarding the manner of computation of the capital investment costs. As the grant of small scale registration to units by the Director of Industries is also based on their scrutiny of capital investment on plant and machinery, it was considered that the fact of a unit holding a registration could be adequate for the purposes of eligibility for concessions, besides the criteria of annual turnover. Further, the Technical Study Group in its report in 1985 had also recommended that once a unit is registered as a small scale unit by the Director of Industries of the State Government, it should be entitled to derive the benefit of excise duty concessions without any further criterion of eligibility applied to it. Keeping in view the above, the criteria of investment in plant and machinery has not been included in the notification."

E Registration of Small Scale Units

22. The estimated number of small scale units and the number of Registered Units (Cumulative figures) during the last three years are given below:

Year	No. of registered units (In lakhs)	No. of unregistered units (in lakhs) (rough estimates)	No. of SSI Units (in lakhs) (estimated)
1988-89	11.70	5.42	17.12
1989-90	12.67	5.56	18.23
1990-91	13.78	5.60	19.38

23. According to the Department of Small Scale, Agro and Rural Industries, registration of Small Scale Units is not compulsory and is optional. Registration by respective State/Union Territory District Industries Centre is done in two State Viz: (i) Provisional Registrations and (ii) Permanent Registration.

24. A provisional certificate of Registration is issued to enable the entrepreneur to take steps to bring the unit into existence. This is generally issued within a week of submission of application therefor. After the requisite steps are taken e.g. completion of factory building, installation of machinery and power connection etc., a final/permanent certificate is issued.

25. A provisional certificate become invalid after 2 years unless further extension is granted. In the case of permanent registration, the certificate can be cancelled by the Director of Industries. Instructions have been issued by the Department of Small Scale, Agro and Rural Industries that as and when small scale unit graduates into medium unit it is liable for deregistration. Once a unit is deregistered it loses the benefits and facilities available to it earlier.

26. Asked why the Small Scale Units prefer to remain unregistered and whether any action was contemplated to encourage registration among the small units, the Department of Small Scale Agro and Rural Industries have informed:

“The scheme of registration is purely optional and it is, therefore, not binding on any unit to obtain permanent registration. If a unit perceives that it is not in need of facilities, it normally remains unregistered.”

27. Registration of Units is a condition precedent to availment of central excise concessions while it is not so for availing tax concessions under the Income tax Act, 1961. Audit para 2.03 of Audit Report (No.5 of 1991) makes a mention of the desirability of a statutory requirement of registration of unit for the purposes of income tax.

28. The Finance Secretary while commenting on the audit observations regarding registration of Small Scale Units, stated:

“...In the Industrial Policy Resolution anybody is free to go and get registered. We also say that these concessions should be available only for registered units. Such a decision will have to be taken first because today registration is not compulsory. But we can stipulate that those small scale industries which want concessions, they should get registered...”

29. It is noticed from the information furnished by the Deptt. of Revenue that under excise duty exemption notification, a unit had to produce a registration certificate issued either by the Director of Industries in any State or the Development Commissioner (SSI) and no independent verification was made by the Department as to the eligibility of the unit to the excise duty exemptions.

30. During evidence the Secretary, Deptt. of Small Scale Industries and Agro and Rural Industries on being asked whether the Department deregister the unit after it grew into bigger one, stated:

“I cannot say that everybody is being checked out as far as the system is concerned, it is there. The system is that District Industry Centre have inspectors who periodically check these units and when they find that the unit has crossed the ceiling prescribed for the small Scale sector then they take note of it. Suppose, they want more raw material sponsorship has to come from DIC. Similarly if they want to have extra power connection it has to be sponsored by DIC. So, the DIC is in touch with all the units.”

31. Reacting to an observation of the Committee that with the support of the Department, the Small Units grew into big ones, the witness stated “They do grow. To avail of different benefits, some units try to put another unit in some other name.”

32. In a circular issued by the Small Scale Industries Board on 15 March 1989, the following instructions were given regarding clubbing of investment:

“If the fixed investment in plant and machinery of one or more units (clubbed together) set up by common proprietor/partner(s) Director(s) within the country for the manufacture of similar/different product(s) exceeds the fixed investment ceiling prescribed in the definition of small scale/ancillary industrial undertaking, then all such units would be liable for deregistration.”

33. Asked about objection of the Ministry to the large units running small units, the Secretary, Deptt. of Small Scale Industries and Agro & Rural Industries explained:

“It is not our policy to support a large entrepreneur who is operating in the names of a small entrepreneur. That is the basic principal which we follow and that is why, we say that if an industry is subsidiary or owned or controlled by another industrial undertaking, as we are now interpreting it, it will not be considered as a small scale unit, although it is labour intensive. We do not go into the question of ownership.”

34. On a further enquiry whether the owner of a large scale unit who set up small scale unit, would get all benefits, the witness explained:

“We have recently taken a decision to permit 24 percent equity participation by small scale federations... Now we can incorporate a clause to the effect that if a person who has set up a big undertaking, set up a small unit also, then the assets of the two undertakings will be clubbed together for purposes of finding out whether concessions can be given or not.”

35. The decision of the Government to allow equity participation by other industrial undertaking in small scale sector is contained in a circular No. 4(1)/91-SSI-Bd. dated 20.11.1991 issued by the Small Scale Industries Board in the Deptt. of Small Scale Industries and Agro and Rural Industries, as follows:

“Government in their policy measures for promoting and strengthening small, tiny and village enterprises laid on the Table of both Houses of Parliament on 6.8.1991, have decided to allow equity participation by other industrial undertakings in small scale sector, not exceeding 24% of total share holdings of the SSI unit. The relevant para in the policy (para 3.2) reads as follows:—

‘To provide access to the capital market and to encourage modernisation and technological upgradation, it has been decided to allow equity participation by other industrial undertakings in the SSI, not exceeding 24 per cent of the total share holding. This would also provide a powerful boost to ancillarisation & Sub-contracting, leading to expansion of employment opportunities.’

Since the existing guidelines on clubbing do not conform with the new policy of Government which allows equity participation by other industrial undertakings in the SBI, it has been decided to keep operation of instructions on clubbing issued *vide* letter dated 15.3.89 in abeyance till further orders.”

36. According to Secretary, Department of Small Scale Industries and Rural and Agro Industries, this Department was ‘trying to formulate a new circular in consultation with the Ministry of Law so that it would not contradict the position on ground today’. He further clarified:

“This is in respect of 24 per cent and that will apply only to the Small Scale Ventures in the Corporate sector and 96 per cent of the Small Scale units are only in the non-corporate sector. The difficulty is in relation to that 4 per cent. When I am talking of shareholding, I am talking in terms of the Company Act.”

37. On 13 July, 1992, a draft Notification* seeking amendments to the earlier Notification No.S.O.232(E) dated 2 April, 1991 and explaining certain expressions used in that Notification was laid on the Table of the House. The draft Notification gives the following meaning to the expression ‘controlled by any other industrial undertaking’ used in the Note appended to earlier Notification:

- “(i) Where two or more industrial undertakings are set up by the same person as a proprietor, each of such industrial undertakings shall be considered to be controlled by the other industrial undertaking or undertakings;
- (ii) Where two or more industrial undertakings are set up as partnership firms under the Indian Partnership Act, 1931 (1 of 1932) and one or more partners are common partner or partners in such firms, each such undertaking shall be considered to be controlled by the other undertaking or undertakings;
- (iii) Where industrial undertaking are set up by companies under the Companies Act, 1956 (1 of 1956), an industrial undertaking shall be considered to be controlled by other industrial undertaking if:—
 - (i) the equity holding by other industrial undertaking in it exceeds 24% of its total equity; or
 - (ii) the management control of an undertaking is passed on to the other industrial undertaking by way of the Managing Director of the first mentioned undertaking being also the Managing Director or Director in the other industrial undertaking or the majority of Directors on the Board of the first mentioned undertaking being the equity holders in the other industrial undertaking in terms of the provisions of (a) and (b) of sub-clause (iv);

* Appendix III.

- (iv) The extent of equity participation by other industrial undertaking or undertakings in the undertaking as a per sub-clause (iii) above shall be worked out as follows:—
- (a) the equity participation by other industrial undertaking shall include both foreign and domestic equity;
 - (b) equity participation by other industrial undertaking shall mean total equity held in an industrial undertaking by other industrial undertaking or undertakings, whether small scale or otherwise, put together as well as the equity held by persons who are Directors in any other industrial undertaking or undertakings;
 - (c) equity held by a person, having special technical qualification and experience, appointed as a Director in a small scale industrial undertaking, to the extent of qualification shares, if so provided in the Articles of Association, shall not be counted in computing the equity held by other industrial undertaking or undertakings even if the person concerned is a Director in other industrial undertaking or undertakings;
 - (v) Where an industrial undertaking is a subsidiary of or is owned or controlled by, any other industrial undertaking or undertakings in terms of sub-clause (i), sub-clause (ii) or sub-clause (iii), and if the total investment in fixed assets in plant and machinery of the first mentioned industrial undertaking and the other industrial undertaking or undertakings clubbed together exceeds the limit of investment specified in Paragraphs in I and II of this Table,* as the case may be, none of these industrial undertakings shall be considered to be a small scale or ancillary industrial undertaking."

F. Concessions/Incentives Available to Small Scale Units

38. With the object of promoting growth and development of Small Scale Sector and to provide it a measure of protection, a number of facilities, concessions and incentives are offered to small units by the Small Industries Development Organisation (SIDO) and the Departments of Revenue and Economic Affairs (Banking Division) in the Ministry of Finance apart from those being extended by the State Governments. These concessions/incentives extended by the Central Government are enumerated in the succeeding paragraphs.

(a) Facilities offered by SIDO

39. The Small Industries Development Organisation assists the Small Scale Sector by offering the Small industrial units:

- (i) Technology support
- (ii) Extension services

* See Notification No. S.O. 232(E) dated 2.4.91.

- (iii) Infrastructural facilities
- (iv) Central Investment Subsidy (since discontinued from 1st October, 1988)
- (v) EDP Courses and training programmes
- (vi) Skill development courses and training programmes
- (vii) Testing facilities
- (viii) Common facility services
- (ix) Reservation of items for exclusive manufacture in the small scale sector
- (x) reservation of items for purchase from small scale sector.

According to the DSSA&RI, these facilities offered are open to all SSI units and are availed of by them as per their needs and that this has resulted in continuous annual growth of about 10-12 per cent in the small scale sector.

(b) *Excise Duty Exemptions*

40. Exemptions from levy of the excise duty are being given by the Government on goods manufactured or produced in factories, which belong to what is commonly referred to as the Small Scale Industry (SSI) sector, to enable them to become economically viable and to help competitive pricing of their products *vis-a-vis* large scale manufacturers.

41. A number of exemption notifications were issued from 1972 covering various commodities and stipulating conditions governing the grant of exemption which were operative till a comprehensive notification No. 175/86-CE dated 1 March, 1986 was issued. This notification has been amended from time to time. The conditions stipulated for concessions under this notification indicated a set of criteria to identify the targetted units. The main features of the criteria are:—

- (i) The factory must be engaged in the manufacture of excisable goods of the description specified in the Annexure to the notification dt. 1 March, 1986, which are generally referred to as "specified goods".
- (ii) The factory, where such specified goods are manufactured shall be an undertaking registered with the Director of industries in any State, or the Development Commissioner (SSI) as a Small Scale Industry under the provisions of the Industries (Development & Regulation) Act, 1951.
- (iii) Full exemption was admissible in the case of clearances of specified goods upto an aggregate value not exceeding Rs. 30 lakhs (Rs. 15 lakhs under one chapter heading). Thereafter duty was payable at concessional rate upto aggregate value not exceeding Rs. 75 lakhs.
- (iv) In the case of manufacturers availing MODVAT credit on inputs the duty was payable at concessional rate from the very beginning.

- (v) The exemptions under this scheme would cease to apply if the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories or from any factory by one or more manufacturers had exceeded rupees one hundred and fifty lakhs (raised to rupees two hundred lakhs from 27 April, 1989) in the preceding financial year.
- (vi) The exemption is not applicable to the specified goods where the manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption.

42. Besides, there are a few commodity specific small scale exemption schemes under other Notifications as detailed below:

- (i) *SSI Scheme for Cosmetics (Vide Notification No. 140/83 dated 5.8, 1983)*

Cosmetics and toilet preparations covered under Chapter 33 of the Schedule to the Central Excise Tariff Act are eligible for full exemption from excise duty upto a value of clearances of Rs. 5 lakhs. Subsequent clearances upto Rs. 15 lakhs are eligible for concessional rate of duty of 50% of the normal duty (which is, at present, 105% advalorem).

Units intending to avail of the exemption under the scheme are eligible only if:

- (i) the aggregate value of clearances of all excisable goods during the preceding financial year did not exceed Rs. 20 lakhs; and
- (ii) the aggregate value of clearances of cosmetics and toilet preparations did not exceed Rs. 15 lakhs.

- (ii) *SSI scheme for tyres, tubes and flaps (vide Notification No. 231/85-CE dated 11.11.1985)*

Under this scheme, tyres, tubes and flaps covered under Chapter 40 of the Central Excise Tariff Act are subjected to concessional rate of duty of 50% of the normal duty provided that

- (i) the aggregate value of the first clearances of these goods for home consumption does not exceed Rs. 50 lakhs in any financial year; and
- (ii) the aggregate value of clearances of tyres, tubes and flaps by a unit during the preceding financial year should not have exceeded Rs. 2 crores.

- (iii) *SSI scheme for Refrigerating and Air conditioning Appliances and Machinery. (vide Notification No. 75/87-CE dated 1.3.1987)*

Under the scheme first clearances of refrigerating, and air-conditioning appliances and machinery and parts thereof falling

under Chapter Nos. 84, 85 or 90 of the schedule to the Central Excise Tariff are fully exempted from excise duty upto an aggregate value of clearances upto Rs. 5 lakhs units a year subsequent clearances upto 15 lakhs are chargeable to a concessional rate of duty of 60%. The aforesaid concession under the scheme is available to a unit whose aggregate value of clearances of all excisable goods did not exceed Rs. 40 lakhs in the preceding financial year.

(iv) *Scheme for matches manufactured in cottage sector*
(Notification No. 22/82-CE dated 23.2.1982)

Matches manufactured without the aid of power and falling under sub-heading No. 36.05 of the Schedule to the Central Excise Tariff are chargeable to a concessional rate of duty of Rs. 0.75 paise per 100 boxes of 50 matches each. The exemption under this notification is available only to those units whose value of clearances of matches did not exceed 150 million matches in the preceding financial year.

(v) *Scheme for Bidis*
(Notification No. 33/82-CE dated 23.2.1982)

Hand made unbranded bidis falling under sub-heading No. 2404.39 of the Central Excise Tariff have been fully exempted from central excise duty and additional excise duty, if manufactured by a manufacturer upto a quantity not exceeding 20 lakhs, cleared on or after the 1st day of April of any financial year. Paper rolled bidis falling under the same sub-heading are excluded from the purview of this scheme.

(vi) *Scheme for Plastic coated/Laminated Fabrics*
(Notification No. 82/88-CE dated 1.3.1988)

Under this scheme, certain specific rates of excise duty at concessional rates have been prescribed for plastic coated/laminated fabrics. Three different rates have been specified on such fabrics depending upon the type of base fabric used. These duties are levied in addition to the duty leviable on the base fabric, if not already paid. The concessional rates are broadly equal to 2/3rds of the duty payable by the organised sector. The exemption is subject to the following conditions, namely:—

- (i) the aggregate value of clearances of such fabrics for home consumption by a manufacturer from one or more factories or from any factory by one or more manufacturer is not more than rupees one hundred and fifty lakhs in the preceding financial year; and

- (ii) the aggregate quantity of such fabrics cleared for home consumption in any financial year is not more than three lakh square metres.

(b) Fiscal concessions under the Income tax Act, 1961

43. A host of fiscal concessions are available to all kinds of industries under the Income tax Act, 1961. The following fiscal concessions* are available to SSI Units under the Income tax Act, 1961:

- (i) *Under Section 32 A*— Basically, investment allowance @ 25% of the cost of newly installed plant and machinery for the purpose of business of manufacture or production of any article or thing (not being an article or thing specified in the Eleventh Schedule) is allowed as a deduction. The restriction in respect of articles listed in Eleventh Schedule is however, lifted in the case of Small Scale Industrial undertakings. This provision was in operation from 1.4.76 till 31.3.90. The investment allowance in respect of plant and machinery installed after 31.3.1987 is admissible @ 20% only for Assessment years 1989-90 and 1990-91. The allowance is however not admissible for Assessment year 1988-89.
- (ii) *Under Section 80 HHA*— A deduction of 20% of the profit of a small scale industrial undertaking in rural areas is allowed in the computation of the total income for a period of 10 years if the undertaking began to manufacture or produce articles after 30.9.77 but before 1.4.90.

However, this deduction is not available if the benefit of similar deduction is claimed for setting up industrial undertaking in backward areas under section 80 HH of the Income tax Act, which is available to all industrial undertakings.

- (iii) *Under Section 80I*— A deduction of 20% (25% in case of a company, of the profit of a small scale industrial undertaking manufacturing or producing any article or thing (not being an article or thing specified in the Eleventh Schedule), after 31.3.81 is allowed in computation of the total income for period of 8 years. The restriction in respect of articles listed in Eleventh Schedule is however, lifted in the case of small scale industrial undertakings.

In case the SSI unit is owned by a cooperative society the tax holiday is available for a period of 10 years. For undertakings, which started manufacturing or producing after 31.3.90 but before 1.4.91 the rate of deduction has been enhanced to 25% (30% for a company) and the tax holiday period has been increased to 10 years. In case the SSI unit is owned by a cooperative society, the tax holiday is available for a period of 12 years.

* Tax concessions under Sections 32 A, 80HH and 80HHA have been withdrawn w.e.f. 1.4. 1990 by Finance Act, 1990.

(iv) *Under Section 80IA*— A deduction of 25% (30% in case of a company) of the profit of a small scale industrial undertaking, which begins manufacturing or producing any article or thing after 31.3.91 and before 1.4.95 is allowed in computation of the total income for 10 assessment years. In case the SSI unit is owned by a cooperative society the tax holiday is available for a period of 12 years.

44. Asked why the concessions available to the Small Sector under Sections 32A, 80 HH, and 80HHA, of the Income tax Act, 1961 had been withdrawn, the Finance Secretary deposed during evidence:

“We find that in 1990 Budget, two decisions were taken. One decision was to reduce the rates of corporate tax. The second and the most important was in the case of firms and partnerships where the rates have remained untouched for nearly 16 to 17 years. The minimum exemption limit was increased and the maximum rate was also brought down from 24 to 18 per cent. Specifically, a decision was taken that these concessions can be dropped. This has been referred in the Finance Minister’s Budget speech of that particular year.

As I was submitting to the Committee yesterday, it is not as if we have the exact figure of the benefit given earlier or the benefit that will now be given but it was a particular decision that was taken saying that these concessions are being given and these concessions can be withdrawn. It is a conscious decision taken at the time of 1990 Budget.”

45. On a further enquiry whether there was any dialogue with the Ministry of Industry on the question of withdrawal of concessions the Finance Secretary stated:

“Not having been present in these rounds of discussions I could only guess what could have happened. This year as a Finance Secretary I held discussions with practically every industrial group including the small scale industry. One problem is that during these discussions I could not reveal my hand. This would have happened in 1990 discussion with the then Secretary for Industrial Development. They would have taken a decision saying that we are increasing the exemption limit by several thousand rupees and we are reducing the maximum marginal tax rate for these units from 24% to 18%. Other incentives were not specifically for the small scale industries so, all these incentives were removed on the basis of an approach that total corporate tax should be brought down.”

46. In reply to a pointed question whether the question of withdrawal of concessions was taken up with the Ministry of Finance, the Development Commissioner(SSI) stated:

“We had made some kind of shouting. After that, there was an announcement in the Budget in April, 1990 that there will be a separate scheme for the development of backward areas and a

scheme of Central Investment Subsidy would be worked out for that purpose in respect of only the small scale sector. I was not in the picture at that point of time."

When probed further the witness stated that 'the new scheme has not been introduced'.

47. In a subsequent note the Ministry of Finance (Deptt. of Revenue) while explaining the background of the withdrawal of certain tax concessions, stated:

"The withdrawal of the tax concessions were made because it was felt that providing tax incentives was not the right approach for removal of regional imbalances and that these can be done better through cash subsidy. In fact, the withdrawal was coupled with an announcement made by the Finance Minister in the Budget Speech that the Central Investment Subsidy was being reintroduced for small scale units in rural areas and backward regions."

48. Asked whether any Study was made before finalising the amendments to the Income tax Act, 1961, and whether the Deptt. of Small Scale Agro & Rural Industries was also involved in such a study, the Ministry have informed as follows:

"The tax concessions were withdrawn by Finance Act, 1990 with simultaneous reduction in rates of tax in the case of domestic companies registered firms after a comprehensive review of tax incentives and concessions available to taxpayers. Studies made by National Institute of Public Finance & Policy on the impact of tax incentives for development of backward areas were taken into account while finalising the amendments. It may be pointed out in this regard that the incentives under sections 80HH and 80HHA were both related to the problem of regional imbalances in the economy. Section 80HH sought to provide incentive for industries set up in backward areas and section 80HHA sought to provide incentive for industries set up in rural areas which were not in backward areas. Since small scale industries were best suited for rural areas the incentive for rural areas were restricted to Small Scale Industries.

The National Institute of Public Finance & Policy is an autonomous body. Although there is no indication in the study that the Deptt. of Small Scale Agro and Rural Industries was consulted, the study of the Institute took into account various reports of the Ministry of Industrial Development regarding fiscal incentives to industries."

(C) Credit facilities to the small scale sector

49. The Committee have been informed by the Banking Division in the Ministry of Finance that ever since the concept of 'priority sector' lending was introduced in the year 1969, the small scale industrial sector is included in the above category which is enjoying certain advantages over

the non-priority sector advances. In the first instance, they get preference over others in the matter of credit allocation. Banks are at present required to allocate 40% of the total advances to priority sector. Although no sub-target has been prescribed for small scale industrial sector within the priority sector as has been done for agriculture, the aggregate outstandings of advances to SSI sector formed 15.9% of the total advances at the end of March, 1991. The position of advances granted by all scheduled commercial Banks to Small Scale Sector is indicated in Appendix IV. Besides, Reserve Bank of India has issued guidelines to Banks for ensuring prompt and adequate flow of credit to SSI units.

50. The Small Industries Development Bank of India (SIDBI) offers the following incentives to small scale sector:

(i) *Rate of interest:*

(a) The rates of interest on term loans are now linked to quantum of loan. The rates (exclusive of interest tax) chargeable by primary lending institution on term loans to SSI units under the Refinance Scheme of SIDBI are given below:

<i>Size of Loan</i>	<i>Rate to Interest %</i>
Upto and inclusive of Rs. 7,500/-	11.5
Over Rs. 7,500/- and upto Rs. 15,000/-	13.0
Over Rs. 15,000/- and upto Rs. 25,000/-	13.5
Over Rs. 25,000/- and upto Rs. 50,000/-	14.0
Over Rs. 50,000/- and upto Rs. 2 lakhs	15.0
Over Rs. 2 lakhs	18.0

(b) As against the above rates, the rate of interest for medium scale sector under IDBI Refinancing Scheme is charged within a band of 17.5% and 20% p.a. (inclusive of interest tax).

(c) All India Financial Institutions are charging interest within a band of 18-20% (inclusive of interest tax) for direct assistance to large scale sector. The rate for a particular unit is decided keeping in view the perception of risk involved.

(d) With regard to interest on working capital exceeding Rs. 2 lakhs under SIDBI's Single Window Scheme, SSI units are eligible to avail of working capital assistance at a *fixed rate* of interest at 19% exclusive of interest tax whereas outside the scheme, banks charge a *minimum interest of 19%* for similar facilities.

(ii) *Debt Equity Ratio:*

In the case of small industrial units, a debt equity ratio upto 3:1 is permitted as against 2:1 normally required for units in medium and large scale sectors.

(iii) *Promoters' Contribution:*

(a) Comparative position of minimum promoters' contribution norm is as under :

	<i>Units located in:— SSI Sector</i>	<i>(Percentage) Medium Scale Sector</i>
'A' category district	12.5	17.5
'B' category district	17.5	17.5
'C' category district	20.0	20.0
Others	22.5	22.5

All India Financial institutions are normally stipulating minimum contribution of 22.5% for large scale sector irrespective of the location of the project.

(b) No minimum contribution from promoters is insisted upon under SIDBI's Composite Loan Scheme, Scheme of assistance to SC/ST and physically handicapped entrepreneurs and quality control facilities. Besides, a minimum of 10% only is insisted upon in the case of units assisted under National Equity Fund (NEF), Mahilla Udayam Nidhi (MUN) and Special Scheme of Assistance to Ex-servicemen (SEMFEX) Schemes which are exclusively operated by SIDBI for SSI Sector.

51. In addition to the above, SIDBI operates the schemes of assistance exclusively to units in the small scale sector under which various concessions/incentives are available to the SSI units (See Appendix V).

52. The assistance provided to small scale units in the last 3 years by IDBI/SIDBI is as under :

(Rs. in crores)

<i>Year</i>	<i>Sanctions</i>	<i>Disbursements</i>
1988-89* (July-March)	1468.0	1034.4
1989-90* (April-March)	2086.1	1570.9
1990-91** (April-March)	2823.8	2253.5

* By IDBI.

**By SIDBI.

(d) *Factoring Services :*

53. In order to mitigate the difficulties faced by SSI units on account of delayed payments, SIDBI decided to joint the nodal banks identified by Reserve Bank of India in promoting separate factoring companies.

Accordingly SIDBI has joined State Bank of India and Canara Bank as shareholder in setting up separate companies to provide factoring services in the Western and Southern regions respectively. Both these factoring companies are in operation and SIDBI has taken up 20% of the equity in the companies. SIDBI also expects to join the factoring companies to be promoted by the nodal banks for the Northern and Eastern Regions when established. Apart from joining the factoring companies as a shareholder, SIDBI has offered to provide resource support to them against the factoring assistance provided by them to small scale industries. It is expected that the factoring companies promoted by State Bank of India and Canara Bank would commence availment of such resource support from SIDBI during the financial year 1992-93. SIDBI is represented by its MD on the Boards of Directors of both the factoring companies. The setting up of the factoring companies is expected to facilitate financing and speedy collection of book debts of small scale industries.

54. While the SBI Factors and Commercial Services Ltd. commenced operations in April, 1991, Canbank Factors Ltd. started business in September, 1991. The latter has since opened branch offices at Madras and Hyderabad also. SBI Factors and Commercial Services Ltd. has so far factored debts aggregating Rs. 25 crores, Canbank Factors Ltd. had factored debts amounting to Rs. 20 crores.

G. Sickness in 'Small Scale Sector'

55. The position of the sick small scale units during the last 3 years and the amount locked up in such sick units is as under :

No. of accounts in thousand
(Amount in crores of rupees)

<i>As at the end of</i>	<i>No. of units</i>	<i>Amount outstanding</i>
June 1989	217	1979.85
December 1988	241	2141.00
September 1989	186@	2243.31
March 1990	219@	2426.94
September 1990	225@	2610.87

@ N.B. :Does not include units which are not in existence/not traceable.

56. Detailed guidelines have been issued by Reserve Bank of India for identifying incipient sickness and timely rehabilitation of potentially viable units by extending various concessions and reliefs which include funding of irregular portion by sanctioning working capital terms loans at concessional rates of interest and sanctioning of need-based working capital. The problems arising out of the lack of coordination among the banks, financial institutions and Government agencies in regard to the rehabilitation of the various units are sorted out in the State Level Inter-Institutional Committees functioning in the State under the Chairmanship of the Secretary, Industry Deptt./Development Commissioner of the respective States.

57. A separate Refinance Scheme for Rehabilitation (RSR) is being operated by SIDBI for revival of potentially viable sick units.

58. SIDBI has been organising rehabilitation meets in different States to help primary lending institutions (PLIs) and promoters in drawing up mutually acceptable rehabilitation packages for potentially viable sick SSI units.

59. The sick units being in the red are unable to take advantage of the concessions available under the provisions of Income tax Act, 1961 because the concessions are linked with the profits of the business. The Ministry of Finance (Deptt. of Revenue) were asked whether the deductions could be linked to the capital employed in the undertaking with provision for carry forward of losses etc. for the benefit of sick units. The Ministry, in reply, stated :

“Though it is possible to provide tax concession to small scale industrial undertakings by linking it to capital employed in a manner similar to the grant of Capital Investment Subsidy by State financial institutions which provide finances for setting up small scale industrial undertakings, it may be pointed out that linkage of capital investment subsidy has provided scope for malpractices of over invoicing investment in plant and machinery etc. for claiming higher amounts of subsidy. In case, income-tax concessions is also linked with capital employed it would provide added incentive to such a malpractice. Further, the concept of using capital employed for the purpose of tax concessions is complicated and has invariably given rise to unnecessary litigation.”

60. In this connection, it is relevant to refer to the provisions of Section 80J(1) of the Income tax Act, 1961 which provides for deduction in respect of profits and gains from newly established industrial undertaking or ships or hotel business in certain cases, as follows :

“Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a shop or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains (reduced by the deduction, if any, admissible to the assessee under section 80HH or section 80HHA) of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, computed in the manner specified in sub-section (1A) in respect of the previous year relevant to the assessment year (the amount calculated as aforesaid being hereafter, in this section, referred to as the relevant amount of capital employed during the previous year).”

Committee for Small Scale Industries

6.1 During evidence, the Committee were informed that a high powered committee had been set up by the Reserve Bank of India to go into the Credit needs etc., of the Small Scale Sector. This Committee for small Scale Industries consists of 16 members including the Chairman who is the Deputy Governor of RBI. According to the Ministry, the Committee was likely to submit its Report by the end of June, 1992. The terms of reference of the Committee are as follows:

- i) to examine the adequacy of the institutional credit of working capital to the SSI sector, particularly, with reference to the increase in the cost of raw materials and locking up of the available resources, due to the delay in the realisation of sale proceeds from large companies and Government agencies.
- ii) To examine the adequacy of the institutional credit for term finance to the SSI sector.
- iii) To examine the need for making any modifications, relaxations in the norms of Tandon/Chore Committee in respect of SSI units.
- iv) To examine whether any revision is required in the present RBI guidelines for rehabilitation of sick SSI units.
- v) In the light of the above to suggest:
 - a) Suitable arrangements for ensuring adequate flow of institutional credit for working capital and term finance to SSI sector including refinance arrangements by SIDBI/NABARD etc.
 - b) Modifications/relaxations, if any, required in the norms of Tandon/Chore Committee in respect of SSI units.
 - c) Methods by which the locking up of resources on account of delay in realisation of bills can be minimised.
 - d) Changes, if any, required in the present guidelines for rehabilitation of sick SSI units.
- vi) To make recommendations on any other related matter as the Committee may consider germane to the subject.

H. Evaluation of impact of concessions

62. According to Audit Para 2.03 of the Audit Report (Direct taxes) for 1989-90, the Income tax Department has no mechanism to periodically evaluate the extent of availment of concessions by small Scale Units and the impact of each concession on the growth of the Small Scale Sector as a whole.

63. The Ministry of Finance (Deptt. of Revenue) on being addressed in the matter intimated that since the Small Scale Units were not a separate taxable entity under the Income tax Act, 1961, their cases were not

identifiable as Small Scale industrial undertakings, and therefore no evaluation had been made of the impact of the allowance and revenue foregone in respect of Small Scale units as such. The Ministry had, however, in the past got studies conducted on various other provision of Income tax Act, 1961. The Ministry have a Directorate of Research, Statistics, Publication and Public Relations which does *inter alia* research. Besides, specific studies are assigned to agencies like the National Institute of Public Finance and Policy.

64. As regards the data on the number of Small Scale Industrial Undertakings filling return and financial implications of various concessions, the Ministry expressed their inability to furnish the same as it was not maintained/compiled by them. During evidence, the Finance Secretary informed the Committee as follows:

“We have about 75 lakh of assesseees. So, unless we have mechanism to computerise and put each one into a code, there is no way to separate out the returns. We have the break up for individuals, corporate sector etc. But we do not have today for instance now much is the collection from the cement industry.”

65. Asked how the tax concessions are conceived and formulated, the Ministry have informed that these are conceived and formulated on the basis of suggestions received from the Administrative Ministries, professionals, and other institutions. The representative received from individuals and the Small Scale Industry itself are also considered.

66. During the course of evidence, the Finance Secretary while agreeing to have an evaluation of the tax concessions done by an outside agency stated:

“We have not tried any evaluation so far to find to what extent these concessions have been beneficial. Such an evaluation, infact, is possible with the present statistical base in the case of excise duty where the number of beneficiaries is not large and where the collection of statistics is industry-wise. But in the direct taxes, our system of collection of date and analysis is such that we go by the status of the unit, rather than an industrial classification, with the net result that at a pinch we cannot even report back about what is the total collection of taxes under the direct taxes from a group called the small scale industries, let alone how much is the concession given. This has again, I would say, been the result of the historical background. The indirect taxes data has been computerised. We are in a position to analyse it. In the direct taxes, we have recently reviewed it in the Revenue Department and we are in a position to computerise this data also. In the direct taxes we go by the Permanent Account Number. It is a six-digit code. we will have to go into a further classification, or if I can use the word *kundli*, so that if I computerise it, I would know how much is in the small scale industry

etc. This we are in the process of finalising because we should also do it in a such a way that the people who pay the taxes do not feel irritated. The package is being finalised but even without waiting for it the point is well taken that it is necessary that we must have an evaluation. This can be got done by the Finance Ministry by an outside agency which can be asked to evaluate on a sample study basis. So, we can also ask the Small Scale Industries Deptt. to make the assessment and give it."

67. The Finance Secretary further added:

"The question before the Committee is: Has somebody gone to see what is the impact of concessional lending? I do not think such an analysis had been made. The whole priority sector lending was at a bottom level. We have taken it 40 per cent. To what extent it has helped, what remedial measures are taken. I do not think that study has been made. Now there is a need for overall coordination not only for looking into the concessions of the tax benefits arising out of the lending but the infrastructure being made available by the State and the policy direction. This would appropriately be done by the Department for small scale industry now as we have a separate Department. I think, it is but proper that such a coordinating mechanism is set up, coordinating mechanism not only for coordinating the various activities but if we have to go one step further, to review what exactly has been the result. Has it benefited sufficiently or something more should be done? I think, in the present arrangements, that it is more for the small scale sector Department to coordinate."

68. The Secretary, Department of Small Scale Industries and Agro and Rural Industries also subscribed to the view that detailed study of the impact of various concessions and incentives given to the Small Scale Sector should be made and on the basis of such a study correctives to the existing policies should be applied so that the objectives for which Government was supporting the Small Scale Sector, were achieved, and informed the Committee that "I have already taken up with my Ministry that we should set up a coordinating agency and that we should request all the agencies, which are giving incentives and facilities to the small scale industries, to set up similar monitoring agencies so that the impact of our policy is known and we are able to ensure that the desired results are being achieved."

I. Data base of Small Scale Sector

69. In a note furnished to the Committee, the Deptt. of Small Scale Industries, Agro & Rural Industries have explained the measures taken to improve the data base of Small Scale Sector as follows: .

"The Statistics and Data Bank Divn. of SIDO acts as a nucleus for collection, compilation and dissemination of information on various aspects of SSI development. This task is carried out with

the assistance of SSIs, the State Directorates of Industries and the District Industries Centres. Regular efforts are made to improve the data and make it more reliable to help in planning and formulation of various development programmes. Some of the measures adopted for continuous improvement of data base of Small Scale Sector are briefly as follows:—

a) Sample Survey of SSI Units

The first All India Census of Registered Small Scale Units was conducted in 1973-74. In order to update the data collected during the Census, the DC (SSI), in collaboration with State Directorate of Industries, conducts sample surveys of SSI units based on 20% sampling.

b) Registration of SIDO Units

Information on registration of SSI units statewise on calendar year basis is regularly collected, compiled and disseminated.

c) Index of Industrial Production for SSI

With a view to assess the trend in production, a 2% sample is selected out of the frame available from the Census of SSI units conducted in 73-74. Production data in respect of these selected units are being collected on quarterly basis from February, 1976 onwards. (The sample size is kept small due to financial constraints).

d) Inclusion of Production of Small Scale Sector in General index of industrial Production

DC (SSI) collects monthly production data in respect of 18 important items in Small Scale Sector from a selected sample in areas of concentration of these items. The All India estimates of production of these items are supplied to Central Statistical Organisation for inclusion in the General Index of Industrial Production.

e) Computerisation of data

To meet the requirements of computerisation of data of the Office of the Development Commissioner (Small Scale Industries), NIC has set up a Computer Unit at Nirman Bhavan. Office of DC (SSI) has also proposed a scheme of Management Information System (MIS) with computerisation of District Industries Centres in the VIIIth Five Year Plan in which integration of information system with NIC-NET is envisaged for improving and developing a sound data base.

f) Second All India Census of SSI Units

The need for a sound data base for effective policy initiatives does not require any special emphasis. Towards this end, the Office of DC (SSI) conducted the Second All India Census of SSI Units. The data collected related to the reference year 1987-88. Summary report of the census has already been released."

70. On a question regarding monitoring system in regard to the implementation of the Government policies and pronouncement relating to Small Scale Sector, the Secretary Deptt. of Small Scale Industries and Agro and Rural Industries stated that "a special monitoring agency would be set up to oversee that the genuine a credit needs of the Small Scale Sector are fully met. We are in the process of setting up that." He further added that "it would start working in a purposeful manner only after we have been able to lay down a new policy for supplying credit to the Small Scale sector. That is why the Committee set up by the Reserve Bank is now engaged in. We will try to set up some suitable mechanism, if required, in consultation with our sister ministries and see that it is set up."

J. Errors and omissions noticed in assessments made under Income Tax Act, 1961

71. The Audit Para on Direct taxes has revealed that incentives and concessions as available to the Small Scale Industrial Undertakings under various provisions of Income tax Act, 1961 were allowed without taking into consideration all the relevant factors governing grant of such concessions and the possibility of detection of such errors during assessment was remote in view of the summary assessments procedure in vogue.

72. The conditions attached to the grant of concessions under section 80HHA, 80I and 80TA to small scale industrial undertakings under I.T. Act are:

- (i) It is not formed by the splitting up, or the reconstruction of a business already in existence;
- (ii) It is not formed by the transfer to a new business of machinery or plant previously used for any purpose;
- (iii) It employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without aid of power;
- (iv) The small-scale industrial undertaking has begun to have manufactured or produced the articles or things within the period specified in each of the relevant sections.

73. According to Audit Paragraph, the total number of errors/mistakes noticed in test check came to 101 with tax effect of Rs. 422.54 lakhs (*vide* para 2.03.5). The representative cases of commissions are mentioned in paras 2.03.7 and 2.03.8 of the Report (No. 5 of 1991) of C&AG of India for the year 1989-90.

74. The Deptt. of Revenue while commenting on the audit observations have stated as follows:

“77 Cases out of the ICL cases referred to in para 2.03.5 of the C&A’s Report have been mentioned in the relevant paras 2.03.7 and 2.03.8. Out of these cases, only 18 cases were completed under Section 143(1). Out of the balance, in 38 cases, the mistakes were not accepted. The number of cases in which mistakes were accepted by the Department were seen to be only 21, involving a revenue effect of Rs. 70.10. lakhs. The mistakes have occurred because of non-application or incorrect application of the provisions of law by the officers concerned.”

75. The Department of Revenue have brought to the notice of all Chief Commissioners and Directors General of Income tax the nature of mistakes pointed out by Audit in the Audit Paragraph (through Instruction No. 1877 dated 10 January, 1991 (Appendix-VI) so that such mistakes do not recur while making assessments under the Income tax Act, 1961.

76. In reply to another question, the Ministry of Finance (Deptt. of Revenue) have intimated that Summary Assessment procedure followed prior to 1.4.1989 was introduced mainly with the object of managing the increase in the workload due to the increase in the number of tax payers, with no corresponding increase in the manpower resources of the Department. It was not physically possible to examine each and every case with a view to ensuring that the conditions prescribed for claiming deduction were fulfilled. However, w.e.f. 1.4.1989, the law relating to the procedure of assessments was modified by introduction of Section 143(1) (a) in the Income tax Act. This section provides that all returns have to be processed for making *prima facie* adjustments as provided for in the proviso of the said section. After carrying out these *prima facie* adjustments an intimation is sent to the assessee and if any tax or interest is found due, the assessee is required to pay it; also wherever any refund is due to the assessee it is granted to him.

77. The Ministry have further added that in the Action Plan for 1991-92 it was clarified that all returns above Rs. 5 lakhs would be compulsorily scrutinised. It was also clarified that cases where refunds exceed Rs. 1 crore, whether already issued or not, should invariably be selected for scrutiny.

78. The returns are processed by the Assessing Officers after making *prima facie* adjustments as prescribed u/s 143(1) (a). Apart from the *suo moto* action for rectification on discovery of mistakes, following checks are provided by the Department to prevent the recurrence of mistakes in *prima facie* adjustments.

(1) *Compulsory auditing in large income group cases*

All the cases processed under Section 143(1) (a) with income limit of Rs. 5 lakhs and above are compulsorily audited by Internal Audit Wing of the Department whether selected for scrutiny or not. Cases with income limit of Rs. 25 lakhs and above are personally checked by the Deputy Commissioner (Audit). In metropolitan charges this limit is Rs. 50 lakhs.

(2) *Selective Auditing*

For the remaining cases within the income group of less than Rs. 5 lakhs there is a selective audit due to constraints of manpower available.

(3) Check Sheets have been provided to Assessing Officers for disposal of cases under section 143(1) (a).

(4) *For refreshing and updating the knowledge of Assessing Officers*

Mistakes found by Receipt Audit Parties and Internal Audit parties all over India are compiled in the form of a handbook and circulated for the education of Assessing Officers.

(5) Wherever mistakes are committed by Assessing Officers, their explanations are called and suitably dealt with.

79. In the context of audit findings, the Committee desired to know whether the scope of Internal Audit needed to be enlarged to eliminate the scope of mistakes in assessments. The Ministry of Finance (Deptt. of Revenue) have informed that scope of the 'Internal audit' is co-extensive with that of the 'Receipt audit'. However, presently the Internal audit parties are required to check 100% assessments only in search and seizure cases and in cases having assessed income or loss of Rs. 5 lakhs and above. In the remaining cases they are doing selective audit only as per the following norms:—

Category	Scrutiny cases under Section 143(3)	Non-scrutiny cases processed under Section 143(1) (a)
Non-company assessment with income/loss from Rs. 2 to 5 lakhs and company assessments with income/loss from Rs. 50,000 to Rs. 5 lakhs	50%	50%
Remaining cases	10%	2%

80. The Department have further stated that in para 6.11 of their 173rd Report, the Public Accounts Committee had recommended that arrangement for both internal and statutory audit might be reviewed in consultation with C&AG and both the audits for summary assessment case placed

on a sound footing. In the light of that recommendation, the norms for checking of cases by Internal audit parties were reviewed in consultation with C&AG and after considering the present work-load and available man-power, it was decided that the audit of scrutiny cases having income of Rs. 2 to 5 lakhs in non-company cases and Rs. 50,000 to 5 lakhs in company cases would be increased from 50% to 100% with a consequent reduction of audit in non-scrutiny cases of this category from 50% to 10%. Given the constraints of the limited man-power resources, it is not possible to enlarge further the scope of the internal audit to cover more cases.

K. Availment of concessions intended for small scale industrial units by large units

81. Audit has pointed out three cases where, according to them, concessions were availed of by large business houses by means of setting up front companies for small scale undertakings namely:-

- (1) M/s. Bengal Electric Lamp Works Ltd.
- (2) M/s. Bangalore Grape Wineries(P) Ltd.
- (3) M/s. Bisleri Beverages (P) Ltd.

82. According to the Department of Revenue assessment in the case of M/s. Bangalore Grape wineries (P) Ltd. was made under section 143(i) (a) of Income tax Act, 1961 and the allowance referred to by Audit was not covered by the prescribed adjustments. The facts of the other two cases and the Ministry's comments are briefly as under:—

(1) *M/s. Bengal Electric Lamp Works Ltd.*

In this case, the Revenue Audit observed that while completing the assessment for the assessment year 1983-84 unabsorbed investment allowance pertaining to assessment year 1979-80 was allowed in this year which was wrong in law because the industrial unit was producing an article i.e. domestic electrical appliances like Electrical Bulbs and Tubes which was specifically reserved for Small Scale Industrial Units vide item 12 of the XIth Schedule of the Act, till 1st April, 1982.

The Department of Revenue have not accepted the audit objection on the following grounds:

- (a) The products of the assessee company viz. GLS Lamps of various wattages and quality and Fluorescent Tube Light of different types cannot be said to be items of exclusive domestic use, because these items are also used in places such as Roads, Stations, Airports, Factories, Railway Coaches, Ships, Aeroplanes etc.
- (b) Certain types of Electrical lamps such as sodium vapour lamps and mercury vapour lamps used in Avenue Lighting, industries lighting, and lighting of such public places as Airports, Railway Stations have also no domestic use.

- (c) Section 32A (2A) inserted *vide* Finance Act 1977 w.c.f. 1.4.78 clearly provides that deduction under sub-section 32A(1) shall not be denied in respect of Plant & Machinery installed and used mainly for the purpose of business of construction, manufacture or production of an article or thing not being an article or thing specified in the list in the XIth Schedule by reason that such machinery or plant is also used for the purpose of business of construction, manufacture or production of any article or thing specified in the said list.

Therefore, if any Plant and Machinery produces an item which has even partial utility in non-domestic areas, such plant and machinery should get investment allowance even if, the items produced are listed in the XIth Schedule.

There is a distinction between electrical items of exclusive domestic use such as mixer-cum-grinders, electric heaters, non-industrial fans (ceiling fans and table fans etc.) and Electric lamps such as GLS lamps alongwith electrical fittings. Whereas the items belonging to the former category which are listed in the XIth Schedule have exclusive domestic use, the items of the latter category can at best be said to have both domestic as well as non-domestic use. In this case the stipulation of Section 32A (2A) guides to the effect that investment allowance on plant and machinery manufacturing items of the latter category, should be eligible for investment allowance.

In view of the above, the objection raised by the audit and the observations in the course of the review of assessment on Small Scale Industrial Undertaking are not based on correct interpretation of Law.

The Department of Revenue have also supported their view by a judgement delivered by the Madhya Pradesh High Court in the case of Kalpana Lamp Component Pvt. Ltd. (178 ITR 33D) in which the expression "domestic electrical appliances" occurring in Item No. 12 of the 11th Schedule has been interpreted as under:

"The word "appliance" means, according to the Random House Dictionary, (1) an instrument, apparatus or device for a particular purpose or use; (ii) a piece of equipment, usually operated electrically, especially for use in homes or for a performance of domestic chores, as a refrigerator, washing machine, toaster, etc." 'Flourescent tubes manufactured by the assessee are articles of general use not necessarily confined to domestic use. Moreover, it cannot be held that the said article is used for performing the routine test or a housekeeper or of a person incharge of hotels, restaurants, hostels, offices, educational institutions and hospitals. The assessee who manufactured flourescent tubes was therefore, entitled to investment allowance under Section 32A of the Income-tax Act, 1961."

(2) *M/s Bisleri Beverages (P) Ltd.*

The Audit has objected to the grant of deductions u/s. 32 A 80HHA and 80 I of the Income tax Act, to the company manufacturing soft drinks concentrates and mango and papaya pulp for exports, on the ground that the assessee company was not a small scale industrial undertaking. The company had units at Chittoor, Bangalore and Baroda. The entire share capital of the company was held by a private limited company and in all respects controlled and managed by the later company. The investment in plant and machinery of the private limited company was Rs. 42.77 lakhs on the last day of the previous year ending on 31 December, 1985 relevant to assessment year 1986-87 and also it was engaged in the manufacture of soft drink concentrates, (an article listed in the Eleventh Schedule) and mango papaya pulp for export. Further there was nothing on record to show that either of the units had got itself registered as small scale unit.

The machinery on which investment allowance was allowed was not used for the manufacture of pulp. Also Chittoor was not a "rural area". Not accepting the audit views the Ministry of Finance (Deptt. of Revenue) have explaining as follows:

"As regards the admissibility of deduction under Section 80HHA in respect of Chittoor unit, it has been reported that the deduction, in fact, was allowed under Section 80HH and not under section 80HHA. This unit has been set up in Chittoor which is a backward area. The deduction under Section 80HHA is allowable in respect of rural areas whereas the deduction u/s 80 HH is allowable in respect of backward areas. As regards deduction under section 80I under of the Act, it may be mentioned that deduction under the said section was allowed in respect of three new industrial undertakings which started manufacturing mango pulp during the year at Baroda, Bangalore and Chittoor. It has not been stipulated under section 80 I that the benefit of this section will be extended to small scale units only. As manufacturing mango pulp from raw mangoes is not an item which is listed in the XI schedule, the same is eligible for deduction under section 80I. It is applicable to a small scale industrial undertaking also. As regards the point whether each unit is registered as a small scale industrial undertaking, there is nothing in the Income Tax Act which says that each unit should be registered as a small scale industry. Further as per the record, the machinery purchased was used for manufacture of pulp and accordingly the investment allowance was allowed. Therefore, the audit objection is not accepted on any of these three points."

83. Asked to define the expression "manufacture" and "Production", the Department of revenue informed that the words "manufacture" and "production" have not been defined in the IT Act. However, the term

'manufacture' has been assigned an inclusive meaning for the purposes of sections 10A and 10B of the Income tax Act as under:—

- (a) process, or
- (b) assembling, or
- (c) recording of programme on any disc, tape, perforated media or other information storage device."

84. The Department further stated that the term 'manufacture' has been subject of judicial interpretation and pronouncements. The Supreme Court has in AIR 1963 SC 791 quoted with approval the following passage from Permanent Edition of Words and Phrases, Vol. 26:—

"'manufacture' implies a change, but every change is not manufacture and yet every change is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."

85. The Department of Revenue has contended that extraction of mango pulp from raw mangoes amounts to manufacture or production of an article or a thing. The articles or things manufactured in fruit processing industries such as mango pulp are not specified in the Eleventh Schedule. Item No. 5 of the Eleventh Schedule reads as under:

"Aerated waters in manufacturing of which blended flavouring concentrates in any form are use.'

Explanation: Blended flavouring concentrates' shall include and shall be deemed always to have included, synthetics essences in any form."

86. In the process of extracting mango pulp from raw mangoes, there is a transformation because mango pulp has a distinct and different characteristics from raw mangoes. Mango pulp is saleable in Indian markets and also exported. Therefore, deduction u/s 32A/80I is allowable in respect of profits derived from the industrial undertakings engaged in manufacturing of mango pulp from raw mangoes. According to the Department, there does not appear to be any lacuna in the Act.

L. *Deductions under Sections 80HH and 80-I of the Income tax Act, 1961*

87, Section 80HH(1) and 80-I(1) of the Income tax Act, 1961 reads as follows:

"80-I (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or the business of a hotel to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a

deduction from such profits and gains of an amount equal to twenty per cent thereof.

80-I.(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going Vessels or other powered craft to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty per cent", the words "twentyfive per cent" had been substituted."

88. The Audit Para has reported three cases of the Income tax circle, Bombay where according to audit deductions under Sections 80HH and 80-I of the Income tax Act, 1961 were irregularly allowed.

89. In the first case which relates to M/s. Pentex Eng. (P) Ltd., Bombay a small scale industrial undertaking established in a backward area was assessed in the status of company for the assessment year 1987-88, in July 1989 and the assessing officer while making assessment determined the profit of the industrial undertaking at Rs. 27.89 lakhs. The assessee was entitled to both the deductions, viz. deduction of 20 percent of profit for the establishment of new industrial undertaking in a backward area and 25 percent for the establishment of the new industrial undertaking after 31 March, 1981. Accordingly the assessee was allowed deductions of Rs. 5.58 lakhs and Rs. 6.97 lakhs at 20 percent and 25 percent of the profits respectively. According to audit the assessing officer, while determining the profit of the industrial undertaking, omitted to consider the deduction of Rs. 2.92 lakhs allowed to the assessee in respect of investment deposit account during the year. Further the deduction of Rs. 5.58 lakhs allowed to the undertaking was also not considered by the assessing officer while allowing the deduction of 20 percent of profit relating to the new industrial undertaking established after 31 March, 1981. The excess deduction allowed to the assessee for the new industrial undertaking established after 31 March, 1981 worked out to Rs. 1.98 lakhs involving short levy of tax of Rs. 1.47 lakhs including interest payable by the assessee.

90. The Ministry of Finance (Department of Revenue) have given the following reply to the audit observation:

"The Audit objection regarding omission to consider the deduction allowed to the assessee in respect of investment, Deposit Account while computing the deductions under sections 80 I and 80HH of the Act is acceptable and the assessment is being rectified.

However, Audit's view that the deductions u/s 80 I is to be computed after reducing the deduction allowed u/s 80 HH is not acceptable. Under Section 80A(1) the deductions under Chapter VIA are required to be allowed on the gross total income, which is defined u/s 80B(5) as the total income before making any deduction under this Chapter. Hence, the deduction u/s 80 I is to be computed on the gross total income and not on the net income obtained after allowing the deduction u/s 80HH."

91. In the second case which also relates to M/s. Pentex Engg. (P) Ltd., Bombay, the audit para mentions that the profits of the assessee unit was determined by the assessing officer at Rs. 21.41 lakhs while completing the assessment in January 1990. While arriving at the profit of the assessee, the assessing officer did not consider the depreciation of Rs. 6.06 lakhs as the assessee wanted to avail of the maximum deduction relating to the establishment of new industrial undertaking after 31 March, 1981. The assessee was, this, allowed deduction of Rs. 4.28 lakhs relating to backward area and a further deduction of Rs. 5.35 lakhs at 25 percent of the gross profit without considering the deduction of Rs. 4.28 lakhs for the establishment of the unit after 31 March, 1981. The mistakes resulted in excess deduction of Rs. 1.21 lakhs relating to the backward area and consequent short levy of tax (including interest) of Rs. 88,385. The excess deduction relating to the establishment of new unit after 31 March, 1981 worked out to Rs. 2.28 lakhs involving short levy of tax of Rs. 1.60 lakhs inclusive of interest.

92. The Ministry of Finance (Department of Revenue) have not accepted the audit objection keeping in view the decision of the Bombay High Court in CIT Vs. Someshwar Sihakari Sakhar Karkhane (177 ITR 443) which is stated to be binding on the Assessing Office in Bombay. According to the Ministry the deduction under Section 80HH and 80—I were rightly allowed before depreciation.

93. In the third case which relates to M/s Vikram Plastics, Bombay, while computing the assessments for the assessment years 1984-85 to 1986-87 in March, 1989, the assessee firm was allowed deduction of Rs. 5.11 lakhs, Rs. 2.43 lakhs and Rs. 3.93 lakhs respectively towards deduction in respect of profits and gains from new industrial undertaking established after 31 March, 1981. The assessee was also allowed deduction of an equal amount in respect of profits and gains from newly established industrial undertaking in backward area. Both the deductions were worked out at 20 percent on the gross total income. According to audit the assessee firm was entitled to both the deductions and, therefore, the deduction in respect of profits and gains from new industrial undertaking established after 31 March, 1981 was to be allowed on the total gross income as reduced by the deduction in respect of profits and gains from the newly established industrial undertaking in backward area. Hence, the assessee was entitled to deduction of Rs. 4.24 lakhs, Rs. 1.95 lakhs and Rs. 3.14 lakhs

respectively for the assessment years 1984-85 to 1986-87 in respect of profits and gains from new industrial undertaking established after 31 March, 1981 as against Rs. 5.11 lakhs, Rs. 2.43 lakhs and Rs. 3.93 lakhs allowed. The mistake resulted in excess allowance of deduction aggregating Rs. 2.14 lakhs involving short levy of tax of Rs. 97,952 in the hands of the firm and its partners.

94. According to the Ministry of Finance (Deptt. of Revenue) the objection is not acceptable because under section 80A(1) the deductions under Chapter VIA are required to be allowed on the gross total income, which is defined u/s 80B(5) as the total income before making any deduction under this Chapter. Hence, the deduction u/s 80I is to be computed on the gross total income and not on the net income obtained after allowing the deduction under Section 80HH.

M. Surveys to widen tax base

95. Audit Para has pointed out that a large number of Small Scale Industrial Undertakings though registered with the District Industries Centre were not on the registers of Income Tax Department. The registration is also not necessary for the Small Scale Unit to avail tax concessions under the Income tax Act, 1961. As such, there is every possibility of the profit making Small Scale Units escaping tax net. In support of their above views, the Audit have quoted in Audit Para 2.03.6 a number of cases they detected in Gujarat, Uttar Pradesh, Himachal Pradesh, Punjab and Bihar Circles.

96. In the case of Punjab Circle, the audit paragraph mentions that out of 1620 units, 1342 units were not submitting income tax returns. On further verification the Audit have intimated the position as follows:

“Verification has shown that 240 units out of 1342 are actually borne on income-tax records. 999 cases are petty units which are not ever traceable and there is no justification or need to have them on income-tax records. However, 103 units (out of 1342) have now been found to be potential income-tax assesseees and notices have since been issued to them.”

97. Explaining the procedure being followed to identify the potential tax payers, the Ministry have stated that information of new factories registered with the Inspector of Factories and the new industries registered with the Directorate of Industries is collected by the Central Information Branches functioning under the Investigation Wing. The information so collected is then verified with a view to identify the new potential tax payers in order to bring them to the registers of the Income-tax Department.

98. The Committee have also been informed that surveys under Section 133B of the Income-tax Act were also conducted in various industrial areas at Delhi, Madras, Vishakapatnam, Mysore, Belgaum and Bangalore and

the results compiled so far reveal that 736 industrial units have been identified as new cases liable to tax.

N. Availment of SSI exemption and MODVAT Credit

99. The Scheme of the exemption under nofn. No. 175/86-CE provides for an integrated method of computation of value of clearance. As per the notification, if a manufacturer avails of MODVAT credit in respect of specified goods covered under the notification, then the concessional rate of duty would apply. Keeping in view the legal position as above and the fact that there is no one to one-co-relation between the inputs and the final products under the MODVAT Scheme, it would not be possible to allow a manufacturer simultaneously to avail of MODVAT for some of the products and full exemption for others under the small scale exemption scheme.

100. It has been further clarified by the Department of Revenue that so long as a manufacturer avails of MODVAT for one or more products, he cannot avail of full exemption under the small scale exemption scheme for any other products merely because other products were not covered under MODVAT. Thus, a manufacturer can avail himself either of the two facilities.

101. Audit para 1.038 of Audit Report (Indirect Taxes) for 1989-90 cites cases where the assessee availed MODVAT and SSI exemptions simultaneously. In 12 collectorates, such irregularities noticed by the audit during test check involved duty of Rs. 46 lakhs.

O. Misuse of Higher National Credit

102. The small scale sector has been provided with excise duty exemption scheme so as to compete with the organised sector which has the advantage of economies of scale. As the goods manufactured in the SSI sector are at a price disadvantage vis-a-vis the organised sector, excise duty exemption to the small scale units makes them competitive in the market. In the year 1986, MODVAT scheme was introduced. Under this scheme, duty actually paid on the inputs is available as credit for payment of excise duty on the final product. Consequently, the actual amount of duty paid on the goods, (whether concessional or otherwise), ceased to affect the price of the duty paid goods purchased by the customer for manufacture of final products. In the circumstances, despite the duty concession, no incentive was left for the customers to purchase goods manufactured by small scale units. In order to provide an edge to the small scale units in the marketing of their goods and to maintain their competitiveness in the face of competition from organised sector units, a new national credit scheme was incorporated in the SSI exemption scheme where a manufacturer who purchased inputs manufactured by a small scale unit could take credit of an amount higher than the duty actually paid on the inputs, even though the small scale unit pays the duty at a concessional rate. The extent of higher national credit allowed is 5%.

103. On being asked, the Ministry of Finance (Department of Revenue) have intimated that "it has been estimated that the national credit allowed is about Rs. 225 crores in the financial year 1987-88, Rs. 135 crores in 1988-89 and about Rs. 140-150 crores during 1989-90."

104. Audit para 1.03 of the Audit Report (Indirect Taxes) for 1989-90 has cited 6 cases in which irregularities in availing higher national credit were noticed. These cases are summed up below:

(i) *Konyak Forest Products (P) Ltd. Shillong*

A large scale unit who purchased all the vaneers manufactured by the assessee a small scale unit, availed higher MODVAT credit of Rs. 138 lakhs during 1987-88 due to irregular payment of duty although the assessee unit was not required to pay duty.

The Ministry have informed that 'the assessee has correctly paid duty at the rate prescribed at Para 1(a)(i) of Notification 175/86, dated 1.3.1986.

(ii) *A.R.D. Polypack & 10 others—Delhi*

11 manufacturers were found to have been paying duty at concessional rate without fulfilling the conditions of availing MODVAT credit. These assesseees were not entitled to concessional treatment.

According to the Ministry "the issue is under examination."

(iii) *Sanjay Minerals and other—Jaipur*

Five Small Scale Units engaged in increasing the purity of ammonium nitrate by prilling paid duty incorrectly at concessional rate on consignments cleared by them notwithstanding the fact that no duty was leviable on these clearances in terms of decision of CEGAT to the effect that merely improving the quality of ammonium nitrate by prilling did not amount to manufacture and no duty was leviable on prilled ammonium nitrate. The incorrect payment of duty at concessional rate by these units enabled the purchaser factories to avail of the national higher credit.

The Ministry have admitted the objection and the collectorate of Central Excise, Jaipur has been asked to take necessary action to safeguard the revenue.

(iv) *Hind Wire Ltd—Bolpur*

The unit received conversion charges for the job work and cleared those finished product (stranded wire) to the large scale manufacturer on payment of duty at concessional rate. The large scale manufacturer availed notional MODVAT credit at higher rate in terms of rule 57B. The assessee had also taken credit of duty paid on the raw material supplied to him by the supplier.

The Ministry have informed that "the CCE, Bolpur has reported that

the purchaser of stranded has not availed higher notional credit as pointed out by audit.”

(v) *Vijay containers—Calcutta*

This is a case where higher notional credit was availed of by a unit on containers procured from a dummy unit situated in the same premises.

The Ministry have informed that “the facts are being ascertained.”

(vi) *Associated Ancillaries & Others—Chandigarh*

Three assessee manufacturing Tractor parts neither opted for clearing goods without payment of duty upto the prescribed limit nor availed credit of duty on inputs under MODVAT scheme but paid central excise duty at concessional rate applicable to assessee availing MODVAT credit. According to Audit this was irregular because these units did not avail MODVAT and were required to clear the goods upto Rs. 15.30 lakhs without payment of duty. These units paid duty enabling the large purchasing units to avail notional higher credit.

According to the Ministry of Finance (Deptt. of Revenue) “the CCE has reported that in respect of one unit the assessee sold the goods to their sister concern who did not avail the facility of notional higher credit. Position with regard to other two units are being ascertained.”

P. Misuse of SSI Excise Duty concessions by big Manufacturers

105. Under Section 2(f) of the Central Excise and Salt Act, 1944, the term ‘manufacturer’ includes not only a person who employs hired labour in the production of exciseable goods but also any person engaged in the production of manufacture of any exciseable goods.

106. The Central Board of Excise and Customs in consultation with the Law Ministry issued Circular No. 50/86 dated 20.9.1988 (vide letter No. F.No. 213/31/88-cx.8 clarifying that if the raw materials (inputs) were supplied by the principal manufacturers for the manufacture of goods on job work basis, the concession would not be available if the principal manufacturer himself was not entitled to such concession.

107. Subsequently, the Central Board of Excise and Customs modified the aforementioned circular instructions in the light of Supreme Court orders passed on 12.3.1990 in the case of Central Excise, Cochin Vs Kerala State Electricity Board wherein it was held that the supplier of the raw material would not become the manufacturer by the mere fact that the raw materials utilised were being supplied by him and the same were to be utilised in the manufacture of articles to the specification of the supplier and thus the manufactured articles were to be returned to the supplier. The Circular No. 49/90-cx.8, dated 27.7.1990 modifying the earlier instructions reads *inter-alia* as follows:

“The matter has been re-examined in a full Board meeting. It was

observed by the Board that the aforesaid judgements related to the specific facts of the cases mentioned therein. It was therefore decided by the Board that every case has to be looked into keeping in view the circumstances and merits of the case and also keeping in view the spirit of aforesaid judgement of Hon'ble Supreme Court. However, to remove ambiguity in the instructions aforesaid, Board has decided to clarify the position to the field formations as under:

“If the relationship between the raw material supplier and the job worker is one of principal to principal then the job workers will be the actual manufacturer. If from the facts of the case and the terms of agreement between the raw material supplier and job worker, it can be established that job worker is a dummy unit or is just a hired labour of the raw material supplier, then the raw material supplier would be the Principal manufacturer and the job worker would be his workman or hired labour.”

108. The Audit Para 1.03(12) of the Audit Report (Indirect Taxes) for 1989-90 cites a few cases (i.e. 8 cases in Delhi Collectorate, 2 cases in Madras Collectorate; 5 cases in Cochin Collectorate 2 cases in Bangalore Collectorate and one case in Hyderabad Collectorate) of irregular availment of small scale exemption in respect of goods manufactured on behalf of big manufacturers from Small Scale Units by supply of raw material specifications etc.

109. In reply to audit findings, the Ministry of Finance (Department of Revenue) have stated:

“If the relationship between the raw material supplier and job worker is one of principal to principal basis then the job worker will be the actual manufacturer and in such cases there is no legal bar of extending the benefit of notification No. 175/86, dated 1.3.1986, if the job workers who are independent manufacturers on their own right, are small scale industries themselves.”

110. Asked as to how the case of M/s. Kerala State Electricity Board who was neither a trader nor a manufacturer could be equated with other big-manufacturers who got the goods manufactured on their account from Small Scale manufacturers at concessional rate of duty, the Department of Revenue informed that 'for the purposes of application of the Supreme Court judgements, Kerala State Electricity Board can be equated with other big manufacturers who supply material, fix specifications and received back the manufactured goods.'

111. In reply to another question, the Committee were informed that the revised Circular No. 49/90 was not issued in consultation with the Ministry of Law.

Q. Other irregularities noticed in grant of excise duty concessions

112. The Audit Para 1.03 of Audit Report (Indirect Taxes) for the year ended 31 March, 1990 has also reported cases where irregularities of the nature mentioned below were noticed during the test check:

- (i) Misclassification of goods with a view to availing concession involving short levy of Rs. 9.26 lakhs.
- (ii) Irregular duty free clearance in excess of prescribed limit involving levy of Rs. 22.83 lakhs.
- (iii) Availment of concession under new SSI Scheme before its application (duty involved was Rs. 14.91 lakhs).
- (vi) Clearance of goods from SSI units belonging to Central/State Governments (duty involved was of the order of Rs. 23 lakhs).
- (v) Assessment on the basis of invoice price for small scale unit (duty involved was Rs. 5.90 lakhs).
- (vi) Other irregularities in the implementation of the scheme for SSI concessions (with duty effect of Rs. 1.50 crores).

113. Small Scale Industries play a vital role in the process of economic development through vast employment generation, promotion of exports, dispersal of industrial and economic activities and mitigation of regional imbalances. The phenomenal growth of the small scale sector can be seen from the fact that the number of small scale units have increased from 5.46 lakhs in 1975-76 to 19.38 lakhs in 1990-91 generating additional employment to the tune of 78.40 lakh persons during the same period. In value terms production from the small scale sector has increased from Rs. 110 crores in 1975-76 to Rs. 1553.4 crores in 1990-91. At the end of the Seventh Five Year Plan, this sector accounted for nearly 30% of the gross value of output in the manufacturing sector and over 40% of the total exports besides creating jobs for 12 million people.

114. The Small Industries Development Organisation headed by the Development Commissioner, (Small Scale Industries) under the Department of Small Scale, Agro and Rural Industries is an apex body and nodal agency for formulating, co-ordinating and monitoring policies and programmes for promotion and development of small scale industries. According to the information furnished to the Committee the Department of Small Scale, Agro and Rural Industries maintains close liaison with other concerned departments like Department of Industrial Development, DGTD, Ministry of Finance, Planning Commission etc. and very often inter-ministerial meetings are held to resolve issues connected with the small scale sector.

115. The Industrial Policy Statement of July, 1991, stated that "Government will provide enhanced support to the small scale sector so that it flourished in an environment of economic efficiency and continuous technological upgradation." The thinking of the Government on the "Policy Measures for promoting and strengthening Small, tiny and village industries" was spelt out in greater detail in the statement made in the

Lok Sabha in August, 1991. The main features of the Policy are enumerated below:

- (i) De-regulation, de-bureaucratisation and simplification of statutes, regulations and procedures;**
- (ii) Increase in the investment limit in plant and machinery of tiny enterprises from Rs. 2 lakhs to Rs. 5 lakhs, irrespective of the location of the unit;**
- (iii) Inclusion of industry-related services and business enterprises, irrespective of their location, as small scale industries;**
- (iv) Ensuring both adequate flow of credit on a normative basis and quality of its delivery for viable operation of the SSI sector;**
- (v) Setting up of a special monitoring agency to oversee the genuine credit needs of the small scale sector;**
- (vi) Introduction of suitable legislation to ensure prompt payment of small industries bills;**
- (vii) Introduction of a scheme of Integrated Infrastructural Development (including technological back up services) for Small Scale Industries;**
- (viii) Setting up of a Technology Development Cell in the Small Industries Development Organisation;**
- (ix) Market promotion of SSI products through co-operative/public sector institutions, other specialised professional/marketing agencies and the consortia approach;**
- (x) Setting up of an Export Development Centre in the Small Industries Development Organisation.**

116. The Committee are of the firm view that urgent and effective implementation of the above measures to promote the growth of the Small Scale Sector is essential in view of the note of caution contained in the Economic Survey 1991-92 that "the growth of the Sector during 1990-91 was relatively low because of the adverse impact of certain factors like import restrictions, credit squeeze and hike in interest rates. The combined adverse effects of these factors are likely to aggravate further during the current year. Production in the Small Scale Sector is expected to go up only by about 3 per cent this year as against 8.5 per cent in 1990-91. The growth in employment is also likely to be only marginal." The Committee would like to be apprised of the follow up action taken by the Government on the initiatives suggested in the policy statement of August, 1991.

117. The Committee note that the term 'Small Scale Industries Undertaking/Concern' has been defined in three statutes namely, the Income tax Act, 1961, the Industries (Development and Regulation) Act, 1951 and the Banking Regulation Act, 1949. Prior to the amendment to the Income tax Act, 1961, introduced through the Finance Bill, 1992, all these definitions

were at variance with each other. It was only when the Committee took up examination of the audit paragraph and examined the Finance Secretary on the subject that the Department of Revenue realised the need for bringing about uniformity in the definitions and incorporated suitable amendment to the relevant provisions of the Income tax Act, 1961 in the Finance Bill, 1992 thereby adopting the same definition as for the purposes of Industries (Development and Regulation) Act, 1951. In the case of the Banking Regulation Act, 1949, the Committee are informed that the decision to amend the definition of the term 'Small Scale Industrial concern' has been kept in abeyance in the wake of recommendation made by the Narasimham Committee to the effect that the Small Scale Sector except tiny sector might be excluded from the priority sector. During evidence, the Secretary (Economic Affairs) had also expressed apprehensions that in case the existing level of investment limit (i.e. Rs. 35 lakhs for Small Scale Units and Rs. 45 lakhs for ancillary units etc.) was also raised to Rs. 60 lakhs and Rs. 75 lakhs under the Banking Regulation Act, 1949 as has been done for the purposes of Industries (Development and Regulation) Act, 1951, the larger units in small scale sector being more credit worthy would have greater access to banks than the smaller units which might be deprived of the needed support. The Committee agree that the Small units in the Small Scale Sector need protection from the onslaught of larger units in that sector in availing credit facilities. They are, however, unable to agree to the view that priority sector lending should be restricted only to the tiny sector and recommend that the existing level of investment limits i.e. Rs. 35 lakhs for small scale units and Rs. 45 lakhs for ancillary units be retained for lending under the priority sector. Preference may of course be given to meeting the requirements of tiny sector and a separate data may be maintained in respect of lending to tiny Sector to monitor the credit flow to this Sector.

118. The Committee note with surprise that although the excise duty concessions are extended to the Small Scale Industries Units by the Deptt. of Central Excise, the term 'Small Scale Industrial undertaking' is nowhere defined in the Central excise and Salt Act, 1944 or Rules made thereunder. The Committee desire that the Central Excise and Salt Act, 1944 or Rules should be amended to incorporate therein the definition of the term 'Small Scale Industrial Undertaking' on the same lines as in the Industries (Development & Regulation) Act, 1951.

119. The Committee note that registration of a Small Scale Unit is a prerequisite for availing excise duty concessions while it is not so in respect of tax concessions under the Direct tax Laws. It is strange that despite the fact that both the Central Board of Direct Taxes and the Central Board of Excise and Customs function under the same Department of Revenue, separate procedures are followed by them in the matter of extending concessions to Small Scale Industries. The Committee, therefore, desire that as in the case of Central Excise duty concessions, the income tax concessions

should also be available only to the registered small scale units. This would help the Ministry in having definite information of not only the potential tax payers in the Small Scale Sector but also enable an assessment of the impact of the fiscal concessions on the growth of Small Scale Sector.

120. The Committee note that there is no system in the Department of Central Excise for verification of the validity of the registration certificate subsequent to its issue by the Director of Industries when the unit makes changes in its location, constitution of factory or makes addition to the plant and machinery beyond the prescribed limits. According to the Department of Revenue, the registration certificate is sufficient evidence to grant exemption to small scale units and no verification is made by them in the matter. The Committee have been informed during evidence that a system for such verification exists in the Directorate of Industries/DC(SSl). However, the test check conducted by Audit, disclosed 178 cases in 26 collectorates involving irregular exemptions of the order of Rs. 9.44 crores. Out of these, 102 cases in 21 collectorates accounted for excise duty concessions amounting to over Rs. 5.31 crores irregularly availed as the registration certificate on which reliance was placed had already ceased to be valid. In the remaining cases, the requirement of registration were found to have not been fulfilled.

121. Considering the extent of loss that has occurred to the exchequer through such irregular concessions, the Committee feel it imperative that there should be proper verification of the unit before registration and once registered, reviewed on a regular basis and the unit deregistered, if it crosses the prescribed limit by the Directorate of Industries or the District Industries centre, as the case may be.

122. In order to enable the Small Scale Industrial Undertakings to become economically viable and to help them face stiff competition from the large scale sector, a host of tax concessions, excise duty concessions as also other supportive facilities/incentives are extended to them by the Government from time to time. These concessions/incentives no doubt have contributed largely to the growth of the Small Scale Sector. Nevertheless, the Committee cannot help expressing their regret over the disjointed approach of the various Ministries/Departments of the Government in dealing with Small Scale Sector and there is no evidence of their having made a cohesive effort in extending various concessions. No effective coordination amongst the Ministries seems to exist. In these circumstances, the Committee feel that an inter-Ministerial Monitoring Agency is the only solution to ensure effective and efficient implementation of policies and programme drawn by various Ministries for the development of Small Scale Sector. Such an agency will be able to monitor the administration of concessions, review the progress of policy/programmes and identify the bottlenecks requiring correctives. The Committee hope that necessary steps would be initiated by the Department of Small Scale Industries and Agro and Rural Industries in this direction.

123. The Committee note that notwithstanding the protests registered by the Office of Development Commissioner (SSI), tax concessions available under sections 32A, 80HH and 80HHA of the Income tax Act, 1961 were withdrawn w.e.f. the assessment year 1991-92 as a measure of rationalisation of tax structure. In April 1990, the then Finance Minister in his Budget Speech, had also announced that the Central Investment subsidy was being reintroduced for small scale units in rural areas and backward regions. The Committee view with concern that while the tax concessions as aforementioned were denied to Small Scale Sector, the promised Central Investment Subsidy is nowhere in sight even after 2 years of the announcement in the House. The withdrawal of concessions especially those for rural and backward areas militates against the policy of dispersal of industries in such areas. The Committee would like the Department of Revenue to review the whole matter afresh in view of the promised Central Investment Subsidy Scheme not having been introduced and keeping in view the special requirement of the Small Scale Sector.

124. The Committee note that the industrial Policy statement of July, 1991 envisages liberalisation of policies in various areas like Industrial Licensing, Foreign Investment, Foreign Technology Agreements, Public Sector and MRTP Act. The Committee desire the Government to act cautiously while implementing the above policy so that the process of liberalisation does not have any adverse effect on the Small Scale Sector which deserves to be nurtured and protected in view of its vital role in the process of economic development.

125. The Committee have been informed that no data regarding Small Scale Industrial Undertakings filing returns under the Direct tax laws or the extent of concessions granted to them is available with the Department of Revenue. According to the Department of Revenue, this data is not compiled as under the Income tax Act, the small scale industries are not a separate taxable entity and therefore their cases are not identifiable as small scale industrial undertakings. In the absence of data with the Finance Ministry relating to potential tax payers or revenue sacrificed, the Committee are unable to comprehend as to how technically the entire range of fiscal concessions are annually reviewed before the Budget and changes introduced based on the impact such concessions have made on the intended sector. The Committee are, therefore, inclined to believe that such changes at the time of the Budget are based on the subjective assessments of the Ministry of finance and the concerned administrative Ministry/Department and not strictly based on any rationale. The Committee are also unhappy to note that the Finance Ministry which manages the resources of the economy have not made any serious efforts to quantify the revenue sacrificed through the tax concession extended to small scale sector under the Direct Tax Laws. They desire that on the lines of Central Excise, data relating to Direct Taxes should be computerised expeditiously after demarcating small scale industries as a separate taxable entity to enable proper financial planning. The

Committee would like to be apprised of the action taken by the Ministry of Finance in this regard.

126. The Committee further note that no serious attempt has ever been made by any Ministry or Department concerned to evaluate the impact of concessions, incentives etc. extended to the small scale sector by them from time to time. The Committee need hardly emphasise that extension of any incentive or concession should be followed up with a detailed evaluation to enable the Department to assess the efficacy of such incentives in terms of growth of the sector. This becomes all the more relevant where fiscal concessions are involved as the balancing is between the growth of the sector and the likely revenue loss that is to accrue to the exchequer. The Committee need hardly point out that this feedback will form a vital input in the formulation of any effective strategy for programme/policy support contemplated to promote the growth of the small scale sector. The Committee desire that necessary steps may be taken by the Ministry of Finance/Department of Small Scale, Agro and Rural Industries to get such an evaluation conducted and apprise the Committee of the outcome alongwith the action taken thereon.

127. The Committee note that delayed payments to the small scale sector is one of the crucial problems being faced by the units in this sector. Apart from setting up factoring services through Small Industry Development Bank of India, the Ministry was to introduce suitable legislation to ensure prompt payment to the units in the small scale sector. The Committee regret to note the delay in this regard and desire that the proposed bill may be expedited to mitigate the problem of delayed payment to small scale units.

128. The Committee note with concern the acute problem of sickness which the Small Scale Sector has been facing over the years as is obvious from the fact that 2.24 lakh units were sick with an amount of Rs. 2610.87 crores locked up therein at the end of September, 1990 as against 1.86 lakh sick units with an outstanding amount of Rs. 2243.31 crores at the end of September, 1989. Considering the high incidence of sickness the Committee feel that the measures taken by the Reserve Bank of India to rehabilitate the potentially viable sick units have not met with much success. With this background in view, it seems, the Reserve Bank of India has constituted a Committee for Small Scale Industries to examine whether any revision is required in the present RBI guidelines for rehabilitation of sick small scale industrial units apart from the question of credit needs of the sector. The above mentioned Committee was expected to submit its report by the end of June, 1992. The Committee desire that they be apprised of the recommendations made by the said Committee alongwith action taken thereon by Government.

129. The Committee note that the benefits of deductions under the provisions of Indome-Tax Act, 1961 are availed of by the profit making industrial undertakings and the large number of sick units which are

running into losses, are in no way benefitted therefrom. Obviously, this is on account of deductions being linked with the profits and there being no provisions for carry forward of losses. The Committee feel that sick units deserve sympathetic treatment. They, therefore, desire the Department of Revenue to thoroughly examine the matter and make suitable provisions in law for the benefit of sick units.

130. According to Para 2.03 of the Audit Report (Direct Taxes) for 1989-90, a large number of Small Scale units registered with the District Industries Centres were not on the registers of Income Tax Department. In Gujarat Circle, the number of registered units during the period 1980-88 was 58,565 but the number of units assessed to Income tax was stated to be negligible. In the case of Uttar Pradesh, only 1.95% of the registered units were reported to have been assessed to Income Tax during 1988-89. Similarly, in Punjab Circle, out of 1620 Small Scale Units, 1342 units were not submitting income tax returns. The Audit have, on further verification, informed that in Punjab Circle 240 units out of 1342 were actually borne on income tax records; 999 units were petty ones having no justification for being on income tax records and 103 units were found to be potential income tax assesseees to whom notices had been issued in the matter. The Committee had in their 116th Report (8th Lok Sabha) recommended that the Department of revenue intensify the tempo of surveys by further strengthening the investigating machinery of the Department so that persons having taxable income were taxed. In response to that recommendation, the Committee were informed that vigorous and sustained efforts in this direction would be continued. Considering the facts brought out by the Audit, the Committee feel that much remains to be done in the matter to bring tax evaders to book. In this connection, the Committee feel that the Central Information Branches functioning under the control and supervision of Directors of Income tax need to be activated to identify potential tax payers in Small Scale Sector. The Committee are of the view that the surveys of industrial complexes housing small scale units if undertaken jointly by the Central Excise Department and the Income tax Department, would be more effective and result oriented in terms of revenue that may accrue to the exchequer. The Committee, therefore, recommend that both the Departments should take necessary steps and chalk out a joint strategy to deal effectively with the potential tax payers and tax evaders.

131. The Committee are distressed to find from the audit para that the concessions were allowed in Direct Taxes to small scale units by the Assessing Officers without taking into account all the relevant factors governing such concessions and the possibility of detection of such errors was remote due to the Summary Assessment procedure being followed by the Income tax Department. In fact the audit para has highlighted that the total number of mistakes that had been noticed in test check came to as many as 101 with tax effect of Rs. 4.23 crores. The Deptt. of Revenue have, however, clarified that the Summary Assessment Scheme was introduced

mainly with the object of managing the increasing work load and prior to 1.4.1989 arithmetical errors etc. were allowed to be rectified. However, w.e.f. 1.4.1989 a new Section 143(1)(a) was introduced in the Income tax Act, 1961 providing the returns would be processed and *prima facie* adjustments as prescribed under the Section would be made. The Committee, however, note that the mistakes had occurred even in cases where assessments were completed after scrutiny.

132. As a sequel to the recommendations made by PAC in their 173rd Report (8th Lok Sabha), and in consultation with C&AG, the Deptt. of Revenue have decided that the Audit by International audit of scrutiny cases having income of Rs. 2 to 5 lakhs in non-company cases and Rs. 50,000 to Rs. 5 lakhs in company cases will be increased from 50% to 100% with a consequent reduction of audit in non-scrutiny cases of this category from 50% to 10%. The Committee note that the Action Plan for 1991-92 drawn by the CBDT laid down that all cases of returned income/loss of Rs. 5 lakhs and above would be compulsorily scrutinised and out of the remaining cases selection would be made for scrutiny of such cases as involve refund exceeding Rs. 1 crore or where information was received from CIB, survey or other sources or are glaring cases of tax evasion etc. The Committee hope that with the changes brought about in the procedures and exercise of greater care by the Assessing Officers, the scope for errors such as those pointed out in the audit para, will be minimised.

133. The audit have also pointed out that the Assessing Officers have allowed the grant of incentives and concessions admissible under the various rules of the Income tax without verifying whether all the pre-conditions *viz.* number of workers employed, cost of plant and machinery installed, location of unit and production of audit certificate, for the grant of such concessions were fulfilled. According to the Ministry the mistakes have occurred on account of non-application or incorrect application of the provisions of law by the officers concerned. To avoid such errors the Central Board of Direct Taxes have issued a circular in January, 1991, drawing attention to the provisions under Chapter VI-A of the Income Tax Act and have summarised the nature of mistakes that have normally been committed by the Assessing Officers on the basis of the objections raised by Audit in the audit para. The Assessing Officers have also been directed to acquaint themselves with the legal provisions as clarified from time to time through legal pronouncement and Board's instructions before they allow any deduction under Chapter VI-A while computing the taxable income of the assesseees. The Committee hope that the above instructions will be strictly followed by the Assessing Officers in letter and spirit. The Committee, however, desire the Ministry to evolve a proforma which the assesseees may be required to file alongwith their return indicating therein the deductions claimed and the satisfaction of all the conditions required for claiming deductions with supporting evidence so as to ensure fulfilment of the prescribed conditions.

134. The Audit Para (Direct Taxes) has made a mention of three cases in which large units are reported to have availed of concessions intended for small scale units by projecting themselves as Small Scale Units. These cases relate to units engaged in the manufacture of domestic electrical appliances, alcohol spirit and soft drink. The Ministry of Finance (Deptt. of Revenue) have not accepted the audit objections in these cases on the basis of judicial pronouncements on similar issues and interpretation of legal terms. The Committee, however, feel that there is need to make the law clearer to avoid any misinterpretation or ambiguity thereabout. They, therefore, desire that the Department of Revenue should undertake an exercise in consultation with Audit and the Ministry of Law and the lacunae, if any, in the law be plugged.

135. The Audit Para has reported cases in Bombay Circle where deductions under Sections 80HH and 80-I of the Income tax Act 1961 were said to have been irregularly allowed in respect of profits/gains of industrial undertakings/units. In these cases the amounts of deduction under both the Section 80HH and 80-I were arrived at separately for being allowed from the gross total income. The Audit has objected to the method adopted by the Income tax Department in these cases and has stated that the deduction under section 80-I is to be computed after reducing the deduction allowed under Section 80HH. The Ministry have not accepted the audit view contending that the deductions had been allowed as per provision of law. The Committee desire that the issue be settled in consultation with the Ministry of Law and suitable amendments made in the law wherever required.

136. The Committee note that irregular grant of both MODVAT credit and SSI exemption under Notification No. 175/86-CE dated 1.3.1986 simultaneously resulted in loss of revenue to the extent of Rs. 46 lakhs in 12 collectorates test checked by Audit. This should not have happened given the clear instructions and clarifications made in the matter by the Ministry of Finance (Deptt. of Revenue). Had a little more care been exercised at the time of grant of exemptions, the loss in revenue could have been avoided. The Committee hope that the enforcing agencies would be more careful in future in this regard.

137. The Committee note that in order to enable the Small Scale Units to maintain competitiveness of their goods in the market, a scheme of higher notional credit of the duty paid on the inputs was incorporated in the SSI exemption sheme whereby a manufacturer who procures the goods (inputs) from a Small Scale manufacturer can take credit of an amount higher than the duty actually paid on the inputs even though the Small Unit pays the duty at a concessional rate. The extent of higher notional credit allowed is 5% at present. The audit has noticed certain irregularities in the availment of higher notional credit during the course of test checks in 10 collectorates involving an amount of duty of the order of over Rs. 2.08 crores. This is

indicative of the lack of vigilance on the part of the assessing officers while granting higher notional credit. The Committee also note from the information supplied by the Ministry that every year sizeable amount in the form of higher notional credit is allowed. During the years 1987-88, 1988-89 and 1989-90 the estimated amounts of such allowance were of the order of Rs. 25 crores, Rs.135 crores and Rs. 140-150 crores, respectively. Considering the quantum of allowance made annually under the above scheme, the Committee consider it imperative that the field formations should be suitably alerted to be extra vigilant while dealing with cases involving grant of higher notional credit.

138. Under Section 2(f) of the Central Excises & Salt Act, 1944, the term 'manufacturer' includes not only a person who employs hired labour in the production or manufacture of any exciseable goods but also any person engaged in the production or manufacture of any exciseable goods on his account. The Department of Revenue in consultation with Law Ministry had clarified vide circular No. 50/88, dated 20.9.88 that if the raw materials (inputs) were supplied by the principal manufacturers for the manufacture of goods on job work basis, the concession under SSI exemption notification No. 175/86-CE dated 1.3.86 would not be available if the Principal Manufacturer himself was not entitled to such concession. A test check in audit revealed 64 cases where the aforesaid considerations were disregarded in 16 collectorates leading to loss or revenue to the tune of Rs. 532 lakhs. Subsequently, in the light of Supreme Court orders dated 12 March, 1990 that circular was modified (vide circular No. 49/90 dated 23.7.1990) clarifying that if the relationship between the raw material supplier and the job worker is one of the principal to principal then the job worker will be the actual manufacturer and the benefit of SSI exemption will be applicable. This circular has led to misuse of concessions by the manufacturers who get the goods manufactured on their account by supply of raw material and specifications etc. The Committee were informed that the Minister of Law was not consulted before the issue of modified circular.

139. The Committee are of the view that the circular (Circular No. 49/90) should have clearly defined terms such as raw material supplier/job worker and their relationship and should have been legally vetted. The Committee desire that the said circular should be modified taking into consideration the deficiencies noticed and referred to the Law Ministry for vetting with a view to eliminating any ambiguity and scope for misinterpretation which may not only involve the Department in legal wrangles but also affect revenue collection.

140. The Audit para (Indirect Taxes) has also mentioned several cases of irregular availment of central excise exemption involving misinterpretation of the small scale concessions. These mainly relate to misclassification of goods with a view to availing concessions (Short levy involved Rs. 9.26 lakhs), irregular duty-free clearance in excess of prescribed limits (Levy involved Rs. 22.83 lakhs). Availment of concession under new ST scheme

before its application (Duty involved Rs. 14.91 lakhs), clearance of goods from SSI units belonging to Central/State Governments (Duty involved Rs. 23 lakhs), Assessment on the basis of invoice price for small scale unit (Duty involved Rs. 5.90 lakhs), and other irregularities in the implementation of the scheme for SSI concession (Rs. 1.50 crores). The Committee desire that all these cases should be examined in detail and the lacunae, if any, found in the law or the existing procedures be plugged to avoid recurrence of similar nature of irregularities. The Committee would like to be apprised of the results of the examination.

NEW DELHI;
7 August, 1992

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

Sravana 16, 1914 (Saka)

APPENDIX I

(Vide Para 1 of the Report)

Para 2.03 of the Report (No. 5 of 1991) of the Report of C&AG of India for the year ended 31 March, 1990, Union Government (Revenue Receipts—Direct Taxes) re. Assessment of Small Scale Industrial Undertakings

2.03 Assessments of Small Scale Industrial Undertakings

Introductory

2.03.1 Small Scale Industries (SSI) play a very important role in the overall growth of the economy of the country. While the cost of investment in small scale industries would be comparatively low, its potential for generation of employment as a sector, is relatively high. Development of small scale industries also result in dispersal of industries in backward, rural and semi-urban areas which eventually lead to reduction of regional imbalances in growth.

The basic policy in regard to the small scale sector was first enunciated in the Industrial Policy Resolution of 30 April, 1956, which underwent changes in tune with the course of industrial development in the country. The Industrial Policy announcement of 23 July, 1980, recognised the need for growth of the small scale sector, side by side with other medium and large sectors, towards rapid and balanced industrialisation of the country.

The basic objectives behind development of small scale industries, as outlined in the Industrial Policy announcement of 1980, and in the Plan documents of successive Five Year Plans, are to create immediate employment opportunities with relatively low investment, to make small industries export-oriented and help quality upgradation, and to remove regional disparities through a deliberate policy, and encourage growth in villages and small towns.

With a view to fostering generation of internal resources to make these units viable and self-reliant, and for enabling them to undertake modernisation and technological upgradation, Government have accorded fiscal concessions in income-tax, wealth-tax, customs, central excise duties and sales tax by way of deductions and exemptions from duties and taxes on profits.

The following table gives the Growth of small scale industries during the years 1985-86 to 1988-89

	Seventh Five Year Plan Period			
	1985-86	1986-87	1987-88	1988-89
No. of units (in Lakh Nos.) (Commulative)	13.55 (9.09)	14.76 (8.93)	15.76 (6.78)	17.01 (7.93)
*Production at current prices (Rs. in crores)	61,228 (21.20)	72,250 (18.00)	87,300 (20.83)	1,06,875 (22.42)
*Production at 1970-71 prices	17,840 (12.84)	20,187 (13.16)	22,326 (10.60)	25,790 (15.32)
Employment (in Lakh Nos.)	96.00 (6.67)	101.40 (5.62)	107.00 (5.52)	113.00 (5.61)
Export at current prices (Rs. in crores)	2753.23 (7.84)	3617.33** (31.38)	4535.01*** (25.37)	N.A.

*Estimated

**Revised

***Provisional

Figures in brackets indicate percentage increase over the previous year.

According to the All India census of small Scale industrial units 1973-74, the total number of units registered with the State Departments of Industries were only 1,39,572 whereas during 1988-89, the total number of units stood at 17.01 lakhs, an increase of 12.19 times. The above table also indicate that there is all round and sustained growth in production, employment opportunities and even exports year after year in the small scale sector.

According to the data compiled by the Reserve Bank of India as at the end of December 1987, out of 22.27 lakhs borrowing units in SSI Sector enjoying total bank credit amounting to Rs. 10,729 crores (Provisional), 2,04,259 units with outstanding bank credit of Rs. 1,797 crores have been identified by banks as sick. Though by number, 9.2 percent of the borrowing SSI Units were sick, the amount locked up in these sick units formed 16.8 percent of the aggregate advances to SSI units.

Law and Procedure

2.03.2. As per the Government of India Notifications issued from time to time and as adopted for the purpose of definition of small scale industrial units under the Income-tax Act, an industrial undertaking shall

be deemed to be a small scale industrial undertaking, if the aggregate value of the investment in fixed assets in plant and machinery (other than tools, jigs, dies, moulds), whether held on ownership basis or by lease or by hire purchase, installed as on the last day of the previous years for the purpose of the business of the undertaking, did not exceed Rs. 10 lakhs in a case where the previous year ended before 1 August 1980, Rs. 20 lakhs in a case, where the previous year ended after 31 July, 1980 but before 18 March, 1985 and Rs. 35 lakhs in a case, where the previous year ended on or after 17 March, 1985.

The fiscal concessions under the Income-tax Act, 1961, and the Wealth-tax Act, 1957, are given by way of deductions in the profits and gains of small scale units or exclusion from the computation of total wealth. The deductions allowed under the various provisions of Income-tax Act and the concessions allowed under the Wealth-tax Act are: (i) an investment allowance equal to 25 per cent of the cost of any machinery and plant installed after 31 March, 1976 but before 31 March, 1988 in a small scale industrial undertaking for the purpose of manufacture or production of any article or thing, including those of low priority specified in the list of articles in the Eleventh Schedule, (ii) a deduction equal to 20 per cent of the profits and gains from newly established industrial undertaking or hotel business in backward areas, (as may be specified by the Central Government by notification in official gazette in this behalf) for the initial ten assessment years, (iii) a deduction equal to 20 per cent of the profits and gains from newly established small scale industrial undertakings set up in a rural area for initial ten assessment years (not allowed where the deduction under (ii) is availed of), (iv) a deduction in respect of profits retained for export business equal to the aggregate of (a) 4 per cent of the net foreign exchange realisation and (b) 50 per cent of so much of the profits derived from the export of such goods or merchandise as exceeds the amount referred to in clause (a), (v) a deduction in respect of profits and gains from a small scale industrial undertaking manufacturing or producing articles or things after 31 March, 1981 which may be engaged in the manufacture or production of an article or thing including an article or thing of low priority specified in the list in the Eleventh Schedule to Income-tax Act for 8 initial assessment years (10 years in the case of a co-operative society), and (vi) upto the assessment year 1983-84, a concession in the rate of tax.

Under the Wealth-tax Act, any company carrying on an industrial activity is exempted from the levy of wealth-tax for five successive assessment years commencing with the assessment year next following the date on which the company is established [Section 45(d)] and also that portion of the net wealth of a company established with the object of carrying on an industrial undertaking in India as is employed by it in a new, and separate units set up by way of substantial expansion of its undertaking [Section 5(1) (xxi)] is exempted from the levy of wealth-tax for five

successive assessment years commencing with the assessment year next following the date on which company commences the operations for the establishment of such unit. Section 5(1)(xxxi) exempts further the value of assets (not being land and building) forming part of an industrial undertaking belonging to the assessee to the extent specified in Section 5(IA) is exempt. A similar exemption is available in respect of the assessee's share in an industrial undertaking owned by a firm or an association of persons [Section 5(1)(xxxii)].

3. The exact number of small scale industrial units on the registers of Income-tax department is not ascertainable. But as per the statistical information published by the department, the details of income-tax exemptions availed by small scale industrial units under Section 80HHA exclusively available to only small scale industrial units during the three years ending 1987-88 were:

	No. of Returns	Amount of deductions claimed	Tax relief
	(Amount in lakhs of Rupees)		
*1985-86	520	203.89	93.75
1986-87	584	283.06	120.21
1987-88	812	1,460.17	686.58

Separate figures for other concessions are not available.

*Except A.P. Charge

Scope of Audit

2.03.3 By means of test-checks, it was examined during audit in 1989-90 whether the Income-tax department, while finalising assessments of small scale industrial units, was correctly regulating the fiscal concessions allowable to the units under the Income-tax Act. Efforts were also made to identify the small scale units which are not registered with the Directorate of Industries, but are enjoying income-tax deductions and whether these were controlled by big or medium sector industrial undertakings in which case they would be disqualified to be treated as small scale industries units.

Coverage of Audit

2.03.4 The assessment of 3454 units were selected at random for scrutiny. While selecting the cases, weightage was given to factors including turnover, raw material used, articles manufactured, etc. The audit checks were employed in the light of the various fiscal incentives and concessions available in the Income-tax and Wealth-tax Acts and covered the period from the a assessment year, 1984-85 to 1988-89. Out

of the 3454 units selected for audit, assessment records in respect of 2003 units only were made available by the department.

Highlights

2.03.5(1) Under the Income-tax Act, registration of a small scale undertaking with the Director of Industries of the State is not pre-condition for enjoying the statutory concessions. The test-check revealed that a number of small scale industrial units assessed by the department were not registered with District Industries Centres but all the same were, regularly, enjoying the statutory tax concessions. At the same time, a large number of the small scale industrial units registered with District Industries Centres were not on the registers of the Income-tax department. Under the circumstances, the possibility of a number of small scale industrial units registered with District Industries Centres escaping the tax net, although they may have taxable income, cannot be ruled out. In the absence of a provision in the Act to the above effect, cross-verification between the two agencies was not feasible. Since District Industries Centre is the nodal agency for the development of small scale industries, as a growth sector, it would be advisable for the Income-tax department to insist that units should get registered with Director of Industries before claiming the concessions and that in the returns, the registration number should be quoted.

(2) Even though the Income-tax provide for six different types of concessions/deductions in favour of small scale industrial units (and Wealth-tax Act two concessions) the Income-tax Department does not have any mechanism to periodically evaluate the extent of availment of the concessions by the units and the impact of each concession on the growth of the sector as a whole. The audit scrutiny disclosed that most of them were ornamental as most small scale industrial units did not have adequate profits to avail of the concessions as per their books of accounts. The only widely enjoyed concession was investment allowance (Section 32A) which in any case, stand abolished with effect from 1 April 1990.

(3) Audit of assessments of returns filed by small scale industrial units disclosed many errors involving claims for excess deductions and allowances etc, at variance with the provisions of the Act. The possibility of detection of such errors during assessment was remote in view of the summary assessment procedure in vogue in the Department. The total number of such mistakes noticed in audit came to 101 with tax effect or Rs. 422.54 lakhs.

(4) One common mistake committed by assessing officers was to allow incentives and concessions admissible under the various sections of the Income-tax Act, without verifying that all the pre-conditions governing the grant of such concessions were fulfilled. For instance, the assessing officers, in most cases did not have any authentic records regarding the number of workers employed by the assesseees in manufacture of their products (80HH) or the cost of plant and machinery installed (Explanation to Section

80HHA). Similarly, assessing officers did not also satisfy themselves that a particular location claimed by the assessee to be a rural area for concessions under Section 80HHA was actually declared to be so.

(5) In a small percentage of cases ineligible units (under the Act) claimed the benefits intended for units in backward areas which were irregularly admitted.

(6) Cases where large units availed of the concessions intended for small scale industrial units, by projecting themselves as small scale industrial units were also noticed. In one such case, a major undertaking claimed the fiscal concessions by manufacturing domestic electrical appliances, reserved for small scale industrial units, while in another case, the assessee manufactured alcoholic spirit (a low priority item). In yet another cases, a leading soft drink manufacturer with vast marketing organisation all over the country, availed of the concessions intended for small scale industries, in large measure.

(7) Assessing officer did not insist in many cases on production of audit certificates from Accountants in Form 10CC and 10CCAC, certifying the correctness of accounts, as required under Section 80HHA and 80HHC.

(8) While working out the permissible deductions, the assessing officers accepted the income as returned by the assessee, which included sales tax, central excise duty, etc., collected as reflected in the final accounts. Consequently, the concerned units received undue benefits.

(9) Instances where small scale industrial units which were only processing materials and not manufacturing or producing any article or thing (as required under Section 80HH/HHA) getting the fiscal concessions, which was not intended by the Legislature, also came to notice.

Lacunae in Procedure

2.03.6 (i) In Gujarat circle, as per the records of the Industries Commissioner, Gujarat State, on an average 6,500 new small scale industrial units are registered every year and the total registration of new units during 1980-88 was 58,565 but the units assessed to income-tax was negligible. There was no co-ordination between the Industries Departments and the Income-tax department to bring the units, at least the profit-making ones, to the tax net. In one district, where the assessing officer attempted to verify the position when audit requisitioned the cases for scrutiny, it was noticed that out of 129 cases of small scale industrial units registered with the District Industries Officer, 79 units were either non-existent or whereabouts of their promoters were not known. Even in respect of the remaining 50 units, records in respect of only eight units were available for scrutiny. This indicated the need for a statutory provision in the Income-tax Act to the effect that all small scale industrial units registered with the District Industries Centre should include intimation of such registration in this returns to the Income-tax department and

also District Industries Centres should be responsible to send particulars of registration to the Income-tax Officer.

(ii) In Uttar Pradesh circle, the number of small scale industrial units assessed to income-tax, as compared to the number of units registered with District Industries Centre, was as low as 2.76 percent in 1985-86 which came down further to 1.95 percent in 1988-89. It was verified during audit that in 8 cities as on 1 April, 1989, only 204 units [out of 702 units reviewed (934 assessments)] (Total number of units on the rolls of District Industries Centre 3,840) were availing concessions available under the Act (268 cases of assessments). This actually worked out to 29 per cent of the cases test-checked. Further, even among these 204 units, only 75 were assessed to income-tax as small scale industrial units while the rest were enjoying the benefits without being assessed as small scale industries under the Income-tax Act.

(iii) In Himachal Pradesh circle, in one ward, out of 20 assesses who availed of the tax holiday benefits, majority claimed the benefits under Section 80 HH (relating to setting up of the new industrial undertakings in backward areas); but in 4 cases, the assesses were ineligible for it since they were engaged in extraction of ~~stones~~ ^{stones} and contract business and were not, strictly-speaking, small scale industrial units. The irregular deductions, allowed by the Department, came to Rs. 4.52 lakhs during the assessment years 1987-88 and 1988-89 involving a tax effect of Rs. 97,483. In 15 other cases, the condition regarding employment (10 or more workers in manufacturing process carried on with the aid of power, and 20 or more workers in manufacturing process carried on without the aid of power) was not satisfied.

In 12 cases, the assessment records did not indicate whether the units were registered with the Director of Industries.

(iv) In Punjab circle, as on 31 March, 1989, 1,580 small scale industrial units registered with the Department of Industries and another 40 units identified from the records of Income-tax department were engaged in the manufacture of alcoholic spirits including Indian made foreign liquor, soap, aerated water, tobacco and tobacco preparations, etc. Of these 1,620 units, only 206 units had submitted income-tax returns regularly and, even out of these, 72 had paid income-tax only during certain years. Further 1,342 small scale industries did not file income-tax returns at all during 1988-89, though the total value of goods produced by 206 units during that year was Rs. 29.82 crores.

(v) In Bihar circle, 141 assessments of small scale industrial units registered with the Industrial Area Development Authorities/District Industries Centre during 1989-90 were selected at random for audit, but the assessment records of only 34 cases were made available for scrutiny by the concerned assessing officers. Verification of the records indicated that certain units had received capital subsidies from the Government which

amounts were to be deducted while determining the actual cost of plant and machinery for the purposes of depreciation and investment allowance, etc. Similarly, the electricity subsidies received by the units were to be taken as part of the trading receipts of the undertakings. Due to the failure of the department to make available the assessment records of such assesses, it was not possible to verify in audit whether the correct method was being followed in all these cases.

(vi) In Karnataka circle, the audit scrutiny of the assessments of 214 industrial units for the period from the assessment year 1984-85 to 1988-89 selected at random revealed that many of the units were working in loss. The year-wise break-up of some of the units, and their working results, as per income computed by the Income-tax department, are as follows:

Assessment year	No. of units in loss	Other cases
1984-85	81	63
1985-86	83	77
1986-87	99	80
1987-88	92	86
1988-89	75	83

On an average, 86 out of 164 units (53 per cent) assessed in a year, which were test-checked in audit, were working in loss and not paying any income-tax at all. The amount of income-tax paid by the profitable units, the number of which on an average worked out to 78 units in a year, amounted to Rs. 2.74 crores for the five years period of assessment years starting from 1984-85.

As against the above, the impact of fiscal concessions by way of deductions under the various sections of the Act in respect of the 366 units (for assessment years 1984-85 to 1988-89) working in loss or other wise would work out to Rs. 2.32 crores, virtually nullifying the tax contribution made by the 78 profitable units.

Thus, for the assessment years 1984-85 to 1988-89, of the cases checked in audit, 138 small scale units (38 per cent of total units which claimed various concessions) did not have adequate profits to avail of the benefit of fiscal concessions (Rs. 1.04 crores) allowed by way of deductions from the profits and gains of the units, which had to be carried forward by them. Further, of these 138 units, 36 units had been continuously in the red, either from the assessment year 1984-85 or from a later year, (in the case of newly started units) upto the assessment year 1988-89. The tax effect (potential) of such concessions that could not be availed of by these 36 units alone amounted to Rs. 69.79 lakhs.

Irregular or excess relief/deduction under the provisions of the Income-tax Act.

2.03.7 The review revealed that the incentives and concessions as available to the small scale industrial undertakings under the various sections of the Income-tax Act were allowed without taking into consideration all relevant factors governing the grant of such concessions. Some representative cases of omissions and failures noticed during the course of audit are given below.

Gujarat Circle

(i) A private limited company, registered as a small scale industrial unit was running a hotel from the previous year relevant to assessment year 1987-88. The assessee claimed and was allowed deduction towards investment allowance, an amount of Rs. 8.41 lakhs, being 25 percent of the cost of machinery and plant (Rs. 23.65 lakhs) installed for the hotel business while computing its total income for assessment year 1988-89. In the absence of any positive income, the allowance was allowed to be carried forward to be adjusted against future income. The deduction was erroneous since it has been judicially held that investment allowance is not admissible on plant and machinery used for a cold storage or in hotel business. For the subsequent years, assessment records were not available for verification and hence it could not be verified whether the unabsorbed investment allowance was actually set off in next year and whether any further deduction was allowed. The erroneous carry forward allowed in assessment year 1988-89 resulted in potential tax effect of Rs. 5.30 lakhs in one year.

(ii) In two cases, investment allowance was wrongly allowed on plant and machinery used by the assessees concerned for cold storage, resulting in aggregating short levy of Rs. 2.88 lakhs.

Andhra Pradesh circle

In the case of an assessee firm, a small scale industry, which quarried granite stones and exported them after polishing, deduction was allowed on its export turnover for the assessment years 1984-85 and 1985-86, though minerals and ores do not qualify for the deduction. The incorrect allowance of relief resulted in short levy of tax of Rs. 1.08 lakhs for both the assessment years put together, in the hands of the firm and its partners.

Madhya Pradesh circle

In the assessments of seven assessees (one unregistered firm, four registered firms and two individuals) for the previous years relevant to the assessments years. 1985-86 to 1988-89, completed in December 1988, January 1989 and March 1989, the assessing officers allowed investment allowance aggregating to Rs. 30.90 lakhs in respect of plant and machinery used for construction of tube-wells/execution of civil works. The asses-

sees, though small scale industrial units, were not engaged in the manufacture or production of any article or thing, and hence, were not entitled to investment allowance. The mistake resulted in short levy of tax of Rs. 11.15 lakhs during the four assessment years.

Punjab circle

An assessee industrial company (a small scale industrial unit) received Central subsidy of Rs. 4.18 lakhs on the purchase of new machinery worth Rs. 23.97 lakhs during the previous year relevant to assessment year 1987-88. While computing depreciation and investment allowance admissible to the assessee under the Act, the department did not take into account the amount of subsidy received by the assessee, which led to excess allowance of depreciation (Rs. 62,670) and investment allowance (Rs. 1.04 lakhs) with potential tax effect of Rs. 91,916.

Bihar circle

(i) In the assessment of a small scale industrial units for the assessment years 1985-86 (assessment completed in January 1988) and 1986-87 (assessment completed in January 1989), investment allowance of Rs. 7.94 lakhs (25 percent of Rs. 31.74 lakhs) and Rs. 1.06 lakhs (25 per cent of Rs. 4.23 lakhs) respectively were allowed on the cost of new plant and machinery installed during the relevant previous years. It was seen in audit that while finalising the assessment, the assessing officer reduced the capital subsidy of Rs. 5.70 lakhs, received by the assessee from the Government in respect of plant and machinery installed, to work out depreciation admissible for the assessment year 1986-87. Nevertheless, investment allowance was allowed on the total cost of the new plant and machinery, instead of the 'actual cost' to the assessee, as reduced by the subsidy. The mistake resulted in excess allowance of investment allowance by Rs. 1.43 lakhs for the assessment years 1985-86 and 1986-87 which was allowed to be carried forward and had a potential tax effect of Rs. 8,940 in the aggregate.

(ii) On the dissolution of an assessee firm with effect from 28 February, 1983, all its assets and liabilities existing on that date were taken over by one of its partners, a private limited company. The company also made payment to the other partners in respect of their respective shares of interest in the firm. In the assessment of the firm for the previous year relevant to the assessment year 1984-85, completed in December 1986 and revised in January 1990 depreciation allowance of Rs. 2.83 lakhs was allowed. As the assets had been 'sold' before the close of the previous year by way of transfer by exchange, no depreciation allowance was admissible. The irregular grant of depreciation allowance of Rs. 2.83 lakhs resulted in under assessment of income by the same amount, involving tax effect of Rs. 1.09 lakhs in the hands of the firm alone. The under assessment of tax in the hands of the partners was to be ascertained.

Assam circle

(i) An assessee company started commercial production in the previous year relevant to the assessment year 1984-85. During the assessment year 1984-85 the company was granted investment allowance on the cost of plant and machinery, which included pre-operative expenses (not being in the nature of incidental expenses incurred in acquiring the plant and machinery) of Rs. 1.45 lakhs capitalised to plant and machinery. The company also received central investment subsidy of Rs. 4.6 lakhs in the previous years relevant to assessment years 1987-88 and 1988-89 for capital investment in fixed assets, like plant and machinery. The assessing officer, however, did not reduce the cost of the plant and machinery by the amount of subsidy received by the company. The incorrect grant of investment allowance on the pre-operative expenses capitalised and included in the cost of plant and machinery and non-reduction of the cost of plant and machinery by the amount of subsidy, resulted in granting of excess investment allowance of Rs. 1.48 lakhs.

(ii) Due to inclusion of pre-operative expenses in the actual cost of assets, viz., plant and machinery (Rs. 1.45 lakhs) and building, and non-reduction of the cost of plant and machinery by the amount of subsidy received (Rs. 4.46 lakhs) there was excess grant of depreciation aggregating Rs. 4.11 lakhs during the assessment years 1984-85 to 1988-89 in respect of plant and machinery (Rs. 3.85 lakhs) and building (Rs. 0.26 lakh.)

The incorrect allowance of depreciation (Rs. 4.11 lakhs) and investment allowance (Rs. 1.48 lakhs) involved excess carry forward of loss of Rs. 5.59 lakhs with a potential tax effect of Rs. 3.07 lakhs.

(iii)(a) An assessee company started commercial production from July, 1986. The company was allowed depreciation amounting to Rs. 5.43 lakhs for the whole year i.e. 12 months from 1 April, 1986 to 31 March, 1987 instead of for 9 months of the previous year from 1 July, 1986 to 31 March, 1987 relevant to the assessment year 1987-88. Further, the Auditor's notes revealed that pre-operative expense amounting to Rs. 3.49 lakhs were capitalised and added to the fixed assets. The incorrect allowance of depreciation on the cost of assets including the pre-operative expenses and excess depreciation allowed for 3 months from 1 April, 1986 to 31 June, 1986 involved carry forward of loss of Rs. 1.71 lakhs.

(b) Due to inclusion of pre-operative expenses of Rs. 2.25 lakhs in the actual cost of plant and machinery, there was an excess grant of investment allowance of Rs. 0.64 lakh, incorrect allowance of depreciation (Rs. 1.71 lakhs) and investment allowance (Rs. 0.64 lakh) involved carry forward of loss of Rs. 2.35 lakhs with potential tax effect of Rs. 1.29 lakhs.

Kerala circle

In the case of an un-registered firm, the amounts credited to the investment allowance reserve account were credited to the current account of the partners of the assessee firm. But no action was taken to withdraw the investment allowance already granted. Consequently income of Rs. 5.29 lakhs involving under charge of income-tax of Rs. 3.27 lakhs escaped assessment.

Calcutta circle

The assessment of a company, for the assessment year 1983-84 was completed by the Inspecting Assistant Commissioner (Assessment) in December 1985 (revised in November 1986). While doing so, unabsorbed investment allowance of Rs. 26.87 lakhs (against assessee's claim of Rs. 27.28 lakhs) pertaining to the assessment year 1979-80, which was not allowed in that assessment due to non-creation of required reserve and in the subsequent assessment for the assessment years 1981-82 to 1982-83 due to there being no positive income (due to change in the accounting year there was no assessment in the assessment year 1980-81) was erroneously allowed. The ineligible allowance related to domestic electrical appliances, like electric bulbs and tubes which were listed in the Eleventh Schedule to the Act until 1 April, 1982 and were specially reserved for small scale industrial units. The irregular grant of investment allowance for the assessment year 1979-80 resulted in underassessment of income of Rs. 26.87 lakhs involving short levy of tax of Rs. 20.53 lakhs including short levy of interest of Rs. 5.38 lakhs for short payment of advance tax in the assessment year 1983-84.

Karnataka circle

(i) In a case, for the assessment year 1984-85, the assessee company claimed a deduction of Rs. 2.62 lakhs being 25 percent of the cost of new plant and machinery of Rs. 10.49 lakhs towards investment allowance, but for want of profits the entire sum was allowed to be carried forward. It was, however, seen in audit that the assessee company had, not only, installed this plant and machinery during the previous year relevant to the assessment year 1983-84, but had also put them into use in the same previous year. As such, the assessee was entitled to claim the allowance for the assessment year 1983-84 and not for the assessment year 1984-85. The assessee, having failed to avail of the deduction in the relevant year concerned was not entitled for it, under the Act, in the assessment year 1984-85. The incorrect grant of this investment allowance for the assessment year 1984-85 resulted in a potential tax loss of Rs. 1.65 lakhs.

(ii) In another case, the assessee company was a manufacturer of alcoholic products listed in the Eleventh Schedule to the Act, an item specially reserved for small scale industrial undertaking for the purpose of grant of investment allowance. The aggregate value of plant and machinery

installed by the assessee undertaking as at the end of the previous year relevant to the assessment year 1987-88 and 1988-89 exceeded Rs. 35 lakhs (Rs. 38.91 lakhs and Rs. 40.65 lakhs for the assessment year 1987-88 and 1988-89 respectively). As the investment on plant and machinery exceeded the statutory limit, the assessee was not a small scale unit for the assessment years 1987-88 and 1988-89. In the circumstances, and as the assessee was manufacturing a low priority item listed in Eleventh Schedule, the assessee was not entitled to deduction towards investment allowance. However, investment allowance to the extent of Rs. 2.41 lakhs and Rs. 43,392 for the assessment years 1987-88 and 1988-89, as claimed by the assessee, was admitted by the department in the assessments concluded in summary manner (January 1989) and the entire amount was allowed to be carried forward in the absence of profits. The above mistakes had potential tax effect of Rs. 1.56 lakhs for the two assessment years.

(iii) In another case, for the assessment year 1985-86, an assessee company claimed a deduction of Rs. 1.55 lakhs towards investment allowance and created the stipulated reserve by debit of an equivalent amount to the profit and loss account. The assessing officer admitted the claim of the assessee in this regard and allowed the amount of Rs. 1.55 lakhs to be carried forward and adjusted in the future profits. The assessing officer, however, failed to notice that the assessee company had also withdrawn the entire reserve in the same year, with a view to reducing the brought forward loss and consequently, there was no investment allowance reserve, at the end of the previous year relevant to the assessment year 1985-86. The assessee was not, therefore, entitled to any investment allowance. The irregular deduction resulting in potential tax loss of Rs. 97,765.

Tamil Nadu circle

The assessment of a closely held company for assessment year 1987-88 was completed in February 1988 after allowing a deduction of Rs. 2.75 lakhs towards investment allowance and Rs. 1.39 lakhs as deduction towards profits and gains in respect of new industrial undertakings.

Scrutiny of records revealed that the cost of plant and machinery installed by the assessee exceeded rupees thirty five lakhs and by virtue of the definition in the Act was not a small scale industrial undertaking. The assessee was thus not eligible for the deductions claimed and allowed. The omission to disallow the deduction claimed resulted in an underassessment of income by Rs. 4.15 lakhs involving short levy of tax of Rs. 2.28 lakhs.

Irregular or excess relief granted under Chapter VI-A of the Income-tax Act

2.03.8 Other important irregularities noticed in assessments relating to small scale industrial units, coming under the various provisions of Chapter VI-A of the Act are given below.

Gujarat circle

(i) A closely held company, whose investment in plant and machinery as on the last day of the previous year ending on 31 December, 1985 relevant to assessment year 1986-87, was Rs. 42.77 lakhs was engaged in the manufacture of soft-drink concentrates, (an article specified in the Eleventh Schedule) and mango and papaya pulp for export. The company claimed and was allowed the following deductions in computation of its total income for the assessment year 1986-87, the assessment of which was finalised in March 1988, for a total income of Rs. 2.17 crores.

	(Rupees in lakhs)
(i) Investment allowance	2.30
(ii) Deductions under Section 80HHA ³	1.27
(iii) Deductions under Section 80-I ⁴	66.02
Total	69.59

The company had its units at Chittoor, Bangalore and Baroda. The entire share capital of the company (paid up capital Rs. 10 lakhs in 1,000 equity shares of Rs. 1,000 each including 500 equity shares allotted as Bonus shares) was held by a private limited company, and hence was, in all respects, being controlled and managed by the latter company.

Scrutiny of the accounts revealed that for the urpose of deduction under Section 80-I, the assessee company filed copies of the profit and loss account and balance sheet of the units, as bifurcated from the main accounts. The unit's accounts showed that they were finalised by introducing the concept of "inter unit accounts balance" system in the balance sheet. There was nothing on record to show that either of the unit had got itself registered as a small scale industrial undertaking. It was further noticed that the machine for pulp-manufacture, on which investment allowance was claimed, was not suitable for that purpose and the pulp was actually got manufactured from outside parties.

The company also claimed deduction under Section 80 HHA in respect of its Chittoor unit, though in fact, Chittoor was not a "rural area" in terms of section 35 CC of the Income-tax Act to justify the claim.

The above facts go to establish that the assessee company was not a small scale industrial undertaking, and hence was not eligible for the deduction under Section 32A, 80HHA and 80-I. The deductions allowed aggregating Rs. 69.59 lakhs in assessment year 1986-87 was, therefore, irregular and resulted in short levy of Rs. 40.19 lakhs in one year *i.e.* assessment year 1986-87 alone. The corresponding short levy in assessment years 1983-84, 1984-85, 1985-86 and 1987-88 worked out Rs. 1.10 crores in

³ Deduction in respect of profits and gains from newly established small scale industrial undertakings in rural areas.

⁴ Deduction in respect of profits and gains from industrial undertakings after a certain date (31 March 1981) etc.

the aggregate. The total tax effect involved in the case amounted to Rs. 1.50 crores.

(ii) An assessee firm, manufacturing 'Nicotine' and 'Tobacco dust' for export and located in Kheda District claimed deduction under Section 80-I and 80HHA in computation of its taxable income from assessment year 1986-87 onwards. The assessee firm was constituted on 18 August 1984. The assessment for the first year *i.e.* assessment year 1985-86 was finalised for a total income of Rs. 8,215. The income was derived from trading business only during the year and there was no claim of either 80HHA or 80-I in that year.

In assessment year 1986-87 the assessee claimed relief under Section 80-I on the plea that it had started a new unit during the relevant accounting year. In support of the claim, the assessee filed an audit report in Form 10 CCA stating that the assessee was having two units, of which one was new and established during the year (*i.e.* accounting year relevant to assessment year 1986-87) and the profit pertaining to the new unit was taken according to the basis of production on each unit. Similar certificate, without any other details, was filed for the claim for deduction under Section 80HHA also. The profit of unit II in assessment year 1986-87 was certified by the Accountant to be Rs. 6.51 lakhs based on which the deductions were allowed.

On scrutiny of the assessment records, it was noticed that the assessee had filed only a combined accounts in which profit was bifurcated as that of unit I and II. The business was located at the same place and the partners of the firm and the profit sharing ratio were one and the same. Besides, the unit was not located in a 'backward area' in terms of Schedule VIII nor was it a 'rural area' in terms of Section 35C of Income-tax Act. There was nothing on record to show that the assessee had registered itself as small scale industrial unit.

In a view of the above, the assessee was not eligible for the deductions granted under Section 80HHA and 80-I. The consequent underassessment came to Rs. 2.60 lakhs, Rs. 10.95 lakhs and Rs. 38,806 in the assessment years 1986-87, 1987-88 and 1988-89 respectively, involving an aggregate short levy of Rs. 8 lakhs in the case of the firm and the partners put together.

(iii) A private limited company, registered as a small scale industrial undertaking and doing the business of manufacturing of P.V.C. pipes and P.V.C. resins, at Rajkot, was assessed for the first time in the assessment year 1986-87 on a total income of Rs. 27,333. The company got itself registered on 29 June, 1985.

In computation of the total income for assessment year 1986-87 and subsequent years, the assessee claimed and was allowed deductions under Section 32A, 80HH and 80-I of Income-tax Act, to the following extent:

Assessment year	32-A	80HH	80-I
1986-87	Rs. 4.19 lakhs	Rs. 9,080	Rs. 9,200
1987-88	—	Rs. 1.49 lakhs	Rs. 1.87 lakhs

As Rajkot was not a 'backward area' as specified in schedule VIII of Income-tax Act, no deduction under Section 80HH was admissible. Besides, while computing the taxable income for assessment year 1986-87, the restrictive provisions of Section 80VVA (Restriction on certain deductions in the case of companies) was not invoked. Failure to do so resulted in excess deduction of investment allowance to the tune of Rs. 95,077. While invoking the provisions of Section 80 VVA, the assessee resulted in excess deduction of investment allowance to the tune of Rs. 95,077. While invoking the provisions of Section 80 VVA, the assessee would not have been entitled to any deduction under Section 80HH or 80-I for want of positive income to absorb the deductions. Moreover, it was noticed that the requisite certificates of Accountants in form 10 CC and 10 CCB were not filed.

Thus, there was under assessment of income of Rs. 5.46 lakhs involving an aggregate short levy of Rs.3.06 lakhs for assessment year 1986-87 to 1988-89.

(iv) A registered firm constituted on 20 November, 1979 with its administration office at Anand, was doing the business of manufacture and supply of 'Monoblock concrete sleepers' to railway. Subsequently on 24 June, 1983, a new partnership deed was executed to continue the business in the same name and style at Kharsalia in Kalol taluka of Panchmahals District (a declared backward area); but the registered office continue to be at Anand and the partners were members of a family, as hitherto before. There was no indication on the records to show where the factory had been located earlier, as assessment records for the earlier period were not available for verification. The assessee got itself registered as a small scale industrial unit in June 1982.

On scrutiny of the records, it was noticed that the partners of the assessee firm their close relatives were partners in not less than six other firms, all of which were functioning with their administrative office at Anand and one of which had been doing the business of contract work of dam, buildings, roads etc., from assessment year 1972-73 onwards and were the suppliers of sleepers to railways, even before the assessee firm commenced its business at Kalol in Panchmahals district. *Prima facie* the assessee had not started any new business after 31 March, 1981 so as to be eligible for the deduction under Section 80-I and 80 IIIA of the Income-tax Act, but had only shifted an existing business to the new place. Having not fulfilled the conditions laid down in both the sections of the Act, the erroneous deduction allowed to the assessee had resulted in underassessment of Rs.2.42 lakhs in assessment year 1984-85 and Rs.8.36 lakhs in assessment year 1985-86 involving an aggregate short levy of Rs.6.85 lakhs in the case of the firm and partners put together.

It was also noticed that the deductions allowed in assessment year 1984-85 were computed on inflated gross total income, due to addition of sales tax and central excise liability of Rs. 0.35 lakh and Rs. 1.14 lakhs respectively, as reflected in the balance sheet. Even though the law does

not specifically provide for their exclusion from total income, these are only notional income since they had to be credited to the Sales tax and Central Excise department of Government, and hence should not be reckoned as qualifying amounts for allowing the deductions under Sections 80HHA or 80-I of the Income-tax Act.

(v) A registered firm commenced its business of twisting of yarn on job basis during the previous year relevant to the assessment year 1984-85 at Ankleshwar with its registered office at Surat. The assessment for assessment year 1984-85 was finalised at a loss of Rs. 3.26 lakhs and that of assessment year 1985-86 was finalised for 'Nil' income, after allowing set-off of unabsorbed investment allowance to the extent positive income was available and the balance of investment allowance of Rs. 2.28 lakhs was allowed to be carried forward.

In the computation of the taxable income for assessment years 1986-87 and 1987-88 the assessee claimed and was allowed deductions under Section 80HH and 80-I to the tune of Rs. 2.97 lakhs each and Rs. 2.20 lakhs respectively. Though Bharuch was a backward district as per Schedule VIII of Income-tax Act, Ankleshwar and Bharuch Talukas in Bharuch District were not declared as backward area, as notified by the Industries Commissioner, Gujarat State and published in the year 1988 and as notified by the Central Government under Section 80HH (11). Hence the deduction of Rs. 2.20 lakhs and Rs. 2.97 lakhs allowed under Section 80HH in assessment years 1986-87 and 1987-88 was not in order. Further, the claim for deduction under Section 80-I allowed in the assessment year 1986-87 was computed on a gross total income of Rs. 14.84 lakhs, before deducting the unabsorbed and current years' investment allowance totalling Rs. 2.82 lakhs. Consequently, excess deduction was allowed under Section 80-I to the extent of Rs. 56,499 in assessment year 1986-87.

The total underassessment of income in the assessment year 1986-87, thus, worked out to Rs. 3.53 lakhs and that in the assessment year 1987-88 amounted to Rs. 2.20 lakhs, involving aggregate short levy of Rs. 2.20 lakhs in assessment year 1986-87 and short levy of tax of Rs. 1.37 lakhs in the assessment year 1987-88, in the case of the firm and partners put together, aggregating Rs. 3.57 lakhs.

(vi) In the following cases, relief under Section 80-I as admissible to new industrial undertakings established after 31 March, 1981, was erroneously allowed.

A registered firm engaged in the business of corrugated boxes at Vapi from 2 March, 1981 was dissolved by mutual consent, as per a dissolution deed, dated 14 December, 1982. A new partnership deed was executed on 15 December, 1982 by three of the four outgoing partners and four new partners providing to continue the business, in the same name and style, by taking over all assets and liabilities of the defunct firm. In computing of the total income for the assessment years from 1984-85 to 1988-89 (except for 1986-87) the assessee claimed deduction under Section 80-I to the extent of Rs. 3.55 lakhs in aggregate which was allowed by the department.

As no new industrial undertaking was actually established (except for the change in partnership), the deduction allowed was erroneous, and there was an aggregate short levy of tax of Rs. 1.86 lakhs.

Uttar Pradesh circle

(i) In the case of two assessee companies, deduction of Rs. 3.76 lakhs and Rs. 3.09 lakhs were allowed in respect of profits and gains from newly established industrial undertakings under Section 80HH in the assessments for the assessment years 1987-88 and 1988-89. The units, it was noticed in audit, were located at Dadri in Ghaziabad district. As Dadri was not declared as a 'backward area', the deduction allowed was irregular and involved short levy of tax aggregating to Rs. 3.80 lakhs.

(ii) In the case of two other companies, deductions under the same Section 80HH in the assessment year 1986-87 was allowed. The undertakings in these two cases were located at 'NOIDA' in Ghaziabad district. As the location did not constitute 'backward area' under the Act, the deduction under Section 80HH allowed was irregular. The mistake resulted in short charge of tax aggregating Rs. 25.52 lakhs.

(iii) In the case of three assessee companies the deduction Section 80HHC aggregating to Rs. 11.90 lakhs was allowed in the assessments for the assessment years 1987-88 and 1988-89, though the prescribed certificates has not been filed, namely the report of the Accountant certifying that the deduction had been correctly claimed on the basis of the amount of net foreign exchange realisation. The irregular deduction resulted in a total short levy of tax of Rs. 3.85 lakhs.

(iv) The assessee, a small scale industrial undertaking was allowed a deduction of Rs. 3.61 lakhs under Section 80HHA in the assessment year 1985-86. The assessment was completed by the Deputy Commissioner of Income-tax on an income of Rs. 19.52 lakhs. It was, however, noticed that the assessee company was producing articles even before 30 September 1977, and as such was not entitled to the deduction specified under Section 80HHA in the assessment year 1985-86. The incorrect deduction led to a short charge of tax of Rs. 2.08 lakhs.

(v) While completing the assessment of a company for the assessment years 1986-87 and 1987-88 in March 1987 and March, 1988, deduction of Rs. 3,82,246 and Rs. 63,318 respectively towards relief in respect of small scale industrial undertaking set up in rural area, was allowed by the department. Assessment records indicated that the small scale industrial undertaking of the assessee was set up well within the out-skirts of the municipal limit of a city. As the new small scale industrial undertaking was not set up in a 'rural area', the assessee was not entitled to the deduction. The incorrect deduction allowed led to undercharge of tax aggregating to Rs. 3.11 lakhs (inclusive of interest of Rs. 36,030 for short fall in payment of advance-tax for the assessment year 1986-87 for these two years.)

Bombay circle

(i) In the assessment of a small scale industrial undertakings established in a backward area, assessed in the status of company for the assessment

year 1987-88, in July 1989, the assessing officer determined the profit of the industrial undertaking at Rs. 27.89 lakhs. The assessee was entitled to both the deductions, viz. deduction of 20 percent of profit for the establishment of new industrial undertaking in a backward area and 25 percent for the establishment of the new industrial undertaking after 31 March, 1981. Accordingly the assessee was allowed deductions of Rs. 5.58 lakhs and Rs. 6.97 lakhs at 20 percent and 25 percent of the profits respectively. However, the assessing officer, while determining the profit of the industrial undertaking omitted to consider the deduction of Rs. 2.92 lakhs allowed to the assessee in respect of investment deposit account during the year. The deduction of Rs. 5.58 lakhs allowed to the undertaking was also not considered by the assessing officer while allowing the deduction of 25 percent of profit relating to the new industrial undertaking established after 31 March 1981. The excess deduction allowed to the assessee for the new industrial undertaking established after 31 March 1981 worked out to Rs. 1.98 lakhs involving short levy of tax of Rs. 1.47 lakhs including interest payable by the assessee.

(ii) The profits of the assessee, another small scale industries unit, was determined by the assessing officer at Rs. 21.41 lakhs while completing the assessment in January 1990, while arriving at the profit of the assessee, the assessing officer did not consider the depreciation of Rs. 6.06 lakhs as the assessee wanted to avail of the maximum deduction relating to the establishment of new industrial undertaking after 31 March 1981. The assessee was, thus, allowed deduction of Rs. 4.28 lakhs relating to backward area and a further deduction of Rs. 5.35 lakhs at 25 percent of the gross profit, without considering the deduction of Rs. 4.28 lakhs for the establishment of the unit after 31 March 1981. The mistakes resulted in excess deduction of Rs. 1.21 lakhs relating to the backward area and consequent short levy of tax (Including interest) of Rs. 88,385. The excess deduction relating to the establishment of new unit after 31 March, 1981 worked out of Rs. 2.28 lakhs involving short levy of tax of Rs. 1.60 lakhs inclusive of interest.

(iii) While computing the assessments of a small scale industrial unit in the status of a registered firm for the assessment years 1984-85 to 1986-87 in March, 1987 the assessee firm was allowed deduction of Rs. 5.11 lakhs, Rs. 2.43 lakhs and Rs. 3.93 lakhs respectively towards deduction in respect of profits and gains from new industrial undertaking established after 31 March, 1981. The assessee was also allowed deduction of an equal amount in respect of profits and gains from newly established industrial undertaking in backward area. Both the deductions were worked out at 20 percent on the gross total income. As the assessee firm was entitled to both the deductions, the deduction in respect of profits and gain from new industrial undertaking established after 31 March, 1981 was to be allowed on the total gross income as reduced by the deduction in respect of profits and gains from the newly established industrial undertaking in backward area.

Hence, the assessee was entitled to deduction of Rs. 4.24 lakhs, Rs. 1.95 lakhs and Rs. 3.14 lakhs respectively for the assessment years 1984-85 to 1986-87 in respect of profits and gains from new industrial undertaking established after 31 March 1981 as against Rs. 5.11 lakhs, Rs. 2.43 lakhs and Rs. 3.93 lakhs allowed. The mistake resulted in excess allowance of deduction aggregating Rs. 2.14 lakhs involving short levy of tax of Rs. 97,952 in the hands of the firm and its partners.

Haryana circle

(i) An assessee (individual) manufacturing unit functioning within the jurisdiction of a municipal corporation was allowed relief under section 80HHA of Income-tax Act as claimed by the assessee in assessment years 1984-85 to 1988-89. The allowance was contrary to the provisions of the Act, which excludes any area within the jurisdiction of a municipal committee from 'rural area'. The incorrect grant of relief of Rs. 2.20 lakhs in four assessment years resulted in short tax demand of Rs. 88,808.

(ii) The Income-tax Act lays down that in case the profit and gains derived from any industrial unit coming into production prior to 31 March 1981, falls short of 6 percent of capital employed during the previous year, the amount of such short fall shall be carried forward and adjusted against the profits of the subsequent assessment years but not beyond the seventh assessment year as reckoned from the end of initial assessment year.

An assessee company started its production in the previous year 1979-80 and was accordingly allowed relief at the rate of 6 percent of the capital employed in assessment year 1980-81 for the first time. Since the profit and gains of the business were not sufficient to adjust the said relief, the same was allowed to be carried forward for set off against the income of the subsequent assessment year. The deficiency on this account was allowed to be carried forward beyond assessment year 1987-88, which resulted in excess carry forward of deficiency amounting to Rs. 2.09 lakhs in assessment year 1988-89 with notional tax effect of Rs. 1.20 lakhs.

In 22 other cases, each involving comparatively small tax effects, reliefs under Section 80HH and 80-I were wrongly claimed and allowed due to various mistakes pointed out by audit against each assessee during the period from 1985-86 to 1989-90. The total tax effect of these cases came to Rs. 1.70 lakhs.

Madhya Pradesh circle

(i) A small scale industrial unit, formed by bifurcation from another company existing in the same area began to manufacture 'bidis' from the year 1982-83 in a backward district (Damoh) in Madhya Pradesh. The assessee did not claim deductions under section 80 HHA and 80-I of the Income-tax act for the assessment year 1983-84, but claimed such deductions in the assessment years 1984-85 and 1985-86.

The assessing officer did not allow the deductions claimed by the unit, on the the ground that it was formed by re-constitution of an existing firm. The assessee went in appeal and the Commissioner of Income-tax (Appeals) held that the assessee company was entitled to such deductions. This decision of the Commissioner of Income-tax (Appeals) was not accepted by the department, which filed an appeal to the Income-tax Appellate Tribunal. Meanwhile, the assessing officer allowed the claims under section 80HHA and 80-I without waiting for the decision of the Income-tax Appellate Tribunal in the appeal filed against the decision of the Commissioner of Income-tax (Appeals). The income involved under dispute came to Rs. 59.13 lakhs resulting in likely tax effect of Rs. 33.35 lakhs in the assessment years 1986-87 and 1987-88.

(ii) An assessee firm started the business of manufacture and sale of agricultural implements, steel furniture, etc., during the previous year relevant to the assessment year 1985-86. It did not claim the deductions under Section 80HHA and 80-I of the Income-tax Act during the assessment year 1985-86. During the previous year relevant to the assessment year 1986-87, the firm was reconstituted and three new partners were admitted. For the assessment years 1986-87 to 1988-89 the firm claimed deduction under Section 80HH and 80-I of the Income-tax Act which was allowed by the assessing officer. But, since the business was only reconstituted and no new industrial undertaking was started, the deductions under Section 80HH and 80-I were not allowable. The irregular allowance resulted in under assessment of income by Rs. 5.96 lakhs with consequent short levy of tax of Rs. 3.18 lakhs for the three assessment years from 1986-87 to 1988-89.

Assam circle

(i) An assessee company claimed and was allowed the specified deductions of Rs. 1.23 lakhs (20 per cent) and Rs.1.54 lakhs (25 per cent) on the gross profit of Rs. 6.15 lakhs during the previous year relevant to the assessment year 1987-88. Audit observed that the company had a business loss of Rs. 7.95 lakhs and interest income of Rs. 14.10 lakhs, resulting in net income of Rs. 6.15 lakhs. Since there were no industrial profits during the assessment year 1987-88, the company was not entitled to the statutory deductions under Section 80. The incorrect allowance of deductions of Rs. 2.77 lakhs resulted in short levy of tax (including interest for belated filing of return) of Rs. 1.95 lakhs.

(ii) Similarly, in the assessment of a company of the assessment years 1979-80 to 1984-85 the assessing officer allowed deductions of Rs. 4.57 lakhs in respect of profits of the business of the company. The profits on which the deductions were allowed included income of Rs. 20.75 lakhs from other sources, viz., income from building contracts and rent from warehouse, and hence, there was incorrect allowance of deductions of Rs. 4.15 lakhs (20 per cent of Rs. 20.75 lakhs) on non-industrial income of the company. The incorrect allowance of deductions of Rs. 4.15 lakhs resulted in short levy of tax of Rs. 2.96 lakhs.

Delhi circle

(i) In the assessment of a registered firm manufacturing industrial plant and machinery, for the assessment year 1986-87, the assessing officer disallowed the deductions under Section 80HH and Section 80-I of the Act by holding that as per the production register, the assessee firm did not employ ten more workers in the manufacturing process throughout the year. However, in the assessment year 1987-88, the department allowed these deductions amounting to Rs.1.10 lakhs. This was objected to by the internal audit in October 1988. The department, however, took no rectificatory action to withdraw these deductions and create additional demand of Rs.0.78 lakhs (0.31 lakhs in the hands of the firm and Rs.0.47 lakhs in the hands of the partners) till the date of audit (April 1990). Similar deduction amounting to Rs. 0.21 lakhs allowed in the assessment year 1985-96 were also required to be withdrawn.

(ii) In the case of a registered firm engaged in the business of manufacture of garments for exports, deduction was allowed in respect of profits and gains from newly established industrial undertaking in backward area in the assessment years 1986-87 to 1988-89 from the gross total income which included income from other sources. The income from other sources amounted to Rs. 10.04 lakhs, Rs. 15.16 lakhs and Rs. 25.41 lakhs for the assessment year 1986-87, 1987-88 and 1988-89 respectively comprising rental income, duty draw back, cash incentive, premium on sale of R.E.P. licences, high sea sales receipts and miscellaneous income. Some of these were income 'attributable' to, but not 'derived' from industrial undertaking while others (rental income premium on REP licence, high sea sales receipts and miscellaneous income) did not constitute industrial profits. After deducting such income from the gross total income, the profits derived from industrial undertaking were nil. The allowance of relief under Section 80HH was, therefore, not admissible. The mistake led to short levy of tax of Rs. 5.07 lakhs in the hands of the firm and its partners in the assessment years 1986-87 to 1988-89.

(iii) In the case of an assessee company deduction of one per cent of export turnover plus five per cent on the incremental export turnover made during the previous year 1984-85 relevant to the assessment year 1985-86 was allowed. The assessee had not conducted export business during the immediately preceding previous year i.e. 1983-84 and as such there was no incremental export turnover during the previous year 1984-85 relevant to the assessment year 1985-86. This mistake, together with mistake of allowing wrong deduction of investment allowance amounting to Rs. 0.11 lakh on machinery, the whole cost of which was allowed as deduction by way of depreciation, resulted in undercharge of tax of Rs. 0.99 lakh.

(iv) It was noticed in audit that in the case of two assessees (individual), the deduction in respect of profits retained for export business was allowed while computing their business income for the assessment year 1988-89 though the assessee had not created any reserve in

respect of export profits, as required under the Act. The mistake led to short levy of tax of Rs. 2.11 lakhs.

(v) While making the assessment of a registered firm for the assessment year 1987-88, the assessing officer allowed the deduction of Rs. 4.88 lakhs under Section 80HHC. The profit and loss account, however, revealed that the assessee firm had created reserve to the extent of Rs. one lakh only. As such, the deduction in respect of export profits should have been restricted to Rs. one lakh. The mistake led to excess deduction of Rs. 3.88 lakhs and consequent short levy of tax of Rs. 2.41 lakhs in the hands of the firm and its partners.

In the case of ten assesseees, in the charges of three Commissioners, deduction in respect of export turnover from profits derived from the export of goods or merchandise was allowed from the gross total income while making assessment for the assessment year 1986-87. The gross total income included other income such as cash incentive, duty draw back and premium on sale of import licence, etc., from sources other than export of goods or merchandise. The other income could be treated as 'attributable' to export activities but could neither be treated to have been 'derived' from export of goods nor received in convertible foreign exchange. After deducting the other income from the gross total income, there was no profit from export activities. Hence, the deduction allowed under Section 80HHC was not admissible. The incorrect deduction led to short levy of tax of Rs. 16.79 lakhs in the case of these 10 assesseees.

(vi) In the case of eleven assesseees, in the charges of three other Commissioners also similar incorrect deduction was also allowed from the gross total income while making assessments for the assessment years 1987-88 and 1988-89. The mistake resulted in short levy of tax of Rs. 74.72 lakhs.

(vii) Under sub-Section 9 of Section 88HH of the Act where an assessee is entitled to the deduction in respect of newly established undertaking in backward areas as well as to the deduction in respect of profits and gains from newly established undertaking under Section 80C after 31 March 1981, effect shall first be given to the deduction admissible under Section 80HH.

In the assessments of two assesseees in the charges of two Commissioners for the assessment year 1987-88, the deduction was computed and allowed on the profits and gains from new industrial undertaking before reducing them by the amount of investment allowance and investment deposit account. The incorrect computation of deduction in respect of profits and gains from new industrial undertaking led to short levy of tax of Rs. 1.1 lakhs.

(viii) An assessee firm came into existence in June 1980 and commenced the business of manufacturing of garments during the previous year ended 30 June 1981 relevant to assessment year 1982-83. It was noticed in audit

• that the assessee firm was allowed deductions under the provisions mentioned above in the assessment years 1982-83, 1985-86 and 1986-87. During the assessment years 1983-84 and 1984-85, no such deduction was claimed or allowed because assessments were made at 'nil' income. As the firm commenced the business of manufacture prior to 1 April 1981, the deductions were not admissible. The incorrect allowance of deduction resulted in short levy of tax of Rs. 0.81 lakhs in the hands of the firm and its partners for the assessment year 1982-83, 1985-86 and 1986-87.

(ix) An assessee (individual) engaged in the business of manufacturing perfumes and perfume compound and other allied products was allowed the above mentioned deductions in the assessment years 1984-85 to 1987-88. From the assessment records, there was nothing to verify as to whether the assessee had employed minimum number of workers prescribed under the law in the previous years relevant to above assessment years for claiming the above deductions. Moreover, no wages were paid as per manufacturing, trading and profit and loss accounts relating to these assessment years. Since the condition of employing the minimum number or workers engaged in the production was not fulfilled, the above mentioned deduction allowed by the department was inadmissible. The mistake led to under charge of tax of Rs.1.59 lakhs during the assessment years 1984-85 to 1987-88.

• (x) In the case of two assesseees falling under the jurisdiction of two Commissioners, it was noticed in audit that the deduction in respect of profits and gains in respect of new undertaking established after 31 March, 1981 was computed and allowed under Section 80-I on the profits from such undertakings included in the gross total income and not on the balance amount of profit as reduced by the deduction already allowed under Section 80HH i.e., deduction in respect of newly established undertaking in backward areas. The omission to do so resulted in short levy of tax of Rs. 0.86 lakhs.

APPENDIX II

(Vide Para 1 of the Report)

Para 1.03 of the Report (No. 4 of 1991) of the Report of C&AG of India for the year ended 31 March, 1990, Union Government (Revenue Receipts Indirect Taxes) re: Exemption to Small Scale Industries

1.03 Exemption to Small Scale Industries

(1) Introduction

Exemptions from levy of the duty of excise are being given by the government on goods manufactured or produced in factories, which belong to what is commonly referred to as, the Small Scale Industries (SSI) sector, to enable them to become economically viable and to help competitive pricing of their products vis-a-vis large scale manufacturers.

A number of such notifications were issued from 1972, covering various commodities and stipulating conditions governing the grant of exemption which were operative till a comprehensive notification 175/86 CE dated 1 March, 1986 building in the essential features of the earlier notifications was issued and given effect to from April 1986.

Introducing this notification as a new scheme of duty concessions to the SSI units, the Finance Minister in his 1986 Budget speech, expressed the hope that these concessions would serve "as a ladder and not as a lid".

The different categories of small scale industrial units and the amount of duty paid by them during the year 1986-87 to 1989-90 are given in Statement I.

(2) Salient Features of the Scheme

Although the new scheme of concessions was meant for the SSI units, an SSI unit had not been defined either in notification 175/86 CE dated 1 March 1986 or elsewhere in the central excise law. However, the conditions stipulated for concessions under this notification indicated a set of criteria to identify the targetted units.

The main features of that criteria are given below :

- (i) the factory must be engaged in the manufacture of excisable goods of the description specified in the Annexure to the aforesaid notification dated 1 March 1986, which are generally referred to as "specified goods";
- (ii) the factory, where such specified goods are manufactured shall be an undertaking registered with the Director of Industries in any State, or the Development Commissioner (Small Scale Industries)

as a small scale industry under the provisions of the Industries (Development and Regulation) Act, 1951;

- (iii) full exemption was admissible in the case of first clearances of specified goods up to an aggregate value not exceeding Rs. 30 lakhs (Rs. 15 lakhs under one chapter heading). Thereafter duty was payable at concessional rate upto aggregate value not exceeding Rs. 75 lakhs;
- (iv) in the case of manufacturers availing Modvat credit on inputs, the duty was payable at concessional rate from the very beginning;
- (v) the exemptions under this scheme would cease to apply if the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories or from any factory by one or more manufacturers had exceeded rupees one hundred and fifty lakhs in the preceding financial year.

(3) Scope of Audit

A test check of records maintained by the SSI units for the period from 1986-87 to 1988-89 was conducted during 1989-90. The scope of audit was primarily designed to see

- (i) that the exemption was availed of on specified goods upto the limits specified in the notification;
- (ii) that the exemption was allowed only to those units which were duly registered with the Director of Industries in any state or with the Development Commissioner (SSI) under provisions of Industries (Development and Regulation) Act, 1951;
- (iii) that the notional higher credit available under the Modvat scheme was not irregularly availed;
- (iv) that the concessions were not taken in respect of goods manufactured on behalf of large scale manufacturers, who by themselves were not eligible for the SSI benefits; and
- (v) that the concessions were not availed on goods manufactured in SSI units but affixed with a brand name or trade name of another manufacturer who is not eligible for the SSI benefits.

(4) Highlights

The results of review of the scheme of exemptions relating to the SSI units highlight the following :—

In 102 cases in 21 collectorates SSI concessions availed by units beyond the validity period of registration or during the period subsequent to the registration becoming inoperative, were noticed. The duty involved was over Rs. 5.31 crores.

Concessions were availed of by SSI units, on behalf of other manufacturers, who were not themselves entitled to the concessions.

The duty not levied amounted to Rs. 5.32 crores in 64 cases spread over 16 collectorates.

There were 76 cases in 17 collectorates where the units had not even been duly registered as SSI units, but were allowed to avail the concessions irregularly. The duty not levied worked out to Rs. 4.13 crores.

The misuse of notional higher credit under Modvat scheme in relation to duty paid goods manufactured by SSI units, was noticed in 42 cases in 10 collectorates. This irregularity involved a duty of Rs. 2.08 crores.

There were other miscellaneous irregularities in the implementation of the scheme of SSI concessions. 50 such cases had been noticed in 17 collectorates which involved a duty of over Rs. 1.50 crores.

(5) Excisable goods covered by the scheme—misclassification of goods to avail the same

Excise concession to small scale units, under the new scheme applies only to goods specified in annexure to notification 175/86 CE dated 1 March 1986. Numerous amendments by way of additions and deletion of items have been carried out by the Government by issue of notifications under rule 8 of the Central Excise Rules, 1944 (now section 5A of the Central Excises and Salt Act, 1944). The items added become eligible for excise concessions from the date of issue of such amending notifications and items deleted from the annexure become ineligible for concessions from such date. In this context, it would be irregular to continue to avail SSI concessions in respect of goods falling under the sub heading deleted from the annexure to the said notification or to misclassify goods with a view to availing the concessions incorrectly.

A few cases are given below to illustrate such irregularities:

- (i) Three assesseees in Shillong collectorate were engaged in the manufacture of tubewell brass strainer (sub heading 7411.21); nuts, bolts, gate, grill, water tank etc., (sub heading 7309.90 and 7308.30); steel windows, ventilators (sub heading 7308.90) and brass strainer fabrication works (sub heading 7412.20) respectively. All the products classifiable under these sub headings were omitted from the notification 175/86 CE dated 1 March 1986 by an amending notification 47/88 CE dated 1 March 1988, but the assesseees continued to avail of the small scale benefits. This resulted in non levy of duty of Rs. 3.42 lakhs during 1988-89.
- (ii) A licensee in Bangalore collectorate carried out fabrication of structure on Maruti (Saloon) cars (not on chassis) as per the special design supplied by a big manufacturer. Such fabrication amounted to manufacture and a new product classifiable under heading 87.04 had emerged. As goods under heading 87.04 were

not eligible for the SSI concessions, this product had been misclassified under heading 87.07 to avail of such benefits. The misclassification entailed loss of duty, otherwise leviable, to the extent of Rs. 2.32 lakhs during the year 1989-90.

- (iii) An assessee in Delhi collectorate manufactured 'preformed expansion joint filler, bitumen impregnated fibre board'. It was noticed that the item had been classified under sub heading 2715.90 vide classification list filed on 24 March 1986. This item was reclassified under sub heading 4410.90 vide revised classification list filed on 2 April 1986. As the item manufactured by the assessee was made from ligneous material it was correctly classifiable under sub heading 4406.90 on which duty was leviable at the rate of 30 per cent ad valorem from 1 March 1986 to 28 February 1987 and 20 per cent ad valorem in March 1987.

The incorrect classification of preformed expansion joint filler resulted in short payment of duty of Rs. 2.03 lakhs during 1986-87.

- (iv) An assessee in Patna collectorate manufactured "retreading cement" which was classified by the department under sub heading 4001.00 making the assessee eligible for full exemption (up to Rs. 15 lakhs) under notification dated 1 March 1986 as amended. Natural rubber, carbon black and petrol were the principal constituent materials for manufacturing the retreading cement. The product, therefore, was nothing but rubber solution, and not natural rubber in raw or semi finished stage. The rubber solution was sold in litres and as such was appropriately classifiable under sub heading 4005.00. Rubber products falling under sub heading 4005.00 were not specified goods for availing the small scale units exemption benefit. The misclassification of the product resulted in short levy of duty of Rs. 1.49 lakhs during April 1987 to October 1989.

(6) Registration as a small scale industrial unit

6.1 Registration of units with the Director of Industries in any state or with the Development Commissioner (SSI) under provisions of Industries (Development and Regulation) Act, 1951 was made a condition precedent to availment of proposed concessions, but not where a unit had already been availing SSI concessions under any of the notifications specified in the scheme or where its annual turnover was not likely to exceed Rs. 7.5 lakhs. Valid certificates of registration from the Directorate of Industries of the state in accordance with the instructions issued by the Development Commissioner (SSI), New Delhi, in this regard is required. The registration is done in two stages:

- (i) Provisional Registration and

(ii) Final Registration.

A provisional registration certificate is issued to enable the entrepreneur to take necessary steps to bring the unit into existence. When he has taken all steps to establish the unit, that is to say, where the factory building is ready, power connection is given, the machinery has been installed etc., he may apply for a final registration certificate. Such a certificate issued would specify the products proposed to be manufactured, the location and the constitution of the factory at the time of registration for the admissibility of concessions under notification 175/86 CE. Any change in or alteration of these factors in the registration certificate, unless authorised by the registering authority, would render the unit ineligible for the said concessions.

A test check in audit revealed 76 cases in 17 collectorates where though the requirements of registration were not fulfilled, excise duty concessions of Rs. 413 lakhs (vide Statement II) were availed of.

A few cases are given below to illustrate such irregularities:

- (i) An assessee in Delhi collectorate engaged in the manufacture of seats for scooters and motor vehicles, was availing SSI concession on these products although he had no valid registration for his factory. The provisional SSI certificate had not mentioned the address of the factory. The assessee had, therefore, availed the SSI concession irregularly during the period 1986-87 to 1988-89, the duty in respect of which amounted to Rs. 21.17 lakhs.
- (ii) Another assessee in the same collectorate engaged in the manufacture of gases and chemicals was registered as a small scale industrial unit at an address different from the one where he was actually engaged in the manufacture. As the registration had not been done with reference to the place of actual manufacture, the benefits of the SSI were not available. However, the assessee had cleared goods during the period from April 1986 to January 1990 from the unregistered premises, on which the duty payable amounted to Rs. 13.21 lakhs.
- (iii) An assessee in Bombay II collectorate engaged in the manufacture of PVC bonded aluminium sheets, decorative plywoods and other PVC bonded M.S. Sheets etc., (falling under headings 76.16, 44.08 and 73.26), was not paying duty claiming exemption under notification 175/86 dated 1 March 1986. The assessee had not taken any SSI registration from the Director of Industries, Bombay, though the clearance value during 1986-87 was above Rs. 15 lakhs. As the assessee was not having any L4 licence and was working under the Shops and Establishment Act during 1985-86,

the question of automatically availing the exemption under any of the notification covered under condition 4(b) of notification 175/86 dated 1 March 1986 did not arise. The assessee was consequently liable to pay duty at the appropriate rates and the duty that had not been so paid on the clearances during the years 1986-87 to 1988-89 amounted to Rs. 13.15 lakhs.

- (iv) An assessee in Delhi collectorate had SSI registration for "Job work of auto parts", but was engaged in the activity of manufacture of motor vehicle parts (chapter 87). As the registration was not for manufacture of M.V. parts, the concession under notification 175/86 dated 1 March 1986 was not available. The duty not paid on the clearances during the period from April 1986 to January 1990 amounted to Rs. 12.95 lakhs.
- (v) An assessee in Indore collectorate engaged in the manufacture of goods falling under headings 85.03, 85.04, 85.14, 85.38 and 85.43, besides items falling under heading 72.04, was availing small scale industry exemption. The concerned District Industries Centre had registered this unit with a specific condition that the registration was valid for factory location, products and constitution of the unit at the time of allotment of the factory.

Later, the assessee shifted the factory to a different location and the District Industries Centre when approached for amending the certificate of registration had refused to grant such permission.

The assessee had thus no valid registration as SSI unit during the period from March 1986 to July 1989 when he had availed the SSI Exemption. The differential duty not levied amounted to over Rs. 12.93 lakhs during the aforesaid period.

- (vi) An assessee in Coimbatore collectorate manufacturing goods falling under sub heading 8481.80 who had neither registered as a small scale industry (till 29 February 1988) nor was availing of any of the specified exemption notifications during 1985-86/1986-87 was allowed to avail the benefits of the exemption under the notification first cited on the ground that a sister unit (falling under another Collectorate) of the assessee was holding a small scale industry certificate issued in May 1973.

As registration of the factory as a small scale unit is a pre-requisite for availing the exemption, the availment of the benefits without such a certificate was not in order. The incorrect availment of exemption during the period from March 1986 to February 1988 resulted in short levy of duty of Rs. 7.60 lakhs.

On this being pointed out in audit (May 1989), the department accepted the objection and reported (June 1989/December 1989) issue of a show cause notice for recovery of duty due. Report on

adjudication and recovery action have not been furnished (January 1990)

6.2 Ministry of Finance (Department of Revenue) clarified in their letter F. No. B-21/15/86-TRU dated 3 April 1987 that the provisional registration from the state Government should be accepted for the purpose of availment of duty concession under the notification dated 1 March 1986. In this connection following aspects were looked into:—

- (a) whether the certificate of registration issued by the state government to the assessee was valid for the period and premises for which exemption had been availed;
- (b) whether the provisional registration was regularised within a reasonable time, and whether the delay in granting regular registration certificate exceeded one year;
- (c) cases of "registered" small scale units were also checked with reference to their total investment on Plant and Machinery (without deducting depreciation allowed thereon) shown in the balance sheet. In case total (gross) investment on plant and machinery exceeded Rs. 35 lakhs during a particular year, the certificate issued by the department/state government became inoperative from that date.

Major cases of irregular availment of exemption on this account were noticed in 102 cases in 21 collectorates. The amount of duty involved in these cases was over Rs. 531 lakhs (vide Statement II).

A few cases are given below to illustrate such irregularities:

- (i) An assessee in Delhi collectorate, an ancillary unit of a public sector undertaking, was engaged in the manufacture of tractor parts falling under heading 87.08 of the schedule to the Central Excise Tariff Act, 1985. The assessee had been registered as a small scale unit with the Director of Industries, Haryana. According to a notification issued by the Ministry of Industry and Company Affairs on 18 March 1985, the limit of value of plant and machinery installed, for the purpose of registration as small scale industrial undertaking was Rs. 35 lakhs.

It was noticed in audit that the assessee had crossed the limit of Rs. 35 lakhs during the year 1985-86 as his balance sheet showed the value of plant and machinery at Rs. 54.11 lakhs. Accordingly, the exemption as a small scale unit was not available to the assessee from 1985-86. The amount of duty that had not been paid on the value of clearances during the period from 1987-88 to December 1989 was Rs. 27.53 lakhs.

- (ii) Another assessee in Chandigarh collectorate engaged in the manufacture of cement (heading 25.02), had indicated the value of

plant and machinery in the balance sheet ending June 1986 at Rs. 37.85 lakhs and at Rs. 38.10 lakhs at the end of June 1987. He had thus crossed the limit of Rs. 35 lakhs and was therefore not entitled to exemption as a small scale unit. However, he was allowed to continue to avail himself of the benefits as an SSI unit. The total amount of duty not levied during the period from 1 April 1986 to 31 March 1988 worked out to Rs. 21.07 lakhs.

- (iii) An assessee, a small scale unit in Hyderabad collectorate, was engaged in the manufacture of oxygen gas. As the investment on plant and machinery in this unit, stood at Rs. 59.92 lakhs in 1984, Rs. 54 lakhs in 1985, Rs. 48.09 lakhs in 1986 and Rs. 105.81 lakhs in 1987 as per the balance sheets for these years, he was liable to pay duty at appropriate rates. The duty not levied during the period from April 1986 to July 1989 amounted to Rs. 18.89 lakhs.
- (iv) Another assessee, a small scale unit in Chandigarh collectorate, engaged in the manufacture of cement had indicated the total value of plant and machinery at over Rs. 41.67 lakhs in the balance sheet for the period ended on 31 July 1986. He was, however, allowed to continue availing small scale benefits. The duty not levied during the period from 1 July 1986 to 31 March 1989 amounted to Rs. 18.26 lakhs.

(7) Irregular duty free clearances in excess of the prescribed limits

Under the small scale exemption scheme, first clearances of specified goods for home consumption up to Rs. 30 lakhs in value was wholly exempt from excise duty, where Modvat credit facility was not being availed of. By notification 216/86 CE dated 2 April 1986, it was however, stipulated that the aggregate value of clearances of specified goods in respect of any one tariff heading should not exceed Rs. 15 lakhs. Thus, once the overall limit of Rs. 30 lakhs is reached, the exemption ceased, even if in respect of any one tariff heading the value of clearances might not have reached the limit of Rs. 15 lakhs. The scheme also provides payment of concessional rates of duty for clearances up to Rs. 75 lakhs. Full rate of duty is to be paid after the aggregate value of clearances exceeded Rs. 75 lakhs.

A test check in audit revealed infringement of the aforesaid provisions in 18 collectorates. The irregularities involved 47 cases, where goods of the value of Rs. 718.91 lakhs had been cleared in excess of the permissible limits for duty free clearance or clearance on payment of concessional rate of duty. The amount of differential duty not paid in these cases was Rs. 22.83 lakhs. Collectorate wise details are given in Statement III.

(8) Availment of SSI exemption and Modvat credit

The new scheme of excise duty concessions to small scale units introduced by notification 175/86 CE dated 1 March 1986 provided for an

integrated method of computation of value of clearances made in a financial year. Under the notification, if a manufacturer avails of Modvat credit in respect of specified goods, then he is required to pay excise duty at normal rates reduced by 10 per cent ad valorem. In view of legal position obtaining after issue of notification dated 1 March 1986 and the fact that there is no one to one correlation between the input and output under Modvat scheme, it would not be possible to allow a manufacturer simultaneously to avail Modvat for some of the products and full exemption for others under the small scale exemption scheme. In other words, a manufacturer can avail himself either of the two facilities. Irregularities in this regard were noticed in 12 collectorates involving duty of Rs. 46 lakhs (vide Statement IV).

A few cases are given below to illustrate such irregularities:

- (i) In Delhi collectorate four assessees had availed Modvat as well as SSI exemption resulting in short levy of excise duty amounting to Rs. 12.07 lakhs on clearances during 1986-87 to 1988-89. The irregularities were pointed out to the department during August 1989 to May 1990 but replies have not been received (May 1990).
- (ii) In Bhubaneswar collectorate certificate of registration had been issued by the District Industries Corporation in favour of one person for two units which were located in the same compound and having one and the same administrative building. For all purposes the same person was the owner of both the units with his relatives as directors for both the units. One unit had produced "Portland Cement" under sub heading 2502.20 and the other unit had manufactured non alloy steel ingots (7606.90) and steel casting under sub heading 7325.90. One individual, being the assessee for both the products, had availed Modvat credit in respect of steel ingots (7606.90) and had simultaneously availed exemption benefit of Rs. 15 lakhs for cement products (2502.20), which was irregular. The assessee had cleared a total quantity of 397.20 MT of cement valued at Rs. 45 lakhs at nil rate of duty under SSI exemption. This resulted in irregular availment of concession of central excise duty to the tune of Rs. 4.98 lakhs during the period 1986-87 to 1988-89.
- (iii) Another unit, in the same collectorate, a state government enterprise, had manufactured T.V. cabinets (sub heading 8529.00), as well as wooden furniture (sub heading 9403.00). The assessee had taken Modvat benefits for the manufacture of T.V. cabinets (8529.00) and had availed small scale exemption for the manufacture of wooden furniture (9403.00) which was irregular as the manufacturer could avail one of the two benefits. The assessee had cleared wooden furniture valued at Rs. 20,90,236 during the period from 1986 to 1989. The duty concession erroneously allowed was Rs. 3.88 lakhs.

(iv) A manufacturer of auto parts (sub heading 8708.00) and nut bolts (sub heading 7319.10) in Meerut collectorate cleared his goods on payment of duty at concessional rate as he had been availing of deemed credit under rule 57G of the Central Excise Rules, 1944 on his only input *viz.* mild steel bright bars (sub heading 7207.20). With the withdrawal by the government of the deemed credit facility on mild steel bright bars from 2 November 1987 he discontinued availing of the benefit of credit on the input. He, however, continued to clear his goods at the concessional rate of duty even after 2 November 1987. The irregularity resulted in short levy of duty of Rs. 3.17 lakhs on the goods cleared during the period from 1 April 1988 to 31 January 1990. Short levy for the period from 2 November 1987 to 31 March 1988 had not been worked out by the department.

The audit objection was communicated to the department in March 1990. Their reply has not been received (April 1990).

(9) Availment of concession under new SSI scheme before its application

As per two notifications issued under 77/85 CE dated 17 March 1985 and 85/85 CE dated 17 March 1985 small scale units manufacturing certain goods specified therein were allowed to avail of complete exemption from payment of duty on clearance of Rs. 20 lakhs and Rs. 7.5 lakhs respectively and on payment of concessional rates of duty thereafter upto Rs. 40 lakhs according to different slabs.

With the introduction of notification dated 1 March 1986 the eligibility and the quantum of concession in respect of goods specified goods were revised. Complete exemption upto Rs. 30 lakhs (if the specified goods were falling under one heading only) and/or concessional rate of duty upto Rs. 75 lakhs was allowed.

This notification dated 1 March 1986 was suspended from 25 March 1986 to 31 March 1986. As a result the goods specified under the two notifications during the period from 25 to 31 March 1986 were cleared at the concessional rates of duty prescribed as per old slabs and at new tariff rates which came into force from 1 March 1986.

Though the period 1 March 1986 to 24 March 1986 was part of the financial year 1985-86, due to non issue of order suspending the operation of notification dated 1 March 1986 during that period manufacturers cleared the goods at concessional rate of duty upto Rs. 75 lakhs though some of them had crossed the limit of Rs. 40 lakhs the maximum limit up to which the goods could have been cleared at concessional rates under the two earlier notifications in force upto 28 February 1986.

Thus, due to non-suspension of the operation of notification 175/86 dated 1 March 1986, which was done from 25 March 1986, a number of units cleared their goods availing concessional rates of duty on clearances

even after crossing the limit of Rs. 40 lakhs the limit upto which such concession was applicable from 1 April 1985 to 28 February 1986 and from 25 March 1986 to 31 March 1986.

Such irregular availment of concession was noticed in 41 cases, in 8 collectorates. The duty involved was Rs. 14.91 lakhs (*vide* Statement V).

Two instances are given below:-

- (i) A unit in Delhi collectorate engaged in the manufacture of excisable goods classifiable under heading 90.11 (erstwhile tariff item 68) was availing of concessions under notification 77/85 CE dated 17 March 1985 prior to the issue of notification 175/86 CE dated 1 March 1986 which came to be effective from 1 April 1986. The assessee was therefore eligible for concessions under the new notification dated 1 March 1986 only with effect from 1 April 1986. Also, the concessions under the earlier notification dated 17 March 1985 had relevance to the value of clearances during the whole year and one of the conditions in that notification stipulated that the assessee paid duty at normal rates after the aggregate value of clearances of goods in the factory exceeded Rs. 40 lakhs. As the assessee had crossed this ceiling, he was liable to pay duty at the normal rates.

It was seen in audit that the assessee had paid concessional rate of duty at 5 per cent ad valorem on his goods from 1 to 31 March 1986 under notification 175/86 CE dated 1 March 1986, although he was liable to pay duty at the normal rate of 15 per cent ad valorem during this period. This had resulted in short levy of duty of Rs. 1.06 lakhs on the value of goods cleared by him during March 1986, availing irregularly the concessions under notification 175/86 CE dated 1 March 1986.

- (ii) A unit in Bombay I collectorate engaged in the manufacture of goods classifiable under erstwhile tariff item 15A was availing of concession under notification 85/85 CE dated 17 March 1985. Under this notification he could clear, at concessional rates of duty, goods of the value of Rs. 40 lakhs during a financial year. As he had crossed this limit earlier, he was liable to pay duty at the normal rates

However, it was seen in audit that the assessee had irregularly availed of concessional rates of duty under notification 175/86 CE dated 1 March 1986 and paid duty at 30 per cent ad valorem instead of at 40 per cent ad valorem on the clearances during March 1986. The irregularity had resulted in short levy of duty of Rs. 54,132.

(10) Clearance of goods from SSI units belonging to Central/State Governments

As per Explanation V to notification 175/86 CE dated 1 March 1986, in

cases where the specified goods are manufactured in a factory belonging to or maintained by the Central Government or by a State Government or by a State Industries Corporation or by a State Small Industries Corporation or by the Khadi and Village Industries Commission (KVIC), the value of excisable goods cleared from such factory alone shall be taken into account. The Central Board of Excise and Customs in their letter No.F.345/1/87-TRU, dated 16 April 1987 clarified that the benefit of not clubbing the clearances from different factories belonging to or maintained by the Central/State Government, KVIC, for the purposes of excise duty concession under the notification can not be extended to the factories belonging to independent industrial corporations, notwithstanding the fact that these corporations are undertakings of Central/State Governments.

A test check in audit revealed that during the years 1986-87, 1987-88 and 1988-89, excise duty concession totalling to Rs. 23 lakhs was availed of by 5 factories belonging to independent industrial corporations in three collectorates (*vide* Statement VI).

A few such cases are given below:-

- (i) One unit, a State Government Undertaking in Bhubaneswar collectorate, had two units manufacturing wooden furniture. As per the Board's instruction dated 16 April 1987 the department was required to club the value of clearances of wooden furniture of both the units (from 1986 to 1989), which was not done. This entailed irregular availment of excise duty concession of Rs. 19.02 lakhs. On this being pointed out in audit the department confirmed differential duty amounting to Rs. 2.23 lakhs of wooden furniture cleared during 1 March 1986 to 31 March 1987 and a show cause cum demand notice amounting to Rs. 4.20 lakhs had been issued on the unit in respect of clearances during April 1987 to July 1988.
- (ii) In three cases in Coimbatore collectorate, clearances made by all the factories belonging to a public limited company whose shares were fully subscribed by a State Government, were not taken into account while determining the duty liability, under the presumption that those units were owned and maintained by the State Government and therefore, were eligible for assessment based on the value of individual clearances. This irregularity resulted in short levy of duty of Rs. 2.96 lakhs on these three units during 1986-87. On the mistake being pointed out, the department accepted the objection in respect of one unit involving duty of Rs. 2,01,786 and in another recovery of Rs. 20,735 was reported. In the third case a demand for differential duty of Rs. 73,773 had been confirmed.
- (iii) In Hyderabad collectorate it was seen that the clearances from a unit (an engineering workshop) which was a unit of the state Small Scale Industries Development Corporation was not being clubbed

with the other factories of the same state Small Scale Industries Development Corporation for deciding the applicability of concessions under notification 175/86 dated 1 March 1986. If the clearances of other factories of the said corporation had also been taken into account, the aforesaid unit (an engineering workshop) would not have been eligible for the exemption. The irregularity resulted in under assessment of Rs. 1.02 lakhs during the period from April 1986 to March 1988.

(11) Misuse of notional higher credit

As per rule 57A of the Central Excise Rules, 1944, Modvat credit for the duty paid on inputs used in or in relation to manufacture of final products is allowed to a manufacturer and this credit could be utilised towards payment of duty leviable on such final products. As per rule 57B *ibid* where the specified goods are cleared at concessional rates with reference to notification 175/86 CE dated 1 March 1986 exempting them from part of duty on it based on value of clearances of such goods during any specified period, Modvat input credit would be allowed in respect of these goods at a rate otherwise applicable but for the said notification. It follows, therefore, that if a manufacturer procures the goods (inputs) from a small scale manufacturer he could take credit of duty paid on these inputs at notional higher rates. With effect from 1 April 1988 such higher credit is admissible at the rate duty is actually paid plus five per cent or the duty otherwise applicable whichever is less.

In a test check audit looked for cases where duty had been paid on goods although no duty was required to be paid thereon or which were exempted from duty, so that the major buyer units could avail notional higher credit. Audit was also on the look out for cases where the small scale industrial units, in collaboration with large scale industrial units cleared the specified goods to large scale units at inflated prices (by over invoicing) in order to facilitate the large scale units to avail higher notional credit under the said rule 57B. The possibility of such amounts (charged in excess) having been refunded by way of special discount or by adopting other methods, without correspondingly reducing the amount of notional credit already taken by the large scale units, was also looked into.

Irregularities relating to these areas were noticed in 10 collectorates and the amount of duty involved was over Rs. 2.08 crores (*vide* Statement VII).

10 Some cases are detailed below:-

10 (i) An SSI unit in Shillong Collectorate cleared goods valued at
10 Rs. 34 lakhs during 1987-88 (Rs. 33.82 lakhs under heading 44.04

and Rs. 0.19 lakhs under heading 44.05) of which goods valued at Rs. 2.41 lakhs were cleared without payment of duty and the balance on payment of duty at 5 per cent ad valorem in place of total exemption upto Rs. 30 lakhs clearances available to it. As a result the purchaser, a large scale unit, who purchased all veneers manufactured by the assessee availed higher Modvat credit of Rs. 138 lakhs during 1987-88, due to irregular payment of duty although the assessee unit was not required to pay duty.

- (ii) Notification 175/86 CE dated 1 March 1986 (as amended) provided for concessional rates of duty on specified goods manufactured by small scale units and cleared for home consumption in a financial year by a manufacturer who avails of the credit of duty paid on input used in the manufacture of specified goods under rule 57A of the Central Excise Rules, 1944. The concession was available on clearance value up to Rs. 75 lakhs in a financial year. To avail the benefit of concessional rate of duty of excise the manufacturer was under a legal obligation to avail of the credit of duty paid on inputs and the manufacturer who did not fulfil this condition would not be entitled to the benefits of concessional rate of duty of excise.

It was, however, noticed in Delhi collectorate that 11 manufacturers were paying duty at the concessional rate although they did not fulfil the condition of availment of credit of duty paid on inputs and did not maintain necessary records prescribed. The RG23A part I and II accounts had not been maintained. In the absence of fulfillment of the prescribed conditions, these assessees were not entitled to pay duty at concessional rate. The irregular clearances of goods at concessional rate of duty instead of at nil rate upto the clearances of Rs. 15/30 lakhs under SSI scheme resulted in facilitating the buyers to avail of the notional credit of duty Rs. 31.53 lakhs during the years 1986-87 to 1989-90.

- (iii) Ammonium nitrate whether or not pure was chargeable to duty at 15 per cent ad valorem under heading 31.02. The CEGAT had, however, held [1985 (21) ELT 889] that merely improving the quality of purity of ammonium nitrate by prilling did not amount to manufacture and no duty was leviable on prilled ammonium nitrate.

Five small scale units in Jaipur collectorate engaged in increasing the purity of ammonium nitrate by prilling paid duty incorrectly amounting to Rs. 4,61,656 at concessional rate of 5 per cent ad valorem on consignments cleared by them from April 1986 to January 1989, notwithstanding the fact that no duty was leviable on these clearances in terms of 1985 decision of the CEGAT. Further these units not having availed of any Modvat credit in respect of

duty paid on inputs, the first clearance of Rs. 15 lakhs made by them in each year was also exempted from the whole of the duty. The incorrect payment of duty at the concessional rate by these units enabled the factories, which had purchased the prilled ammonium nitrate from them to be used as input for manufacture of explosives, to avail of the notional higher credit amounting to Rs. 10.43 lakhs and to utilise the credit to discharge the duty liability on their final product. This resulted in an unintended benefit to the ultimate consignee and loss of revenue of Rs. 6.81 lakhs which could have been avoided had the clearances by small scale units been correctly allowed without payment of duty.

On the inadmissibility of the benefit being pointed out (February 1988 and March 1989) in audit, the department initially contended (March 1988) that the decision of the CEGAT was not based on sound legal footing and that so long as the units had filed declarations to avail of the Modvat credit, it was not necessary for them to actually avail of such credit so as to become eligible for payment of duty at the concessional rate. Subsequently, the department referred (April 1989) the matter to the Board for clarification. While upholding the view of Audit, the Board clarified (July 1989) that no duty on such prilled ammonium nitrate was to be paid and that no Modvat credit of such duty was to be allowed even if it had been paid. The Board accepted (November 1989) the audit objection and stated that concessional rate of duty in terms of notification of 1 March 1986 was not admissible if the Modvat credit was not availed of.

Action, if any, taken for the reversal/recovery of the notional credit taken by the consignee in these cases has not been intimated by the department. A statement of facts was issued to the department in February 1990. The reply has not been received (May 1990).

- (iv) A manufacturer under Bolpur collectorate manufacturing stranded wire (SH 7312.10) received, free of cost, wire of non alloy steel from a large scale manufacturer for the manufacture of stranded wire on his behalf. The licensee, a SSI unit, received conversion charges for the job work and cleared those finished product (stranded wire) to the large scale manufacturer on payment of duty at concessional rate of 5 per cent ad valorem in terms of notification 175/86 CE. The large scale manufacturer availed notional Modvat credit at higher rate in terms of rule 57B. The assessee had also taken credit of the duty paid on the raw materials supplied to him by the supplier.

Total amount of duty paid by the assessee on the finished product (stranded wire) cleared to the large scale manufacturer was Rs. 4,52,687 during February 1989 to September 1989. Higher

notional credit of equivalent amount availed by the large scale manufacturer was irregular.

The irregularity was pointed out in audit in December 1989 and a statement of facts issued in February 1990. Reply has not been received.

- (v) The assessee of one factory, under Calcutta II Collectorate, situated within the same premises of another assessee manufacturing biscuits, is closely related to the proprietor of the biscuit factory. The former factory was manufacturing metal containers without the aid of power prior to 5 May 1987 and with the aid of power from that date and Central Excise duty was accordingly paid after the unit being allowed by the department to avail of small scale exemption under notification 175/86 CE dated 1 March, 1986.

The electricity consumed by the first assessee's factory was also taken from the second assessee. Further, all the metal containers manufactured by the assessee were branded with the name of the second assessee and cleared exclusively to the second assessee who availed higher notional credit under rule 57B of the Central Excise Rules, 1944, read with para 5 of the notification dated 1 March 1986 mentioned above. Chapter 19 (biscuits) having been brought under the Modvat scheme from 1 March 1987, the biscuit manufacturer started taking higher notional credit from May 1987. It was observed in audit that the biscuit manufacturer by paying duty through a dummy (i.e., the first assessee) reaped the benefit of higher notional credit, thereby misusing the benefit of the same. This resulted in availment of unintended benefit of higher notional credit of Rs. 4.31 lakhs during the period from 5 May 1987 to 30 November 1989. A statement of facts issued in February 1990 to the department has not been replied (April 1990).

- (vi) Three assessees under Chandigarh collectorate manufacturing tractor parts under the heading 87.08 neither opted for clearing the goods without payment of duty upto the prescribed limit nor availed credit of duty on inputs under Modvat scheme but paid central excise duty at concessional rates applicable to assessees availing Modvat credit. This was irregular because these units did not avail Modvat and were required to clear the goods upto Rs. 15/30 lakhs without payment of duty. These units paid duty and thus enabled the large scale units to whom clearances were made to avail notional higher credit amounting to Rs. 3.97 lakhs during the years 1986-87 to 1988-89 which was otherwise inadmissible. The provisions for concession to SSI units, were thus misused.

(12) Goods manufactured by the SSI units on behalf of others

Under section 2(f) of the Central Excises and Salt Act, 1944, the term 'manufacturer' includes not only a person who employs hired labour in the production of excisable goods but also any person engaged in the production or manufacture of any excisable goods on his own account.

Many small scale units received supply of raw materials from principal manufacturers who were not eligible for small scale exemptions. These SSI units manufactured component parts or intermediate products on job work basis and returned them after payment of duty at the concessional rates of duty applicable to small scale units. The suppliers of the raw materials who utilised the component parts and intermediate products as inputs in the manufacture of final products took Modvat credit at higher notional rates under rule 57B of Central Excise Rules, 1944, than what had been actually paid. In all these cases the suppliers of the raw material should be treated as the principal manufacturers and as they were not eligible for small scale industry concession, the job worker should pay duty at the normal rates and return the goods to the principal manufacturer. Alternatively the supplier of raw materials being Modvat optees could send the raw materials to the job workers following the procedure under rule 57F(2) and receive the intermediate products from the job worker without payment of duty by opting for notification 214/86 dated 25 March 1986. In the former case the amount actually paid by the job worker would be taken as Modvat credit by the principal manufacturers and in the latter no credit would be admissible; and in either case no unintended credit benefit would accrue to the principal manufacturers.

It was pointed out in audit that in view of the decision of Supreme Court in the case of Shree Agencies [1977 ELT (J 168) SC] and Bajrang Gopilal Gajabi [1986 (25) ELT 609] and the Tribunal in the case of Guru Instruments [1987 (27) ELT 269] and also the clarification of the Board in letter No. F267/31/88/Cx. 8 dated 20 September 1988, in consultation with Law Ministry, holding the suppliers of the raw materials as the real manufacturers, duty should have been paid at the normal rates only. However the department justified the availment of higher notional credit on the ground that both the principal manufacturer and the job worker were independent legal entities and the transactions were on principal to principal basis. The payment of duty at concessional rates by the small scale manufacturer (job worker) was at variance with the Supreme Court's judgment and the Board's order that non-observance of procedure laid down in rule 57F(2) and notification 214/86 dated 25 March 1986 by the principal manufacturers and job workers respectively would result in unintended benefit.

The Central Board of Excise and Customs vide its letter F.No. 21331/88-CEx.8 (circular 5088) dated 20 September 1988, had also clarified that if the inputs were supplied by the principal manufacturer for the

manufacture of any goods on job work basis, the concession under notification 175/86 CE dated 1 March 1986 for small scale manufacturer would be available only if the principal manufacturer himself is eligible for such concession.

A test check in audit had revealed 64 cases where the aforesaid considerations had been disregarded in 16 Collectorates leading to loss of revenue to the tune of Rs. 532 lakhs (vide statement VIII).

Some cases are given below:

- (i) In Delhi collectorate 8 cases were noticed where large scale manufacturers, not entitled to small scale exemption, had sent the raw materials to SSI units for conversion into final product on job work basis and had paid them job charges only. Such job workers, though not liable to pay central excise duty, paid the same at concessional rate applicable to SSI units and the large scale manufacturers took higher notional credit. Since these job workers were actually engaged by the large scale manufacturers, the duty liability on these goods should have been at normal rates instead of the concessional rates. The differential duty in these cases worked out to Rs. 111.28 lakhs on clearances during the period from 1986-87 to 1988-89. This was pointed out in audit in March 1990. Reply of the department has not been received (April 1990).
- (ii) A large scale manufacturer in Madras collectorate engaged in manufacturing parts of IC engines (chapter 84) also cleared cylinder liners from his duty paid godown. The 'Cylinder liners' were got manufactured from the job workers by supplying pig iron castings in the form of liner pot. The assessee cleared liner pots as iron castings (7325.10) which were exempted from duty as per notification 275/88 CE dated 4 November 1988. After machining, boring etc., as per assessee's instructions the finished goods viz., 'cylinder liners' were returned to the assessee's duty paid godown, on payment of duty by the job worker at concessional rate with reference to notification 175/86 CE dated 1 March 1986, as amended. The labour charges alongwith excise duty and transport charges were reimbursed to the job worker by the assessee.

As the supplier of raw material to job workers for manufacture of finished excisable goods is to be treated as manufacturer when the goods are manufactured on job charges basis, the same should be treated as goods manufactured by the supplier of raw material and the liability of duty decided accordingly. This was not done and the small scale concessions were availed irregularly. This resulted in short levy of duty of Rs. 87.37 lakhs on the goods cleared during the period from April 1987 to March 1989.

- (iii) In Cochin collectorate 5 cases revealed irregular availment of SSI exemption involving duty of Rs. 27.11 lakhs. In all these cases, the principal manufacturers who were large scale units, had supplied raw material and component parts to the small scale units for further processing. The SSI units had cleared these goods availing SSI benefits although the principal manufacturers were not entitled to the benefits of such concession. The aforesaid short levy related to the clearances by these SSI units during the period April 1986 to August 1989.
- (iv) Two assessees (small scale units) in Bangalore collectorate, manufacturing printed circuit board assembly (heading 85.17), were availing the exemption under notification dated 1 March 1986. The benefit of Modvat was also being availed simultaneously and concessional rate of duty of 10 per cent was being applied on clearances upto Rs. 75 lakhs.

The inputs such as unpopulated circuit board, diodes, resistor, transistors etc., required for the manufacture of PCB assembly were received on gate passes issued under rule 57F(1) from a manufacturer, who was not eligible for SSI exemption. The duty paid on these inputs was adjusted by the licensee in the Modvat records at the time of clearance of finished goods. The PCB assemblies were in fact manufactured on job work basis exclusively for the principal manufacturer and only job work charges and value of the inputs added by the licensee were realised from such principal manufacturer. In terms of the Board's letter dated 20 September 1988 the licensee was not entitled to clear excisable goods on job work charges (from out of the duty paid inputs supplied by them) at concessional rate.

This led to short levy of Rs. 15.75 lakhs and Rs. 7.96 lakhs respectively during the period 1988-89 and 1989-90. The matter was brought to the notice of the department (December 1989 and February 1990). The department replied (January 1990). The department replied (January 1990) that an offence case had been registered against one licensee. Reply in respect of the other licensee has not been received (April 1990).

- (v) A small scale unit in Madras Collectorate took up job work on behalf of a large scale manufacturer for the manufacture of roasted chicory powder falling under sub heading 2101.30 of the schedule to the Central Excise Tariff Act, 1985. The raw materials viz. chicory roots and the packing material viz. Polybags were supplied by the latter and the assessee was paid only labour charges for conversion of chicory roots into chicory roasted powder. The assessee cleared the goods on payment of duty at concessional rates under notification 175/86 dated 1 March 1986, as amended, applicable to small scale unit and the duty so paid was also

reimbursed by the supplier of raw material, as per the agreement between them. The payment of duty at the concessional rates and the availment of benefits under exemption notification applicable to small scale units was not in order. Since the goods (chicory roasted powder) was manufactured on behalf of the large scale manufacturer on job charges basis the supplier of raw material was deemed to be the manufacturer of the goods. This resulted in underassessment of duty of Rs. 16.60 lakhs during the period from April 1986 to May 1988.

- (vi) An assessee in Hyderabad collectorate undertook job work for manufacturing biscuits (chapter 19) under the trade name 'Cadburrys' out of the raw materials and packing materials supplied to him by another manufacturer who was the primary manufacturer. The finished product was cleared after payment of the duty at the concessional rate available to small scale industries under notification dated 1 March 1986, which concession the primary manufacturer was not eligible. Irregular availment of S.S.I. concession resulted in short payment of duty of Rs. 4.49 lakhs during the year 1986-87.

On this being pointed out in audit (June 1988) the department accepted the objection and intimated (July 1989) that a show cause notice would be issued and a further report would be sent to audit in due course.

(13) Branded goods manufactured in a SSI unit

As per para 7 of notification 17586 CE dated 1 March 1986 as amended by notification 22387 CE dated 22 September 1987 the exemption contained in the former notification will not apply to the specified goods where the manufacturer affixes such goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under the said notification.

As per explanation VIII of the aforesaid notification brand name or trade name shall mean brand name or trade name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, lable, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person. Irregularities were noticed in 17 cases in 8 collectorates of small scale units affixing such brand/trade name and availing the concessional rates of duty, and the amount of duty involved was to the tune of over Rs. 45 lakhs (Statement IX). Some of the cases noticed in audit are mentioned below:-

- (i) In Indore collectorate a manufacturer of aerated waters (sub heading 2202.11) was manufacturing goods under brand names of

repute from 1 April 1988. He availed SSI exemption on these goods on the ground that property rights of these brands had now been assigned to another who was also a small scale manufacturer. It was noticed in audit (August 1988) that the goods were still being cleared in glass bottles affixed with the name of the company who were the brand name holders. Since the goods were being sold in market indicating a connection between the goods and brand name owning company, availment of SSI exemption was irregular and had resulted in loss of revenue amounting to Rs. 7.15 lakhs in respect of clearances made from 1 April 1988 to 30 June 1988.

On this being pointed out in audit (August and September 1988), the range superintendent, while assessing the monthly RT12 returns, raised a demand for short levy of Rs. 8.62 lakhs on clearances made during the period from 1 April 1988 to 30 September 1988. Though the assessee had not paid the amount demanded on RT12 assessments, a formal show cause cum demand notice had not been issued and the demand had thereupon become time barred.

- (ii) A private limited company in Coimbatore collectorate owning a small scale unit was engaged in the manufacture of food products falling under headings 20.01 and 21.03. They sent their entire products to a marketing agency for marketing them under the latter's brand name, till May 1989. The marketing agency had a factory and was also in possession of a SSI certificate, but the goods manufactured by them were chemicals that were completely exempted from payment of duty. The factory was also not under central excise licensing control and was enjoying SSI concession under notification 175/86 CE dated 1 March 1986. Since the marketing agency did not produce food products but placed orders with the assessee for manufacturing the goods out of his own (assessee's) raw materials but with their brand name and as such were acting as traders only. They were, therefore, not eligible for SSI concession and the entire goods should have been levied full rates of duty. Incorrect availing of concession had resulted in short levy of duty of Rs. 4.56 lakhs during the period from April 1988 to April 1989. This was brought to the notice of the department (March 1990) and a reply thereto has not been received (April 1990).
- (iii) An assessee in Delhi collectorate manufacturing wheel rims for supply to well known moped manufacturers was putting the latter's stickers on the goods. The department, however, allowed the assessee concession, as a small scale unit which resulted in loss of revenue to the tune of Rs. 3.39 lakhs during

the period from October 1987 to May 1988. This was pointed by audit in November 1989. Reply has not been received (May 1990).

- (iv) A manufacturer of perfumery compounds, resinoids (chapter 33) in Bangalore collectorate was clearing the goods from the factory on payment of duty at 10 per cent which represented concessional rate of duty applicable to SSI units. The clearances were made after affixing a label which carried a brand name and a monogram which were not of Indian origin. Accordingly, the benefit of notification dated 1 March 1986 to clear the goods at concessional rate was not available to a small scale manufacturer who had affixed the brand name of a foreign trader/manufacturer. Consequent short realisation of duty during the period May 1988 to October 1989 on the value of clearances of Rs. 32.25 lakhs amounted to Rs. 3.39 lakhs. The objection was communicated to the department in November 1989. The reply has not been received (March 1990).
- (v) Another manufacturer of unpopulated printed circuit boards, falling under chapter heading 85.34 in the same collectorate had started manufacturing single and double sided printed circuit boards from March 1988. He, however, obtained the central excise licence with effect from 15 November 1988 only. The printed circuit boards manufactured by the assessee were embossed with the diagram/drawings which could be identified with the brand name of the customers on whose behalf the goods were manufactured. As these customers were not entitled for the SSI concession, the goods cleared with their brand names were to be cleared at normal rates of duty. It was, however, seen that the assessee had cleared the goods at concessional rates, resulting in short payment of duty of Rs. 3.31 lakhs on the value of clearances for the period from March 1989 to September 1989. This was brought to the notice of the department (November 1989). Reply has not been received (April 1990).

(14) Assessment on the basis of invoice price for small scale units

According to rule 173C(11) of the Central Excise Rules, 1944 an assessee has to declare the price of goods transacted. As this could be done only where firm prices are known before clearance of goods from the factory, the Central Board of Excise and Customs decided to allow the SSI units to pay duty on the basis of the provisional prices shown in the invoices at the time of transfer of such goods to their depots etc. (vide Board's circular No. 86/88 CX-6 dated 27 December 1988). However, the assessments in such cases were required to be kept provisional until the final invoices were received. The SSI units availing of this facility were therefore required to execute a bond under rule 9 B *ibid*, pending finalisation of these assessments.

Further, the Board in their letter dated 11 October 1988 have allowed exemption to SSI units from filing the price lists provided those units made a declaration to the effect that the invoice prices conform to the definition of value in Section 4 of the Central Excise Rules, 1944.

Accordingly, where the assessable value is not susceptible of determination under the provisions of Section 4 of the Act, the provisions of the Central Excise (Valuation) Rules, 1975, made there under, come to play. Thus, in the case of an SSI unit who is a job worker and who receives materials from primary manufacturers free of charge, is required to add the cost of raw materials too in assessing the value of the finished products, for purposes of payment of duty.

Irregularities have been noticed in the implementation of these provisions which have resulted in loss of revenue.

A few cases are given below as instances:

- (i) A unit in Chandigarh collectorate engaged in the manufacture of oxygen gas classifiable under heading 28.04 charged Rs.2 per cubic metre of the gas through an invoice and simultaneously issued debit notes also for rental charges and cylinder maintenance charges. The additional amount recovered through debit notes was not taken into account for arriving at the assessable value of the oxygen gas sold. By adopting this practice the manufacturer managed to remain within the exemption limit and thus could clear the gas at nil rate of duty upto an aggregate value of Rs. 7.50 lakhs under provisions of paragraph 4(a) of notification 175/86 dated 1 March, 1986. The irregular computation of assessable value resulted in incorrect grant of exemption and consequential non levy of duty amounting to Rs. 3.76 lakhs during the period 1 April, 1987 to 31 March, 1989.
- (ii) A small scale manufacturer of electrodes (heading 83.11) and machines for manufacture of electrodes (heading 84.79) in Bangalore collectorate, opted for invoice price in respect of all clearances where duty was payable on the value. The assessee entered into a contract with a firm for manufacture and supply of machinery/equipments including spares for a sum of Rs. 11.50 lakhs but excluding central excise duty. The licensee cleared the goods from the factory and paid duty of Rs. 73,237 on the machinery. Soon after completing the transaction the assessee raised a final invoice in terms of the contract. Central Excise duty of Rs. 1,81,125 leviable under the Central Excise Tariff Act had also been realised on the contract as could be seen from the final invoice. The assessee had initially paid Rs. 73,237 as central excise duty as stated above but the balance amount of Rs. 1,07,888 realised from the customer was not paid to government account.

This irregularity was brought to the notice of the department (December 1989). Reply has not been received (April 1990).

(iii) In Bombay II collectorate an assessee, an SSI unit, engaged in the manufacture of motor vehicle parts classifiable under heading 87.08, cleared these goods named "Brakes Pedal RH" to one customer only. The customer had supplied free of cost, bushes which are used in the brake pedal as component. The assessee after manufacturing the product cleared these goods back to the customer at concessional rate of duty on the value of brake pedal RH plus the excise duty on bushes but the cost of such bushes supplied free of charge by the customer was not added to the value. Non inclusion of the cost of bushes in the assessable value of brake pedal RH, resulted in short levy of duty to the tune of Rs. 1.06 lakhs during the period from 1988-89 to 1989-90.

This was pointed out in audit (March 1990). Reply of the department has not been received (April 1990).

(15) Duty exemption on other goods manufactured by SSI units under separate schemes

Apart from the goods-specified in Annexure to notification 17586 CE dated 1 March, 1986, there were certain other SSI exemptions. During a test check in audit, certain irregularities were noticed in clearances under these notifications too. The types of irregularities entailing loss of revenue, are indicated below:-

(i) Tread rubber, camel black etc:

A licensee in Belgaum collectorate engaged in the manufacture of tread rubber (chapter 40) was also undertaking job work of conversion of raw materials.

It was seen that the licensee was availing the benefit of notification 5688 CE dated 1 March, 1988 for concessional rates in respect of tread rubber and cushion compound manufactured and cleared from the factory.

According to the aforesaid notification the following conditions were to be satisfied for claiming the benefit:

(a) the aggregate value of all excisable goods cleared should not have exceeded rupees one and half crores during the preceding year.

(b) the aggregate quantity of clearances of the said goods from any factory on behalf of one or more manufacturers for home consumption during the preceding financial year had not exceeded 250 metric tonnes.

The Ministry of Finance in their letter dated 19 April, 1988 had clarified that the concession is not available if either of the two limits was exceeded.

The assessee in question, received from another manufacturer during 1987-88, various raw materials and manufactured excisable goods falling under chapter 40. The quantity of tread rubber compound in sheet form manufactured and cleared during the year 1987-88 was 550 metric tonnes. This was besides the goods manufactured on his own account. Nevertheless,

the department allowed the assessee to avail benefit under the aforesaid notification prescribing concessional duty for small scale rubber manufacturers on the clearances made on his own during the financial year 1988-89, even though the aggregate quantity of the said goods cleared (including the quantity cleared on job work) had exceeded 250 metric tonnes in the previous financial year 1987-88. The short levy of Rs. 6,77,848 on a quantity of 87.552 Kgs. cleared from 1 April, 1988 to 31 March, 1989 was pointed out in audit in July 1989.

The Collector of Central Excise replied (January 1990) that the product cleared after completion of job work was masticated rubber which represented semi finished product and cannot be treated as clearance for home consumption within the meaning of notification referred to above.

The reply is not acceptable as the description of goods cleared after job work (i) rubber compound in sheet form (ii) C.M. compound/Flap compound and (iii) T.R.A Compound are nevertheless goods which are classifiable under chapter 40 of the Central Excise Tariff and may not be taken outside the scope of clearance for home consumption as they are goods which were cleared from the factory.

(ii) As per notification 232/85 CE dated 14 November, 1985, tread rubber (sub heading 4006.10 w.e.f. 1 March, 1986) was chargeable to duty at 12 per cent *ad valorem* on first clearance upto Rs. 7.5 lakhs and at 18 per cent *ad valorem* on the next clearances upto Rs. 17.50 lakhs provided the total value of clearances during the previous year did not exceed Rs. 25 lakhs.

The scope of the exemption scheme was enlarged by bringing some retreading products *viz.*, cushion compound cushion gum and tread packing strips thereunder *vide* notifications 45/87 dated 1 March, 1987 and 130/87 dated 29 April, 1987. Under these notifications first clearance of specified goods not exceeding 50 tonnes was exempted from duty in excess of Rs. 6/Rs. 4 per Kg. and duty in excess of Rs. 9/Rs. 8 per Kg. was exempted on next clearances not exceeding 100 tonnes provided the total quantity cleared during the previous year did not exceed 250 tonnes.

The scope of concession was further enlarged during 1988-89. As per notification 56/88 CE dated 1 March, 1988 excise duty in excess of Rs. 5 per Kg. on first clearances not exceeding 75 tonnes, Rs. 7 per Kg. on the next clearances of 75 tonnes and Rs. 10 per Kg. on the next clearances not exceeding 100 tonnes was exempt subject to the conditions that the value of clearances of all excisable goods in the preceding financial year did not exceed Rs. 150 lakhs and the quantity of the specified goods did not exceed 250 tonnes. The rates of duty were again revised to Rs. 5.25, Rs. 7.35 and Rs. 11.55 per Kg. w.e.f. 1 March 1989 by notification 44/89 dated 1 March, 1989.

Large scale avoidance of central excise duty was noticed in certain tread rubber units in Cochin collectorate whose modus operandi was as follows:-

Members of one family had registered six independent, private limited

companies and obtained six L4 licences from the range office for the manufacture of tread rubber. The six factories were housed in two adjoining sheds facing each other in the same compound and each factory being separated by partition walls erected in the sheds. A common varandah with collapsible iron bridge separately for each factory section was used as a common passage for the movement of raw materials and finished products. A single extruder was being used in turn by each unit after intimating the department that the extruder had been leased out by one unit to other units. They sold most of their finished products viz., tread rubber through a common agency set up by the same group. The rubber compound requirements for the production of tread rubber were obtained by all the units from another factory set up by the same group. All the six units were using the same entrance and same equipments like transformer, weigh bridge, workshop etc., and were having common technical personnel and office staff. All these factors taken singly and cumulatively established the fact that these units were set up with the sole idea of securing the benefit of lower rate of duty for tread rubber by keeping the production within the required ceiling slab fixed in the exemption notification. Similarly another group of factories (8 nos.) were set up by the members of the above said family under the jurisdiction of another range. The duty evasion being made by this group was pointed out by audit on several occasions. The matter was adjudicated by the Collector who held on 21 August, 1989 (original order 16/89) that for want of conclusive proof, each unit was to be treated as separate unit for the purpose of assessment and that the price at which the goods was sold by the aforesaid common agent to the consumer had to be taken as assessable value. A differential duty of Rs. 4,45,658.94 (for the period 1978-79 to 1981-82) was therefore ordered to be realised from 10 units and a fine of Rs. 5,000 each under rule 9(2) and 173(Q) was imposed. This amount was paid on 24 November, 1989.

(16) Other Topics of Interest

(i) Irregular exemption

- (a) An assessee in Delhi collectorate manufacturing good falling under chapters 84 of the Central Excise Tariff Act, 1985 viz., electric fans, geysers, electric motors, rotors and stators for captive use in power driven pumps was also engaged in the manufacture of centrifugal power driven pumps which are exempt from duty vide notification 155/86 CE dated 1 March, 1986. Assessee was also availing the benefit of duty in respect of inputs used in the manufacture of the final product i.e., fans, geysers, electric motors and rotors and stators for PD pumps as well as the benefits of concessional rate of duty under notification 175/86 CE dated 1 March, 1986 (as amended). While computing the value of clearance of Rs. 1.50 crores, the value of rotors and stators was not being taken into account although the assessee was paying duty at concessional rate under notification 175/86CE dated 1 March, 1986

Since the assessee was availing the benefits and paying concessional rate of duty under the said notification, the value of clearances of rotors and stators needed to be taken into account while computing limit of Rs. 75 lakhs and 150 lakhs. The aggregate value would then work out to Rs. 150,85,805 and Rs. 150,54,369 at the end of financial years 1986-87 and 1987-88 respectively, and hence the assessee was not entitled to the benefit of concessional rate of duty upto Rs. 75 lakhs during 1987-88 and 1988-89 under notification dated 1 March, 1986. This resulted in short levy of duty of Rs. 15.37 lakhs.

Similar irregularities were noticed in 6 cases in Delhi collectorate where the amount of duty not levied was to the tune of Rs. 26.57 lakhs during the period from 1986-87 to 1989-90.

- (b) One unit under Ahmedabad collectorate was doing job work on behalf of a big unit and was availing benefit under notification 175/86 CE dated 1 March, 1986. Since the principal manufacturer was not eligible for the benefit of SSI concession, incorrect availing of benefit by the job worker resulted in short levy of Rs. 2,84,632.60 for the year 1986-87 and Rs. 6,29,229.60 for the year 1987-88. Further, the total clearance during 1987-88 had exceeded the limit of Rs. 1.50 crores for the above unit and as such it became ineligible for the year 1988-89. However, the unit continued to avail the concession during 1988-89 also and this resulted in short levy of duty. When pointed out (September 1988) the department stated (April, 1989) that show cause notice was issued for Rs. 20,60,989 for the period April 1988 to September 1988 on 30 November, 1988 and Rs. 14,69,784 for the period October, 1988 to February 1989.
- (ii) SSI concessions availed even after the aggregate value of goods cleared for home consumption exceeded the ceiling limits—units under the same proprietorship not clubbed:

It was noticed during audit that in the case of two assesseees in Aurangabad collectorate, both of whom were engaged in the manufacture of aluminium conductors cleared them to certain state electricity boards in Maharashtra, Punjab, Rajasthan and Cooperative Electric Societies.

The Partners in one unit and the Directors in the other were common and were related persons having proprietary interest in both. This contravened the declaration given by the assesseees in the classification list that "they had no other interest in any other concern."

The finished products manufactured by both the units were the same with same brand name viz. "Weared" "Rabit" and "Racoon". Their customers were also common.

Both units were located in the same premises separated by a compound wall and were managed by common employees.

The raw materials were transferred between the two units according to the requirements of each.

It was thus clear that there was mutuality of interest between the individuals controlling the units and that separate legal entity had been claimed only to avail excise concession applicable for small scale units.

The clearances of the two units during 1986-87 taken together amounted to Rs. 231.24 lakhs which would keep the units out of the SSI benefit during 1987-88 and 1988-89. But the assessees had availed benefits of concessional rate of duty amounting to a total of Rs. 30.75 lakhs (approx.) during the years 1987-88 and 1988-89.

Similar cases were found in Calcutta II, and Aurangabad collectorates. The duty not levied amounted to Rs. 21.89 lakhs (one case) and Rs. 30.75 lakhs (2 cases) respectively, during the period from 1986-87 to 1988-89.

(iii) Incorrect computation of value of clearance to avail of SSI concession:

An assessee in Nagpur collectorate manufacturing hard boiled sweets and tofees classifiable under sub heading 1704.90 availed exemption from payment of duty under notification 175/86 CE dated 1 March, 1986 (as amended) during 1986-87.

The assessee had filed price list effective from 1 April 1986. While approving the price, deduction towards element of central excise duty was allowed to the extent of 12 per cent although the first clearances upto Rs. 15 lakhs were exempt from payment of whole of duty as per the said notification. This resulted in approving the assessable value on the lower side to the extent of Rs. 1,80,000 (12 per cent of Rs. 15 lakhs) and finally resulted in under assessment and short payment of duty of Rs. 18,000 (at effective rate of 10 per cent *ad valorem*). This was so, as the clearances during 1986-87 had exceeded Rs. 75 lakhs and the assessee was liable to pay duty at normal rates.

On this being pointed out the department accepted the objection and stated (February 1988) that the assessee had paid the amount of Rs. 18,000 in January 1988 through P.L.A.

Test check in audit had also revealed 5 more cases in Nagpur collectorate in which such irregular computation was made. The duty involved was Rs. 55,000.

(iv) **SSI concessions irregularly availed by units registered with Directorate General of Technical Development:**

Concessions in the matter of payment of excise duties under the notification 175/86 dated 1 March, 1986 were available to industrial units on clearances made of specified goods, provided the units are registered with the Director of Industries in any state or the Development Commissioner (small scale industries) as a small scale industry under the Industries (Development and Regulation) Act, 1951. Such a registration, however, is not necessary if the unit had already been availing of the exemption under the very notification (175/86 CE) or any of the notification specified in para 4(b) of that notification during the preceding financial year. By a notification issued on 30 October, 1987, the notification issued under 175/86 CE was amended to bring out that the concessions envisaged thereunder were not applicable to units registered with Directorate General of Technical Development.

A small scale industry by definition is an undertaking having investment in fixed assets in plant and machinery whether held on ownership terms or by lease or by hire purchase not exceeding Rs. 35 lakhs and when the value of plant and machinery exceeds Rs. 35 lakhs it is no longer a small scale industry and it is required to get registered under the DGTD.

An assessee in Goa collectorate engaged in the manufacture of industrial/medicinal oxygen classifiable under chapter 28 and dissolved acetylene gas falling under chapter 29 of the Central Excise Tariff Act, 1985 was registered with the DGTD. Though it was not a small scale industry, it availed the benefit of duty concession on clearances made even after issue of notification dated 1 March, 1986 on the grounds it was paying duty in the financial year 1985-86 availing of the concession under notification 85/85 CE dated 17 March, 1985 which was specified in para 4 (b) of the notification 175/86 CE dated 1 March, 1986.

After issue of notification 244/87 dated 30 October, 1987, excluding the DGTD units from the purview of notification 175/86/CE dated 1 March, 1986, the assessee started paying full duty. Thus due to non-issue of orders excluding the DGTD units from the operation of notification 175/86 dated 1 March, 1986 which was intended for units registered with Director of Industries, duty amounting to Rs. 4.86 lakhs was lost on clearances made by the units during the period from 1 March 1986 to 29 October 1987

(v) SSI concessions allowed to ineligible units:

An SSI unit in Cochin collectorate manufactured soft drinks classifiable under sub heading 2202.11 and 2201.12. The unit was not registered as a small scale industry and did not avail of exemption during 1984-85 and 1985-86 under any notification specified in para 4 of notification 175/86. Benefit of exemption under notification 148/82 dated 22 April 1982 was allowed to the assessee for 1984-85 by sanctioning a refund. The assessee availed benefit of exemption under notification 175/86 from 1 April 1986. In October 1986 the Department pointed out mistakes in valuation and consequent ineligibility to exemption under notification 148/82 and therefore directed the assessee not to avail of the SSI benefit from 7 October 1986. It was pointed in audit that since the assessee was not eligible for exemption under notification 148/82, grant of exemption from duty under notification 175/86 from 1 April 1986 was incorrect and resulted in short levy of duty of Rs. 1.74 lakhs during the period from 1 April 1986 to 6 October 1986. The department replied (June 1988) that show cause notice was issued and confirmed for recovery of Rs. 3,94,927 for the period from 27 May 1986 to 6 October 1986 and that the remaining amount of Rs. 7,79,339 pertaining to April 1986 to 25 May 1986 was not recoverable as the clearances were made on the strength of approved classification list allowing exemption. In a further report (January 1989) it was intimated by the department that the matter was before the tribunal.

(vi) Incorrect computation of value of clearances during the preceding year:

According to paragraph (3) of notification 175/86 CE dated 1 March 1986 as amended small scale concessions enunciated in the notification are not applicable to a manufacturer if the aggregate value of clearances of all excisable goods for home consumption from any factory by one or more manufacturers had exceeded Rs. 150 lakhs in the preceding financial year.

An SSI unit in Cochin collectorate manufactured plywood, black boards, flush doors, veneers etc., falling under chapter 44 of Central Excise Tariff computed the aggregate value of the clearances of all excisable goods during the financial year 1986-87 at Rs. 1,43,071 lakhs and availed of the exemption under Notification 175/86 CE dated 1 March 1986 (as amended) during the year 1987-88. While computing the aggregate value of clearances of all excisable goods for 1986-87 the value of commercial soft wood veneers manufactured in their factory on job work basis, out of the

logs supplied by another assessee and cleared at a value of Rs. 5,96,241 should have been reckoned by the assessee as required in CBEC's letter dated 24 December 1986. This was however not done. As such, a demand was confirmed for Rs. 86,906 being the differential value of goods sold through consignee's agents at Bombay and Hyderabad during 1986-87. After adding these two amounts the aggregate value of clearances exceeded Rs. 150 lakhs and hence the assessee became ineligible for concessions under notification 175/86 CE dated 1 March 1986 for the year 1987-88. But during the year 1987-88, the assessee enjoyed full exemption upto 8 May 1988 and effected clearances at concessional rates upto 10 September 1987. On this being pointed out in audit (September 1987) the Asstt. Collector stated (May 1988) that the differential value of goods sold through consignee's agents at Bombay and Hyderabad during the year 1986-87 would come to Rs. 11,355 only and the aggregate value of clearances of all specified goods during 1986-87 would work out to Rs. 1,49,91,1,273 only. But a show cause notice demanding a duty of Rs. 10,50,120 was issued by the department and the demand was confirmed on 19 July 1989. It was stated by the department (March 1990) that the amount was not paid by the assessee.

- (vii) Excisable goods removed in unassembled/disassembled condition so as to remain within the value limit for SSI concession :

Domestic electrical wet grinders consisting of an in built electric motor (heading 85Å01) as the prime mover are classifiable under heading 85.09 attracting effective rate of duty at 20 per cent ad valorem.

In Coimbatore collectorate eleven small scale units consisting of common partners, mostly relatives, and functioning as independent units were engaged in the manufacture of wet grinders and electric motors. Out of these eleven units some units licensed for manufacture of electric motors and wet grinders cleared the electric motor meant for fitment to wet grinders as electric motors and rest of the parts of wet grinders as 'wet grinders without prime mover' separately, though clearance of all these items could be called as 'wet grinders in an unassembled or disassembled condition. If the manufacturers cleared the goods as 'wet grinders' falling under heading 85.09, they could avail full duty concession up to a limit of Rs. 15 lakhs only under notification 175/86 CE dated 1 March 1986. If, instead they clear the goods as electric motor falling under heading 85.01 and parts of wet grinder falling under heading 85.09, they could avail full duty exemption up to Rs. 15 lakhs under each heading. Thus so as to avail of the full exemption upto a value of clearance of Rs. 30 lakhs, the manufacturers cleared the goods as two different commodities.

Further, these manufacturers cleared the goods to another sister concern which acted as their marketing agency. The goods were in turn sent to various dealers in whose premises; the electric motors are fitted into the 'wet grinders' without the prime mover and sold in retail as 'wet grinders'. This method was adopted with a view to keeping the annual turnover of each individual manufacturer within the exemption limit and to avoid incidence of duty.

In terms of rule 2(a) of the rules for the interpretation of the schedule to the Central Excise Tariff Act, 1985, if goods are removed in an unassembled or dis-assembled condition, they are required to be classified under the heading in which the complete or finished goods are classified. Moreover, with effect from 1 March 1989 as per the new note 6 of section XVI, conversion of incomplete or unfinished goods having the essential character of the complete or finished articles, into complete or finished articles, amounts to manufacture. Therefore when the goods are removed from factories as electric motor and 'wet grinders without prime mover', they should be classified as wet grinders only and appropriate duty charged. Also the various dealers who received the 'electric motors' and 'wet grinders without prime mover' from the manufacturers and assembled them as 'wet grinders' before sale should also be licenced in terms of rule 174.

Due to omission of the department in taking effective action, there had been non levy of duty of Rs. 3,76,811 from April 1989 to January 1990 in respect of three cases. This was pointed out to the department (March 1990). Reply therefore has not been received (April 1990).

(viii) **Accumulation of credits in excess of the duty payable on the final products :**

As per rule 57A of Central Excise Rules, 1944, credits of duty paid on raw material used in manufacture of final products may be utilised towards payment of duty of excise leviable on final products in manufacture of which such inputs are used.

Central Board of Excise and Customs clarified on 1 July 1986 that credits cannot be utilised for any other purpose except for payment of duty on finished products.

Some instances are given below to high-light cases of accumulation of credits even after payment of duty from RG 23 Part II account for the reason that the rate of duty leviable on final products was lesser than the rate at which duty credit was availed on inputs.

- (a) In Chandigarh collectorate small scale manufacturer of 'flexible LDPE natural printed film availed credits at 30 per cent ad valorem on LDPE granules (raw-material) used as inputs. The duty on finished product was paid at concessional rate of 15 per

cent ad valorem applicable to small scale manufacturers. As there was no corresponding stock of raw material and finished goods the accumulated credits amounting to Rs. 8,05,472 as on 31 March 1989 could not be utilised for the purpose of payment of duty on relevant final products.

The matter was brought to the notice of the department in February 1990; reply has not been received.

- (b) Another small scale manufacturer of 'Aluminium Castings' in the same collectorate availed deemed credit on aluminium which was more than the concessional rate of duty applicable on fan components (finished goods). The accumulated credits amounting to Rs. 1,94,250 can not be utilised in view of the fact that there was no stock of raw material or finished goods in the factory.

Matter was brought to the notice of the department in February 1990; reply has not been received.

- (ix) Non clubbing of clearances of other factory belonging to the same manufacturer:

A small scale unit, located in the industrial area in Jaipur collectorate was engaged in the manufacture of parts of ball and roller bearing under sub heading 8482.00 and cleared goods of a total value of Rs. 1490 lakhs during 1987-88 without payment of duty in terms of the notification of 1 March 1986. The proprietors of this unit also had interest in a unit in another area of the same collectorate in the manufacture of leaf springs (sub heading 7320.00). This unit cleared leaf springs manufactured by it during 1987-88 on payment of the concessional rate of duty under the SSI scheme treating these clearances as distinct and separate from those effected from the former unit, notwithstanding the fact that the total value of the parts of ball and roller bearings and the leaf springs cleared from both these units exceeded the monetary ceiling of Rs. 30 lakhs in the aggregate, and that the clearances of the two units should have been clubbed together for allowing the concessions and benefits under the scheme. The fact of existence of another unit was also not disclosed by the former unit.

On the irregularity being pointed out by audit in March 1989, the department issued a show cause notice to the former unit in August 1989, and held, in adjudication, that the unit had suppressed the fact about the existence of the other unit with the intention of availing of the benefits of the notification dated 1 March 1986 which were otherwise not available, and that, in this process, the small scale manufacturer had evaded central excise duty totalling to Rs. 1,48,874 during the years 1986-87, 1987-88 and 1988-89. Apart from demanding the duty evaded, the department also

imposed a penalty of Rs. 25,000 on the unit. The position was confirmed by the department in January 1990.

- (x) In correct rate of duty adopted by an SSI unit :

A small scale unit in Baroda collectorate, which was availing Modvat credit on inputs used in the manufacture of final items, was paying duty at a rate of Rs. 8.75 being 35 per cent of the tariff rate for its clearances during 1 to 8 April 1986 as per notification 175/86 CE dated 1 March 1986, though this was amended by notification 216/86 CE dated 2 April 1986 and duty at a rate of 10 per cent less than the tariff rate was payable. The incorrect rate adopted, resulted in short levy duty of Rs. 1,63,168. On this being pointed out (May 1989) the department accepted the objection (August 1989). Details of recovery are not received.

- (xi) Irregularity in allowing to opt out of the scheme in the middle of the financial year :

Under the notification 175/86 CE issued on 1 March 1986 as amended on notification 216/86 CE on 2 April 1986 a small scale manufacturer may either avail of Modvat credit in respect of specified goods and pay excise duty at normal rates reduced by 10 per cent during a financial year or avail full exemption upto the first clearance value of Rs. 15/30 lakhs and thereafter at concessional rate (normal duty less 10 per cent) during the financial year. However, he cannot opt out of the scheme in the middle of the financial year with a view to avail of the full exemption benefit. The Central Board of Excise and Customs clarified on 15 April 1987 that a manufacturer may be permitted to opt out of Modvat scheme so as to avail of the full exemption in the same financial year only in cases where he filed a declaration but had not actually paid duty on their clearances or had not taken any credit of duty paid on inputs.

A manufacturer of welding electrodes in Patna collectorate filed declaration on 31 March 1986 for availing Modvat credit and was allowed to pay concessional rate of normal duty reduced by 10 per cent. During the months of April and May 1986 he availed of the Modvat credit and utilised the same towards payment of duty on the final product. Thereafter he withdrew from availing the Modvat scheme and began to avail of the full exemption. This resulted in short payment of duty to the extent of Rs. 1,56,222 during the financial year 1986-87.

- (xii) Acceptance of irregular payment of duty on exempted goods and consequential loss of revenue :

Three small scale units in Shillong collectorate supplied veneers to an assessee in the same collectorate who was engaged in the

manufacture of commercial plywood and black board. The small scale units, although eligible for appropriate exemption in full up to Rs. 15 lakhs clearance, had paid duty at 5 per cent ad valorem on the basis of which the assessee had taken Modvat credit (including deemed credit) of Rs. 60,889 during 1987-88 and of Rs. 76,793 during 1988-89. Acceptance of central excise duties paid by the small scale units had entailed availment of benefits not contemplated either in the SSI scheme or under the central excise rules. The irregular availment of Modvat credit of over Rs. 1.37 lakhs being an avoidable one, constituted loss of revenue.

(xiii) Irregularities in departmental control:

Instructions were issued in Board's letter dated 19 August 1978 requiring maintenance of a Central Registry in respect of SSI units exempted from licensing control. In Cochin collectorate it was observed that in the Range Office as well as the Divisional Office no centralised register was maintained indicating the details of SSI units availing exemption from licensing control, the code number allotted to each etc. In the absence of such a Registry it is not possible to watch the receipt of declarations from the units and ascertain the quantity/value of clearances made by each unit. It was stated (March 1990) that necessary instructions had been issued to maintain 'Central Registry' at the divisional level and range level immediately.

The registration of SSI units automatically lapses in cases where the total gross investment (i.e., without depreciation) on plant and machinery exceeds Rs. 35 lakhs during a particular year. There is no machinery in the department for ensuring that the value of investment on plant and machinery in respect of registered SSI units is within the prescribed limits. It was stated by the department (March 1990) that it was the responsibility of the SSI department to verify from time to time whether the SSI units were within the exemption limits or not in respect of investment on plant and machinery and that the only requirement under notification 175/86 was to verify whether the unit had a SSI certificate from the competent authority.

As per notification 11/CE(NT) dated 15 April 1988 exemption from licensing control stands withdrawn as soon as the value of clearances by the unit crosses the limit of Rs. 10 lakhs. In respect of two units in Cochin collectorate no licence was issued even though the value of clearances had exceeded the limit of Rs. 10 lakhs.

The aforesaid appraisal was sent to the Ministry of Finance in October 1990; their reply has not been received (December 1990).

STATEMENT I

(See para 1)

Units with annual turnover of value of	1986-87		1987-88	
	No. of Units	Amount of duty in Rs. lakhs	No. of units	Amount of duty in Rs. lakhs
i) Less than Rs. 15 lakhs	17445	151.78	19034	158.65
ii) More than Rs. 15 lakh but less than Rs. 30 lakhs	5548	5595.50	6649	6749.82
iii) More than Rs. 30 lakhs but less than Rs. 75 lakhs	3901	10553.90	5015	14577.90
iv) More than Rs. 75 lakhs but less than Rs. 150 lakhs	1213	13648.84	1664	23802.03
Total	28107	29950.02	32362	45288.40
Units with annual turnover of value of	1988-89		1989-90	
	No. of Units	Amount of duty in Rs. lakhs	No. of units	Amount of duty in Rs. lakhs
i) Less than Rs. 15 lakhs	19980	175.11	18648	171.51
ii) More than Rs. 15 lakh but less than Rs. 30 lakhs	7224	7880.09	5898	6374.99
iii) More than Rs. 30 lakhs but less than Rs. 75 lakhs	6020	19445.99	4070	11858.16
iv) More than Rs. 75 lakhs but less than Rs. 150 lakhs	2427	28352.68	1367	12930.54
Total	35651	55853.87	29983	31335.20

(See para 6)

STATEMENT II

Sl. No.	Collectorate	Total amount of duty forgone		Cases referred in para 6.1		Cases referred in para 6.2	
		No. of cases	Amount in Rs. lakhs	No. of cases	Amount in Rs. lakhs	No. of cases	Amount in Rs. lakhs
1.	Delhi	46	323.18	27	194.20	19	128.98
2.	Chandigarh	14	103.55			14	103.55
3.	Vadodra	31	87.03	5	9.03	26	78.00
4.	Bombay II	9	59.07	8	53.22	1	5.85
5.	Ahmedabad	13	51.82			13	51.82
6.	Indore	11	49.46	8	45.70	3	3.76
7.	Bombay III	7	39.75	7	39.75		
8.	Hyderabad	3	31.82			3	31.82
9.	Bhubaneswar	4	29.53	1	1.58	3	27.95
10A	Coimbatore	6	32.96	2	10.44	4	22.52
11A	Bombay I	5	23.07	2	3.04	3	20.03
12A	Bengalore	4	19.30	3	11.43	1	7.87
13A	Tiruchirappally	1	15.65			1	15.65
14.	Jaipur	2	12.24			1	3.69
15A	Rajkot	7	11.59	5	8.94	2	2.65
16A	Belgaum	2	10.28	1	1.52	1	8.76
17A	Pune	2	8.63	2	8.63		
18.	Madras	2	7.49	1	2.47	1	5.02
19A	Calcutta II	1	5.07	1	5.07		
20.	Calcutta I	1	4.70	1	4.70		
21.	Kanpur	1	4.66	1	4.66		
22.	Guntur	1	4.50			1	4.50
23.	Cochin	1	2.15			1	2.15
24.	Allahabad	1	2.84			1	2.84
25.	Meerut	2	2.20			2	2.20
26.	Nagpur	1	1.75			1	1.75
	Total	178	944.29	76	412.93	102	531.36

(See para 7)

STATEMENT III

Sl. No.	Collectorate	No. of cases	Earliest date of crossing the limit of Rs. 15/30 lakhs	Value of clearances made after crossing the limit Rs. in lakhs	Differential duty Payable Rs. in lakhs
1.	Vadodara	5	November 1986	136.64	6.10
2.	Cochin	6	October 1986	38.10	5.17
3.	Indore	6	August 1986	164.80	1.70
4.	Bombay III	2	August 1987	13.56	1.47
5.	Allahabad	1	June 1988	8.58	0.45
6.	Kanpur	2	July & September 1988	9.65	0.71
7.	Delhi	6	March 1987	15.23	1.00
8.	Belgaum	1	July 1987	4.88	0.97
9.	Rajkot	1	March 1988	34.36	0.81
10.	Coimbatore	2	May 1986	10.40	0.79
11.	Bombay II	3	December 1987	73.11	0.70
12.	Jaipur	1	February 1987	77.05	0.55
13.	Meerut	2	October 1986	5.25	0.52
14.	Bolpur	1	July 1989	79.16	0.51
15.	Bangalore	3	June 1986	6.58	0.48
16.	Ahmedabad	1	September 1989	18.00	0.37
17.	Chandigarh	3	September 1986	5.17	0.27
18.	Bhubaneswar	1	February 1989	18.39	0.17
	Total	47		718.91	22.83

STATEMENT IV*(See para 8)*

Sl. No.	Collectorate	Amount of duty involved (Rs. in lakhs)
1.	Delhi	14.18
2.	Bhubaneswar	10.36
3.	Kanpur	6.39
4.	Shillong	4.48
5.	Meerut	3.99
6.	Cochin	1.94
7.	Chandigarh	1.40
8.	Coimbatore	0.96
9.	Madras	0.93
10.	Bombay II	0.70
11.	Indore	0.39
12.	Belgaum	0.28
	Total	46.00

STATEMENT V*(See para 9)*

Sl. No.	Collectorate	No. of cases	Amount of duty involved (Rs. in lakhs)
1.	Bombay I	8	3.54
2.	Delhi	19	7.34
3.	Goa	2	0.33
4.	Bombay II	4	2.11
5.	Bombay III	4	0.34
6.	Pune	1	0.44
7.	Ahmedabad	2	0.52
8.	Vadodara	1	0.29
	Total	41	14.91

STATEMENT VI*(See para 10)*

Sl. No.	Collectorate	No. of cases	Amount of duty involved (Rs. in lakhs)
1.	Bhubaneswar	1	19.02
2.	Coimbatore	3	2.96
3.	Hyderabad	1	1.02
	Total	5	23.00

STATEMENT VII*(See para 11)*

Sl. No.	Collectorate	No. of cases	Amount of duty involved (Rs. in lakhs)
1.	Shillong	6	144.83
2.	Delhi	11	31.53
3.	Jaipur	6	8.51
4.	Chandigarh	8	8.93
5.	Bolpur	1	4.53
6.	Calcutta II	1	4.31
7.	Madras	6	2.91
8.	Allahabad	1	1.79
9.	Coimbatore	1	0.81
10.	Bangalore	1	0.19
Total		42	208.34

STATEMENT VIII*(See para 12)*

Sl. No.	Collectorate	No. of cases	Amount of duty involved (Rs. in lakhs)
1.	Madras	15	198.50
2.	Hyderabad	7	55.51
3.	Indore	5	46.84
4.	Bangalore	7	46.27
5.	Cochin	5	27.11
6.	Ahmedabad	2	10.06
7.	Belgaum	5	17.17
8.	Jaipur	2	4.36
9.	Baroda	1	3.86
10.	Calcutta II	2	2.39
11.	Guntur	1	1.56
12.	Bombay I	1	4.08
13.	Bombay III	1	1.21
14.	Delhi	8	111.27
15.	Pune	1	1.01
16.	Shillong	1	0.62
Total		64	531.82

STATEMENT IX

(See para 13)

Sl. No.	Collectorate	No. of cases	Amount of duty involved (Rs. in lakhs)
1.	Delhi	4	23.51
2.	Bangalore	5	7.72
3.	Indore	1	7.15
4.	Coimbatore	1	4.56
5.	Bombay III	2	1.06
6.	Madras	1	0.75
7.	Jaipur	1	0.74
8.	Bombay II	2	0.35
Total		17	45.84

APPENDIX III

(Vide Para 37 of the Report)

(To be Published in Extraordinary Gazette of India
in Part II Section 3 Sub-section (ii) dated_____)

MINISTRY OF INDUSTRY (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

New Delhi, the

NOTIFICATION

S.O., _____ Whereas the Central Government considers it necessary with a view to ascertaining which ancillary and small scale industrial undertakings need supportive measures, exemptions or other favourable treatment, under the Industries (Development and Regulation) Act, 1951 for the purposes specified in section 11-B of the said Act;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11-B and sub-section (1) of section 29-B of the said Act, the Central Government for the purposes of further specifying the requirements which shall be complied with by the industrial undertakings to enable them to be regarded as an ancillary or a small scale industrial undertaking for the purposes of the said Act, makes the following amendments in the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No.S.O. 232(E) dated the 2nd April, 1991 namely:—

In the said Notification, in the Table, in paragraph II the existing note shall be numbered as Note 1 thereof and after Note-1, as so numbered, the following Explanation and Note shall be inserted, namely:—

Explanation: For the purposes of this Note—

(A) "owned" shall have the meaning as derived from the definition of the expression "owner" specified in clause (f) of section 3 of the Industries (Development & Regulation) Act, 1951 (65 of 1951);

(B) "Subsidiary" shall have the same meaning as in clause (47) of section 2, read with section 4, of the Companies Act, 1956 (1 of 1956);

(C) the expression "controlled by any other industrial undertaking" means as under:—

- (i) where two or more industrial undertakings are set up by the same person as a proprietor, each of such industrial undertakings shall be considered to be controlled by the other industrial undertaking or undertakings;

- (ii) where two or more industrial undertakings are set up as partnership firms under the Indian Partnership Act, 1932 (1 of 1952) and one or more partners are common partner or partners in such firms, each such undertaking shall be considered to be controlled by the other undertaking or undertakings;
- (iii) where industrial undertaking are set up by companies under the Companies Act, 1956 (1 of 1956), an industrial undertaking shall be considered to be controlled by other industrial undertaking if,—
 - (a) the equity holding by other industrial undertaking in it exceeds 24% of its total equity; or
 - (b) the management control of an undertaking is passed on to the other industrial undertaking by way of the Managing Director of the first mentioned undertaking being also the Managing Director or Director in the other industrial undertaking or the majority of Directors on the Board of the first mentioned undertaking being the equity holders in the other industrial undertaking in terms of the provisions of (a) and (b) of sub-clause (iv);
- (iv) The extent of equity participation by other industrial undertaking or undertakings in the undertaking as per sub-clause (iii) above shall be worked out as follows:—
 - (a) the equity participation by other industrial undertaking shall include both foreign and domestic equity;
 - (b) equity participation by other industrial undertaking shall mean total equity held in an industrial undertaking by other industrial undertaking or undertakings, whether small scale or otherwise, put together as well as the equity held by persons who are Directors in any other industrial undertaking or undertakings;
 - (c) equity held by a person, having special technical qualification and experience, appointed as a Director in a small scale industrial undertaking, to the extent of qualification shares, if so provided in the Articles of Association, shall not be counted in computing the equity held by other industrial undertaking or undertakings even if the person concerned is a Director in other industrial undertaking or undertakings.
- (v) where an industrial undertaking is a subsidiary of or is owned or controlled by, any other industrial undertaking or undertakings in terms of sub-clause (i), sub-clause (ii), or sub-clause (iii), and if the total investment in fixed assets in plant and machinery of the first mentioned industrial undertaking and the other industrial undertaking or undertakings clubbed together exceeds the limit of investment specified in paragraph I or II of this Table, as the case may be, none of these industrial undertakings shall be considered to be a small scale or ancillary industrial undertaking.

Note 2

- (a) In calculating the value of plant and machinery for the purpose of this Notification, the original price thereof, irrespective of whether the plant and machinery are new or second hand, shall be taken into account.
- (b) In calculating the value of plant and machinery, the following shall be excluded, namely:—
- (i) the cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
 - (ii) the cost of installation of plant and machinery;
 - (iii) the cost of Research and Development (R&D) equipment and pollution control equipment;
 - (iv) the cost of generation sets, extra transformer, etc. installed by the undertaking as per the regulations of the State Electricity Board;
 - (v) the bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;
 - (vi) the cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted on individual machines), oil circuit breakers/miniature circuit breakers, etc. which are necessarily to be used for providing electrical power to the plant and machinery/safety measures;
 - (vii) the cost of gas producer plant;
 - (viii) transportation charges (excluding of taxes e.g. Sales tax, Excise etc.) for indigenous machinery from the place of manufacturing to the site of the factory;
 - (ix) charges paid for technical know-how for erection of plant and machinery;
 - (x) cost of such storage tanks which store raw materials finished products only and are not linked with the manufacturing process; and
 - (xi) cost of fire fighting equipments.

(a) In the case of imported machinery, the following shall be included in calculating the value, namely:—

- (i) Import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory demurrage paid at the port)
- (ii) the shipping charges;

- (iii) Customs clearance charges; and**
- (iv) Sales tax.**

(S. BEHURA)
Joint Secretary to the Govt. of India
[No. 10(5)/91-LP]

APPENDIX IV

(Vide Para 49 of the Report)

Advances Granted by Scheduled Commercial Banks to Small Scale Sector

(No. of accounts in thousands)
(Amount in crores of rupees)

As on last Friday of	Advances to SSI Sector		Term Loan		Total		Total Bank Credit	Percentage of 7 to 8
	Working Capital	Term Loan	No. of A/cs.	Amt.	No. of A/cs.	Amt.		
1	2	3	4	5	6	7	8	9
Dec. 1987	1277	8361.37	902	2423.77	2179	10785.24	67855.53	15.9
Dec. 1988	1409	10093.85	1124	2874.14	2533	12967.99	79388.99	16.3
Sept. 1989	1495	11293.08	1223	3342.11	2718	14635.19	89327.00	16.4
March 1990	1526	12398.51	1265	3570.85	2791	15969.36	101453.00	15.7
March 1991 (Provisional)	N.A.	N.A.	N.A.	N.A.	3172	17513.24	110386.15	15.9

APPENDIX V

(Vide Para 51 of the Report)

Schemes Operated by SIDBI to Assist Small Scale Industries

- (i) **Special Refinance Scheme** for extending assistance to women entrepreneurs on concessional terms with debt equity ratio 3:1 promoters' contribution at 12.5% for units located in 'A' category districts and 15% in other districts as against 22.5% otherwise being stipulated.
- (ii) **SIDBI also operates Single Window Scheme** for providing assistance both for acquisition of fixed assets and working capital to SSI units for securing timely working capital assistance. The limits on project cost and working capital component which were originally fixed at Rs. 5 lakhs and Rs. 2.5 lakhs have been raised to Rs. 20 lakhs and Rs. 10 lakhs respectively.
- (iii) **Soft loan assistance** at the rate of 1% p.a. interest (by way of service charge) is extended to new entrepreneurs under special schemes, viz. NEF, SEMFEX, Schemes as also SFC's special capital scheme. In July 1991, SIDBI enlarged the scope of the National Equity Fund Scheme to cover projects costing upto Rs. 10 lakhs as against Rs. 5 lakhs earlier, and offers equity type assistance of Rs. 1.5 lakhs as against Rs. 75,000/ available earlier.
- (iv) **To encourage SSI units to establish facilities for testing and quality control with a view to ensuring better market acceptability of their products, SIDBI operates a special Refinance Scheme** to SSI units for acquisition of in-house quality control facilities. Loan assistance upto Rs. 7.5 lakhs is available under the scheme. No contribution from the promoter is insisted upon. In the case of new projects, promoters contribution will be reckoned on the basis of project cost excluding the outlay on quality control facilities.
- (v) **With a view to ensuring that refinance is sanctioned to eligible institutions on a fast track, avoiding delays in the flow of assistance to the small scale sector, SIDBI has a special automatic refinance procedure** under which loans upto Rs. 10 lakhs are refinanced by SIDBI without the normal requirement of pre-sanction scrutiny of individual proposals by SIDBI.
- (vi) **With a view to providing marketing support to products of SSI units, SIDBI has evolved the following new scheme of assistance to—**
 - (a) **KVI approved institutions to acquire sales vans for stocking/**

display/sale of especially cottage & village industries products under the Refinance Scheme of SIDBI with interest subsidy from KVI;

(b) set up new marketing outlet in small towns, semi-urban areas for sale of products of small scale sector or for expansion-renovation of existing ones under the Refinance Scheme of SIDBI;

(c) Urban-oriented specialised marketing agencies and large marketing organisations for providing marketing support to SSI units by way of direct loans by SIDBI.

(vii) With a view to supporting development of industrial areas, SIDBI has introduced a Scheme for direct assistance to SIDCs, SSIDCs, State Infrastructure Development Corporations/Authorities, for development of industrial areas exclusively for SSI sector. A Scheme has also been introduced to provide direct assistance for setting up village industrial estates on KVIC model by the approved institutions of KVIC.

(viii) A new scheme for direct assistance to ancillary/sub-contracting units has been introduced by SIDBI in December, 1991 to encourage them to adopt improved/updated technology, improve their product quality and diversify product range and improve marketing and exports as per the requirements/plans of their Mother Unit.

(ix) Delayed payment by large units has been a major problem of SSI units. With a view to mitigating their difficulties in this respect, SIDBI provides short term direct discounting assistance to SBI units in respect of their sale of components/parts/accessories/sub-assemblies to users in medium and large industries. SIDBI also operates Direct Discounting of Bills Scheme to assist SSI units manufacturing capital goods. Under this Scheme, the manufacturer seller in the small scale sector/selling agent will receive immediate payment for capital equipment/machinery supplied. The buyer will get the facility of deferred payments in easy instalments over a period of 5-7 years. SIDBI also provides rediscounting facility of bills/promisory notes to banks arising out of sales of indigenous machinery to purchaser users on deferred payment basis on special concessional rate of discount/rediscount for purchaser users as well as seller manufacturers in small scale sector.

APPENDIX VI

Instruction No. 1877

(Vide Para 75 of the Report)

F. No. 181/1/90-IT(A1)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 10th January, 1991.

To

All Chief Commissioners of Income-tax, and
All Directors General of Income-tax.

Sir,

SUBJECT: *Deductions under Chapter VI-A of the Income-tax Act, 1961—Non-application/incorrect application of the provisions of law—regarding—*

The Comptroller & Auditor General has recently conducted a review on the Assessment of small-scale industrial undertaking. In this, a number of objections have been raised which clearly indicate that the provisions under Chapter VI-A of the Income-tax Act are either not being applied at all, or are being applied incorrectly by Assessing Officers without verifying whether the conditions laid down under the respective provisions of law are fulfilled or not. Some such objections are summarised below:—

- (i) The Assessing Officers do not obtain/check any authentic record of the number of workers employed by the assessee in the manufacture of their products, as is required under section 80HH.
- (ii) The Assessing Officers do not verify the actual cost of plant and machinery installed, as is required under explanation to section 80 HHA.
- (iii) The Assessing Officers do not satisfy themselves that a particular location, claimed by the assessee, to be a rural area for concession under section 80 HHA, is actually declared to be so.
- (iv) Ineligible units claim the benefit intended for units in backward areas. Such claim is allowed without verification.
- (v) Large-scale industrial units avail of the concessions which are intended for small-scale industries. This, too, is allowed without verification.
- (vi) Production of audit certificates from the accountant in Forms 10CC and 10CCB, certifying the correctness of accounts, are not insisted

upon, as is required under sections 80 HHA and 80 HHC, respectively.

- (vii) While working out permissible deductions, the Assessing Officers adopt the gross income shown by the assesseees, which includes sales tax, central excise duty, etc., that has been collected and also stand reflected in the statements of account. Consequently, the concerned units receive undue and excessive benefit.
- (viii) Certain units, which were only processing materials and were not manufacturing or producing any article or thing, enjoyed fiscal concessions under sections 80HH and 80HHA. This was not the intention of the legislature.

2. While accepting these audit objections, the Board have expressed their dissatisfaction with the work of the Assessing Officers. It may be true that some such irregularities are overlooked because of the summary assessment procedure, but the Comptroller & Auditor General has observed that such mistakes were committed by the Assessing Officers even where the Assessments were completed after scrutiny. The loss of revenue on account of such irregularities alone has been reported at Rs. 4.23 crores, which is alarming.

3. Necessary instructions may be issued to the Assessing Officers working in your region to acquaint themselves with the legal provisions, as clarified from time to time through legal pronouncements and Board's instructions and circulars, before they allow any deduction under Chapter VI-A while computing the taxable income of the assesseees.

Yours faithfully,
Sd/-

ANUJA SARANGI
Officer on Special Duty

Copy to:

1. All Officers in the Central Board of Direct Taxes of the rank of Under Secretary, and above.
2. Director of Income-tax (Research, Statistics, Publication and Public Relations), for publication in the quarterly tax bulletin, and for circulation as per his usual mailing list.

APPENDIX VII

(Vide Para 11 of Introduction)

Statement of Observations/Recommendations

Sl. No.	Para No.	Ministry/ Deptt. concerned	Observations/Recommendations
1	2	3	4
1.	113	Deptt. of Small Scale Agro & Rural Industries	Small Scale Industries play a vital role in the process of economic development through vast employment generation, promotion of exports, dispersal of industrial and economic activities and mitigation of regional imbalances. The phenomenal growth of the small scale sector can be seen from the fact that the number of small scale units have increased from 5.46 lakhs in 1975-76 to 19.38 lakhs in 1990-91 generating additional employment to the tune of 78.40 lakh persons during the same period. In value terms production from the small scale sector has increased from Rs. 110 crores in 1975-76 to Rs. 1553. crores in 1990-91. At the end of the Seventh Five Year Plan, this sector accounted for nearly 30% of the gross value of output in the manufacturing sector and over 40% of the total exports besides creating jobs for 12 million people.
	114	-do-	The Small Industries Development Organisation headed by the Development Commissioner, (Small Scale Industries) under the Department of Small Scale Agro & Rural Industries is an apex body and nodal agency for formulating, co-ordinating and monitoring policies and programmes for promotion and development of small scale industries. According to the information furnished to the Committee the Department of Small Scale Agro and Rural Industries maintains close liaison with other concerned departments like Department of Industrial Develop

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			ment, DGTD, Ministry of Finance, Planning Commission etc. and very often interministerial meetings are held to resolve issues connected with the small scale sector.
3.	115	Deptt. of Small Scale Agro & Rural Industries	<p>The Industrial Policy Statement of July, 1991, stated that "Government will provide enhanced support to the small scale sector so that it flourished in an environment of economic efficiency and continuous technological upgradation." The thinking of the Government on the "Policy Measures for promoting and strengthening small, tiny and village industries" was spelt out in greater detail in the statement made in the Lok Sabha in August, 1991. The main features of the policy are enumerated below:</p> <ol style="list-style-type: none"> i) De-regulation, de-bureaucratisation and simplification of statutes, regulations and procedures; ii) Increase in the investment limit in plant and machinery of tiny enterprises from Rs. 2 lakhs to Rs. 5 lakhs, irrespective of the location of the unit; iii) Inclusion of industry-related services and business enterprises, irrespective of their location, as small-scale industries; iv) Ensuring both adequate flow of credit on a normative basis and quality of its delivery for viable operation of the SSI sector; v) Setting up of a special monitoring agency to oversee the genuine credit needs of the small scale sector; vi) Introduction of suitable legislation to ensure prompt payment of small industries bills; vii) Introduction of a scheme of Integrated infrastructural development (including technological backup services) for Small Scale Industries;

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			<ul style="list-style-type: none"> viii) Setting up of a Technology Development Cell in the Small Industries Development Organisation; ix) Market promotion of SSI products through co-operative/public sector institutions, other specialised professional/marketing agencies and the consortia approach; x) Setting up of an Export Development Centre in the Small Industries Development Organisation.
4.	116	Deptt. of Small Scale Agro & Rural Industries	<p>The Committee are of the firm view that urgent and effective implementation of the above measures to promote the growth of the small scale sector is essential in view of the note of caution contained in the Economic Survey 1991-92 that "the growth of the Sector during 1990-91 was relatively low because of the adverse impact of certain factors like import restrictions, credit squeeze and hike in interest rates. The combined adverse effects of these factors are likely to aggravate further during the current year. Production in the Small Scale Sector is expected to go up only by about 3 per cent this year as against 8.5 per cent in 1990-91. The growth in employment is also likely to be only marginal." The Committee would like to be apprised of the follow up action taken by the Government on the initiatives suggested in the policy statement of August, 1991.</p>
5.	117	-do-	<p>The Committee note that the term 'Small Scale Industrial Undertaking/Concern' has been defined in three statutes namely, the Income tax Act, 1961, the Industries (Development and Regulation) Act, 1951 and the Banking Regulation Act, 1949. Prior to the amendment to the Income tax Act, 1961 introduced through the Finance Bill, 1992, all these definitions were at variance with each other. It was only when the Committee took up examination of the audit paragraph and examined the Finance Secretary</p>

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on the subject that the Department of Revenue realised the need for bringing about uniformity in the definitions and incorporated suitable amendment to the relevant provisions of the Income Tax Act, 1961 in the Finance Bill, 1992 thereby adopting the same definition as for the purposes of Industries (Development and Regulation) Act, 1951. In the case of the Banking Regulation Act, 1949, the Committee are informed that the decision to amend the definition of the term 'Small Scale Industrial concern' has been kept in abeyance in the wake of recommendation made by the Narasimham Committee to the effect that the Small Scale Sector except tiny sector might be excluded from the priority sector. During evidence, the Secretary (Economic Affairs) had also expressed apprehensions that in case the existing level of investment limit (*i.e.* Rs. 35 lakhs for Small Scale Units and Rs. 45 lakhs for ancillary units etc.) was also raised to Rs. 60 lakhs and Rs. 75 lakhs under the Banking Regulation Act, 1949 as has been done for the purpose of Industries (Development and Regulation) Act, 1951 the larger units in small scale sector being more credit worthy would have greater access to banks than the smaller units which might be deprived of the needed support. The Committee agree that the Small units in the Small Scale Sector need protection from the onslaught of larger units in that sector in availing credit facilities. They are, however, unable to agree to the view that priority sector lending should be restricted only to the tiny sector and recommended that the existing level of investment limits *i.e.* Rs. 35 lakhs for small scale units and Rs. 45 lakhs for ancillary units be retained for lending under the priority sector. Preference may of course be given to meeting the requirements of tiny sector and a separate data may be maintained in respect of lending to tiny Sector to monitor the credit flow to this Sector.

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6.	118	Deptt. of Revenue	The Committee note with surprise that although the excise duty concessions are extended to the Small Scale Industrial Units by the Deptt. of Central Excise, the term 'Small Scale Industrial Undertaking' is nowhere defined in the Central Excise and Salt Act, 1944 or Rules made thereunder. The Committee desire that the Central Excise and Salt Act, 1944 or Rules should be amended to incorporate therein the definition of the term 'Small Scale Industrial Undertaking' on the same lines as in the Industries (Development & Regulation) Act, 1951.
7.	119	-do-	The Committee note that registration of a Small Scale Unit is a pre-requisite for availing excise duty concessions while it is not so in respect on tax concessions under the Direct Tax Laws. It is strange that despite the fact that both the Central Board of Direct Taxes and the Central Board of Excise and Customs function under the same Department of Revenue, separate procedures are followed by them in the matter of extending concessions to Small Scale Industries. The Committee, therefore, desire that as in the case of Central Excise duty concessions, the income tax concessions should also be available only to the registered small scale units. This would help the Ministry in having definite information of not only the potential tax payers in the Small Scale Sector but also enable an assessment of the impact of the fiscal concessions on the growth of Small Scale Sector.
120	Deptt. of Revenue and Deptt. of Small Scale Agro & Rural Industries	The Committee note that there is no system in the Department of Central Excise for verification of the validity of the registration certificate subsequent to its issue by the director of Industries when the unit makes changes in its location, constitution of factory or makes addition to the plant and machinery beyond the prescribed limits. According to the Department of Revenue, the registration certificate is sufficient evidence to grant exemption to small scale units and no verification is made by them in the matter. The Committee have been informed during evidence that a system for such verification exists in the Directorate of Industries/	

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			<p>DC(SSSI). However, the test check conducted by Audit, disclosed 178 cases in 26 collectorates involving irregular exemptions of the order of Rs. 9.44 crores. Out of these, 102 cases in 21 collectorates accounted for excise duty concessions amounting to over Rs. 5.31 crores irregularly availed as the registration certificate on which reliance was placed had already ceased to be valid. In the remaining cases, the requirement of registration were found to have not been fulfilled.</p>
121	<p>Deptt. of Revenue and Deptt. of Small Scale Agro & Rural Industries</p>	<p>Considering the extent of loss that has occurred to the exchequer through such irregular concessions, the Committee feel it imperative that there should be proper verification of the unit before registration and once registered, reviewed on a regular basis and the unit deregistered, if it crosses the prescribed limit by the Directorate of Industries or the District Industries Centre, as the case may be.</p>	
10 122	<p>Deptt. of Small Scale Agro & Rural Industries</p>	<p>In order to enable the Small Scale Industrial Undertakings to become economically viable and to help them face stiff competition from the large scale sector, a host of tax concessions, excise duty concessions as also other supportive facilities/incentives are extended to them by the Government from time to time. These concessions/incentives no doubt have contributed largely to the growth of the Small Scale Sector. Nevertheless, the Committee cannot help in expressing their regret over the disjointed approach of the various Ministries/Departments of the Government in dealing with Small Scale Sector and there is no evidence of their having made a cohesive effort in extending various concessions. No effective coordination amongst the Ministries seems to exist. In these circumstances the Committee feel that an inter-Ministerial Monitoring Agency is the only solution to ensure effective and efficient implementation of policies and programmes drawn by various Ministries for the development of small</p>	

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			Scale Sector. Such an Agency will be able to monitor the administration of concessions, review the progress of policy/programmes and identify the bottlenecks requiring correctives. The Committee hope that necessary steps would be initiated by the Department of Small Scale Industries and Agro and Rural Industries in this direction.
11	123	Deptt. of Revenue	The Committee note that notwithstanding the protests registered by the Office of Development Commissioner (SSI), tax concessions available under sections 32A, 80HH and 80HHA of the Income tax Act, 1961 were withdrawn <i>w.e.f.</i> the assessment year 1991-92 as a measure of rationalisation of tax structure. In April 1990, the then Finance Minister in his Budget Speech, had also announced that the Central Investment subsidy was being reintroduced for small scale units in rural areas and backward regions. The Committee view with concern that while the tax concessions as aforementioned were denied to Small Scale Sector, the promised Central Investment Subsidy is nowhere in sight even after 2 years of the announcement in the House. The withdrawal of concessions especially those for rural and backward areas militates against the policy of dispersal of industries in such areas. The Committee would like the Department of Revenue to review the whole matter afresh in view of the promised Central Investment Subsidy Scheme not having been introduced and keeping in view the special requirement of the Small Scale Sector.
12	124	Deptt. of Small Scale Agro & Rural Industries	The Committee note that the industrial policy statement of July, 1991 envisages liberalisation of policies in various areas like Industrial Licensing, Foreign Investment, Foreign Technology Agreements, Public Sector and MRTP Act. The Committee desire the Government to act cautiously while implementing the above policy so that the process of liberalisation does not have any adverse effect on the Small Scale

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13.	125	Deptt. of Revenue	<p>Sector which deserves to be nurtured and protected in view of its vital role in the process of economic development.</p> <p>The Committee have been informed that no date regarding Small Scale Industrial Undertakings filing returns under the Direct tax laws or the extent of Concessions granted to them is available with the Department of Revenue. According to the Department of Revenue, this data is not compiled as under the Income tax Act, the small scale industries are not a separate taxable entity and therefore their cases are not identifiable as small scale industrial undertakings. In the absence of data with the Finance Ministry relating to potential tax payers or revenue sacrificed, the Committee are unable to comprehend as to how technically the entire range of fiscal concessions is annually reviewed before the Budget and changes introduced based on the impact such concessions have made on the intended sector. The Committee are, therefore, inclined to believe that such changes at the time of the Budget are based on the subjective assessments of the Ministry of Finance and the concerned administrative Ministry/Department and not strictly based on any rationale. The Committee are also unhappy to note that the Finance Ministry which manages the resources of the economy have not made any serious efforts to quantify the revenue sacrificed through the tax concessions extended to small scale sector under the Direct Tax Laws. They desire that on the lines of Central Excise, data relating to Direct Taxes should be computerised expeditiously after demarcating small scale industries as a separate taxable entity to enable proper financial Planning. The Committee would like to be apprised of the action taken by the Ministry of Finance in this regard.</p>
14.	126	Deptt. of Revenue Deptt. of Small & Scale Agro & Rural Industries	<p>The Committee further note that no serious attempt has ever been made by any Ministry or Department concerned to evaluate the impact of concessions, incentives etc. extended to the small scale sector by them from time to time. The Committee need hardly emphasise that extension of any incentive or concession should be followed up with a detailed evaluation to</p>

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			<p>enable the Department to assess the efficacy of such incentives in terms of growth of the sector. This becomes all the more relevant where fiscal concessions are involved as the balancing is between the growth of the sector and the likely revenue loss that is to accrue to the exchequer. The Committee need hardly point out that this feedback will form a vital input in the formulation of any effective strategy for programme/policy support contemplated to promote the growth of the small scale sector. The Committee desire that necessary steps may be taken by the Ministry of Finance/Department of Small Scale, Agro and Rural Industries to get such an evaluation conducted and apprise the Committee of the outcome alongwith the action taken thereon,</p>
15.	127	Deptt. of Small Scale Agro & Rural Industries	<p>The Committee note that delayed payments to the small scale sector is one of the crucial problems being faced by the units in this sector. Apart from setting up factoring services through Small Industry Development Bank of India, the Ministry was to introduce suitable legislation to ensure prompt payment to the units in the small scale sector. The Committee regret to note the delay in this regard and desire that the proposed bill may be expedited to mitigate the problem of delayed payment to small scale units.</p>
16.	128	Deptt. of Economic Affairs	<p>The Committee note with concern the acute problem of sickness which the Small Scale Sector has been facing over the years as is obvious from the fact that 2.24 lakh units were sick with an amount of Rs. 2610.87 crores locked up therein at the end of September, 1990 as against 1.86 lakh sick units with an outstanding amount of Rs. 2243.31 crores at the end of September, 1989. Considering the high incidence of sickness the Committee feel that the measures taken by the Reserve Bank of India to rehabilitate the potentially viable sick units have not met with much success. With this background</p>

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			<p>in view, it seems, the Reserve Bank of India has constituted a Committee for Small Scale Industries to examine whether any revision is required in the present RBI guidelines for rehabilitation of sick small scale industrial units apart from the question of credit needs of the sector. The above mentioned Committee was expected to submit its report by the end of June, 1992. The Committee desire that they be apprised of the recommendations made by the said Committee alongwith action taken thereon by Government.</p>
17.	129	Deptt. of Revenue	<p>The Committee note that the benefits of deductions under the provisions of Income tax Act, 1961 are availed of by the profit making industrial undertakings and the large number of sick units which are running into losses, are in no way benefitted therefrom. Obviously, this is on account of deductions being linked with the profits and there being no provision for carry forward of losses. The Committee feel that sick units deserve sympathetic treatment. They, therefore, desire the Department of Revenue to thoroughly examine the matter and make suitable provisions in law for the benefit of sick units.</p>
18.	130	-do-	<p>According to Para 2.03 of the Audit Report (Direct taxes) for 1989-90, a large number of Small Scale Units registered with the District Industries Centres were not on the registers of Income Tax Department. In Gujarat Circle, the number of registered units during the period 1980—88 was 58,565 but the number of units assessed to Income tax was stated to be negligible. In the case of Uttar Pradesh, only 1.95% of the registered units were reported to have been assessed to Income Tax during 1988-89. Similarly, in Punjab Circle, out of 1620 Small Scale Units, 1342 units were not submitting income tax returns. The Audit have, on further verification, informed that in Punjab Circle 240 units out of 1342 were actually borne on income</p>

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tax records; 999 units were petty ones having no justification for being on income tax records and 103 units were found to be potential income tax assesseees to whom notices had been issued in the matter. The Committee had in their 116th Report (8th Lok Sabha) recommended that the Department of Revenue intensify the tempo of surveys by further strengthening the investigating machinery of the Department so that persons having taxable income were taxed. In response to that recommendation, the Committee were informed that vigorous and sustained efforts in this direction would be continued. Considering the facts brought out by the Audit, the Committee feel that much remains to be done in the matter to bring tax evaders to book. In this connection, the Committee feel that the Central Information Branches functioning under the control and supervision of Directors of Income tax need to be activated to identify potential tax payers in Small Scale Sector. The Committee are of the view that the surveys of industrial complexes housing small scale units if undertaken jointly by the Central Excise Department and the Income tax Department, would be more effective and result oriented in terms of revenue that may accrue to the exchequer. The Committee, therefore, recommend that both the Departments should take necessary steps and chalk out a joint strategy to deal effectively with the potential tax payers and tax evaders.

19. 131

Deptt. of
Revenue

The Committee are distressed to find from the audit para that the concessions were allowed in Direct Taxes to small scale units by the Assessing Officers without taking into account all the relevant factors governing such concessions and the possibility of detection of such errors was remote due to the Summary Assessment procedure being followed by the Income tax Department. In fact, the audit para has highlighted that the total number of mistakes that had been noticed in test check came to as many as 101

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			<p>with tax effect of Rs. 4.23 crores. The Department of Revenue have, however, clarified that the Summary Assessment Scheme was introduced mainly with the object of managing the increasing work load and prior to 1.4.1989 arithmetical errors etc. were allowed to be rectified. However, <i>w.e.f.</i> 1.4.1989 a new section 143(1)(a) was introduced in the Income tax Act, 1961 providing that returns would be processed and prima facie adjustments as prescribed under the Section would be made. The Committee, however, note that the mistakes had occurred even in cases where assessments were completed after scrutiny.</p>
20.	132	Deptt. of Revenue	<p>As a sequel to the recommendations made by PAC in their 173rd Report (8th Lok Sabha), and in consultation with C&AG, the Deptt. of Revenue have decided that the Audit by Internal Audit of scrutiny cases having income of Rs. 2 lakhs to 5 lakhs in non-company cases and Rs. 50,000 to Rs. 5 lakhs in company cases will be increased from 50% to 100% with a consequent reduction of audit in non-scrutiny cases of this category from 50% to 10%. The Committee note that the Action Plan for 1991-92 drawn by the CBDT laid down that all cases of returned income/loss of Rs. 5 lakhs and above would be compulsorily scrutinised and out of the remaining cases selection would be made for scrutiny of such cases as involve refund exceeding Rs. 1 crore or where information was received from CIB, survey or other sources or are glaring cases of tax evasion etc. The Committee hope that with the changes brought about in the procedures and exercise of greater care by the Assessing Officers, the scope for errors such as those pointed out in the audit para, will be minimised.</p>
21.	133	-do-	<p>The audit have also pointed out that the Assessing Officers have allowed the grant of incentives and concessions admissible under the various rules of the Income tax without verify-</p>

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ing whether all the pre-conditions viz. number of workers employed, cost of plant and machinery installed, location of unit and production of audit certificate, for the grant of such concessions were fulfilled. According to the Ministry, the mistakes have occurred on account of non application or incorrect application of the provisions of law by the officers concerned. To avoid such errors the Central Board of Direct Taxes have issued a circular in January, 1991, drawing attention to the provisions under Chapter VI-A of the Income Tax Act and have summarised the nature of mistakes that have normally been committed by the Assessing Officers on the basis of the objections raised by Audit in the audit para. The Assessing Officers have also been directed to acquaint themselves with the legal provisions as clarified from time to time through legal pronouncements and Board's instructions before they allow any deduction under Chapter VI-A while computing the taxable income of the assesseees. The Committee hope that the above instructions will be strictly followed by the Assessing Officers in letter and spirit. The Committee, however, desire the Ministry to evolve a proforma which the assesseees may be required to file alongwith their returns indicating therein the deductions claimed and the satisfaction of all the conditions required for claiming deductions with supporting evidence so as to ensure fulfilment of the prescribed conditions.

22. 134 Deptt. of
 Revenue

The Audit Para (Direct Taxes) has made a mention of three cases in which large units are reported to have availed of concessions intended for small scale units by projecting themselves as Small Scale Units. These cases relate to units engaged in the manufacture of domestic electrical appliances, alcohol spirit and soft drink. The Ministry of Finance (Deptt. of Revenue) have not accepted the audit objections in these cases on the basis of judicial pronouncements on smillar issues and interpre

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			<p>tation of legal terms. The Committee, however, feel that there is need to make the law clearer to avoid any misinterpretation or ambiguity thereabout. They, therefore, desire that the Department of revenue should undertake an exercise in consultation with Audit and the Ministry of Law and the lacunae, if any, in the law be plugged.</p>
23.	135	<p>Deptt. of Revenue</p>	<p>The Audit Para has reported cases in Bombay Circle where deductions under Section 80HH and 80-I of the Income tax Act, 1961 were said to have been irregularly allowed in respect of profits/gains of industrial undertakings/units. In these cases the amounts of deductions under both the Sections 80HH and 81-I were arrived at separately for being allowed from the gross total income. The Audit has objected to the method adopted by the Income tax Department in these cases and has stated that the deduction under Section 80-I is to be computed after reducing the deduction allowed under Section 80HH. The Ministry have not accepted the audit view contending that the deductions had been allowed as per provisions of law. The Committee desire that the issue be settled in consultation with the Ministry of Law and suitable amendments made in the law wherever required.</p>
24.	136	-do-	<p>The Committee note that irregular grant of both MODVAT credit and SSI exemption under Notification No. 175/86-CE dated 1.3.1986 simultaneously resulted in loss of revenue to the extent of Rs. 46 lakhs in 12 collectorates test checked by Audit. This should not have happened given the clear instructions and clarifications made in the matter by the Ministry of Finance (Deptt. of Revenue). Had a little more care been exercised at the time of grant of exemptions, the loss in revenue could have been avoided. The Committee hope that the enforcing agencies would be more careful in future in this regard.</p>

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25.	137	Deptt. of Revenue	<p>The Committee note that in order to enable the Small Scale Units to maintain competitiveness of their goods in the market, a scheme of higher notional credit of the duty paid on the inputs was incorporated in the SSI exemption scheme whereby a manufacturer who procures the goods (inputs) from a Small Scale manufacturer can take credit of an amount higher than the duty actually paid on the inputs even though the Small Unit pays the duty at a concessional rate. The extent of higher notional credit allowed is 5% at present. The audit has noticed certain irregularities in the availment of higher notional credit during the course of test checks in 10 collectorates involving an amount of duty of the order of over Rs. 2.08 crores. This is indicative of the lack of vigilance on the part of the assessing officers while granting higher notional credit. The Committee also note from the information supplied by the Ministry that every year a sizeable amount in the form of higher notional credit is allowed. During the years 1987-88, 1988-89 and 1989-90 the estimated amounts of such allowance were of the order of Rs. 225 crores, Rs. 135 crores and Rs. 140-150 crores, respectively. Considering the quantum of allowance made annually under the above scheme, the Committee consider it imperative that the field formations should be suitably alerted to be extra vigilant while dealing with cases involving grant of higher notional credit.</p>
26.	138	-do-	<p>Under Section 2(f) of the Central Excises & Salt Act, 1944, the term 'manufacturer' includes not only a person who employs hired labour in the production of manufacture of any exciseable goods but also any person engaged in the production or manufacture of any exciseable goods on his account. The Department of Revenue in consultation with Law Ministry had clarified <i>vide</i> circular No. 50/88, dated 20-9-88 that if the raw materials (inputs) were supplied by the principal manufacturers for the manufac-</p>

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			<p>ture of goods on job work basis, the concession under SSI exemption notification No. 175/86-CE dated 1.3.86 would not be available if the Principal Manufacturer himself was not entitled to such concession. A test check in audit revealed 64 cases where the aforesaid considerations were disregarded in 16 collectorates leading to loss of revenue to the tune of Rs. 532 lakhs. Subsequently, in the light of Supreme Court orders dated 12 March, 1990 that circular was modified (<i>vide</i> circular No. 49/90 dated 23.7.1990) clarifying that if the relationship between the raw material supplier and the job worker is one of the principal to principal then the job worker will be the actual manufacturer and the benefit of SSI exemption will be applicable. This circular has led to misuse of concessions by the manufacturers who get the goods manufactured on their account by supply of raw material and specifications etc. The Committee were informed that the Ministry of Law was not consulted before the issue of modified circular.</p>
27.	139	Deptt. of Revenue	<p>The Committee are of the view that the circular (Circular No. 49/90) should have clearly defined terms such as raw material supplier/job worker and their relationship and should have been legally vetted. The Committee desire that the said circular should be modified taking into consideration the deficiencies noticed and referred to the Law Ministry for vetting with a view to eliminating any ambiguity and scope for misinterpretation which may not only involve the Department in legal wrangles but also affect revenue collection.</p>
28.	140	-do-	<p>The Audit para (Indirect Taxes) has also mentioned several other cases of irregular availment of Central Excise Exemption involving misinterpretation of the small scale concessions. These mainly relate to misclassification of goods with a view to availing concessions (Short levy involved Rs. 9.26 lakhs), irregular duty-free clearance in excess of prescribed limits (Levy</p>

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involved Rs. 22.83 lakhs), availment of concession under new SSI scheme before its application (Duty involved Rs. 14.91 lakhs), clearance of goods from SSI units belonging to Central/State Governments (Duty involved Rs. 23 lakhs), assessment on the basis of invoice price for small scale unit (Duty involved Rs. 5.90 lakhs), and other irregularities in the implementation of the scheme for SSI concession (Rs. 1.50 crores). The Committee desire that all these cases should be examined in detail and the lacunae, if any found in the law or the existing procedures be plugged to avoid recurrence of similar nature of irregularities. The Committee would like to be apprised of the results of the examination.
