

ASSESSMENT OF LOTTERY BUSINESS

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

PUBLIC ACCOUNTS
COMMITTEE
1991-92

TENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

EIGHTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1991-92)

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MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)



Presented in Lok Sabha on 26 February 1992

Laid in Rajya Sabha on 26 February 1992

LOK SABHA SECRETARIAT
NEW DELHI

January, 1992/Pausa 1913(Saka)

Price: Rs. 11.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Seventh Edition) and printed by the Manager, Photo Litho Unit, Government of India Press, Minto Road, New Delhi-110002.

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- (ii) 7 January, 1992

* Will be appended at the time of printing.

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

PUBLIC ACCOUNTS COMMITTEE
(1991-92)

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1. Shri S.C. Gupta—*Joint Secretary*
2. Mrs. Gangamurthy—*Deputy Secretary*
3. Mr. K.C. Shekhar—*Under Secretary*

INTRODUCTION

1. the Chairman of the Public Accounts Committee do present on their behalf this Eighth Report on Paragraph 2.01 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1989, No.6 of 1990, Union Government—(Revenue Receipts—Direct Taxes) relating to Assessment of Lottery Business.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 1989, No.6 of 1990, Union Government—(Revenue Receipts—Direct Taxes) was laid on the Table of the House on 10 May, 1990.

3. The Committee's examination has revealed that till recently no steps were taken by the Department of Revenue/Central Board of Direct Taxes to arrest large scale avoidance, under-assessment and short-levy of tax in the lottery business resulting in substantial loss to the national exchequer. The Revenue Secretary conceded before the Committee during evidence that the income from lotteries has not received the kind of specialised attention that it deserved. The Committee have deplored the laxity and complacency of the Department in an important area like the collection of tax and have recommended that the effectiveness of the existing procedure should be evaluated with a view to further revamping it.

4. The Committee have noted that most of the State Governments are not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and subsequently in regard to conduct of state lotteries and lotteries permitted by the State Govts./Union Territory Administrations. Further, according to the Ministry of Home Affairs, so far as the schemes of different State Governments regarding lotteries are concerned, the rules differ from State to State. The Committee have recommended that to achieve uniformity, effective control and avoiding malpractices in lotteries organised by the various State Governments/Union Territory Administrations Government should consider the question of bringing in a suitable legislation.

5. The Committee have found that due to the lack of timely and appropriate corrective steps on the part of the Deptt. of Revenue, there have been large scale omissions to bring the recipients of winning tickets in the tax net for the purpose of regular Income tax and Wealth-tax assessment leading to large scale avoidance/under assessment of the taxes. According to the audit test check, there was an under-assessment of tax to the extent of Rs.6 crores approximately on various counts in the lottery business. The Committee have noted that with effect from 9 April, 1990, the Central Information Branches of the Directorate of Investigation have been directed to collect the information relating to recipients of prize money and disseminate the information to the concerned assessing

officers so as to enable them to take further necessary action under the income-tax Act and Wealth tax Act. The Committee have recommended that the position in this regard should be continuously reviewed with a view to taking final corrective and preventive steps so as to curb the rampant avoidance/under assessment of taxes.

6. The Committee have found that in three cases in Madhya Pradesh, prizes worth Rs. 20,39,70,500 were declared on unsold tickets and Govt. deprived of a sum of Rs. 5,38,83,350 as otherwise recoverable. According to the Department of Revenue, the liability to deduct tax at source arises only at the time of actual payment of the lottery prize under Section 194 B of the Income-tax Act and a mere declaration of prize is not sufficient to attract the provision of the Section. The Committee have recommended that the question of leakage of revenue on this account should be examined in consultation with the Ministry of Law and corrective action taken within a period of six months.

7. According to audit, in certain cases where the social welfare societies/organisations were granted exemptions from payment of tax having regard to the object of such institutions, either the exemptions were initially irregular due to non-fulfilment of necessary conditions by such organisations or these organisations became disentitled to the exemptions due to contravening of some legal provisions subsequently as detailed. [In reply to a specific question whether there was any review of all cases of exemptions granted to such organisations, the Deptt. of Revenue admitted that there was no such review]. The Committee have found that after the issue of exemption notifications in such cases, the Department do not keep any watch over the activities of such organisations unless there are some specific allegations. The Committee have recommended that the Government should evolve a suitable methodology for keeping a continuous watch on the activities of the societies/organisations granted exemptions from tax and if such societies commit any contravention of legal provisions necessitating a review of the question of grant of exemption to them that should be done immediately.

8. The Committee (1990-91) examined Audit Paragraph 2.01 at their sitting held on 23 October, 1990. At their sittings held on 15.11.1991 and 13.12.1991, the Committee had deferred the consideration of the Report. The Committee considered and finalised the Report at their sitting held on 7 January, 1992. Minutes of the sittings from Part II* of the Report.

9. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in

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the body of the Report and have also been reproduced in a consolidated form in Appendix IV* of the Report.

10. The Committee would like to express their thanks to the Public Accounts Committee (1990-91) for taking evidence on Paragraph 2.01 and obtaining information thereon.

11. The Committee would also like to express their thanks to the Officers of the Ministry of Finance (Deptt. of Revenue) and the Ministry of Home Affairs for the cooperation extended to them in giving information to the Committee.

12. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;

29 January, 1992

9 Magha, 1913 (Saka)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

* Not appended to the cyclostyled copy of the Report.

REPORT

Assessment of Lottery Business

This Report is based on the Audit Para 2.01* of the Audit Report for the year ending 31 March, 1989 relating to "Assessment of Lottery Business".

Introductory

1. The Constitution of India empowers Parliament to make laws governing lotteries organised by the Government of India or the Government of a State vide item 40 of the List in the VII Schedule to the Constitution. All other lotteries fall under the general entry "Betting and gambling" in the State list and are subject to regulations by Acts passed by the respective state legislatures. The legislation regarding the private lotteries is enacted by the State Government under the powers conferred by entry 34 of the State List of the Seventh Schedule of the Constitution. Licences issued under the State Lottery Act/Rules empower non-government agencies to organise the conduct of lotteries subject to stipulations regarding the number of draws, the number of tickets to be printed in each series, the amount of prize money, etc.

Objectives

2. Lotteries have been widely used as a means of raising Revenue. While the State Governments utilise the proceeds for financing developmental activities and public utility services, other social organisations conduct lotteries for social welfare purposes.

General Scheme of Lottery Business

3. Lotteries are conducted either departmentally or through private agencies who act as sole selling agents on commission or sole organising agents on payment of royalty to government. Promoters of private lotteries arrange the conduct of lotteries through organising agents on guaranteed profit basis or appoint stockists and agents for sale of tickets on commission basis.

There is no distinction between a government lottery and a private lottery from taxation point of view except that income accruing to the Government from the conduct of lottery business is not taxable by virtue of Article 289(1) of the Constitution of India.

*Reproduced in Appendix-I.

Laws and procedures

4. Prior to 1 April 1972, casual and non-recurring receipts were not regarded as income under the Income Tax Act, 1961, as such no income-tax was chargeable on receipts from winnings of Lotteries. The Direct Taxes Enquiry Committee appointed by the Government of India in 1971, known as Wanchoo Committee, considered this position and recommended withdrawal of the exemption on the ground that it provided scope for avoidance of tax and conversion of black money into white through purchase of prize winning tickets at a premium. Accordingly, the Act was amended in 1972 by rendering income from lotteries, assessable to tax under the head 'Income from other sources'. The law as it existed upto the assessment year 1986-87 provided for deductions in respect of expenses incurred from earning accruing as winnings from lotteries, while computing the income by way of winnings from lotteries. With effect from 1 April 1987 (assessment year 1987-88) winnings from lotteries is taxed at the rate of 40 per cent, subject to a flat deduction of Rs. 5,000 (for the aggregate casual receipts), without any further allowance or deduction in earning the income.

Legal provisions governing the assessment of lottery business and lottery assesseees

5. There is no separate provision of law governing the assessment of lottery business. The income from profits and gains of business or profession is governed by the provisions laid down in sections 28 to 44 of the Income-tax Act, 1961. Therefore, income from lottery business has to be computed in the same manner as the income from most other business. The assessment in this regard is governed by the provisions of Chapter XIV of the Income-tax Act. The penal provisions applicable to general assesseees are also applicable here.

For lottery winnings, the relevant provisions are as follows:-

- (a) Section 2(24) (ix) defines "income" to include, *inter-alia*, any winnings from lotteries;
- (b) Section 10(3) exempts from income any receipts which are of casual and non-recurring nature, to the extent such receipts do not exceed five thousand rupees in the aggregate;
- (c) Section 56(2) (ib) provides that all winnings covered by Section 2(24) (ix), shall be assessed as "Income from other sources";
- (d) Prior to 1.4.1987, section 80TT provided a deduction from income of an assessee not being a company, having winning from lotteries. Thereafter, Finance Act, 1986 introduced Section 115BB from the same date, which provides for charging of tax at the rate of 40% from the winnings from lottery, amongst other incomes from other sources, to all assesseees; and
- (e) Section 194B provides for deduction of tax at source from payment

of winnings from lottery, in amounts exceeding Rs. 5000 /- (Substituted for Rs. 1000 /- by the Finance Act, 1986 with effect from 1.6.1986), at the rates in force.

For default in the above tax deduction, interest is leviable under Section 201 and penalty under Section 271C. For failure to pay the tax deducted at source to the Central Government, an assessee is liable to prosecution under Section 267B.

Assessment of Lotteries

6. According to the Department of Revenue, no specific instructions and circulars have been issued by the Central Board of Direct Taxes on the assessment of lotteries.

The persons connected with lottery business or the so-called lottery assesseees are stated to be of the following types:

- (i) Recipients of prize money;
- (ii) Persons authorised to conduct lotteries on behalf of State Government or organisers;
- (iii) Agents/stockists of lotteries; and
- (iv) Sub-agents of lotteries.

As far as recipients of prize money of lotteries are concerned, Section 194B of the Income-tax Act requires that the person responsible for paying to any person any income by way of winnings of any lottery of an amount exceeding Rs. 5,000/- shall at the time of payment thereof, deduct income-tax thereon at the rates in force. Thus, the persons getting prize money get the amount after deduction of tax at source. The persons responsible for deducting tax at source are also required to file an annual return of deduction of tax to a designated officer of the Income-tax Department.

As regards, other categories of persons connected with lottery business, it has been stated that their cases are dealt with by the Department in the same manner as any other category of assesseees.

System of collection and utilisation of information of lottery assesseees

7. According to the Department of Revenue, the State Government Machinery is not suitably equipped to economically manage the draws and they appoint agents or organisers who then virtually conduct the lottery as any other private or voluntary organisation doing the business. A fixed amount is receivable by the State Governments and the balance profit/loss accrues to the organiser. This results, in large profits for persons conducting the lottery business on behalf of State Governments which is relevant from the income tax point of view. Further, according to the Department, lottery winners gain substantial amounts without much effort or contribution and are also potential sources of income.

Income-tax collected from assesseees engaged in the lottery business in India

8. According to the Department of Revenue the records of income-tax collections from lottery business are not maintained by them industry-wise or trade-wise. As such the Department has not been able to furnish the figures of total income-tax collected from assesseees engaged in the lottery business in India. However, according to the Department the figures of total collection from tax deducted at source under section 194B of the Income Tax Act, 1961, from winnings from lottery or cross-word puzzles for 1987-88 and 1988-89 are as follows:-

Year	(Rs. in crores)
1987-88	44.88
1988-89	36.99

9. The Secretary (Revenue) informed the Committee during evidence that the income from lotteries had not received the kind of specialised attention that perhaps it deserved because of its nature of operation. It was treated as any other business and since there were tens of thousands of accounts of business in the country, lottery income was considered as one of the businesses and, therefore did not receive any specialised-attention of the Department.

10. To a question that since when it was felt that this area was not receiving adequate attention, the Secretary (Revenue) stated as follows:

“I must give credit to the Audit Report that it has drawn attention to an important area which was not readily receiving the attention that it deserves because unlike other businesses, this is an area where information is available largely from the State Governments. In case of State lotteries, all the information is available from State Governments.”

Non-enlistment of prize winners

11. The audit paragraph reveals large scale omissions to bring the recipients of winning tickets to tax control registers for the purpose of regular income-tax and wealth-tax assessment. A few instances are given below:

State	Nature of mistake
1	2
Kerala	76 winners of prizes ranging from Rs. 5.95 lakhs to Rs. 25.50 lakhs not enlisted for wealth tax.
Punjab	89 out of 106 prize winners (all residents of Punjab) of Rs. 50,000 and above (38 of them being winners of another State Lottery) not entered in the control registers, while in the remaining cases no returns filed.

1	2
Karnataka	<p>During 1985-86 and 1986-87, 81 out of 113 winners of prizes ranging from 50,000 to Rs. 25,00,000 (six of them with prizes above Rs. 20 lakhs) filed no income-tax returns, possibly these assesses were also liable to wealth-tax. In one case tax was incorrectly assessed resulting in excess refund of Rs. 9,544 while in another case of an individual who had won the prize of Rs. 25 lakhs and an ambassador car was not assessed to income-tax or wealth-tax and the car value escaped tax liability.</p> <p>15 agents out of 19 selling tickets in Karnataka and Goa, not borne on the books of the department. No means to verify the fact of the filing of the return in any other State.</p>
Uttar Pradesh	<p>Out of 293 cases of prize winners only 51 were reportedly entered in the Control Registers, assessment records of the remaining winners were not produced to audit.</p>
Assam and Meghalaya	<p>Out of 112 prize winners with given addresses at Gauhati and Shillong in no single case the records were produced for audit for verification of the genuineness of the certificates issued for non/less deduction of tax at source. The distinct reference numbers, etc. not withstanding. On the basis of prize money of Rs. 33.14 lakhs a sum of Rs. 9.63 lakhs was deductible at source but only a sum of Rs. 1.46 lakhs was actually deducted. In another 320 cases from outside the Region in respect of lotteries held during 1984-85 and 1985-86 involving payment of Rs. 290.10 lakhs, tax was deducted at Rs. 18.53 lakhs against Rs. 83.75 lakhs due.</p>
Orissa	<p>18 of the 37 winners had not filed returns nor the department had issued notices to this effect. Details of the winners were also not communicated to the concerned assessing officers on the basis of quarterly return of tax deducted at source.</p>
Madhya Pradesh	<p>3 winners in Madhya Pradesh were assessable to tax for profits of Rs. 7 lakhs and above, but no returns had been filed for income / wealth-tax purposes as per records. Income-tax involved Rs. 1,20,556.</p>

12. The Revenue Secretary admitted during evidence that the taxation on lottery income did not receive that much attention because it was not such a big business activity considering the entire operation of the CBDT. He further stated as follows:

“Now, the Audit has come out with a very useful suggestion. They have pointed out due lacunae. We ourselves feel that this matter does require more attention. We assure you that we will try to remove the lapses to the best of our ability.”

13. Recounting the various steps taken by the Department of Revenue after the receipt of the audit paragraph, the Chairman, Central Board of Direct Taxes stated as follows:

“We have already taken steps after the C&AG has submitted its comments. The first step is that lottery business has been made as one of the items for action plan for surveys. Our staff will look into the cases of agents. So, we have included this business in our survey plan. Secondly, we have issued a circular and we are trying to strengthen the machinery relating to CIB and now, we will be in a better position to monitor the agents. We will collect the information regarding payments made to various persons and pass it on to the assessing officers for necessary action. Thirdly, we will consider the question of centralisation of cases of lotteries. We will try to see that there is no tax evasion. Regarding black money which is generated through lotteries, checking this generation is a very big problem. That cannot be done unless we ensure that the name and address of the person is noted in the ticket and the identity of the person is established. Some study is proposed by the Board to be given to the Institute as to what can be the ways by which we can try to see that lottery business is not used as a conduit for generating unaccounted black money.”

14. It was pointed out during evidence that one of the actions taken by the Department of Revenue to improve the system was to issue a circular to all the Director Generals of Income Tax and the Chief Commissioners of Income-tax in April, 1990. The idea being that they would have some centralised collection of information as the information would be collected from the states and then disseminate to the assessing officer so that there was no leakage of revenue. It was suggested that the copies of these circulars should have been endorsed to all the State Governments to enlist their co-operation. Reacting to this suggestion, the Revenue Secretary informed the Committee as follows:

“The best course for me would be to write to the Finance Secretaries or the Chief Secretaries enclosing a copy of the Circular, bringing it to their attention and soliciting their cooperation in getting all the information needed for tax purposes. As I submitted,

we are going to appoint a nodal officer in each State who will liaise with the State's Directorate of Lotteries. The Commissioners and Chief Commissioners of Income Tax in their own States are not persons who are inconsequential and they also can approach the Chief Secretary or the Finance Secretary and bring these things to their attention.

As far as TDS is concerned, I have perhaps been misunderstood. We are not thinking of setting up a Committee. We are thinking of a study regarding guidelines for computation of business profits in respect of bonus, commissions, organising agents, etc in the lottery business so as to get some broad parameters which would help our assessing officers to assess the returns in a better way. We have no proposal at the moment to set up a Committee on the TDS. In fact a lot of committees in the past have made recommendations and we have a lot of literature on this both in India and abroad. Ultimately, it is a matter of balancing the tax considerations and the inconvenience caused to the tax payer and a political decision has to be taken as to what the best solutions would be under the circumstances."

Conduct of lotteries

15. In reply to a question as to the rules and practices governing the conduct of lotteries, the Ministry have stated that no rules have been framed so far. However, the Ministry of Home Affairs had issued certain guidelines to the States and Union Territories through their letter No. V-21011/7/83-GPA-IV dated the 27th June, 1984 to bring about some discipline and uniformity in respect of State Lotteries. The States and Union Territories were also requested to keep these guidelines in view while determining the conditions under which private lotteries were to be authorised by them. The matter was subsequently followed up by the Ministry of Home Affairs with the State Governments / Union Territory Administrations, through the issue of several communications till January, 1987. All these guidelines are contained in Appendix II of this Report.

16. In their communication of February, 1985, the Ministry of Home Affairs had drawn attention to the pronounced departure made from the guidelines issued in June, 1984 particularly in case of private lotteries and had instructed such adherence to these guidelines. Mention had also been made about lotteries sponsored by some unknown and obscure organisations concerned with causes like spinal injuries, mentally retarded, children welfare etc. and the need for control over the mechanism for appointment of sole selling agents/organising agents and over any malpractices in the business, the system and procedure of printing tickets and their numbering, the payment of prizes etc.

17. On being asked about the viability of issuing model rules to State Governments regarding conduct of lotteries, the representative of the Ministry of Home Affairs stated during evidence:

“In 1984, because of large scale complaints against Private lotteries in States, guidelines were issued to all State Governments requesting them to apply these guidelines in respect of State lotteries and private ones. We have learnt that most of the State Governments follow them in respect of State lotteries, but not in respect of private ones—where only State governments are authorised to legislate. We have found it difficult to legislate under the States list as the subject is under the State list. So far as State lotteries are concerned, as a matter of fact most of the complaints received so far pertain to private lotteries and not State lotteries though some complaints have been received about them also.”

18 Offering his comments on the issue, the representative of Ministry of Home Affairs stated as follows:

“So far as the scheme of different State Governments regarding lotteries are concerned the rules differ from state to state.”

He further elaborated:

“So far as State lotteries are concerned they are covered under item 40 of the Union list in the VIIth-Schedule to the Constitution. The Parliament is entitled to make a legislation but so far, we have not legislated in this field at all because the policy of the Government of India had always been to discourage lotteries. In 1968, there was a proposal to ban lotteries.”

But later on, it was thought that in the interest of Centre/State relations, it would be best to authorise the State Governments to conduct lotteries. In 1978 again, question of banning the lotteries came up and the Cabinet took a decision that instead of banning the lotteries at least, we should prevent malpractices by having a legislation which restricts the uppermost level of the prize. But unfortunately again in 1981, the Cabinet decided not to legislate.”

19. In reply to a specific question about the sanctity of the guidelines issued by the Ministry of Home Affairs on 26/27 June, 1984, the representative of the Home Ministry stated as follows:

“These are guidelines only which are optional. These do not have any legal sanction. These are guidelines in which we have requested the State Governments that in case of lotteries organised by the State Governments they must follow these guidelines. We have also requested that in respect of individual licences, these guidelines should be kept in view. But... some of the State Governments have not been following the guidelines.”

Sphere of coordination between Ministry of Finance and Ministry of Home Affairs in regard to Lottery cases

20. In the context of the extent of coordination between the Ministries of Finance and the Home Affairs in the matter of assessment of lottery cases, the Ministry of Finance (Deptt. of Revenue) have stated as follows:

“There is no machinery existing at present for coordination between the Ministry of Finance and Ministry of Home Affairs in regard to assessment of Lottery cases.”

21. The Audit Paragraph reveals that in North Eastern circle, the organising agents/sole selling agents of a State lottery were not based in the Region of that State and there may be a number of instances of this nature. Further the rules regulating the conduct of lottery also did not provide for the State Government being informed of the details of the persons engaged for running of lotteries by the organising agent/sole selling agent and no co-ordination was possible in audit. The Committee enquired whether the Ministry of Finance have studied the schemes and rules of the various State Governments, to see whether they provide for furnishing of the details to the State Governments and, if so, to secure uniformity in all State Schemes and prevent evasion of tax by undesirable means will it not be desirable that the State Governments insist on such details for this purpose. The Ministry of Finance (Deptt. of Revenue) have stated as follows:

“This is not a subject dealt with by this Ministry. However, it would be useful if the rules regarding the conduct of lotteries are such that the State Governments can ask for such details from the organisers of lotteries. A reference in this regard has been made to Ministry of Home Affairs.”

Gaps in the existing laws and procedures

Purchase of prize-winning tickets at premium

22. The audit paragraph reveals that at present there is no safeguard in the scheme of lotteries to prevent a third person other than the real buyer from claiming the prize money.

23. The Committee pointed out during evidence that on the prize winning tickets the actual beneficiary might also earn the black money by selling it to the interested parties on a premium. Department of Revenue have admitted that it is possible that some persons in possession of unaccounted money may introduce their untaxed and unaccounted income in their accounts by purchasing prize winning tickets from genuine holders of such tickets by paying some premium for the purpose.

24. The Committee desired to know the difficulty and drawbacks in indicating the names and addresses of the buyers on the counterfoils of the tickets purchased. The Revenue Secretary stated during evidence as follows:

“The State Governments and some charitable institutions are mopping up some quite substantial revenue from the source. If we make the procedure of selling tickets very very restrictive, then it is possible that the source may dry up very substantially. It is possible that people may not bother to purchase lottery tickets if somebody were to ask them their identification, photographs, permanent and temporary address, income-tax number and all that. Normally tickets are sold by hawkers all over. At that point of time, to establish who has purchased the ticket is very difficult. The prize is given to the person who produces the ticket before the lottery officer. There the identity of the winner is established and 40% is deducted at source. The answer to the question whether after winning the lottery can a person be prevented from selling his lottery ticket to somebody else at a premium, it is possible if we are able to establish the identity of the buyer right at the point when the ticket is sold, and my belief is that if that action is taken, than the income from lotteries will precipitously fall. This source, which is a buoyant source for the Government may dry upto a very large extent.”

25. The witness further elucidated as follows:

“It is not a conscious decision. I am only saying that the rigours involved in establishing the identity of the buyer would make it very difficult for selling the lottery ticket.”

Splitting of Prize Money

26. The Audit paragraph further reveals that there is enough scope for splitting of prize money by putting forth joint claims so as to avoid tax liability.

27. Asked to elucidate the actual position, the Revenue Secretary stated as follows:

“There is absolutely no bar on that.”

28. It is seen from a Bombay case highlighted in Para 2.01.20 of the Audit Paragraph, that the assessee filed an affidavit much later than the declaration of the results of the draw claiming that the prize was won by a syndicate. The Department of Revenue have stated that the disbursing authority had accepted the claim and on that basis, the claim was accepted by the income-tax officer.

29. The Chairman CBDT clarified the position further by stating that even though joint claims were put forward for splitting of prize money, there was no loss of revenue to the Government as each individual was paid after deducting 40% tax, so there would be no incentive in splitting up the prize money.

30. Under the Scheme of Lotteries-Bonus, commission etc. payable to the agents are deducted from the prize money and paid to the stockists/agents, sub-agents. The Audit Paragraph incorporated a number of instances of omission to return these amounts for assessment by the recipients illustrating the possibility of evasion of tax, due to absence of regular and periodical exchange of information between the State Government and income tax department.

31. The Committee enquired if there was effective coordination between the Department of Revenue and the State Government for collecting data in respect of Organisers, stockists and sub-agents who received money in the form of service charges, bonus on prize winning tickets and how the moneys received by these persons were brought within the tax net. In reply the Ministry of Finance (Department of Revenue) have stated as follows:

“Vide Board’s Instruction No. 1845 dated 9.4.1990, a procedure has been laid down for collection of information by the Central Information Branches with regard to payments made by the State Governments to organisers, stockists and agents etc. as bonus, service charges and selling agent’s commission. The Central Information Branches in the investigation wing of the Department have been directed to collect this information from the concerned Departments of the State Governments every year, verify the information and disseminate to the assessing officers to ensure that the income earned by such persons is duly brought to tax. The Central Information Branches have also been directed to obtain names and addresses of persons liable to deduct tax at source from winnings from lotteries and pass on this information to the designated officers for ensuring that there is no omission with regard to deduction of tax by the concerned persons.”

Non-assessment of promoters, stockists/sub-agents

32. When lotteries are conducted through stockists and sub-agents, the payments, include service charges on sales, bonus on prize winning tickets and service charges on prize winning tickets for arranging sales of tickets. The scheme of lotteries generally provides for deduction towards bonus, selling agent’s commission etc. in respect of the prize winning tickets from the prize money and the amounts so deducted are made over to the stockists sub-agents, who should naturally include such receipts in their respective returns of income. *

* Through the Finance (No.2) Act, 1991 section 194 G. has been inserted in the Income-tax Act, which reads as follows:

“194G. Any person who is responsible for paying, on after the 1st day of October, 1991 to any person, who is or has been stocking, distributing, purchasing or selling lottery

33. Whereas the Income-tax Act provides for the Tax* deduction at source in the case of winnings from lottery, no such provision exists for substantial sums paid as bonus, commission and service charges etc. to stockists, promoters and sub-agents.

34. The Audit para has revealed that a number of stockists promoters and sub-agents had omitted to file in their return the relevant income. The assessing officers also did not call for the same leading to possible exclusion of substantial income from tax-brackets. According to the test check conducted by audit, there was an under assessment of tax to the tune of Rs.6 Crores approximately on a various counts.

35. In Paragraphs 2.01.11 (i)(a)(b)(c), (ii) (c) and (iii) (c) of the audit paragraph cases of suppression of sales of tickets to the extent of Rs. 1.23 crores, Rs. 68.43 lakhs and Rs. 1.13 crores were reported.

36. In the first two cases, the Department of Revenue have stated that the figures reported in the Audit para represent the gross value of the tickets and the difference represented discount/rebate to the Zonal agents and so, there is no suppression of income/or escapement of revenue.

37. In the third case the Department have stated that the organising agent had left the country to the United States without leaving any address and that efforts are on to locate the assessee and proceedings for assessment are continuing.

38. On being asked whether any amendment in the Act is proposed to be made in this regard, in a written note furnished to Committee, Ministry of Finance (Department of Revenue) have stated:

“The issue of extension of TDS on payment of bonus, commission or service charges etc. to the stockists promoters and sub-agents of lottery tickets is under active consideration.”

39. The Revenue Secretary further elucidated the position in this regard as follows:

“The whole issue of TDS is under examination like whether the commission agent should pay or not, what should be the quantum of deduction of tax at source, what are the methods verifying the authenticity of TDS certificates that are issued and so on. All these questions are under examination. It is a very complex and difficult

tickets, any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding one thousand rupees, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent”.

Explanation—For the puposes of this section, where any income is credited to any account, whether called “Suspense account” or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

question not only in India but all over there world. Therefore, we will pay the best possible attention to it.”

40. He further added:

“The question of TDS has been under debate for a long time. A legislation was introduced in parliament but because of opposition from various sections of the House, it had to be withdraw. The question is that there are problems in arriving at an appropriate tax deduction at source because the income in this business varies greatly. The statement given by Audit shows that the percentage of profits varies sharply depending on the nature of business, the kind of lotteries, and also the coverage of the agent etc. Therefore, to arrive at an appropriate level of tax deduction whether it should be 10 per cent or 20 or 30 per cent will be a very difficult exercise. However, we will certainly examine whether it is possible or not.”

41 The Chairman, CBDT supplemented the position as follows during evidence:

“I request you to go through the Finance Act of 1987 when it was proposed that the TDS should be extended to the areas of professional service, technical service etc. commission was one of the areas where the Government wanted to have the tax deducted at source. Royalties, rent, payment for goods supplied over certain limits were the areas where there was proposal in the Finance Bill 1987 that the TDS should be extended. The rates were also mentioned but there was much opposition in the parliament and these provisions had to be withdrawn.”

42. He further elaborated:

“We are trying to work out these proposals again and bring them in the Parliament. But we have not been successful. After that opposition it has not been possible. It is not because of lack of desire on the part of CBDT not to extend these provisions. Since there is no provision for extension of TDS on payment of bonus, service charges etc. it has not been possible for the Income-tax Department to insist that tax should be deducted. It has to be done by a legislation. It was proposed in the Finance Bill of 1987. We tried to extend it but we could not succeed.”

43. According to the Department of Revenue there are instances of suppression of stock, non-disclosure of correct receipt by way of commission, bonus etc. Explaining the position in this regard, the Department of Revenue have stated as follows:

“This type of modus operandi being resorted by persons is not peculiar only to lottery business but is a part of the general problem of tax evasion as a whole. It is an acknowledged fact that having regard to increasing number of tax payers, volume and

complexity of transactions, the Income-tax department cannot within the existing resources verify each and every transaction that takes place in the business. Accordingly, the thrust is on selection of comparatively more important cases for scrutiny in assessment. The ultimate aim of the Government is to introduce a system of voluntary compliance to tax laws in the country. With this end in view, the Government has been following a two pronged policy, one limb of the policy is encouragement of voluntary compliance, the other limb of the policy is intensification of deterrent measures like searches, surveys and prosecutions. The stepping up of searches, surveys and prosecutions is expected to create the required degree of deterrence against tax evasion.”

44. Specific instances have been brought out in Paragraph 2.01.12 of the audit paragraph relating to suppression of stock, non-disclosure of correct receipts by way of commission, bonus etc. non-declaration of tax at source etc.

45. For instance in the three cases of sole selling agents of West Bengal, there was under-assessment of income of the order of Rs. 2,71,31,00 for the assessment years 1985-86 and 1986-87 leading to aggregate short levy of tax of Rs. 67,54,481.

46. Similarly the audit paragraph has highlighted 3 more cases involving under-assessment of income of Rs. 4,70,764 Rs. 5,27,644 and Rs. 3,36,471 (for the 2 assessment years) and Rs. 1,76,330 involving a huge short levy of tax. In yet another case of Tamil Nadu there was short computation of income of Rs. 10 lakhs and short levy of tax of Rs. 6.52 lakhs.

47. In Para 2.01 11(i) (d) and (iii) (d) of the Audit paragraph it has been stated that prizes worth Rs. 4.36 crores and Rs. 15.67 crores were declared on unsold tickets and a sum of Rs. 1.35 crores and Rs. 3.91 crores otherwise recoverable in respect of TDS was deprived to the Government.

48. However, according to the Department of Revenue the liability to deduct tax at source arises only at the time of actual payment of the lottery prize under Section 194B of the Income-tax Act and a mere declaration of prize is not sufficient to attract the provision of Section 194B.

49. Elucidating the position further, the Revenue Secretary informed the Committee during evidence:

“As far as I know, it is a common practice in the State lotteries that prizes are declared on both sold and unsold tickets. In some rare cases the prizes are confined to the tickets sold only. But there are cases because state Government want to reduce the outgo of funds end to get more and more money. The general practice is that prizes are announced both on sold and unsold tickets. But generally

prizes are paid only for the sold tickets. The prizes on unsold tickets are not actually paid. In some cases there are provisions wherein unsold tickets the agent or the organiser is entitled to a certain percentage of commission on the prizes. He gets that commission. He does not get the prize. There is no question of payment of prize on that.”

Absence of time limit for payment of Prizes

50. Audit para has cited a case where only part of prize was paid (Rs. 1 lakh out of Rs. 15 lakhs) and the balance remained undisbursed without any deduction of tax at source. Such a situation has arisen because the lottery Act/Rules while providing a time limit for claiming of prizes does not provide for a time limit for payment of the prizes.

51. On being asked whether the Ministry would consider any legislation in this regard to check trading in black money on unclaimed prizes, Ministry of Finance (Department of Revenue) have stated as follows:

“A suggestion would be made to Home Ministry to consider the feasibility of fixing such a time limit for payment of prizes in respect of prize winning ticket.”

Non-inclusion of value of prize paid partly in kind

52. As per the standing instructions of the Central Board of Direct Taxes, issued in August 1985 where a prize is given partly in cash and partly in kind, source deduction of income-tax will be with reference to the aggregate amount of cash prize and value of prize in kind.

53. Audit scrutiny has revealed that the value of prizes given in kind had not been considered by the Director of state lotteries in Kerala, contrary to the guidelines issued by the CBDT. In respect of such cases checked by audit income representing the value of the cars had apparently escaped assessment the approximate revenue effect being of the order of Rs. 6,10,000.

54. The Ministry have stated that the point is acceptable and steps are being taken to raise the necessary demand against the 16 persons and the question of amendment* of Form 26B to clarify that the value of the prize given in kind should be indicated in the form is under consideration.

ADEQUACY AND EFFICACY OF ASSESSMENT OF LOTTERY ASSESSEES

Variation in income and expenses

55. Audit paragraph has brought out the fact that the expenses claimed by the assessee engaged in the lottery business were generally allowed in all assessments in-toto. The test/check conducted by Audit has revealed

* This amendment has been carried out w.e.f. 7.1.1991

that the returns filed were not generally accompanied by details of income returned under various heads and that the expenses incurred were not fully vouched for nor were such details called for by the assessing officers, during the course of assessments. Even in cases with high turnover, running into crores of rupees, the accounts were replete with claims for disproportionately heavy expenses, which reduced the profit margin to very low level. The quantum of various expenses claimed also differed from assessee to assessee and from year to year with no relation whatsoever to the turnover.

56. The Committee desired to know the reasons for wide variations in incomes and expenses in the lottery business. The Revenue Secretary stated during evidence:

“There are very large variations in income and expenses. Of course, some income variations are natural, because of nature of business and the differences in the type of business they are doing but there are some differences which may be because of the fact that income has been suppressed or the expenses have been overstated. We have considered this matter amongst ourselves. We feel that it would be appropriate if we give this matter to an expert body for study, and if the matter is studied and some kind of guidelines are evolved it may help the assessing officer in arriving at some correct estimate of income and expenditure in lottery business”.

57. While admitting the pit-falls in pre-assessment formalities the Department of Revenue have stated that the procedures have been streamlined from July-September 1989. The Committee enquired whether the Department had made any evaluation after a year of operation of the revised procedure. The Department have stated as follows:

“The working and effectiveness of the new provisions relating to tax deduction at source were examined by the Directorate of Organisation and Management Services (DOMS). The report of the DOMS recommended a few further legal and administrative measures to make the system more effective. Action on some of these recommendations has already been taken and others are under consideration. The subject of TDS was also discussed in the Conference of Commissioners of Income-tax held in June, 1990. Board’s instruction No.* 1863 dated 22.10.90 has been issued thereafter. Thus, the Department has been constantly evaluating the effectiveness of the revised procedure”.

*Appendix III.

Centralisation of Lottery Cases

58. There has been momentous spurt in the lottery business during the last few years. The audit paragraph reveals varied types of instances which prove that conscious and planned efforts were on the increase in the lottery business to avoid payment of tax by adoption of questionable modes. Despite this, the Department has failed to centralise the lottery cases for possible coordination and detection of any suppression of income.

59. According to the Department of Revenue, the organisers and others involved in the business are assessed by the Department in the same manner as the other categories of Assesseees.

60. Giving their initial reaction to the suggestion of centralising the cases of lottery assesseees, the Department of Revenue have stated that since the lottery assesseees are scattered all over the country and the agents and sub-agents work for more than one promoter/principle, it is impossible to centralise the cases of all assesseees connected with lottery business.

61. Elucidating the position further, the Chairman, Central Board of Direct Taxes stated as follows :

“We are trying to see that all these cases are centralised at one place or two places or in four places so that there could be coordination. We are examining the promoters of the lottery. The promoter of the lottery may be in one State, the agent may be in another State. The distribution is done all over India by different agents, sub-agents and small hawkers. The printing is done at some other place. It becomes difficult to bring all the cases at one place and assess them in one circle. But certainly, in big cases where big amounts are involved, we will try to see that they are centralised and we are in a position to check the accounts of one with the other.”

Non-disallowance of expenditure in excess of Rs. 2500 paid otherwise than by crossed Cheque/Draft.

62. The Income-tax Act, 1961 provides for disallowance of expenditure incurred in business or profession, subject to certain exemption for which payment is made for any amount exceeding Rs. 2500 otherwise than by crossed Cheque or a Crossed Bank Draft. A residuary provision made in this regard states that exemption can be allowed where the assessee satisfies the Income-tax Officer not only about the genuineness of the payment and identity of the payee, but also of the fact that the payment could not be made by a crossed cheque/bank draft due to exceptional or unavoidable circumstances or due to the impracticability of payment or to avoid causing genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof.

63. Audit paragraph has brought out certain cases where payments exceeding Rs. 2500 made otherwise than by crossed cheque/bank draft, were allowed by assessing officers without any plausible reasons which resulted in undercharge of tax.

64. Admitting the deficiency, the Revenue Secretary stated during evidence:

“You are very right in observing that some irregularities have occurred in the payment of cheques.”

Incorrect grant of exemption and large scale avoidance and evasion of tax

65. The audit paragraph has brought out certain cases indicating incorrect application of the provisions of the Income-Tax Act and also suggesting undue tax benefits to certain individuals. These cases are:

- (i) The Churhat Children’s Welfare Society, Rewa (MP);
- (ii) The Indian Red Cross Society (M.P. Branch), Bhopal
- (iii) The Indore Table Tennis Trust, Indore, and
- (iv) The M.P. Freedom Fighters Organisation, Bhopal.

A brief account of these cases is as under:—

- (i) *The Churhat Children’s Welfare Society, Rewa, M.P.*

The Society is registered with the Registrar of Societies, MP *vide* registration No. 10917 dated 19.1.1982. The Society, *vide* letter dated 11.7.1984, applied to the Central Government for exemption of its income from the levy of income-tax under section 10 (23C) (iv) of the Income-tax Act. The Central Government approved the case for exemption and issued a notification under section 10(23C) (iv), bearing No. 5959 on 31st August, 1984, for the assessment year 1984-85 and 1985-86. Again through its letter dated 28.3.1985, the Society applied for renewal of exemption under the said section. The approval was granted, and the exemption was renewed on 25.3.1986 for the assessment years 1986-87 to 1988-89. According to the Department of Revenue assessment for all the above assessment years were completed taking into consideration these notifications.

The Society was granted a licence by the M.P. Government to conduct lottery draw. The Society entered into an agreement with M/s A&A Enterprises, New Delhi, on 14.1.1984, whereby the latter were appointed as the organising agents for conducting the lottery draws on behalf of the Society.

In the miscellaneous petition No. 3909 of 1987 in the case of **Kailash Joshi Vs. the State of Madhya Pradesh and others (1989-MPTR-HC-129)**, their Lordships of the Madhya Pradesh High Court held that:—

- (a) the agreement dated 14.1.1984 with M/s A&A Enterprises was unlawful and void under section 23 of the Contract Act, as it defeated the provisions of the M.P. State Lottery Act and Rules;
- (b) The Society contravened the provisions of section 6 of the MP State Lottery Act and rule 7 of the MP State Lottery Rules;
- (c) The Society admittedly shared the net proceeds of the lottery with the alleged organising agents; and
- (d) the society is disentitled to get exemption from payment of lottery tax.

The Department of Revenue have pleaded that the Madhya Pradesh High Court nowhere commented or decided on the propriety of grant of exemption under section 10 (23C) (IV) of the Income-tax Act by the Central Government. Neither the Central Government nor the Central Board of Direct Taxes were party to this suit. According to the Deptt. the facts regarding contravention of certain state laws by the Society were not in the knowledge of the Central Government at the time of issuing the aforementioned two notifications on 31.8.84 and 25.3.86. These notifications were stated to be issued in good faith and the above-mentioned judgement of the High Court was pronounced much later on 20.1.1989.

This judgement has not been accepted by the Society and the Supreme Court, vide order passed on 4.5.89 in Special Leave to Appeal No. 4806 of 1989, admitted the Society's Special Leave Petition, against the judgement of the High Court, for hearing. The matter is, therefore, *sub judice* before the Supreme Court.

Although the question regarding contravention of the State Laws by the Society is *sub judice* before the Supreme Court, as a matter of abundant precaution, the Central Government has issued notices to the Society requiring it to show cause why the said two notifications under section 10 (23C) (iv) of the Income-tax Act should not be withdrawn with retrospective effect. According to the Department the reply of the Society, when received, will be considered on merits. The Committee desired to know the latest position with regard to the show cause notices issued to the Society on 27.8.1991. Vide their O.M. dated 30.12.1991, the Ministry of Finance (Deptt. of Revenue) have stated as follows:

“Show cause notices were issued on 27.8.90 to the Churhat Children's Welfare Society for withdrawal of Notification issued under section 10(23C)(iv) for assessment years 1984-85 to 1988-89. The

Society sought for an adjournment by their letter dated 27.9.90. In response to reminder dated 1.4.91 adjournment was again sought for assessment years 1984-85 and 1985-86 through a telegram which was received on 23.5.91. No reply was received for assessment years 1986-87 to 1988-89. The reminder issued on 24.6.1991 was received back unserved. The reminders issued on 16.9.91 and 18.11.91 have not been responded by the Society.

As the evidence of service of reminders dated 16.9.1991 and 18.11.1991 is not available on record a final opportunity has been given to the Churhat Children's Welfare Society to reply to the show cause notices."

(ii) The Indian Red Cross Society (MP Branch), Bhopal

According to the Department, the case of Indian Red Cross Society was referred to the Ministry of Law as long back as in 1975 and it was held that the Society is entitled for grant of exemption under section 10 (22A) of the Income-tax Act. This grant was communicated to the Society vide letter No.184/55/74/-ITA-I dated 5.5.1975 and opinion of the Ministry of Law was brought to the notice of all Commissioners of Income-tax.

The society was granted permission for conducting a lottery draw vide collector, Bhopal's order No. 571/ALP. Bachat/84 dated 27.7.84. The Society entered into an agreement with M/s Chandra Agencies, New Delhi on 19.6.84 appointing them as the organising agents for conducting the lottery draws. The audit para has pointed out that the Society should have deducted tax amounting to Rs. 10,97,312/- at source of prizes of Rs. 35,25,500/- on unsold tickets and interest under section 201(IA) should also have been levied. Apart from this, tax amounting to Rs. 19,19,790/- should also have been deducted from the value of unclaimed prizes amounting to Rs. 61,68,000/-. In this connection, the Department have submitted that liability to deduct tax under section 194B arises only at the time of payment of lottery prizes to winners and not at the time of declaration of prizes. Since no payment was made either in respect of the unsold tickets or in respect of the unclaimed prizes; the question of deduction of any tax does not arise.

The Society had entered into an agreement with M/s Chandra Agencies, New Delhi, on 19.6.84. Even on an earlier occasion, the Society had entered into a similar agreement on 25.12.79 with one Shri V. Kumar of Delhi. The audit view is that by entering into these agreements, the Society shared its income with the agents and, therefore, the entire income should have been liable to income-tax and wealth-tax in the status of "Association of Persons" and taxed at the maximum marginal rate. This is not acceptable to the Department as according to the Department, by these agreements, the Society only appointed organising agents, as the

Society itself not have the necessary experience to conduct the lottery draws. The Department have, therefore, stated that execution of such agreements cannot be taken as an instrument forming an AOP having indeterminate shares, so as to attract income-tax and wealth-tax at the maximum marginal rates. .

However, the objection of the Audit, that tax of Rs. 2,72,528 was not deducted on the payments of lottery prizes of amounts of over Rs 10,000/- each has been accepted in principle by the Department. The Assessing Officer has been directed to take remedial action and also to charge interest under section 201 (IA) and to examine the possibility of action under section 276 B of the Income-tax Act.

(iii) *The Indore Table Tennis Trust, Indore*

The trust was granted permission by the MP Government in 1984 to conduct lottery draws for raising funds for construction of an indoor stadium. Audit has pointed out that since the Trust did not obtain a licence from the Collector under section 7 of the MP State Lottery Act, the three draws conducted by the Trust were unlawful. Also that since conducting the lottery draws is an adventure in the nature of trade, its income should have been taxed under section 11 (4A). The trust has not been notified under section 10 (23). This objection of the Audit has been accepted, and the case for the assessment year 1986-87 has been re-opened.

For reasons stated in the case of the Indian Red Cross Society, the objection that the income of the Trust and that of the organising agents should be clubbed and assessed in the status of an AOP at the maximum marginal rate is not acceptable to the Department.

Audit has further pointed out that tax should have been deducted at source on the prizes, amounting to Rs 15,67,75,000 declared on unsold tickets. The liability to deduct tax arises at the time of disbursement of prizes and not on mere declaration. This objection is, therefore, not acceptable to the Department.

The Audit has further pointed out that the trust was liable to deduct tax at source on prizes amounting to Rs 6,62,65,000/- disbursed on sold tickets. The trust, however, did not file the details. This objection has been accepted in principle. The case has been re-opened for fresh assessment, and the Assessing Officer has been directed to look into this aspect, as well as the liability, if any, under section 201 (IA). The Assessing Officer has also been directed to process the case for action under section 276B, if found necessary.

(iv) *The MP Freedom Fighters Organisation, Bhopal*

In yet another case of a private lottery organised by Freedom Fighter's Society and which had not also been issued licence by the District Collector return of income for the assessment year 1985-86 offering the

guaranteed profit of Rs 75 lakhs for assigning the work of the lottery to the organising agent was not filed at all. According to the audit paragraph, this resulted in escapement of revenue of Rs 46,40,625 during assessment year 1985-86 since the exemption granted in this case was also irregular. Since there were no records of details of assessed income from the lottery draw in the hands of the organising agent, the extent to which his share income escaped tax was not ascertainable.

According to the Department of Revenue this organisation was not an existing assessee and it was only after the objection was raised by the Audit that notice was issued to the Organisation for the assessment year 1985-86.

66. The Committee desired to know whether there were any safeguards in the Department of Revenue to ensure that all assessees file their returns of income, especially in the context of the summary assessment. In their reply the Department of Revenue have stated as follows:

“In respect of new assessees, the only safeguard to ensure that they file their returns of income is through survey. Regular survey u/s 133 B were started by the Investigation Units on regular basis from the year 1987 onwards. Since no information regarding conducting of lottery was available with the Department, no notice could have been issued to the Organisation earlier”.

Survey, Searches and Seizures

67. Further the audit paragraph has highlighted a number of cases which prove the planned avoidance of tax by questionable modes. The Committee desired to know about the nature/kind of existence of such *modus operandi* and what machinery existed in the Department to detect and tackle such attempts. The Ministry of Finance (Department of Revenue) in a written note furnished to the Committee have stated:—

“Steps being taken by the Income Tax Department for combating tax evasion include systematic survey operations and search and seizure operations in appropriate cases.

Where either in the course of search operation or survey operations U/s 133A of Income Tax Act, it is detected that there has been understatement of receipts by any organiser, agent, stockist etc., this information is brought to the notice of the concerned assessing officer for taking requisite action in the hands of the persons concerned.”

68. The Committee desired to know in how many cases of lottery assessees, survey was completed and the additional tax collections

accrued as a result thereof. The Ministry of Finance (Department of Revenue) in a written note furnished to the Committee have stated:

“The details of cases connected with lottery business where survey operations u/s 133A of the Income Tax Act, 1961 were conducted during the last 5 years by the Investigation Wing are as under:

- (a) In the case of M/S. Vimal Agencies of Madurai, an additional income of Rs 60 lakhs was brought to tax as a result of survey conducted during the financial year 1985-86.
- (b) In the case of M/S. Doss and Doss Lucky Centre, Madurai, survey conducted in April 1987 resulted in a disclosure of Rs 3.67 lakhs. Tax paid was Rs 3.04 lakhs.
- (c) In the case of M/S. J.K. & Co. Lottery agents Madurai the survey resulted in an additional tax of Rs 3,000/.
- (d) In the case of M/S. Vardhman Enterprises of Delhi, survey was undertaken in March, 1990. The results of the survey have been forwarded to the concerned assessing officer for taking necessary action during assessment proceedings.
- (e) Survey operations were undertaken in Calcutta in the case of Shri A. Karmaker, M/S. Dhar Agency, Shri P.K. Paul and Shri S. Kandu in October, 1990. The results will be utilised in the relevant assessments”.

69. The Committee enquired as to how many search operations had been conducted so far and what were the results thereof. Chairman CBDT stated as follows:—

“We have carried out a number of searches with regard to lottery agents. In 1985-86, in seven cases searches were carried on in Delhi. And of course, the assessments have not been finalised yet. In 1985-86, searches were carried out. The papers have come. According to my information, that was the first year when we did it. In 1987-88, in Delhi we have done it in quite a number of cases. A number of groups were there. In 1987-88, we did one case in Madras, and in Coimbatore. In Bombay in 1988-89 there were nine cases. In 1989-90 in Delhi there were three cases. In 1989-90 when we did it in Delhi, unaccounted cash of Rs 50,000 was found in one case; and assets worth Rs 2.47 lakhs in another Rs 15 lakhs of concealed income were also admitted. There was another case in Coimbatore. We will give a report”.

70. It is seen from the information furnished by the Department of Revenue that out of the 42 search operations conducted by the Department since 1.1.84 assessments in respect of 20 cases were still pending.

71. In para 2.01.12 (i) (a) (2) of the audit paragraph a registered firm is stated to have not returned agents' Commission and sole selling agency commission aggregating Rs 2.70 crores in two Assessment years 1985-86 and 1986-87 and the assessment for assessment year 1986-87 had also been finalised as summary assessment. The Department have stated that the objection is acceptable for assessment year 1985-86. For the assessment year 1986-87, where the under assessment involved was Rs 1.87 crores, the Ministry have stated that the assessment has been done under Summary Assessment Scheme and enquiry and remedial measure would involve the conversion of the summary assessment case into scrutiny case which is against the policy of the Government as the audit point is not covered by the prescribed adjustments.

72. The Committee enquired whether the Department proposed to take action for assessment year 1985-86 and if not whether any review of the scheme was proposed to be conducted in case the scheme precluded revision in such cases. The Department have stated as follows:

“The department had introduced the scheme of summarily assessing the income-tax returns in order to speed up the disposal of income-tax assessments with the manpower available and to reduce the ever increasing workload. If the assessments completed under the Summary Assessment Scheme are allowed to be disturbed in a routine manner, the whole idea underlying the scheme, namely expeditious disposal of assessments to reduce the increasing workload would be negated. Besides this procedure even though it would lead to some loss of revenue, would provide the officers with more time which would lead to better assessment of other cases where large revenue is involved, the decision not to insist on the withdrawal of administrative instructions in this regard was taken with the approval of the then Finance Minister”.

73. The omission in procedural provisions have been largely accepted and the Department have cited that a number of measures both legislative and administrative have been taken to make the provisions of tax deduction at source effective. The Ministry have also stated that in summary assessment cases the basic requirements including tax audit etc. are not required to be looked into. However, considering that only 3 percent of the cases are actually subjected to scrutiny under the summary Assessment Scheme, the Committee asked the Department to clarify whether they were able to ensure proper implementation of these provisions regarding tax deduction at source, tax audit etc. The Department have stated as follows:

“Even in respect of cases completed under the summary assessment scheme, the assessing officer is required to look into the correctness of tax deducted at source, computation of income etc. Wherever there is any doubt regarding escapement of income or incorrect payment of tax etc., the assessing officer is at liberty to pick up the case for deep scrutiny”.

74. Section 10 (23 C) (iv) and (v) of Income Tax Act, 1961 provides for exemption from tax, the income received in the case of following:

- i) The income received by any person on behalf of any fund or institutions established for charitable purpose, notified by the Central Government in the official Gazette having regard to the object of the fund or institution and its importance throughout India or throughout any State or States;
- ii) The income received by any person on behalf of any trust (including any other legal obligation) or institution wholly for public, religious and charitable purposes, which may be notified by the Central Government in the official Gazette, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof.

75. The Committee desired to know whether in the light of the doubtful and unlawful activities indulged by the welfare organisations and having regard to the Home Ministry's circulars, Ministry have attempted a review of all such cases of exemption granted to such welfare organisations, where control of the Government after issue of the notification was relatively absent. The Ministry of Finance in a written note furnished to the Committee have stated:—

“The Ministry has not attempted any such Review”.

76. The Department have further elaborated as follows:—

“Unless there were special circumstances, exemption u/s 10(23C) (iv)/(v) normally used to be given for 3 years. Under the new provisions, as amended, by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1990, Exemption cannot be given for more than 3 years at a time. During the period for which the notification u/s 10 (23C) (iv)/(v) is issued no control is kept over the activities of the organisation unless there are specific allegations. However, after the said period of 3 years, applications for renewal of notification are examined afresh on merits. At the time of examining the applications for renewal of notification the nature of activities and utilisation of funds during the earlier years are also examined.”

ASSESSMENT IN THE STATUS OF 'ASSOCIATION OF PERSONS'

77. According to Audit in cases where the promoter of lottery appoints an agent for the purpose of conducting the draws on payment of stipulated amount to itself, there is an Association to join voluntarily and without any compulsion and that for tax purposes such an association comprising the promoter and the organising agent can be assessed as an 'Association of persons'.

78. The Department of Revenue are not agreeable to the interpretation of audit and in support of their contention the Department have stated as follows:—

“The leading case explaining the concept of an Association of Persons (AOP hereinafter) is the Supreme Court decision in the case of CIT vs. Indira Bal Krishan (1960) 39 IIR 546 (SC). According to this decision, an AOP is one in which two or more persons join for a common purpose for a common action and the association must be one object of which is to produce the incomes, profits or gains. There is no formula of application as to what facts, how many of them and of what nature, are necessary to come to the conclusion that there is an “Association of persons”; it must depend upon the particular facts and circumstances of each case as to whether the conclusion regarding the constitution of an association of persons can be drawn or not. The Supreme Court in this decision has very clearly said that the existence of a common source of income in which two or more persons are interested as owner or otherwise, whether their shares are specific or indefinite or whether there is any scheme of management or not is neither conclusive nor demonstrative of the question whether two persons constitute an AOP.

The decision quoted by the Audit in the case of G. Murugason & Bros. vs. CIT 1973, 88 ITR 432/(SC) does not support the view that when a society or an association assigns the rights to conduct lotteries to some organising agents on payment of certain amounts fixed or otherwise, an Association of Persons is constituted. The case by the Audit on the contrary, supports the view of the Income-Tax Department that there is no AOP in such circumstances

In the case quoted by the Audit, the assesseees were joint owners of shares for which share transfers had been assigned by one ‘M’ on his own and on behalf of brothers the joint owners. The dividend received was being credited initially in the books of a firm in the account of ‘M’ and Bros. and at the end of the year the balance in the account was transferred to the individual accounts of Brothers. For the assessment years 1957-58 and 1958-59, the return of income in respect of dividends had been filed in the status of an AOP but for the later years each brother filed his own return in his capacity as individual. The contention of the revenue was that in view of the fact that the dividend was collected jointly, the assessment for later years should also be made in the capacity of an AOP.

The Supreme Court has decided that in cases of receiving dividends from shares, where there is no question of any management it is difficult to draw an inference that two or more shareholders function as an AOP from the mere fact that they jointly own one or more shares, and jointly receive the dividends declared.

There are a number of other decisions also which go to show as to what constituted an “Association of Persons”. The persons, in an

AOP must 'earn' and not only 'receive' income by reason of their association. In the case under consideration, even if an association is presumed, the promoter only 'receives' income and does not 'earn it'. The earning part is being done by the organising agents and therefore, there cannot be presumed to be an AOP between the promoter and the agent of the right to draw lotteries. The decisions are:

- (i) **N.S. Choodamani vs. CIT 1959, 35 ITR 676 (Kerala).**

In this case, it has been observed by the High Court that in order to assess a group of persons in the status of AOP, there must be some evidence of a joint venture or there must be something to show that the income was the result of some joint effort or a joint business. What is required before an AOP can be liable to tax is not that they should receive income but they should earn or help to earn income by reason of their association and if the case of the department stops short of mere receipts of income, then the department must fail in bringing home the liability to tax of individuals as an AOP.

- (ii) **Sheikh Zainuddin Ahmed vs. CIT (1956) 30 ITR 36 (Pat).**

This was a case where four brothers, three of whom were carrying extensive business, some in tobacco and some in sweetmeat, had purchased a house for Rs. 25,000 and since their explanation over the source of the said sum was not satisfactory, the revenue treated the said sum as the income of the AOP. On these facts, the Patna High Court had decided that in order to assess the four brothers in the status of an AOP there must be some evidence of a joint venture or there must be something to show that the income was the result of some joint effort or a joint business. Since it could not be proved before the High Court that the four brothers had earned Rs. 25,000/- as a result of any joint venture or had derived the income from any joint business or any joint property, the Department was not correct in assessing this income as income of an AOP.

- (iii) **T.N.K. Govindaraju Chetty & Co. (P) Ltd. vs. CIT (1964) 51 ITR 731 (Mad.)**

This was a case where the assessee had provided financial assistance to one R for assisting him to acquire managing agency of a company and the R in turn had paid part of his agency commission to the assessee. It was held that the assessee and R could not be treated as an association of individuals as the agreement did not constitute a joint venture or common enterprise to produce income but was only a simple contract

by R to pay a certain share of his commission to the assessee.

This decision of the Madras High Court applies squarely to the facts in the four cases cited by the Audit. The promoters desiring to have lotteries drawn did not enter into joint venture or business activity with the organising agents. They merely gave the rights to hold the lotteries and manage their conduct to some agents and stipulated that such agents would pay certain stipulated sums to the persons having the right to get the lotteries drawn. The promoters were only to get some amount out of the draws and were not to share any losses with the organising agents. There was no element of risk sharing or business participation. It was merely an arrangement for getting certain services rendered for the conducting of lotteries. In other words, there was only a relationship of master and servant or master and an agent and not an association of a nature which could be designated as an Association of persons. It has been held by the Supreme Court in the case of Commissioner Agricultural Income tax Vs. Rattan Gopal (Supra) that "Collection of the entire income from the State by one of the sharers or even by a common employee will not make the income from a joint venture". Likewise, the mere payment to an agent, manager or lessee will not make the owner assessable as an Association of Persons.

In view of the detailed reasons and legal position discussed above, it is respectively submitted that the Audit view in regard to the four cases to the effect that there should have been an assessment of an AOP, is not legally tenable and is, therefore, not acceptable."

79. Lotteries organised by the Government of India or the Government of a State appear in the Union List in the VII Schedule to the Constitution of India and the Parliament is vested with the powers to make laws governing such lotteries. Lotteries organised by any other agency come under the general entry "Betting and Gambling" in the State List, and would be subject to regulation by Acts enacted by the respective States. The Committee note that there is no separate provision of law governing the assessment of lottery business. Therefore, income from lottery business is computed in the same manner as the income from most other business, under sections 28 to 44 of the Income-tax Act, 1961. Further no specific instructions and circulars have been issued by the Central Board of Direct Taxes on the assessment of lotteries.

80. Prior to 1 April, 1972, casual and non-recurring receipts were not regarded as income under the Income-tax Act, 1961, as such no income-tax was chargeable on receipts from winnings of lotteries. The Act was amended in 1972 on the recommendations of the Direct Taxes Enquiry Committee

(Wanchoo Committee) by rendering income from lotteries assessable to tax under the head 'Income from other sources'. Further, with effect from 1 April 1987 (Assessment year 1987-88) winnings from lotteries is taxed at the rate of 40 per cent subject to a flat deduction of Rs. 5000/- (for the aggregate/casual receipts), without any further allowance or deduction. The total collection from tax deducted at source under section 194B of the Income-tax Act, 1961, from winnings from lottery or cross-word puzzles for 1987-88 and 1988-89 has been Rs. 44.88 crores and Rs. 36.99 crores, respectively. The Committee are surprised to find that the Central Board of Direct Taxes have so far not initiated any exercise to assess the profits in this trade, even decades after the operation of the scheme in the States. The Committee feel that such an assessment is very essential both for the purpose of framing realistic estimates of tax collection and taking adequate preventive steps to curb leakage of revenue.

81. The Committee are distressed to find that till recently no steps were taken by the Department of Revenue/Central Board of Direct Taxes to arrest large scale avoidance, under-assessment and short-levy of tax in the lottery business resulting in substantial loss to the national exchequer. The Revenue Secretary conceded before the Committee during evidence that the income from lotteries had not received the kind of specialised attention that it deserved. The Department of Revenue have admitted the pitfalls in the pre-assessment procedure and the procedure is stated to have been streamlined from September, 1989. The Committee deplore the laxity and complacency of the Department in an important area like the collection of tax. The Committee recommend that the effectiveness of the existing procedure should be evaluated with a view to further revamping it.

82. The Committee regret to note that most of the State Governments are not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and subsequently in regard to conduct of state lotteries and lotteries permitted by the State Govt./Union Territory Administration. Further, according to the Ministry of Home Affairs, so far as the schemes of different State Governments regarding lotteries are concerned the rules differ from State to State. The Committee would appreciate if uniformity is brought about in all such State rules in the interest of collection of taxes. Further, the rules regulating the conduct of lottery did not provide for the State Government being informed of the details of the persons engaged for running the lotteries by the organising agents/sole selling agents. According to the Department of Revenue it would be useful if the rules regarding the conduct of lotteries were such that the State Governments could ask for such details from the organisers of lotteries. The Department of Revenue have already taken up this matter with the Ministry of Home Affairs. The Committee urge upon the Ministries of Home Affairs and Finance to take the desired corrective action in the matter at the earliest. The Committee also recommend that to achieve uniformity, effective control and avoiding malpractices in Lotteries organised by the various State Governments/Union

Territory Administrations, Government should consider the question of bringing in a suitable legislation.

83. The Committee find that due to the lack of serious efforts on the part of Department of Revenue, there have been large scale omissions to bring the recipients of winning tickets in the tax net for the purpose of regular income-tax and wealth-tax assessments leading to large scale avoidance / under assessment of the taxes. A number of such instances revealed as a result of test check conducted by Audit have been enumerated in para 11 of this report. For instance, in the cases pertaining to Kerala, 76 winners of Prizes ranging from Rs. 5.95 lakhs to Rs. 25.50 lakhs were not enlisted for wealth tax. Similarly in Punjab, 89 out of 106 prize winners of Rs. 50,000 and above, were not onlisted in the control registers, while in the remaining cases no returns were filed. Similarly in Madhya Pradesh 3 winners were assessable to tax for profits of 7 lakhs and above but no returns had been filed for income / wealth tax purposes as per records. Income-tax involved in these cases was Rs. 1,20,556. According to the audit test check there was an under-assessment of tax to the extent of Rs. 6 crores approximately on various counts in the lottery business. The Department of Revenue have informed the committee that with effect from 9 April, 1990 the Central Information Branches of the Directorate of Investigation have been directed to collect the information relating to recipients of prize money from the annual statements of TDS filed with the designated officers and to disseminate the information to the concerned assessing officers so as to enable them to take further necessary action under the Income-tax Act and the Wealth-tax Act. They have been directed to collect information in respect of prize money of Rs. 1 lakh and above for this purpose. The Committee regret to note that the Department of Revenue / Central Board of Direct Taxes have miserably failed in taking timely and appropriate corrective steps to overcome this large scale avoidance and under-assessment of taxes. They recommend that the position should be continuously reviewed with a view to taking further corrective and preventive steps so as to curb the rampant avoidance / under-assessment of taxes.

84. The Committee find that large scale avoidance and under-assessment of income-tax and wealth-tax in the lottery business has occurred due to various loop-holes and deficiencies in the existing laws and procedure. Audit scrutiny has revealed that while a number of stockists, promoters and sub-agents had not filed the tax returns, quite a few others had not returned the full incomes received by way of bonus, commission and service charges. For instance, the Committee find that in three cases of sole selling agents of West Bengal, there was under-assessment of income of Rs. 2,71,31,100 for the assessment years 1985-86 and 1986-87 leading to aggregate short levy of tax of Rs. 67,54,481. Similarly, the audit paragraph has highlighted three more cases involving under assesment of Rs. 4,70,764, Rs. 5,27,644 and Rs. 3,36,471 (for the two assessment years) and Rs.

1,76,330. In yet another case of Tamil Nadu there was short computation of income of Rs. 10 lakhs and short levy of tax of Rs. 6.52 lakhs. The Committee note with deep concern these instances of suppression and short-levy of tax. According to the Department, the stepping up of searches, surveys and prosecutions is expected to create the required degree of deterrence against tax evasion. Further whereas the Income-tax Act provided for the deduction at source from winnings from lottery, no such provision earlier existed for substantial sums paid as bonus, commission and service charges etc. to the stockists, promoters and sub-agents.

The Committee note that in pursuance of the suggestion made by them during evidence of the representatives of the Ministry of Finance on the subject, the Govt. have through the Finance (No. 2) Act, 1991 inserted a new section 194G in the Income Tax Act. According to the new provision, any person who is responsible for paying, on or after the 1st day of October, 1991 to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding one thousand rupees shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent. The Committee hope that the Government will keep a close watch over the implementation of this provision and take further necessary steps to overcome the problem of large scale avoidance and under-assessment of tax in the lottery business.

85. The audit paragraph reveal yet another source of avoidance of tax in the lottery business. It is seen that in three cases in Madhya Pradesh, prizes worth Rs. 20,39,70,500 were declared on unsold tickets and Govt. deprived of a sum of Rs. 5,38,83,350 as otherwise recoverable. According to the Department of Revenue the liability to deduct tax at source arises only at the time of actual payment of the lottery prize under Section 194B of the Income-tax Act and a mere declaration of prize is not sufficient to attract the provision of the Section. The Committee recommend that the question of leakage of revenue on this account should be examined in consultation with the Ministry of Law and corrective action taken within a period of six months.

86. The audit paragraph reveals yet another lacuna leading to under-assessment or avoidance of tax in the matter relating to the expenses claimed by the persons engaged in the lottery business. The Committee are surprised to find that the expenses claimed and allowed not only varied from assessee to assessee but there was also no relationship whatsoever of these expenses with the turnover. Even in cases with high turnover, running into crores of rupees, the accounts were replete with claims for disproportionately high expenses, which reduced the profit margin for

assessment purposes to a very low level. What is more distressing is the fact that there has not been detailed examination of the accounts of the assesseees by the assessing officers so as to bring the actual income to tax. The Committee are deeply concerned over this dismal state of affairs. The Revenue Secretary assured the Committee during evidence that the matter was proposed to be got examined by an expert body for evolving concrete guidelines to overcome this lacuna. The Committee emphasise that the proposed study should be got conducted urgently and the guidelines evolved as a result thereof should be introduced within a period of six months.

87. Yet another serious problem brought out in the audit paragraph is about the purchase of prize winning tickets at a premium, by the third parties from the actual winners resulting in conversion of black money into white money. The Committee take serious note of the adverse effects of such cases on the economy of the country. What is really distressing is the fact that there is, at present, no safeguard in the scheme of lotteries to prevent a third person, other than the real buyer, from claiming the prize money. The Committee are further distressed to find that there is also enough scope for splitting of the prize money by putting forth joint claims so as to avoid or reduce the tax liability especially the wealth-tax liability. The Committee strongly recommend that both these problems, should be seriously considered for evolving suitable methodology to check avoidance of tax through such means.

88. It is further distressing to find that even the basic requirements provided for under the Income-tax Act such as compulsory maintenance of accounts by major assesses and tax audit, the payments, in excess of Rs. 2500, by crossed cheque / demand draft were not insisted upon in a number of cases. The Committee urge upon the Department of Revenue to ensure that prescribed procedure in all such matters is strictly adhered to.

89. The Committee are of the view that centralisation of lottery cases is the most practical solution for possible coordination and detection of any suppression of income. Unfortunately the Department have not so far taken any steps towards this end.

The Committee during evidence were informed by the Chairman, Central Board of Direct Taxes that it was difficult to bring all the cases at one place and assess them in one circle as the promoter of the lottery may be in one state and the agent may be in another state. Moreover the distribution is done all over the country by different agents, sub-agents and small lotteries hawkers. But he assured the Committee that they would centralise the big cases involving larger amounts. The Committee would like to know the concrete action taken in this regard within a period of six months.

90. The Committee find that in contravention of the standing instructions of the Central Board of Direct Taxes that source deduction of income-tax should be made with reference to the aggregate amount of cash prize and value of prize in kind, in the 16 cases relating to the Director of State

Lotteries in Kerala, income representing the value of cars had escaped assessment, the approximate revenue effect being of the order of Rs. 6,10,000. While accepting the point, the Department of Revenue have stated that necessary steps are being taken to raise the necessary demand and the question of amendment* of Form 26B to clarify that the value of the prize given in kind should be indicated is under consideration.

91. Whereas Lottery Act/Rules provide a time limit for claiming of prizes in respect of prize winning tickets, no such time limit has been prescribed with regard to payment of the prizes. Audit para has brought out a case where only part of prize was paid (Rs. 1 lakh out of Rs. 15 lakhs) and the balance remained undisbursed without any deduction of tax at source. With a view to check malpractices, the Committee recommend that the question of fixing a time limit for payment of prizes in respect of prize winning tickets should be urgently examined and compliance reported within a period of six months.

92. According to audit, in certain cases where the social welfare societies/ organisations were granted exemptions from payment of tax having regard to the object of such institutions, either the exemptions were initially irregular due to non-fulfillment of necessary conditions by such organisations or these organisations became disentitled to the exemptions due to contravening of some legal provisions subsequently as detailed in para 65. In reply to a specific question whether there was any review of all cases of exemptions granted to such organisations, the Deptt. of Revenue admitted that there was no such review. After the issue of exemption notifications in such cases, the Department do not keep any watch over the activities of such organisations unless there are some specific allegations. The Committee recommend that the Government should evolve a suitable a methodology for keeping a continuous watch on the activities of the societies/organisations granted exemptions from tax and if such societies commit any contravention of legal provisions necessitating a review of the question of grant of exemption to them that should be done immediately.

93. The Committee note that Churahat Children's Welfare Society, Rewa, M.P. was granted exemption from payment of Income tax under Section 10(23C) (iv) of the Income tax Act for the years 1984-85 to 1988-89. The Society was granted a licence by the M.P. Govt. to conduct lottery draws. In a suit filed in the High Court, M.P., the High Court had *inter alia* held that due to the contravention of the provisions of the State Lottery Act by the Society, it was disentitled to get exemption from payment of lottery tax. According to the Department of Revenue the judgement of the Madhya Pradesh High Court has not been accepted by the Society and the Supreme Court, *vide* order passed on 4.5.1989 in special leave to appeal has admitted the Society's special leave petition, against the judgement of the

*This Amendment has been carried out w.e.f. 7.1.1991.

High Court, for hearing. The Committee have been informed that as a matter of abundant precautions, the Department have issued notices to the Society on 27-8-1990 requesting it to show cause why the two notifications issued on 31st August, 1984 and 25 March, 1986 under Section 10(23C) (IV) of the Income-tax Act granting exemption to the Society for the assessment years 1984-85, 1985-86 and 1986-87 to 1988-89 respectively should not be withdrawn with retrospective effect.

The Committee have been further informed that on 27.9.1990 the Society had sought for adjournment. Again through a telegram received in the Ministry on 23.5.91, adjournment was sought for by the Society for the assessment years 1984-85 and 1985-86. No reply is stated to have been received for assessment years 1986-87 to 1988-89 despite the reminders issued on 24.6.1991, 16.9.91 and 18.11.1991. According to the Ministry as the evidence of service of reminders dated 16.9.91 and 18.11.1991 is not available on record, a final opportunity has been given to the Society to reply to the show cause notices. The Committee regret to note that although more than one year has lapsed since the issue of the show cause notices to the Society on 27.8.1990, no progress has been made in the matter. The Committee would like it to be expedited and the outcome reported to them.

The Committee are also surprised that no evidence of service of reminders issued to the Society on 16.9.1991 and 18.11.1991 is available on record with the Ministry. They take serious note of this and desire that the matter may be thoroughly probed.

94. The Committee further find that in the case of the Indian Red Cross Society, Bhopal, the Department of Revenue have accepted in principle, the audit objection that tax of Rs. 2,72,528 was not deducted on the payments of lottery prizes of over Rs. 10,000 /- each for further necessary action. Similarly, in the case of Indore Table a Tennis Trust, Indore the Department have accepted the audit objection that the trust was liable to deduct tax at source on the prizes amounting to Rs. 6,62,65,000 /- disbursed on sold tickets. But for the audit test check, the tax evasion in these cases would have gone undetected. The Committee recommend that with a view to effectively combat different types of tax evasions, the number of survey operations and search and seizure operations should be adequately augmented. The Committee further emphasise that no leniency should be shown to the offenders involved in evasion of revenue, irrespective of quantum of value involved and they should be booked for appropriate action under the law. The Committee would also like to know the conclusive action taken in the aforesaid two cases within a period of six months.

95. The Committee find that a registered firm had not returned agents' commission and sole selling agents' commission aggregating Rs. 2.70 crores in two assessment years 1985-86 and 1986-87. The assessment for year 1986-87 had also been finalised as summary assessment. The Department have accepted the objection for assessment year 1985-86. For the assessment year

1986-87, where the under assessment involved was as high as Rs. 1.87 crores, the Department have stated that the assessment has been done under Summary assessment scheme and enquiry and remedial measures would involve the conversion of the summary assessment case into scrutiny case which is against the policy of the Government as the audit point is not covered by the prescribed adjustments. Further, according to the Department, if the assessments completed under the Summary Assessment Scheme are allowed to be disturbed in a routing manner, the whole idea underlying the schemes, would be negated. The Committee are unable to agree with the views of the Department and are convinced that the summary assessment scheme should not prevent them from reopening of the cases and taking proper action in important cases where a large revenue is at stake. The Committee recommend that in the interest of revenue and also with a view to instil fear in the minds of the tax evaders the Government should consider the question of reopening of the assessments on the basis of subsequent positive information, in such cases where there is reported under-assessment/short-levy of tax involving heavy amount. The Committee would like to know the concrete action taken in this regard within a period of six months.

96. According to Audit in cases where the promoter of lottery appoints an agent for the purpose of conducting the draws on payment of stipulated amount there is an Association to join voluntarily and without any compulsion and that for tax purposes such an association comprising the promoter and the organising agent can be assessed as a 'Association of persons'. The Department have, however, not accepted the audit's viewpoint and in support of their contention the Department have adduced various legal decisions. The Committee recommend that the matter should be examined in detail in consultation with the Ministry of Law, urgently.

97. The facts narrated above abundantly prove that tax collection from the lottery business which is a potential source for raising revenue has hitherto remained largely neglected. Consequently, wilful and planned attempts were on the increase to avoid payment of tax by adopting questionable means. There is no coordination between the Ministries of Finance and Home Affairs in regard to assessment of lottery cases. The State Governments are not seriously following the guidelines issued by the Ministry of Home Affairs. There have been large scale omissions to bring the recipients of winning tickets to the tax net and there is large scale avoidance/under-assessment of the taxes. Further exemptions from payments of tax granted to the Social Welfare Societies/Organisation are not regularly reviewed. The Committee are convinced that there is considerable scope for unearthing unaccounted income in the lottery business. The Committee need hardly emphasise the fact that the growth of the economy and entire gamut of financial administration and fiscal policies of the Government are entirely dependent on the smooth and unhindered flow of revenue. This would be possible only if the menace of tax-avoidance, under

assessment and short-levy of tax is effectively met. The Committee therefore, recommend that all the preventive and effective steps should be taken immediately in the light of the various recommendations of the Committee contained in this Report.

New Delhi;
29 January, 1992

9 Magha, 1913 (Saka)

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee

APPENDIX I

2.01 Assessments of lottery business

Introductory

2.01.1 Lotteries organised by the Government of India or the Government of a State appear in the Union list in the VII Schedule to the Constitution of India and the Parliament is vested with the powers to make laws governing such lotteries. Lotteries organized by any other agency come under the general entry 'Betting and Gambling' in the State list, and would be subject to regulation by Acts enacted by the respective States.

Several State Governments presently conduct lotteries as a means to mobilise additional resources for financing developmental activities and public utility services. Under the provisions of the State Lottery Acts / Rules, licences are also issued for promotion of private lotteries for social welfare purposes.

General features of lottery scheme

2.01.2 Test audit revealed that 14 State Governments conduct lotteries departmentally, while many other State Governments conduct them through private agencies, who either pay royalties to the State Governments or act as sole selling agents on commission basis. Some of the promoters of private lotteries also depend on organising agents to conduct the lotteries on guaranteed profits basis or appoint stockists and agents on payment of commission, for arranging the sales of lottery tickets.

Law and procedure

2.01.3 Prior to 1 April 1972, casual and non-recurring receipts were not regarded as income under the Income-tax Act, 1961. The Direct Taxes Enquiry Committee appointed by the Government of India in 1971, known as Wanchoo Committee, considered this position and recommended withdrawal of the exemption on the ground that it provided scope for avoidance of tax and conversion of black money into white through purchase of prize winning tickets at a premium. Accordingly, the Act was amended in 1972 by rendering income from lotteries assessable to tax under the head 'Income from other sources'. The law as it stood up to the assessment year 1986-87 provided for deductions in respect of expenses in earning the income from winning from lotteries. While computing the income by way of winnings from lotteries. With effect from 1 April 1987 (assessment year 1987-88) winnings from lotteries is taxed at the rate of 40 per cent subject to a flat deduction of Rs. 5,000 (for the aggregate casual receipts) without any further allowance or deduction in earning the income.

The Act makes it obligatory for every person responsible for paying winnings from lottery to deduct income-tax at source, at the rates specified in the Finance Act of the relevant year. He is also required by law to send to his jurisdictional Income-tax Officer statements of such deductions in a prescribed form, every quarter, by July 15, October 15, January 15 and April 15, covering deductions made during the immediately preceding quarter.

Under the Income-tax Act, all persons carrying on any business (including the business of lotteries) have to maintain books of account and documents, if their annual income exceeds Rs. 25,000, or the gross receipts or turnover exceed Rs. 2,50,000, in any one of the three years immediately preceding the previous year relevant to the assessment year. The Act also makes it obligatory for those with total sales, turnover on gross receipts in excess of rupees forty lakhs in any previous year to get their accounts audited by any accountant before a specified date. Failure to comply with the latter provision attracts penalty equal to one-half per cent of the total sales, etc., subject to a maximum of rupees one lakh.

Scope of audit

2.01.4 The object of the review was to assess the overall efficiency with which the Income-tax Department, in general, finalised assessments relating to income derived from lotteries, and to examine whether the Department was successful in taxing the entire income generated by various authorities and agencies in conducting lotteries, and also winnings from lotteries. The review also tried to examine to what extent the Department has been able to check avoidance of tax and conversion of black money into white, the twin objectives contemplated by Wanchoo Committee. In the process, an attempt was also made to identify the loopholes and lacunae existing in the system which if plugged, could mobilise additional revenue, apart from curtailing the scope for avoidance of tax.

Highlights

2.01.5 (i) A random check of assessments of person carrying on lottery business in various capacities disclosed that though the profit margin returned was very low in most of the cases, and the expenses were not fully vouched, there was no detailed examination of the account of the assessee by the assessing officers so as to bring the actual income to tax. Nor was there any co-ordination of inter-related payments with the records of recipient or their scrutiny with references to law and commercial practice, though there was scope for overstatement of expenses in this line of business. The expenses claimed and allowed also varied from assessee to assessee and from year to year, with no relation whatsoever to the turnover. The Central Board of Direct Taxes had also not assessed the gross profit in this trade, even decades after the operation of the schemes in the States.

(ii) Flowing from the overall growth in the volume of lottery business also over the country, it was noticed during the review, that conscious and

planned efforts were on the increase to avoid payment of tax by adoption of questionable modes. Despite this, the Department is yet to centralise the lottery cases, for possible co-ordination and detection of any suppression of income.

(iii) One of the objects of the legislation is to prevent conversion of black money into white money by purchase of prize winning tickets at small premium. There is, at present, no safeguard in the scheme of lotteries to prevent a third person, other than the real buyer, from claiming the prize money. Also, there is enough scope for splitting of the prize money by putting forth joint claims so as to avoid tax liability.

(iv) The persons directly involved in the business such as organisers, stockists and sub-agents are not many, but they receive substantial amounts as service charges, bonus and service charges on prize winning tickets. It is, therefore, essential that the State Governments have complete and reliable data of these persons for periodical exchange of information with tax department. There is, however, no effective co-ordination on data so as to widen the tax base and to curb tax evasion. According to the test check by audit, there are a number of stockists and sub-agents who are reportedly not borne on the books of the department.

(v) The Act provides for deduction of tax at source from lottery winnings as in case of interest, dividends, contractor's payments, etc. There is no similar provision for deduction of tax at source from bonus and commission paid in substantial amounts in this business. Test check disclosed that while a number of stockists promoters and sub-agents had not filed the tax returns, quite a few others, had not returned the full incomes received by way of bonus, commission and service charges.

(vi) The Act requires furnishing of statements in respect of the tax deduction to the concerned Income-tax Officer every quarter. The test check brought to light instances of incomplete and delayed submission of the statements apart from deficiencies in the system which led to non-deduction of tax from prize winnings and agents' bonus, non-deduction of surcharge, etc.

(vii) The quarterly statements of tax deducted at source are meant to communicate the names of prize winners to the assessing officers, so as to ensure that all prize winners file their returns in time. The audit scrutiny however, disclosed that a large number of prize winners were not registered for assessment in the books of the department. Further, even those who had filed their income-tax returns were not assessed for wealth-tax.

(viii) Even such basic requirements provided for under the Act, such as compulsory maintenance of accounts by major assesseees and tax

audit, and payments in excess of Rs. 2,500 by crossed cheque / demand draft were not insisted upon in many cases.

(ix) According to the test check, there was under-assessment of tax of Rs. 6 crores approximately on various counts.

Detailed review

2.01.6 A review was conducted in audit during the year 1988-89 of the assessments of persons connected with lotteries, e.g., agencies organising lotteries, lottery agents and a sub-agents and prize winners of lotteries, etc. The results of the review are summarised in the following paragraphs:

General observations on Assessment Procedure

2.01.7 By its very nature, lottery operations cover a number of agencies, millions of fortune-seekers, thousands of prize winners and a variety of transactions and offer scope for withholding certain transactions from books, in case one seeks to evade tax. It is, therefore, necessary that the assessing officers scrutinise the accounts of agents, stockists, etc., of lotteries, critically in the process of assessment. However, it was noticed that out of 49 cases of stockists, sole selling agents, sub-agents and others dealing in lottery tickets spread over in ten State assessment circles, covering 116 assessment, 39 assessments were completed in summary manner, without requiring the presence of the assessee or the production by him of any evidence in support of the claims made in the accounts. Even in the remaining cases, barring a few where the assessments were completed as scrutiny assessments, only marginal additions were found to have been made with the incomes returned by the assessees having been accepted as such in most of the cases. Further, the expenses claimed were also generally allowed in all assessments, in toto. Test-audit indicated that the returns filed were not generally accompanied by details of income returned under various heads, and that the various expenses incurred were not fully vouched, nor were such details called for by the assessing officers during the course of assessments. Even in cases with high turnover, running into crores of rupees, the accounts were replete with claims for disproportionately heavy expenses, which reduced the profit margin to very low levels. The quantum of various expenses claimed also differed from assessee to assessee, making comparison for the purpose of better appreciation difficult.

Comparative study of accounts and income assessed

2.01.8 A selective test-check by audit of the particulars of turnover, income and expenses, etc., of representative assessees from different charges disclosed that there was no discernible pattern or relation between the profit margins (income) returned by the assessees and the gross turnover, for different lotteries, as also between different assessees

from year to year. The variation ranged from anything less than one tenth per cent to as high as eighty per cent. The cases in Annexure illustrate the wide disparities in the income returned and assessed.

Non assessment of promoters, stockists / sub-agents

2.01.9 Where lotteries business is conducted through stockists and sub-agents, the payments include service charges on sales, bonus on prize winning tickets and service charges on prize winning tickets, for arranging sales of tickets. The scheme of the lotteries generally provide for deduction towards bonus, selling agents commission, etc., in respect of the prize winning tickets from the prize money and the amounts so deducted are made over to the stockists / sub-agents, who, should, naturally, include such receipts in their respective returns of income. However, audit review revealed that a number of them had omitted to return the relevant income. The assessing officers also did not call for the same, leading to possible escapement of substantial income from tax-bracket. A few such cases are mentioned below:

(i) (a) In Karnataka, circle, out of 30 cases of sub-agents who had received bonus ranging from Rs. 30,000 to Rs. 1 lakh aggregating to Rs. 17.60 lakhs, without any deduction of tax at source during the assessment years 1986-87 to 1988-89, the returns of income were not seen filed by 14 sub-agents and no action was also initiated by the department to call for the returns. As no expenditure is generally incurred in earning the bonus income, the entire income of Rs. 8.20 lakhs involving tax effect of Rs. 1.98 lakhs is likely to have escaped assessment.

(b) In the same circle, an attempt by audit to verify the assessment records of another group of 2,150 sub-agents appointed by a sole selling agent was not fruitful as most of the sub-agents were not regular assesseees.

(c) In the case of two other assesseees dealing in a State local lottery, in the same circle, the bonus and commission returned by the agents for the assessment years 1986-87 and 1987-88 were less by Rs.20,06,093 and Rs. 18,36,704 than that intimated by the sole selling agent, and involved a tax liability of Rs. 21,67,983. According to the information furnished by the department, three other agents, who were not listed as income-tax assesseees, had received bonus and commission totalling to Rs.3,53,008, Rs.2,47,843 and Rs.1,73,611 for the assessment years 1986-87 to 1988-89, which also escaped tax liability.

(ii) (a) In Madhya Pradesh circle, out of 5 stockists of State lotteries, one stockist had not declared any amount of such commission in his returns of income for the assessment years 1983-84 and 1986-87.

(b) In the same circle, 19 promoters of private lotteries were given licences for organising lottery draws during the calendar years 1984—87. Although, the promoters had organised lottery draws according to records available with State Government in no single case had the income-tax

returns been filed nor was the reasons therefor available with the Income-tax Department. It is also not verifiable whether any or all of them were exempted from tax. A cross verification of the records maintained in the offices of the directorate of State Lottery and Collectors concerned by audit, however, revealed that in 5 cases i.e., a sports club, two branches of a welfare society, an educational institution and a trade fair, lottery tickets of more than Rs.1 lakh each had been sold. In the absence of details, it was not possible to assess the extent of income which may have escaped assessment in all the cases put together.

(iii) In North Eastern circle, the organising agents / sole selling agents of a state lottery was not based in the Region of that State. The rules regulating the conduct of lottery also did not provide for the State Government being informed of the details of the persons engaged for running of lotteries by the organising agent / sole selling agent and no co-ordination was possible in audit.

(iv) In Orissa circle, two stockists of state Lotteries, one of whom had purchased at least tickets worth Rs.9 lakhs and was a sales-tax assessee, were not income-tax assessees.

(v) In Kerala circle, in respect of a State lottery agent with very high turnover, the assessment for assessment years 1985-86 to 1987-88 were completed in a summary manner. It was noticed in audit that his returns did not contain any details regarding receipt of agent's price, incentives in kind, etc., and in their absence the assessing officer could not have satisfied himself of the fact of deduction of tax at source.

Non-enlistment of prize winners

2.01.10 The review disclosed large-scale omissions to bring the recipients of winning tickets to tax control registers for the purpose of regular income-tax and wealth-tax assessments:

A few instances are given below:—

State	Nature of mistake
Kerala	76 winners of prizes ranging from Rs. 5.95 lakhs to Rs.25.50 lakhs not enlisted for wealth tax.
Punjab	89 out of 106 prize winners (all residents of Punjab) of Rs. 50,000 and above (38 of them being winners of another State lottery) not entered in the control registers, while in the remaining cases no returns filed.
Karnataka	During 1985-86 and 1986-87, 81 out of 113 winners of prizes ranging from 50,000 to Rs. 25,00,000 (six of them with prizes above Rs. 20 lakhs) filed no income-tax returns, possibly these assesseees were also liable to wealth-tax. In one case tax was incorrectly

assessed resulting in excess refund of Rs. 9,544 while in another case of an individual who had won the prize of Rs.25 lakhs and an ambassador car was not assessed to income-tax or wealth-tax and the car value escaped tax liability.

15 agents out of 19 selling tickets in Karnataka and Goa, not borne on the books of the department. No means to verify the fact of the filing of the return in any other State.

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| Uttar Pradesh | Out of 293 cases of prize winners only 51 were reportedly entered in the Control Registers, assessment records of the remaining winners were not produced to audit. |
| Assam and Meghalaya | Out of 112 prize winners with given addresses at Guwahati and Shillong in no single case the records were produced for audit for verification of the genuineness of the certificates issued for non / less deduction of tax at source, the distinct reference numbers, etc., notwithstanding. On the basis of prize money of Rs. 33.14 lakhs, a sum of Rs. 9.63 lakhs was deductible at source but only a sum of Rs. 1.46 lakhs was actually deducted. In another 320 cases from outside the Region in respect of lotteries held during 1984-85 and 1985-86 involving payment of Rs. 290.10 lakhs, tax was deducted at Rs. 18.53 lakhs against Rs. 83.75 lakhs due. |
| Orissa | 18 of the 37 winners had not filed returns nor the department had issued notices to this effect. Details of the winners were also not communicated to the concerned assessing officers on the basis of quarterly return of tax deducted at source. |
| Madhya Pradesh | 3 winners residing in Madhya Pradesh were assessable to tax for profits of Rs.7 lakhs and above, but no returns had been filed for income / wealth-tax purposes as per records. Income-tax involved Rs. 1,20,556. |

Incorrect grant of exemption

2.01.11 Certain cases of incorrect application of the provisions of the Act, suggesting undue tax benefits to certain individuals or association of

persons, were noticed in the course of the review. The specific instances so noticed are given below:

Madhya Pradesh

(i) (a) Under the Income-tax Act, 1961, income received by any person, on behalf of institutions established for charitable purposes, is exempt for tax, provided they are notified by the Central Government in the official gazette having regard to the objects of the institutions and their importance throughout India, or throughout any other State or States.

A Children's Welfare Society, at Churhat which organised its lotteries through agents, by assigning the licence to them, claimed its guaranteed profit of Rs. one crore, received from the organising agent during the accounting year relevant to the assessment year 1985-86 as exempt from tax on the ground that the institution was established for charitable purposes. In the return of income for the assessment year 1985-86, filed in February 1988, the Society stated that an exemption order to this effect had been obtained by it from the Government of India, Ministry of Finance, *vide* notification dated 31 August, 1984. Based on the above, the assessing officer, in the assessment made in March 1988, exempted the guaranteed profit of Rs. one crore from payment of tax. Subsequently, the Society obtained similar orders for exemption from tax, *vide* another notification dated 25 March 1986 for the assessment years 1986-87 to 1988-89. The orders granting exemption from tax in respect of the income of the Society were irregular for the following reasons:

1. According to the Society, the lotteries were organized by it under clause 7 of its Memorandum of Association which enabled it to do all lawful things as were conducive or incidental to the attainment of its other objects of specified in its Memorandum of Association. However, Rule 7 of the State Lottery Scheme Rules (Niyantaran Tatha Kar) of the State prohibited the assignment or transfer of lottery licences, and read with Section 23 of the Contract Act, the assignments and agreements entered into by the Society with its organizing agents for conducting the lotteries were, *prima facie*, void.

2. Moreover, in its application dated 2 July, 1984 to the Government of India seeking exemption from income-tax as applicable to charitable institutions, the Society had declared that no portion of its income or property shall be paid or transferred directly or indirectly to any other person. By assigning the conduct of lottery draws to the organising agents, the Society had, however, shared its lottery business and income with the latter and had, in the process, violated its own declaration.

3. The State Government had, in its letter of 9 October, 1984 to the District Collector clarified that the permission given to the Society was for one lottery draw but against it the society arranged 12 lottery draws of during the period 14 July, 1984 to 7 April, 1985, which were later regularised *ex-post-facto*. According to the provisions of Section 6(1) of the State Lottery (Niyantaran Tatha Kar) Act, 1973, all 11 lottery draws (other than the draw organised on 14 July, 1984) were, thus, not covered by the

provisions of law at the relevant time. Besides, under Section 4 of the Indian Trust Act, the Society became null and void as and when it undertook the unlawful activity of conducting lotteries, without permission of the State Government.

4. Under the Income-tax Act, as applicable from 1 April, 1985, the provisions relating to exemption, accumulation and exemption of trust income will not apply to any profits and gains of income, unless the related business is carried on by a trust wholly for public religious and charitable purposes.

As brought out in the **Audit Report (Civil) of the Government of Madhya Pradesh for 1987-88**, the way the Society organised the lottery draws was nothing but business, and the income derived there from was not exempt from payment of income-tax with effect from 1 April, 1984. Thus, the lottery income of this Society did not qualify for exemption.

5. According to the instruction of Central Board of Direct Taxes issued in August 1984, before allowing exemptions to charitable institutions, a report from the Commissioner of Income-tax concerned, containing, *inter alia*, the details of the object of the institution, its activities and its importance (which should be at least of State level) was required to be furnished. While granting exemption to the Society for the assessment years 1984-85 and 1985-86, *vide* Notification dated 31 August, 1984, the Board did not call for any report from the Commissioner of Income-tax as contemplated in its own instructions of 1984. Moreover, when it finally called for a report from the Commissioner of Income-tax on the Society's application dated 28 March, 1985 for renewal of the earlier exemption orders, the Commissioner of Income-tax had not favoured renewal and wanted to keep the case pending till receipt of full details of lottery from the Society. However, the Board granted renewal of exemption for the assessment years 1986-87 to 1988-89 on 25 March, 1986 without waiting for the details and in disregard of the Commissioner of Income-tax's recommendations, reasons for which are not available. It is relevant to mention here that in view of the then obtaining unlawful nature of the activity, and having regard to the fact that the reported welfare activities of the Society were confined to a radius of 100sq. Kms. from its headquarters, the criteria of All India / State-level importance could hardly be said to have been fulfilled in this case, and the Commissioner of Income-tax's reluctance to recommend the case was fully justified.

6. The Supreme Court had held on 8 February, 1973 (88 ITR 432) that where members of an association join voluntarily and without any compulsion to undertake any purpose, there was an 'association of persons'. It was clear that in the light of the above, the income from lottery draw by the Society was assessable in the hands of the Society and the organising agent, as an association of persons. Since this association of persons could not be registered as charitable institution, the income from

lottery draws was obviously chargeable to tax. Further, the shares of the members of association of persons being indeterminate, the income-tax would be leviable in this case at the maximum marginal rate. In the absence of records or details of the assessed income from the lottery draws in the hands of the organising agents and considering only the guaranteed profit of Rs. one crore, revenue of Rs. 61,87,500 in the hands of the Society thus escaped assessment during the assessment year 1985-86.

(b) The wealth accumulated out of lottery draws in the hands of the Society and the organising agent would also be chargeable to wealth tax in the status of association of persons consisting of the Society and the organising agent.

(c) Apart from all the above, the Society and its organizing agents suppressed information regarding actual sales of tickets, with a view to avoid tax and to conceal its income. The extent of suppression, as extracted from records would at least, be Rs. 1,23,08,469 because against the sales of lottery tickets of Rs. 5,44,49,590 as per details furnished by the Society, the organising agents accounted for the sales of Rs. 4,21,41,121 only in its profit and loss account, for all the lottery draws put together. This resulted in escapement of revenue of Rs. 76,15,865 for the assessment year 1985-86.

(d) In respect of all the draws held by the organising agents, 226 lottery prizes worth Rs. 4,36,70,000 (for more than 1,000 in each case) were declared on unsold lottery tickets in contravention of the provisions of the State Lottery Act, 1973. This also resulted in depriving the exchequer of income-tax revenue of Rs. 1,35,92,288, which would have, otherwise been recoverable as income-tax and deducted at source, had lottery prizes been declared on sold lottery tickets only.

(ii) (a) Under the Income-tax Act, any income of a hospital or other institution dedicated for the reception and treatment of persons suffering from physical or mental illness, and existing solely for philanthropic purposes is not to be included in the computation of total income.

In the case of a branch of a Welfare Society guaranteed profits of Rs. 25,000 and Rs. 22 lakhs for two draws, received from the organising agents in return for assigning the conduct of two lottery licences during the accounting years relevant to the assessment years 1980-81 and 1985-86, were claimed as exempt in the returns of income filed on 18 June, 1980 and 26 June, 1985, on the ground that the institution existed solely for philanthropic purposes and not for the purposes of profit. The assessing officers accepted the plea and exempted the guaranteed profits of Rs. 25,000 and Rs. 22 lakhs from payment of tax.

In this case also, the agreement made by the Society with the organising agent on 19 June, 1984 for organising the lottery draw held on 15 September, 1984 was void in view of the provisions of the State Lottery (Niyantaran Tatha Kar) Rules which prohibited the assignment of transfer

of lottery licences. In view of the above, taking into account only the guaranteed profits of Rs. 25,000 and Rs. 22 lakhs (for both draws), revenue of Rs. 13.79 lakhs escaped assessment during the assessment year 1985-86. Further, since there were no records or details of the assessed income from the lottery draw in the hands of the organising agent, it is not known to what extent his share of income had actually suffered income-tax.

(b) The wealth accumulated out of lottery draws would also be chargeable to wealth tax in the status of an association of persons consisting of the society and the organising agent. The details of such accumulated wealth are yet to be worked out.

(c) Further, the sale of lottery tickets were suppressed by Rs. 68,43,365 in this case; as against the sales of lottery tickets for Rs. 3,46,98,980 as evidenced from the information supplied by the Collector, the organising agent in its profit and loss account for the lottery draw had accounted for the sale of only Rs. 2,78,55,615. This resulted in escapement of revenue of Rs. 42,34,330 during the assessment year 1985-86.

(d) Also, refund of prize money of Rs. 25 lakh against unclaimed and undisbursed lottery prizes by the Society to the organising agent was not accounted for by the organising agent in the profit and loss account prepared for the lottery draw. This amount was assessable to tax in the hands of the association of persons, consisting of the Society and the organising agent, but had escaped assessment leading to loss of revenue of Rs. 15,46,875.

(iii) (a) The State Lottery (Niyantaran Tatha Kar) Act, 1973 and Rules made thereunder permit conducting the private lottery draws only after issue of licences for them by the Collector of the Districts concerned.

A Sports Trust assessed in this circle organised two lottery draws without event obtaining necessary licences from the concerned authorities. It received guaranteed profits of Rs. 60 lakhs (accrued and partly received) from two organising agents from assigning the work of three lottery draws during the accounting year ending 31 March 1986 relevant to the assessment year 1986-87 but had not offered it for assessment in the returns of income filed on 1 September 1986, claiming that the Trust was a charitable trust. In the summary assessment made in December 1988, the guaranteed profit of Rs. 60 lakhs was exempted totally. As the trust had not obtained the necessary licences for the three draws organised by it in 1985/1986 the agreements made by it with the organising agents were, *ab initio*, void. Consequently, the guaranteed profits of Rs. 60 lakhs received by the trust for all the three draws escaped assessment during the assessment year 1986-87 with consequential loss of revenue of Rs. 30 lakhs. Since there were no records or details of assessee's income from lottery draws in the hands of the organising agents, their share of income also apparently were not brought to tax.

(b) The wealth accumulated out of lottery draws in the hands of the trust and the organising agents would also be chargeable to wealth tax in the status of an association of persons consisting of the trust and the organising agents. The details of such accumulated wealth are yet to be worked out by the department.

(c) The sale of lottery tickets for the first draw held on 12 July 1985 was suppressed to the extent of Rs. 1,13,96,340 because according to the books of accounts of the organising agents for this draw, 64,418 lottery tickets were sold for Rs. 38,09,260 whereas according to the information supplied by the Collector, 3,04,112 lottery tickets of Rs. 50 each amounting to Rs. 1,52,05,600 were sold. Thus, suppression of sales figures resulted in escapement of revenue of Rs. 47,12,254.

(d) 6,340 lottery prizes worth Rs. 15,67,75,000 (for more than Rs. 1,000 in each case) were declared on unsold lottery tickets in all the three draws, which was not permissible under the State Lottery Act. This also resulted in loss of income-tax revenue of Rs. 3,91,93,750 which was otherwise recoverable at source, had the lottery prizes been declared on sold lottery tickets only as per rules.

(e) 212 lottery prizes for Rs. 6,62,65,000 declared on sold tickets were paid, but the details of income-tax deducted at source out of prize money were not filed with the Income-tax Department. In the absence of such details it could not be verified in audit whether interest and penalty due for defaults in deduction of income-tax at source and remittance to Government account, if any, had been done properly.

(iv) In yet another case of a private lottery, organised by Freedom Fighter's Society and which had not also been issued licence by the District Collector, return of income for the assessment year 1985-86 offering the guaranteed profit of Rs. 75 lakhs for assigning the work of the lottery licence to the organising agent was not filed at all. This resulted in escapement of revenue of Rs. 46,40,625 during assessment year 1985-86 since the exemption granted in this case was also irregular. Since there were no records of details of assessed income from the lottery draw in the hands of the organising agent, the extent to which his share income escaped tax was not ascertainable.

The wealth accumulated out of lottery draw in the hands of the trust and the organising agent would be chargeable to wealth tax in the status of an association of persons. The amounts of such accumulated wealth are yet to be assessed by the department.

Incomes escaping assessment, bonus and agency commission, etc.

West Bengal

2.01.12(i) (a) An assessee, a registered firm, was engaged in lottery business conducted by various State Governments as well as by private organisations. The assessee was also sole selling agent/selling agents in respect of three State Government lotteries. In the assessment for the assessment year 1985-86 completed in March 1988 and for the assessment year 1986-87 completed in March 1987 under summary assessment scheme, the following omissions were noticed:

(1) The Directorate of State Lottery, Madhya Pradesh sold 18,00,000 lottery tickets to the assessee as its sole selling agent for a weekly draw held during the previous year relevant to the assessment year 1985-86. But as per details of purchases available in the assessment records, the assessee had shown the number of tickets purchased for the relevant draw as 12,84,000 only. By this means, the assessee suppressed a turnover of 5,16,000 tickets (each having a face value of Re. 1) from his assessment which led to an under assessment of income of Rs. 25,800.

(2) The same Directorate paid Rs. 82,50,000 and Rs. 1,87,72,500 respectively to the assessee on account of agent's commission and sole selling agents' commission during the previous year relevant to assessment year 1985-86 (draws 10 to 34) and assessment year 1986-87 (draws 35 to 86) respectively. But the assessee did not include the amounts in his profit and loss account for the respective assessment years, which resulted in under assessment of income of Rs. 82,50,000 and Rs. 1,87,72,500 for the assessment years 1985-86 and 1986-87 respectively.

(3) As per profit and loss account for the assessment year 1986-87, the same assessee debited a sum of Rs. 82,800 under expired stock. Since the value of expired stock was not credited in the trading account in the form of closing stock, debit of the same in the profit and loss account resulted in reduction of income by Rs. 82,800 involving under assessment of income of a similar amount.

The above mistakes involving under assessment of income of Rs. 2,71,31,100 for the assessment years 1985-86 and 1986-87 led to aggregate short levy of tax of Rs. 67,54,481.

(b) In the assessment of another assessee, an individual engaged in the business of purchase and sale of lottery tickets of different State Governments for the assessment years 1984-85, 1985-86 and 1986-87 completed between July 1987 and November 1988 in a summary manner, Rs. 50,108 and Rs. 3,687 only were shown as receipts by way of agency bonus/ sellers bonus received from the Directorate of the State Government, during the previous year relevant to assessment years 1984-85 and 1985-86 as against the correct sums of Rs. 1,29,143, Rs. 1,27,173 and Rs. 2,18,979 under these heads. This resulted in under assessment of income to the extent of Rs. 79,035, Rs.1,23,506 and Rs. 2,18,979 with

consequent undercharge of tax aggregating to Rs. 2,30,658. The department has justified the case under the summary assessment scheme.

(c) The assessment of a third assessee, an individual, for the previous year ending 31 December 1985 relevant to the assessment year 1986-87 was completed in March 1989 on a total income of Rs. 3,42,450 and a demand of Rs. 1,50,475 was raised. The scrutiny of the assessment records revealed that the assessee had received sums of Rs. 1,79,100 and Rs. 3,10,083 for monthly draws from 1 to 12 and weekly draws from 500 to 550 as stockist bonus and agency bonus from the Directorate of State Lotteries of West Bengal State. Since the assessee maintained the accounts on mercantile system, the entire total receipt of Rs. 4,89,183 was required to be included in the income for the period ending 31 December 1985 as against the sums of Rs. 18,419 shown in the profit and loss account during this period. This resulted in under assessment of income of Rs. 4,70,764 leading to short levy of tax of Rs. 2,35,380.

(d) The assessment of another individual dealing in purchase and sale of lottery tickets of various State Governments for the assessment year 1986-87 was completed in July 1988 and for 1987-88 in March 1989 respectively, in a summary manner. A scrutiny of the assessment records revealed that sums of Rs. 5,46,644 and Rs. 3,52,471 were received by the assessee from the Director of State Lotteries of West Bengal State on account of stockist's bonus, agency bonus and sellers' bonus for the two assessment years, but only sums of Rs. 19,000 and Rs. 16,000 were shown as receipts under these heads. Thus, there was an under assessment of income of Rs. 5,27,644 and Rs. 3,36,471 for the two assessment years leading to aggregate undercharge of tax of Rs. 4,17,513.

(e) Yet another individual was a dealer for purchase and sale of lottery tickets for the various State Governments and private organisations. In the assessment for the assessment year 1985-86 completed in February 1988 in a summary manner on a total income of Rs. 25,020, it was noticed that deductions of Rs. 1,02,420 on account of invalid stock of a lottery and Rs. 4,69,549 on account of advertisement and publicity were allowed by the assessing officer, as returned by the assessee. It was, however, noticed that the assessee had debited the value of invalid stock of Rs. 1,02,420 in his trading account without taking the same on credit side in the form of closing stock which led to short credit in the trading account to that extent as the value was already included in the purchases. This, together with excess allowance of Rs. 73,910 (being 20 per cent of excess of Rs. 1,00,000 as admissible under the Act) on account of advertisement and publicity expenses resulted in under assessment of income of Rs. 1,76,330 involving a short levy of tax of Rs. 99,830.

(f) The agency bonus of Rs. 3,00,000 paid in November 1984 to a firm and a sum of Rs. 3.50 lakhs introduced as capital in October 1983 during

the previous year relevant to the assessment year 1985-86 could not be traced in the records of the recipients.

Assam and Meghalaya

(ii) According to the agreement between the State Government and the organising agent in respect of State Lotteries (June 1982) valid up to June 1985, the prize money in respect of unclaimed prizes above Rs. 1,000 payable through the Government, if not claimed within 45 days of the date of publication of the results, lapsed to the organising agent. An amount of Rs. 38.07 lakhs due to the organising agent on this account adjusted by the state Government towards security deposit against guaranteed profits and prize money, would be liable to be taxed as business income involving a likely revenue of Rs. 25.69 lakhs. However, no action had been taken by the assessing officer.

Orissa

(iii) An individual won a prize of Rs. 15 lakhs in respect of a Bumper lottery of a non-Government institution of the State of Madhya Pradesh drawn in February 1986, but the assessee filed a return disclosing only a sum of Rs. 1 lakh as having been received in February 1987. The amount was shown in his capital account in his return for assessment year 1987-88. The institution had not deducted tax on the amount disbursed and had also not paid the tax deductible on undisbursed balance as the Act did not provide for any time limit for payment of prize money and prompt deduction of tax at source therefrom. There was non-deduction of Rs. 6 lakhs due to Government.

Uttar Pradesh

(iv) An assessee filed his income-tax return for the previous year relevant to the assessment year 1984-85 in July 1984 returning an income of Rs. 0.19 lakh as a partner having 29 per cent share in a registered firm dealing with rubber tubes. As per list of prize winners furnished by the Directorate of lotteries of the State, the assessee had won a prize of Rs. 1 lakh. After deducting 11 per cent commission of the agent, the balance of Rs. 0.89 lakh formed part of assessee's total income which should have been included in the assessee's total income. This was not done, resulting in short computation of income by Rs. 0.89 lakh and consequent short levy of tax of Rs. 49,000.

Delhi

(v) In the assessment of an assessee, an individual for the assessment year 1986-87, the benefit of deduction allowable on winnings from lotteries was allowed to the extent of Rs. 46,49,400 which also included the seller's bonus of Rs. 2,21,400. As the seller's bonus does not qualify for deduction, the mistake resulted in under assessment of income of

Rs. 1,10,700 being 50 per cent of the amount of bonus (Rs. 2,21,400) with consequential tax effect of Rs. 80,235 including interest due for late filing of return and short payment of advance tax.

Tamil Nadu

(vi) (a) In the assessment of an assessee registered firm dealing in lottery tickets for the assessment year 1984-85 completed in a summary manner, a sum of Rs. 219.80 lakhs was shown in the trading account as purchases after deducting purchase returns of Rs. 10.82 lakhs from the gross purchases of Rs. 220.62 lakhs. The correct amount on this account would work out to Rs. 209.80 lakhs. This mistake resulted in short computation of income of Rs. 10 lakhs and short levy of tax of Rs. 6.52 lakhs in the hands of the firm and its partners.

(b) In the case of another assessee, an individual who won Rs. 1.80 lakhs in the Sikkim State Lottery during the assessment year 1987-88, the lottery agent failed to deduct tax at source. In the assessment completed under the summary assessment scheme, the assessee had shown the income from lottery only as Rs. 70,000 instead of the entire sum of Rs. 1.80 lakhs. This resulted in short demand of tax of Rs. 37,000.

(c) In the case of a specified H.U.F., the prize of Rs. 1 lakh of Royal Bhutan Lottery won during the assessment year 1984-85 was exhibited in the capital account without offering the same to tax. This, together with certain other mistakes, resulted in short levy of tax of Rs. 49,000.

Deduction of tax at source and deposit thereof to Government account

2.01.13 As mentioned in Para 2.01.3 above, the Act makes it obligatory for every person responsible for deduction of tax to furnish quarterly statements to the Income-tax Officer in the prescribed form (Form 26B). Some omissions in this regard are discussed below:

(i) In the West Bengal circle, it was noticed that the Director of State Lottery had not submitted the quarterly returns to the department in the prescribed form. The returns submitted on 12 May 1986, 14 May 1987, 1 December 1987 and 30 May 1989 did not contain the following columns:

- (1) Date of payment of prize money to the prize winners;
- (2) Date on which tax was deducted at source; and
- (3) Date on which tax deducted at source was paid to the credit of the Central Government.

(ii) (a) In Madhya Pradesh circle delays were noticed in sending 10 quarterly statements due for the period from April 1984 to September 1984 and January 1985 to December 1986. The Income-tax authority was responsible to verify the accuracy of the tax deducted at source from the details of the lottery prizes given in the statement and the remittances thereof to the Government account from the challans and bank scrolls received from the banks. He was also responsible to communicate the

details of the prize moneys to the concerned assessing Income-tax Officers, who were to watch the same. None of these requirements were found complied with, and the remittances of Rs. 6,79,222 out of a total amount of Rs. 75,41,191 deducted at source in 69 lottery prizes were not traceable in the records of the department.

(b) In the same circle, in the case of 4 assesseees, co-operative societies, conducting lottery business through private agents, quarterly statements for deduction of income-tax at source were not seen filed. In one case, the society subsequently obtained the details of lottery prizes paid to the prize winners by the organising accounts but the Income-tax authority did not check the accuracy of income-tax deducted at source, verify fact of remittances of income-tax deducted at source to the Government account and intimate the details of the lottery prizes to the Income Tax Officers concerned. In another case, the required statements were not filed by the society giving details of the organising agents who were responsible to deduct income-tax at the time of payment of lottery prizes and its remittance to Government account.

(iii) In Uttar Pradesh, Kerala, Punjab and Rajasthan circles the quarterly statements for the years from 1983-84 to 1988-89 were either not sent on due dates or not sent at all to the concerned income-tax authority. In Kerala for the year 1987-88 only a single statement was sent, and in respect of payments to contractors no returns were sent; in Punjab first two quarterly statements for 1986-87 were submitted late. However, in Rajasthan circle delays ranging from 2 to 162 days were noticed in submission of 16 of the 20 quarterly statements. In Uttar Pradesh since October 1987, no such statement was furnished.

Non inclusion of value of prize paid partly in kind

2.01.14 As per the standing instructions of the Central Board of Direct Taxes issued in August 1985 where a prize is given partly in cash and partly in kind, source deduction of income-tax will be with reference to the aggregate amount of cash prize and the value of prize in kind. Although the practice in Kerala was to offer an Ambassador car along with the first prize in every monthly draw, it was noticed that the State Lotteries Directorate had not included the value of the car for deduction of tax at source. The statements of source deduction filed by the Directorate of Lotteries also did not contain particulars of the prizes in kind. Moreover, a number of prize winners had also not filed their income-tax returns for the relevant assessment years. Thus, in respect of 16 such cases checked by audit income representing the value of the cars had apparently escaped assessment, the approximate revenue effect being of the order of Rs. 6,10,000.

Non deduction of tax at source in respect of prize to agents

2.01.15 Under the terms of agency arrangement, in addition to twenty per cent sales commission and other incentives in respect of major prizes, the agents/sellers are also eligible for a specified percentage of the declared prize money of each draw on each prize winning ticket sold. The amount so received is winning from lotteries in the hands of the agent/seller in as much as the payment had nexus to the prize winning ticket and not to the business turnover, and is set apart from the declared prize as seller's prize as per the scheme of the lotteries. Such income would therefore, fall under 'winning from lotteries' liable to source deduction at source.

(i) (a) In Kerala circle, omission to deduct tax at source from such amounts, (five per cent of declared prize money) relating to the draws conducted from 1 April 1984 aggregated to Rs. 23,41 lakhs.

To what extent the income so realized by the agent/seller had been brought to tax while assessing them for this business income was not ascertainable.

(b) In 2 cases in one income-tax ward in Kerala circle, in the assessments for the assessment year 1987-88 completed under the summary scheme, seller's prize was assessed as business income for taxation instead of winnings from lotteries (under charge Rs. 16,000).

(ii) In North Eastern circle, the balance ten/twenty per cent of the prize money is retained by the sole organising agent who received the same directly from the Directorate of Lotteries without giving any detailed information regarding distribution of the same amongst the sellers and stockists to the Government. In respect of the 314 draws held during 1987-88 and up to September 1988, the amount of the balance prize money paid to the sole organising agent towards sellers, stockists, etc., prize came to Rs. 134.00 lakhs, but the amount of tax deductible at source on this amounting to Rs. 53.60 lakhs, was not, however, levied and realised.

Non Levy of surcharge on tax deducted at source

2.01.16 (i) As per the amendment to the Finance Act, 1987, which came into force in December 1987, source deduction of tax on winnings from lotteries was to be increased by a surcharge of five per cent. But this was not done till March 1988 by the State Lotteries Department in the Kerala circle, leading to non deduction of tax amounting to Rs. 2.97 lakhs in 18 cases alone. Surcharge due on payment of winnings from lotteries during the financial year 1987-88 (assessment year 1988-89) in 47 other cases in Kerala circle amounted to Rs. 7.89 lakhs.

The omission is significant in the context of the revised pattern of taxing lottery income at forty per cent flat rate effective from 1 April 1987, since a large number of prize-winners of lotteries do not file income-tax returns

on the plea that has already been deducted at source. Non-deduction of surcharge at source would, in such cases, result in direct loss of revenue.

(ii) In Rajasthan circle, surcharge totalling Rs. 2,10,560 was not deducted at source in 41 cases while distributing the prize money during the quarter January 1988 to March 1988.

Delay in depositing tax deducted at source

2.01.17 Under the Act, any person, not being an individual or Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income chargeable under the head 'interest on securities,' shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque, whichever is earlier, deduct income-tax thereon at the rates in force and deposit the same to the credit of the Central Government.

In West Bengal circle, a scrutiny of the statements of tax deducted at source of the Directorate of Lotteries revealed that in 186 cases there were delays ranging from 1 month to 4 months in crediting the amount of tax, deducted at source, to the Income-tax Department's account. Failure to observe the statutory provisions attracted levy of interest amounting to Rs. 1,20,183 in these cases, but no interest was found to have been levied by the department.

Incorrect credit for tax deduction at source

2.01.18 The following irregularities were noticed in this regard:

(i) In Uttar Pradesh circle an assessee's returned income included a sum of Rs. 41 lakhs from lottery, received by him as prize money from the Government of Sikkim. The assessee claimed credit for Rs. 3.68 lakhs deducted source by the Government of Sikkim towards income-tax from the prize money of Rs. 41 lakhs paid to the assessee. In the original assessment completed in March 1987 the credit claimed was not allowed by the assessing officer on the ground that proof of deduction was not submitted by the assessee in original. On the assessee moving an application on 26 April 1987, for rectification of mistake apparent from records, enclosing the income-tax clearance certificate for sums issued by Government of Sikkim, the department revised the assessment in May 1987, allowed the credit claimed. It was pointed out in audit that the allowance was not correct because (a) the clearance certificate issued by the Sikkim Government did not constitute tax deduction at source for the purpose of the Indian Income-tax Act, 1961, and (b) the deduction was only a receipt of the State Government of Sikkim where the Indian Income-tax Act, 1961, was not operative at the relevant time, and (c) the amount was credited to the State Revenues and not to the Revenues of the Government of India. The omission resulted in levy of tax of Rs. 3.85 lakhs including interest for belated filing of return.

(ii) In Andhra Pradesh circle, the assessment of an individual for the assessment year 1984-85 was completed in August 1987 in a summary manner accepting the returned income of Rs. 52,230 plus Rs. 10,000 agricultural income. This included a sum of Rs. 15,840, authorised against the tax deduction at source of Rs. 33,750 from winnings from lotteries of Rs. 1 lakh. During investigation of the genuineness of the lottery prize and the cash credit of Rs. 2.5 lakhs introduced in assessment year 1983-84, the assessee offered Rs. 1 lakh as income from unexplained sources and Rs. 1.75 lakhs as income from undisclosed sources for the two years. In the reassessments, though deduction towards winnings from lotteries was not allowed, the credit allowed towards tax deducted at source was not withdrawn as being not admissible against unexplained income. The department replied in February 1989 that the prize with amount of tax deducted at source was genuine, though not assessed to tax separately.

(iii) The correctness of the Tax Deduction Certificates issued by the Directorate of Lotteries (West Bengal circle) and those received from the circles of Madhya Pradesh, Punjab, Kerala, Orissa and Rajasthan could not be verified with the records of the recipients (except in one case) in the absence of the PA/GIR No. in the relevant (TDS) statements.

Other Irregularities

Incorrect allowance of deduction treating seller's bonus as winnings from lotteries

2.01.19 In the Uttar Pradesh circle, a registered firm carrying on lottery agency business received seller's bonus of Rs. 3 lakhs against a prize of Rs. 1 crore declared by the Indian Red Cross Society on a ticket sold by the firm. The bonus was returned for assessment for the assessment year 1986-87 and a deduction of Rs. 1.53 lakhs was claimed as admissible on lottery winnings. The department allowed the deduction in the assessment completed in February 1987. As the amount received was not winnings from lotteries, the irregular deduction allowed led to short levy of tax of Rs. 58,000.

Splitting of income / incorrect deduction from winnings

2.01.20 Under the provisions of the Act as applicable upto the assessment year 1986-87, where the gross total income of an assessee includes any income by way of winnings from any lottery, a deduction equal to five thousand rupees as increased by a sum equal to fifty per cent of the amount by which the winnings exceed five thousand rupees shall be allowed in computing the total income of the assessee. Under an amendment to the Act effective from 1 April 1981, the deduction is to be determined with reference to the net income and not on the gross income.

In Bombay circle, an individual claimed to have won a prize of Rs. 2.22 crores in a Raffle (draw held on 18 February 1984) against a ticket of Rs. 5, jointly with three other family members, viz., wife and two sons. In support, he furnished an affidavit filed in the Court on 26 March 1984

stating that the four family members had formed a syndicate, agreeing to share the prize amount equally. The assessing officers concerned with the assessments of the individual, his wife and one son accepted the affidavit and completed their assessments allowing the deduction available under the provisions of the Income-tax Act, 1961, for winnings from lottery at Rs. 28,83,750 in each case and taxing the balance at the appropriate rate. Returns were, accordingly, filed individually returning therein income from lottery winnings at Rs. 41,62,500 after deducting agent's commission of Rs. 13,87,500 from Rs. 55,50,000 (i.e. 1/4th share from gross winnings of Rs. 2.22 crores).

Audit scrutiny revealed that the affidavit, claiming the formation of the syndicate, was filed in the court after 38 days of the declaration of the results of the draw on 18 February 1984. As there was no evidence to show that the syndicate was actually formed before the declaration of the results of the draw, the acceptance of the assessee's statement without full investigation was not proper as it was prejudicial to the interests of revenue, apart from the fact that the claim could enable the assessee to launder his black money. It is relevant to mention that the assessing officer had not accepted the affidavit of one of the family members and held that the assessee had apparently purchased the winning ticket after the results were declared.

Incorrect assessment as winnings from lotteries

2.01.21 Any expenditure or trading liability incurred for the purpose of business carried on by the assessee is allowed as a deduction in the computation of his income. Where on subsequent date, the assessee obtains any benefit in respect of such expenditure or trading liability allowed earlier, by way of remission or cessation thereof, the benefit that accrues thereby, shall be deemed to be the profits and gains of business or profession to be charged to income-tax as income of the previous year in which such remission of cessation takes place.

(i) In a case in Delhi circle during the previous year relevant to the assessment year 1983-84, the total income of an individual, engaged in the business of lotteries as organising agent of certain State Government lotteries, as also stockists of various other State Government lotteries, was determined at Rs. 3,60,680 after allowing deduction of Rs. 19,45,837 as admissible under the Act. The assessee was to conduct certain number of draws and to pay the prescribed guaranteed profits to the State Governments. Besides, he was to reimburse to the State Governments, the prize money claimed over Rs. 1,000 by prize winning ticket holders, but the liability to pay such prize money below Rs. 1,000, on which no tax at source was deductible, was on the assessee. As stipulated in the contract, the assessee was entitled to unclaimed prizes as also his share of prize on unsold prize winning tickets. The assessee debited to the trading account for 1982-83, a sum of Rs. 21,47,500 as guaranteed profit to the two State

Governments, and Rs. 8,81,31,622 as provision for prize money. The assessee debited a sum of Rs. 64,06,134 on account of unsold stock of tickets and credited a sum of Rs. 38,86,674 comprising unclaimed prizes amounting to Rs. 32,62,674 and his share on prizes of unsold tickets amounting to Rs. 6,24,000 in the profit and loss account. The assessee was holding the tickets as his stock in trade. In view of the fact that the assessee had debited a sum of Rs. 8,81,31,622 as provision for prizes, any amount of prizes that remained unclaimed, constituted his business income under the Act which reduced his liability to that extent in respect of provision for prizes. Likewise, his share of prizes on unsold tickets received under the terms of the contract of business did not constitute winning from lotteries, but business income. The relief of Rs. 19,45,837 allowed to the assessee from his gross total income of Rs. 23,23,316 was thus erroneous which resulted in under assessment of income of Rs. 19,45,837 involving a short levy of tax of Rs. 12,99,921 including interest for late filing of the returns. The assessee was also allowed deduction of Rs. 4,08,703 and Rs. 1,05,477 for the assessment years 1982-83 and 1981-82 respectively, resulting in an undercharge of tax, including interests amounting to Rs. 2,56,734 and Rs. 46,736.

The department justified the grant of relief relying on an appellate decision for the assessment year 1973-74 to 1978-79 by the Tribunal against which reference application was rejected by the Tribunal. The decision was not applicable for subsequent years as for the purposes of income-tax assessment each year was to be reckoned as self-contained and independent. The department had disallowed the claim for the assessment years 1984-85, 1985-86 and 1986-87. The disallowance for the assessment year 1984-85 had also been confirmed by the Commissioner of Income-tax (Appeals) but no information regarding this confirmation was available for assessment years 1985-86 and 1986-87.

(ii) In another case, in Delhi circle, of a registered firm engaged in the business of lottery, an organising agent of a State Government/Union Territory, lotteries, as also stockist of various other State Government lotteries income for the assessment year 1983-84 was determined at Rs. 'NIL' after allowing deduction of Rs. 5,58,147 towards winnings from lotteries under the Act. In the assessment made for the assessment year 1984-85, the assessing officer disallowed the similar deduction by holding that the amount of prize money being remission of trading liability allowed earlier, was business income and not 'winnings' from lottery to qualify for the said deduction. The Commissioner of Income-tax (Appeals) also upheld the disallowance, vide order dated 17 February 1988. However, no action was taken by the department to revise the assessment for the assessment year 1983-84 to withdraw the deduction allowed. The omission to do so resulted in under assessment of income of Rs. 5,58,147 with consequent

short levy of tax of Rs. 3,16,635 in the hands of the firm and its partners. The department stated (July 1989) that no action for 1983-84 was possible due to time-bar.

Incorrect charge of income-tax due to incorrect consideration of assessment year

2.01.22 An individual assessee in Bombay circle filed return of income for the assessment year 1986-87 showing an income of Rs. 1,80,000 being winnings from lottery conducted by a Metropolitan Development Authority. The assessing officer completed the assessment in March 1987 raising a demand of Rs. 24,250 calculated at rates applicable for the assessment year 1986-87. Audit scrutiny in May 1988 revealed that the assessee had received the prize money in May 1986. Since she had no other source of income, her previous year was the financial year preceding the assessment year, and winnings from lottery received in May 1986 was, therefore, income pertaining to the previous year relevant to the assessment year 1987-88. The tax leviable on Rs. 1,80,000 for the assessment year 1987-88 worked out to Rs. 70,000 against Rs. 24,250 levied by the assessing officer. The incorrect consideration of the assessment year, thus resulted in short levy of tax of Rs. 45,750.

Irregularities noticed in respect of lottery authorised by the State Government to be conducted by a non Government body (Society)

2.02.23 The Government of Kerala, authorised a Society 'A' a registered society in May 1976 to conduct a series of weekly lotteries, primarily to enable it to repay certain loans for which the State Government had stood guarantee, and to augment the resources of the Society. Society 'A' entrusted the work of organising the lotteries to another Society 'B', registered under the Co-operative Societies Act, on agency basis and an agreement was entered into in December 1986, under which society 'B' was entitled to a service charge at one per cent of the face value of the total tickets for each draw and a loan of thirty per cent of the net proceeds of the lottery for a period of 21 years at one per cent interest.

The net profit derived from the lotteries conducted during the period from September 1986 to April 1987 by Society 'A' amounted to about Rs. 405.26 lakhs, out of which Rs. 121.57 lakhs was given as loan to Society 'B', who also received service charges at one per cent, namely, Rs. 22.9 lakhs. In February 1987, 'Society' 'A' applied to the Commissioner of income-tax for exemption of its lottery income under the provisions of the Act and the decision on the application is still awaited (March 1989). However, as Society 'A' had diverted part of its income from lotteries (Rs. 121.57 lakhs) for purposes other than the object for which it was established the Society is not eligible for the exemption sought for.

Pending the decision of the Commissioner of Income-tax the Society 'A' had not filed any income-tax returns for the assessment years 1987-88 and 1988-89. Further, Society 'B' had also not filed any income-tax return for assessment year 1988-89 (accounting year ended 30 June 1987), the department has also not initiated any proceedings to tax the income of over Rs. 400 lakhs derived by the Society from lotteries (March 1989). It was noticed in audit that the Society 'A' had not made any deduction of tax at source from the payment of service charges of Rs. 22.9 lakhs to Society 'B' under the agreement. The amount of tax omitted to be deducted at source at two per cent worked out to Rs. 45,800. On being pointed out by Audit in November 1988, the Department has enlisted the Society 'B' for income-tax assessment for the assessment year 1986-87 onwards. It is to be mentioned that in so far as Society 'B' is concerned the difference between the market rate of borrowing and the rate levied by A, viz., one per cent, constituted receipt on account of service charges every year for 21 years from the previous year relevant to assessment year 1988-89 and would be liable to be taxed. The tax leviable on the Society on this account is yet to be ascertained.

Under the agency agreement between the Society 'B' and a bank, a sum of Rs. 11.45 lakhs was paid to the latter of its assistance in launching the scheme of lottery. But source deduction of Rs. 2,900 required to be made under the Act was not made. Similarly, source deduction of Rs. 36,000 (approximately) to be made from payments to three printing contractors was also not made by Society 'B'.

Failure to issue notice to file the return

2.02.24 In the case of any income of any person other than a company, where the assessing officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or deduction of no income-tax at all, he shall, on an application made by the assessee in this behalf, give the assessee a certificate to that effect. The department should however, follow up such cases to ensure that income covered by such certificates are actually brought to tax at the appropriate rates. Omission to do so, in respect of winnings from lotteries, was noticed during the review, as pointed out below.

In Uttar Pradesh circle an individual filed an Affidavit on 28 January 1986 showing an income of Rs. 1.71 lakhs, including income of Rs. 1.51 lakhs from lottery. After deducting agent's commission amounting to Rs. 0.17 lakh and exemption of Rs. 0.70 lakh as admissible under the Act, the assessee affirmed in an affidavit that he would invest Rs. 0.40 lakh in the National Savings Certificates and accordingly, claimed a further deduction of Rs. 0.20 lakh on this account. On the basis of the assessee's affidavit for the balance income of Rs. 64,500, the concerned assessing officer issued him a certificate for deduction of tax at source at lower rates. The Director of State Lottery, relying on the above certificates, deducted income tax at source at the lower rate. The assessee did not however, file

any income-tax return. The department also did not take any follow up action to call for the return of the prize winner (March 1989), so much so, there was no evidence as to whether the individual actually purchased the certificate, etc., as proposed by him.

Non-completion of assessment

2.01.25 In Delhi circle, an assessee firm was engaged by a Sports Trust as lottery organisers for conducting three draws of lottery, sanctioned by the Government of Madhya Pradesh. As per the agreement, the organisers were to pay a minimum guaranteed profit of Rs. 10 lakhs to the promoters for each draw, before putting the tickets on sale. The organising agent furnished a bank guarantee of Rs. 35 lakhs to the Trust, providing, *inter alia* that the guarantee would stand forfeited to the Trust in the event of breach of any of the terms and conditions of the contract by the organising agent. The District Collector informed that the organising agent had sold 3,04,112 tickets of Rs. 50 denomination out of a total of Rs. 16,97,000 tickets printed and collected an amount of Rs. 1,52,05,600 against the scheme of prizes of Rs. 15 crores declared. First draw was held on 12 July 1985 but no prize was paid to the winners. The organisers issued cheques for Rs. 9 lakhs as guaranteed profit to the Trust, which were dishonoured by the Bank. The Bank also found that the Bank guarantee given by the organisers was fraudulent. The Sports Trust lodged an FIR with police authorities against the organisers, but they had reportedly left India. The department has not taken any action so far (January 1989) to complete the assessment of the assessee firm (July 1989) as *ex-parte* and to recover the tax by attachment of the assets of the assessee.

Non-levy of penalty for failure to furnish audited accounts—Lottery agents/prize winners

2.01.26 Under the provisions of the Income-tax Act, 1961, as applicable from assessment year 1985-86 onwards, every person carrying on any business and whose sales turnover or gross receipts exceed Rs. 40 lakhs, in the relevant previous year, will have his accounts audited before the specified date of filing the return of income, by an accountant and obtain before that date, the report of such audit in the prescribed form to be attached to the return of income. For failure to comply with these provisions without reasonable cause, an assessee will be liable to pay penalty at the rate equal to one half per cent of sales turnover or gross receipts, subject to a maximum of rupees one lakh. The Central Board of Direct Taxes have, in their circular issued in June 1985, clarified that no penalty proceedings would be initiated for the assessment year 1985-86 in cases where the prescribed audit report had been obtained by 30 September 1985 and self assessment tax paid within the prescribed period for filing of return of income. The Board have also issued instructions in July 1964 and again in September 1975 that where the assessing officer

does not initiate penalty proceedings in any case he should record the reasons for not doing so.

(i) In Kerala circle, in the case of an assessee, a major agent for various State lotteries, assessments for assessment years 1985-86 and 1986-87 were completed accepting the income returned on estimate basis at Rs. 1.25 lakhs and Rs. 2 lakhs respectively. The assessee had not furnished profit and loss accounts and balance sheets along with returns, even though his turnover of the Kerala State Lottery tickets alone for the assessment years 1985-86 and 1986-87, was of the order of Rs. 150 lakhs and Rs. 290 lakhs respectively. There was no indication in the assessment records that the assessee had prepared even final accounts.

A penalty of upto Rs. one lakh was leviable for each year in this case, but this was not imposed, nor were any proceedings initiated for the purpose. Further, in the absence of details it could not be ensured in audit that five per cent agent's prize and incentives in kind, for which no source deduction was made, were considered in computing the taxable income.

(ii) In West Bengal circle, the total sales/turnover gross receipts of 2 assessee registered firms and 2 individuals for the assessment years 1985-86, 1986-87 and 1987-88 assessed between July 1986 and July 1988 exceeded Rs. 40 lakhs in each case. As such, the firms were required to get the accounts audited by accountants and to furnish the report of such audit alongwith the return of income; but no such report was attached to the returns nor was insisted upon by the assessing officer. For failure to observe the statutory provisions, the assessees would be liable to an overall penalty at Rs. 5,16,146 which was not levied.

(iii) In Madhya Pradesh circle, a welfare society received a guaranteed profit of rupees one crore from the organising agent during the year relevant to the assessment year 1985-86, but the annual accounts were not got audited by the specified date *i.e.*, by 31 July 1985, nor were any such proceedings initiated by the assessing officer. For failure to observe the statutory provisions a penalty of Rs. 50,000 was leviable, but was not levied by the department.

(iv) In Delhi circle, in ten cases, though the sales, turnover or gross receipts for the assessment years 1985-86 and 1986-87 exceeded Rs. 40 lakhs in each case the prescribed audit reports were filed beyond the specified date or not filed at all before finalising the assessments. For failure to follow the statutory provisions, penalty to the tune of Rs. 11,00,000 was leviable, but no such action was initiated by the assessing officers.

In four cases, the department was stated to have allowed the assessees' extension of time for furnishing the returns of income and hence the specified date for filing the audit report got automatically extended. However, the assessees were statutorily required to get the accounts

audited by the specified date notwithstanding the extension granted for filing of the returns, and liable for penalty.

Non-disallowance of expenditure in excess of Rs. 2500 paid otherwise than by crossed cheque/draft

2.01.27. The Income-tax Act, 1961, provides for disallowance of expenditure incurred in business or profession, subject to certain exemption, for which payment is made for any amount exceeding Rs. 2,500 otherwise than by crossed cheque or a crossed bank draft. This provision was designed to act as a check against evasion of tax through claims for expenditure, shown to have been incurred in cash, but would frustrate proper investigation by the department as to the identity of the payee and the reasonableness of the amount. A residuary provision made in this regard states that exemption can be allowed where the assessee satisfies the Income-tax Officer not only about the genuineness of the payment and identity of the payee, but also on the fact that the payment could not be made by a crossed cheque/bank draft due to exceptional or unavoidable circumstances or due to the impracticability of payment or to avoid causing genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof.

It has been judicially held (167 ITR 139) that to claim the benefit of the provision of this Rule, it is not sufficient to establish the genuineness of purchases and identity of the payee, but the assessee should also be further required to prove that the circumstances mentioned in the rule existed, and the required conditions were satisfied and in the absence of such evidence, such payments are not deductible in the computation of income.

In West Bengal circle, in the assessment of an assessee registered firm and an individual engaged in the business of lottery for the assessment year 1985-86 completed between July 1986 and July 1988, payments in each case exceeding Rs. 2,500 made otherwise than by crossed cheque/bank draft to the extent of Rs. 5,40,606, were listed out in the assessment records without indicating the exceptional and unavoidable circumstances as provided under the rules. There was nothing on record to indicate that the assessing officer was satisfied with these payments. The expenditure of Rs. 5,40,606 was, therefore, not allowable to the assessee and consequently resulted in aggregate under charge of tax of Rs. 1,49,096.

The review was forwarded to the Ministry of Finance for comments in September 1989; the reply from the Government has not so far been received (October 1989).

ANNEXURE

(Amount in lakhs)

Name of the A.G./D.A.	Asses- see	Assess- ment year	Total Sales/ turnover/ receipts including commission on sales of price winning tickets	Expenses		Income returned by the assessee	Income assessed	Percentage of profit over receipts
				Claimed	Allowed			
1	2	3	4	5	6	7	8	9
Tamil Nadu	A	1984-85	570.08	562.69	555.18	12.63	20.14	3.53
		1985-86	986.78	986.11	982.38	16.56	20.29	2.05
		1986-87	1031.99	1018.35	1016.30	13.67	15.71	1.52
		1987-88	1038.81	1062.77	1060.67	(-)23.86	(-)21.76	
	B	1984-85	82.98	92.46	91.99	(-)7.81	(-)7.34	—
		1985-86	954.42	984.06	983.61	(-)28.43	(-)27.98	—
		1986-87	231.85	221.06	220.87	12.36	12.55	5.41
		1987-88	2.53	0.38	0.18	2.15	2.35	
	C	1984-85	1132.71	1125.86	1113.56	12.35	52.50	4.63
		1985-86	2315.32	2343.41	2331.31	(-)13.08	(-)7.99	—
		1986-87	2162.33	2238.78	2232.57	(-)76.45	(-)70.24	—
		1987-88	1364.35	1312.48	1307.51	51.90	58.88	4.31
	D	1984-85	945.13	937.36	924.08	11.67	14.95	1.58
		1985-86	1406.88	1404.61	1379.80	16.10	40.91	2.90
		1986-87	1077.74	1084.78	1079.38	(-)6.96	(-)1.67	—
		1987-88	1426.42	1443.78	1437.82	(-)12.96	(-)6.98	—
	E	1984-85	1040.24	1038.29	1033.17	7.84	12.96	1.24
		1985-86	851.84	847.72	856.99	6.41	11.94	0.83
		1986-87	583.62	594.57	591.96	(-)10.91	(-)8.29	—
		1987-88	146.03	148.39	147.27	(-)2.04	(-)0.92	—
Calcutta	F	1984-85	1127.05	1106.80	1106.79	—	—	0.07
		1985-86	1489.90	1461.94	1461.01	(-)33.81	2.03	0.02
		1986-87	2226.47	2218.19	2218.19	0.46	0.46	0.02
	G	1984-85	225.93	223.69	223.21	1.86	3.23	0.99
		1985-86	154.08	152.60	152.60	0.25	0.25	0.23
	H	1984-85	19.05	18.70	18.70	0.50	0.50	2.95
		1985-86	35.47	33.81	33.81	0.80	0.80	4.84
	I	1984-85	426.96	421.68	421.68	—	—	0.74
		1985-86	194.78	183.66	183.66	—	—	0.63
	J	1984-85	148.10	149.63	149.63	0.46	0.46	0.47
	K	1985-86	2.37	2.05	2.05	0.32	0.32	13.33
		1986-87	16.98	16.57	16.57	0.41	0.41	2.40

1	2	3	4	5	6	7	8	9
	L	1984-85	155.06	152.72	152.71	0.28	0.29	0.24
		1985-86	84.00	83.17	83.17	0.43	0.43	0.85
		1986-87	122.47	121.19	121.19	0.36	0.36	0.40
		1987-88	84.30	83.18	83.11	0.30	0.41	0.70
	M	1984-85	109.26	108.85	108.83	0.20	0.18	0.18
		1985-86	56.96	56.47	56.47	0.37	0.33	0.66
		1986-87	149.89	146.22	143.58	1.06	3.42	2.36
Kerala	N	1985-86	186.46	7.09	7.09	1.32	1.32	0.70
		1986-87	195.82	6.06	6.06	1.01	1.61	0.82
		1987-88	104.99	3.53	3.53	(-)0.02	(-)0.02	Nil
	O	1985-86	5.22	5.08	5.08	00.14	00.14	2.6
		1986-87	1.90	1.80	1.80	00.11	00.11	5.6
Andhra Pradesh	P	1984-85	0.73	00.21	00.20	00.83	00.83	113.69
		1985-86	1.35	00.68	00.69	1.09	1.09	80.74
		1986-87	3.65	00.91	00.91	2.96	2.96	81.09
		1987-88	2.34	0.83	0.83	1.77	1.77	75.64
Karnataka	Q	1985-86	39.26	1.83	1.83	0.75	0.75	1.9
		1986-87	31.73	1.46	1.46	0.95	0.95	3.00
		1987-88	16.52	1.37	1.37	N.A.	N.A.	1.7
	R	1986-87	139.86	0.64	0.64	0.73	0.73	0.52
		1987-88	167.69	2.32	2.32	0.97	0.97	0.58
	S	1985-86	2.62	2.02	2.02	0.71	0.71	27
Bihar	T	1985-86	65.99	65.01	65.01	0.99	0.99	1.50
		1986-87	87.85	86.88	86.88	0.97	0.97	1.10
		1987-88	134.51	133.57	133.57	0.95	0.95	0.70
	U	1986-87	137.16	136.23	136.23	0.92	0.92	0.67
		1987-88	388.52	387.54	387.54	0.98	0.92	0.25
	V	1985-86	2.85	2.00	2.00	0.85	0.85	29.81
		1986-87	3.02	2.05	2.05	0.98	0.98	32.28
		1987-88	3.17	2.26	2.26	0.91	0.91	28.59
Gujarat	W	1984-85	19.15	1.08	1.03	1.00	1.87	9.5
		1985-86	42.80	1.14	1.04	0.93	1.31	3
		1986-87	174.67	2.78	2.68	1.05	2.36	1.5
	X	1984-85	13.98	1.12	1.07	0.63	1.93	14
		1985-86	40.88	1.68	1.56	1.42	1.86	4.5
		1986-87	45.66	1.19	1.08	1.14	1.36	3
	Y	1984-85	5.27	0.53	0.53	0.90	0.90	17
		1985-86	4.81	0.29	0.29	0.48	0.48	9
		1986-87	3.03	0.32	0.32	0.33	0.33	11
	Z	1984-85	5.43	0.47	0.47	1.06	1.06	19
		1985-86	7.82	0.31	0.31	0.69	0.69	9
		1986-87	4.94	0.37	0.37	0.43	0.43	8
	AA	1984-85	14.54	0.27	0.27	0.22	0.22	1.5
		1985-86	12.11	0.16	0.16	0.17	0.17	1.5

1	2	3	4	5	6	7	8	9
	BB	1987-88	94.57	1.99	1.99	0.28	0.28	3
Uttar Pradesh	CC	1984-85	0.40	0.22	0.22	0.18	0.18	45.14
		1985-86	0.69	0.47	0.47	0.22	0.22	31.7
		1986-87	1.57	1.21	1.21	0.30	0.30	19.2
	DD	1984-85	187.38	186.53	186.49	0.91	0.95	0.51
	EE	1986-87	5.13	9.56	3.56	1.58	1.58	30.72
	FF	1986-87	1.09	0.67	0.67	0.14	0.14	12.72
	GG	1985-86	15.22	7.78	7.75	7.91	7.93	52.11
		1986-87	18.28	7.85	7.80	10.45	10.50	57.40
	HH	1986-87	0.08	7.86	7.86	0.22	0.22	2.77
New Delhi	II	1986-87	189.45	195.66	195.66	0.17	0.57	0.29
	JJ	1985-86	263.81	257.44	257.44	1.40	1.40	0.53
		1986-87	986.19	997.59	997.59	3.63	3.63	0.37
	KK	1984-85	658.45	661.49	660.26	2.86	7.82	1.2
		1985-86	1270.94	1255.46	—	3.07	8.00	0.6
		1986-87	1230.51	1240.40	1239.78	5.08	5.89	0.46
	LL	1984-85	6.37	4.47	3.29	2.39	3.09	48.4
		1985-86	54.82	306.72	304.68	(-)14.44	(-)12.40	Loss
		1986-87	473.73	654.35	643.55	(-)36.29	(-)25.48	Loss
	MM	1986-87	304.23	305.47	305.38	1.24	2.09	0.7
	NN	1986-87	71.77	84.69	73.53	(-)7.11	(-)6.01	Loss
	OO	1984-85	2718.63	3770.88	3746.10	—	91.34	3.3
		1985-86	3501.73	3737.21	3713.63	30.73	203.84	5.8
		1986-87	4483.51	4172.88	4171.74	365.51	505.21	11.3
	PP	1984-85	238.08	220.08	211.03	25.63	26.55	11.2
		1985-86	935.81	946.20	935.61	(-)2.07	00.21	0.02
		1986-87	3397.00	3381.15	3374.90	21.33	22.10	0.65
	QQ	1984-85	1107.52	1123.02	1117.07	99.37	124.08	11.2
		1985-86	2601.63	2307.60	2297.50	113.30	285.03	10.9
		1986-87	3536.68	3073.35	3063.13	327.72	479.49	13.5
	RR	1986-87	64.99	89.05	88.90	(-)2.29	(-)2.15	Loss
	SS	1984-85	3325.68	3321.07	3303.09	19.97	22.59	0.7
		1985-86	4332.22	4323.68	4297.12	8.54	12.43	0.3
	TT	1985-86	3.16	5.78	5.78	0.15	0.15	4.6
		1986-87	33.16	35.47	35.47	0.67	0.67	2
	UU	1986-87	304.23	305.47	305.38	1.24	2.10	7
	VV	1985-86	1627.41	1626.80	1626.80	0.61	0.61	0.04
Madhya Pradesh	WW	1984-85	14.65	14.46	14.46	0.24	0.24	1.6
		1985-86	14.91	14.81	14.81	0.18	-0.18	1.2
		1986-87	16.36	16.01	16.01	0.28	0.28	1.7

APPENDIX-II

(Vide Para 15 of the Report)

MOST IMMEDIATE

No. V. 21011 / 7 / 83-GPA. IV

Government of India / Bharat Sarkar

Ministry of Home Affairs / Grih Mantralaya

.....

New Delhi-110001, the 26/27th June, 1984.

To

**The Chief Secretaries,
All State Governments / Union Territory Admns.**

Subject: Guidelines for the conduct of State lotteries and lotteries permitted by the State Governments / Union Territory Administrations.

Sir,

I am directed to say that the lotteries / raffles organised by the Central Government and the State Governments are covered by item 40 of the Union List in the Seventh Schedule to the Constitution. The State Governments have been authorised by the Government of India in the past to run State Lotteries for augmenting their financial resources for developmental purposes. It is seen that the prize structure, the price of the lottery ticket, the periodicity of draws the commission paid to agents and other features vary considerably from State to State.

2. Of late, there has been criticism about some aspects of the lottery schemes. Complaints of malpractices have been received and unhealthy competition amongst the various State lotteries has been reported. The matter has been carefully examined by the Central Government. It is considered necessary to bring about some uniformity and to curb the scope of malpractices in the running of lotteries. With this end in view the following broad guidelines have been formulated:

(1) *Weekly lotteries:*

(a) The ceiling of the first prize may be Rs. 1 lakh. There may be a separate prize for each Series.

(b) The maximum price for one ticket may be fixed Re. 1.

Note: There may be no lotteries with draws at intervals of less than a week.

(2) *Bumper draws:*

- (a) The ceiling on the first prize may be fixed at Rs. 25 lakhs.
- (b) The first prize may be made common to all series.
- (c) The maximum price of a ticket may not exceed Rs. 3/-
- (d) Any draw other than a weekly draw may be treated as a bumper draw for the above purpose.
- (e) The maximum number of bumper draws in a year may be twelve.

(3) *Total outgo of prizes:*

The total value of prizes to be paid for each draw should not be less than 50% of the gross value of the tickets printed for sale.

(4) *Minimum revenue accruing from the lottery:*

The net profit accruing from the lottery may at least 15% of the gross value of the tickets printed for sale.

- (5) The printing of tickets should be got done by the Government.
- (6) The draws for the prizes should also be conducted under the direct supervision and control of the Government in the presence of responsible Government officials.
- (7) The payments of all prizes, as far as possible should be made by the Government directly; prizes above the value of Rs. 10,000/- & above should invariably be paid by the Government directly.
- (8) Contracts already signed by the State Governments / UT Administrations with private organising agents / sole selling agents, which are not in accordance with the above guidelines may be reviewed by the State Governments / UT Administrations concerned keeping in view of the legal implications.

3. The State Governments / Union Territory Administrations are advised to observe the above guidelines while conducting the State Lotteries.

4. Some State Governments / Union Territory Administrations may have permitted certain private organisations or individuals to organise lotteries under the powers conferred by item 34 of the State List of the Seventh Schedule to the Constitution. It is requested that the State Governments / Union Territory Administrations may keep in view the above guidelines while determining the conditions subject to which such private lotteries are authorised.

5. The receipt of this letter may be acknowledged. The action taken in the matter may also be intimated to this Ministry.

Yours faithfully,

Sd/-

(P.N. NARAYANAN)

*Deputy Secretary to the Government of
India*

No. V / 21011 / 7 / 83-GP.IV. New Delhi, dated the June, 1984:

Copy to:

1. Secretaries, Department of Finance, All State Government / Union Territory Administrations

2. Directors of lotteries, All State Governments / Union Territory Administrations

Copy also to:

3. Secretaries, all Ministries and Departments of the Government of India;

4. All Divisions of Ministry of Home Affairs (with the request to follow the above guidelines)

Sd/-

(P.N. NARAYANAN)

*Deputy Secretary to the Government of
India*

**IMMEDIATE
CONFIDENTIAL**

**No V. 21011 / 7 / 83-GPA. IV
GOVERNMENT OF INDIA / BHARAT SARKAR
MINISTRY OF HOME AFFAIRS / GRIH MANTRALAYA**

New Delhi-110001, the 27th February, 1985

To

The Chief Secretaries,
All State Governments / Union Territory
Administrations.

SUBJECT: Guidelines for the conduct of State lotteries and lotteries permitted by the State Governments / Union Territory Admns.

...

Sir,

I am directed to invite a reference to this Ministry's letter of even no. dated the 27th June, 1984 on the subject mentioned above, and to say that while replies from a few State Governments are yet to be received, those already received do not give a clear picture as to whether the guidelines are being followed in the running of State lotteries and whether the lotteries rules have been brought in conformity with the guidelines. In regard to private lotteries it is not known whether any steps have been taken by the State Governments and the Union Territory Administrations to regulate their conduct.

2. An analysis of the advertisements about State lotteries appearing recently shows certain departures from the guidelines. Specific cases of departure will be brought to the notice of the concerned State Governments separately later.

3. The departure in the matter of prizes and ticket price is more pronounced in the case of private lotteries. Some of these private lotteries, it is noticed, have offered first prizes running into crores of rupees and have fixed the price of tickets as high as Rs. 100/- or even Rs. 500/- per ticket. An intriguing feature of these lotteries is that quite a few of them are sponsored by some unknown and obscure organisations concerned with "spinal injuries", "mentally retarded", "children welfare" etc., to name a few. In the absence of an indication either on the lottery tickets or in advertisements about the State / U.T. which authorised a private lottery, it is not known whether all these lotteries have really been authorised by the State Governments and the Union Territory Administrations. Perhaps it may be desirable to make it obligatory on the part of the organisers of private lotteries to indicate in the lottery advertisements and on the tickets the name of the State / UT which has authorised them to run the lottery. Further, it is also not known whether the mechanism behind the lotteries such as appointment of sole selling agents / organising agents, the system and procedure for printing of tickets and their numbering, the payment of prizes, etc. is fool-proof; whether arrangements for authorising private lotteries and supervision over the approved lotteries are adequate; whether the organising agents, stockists, etc. furnish any reports to the authority sanctioning the lottery, and, if so, what.

It has also been brought to our notice that only a few organising / sole agents and stockists located in a small area in the vicinity of Connaught Place, Bhagat Singh Market and opposite the Rivoli Cinema, etc. in Delhi have concerned the lottery business. There could be a similar situation in other cities of other States / U.Ts such a situation, though legally not indefensible, causes several eyebrows to be raised. State Governments may keep this aspect in view while authorising their own lotteries to be conducted through private agents or while appointing agents/stockists.

5. It may be recalled that the guidelines were framed to restrict unhealthy competition amongst lotteries by fixing the ceiling on prize money, the price of tickets and the number of draws and also to curb chances of malpractices by laying down the procedure for printing of tickets, payment of prizes etc. The departure, as briefly summarised above, would, however, seem to negate these very objectives. The offer of big prizes by private lotteries has an adverse effect on the State lotteries in as much as it tends to make them unattractive causing loss of revenue to the State.

6. It is requested that early steps may be taken to ensure that the guidelines are observed by State / Union Territories when they authorise the private parties also. If considered necessary, a suitable legislation restricting the sale of tickets of private lotteries authorised by other States and regulating their conduct may be brought about. This should aim at making the entire mechanism behind the lottery and the system and procedures involved foolproof. It is noticed that some of the States Government such as Maharashtra and Gujarat have already enacted legislation in this regard. Till such legislation is brought about or it is not considered necessary by a State to do so, steps may be taken to devise proper checks on private lotteries on the lines suggested in the guidelines. The points raised in Paras 3,4,5 above in regard to the private lotteries may be investigated to detect any malpractices in the authorisation or conduct of lotteries and proper remedial action may be taken.

7. A report on the specific action taken both in respect of the State lotteries and the private lotteries authorised by them may be sent to this Ministry as early as possible.

Yours faithfully,

Sd/-

(P.N. NARAYANAN)

Deputy Secretary to the Govt. of India,

Dated 27th February, 1985.

No. V.21011 / 7 / 88-GPA.IV

Dr. S.P. Vishnoi,
Additional Secretary.

D.O. NO. V. 21011 / 7 / 83-GPA. IV
Government of India
Ministry of Home Affairs
New Delhi-110001.
April 8, 1985.

Dear

You are perhaps aware of the sudden spurt in the number of private lotteries in recent times. Some of these lotteries are in the name of certain obscure and not-top-well-known organisations such as "Spinal injuries", "Children Welfare", etc. etc. We are not aware whether your Union Territory too has permitted such private organisations to conduct lotteries.

2. The lotteries especially the private ones, have, of late, come to adverse notice and there has been some criticism both in the Parliament and the press on the ground that they have assumed the proportion of a well-organised scandal.

3. We had issued certain guide-lines in the States and Union Territories through letter No. V-21011/7/83-GPA. IV dated the 27th June, 1984 to bring about some discipline and uniformity in respect of State lotteries. The States and Union Territories were also requested to keep these guidelines in view while determining the conditions under which private lotteries were to be authorised by them. We have again recently drawn their attention to the alleged malpractices reported in the Press with a request to ensure strict adherence to the guidelines and to take such further measures including legislation, if necessary, to make the mechanism and procedure behind lotteries become fool-proof through letter No. V-21011 / 7 / 83-GPA, IV dated 27.2.85

4. We trust that suitable action as required in the matter might have already been taken. Meanwhile, I would request that henceforth no private lotteries are permitted by the UT Admn. Wherever such permission has already been given to any private party to run a lottery, the question of revoking the permission may be considered keeping in view the legal implications. The U.T. Administration, while they run State lotteries, must strictly adhere to the guidelines.

5. I would be grateful if the receipt of this letter is acknowledged. The present position and the action taken may also please be initiated to us early.

Yours sincerely,

Sd/-
(S.P. VISHNOI)
4.4.85

Administrators,

All Union Territories.

CONFIDENTIAL

**D.O. No. V-21011 / 7 / 83-GPA. IV
HOME MINISTER, INDIA
NEW DELHI, April 12, 1985.**

Dear Shri

By this Ministry's letter No. V-21011 / 7 / 83-GPA. IV dated the 27th June, 1984 we had issued certain guidelines to all the State Governments in June, 1984 which sought to bring some discipline in the running of State and private lotteries. The intention was to avoid unhealthy competition and eliminate the scope of malpractices through a ceiling of the first prize and the price of the tickets; regulating the periodicity of draws and the practice and procedure for printing of tickets, holding of draws, appointment of organising / sole selling agents etc.

While we have noticed some departures from the guidelines in State lotteries, the deviation in private lotteries have been of a substantially major nature. These have also generally been brought to the notice of the State Governments through our letter of even number dated 27th February, 1985 (copy enclosed for ready reference) for remedial action.

The departures and deviation have become subject of debate and controversy in the Parliament as well as in the Press.

I hope you will kindly take necessary steps to ensure that the guidelines and instructions issued by us in this regard receive due consideration while the States organise their own lotteries and in private lotteries.

With regards,

Yours sincerely,

Sd/-

(S.B. CHAVAN)

**All Chief Ministers
(States except Punjab
as per list attached)**

**I.P. GUPTA
ADDITIONAL SECRETARY
TELE NO: 3016933**

**D.O. NO. V-21011 / 7 / 83-GPA. IV
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI
JUNE 12, 1986.**

Kindly refer to this Ministry's letter of even number dated the 27th June, 1984 forwarding guidelines for the conduct of State lotteries and lotteries permitted by the State Governments / UT Administration. In our subsequent letter dated 27.2.1985, we had conveyed to you the types of departures from the guidelines which had come to our notice in the running of these lotteries even after issue of the above guidelines. We had also requested that States / UTs may consider measures including a legislation on private lotteries to check malpractices and ensure adherence to the guidelines. Home Minister too, had addressed all the Chief Ministers in April 1985 to take necessary steps to ensure that the guidelines and the instructions issued by us received due consideration while the States organise their own lotteries or permit private lotteries.

2. We shall be grateful if you kindly send us detailed information as to the manner in which the guidelines are being followed both in respect of the State lotteries and the private lotteries permitted by the State Government. You may also kindly indicate specific measures taken by your State/UT to plug the loopholes noticed in the running of lotteries.

Yours sincerely,

Sd/-

(I.P. GUPTA)

**A.K. BASAK,
JOINT SECRETARY**

**D.O. No. V. 21013 / 10 / 86-
GPA. IV**

**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**

27th/30 January, 1987.

As you are aware, certain guidelines were issued by this Ministry vide letter No. V. 21011 / 7 / 83-GPA. IV dated 27.6.84 to bring about some discipline in the running of the State / Private lotteries. The Union Home Minister vide his letter No. V. 21011 / 7 / 83-GPA. IV dated 12-4-85 to the Chief Ministers brought to the notice of the State Government some departure from the guidelines as reported in this Ministry's letter dated 27.2.85 for remedial action. As lotteries have become a subject of debate and controversy in Parliament as well as in the Press, the State Governments / Union Territory Administrations were requested vide our letter No. V-21011 / 7 / 83-GPA. IV dated 12-6-86 to ensure that the guidelines / instructions issued by this Ministry receive due consideration while the State organise their own lottery or permit private lotteries. They were also requested to send detailed information as to the manner in which the guidelines were being followed both in respect of State lotteries and private lotteries, and to indicate specific measures taken by them to plug the loopholes noticed in the running of the lotteries.

2. Recently cases of running of instant lotteries by some States / Union Territories have come to the notice of Government of India. It is requested that the desirability of running such lotteries may be reviewed in the light of the guidelines issued from time to time and result of the review intimated to the Ministry.

Yours sincerely,

Sd/-

(A.K. BASAK)

**Chief Secretaries,
All states / U.T.s.**

APPENDIX-III

(Vide Para 57 of the Report)

INSTRUCTION NO. 1863.

F.No. 275 / 111 / 90-IT(B)

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES**

New Delhi, the 22nd October, 1990.

To

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

Subject: Administration of TDS-regarding

Sir,

On consideration of the recommendations of the Commissioners' Conference held in June, 1990 and the report on "Administration of TDS" submitted by DOMS in March, 1990 the Board has taken the following decisions:—

- (i) All applications for exemption from issuing TDS certificates in Form No. 16 on stationery supplied by Government to companies employing computerised system, should be disposed of within one month;
- (ii) Adequate manpower should be deployed in TDS circles. The TDS work is basically handled at the clerical level. There would be a sample checking of the correctness of the returns filed by the tax deductors. The Chief Commissioners of Income-tax / Commissioners of Income-tax will lay down detailed guidelines for the method of selection of sample and also prescribe percentage of returns to be checked. However, any return selected for checking will be checked thoroughly and not in respect of a few items only. The use of computers for scrutinising the TDS returns will be made, wherever possible.
- (iii) On the question of remedy available to an employee whose employer does not issue the certificate in Form No. 16, the Board is of the view that since a penalty has already been prescribed under section 272A, the aggrieved employee should approach the

Deputy Commissioner of Income-tax under whom the concerned Income-tax Officer (TDS) is working Adequate publicity may however be given by the Chief Commissioner to the provision for levy of penalty for not issuing the certificate in time.

(iv) All TDS work should be centralised with one or more ITOs in each region or station as considered proper by the Chief Commissioner.

(v) Adequate publicity may be given at regional levels as well as central level to various TDS provisions and particularly about the appointment of Income-tax Officers (TDS) and the region and their jurisdiction. At central level, the Director of Income-tax (RSP&PR) may give due publicity to the TDS provisions. The statutory responsibility of the persons deducting tax at source e.g. deducting tax properly, depositing tax in Government account in time, filing annual returns of TDS, issuing TDS Certificates etc., as also the penal provisions for not discharging this responsibility should be highlighted.

Necessary action may be taken to implement these decisions in your region.

Yours faithfully

Sd/-
(V.K. BHATIA)
DIRECTOR (BUDGET)

Copy forwarded to:

1. The Director Generals of Income-tax
2. All Commissioners of Income-tax
3. All Officers and Technical Sections of the CBDT.
4. Director of Inspection (Investigation) / IT&Audit / Vigilance / Intelligence / RSP&PR / Recovery / Special Inv.
5. Deputy Director of Inspection (P&PR), New Delhi.
6. Assistant Director of Inspection (Bulletin), New Delhi.
7. Comptroller and Auditor General of India (40 copies)
8. Competent Authority, Madras / Delhi / Bombay / Calcutta.
9. Joint Secretary, Legal Advisor, Ministry of Law & Justice, New Delhi.
10. Director of O&M (IT), 1st floor, Aiwan-e-Ghalib, Mata Sundri Lane, New Delhi (5 copies).
11. Director, National Academy of Direct Taxes, P.B. No. 40, Nagpur.

APPENDIX IV

Statement of Conclusions and Recommendations

Sl. No.	Para No.	Ministry / Deptt. Concerned	Recommendations and Conclusions
1	2	3	4
1.	79	Deptt. of Revenue	Lotteries organised by the Government of India or the Government of a State appear in the Union List in the VII Schedule to the Constitution of India and the Parliament is vested with the powers to make laws governing such lotteries. Lotteries organised by any other agency come under the general entry "Betting and Gambling" in the State List, and would be subject to regulation by Acts enacted by the respective States. The Committee note that there is no separate provision of law governing the assessment of lottery business. Therefore, income from lottery business is computed in the same manner as the income from most other business, under sections 28 to 44 of the Income tax Act, 1961. Further no specific instructions and circulars have been issued by the Central Board of Direct Taxes on the assessment of lotteries.
2.	80	-do-	Prior to 1 April, 1972, casual and non-recurring receipts were not regarded as income under the Income-tax Act, 1961, as such no income-tax was chargeable on receipts from winnings of lotteries. The Act was amended in 1972 on the recommendations of the Direct Taxes Enquiry Committee (Wanchoo Committee) by rendering income from lotteries assessable to tax under the head 'Income from other sources'. Further, with effect from 1 April 1987 (Assessment year 1987-88) winnings from lotteries is taxed at the rate of 40 per cent subject to a flat deduction of Rs. 5000 /- (for the aggregate / casual receipts), without any further allowance or deduction. The total collection from tax deducted at source under

section 194B of the Income-tax Act, 1961, from winnings from lottery or cross-word puzzles for 1987-88 and 1988-89 has been Rs. 44.88 crores and Rs. 36.99 crores, respectively. The Committee are surprised to find that the Central Board of Direct Taxes have so far not initiated any exercise to assess the profits in this trade, even decades after the operation of the schemes in the States. The Committee feel that such an assessment is very essential both for the purpose of framing realistic estimates of tax collection and taking adequate preventive steps to curb leakage of revenue.

3. 81 Deptt. of Revenue
- The Committee are distressed to find that till recently no steps were taken by the Department of Revenue / Central Board of Direct Taxes to arrest large scale avoidance, under-assessment and short-levy of tax in the lottery business resulting in substantial loss to the national exchequer. The Revenue Secretary conceded before the Committee during evidence that the income from lotteries has not received the kind of specialised attention that it deserved. The Department of Revenue have admitted the pitfalls in the pre-assessment procedure and the procedure is stated to have been streamlined from September, 1989. The Committee deplore the laxity and complacency of the Department in an important area like the collection of tax. The Committee recommend that the effectiveness of the existing procedure should be evaluated with a view to further revamping it.
4. 82 Deptt. of Revenue and Ministry of Home Affairs
- The Committee regret to note that most of the State Government are not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and subsequently in regard to conduct of state lotteries and lotteries permitted by the State Govt. / Union Territory Administration. Further, according to the Ministry of Home Affairs, so far as the schemes of different State Government regarding lotteries are concerned the

rules differ from State to State. Further, the rules regulating the conduct of lottery did not provide for the State Government being informed of the details of the persons engaged for running the lotteries by the organising agents/sole selling agents. According to the Department of Revenue it would be useful if the rules regarding the conduct of lotteries were such that the State Governments could ask for such details from the organisers of lotteries. The Department of Revenue have already taken up this matter with the Ministry of Home Affairs. The Committee urge upon the Ministries of Home Affairs and Finance to take the desired corrective action in the matter at the earliest. The Committee also recommend that to achieve uniformity, effective control and avoiding malpractices in Lotteries organised by the various State Governments / Union Territory Administrations Government should consider the question of bringing in a suitable legislation'.

5. 83 Deptt.
of
Revenue

The Committee find that due to the lack of serious efforts on the part of the Department of Revenue, there have been large scale omissions to bring the recipients of winning tickets in the tax net for the purpose of regular Income-Tax and Wealth-Tax assessments leading to large scale avoidance/under assessment of the taxes. A number of such instances revealed as a result of test check conducted by Audit have been enumerated in para 11 of this report. For instance, in the cases pertaining to Kerala, 76 winners of prizes ranging from Rs. 5.95 lakhs to Rs. 25.50 lakhs were not enlisted for wealth tax. Similarly in Punjab, 89 out of 106 prize winners of Rs. 50,000 and above, were not enlisted in the control registers, while in the remaining cases no returns were filed. Similarly in Madhya Pradesh 3 winners were assessable to tax for profits of 7 lakhs and above but no returns had been filed for income / wealth tax purposes as per records. Income-tax involved in these cases was Rs. 1,20,556. According to the audit test check there was an under-assessment of tax to the extent of Rs. 6 crores

approximately on various counts in the lottery business. The Department of Revenue have informed the committee that with effect from 9 April, 1990 the Central Information Branches of the Directorate of Investigation have been directed to collect the information relating to recipients of prize money from the annual statements of TDS filed with the designated officers and to disseminate the information to the concerned assessing officers so as to enable them to take further necessary action under the Income-tax Act and the Wealth-tax Act. They have been directed to collect information in respect of prize money of Rs. 1 lakh and above for this purpose. The Committee regret to note that the Department of Revenue / Central Board of Direct Taxes have miserably failed in taking timely and appropriate corrective steps to overcome this large scale avoidance and under-assessment of taxes. They recommend that the position should be continuously reviewed with a view to taking further corrective and preventive steps so as to curb the rampant avoidance / under-assessment of taxes.

6. 84 Deptt.
of
Revenue

The Committee find that large scale avoidance and under-assessment of income-tax and wealth-tax in the lottery business has occurred due to various loop-holes and deficiencies in the existing laws and procedure. Audit scrutiny has revealed that while a number of stockists, promoters and sub-agents had not filed the tax returns, quite a few others had not returned the full incomes received by way of bonus, commission and service charges. For instance, the Committee find that in three cases of sole selling agents of West Bengal, there was under-assessment of income of Rs. 2,71,31,100 for the assessment years 1985-86 and 1986-87 leading to aggregate short levy of tax of Rs. 67,54,481. Similarly, the audit paragraph has

highlighted three more cases involving under assessment of Rs. 4,70,764, Rs. 5,27,644 and Rs. 3,36,471 (for the two assessment years) and Rs. 1,76,330. In yet another case of Tamil Nadu there was short computation of income of Rs. 10 lakhs and short levy of tax of Rs. 6.52 lakhs. The Committee note with deep concern these instances of suppression and short-levy of tax. According to the Department, the stepping up of searches, surveys and prosecutions is expected to create the required degree of deterrence against tax evasion.

Further whereas the Income-tax Act provided for the deduction at source from winnings from lottery, no such provision earlier existed for substantial sums paid as bonus, commission and service charges etc. to the stockists, promoters and sub-agents. The Committee note that in pursuance of the suggestion made by them during evidence of the representatives of the Ministry of Finance on the subject, the Govt. have through the Finance (No. 2) Act, 1991 inserted a new section 194G in the Income Tax Act. According to the new provision, any person who is responsible for paying, on or after the 1st day of October, 1991 to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding one thousand rupees shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent. The Committee hope that the Government will keep a close watch over the implementation of this provision and take further necessary steps to overcome the problem of large scale avoidance and under-assessment of tax in the lottery business.

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7.	85	Deptt. of Revenue Ministry of Law	<p>The audit paragraph reveal yet another source of avoidance of tax in the lottery business. It is seen that in three cases in Madhya Pradesh, prizes worth Rs. 20,39,70,500 were declared on unsold tickets and Govt. deprived of a sum of Rs. 5,38,83,350 as otherwise recoverable. According to the Department of Revenue the liability to deduct tax at source arises only at the time of actual payment of the lottery prize under Section 194B of the Income-tax Act and a mere declaration of prize is not sufficient to attract the provision of the Section. The Committee recommend that the question of leakage of revenue on this account should be examined in consultation with the Ministry of Law and corrective action taken within a period of six months.</p>
8.	86	Deptt. of Revenue	<p>The audit paragraph reveals yet another lacuna leading to under-assessment or avoidance of tax in the matter relating to the expenses claimed by the persons engaged in the lottery business. The Committee are surprised to find that the expenses claimed and allowed not only varied from assessee to assessee but there was also no relationship whatsoever of these expenses with the turnover. Even in cases with high turnover, running into crores of rupees, the accounts were replete with claims for disproportionately high expenses, which reduced the profit margin for assessment purposes to a very low level. What is more distressing is the fact that there has not been detailed examination of the accounts of the assesseees by the assessing officers so as to bring the actual income to tax. The Committee are deeply concerned over this dismal state of affairs. The Revenue Secretary assured the Committee during evidence that the matter was proposed to be got examined by an expert body for evolving concrete guidelines to overcome this lacuna. The Committee emphasise that the proposed study should be got conducted</p>

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urgently and the guidelines evolved as a result thereof should be introduced within a period of six months.

9. 87 Deptt. of Revenue

Yet another serious problem brought out in the audit paragraph is about the purchase of prize winning tickets at a premium, by the third parties from the actual winners resulting in conversion of black money into white money. The Committee take a serious note of the adverse effects of such cases on the economy of the country. What is really distressing is the fact that there is, at present, no safeguard in the scheme of lotteries to prevent a third person, other than the real buyer, from claiming the prize money. The Committee are further distressed to find that there is also enough scope for splitting of the prize money by putting forth joint claims so as to avoid or reduce the tax liability especially the wealth-tax liability. The Committee strongly recommend that both these problems, should be seriously considered for evolving suitable methodology to check avoidance of tax through such means.

10. 88 Deptt. of Revenue

It is further distressing to find that even the basic requirements provided for under the Income-tax Act such as compulsory maintenance of accounts by major assesseees and tax audit, the payments, in excess of Rs. 2500, by crossed cheque/demand draft were not insisted upon in a number of cases. The Committee urge upon the Department of Revenue to ensure that prescribed procedure in all such matters is strictly adhered to.

11. 89 Deptt. of Revenue

The Committee are of the view that centralisation of lottery cases is the most practical solution for possible coordination and detection of any suppression of income. Unfortunately the Department have not so far taken any steps towards this end.

The Committee during evidence were informed by the Chairman Central Board of Direct Taxes

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that it was difficult to bring all the cases at one place and assess them in one circle as the promoter of the Lottery may be in one State and the Agent may be in another State. Moreover, the distribution is done all over the country by different agents, sub-agents and small lotteries hawker's. But he assured the Committee that they would centralise the big cases involving larger amounts. The Committee would like to know the concrete action taken in this regard within a period of six months.

12 90 Deptt. of
Revenue

The Committee find that in contravention of the standing instructions of the Central Board of Direct Taxes that source deduction of income-tax should be made with reference to the aggregate amount of cash prize and value of prize in the kind, in the 16 cases relating to the Director of State Lotteries in Kerala, income representing the value of cars had escaped assessment, the approximate revenue effect being of the order of Rs. 6,10,000. While accepting the point, the Department of Revenue have stated that necessary steps are being taken to raise the necessary demand and the question of amendment* of Form 26B to clarify that the value of the prize given in kind should be indicated is under consideration. The Committee would like to know the concrete action taken in the matter.

13. 91 Ministry
of
Home Affairs
and Deptt. of
Revenue

Whereas Lottery Act/Rules provide a time limit for claiming of prizes in respect of prize winning tickets, no such time limit has been prescribed with regard to payment of the prizes. Audit para has brought out a case where only part of prize was paid (Rs. 1 lakh out of Rs. 15 lakhs) and the balance remained undisbursed without any deduction of tax at source. With a view to check malpractices, the Committee recommend that the

*. This amendment has been carried out w.e.f. 7.1.1991

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question of fixing a time limit for payment of prizes in respect of prize winning tickets should be urgently examined and compliance reported within a period of six months.

14. 92 Deptt. of Revenue

According to audit, in certain cases where the social welfare societies/organisations were granted exemptions from payment of tax having regard to the object of such institutions, either the exemptions were initially irregular due to non-fulfilment of necessary conditions by such organisations or these organisations became disentitled to the exemptions due to contravening of some legal provisions subsequently as detailed in para 65. In reply to a specific question whether there was any review of all cases of exemptions granted to such organisations, the Deptt. of Revenue admitted that there was no such review. After the issue of exemption notifications in such cases, the Department do not keep any watch over the activities of such organisations unless there are some specific allegations. The Committee recommend that the Government should evolve a suitable methodology for keeping a continuous watch on the activities of the societies/organisations granted exemptions from tax and if such societies commit any contravention of legal provisions necessitating a review of the question of grant of exemption to them that should be done immediately.

15. 93 Deptt. of Revenue

The Committee note that Churahat Children's Welfare Society, Rewa, M.P. was granted exemption from payment of Income tax under Section 10 (23C) (iv) of the Income tax Act for the years 1984-85 to 1988-89. The Society was granted a licence by the M.P. Govt. to conduct lottery draws. In a suit filed in the High Court, M.P., the High Court had *inter alia* held that due to the contravention of the provisions of the State Lottery Act by the Society, it was disentitled to get exemption from payment of lottery tax. According to the Department of Revenue the

judgement of the Madhya Pradesh High Court has not been accepted by the Society and the Supreme Court, *vide* order passed on 4.5.1989 in special leave to appeal has admitted the Society's special leave petition, against the judgement of the High Court, for hearing. The Committee have been informed that as a matter of abundant precautions, the Department have issued notices to the Society on 27-8-1990 requesting it to show cause why the two notifications issued on 31st August, 1984 and 25 March, 1986 under Section 10(23C) (IV) of the Income-tax Act granting exemption to the Society for the assessment years 1984-85, 1985-86 and 1986-87 to 1988-89 respectively should not be withdrawn with retrospective effect. The Committee would like to know the latest position in this regard.

16. 94 Deptt.
of Revenue

The Committee further find that in the case of the Indian Red Cross Society, Bhopal, the Department of Revenue have accepted in principle, the audit objection that tax of Rs. 2,72,528 was not deducted on the payments of lottery prizes of over Rs. 10,000 /- each for further necessary action. Similarly, in the case of Indore Table Tennis Trust, Indore the Department have accepted the audit objection that the trust was liable to deduct tax at source on the prizes amounting to Rs. 6,62,65,000 / - disbursed on sold tickets. But for the audit test check, the tax evasion in these cases would have gone undetected. The Committee recommend that with a view to effectively combat different types of tax evasions, the number of survey operations and search and seizure operations should be adequately augmented. The Committee further emphasise that no leniency should be shown to the offenders involved in evasion of revenue, irrespective of quantum of value involved and they should be booked for appropriate action under the law. The Committee would also like to know the conclusive action taken in the aforesaid two cases within a

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period of six months.

17. 95 Deptt. of Revenue The Committee find that a registered firm had not returned agents' commission and sole selling agents' commission aggregating Rs. 2.70 crores in two assessment years 1985-86 and 1986-87. The assessment for year 1986-87 had also been finalised as summary assessment. The Department have accepted the objection for assessment year 1985-86. For the assessment year 1986-87, where the under-assessment involved was as high as Rs. 1.87 crores, the Department have stated that the assessment has been done under Summary Assessment Scheme and enquiry and remedial measures would involve the conversion of the summary assessment case into scrutiny case which is against the policy of the Government as the audit point is not covered by the prescribed adjustments. Further, according to the Department, if the assessments completed under the Summary Assessment Scheme are allowed to be disturbed in a routine manner, the whole idea underlying the schemes, would be negated. The Committee are unable to agree with the views of the Department and are convinced that the summary assessment scheme should not prevent them from reopening of the cases and taking proper action in important cases where a large revenue is at stake. The Committee recommend that in the interest of revenue and also with a view to instil fear in the minds of the tax evaders the Government should consider the question of reopening of the assessments on the basis of subsequent positive information, in such cases where there is reported under-assessment / short-levy of tax involving heavy amount. The Committee would like to know the concrete action taken in this regard within a period of six months.
18. 96 Deptt. of Revenue & Ministry of Law According to Audit in cases where the promoter of lottery appoints an agent for the purpose of conducting the draws on payment of stipulated amount there is an Association to join voluntarily and without any compulsion and that for tax

purposes such an association comprising the promoter and the organising agent can be assessed as a 'Association of persons'. The Department have, however, not accepted the audit's view-point and in support of their contention the Department have adduced various legal decisions. The Committee recommend that the matter should be examined in detail in consultation with the Ministry of Law, urgently.

19. 97 Deptt.
of Revenue
& Ministry
of Home
Affairs

The facts narrated above abundantly prove that tax collection from the lottery business which is a potential source for raising revenue has hitherto remained largely neglected. Consequently, wilful and planned attempts were on the increase to avoid payment of tax by adopting questionable means. There is no coordination between the Ministries of Finance and Home Affairs in regard to assessment of lottery cases. The State Governments are not seriously following the guidelines issued by the Ministry of Home Affairs. There have been large scale omissions to bring the recipients of winning tickets to the tax net and there is large scale avoidance / under-assessment of the taxes. Further exemptions from payments of tax granted the Social Welfare Societies / Organisations are not regularly reviewed. The Committee are convinced that there is considerable scope for unearthing unaccounted income in the lottery business. The Committee need hardly emphasise the fact that the growth of the economy and entire gamut of financial administration and fiscal policies of the Government are entirely dependent on the smooth and unhindered flow of revenue. This would be possible only if the menace of tax-avoidance, under assessment and short-levy of tax is effectively met. The Committee therefore, recommend that all the preventive and effective steps should be taken immediately in the light of the various recommendations of the Committee contained in this Report.