

Chapter III: Corporation Tax

3.1 Introduction

3.1.1 This chapter discusses 320 significant and high value corporation tax cases referred to the Ministry during May 2016 to October 2016. Of these 297 cases involve undercharge of ₹ 3,122.20 crore and 23 cases involve overcharge³⁰ of ₹ 176.73 crore. These cases of incorrect assessment point towards weaknesses in the internal controls in the assessment process being exercised by the Income Tax Department.

3.1.2 The categories of mistakes have been broadly classified as follows:

- Quality of assessments
- Administration of tax concessions/ exemptions/ deductions
- Income escaping assessments due to omissions
- Others – Overcharge of tax/ Interest etc.

Table 2.6 (Para 2.3.4) shows the details of broad categories of mistakes and their tax effect (refer *Appendix 2.3*).

3.1.3 The Ministry has conveyed its acceptance in 184 cases involving tax effect of ₹ 1,345.80 crore. The Ministry has not accepted 11 cases involving tax effect of ₹ 167.24 crore. In the remaining 125 cases, the Department (ITD) has accepted 23 cases involving tax effect of ₹ 251.02 crore while not accepting 23 cases involving tax effect of ₹ 488.50 crore. Out of 320 cases, ITD has effected recovery of ₹ 3.99 crore in one case, completed remedial action in 252 cases involving tax effect of ₹ 2,426.96 crore and initiated remedial action in 25 cases involving tax effect of ₹ 191.95 crore.

3.2 Quality of assessments

3.2.1 AOs committed errors in the assessments despite clear provisions in the Act. These cases of incorrect assessments point out weaknesses in the internal controls on the part of ITD which need to be addressed. Table 3.1 shows the sub-categories of mistakes which impacted the quality of assessments.

³⁰ Overcharge is on account of mistakes in adoption of correct figures, arithmetical errors in computation of income, incorrect application of rates of tax/interest etc.

Table 3.1: Sub-categories of mistakes under Quality of assessments				(₹ in crore)
Sub-categories	Cases	Tax effect	States	
a. Arithmetical errors in computation of income and tax	45	922.95	Andhra Pradesh (AP), Bihar, Delhi, Karnataka, Kerala, Madhya Pradesh (MP), Maharashtra, Odisha, Tamil Nadu (TN), and West Bengal (WB).	
b. Application of incorrect rate of tax and surcharge	5	15.73	Gujarat, Maharashtra and Uttar Pradesh (UP)	
c. Mistakes in levy of interest	39	163.84	AP, Delhi, Gujarat, Haryana, MP, Maharashtra, Odisha, TN, UP and WB.	
d. Excess or irregular refunds/interest on refunds	6	49.46	AP, Karnataka, Kerala and Maharashtra.	
e. Mistakes in assessment while giving effect to appellate order	10	290.96	Delhi, Maharashtra, UP and WB.	
Total	105	1,442.94		

3.2.2 Arithmetical errors in computation of income and tax.

We give below seven such illustrative cases:

Section 143(3) provides that AOs have to determine and assess the income correctly. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments. CBDT has also issued instructions from time to time in this regard.

3.2.2.1 In Maharashtra, Pr. CIT-6 Mumbai charge, AO completed the assessment of **M/s Essar Capital Ltd.** for the AY 2011-12 under section 144 read with section 144C of the Act in March 2015, determining income at ₹ 4,208.31 crore. While computing the taxable income, AO did not add back the amount of ₹ 379.57 crore on account of “discounting charges on debenture” although the claim was disallowed during the assessment. The same was also not added back while passing rectification order under section 154 in September 2015. The mistake resulted in underassessment of income of ₹ 379.57 crore involving short levy of tax of ₹ 126.09 crore. *Ministry has accepted the audit objection and rectified the mistake (May 2016) under section 154³¹.*

3.2.2.2 In Tamil Nadu, CIT-1 Chennai charge, AO completed the scrutiny assessment of **M/s Tamil Nadu State Marketing Corporation Ltd.** for the AY 2012-13 in March 2015 determining income at ₹ 4,199.24 crore. While computing the taxable income, AO did not add back the amount of ₹ 307.53 crore on account of “vend fee paid/payable by the assessee to the Government of Tamil Nadu” although the claim was disallowed during the scrutiny assessment. The mistake resulted in underassessment of income of

31 Mistakes apparent from records in any order passed by the Assessing Officer can be rectified under section 154 of the Income Tax Act.

₹ 307.53 crore involving short levy of tax of ₹ 99.78 crore. *Ministry has accepted the audit objection and rectified the mistake (May 2015) under section 154.*

3.2.2.3 In Odisha, CIT Bhubaneswar charge, AO completed the scrutiny assessment of **M/s Paradeep Phosphate Ltd.** for the AY 2011-12 in March 2015 determining income at ₹ 2,706.47 crore. While computing taxable income, the AO erroneously adopted returned income at ₹ 24.08 crore instead of correct amount of ₹ 240.77 crore and levied surcharge at the rate of 10 *per cent* instead of admissible rate of 7.5 *per cent*. Further, the assessed income was wrongly computed at ₹ 2,706.47 crore³² instead of ₹ 2,944.83 crore. The mistakes resulted in underassessment of income of ₹ 238.36 crore involving short levy of tax of ₹ 86.24 crore. *Ministry has accepted the audit objection and rectified the mistake (January 2016) under section 154.*

3.2.2.4 In Maharashtra, CIT-14 Mumbai charge, AO completed the scrutiny assessment of **M/s 9X Media Private Ltd.** for the AY 2009-10 in December 2011 determining total loss at ₹ 83.39 crore which was subsequently revised to ₹ 89.43 crore in March 2015. While computing taxable income in the revised assessment, the AO erroneously adopted starting figure at loss of ₹ 266.34 crore as per return of income instead of correct amount of loss of ₹ 83.39 crore arrived at after scrutiny assessment. The mistake resulted in over-assessment of loss of ₹ 182.94 crore involving potential short levy of tax of ₹ 62.18 crore. *Ministry has accepted the audit objection and rectified the mistake (April 2016) under section 154.*

3.2.2.5 In West Bengal, Pr. CIT-2 Kolkata charge, AO completed the scrutiny assessment of **M/s Spoxy Investment Consultants Private Ltd.** for AY 2012-13 in March 2015 determining income of ₹ 10.04 crore. While finalizing the assessment, the AO added back the amount of share premium of ₹ 9.99 crore to income instead of actual amount of share premium of ₹ 99.86 crore as unexplained investment under section 68. The mistake resulted in underassessment of income of ₹ 89.87 crore involving tax effect of ₹ 39.66 crore including interest. *Ministry has accepted the audit objection and rectified the mistake (May 2015) under section 154.*

3.2.2.6 In Delhi, CIT (Central)-1 Delhi charge, AO completed the scrutiny assessment of **M/s Sahara India Commercial Corporation Ltd.** for AY 2011-12 in November 2014 determining income of ₹ 4,920.93 crore and tax of ₹ 1,634.61 crore thereon. While finalizing the assessment, the AO considered the total amount of all the disallowances as ₹ 5,312.72 crore instead of

32 Income of ₹ 2,706.47 crore included disallowances of ₹ 2,701.99 crore and ₹ 2.06 crore.

correct amount of ₹ 5,355.54 crore. The mistake resulted in underassessment of income of ₹ 42.82 crore involving short levy of tax of ₹ 20.48 crore. *ITD rectified the mistake (December 2015) under section 154.*

3.2.2.7 In Maharashtra, Pr. CIT-14 Mumbai charge, AO completed the scrutiny assessment of **M/s East Hyderabad Expressway Ltd.** for AY 2012-13 in March 2015 determining a loss of ₹ 61.02 crore. While finalizing the assessment, the AO erroneously computed loss as ₹ 61.02 crore instead of correct amount of loss of ₹ 19.92 crore after considering various disallowances as per assessment order. The mistake resulted in overassessment of loss of ₹ 41.10 crore involving potential tax effect of ₹ 13.33 crore. *Ministry has accepted the audit objection and rectified the mistake (February 2016) under section 154.*

3.2.3 Application of incorrect rates of tax and surcharge

We give below three such illustrative cases:

Section 143(3) provides that AOs have to determine and assess the income correctly. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments. CBDT has also issued instructions from time to time in this regard.

3.2.3.1 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed the scrutiny assessment of **M/s LIC Housing Finance Ltd.** for the AY 2009-10 in December 2011 determining income of ₹ 592.67 crore including short term capital gains of ₹ 53.86 crore. While computing tax liability, AO erroneously computed tax of ₹ 9.15 crore on short term capital gains on account of liquid funds, money market funds, cash management funds etc. on which securities transaction tax was not payable on redemption, at the rate of 15 *per cent* instead of 30 *per cent*. The mistake resulted in short levy of tax of ₹ 9.15 crore. *Reply from ITD was awaited (November 2016).*

3.2.3.2 In Maharashtra, Pr. CIT-5 Mumbai charge, AO completed the reassessment of **M/s Kalsaria Diamonds Pvt. Ltd.** for AY 2008-09 in March 2015 determining income of ₹ 140.03 crore. While computing tax liability, AO erroneously levied surcharge at one *per cent* instead of correct rate of surcharge of 10 *per cent*. The mistake resulted in short levy of tax of ₹ 3.89 crore. *Ministry has accepted the audit objection and rectified the mistake (May 2015) under section 154.*

3.2.3.3 In Gujarat, Pr. CIT-2 Ahmedabad charge, AO completed the scrutiny assessment of **M/s Ganeshsagar Infrastructure Private Ltd.** for AY 2012-13 in December 2014 determining income of ₹ 69.57 crore including long term capital gain (LTCG) of ₹ 69.55 crore and book profit of ₹ 69.70 crore under

special provisions of the Act. While computing tax liability in ITNS-150, AO charged the tax at the rate of 18.5 per cent on book profit of ₹ 69.70 crore instead of normal rate of 30 per cent on income of ₹ 1.60 lakh and 20 per cent on LTCG of ₹ 69.55 crore. The omission resulted in short levy of tax of ₹ 1.24 crore including interest. *Ministry has accepted the audit objection and rectified the mistake (September 2015) under section 154.*

3.2.4 Mistakes in levy of interest

We give below five such illustrative cases:

Act provides for levy of interest for different omissions on the part of the assessee at the rates prescribed by the Government from time to time. Section 234A provides for levy of interest on account of default in furnishing return of income at specified rates and for specified time period. Section 234B provides for levy of interest on account of default in payment of advance tax at specified rates and for specified time period.

3.2.4.1 In Uttar Pradesh, Pr. CIT-Noida charge, AO completed the scrutiny assessment of **M/s New Okhla Industrial Development Authority** for AYs 2010-11 to 2012-13 in February 2015. While computing tax liability, the AO levied interest of ₹ 31.61 crore, ₹ 30.11 crore and ₹ 5.22 crore under section 234A for default in furnishing return of income instead of correct amount of ₹ 39.14 crore, ₹ 40.64 crore and ₹ 8.12 crore for three years respectively. Further, AO levied interest of ₹ 35.38 crore, ₹ 35.13 crore and ₹ 6.67 crore under section 234B for default in payment of advance tax instead of correct amount of ₹ 44.41 crore, ₹ 47.75 crore and ₹ 10.16 crore for these AYs respectively. The mistake resulted in short levy of interest aggregating ₹ 46.09 crore (₹ 20.96 crore³³ under section 234A and ₹ 25.14 crore³⁴ under section 234B). *Ministry has accepted the audit objection and rectified the mistakes (November 2015) under section 154.*

3.2.4.2 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed the scrutiny assessment of **M/s Bharat Petroleum Corporation Ltd.** for AY 2009-10 in December 2011 determining income at ₹ 1,644.79 crore. Subsequently the case was reassessed under section 143(3)³⁵ read with section 147³⁶ read with section 250 of Income Tax Act in March 2014 revising income to ₹ 1,574.71 crore after relief given by CIT(Appeals) vide order passed in April 2013. As per computation of income enclosed with the return, the assessee claimed TDS of ₹ 35.67 crore and self assessment tax of ₹ 460.43 crore and ₹ 49.03 crore paid on 29.05.2009 and 25.09.2009 respectively against the tax payable. Audit examination of Form ITNS 150A revealed that the department

33 ₹ 20.96 crore = (₹ 39.14 crore + ₹ 40.64 crore + ₹ 8.12 crore) – (₹ 31.61 crore + ₹ 30.11 crore + ₹ 5.22 crore)

34 ₹ 25.14 crore = (₹ 44.41 crore + ₹ 47.75 crore + ₹ 10.16 crore) – (₹ 35.38 crore + ₹ 35.13 crore + ₹ 6.67 crore)

35 Section 143(3) refers to scrutiny assessment completed by an AO.

36 The provisions of section 147 of the Income Tax Act empower the Assessing Officer to reopen an assessment if he has "reasons to believe" that income has escaped assessment.

wrongly considered the self assessment tax aggregating ₹ 509.47 crore shown as paid by the assessee as advance tax. The mistake resulted in non levy of interest of ₹ 20.20 crore under section 234B and withdrawal of interest of ₹ 2.63 crore under section 244A(1)(b). *ITD accepted the audit observation (September 2014) and stated that remedial action would be taken in due course.*

3.2.4.3 In Delhi, CIT (International Taxation)-2 charge, AO completed the assessment of **M/s Nokia Corporation** for AY 2010-11 under section 144C read with section 143(3) in January 2015 determining income of ₹ 5,149.35 crore and tax of ₹ 689.83 crore thereon. The assessee filed the Corporation Tax Return on 18 August 2011 against the due date of filing on 30 September 2010 (extended upto 15 October 2010). While computing tax demand, interest for the delay in furnishing return of income was levied for ten months only as against 11 months. The mistake resulted in short levy of interest of ₹ 6.9 crore. *Ministry has accepted the audit objection and rectified the mistake (February 2016) under section 154.*

3.2.4.4 In Tamil Nadu, CIT-1 Chennai charge, AO completed the scrutiny assessment of **M/s Cholamandalam Investment and Finance Ltd.** for AY 2012-13 in March 2015 determining income of ₹ 175.72 crore and gross tax of ₹ 57.01 crore excluding interest. While computing tax liability, the net tax payable was arrived at ₹ 17.37 crore excluding interest after adjusting the tax deducted at source and advance tax paid by the assessee. However, interest under section 234B(1) for 36 months amounting to ₹ 6.25 crore from April 2012 to March 2015 was not levied. *Ministry has accepted the audit objection and rectified the mistake (May 2015) under section 154.*

3.2.4.5 In Madhya Pradesh, CIT (Central)-Bhopal charge, the assessment of **M/s Ajitnath Reality Pvt. Ltd., Indore** for AYs 2009-10 to 2012-13 was completed under section 153A read with section 143(3) in March 2015 at incomes of ₹ 42.97 crore, ₹ 89.10 crore, ₹ 16.70 crore and ₹ 13.47 crore respectively. The assessee filed its return of income on 27 March 2014 for AYs 2009-10 to 2012-13 in response to notice issued under section 153A to file the return of income by 30 June 2013 for all these AYs. While computing tax liability, no interest was levied for delayed filing of return of income under section 234A(3) although there was a delay of 9 months³⁷ in furnishing the return. The mistake resulted in non levy of interest of ₹ 4.78 crore. *Ministry has accepted the audit objection and rectified the mistake (January 2016) under section 154.*

³⁷ July 2013 to March 2014

3.2.5 Excess or irregular refunds/interest on refunds

We give below two such illustrative cases:

Section 143(3) provides that AOs have to make correct assessment of the total income after making additions and allowing deductions as per the provisions of the Act and determine exact sum payable or refundable, as the case may be.

3.2.5.1 In Kerala, CIT-Thrissur charge, AO completed the assessment of **M/s The South Indian Bank Ltd.** for AY 2004-05 after scrutiny in December 2005 which was subsequently modified several times. The last revision was completed in March 2013 determining income at ₹ 140.15 crore and refund of ₹ 39.05 crore authorized after adjusting demands and refunds at various stages. While computing refund of ₹ 39.05 crore, a credit of ₹ 33.43 crore was given by adjusting a refund relating to AY 2010-11 in December 2010. As the entire refund of ₹ 48.49 crore due to the assessee for AY 2010-11 in December 2010 had been adjusted against the demands for AYs 2003-04 and 2008-09, the credit of ₹ 33.43 crore was not admissible. The mistake resulted in determination of excess refund of ₹ 37.94 crore. *ITD did not accept the observation (June 2015) stating that while passing order dated 9 August 2011 and 11 March 2013, credit was rightly taken as per AST system. However, ITD took remedial action under section 254 read with section 143(3) in March 2015. Reply was not tenable as the order dated 9 August 2011 for AY 2004-05 specified ₹ 33.43 crore credit as refund adjustment from AY 2010-11 whereas no credit was available as per challan details register for the year 2004-05. In AY 2010-11, a refund of ₹ 48.49 crore was authorised by refund adjustment to AY 2003-04 and 2008-09 as per ledger details for the year 2010-11.*

Section 220(2) provides that, if the amount specified as payable in any notice of demand under section 156 is not paid within a period of 30 days of the service of notice, the assessee shall be liable to pay simple interest as per prescribed rates and for the period specified in the Act.

3.2.5.2 In Andhra Pradesh and Telangana, CIT-5 Hyderabad charge, AO completed the assessment of **M/s Viom Networks Ltd.** for AY 2009-10 after scrutiny in December 2011 determining loss of ₹ 55.64 crore. Since a refund order for ₹ 60.21 crore was already issued in March 2011, no refund was arrived at in the Assessment order of December 2011. The net amount of ₹ 25.23 crore³⁸ was refunded to the assessee in March 2011 after adjusting the outstanding demands of ₹ 34.98 crore for the AYs 2006-07 and 2008-09. However, while issuing refund, the interest leviable under section 220(2) on outstanding demand for AYs 2006-07 and 2008-09 was not levied. The omission resulted in excess refund of ₹ 1.18 crore to the assessee. *Ministry has accepted the audit objection and took remedial action (October 2015) under section 220(2).*

³⁸ ₹ 25.23 crore = (₹ 60.21 crore – ₹ 34.98 crore)

3.2.6 Mistakes in assessment while giving effect to appellate orders

We give below five such illustrative cases:

Under section 254, an aggrieved assessee can appeal to the CIT (Appeals) against the order of AO who shall comply with the directions given in the appellate order. Further appeal is also permitted to be made on questions of fact and law to ITAT. Any mistake in implementation of an appellate order results in under assessment/over assessment of income.

3.2.6.1 In Delhi CIT-2 charge, AO completed the scrutiny assessment of **M/s BSES Rajdhani Power Ltd.** for AY 2010-11 in October 2013 determining income of ₹ 838.38 crore after setting off of brought forward business losses and unabsorbed depreciation of ₹ 796.57 crore. The assessed income was further rectified to ₹ 816.59 crore in January 2014. While giving effect to appeal order under section 250 (July 2014), the assessment was completed at a loss of ₹ 564.52 crore after allowing relief of ₹ 1,402.90 crore. As the assessed income was computed after allowing set off of brought forward losses of ₹ 796.57 crore, the income in the current year was required to be assessed at 'nil' after setting of brought forward losses to the extent of available income. The mistake resulted in over assessment of loss of ₹ 564.52 crore involving potential tax effect of ₹ 191.88 crore. *ITD rectified the mistake (May 2016) under section 154.*

3.2.6.2 In Uttar Pradesh, CIT-Noida charge, AO completed the scrutiny assessment of **M/s L. G. Electronics India Pvt. Ltd.,** for AY 2008-09 in November 2012 at an income of ₹ 654.97 crore. Subsequently, the assessment was rectified in January 2013 at income of ₹ 740.72 crore and was re-assessed under section 263 in March 2015 at income of ₹ 704.35 crore. While giving effect to the appellate order passed under section 263 read with section 143(3) in March 2015, the AO erroneously adopted the income of ₹ 654.97 crore assessed under section 143(3)/144C in November 2012 instead of ₹ 740.72 crore revised under section 154 in January 2013. The omission resulted in underassessment of income of ₹ 85.75 crore³⁹ involving tax effect of ₹ 45.47 crore including interest. *ITD accepted the audit observation and rectified the mistake (June 2015) under section 154 read with sections 263 and 143(3).*

3.2.6.3 In Delhi, CIT-2 Charge, AO completed the scrutiny assessment of **M/s BSES Yamuna Power Ltd.** for AY 2010-11 in October 2013 determining income of ₹ 687.27 crore after setting off of brought forward business loss and unabsorbed depreciation of ₹ 86.21 crore. The assessed income was revised to ₹ 674.87 crore after rectification under section 154 (January 2014).

³⁹ ₹ 85.75 crore = ₹ 740.72 crore – ₹ 654.97 crore

While giving effect to appeal order under section 250 (July 2014), the assessment was completed at a loss of ₹ 53.65 crore after allowing relief of ₹ 740.92 crore. As the assessed income was computed after allowing set off of brought forward losses of ₹ 86.21 crore, the income in the current year was required to be assessed at 'nil' after allowing set off of brought forward losses to the extent of available income. The mistake resulted in over assessment of loss of ₹ 53.65 crore involving potential tax effect of ₹ 18.24 crore. *ITD rectified the mistake (May 2016) under section 154 of the Act.*

3.2.6.4 In Maharashtra, Pr. CIT (Central)-3, Mumbai charge, AO completed the scrutiny assessment of **M/s Gannon Dunkerely & Co. Ltd.** for AY 2010-11 in March 2013 determining income of ₹ 160.84 crore. The income was revised to ₹ 149.18 crore while giving effect to the order of CIT(Appeals) in March 2015. While computing tax liability, surcharge at the rate of 10 *per cent* of the tax demand was not levied. The omission resulted in short levy of tax of ₹ 4.61 crore. *ITD rectified (January 2016) the mistake under section 154 of the Act.*

3.2.6.5 In West Bengal, Pr. CIT-2, Kolkata charge, AO completed the scrutiny assessment of **M/s Ginza Industries Ltd.** for AY 2011-12 in March 2014 determining income of ₹ 5.15 crore after setting off of brought forward losses of ₹ 5.26 crore. As per assessment order giving effect to appeal orders for the assessment years 2009-10 and 2010-11, business loss of ₹ 77.32 lakh only was available for set off. The mistake resulted in excess set off of losses of ₹ 4.48 crore involving tax effect of ₹ 1.49 crore. *ITD rectified (August 2014) the mistake under section 154 of the Act.*

3.3 Administration of tax concessions/exemptions/deductions

3.3.1 The Act allows concessions/exemptions/deductions to the assessee in computing total income under Chapter VI-A and for certain categories of expenditure under its relevant provisions. We observed that the assessing officers have irregularly extended benefits of tax concessions/exemptions/deductions to beneficiaries that were not entitled to the same. These irregularities point out weakness in the administration of tax concessions/deductions/exemptions on the part of ITD which need to be addressed. Table 3.2 shows the sub-categories which have impacted the Administration of tax concessions/exemptions/deductions.

Table 3.2: Sub-categories of mistakes under Administration of tax concessions/exemptions/deductions			(₹ in crore)
Sub-categories	Nos.	TE	States
a. Irregularities in allowing depreciation/ business losses/ capital losses	71	590.75	AP, Bihar, Delhi, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan, TN and WB.
b. Irregular exemptions/ Deductions/ Rebates/ Relief/ MAT Credit	27	328.98	Delhi, Karnataka, Kerala, Maharashtra, TN, UP and WB.
c. Incorrect allowance of business expenditure	47	514.09	AP, Assam, Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Odisha, Punjab, TN and WB.
Total	145	1,433.82	

3.3.2 Irregularities in allowing depreciation and set off and carry forward of business/capital losses

We give below 10 such illustrative cases:

CBDT has clarified⁴⁰ that the cost of construction on development of infrastructure facility of roads/highways under Build-Operate-Transfer (BOT) projects may be amortized and claimed as allowable business expenditure under the Income Tax Act. Further, while deciding the issue of claim of depreciation on toll road, ITAT Mumbai held⁴¹ that provision of section 32(1) will not apply in the case of assessee holding leasehold rights in respect of land on which construction had been carried out. The Bombay High Court upheld the decision of the Tribunal (ITA No. 499 of 2012) in its judgement pronounced on 14 October 2014.

3.3.2.1 In Maharashtra, Pr. CIT-8 Mumbai charge, AO completed the assessments of **M/s Western MP Infrastructure & Toll Roads Private Ltd.** for AYs 2010-11 to 2012-13 after scrutiny in December 2012, February 2014 and March 2015 determining loss of ₹ 48.96 crore, ₹ 79.59 crore and ₹ 191.66 crore respectively. The assessee was awarded a project by MPRDC⁴² on 30 August 2007 for construction, development and maintenance of State Highway No. 31 on BOT⁴³ basis for 25 years (concession rights). Phase-I and Phase-II of the project were completed in November 2009 and June 2011 respectively and the cost of ₹ 372.39 crore and ₹ 528.59 crore incurred thereon was capitalized as 'concession rights' under the block of intangible assets. The assessee claimed and was allowed depreciation of ₹ 193.24 crore⁴⁴ at the rate of 25 per cent on written down value of aforesaid intangible assets as on 1 April 2011 which was not in order in view of judicial decisions cited above. Instead, the construction cost should have been

40 CBDT Circular No. 09 dated 23/04/2014

41 M/s North Karnataka Expressway Ltd. vs. CIT (ITA No.3978/Mum/2010)

42 Madhya Pradesh Road Development Corporation

43 Build-Operate-Transfer

44 ₹ 193.24 crore = ₹ 61.09 crore (Phase I) + ₹ 132.15 crore (Phase II)

amortised over the agreement period of 25 years, which worked out to ₹ 36.04 crore⁴⁵ as against depreciation of ₹ 193.24 crore allowed. The incorrect allowance of depreciation resulted in underassessment of income of ₹ 157.20 crore involving short levy of tax of ₹ 83.87 crore. *ITD did not accept the observation (July 2015) for AY 2012-13 stating that CBDT circular No. 09 of 23 April 2014 was effective from AY 2014-15 onwards.* The reply is not tenable as assessment order was passed subsequent to High Court judgement delivered on 14 October 2014, cognizance of which was mandatory.

3.3.2.2 In Maharashtra, Pr. CIT(Central)-4 Mumbai charge, AO completed the scrutiny assessment of **M/s Mumbai Nasik Expressway Ltd.** for AY 2012-13 in March 2015 determining loss at ₹ 153.88 crore under the normal provisions of the Act and book profit of ₹ 7.57 crore under the special provisions. The assessee was awarded NHAI project on NH-3 on BOT basis. The assessee had capitalized the cost of the project in its books of accounts and written it off over the period of the BOT contract of 19 years from the completion of the construction of the same. While computing the taxable income, the assessee had claimed and was allowed depreciation of ₹ 182.79 crore, at the rate of 25 per cent applicable to an intangible asset, instead of allowable expenditure of ₹ 38.48 crore⁴⁶ based on amortization of the expenditure for a period of 19 years in view of the judgement referred above. The mistake resulted in over assessment of loss of ₹ 144.31 crore involving potential short levy of tax of ₹ 46.82 crore. *ITD did not accept the observation (August 2016) stating that the AO finalised the assessment for the AY 2013-14 after disallowing the claim of depreciation of ₹ 139.67 crore for the current year and, after taking into consideration the depreciation allowed in earlier years and amortised the balance expenditure of ₹ 555.49 crore over the remaining concessional period of 15 years allowing an amount of ₹ 32.28 crore. Therefore no further action was required for AY 2012-13.* The reply was not tenable in view of judicial decision⁴⁷ on the issue of depreciation on toll road wherein it was held that provision of section 32(1) will not be applicable in the case of assessee holding lease rights in respect of land on which construction had been carried out. Further, the Department rectified the assessment of AY 2013-14 instead of rectifying the assessment for AY 2012-13 to which audit observation pertained.

45 ₹ 36.04 crore = ₹ 14.90 crore (Phase I) + ₹ 21.14 crore (Phase II)

46 (Opening WDV of ₹ 415.29 crore + Project cost of ₹ 334.40 crore - Capital grant received of ₹ 18.52 crore)/19 years contract period

47 M/s North Karnataka Expressway Ltd. (ITA No. 499 of 2012 – Bombay High Court judgement- 14 October 2014)

Section 35ABB of the Act provides that deduction shall be allowed for each of the relevant previous years, in respect of any capital expenditure incurred for acquiring any right to operate telecommunication services and for which payment has actually been made to obtain a licence. The amount of deduction shall be equal to the appropriate fraction of the amount of such expenditure.

3.3.2.3 In Maharashtra, Pr. CIT-8 Mumbai charge, AO completed the scrutiny assessment of **M/s Tata Teleservices (Maharashtra) Ltd.** for AY 2012-13 in March 2015 determining loss of ₹ 668.47 crore. The assessee had paid one time licence fee of ₹ 1,257.82 crore to the Government to obtain 3G spectrum for provisioning of telecom access services during the previous year. In the books of accounts, the assessee amortised the expense of ₹ 1,257.82 crore along with borrowing costs over the period of 19.25 years. However, for income tax purpose, the assessee claimed and was allowed depreciation of ₹ 249.35 crore under section 32 admissible to intangible assets which was not in order and should have been disallowed. The amortization allowable for the relevant previous year worked out to ₹ 68.71 crore as against the depreciation of ₹ 249.35 crore allowed on the aforesaid fee. The omission resulted in under assessment of income of ₹ 180.64 crore involving short levy of tax of ₹ 58.61 crore.

ITD did not accept the observation (August 2015) stating that the fee was paid for purchase of 3G Spectrum on winning the bids for Maharashtra Circle (including Goa and excluding Mumbai) and not to acquire any new license as possession. The reply was not tenable as the assessee would not have been able to provide 3G services had their license not been modified by the Department of Telecommunication (DOT), in September 2010 consequent upon their winning the bids. Thus the DoT's license modification letter of September 2010 was as good as a license for 3G services. Further the Company had paid one time fee of ₹ 1,257.82 crore for use of 3G spectrum over the period of 19.25 years. Hence, it should have been treated as capital expenditure incurred for acquiring right to operate telecommunication services as per the provisions of section 35ABB of the Income Tax Act, 1961. As the Act has a specific provision for treatment of expenditure on telecommunication services, depreciation claimed by the assessee should have been disallowed. Further, as per Notes to accounts⁴⁸ the bid price paid towards related license fees aggregating to ₹ 1,257.82 crore was capitalized as License fee under Fixed Assets and the same should have been amortised over the period of contract.

48 Note 24.12 forming part of Financial Statements

As per section 71(3) of the Income Tax Act, if the net result of computation under the head capital gains is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set off against income under the other head.

3.3.2.4 In Delhi, Pr. CIT-5 charge, AO completed the scrutiny assessment of **M/s Powerlinks Transmission Ltd.** for AY 2010-11 in December 2012 at 'nil' income after setting off brought forward unabsorbed depreciation of ₹ 86.91 crore relating to AY 2007-08 and allowing of balance of ₹ 63.15 crore relating to AY 2007-08 and ₹ 45.18 crore relating to AY 2008-09.. As per the assessment records pertaining to AYs 2007-08 and 2008-09, unabsorbed depreciation of ₹ 55.26 crore pertaining to AY 2007-08 only was available for carry forward and no amount was available for carried forward in AY 2008-09. These mistakes resulted in incorrect carry forward of loss of ₹ 53.07 crore⁴⁹ involving potential tax effect of ₹ 18.04 crore. *ITD rectified the mistake (February 2016) under section 154.*

3.3.2.5 In Maharashtra, Pr. CIT-16 Mumbai charge, AO completed the scrutiny assessment of **M/s 9X Media Pvt. Ltd.** for AY 2010-11 in March 2013 determining income of ₹ 50.17 crore and rectified it in August 2013 after allowing set off of losses of ₹ 45.72 crore to the extent of income available. The losses set off included brought forward loss of ₹ 83.39 crore pertaining to AY 2009-10. Further, the assessment case of the assessee for AY 2009-10 was re-opened under section 147 in March 2015 determining income of ₹ 89.43 crore. Thus, 'nil' loss pertaining to AY 2009-10 was available for carry forward and set off in AY 2010-11. The incorrect set off of losses of ₹ 45.72 crore resulted in underassessment of income to the same extent involving short levy of tax of ₹ 15.54 crore. *ITD accepted the observation and initiated remedial action for rectification (April 2016) under section 154.*

Section 143(3) provides that AOs have to determine and assess the income correctly including set off of brought forward losses of earlier years and determine the tax payable or refundable, as the case may be. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments. CBDT has also issued instructions from time to time in this regard.

3.3.2.6 In Karnataka, CIT-3 Bangalore charge, AO completed the scrutiny assessment of **M/s The Mysore Paper Mills Pvt. Ltd.** for AY 2011-12 in January 2014 determining loss at ₹ 105.70 crore after making addition of ₹ 17.79 crore to the returned loss of ₹ 87.90 crore. While completing the assessment, the current year loss was incorrectly determined at ₹ 105.70 crore instead of ₹ 70.10 crore. The mistake resulted in excess computation of loss by ₹ 35.59 crore which was allowed to be carried

⁴⁹ ₹ 53.07 crore = (₹ 63.15 crore + ₹ 45.18) – ₹ 55.26 crore

forward having a potential tax effect of ₹ 11.82 crore. *Ministry has accepted the audit objection and rectified the mistake (March 2016) under section 154.*

3.3.2.7 In Tamil Nadu, CIT-LTU Chennai charge, AO completed the scrutiny assessment of **M/s Axles India Ltd.** for AY 2010-11 in February 2014 after scrutiny read with section 92CA determining 'nil' income, after set off of brought forward loss of ₹ 59.05 lakh under the normal provisions and book profit of ₹ 55.60 lakh under special provisions of the Act. While completing the assessment, AO allowed carry forward of business loss of ₹ 13.35 crore and unabsorbed depreciation loss of ₹ 10.14 crore relating to AY 2010-11. As per the records no amount of loss relating to AY 2010-11 was available for carry forward and set off. The mistake resulted in excess carry forward of loss of ₹ 23.50 crore⁵⁰ involving potential tax effect of ₹ 7.99 crore. *ITD rectified (April 2015) the mistake under section 154.*

3.3.2.8 In Tamil Nadu, CIT-1 Chennai charge, AO completed the scrutiny assessment of **M/s Ambattur Clothing Ltd.** for AY 2011-12 in March 2015 determining loss of ₹ 4.26 crore. The assessee claimed and was allowed amount of ₹ 6.92 crore towards share of loss from partnership firm under the head "selling, administration and other expenses" in the profit and loss account. As the loss from partnership firm is not an expenditure of the assessee, the deduction on account of the same was required to be disallowed. The incorrect allowance resulted in excess computation of loss of ₹ 13.84 crore with consequential excess carry forward of loss to the same extent and potential tax effect of ₹ 4.60 crore. *Ministry has accepted the audit objection and rectified the mistake (October 2015) under section 154.*

3.3.2.9 In Maharashtra, Pr. CIT-7 Mumbai charge, AO completed the scrutiny assessment of **M/s Tata Teleservices (Maharashtra) Ltd.** for AY 2009-10 in December 2011 determining income of ₹ 11.48 crore. The assessment was rectified in February 2012 reassessing the income at 'nil' after set off of brought forward unabsorbed depreciation of ₹ 11.48 crore. The assessment was further rectified on 20 March 2013 revising income to ₹ 20.16 crore which was adjusted against the brought forward losses. The assessment was again re-opened and reassessment was completed on 25 March 2013 assessing loss at ₹ 20.46 crore. While computing taxable income in the reassessment order (March 2013), the AO considered income at 'nil' as per rectification order passed on 20 March 2013 instead of ₹ 11.48 crore arrived at in the initial assessment order passed in December 2011, before set off of brought forward losses. The mistake resulted in excess allowance of loss of ₹ 11.48 crore involving potential tax effect of ₹ 3.90 crore. *Ministry has*

⁵⁰ ₹ 23.50 crore = (₹ 13.35 crore + ₹ 10.14 crore)

accepted the audit objection and rectified the mistake (March 2016) under section 154.

Section 70 provides that if the net result for any assessment year in respect of any source under any head of income is a loss, the assessee is entitled to have the amount of such loss set off against the income from any other source under the same head of income with the exception that from the assessment year 2003-04, long term capital loss can be set off only against long term capital gain.

3.3.2.10 In Delhi CIT-3 Charge, AO completed the scrutiny assessment of **M/s DLF Utilities Ltd.** for AY 2012-13 in March 2015 determining loss at ₹ 5.17 crore under normal provisions and book profit of ₹ 216.76 crore under special provisions of the Act. The assessee had filed return at 'nil' business income (after setting off brought forward unabsorbed depreciation to the extent of available income of ₹ 71.32 crore) and at long term capital loss of ₹ 9.87 crore which was carried forward. While computing the taxable income, the AO set off the long term capital loss of ₹ 9.87 crore against business income of ₹ 4.70 crore (on account of disallowance made during assessment) and completed the assessment at a loss of ₹ 5.17 crore instead of 'nil' income (after setting off brought forward unabsorbed depreciation of ₹ 4.70 crore to the extent of addition). This mistake resulted in overassessment of loss of ₹ 5.17 crore and underassessment of income of ₹ 4.70 crore involving potential tax effect of ₹ 3.20 crore. *Ministry has accepted the audit objection and rectified (March 2016) the mistake under section 154.*

3.3.3 Irregular exemptions/deductions/rebate/relief/MAT credit

We give below six such illustrative cases:

Section 10A of the Act allows deduction of profits and gains which are derived by an undertaking from the export of articles or things or computer software. As per first proviso to Section 92C(4) of the Act, if the total income having regard to arms length price is enhanced, no deduction under Section 10A, 10B or Chapter VI-A shall be allowed in respect of the increased quantum of income. The CBDT has clarified⁵¹ that section 10A deduction to be allowed after applying the provisions of Section 71/72 of the Act and the circular not being struck down by Courts is binding on the Department so as to keep the issue alive in appeals.

3.3.3.1 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed the scrutiny assessment of **M/s Satyam Computer Services Ltd.** for AY 2010-11 under section 143(3) read with sections 153 and 144C(4) in January 2015 determining loss of ₹ 250.87 crore under normal provisions of the Act after allowing deduction of ₹ 559.47 crore under section 10A of the Act. AO made various disallowances including Transfer Pricing adjustment of ₹ 24.02 crore

⁵¹ Circular No 07 of 2013 dated 16 July 2013

and the income before deduction under section 10A included an amount of Short Term Capital Gain of ₹ 22.08 crore. Allowance of deduction on Short Term Capital Gain and Transfer Pricing adjustment was not in order. Irregular allowance of deduction resulted in underassessment of income of ₹ 46.10 crore and irregular carry forward of loss of ₹ 250.87 crore involving short levy of tax of ₹15.67 crore and potential tax effect of ₹ 85.27 crore. *ITD did not accept the observation (October 2015) stating that section 10A was anterior to the application of the provisions of section 72 of the Act.* The reply not acceptable as the circular number 07 of 2013 issued by CBDT prescribing allowance of 10A deduction after aggregation of losses was binding on the Assessing Officers.

Section 115JAA of the Income Tax Act allows carry forward of MAT credit to an assessee when tax payable under normal provisions is more than tax under special provisions. However, such credit shall be limited to the difference of tax under normal provisions of the Act and tax under special provisions of the Act.

3.3.3.2 In Maharashtra, Pr. CIT-2 Mumbai charge, the return of income of **M/s State Bank of India** for AY 2012-13 was processed in summary manner in March 2014 determining refund of ₹ 6,335.59 crore. Further, rectification order under section 154 was passed in March 2014 determining refund of ₹ 8,471.56 crore. AO allowed MAT credit of ₹ 53.32 crore pertaining to AY 2011-12 which was not available at all as the assessment for AY 2011-12 was completed after scrutiny under normal provisions in March 2013 followed by rectification order passed under section 154 in May 2014. This mistake resulted in irregular grant of MAT credit of ₹ 53.32 crore. *ITD accepted (March 2015) the audit observation and completed remedial action (February 2015) under section 143(3) read with section 144C(13) withdrawing the MAT credit.*

Section 143(3) provides that AOs have to determine and assess the income correctly. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments. Further, as per section 35AD the assessee shall be allowed a deduction in respect of expenditure of capital nature incurred on specified business carried on by him in which such expenditure is incurred by him subject to fulfilment of conditions prescribed in the Act.

3.3.3.3 In Delhi Pr.CIT-2 charge, AO completed the assessment of **M/s Boutique Hotels India Pvt. Ltd.** for AY 2011-12 under section 143(3) read with section 144C in February 2015 determining loss of ₹ 125.86 crore after allowing a deduction of ₹ 124.34 crore under section 35AD. The assessee had withdrawn (January 2014) its claim of deduction of ₹ 124.34 crore under

section 35AD as the required conditions⁵² were not fulfilled. While computing the taxable income, the AO did not disallow deduction of ₹ 124.34 crore despite of the self-withdrawal of the claim. The mistake resulted in over assessment of loss by ₹ 124.34 crore involving potential tax effect of ₹ 41.30 crore. *ITD rectified the mistake (February 2016) under section 154.*

Section 115JAA of the Income Tax Act allows carry forward of MAT credit to an assessee when tax payable under normal provisions is more than tax under special provisions. However, such credit shall be limited to the difference of tax under normal provisions of the Act and tax under special provisions of the Act.

3.3.3.4 In Maharashtra, Pr. CIT-8 Mumbai charge, AO completed the scrutiny assessment of **M/s Vodafone India Ltd.** for AY 2010-11 in February 2015 determining income of ₹ 850.70 crore. The assessee was allowed MAT credit of ₹ 29.81 crore whereas verification of earlier years' records disclosed that the assessee had paid tax under normal provisions of the Act and there was no MAT credit available for carry forward and set off in subsequent years. The incorrect allowance of set off of MAT credit ₹ 29.81 crore resulted in short levy of tax of ₹ 29.81 crore. *Reply from ITD was awaited (November 2016).*

CBDT has clarified⁵³ that section 10A deduction is to be allowed after applying the provisions of Section 71 and 72 of the Act. The Bombay High Court has also upheld that section 10A is a deduction section. Further, as per section 92C (4), no deduction under section 10A is allowable on the Transfer Pricing additions made

3.3.3.5 In Maharashtra, Pr. CIT-15 Mumbai charge, the scrutiny assessment of **M/s 3i Infotech Ltd.** for AY 2010-11 was completed in January 2015 determining total loss at ₹ 23.30 crore. While completing the assessment, AO made additions of ₹ 88.03 crore which *inter alia* included addition of ₹ 43.78 crore on account of transfer pricing adjustments. The income of ₹ 59.84 crore, before allowance of deduction under section 10A, included other income of ₹ 2.25 crore and Transfer Pricing addition of ₹ 43.78 crore on which section 10A deduction was not available. While computing the taxable income, the AO allowed deduction of ₹ 85.26 crore under section 10A as against allowable deduction of ₹ 13.81 crore⁵⁴. The mistake resulted in irregular allowance of deduction of ₹ 71.45 crore under section 10A involving potential tax effect of ₹ 24.29 crore. *Reply from ITD was awaited (November 2016).*

52 The assessee had applied for the issuance of star category certificate from Ministry of Tourism, Central Government for its two hotel properties at Jaipur which was not yet received. Thus the assessee withdrew its claim under section 35AD vide letter dated 3 January 2014.

53 CBDT Circular number 07 of 2013 dated 16 July 2013 (para 5).

54 ₹ 13.81 crore = (₹ 59.84 crore - ₹ 2.25 crore - ₹ 43.78 crore).

The Finance Act, 2009; effective from 19 August 2009, imposed a condition that deduction under section 80IB(10) would not be available in cases where more than one units were allotted to an individual or their specified family members. The Explanatory notes to the Finance Act, 2009 while explaining the rationale for extending 80IB to housing projects clarified that the objective of the tax benefit to said projects was to build housing stock for low and middle income households and towards this end, the Government provided for restriction on size of residential units⁵⁵.

3.3.3.6 In Maharashtra, Pr. CIT Central-2 Mumbai charge, the scrutiny assessment of **M/s Runwal Realty Pvt. Ltd.** for AY 2011-12 was completed in March 2014 determining income of ₹ 35.66 crore under normal provisions of the Act after allowing deduction of ₹ 56.14 crore under section 80IB(10). As per the records deduction under section 80IB(10) was allowed to the assessee on the basis of carpet area in respect of each flat and not on the basis of built up area. Further, a submission of the assessee revealed that it had allotted multiple units to an individual or their specified family members in contravention of the above provisions and in one case, the date of booking and date of agreement were both posterior to the effective date of amendment in the Act. The AO allowed deduction on the basis of occupation permission dated 2 November 2010 whereas the Act specifies that there should be a completion certificate issued by Local Authority. As the assessee did not fulfill the mandatory requirements of the Act for availing the deduction of ₹ 56.14 crore under section 80IB(10), the deduction allowed was irregular. Irregular allowance of deduction resulted in underassessment of income of ₹ 56.14 crore involving short levy of tax of ₹ 18.65 crore. *ITD initiated remedial action (June 2016) under section 148 of the Act.*

3.3.4 Incorrect allowance of business expenditure

We give below eleven such illustrative cases:

Section 36(1)(vii) of the Income-tax Act, 1961 (the Act) allows deduction of the amount of any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee during the previous year. The amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause. For the purpose of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee.

3.3.4.1 In Andhra Pradesh & Telangana, CIT-3 Hyderabad charge, AO completed the assessments of **M/s State Bank of Hyderabad** for AYs 2010-11 and 2011-12 after scrutiny in February 2013 and March 2013 determining incomes at ₹ 1,792.35 crore and ₹ 1,551.19 crore respectively. The assessee

⁵⁵ Some of the developers having been circumventing the provisions on size restriction by entering into sale agreements of multiple adjacent units to a single buyer, the amendment was brought in.

had NPA provision of ₹ 345.27 crore and ₹ 662.58 crore for these AYs against which advances of ₹ 88.41 crore and ₹ 170.23 crore were written off in the books of accounts respectively. However, as per computation of income, assessee claimed ₹ 75.03 crore and ₹ 186.75 crore towards non rural branch advances separately, which resulted in double deduction of advances to the extent of ₹ 75.03 crore and ₹ 170.23 crore respectively for the two AYs. Further, the assessee claimed and was allowed the amounts of ₹ one crore and ₹ 2.48 crore towards loss on sale of land, building and other assets for these AYs respectively, which was not in order as the loss was incurred on capital assets. Further, the AO did not levy interest of ₹ 13.08 lakh and ₹ 7.47 lakh under section 115P during AYs 2010-11 and 2011-12 respectively. The omissions resulted in underassessment of income of ₹ 76.03 crore and ₹ 172.71 crore involving short levy of tax aggregating ₹ 118.02 crore including interest for the AYs involved. *ITD took remedial action for the AYs 2010-11 and 2011-12 in February 2014 and January 2015 respectively.*

As per proviso to section 36(1)(vii) of the Act, the amount of deduction allowed in respect of bad debts written off shall be limited to the amount by which such debt exceeds credit balance in the provision for bad and doubtful debt account made under section 36(1)(viii).

3.3.4.2 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed the scrutiny assessment of **M/s ICICI Bank Ltd.** for AY 2011-12 in March 2015 determining income of ₹ 6,738.07 crore. The assessee claimed and was allowed deduction of ₹ 146.62 crore under section 36(1)(vii) which was arrived at after adjusting earlier years provision of ₹ 409.43 crore made towards bad and doubtful debts as per original return of income against bad debts of ₹ 556.05 crore written off during the relevant previous year under section 36(1)(viii). The AO allowed deduction of ₹ 738.02 crore on account of provision for bad debts under section 36(1)(viii) during assessment⁵⁶ for AY 2010-11. As the bad debts written off during the year was less than the opening credit balance of ₹ 738.02 crore allowed under section 36(1)(viii) of the Act, deduction under section 36(1)(vii) of the Act was not allowable to the assessee. The omission resulted in under assessment of income of ₹ 146.62 crore involving short levy of tax of ₹ 48.70 crore.

ITD replied (October 2015) that assessee was in appeal in the preceding assessment year on the additions made and the credit balance in the provision for bad and doubtful debts would change on disposal of the appeal for AY 2010-11. Hence, the provision for bad and doubtful debts was taken at ₹409.43 crore as per the original return of income for AY 2010-11. The reply was not tenable as the scrutiny assessment for AY 2010-11 was completed in March 2014 i.e. one year before the scrutiny assessment for AY 2011-12 was

⁵⁶ Assessment order completed under section 143(3) read with section 144C(3) of the Act, dated 12 March 2014.

completed (March 2015). The scrutiny assessment needs to be completed taking into account all the facts available on record as on the date of assessment. As the appeal order for AY 2010-11 was not passed as on the date of assessment for AY 2011-12, the amount of deduction of ₹ 738.02 crore allowed under section 36(1)(viiia) should have been considered as opening balance available for set off against bad debts claim.

As per proviso (c)(iv) to section 35D(2) of the Act, where an assessee, being an Indian company, after commencement of its business for the extension of its undertaking or for setting up a new unit, incurs expenditure in connection with the issue for public subscription of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus, shall be allowed a deduction of an amount equal to one-fifth such expenditure for each of the five successive previous years.

3.3.4.3 In Maharashtra, Pr. CIT-LTU Mumbai charge, AO completed the scrutiny assessment of **M/s Tata Motors Ltd.** for AY 2010-11 in December 2014 determining book profit of ₹ 3,031.84 crore under section 115JB. The assessee claimed and was allowed expenditure of ₹ 139.62 crore related to issue of non-convertible debentures (NCD); being processing fees, legal and professional charges, underwriting fees, bank guarantee commission etc. As per records⁵⁷, the NCDs were issued to raise funds to expand the automotive business globally to enhance the technical capabilities of the company and for acquiring the Jaguar and Land Rover business. Thus, these expenses were incurred in connection with the extension of the undertaking. As per provisions of section 35D, the assessee was entitled to claim expenditure of ₹ 27.92 crore only (one fifth of ₹ 139.62 crore) instead of entire amount of ₹ 139.62 crore. The incorrect allowance of expenditure resulted in underassessment of income of ₹ 111.70 crore involving potential tax effect of ₹ 37.96 crore.

Ministry did not accept the audit observation (August 2016) stating that the assessee was already in automobile manufacturing business and during the year there was neither extension of any existing undertaking or setting up of any new unit. The Jaguar and Land Rover (JLR) are already businesses which were acquired by the assessee. Further reliance was placed on clarification⁵⁸ issued by CBDT in this regard and judicial rulings⁵⁹ and wherein it was held that expenditure incurred in connection with raising of loan was allowable as business expenditure Therefore expenditure incurred for raising of debts was an allowable expenditure and not covered under provisions of section 35D of the Act. The reply was not acceptable as the assessee has disclosed in Note

57 Note 27 to the computation of income

58 CBDT Circular number 56 dated 19 March 1971

59 Honorable Supreme Court judgement in the case of India Cement Ltd. (60 ITR 52) and Honorable Rajasthan High Court judgement in the case of Secure Meters Ltd. (321 ITR 611)

No. 27 to computation of income that it had raised these funds to expand automotive business globally and to acquire Jaguar and Land Rover business. It is an established fact that the Company acquired Jaguar and Land Rover business during the year. Therefore the expenditure incurred in connection with raising of debts for expansion of business of the undertaking would be governed by provisions of section 35D of the Act. Further, it has been judicially held⁶⁰ that expenditure incurred for extension which includes expansion of undertaking will fall within the ambit of section 35D of the Income Tax Act. In the court's view when the legislature (the Act) makes a special provision for claiming deduction in respect of specified category of expenditure incurred by the assessee in their business activity, then in that event, it excludes the applicability of general provision dealing on the subject.

The deductions allowable under the Income Tax Act, 1961 are specified under sections 30 to 43 of the Act. The expenses which are merely provisions and not incurred wholly and exclusively for the purpose of business are not allowable. CBDT clarified⁶¹ that losses determined on marked to market basis are contingent in nature and hence should not be allowed.

3.3.4.4 In Maharashtra, Pr. CIT-12 Mumbai charge, AO completed the scrutiny assessment of **M/s Deutsche Investment India Pvt. Ltd.** for AY 2010-11 in January 2014 determining income of ₹ 58.57 crore under normal provisions of the Act. As per profit and loss account, the assessee booked loss of ₹ 87.63 crore on account of 'revaluation of non-convertible debenture on marked to market basis' and ₹ 6.31 crore on account of 'revaluation on Index Options net of premium received' under the head 'other Income'. As per the notes to accounts⁶², the expenses were not booked on actual basis but on marked to market basis on the valuation date. Hence, the expenses being contingent in nature were required to be disallowed. The omission resulted in underassessment of income of ₹ 93.94 crore involving short levy of ₹ 31.93 crore. *Ministry has accepted the audit objection and took remedial action (March 2016) under section 263.*

As per section 14A of the Act, no deduction would be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. Further, Rule 8D of the Income Tax Rules, 1962 prescribes the method of computation of the disallowance.

3.3.4.5 In Maharashtra, CIT-9 Mumbai charge, AO completed the scrutiny assessment of **M/s Aditya Birla Retail Ltd.** for AY 2010-11 in March 2013 at loss of ₹ 477.33 crore disallowing of ₹ 23.40 crore under section 14A towards earning of exempt income, suo moto considered by the assessee. While

60 Shree Synthetics Ltd. vs CIT (303 ITR 451), Madhya Pradesh High Court judgement

61 CBDT Instruction number 3 of 2010 dated 23 March 2010

62 Schedule 2.8 and 2.11 of Notes to Accounts

arriving at the figure of disallowance of ₹ 23.40 crore, the assessee had included 'Profit and loss Account - Debit Balance' of ₹ 1,551.65 crore for the year ending 31 March 2010 and ₹ 1,010.50 crore for the year ending 31 March 2009 to determine the value of average asset which was not in order. These represented the contra figures for adjustments and were not backed by any tangible assets. The total disallowance under section 14A would work out to ₹ 89.39 crore as against ₹ 23.40 crore suo moto considered by the assessee. The mistake resulted in short disallowance of ₹ 65.99 crore involving potential tax effect of ₹ 22.43 crore. *Ministry accepted the objection and completed remedial action under section 143(3) read with section 263 of the Act in March 2016.*

As per section 37 of the Act, the expenditure incurred or accrued for business is an allowable expenditure. However, the provision set aside to meet the unascertained liability is not an allowable deduction while computing profits and gains of business. It has been judicially held⁶³ that provision for slow moving inventories is not an allowable deduction.

3.3.4.6 In Maharashtra, Pr. CIT-LTU Mumbai charge, AO completed scrutiny assessments of **M/s Ambuja Cements Ltd.** for AYs 2010-11 and 2011-12 in February 2014 and March 2015 determining income at ₹ 994.53 crore and ₹ 1,426.79 crore respectively. The assessee claimed and was allowed ₹ 52.80 crore and ₹ 9.60 crore on account of provision made for slow moving inventories during these AYs respectively. The provision created for diminution in value of spares of plant and machinery being contingent in nature should have been disallowed. Incorrect allowance resulted in under assessment of income of ₹ 62.40 crore involving tax effect of ₹ 21.14 crore.

Ministry did not accept the audit observation (August 2016) in view of Accounting Standard 1 and judicial decision⁶⁴ holding that it was a well recognised principle of commercial accounting to consider in the profit and loss account the value of stock in trade at the beginning and at the end of accounting year at cost or market price, whichever was lower. It was further held that the correct principle of accounting was to enter the stock in the books of account at cost. Ministry's reply was not acceptable on the grounds that the decision quoted by the Ministry is not relevant as audit has challenged the provision created for diminution in the value of spares of plant and machinery and not the valuation thereof or the anticipated loss due to fall in the market value of the goods below the original cost as discussed by the Ministry. In this case the decision of ITAT Ahmedabad in the case of Molex Mafatlal Micron Ltd. vs ITO Gandhinagar and M/s Zeepelin

63 Molex Mafatlal Micron Ltd. vs ITO Gandhinagar and Zeepelin Mobile System (India) vs ACIT Cir-8 Ahmedabad-ITAT Ahmedabad (7 December 2006)

64 CIT vs British Paints India Ltd. (1991), 188 ITR 44 (SC)

Mobile System (India) Ltd. vs ACIT Circle-8 Ahmedabad are relevant wherein it was held that provision for slow moving inventories is not an allowable deduction. Further, ITD has initiated remedial action (March 2016) for AY 2010-11 under section 263 of the Act.

As per section 43B(f) of the Act, any provision made for leave encashment is allowable only when it is actually paid. It has been judicially held⁶⁵ that the provision made under section 43B(f) is not an allowable deduction and the provision was struck down considering it as arbitrary and unconscionable.

3.3.4.7 In Maharashtra, Pr. CIT-LTU Mumbai charge, AO completed the scrutiny assessments of **M/s Tata Motors Ltd.** for AYs 2007-08 and 2010-11 in May 2011 and December 2014 determining income at ₹ 1,287.74 crore under normal provisions and ₹ 3,031.84 crore under special provisions of the Act respectively. The assessee claimed and was allowed ₹ 30.14 crore and ₹ 29.61 crore on account of 'provision for leave encashment' for AYs 2007-08 and 2010-11 respectively. The amounts were not considered for disallowance under section 43B on the basis of judicial ruling cited above. This resulted in underassessment of income of ₹ 30.14 crore and ₹ 29.61 crore for AYs 2007-08 and 2010-11 respectively involving short levy of tax ₹ 10.15 crore for AY 2007-08 and potential tax effect of ₹ 10.06 crore for AY 2010-11 due to excess carry forward of MAT credit. *ITD has partially accepted the observation (October 2012) for AY 2007-08 and rectified the mistake (January 2015) under section 154.* The assessee filed appeal before the CIT (Appeals) against the order under section 154 (January 2015). *ITD did not accept the observation for AY 2010-11 (June 2015) stating that claims of deduction of leave encashment was based on the judicial ruling of Honourable Kolkata High Court.* Reply was not tenable as deduction under section 43B(f) was to be allowed only when tax was actually paid and not on the basis of provision made. Further, the decision of the Kolkata High Court has been stayed by the Supreme Court.

Section 36(1)(viiia) of the Act provides for deduction in respect of any provision for bad and doubtful debts made by a scheduled bank or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, of an amount not exceeding seven and one-half *per cent* of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding ten *per cent* of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner. Further, CBDT has clarified⁶⁶ that provision in respect of any unascertained liability or a liability which has not accrued, do not qualify for deduction.

65 M/s Exide Industries Ltd. vs Union of India (292 ITR 470-Kolkata HC)

66 CBDT Instruction number 17 of 2008 dated 26/11/2008.

3.3.4.8 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed the scrutiny assessment of **M/s Kotak Mahindra Bank Ltd.** for AY 2012-13 in January 2015 determining income of ₹ 1,466.12 crore after allowing deduction of ₹ 211.02 crore under section 36(1)(viiia) towards provision for doubtful debts. The assessee claimed and was allowed provision of ₹ 197.55 crore⁶⁷ for bad and doubtful debts which included provision of ₹ 25.57 crore for standard assets. As provision for standard assets was not eligible for deduction⁶⁸, the deduction allowed under section 36(1)(viiia) should have been restricted to ₹ 171.98 crore instead of ₹ 211.02 crore. The mistake resulted in underassessment of income of ₹ 39.05 crore involving short levy of tax of ₹ 12.67 crore. *Reply from ITD was awaited (November 2016).*

As per section 37 of the Act, any expenditure, not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head 'Profits and gains of business or profession'.

3.3.4.9 In Maharashtra, Pr. CIT-8 Mumbai charge, AO completed the scrutiny assessment of **M/s Vodafone India Ltd.** for AY 2009-10 in January 2014 determining income of ₹ 749.96 crore. The assessee claimed and was allowed expenditure of ₹ 5.42 crore⁶⁹ on account of 'share based payment reserve'. As per the Tax Audit Report, the Auditor had certified ₹ 5.42 crore as liability of a contingent nature, which was required to be disallowed. The omission to disallow resulted in underassessment of income of ₹ 5.42 crore involving short levy of tax of ₹ 1.84 crore. *Ministry accepted the audit objection and rectified the mistake (March 2016) under section 154.*

3.3.4.10 In West Bengal, Pr. CIT-1 Kolkata charge, AO completed the scrutiny assessment of **M/s Burn Standard Company Ltd.** for AY 2012-13 in March 2015 determining loss of ₹ 69.94 crore. The assessee debited ₹ 55.91 crore towards exceptional items from the loss for the year before tax to arrive at the net loss before tax amounting to ₹ 76.10 crore. As per the Notes on Financial Statements, the aforesaid exceptional items included amount of ₹ 14.57 crore on account of deferred tax asset (written off). As the same was not an allowable expenditure, it should have been disallowed while finalising the assessment. The omission resulted in over assessment of loss of ₹ 14.57 crore involving potential tax effect of ₹ 4.73 crore. *ITD initiated remedial action (August 2016) under section 263 of the Act.*

67 Para 10- Provisions and Contingencies-Schedule 18 of Notes to Account read with profit and loss account for the year ended 31 March 2012.

68 Clause (xi) of CBDT Instruction number 17 of 2008 dated 26/11/2008.

69 As per schedule 2 of Balance Sheet – Reserves and Surplus

Section 37 of the Act provides that any expenditure (not being in the nature of expenditure described in sections 30 to 36 or in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of business or profession shall be allowed in computing the income under the head Profits and Gains of business or profession. The term wholly and exclusively for the purpose of business, has been clarified by inserting an Explanation 2 to Section 37(1) by the Finance Act 2014, which reads that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility (CSR) referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

3.3.4.11 In West Bengal, Pr. CIT-2, Kolkata charge, AO completed the scrutiny assessment of **M/s Balmer Lawrie & Company Ltd.** for AY 2012-13 in February 2015 determining income of ₹ 189.86 crore. The assessee claimed and was allowed deduction of ₹ 3 crore on account of expenditure incurred on various CSR activities. As this expenditure was not incurred wholly and exclusively for the purpose of business of the assessee, it should have been disallowed. The omission to disallow resulted in underassessment of income of ₹ 3 crore involving tax effect of ₹ 1.31 crore including interest. *ITD did not accept the observation (September 2015) stating that explanation 2 of Section 37(1) was effective from 01 April 2015 i.e. in relation to AY 2015-16 and subsequent years, and it was not applicable prior to AY 2015-16. Hence, the question of disallowance of such expenses during AY 2011-12 did not arise.* Reply was not acceptable as any expenditure incurred by an assessee on the activities relating to CSR shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. Further, explanation 2 to Section 37(1) was clarificatory in nature and not amendatory as it was inserted for removal of doubts.

3.4 Income escaping assessments due to omissions

3.4.1 The Act provides that the total income of a person for any previous year shall include all incomes from whatever source derived, actually received or accrued or deemed to be received or accrued. We observed that the AOs did not assess/under assess total income that require to be offered to tax. Table 3.3 shows the sub-categories which have resulted in Income escaping assessments.

Table 3.3: Sub-categories of mistakes under income escaping assessments due to omissions				(₹ in crore)
Sub-categories	Nos.	TE	States	
a. Income not assessed/under assessed under special provision	13	62.35	Delhi, Gujarat, Maharashtra, Rajasthan, TN, UP and WB	
b. Income not assessed/under assessed under normal provision	19	140.76	Gujarat, Karnataka, MP, Maharashtra, Odisha, TN, UP and WB	
c. Incorrect classification and computation of capital gains	4	6.47	Andhra Pradesh, Karnataka, TN and WB	
d. Incorrect estimation of Arms Length Price	9	23.28	AP, Gujarat, Karnataka, Maharashtra and WB.	
e. Unexplained investment cash credit	2	12.58	Delhi and Maharashtra	
Total	47	245.44		

3.4.2 Income not assessed/under assessed under special provisions

We give below six such illustrative cases:

Section 115JB provides for levy of Minimum Alternate Tax (MAT) at prescribed percentage of the book profit if the tax payable under the normal provisions is lesser than MAT.

3.4.2.1 In Uttar Pradesh, Pr. CIT-Noida charge, AO completed the scrutiny assessment of **M/s Jubilant Enpro Private Ltd.**, for AY 2012-13 in March 2015 determining income of ₹ 23.22 crore under normal provisions and book profit of ₹ 66.46 crore under special provisions. The assessee debited ₹ 118.45 crore on account of 'loss on transfer/ write-off of investments' in the profit and loss account and added it back to income under normal provisions of the Act and claimed it as long term capital loss on sale of shares. AO rejected the claim of 'capital loss on sale of shares' but did not add back ₹ 118.45 crore⁷⁰ to the book profit considering it as diminution in value of assets⁷¹. The omission resulted in short levy of tax of ₹ 32.23 crore including interest. *ITD accepted the observation (December 2015) and initiated remedial action (November 2015) under section 236 of the Act.*

70 ₹ 118.45 crore = ₹ 25.53 crore on account of "loss on sale of investment" and ₹ 92.91 crore on account of "loss on cancellation of investments (capital deduction)"

71 As held by Principal Bench of ITAT, Mumbai in case of ITO Vs. TCFC Finance Ltd ITA No. 1299/Mum./2009 dated 09.03.2011

Section 143(3) provides that AOs have to determine and assess the income of the assessee correctly and determine the correct sum payable by him or refundable to on the basis of such assessment. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments.

3.4.2.2 In Maharashtra, Pr. CIT-10 Mumbai charge, AO completed the scrutiny assessment of **M/s Oracle Financial Services Software Ltd.** for AY 2010-11 in March 2014 determining income of ₹ 240.82 crore under normal provisions and book profit of ₹ 748.25 crore under special provisions of the Act. As per the assessment records, the AO allowed deduction of ₹ 587.76 crore to the assessee under section 10A. While computing taxable income under normal provisions, AO wrongly considered deduction under section 10A at ₹ 630.80 crore instead of correct amount of deduction of ₹ 587.76 crore. As the assessment was completed under special provisions of section 115JB, the excess allowance of deduction resulted in underassessment of income by ₹ 43.04 crore involving excess carry forward of MAT credit of ₹ 14.63 crore. *ITD accepted the audit observation and rectified (February 2016) the mistake under section 154.*

Section 115JB provides for levy of Minimum Alternate Tax (MAT) at prescribed percentage of the book profit if the tax payable under the normal provisions is lesser than MAT. As per Explanation [1] under section 115JB, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2) subject to certain additions/ deletions. The additions, inter alia, include amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities.

3.4.2.3 In Gujarat, Pr.CIT-III Ahmedabad charge, AO completed the scrutiny assessment of **M/s Nirma Ltd.** for AY 2006-07 in December 2008 determining income of ₹ 449.08 crore, which was rectified under section 154 in March 2011 determining income at 'nil' under normal provisions after setting-off of brought forward losses and unabsorbed depreciation of ₹ 449.08 crore to the extent of income and book profit of ₹ 343.85 crore. The assessment was again rectified (June 2013) under section 154 determining the book profit of ₹ 343.49 crore. Further, while giving effect to appellate order of December 2013, AO revised income at 'nil' under normal provisions after setting-off of brought forward losses and unabsorbed depreciation to the extent of income of ₹ 270.78 crore and book profit of ₹ 343.49 crore in March 2014. While computing book profit in rectification order (June 2013) and appeal effect order (March 2014), provision for doubtful advances of ₹ 48.96 crore was not added in view of provisions *ibid*. The mistake resulted in underassessment of book profit by ₹ 48.96 crore involving short levy of tax of ₹ 4.12 crore. *Ministry accepted the observation and rectified the mistake (March 2015) under section 154.*

As per section 115JB, 'Book Profit' means the net profit as shown in the Profit and Loss account for the relevant previous year as increased amongst others, by the amount of expenditure relatable to any exempt income if such income is not subject to MAT. Further, as per section 14A no deduction is allowable in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. As per Rule 8D of Income Tax Rules, 1962 the Assessing Officer is required to determine the quantum of such expenditure in accordance with the provisions of the Rule.

3.4.2.4 In Tamil Nadu, CIT-4 Chennai charge, AO completed the scrutiny assessment of **M/s L&T Infrastructure Development Projects Ltd.** for AY 2012-13 in March 2015 determining income at 'nil' under normal provisions of the Act after setting off the brought forward depreciation loss of ₹ 14.20 crore and book profit of ₹ 4.09 crore under special provisions of the Act. While completing the assessment, although the amount of ₹ 8.92 crore was disallowed under section 14A read with Rule 8D, it was not considered for computing 'Book Profit'. The omission to disallow the expenditure resulted in underassessment of book profit by ₹ 8.92 crore involving short levy of tax of ₹ 1.79 crore. *Reply from ITD was awaited (November 2016).*

3.4.2.5 In Rajasthan, CIT-2 Jaipur charge, AO completed the scrutiny assessment of **M/s Safeflex International Ltd.** for AY 2012-13 in February 2015 determining income of ₹ 15.64 lakh and tax of ₹ 4.83 lakh under the normal provisions of the Act. As the Minimum Alternative Tax (MAT) of ₹ 1.36 crore, leviable at the rate of 18.5 *per cent* of the book profit of ₹ 6.84 crore, was higher than the tax payable under the normal provisions of the Act, the assessee was liable to pay MAT under special provisions of the Act. The mistake resulted in non-assessment of book profit of ₹ 6.84 crore under special provisions involving short levy of tax of ₹ 1.78 crore including interest. *ITD accepted the mistake and initiated remedial action (May 2016).*

3.4.2.6 In CIT-7 Delhi charge, AO completed the scrutiny assessment of **M/s Pawan Hans Helicopters Ltd.** for AY 2011-12 in December 2013 determining loss of ₹ 28.10 crore under normal provisions and book profit of ₹ 50.86 crore under special provisions of the Act. The assessee claimed and was allowed expenditure of ₹ 3.12 crore towards provision for non-moving inventory/ shortage of inventory and ₹ 98.78 lakh towards provision for bad and doubtful debts in the profit and loss account. As the provisions of ₹ 4.10 crore were made towards unascertained liabilities, these expenses should have been disallowed and added to the book profit. The omission resulted in underassessment of book profit by ₹ 4.10 crore involving short levy of tax of ₹ 1.09 crore including interest. *Ministry accepted the observation and rectified the mistake (July 2015) under section 154.*

3.4.3 Income not assessed/under assessed under normal provisions

We give below six such illustrative cases:

Section 14A of the Act provides for disallowance of expenses incurred for earning exempt income in accordance with Rule 8D of Income Tax Rules, 1962. It has been judicially held⁷² that where investment had been made in shares, which did not yield any dividend in year under consideration, expenditure incurred for earning income was not deductible notwithstanding the fact that no such income had been earned. Section 14A read with Rule 8D prescribes the working for disallowance for earning exempt income. Further CBDT had also clarified⁷³ that Rule D read with section 14 A of the Act provides for disallowance of the expenditure even where taxpayer in particular year has not earned any exempt income.

3.4.3.1 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed scrutiny assessment of **M/s ICICI Bank Ltd.** for AY 2011-12 in March 2015 determining income at ₹ 6,738.07 crore, inter alia, making disallowance of ₹ 531.40 crore under section 14A. While computing average investment for disallowance, the assessee considered the opening balances of 'investment in shares (equity and preference share)' and in 'subsidiary and joint ventures' as ₹ 2,755.74 crore and ₹ 6,222.68 crore respectively as per the balance sheet. In respect of closing balance of investments, the assessee considered only those investments of ₹ 1,049.46 crore and ₹ 2,870.95 crore from which exempt income was actually received during the year instead of ₹ 2,813.41 crore and ₹ 6,479.69 crore as per the Balance Sheet. The computation was not in conformity with judicial ruling and CBDT circular cited above. The mistake resulted in underassessment of income of ₹ 131.80 crore due to short disallowance under section 14A involving short levy of tax of ₹ 43.79 crore. *ITD did not accept the observation (October 2015) stating that as per provisions of Section 14A, expenses were to be disallowed in relation to the income which did not form part of the total income under the Act.* Reply was not acceptable as it contradicted its own circular of May 2014 clarifying the legislative intent, which having not been struck down by Courts was a binding on the Department to be complied with.

Section 41(1) of the IT Act provides that where allowance has been made in respect of loss, expenditure or trading liability and assessee has subsequently obtained some benefit in respect of such trading liability by way of remission or cessation thereof it shall be deemed to be profit and gains of business or profession of that previous year. Further, it has been judicially held⁷⁴ held that the expression expenditure under section 41(1) is wide enough and would include not only revenue but also capital expenditure.

3.4.3.2 In Maharashtra, Pr. CIT-IV Mumbai charge, AO completed the scrutiny assessment of **M/s Stainless India Private Ltd.** for AY 2011-12

72 M/s Technopak Advisors P Ltd 18 Taxmann.com 146 (Delhi ITAT)

73 CBDT circular no. 5/2014 dated 11/02/2014

74 M/s Nector Beverages Pvt. Ltd. vs CIT 2004 (139 Taxman 70-Bombay HC)

determining income of ₹ 2.70 crore. As per notes to accounts⁷⁵, the assessee suspended its operations in October 2008. Further, the assessee received trade advances of ₹ 53.50 crore from M/s Mukund Ltd. which was a group company and held 44.09 *per cent* shares of the assessee. Mukund Ltd. had written off trade advances of ₹ 53.50 crore in its books of accounts. It continued to claim its debts as the same were not written back by the assessee. The cross verification of records of M/s Mukund Ltd. for AY 2011-12 revealed that these write offs had actually been made in the books and partly claimed during FY 2010-11 and partly adjusted against provision for bad debts made in earlier years. Thus it was apparent that the creditor has claimed the deduction by way of bad debts and written it off from their accounts. The write off of bad debts by creditors amounted to remission or cessation of liability and thereby attracted the provisions of section 41(1) of the Act. The omission resulted in underassessment of income by ₹ 53.50 crore involving potential short levy of tax by ₹ 17.77 crore.

ITD did not accept the observation (June 2016) stating that provisions of section 41(1) were not attracted in this case as the amount in question was not allowed as trading liability in any previous year. Further, M/s Mukund Ltd. was not a creditor of the assessee and had given only advance to the assessee. In support of the contention, ITD also quoted few case laws not relevant to the case. Reply was not acceptable as assessee had shown it as advance against job work/ supplies. Further, it has been judicially held⁷⁶ that the trade deposits were capital in nature at the time of receipt and with the afflux of time their character was changed to trading receipts. Further, there existed no provision in the Act to protect the interests of revenue in such cases where companies were related and one of the companies claims deduction of bad debts from income but the other company did not offer such income. ITD initiated remedial action (March 2016) under section 147 of the Act.

3.4.3.3 In PCIT- Noida charge, AO completed the scrutiny assessment of **M/s L. G. Electronics India Pvt. Ltd.** for AY 2007-08 in October 2011 determining income of ₹ 583.91 crore. The case was reassessed in March 2015 under section 147 read with section 143 (3) of the Act at revised income of ₹ 597.80 crore. The assessee had received subsidy (tax incentives) of ₹ 20.58 crore from the Government of Maharashtra and ₹ 61.01 crore from the Government of Uttar Pradesh. While computing taxable income, AO disallowed and added back subsidy received from the Government of Uttar Pradesh treating them as revenue receipts. However, the subsidy received

75 Note 8B to Schedule 18 of notes to accounts

76 in the case of T V Sundaram Iyengar and Sons Ltd.

from the Government of Maharashtra was not disallowed and added back to the taxable income. The omission resulted in underassessment of income by ₹ 20.58 crore involving short levy of tax of ₹ 10.74 crore including interest. *ITD accepted the audit observation and initiated (February 2016) remedial action under section 263.*

Section 143(3) provides that AOs have to determine and assess the income of the assessee correctly and determine the correct sum payable by him or refundable to on the basis of such assessment. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments.

3.4.3.4 In Odisha, CIT-Sambalpur charge, AO completed the scrutiny assessment of **M/s Mahanadi Coal Field Ltd.** for AY 2011-12 in January 2014 determining income at ₹ 5,772.71 crore after disallowing all the provision of ₹ 110.67 crore shown in the profit and loss account. The provision of ₹ 110.67 crore disallowed by the AO included minus figure of ₹ 23.85 crore towards reclamation of land, which was not brought to tax. This resulted in underassessment of income by ₹ 23.85 crore involving tax effect of ₹ 10.61 crore. *Ministry accepted the observation and completed remedial action (April 2015) under section 147 read with section 143(3).*

3.4.3.5 In West Bengal, Pr. CIT-4 Kolkata charge, AO completed the scrutiny assessment of **M/s Subir Sirkar Jewellers Private Ltd.** for AY 2012-13 in March 2015 determining loss of ₹ 5.42 lakh. As per the profit and loss account, the opening stock for AY 2012-13 was shown at ₹ 21.22 crore whereas the closing stock for AY 2011-12 was shown at ₹ 74.31 lakh only. Hence, the opening stock for AY 2012-13 was overstated by ₹ 20.48 crore which was allowed in the assessment. The mistake in allowing excess debit of opening stock resulted in underassessment of income of ₹ 20.48 crore involving tax effect of ₹ 9.01 crore. *Ministry accepted the observation and took remedial action under section 154 read with sections 144 and 143(3) in December 2015.*

Section 28 provides that the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year shall be chargeable to income tax under the head 'profits and gains of business or profession'.

3.4.3.6 In Gujarat, Pr. CIT-2 Ahmedabad charge, AO completed the scrutiny assessment of **M/s Ganesh Housing Corporation Ltd.** for AY 2009-10 in December 2011 determining income of ₹ 63.55 crore including LTCG of ₹ 34.17 crore. The assessee engaged in real estate development and construction activities sold land which was originally purchased in 2002-03 by the amalgamating company (Nachiket Properties Private Ltd.). Thereafter, the assessee converted the land into non-agricultural land by paying

conversion tax. This shows that the land was not purchased or acquired as an investment but for resale and earning of profit as per the business of the company. Hence, the land acquired was stock-in-trade of the assessee and the profits earned was business income instead of capital gain. The omission has resulted into short levy of tax of ₹ 5.29 crore including interest. *ITD accepted the objection and took remedial action under section 143(3) read with section 147 in November 2014.*

3.4.4 Incorrect computation/classification of capital gains

We give below two such illustrative cases:

Section 143(3) provides that AOs have to determine and assess the income of the assessee correctly and determine the correct sum payable by him or refundable to on the basis of such assessment. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments.

3.4.4.1 In Karnataka, CIT-1 Bangalore charge, AO completed the scrutiny assessment of **M/s Hinduja Realtors Pvt. Ltd.** for AY 2010-11 in March 2013 determining income at ₹ 1.91 crore and tax of ₹ 83.38 lakh thereon. The assessee had declared long term capital gains of ₹ 7.08 crore from the sale of equity shares in its statement of computation. While completing the assessment, AO did not consider income of ₹ 7.08 crore on account of long term capital gains. The omission resulted in underassessment of income of ₹ 7.08 crore involving short levy of tax of ₹ 2.18 crore including interest. *ITD has accepted the observation and rectified the mistake (June 2014) under section 154.*

Section 45 of the Act provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to income-tax under the head Capital Gains and shall be deemed to be the income of the previous year in which the transfer took place. Further as per Section 48 of the Act, the income chargeable under the head Capital gains shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts namely;

(i) Expenditure incurred wholly and exclusively in connection with such transfer (ii) the cost of acquisition of the asset and the cost of any improvement thereto.

3.4.4.2 In West Bengal, Pr. CIT-1 Kolkata charge, AO completed the scrutiny assessment of **M/s Bata India Ltd.** for AY 2007-08 in December 2010 determining business income as 'nil' and short term capital gains of ₹ 66.49 crore. The assessment was revised under section 154 read with section 251 in February 2012 determining business income as 'nil' and long term capital gains of ₹ 28.26 crore. The assessment was again revised under

section 263 read with section 143(3) in March 2014 determining short term capital gains of ₹ 47.77 crore. The assessment was further rectified (July 2014) under section 154 determining long term capital gains of ₹ 47.77 crore. The capital gains determined in different assessment orders (either the short term capital gain or the long term capital gain) was due to transfer of rights by the assessee to its joint venture namely Riverbank Holding Private Ltd. (RHPL) for developing 262 acres of land into an integrated modern township. The assessee adopted the full value of consideration for transferring the rights of land at ₹ 77.53 crore, which was further revised (March 2014) to ₹ 97.02 crore. The consideration value, inter alia, included cost of construction of ₹ 55.94 crore of housing project for employees after claiming discount at the rate of eight *per cent* for two years on the value determined by the approved valuer. The transfer of rights of land was done through a development agreement made in May 2006. The approved valuer evaluated land at ₹ 65.28 crore in September 2007 along with the cost of construction of housing project while determining the consideration received against the transfer of rights of land. As the period between the transfers of the rights (May 2006) and determination of value of construction (September 2007) was only one year, the discount of eight *per cent* was admissible for one year instead of two years as claimed by the assessee. Thus, the cost of construction was required to be determined at ₹ 60.44 crore instead of ₹ 55.94 crore allowed to the assessee. The mistake resulted in underassessment of long term capital gains of ₹ 4.50 crore involving excess allowance of MAT credit of ₹ 1.01 crore. *Ministry accepted the observation and took remedial action (March 2016) under section 263.*

3.4.5 Incorrect estimation of Arm's Length Price

We give below three such illustrative cases:

The computation of Arm's Length Price (ALP) under section 92C of Income Tax Act, 1961, should be referred to the Transfer Pricing Officer (TPO), if the value of international transaction as defined under section 92B of IT Act exceeds rupees 15 crore. The TPO, after hearing the assessee, after considering the evidence produced by him as required on any specified points and after taking into account all relevant materials which he has gathered, shall by order in writing determine the ALP in relation to the international transaction in accordance with provisions of section 92C(3) and send a copy of his order to the Assessing Officer and to the assessee.

3.4.5.1 In Karnataka, Pr.CIT-6 Bangalore charge, the transfer pricing adjustment of the **M/s SKF Technologies India Pvt. Ltd.** for AY 2011-12 was concluded under section 92CA in January 2015 determining the total Transfer Pricing adjustment at ₹ 13.74 crore. The TPO recomputed the Operating Cost (OC) at ₹ 131 crore as against ₹ 107.13 crore computed by the assessee.

While computing the ALP, the TPO wrongly adopted OC as ₹ 107.13 crore as against ₹ 131 crore. The mistake resulted in short adjustment by ₹ 23.87 crore under section 92CA involving tax effect of ₹ 7.93 crore. *Ministry accepted the observation and rectified the mistake (March 2016) under section 154 read with section 92CA.*

3.4.5.2 In Karnataka, Pr.CIT-3 Bangalore charge, the transfer pricing adjustment of **M/s Google India Pvt. Ltd.** for AY 2011-12 was completed under section 92CA in January 2015. While computing the ALP, the TPO wrongly adopted the operating cost and price received at ₹ 205.31 crore and ₹ 241.43 crore respectively instead of ₹ 325.49 crore and ₹ 383.76 crore resulting in short adjustment by ₹ 10.51 crore under section 92 CA involving short levy of tax of ₹ 5.55 crore. *ITD stated that the TPO rectified the mistake, which was considered by the AO while completing the assessment under section 143(3) read with section 144C in February 2016.*

3.4.5.3 In Andhra Pradesh and Telangana, CIT(IT&TP) Hyderabad charge, the transfer pricing adjustment of **M/s Vivimed Labs Ltd.** for AY 2012-13 was completed under section 92CA(3) in January 2016 determining the total Transfer Pricing adjustment at ₹ 17.13 crore towards advances and corporate guarantee. While computing the ALP, the TPO wrongly computed corporate guarantee fee at the rate of 2 per cent on ₹ 522.95 crore instead of the correct amount of corporate guarantee of ₹ 196.13 crore. The mistake resulted in excess adjustment by ₹ 6.54 crore⁷⁷ involving tax effect of ₹ 2.12 crore. *Ministry accepted the observation and rectified (March 2016) the mistake under section 92CA(5) read with section 154.*

3.4.6 Unexplained Investment/cash credit

We give below one such illustrative case:

Section 68 provides that if assessee offers no explanation about the nature and source of any sum credited in the books of the assessee, the sum so credited may be charged to income tax as income of the assessee.

3.4.6.1 In Pr.CIT-6 Delhi charge, AO completed the assessment of **M/s North West Sales And Marketing Ltd.** for AY 2011-12 under section 144 (March 2014) determining income at ₹ 8.71 crore and tax of ₹ 2.87 lakh thereon. While completing the assessment, the AO sought details of unsecured loan raised of ₹ 32.48 crore from the assessee against which list of unsecured loans of ₹ 8.64 crore only was provided without the necessary details viz. PAN, address and other particulars of the parties. In the absence of necessary details AO treated the amount of unsecured loan of ₹ 8.64 crore as unexplained income of the assessee. As necessary details of unsecured loans

⁷⁷ ₹ 6.54 crore = (₹ 10.46 crore - ₹ 3.92 crore)

of ₹ 32.48 crore were not provided the entire amount was required to be treated as unexplained income. This omission resulted in underassessment of income by ₹ 23.83 crore⁷⁸ involving short levy of tax of ₹ 11.72 crore including interest. *Ministry accepted the observation and rectified the mistake (December 2015) under section 154.*

3.5 Over-charge of tax/Interest

3.5.1 We noticed that AOs over assessed income in 23 cases involving overcharge of tax and interest of ₹ 176.73 crore in Andhra Pradesh, Delhi, Goa, Haryana, Odisha, Tamil Nadu, UT Chandigarh, Uttarakhand and West Bengal. We give below five such illustrative cases:

Section 234B provides for levy of interest on account of default in payment of advance tax at specified rates and for specified time period.

3.5.1.1 In CIT-LTU Delhi charge, AO completed the scrutiny assessment of **M/s Rural Electrification Corporation Ltd.** for AY 2012-13 in March 2015 at income of ₹ 2,871.64 crore and tax of ₹ 931.62 crore thereon. While computing tax demand, the AO levied interest of ₹ 42.29 crore under section 234B of the Act despite the fact that the amount of advance tax of ₹ 957 crore deposited by the assessee was more than the assessed tax (₹ 931.62 crore). The mistake resulted in excess levy of interest of ₹ 42.29 crore under section 234B. *Ministry accepted the observation and rectified the mistake (July 2015) under section 154.*

Section 143(3) provides that AOs have to determine and assess the income correctly. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments.

3.5.1.2 In CIT(Central) Delhi charge, the scrutiny assessment of **M/s Pixion Media Pvt. Ltd.** for AY 2011-12 was completed in March 2013 determining an income at ₹ 792.04 crore and tax of ₹ 263.09 crore thereon. While computing the taxable income, AO wrongly adopted the returned income at 'nil' instead of correct amount of loss of ₹ 48.53 crore. This mistake resulted in over assessment of income by ₹ 48.53 crore involving potential overcharge of tax of ₹ 22.73 crore. *Ministry accepted the observation and rectified the mistake (February 2016) under section 154.*

3.5.1.3 In CIT-7 Delhi charge, the scrutiny assessment of **M/s Religare Securities Ltd.** for AY 2011-12 was completed in March 2014 determining income at ₹ 39.37 crore and raising tax demand of ₹ 16.96 crore including interest under section 234B. While computing tax demand, AO wrongly levied interest of ₹ 3.88 crore under section 234B on net tax of ₹ 13.08 crore. The

⁷⁸ ₹ 23.83 crore = (₹ 32.48 crore - ₹ 8.65 crore)

assessee paid TDS of ₹ 11.64 crore and advance tax of ₹ 7 crore, which was more than ninety *per cent* of assessed tax, interest under section 234B was not leviable. The mistake resulted in excess levy of interest of ₹ 3.88 crore. *Ministry accepted the observation (August 2016) and rectified the mistake (August 2015) under section 154.*

Section 143(3) provides that AOs have to determine and assess the income or loss of the assessee correctly. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments. Further, section 139(5) provides that if any person, having furnished a return under section 139(1), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

3.5.1.4 In Delhi CIT-3 charge, AO completed the scrutiny assessment of **M/s Delhi Transport Corporation** for AY 2011-12 in March 2014 determining loss at ₹ 2,419.80 crore. The assessee filed revised return of income on 28 September 2012 at loss of ₹ 2,618.40 crore as against loss of ₹ 2,422.69 crore as per original return of income filed on 27 September 2011. While computing the assessed loss, AO did not consider the revised statement of loss although both original and revised returns were filed by the assessee within the stipulated time. This resulted in underassessment of loss by ₹ 195.71 crore involving potential tax effect of ₹ 65.01 crore. *Ministry accepted the observation and rectified the mistake (March 2016) under section 154.*

3.5.1.5 In Delhi CIT (Central)-1 Charge, AO completed the assessment of **M/s Pearl Studio Ltd.** for AY 2011-12 under section 144 of the Act in March 2013 determining income at ₹ 144.12 crore and tax of ₹ 47.87 crore thereon. While computing the taxable income, AO wrongly adopted the returned income at 'nil' against correct amount of returned loss of ₹ 46.53 crore. The mistake resulted in overassessment of income by ₹ 46.53 crore involving overcharge of tax of ₹ 21.79 crore. *ITD rectified the mistake (February 2016) under section 154.*