

## 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 April 2017 to July 2017. Of these, 280 cases involve undercharge of ₹ 3,404.78 crore and 40 cases involve overcharge<sup>51</sup> of ₹ 446.08 crore. These cases of incorrect assessment point towards weaknesses in the internal controls in the assessment processes of the Income Tax Department (ITD).

**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 2.9 (*Para 2.4.4*) shows the details of broad categories of mistakes and their tax effect (refer *Appendix 2.3*).

**3.1.3** The Ministry/ITD has conveyed its acceptance of audit observations in respect of 180 cases involving tax effect of ₹ 2,619.44 crore while not accepting 22 cases involving tax effect of ₹ 191.62 crore. Out of 320 cases, ITD has completed remedial action in 218 cases involving tax effect of ₹ 2,749.96 crore and initiated remedial action in 21 cases involving tax effect of ₹ 197.98 crore.

### 3.2 Quality of assessments

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

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<sup>51</sup> 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	36	310.04	Delhi, Goa, Gujarat, Haryana, Maharashtra, Punjab, Tamil Nadu (TN), Uttar Pradesh (UP) and West Bengal (WB).	
b. Application of incorrect rate of tax and surcharge	11	36.50	Delhi, Haryana, Madhya Pradesh (MP), Maharashtra, TN, UT-Chandigarh, UP and WB.	
c. Mistakes in levy of interest	40	157.46	Andhra Pradesh (AP) & Telangana, Delhi, Karnataka, MP, Maharashtra, Odisha, Punjab, TN, UT-Chandigarh and WB.	
d. Excess or irregular refunds/interest on refunds	6	50.35	Karnataka and Maharashtra.	
e. Mistakes in assessment while giving effect to appellate order	6	71.38	Delhi, Karnataka, Maharashtra and WB.	
<b>Total</b>	<b>99</b>	<b>625.73</b>		

### 3.2.2 Arithmetical errors in computation of income and tax.

We give below six 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 details in every scrutiny assessment. CBDT has also issued instructions from time to time in this regard.*

**3.2.2.1** In Pr.CIT-1 Delhi charge, AO completed the scrutiny assessment of **M/s Aravali Power Company Pvt. Ltd.** for the assessment year (AY) 2013-14 in March 2016 at a loss of ₹ 113.48 crore. Audit examination revealed that in the assessment order, incorrect figures of net profit and expenses were adopted and adjusted with the disallowance of ₹ 4.90 lakh to arrive at a loss of ₹ 113.48 crore. While computing taxable income, the net profit was considered as ₹ 42.72 crore instead of the correct amount of ₹ 222.17 crore, the additions were worked out to ₹ 144.18 crore instead of the correct amount of ₹ 260.77 crore and deductions were computed as ₹ 300.38 crore instead of the correct amount of ₹ 419.25 crore. These mistakes had resulted in under assessment of income by ₹ 63.69 crore<sup>52</sup> and simultaneously, excess carry forward of loss by ₹ 113.48 crore, involving short levy of tax of ₹ 20.66 crore and potential tax effect of ₹ 36.82 crore<sup>53</sup>. *Ministry accepted the audit observation (October 2017) and rectified the mistake (July 2016) under section 154<sup>54</sup> of the Act.*

<sup>52</sup> The assessee had brought forward losses available for set-off against income of ₹ 63.69 crore.

<sup>53</sup> ₹ 20.66 crore (₹ 63.69 crore\*30 per cent + 5 per cent surcharge + 3 per cent education Cess) + ₹ 36.82 crore (₹ 113.48 crore\*30 per cent + 5 per cent surcharge + 3 per cent education Cess)

<sup>54</sup> Mistakes apparent from records in any order passed by the AO can be rectified under section 154 of the Act.

**3.2.2.2** In Pr. CIT-3 Delhi charge, AO completed the scrutiny assessment of **M/s Fortis Healthcare Ltd.** for the AY 2012-13 in March 2015 at a loss of ₹ 116.40 crore under normal provisions and at income of ₹ 210.71 crore under special provisions of the Act. Audit examination revealed that the assessee had filed its return at nil business income (after setting off of brought forward business loss to the extent of ₹ 19.16 crore) and showing long term capital loss of ₹ 131.68 crore which was to be carried forward to the subsequent assessment years. While computing the taxable income, the long term capital loss of ₹ 131.68 crore was treated as business loss and after addition of ₹ 15.28 crore on account of disallowances, the assessment was completed at a loss of ₹ 116.40 crore, instead of income of ₹ 8.76 crore<sup>55</sup>. The mistake had resulted in under assessment of income by ₹ 8.76 crore and over assessment of loss by ₹ 116.40 crore involving potential tax effect of ₹ 40.61 crore. *Ministry accepted the audit observation (September 2017) and rectified the mistake (February 2016) under section 154 of the Act.*

**3.2.2.3** In Punjab, Pr.CIT (Central) Ludhiana charge, AO completed the assessments of **M/s ARK Imports Pvt. Ltd.** for AYs 2012-13, 2013-14 and 2014-15 under section 153A<sup>56</sup> read with section 143(3) in March 2016 at incomes of ₹ 92.89 crore, ₹ 520.24 crore and ₹ 109.37 crore respectively. Audit examination revealed that the AO had erroneously levied tax demand of ₹ 37.16 crore, ₹ 208.09 crore and ₹ 43.75 crore as against leviable amounts of ₹ 44.85 crore, ₹ 238.17 crore and ₹ 46.10 crore after adjustment of prepaid taxes of ₹ 3.57 lakh, ₹ 97.10 lakh and 'nil' during assessment years 2012-13, 2013-14 and 2014-15 respectively. The mistakes had resulted in short levy of tax and interest aggregating to ₹ 40.13 crore<sup>57</sup>. *ITD rectified the mistake for the assessment year 2013-14 under section 154 in February 2017 wherein demand of ₹ 30.08 crore was raised. However, details of remedial action taken for the assessment years 2012-13 and 2014-15 were awaited (July 2017).*

**3.2.2.4** In Gujarat, Pr. CIT-1, Ahmedabad charge, AO completed the assessment of **M/s Cadila Healthcare Ltd.** for the AY 2010-11 under section 143(3) read with section 144C(13)<sup>58</sup> in February 2015, determining loss of ₹ 106.21 crore and book profit of ₹ 160.04 crore under section 115JB. Audit

55 ₹ 15.28 crore - ₹ 6.52 crore (after setting off of brought forward loss of ₹ 6.52 crore)

56 Section 153A of Income Tax Act deals with assessment in case of search or requisition.

57 ₹ 4,012.56 lakh = ₹ 769.82 lakh (AY 2012-13) + ₹ 3,007.89 lakh (AY 2013-14) + ₹ 234.85 lakh (AY 2014-15)

58 Section 144C governs provisions relating to Dispute Resolution Panel (DRP) that has been constituted as an alternative dispute resolution mechanism for resolving disputes relating to transfer pricing in international transactions. The DRP issues directions to AO for completing the assessment and as per section 144C(13) the AO is required to finalise the assessment within one month from the end of the month in which such direction is received without giving any opportunity to the assessee for being heard.

examination revealed that, while finalizing the scrutiny assessment, the AO had adopted the business loss as ₹ 125.17 crore as per statement of income as against the returned loss of ₹ 12.52 crore. The mistake had resulted in under assessment of income of ₹ 6.44 crore and over assessment of loss of ₹ 106.21 crore involving short levy of tax of ₹ 2.19 crore and potential tax of ₹ 36.10 crore. *Ministry accepted the audit observation (August 2017) and rectified the mistake (July 2017) under section 154 of the Act.*

**3.2.2.5** In Maharashtra, Pr.CIT Central-2 Mumbai charge, AO completed the assessment of **M/s Dhanus Technologies Ltd.** for the AY 2010-11 under section 143(3) read with section 153C<sup>59</sup> of the Act in March 2016, determining income at ₹ 6.28 crore. Audit examination revealed that while completing the assessment, the AO had considered assessed income at ₹ 6.28 crore instead of correct amount of ₹ 31.94 crore. As per the records, the regular assessment was completed under section 143(3) read with section 144 in February 2013 and the taxable income was determined at ₹ 6.28 crore which was subsequently rectified under section 154 in April 2015 at ₹ 31.94 crore after making addition of ₹ 25.65 crore. This mistake had resulted in under assessment of income of ₹ 25.66 crore and consequent short levy of tax of ₹ 8.72 crore. *ITD accepted (May 2016) the mistake and stated that remedial action was being taken.*

**3.2.2.6** In Haryana, Pr. CIT (Central), Gurgaon charge, AO completed the assessment of **M/s Kudos Chemie Ltd.** for the AY 2013-14 under section 153A(1)(b) read with sections 143(3) and 144<sup>60</sup> of the Act in February 2016 determining income of ₹ 138.56 crore. Audit examination revealed that while completing the assessment, the AO had erroneously computed the assessed income as ₹ 138.56 crore instead of correct amount of ₹ 154.15 crore. The mistake had resulted in short levy of tax of ₹ 7.13 crore including interest. *ITD rectified the mistake (February 2017) under section 154 of the Act.*

### **3.2.3 Application of incorrect rates of tax and surcharge**

We give below three such illustrative cases:

**3.2.3.1** In Uttar Pradesh, Pr. CIT-Noida charge, AO completed the scrutiny assessment of **M/s Dkrrish Builders Pvt. Ltd.** for AY 2012-13 in March 2016 determining income of ₹ 44.71 crore. Audit examination revealed that while computing tax demand, the AO did not levy surcharge as per the relevant Finance Act provisions and interest under section 234B of the Act. The omissions had resulted in short levy of tax of ₹ 7.65 crore. *ITD stated*

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59 Section 153C of the Income Tax Act deals with assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned.

60 Section 144 of the Income Tax Act deals with best judgement assessment in cases where the return of income is not filed by the taxpayer or if there is no cooperation by the taxpayer in terms of furnishing information/ explanation related to his tax assessment or if books of accounts of taxpayer are not reliable or are incomplete.

(February 2017) that necessary action under section 154 will be carried out. Final reply is awaited (July 2017).

*Section 115BBE(1) of the Income Tax Act provides that where the total income of an assessee includes any income referred to in section 68 or 69 of the Act, the income tax payable shall be the aggregate of the amount of income tax calculated on income referred to in section 68 or 69 at the rate of thirty per cent and the amount of income tax chargeable on the remaining income determined under normal provisions. Further sub-section (2) provided that no deduction in respect of any expenditure or allowance shall be allowed under any provisions of this Act in computing the income referred to in section 68 or 69 of the Act.*

**3.2.3.2** In Haryana, Pr. CIT (Central)-Gurgaon charge, AO completed the assessment of **M/s Kudos Chemie Ltd.** for AY 2014-15 under section 153B(1)(b)<sup>61</sup> read with sections 143(3) and 144 of the Act in February 2016 determining loss of ₹ 23.25 crore. Subsequently, the assessment was rectified (May 2016) determining income of ₹ 28.37 crore under section 115BBE. Audit examination revealed that while computing tax liability in the rectification order, income of ₹ 28.37 crore, assessed under section 115BBE of the Act, was erroneously taxed at the rate of 18.5 per cent as against applicable normal rate of tax at 30 per cent. The tax liability was computed at ₹ 4.81 crore instead of correct amount of ₹ 11.63 crore. The mistake had resulted in short levy of tax ₹ 6.82 crore. ITD rectified the mistake (September 2016) under section 154 of the Act.

**3.2.3.3** In Maharashtra, Pr. CIT-1, Pune charge, the assessment of **M/s Duke Corporation Ltd.**, for the AY 2013-14, was completed under section 143(3) read with section 144(1) in March 2016, determining income at ₹ 2.49 crore after making additions of ₹ 18.90 crore which included addition of ₹ 11.95 crore under section 68 of the Income Tax Act being unexplained share application money. Audit examination revealed that the AO had levied tax on the assessed income of ₹ 2.49 crore only, instead of levying tax at the rate thirty per cent on the additions of ₹ 11.95 crore made under section 68 of the Act. The mistake had resulted in under assessment of income of ₹ 9.46 crore involving short levy of tax of ₹ 3.07 crore. Reply from the ITD was awaited (July 2017).

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61 Section 153B of the Income Tax Act provides for time limit for completion of search assessments.

### 3.2.4 Mistakes in levy of interest

We give below five such illustrative cases:

*The Income Tax Act provides for levy of interest for 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 Maharashtra, Pr. CIT-13, Mumbai charge, initially the assessee, **M/s Shivan Giri Steel Ltd.** did not file any return of income, for assessment years 2008-09 to 2010-11, within the due dates of filing of returns in the month of September of respective years under section 139 (1). The assessee had filed returns of income for three assessment years in March 2016 post issue of notice under section 148 in March 2015 and the AO had completed assessments for each AY after scrutiny in March 2016 as per details given in Table 3.2 below:

Table 3.2: Details of returns filed and assessment completed						(₹ in lakh)	
AY	Date of Issue of notice under section 148	Date of filing the return	Date of completion of assessment	Income returned	Income assessed	Interest levied under section 234A	Interest leviable under section 234A
2008-09	19-03-2015	29-03-2016	29-03-2016	nil	7,183.07	317.40	2,197.37
2009-10	19-03-2015	28-03-2016	28-03-2016	0.08	2,178.65	96.27	577.61
2010-11	19-03-2015	28-03-2016	28-03-2016	0.17	912.86	40.34	204.78

The AO completed the assessment for all the three years as best judgment assessment under section 144 read with section 147 on the basis of materials available on record. However, interest for delay in filing the returns was levied for 13 months (March 2015 to March 2016) in each case instead of 90 months (October 2008 to March 2016), 78 months (October 2009 to March 2016) and 66 months (October 2010 to March 2016) for AYs 2008-09, 2009-10 and 2010-11 respectively. The mistake resulted in short levy of interest aggregating ₹ 25.26 crore<sup>62</sup> for all the three years. *ITD rectified the mistake (January 2017) under section 154 of the Act.*

**3.2.4.2** In Maharashtra, Pr.CIT-6, Mumbai charge, the scrutiny assessments of **M/s B A Trading Co. Pvt. Ltd.** for the AYs 2009-10 and 2010-11 were completed in March 2016 under the provision of Section 144 read with section 147 of the Act determining incomes at ₹ 33.53 crore and ₹ 52.67 crore respectively. Audit examination revealed that the assessee had not filed the return of income on due date as specified under section 139(1) of the Act of the relevant assessment years, nor filed the return in response to notice issued under section 148 of the Act. As the assessee had not filed the return for both the AYs, it was liable to pay

<sup>62</sup> AY 2008-09: ₹ 18.79 crore, AY 2009-10: ₹ 4.81 crore and AY 2010-11: ₹ 1.64 crore

interest under section 234A. While computing tax demand, the AO had levied interest of ₹ 1.37 crore and ₹ 53.71 lakh for a period of 12 months only as against leviable amount of ₹ 8.88 crore (for 78 months) and ₹ 11.64 crore (for 65 months) in AYs 2009-10 and 2010-11 respectively. The mistakes resulted in short levy of interest of ₹ 18.62 crore<sup>63</sup> under section 234A in AYs 2009-10 and 2010-11. *ITD rectified the mistake (January 2017) under section 154 of the Act.*

**3.2.4.3** In Pr. CIT (Central)-1 Delhi charge, the assessments of **M/s Ultra Home Construction Pvt. Ltd.** for the assessment years 2010-11, 2011-12 and 2012-13 were completed under section 153A read with section 143(3) of the Income Tax Act in March 2016 determining incomes of ₹ 73.36 crore, ₹ 133.97 crore and ₹ 32.87 crore respectively. Audit examination revealed that while computing tax demand, interest under section 234A(3) was incorrectly levied in the AY 2010-11, while interest amounts leviable under section 234A(3) in the AYs 2011-12 and 2012-13 were not levied at all. Moreover, in the AYs 2010-11, 2011-12 and 2012-13, interest under section 234B(3) was charged incorrectly (as indicated in the Table 3.3 given below).

Table 3.3: Details of interest short levied							(₹ in lakh)
AY	Interest under section 234A			Interest under section 234B			Total
	Levied by Department	Leviable (as per Audit)	Short levy of interest	Levied by Department	Leviable (as per Audit)	Short levy of interest	
2010-11	38.90	78.10	39.20	863.68	937.24	73.56	112.76
2011-12	Nil	198.64	198.64	1,312.16	1,986.35	674.19	872.83
2012-13	Nil	40.94	40.94	313.86	327.51	13.65	54.59
<b>Total</b>	<b>38.9</b>	<b>317.68</b>	<b>278.78</b>	<b>2,489.70</b>	<b>3,251.10</b>	<b>761.4</b>	<b>1,040.18</b>

These mistakes resulted in short levy of interest of ₹ 10.40 crore. *Ministry accepted the audit observation (June 2017) and rectified the mistakes in January 2017 by way of passing an order under section 154.*

**3.2.4.4** In Odisha, Pr. CIT-Bhubaneswar charge, block assessment of **M/s Green India Infra Projects Ltd.** for the AYs 2012-13 and 2013-14 was completed after scrutiny under section 153B read with section 144 in March 2015 determining incomes at ₹ 144.63 crore and ₹ 74.58 crore respectively. Audit examination revealed that notices under sections 153A and 142(1)<sup>64</sup> of the Act were served upon the assessee on 11 September 2013 and 02 May 2014 for AYs 2012-13 and 2013-14 respectively. As the assessee did not file returns of income within the dates specified in notices under sections 153A and 142(1), it was liable to pay interest under section 234A of the Act for 19 months and 11

63 ₹ 18.62 crore = ₹ 7.52 crore (AY 2009-10) + ₹ 11.10 crore (AY 2010-11)

64 Section 142(1) of the Income Tax Act deals with inquiry before assessment. Notice under section 142(1) is served to call upon documents and details from the assessee, and to take a particular case under assessment



months during AYs 2012-13 and 2013-14 respectively.<sup>65</sup> However, the Assessing Officer had levied such interest for five months only. The above omission had resulted in short levy of interest of ₹ 8.02 crore<sup>66</sup> under section 234A. *ITD stated in its reply that the mistake was rectified in March 2016. However, a review of the rectification order revealed that the order was passed by levying interest under section 234A for 11 months instead of 19 months for the AY 2012-13. Audit issued a rejoinder on the mistake in January 2017 in respect of which the AO replied (February 2017) that interest under section 234A of Income Tax Act would be re-computed after serving notice to the assessee. Further details of remedial action taken were awaited (August 2017).*

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

**3.2.4.5** In West Bengal, Pr. CIT-3, Kolkata charge, the assessment of **M/s ITC Ltd.** for the AY 2012-13 was completed after scrutiny in March 2016 determining income of ₹ 8,241.40 crore. Audit examination revealed that the assessee had paid advance tax of ₹ 265 crore only before 15 June 2011 as against the requirement of ₹ 297.56 crore, and was therefore liable to pay interest under section 234C for default in the payment of advance tax. However, the AO, while finalizing the assessment, did not levy any interest under section 234C. The omission resulted in non-levy of interest of ₹ 3.21 crore. *Ministry accepted the audit observation (June 2017) and rectified the mistake (July 2016) under section 154 of the Act.*

### **3.2.5 Excess or irregular refunds/interest on refunds**

We give below two such illustrative cases:

**3.2.5.1** In Karnataka, CIT-LTU Bengaluru charge, the assessment of **M/s Vijaya Bank**, for the AY 2012-13 was completed under section 143(3) in March 2015 determining the taxable income at ₹ 1,101.93 crore and tax payable at ₹ 376.90 crore. Audit examination revealed that a refund of ₹ 36.88 crore generated on rectification made under section 154 (April 2014) was adjusted towards the outstanding demand of the AY 2011-12. However, the said refund was not considered while completing the scrutiny assessment (March 2015). This omission had resulted in short computation of tax to the extent of ₹ 36.88 crore. *Ministry accepted the audit observation (June 2017) and rectified the mistake under section 154 in March 2016.*

<sup>65</sup> For the period from the date following the expiry of time limit specified in the notice till the date of assessment.

<sup>66</sup> ₹ 6.57 crore for AY 2012-13 + ₹ 1.45 crore for AY 2013-14



*Section 244A(1)(a) of the Income Tax Act, 1961 provides for levy of interest on the amount of refund where refund arises due to excess payment of tax, at a specified rate from the first day of the assessment year to the date of grant of refund. Further, it has been judicially held<sup>67</sup> that payment of interest on interest is irregular.*

**3.2.5.2** In Maharashtra, Pr. CIT (Central)-1, Mumbai charge, AO completed the scrutiny assessment of **M/s Hindalco Industries Ltd.** for the AY 1994-95 in March 1997 determining income at ₹ 146.56 crore after making various disallowances, which was reduced to ₹ 109.81 crore in September 2013 while giving effect to an appellate order under section 143(3) read with section 254<sup>68</sup>. Audit examination revealed that while giving effect to the appellate order in September 2013, the AO had allowed interest of ₹ 5.30 crore under section 244A(1)(a), which included an element of interest on interest already included in the total refundable amount. Thus, the payment of interest on interest contrary to the judgement *ibid* had resulted in excess allowance of interest of ₹ 3.45 crore on refund. *ITD accepted the observation (December 2015) and rectified the mistake (May 2015) under section 154 of the Act.*

### **3.2.6 Mistakes in assessment while giving effect to appellate orders**

We give below two such illustrative cases:

**3.2.6.1** In Maharashtra, Pr. CIT-LTU, Mumbai charge, the scrutiny assessment of **M/s Reliance Industries Ltd.** for the AY 2011-12 was completed in April 2015 determining income of ₹ 20,156.18 crore after giving relief on account of provision for mark to market loss (MTM)<sup>69</sup> of ₹ 94.09 crore. Audit examination revealed that the AO had disallowed assessee's claim of deduction of ₹ 94.09 crore on account of provision for mark to market (MTM) loss in AY 2010-11, against which the assessee had preferred an appeal before the CIT(Appeals). Meanwhile, based upon the assessee's submission that the provision was already reversed as on 01-04-2010, the AO had given relief for the amount during AY 2011-12. However, the assessee was granted relief for the amount vide orders passed by CIT (Appeals) in May 2016. While giving effect to the appellate order (May 2016), the assessee was again allowed deduction of ₹ 94.09 crore with respect to claim for AY 2010-11, ignoring the fact that the relief was already given at the time of assessment for AY 2011-12. Thus the assessee was allowed double relief (April 2015, May 2016) on account of the same provision. This mistake had resulted in under assessment of income of ₹ 94.09 crore with consequent short levy of tax of ₹ 46.57 crore including

67 CIT vs Gujarat Fluoro Chemicals – Supreme Court (2013)

68 Section 254 of the Income Tax Act provides for powers of Appellate Tribunal while specifying criteria and conditions for passing of orders by the Appellate Tribunal.

69 MTM is a methodology of assigning value to a position held in a financial instrument based on its market price on the closing day of the accounting or reporting period. Mark-to-market losses are generated through an accounting entry (viz. when financial instruments are valued at current market value) rather than the actual sale value of the instrument.

interest. ITD has initiated remedial action (October 2016) for rectification under section 154 of the Act.

**3.2.6.2** In Maharashtra, Pr. CIT-6, Mumbai charge, the AO completed the assessment of **M/s CEAT Ltd.** for assessment year 1998-99, in March 2001 at total income of ₹ 39.60 crore, which was rectified in March 2002 at nil income, *inter alia* setting off income from other sources and short term/long term capital gains against business loss/long term capital loss brought forward from the earlier years. The assessment was further revised in July 2003, September 2011, March 2012 and December 2012 to give effect to the appellate orders passed by CIT (Appeals) and ITAT and for rectification of mistakes under section 154. Audit examination of the order giving effect to the appellate order passed in September 2011 and the assessment orders passed thereafter revealed that in all his assessment orders, the AO had omitted to include income ₹ 12.51 crore from other sources and short term capital gains of ₹ 48.06 crore. The omission had resulted in under assessment of income of ₹ 60.57 crore involving potential tax effect of ₹ 21.20 crore. ITD stated (March 2017) that there was mistake in computing the income and aggregate income of ₹ 60.57 crore was not considered while assessing the income.

### 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 AOs have irregularly extended benefits of tax concessions/exemptions/deductions to beneficiaries who were not entitled for 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 3.4 shows the sub-categories which have impacted the Administration of tax concessions/exemptions/deductions.

Table 3.4: 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	81	1,144.10	AP & Telangana, Delhi, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Punjab, Rajasthan, TN, UP and WB.
b. Irregular exemptions/ Deductions/Rebates/ Relief/MAT Credit	19	166.45	AP & Telangana, Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Odisha, Rajasthan, TN and WB.
c. Incorrect allowance of business expenditure	50	478.67	AP & Telangana, Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan, TN and WB.
<b>Total</b>	<b>150</b>	<b>1,789.22</b>	

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

We give below six such illustrative cases:

*CBDT has clarified<sup>70</sup> 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 held<sup>71</sup> 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 had upheld the decision of the Tribunal (ITA No. 499 of 2012) in its judgement pronounced on 14 October 2014.*

**3.3.2.1** In Gujarat, Pr. CIT-1 Baroda charge, AO completed the scrutiny assessment of **M/s Gujarat Urja Vikas Nigam Ltd.** for the AY 2011-12 in January 2014 determining income as 'nil' after setting-off brought forward business losses/unabsorbed depreciation to the extent of income of ₹ 374.94 crore. As per 3CD Report for the AY 2011-12, the assessee had brought forward business loss of ₹ 339.25 crore and unabsorbed depreciation of ₹ 477.55 crore. Audit examination revealed that the business losses and unabsorbed depreciation for the AYs 2008-09, 2009-10 and 2010-11 amounting to ₹ 1,289.04 crore had already been allowed during the respective AYs. Thus, set-off of brought forward business loss and unabsorbed depreciation of ₹ 374.94 crore in AY 2011-12 was irregular. This mistake had resulted into under assessment of income of ₹ 374.94 crore involving short levy of tax of ₹ 166.89 crore including interest. *Ministry accepted the audit observation (July 2017) and completed remedial action under section 143(3) read with section 263 in November 2016.*

**3.3.2.2** In Maharashtra, Pr. CIT-2, Mumbai charge, AO completed the assessment of **M/s. Satyam Computers Services Ltd.** for AY 2011-12 in May 2015 under section 143(3) read with section 144C(3) determining loss of ₹ 501.24 crore under normal provisions of the Act, being loss other than long term capital loss. Audit examination revealed that the AO had erroneously included loss of ₹ 250.86 crore, being brought forward loss relating to AY 2010-11, as a part of loss of the AY 2011-12 and passed speaking order to this effect. Further, as per rectification order passed under section 154 of the Act in January 2016, the AO had taken ₹ 501.24 crore as total loss for the AY 2011-12 while treating the brought forward loss of earlier AY 2010-11 as part of loss of the instant AY 2011-12, which was not in order. This mistake had resulted in inflated allowance of loss to the extent of ₹ 250.86 crore being brought forward loss from the last assessment order for the AY 2010-11 involving potential tax effect of

<sup>70</sup> CBDT Circular No. 09 dated 23-04-2014

<sup>71</sup> M/s North Karnataka Expressway Ltd. vs. CIT (ITA No.3978/Mum/2010)

₹ 83.33 crore. *ITD accepted the observation (March 2017) and intimated that the necessary remedial action would be taken to rectify the mistake. Further details of remedial action is awaited (July 2017).*

**3.3.2.3** In Delhi, Pr. CIT-3 charge, AO completed the scrutiny assessment of **M/s Delhi Transco Ltd.**, for the AY 2013-14 in March 2016 at 'nil' after setting off of brought forward business loss of ₹ 23.96 crore (to the extent of available business income) under normal provisions and ₹ 317.31 crore under special provisions<sup>72</sup> of the Act. In addition to this, income of ₹ 39.35 crore had also been assessed as income from other sources. Audit examination revealed that while completing the assessment, the AO had erroneously considered gross total income as loss of ₹ 63.49 crore instead of the correct income of ₹ 230.04 crore. This mistake had resulted in setting off of brought forward loss of ₹ 23.96 crore instead of ₹ 190.87 crore. This resulted in excess carry forward of loss of ₹ 166.91 crore involving potential tax effect of ₹ 54.15 crore. *ITD rectified the mistake (May 2016) under section 154.*

*As per explanation 5 to section 32(1) of the Income Tax Act, the entire depreciation is required to be absorbed in the same assessment year regardless of whether or not the assessee has claimed or not.*

**3.3.2.4** In Andhra Pradesh & Telangana, Pr. CIT-1 Hyderabad charge, AO completed the scrutiny assessment of **M/s Bartronics India Ltd.** for AY 2010-11 in February 2015 determining income at ₹ 11.83 crore under normal provisions after allowing deduction of ₹ 154.37 crore under section 10B of the Income Tax Act. Audit examination revealed that the assessee had claimed and was allowed deduction under section 10B without reducing the entire current depreciation of ₹ 135 crore. Only an amount of ₹ 3.26 crore was reduced and the balance amount of depreciation of ₹ 131.74 crore was allowed to be carried forward as unabsorbed depreciation. The assessee was allowed deduction of ₹ 154.10 crore as against the admissible deduction of ₹ 22.37 crore under section 10B of the Income Tax Act. This mistake resulted in excess carry forward of depreciation of ₹ 131.74 crore involving potential tax effect of ₹ 44.78 crore. *ITD has accepted the audit observation (February 2017) and stated that remedial action was being initiated under section 263 of the Act.*

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72 under section 115JB

*CBDT has clarified<sup>73</sup> 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. In cases where assessee has claimed a deduction out of initial cost of infrastructural facility of roads/highway under BOT projects in earlier years, the total deduction so claimed for the AYs prior to the AY under consideration may be deducted from the initial cost of infrastructural facility of roads/ highways and the cost so reduced shall be amortised equally over the remaining period of toll concessionaire agreement.*

**3.3.2.5** In Andhra Pradesh & Telangana, Pr. CIT-1 Hyderabad charge, AO completed the scrutiny assessment of **M/s Bangalore Elevated Tollway Ltd.** for AY 2012-13 in March 2015 determining loss of ₹ 184.15 crore under normal provisions of the Act. Audit examination revealed that the assessee had claimed depreciation of ₹ 181.43 crore at the rate of 25 per cent on the written down value of carriage way at ₹ 725.74 crore as on 01 April 2011. Instead, the said amount should have been amortised equally over the remaining period of 15 years (out of the total period of 20 years from 2007-08), which worked out to ₹ 48.38 crore<sup>74</sup> as against depreciation of ₹ 181.43 crore that was allowed. The incorrect allowance of depreciation had resulted in under assessment of income of ₹ 133.05 crore involving potential tax effect of ₹ 43.17 crore. *ITD had accepted the audit observation (February 2017) and initiated remedial action under section 263 of the Act.*

**3.3.2.6** In Maharashtra, CIT-1, Mumbai charge, AO completed the scrutiny assessment of **M/s Deep Water Services India Ltd.,** for AY 2014-15 in March 2016 under special provisions of the Act at book profit of ₹ 57.58 lakh and nil income under normal provisions, after allowing set-off of brought forward business loss of ₹ 37.21 crore pertaining to AY 2012-13 and carry forward of brought forward losses of ₹ 83.12 crore pertaining to AYs 2012-13 and 2013-14 as claimed without ascertaining the availability of such losses. Audit examination of assessment records of AYs 2012-13 and 2013-14 revealed that the AO had determined assessed income of ₹ 20.42 crore and ₹ 42.41 crore in AYs 2012-13 and 2013-14 respectively and as such there was no loss available in these two assessment years. Incorrect set off and carry forward of non-existent loss in AY 2014-15 resulted in under assessment of income to that extent involving short levy of tax of ₹ 12.65 crore and potential tax effect of ₹ 28.25 crore. *ITD has accepted the audit observation (April 2017) and stated that remedial action was being taken. Further details are awaited (July 2017).*

<sup>73</sup> CBDT Circular No. 09 dated 23/04/2014

<sup>74</sup> ₹ 48.38 crore = ₹ 725.74 crore/15

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

We give below four such illustrative cases:

*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.*

**3.3.3.1** In Pr. CIT-1, Bhubaneswar charge, AO completed the scrutiny assessment of **National Aluminium Company Ltd. (NALCO)**, for the AY 2013-14 in February 2016 determining income at ₹ 1,090.35 crore. Audit examination revealed that assessment for the AY 2012-13 was completed in February 2015 determining total income at ₹ 1,109.76 crore under normal provisions. As total income was determined under normal provisions, no MAT credit was available for carry forward. However, while completing the scrutiny assessment for AY 2013-14, the AO had allowed MAT credit of ₹ 53.04 crore relating to AY 2012-13 as claimed by the assessee in the return of income. This mistake had resulted in irregular grant of MAT credit involving short levy of tax of ₹ 71.61 crore including interest. *ITD stated (February 2017) that remedial action has been initiated for invoking provisions under section 147 of the Income Tax Act. Further details were awaited (July 2017).*

*Section 80-IB (11A) provides that 100 per cent deduction of the profits and gains is allowable to the undertaking deriving profits from the business of processing, preservation and packaging of fruits or vegetables or meat and meat products or poultry or marine or dairy products or from the integrated business of handling, storage and transportation of food grains for five assessment years beginning with the initial assessment year.*

**3.3.3.2** In Gujarat, Pr. CIT-2 Baroda Charge, the scrutiny assessments of **M/s Manpasand Beverages Pvt. Ltd.** for the AYs 2012-13 and 2013-14 were completed in October 2015 and March 2016 determining income of ₹ 7.04 crore and ₹ 8.80 crore respectively under normal provisions and ₹ 6.92 crore and ₹ 24.72 crore respectively under section 115JB. The assessee had claimed and was allowed deductions of ₹ 6.31 crore and ₹ 9.69 crore for the AYs 2012-13 and 2013-14 respectively under section 80-IB (11A) for the business of manufacturing and processing of fruits juices. Audit examination revealed that the assessee had not dealt with fruits for manufacturing and processing of fruit juices during these AYs, and had instead used mango pulp only as raw material. Thus, deductions allowed as per provisions quoted *ibid* were not in order. The incorrect allowance of deduction of ₹ 6.31 crore and ₹ 9.69 crore for the AYs 2012-13 and 2013-14 respectively resulted in under assessment of income by ₹ 16 crore and short levy of tax of ₹ 7.20 crore including interest. *Ministry accepted the audit observation (July 2017) and initiated remedial action by issuing notice under section 263 of the Act in March 2017.*



**3.3.3.3** In Rajasthan, CIT Kota charge, AO completed the scrutiny assessment of **M/s Mangalam Cement Ltd.** for the AY 2013-14 in March 2016 at income of ₹ 103.65 crore and tax demand of ₹ 26.24 crore thereon after allowing MAT credit of ₹ 7.39 crore. Audit examination revealed that MAT credit of ₹ 6.91 crore was available for carry forward after scrutiny assessment of AY 2011-12 (March 2014), of which credit of ₹ 4.52 crore was allowed during the assessment of AY 2012-13 assessed under section 154 in March 2015. Thus, MAT credit of ₹ 2.39 crore was only available for set off during the AY 2013-14 instead of ₹ 7.39 crore allowed by the assessing officer. The omission had resulted in under charge of tax by ₹ 5 crore. *Ministry accepted the audit observation (October 2017) and had rectified the mistake (October 2016) under section 154 of the Act.*

**3.3.3.4** In Maharashtra, Pr. CIT (Central)-3, Mumbai charge, AO completed the scrutiny assessment of **M/s Welspun Syntex Ltd.** for the AY 2013-14 in March 2016 at 'nil' income after allowing set off of unabsorbed depreciation of ₹ 10.89 crore to the extent of assessed income. The tax was computed under special provisions of section 115JB on book profit of ₹ 16 crore. Audit examination revealed that the assessee had positive income of ₹ 6.61 crore under normal computation in the AY 2012-13 after allowing set off of brought forward unabsorbed depreciations of ₹ 8.43 crore pertaining to the AYs 2005-06 and 2009-10. As such, no unabsorbed depreciation was available for set off against the assessed income of ₹ 10.89 crore in AY 2013-14. Irregular set off of unabsorbed depreciation and application of MAT provisions had resulted in under assessment of income of ₹ 10.89 crore under the normal provision involving tax effect of ₹ 3.53 crore including excess allowance of MAT credit of ₹ 3.20 crore and short levy of tax of ₹ 33.03 lakh under normal provisions. *ITD accepted the observation and rectified the mistake (July 2016) under section 154 of the Act.*



### 3.3.4 Incorrect allowance of business expenditure

We give below nine such illustrative cases:

*Explanation to Section 37(1) of the Act stipulates that any expenditure incurred by an assessee for any purpose which is an offence or prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. Further, Hon'ble Delhi High Court, in case of M/s Northern India Chemical Distribution Ltd. vs. CIT [2001] 248 ITR 790 (Delhi), also upheld the disallowance of the damages paid for the dishonest conduct of director though the amount may have been settled in civil action for damages.*

**3.3.4.1** In Maharashtra, Pr.CIT-2 Mumbai charge, AO completed the scrutiny assessment of **M/s Satyam Computer Services Ltd.**, for the AY 2011-12 in May 2015 determining loss at ₹ 250.38 crore. Audit examination revealed that the assessee had claimed and was allowed amount of ₹ 569 crore to profit and loss account on account of settlement of 'Class Action Complaint' under the head of exceptional items. In the Tax Audit Report (Form 3CD), the Auditor qualified these expense as deduction under section 37 of the income tax Act and hence ineligible for deduction for tax purposes. It was further revealed that the Company had to pay Class Action Settlement Consideration of ₹ 569 crore to its investors in the United States of America due to fraud towards financial irregularities in the Company's books of accounts, which was allowed by the Department during scrutiny assessment. As the payment of settlement considerations was payment in the form of punitive damages for fraudulent act of the assessee company, the same was not allowable as per provisions *ibid*. The incorrect allowance of inadmissible deduction has resulted in the underassessment of income to the extent of ₹ 569 crore and short levy of tax to the extent of ₹ 189 crore. *ITD's reply was awaited (July 2017).*

*Under section 36(1)(viiia) of the Income Tax Act, provision for bad and doubtful debts is allowable in the case of banking industry at the rate of 7.5 per cent of total income of an Indian company and 5 per cent of total income in the case of a foreign company. It was clarified by the CBDT circular no. 17 of 2008 dated 26 November 2008 that this provision shall become the opening credit balance and the bad and doubtful debts actually written off shall first be set-off against available credit balance and excess, if any, is allowable under section 36(1)(vii) read with section 36(2) of the Act.*

**3.3.4.2** In Maharashtra, Pr.CIT(IT)-4, Mumbai charge, AO completed the scrutiny assessment of **M/s Standard Chartered Bank** for the AY 2009-10 in March 2013 determining income at ₹ 3,783.11 crore. Audit examination revealed that the assessee had claimed bad debts of ₹ 261.91 crore. This was done by setting off the opening credit balance in provision for bad debts of ₹ 103.18 crore as per the return filed and claiming the balance in net bad debts of ₹ 158.73 crore under section 36(1)(viiia), which was allowed by the AO. The actual opening credit balance in provision for bad debts available for set off against the bad debts written off was ₹ 190.85 crore. Thus the amount of ₹ 71.06 crore only was

eligible for deduction under section 36(1)(viiia) as against ₹ 158.73 crore allowed by the AO. The omission had resulted in excess allowance of bad debts by ₹ 87.67 crore resulting in under assessment of income by the same amount involving tax effect of ₹ 37.02 crore. *ITD stated (June 2016) that the mistake had been rectified under section 154 in March 2016.*

*Section 36(1)(viii) of the Income Tax Act stipulates that in computing income from business, a deduction shall be allowed in respect of any special reserve created and maintained by a specified entity. The amount of permissible deduction should be the least of the i) Amount transferred to special reserve account during the previous year; ii) 20 per cent of income from eligible business during the year; or iii) 200 per cent of the paid up capital less the balance of the special reserve account on the first day of the previous year.*

**3.3.4.3** In Maharashtra Pr. CIT-2, Mumbai charge, AO completed the scrutiny assessment of **M/s State Bank of India**, for the AY 2013-14 in March 2015 determining income of ₹ 22,210.40 crore. Audit examination revealed that ₹ 750 crore was transferred to the special reserve under section 36(1)(viii) during the previous year. However, the AO had allowed deduction of ₹ 833.68 crore as claimed by the assessee on the grounds that there was no express provision in the Act to the effect that reserve should be created by way of debit to the Profit and Loss Account of the relevant financial year. This is not correct as the Act clearly provides for restricting the amount of deduction to the amount transferred during the previous year to the special reserve account created for the purpose of section 36(1)(viii). This mistake resulted in excess allowance of deduction amounting to ₹ 83.68 crore<sup>75</sup> with consequent short levy of tax of ₹ 27.14 crore. *ITD's reply was awaited (July 2017).*

*Section 41(1) of Income Tax Act provides that where an allowance or deduction has been made in the assessment for any year in respect of a loss declared by the assessee and subsequently during any previous year this amount is received, then the income realized should be treated as profits chargeable to tax.*

**3.3.4.4** In Rajasthan, CIT Jaipur-2 charge, AO completed the scrutiny assessment of **State Bank of Bikaner and Jaipur** for the AY 2013-14 in February 2015 determining income of ₹ 1,407.74 crore. Audit examination revealed that assessee had claimed and was allowed deduction of ₹ 37.61 crore as 'recovery in written off accounts' from the taxable income. The same was not allowable as per provisions *ibid* and chargeable to tax. The omission had resulted in under assessment of income of ₹ 37.61 crore involving short levy of tax of ₹ 15.01 crore including interest. *ITD's reply was awaited (February 2017).*

<sup>75</sup> ₹ 83.68 crore = ₹ 833.68 crore - ₹ 750 crore

*As per section 37 of Income Tax Act, any expenditure being in the nature of capital expenditure or personal expenditure shall not be allowed in computing the income chargeable under the head 'profits and gains of business or profession'. Bombay High Court in the case of Ciba of India Ltd. vs CIT held that where the assessee had set up a new plant for manufacturing additional pharmaceutical goods in the same line of business, travelling expenses, training expenses of staff etc. were in the nature of capital expenditure.*

**3.3.4.5** In Maharashtra, CIT-LTU, Mumbai charge, AO completed the scrutiny assessment of **M/s Tata Motors Ltd.**, for AY 2009-10 in January 2014 determining loss of ₹ 1,779.04 crore. Audit examination revealed that the assessee had claimed total expenses of ₹ 43.83 crore towards salary, staff welfare expenses, travelling and conveyance, hotel expenses etc. in respect of 'Nano Project' which was capitalised in the books of accounts. However, the same was claimed and allowed as revenue expenses for the purpose of Income Tax in the computation of income. As 'Nano Project' at Singur (West Bengal) was altogether a new project and not an expansion of existing one, the expenses should have been capitalised. The incorrect allowance resulted in under assessment of income by ₹ 43.83 crore, involving potential tax effect of ₹ 14.90 crore. *ITD took remedial action (July 2016) under section 143(3) read with section 263.*

**3.3.4.6** In Maharashtra, Pr.CIT-1, Mumbai charge, AO completed the scrutiny assessment of **M/s Hindustan Petroleum Corporation Ltd. (HPCL)**, for the assessment year (AY) 2013-14 in March 2016 determining loss at ₹ 282.14 crore after disallowance of various expenditure. The assessee was liable to tax on book profit of ₹ 1,322.72 crore under the provision of MAT. Audit examination revealed that the assessee had debited ₹ 35.53 crore to Profit and Loss Account on account of loss on sale of current investment which was allowed as business expenditure. It was also revealed that these investments were in the form of bonds issued by the Government of India to the assessee in previous years to make up for the loss on account of sale of products at lower cost to the Public Distribution System. As the sale/redemption of such bonds was capital in nature, it was required to be disallowed in view of above quoted provisions. In a similar case of M/s HPCL for AYs 2006-07 and 2007-08, the Department had treated profit/loss on sale of oil bonds as capital gain/loss and was upheld by CIT (Appeals) in AY 2006-07. The incorrect allowance of capital expenditure had resulted in under assessment of income by ₹ 35.53 crore involving short levy of tax of ₹ 11.53 crore. *Ministry accepted the audit observation (September 2017) and stated that remedial action has been initiated under section 263 of the Act.*

*A provision made in the accounts only for an accrued or known liability is an admissible deduction.*

**3.3.4.7** In Gujarat, Pr. CIT-1, Baroda Charge, AO completed the scrutiny assessment of **M/s Gujarat State Electricity Corporation Ltd.** for the AY 2011-12 determining income at 'nil' after setting-off brought forward business losses of ₹ 269.90 crore and unabsorbed depreciation of ₹ 17.90 crore in January 2014. Audit examination revealed that the assessee had claimed and was allowed ₹ 31.68 crore as provision towards a long term service contract agreement for maintenance of 374MW Utran Gas Based Power Plant. As the expenditure was merely a provision and not an ascertained liability, it should have been disallowed and added back to the income of the assessee. The mistake had resulted in under assessment of income by ₹ 31.68 crore involving potential tax effect of ₹ 10.52 crore. *ITD took remedial action by passing order under section 143(3) read with section 263 in December 2016.*

*It has judicially been held<sup>76</sup> that the guidelines issued by the Reserve Bank of India cannot override the statutory provisions of the Income Tax Act.*

**3.3.4.8** In Tamil Nadu, Pr.CIT-2 Chennai charge, AO completed the scrutiny assessment of **M/s Indian Bank** for the AY 2013-14 in March 2016 determining income of ₹ 2,801.94 crore. Audit examination revealed that the assessee had claimed and was allowed amortisation of premium of ₹ 31.90 crore on investment held under 'held to maturity' (HTM) category as per RBI's master Circular on 'Prudential norms for Classification, Valuation and Operation of Investment Portfolio by Banks' and the same was reflected as a deduction from 'Income on Investments'. Since the investments classified under HTM category were not held as stock-in-trade and were of capital nature, the claim of amortisation of premium on investments held under HTM category was not allowable under the Income Tax Act. The omission to disallow had resulted in incorrect allowance of expenditure of ₹ 31.90 crore involving short levy of tax of ₹10.35 crore. *ITD's reply is awaited (July 2017).*

**3.3.4.9** In Odisha, Pr.CIT-1 Bhubaneswar charge, AO completed the scrutiny assessment of **M/s Odisha Hydro Power Corporation Ltd.** for the AY 2013-14 after scrutiny in March 2016 determining income of ₹ 15.67 crore. Audit examination revealed that the assessee had claimed and was allowed deduction of ₹ 77.01 crore towards pension fund despite of certification by tax auditor that out of above liability, an amount of ₹ 49.15 crore had been paid in 2012-13 and ₹ 27.86 crore which remained unpaid was required to be disallowed under

<sup>76</sup> M/s Tamil Nadu Power Finance and Infrastructure Development Corporation Ltd. vs JCIT (280 ITR 491 Madras High Court)

section 43B of the Income Tax Act. The incorrect allowance resulted in under assessment of income by ₹ 27.86 crore involving potential tax effect of ₹ 9.04 crore. ITD accepted the audit observation (February 2017) and initiated remedial action for re-assessment under section 147 of the Act.

### 3.4 Income escaping assessment 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 3.5 shows the sub-categories which have resulted in Income escaping assessments.

Table 3.5: 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	1	2.06	Maharashtra		
b.	Income not assessed/under assessed under normal provision	14	136.71	AP & Telangana, Delhi, Maharashtra, Odisha, TN and WB		
c.	Incorrect classification and computation of capital gains	4	7.60	Gujarat, Maharashtra, Rajasthan and TN		
d.	Incorrect estimation of Arm's Length Price	8	43.68	AP & Telangana, Delhi, Maharashtra and WB.		
e.	Unexplained investment/cash credit	4	799.78	Gujarat, Maharashtra and WB		
<b>Total</b>		<b>31</b>	<b>989.83</b>			

### 3.4.2 Income not assessed/under assessed under special provisions

We give below one such illustrative case:

*Section 115JB of the Act provides for levy of Minimum Alternate Tax (MAT) at prescribed percentage of book profit if the income tax payable on the total income computed 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 subject to certain additions/ deletions. Further, vide Finance Act 2011, book profit as defined below Explanation 1 of section 115JB has been amended to exclude retrospectively from 01 April 2005 any deduction with respect to sections 80HHC, 80HHE and 80 HHF as enumerated in sub-clause (iv), (v) and (vi) thereof.*

**3.4.2.1** In Maharashtra, Pr. CIT-15, Mumbai charge, AO completed the scrutiny assessment of **M/s The Wanbury Ltd.** for AY 2010-11 in April 2014 at nil income after allowing set off of brought forward unabsorbed depreciation to the extent of income available and computed tax under special provisions of Minimum Alternate Tax (MAT). Audit examination revealed that the assessee had claimed and was allowed deduction of ₹ 12.11 crore under section 80HHC(1B), which was not in order. In view of the above mentioned

amendment, AO should have disallowed and added back the deduction. Omission to do so resulted in underassessment of book profit to that extent, involving short levy of tax of ₹ 2.06 crore. *Reply from the ITD was awaited (July 2017).*

### 3.4.3 Income not assessed/under assessed under normal provisions

We give below six such illustrative cases:

*As per Section 115BBD of the Act, where the total income of an assessee, being an Indian company, includes any income by way of dividends declared, distributed or paid by a specified foreign company, the income tax payable shall be the aggregate of the amount of income-tax calculated on the income by way of such dividends at the rate of fifteen per cent and the amount of income tax with which the assessee would have been chargeable had its total income been reduced by the aforesaid income by way of dividends. Further, in a scrutiny assessment, AO is required to make a correct assessment of the total income or loss of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment.*

**3.4.3.1** In Delhi, Pr. CIT-4 charge, AO completed the scrutiny assessment of **M/s India Infrastructure Finance Company Ltd.** for AY 2013-14 in February 2016 determining income of ₹ 1,141.18 crore and tax of ₹ 343.28 crore thereon. Audit examination revealed that while completing the assessment, the AO did not add the dividend income<sup>77</sup> of ₹ 166.28 crore to the income of the assessee despite the fact that assessee itself had offered tax at the rate of fifteen *per cent* on the said income in its return. Besides, tax on the assessed income of ₹ 1,141.18 crore was charged at ₹ 343.28 crore, instead of the correctly leviable amount of ₹ 370.25 crore. These mistakes had resulted in underassessment of income of ₹ 166.28 crore, involving short levy of tax of ₹ 53.95 crore. *Ministry accepted the audit observation (July 2017) and rectified the mistake (February 2017) under section 154.*

*Section 5 of the Act provides that the total income of a person for any previous year shall include all incomes derived from whatever source, which is received or deemed to be received or which accrues or is deemed to be accrued during such previous year, unless specifically exempt from tax under the provisions of the Act.*

**3.4.3.2** In Odisha, Pr.CIT-1 Bhubaneswar charge, AO completed the scrutiny assessment of **M/s North Eastern Electricity Supply Company of Orissa Ltd. (NESCO)** for AY 2012-13 in March 2015 determining loss at ₹ 108.95 crore. Audit examination revealed that the assessee had credited ₹ 79.32 crore in its profit and loss account as “Income to be recovered from future tariff determinations by OERC”. However, in the computation of income, the same was reduced as “Income from regulatory affairs towards future tariff

<sup>77</sup> Tax was chargeable at the rate of fifteen per cent at this income under section 115BBD of the Act



determinations by OERC". As the Act did not provide for deduction or exemption of such income and as this income was receivable in future, allowance of this income as exempt was not in order. The omission resulted in under assessment of income by ₹ 79.32 crore involving potential tax effect of ₹ 25.73 crore. *ITD accepted the audit observation and initiated remedial action (February 2017).*

*Under section 28(iiiB) of Income Tax Act, 1961, cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India shall be chargeable to income tax under the head 'profit and gains of business or profession'.*

**3.4.3.3** In Maharashtra, Pr. CIT-2, Mumbai Charge, AO completed the scrutiny assessment of **M/s Nhava Sheva International Containers Terminal Pvt. Ltd.** for AY 2011-12 in March 2014 under special provisions of section 115JB allowing carry forward of tax credit of ₹ 13.60 crore for set off in the following AY(s). The assessee company had credited to profit and loss account ₹ 4.90 crore as duty scrip<sup>78</sup> earned on account of its export earnings under the Served from India Scheme (SFIS) and utilised the same for payment of custom duty on import of capital goods and spares. While finalising the assessment order, the AO had treated the duty scrip as capital receipt and reduced the same from the taxable income as claimed by the assessee. As per the provisions of section 28(iiiB) of the Act, the duty scrip of ₹ 4.90 crore was required to be taxed by treating it as revenue receipt. In doing so, the tax liability under normal provision worked out to be ₹ 13.65 crore which exceeded the tax liability of ₹ 13.60 crore worked out under special provisions. The mistake had resulted in short levy of tax of ₹ 13.65 crore including irregular carry forward of MAT credit of ₹ 13.60 crore. *ITD accepted the audit observation (February 2017) and took remedial action by passing the order under section 143(3) read with section 147 in December 2016.*

**3.4.3.4** In Delhi, CIT (International taxation)-1, AO completed the scrutiny assessment of **M/s Amadeus IT Group SA** for AY 2011-12 under section 143(3) read with section 144C(13) of the Act in November 2014 determining income of ₹ 305.16 crore and tax of ₹ 128.87 crore thereon. In the assessment order, taxable income was computed in two ways, viz. an amount of ₹ 305.16 crore as profit attributable to the permanent establishment (PE) (taxable at the rate of 42.23 per cent) and ₹ 79.37 crore as gross booking revenue in respect of bookings arising from India (taxable at the rate of 10 per cent). As the tax liability was more in respect of profits attributable to the PE, the taxable

<sup>78</sup> A Duty Credit Scrip is a scrip which is issued by Director General of Foreign Trade and can be used to pay Customs Duty, Excise Duty and Service Tax. These Scrips are issued to both Exporters of Goods as well as Exporters of Service under various schemes mentioned in the Foreign Trade Policy.



income was assessed at ₹ 305.16 crore. Audit examination revealed that income of ₹ 7.66 crore (Euro 12,000,000 at the rate of ₹ 63.8429) was required to be included in the taxable income as revenue from the use of Altea system by British Airways and taxed at the rate of 10 *per cent*. However, this amount was not included in the profits attributable to the PE nor was any tax raised on the same. The omission had resulted in under assessment of income by ₹ 76.61 crore involving short levy of tax of ₹ 11.03 crore including interest. *ITD rectified the mistake (January 2016) under section 154 of the Act.*

*Section 115-O of the Income Tax Act, 1961 provides for tax on any amount declared, distributed or paid by a domestic company by way of dividend. Under Section 2(22)(d) of the Act, dividend includes any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits whether such accumulated profits have been capitalized or not, but does not include any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956.*

**3.4.3.5** In Tamil Nadu, CIT-4, Chennai charge, AO completed the scrutiny assessment of **M/s Mayajaal Entertainment Ltd.** for AY 2012-13 in March 2015 at total loss of ₹ 58.03 lakh. The company had bought back 1,68,77,800 equity shares of ₹ 10 each at a price of ₹ 45 per share from M/s Pentamedia Graphics Pvt. Ltd., holding 48.71 *per cent* shares in the assessee company, under settlement, making payment of premium of ₹ 59.07 crore. Out of premium amount of ₹ 59.07 crore, assessee had adjusted ₹ 39.89 crore against the Securities Premium Account and the balance ₹ 19.18 crore towards distribution of profit to M/s Pentamedia Graphics Pvt. Ltd. under section 2(22)(d) of the Act against the surplus as per profit and loss account. Since buyback of shares was not covered under the provisions of section 77A of the Companies Act, 1956, Dividend Distribution Tax under section 115-O was payable. Omission to do so had resulted in non-levy of Dividend Distribution Tax of ₹ 3.19 crore excluding interest leviable thereon under section 115P. *Reply from ITD was awaited (July 2017).*

**3.4.3.6** In Maharashtra, Pr. CIT (Central)-8(3), Mumbai charge, AO completed the scrutiny assessment of **M/s Lokhandwala Kataria Construction Pvt. Ltd.** for AY 2012-13 in March 2015 at total loss of ₹ 14.10 crore. The assessee, engaged in the business of property development, showed closing work-in-progress (WIP), in respect of AY 2013-14, at ₹ 547.77 crore after adding expenditure of ₹ 224.68 crore incurred during the year in the opening WIP of ₹ 323.09 crore i.e. closing WIP of AY 2012-13. The AO had restricted the closing WIP of previous AY 2012-13 to ₹ 313.40 crore as against ₹ 323.09 crore as claimed by the assessee in the assessment proceedings of that year. Hence the correct closing WIP with respect to the instant AY 2013-14 worked out to ₹ 538.08 crore instead of ₹ 547.77 crore after adding expenditure of ₹ 224.68 crore incurred during the

year as allowed in the assessment. Omission to adopt correct figure of closing WIP resulted in under assessment of income of ₹ 9.69 crore involving potential tax effect of ₹ 3.15 crore. *ITD accepted the observation (March 2017), but details of remedial action initiated were awaited (July 2017).*

#### **3.4.4 Incorrect computation/ classification of capital gains**

We give below three such illustrative cases:

*Section 50 provides that if an assessee has sold a capital asset forming part of block of assets (building, machinery etc.) on which depreciation has been allowed under the Income Tax Act, the income arising from such capital asset (i.e. difference between WDV and sales consideration) is treated as short term capital gain.*

**3.4.4.1** In Gujarat, Pr. CIT Valsad Charge, AO completed the scrutiny assessment of **M/s Avi Global Plast Private Ltd.** for AY 2012-13 in January 2015 determining total income of ₹ 1.29 crore. The assessee had sold factory building and earned profit of ₹ 10.43 crore. The gain so received was claimed to be non-taxable on the ground that the block of 'Factory Building' still remained positive as on 31.03.2012. Assessee had shown a new building purchased at ₹ 11.03 crore in January 2012 under the block of 'Factory Building'. However, there was no such purchase of building as the assessee had only entered into an agreement for purchase of building which was under construction. Thus, the new building shown as purchased did not form part of the block of asset, and therefore the amount of ₹ 10.43 crore was liable to be taxed as short term capital gains (STCG). The omission had resulted into under assessment of STCG of ₹ 10.43 crore involving short levy of tax of ₹ 4.53 crore including interest. *Ministry accepted the audit observation (September 2017) and stated that remedial action was initiated under section 148 of the Act in August 2017.*

*Section 45(1) of the Income Tax Act provides that any profits or gains arising from the transfer of 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.*

**3.4.4.2** In Maharashtra, Pr.CIT-10, Mumbai charge, AO completed the scrutiny assessment of **M/s N V Developers Pvt. Ltd.** for AY 2012-13 in March 2015 determining income of at ₹ 9.01 Crore. The assessee was engaged in the business of operating and maintaining 'G-Corp Tech Park' and offered its rental income under the head 'Profit and Gains from Business or Profession'. While completing the assessment, AO had treated the rental income as 'Income from house property' and disallowed depreciation and other expenditure. Further, during the year under consideration, the assessee had sold a flat in the fifth floor (out of the 15 floors) of the Tech Park in August 2011 and credited an amount of ₹ 3.53 crore being the profit on this sale to profit and loss account under the

head 'Exceptional Items'. Since the rental income from the flats had been considered as 'Income from House Property' by the AO, any gain arising out of the sale would be taxable as 'Capital Gains' instead of profits from business. Moreover, assessee had kept the flat for less than three years (April 2010 to August 2011). Hence, the profit would be taxable as 'Short Term Capital Gains'. The omission to tax STCG had resulted in under assessment of capital gain of ₹ 3.53 crore involving tax effect of ₹ 1.15 crore. *Ministry accepted the audit observation (September 2017) and stated that remedial action under section 147 of the Act will be taken in due course.*

**3.4.4.3** In Rajasthan, CIT-Ajmer charge, AO completed the scrutiny assessment of **M/s Sharda Spuntex Private Ltd.** for AY 2013-14 at an income of ₹ 0.98 crore including short term capital gains (STCG) of ₹ 5.04 crore after setting-off brought forward business loss of ₹ 2.48 crore and unabsorbed depreciation of ₹ 1.38 crore in March 2016. While computing the taxable income of the assessee, the AO allowed set-off of brought forward business loss of ₹ 2.48 crore from STCG which was irregular in view of the provisions quoted above. The omission had resulted in under-computation of short term capital gains by ₹ 2.48 crore involving short levy of tax of ₹ 1.11 crore including interest. *Ministry accepted the audit observation (October 2017) and rectified the mistake by passing order under section 154 in January 2017.*

### 3.4.5 Incorrect estimation of Arm's Length Price

We give below four 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 the Act exceeds ₹ 15 crore. The TPO, after hearing the assessee and 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 AO and to the assessee.*

**3.4.5.1** In Maharashtra, Pr.CIT (TP)-1 Mumbai charge, AO completed the transfer pricing assessment of **M/s ACC Ltd.** for AY 2013-14 in November 2016, determining the Arm's Length Price (ALP) adjustment at ₹ 503.48 crore. While determining the ALP of the inter-unit transfer of power, the sales value of the assessee at various locations was revised and ALP adjustment of ₹ 428.81 crore was proposed vide para 33 of transfer pricing order. As per the working of the revised sale value and adjustments thereon, while computing the adjustment in respect of a location 'Jamul', the value was inadvertently taken at ₹ 4.75 crore instead of ₹ 47.55 crore. This mistake had resulted in short adjustment of ALP by

₹ 42.80 crore involving a tax effect of ₹ 13.89 crore. *Ministry accepted the audit observation (September 2017) and rectified the mistake by passing order under section 92CA(5)<sup>79</sup> read with section 154 in January 2017.*

*Section 92C(1) of the Income Tax Act, 1961, provides that the Arm's Length Price (ALP) in relation to an international transaction shall be determined by any of the methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe. The methods specified may be any of a) comparable uncontrolled price method, b) resale price method, c) cost plus method, d) profit split method, e) transactional net margin method, and f) such other method as be prescribed by the Board.*

**3.4.5.2** In Maharashtra CIT(TP)-Pune charge, the TPO passed an order on **M/s Volkswagen India Pvt Ltd.** for AY 2013-14 in October 2016 determining adjustment of ₹ 1,110.42 crores to the value of international transaction by applying Cost Plus Method (CPM). An alternate adjustment of ₹ 881.53 crore was also made by applying Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM). During the course of alternative benchmarking with TNMM as MAM, the Profit Level Indicator (PLI) of the assessee was determined by the ITD as (-) 13.74 *per cent* while PLI of the comparables was worked out to 1.81 *per cent*. Considering this, the Arm's Length operating profit in case of the assessee should be ₹ 106.90 crore (1.81 *per cent* of ₹ 5,906.27 crore as operating revenue) as against the actual operating profit of the assessee at (-) ₹ 811.84 crore. Thus, the total adjustment under this head should have been proposed at ₹ 918.74 crore. However, the ITD had incorrectly considered PLI of the comparables as 1.18 *per cent* instead of correct PLI of 1.81 *per cent*. Consequently, the Arm's Length Profit was wrongly computed at ₹ 69.69 crore (1.18 *per cent* of ₹ 5,906.27 crore) after allowing ALP adjustment of only ₹ 881.53 crore under the provisions of section 92CA(3) of the Act. The omission resulted in short adjustment of ₹ 37.21 crore<sup>80</sup> involving tax effect of ₹ 12.07 crore. *Ministry accepted the audit observation (September 2017) and rectified the mistake by passing order under section 154 read with section 92CA(5) of the Act in December 2016.*

**3.4.5.3** In West Bengal, CIT IT & TP, Kolkata charge, the TPO passed an order on **M/s Philips India Pvt. Ltd.** for AY 2012-13 under section 92CA(3) in January 2016 at an upward adjustment of ₹ 371.94 crore which was revised at ₹ 340.21 crore under sections 92CA(3) read with sections 92CA(5) and 144C(5) of the Act for

<sup>79</sup> Section 92CA of Income Tax Act deals with procedure for reference to TPO of any issue relating to computation of ALP in an international transaction. As per sub section 5 of section 92CA the TPO can determine ALP of other international transactions identified subsequently in the course of proceedings before him.

<sup>80</sup> ₹ 37.21 crore = ₹ 918.74 crore - ₹ 881.53 crore

giving effect to the directions of the Dispute Resolution Panel (DRP) in January 2017. In the final TP order of January 2017, upward adjustments in respect of Advertisement Marketing and Promotions (AMP) expenses for lighting (distribution) division and CLS (distribution) division was made for total amount of ₹ 1.03 crore (lighting division ₹ 0.02 crore and CLS division ₹ 1.01 crore). Audit examination revealed that the TPO, while making upward adjustments, computed upward adjustment on AMP expenses instead of on the operating income. This omission had resulted in short upward adjustment of ₹ 21.03 crore (₹ 2.27 crore for lighting and ₹ 18.76 crore for CLS respectively) involving tax effect of ₹ 6.82 crore. *ITD rectified the mistake (June 2017) under section 144C(5) read with sections 154 and 92CA(3).*

**3.4.5.4** In Delhi, CIT-1 TPO charge, the TPO passed an order on **M/s Bharti Airtel Ltd.** under section 92CA(3) of the Act for AY 2011-12 in November 2014 at an adjustment of ₹ 227.96 crore on the international transactions of corporate guarantee, interest on loans advanced to Associated Enterprises (AEs), receivables (recoverable from AEs) and valuation of shares. The TPO proposed interest adjustments of ₹ 0.19 crore, ₹ 17.94 crore and ₹ 54.19 crore at the rate of 11.69 *per cent* on the loans advanced to its three subsidiary companies, viz. M/s Bharti Airtel (USA) Ltd., M/s Bharti Airtel International (Netherland) B.V. and M/s Bharti Airtel (Lanka) Ltd. respectively. However, in the final computation, the proposed adjustment of ₹ 0.19 crore and ₹ 17.94 crore were not included. This mistake had resulted in short adjustment of ₹ 18.13 crore. Further, while applying the Comparable Uncontrolled Price (CUP) method, the rate for the financial guarantee rate of Punjab National Bank was taken as 2.7 *per cent* instead of 3.6 *per cent* (0.9 *per cent* per quarter rate was given), leading to short adjustment of ₹ 87.16 lakh. The mistakes had resulted in total short adjustment of ₹ 19 crore in the order of the TPO involving short levy of tax of ₹ 6.31 crore. *Ministry accepted the audit observation (September 2017) and rectified the mistakes (May 2016) under 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. As per Section 281B of the Act, if during the assessment proceedings, the AO is of the opinion that it is necessary in the interest of revenue, he may, with the prior approval of Pr. Commissioner of Income Tax, provisionally attach the property of the assessee. Further, bank accounts of the defaulting assessee can be frozen under section 226(3) of the Act.*

**3.4.6.1** In Maharashtra, Pr. CIT-14, Mumbai charge, a company **M/s Darwin Platform Infrastructure Ltd.** declared income of ₹ 1.16 crore for AY 2012-13 (September 2012). The case was selected for scrutiny under CASS to examine the huge introduction of unsecured loan during the relevant financial year 2011-12 (₹ 1,799.78 crore was raised by the assessee during the year). The AO completed the best judgment assessment (March 2015) *ex parte* under section 144, making ad-hoc addition of ₹ 19.01 crore, under section 68 of the Act, treating one *percent* of the entire unsecured loans at the year-end amounting to ₹ 1900.79 crore as unexplained income.

As per the assessment records, ITD had issued notices to the assessee (August 2013, December 2014 and March 2015) for submission of the details in respect of these loans including the list of unsecured loan providers and their confirmations. However despite the first two notices being duly served, no information or submission in this regard was received from the assessee. The case being material one involving loan transactions of ₹ 1,900.79 crore, the ITD was required to make maximum possible inquiries about the assessee, direct/indirect assets of the assessee etc. and to take recourse to available options of property attachments and/or freezing of bank accounts so as to protect the interest of revenue. ITD added back only one *per cent* of the unsecured loan instead of the entire amount of unsecured loan concluding that the three main yardsticks of candidness of the loan transaction viz. *identity* of the loan providers, their *creditworthiness* and *genuineness* of transaction remained unproved. Conclusion drawn by the AO was not convincing at all. The omission had resulted in under assessment of income of ₹ 1,780.77 crore involving short levy of tax was of ₹ 577.77 crore. Besides, interest of ₹ 208 crore was also leviable under section 234B. *Ministry accepted the audit observation (September 2017) and stated that since the assessment was set aside, the proceedings under section 143(3) read with section 264 was in progress.*



### 3.5 Over-charge of tax/Interest

**3.5.1** We noticed that AOs over assessed income in 40 cases involving overcharge of tax and interest of ₹ 446.08 crore in Andhra Pradesh & Telangana, Delhi, Haryana, Madhya Pradesh, Maharashtra, Odisha and West Bengal. We give below five such illustrative cases:

**3.5.1.1** In Maharashtra, Pr. CIT-5, Mumbai Charge, the AO had reopened and completed the assessment of **M/s National Aviation Company (India) Ltd.** for AY 2008-09 after scrutiny in February 2015 determining assessed loss at ₹ 4,679.29 crore, *inter alia*, making addition of ₹ 39.69 crore towards unabsorbed depreciation pertaining to the AY 1997-98. The assessee company had total brought forward unabsorbed depreciation of ₹ 311.12 crore including ₹ 39.69 crore pertaining to AY 1997-98 which was not allowed to be carried forward for set off either at the time of rectification order passed in March 2012 or at the time of earlier scrutiny order passed by the department in December 2010 as the assessee had reported loss during the relevant previous year. As such, the AO should have reduced the claim of carry forward of unabsorbed depreciation of ₹ 39.69 crore pertaining to AY 1997-98 instead of adjusting the income of AY 2008-09. The mistake resulted in underassessment of loss of ₹ 39.69 crore involving potential excess levy of tax of ₹ 13.49 crore. *ITD's reply was awaited (July 2017).*

**3.5.1.2** In Haryana, Pr.CIT (Central), Gurgaon charge, AO completed the assessment of **M/s Tokai Imperial Rubber India Pvt. Ltd.** for AY 2009-10 under section 143(3) read with section 147 in March 2015 determining income of ₹ 30.59 crore. While computing taxable income, the AO erroneously adopted figure of returned income as ₹ 20.97 crore instead of loss of ₹ 20.97 crore as per return filed by the assessee. The assessed income was wrongly determined as ₹ 30.59 crore instead of the correct amount of loss of ₹ 11.35 crore after making disallowance of ₹ 9.72 crore. The mistake had resulted in over charge of tax of ₹ 10.72 crore including interest. *ITD has rectified mistake by issuing order under section 154 (September 2015).*

**3.5.1.3** In West Bengal, Pr. CIT-2, Kolkata charge, AO completed the scrutiny assessment of **M/s Trend Vyapaar Ltd.** for AY 2013-14 in March 2016 determining income of ₹ 21.81 crore. The assessee had filed return of income for the year at nil income after setting off brought forward losses of ₹ 21.78 crore against the income of ₹ 97.16 lakh and the remaining loss of ₹ 20.81 crore was carried forward for set off in future year. The AO, while finalizing the assessment, rejected the claim of the entire brought forward losses of the assessee and erroneously added this amount, along with the disallowed expenses of ₹ 3.32 lakh to the assessee's total income. The omission had



resulted in over assessment of income of ₹ 20.81 crore<sup>81</sup> involving over charge of tax of ₹ 9.20 crore. *Ministry accepted the audit observation (October 2017) and rectified the mistake (May 2016) under section 154 of the Act.*

*As per section 234B(3), if as a result of re-assessment under section 147, the amount on which interest was initially payable is increased, the taxpayer will be liable to pay additional interest at the rate of 1 per cent per month or part of month. This is calculated from the date of determination of total income under section 143(1) or regular assessment and ending on the date of reassessment.*

**3.5.1.4** In AP & Telangana, Pr.CIT-4 Hyderabad charge, AO completed the scrutiny assessment of **M/s Deccan Chronicle Holdings Ltd.** for AY 2010-11 in March 2013 determining income at ₹ 364.10 crore. Subsequently the assessment was re-opened and completed in March 2015 enhancing the income to ₹ 3,280.27 crore. While computing tax demand under the re-assessment made in March 2015, AO had levied surcharge at 7.5 per cent instead of leviable rate of 10 per cent resulting in short levy of surcharge of ₹ 24.60 crore. Besides, AO had erroneously charged interest at ₹ 592.26 crore under section 234B instead of the correct amount of ₹ 246.86 crore, resulting in excess levy of interest of ₹ 345.41 crore. The mistakes had resulted in net excess demand of tax of ₹ 320.80 crore. *ITD rectified the mistakes under section 154 in June 2016 and January 2017 respectively.*

**3.5.1.5** In Delhi, Pr. CIT-3 charge, AO completed the scrutiny assessment of **M/s Delhi Transco Ltd.** for AY 2013-14 in March 2016 determining income of ₹ 39.35 crore as 'income from other sources' and ₹ 317.31 crore under special provisions of the Act. While computing tax demand, the AO had erroneously levied interest of ₹ 18.08 crore under section 234B of the Act despite the fact that TDS credit of ₹ 83.74 crore available to the assessee was more than the assessed tax of ₹ 63.49 crore. The mistake had resulted in excess levy of interest of ₹ 18.08 crore. *Ministry accepted the audit observation (September 2017) and rectified the mistake (May 2016) under section 154.*

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<sup>81</sup> ₹ 20.81 crore = [₹ 21.81 crore – (₹ 97.16 lakh + ₹ 3.32 lakh)]