

CHAPTER III

CORPORATE TAX

Chapter Summary

We referred 247 high value cases with tax effect of Rs. 1,642.4 crore to the Ministry of Finance between April and October 2009 to elicit their comments. The Ministry accepted observations in 101 cases involving revenue impact of Rs. 895.8 crore as of January 2010.

(Paragraphs 3.1 and 3.2)

The major mistakes in assessments were on account of

- ◆ Deductions allowed incorrectly in 43 cases involving revenue impact of Rs. 182.8 crore.

(Paragraph 3.6)

- ◆ Arithmetical errors in 23 cases involving revenue impact of Rs. 75.7 crore.

(Paragraph 3.8)

- ◆ Inadmissible carry forward and set off of losses and exemptions allowed in 23 cases involving revenue impact of Rs. 90.4 crore.

(Paragraphs 3.9 and 3.10)

- ◆ Errors in allowing capital expenditure as business expenditure and in computing income under special provisions in 23 cases involving revenue impact of Rs. 65.2 crore.

(Paragraphs 3.11 and 3.12)

- ◆ Errors in allowing depreciation and in computing capital gains in 22 cases involving revenue impact of Rs. 48.7 crore.

(Paragraphs 3.13 and 3.14)

- ◆ Income not assessed and short levy of interest in 13 cases involving revenue impact of Rs. 21.8 crore.

(Paragraphs 3.15 and 3.16)

- ◆ Impermissible benefit allowed in summary assessments in 15 cases involving revenue impact of Rs. 72.2 crore.

(Paragraph 3.17)

Nine Public Sector Undertakings (PSUs) were charged tax of Rs. 169.2 crore, in excess of their dues.

(Paragraph 3.18)

CHAPTER III

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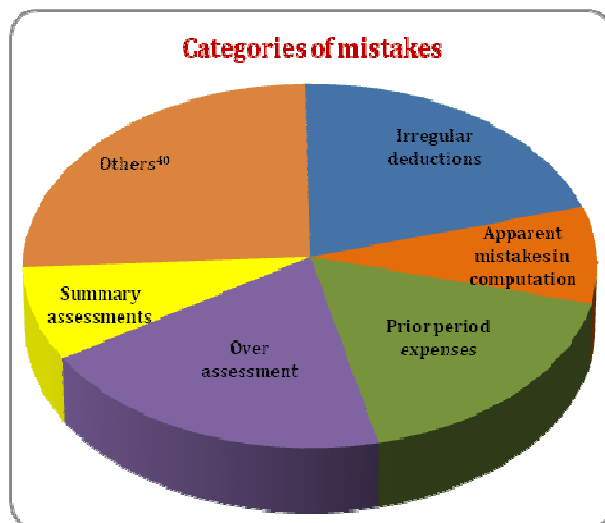
3.1 RESULTS OF AUDIT

We referred 247 high value cases with total tax effect of Rs. 1,642.4 crore to the Ministry³⁷ between April and October 2009 to elicit their comments.

3.2 The Ministry has replied in respect of 108 cases³⁸ accepting 101 cases (93.5 per cent) as of January 2010. Out of these 101 cases, the department completed remedial action³⁹ in 49 cases involving tax effect of Rs. 679.4 crore and initiated remedial action in 15 other cases involving tax effect of Rs. 83.2 crore. These cases have been featured in paragraph 2.5.6 and 2.5.8 of Chapter II of this Report. The Ministry's replies on the remaining cases are yet to be received.

3.3 This chapter discusses 183 cases of which 172 cases involve undercharge of Rs. 708.6 crore and 11 cases involve overcharge of Rs. 171.3 crore. Replies of the Ministry, wherever received, have been examined and suitably incorporated in the report.

3.4 Each paragraph indicates a particular category of mistakes made by the assessing officer (AO). It starts with a suitable preamble (in coloured boxes) followed by the combined revenue impact of all observations of similar nature. Interesting cases are illustrated in subsequent paragraphs.



³⁷ Ministry of Finance, Central Board of Direct Taxes

³⁸ The department has not accepted the audit observations in three summarily processed cases as a matter of principle citing the Assessing officers' limitations. However rectificatory action has been initiated/completed without contesting the facts of the case.

³⁹ The Assessing Officer (AO) *initiates remedial action* by issuing a notice to the assessee, who is then given an opportunity to present his case. After considering all the facts, the AO issues a rectificatory order raising the rectified demand for tax/refund, whichever be the case. At this stage, *remedial action* is said to have been *taken*.

⁴⁰ Category "Others" shown in the chart include mistakes regarding set off of losses, exemptions, capital expenditure, computation under special provisions, depreciation, capital gains, income not assessed and levy of interest.

3.5 Where the provisions of the Act have ambiguities, these have also been highlighted. While we acknowledge that the Act empowers the AOs to exercise best judgment, it is our opinion that clarity in the Act would enhance transparency, consistency in assessments and also reduce litigation, thus reducing the cost of compliance.

3.6 INCORRECT ALLOWANCE OF DEDUCTIONS

The Act allows deductions from the assessee's income, certain categories of expenditure.

Incorrect allowance of deductions resulted in underassessment of income aggregating Rs. 182.8 crore in 43 cases in Andhra Pradesh, Delhi, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu and West Bengal. Six cases are

illustrated below:

3.6.1 CHARGE: CIT-II, KOLKATA, WEST BENGAL; AY: 2003-04⁴¹

Section 35DDA allows deduction of one-fifth of expenditure incurred on voluntary retirement scheme.

Hindustan Copper Ltd. spent Rs. 133.2 crore (including amortised expenditure relating to AY 2002-03) towards VRS, of which only Rs. 111.2 crore, being one-fifth of the total expenditure could be allowed. But the AO allowed Rs. 133.2 crore as deduction. In addition, the assessee accounted for only Rs. 128.3 crore out of the total grant of Rs. 220 crore received from the Government to meet the expenditure under VRS; the balance of Rs. 91.7 crore escaped tax. The mistakes led to potential⁴² short levy of tax of Rs. 41.8 crore.

3.6.2 CHARGE: CIT-II, MUMBAI, MAHARASHTRA; AY: 2006-07⁴³

Section 36(1)(viii) allows deduction of 40 per cent of profits earned from long term finance, for creation of special reserves.

State Bank of India was allowed deduction of Rs. 230.4 crore in respect of the amount transferred to special reserve. However, 40 per cent of the profits from long term finance worked out to Rs. 117 crore. The mistake resulted in excess deduction of Rs. 113.4 crore involving short levy of tax of Rs. 38.2 crore.

⁴¹ Assessed at a loss of Rs. 95.5 crore in March 2006.

⁴² In cases where the assessment is completed at a loss, the excess deductions lead to excess carry forward of loss. In future AYs when the assessee registers a profit, this excess carried forward loss would be set off against the taxable profit leading to potential short levy of tax.

⁴³ Assessed at an income of Rs. 5,515.9 crore in March 2008.

3.6.3 CHARGE: CIT-V, MUMBAI, MAHARASHTRA; AY: 2002-03⁴⁴

Section 14A provides that if a certain income is exempt from tax, the expenditure incurred on earning the income would not be allowed as deduction.

Indian Oil Corporation Ltd. received dividend aggregating Rs. 413.9 crore which was exempt from tax under section 80M of the Act. However, proportionate expenditure of Rs. 31.7 crore⁴⁵ was not disallowed as was done in the assessment for the AYs 2004-05

and 2005-06. The mistake resulted in short levy of tax of Rs. 15.9 crore including interest.

3.6.4 CHARGE: CIT, BHUBANESWAR, ORISSA; AY: 2005-06⁴⁶

Section 37 allows deduction of accrued or known liability. Provisions for unascertained liabilities, do not qualify for deduction.

National Aluminium Company (NALCO) was allowed deduction of Rs. 31.9 crore of provision for peripheral development expenditure and against interest on non-payment of disputed charges of water and electricity,

which were neither accrued nor known liabilities. The omission resulted in short levy of tax of Rs. 13.5 crore.

3.6.5 CHARGE: CIT-I, DELHI; AY: 2003-04⁴⁷

Bharti Cellular Ltd. made a provision of Rs. 154.6 crore for doubtful debts and advances in the balance sheet. The AO disallowed only Rs. 121.3 crore⁴⁸, a mistake which led to potential short levy of tax of Rs. 12.3 crore.

3.6.6 CHARGE: CIT-II, MUMBAI, MAHARASHTRA; AY: 2004-05⁴⁹

Section 36(1)(vii) provides for deduction of bad debt if such a bad debt is written off in the accounts.

Mahindra and Mahindra Ltd. was allowed a deduction of Rs. 15.1 crore on account of waiver of advance paid to its subsidiary company Mahindra Gesco Developer

⁴⁴Assessed at an income of Rs. 3,031.1 crore after scrutiny in March 2005.

⁴⁵The proportionate expenditure was worked out at 2 per cent of the total administrative expenses of Rs. 1,585.5 crore; this being the norm applied by the AO in the next two AYs: AY 2004-05 and 2005-06. Further, rule 8D for working out the proportionate expenditure was brought on the statute only from 24 March 2008, prior to which it was required to be determined using best judgment.

⁴⁶Assessment completed after scrutiny in December 2007.

⁴⁷Assessed at a loss of Rs. 76.9 crore in March 2006.

⁴⁸Rs. 121.3 crore was charged to the Profit & Loss Account which was disallowed by the AO. The remaining provision of Rs. 33.3 crore, accounted in the Balance Sheet was allowed as deduction while computing tax liability.

⁴⁹Assessed at an income of Rs. 243.3 crore in December 2006.

Ltd., although it was not written off in its books of accounts. The omission to disallow the deduction led to short levy of tax of Rs. 7.2 crore including interest.

3.7 TREATMENT OF PRIOR PERIOD EXPENSES

We found eight cases⁵⁰ involving revenue impact of Rs. 151.9 crore, in which the AOs gave varying treatment to prior period expenditure without discussing the inherent permissibility of such deduction. Two such cases are illustrated below:

3.7.1 CHARGE: CIT-I, MUMBAI, MAHARASHTRA; AY: 2004-05⁵¹

Maharashtra State Electricity Board had prior period income of Rs. 351.1 crore and prior period expenditure of Rs. 852.8 crore. The AO limited the prior period expenditure to the extent it netted the prior period income thus disallowing Rs. 501.7 crore. This involved potential tax effect of Rs. 126 crore.

3.7.2 CHARGE: CIT, ALLAHABAD, UTTAR PRADESH; AY: 2004-05⁵²

Triveni Structural Ltd. claimed deduction for prior period expenditure of Rs. 27.3 crore, all of which was allowed by the AO. This involved potential tax effect of Rs. 9.6 crore.

We recommend that suitable instructions be issued to the field units to justify the nature of prior period expenses in the assessment order before their allowance/disallowance.

3.8 MISTAKES IN COMPUTATION

We found that the AOs adopted incorrect figures, committed arithmetical errors, allowed claims twice and in some cases, did not add back inadmissible claims to income, resulting in short levy of tax of Rs. 75.7 crore in 23 cases in Delhi, Haryana, Kerala, Maharashtra, Orissa and Rajasthan. One case is illustrated below:

3.8.1 CHARGE: CIT CENTRAL-I, MUMBAI, MAHARASHTRA; AY: 2005-06⁵³

The AO disallowed in his order, different classes of expenditure⁵⁴ aggregating Rs. 42.2 crore, incurred by Sun Earth Ceramics Ltd. But while computing income, he did not factor the disallowance and

⁵⁰ Two cases were issued as draft paragraph involving revenue impact of Rs. 3.8 crore whereas six cases involving revenue impact of Rs. 148.2 crore were referred separately to CBDT in October 2009.

⁵¹ Assessed completed after scrutiny in November 2006.

⁵² Assessed completed after scrutiny in November 2006.

⁵³ A best judgment assessment completed in December 2007.

⁵⁴ Being interest expenditure, miscellaneous expenditure, discount commission and incentives.

assessed a loss of Rs. 40.1 crore to be carried forward in next AYs. If factored, the assessee would have been taxed at a profit of Rs. 2.1 crore in the current AY. The mistake resulted in potential tax effect of Rs. 15.4 crore (including short levy of tax of Rs. 81.7 lakh).

3.9 IRREGULAR CARRY FORWARD AND SET OFF OF LOSSES

Section 72 provides that net loss of an AY, can be carried forward and set-off against profits and gains, if any, of the following eight assessment years.

Non-compliance with the provisions of section 72 resulted in short levy of tax aggregating Rs. 48.7 crore in 18 cases in Andhra Pradesh, Bihar, Delhi, Haryana, Karnataka, Kerala, Maharashtra, Tamil Nadu and West Bengal. One case

is illustrated below:

3.9.1 CHARGE: CIT, KOCHI, KERALA; AY: 2006-07⁵⁵

Loss of Rs. 75.7 crore returned by **The Federal Bank Ltd.** included a loss of Rs. 25.2 crore pertaining to AY 2005-06 although in that year, the assessee had a net income of Rs. 24.9 crore. This resulted in underassessment of income to that extent involving potential short levy of tax of Rs. 9.4 crore.

3.10 INCORRECT ALLOWANCE OF EXEMPTIONS

Section 10A exempts income of a new undertaking established in a free trade zone. Income earned by a newly established 100 per cent export oriented undertaking is exempt under Section 10B.

Non-compliance with the provisions of section 10A and 10B resulted in short levy of tax aggregating Rs. 41.7 crore in five cases in Delhi, Karnataka, Kerala and West Bengal. Two cases are illustrated below:

3.10.1 CHARGE: CIT-II, DELHI; AY: 2004-05⁵⁶

While computing the income of **Moser Baer India Ltd.** under section 10B, the tax exemption was applied on the profit of Rs. 221.7 crore earned by one Software Technology Park (STP) unit, ignoring the loss incurred by its other STP unit. Had the loss been factored, the assessee would have been allowed exemption of Rs. 183.2 crore only on the net profit. The tax was computed under special provisions of

⁵⁵ Assessed at an income of Rs. 515.2 crore in November 2007.

⁵⁶ Assessed at an income of Rs. 141.6 crore in December 2006 under special provisions.

the Act⁵⁷. This resulted in excess carry forward of loss under normal provisions and underassessment of book profit under special provisions involving potential tax effect of Rs. 17.7 crore (including short levy of tax of Rs. 3.9 crore and interest).

The provisions of the Act are unclear on whether the deduction under section 10B should be allowed on the profit of the profitable units only or on the net profits of all 10B units. The ambiguity has led to varying treatments by different AOs. We had recommended (2007)⁵⁸ that clear instructions should be issued by the Government in this regard.

3.10.2 CHARGE: CIT-IV, DELHI; AY: 2003-04⁵⁹

As per section 10A, export turnover does not include freight, telecommunication charges etc. incurred in foreign exchange in providing technical services outside India.

GE Capital International Services (now known as Genpact India) paid communication expense of Rs. 98.8 crore in foreign currency, which was required to be excluded from the export turnover while computing the exemption under section 10A. Consequently there was excess allowance of exemption

of Rs. 24.4 crore which resulted in short levy of tax of Rs. 14.2 crore including interest.

3.11 INCORRECT ALLOWANCE OF CAPITAL EXPENDITURE

Section 37 disallows capital expenditure as a deduction while computing income chargeable under the head “profits and gains of business or profession”.

Incorrect allowance of capital expenditure resulted in short levy of tax aggregating Rs. 39.2 crore in 18 cases in Delhi, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal. One case is illustrated below:

3.11.1 CHARGE: CIT-IV, DELHI; AY: 2003-04⁶⁰

GE Countrywide Consumer Financial Services Ltd. debited Rs. 7.7 crore and Rs. 14.7 crore to profit and loss account towards “Loss on

⁵⁷ Where the tax payable works out to less than 7.5 per cent of its book profit, tax under special provisions (115JB), called Minimum Alternate Tax (MAT) is applied at the rate of 7.5 per cent of book profits. While computing book profit, deductions that are disallowed under normal provisions, are added back to the book profit. The loss incurred by the assessee in that AY under normal provisions is allowed to be carried forward. MAT paid in the AY is also allowed as a tax credit that can be adjusted against profits, if any, in the next AYs, subject to specific conditions.

⁵⁸ Paragraph no. 1.6.13 of Audit Report No. 8 of 2007

⁵⁹ Income originally assessed as Rs. 90.3 crore was revised to Rs. 100.75 crore in January 2008.

⁶⁰ Assessed at an income of Rs. 36.6 crore in March 2006.

sale of reprocessed goods” and “Loss on sale of loan portfolio” respectively. These losses, being capital in nature, should have been disallowed and added back. The omission resulted in underassessment of income aggregating Rs.22.4 crore involving short levy of tax of Rs. 11.3 crore including interest.

3.12 MISTAKE IN COMPUTATION OF INCOME UNDER SPECIAL PROVISIONS

Section 115JB provides for levy of Minimum Alternate Tax (MAT) at the rate of 7.5 per cent of the book profit if the tax payable on total income under the normal provisions is less than 7.5 per cent of the book profit arrived at after certain additions and deletions as prescribed.

Non-compliance with the special provisions resulted in short levy of tax aggregating Rs. 26 crore in 5 cases in Delhi, Maharashtra, Tamil Nadu and West Bengal. One case is illustrated below:

3.12.1 CHARGE: CIT-II, MUMBAI, MAHARASHTRA; AY: 2005-06⁶¹

The taxable income of **Tata Sons Ltd.** was re-assessed (March 2008) to Rs. 1,129.6 crore under normal provisions and the book profit was worked out to Rs. 2,597.3 crore. Though MAT payable (Rs. 203.7 crore) was more than tax payable under normal provisions (Rs. 184.8 crore), the AO did not levy MAT. The omission resulted in short levy of tax of Rs. 21.9 crore including interest.

3.13 MISTAKES IN ALLOWANCE OF DEPRECIATION

Section 32 provides for depreciation on the cost or written down value of assets if such assets are owned by the assessee and used for the purpose of business during relevant previous year.

Incorrect allowance, carry forward and set off of depreciation resulted in short levy of tax aggregating Rs. 24.4 crore in 16 cases in Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal. One such case is illustrated below:

3.13.1 CHARGE: CIT-III, DELHI; AY: 2004-05⁶²

Spectris Technologies Pvt Ltd. was allowed depreciation of Rs. 2.8 crore on goodwill. As goodwill is not covered under intangible assets in the Act, the depreciation should have been disallowed. The

⁶¹ Assessed at an income of Rs. 1,160.7 crore in December 2007.

⁶² Assessment completed at a loss of Rs. 2.2 crore in November 2006.

Section 32 provides for depreciation on intangible assets which include copyrights, patents, technical knowhow, franchise charges and any other business or commercial rights or similar nature.

mistake resulted in underassessment of income of Rs. 62.6 lakh and incorrect carry forward of loss of Rs. 2.2 crore involving tax effect of Rs. 1.1 crore.

Though the Ministry is yet to reply to the above cases, the principle that goodwill is not an intangible asset under Section 32, was accepted by the Ministry in three cases included in Audit Report for the period ended 2008⁶³. But in a similar case⁶⁴ in the same year, the Ministry took a stand that goodwill is an intangible asset and is covered under commercial rights of similar nature. It was also added that the Act has taken goodwill within the ambit of definition of capital assets for working out cost of acquisition under section 55(2)(a). There is therefore, a need for issue of appropriate clarification to bring in consistency in the action of all AOs in the matter of allowance of depreciation on goodwill.

3.14 MISTAKES IN COMPUTATION OF CAPITAL GAINS

Section 45 provides that any gains arising from transfer of a capital asset shall be taxed under the head "Capital gains" in the year in which the transfer takes place. Long term capital gains and short term capital gains are charged at different rates and hence, are required to be computed separately.

Mistakes in computation of capital gains resulted in short levy of tax aggregating Rs. 24.3 crore in 6 cases in Maharashtra, Tamil Nadu and West Bengal. One case is illustrated below:

3.14.1 CHARGE: CIT-I, CHENNAI, TAMIL NADU; AY: 2003-04⁶⁵

Under Section 55(2)(aa)(ia), acquisition cost in respect of bonus shares/units will be considered as 'nil'. Further, section 35DD provides that demerger expenses, being capital in nature, are to be amortised and only one-fifth thereof is allowed as deduction.

Gimpex Ltd. did not compute long term capital gain and short term capital gain separately. Further, acquisition cost of Bonus Units of a Company was not considered as nil.

⁶³ Paragraph no. 3.8 of Audit Report CA21 of 2009 (CAG DP nos. 184-CT, 349-CT and 433-CT)

⁶⁴ CAG DP no.435-CT for AR 2007-08 included in Paragraph no. 3.8 of Audit Report CA21 of 2009

⁶⁵ Assessed at an income of Rs. 6.9 crore and long term capital gain of Rs. 10.7 lakh in November 2006.

Demerger expenses, which had no relation with transfer of shares, were fully deducted instead of one-fifth thereof. These mistakes resulted in short computation of the long term capital gains and short term capital gains by Rs. 12.9 crore and Rs. 15.6 crore respectively involving revenue impact of Rs. 10.7 crore including interest.

3.15 INCOME NOT ASSESSED

Section 5 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.

Non-compliance with the provisions of section 5 resulted in short levy of tax aggregating Rs. 19.5 crore in 11 cases in Andhra Pradesh, Delhi, Gujarat, Maharashtra, Tamil Nadu and Uttar

Pradesh. One case that we detected by correlating records of same assessee in different tax regimes is illustrated below:

3.15.1 CHARGE: CIT-III, CHENNAI, TAMIL NADU; AY: 2004-05⁶⁶

Matsushita Air Conditioning (P) Ltd. had disclosed a gross sale turnover of Rs. 27.6 crore in the profit and loss account whereas in the assessment order in the Commercial Taxes Department of the Government of Tamil Nadu, the assessee had shown a gross sale turnover of Rs. 31.4 crore. The difference in turnover of Rs. 3.8 crore escaped assessment involving short levy of tax of Rs. 1.4 crore.

3.16 SHORT LEVY OF INTEREST

Section 234C provides for levy of interest for default in payment of advance tax at the rates prescribed by the Government from time to time.

We found short levy of interest of Rs. 2.3 crore for default in payment of advance tax in two cases in Maharashtra and

West Bengal. Details of these cases were referred to the Ministry.

3.17 MISTAKES IN SUMMARY ASSESSMENTS

Section 143(1) provides that the assessment may be completed in a summary manner after, *inter alia*, rectifying any arithmetical error in the return, accounts and accompanying documents.

We found 15 cases of summary assessments involving revenue impact of Rs. 72.2 crore in Delhi, Gujarat, Rajasthan Tamil Nadu

⁶⁶ Assessed at a loss of Rs. 2.4 crore in December 2006.

and West Bengal. One case is illustrated below:

3.17.1 CHARGE: CIT-I, Coimbatore, Tamil Nadu; AY: 2005-06⁶⁷

Section 43B allows deduction for interest on loan only when the interest is actually paid.

Southern Iron & Steel Company Ltd. was allowed deductions of Rs. 26.7 crore and Rs. 75.7 crore, being the interest on loan, pertaining to

AYs 2003-04 and 2004-05 respectively. Under the 'Corporate Debt Restructuring Scheme', the loan was converted into equity shares and the outstanding interest amount on it was waived. Therefore, allowing deductions on unpaid interest was incorrect. This resulted in excess determination of loss involving potential short levy of tax of Rs. 37.5 crore.

3.18 OVERCHARGING OF TAX FROM PUBLIC SECTOR UNDERTAKINGS

We noticed over-assessment of income in nine cases of Public Sector Undertakings (PSUs) involving overcharge of tax totalling Rs. 169.2 crore (against the total leviable tax of Rs. 21.5 crore) in Delhi, Jharkhand, Maharashtra, Orissa and West Bengal. Besides, two cases involving overcharge of tax totalling Rs. 2.1 crore were noticed in respect of Private limited companies. Four cases of PSUs are illustrated below:

3.18.1 CHARGE: CIT-IV, Delhi; AY: 2004-05⁶⁸

While computing income, Indian Railway Finance Corporation Ltd. was allowed depreciation of Rs. 989 crore on leased assets instead of Rs. 1,213.4 crore as decided by the AO in the assessment order. The mistake resulted in underassessment of loss of Rs. 224.4 crore involving potential excess levy of tax Rs. 80.1 crore.

3.18.2 CHARGE: CIT-IV, KOLKATA, WEST BENGAL; AY: 2000-01⁶⁹

Hindustan Steelworks Construction Ltd. was levied interest of Rs. 69.4 crore under Section 234B(3) as against the leviable amount of Rs. 37.1 crore on excess tax payable for the period from April 2002 to the date of reassessment in January 2005. The mistake resulted in excess levy of interest of Rs. 32.3 crore.

⁶⁷ Return processed at a loss of Rs. 200.7 crore in February 2006.

⁶⁸ Assessed at a loss of Rs. 343.5 crore in December 2006.

⁶⁹ Assessed at an income of Rs. 250.5 crore in March 2005.

3.18.3 CHARGE: CIT-I, MUMBAI, MAHARASHTRA; AY: 2005-06⁷⁰

While computing the taxable income of Maharashtra State Electricity Board, the AO disallowed capital expenditure of Rs. 64.9 crore relating to fabrication charges as against the correct amount of Rs. 6.5 lakh. Excess disallowance of expenditure resulted in overassessment of income of Rs. 64.8 crore involving potential excess levy of tax of Rs. 23.7 crore.

3.18.4 CHARGE: CIT-II, MUMBAI, MAHARASHTRA; AY: 2005-06⁷¹

Section 43B provides for deduction for paid interest on loan or borrowing from a bank or any public financial institution only.

Maharashtra Power Development Corporation Ltd. debited to its profit and loss account unpaid interest amount of Rs. 48.9 crore on loan advanced by MSEB. The AO disallowed the claim under section 43B although MSEB is not a public financial institution. The mistake resulted in short computation of loss involving potential excess levy of tax of Rs. 17.9 crore.

⁷⁰ Originally assessed at taxable income of Rs. 925.4 crore in December 2007.

⁷¹ Assessed at a loss of Rs. 1.48 crore in December 2007.