

CHAPTER IV

PART A - INCOME TAX

PART B - WEALTH TAX

Chapter Summary

This chapter is divided into parts A and B. Part A contains our findings on assessments in respect of income tax and Part B includes those on wealth tax.

We reported 95 cases of mistakes in assessments with total revenue impact of Rs. 91.9 crore to the Ministry of Finance for comments. The Ministry has accepted 43 observations involving revenue impact of Rs. 71.4 crore as of January 2010.

(Paragraphs 4.1 and 4.13)

Major mistakes in assessments were on account of:

- ◆ Incorrect carry forward and set off of losses in two cases involving tax effect of Rs. 14.9 crore.

(Paragraph 4.2)

- ◆ Arithmetical errors in six cases involving tax effect of Rs. 5.2 crore.

(Paragraph 4.3)

- ◆ Incorrect levy of interest in 11 cases involving tax effect of Rs. 3.9 crore.

(Paragraph 4.4)

- ◆ Inadmissible deduction allowed to co-operative societies in two cases involving tax effect of Rs. 1.9 crore.

(Paragraph 4.5)

- ◆ Excess allowance of depreciation in five cases involving tax effect of Rs. 2.3 crore.

(Paragraph 4.7)

- ◆ Inadmissible deduction in respect of export profit and exemption under section 11 of the Act in three cases involving revenue impact of Rs. 1.1 crore.

(Paragraphs 4.6 and 4.9)

- ◆ Inadmissible benefits allowed in summary assessments in 13 cases involving tax effect of Rs. 4.4 crore.

(Paragraph 4.10)

- ◆ Wealth not assessed to tax in 10 cases due to non-correlation with income tax assessment records involving tax effect of Rs. 76.5 lakh.

(Paragraph 4.14)

- ◆ Non-inclusion of taxable assets in the net wealth in four cases involving revenue impact of Rs. 80.7 lakh.

(Paragraph 4.15)

CHAPTER IV

A INCOME TAX

4.1 RESULTS OF AUDIT

4.1.1 We referred 73 high value cases involving tax effect of Rs. 90 crore to the Ministry of Finance between April and October 2009 for comments.

4.1.2 The Ministry has replied in respect of 38 cases⁷² accepting 34 cases (89 *per cent*) involving aggregate revenue impact of Rs. 70.5 crore as of January 2010. Of these, the department initiated remedial action⁷³ on 21 cases with tax effect of Rs. 53.7 crore, of which remedial action was completed on 16 cases involving tax effect of Rs. 48.7 crore. These 21 cases have been featured in paragraph 2.5.6 and 2.5.8 respectively of Chapter II of this Report. The Ministry's replies on the remaining cases are yet to be received.

4.1.3 This chapter discusses 52 cases, of which 49 cases involve undercharge of Rs. 35.8 crore and three cases involve overcharge of Rs. 47.6 lakh. Replies of the Ministry wherever received, have been examined and suitably incorporated in the report. The chart illustrates the major categories of errors made by the assessing officers (AO), which are discussed in detail in the subsequent paragraphs.



4.2 INCORRECT CARRY FORWARD AND SET OFF OF LOSS

Section 72 allows carry forward and set-off of net loss of a year against profits, if any, of next eight assessment years (AY).

We found short levy of tax of Rs. 14.9 crore in two cases in

⁷² The department has not accepted the audit observations in four 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

⁷³ 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.

⁷⁴ Others include mistake in short/non-levy of interest, allowance of depreciation, adoption of figures, overassessment, computation of capital gain and income not assessed.

Haryana and Maharashtra as the AOs did not apply the provision correctly. Two cases are illustrated below:

4.2.1 CHARGE: CIT, PANCHKULA, HARYANA; AY 2005-06⁷⁵

Haryana Urban Development Authority, a local authority, was allowed to set off brought forward losses of Rs. 11.5 crore and Rs. 21.6 crore for the AYs 2003-04 and 2004-05 respectively though there was no brought forward loss available in those years. The mistake resulted in short levy of tax of Rs. 13.8 crore including interest.

4.2.2 CHARGE: CIT, ALWAR, RAJASTHAN; AY 2005-06⁷⁶

Alwar Bharatpur Anchlik Gramin Bank, a co-operative society was allowed set-off of brought forward loss of Rs. 3.3 crore, though there was no loss for setting off. The mistake resulted in underassessment of income to that extent with short levy of tax of Rs. 1 crore.

4.3 MISTAKES IN COMPUTATION OF BUSINESS INCOME

We found six cases of mistakes in computation, resulting in short levy of tax aggregating Rs. 5.2 crore in Kerala, Maharashtra and Rajasthan. Two cases are illustrated below:

4.3.1 CHARGE: CIT-XII, MUMBAI, MAHARASHTRA; AY 2002-03⁷⁷

The business loss of Ashok Commercial Enterprises, a firm, was carried forward as Rs. 17.5 crore against the actual business loss of Rs. 7.7 crore. This resulted in excess carry forward of business loss of Rs. 9.8 crore and underassessment of income to that extent with short levy of potential tax of Rs. 3.5 crore.

4.3.2 CHARGE: CIT-XI, DELHI; AY 2004-05⁷⁸

Richa Global, a firm, was assessed at a loss of Rs. 4.2 crore which included loss of Rs. 2.1 crore for the previous AY 2003-04. This resulted in excess determination of loss of Rs. 2.1 crore with potential tax effect of Rs. 75 lakh.

⁷⁵ Income of Rs. 514.24 crore assessed in December 2005.

⁷⁶ Incomes of Rs. 1.25 crore and Rs. 3.24 lakh assessed in December 2006 and December 2007 respectively.

⁷⁷ Loss of Rs. 17.45 crore determined in December 2005 after giving effect to appellate orders.

⁷⁸ Loss of Rs. 4.20 crore determined in December 2006.

4.4 SHORT LEVY OF INTEREST

The assessee is liable to pay simple interest at the specified rate per month or part of the month under:

- ✓ Section 234A of the Act where a return of income is furnished after the due date or is not furnished.
- ✓ Section 234B of the Act, where the assessee fails to pay advance tax or, where the advance tax paid is less than 90 *per cent* of the assessed tax.

We noticed short levy of interest for delays in filing return of income and payment of advance tax aggregating Rs. 3.9 crore in 11 cases in Gujarat, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Maharashtra and Rajasthan. Two cases are illustrated below:

4.4.1 CHARGE: CIT-IV, MUMBAI, MAHARASHTRA; AY 2000-01⁷⁹

Vimla S. Jaju, an individual, paid advance tax of Rs. 3 crore against the demand of Rs. 5.6 crore for which the department levied interest of Rs. 26.3 lakh instead of Rs. 2.2 crore under section 234B for the period from April 2000 to December 2007. The mistake resulted in short levy of interest of Rs. 1.9 crore.

4.4.2 CHARGE: CIT-II, JAIPUR, RAJASTHAN; A.Y.2000-01⁸⁰

Rajesh Kumar Nigam, an individual, did not file the tax return or comply with the notice issued by the AO under section 147⁸¹ of the Act. The department levied interest of Rs. 5.4 lakh instead of Rs. 59.2 lakh chargeable for the period September 2000 to December 2007, resulting in short levy of interest of Rs. 53.8 lakh.

4.5 MISTAKE IN DEDUCTION TO CO-OPERATIVE SOCIETIES

Section 80P exempts from tax, profits from specified activities in respect of co-operative societies. The quantum of such deduction from gross profits will be worked out, after adjusting brought forward losses of earlier years.

In two cases, we found mistakes in allowing deduction to co-operative societies that led to short levy of tax of Rs. 1.9 crore in Maharashtra and Rajasthan. One case is illustrated below:

⁷⁹ Income of Rs. 17.06 crore assessed in December 2007.

⁸⁰ Income of Rs. 1.81 crore assessed in December 2007.

⁸¹ Section 147 allows the AO to assess/reassess income which he feels has escaped assessment.

4.5.1 CHARGE: CIT, ALWAR, RAJASTHAN; AY 2004-05

Alwar Bharatpur Anchlik Gramin Bank, a co-operative society was allowed deduction of Rs. 13.8 crore under section 80P for AY 2004-05 before setting off brought forward loss of Rs. 6.2 crore. This led to underassessment of income of Rs. 7.6 crore with potential tax of Rs. 1.9 crore.

4.6 INCORRECT ALLOWANCE OF DEDUCTIONS

The Act allows deductions from the assessee's gross total income, profits earned on specified activities under section 80HHC

The AOs committed mistakes in computation of export profits resulting in short levy of tax aggregating Rs. 55.6 lakh in two cases in Punjab. Details of these cases have been sent to the Ministry.

4.7 MISTAKES IN ALLOWANCE OF DEPRECIATION

Section 32 allows deduction on account of depreciation on the fixed assets used for the purpose of the business is admissible at the prescribed rates on the written down value. If the assets are used for less than 180 days, half of depreciation is admissible.

Mistakes in allowing depreciation in five cases, resulted in short levy of tax of Rs. 2.3 crore in Delhi, Gujarat and Maharashtra. One case is illustrated below:

4.7.1 CHARGE: CIT-I, KOLHAPUR, MAHARASHTRA; AY 2004-05⁸²

Udaysingrao Gaikwad S.S.K. Ltd., a co-operative society was allowed full depreciation on plant and machinery though the asset was put to use for less than 180 days. The mistake resulted in excess allowance of depreciation of Rs. 4.2 crore with short levy of potential tax of Rs. 1.5 crore.

4.8 INCORRECT ADOPTION OF FIGURES

We noticed mistakes in adoption of figures resulting in short levy of tax aggregating **Rs. 80.9 lakh** in three cases in Gujarat, Maharashtra and Rajasthan. One case is illustrated below:

⁸² Loss of Rs. 20.95 crore determined in December 2006.

4.8.1 CHARGE: CIT CENTRAL-II, MUMBAI, MAHARASHTRA; AY 2006-07⁸³

J. E. Exports, a firm, returned 'nil' income after availing of exemption under section 10A of the Act. However, the AO assessed a loss of Rs. 1.6 crore instead of nil income. The mistake resulted in potential tax effect of Rs. 54.7 lakh.

4.9 IRREGULAR EXEMPTION UNDER SECTION 11 OF THE ACT

Section 11 provides that income from property held for charitable or religious purposes, shall not be included in the total income to the extent to which such income is applied to the purpose of the trust.

In one case in Maharashtra, mistake in exemption under section 11 of the Act led to short levy of tax of Rs. 50.8 lakh, which is illustrated below:

4.9.1 CHARGE: DIT (EXEMPTION) MUMBAI, MAHARASHATRA; AY 2005-06⁸⁴

The Mumbai Stock Exchange, a trust, was assessed as having applied Rs. 118.2 crore towards the objects of the trust. This included a provision of Rs. 1.5 crore for doubtful debts. As this amount was merely a provision and not spent on the purpose of the trust, it should have been disallowed. The mistake resulted in under assessment of income to that extent with short levy of tax of Rs. 50.8 lakh.

4.10 MISTAKES IN SUMMARY ASSESSMENT

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

We noticed mistakes in 13 cases of summary assessments involving tax effect of Rs. 4.4 crore in Gujarat, Jharkhand, Rajasthan and West Bengal. One case is illustrated below:

4.10.1 CHARGE: CIT-III, AHMEDABAD, GUJARAT; AY 2005-06⁸⁵

Dilip C Palany, an individual, paid freight charges of Rs. 5.5 crore but

⁸³ Loss of Rs. 1.6 crore determined in December 2007.

⁸⁴ Nil income assessed in November 2007.

⁸⁵ Income of Rs. 3.5 lakh accepted in July 2006.

did not deduct the tax at source⁸⁶. The assessee being a proprietary concern was liable to deduct tax at source; if not deducted, the expenditure was not allowable as deduction. The irregular allowance of expenditure of Rs. 5.5 crore led to underassessment of income and short levy of tax of Rs. 2 crore including interest.

4.11 OTHER MISTAKES

Section 45(1) provides that any profits or gains arising from the transfer of a capital asset effected in previous year shall be chargeable to income tax under the head "capital gains", and shall be deemed to be income of the previous year in which the transfer took place.

We noticed mistakes in the computation of capital gains resulting in short levy of tax of Rs. 40.9 lakh in two cases in Maharashtra.

We also found short levy of tax aggregating Rs. 35.9 lakh in two cases in West Bengal as the AO had not assessed all income to tax.

4.12 CASES OF OVERASSESSMENT/OVERCHARGE

We noticed avoidable mistakes resulting in overcharge of tax of Rs. 47.6 lakh in three cases in Haryana, Maharashtra and Uttar Pradesh.

⁸⁶ Section 40 (a)(ia) provides that tax has to be deducted at source whenever amount is payable to a resident for carrying out any work.

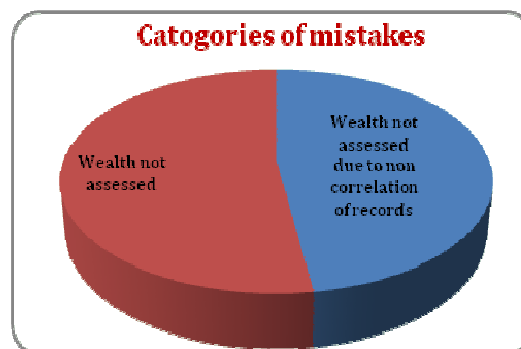
B WEALTH TAX

4.13 RESULTS OF AUDIT

4.13.1 We reported 22 cases to the Ministry between April and October 2009 involving undercharge of wealth tax of Rs. 1.9 crore for its comments.

4.13.2 The Ministry has replied in respect of 11 cases⁸⁷ accepting nine cases (82 *per cent*) involving aggregate revenue impact of Rs. 80.5 lakh. Of these, the department recovered Rs. 5.3 lakh in two cases. In four other cases involving tax effect of Rs. 7 lakh, the department took remedial action and in two cases involving tax effect of Rs. 21 lakh, remedial action was initiated. These eight cases have been featured in paragraphs 2.5.6 and 2.5.8 of Chapter II of this report. In the remaining cases, replies have not been received. Replies of the Ministry have been suitably incorporated in the report.

4.13.3 Out of 22 cases issued to the Ministry, 14 cases involving revenue impact of Rs. 1.6 crore have been included in this chapter.



4.14 NON-CORRELATION OF ASSESSMENT RECORDS

The Board issued instructions to the AOs to ensure that wealth tax and income tax of an assessee are assessed at the same time. The charge for wealth tax is on the assets net of liabilities.

Non-compliance with the instructions resulted in non-levy of wealth tax aggregating Rs. 76.5 lakh in 10 cases in Andhra Pradesh, Delhi, Gujarat, Maharashtra, Tamil Nadu and West Bengal. Two cases are illustrated below:

⁸⁷ The department has not accepted the audit observation in one summarily processed case as a matter of principle citing the Assessing officers' limitations. However rectificatory action has been initiated/ completed without contesting the facts of the case

4.14.1 CHARGE: CIT-III, CHENNAI, TAMIL NADU; AYs 2003-04 AND 2005-06⁸⁸

MIL Industries Ltd., a company, sold a portion of urban land at Ambattur in AY 2005-06 and capital gains on its sale was offered to tax. In the income tax returns, the assessee declared the value of the land as Rs. 17.3 crore for the AYs 2003-04 and 2004-05 and Rs. 12.7 crore for AY 2005-06. The land was not used for business purposes or let out. As such, it was an asset that was assessable to wealth tax. Although the assessee did not file wealth tax returns for the relevant years, yet the AO did not initiate any proceeding to call for it. The omission resulted in non-assessment of wealth of Rs. 47.3 crore involving non-levy of wealth tax of Rs. 46.8 lakh.

4.14.2 CHARGE: CIT CENTRAL-I, KOLKATA, WEST BENGAL; AY 2002-03⁸⁹

Aessen (P) Ltd., a company, had rental income from its godown during AY 2002-03, which was assessed while computing income tax as income from house property. The assessee was, therefore, liable to pay wealth tax for the year. Neither did the assessee file the return of wealth nor did the assessing officer initiate any wealth tax proceeding to call for the same. The omission resulted in wealth escaping assessment of Rs. 8.7 crore involving tax effect of Rs. 8.7 lakh.

4.15 WEALTH NOT ASSESSED

Under Wealth Tax Act 1957 'assets' include guest house and all residential buildings, urban land, motor cars other than those used in the business of running them on hire or as stock-in-trade.

The AOs did not assess assets taxable to wealth tax in four cases in Himachal Pradesh, Maharashtra, Uttar Pradesh and West Bengal resulting in short levy of tax aggregating Rs. 80.7 lakh. Two cases are illustrated below:

4.15.1 CHARGE: CIT-IX, MUMBAI, MAHARASHTRA; AY 2002-03⁹⁰

Tata SSL Ltd., a company, transferred 1.4 lakh sq. metres of freehold land to Kanakia Construction Company for which two agreements (August 2001 and February 2002) were executed. But the sale deed of transfer of land was executed in April 2003 only. Since the

⁸⁸ Loss of Rs. 1.31 crore and capital gain of Rs. 57.25 lakh assessed in September 2005 and December 2007 respectively.

⁸⁹ Income of Rs. 47.44 lakh assessed in March 2005.

⁹⁰ Wealth of Rs. 5.85 crore assessed in March 2005.

ownership of the said freehold land was with the assessee till 31 March 2003, it was liable to be taxed. However, the freehold land was not offered for wealth tax assessment. The omission resulted in wealth escaping assessment of Rs. 72.8 crore involving tax effect of Rs. 72.8 lakh.

4.15.2 CHARGE: CIT-IV, KOLKATA, WEST BENGAL; AY 2004-05⁹¹

Landsdown Realty Ltd., a company, received an advance of Rs. 6 crore against sale of flats to different parties which was included in the liabilities. The omission to disallow the advance resulted in underassessment of wealth of Rs. 6 crore involving short levy of tax of Rs. 6 lakh⁹².

New Delhi
Dated:

(REBECCA MATHAI)
Principal Director
(Direct Taxes)

Countersigned

New Delhi
Dated:

(VINOD RAI)
Comptroller and Auditor General of India

⁹¹ Wealth of Rs. 61.94 lakh assessed in August 2004.

⁹² The department has not accepted the audit observation in this summarily processed case as a matter of principle citing the Assessing officers' limitations. However rectificatory action has been initiated/ completed without contesting the facts of the case