

Chapter IV: Analysis of assessments relating to Income Tax and Wealth Tax

A – Income Tax

4.1 Introduction

4.1.1 Chapter IV discusses 115 high value cases pertaining to Income tax with tax effect of ₹ 593.30 crore (108 cases involving undercharge of ₹ 589.31 crore and seven cases involving overcharge³² of ₹ 3.99 crore) issued to the Ministry between May and October 2012. Table 4.1 shows the details of broad categories of mistakes and tax effect:

Table no. 4.1: Category of mistakes and tax effect

Category	Cases	Tax effect
a. Quality of assessments;	40	516.47
b. Administration of tax concession/ exemption/ deduction	41	53.90
c. Tax escaping assessments due to omissions; and	27	18.94
d. Others-Over-charge of tax/Interest	7	3.99
Total	115	593.30

4.1.2 Under each broad category, we indicate sub-categories for the purpose of highlighting mistakes of a similar nature. Each sub-category starts with a preamble citing the provisions of the Act, followed by illustration of important case(s).

4.2 Quality of assessments

4.2.1 AOs committed errors in the assessments despite clear provisions in the Act. These cases of incorrect assessments point out weaknesses in the internal controls on the part of ITD which need to be addressed. Table 4.2 shows the sub-categories of mistakes which impacted the quality of assessments.

Table 4.2: Details of errors in quality of assessment

Sub-categories	Cases	TE	States
a. Arithmetical errors in computation of income and tax	11	503.13	Andhra Pradesh, Delhi, Gujarat, Karnataka and Maharashtra
b. Application of incorrect rate of tax, surcharge etc.	10	4.89	Delhi, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Punjab and Uttar Pradesh.
c. Mistakes in levy of interest	18	7.83	Andhra Pradesh, Chandigarh (UT), Delhi, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Punjab and Uttar Pradesh.
d. Excess or irregular refunds/ Interest on refunds	1	0.62	Maharashtra
Total	40	516.47	

³² 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.

4.2.2 Arithmetical errors in computation of income and tax

We give below three such illustrative cases:

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

4.2.2.1 In Andhra Pradesh, CIT-I Vishakhapatnam charge, AO completed the assessment of **Visakhapatnam Port Trust** for AY 09 and determined the total income at ₹ 98.33 crore as against actual amount of ₹ 1116.81 crore. This resulted in short computation of income of ₹ 1018.48 crore with short levy of tax of ₹ 455.39 crore. *The Ministry accepted and rectified (January 2012) the mistake under section 154.*

4.2.2.2 In Delhi, DIT I Charge, AO completed the assessment of **ESS Distribution (Mauritius) SNC et Compagnie** for AYs 06 and 07 under section 144C(1) in September 2010 at income of ₹ 17.50 crore and ₹ 13.29 crore, respectively. In both AYs, AO incorrectly adopted the assessed tax as assessed income and calculated the tax accordingly. The mistake resulted in short levy of tax of ₹ 38.03 crore including interest. *ITD rectified the mistake under section 154 in March 2012 for AY 06.*

4.2.2.3 In Maharashtra, CIT-X Mumbai charge, while completing the assessment of **Shri Prabhakar T. Bhandari** for AY 09 after scrutiny in December 2010 at income of ₹ 8.8 crore, AO levied tax of ₹ 1.21 crore instead of ₹ 3.51 crore. The mistake resulted in short levy of tax of ₹ 2.30 crore.

4.2.3 Application of incorrect rates of tax and surcharge

We give below one such illustrative case:

Income tax including surcharge shall be charged at the rates prescribed in the relevant Finance Act.

4.2.3.1 In Himachal Pradesh, CIT Shimla charge, AO while completing the assessment of **Tibetan Children Village** for AY 08 after scrutiny in December 2009 at income of ₹ 34.03 crore, did not levy surcharge. The mistake resulted in short demand of ₹ 1.38 crore.

³³ ₹ 20.63 crore and ₹ 17.40 crore for AY 06 and AY 07 respectively

4.2.4 Mistakes in levy of Interest

We give below one such illustrative case:

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

4.2.4.1 In Delhi, DIT-I charge, AO, while completing the assessment of **ESPN Star Sports Mauritius SNC et Compagnie** for AY 06 under section 144C(1) in September 2010 at income of ₹ 34.18 crore, levied interest of ₹ 2.87 crore instead of ₹ 6.74 crore under section 234B. The mistake resulted in short levy of interest of ₹ 3.87 crore. *ITD rectified the mistake under section 154 in March 2012.*

4.3 Administration of tax concessions/exemptions/deductions

4.3.1 The Act allows concessions/exemptions/deductions to the assessee in computing total income under Chapter VI-A and for certain categories of expenditure under its relevant provisions. We observed that the assessing officers have irregularly extended benefits of tax concessions/exemptions /deductions to beneficiaries that are not entitled to the same. These cases point out weaknesses in the administration of tax concessions/deductions/exemptions on the part of ITD which need to be addressed. Table 4.3 shows the sub-categories which have impacted the Administration of tax concessions/ exemptions/ deductions.

Table 4.3: Sub-categories of mistakes under Administration of tax concessions/ exemptions/ deductions

				Cr. ₹.
Sub-categories	Nos.	TE	States	
a. Irregular exemptions/ deduction/relief given to individuals	4	1.34	Gujarat, Rajasthan, Tamil Nadu and West Bengal	
b. Irregular exemptions/ deduction/ relief given to Trusts/ Firms/Societies	23	18.78	Andhra Pradesh, Bihar, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal	
c. Irregularities in allowing depreciation /business losses/ capital losses	14	33.78	Bihar, Delhi, Gujarat, Karnataka, Maharashtra and West Bengal	
Total	41	53.90		

4.3.2 Irregular allowance of exemptions and deductions to Trusts/Firms/Societies

We give below two such illustrative cases:

Provision made in the accounts for an accrued or known liability is an admissible deduction, while other provisions do not qualify for deduction.

4.3.2.1 In Andhra Pradesh, CIT-IV Hyderabad charge, AO completed the assessment of **District Co-operative Central Bank Limited** for AY 06 after scrutiny in November 2007 at an income of ₹ 4.27 lakh after allowing deduction of ₹ 22.69 crore under section 80P. AO incorrectly allowed deduction before setting-off of brought forward losses. The mistake resulted in excess carry forward of losses of ₹ 22.69 crore involving potential tax effect of ₹ 7.12 crore. *The Ministry accepted and rectified (November 2010) the mistake under section 147.*

4.3.2.2 In Madhya Pradesh, CIT Gwalior charge, AO completed assessment of **District Co-operative Agriculture & Rural Development Bank Limited** for AY 07, after scrutiny in December 2008 at a loss of ₹ 12.14 crore. AO incorrectly allowed provision of ₹ 10.56 crore for time barred and penal interest. The mistake resulted in over assessment of loss of ₹ 10.56 crore involving potential tax effect of ₹ 3.23 crore. *The Ministry accepted and rectified (March 2011) the mistake under section 263.*

4.3.3 Irregularities in allowing depreciation/business losses/capital losses

We give below two such illustrative cases:

Section 72 provides for carry forward and set-off of net loss of an assessment year against profits and gains of the following eight assessment years.

4.3.3.1 In Gujarat, CIT-I Baroda charge, AO while completing the assessment of **Petrofils Co-operative Limited** for AY 07, after scrutiny in November 2008 at income of ₹ 13.89 lakh, allowed carry forward of business loss of ₹ 81.33 crore pertaining to AY 96 to AY 99 contrary to the Act. This resulted in short levy of potential tax effect of ₹ 24.89 crore. *ITD rectified the mistake under section 143(3) read with section 147 in November 2011.*

4.3.3.2 In Maharashtra, CIT-I Kolhapur charge, AO while completing the assessment of an AOP, **Sonhira Sahakari Sakhar Karkhana Limited** for AY 08, after scrutiny in September 2009 at a loss of ₹ 3.17 crore, allowed carry forward of business loss/unabsorbed depreciation of ₹ 33.71 crore as against ₹ 21.98 crore. This resulted in potential tax effect of ₹ 3.59 crore.

4.4 Income escaping assessments due to omissions

4.4.1 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 assessing officers did not assess/under assessed total income that was required to be offered to tax. There were also omissions in implementing TDS/TCS provisions which led to escapement of tax. Table 4.4 shows the sub-categories which have resulted in income escaping assessments.

Table 4.4: Sub-categories of mistakes under income escaping assessments due to omissions
Cr. ₹.

Sub-categories	Nos.	TE	States
a. Unexplained investment/ cash credit	3	0.89	Maharashtra, West Bengal and Uttar Pradesh
b. Incorrect classification and computation of capital gains	5	3.79	Andhra Pradesh and Tamil Nadu
c. Income not assessed/ under assessed	8	1.23	Delhi, Gujarat, Haryana, Punjab, Rajasthan, Tamil Nadu and West Bengal,
d. Omissions in implementing provisions of TDS	11	13.03	Delhi, Gujarat, Jharkhand, Maharashtra and West Bengal
Total	27	18.94	

4.4.2 Incorrect classification of Capital Gain

We give below three such illustrative cases:

Section 4 provides that all incomes shall for the purpose of charge of income tax and computation of total income, be classified under the heads of income specified therein.

4.4.2.1 In Tamil Nadu, CIT-IV Chennai charge, AO while processing the assessment of an HUF, **K Srinivasan** for AY 07 in a summary manner, at income of ₹ 30.75 lakh, treated the income of the assessee under the head 'short/long term capital gain' as against 'Income from business and profession'. This resulted in short levy of tax of ₹ 89.05 lakh. *ITD rectified the mistake under section 143(3) read with section 147 in December 2011.*

4.4.2.2 In Tamil Nadu, CIT-IV Chennai charge, AO while processing the assessment of **Smt. Vijaya Srinivasan** for AY 07, in a summary manner in November 2007 at ₹ 52.03 lakh, treated the income of the assessee under the head 'Short/Long Term Capital Gain' as against 'Income from business and profession'. This resulted in short levy of tax of ₹ 87.07 lakh. *ITD rectified the mistake under section 143(3) read with section 147 in December 2011.*

Under section 45 r.w.s. 2(14)(iii) of Act, any profits and gains arising from the transfer of capital assets shall be chargeable to Income Tax under the head capital gains.

4.4.2.3 In Tamil Nadu, CIT-IV Chennai charge, AO while completing the assessment of **M. Thirunavukkarasu**, for AY 08 after scrutiny in December 2009 at income of ₹ 8.28 lakh, treated residential land (capital asset) as agricultural land. This mistake resulted in incorrect allowance of exemption of Long Term Capital Gain of ₹ 252.34 lakh involving short levy of tax of ₹ 71.82 lakh. *ITD rectified the mistake under section 143(3) r.w.s 147 in December 2011.*

4.4.3 Omissions in implementing provisions of TDS

We give below one such illustrative case:

Section 40(a)(ia) provides that deduction of expenditure towards payments where TDS has not been deducted, shall not be allowed.

4.4.3.1 In Gujarat, CIT-I Rajkot charge, AO while completing the assessment of **Dholu KCLJPF Joint Venture Company**, for AY 07 after scrutiny in December 2008 at income of ₹ 0.39 lakh, allowed the expenditure on account of payment made to sub contractor/work contract on which assessee had deducted/deposited less TDS. The mistake resulted in under assessment of income of ₹ 17.61 crore involving short levy of tax of ₹ 7.87 crore including interest. *The Ministry accepted and rectified (December 2011) the mistake under section 147.*

4.5 Over Charge of Tax/Interest

4.5.1 We noticed over assessment of income in seven cases involving overcharge of tax/interest of ₹ 3.99 crore in Delhi, Jharkhand, Gujarat, Rajasthan and West Bengal. We give below one such illustrative case:

4.5.1.1 In West Bengal, CIT-II Kolkata charge, AO completed the assessment of **Dilip Kumar Khandelwal** for AY 08, after scrutiny in December 2009 at income of ₹ 81.69 lakh instead of ₹ 56.81 lakh due to arithmetical error in computation. The mistake resulted in over assessment of income of ₹ 24.88 lakh leading to overcharge of tax and interest of ₹ 19.40 lakh. *The Ministry accepted and rectified (May 2011) the mistake under section 154.*

B – Wealth Tax

4.6 This section discusses 15 cases of Wealth Tax involving tax effect of ₹ 35.19 lakh reported to the Ministry during August 2012 to October 2012.

4.6.1 Non-levy/short levy of Wealth Tax

We found that AO did not comply with CBDT's instructions³⁴ in these cases in Andhra Pradesh, Bihar, Chhattisgarh, Delhi, Gujarat, Karnataka, Maharashtra, Tamil Nadu and West Bengal. We give below one such illustrative case:

4.6.1.1 In Chhattisgarh, CIT Raipur charge, **Rani Saraogi** having land and cash in hand worth ₹ 4.69 crore for AY 10 did not file the return of wealth tax. The ITD also did not initiate any action to call for the same. The mistake resulted in non-levy of wealth tax of ₹ 4.53 lakh.



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³⁴ CBDT's instructions issued to the AOs in November 1973, April 1979 and September 1984.