

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

4.1 Introduction

4.1.1 Chapter IV discusses 110 high value cases pertaining to Income tax with tax effect of ₹ 171.87 crore (103 cases involving undercharge of ₹ 158.06 crore and seven cases involving overcharge³² of ₹ 13.81 crore) issued to the Ministry between June and November 2013. In addition, 17 cases pertaining to under assessment of Wealth tax amounting to ₹ 1.88 crore have also been discussed in this Chapter. Table 4.1 shows the details of broad categories of mistakes and their corresponding tax effect:

Table no. 4.1: Category of mistakes and tax effect		(₹ in crore)
Category	Cases	Tax effect
a. Quality of assessments	38	50.78
b. Administration of tax concessions/exemptions/deductions	35	80.06
c. Income escaping assessments due to omissions	47*	29.10
d. Others-Over-charge of tax/Interest	7	13.81
Total	127	173.75

*Includes 17 cases of under assessment of wealth involving TE of ₹ 1.88 crore.

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.

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 and incorrect computation of capital gains etc.

Table 4.2: Details of errors in quality of assessments			(₹ in crore)		
Sub-categories	Cases	TE	States		
a. Arithmetical errors in computation of income and tax	3	0.59	Gujarat, Haryana, and Punjab		
b. Incorrect application of rates of tax, surcharge etc.	4	1.13	Andhra Pradesh, Bihar, Chhattisgarh and Maharashtra		
c. Mistakes in levy of interest	27	46.08	Bihar, Delhi, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Uttar Pradesh and West Bengal.		
d. Mistakes in assessment while giving effect to Appellate orders	4	2.98	Gujarat and Maharashtra		
Total	38	50.78			

4.2.2 Arithmetical errors in computation of income and tax

We give below one such illustrative case:

The Act provides that AO is required to make a correct assessment of the total income or loss of the assessee and determine correct amount of tax or refund, as the case may be.

4.2.2.1 In Haryana, CIT-Faridabad charge, AO completed the assessment of an individual **Chhaya Sinha** for AY 2006-07 after scrutiny in November 2011 at an income of ₹ 66.44 lakh. However, audit scrutiny revealed that owing to an arithmetic error, the tax liability was assessed at ₹ 12.71 lakh instead of ₹ 39.18 lakh. The mistake resulted in under charge of income tax of ₹ 26.47 lakh.

4.2.3 Incorrect application of 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 Maharashtra, ADIT(IT) 2(2) Mumbai charge, AO while completing the assessment of **Virginia Retirement System** for AY 2007-08 after scrutiny in December 2010 levied surcharge on tax at the rate of 2.5 *per cent* instead of 10 *per cent*. The mistake resulted in short demand of ₹ 40.32 lakh including interest. *ITD accepted and rectified the mistake under section 154 (June 2011).*

4.2.4 Mistakes in levy of Interest

We give below three such illustrative cases:

As per explanation 3 below section 234A(1), where the return of income is not furnished and the assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as regular assessment, the assessee is liable to pay interest at the specified rate for every month or part of a month comprised in the period commencing on the date immediately following the due date for filing the return and ending on the date of completion of assessment under section 144.

4.2.4.1 In Madhya Pradesh, CIT Gwalior charge, AO completed the assessment of an individual **Chironji Lal Shivhare** for AYs 2003-04 to 2008-09 under section 143(3)/153A in December 2010. The assessee filed the income tax returns late by five months against the date mentioned in the notice issued under 153A and defaulted in payment of advance tax in AY 2005-06. Simultaneously the department also adopted incorrect figure for calculation of tax in AY 2008-09. All these mistakes resulted in short levy of tax and interest of ₹ 21.54 crore. *ITD rectified the mistake under section 154 for all the assessment years (January 2012).*

4.2.4.2 In Delhi, CIT Central II charge, AO completed the assessment of an individual **Manoj Kumar** for AYs 2005-06 to 2009-10 under section 143(3)/153A in December 2011. The assessee filed his income tax returns late by four and half months against the date mentioned in the notice issued under 153A but the department did not levy interest under section 234A for delay in filing the return. The omission resulted in short levy of interest of ₹ 6.06 crore. *ITD accepted the audit observation and rectified the mistake under section 154 (September 2012).*

4.2.4.3 In Punjab, CIT Mohali charge, AO completed the assessment of **The Defence Services Cooperative Housing Society** for AY 2008-09 after scrutiny in December 2010. The assessee filed its income tax return on 30 March 2009 against the stipulated due date of 30 September 2008; however, ITD did not levy interest under section 234A for delay in filing of return. The mistake resulted in short levy of interest of ₹ 3.64 crore. *ITD accepted the audit observation and rectified the mistake under section 154 (June 2011).*

4.2.5 Mistakes in assessment while giving effect to appellate orders

We give below two such illustrative cases:

The Act provides that an aggrieved assessee can appeal to the Commissioner of Income Tax (Appeals)/ITAT/High Court/Supreme Court against the order of assessing officer who shall comply with the direction given in the appellate order.

4.2.5.1 In Maharashtra, CIT Aurangabad Charge, AO completed the assessment of **Bhaurao Chavan Sahakari Sakar Karkhana Limited** for AY 1999-2000 under section 143(3) read with section 147 in March 2006. ITD while giving effect to ITAT's order allowed excess depreciation and double deduction towards cane development expenses and Vasantdada Sugar Institute (VSI) contribution. The mistake resulted in short levy of tax of ₹ 56.03 lakh. *ITD accepted the audit observation and rectified the mistake under section 154 (August 2012).*

4.2.5.2 In Gujarat, CIT Central-I Charge, AO completed the assessment of an individual **Shreyans S Shah** for AY 2006-07 after scrutiny in December 2008 at an income of ₹ 18.23 crore. The assessee filed an appeal against assessment of short term capital gain (STCG) of ₹ 17.02 crore for its treatment as business income to be taxed at normal rates and CIT (A) in its order (October 2009) decided that ₹ 16.77 crore may be taxed as STCG and remaining ₹ 24.96 lakh as business income. However, while giving effect to CIT order, tax of only ₹ 201.81 lakh was charged instead of ₹ 257.02 lakh leading to short levy of tax of ₹ 55.21 lakh including interest. *ITD rectified the mistake under section 154 (September 2011).*

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 them. 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			(₹ in crore)
Sub-categories	Nos.	TE	States
a. Irregular exemptions/deductions/relief given to individuals	1	0.52	Tamil Nadu
b. Irregular exemptions/deductions/relief given to Trusts/Firms/Societies/AOPs	3	1.96	Karnataka, Maharashtra and Punjab
c. Incorrect allowance of Business Expenditure	13	17.48	Assam, Bihar, Maharashtra, Punjab, Rajasthan and Tamil Nadu
d. Irregularities in allowing depreciation/business losses/capital losses	18	60.10	Bihar, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Rajasthan and Uttar Pradesh
Total	35	80.06	

4.3.2 Irregular exemptions/deductions/relief to Trusts/Firms/Societies/AOPs

We give below one such illustrative case:

Section 143(3) provides that AOs have to determine and assess the income correctly. CBDT has also issued instructions from time to time in this regard.

4.3.2.1 In Maharashtra, CIT-I Pune charge, AO completed the assessment of **Janta Sahakari Bank Limited** for AY 2005-06 after scrutiny in December 2007 at a loss of ₹ 25.73 crore and the same was revised at a loss of ₹ 6.63 crore under section 143(3) read with section 263 in December 2010. Audit noticed that assessee debited ₹ 5.15 crore on account of 'depreciation on investment being loss on sale of securities' in the P/L Account and AO while passing orders under section 143(3) read with section 263 again allowed the same expenses. The mistake resulted in under assessment of income by an equal amount involving potential tax effect of ₹ 1.58 crore. *The Ministry accepted and rectified the mistake under section 154 (March 2012).*

4.3.3 Incorrect allowance of Business Expenditure

We give below three such illustrative cases:

Section 36(1)(viiia) of the Act provides that in respect of any provision for bad and doubtful debts made by a scheduled bank or a non-scheduled bank or co-operative bank (other than a primary agricultural cooperative society/agricultural and rural development bank), an amount not exceeding seven and one half per cent of the total income and an amount not exceeding ten per cent of the aggregate average advances made by rural branches³³ of such bank shall be allowed as deduction.

4.3.3.1 In Tamil Nadu, CIT-I Salem charge, AO completed the assessment of **Salem District Central Coop Bank Limited** for AYs 2007-08 and 2008-09 after scrutiny in December 2009 and December 2010 respectively. For AY 2007-08, AO allowed deduction of ₹ 5.68 crore under section 36(1)(viiia) towards 'reserve for interest due' and for AY 2008-09 did not restrict to the extent of provision made in the accounts for bad and doubtful debts. Excess allowance of deduction by including the ineligible amounts of 'reserve for interest due' and not restricting it to the provisions made towards bad and doubtful debts resulted in under assessment of ₹ 16.44 crore³⁴ having a tax effect of ₹ 5.56 crore³⁵.

4.3.3.2 In Tamil Nadu, CIT-II Madurai charge, AO while completing the assessment of **Tirunelveli District Central Cooperative Bank Limited** for AY 2008-09 after scrutiny in December 2012, allowed deduction under section 36(1)(viiia) amounting to ₹ 8.17 crore towards provision for bad and doubtful debts and other provisions. As the assessee did not have any rural branches, hence the same was not eligible for deduction under the said section and only 7.5 per cent of total income i.e. ₹ 0.39 crore was required to be allowed as deduction. Omission to do so resulted in under assessment of income of ₹ 4.72 crore and excess carry forward of losses of ₹ 3.07 crore involving short levy of tax of ₹ 2.64 crore³⁶.

³³ Rural branch means a branch of a scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

³⁴ ₹ 5.69 crore for AY 2007-08 and ₹ 10.75 crore for AY 2008-09

³⁵ ₹ 1.91 crore for AY 2007-08 and ₹ 3.65 crore for AY 2008-09

³⁶ ₹ 1.60 crore positive tax effect and ₹ 1.04 crore potential tax effect

4.3.3.3 In Karnataka CIT-Hubli charge, AO completed the assessment of **The Karnataka Central Co-operative Bank Limited** for AY 2008-09 after scrutiny in December 2010. The assessee had claimed and was allowed deduction in respect of advances made by three branches situated in places having population of more than ten thousand as per the 2001 census. The mistake resulted in excess allowance of deduction of ₹ 1.39 crore involving short levy of tax of ₹ 58.16 lakh including interest. *ITD accepted the audit observation and initiated remedial action under section 148.*

4.3.4 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.

4.3.4.1 In Bihar, CIT-I Bhagalpur charge, AO completed the assessment of **Koshi Kshetriya Gramin Bank** for AY 2008-09 after scrutiny in December 2010 at nil income after setting off of brought forward losses of ₹ 27.28 crore. Audit noticed that there were no brought forward losses in AY 2007-08 to be carried forward to AY 2008-09. The mistake resulted in irregular set off of losses of ₹ 27.28 crore having a tax effect of ₹ 10.56 crore including interest. *ITD rectified the mistake under section 154 (July 2012).*

4.3.4.2 In Gujarat, CIT-Baroda charge, AO completed the assessment of **Petrofils Co-operatives Limited** for AY 2006-07 in November 2008 at an income of ₹ 13.89 lakh. AO incorrectly allowed carry forward of business loss of ₹ 65.90 crore pertaining to AY 1997-98 and earlier years, i.e. beyond the permissible limit of eight years. The mistake resulted in excess allowance of carry forward of business loss to the same extent and resulted in short levy of potential tax effect of ₹ 22.18 crore. *ITD rectified the mistake under section 143(3) read with section 147 in November 2011.*

4.3.4.3 In Kerala, CIT-Trivandrum charge, AO completed the assessment of **Kerala State Co-operative Bank Limited** for AY 2009-10 after scrutiny in December 2011 at an income of ₹ 9.23 crore after setting off of brought forward losses of ₹ 16.29 crore pertaining to AYs 2007-08 and 2008-09. However, audit scrutiny revealed that total loss of ₹ 63.51 lakh only was available for set off for AY 2009-10 and hence there was excess set-off of losses of ₹ 15.65 crore having a tax effect of ₹ 6.43 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 (₹ in crore) due to omissions			
Sub-categories	Nos.	TE	States
a. Incorrect classification and computation of capital gains	7	7.62	Delhi, Gujarat, Maharashtra and Tamil Nadu
b. Incorrect computation of income	19	18.31	Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal
c. Omissions in implementing provisions of TDS/TCS	4	1.29	Delhi, Chhattisgarh, Uttar Pradesh and West Bengal
d. Non-levy/short levy of Wealth Tax	17	1.88	Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal
Total	47	29.10	

4.4.2 Incorrect classification of Capital Gains

We give below two 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 Maharashtra, CIT-International Taxation Mumbai charge, AO completed the assessment of **Openheimer Developing Markets Fund** for AY 2007-08 in September 2009 at an income of ₹ 65.75 lakh. The assessee treated the speculation loss as short term capital loss and adjusted the same against the short term capital gain instead of speculation profits. Omission to treat the loss as speculation loss and allowing the same to be set off against capital gain resulted in understatement of capital gain with short levy of tax of ₹ 52.05 lakh. *ITD accepted the audit observation and rectified the mistake under section 154 (February 2011).*

Under section 45 read with section 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.

4.4.2.2 In Tamil Nadu, CIT-Chennai charge, AO completed the assessment of **Arjun Parthasarthy** for AY 2009-10 after scrutiny in December 2011 at an income of ₹ 13.13 lakh. The assessee along with others sold 27.23 acres of land and earned long term and short term capital gain aggregating ₹ 22.91 crore and subsequently claimed exemption treating it as an agricultural land. However, Audit noticed that change of land use to non-agricultural purposes was approved as per orders issued by Joint Director of Town and Country Planning, Chennai in August 2008. Since there has been a change in the classification of land from agricultural to non-agricultural purposes the assessee's claim of exemption from capital gain tax on the transfer of the above land was required to be rejected and tax levied accordingly. The omission resulted in escaping of short and long term capital gain with consequential non-levy of tax of ₹ 5.86 crore. *ITD rectified the mistake under section 263 (March 2013).*

4.4.3 Incorrect computation of income

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.

4.4.3.1 In Delhi, CIT-I Central charge, AO completed the assessment of an individual **Devi Dass Garg** for AYs 2004-05 to 2006-07 after scrutiny in December 2010. Audit noticed that the tax was incorrectly computed and agricultural income during these years was not taken into account for the purpose of fixing the applicable rates resulting in aggregated short levy of tax of ₹ 1.91 crore. *ITD rectified the mistake under section 154 (December 2012).*

4.4.3.2 In Maharashtra, DCIT Ahmednagar charge, AO completed the assessment of **Ganesh Sahakari Sakhar Karkhana Limited** for AY 2007-08 after scrutiny in June 2009. AO had adopted net loss of ₹ 4.80 crore instead of income of ₹ 10.11 crore filed by the assessee in the revised return and after making an addition of ₹ 45.77 lakh, income was arrived at a loss of ₹ 4.34 crore instead of profit of ₹ 10.56 crore. The mistake resulted in short levy of tax of ₹ 4.56 crore. *ITD accepted the audit observation and rectified the mistake under section 154 (September 2010).*

4.4.3.3 In Maharashtra, CIT-XII charge, AO while completing assessment of **L & T Hochtief Seabird Joint Venture** for AY 2006-07 in November 2008 at an income of ₹ 1.17 crore allowed the set off of short term capital loss of ₹ 4.59 crore against the income under the head 'income from business' of ₹ 5.75 crore. The mistake resulted in under assessment of income of ₹ 4.59 crore involving short levy of tax of ₹ 1.86 crore. *ITD took remedial action under section 263 (December 2011).*

4.4.4 Omissions in implementing provisions of TDS/TCS

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

4.4.4.1 In Delhi CIT-IX charge AO while completing the assessment of an individual **Ashish Kohli** for AY 2006-07 in May 2008 at an income of ₹ 8.85 lakh did not disallow expenses made by assessee amounting to ₹ 133.20 lakh towards Fabrication, Dyeing & Printing and commission expenses on which tax had not been deducted while making payments. This resulted in under assessment of income by an equal amount having a tax effect of ₹ 58.81 lakh including interest. *ITD rectified the mistake under section 144/148 (March 2013).*

4.4.5 Non-levy/short levy of Wealth Tax

Seventeen cases of Wealth Tax involving tax effect of ₹ 1.88 crore were reported to the Ministry during June 2013 to November 2013. We found that AO did not comply with CBDT's instructions³⁷ in these cases in Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal. We give below one such illustrative case:

4.4.5.1 In Andhra Pradesh, CIT-I Hyderabad charge, **M. Ravinder** was in possession of the assets (cash, car and urban land) which attract wealth tax as per Wealth Tax Act but did not file return of wealth tax for AY 2008-09 and AY 2009-10. ITD also did not initiate any action to call for the same. The mistake resulted in non-levy of wealth tax of ₹ 87.97 lakh. *ITD accepted the audit observation and rectified the mistake for AY 2008-09 (January 2013).*

³⁷ CBDT's instructions issued to the AOs in November 1973, April 1979 and September 1984.

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 ₹ 13.81 crore in Chandigarh, Delhi, Madhya Pradesh and Punjab. We give below two such illustrative cases:

4.5.2 In Madhya Pradesh CIT Gwalior charge, AO completed the assessment of **Naveen Shivhare** for AY 2008-09 under section 143(3)/153A in December 2010 at an income of ₹ 2.40 crore. Audit noticed that AO levied net tax of ₹ 10.10 crore instead of correct amount of ₹ 1.12 crore on the assessed income. The mistake resulted in over charge of tax of ₹ 8.98 crore. *ITD rectified the mistake under section 154 of the Act (January 2012).*

4.5.3 In Madhya Pradesh, CIT Gwalior charge, AO completed the assessment of **The Gwalior Citizen Sakh Sahakarita Maryadit** for AY 2005-06, under section 143(3)/153A in December 2009 at income of ₹ 81.48 crore. Audit noticed that tax including interest was levied at ₹ 50.22 crore instead of correct amount of ₹ 46.93 crore on the assessed income which resulted in over charge of ₹ 3.29 crore. *ITD rectified the mistake under section 154 (May 2011).*