

Chapter III: Corporation Tax

3.1 Introduction

3.1.1 We referred 326 high value cases pertaining to corporation tax involving tax effect of ₹ 2,254.72 crore to the Ministry of Finance during June 2014 to September 2014 to elicit their comments.

3.1.2 The Department (ITD) has accepted 113 cases and not accepted 11 cases (referred to in para 2.6.3). ITD has completed remedial action in 248 cases involving tax effect of ₹ 1,551.19 crore and initiated remedial action in 23 cases involving tax effect of ₹ 130.74 crore.

3.1.3 This chapter discusses 326 corporation tax cases, of which 294 cases involve undercharge of ₹ 1,760.44 crore and 32 cases involve overcharge²⁶ of ₹ 494.28 crore). These cases of incorrect assessment point towards weaknesses in the internal controls on the assessment process being exercised by the Income tax Department.

3.1.4 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 2.4 (para 2.5.5) shows the details of broad categories of mistakes and their tax effect.

3.1.5 In the subsequent sections of this chapter, the first paragraph in each category indicates nature of mistakes made by the Assessing Officer (AO). The four broad categories are further sub-divided into 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).

3.2 Quality of assessments

3.2.1 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 3.1 shows the sub-categories of mistakes (refer *Appendix 2.3*) which impacted the quality of assessments.

²⁶ 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: Details of errors in quality of assessment				(₹ in crore)
Sub-categories	Cases	TE	States	
a. Arithmetical errors in computation of income and tax	46	268.09	Andhra Pradesh, Assam, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Tamil Nadu and West Bengal	
b. Mistakes in levy of interest	19	192.86	Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Odisha and West Bengal	
c. Excess or irregular refunds/ interest on refunds	21	122.39	Delhi, Haryana, Maharashtra and West Bengal	
d. Incorrect application of rates of tax, surcharge etc.	8	24.02	Delhi, Maharashtra, Punjab and West Bengal	
e. Mistakes in assessment while giving effect to appellate order	12	48.54	Gujarat, Maharashtra and West Bengal	
Total	106	655.90		

3.2.2 Arithmetical errors in computation of income and tax

We give below five 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.

3.2.2.1 In Andhra Pradesh, CIT-II charge, AO while completing the assessment of **Transmission Corporation of Andhra Pradesh Limited** for the assessment year (AY) 2008-09 after scrutiny in December 2012 determined loss at ₹ 13.47 crore after considering interest income of ₹ 29.33 crore received from Government of Andhra Pradesh. While computing taxable income, the AO erroneously adopted the starting figure at loss of ₹ 42.80 crore instead of correct amount of income of ₹ 79.39 crore. The mistake resulted in underassessment of income by ₹ 122.19 crore involving potential short levy of tax of ₹ 41.53 crore.

3.2.2.2 In Maharashtra, CIT-I Pune charge, AO completed the assessment of **Bank of Maharashtra** for the AY 2009-10 after scrutiny in December 2011 at income of ₹ 761.03 crore. The assessment was subsequently rectified under section 154 in January 2012 and income was reassessed at ₹ 617.78 crore after allowing loss on valuation of securities. While computing taxable income during scrutiny assessment and rectification, the AO did not consider the revised profit of ₹ 250.80 crore on sale of securities, reworked by assessee after making net additions of ₹ 74.54 crore to earlier profit of ₹ 176.26 crore. The mistake resulted in underassessment of income of ₹ 74.54 crore involving tax effect of ₹ 25.34 crore. *ITD has taken remedial action (October 2013) while giving effect to the order of CIT(Appeals) passed in March 2013.*

3.2.2.3 In Tamil Nadu, CIT-III Chennai charge, AO while completing the assessment of **Tele Data Marine Solutions Limited** for AY 2009-10 after scrutiny in May 2013, at income of ₹ 6.95 crore, erroneously added ₹ 4.93 crore only on account of 'Transfer Pricing Upward Adjustments' as against upward adjustment of ₹ 91.12 crore proposed by Transfer Pricing Officer III Chennai under section 92CA(3). The mistakes resulted in underassessment of income by ₹ 86.18 crore involving tax effect of ₹ 29.29 crore. *ITD rectified the mistake (September 2013) under section 154.*

3.2.2.4 In Haryana, CIT Hisar charge, AO while completing the assessment of **Dakshin Haryana Bijli Vitran Nigam Limited** for AY 2008-09 after scrutiny in December 2010 at nil income, adopted and disallowed sum of ₹ 153.98 crore on account of provision for surcharge levied but not realised instead of the correct amount of ₹ 225.46 crore reflected in the books of accounts. The mistake resulted in underassessment of income of ₹ 71.48 crore involving potential tax effect of ₹ 24.29 crore. *ITD has taken remedial action (January 2014) under section 143(3) read with section 263.*

3.2.2.5 In Karnataka, CIT-I Bangalore charge, AO while completing the assessment of **Cheslind Textiles Limited** for AY 2011-12 after scrutiny in October 2013 at loss of ₹ 28.71 crore erroneously adopted returned loss at ₹ 31.31 crore instead of nil income and added back ₹ 2.60 crore disallowed on account of commission on export sale. The incorrect adoption of nil income as loss resulted in overassessment of loss of ₹ 28.71 crore involving potential tax effect of ₹ 9.53 crore.

3.2.3 Mistakes in levy of interest

We give below five such illustrative cases:

The Act provides for levy of interest for different omissions on the part of the assessee at the rates prescribed by the Government from time to time.

3.2.3.1 In Maharashtra, CIT-LTU Mumbai charge, AO completed scrutiny assessment of Tata Consultancy Services Limited for AY 2008-09 in February 2012 at income of ₹ 3,114.47 crore. While computing tax demand, AO did not levy interest for default in payment of advance tax although the advance tax paid by assessee was less than 90 per cent of assessed tax. The mistake resulted in non levy of interest of ₹ 161.77 crore under section 234B. *ITD accepted and rectified (April 2012) the mistake under section 154.*

3.2.3.2 In Delhi, CIT Central-III charge, AO while completing search assessment of **Tirupati Buildings and Offices Pvt. Limited** under section 153A in March 2013 for AY 2010-11, at income of ₹ 76.59 crore, levied interest of

₹ 14.65 lakh under section 234B(3) instead of correct amount of ₹ 6.25 crore. The mistake resulted in short levy of interest of ₹ 6.1 crore under section 234B(3). *ITD rectified (May 2014) the mistake under section 154.*

3.2.3.3 In West Bengal, CIT-II Kolkata charge, AO while calculating tax demand in the case of **West Bengal Industrial Development Corporation Limited** for AY 2008-09 after scrutiny in December 2009 at income of ₹ 118.05 crore, levied interest of ₹ 7.24 crore under section 234B instead of correct amount of ₹ 10.71 crore. The mistake resulted in short levy of interest of ₹ 3.48 crore under section 234B. *ITD rectified (July 2013) the mistake under section 154.*

3.2.3.4 In Delhi, CIT-III charge, AO while calculating tax demand in the case of **Swatch Group India (Private) Limited** for AY 2008-09 after scrutiny in January 2012 at income of ₹ 51 crore, levied interest of ₹ 4.54 crore under section 234B instead of correct amount of ₹ 7.21 crore. The mistake resulted in short levy of interest of ₹ 2.67 crore under section 234B. *ITD accepted and rectified (July 2012) the mistake under section 154.*

3.2.3.5 In Maharashtra, CIT-LTU Mumbai charge, AO while completing the scrutiny assessment of **Shell Technology India Private Limited** for AY 2008-09 in November 2012 at income of ₹ 60.88 crore, levied interest of ₹ 9.62 crore under section 234B for the period from April 2008 to December 2011 instead of ₹ 11.99 crore leviable for the period from April 2008 to November 2012. The mistake resulted in short levy of interest of ₹ 2.37 crore under section 234B. *ITD accepted (January 2014) and rectified (July 2013) the mistake under section 154.*

3.2.4 Excess or irregular refunds/interest on refunds

We give below two such illustrative cases:

Section 234D provides for levy of interest on refund if refund is granted in excess to the assessee.

3.2.4.1 In Maharashtra, CIT-II Mumbai charge, AO completed the assessment of **Larsen & Toubro Limited** for AY 2008-09 after scrutiny in November 2012 at income of ₹ 3,369.63 crore which was subsequently rectified in February 2013. AO did not levy interest on excess refund of ₹ 158.43 crore²⁷ issued to assessee earlier although no refund was due as per scrutiny assessment. The mistake resulted in non levy of interest of ₹ 23.95 crore under section 234D. *ITD accepted (August 2013) the audit observation.*

²⁷ The assessee was granted three refunds aggregating to ₹ 158.43 crore out of which ₹ 126.90 crore was paid in March 2010, ₹ 23.03 crore in March 2011 and ₹ 8.51 crore in October 2011.

3.2.4.2 In Delhi, CIT-III charge, AO while completing the assessment of **Steel Authority of India Limited** for AY 2010-11 after scrutiny in March 2013 at income of ₹ 9,872.27 crore, erroneously levied interest at rate of one *per cent* on refund of ₹ 107.43 crore instead of correct rate of one-half *per cent* on excess refund of ₹ 98.22 crore. The mistake resulted in excess levy of interest of ₹ 13.99 crore under section 234D. *ITD accepted and rectified (August 2013) the mistake under section 154.*

3.2.5 Application of incorrect rates of tax and surcharge

We give below two 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.

3.2.5.1 In Punjab, CIT-I Ludhiana charge, AO while computing tax demand of **Vardhaman Textiles Limited** for AY 2010-11 under scrutiny assessment in March 2013 at income of ₹ 185.03 crore did not levy surcharge and education cess amounting to ₹ 5.55 crore and ₹ 1.83 crore respectively. The mistake resulted in non levy of surcharge and education cess of ₹ 7.38 crore. *ITD rectified (July 2014) the mistake under section 154.*

3.2.5.2 In Delhi, CIT(Central)-I charge, AO while computing tax demand of **Pearl Studios Private Limited** for AY 2010-11 under section 144 read with section 153A in March 2013 at income of ₹ 185.03 crore, levied surcharge at five *per cent* instead of correct rate of 10 *per cent* applicable to domestic companies. The mistake resulted in short levy of surcharge of ₹ 5.21 crore. *ITD accepted and rectified (October 2013) the mistake under section 154.*

3.2.6 Mistakes in assessment while giving effect to appellate orders

We give below two such illustrative cases:

Under section 254, an aggrieved assessee can appeal to the CIT (Appeals) against the order of AO who shall comply with the directions given in the appellate order. Further appeal is also permitted to be made on questions of fact and law to ITAT. Any mistake in implementation of an appellate order results in under assessment/over assessment of income.

3.2.6.1 In Maharashtra, CIT-II Mumbai charge, AO while giving effect to the ITAT's order in June 2010 in case of **State Bank of India** for AY 1995-96, did not recalculate deduction on account of provision for doubtful debts under section 36(1)(viiia) although total income was revised to ₹ 769.59 crore (June 2010) as against ₹ 1,069.51 crore determined in scrutiny assessment (March 1998). The mistake resulted in excess allowance of deduction of ₹ 15.00 crore under section 36(1)(viiia) involving short levy of tax of ₹ 6.90 crore. *ITD accepted the audit observation.*

3.2.6.2 In West Bengal, CIT-IV Kolkata charge, AO while revising assessment of **Haldia Petrochemicals Limited** in March 2009 for AY 2005-06 under section 251 read with section 143(3) (originally assessed under scrutiny assessment completed in December 2007 at nil income under normal provisions and at ₹ 630.06 crore under section 115JB) did not consider refund of ₹ 5.77 crore allowed to assessee in May 2007. The mistake resulted in excess allowance of refund of ₹ 6.00 crore including short levy of interest under section 234D.

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 assessing officers have irregularly extended benefits of tax concessions/exemptions/deductions to beneficiaries that are not entitled to the same. These cases point out weakness in the administration of tax concessions/exemptions/deductions on the part of ITD which need to be addressed. Table 3.2 shows the sub-categories (refer to *Appendix 2.3*) which have impacted the Administration of tax concessions/exemptions/deductions.

Table 3.2: 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	52	320.36	Andhra Pradesh, Assam, Delhi, Goa, Gujarat, Karnataka, Maharashtra, Odisha, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal
b. Irregular exemptions/deductions/Rebates/Relief/MAT credit	29	115.20	Andhra Pradesh, Delhi, Goa, Maharashtra, Rajasthan, Tamil Nadu and West Bengal
c. Incorrect allowance of Business Expenditure	40	281.36	Andhra Pradesh, Assam, Delhi, Gujarat, Haryana, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu and West Bengal
Total	121	716.92	

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

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.

3.3.2.1 In Karnataka, CIT-I Bangalore charge, AO completed the scrutiny assessment of **IDEB Project Private Limited** for AY 2010-11 in March 2013 determining loss of ₹ 69.89 crore. While computing taxable income, AO adopted net loss at ₹ 283.45 crore as per original return instead of revised loss of ₹ 172.45 crore determined by assessee in its revised return. The mistake resulted in excess carry forward of loss of ₹ 65.44 crore involving potential tax effect of ₹ 22.24 crore. *ITD accepted and rectified (April 2014) the mistake under section 154.*

Section 72 provides for carry forward and set-off of business loss upto eight succeeding assessment years with respect to assessment year for which the loss was first computed.

3.3.2.2 In Meghalaya, CIT Shillong charge, AO completed assessment of **Meghalaya Energy Corporation Limited (formerly known as Meghalaya State Electricity Board)**, for AY 2008-09 after scrutiny in December 2010 after allowing carry forward of business loss and unabsorbed depreciation of ₹ 146.67 crore. While computing taxable income, the AO erroneously considered the business loss/unabsorbed depreciation relating to AY 2007-08 as ₹ 95.14 crore instead of allowable loss of ₹ 41.49 crore. The mistake resulted in excess carry forward of loss/ unabsorbed depreciation of ₹ 53.65 crore (₹ 95.14 crore minus ₹ 41.49 crore) involving potential tax effect of ₹ 18.23 crore. *ITD accepted (December 2013) and rectified the mistake under section 154 (June 2013).*

3.3.2.3 In West Bengal, CIT-IV Kolkata charge, AO while completing assessment of **Electrical Manufacturing Company Limited**, for AY 2009-10 after scrutiny in December 2011 at nil income after allowing set-off of loss from income of ₹ 26.06 crore, allowed carry forward of business loss of ₹ 42.66 crore. As business loss of ₹ 34.29 crore only was available for set off, loss of ₹ 8.23 crore²⁸ only should have been allowed to be carried forward. The mistake resulted in excess carry forward of business loss of ₹ 34.42 crore involving potential tax effect of ₹ 11.70 crore.

²⁸ ₹ 8.23 crore = ₹ 34.29 crore - ₹ 26.06 crore

3.3.3. Irregular exemptions/Deductions/Rebate/Relief/MAT credit

We give below two such illustrative cases:

Section 115JAA 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 Maharashtra, CIT-III Mumbai charge, AO completed the assessment of **Videocon Industries Limited** for AY 2008-09 after scrutiny in March 2011 at income of ₹ 647.55 crore under normal provisions and ₹ 1,103.50 crore under special provisions of the Act. The assessment was reassessed (February 2013) at income of ₹ 602.15 crore under normal provisions and further rectified in March 2013 at income of ₹ 534.76 crore under normal provisions. AO erroneously allowed set off of MAT credit of earlier year of ₹ 86.74 crore as against the allowable MAT credit of ₹ 56.74 crore being difference of tax under normal provisions and tax under special provisions of the Act. The mistake resulted in excess allowance of MAT credit of ₹ 30.00 crore involving short levy of tax to the same extent.

3.3.3.2 In West Bengal, CIT-III Kolkata charge, AO completed the assessment of **Vodafone East Limited** for AY 2010-11 after scrutiny in March 2013 at income of ₹ 240.44 crore which was subsequently rectified in May 2013 allowing MAT credit of ₹ 17.68 crore under section 115JAA of the Act. As the assessee paid tax under normal provisions of the Act during AYs 2006-07, 2007-08, 2008-09 and 2009-10, there was no MAT credit available for set-off. The mistake resulted in incorrect allowance of MAT credit of ₹ 17.68 crore involving short levy of tax by ₹ 24.04 crore including interest.

3.3.4 Incorrect allowance of business expenditure

We give below four such illustrative cases:

Section 43B provides for deduction towards certain expenditure only when the same has actually been paid in the previous year on or before the due date of filing return of income.

3.3.4.1 In Maharashtra, CIT-X Mumbai charge, AO while completing the scrutiny assessment of **Indian Oil Corporation Limited** for AY 2008-09 in December 2010 at income of ₹ 10,284.77 crore, allowed deduction of ₹ 377.55 crore on account of loss on sale of investment. As the investment made in bonds issued by Government of India was capital in nature, the sale or redemption of the bonds was required to be disallowed. The incorrect allowance of expenditure resulted in underassessment of income of

₹ 377.55 crore involving short levy of tax of ₹ 128.33 crore. *ITD has accepted (March 2013) the audit observation.*

3.3.4.2 In Tamil Nadu, CIT-II Trichy charge, AO while completing assessment of **Tamil Nadu Transport Corporation (Kumbakonam) Limited**, for AY 2009-10 after scrutiny in December 2011 at loss of ₹ 4.19 crore, allowed deduction of ₹ 53.70 crore towards 'Social Cost' out of ₹ 123.29 crore issued as student concession passes which was to be reimbursed by Government of Tamil Nadu in form of subsidy. As the sum of ₹ 123.29 crore was not accounted as subsidy income, the deduction of ₹ 53.70 crore was required to be disallowed. Further, similar expenditure was disallowed on the above grounds in the reassessment completed under section 143(3) read with section 147 in March 2013 for the AY 2005-06 in case of same assessee. The mistake resulted in underassessment of income of ₹ 53.70 crore involving tax effect of ₹ 18.25 crore. *ITD has initiated (January 2014) remedial action under section 148.*

Section 43B (f) provides for allowance of any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee while computing income referred to in section 28 if the sum is actually paid by the assessee.

3.3.4.3 In West Bengal, CIT-II Kolkata charge, AO while finalizing the scrutiny assessment of **National Insurance Company Limited** for AY 2008-09 in December 2010 at loss of ₹ 573.2 crore under normal provisions and book profit of ₹ 205.65 crore under section 115JB, allowed sums of ₹ 16.32 crore and ₹ 27.74 crore debited towards "Leave Travel Subsidy" and "Sick Leave" respectively in the Profit and Loss Account. As both the items remained unpaid till due date of filing of return, they should have been disallowed. The mistakes resulted in under assessment of income of ₹ 44.06 crore involving potential tax effect of ₹ 14.97 crore. *ITD took remedial action (May 2012) under section 143(3) read with sections 154 and 263.*

Section 36(1)(iii) provides that "Any amount of interest paid, in respect of capital borrowed for acquisition of asset, for any period beginning from the date of which the capital is borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction." Further, as per section 37(1), capital expenditure is not an allowable expenditure while computing the income chargeable under the head profits and gains of business or profession".

3.3.4.4 In Meghalaya, CIT Shillong charge, AO completed the assessment of **North Eastern Electric Power Corporation Limited** for AY 2009-10 after scrutiny in September 2011 at nil income after allowing adjustment of brought forward loss and depreciation against assessed income of ₹ 334.56 crore and carry forward of remaining unabsorbed loss and depreciation of ₹ 920.48 crore. AO allowed expenditure of ₹ 25.82 crore on account of incidental expenses towards construction and interest and finance charges incurred on its projects. As expenditure incurred during the

construction period is capital in nature, it was required to be disallowed. Omission to do so resulted in underassessment of income of ₹ 25.82 crore involving short levy of tax of ₹ 8.77 crore.

3.4 Income escaping assessments 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 assessed total income that require to be offered to tax. Table 3.3 shows the sub-categories (refer *Appendix 2.3*) which have resulted in Income escaping assessments.

Table 3.3: 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	34	100.42	Andhra Pradesh, Delhi, Gujarat, Jammu & Kashmir, Karnataka, Maharashtra, Rajasthan, Tamil Nadu and West Bengal	
b. Income not assessed/under assessed under normal provision	18	237.03	Andhra Pradesh, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Tamil Nadu and West Bengal	
c. Incorrect classification and computation of capital gains	7	18.89	Andhra Pradesh, Gujarat, Maharashtra, Punjab, Tamil Nadu and West Bengal	
d. Omissions in implementing provisions of TDS/TCS	7	27.83	Gujarat, Haryana, Maharashtra, Odisha and Tamil Nadu	
e. Unexplained investment/cash credits etc.	1	3.45	Tamil Nadu	
Total	67	387.62		

3.4.2 Income not assessed/under assessed under special provisions

We give below two such illustrative cases:

Section 115JB provides for levy of Minimum Alternate Tax (MAT) at prescribed percentage of the book profit if the tax payable under the normal provisions is lesser than MAT. As per Finance Act 2009, the section has been retrospectively amended to the effect that provision for bad and doubtful debts shall be added back while computing book profit.

3.4.2.1 In Karnataka, CIT-I Bangalore charge, AO completed the scrutiny assessment of **Bangalore Electricity Supply Company Limited** for AY 2008-09 in December 2010 at nil income under normal provisions and book profit of ₹ 17.95 crore under special provisions. While computing book profit, AO did not add back amount of ₹ 224.27 crore debited towards provision for bad and doubtful debts in the profit and loss account. The mistake resulted in

short levy of tax of ₹ 32.81 crore including interest. *ITD accepted and rectified the mistake under section 147 (March 2014).*

3.4.2.2 In Andhra Pradesh, CIT-VI Hyderabad charge, AO while completing the assessment of **North Power Distribution Company Limited** for AY 2008-09 at book profit of ₹ 744.52 crore under special provisions of the Act, did not add back amount of ₹ 77.41 crore debited towards provision for bad and doubtful debts in the profit and loss account. The mistake resulted in short levy of tax of ₹ 11.64 crore including interest. *ITD has initiated remedial action (July 2013) under section 263.*

3.4.3 Income not assessed/under assessed under normal provisions

We give below two such illustrative cases:

Section 28 provides that profits and gains of any business or profession shall be chargeable to income tax under the relevant head. It has been judicially held in the case of CIT vs TVS Sundaram Iyengar & Sons (222 ITR 344 SC) that even though a sum is not taxable in the year of receipt as being of revenue character, the amount changes its character when it becomes assessee's own money because of limitation or by any other statutory or contractual right. The same warrants treatment of amount as income.

3.4.3.1 In Tamil Nadu, CIT-I Chennai charge, AO completed the scrutiny assessment of **Cholamadalam Investment and Finance Company Limited** for AY 2009-10 in December 2011 at income of ₹ 109.14 crore, which was subsequently revised in December 2012 to ₹ 109.63 crore. The sum of ₹ 323.53 crore withdrawn from Securities Premium Account was credited to profit and loss account by way of adjustment of sums of ₹ 200 crore, ₹ 100 crore and ₹ 23.53 crore against 'provision for standard assets', 'loss assets written off' and 'provision for diminution in value of investments' respectively. The assessee's treatment of netting off debit towards provisions against credit of withdrawal of Securities Premium Account made it revenue neutral. As the withdrawal from the Securities Premium Account was utilised for revenue purposes, it was required to be treated as revenue receipts and offered for taxation as income. Omission to do so resulted in underassessment of income of ₹ 323.53 crore resulted in short levy of tax of ₹ 109.97 crore. *ITD has not accepted the audit observation stating that appropriate disclosure regarding utilisation of share premium as deduction had been made in the notes to accounts and it was only a method of presentation.* The Department's reply is not acceptable as reduction in Share Premium Account is absolute and is falling within the ratio of decision of Supreme Court in case of TVS Sundaram Iyengar & Sons. As per Companies Act adjustment of Share Premium Account against reduction of assets or write off of expenses would require actual write off of assets which represented outflow of cash. Further, it has been clarified in notes to

accounts that adjustments to the Securities Premium Account were not in accordance with Accounting Standard and relevant pronouncement of ICAI.

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

3.4.3.2 In Odisha, CIT Bhubaneswar charge, AO completed the assessment of **National Aluminium Company Limited** for AY 2009-10 after scrutiny in October 2011, at income of ₹ 2042.54 crore which was subsequently rectified under section 154 in March 2012 giving credit of TDS of ₹ 79.96 crore. As per the profit and loss account amount of ₹ (-) 85.35 crore was debited towards value of accretion/decretion of stock, intermediary products and works-in-progress out of which accretion of ₹ 29.28 crore was related to finished product. As per books of accounts the accretion of finished product was ₹ 65.10 crore and not ₹ 29.28 crore. The understatement of accretion of finished products resulted in underassessment of income by ₹ 35.82 crore involving tax effect of ₹ 35.76 crore. *ITD accepted the audit observation (March 2013).*

3.4.4 Incorrect classification and computation of capital gains

We give below one such illustrative case:

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

3.4.4.1 In Andhra Pradesh, CIT-Central Hyderabad charge, AO completed the assessment of **Summit Communications Private Limited**, for AY 2009-10 after scrutiny in December 2011 at income of ₹ 33.73 crore. Assessee transferred 18 lakh shares to Unicon for sale consideration of ₹ 39.09 crore and sale proceeds were credited to assessee's bank account. While computing Capital Gains (STCG), sale proceeds of ₹ 22.07 crore was considered instead of correct amount of ₹ 39.09 crore. Further the assessee was allowed indexed cost of acquisition although the period of holding of shares was less than one year resulting in short computation of capital gains by ₹ 17.02 crore. The mistakes resulted in short computation of STCG by ₹ 17.99 crore involving tax effect of ₹ 8.25 crore. *ITD accepted the audit observation (March 2014) and initiated remedial action under section 263 read with section 154.*

3.4.5 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.

3.4.5.1 In Odisha, CIT Sambalpur charge, AO completed the assessment of **Mahanadi Coalfields Limited** for AY 2009-10 after scrutiny in December 2011, at income of ₹ 2778.87 crore which was subsequently revised to ₹ 2763.73 crore in March 2012. While completing scrutiny assessment, AO allowed payments of ₹ 4.82 crore and ₹ 54.77 crore made to Coal India Limited on which tax was not deducted at source. As tax had not been deducted, the payments of ₹ 59.58 crore were required to be disallowed. Omission to do so resulted in underassessment of income by ₹ 59.58 crore involving tax effect of ₹ 20.48 crore. *ITD accepted the audit observation (March 2013).*

3.4.6 Unexplained investment/ cash credits etc.

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.

3.4.6.1 In Tamil Nadu, CIT-VI Chennai charge, AO completed the scrutiny assessment of **S4 Carlisle Publishing Services Private Limited** for AY 2008-09 in December 2010 at income of ₹ 29.32 lakh. As per the Balance Sheet of the assessee for period ending March 2008, the sums of ₹ 10.67 crore and ₹ 11.85 crore were shown towards 'share premium account' under liabilities and 'investment in S4 Carlisle Publishing Services Inc.' under assets respectively. No explanation has been provided for credit in the share premium account and the share premium account was utilised to invest in a subsidiary company which is not admissible under section 78 of Companies Act. As share premium account was utilised for investment in companies which is not the main business of the assessee, the sum of ₹ 11.85 crore was required to be treated as unexplained credit under section 68 and brought to tax. Omission to do so resulted in income of ₹ 11.85 crore escaping assessment involving tax effect of ₹ 3.45 crore. *ITD has taken remedial action under section 143(3) read with section 147 in March 2014.*

3.5 Over-charge of tax/Interest

3.5.1 We noticed that AOs over assessed income in 32 cases (refer *Appendix 2.3*) involving overcharge of tax and interest of ₹ 494.28 crore in Delhi, Karnataka, Maharashtra, Punjab, Rajasthan, and West Bengal. We give below two 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.

3.5.1.1 In Delhi, CIT-I charge, AO completed the assessment of **Bharat Sanchar Nigam Limited** for AY 2008-09 after scrutiny in December 2010 at income of ₹ 5,673.85 crore. The assessee claimed and was allowed tax credit of ₹ 216.41 crore under section 115JAA at summary stage, but the same was not considered during scrutiny assessment. The omission resulted in overcharge of tax of ₹ 287.83 crore. *ITD rectified the mistake under section 154 (January 2012).*

Section 234B provides that if an assessee has to pay advance tax and he has not paid such tax or if the advance tax paid by him is less than 90 *per cent* of the assessed tax, he shall pay simple interest at the rate of one *per cent* every month or part of a month.

3.5.1.2 In West Bengal, CIT-II Kolkata charge, AO completed the scrutiny assessment of **Central Inland Water Transport Corporation Limited** for AY 2007-08 in December 2009 at income of ₹ 892.02 crore. The assessment was subsequently revised under section 251 read with section 143(3) in August 2010 determining tax of ₹ 39.54 crore and further revised in February 2013 without any additions. While completing revised assessment in February 2013 interest under section 234B was levied at ₹ 28.08 crore as against correct sum of ₹ 13.05 crore. *ITD rectified the mistake under section 154 (July 2013).*