

Chapter IV: Income Tax and Wealth Tax

4.1 Introduction

4.1.1 We referred 124 high value cases pertaining to Income tax involving tax effect of ₹ 396.92 crore to the Ministry of Finance during June 2014 to September 2014 to elicit their comments. In addition, 19 cases pertaining to Wealth Tax amounting to ₹ 2.04 crore have also been discussed in this Chapter.

4.1.2 The Department (ITD) has accepted 31 cases and has completed remedial action in 133 cases involving tax effect of ₹ 390.79 crore and initiated remedial action in four case involving tax effect ₹ 2.68 crore.

4.1.3 This chapter discusses 124 income tax cases, of which 97 cases involving undercharge of ₹ 312.80 crore and 27 cases involve overcharge of ₹ 84.12 crore. These cases of incorrect assessment point towards weaknesses in the internal controls on the assessment process being exercised by the Income Tax Department.

4.1.4 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) of this report shows the details of broad categories of mistakes and their tax effect.

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

Table 4.1: Details of errors in quality of assessment			(₹ in crore)	
Sub-categories	Cases	TE	States	
a. Arithmetical errors in computation of income and tax	9	199.66	Delhi, Kerala, Maharashtra, Punjab and West Bengal	
b. Incorrect application of rates of tax, surcharge etc.	7	31.50	Andhra Pradesh, Madhya Pradesh, Rajasthan and Uttar Pradesh	
c. Mistakes in levy of interest	20	30.77	Andhra Pradesh, Bihar, Delhi, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh	
d. Excess or irregular refunds/ interest on refunds	2	0.74	Bihar and Maharashtra	
Total	38	262.67		

4.2.2 Arithmetical errors in computation of income and tax

We give below three such illustrative cases:

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 West Bengal, DIT-International Taxation Kolkata charge, AO completed the assessment of a firm **Joy Partnership** for AY 2010-11 after scrutiny in March 2013 at an income of ₹ 2.47 crore. Audit noticed that while computing the income of the assessee, AO adopted the figure of ₹ 2.56 crore instead of correct amount of ₹ 10.50 crore as shown by the assessee. The mistake resulted in under assessment of income of ₹ 8.04 crore involving tax effect of ₹ 3.11 crore including interest. *ITD rectified the mistake under section 143(3)/263 (March 2014).*

4.2.2.2 In Delhi, CIT-Central I charge, AO completed the assessment of an individual **Pawan Kumar Gupta** for AY 2010-11 under section 143(3)/153A in March 2013 at an income of ₹ 43.36 crore. Audit noticed that AO while computing the tax, adopted the amount of taxable income at ₹ 43.36 crore instead of correct amount of ₹ 433.68 crore. The mistake resulted in short levy of tax of ₹ 187.21 crore including interest. *ITD rectified the mistake under section 154 (November 2013).*

4.2.2.3 In Kerala, CIT-Central Kochi charge, AO completed the assessment of an individual **Mathew K Cherian** for AY 2004-05 after scrutiny in December 2011 at an income of ₹ 7.86 crore and tax of ₹ 2.59 crore thereon. Audit noticed that the amount of tax was short levied by ₹ 1.89 crore due to arithmetical error in computation of interest under section 234B. The mistake resulted in short levy of tax/interest of ₹ 1.89 crore. *ITD rectified the mistake under section 154 (August 2013).*

4.2.3 Incorrect application of rates of tax and surcharge

We give below three such illustrative cases:

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

4.2.3.1 In Madhya Pradesh, CIT-Gwalior charge, AO completed the assessments of an AOP, **The Gwalior Citizen Sakh Sahakarita Maryadit** for AYs 2007-08 and 2008-09 under section 153A/143(3) in December 2010 at an income of ₹ 137.96 crore and ₹ 119.45 crore respectively. Audit noticed that though the assessee was an AOP, AO treated the status of assessee as a Society while computing tax on income. The mistake resulted in incorrect computation and short levy of tax aggregating ₹ 11.71 crore²⁹ including interest for both the assessment years. *ITD rectified the mistake under section 154 (May 2011).*

4.2.3.2 In Andhra Pradesh, CIT Central Hyderabad charge, AO completed the assessment of **Indrani Prasad** for AY 2009-10 under section 143(3)/153C in December 2011 at an income of ₹ 62.42 crore. Audit noticed that special rate of tax was applied at 20 per cent on capital gains of ₹ 62.42 crore even though the period of holding of asset was less than three years. The mistake resulted in short levy of tax of ₹ 9.71 crore including interest. *ITD accepted the audit observation and rectified the mistake under section 154 (March 2013).*

4.2.3.3 In Rajasthan, CIT Jaipur I charge, AO while completing the assessment of an individual, **Kailash Chand Modani** for AY 2009-10 after scrutiny in December 2011 at an income of ₹ 72.98 lakh, computed the short term capital gain at special rate of 15 per cent instead of normal rate of tax. The mistake resulted in short levy of tax of ₹ 17.21 lakh including interest. *ITD accepted the audit observation and rectified the mistake under section 154 (January 2014).*

4.2.4 Mistakes in levy of Interest

We give below three 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.

4.2.4.1 In Madhya Pradesh, CIT Gwalior charge, AO completed the assessment of an individual **Akhil Singhal** for AY 2008-09 after scrutiny in December 2009 at an income of ₹ 111.75 crore and a tax of ₹ 61.28 crore

²⁹ ₹ 6.27 crore for AY 2007-08; ₹ 4.90 crore for AY 2008-09

thereon. Audit noticed that the department did not levy interest under section 234A even though the assessee filed belated return in response to the notice received under section 142(1). The mistake resulted in non levy of interest of ₹ 6.02 crore. *ITD rectified the mistake under section 154 (May 2011).*

4.2.4.2 In Maharashtra, CIT Central IV Mumbai charge, AO completed the assessment of an individual **Inderjeet Arya** for AYs 2008-09 and 2009-10 under section 144 read with section 153A in June 2011 at an income of ₹ 23.70 crore and ₹ 61.28 crore respectively. Audit noticed that interest under section 234A was levied for 12 months and 11 months for aforesaid assessment years instead of 35 months and 23 months respectively. The mistake resulted in short levy of interest aggregating ₹ 4.35 crore for both the assessment years. *ITD rectified the mistake under section 154 (December 2013).*

Section 220(2) of the Act provides that if the amount specified in any notice of demand under section 156 is not paid within a period of 30 days, the assessee shall be liable to pay simple interest as prescribed in the Act.

4.2.4.3 In Haryana, CIT Gurgaon (Central) charge AO completed the assessment of **Sushil Kumar Gupta** for AY 2009-10 under section 153b(1)(b) in December 2010 at an income of ₹ 7.38 crore. Audit scrutiny revealed that though the assessee paid the tax and interest amounting to ₹ 1.51 crore on 9 November 2012 as against the due date of 28 January 2011, AO did not levy the interest for delay in payment of demand. The mistake resulted in non levy of interest of ₹ 30.08 lakh under section 220(2) of the Act. *ITD rectified the mistake under section 154 (December 2013).*

4.2.5 Excess or irregular refunds/Interest on refunds

We give below two such illustrative cases.

As per provisions of the Act, if the amount of tax paid by the assessee for any AYs exceeds the amount with which he is properly chargeable under the Act for that year, he shall be entitled to refund of the excess. Section 244A(1) provides for interest on refund if the refund amount is not less than ten *per cent* of tax determined on regular assessment or in summary manner.

4.2.5.1 In Maharashtra, CIT II Mumbai Charge AO completed the assessment of a firm, **KPMG** for AY 2007-08 after scrutiny in December 2009 which was rectified in February 2011 at an income of ₹ 17.09 crore which further revised to ₹ 15.71 crore while giving effect to CIT (Appeal) order in October 2012. Audit scrutiny revealed that the department levied tax on assessed

income at ₹ 5.29 crore and after adjustment of prepaid taxes arrived at a refund of ₹ 3.01 crore including interest under section 244A of ₹ 1.01 crore despite the fact that the assessee was already granted refund of ₹ 3.15 crore in two instalments. The mistake resulted in excess grant of interest on refunds amounting to ₹ 38.86 lakh. *ITD rectified the mistake under section 154 (October 2013).*

4.2.5.2 In Bihar, CIT II Patna Charge AO completed the assessment of an individual **Awadhesh Kumar Singh** for AY 2007-08 after scrutiny in November 2010 at an income of ₹ 3.25 lakh allowing refund of ₹ 35.20 lakh. Audit examination revealed that the assessment became null and void as the same was completed after the case became time barred. As the assessment was completed after it had become time barred, allowance of refund of ₹ 35.20 lakh including interest was not in order. *Reply of the department is awaited.*

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 4.2 shows the sub-categories (refer *Appendix 2.3*) which have impacted the Administration of tax concessions/exemptions/deductions.

Table 4.2: 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	2	1.70	Gujarat and Uttrakhand	
b. Irregular exemptions/deductions/ relief given to Trusts/Firms/ Societies/AOPs	12	11.60	Andhra Pradesh, Gujarat, Karnataka, Maharashtra, Punjab and Tamil Nadu	
c. Incorrect allowance of Business Expenditure	7	4.32	Gujarat, Madhya Pradesh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal	
d. Irregularities in allowing depreciation/business losses/ capital losses	16	12.17	Bihar, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh and West Bengal	
Total	37	29.79		

4.3.2 Irregular exemptions/deductions/relief to Individuals

We give below one such illustrative case.

Section 80IC provides for certain deductions in respect of profit and gains from industrial undertaking or enterprises which begins to manufacture or produce any article or thing or commences any operation in any specified area/notified area or as specified in the fourteenth schedule.

4.3.2.1 In Uttarakhand, CIT Dehradun charge, AO completed the assessment of an individual **Prateek Kumar** for AY 2009-10 after scrutiny in June 2011 at an income of ₹ 5.99 lakh after allowing deduction of ₹ 3.65 crore under section 80IC. Audit noticed that the assessee was not only engaged in providing services but also received income from contracts, commission and brokerage from a real estate company and hence was not eligible for deduction under section 80IC. The mistake in allowing deduction resulted in under assessment of income of ₹ 3.65 crore having a tax effect of ₹ 1.57 crore including interest. *ITD accepted the audit observation and initiated the remedial action under section 148 (November 2013).*

4.3.3 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.

4.3.3.1 In Punjab, CIT Patiala charge, AO while completing the assessment of an Artificial Judicial Person **Patiala Improvement Trust** for AY 2008-09 after scrutiny in December 2010 at an income of ₹ 11 lakh, allowed exemption of ₹ 7.46 crore under section 12A even though the said exemption is available to charitable trusts only. The mistake resulted in irregular allowance of exemption by an equal amount involving tax effect of ₹ 3.90 crore including interest. *ITD rectified the mistake under section 147 (March 2013).*

4.3.4 Incorrect allowance of Business Expenditure

We give below one such illustrative case.

As per provisions of the Act, AOs have to determine and assess the income correctly in scrutiny assessment. CBDT has also issued instructions from time to time to AOs and their supervising officers to ensure that mistake in scrutiny assessment do not occur.

4.3.4.1 In Uttar Pradesh, CIT Bareilly charge, AO while completing the assessment of a co-operative society **Kisan Sahkari Chini Mills Limited** for

AY 2006-07 after scrutiny in October 2008 at a loss of ₹ 9.04 crore, allowed an expenditure of ₹ 4.10 crore towards cost of molasses under the head 'cost of cane'. As the said expenditure is not a raw material for production of sugar and hence the same should have been disallowed as an inadmissible expenditure. Omission to do so resulted in over assessment of business loss of ₹ 4.10 crore involving a potential tax effect of ₹ 1.26 crore. *ITD rectified the mistake under section 147 (November 2011).*

4.3.5 Irregularities in allowing depreciation/business losses/capital losses

We give below one such illustrative case:

Section 72 provides for carry forward of loss for set-off in the following AYs where the loss is not wholly set-off against income under any head of the relevant year to the extent it is not set-off.

4.3.5.1 In Maharashtra, CIT-XX Mumbai charge, AO while completing the assessment of an individual **Sharad Kantilal Shah** for AY 2010-11 after scrutiny in December 2012 at an income of ₹ 1.61 crore, did not adjust the 'income from other sources' amounting to ₹ 8.03 crore against the 'business loss' of ₹ 55.35 crore. The mistake resulted in excess carry forward of losses of ₹ 8.03 crore involving potential tax effect of ₹ 2.48 crore. *ITD accepted the audit observation and rectified the mistake under section 154 (January 2014).*

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 4.3 shows the sub-categories (refer *Appendix 2.3*) which have resulted in income escaping assessments.

Table 4.3: Sub-categories of mistakes under income escaping assessments due to omissions				(₹ in crore)
Sub-categories	Nos.	TE	States	
a. Incorrect classification and computation of capital gains	4	2.67	Gujarat, Rajasthan and Tamil Nadu	
b. Incorrect computation of income	11	14.31	Delhi, Gujarat, Karnataka, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh	
c. Omissions in implementing provisions of TDS/TCS	7	3.36	Bihar, Chhattisgarh, Gujarat, Jharkhand and Uttar Pradesh	
d. Non-levy/short levy of Wealth Tax	19	2.04	Gujarat, Karnataka, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal	
Total	41	22.38		

4.4.2 Incorrect classification and computation of Capital Gain

We give below one such illustrative case.

Section 50C provides that where the consideration received or accruing as a result of the transfer by an assessee of a capital being land or building or both, is less than value adopted by any Stamp Value Authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, be deemed to be the full value of consideration received or accruing as a result of such transfer.

4.4.2.1 In Tamil Nadu, CIT-I Coimbatore charge, AO completed the assessment of an individual **K. R. Jayaram** for AY 2009-10 after scrutiny in December 2011 at an income of ₹ 1.55 crore. Audit examination revealed that the assessee, along with another assessee, sold land measuring 4.90 acres for a sale consideration of ₹ 3.19 crore and offered short term capital gains of ₹ 1.17 crore computed on 50 *per cent* share of sale consideration received. However, the market value of the said property was re-fixed at ₹ 7.35 crore by the District Revenue Officer(Stamps). As the market value was revised, the sale consideration for computation of capital gains under section 50C should have been adopted at ₹ 3.67 crore³⁰. The omission resulted in under assessment of capital gains of ₹ 2.08 crore involving short levy of tax of ₹ 70.78 lakh. *ITD accepted the audit observation and initiated the remedial action under section 148 (March 2013).*

4.4.3 Incorrect computation of income

We give below one such illustrative case:

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 Maharashtra, CIT-I Pune charge, AO completed the assessment of an AOP **Sangamner Bhag Sahakari Karkhana Limited** for AY 2007-08 after scrutiny in November 2009 at a loss of ₹ 2.11 crore. Audit examination revealed that the AO considered the returned income of ₹ 2.11 crore as loss and allowed the same to be carried forward in subsequent AYs. The mistake resulted in under assessment of income of ₹ 2.11 crore and incorrect carry forward of loss to that extent with consequent potential tax effect of ₹ 1.29 crore. *ITD rectified the mistake under section 154 (September 2010).*

³⁰ 50 *per cent* of ₹ 7.35 crore as determined by the District Revenue Officer(Stamps)

4.4.4 Omissions in implementing provisions of TDS/TCS

We give below two such illustrative cases.

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 Gujarat, CIT-I Ahmedabad charge AO while completing the assessment of a firm **Hakimchand D & Sons** for AY 2007-08 in December 2009 at an income of ₹ 42.15 lakh allowed expenses made by assessee amounting to ₹ 4.96 crore towards licence fee on which tax has not been deducted while making payments. This resulted in under assessment of income by an equal amount having a tax effect of ₹ 2.22 crore including interest. *ITD rectified the mistake under section 147 (March 2013).*

4.4.4.2 In Chhattisgarh, CIT Raipur charge AO while completing the assessment of a firm **P N B Nair** for AY 2008-09 in December 2010 at an income of ₹ 0.78 lakh allowed expenses made by assessee amounting to ₹ 24.96 lakh towards 'Truck & JCB rent' on which tax has not been deducted while making payments. This resulted in under assessment of income by an equal amount having a tax effect of ₹ 12.34 lakh including interest. *ITD rectified the mistake under section 147 (March 2014).*

4.4.5 Non-levy/short levy of Wealth Tax

19 cases of Wealth Tax involving tax effect of ₹ 2.04 crore were reported to the Ministry during June 2013 to September 2014. We found that AO did not comply with CBDT's instructions³¹ in these cases in Gujarat, Karnataka, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal. We give below one such illustrative case:

4.4.5.1 In Maharashtra, CIT III Mumbai charge, the assessee company **Parasakthi Trading Co. Pvt. Limited**, was in possession of the urban land of ₹ 190.96 crore which attract wealth tax as per Wealth tax Act but did not file return of wealth tax for AY 2008-09. ITD also did not initiate any action to call for the same. The omission resulted in escapement of taxable wealth tax of ₹ 19.53 crore leading to non levy of wealth tax of ₹ 28.32 lakh including interest. ITD rectified the mistake under section 16(5) read with section 17 of the Wealth Tax Act (January 2013).

³¹ 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 twenty seven cases (refer *Appendix 2.3*) involving overcharge of tax/interest of ₹ 84.12 crore in Andhra Pradesh, Bihar, Delhi, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal. We give below two such illustrative cases.

4.5.1.1 In Andhra Pradesh, CIT Central Hyderabad charge, AO completed the assessment of **Andhra Pradesh Housing Board** for AYs 2007-08 and 2009-10 under section 144 read with section 147 of the Act in March 2013 at an income of ₹ 677.93 crore and ₹ 1197.32 crore respectively. Audit noticed that AO levied education cess at three per cent instead of correct rate of two percent for AY 2007-08. Further, interest under section 234A was levied in excess for both the AYs and interest under section 234B was levied in excess for AY 2009-10. The mistake resulted in over charge of tax/interest of ₹ 19.21 crore. *ITD rectified the mistake under section 154 for AY 2008-09 (May 2013).*

4.5.1.2 In Delhi, CIT (Central) I charge, AO completed the assessment of an individual **Rishu Gupta** for AY 2009-10 under section 143(3)/153C in March 2013 at an income of ₹ 18.92 crore and a tax of ₹ 12.47 crore thereon. Audit noticed that education cess was levied at ₹ 6.23 crore instead of correct amount of ₹ 18.70 lakh while computing tax on the assessed income which resulted in over charge of ₹ 9.01 crore including interest. *ITD rectified the mistake under section 154 (November 2013).*