

## Chapter III: Corporation Tax

### 3.1 Introduction

**3.1.1** We referred 312 high value cases pertaining to corporation tax involving tax effect of ₹ 2,459.03 crore to the Ministry of Finance during May 2015 to September 2015 to elicit their comments.

**3.1.2** The Ministry has conveyed its acceptance in 46 cases involving tax effect of ₹ 119.01 crore (November 2015). In the remaining 266 cases, the Department (ITD) has accepted 58 cases while not accepted 15 cases (referred to in para 2.6.3). ITD did not furnish replies in respect of remaining 193 cases. ITD has completed remedial action in 239 out of 312 cases, involving tax effect of ₹ 1,317.17 crore and initiated remedial action in 23 cases involving tax effect of ₹ 127.22 crore as on December 2015.

**3.1.3** This chapter discusses 312 corporation tax cases, of which 292 cases involve undercharge of ₹ 2,400.19 crore and 20 cases involve overcharge<sup>34</sup> of ₹ 58.84 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:

- i. Quality of assessments
- ii. Administration of tax concessions/exemptions/deductions
- iii. Income escaping assessments due to omissions
- iv. 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).

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<sup>34</sup> 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.

### 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.

Table 3.1: Details of errors in assessment				(₹ in crore)
Sub-categories	Cases	Tax effect	States	
a. Arithmetical errors in computation of income and tax	43	164.63	Bihar, Delhi, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.	
b. Mistakes in levy of interest	22	150.10	Delhi, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Odisha, Tamil Nadu and West Bengal.	
c. Excess or irregular refunds/interest on refunds	11	39.80	Delhi, Karnataka, Maharashtra, Tamil Nadu and West Bengal.	
d. Application of incorrect rate of tax and surcharge	13	33.80	Andhra Pradesh, Delhi, Gujarat, Maharashtra, Odisha, Rajasthan and Uttar Pradesh.	
e. Mistakes in assessment while giving effect to appellate order	4	38.51	Karnataka and West Bengal.	
<b>Total</b>	<b>93</b>	<b>426.84</b>		

#### 3.2.2 Arithmetical errors in computation of income and tax

We give below five such illustrative cases:

Section 143(3) of Income Tax Act, 1961 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 Madhya Pradesh, CIT-II Jabalpur charge, AO completed the scrutiny assessment of **Madhya Pradesh Power Generating Company Limited** for the assessment year (AY) 2011-12 in January 2014 determining loss at ₹ 193.54 crore. While computing taxable income, the AO erroneously adopted the starting figure as loss of ₹ 197.37 crore instead of correct amount of loss of ₹ 331.34 crore shown by the assessee in the return filed on 29 September 2011. The mistake resulted in underassessment of loss by ₹ 133.97 crore involving potential tax effect of ₹ 40.19 crore. *ITD rectified the mistake (December 2014) under section 154<sup>35</sup>.*

<sup>35</sup> Mistakes apparent from records in any order passed by the AO can be rectified under section 154 of the Act.

**3.2.2.2** In Maharashtra, CIT-VIII Mumbai charge, the scrutiny assessment of **Reliance Communication Infrastructure Limited** for AY 2008-09 was completed in December 2011 determining income at ₹ 212.58 crore after allowing set-off of brought forward loss of ₹ 2,301.62 crore. The assessment was subsequently revised under section 250<sup>36</sup> in February 2013 determining loss of ₹ 52.75 crore. While computing taxable income in the revised assessment order, the AO allowed relief of ₹ 265.33 crore as granted by CIT(Appeals) (August 2012) from net income of ₹ 212.58 crore instead of ₹ 2,514.19 crore arrived at before setting off brought forward loss of ₹ 2,301.62 crore. The mistake resulted in excess carry forward of loss of ₹ 52.75 crore involving potential tax effect of ₹ 17.93 crore. *ITD rectified the mistake (March 2015) under section 154.*

**3.2.2.3** In Maharashtra, CIT-XI Mumbai charge, AO completed the scrutiny assessment of **SKOL Breweries Limited** for AY 2005-06 in December 2007 at income of ₹ 38.43 crore before set-off of unabsorbed depreciation of same amount. The assessment was subsequently revised in July 2012 under section 250 at loss of ₹ 92.66 crore. While computing taxable income in the revised assessment order in July 2012, the AO adopted income at nil instead of ₹ 38.43 crore determined under scrutiny assessment in December 2007. The mistake resulted in overassessment of loss of ₹ 38.43 crore involving potential tax effect of ₹ 14.06 crore. *ITD's reply is awaited (November 2015).*

**3.2.2.4** In Delhi, CIT-VII charge, AO completed the scrutiny assessment of **Pinewood Information Systems Private Limited** for the AY 2011-12 in March 2014 determining income of ₹ 4.04 crore. While computing taxable income, the AO erroneously computed it at ₹ 4.04 crore instead of correct amount of ₹ 23.68 crore arrived at after making additions aggregating ₹ 23.57 crore to the returned income of ₹ 11.07 lakh. The mistake resulted in underassessment of income of ₹ 19.64 crore involving tax effect of ₹ 8.87 crore. *ITD rectified the mistake (September 2014) under section 154.*

**3.2.2.5** In Maharashtra, CIT-XIV Mumbai charge, AO completed the scrutiny assessment of **Music Broadcast Private Limited** for AY 2011-12 in May 2014, at income of ₹ 5.47 crore under normal provisions after making disallowances aggregating ₹ 19.25 crore and allowing depreciation of ₹ 2.39 crore. The assessee filed nil return of income after claiming set off of brought forward losses of ₹ 11.39 crore against current year's income. While computing taxable income, the AO erroneously adopted business income of

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<sup>36</sup> Section 250 of Income Tax Act, 1961 outlines procedure to be followed in appeals. The CIT (Appeals) shall decide the appeal based on hearing of the appellant and the Assessing Officer against whose order the appeal is preferred. On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner.

₹ 11.39 crore as business loss before allowing set off of brought forward losses. The mistake resulted in underassessment of income by ₹ 22.78 crore resulting in excess carry forward of loss to the same extent involving potential tax effect of ₹ 7.57 crore. *ITD accepted the audit observation (July 2015).*

### 3.2.3 Mistakes in levy of interest

We give below three such illustrative cases:

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-8 Mumbai charge, AO completed scrutiny assessment of **Vodafone India Limited** for AY 2008-09 in October 2012 at income of ₹ 724.61 crore. While computing tax demand, the AO levied interest of ₹ 56.72 crore under section 234B at incorrect rate of 0.5 *per cent* instead of prescribed rate of one *per cent* per month. The mistake resulted in short levy of interest of ₹ 56.72 crore under section 234B. *ITD accepted the audit observation (February 2015) and took remedial action under section 143(3)<sup>37</sup> read with section 147<sup>38</sup> in March 2014.*

**3.2.3.2** In Delhi, DIT-I charge, AO completed assessment of **MOL Corporation, CSC Services of Nevada Inc.**, for AYs 2007-08 and 2008-09 under scrutiny in October 2012 at incomes of ₹ 800 crore and ₹ 1,850 crore respectively. The assessee filed income tax return for AY 2007-08 on 21 December 2010 against due date of filing on 31 October 2007 whereas the return for AY 2008-09 was filed on 29 May 2009 against due date of 30 September 2008. Although the returns were filed belatedly, the AO did not levy interest for delay in filing of return under section 234A of the Act. The omission resulted in non levy of interest of ₹ 29.87 crore under section 234A. *ITD rectified (March 2014) the mistake under section 154.*

**3.2.3.3** In Maharashtra, CIT-4 Mumbai charge, AO completed assessment of **Reid and Taylor (India) Limited** for AY 2010-11 after scrutiny in March 2014 determining income of ₹ 324.23 crore and tax of ₹ 110.21 crore after adjusting advance tax of ₹ 10 crore, self assessment tax of ₹ 35 crore and ₹ 25.01 crore paid in September 2010 and October 2010 respectively. While computing tax demand, the AO levied interest of ₹ 6.25 crore under section 234B instead of correct amount of interest of ₹ 27.28 crore. The mistake resulted in short levy of interest of ₹ 21.03 crore under section 234B.

<sup>37</sup> Section 143(3) refers to scrutiny assessment completed by an AO.

<sup>38</sup> The provisions of section 147 empower the AO, to reopen an assessment if he has "reasons to believe" that income has escaped assessment.

Ministry accepted the audit observation (November 2015) and rectified the mistake under section 154 in January 2015.

### 3.2.4 Excess or irregular refunds/interest on refunds

We give below two such illustrative cases:

Section 143(3) provides that AOs have to make correct assessment of the total income after making additions and allowing deductions as per the provisions of the Act and determine exact sum payable/ refundable, as the case may be.

**3.2.4.1** In Tamil Nadu, CIT-3 Chennai charge, AO completed the assessment of **TVS Motor Company Limited** for AY 2006-07 after scrutiny in December 2008 at income of ₹ 153.77 crore which was subsequently revised to ₹ 110.14 crore in July 2011 to give effect to order of CIT(Appeals). The case was subsequently reassessed in December 2011 and March 2014 determining income at ₹ 112.03 crore and ₹ 146.93 crore respectively. AO assessed refund of ₹ 20.32 crore in the reassessment completed in December 2011 that was adjusted against the demand of AY 2008-09 (March 2012). Further, a refund of ₹ 5.7 crore was determined in the reassessment completed in March 2014 which was adjusted against the arrear demand of AY 2008-09 without considering the earlier refund of ₹ 20.32 crore. The mistake resulted in determination of excess refund of ₹ 14.62 crore. *ITD took remedial action under section 143(3) read with section 254<sup>39</sup> (February 2015).*

As per provisions of the Act, if the amount of tax paid by the assessee for any AY 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 10 per cent of tax determined on regular assessment or in summary manner.

**3.2.4.2** In Maharashtra, CIT-2 Mumbai charge, AO completed the scrutiny assessment of **Tata Sons Limited** for AY 1996-97 in March 1997 which was subsequently revised to give effect to ITAT's order in March 2012. While computing tax refund, the assessee was granted interest of ₹ 25.58 crore instead of correct amount of interest of ₹ 16.12 crore under section 244A. The mistake resulted in excess payment of interest of ₹ 9.46 crore under section 244A. *ITD accepted and rectified (August 2013) the mistake under section 154.*

<sup>39</sup> The Appellate Tribunals may pass orders of Appellate Tribunals after giving both the parties to the appeal an opportunity of being heard under section 254(1).

### 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 Andhra Pradesh, CIT-II Vishakhapatnam charge, AO completed scrutiny assessment of **Rashtriya Ispat Nigam Limited** for AY 2008-09 in December 2010 at income of ₹ 3,664.20 crore which was subsequently revised to ₹ 3,597.28 crore while giving effect to CIT(Appeal)'s order in March 2012. While computing tax demand, AO did not levy secondary and higher education cess at applicable rates of one *per cent*. The mistake resulted in non levy of education cess of ₹ 11.87 crore. *ITD accepted and rectified (April 2015) the mistake under section 154.*

**3.2.5.2** In Uttar Pradesh, CIT(Central) Kanpur charge, AO completed scrutiny assessment of **K. M. Sugar Mills Limited** for AY 2010-11 in March 2013 which was subsequently rectified under section 154 in November 2013 at income of ₹ 204.17 crore. While computing tax demand, AO levied surcharge at 7.5 *per cent* instead of correct rate of 10 *per cent* applicable to domestic companies. The mistake resulted in short levy of surcharge of ₹ 7.9 crore. *ITD rectified the mistake under section 154 read with section 143(3) in May 2015.*

### 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 Karnataka, CIT Mangalore charge, AO while giving effect to the ITAT Bangalore order (June 2013) in December 2013 in the case of **Syndicate Bank** for AY 2006-07, did not consider refund of ₹ 31.46 crore issued in March 2011. The mistake resulted in short levy of tax of ₹ 31.46 crore. *ITD accepted (March 2015) the audit observation and rectified the mistake under section 154 in February 2015.*

**3.2.6.2** In West Bengal, CIT 3 Kolkata charge, AO while revising assessment of **SPML Infra Limited** in May 2013 for AY 2009-10 under section 251 read with section 143(3) (originally assessed under scrutiny assessment completed in December 2011 at income of ₹ 70.09 crore under normal provisions) determined income of ₹ 8.20 crore under normal provisions and levying tax thereon without determining tax under special provisions. As tax under special provisions was more than tax under normal provisions, AO should have levied tax under special provisions. The omission resulted in short levy of tax of ₹ 4.74 crore. *ITD rectified the mistake under section 154 in July 2014.*

### 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 irregularities point out weakness in the administration of tax concessions/deductions/exemptions on the part of ITD which need to be addressed. Table 3.2 shows the sub-categories 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	77	1,359.20	Andhra Pradesh, Assam, Delhi, Goa, Gujarat, Karnataka, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal.
b. Irregular exemptions/Deductions/ Rebates/ Relief/ MAT Credit	22	137.95	UT Chandigarh, Goa, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Punjab, Tamil Nadu and West Bengal.
c. Incorrect allowance of business expenditure	56	299.64	Andhra Pradesh, Bihar, Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal.
<b>Total</b>	<b>155</b>	<b>1,796.79</b>	

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

We give below six 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 Maharashtra, CIT-1 Mumbai charge, AO completed the scrutiny assessment of **Hindustan Petroleum Corporation Limited** for AY 2009-10 in December 2011 determining income of ₹ 314.97 crore under normal provisions of the Act after set-off of brought forward loss of ₹ 321.15 crore pertaining to AY 2008-09. As per the scrutiny assessment of AY 2008-09 completed in November 2010 at income of ₹ 131.13 crore, no loss was available for set-off in AY 2009-10. The mistake resulted in incorrect allowance of set-off of brought forward loss of ₹ 321.15 crore involving tax effect of ₹ 109.16 crore. *ITD accepted the audit observation and rectified (March 2014) the mistake under section 154.*

As per section 55(2)(b)(v)(e) of the Income Tax Act, 1961, for the purpose of computing capital gain, cost of acquisition means in relation to any other capital asset where the capital asset, being a share or a stock of a company, became the property of the assessee on the conversion of one kind of shares of the company into another kind, the cost of acquisition of asset is calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived. It has been judicially held<sup>40</sup> that transfer requires two persons and conversion is not a transfer. It has further been judicially held<sup>41</sup> that if no consideration is received or accrued on account of reduction in capital, then such loss is a notional loss and is not allowable as capital loss.

**3.3.2.2** In Maharashtra, CIT-2 Mumbai charge, the AO completed scrutiny assessment of **Tata Sons Limited**, for the AYs 2009-10 and 2010-11 in May 2013, determining income of ₹ 776.47 crore and ₹ 470.88 crore under normal provisions and computing book profit of ₹ 2,433.75 crore and ₹ 878.99 crore under Section 115JB respectively. While computing taxable income for AY 2009-10, the assessee claimed and was allowed set-off of Long Term Capital Loss (LTCL) of ₹ 2,046.97 crore on account of reduction of capital without receipt of any consideration against Long Term Capital Gains (LTCG) of ₹ 1,347.91 crore which arose from another transaction. Similarly for AY 2010-11, the assessee claimed set-off LTCL of ₹ 776.52 crore suffered on account of conversion of Compulsorily Convertible Preference Shares (CCPS) of Tata Steel Limited against LTCG of ₹ 86.77 crore and Short Term

40 Rasiklal Maneklal Vs CIT (177 ITR 198)-SC.

41 Bennett Coleman and Co. Limited Vs Additional Commissioner of Income Tax -2011 (9) TMI 1-ITAT Mumbai, Special Bench.

Capital Gains of ₹ 57.84 crore and the balance loss of ₹ 631.91 crore was allowed to be carried forward. In both the AYs, the assessee did not receive any consideration nor did it show accrual of any such consideration in its books of account. In the absence of sale consideration, loss claimed was a notional loss and as such it should not have been allowed to be set off against LTCG. The mistake resulted in under assessment of LTCG of ₹ 1,347.92 crore and irregular carry forward of LTCL of ₹ 699.05 crore in AY 2009-10. In AY 2010-11, there was underassessment of LTCG of ₹ 12.19 crore and ₹ 74.56 crore and STCG of ₹ 57.83 crore and irregular carry forward of LTCL of ₹ 631.91 crore. The total short levy of tax worked out to ₹ 326.48 crore (₹ 305.44 crore + ₹ 21.04 crore) and potential tax of ₹ 301.60 crore (₹ 158.41 crore + ₹ 143.19 crore) in both the AYs. ITD did not accept the audit observation, inter alia, stating (April 2014) that unless transaction is covered by section 47<sup>42</sup>, all transactions involved in the extinguishment or relinquishment of right of capital assets were to be treated as transfer for the purposes of capital gains. The reply was not tenable in view of the decision in the case of Bennett Coleman and Company Limited vs Addl. CIT that if the earlier shares have been replaced or substituted by new shares then the same would not amount to transfer at all. Another decision in the case of Rasiklal Maneklal vs CIT that transfer requires two persons and conversion is not a transfer is also relevant here. *ITD's reply is awaited (November 2015).*

Section 35ABB of the Income Tax Act, 1961 provides that deduction shall be allowed for each of the relevant previous years, in respect of any capital expenditure incurred for acquiring any right to operate telecommunication services and for which payment has actually been made to obtain a licence. The amount of deduction shall be equal to the appropriate fraction of the amount of such expenditure.

**3.3.2.3** In Maharashtra, CIT-8 Mumbai charge, AO completed scrutiny assessment of **Tata Teleservices (Maharashtra) Limited** for the assessment year 2011-12 in March 2014 determining income of ₹ 247.65 crore under normal provisions. The assessee amortised one time licence fee of ₹ 1,257.82 crore paid to the Government in the books of accounts over the period of 19.25 years to obtain 3G spectrum for provisioning of telecom access services. However, the assessee claimed and was allowed depreciation of ₹ 324.16 crore at the rate of 25 *per cent* on the said fee. Since the said fee was amortised over a period of 19.25 years in the books of accounts based on the period for which the benefits would accrue to the assessee company, depreciation claimed by the assessee should have been disallowed. The amortization allowable for the relevant previous year worked out to ₹ 67.67 crore as against the depreciation of ₹ 324.16 crore allowed on the

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42 Section 47 refers to the transactions not regarded as transfer for the purposes of Capital Gains.

aforesaid fee. The mistake resulted in under assessment of income of ₹ 256.49 crore involving short levy of tax of ₹ 85.19 crore. *ITD's reply is awaited (November 2015).*

**3.3.2.4** In Andhra Pradesh, CIT-II Hyderabad charge, AO completed scrutiny assessment of **J. T. International (India) Private Limited** under section 143(3) read with section 92CA(4)<sup>43</sup>/144(1)<sup>44</sup>/144(C)<sup>45</sup> for AY 2009-10 in January 2014 determining loss of ₹ 229.53 crore after making addition towards Transfer Pricing adjustment of ₹ 12.46 crore. While computing taxable income, the AO erroneously considered current year's business loss as ₹ 241.99 crore instead of allowable loss of ₹ 72.23 crore. The mistake resulted in excess determination of loss of ₹ 169.76 crore (₹ 229.53 crore minus ₹ 59.77 crore<sup>46</sup>) involving potential tax effect of ₹ 57.70 crore. *ITD rectified the mistake under section 154 (July 2014).*

**3.3.2.5** In Delhi, CIT-1 Delhi charge, AO completed scrutiny assessment of **Alcatel Lucent India Limited** for AY 2007-08 under section 143(3) read with section 144C in October 2011 at income of ₹ 1.39 crore. The assessee filed return of income at 'nil' after setting-off of loss of ₹ 30.16 crore. As the assessee had no brought forward loss available for set-off from current year income, set-off of ₹ 30.16 crore should have been disallowed. The omission resulted in underassessment of income of ₹ 30.16 crore involving tax effect of ₹ 15.74 crore. *ITD rectified the mistake under section 154 (December 2014).*

As per section 71(3) of the Income Tax Act, 1961 if the net result of computation under the head capital gains is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set-off against income under the other head.

**3.3.2.6** In West Bengal, Pr. CIT-4, Kolkata charge, the scrutiny assessment of a company, **V2 Retail Limited** for assessment year 2011-12 was completed in March 2014 at nil income under normal provisions after setting-off short term capital loss of ₹ 18.03 crore and book profit of ₹ 422.68 crore under special provisions. The department, while setting off unabsorbed depreciation and business loss of earlier years, irregularly allowed set off of short term capital loss of ₹ 18.03 crore against the business income of ₹ 213.42 crore of the assessee. The mistake resulted in excess carry forward of business loss of ₹ 18.03 crore involving potential tax effect of ₹ 5.99 crore. *ITD rectified the mistake under section 154 in July 2014.*

43 Section 92CA(4) requires the AO to compute total income of the assessee having regard to the arm's length price determined by the Transfer Pricing Officer under section 92CA(3).

44 Section 144(1) refers to best judgement assessment completed by AO if the assessee fails to comply with the notice issued by the AO.

45 Section 144C provides for reference of case to Dispute Resolution Panel.

46 ₹ 59.77 crore = ₹ 72.23 crore - ₹ 12.46 crore.

### 3.3.3 Irregular exemptions/deductions/rebate/relief/MAT credit

We give below three such illustrative cases:

Section 10A of the Income Tax Act, 1961 provides that deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software shall be allowed from the total income of the assessee.

**3.3.3.1** In Maharashtra, CIT-14 Mumbai charge, AO completed scrutiny assessment of **WNS Global Services Private Limited** for AY 2009-10 after scrutiny in March 2013 at income of ₹ 266.20 crore after allowing deduction of ₹ 222.96 crore under section 10A. The AO computed gross total income of the assessee at ₹ 489.16 crore before allowing deduction under section 10A and included adjustment of ₹ 288.14 crore and ₹ 6.21 crore on account of arms length price and income from other sources respectively. As transfer pricing adjustment under section 92CA and income from other sources were not eligible for deduction under section 10A, they should have been brought to tax and only remaining amount of ₹ 194.81 crore was eligible for deduction under section 10A. The omission resulted in excess allowance of deduction of ₹ 28.15 crore under section 10A involving short levy of tax by ₹ 9.57 crore. *ITD's reply is awaited (November 2015).*

Section 115JAA of the Income Tax Act, 1961 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.

**3.3.3.2** In Maharashtra, CIT-1 Mumbai charge, the scrutiny assessment of a company **Alstom Projects India Limited** for the assessment year 2008-09, was completed in December 2011 determining income at ₹ 144.58 crore under normal provisions and allowed MAT credit to the extent of ₹ 17.28 crore. The assessee was liable to pay tax under normal provision for AY 2007-08 whereas tax of ₹ 4.80 crore was charged under section 115JB for AY 2006-07 as the tax under normal provision was 'nil'. As such assessee was entitled to MAT credit of ₹ 4.80 crore only in subsequent years as against ₹ 17.28 crore allowed by the department. The mistake resulted in excess allowance of MAT credit of ₹ 12.48 crore. *ITD rectified the mistake under section 154 in October 2014.*

**3.3.3.3** In Karnataka, CIT-III Bangalore charge, AO completed the scrutiny assessment of **Shaw Wallace Breweries Limited** for AY 2008-09 in November 2010 determining income of ₹ 25.48 crore and tax demand of ₹ 2.80 crore after allowing MAT credit of ₹ 4.0 crore relating to AY 2007-08. The assessment for AY 2007-08 was completed under scrutiny determining income under normal provisions and there was no MAT credit available for

carry forward. The mistake resulted in incorrect allowance of MAT credit of ₹ 4.0 crore involving short levy of tax of ₹ 5.63 crore. *ITD accepted the audit observation (April 2015) and rectified the mistake under section 154 in January 2014.*

### 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 Karnataka, CIT-I Bangalore charge, AO completed scrutiny assessment of **Bangalore Electricity Supply Company Limited**, for AY 2009-10 determining loss of ₹ 214.51 crore. The assessee collected electricity tax of ₹ 279.82 crore from consumers on behalf of Government of Karnataka. As per the tax audit report, although ₹ 167.29 crore was not remitted to the Government Account before filing the return it was claimed as expenditure in the profit and loss account. The incorrect allowance resulted in excess computation of loss of ₹ 167.29 crore involving potential tax effect of ₹ 56.86 crore. *ITD accepted the audit observation (June 2015) and rectified the mistake under section 154 in August 2013.*

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. 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".

**3.3.4.2** In Odisha, CIT Bhubaneswar charge, AO completed scrutiny assessment of **Paradeep Phosphate Limited**, for AY 2010-11 determining income of ₹ 2,295.88 crore. The assessee claimed and was allowed amount of ₹ 56.34 crore and ₹ 1.72 crore on account of 'provision for diminution of Government of India Fertilizer Bonds' and 'provision for interest on land compensation' respectively. As the provision for diminution of GOI fertilizer bonds was capital in nature, it was required to be disallowed. Further, the provision for interest on land compensation was certified as contingent liability by tax auditor and was required to be disallowed. The incorrect allowances resulted in underassessment of income of ₹ 58.06 crore involving tax effect of ₹ 29.01 crore including interest. *ITD initiated remedial action under section 148<sup>47</sup> in January 2015.*

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47 Section 148 provides for issue of notice for reassessment under 147.

**3.3.4.3** In Tamil Nadu, CIT-3 Chennai charge, AO completed scrutiny assessment of **Tebma Shipyards Limited**, for AYs 2008-09 and 2009-10 in November 2010 and December 2011 determining income of ₹ 69.84 crore under special provisions and loss of ₹ 74.07 crore respectively. The assessee claimed and was allowed deduction of ₹ 2.70 crore and ₹ 83.83 crore towards unrealised losses on derivative contracts relating to AYs 2008-09 and 2009-10 respectively. AO, while completing scrutiny assessment for AY 2009-10, disallowed a sum of ₹ 32.83 crore towards notional forex loss. The derivatives contract were for future exports and receipt of foreign currency and gain or loss in respect of same depended on actual date of realisation of foreign exchange as well as period of retention/receipt in India. As derivatives contract are contingent in nature, the remaining amount of ₹ 2.70 crore and ₹ 51.0 crore were also required to be disallowed. The underassessment of income of ₹ 53.70 crore relating to AYs 2008-09 and 2009-10 led to reduction in MAT credit of ₹ 91.77 lakh (AY 2008-09) and involved potential tax effect of ₹ 17.33 crore. *ITD took remedial action under section 143(3) read with section 147 for AYs 2008-09 and 2009-10 (March 2014).*

**3.3.4.4** In Odisha, CIT Bhubaneswar charge, AO completed scrutiny assessment of **National Aluminium Company Limited** for AY 2011-12 in February 2014 at income of ₹ 2,022.71 crore. The assessee claimed and was allowed deduction of ₹ 40.37 crore on account of provision for impairment loss on assets. As the assessee did not incur amount of ₹ 40.37 crore, it was required to be disallowed and added back to taxable income. The incorrect allowance resulted in underassessment of income of ₹ 40.37 crore involving short levy of tax of ₹ 18.09 crore. *ITD initiated remedial action (January 2015) under section 148.*

### **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 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	20	93.34	Andhra Pradesh, UT Chandigarh, Delhi, Goa, Gujarat, Maharashtra, Rajasthan, Tamil Nadu and West Bengal.	
b. Income not assessed/under assessed under normal provision	19	77.11	Andhra Pradesh, Delhi, Gujarat, Maharashtra, Odisha, Tamil Nadu, Uttar Pradesh and West Bengal.	
c. Omissions in implementing provisions of TDS	5	6.11	Andhra Pradesh, Tamil Nadu and West Bengal.	
<b>Total</b>	<b>44</b>	<b>176.56</b>		

### 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 Andhra Pradesh, CIT Tirupathi charge, AO completed the scrutiny assessment of **Southern Power Distribution Company of AP Limited** for AY 2008-09 in December 2010 at 'nil' income under normal provisions and book profit of ₹ 78.74 lakh under special provisions of the Act. While computing book profit, AO reduced amount of ₹ 124.96 crore being lower amount of brought forward business loss and unabsorbed depreciation. As the assessee had unabsorbed depreciation amounting to ₹ 476.02 crore and nil brought forward business loss, no deduction was admissible on account of same. The mistake resulted in underassessment of book profit of ₹ 124.96 crore involving short levy of tax of ₹ 19.55 crore including interest. *ITD accepted (February 2015) the audit observation and rectified the mistake under section 143(3) read with section 147 in February 2014.*

**3.4.2.2** In West Bengal, Pr. CIT-2 Kolkata charge, AO completed the assessment of **Allahabad Bank** for AY 2010-11 in March 2013 at income of ₹ 1,317.38 crore under normal provisions and book profit of ₹ 1,980.72 crore under special provisions of the Act which was subsequently revised to ₹ 1,969.42 crore in March 2015. While computing book profit, the assessee claimed and was allowed deduction of ₹ 122.0 crore towards provision for wages. The provision of ₹ 122.0 crore was made in financial year 2008-09 (relevant to AY 2009-10) towards estimated liability of wage arrears. As the provision of ₹ 122.0 crore was not credited to the profit and loss account of financial year 2009-10 (relevant to AY 2010-11), deduction on account of the

same was required to be disallowed. Consequently the MAT credit should have been reduced to ₹ 79.80 crore from ₹ 98.10 crore. The omission resulted in excess allowance of MAT credit of ₹ 18.30 crore. *ITD's reply is awaited (November 2015).*

### 3.4.3 Income not assessed/under assessed under normal provisions

We give below two such illustrative cases:

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. Further, it has been judicially held<sup>48</sup> that subsidy of Sales tax, Entry tax and Electricity Duty shall be treated as revenue receipts.

**3.4.3.1** In Uttar Pradesh, CIT Noida charge, AO completed the scrutiny assessment of **L. G. Electronics India Private Limited** for AY 2008-09 in November 2012 at income of ₹ 654.97 crore. The assessee received subsidy (tax incentives) of ₹ 49.38 crore from the Government of Maharashtra and of ₹ 46.30 crore from Government of Uttar Pradesh. While computing taxable income, AO disallowed and added back subsidy received from Government of Uttar Pradesh treating them as revenue receipts. However, the subsidy received from Government of Maharashtra was not disallowed and added back to taxable income. Omission to do so resulted in underassessment of income of ₹ 49.38 crore resulted in short levy of tax of ₹ 26.18 crore including interest. *ITD took remedial action under section 143(3) read with section 263<sup>49</sup> in March 2015.*

Section 5 provides that total income of any resident person includes all income received or deemed to be received as well as income accrued or deemed to be accrued to him.

**3.4.3.2** In Maharashtra, CIT-X Mumbai charge, AO completed the scrutiny assessment of **Ipog International Limited** for the AY 2008-09 in December 2010, at income of ₹ 1.01 crore under normal provisions of the Act. As per the books of accounts, the assessee had accrued interest of ₹ 22 crore on account of fixed deposits with nationalised banks which was not offered for tax. The omission resulted in underassessment of income by ₹ 22 crore involving tax effect of ₹ 7.48 crore. *ITD rectified the mistake under section 154 in September 2013.*

<sup>48</sup> ACIT Hissar vs Jindal Steel & Power Limited in February 2013.

<sup>49</sup> Section 263 provides for revision of an order passed by an AO if Principal Commissioner/Commissioner feels that the order passed is erroneous in so far as it is prejudicial to the interests of the revenue.

### 3.4.4 Omissions in implementing provisions of TDS

We give below one such illustrative case:

Section 194J provides that TDS shall be deducted at the rate of 10 *per cent* by the person responsible for making payment of fees for professional services, fees for technical services, royalty etc. At the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier. Further, section 40(a)(ia) provides that deduction of expenditure towards payments where TDS has not been deducted, shall not be allowed.

**3.4.4.1** In Tamil Nadu, CIT-6 Chennai charge, AO completed the assessment of **Southern Agrifurnace Industries Limited** for AY 2008-09 after scrutiny in December 2010, at income of ₹ 9.64 crore which was subsequently revised to ₹ 8.75 crore in September 2012 to give effect to order of CIT(Appeals). While completing scrutiny assessment, AO allowed payment of ₹ 5.14 crore out of ₹ 5.80 crore debited towards brand usership expenses in the profit and loss account after disallowing ₹ 65.63 lakh due to non-reconciliation by assessee. However, CIT(Appeals) allowed ₹ 65.63 lakh as relief. The assessee had entered into agreement with United Spirit Limited for use of its registered trademarks under Composite Agreement for Tie-up Manufacture of IMFL products, for which assessee had to pay two *per cent* of net sales realisation. Thus the expenditure of ₹ 5.80 crore was incurred towards royalty for use of trademarks on which tax was required to be deducted at source at admissible rate of ten *per cent*. As TDS was not made on royalty payment, it was required to be disallowed. Omission to disallow resulted in underassessment of income by ₹ 5.80 crore involving tax effect of ₹ 1.97 crore. *ITD took remedial action under section 143(3) read with section 147 in February 2014.*

### 3.5 Over-charge of tax/Interest

**3.5.1** We noticed that AOs over assessed income in 20 cases involving overcharge of tax and interest of ₹ 58.84 crore in Andhra Pradesh, Delhi, Gujarat, Madhya Pradesh, Maharashtra, Odisha, Uttar Pradesh 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 Andhra Pradesh, CIT-III Hyderabad charge, AO completed the assessment of **Rain CII Carbon (India) Limited** for AY 2008-09 after scrutiny in January 2012 at 'nil' income after allowing deduction of ₹ 80.58 crore under section 10B. The assessee added back sum of ₹ 13.09 crore debited towards 'loss on transfer of cement business' in its profit and loss account while

computing taxable income. However, the AO again disallowed and added back sum of ₹ 13.09 crore to taxable income in the scrutiny assessment. The mistake resulted in overassessment of income of ₹ 13.09 crore involving overcharge of tax of ₹ 4.45 crore. *ITD took remedial action under section 143(3) read with section 147/144C(1)*<sup>50</sup> in March 2014.

Section 143(3) provides that AOs have to determine and assess the income correctly. Further, section 234B and section 234C provide that amount of tax on which assessee is liable to pay these interests shall be reduced by the amount of any tax deducted at source in accordance with provisions laid down under the Act.

**3.5.1.2** In Delhi, CIT-IV charge, AO completed the scrutiny assessment of **HCL Comnet Limited** for AY 2010-11 in March 2013 at income of ₹ 26.97 crore, inter alia, levying interest of ₹ 4.18 lakh and ₹ 3.45 crore under sections 234B and 234C respectively. The AO allowed TDS credit of ₹ 22.11 crore to the assessee in the scrutiny assessment which was more than assessed tax of ₹ 9.16 crore. As TDS credit available was more than the assessed tax, interest under sections 234B and 234C was not leviable. The mistake resulted in excess levy of interest of ₹ 3.50 crore under sections 234B and 234C. *ITD rectified the mistake under section 154 (November 2014).*

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<sup>50</sup> Section 144C(1) provides for forwarding of a draft of the proposed order of assessment to the eligible assessee if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee.