Chapter III: Corporation Tax

3.1 Introduction

3.1.1 This Chapter discusses the result of audit of assessments related to corporation tax audited during 2017-18. A total of 7,13,139 returns[55] were filed by corporate assessees during the FY 2016-17. ITD completed a total of 1,18,101 corporation tax scrutiny assessments in FY 2016-17 or in earlier years in those units which were audited during audit plan of 2017-18. Out of 1,18,101 corporation tax scrutiny assessments, we checked 97,434 corporation tax scrutiny cases and found mistakes in 7,947 assessments. The incidence of errors in corporation tax scrutiny assessments checked in audit during 2017-18 was 8.15 *per cent*. As we have seen only a limited number of assessment cases/ records as per our sample, the Ministry needs to verify this in entirety and not only in the cases of sample.

3.1.2 A total of 340 high value corporation tax cases were referred to the Ministry during April 2018 to October 2018. Of these, 315 cases involve undercharge of ₹ 4,630.83 crore and 25 cases involve overcharge[56] of ₹ 235.83 crore. These cases of incorrect assessment point towards weaknesses in the internal controls in the assessment processes of the ITD.

3.1.3 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.

The deficiency noticed in the Assessment Information System[57] (AST) module/ Income Tax Business Applications[58] (ITBA) with respect to computation of interest under sections 234A, 234B, 234C and 244A of the Income Tax Act, 1961 has been brought out in Para 3.2.4 and 3.5.1 of this Chapter. Table 2.10 (*Para 2.4.4*) shows the details of broad categories of mistakes in assessments and their tax effect.

3.1.4 The Ministry has conveyed its acceptance of audit observations in respect of 185 cases involving tax effect of ₹ 2,279.60 crore while not accepting 13 cases involving tax effect of ₹ 33.31 crore. In the remaining

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55 Source: Principal Directorate General of Income Tax (Admn. & Tax Payers Services), Research and Statistics wing

56 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.

57 The AST module is an online, menu driven software capable of carrying out all assessment and related functions.

58 ITBA is a software application developed for computerising all internal processes of Income Tax Department.

142 cases, the Department has accepted 37 cases involving tax effect of ₹ 526.87 crore while not accepting eight cases involving tax effect of ₹ 591.59 crore (*referred to in para 2.4.4*). Out of 340 cases, ITD has completed remedial action in 257 cases involving tax effect of ₹ 3,134.02 crore and initiated remedial action in 26 cases involving tax effect of ₹ 85.90 crore.

3.2 Quality of assessments

3.2.1 Assessing Officers (AOs) committed errors in the assessments ignoring clear provisions in the Act. These cases of incorrect assessments involving arithmetical errors in computation of income and tax, application of incorrect rates of tax and surcharge, mistakes in levy of interest, excess or irregular refunds etc. point to weaknesses in the internal controls in ITD which need to be addressed. Table 3.1 shows the details of sub-categories of mistakes (refer *Appendix 2.4*) which impacted the quality of assessments.

Table 3.1: Sub-categories of mistakes under Quality of assessments (₹ in crore)

	Sub-categories	Cases	Tax effect	States
a.	Arithmetical errors in computation of income and tax	46	539.34	Andhra Pradesh & Telangana, Delhi, Haryana, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, UT Chandigarh, Uttar Pradesh, West Bengal.
b.	Application of incorrect rate of tax and surcharge	10	307.50	Delhi, Gujarat, Kerala, Maharashtra, UT Chandigarh, West Bengal.
c.	Mistakes in levy of interest	53	189.37	Andhra Pradesh & Telangana, Bihar, Delhi, Gujarat, Karnataka, Maharashtra, Odisha, Punjab, Tamil Nadu, UT Chandigarh, West Bengal.
d.	Excess or irregular refunds/interest on refunds	4	30.98	Maharashtra.
e.	Mistakes in assessment while giving effect to appellate order	5	54.59	Karnataka, Maharashtra and West Bengal.
Total		**118**	**1,121.78**	

3.2.2 Arithmetical errors in computation of income and tax.

We give below six such illustrative cases:

Section 143(3) of the Income Tax Act, 1961, provides that the Assessing Officers, shall by an order in writing, make an assessment of the total income or loss of the assessee and determine the sum payable by him or refund of any amount due to him on the basis of such assessment after taking into account such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered.

3.2.2.1 In Uttar Pradesh, Pr. CIT Meerut charge, Assessing Officer (AO) completed the assessment of a company for the assessment year (AY) 2013-14, under section 143(3) of the Act in March 2016 determining loss at ₹ 1,127.10 crore. During assessment proceedings the assessee revised its computation of income at loss of ₹ 1,384.82 crore. Audit examination revealed that, while computing taxable income, the AO had erroneously adopted starting figure at loss of ₹ 2,169.02 crore instead of revised loss of ₹ 1,384.82 crore. The mistake had resulted in over assessment of loss by ₹ 784.20 crore involving potential tax effect of ₹ 254.43 crore. *The Department (ITD) rectified the mistake (September 2017) under section 154 of the Act.*

3.2.2.2 In Odisha, Pr.CIT-I, Bhubaneswar charge, AO completed the scrutiny assessment of a company for the AY 2014-15 in December 2016 determining loss at ₹ 86.98 crore after making additions of ₹ 63.70 crore. Audit examination revealed that, while computing total income, the AO had erroneously considered a loss of ₹ 150.68 crore instead of gross total income of ₹ 32.09 crore as returned by the assessee in its original as well as revised returns. Thus, assessed income was erroneously determined as loss of ₹ 86.98 crore instead of income of ₹ 95.79 crore. The mistake had resulted in under assessment of income of ₹ 182.77 crore involving tax effect of ₹ 64.35 crore[59]. *ITD stated (February 2018) that remedial measure was being taken to rectify the mistake as pointed out by audit. Further reply was awaited (March 2019).*

3.2.2.3 In Pr. CIT-5, Delhi charge, AO completed the assessment of a company for the AY 2012-13 under section 144[60] of the Act in March 2015 at a loss of ₹ 86.10 crore. As per the discussion in the assessment order, the expenditure incurred to arrive at the current year loss claimed by the assessee was not substantiated. In the absence of the details of expenditure, the AO determined taxable income at ₹ 16.38 crore as 10 *per cent* of Gross Sales as per Income Tax Return (ITR) filed by assessee while stating that no regard is to be given to the expenditure claimed by the assessee. However, while computing assessed income, the taxable profit of ₹ 16.38 crore was adjusted with returned loss of ₹ 102.48 crore to arrive at a loss of ₹ 86.10 crore. This resulted in under assessment of income by ₹ 16.38 crore and simultaneously, over assessment of loss of ₹ 86.10 crore, involving positive tax effect of ₹ 7.22 crore (including interest) and potential tax effect of ₹ 27.93 crore. *ITD rectified the mistake (December 2017) under section 154 of the Act.*

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[59] ₹ 1,029.49 lakh (positive tax effect) + ₹ 5,405.13 lakh (potential tax effect)

[60] Section 144 of the Income Tax Act, 1961, deals with best judgement assessment in cases where the return of income is not filed by the taxpayer or if there is no cooperation by the taxpayer in terms of furnishing information/explanation related to his assessment or if books of accounts of taxpayer are not reliable or are incomplete.

Section 115BBE(1) of the Income Tax Act, 1961, provides that where the total income of an assessee includes any income referred to in section 68 or 69 of the Act, the income tax payable shall be the aggregate of the amount of income tax calculated on income referred to in section 68 or 69 at the rate of thirty per cent and the amount of income tax chargeable on the remaining income determined under normal provisions. Further sub-section (2) provided that no deduction in respect of any expenditure or allowance shall be allowed under any provisions of this Act in computing the income referred to in section 68 or 69 of the Act.

3.2.2.4 In West Bengal, Pr. CIT-2, Kolkata charge, AO completed the assessment of a company for the AY 2013-14 under section 144 of the Act in March 2016 at 'nil' income after allowing set off of loss of ₹33.68 crore from current year and ₹ 18.08 crore from earlier year. Audit examination revealed that, while finalising the assessment, AO made addition of ₹ 49.44 crore as unexplained cash credit under the provision of section 68[61] of the Act. However, the amount of ₹ 49.44 crore was not separately taxed and was allowed to be set off with the current year's business loss and brought forward business loss, which was not in order. The omission had resulted in under assessment of income by ₹ 49.44 crore involving tax effect of ₹ 16.04 crore excluding interest under section 234B. *ITD rectified the mistake (January 2018) under section 154 read with section 144 of the Act.*

3.2.2.5 In Andhra Pradesh & Telangana, Pr.CIT–5, Hyderabad charge, AO completed the assessment of a company for the AY 2014-15 under section 144 of the Act in December, 2016 determining the income at ₹ 1.61 crore after set off of brought forward loss of ₹ 1.60 crore against estimated income of ₹ 3.21 crore. Audit examination revealed that the AO had estimated the income of the assessee at 5 *per cent* of the gross receipts. The sales/gross receipts of business was shown in the ITR as ₹ 551.42 crore and 5 *per cent* of the same worked out to ₹ 27.57 crore as against ₹ 3.21 crore computed and adopted in the assessment order. Besides the sales receipts, the assessee had also earned 'other income' of ₹ 2.08 crore. Consequently, the total income worked out to ₹ 29.65 crore. After setting off of brought forward loss of ₹ 1.60 crore the taxable income worked out to ₹ 28.05 crore instead of ₹ 1.61 crore as arrived in the assessment order. This resulted in under assessment of income of ₹ 26.44 crore[62] involving tax effect of ₹ 12.16 crore including interest. *The Ministry has accepted the audit objection (December 2018) and rectified the mistake (August 2018) under section 154 of the Act.*

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[61] Section 68 of the Income Tax Act, 1961, provides that where any sum is credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

[62] ₹ 28.05 crore - ₹ 1.61 crore

3.2.2.6 In West Bengal, Pr. CIT-3, Kolkata charge, AO completed the assessment of a company for the AY 2014-15 under section 144 of the Act in December 2016 at an income of ₹ 2.26 crore. Audit examination revealed that, while finalising the assessment, AO made an addition of ₹ 2.25 crore stating that the entire investment made by the assessee in the unlisted equities was not explained by the assessee. However, the correct amount of investment made by the assessee in unlisted equities as per the Balance sheet was ₹ 22.49 crore instead of ₹ 2.25 crore. The omission had resulted in under assessment of income of ₹ 20.24 crore involving tax effect of ₹ 9.56 crore. *ITD has initiated remedial action under section 154 of the Act (June 2018).*

3.2.3 Application of incorrect rates of tax and surcharge

We give below three such illustrative cases:

As per section 115BBD of the Income Tax Act, 1961, where the total income of an Indian company includes any income by way of dividends declared, distributed or paid by a specified foreign company, the income tax payable shall be the aggregate of (a) the amount of income tax calculated on the income by way of such dividends, at the rate of fifteen per cent and (b) the amount of income tax with which the assessee would have been chargeable had its total income been reduced by the aforesaid income by way of dividends. Sub-section 3(ii) of section 115BBD defines "specified foreign company" as a foreign company in which the Indian company holds twenty six per cent or more in nominal value of the equity share capital of the company.

3.2.3.1 In Maharashtra, Pr. CIT-LTU Mumbai charge, AO completed the assessment of a company for the AY 2013-14, under section 143(3) read with section 144C(1)[63] of the Act at a loss of ₹ 3,696.63 crore under normal provisions of the Act and book profit of ₹ 390.03 crore which was charged to tax under section 115JB. Audit examination of the computation of income revealed that the assessee company had shown an amount of ₹ 1,422.11 crore as dividend from foreign companies under the head "Income from other sources". The detailed submission made by the assessee on the dividend received showed that this included dividend of ₹ 1,421.98 crore from 'X' company. As per the annual accounts, 'X' company was a wholly owned subsidiary of the assessee and was a specified foreign company as defined under section 115BBD. Therefore, as per the provisions of the said section, the dividend amount of ₹ 1,421.98 crore was required to be taxed separately at the rate of 15 *per cent* which was not done. The omission had resulted in short levy of tax of ₹ 278.54 crore including interest

[63] Section 144C of the Income Tax Act, 1961, provides for procedure for reference to Dispute Resolution Panel. As per section 144C(1) of the Act the Assessing Office shall forward a draft of the proposed order of assessment to the eligible assessee if he proposes to make, on or after the first day of October 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

of ₹ 22.61 crore under section 234B besides excess levy of interest of ₹ 25.25 crore under section 244A and MAT credit of ₹ 71.72 crore, both of which were required to be withdrawn. *ITD replied (November 2017) that the audit objection was acceptable. Further progress was awaited (March 2019).*

Section 4(1) of the Income Tax Act, 1961, provides that income tax is chargeable for every assessment year in respect of the total income of the previous year of an assessee, according to the rates prescribed under the relevant Finance Act. The Finance Act relevant to assessment year 2013-14 provides for levy of surcharge at the rate of two per cent on income tax in the case of foreign companies if net income exceeds rupees one crore.

3.2.3.2 In Delhi, CIT (International Tax)-2 charge, the assessment of a company for the AY 2013-14 was completed after scrutiny in January 2017 determining an income of ₹ 3,859.92 crore and a tax of ₹ 397.57 crore thereon. As per the assessment order, tax was required to be levied at the rate of 10 *per cent* along with applicable surcharge and cess on the royalty income of ₹ 3,859.92 crore. Audit examination revealed that, while computing the tax demand, surcharge leviable at the rate of two *per cent* was not levied. This mistake had resulted in short levy of tax of ₹ 11.61 crore including interest. *ITD rectified the mistake (March 2018) under section 154 of the Act.*

Section 44DA of the Income Tax Act, 1961, provides for taxation of the income by way of royalty or fees for technical services as 'Profits and gains of business or profession' when such income is connected with Permanent Establishment of non-resident in India. The Finance Act relevant to assessment year 2012-13 provides for levy of tax at the rate of 40 per cent on 'Profits and gains of business or profession' in the case of foreign companies.

3.2.3.3 In Delhi, CIT (International Tax)-1 charge, the assessment of a company for the AY 2012-13 was completed in December 2015 at an income of ₹ 35.52 crore and a tax of ₹ 8.76 crore thereon. As per the assessment order, total income of ₹ 35.52 crore was treated as profit and gains in accordance with the provisions of section 44DA and tax was therefore required to be levied at the rate of 40 *per cent*. Audit examination revealed that, while computing tax demand, AO levied tax of ₹ 8.10 crore only instead of leviable amount of ₹ 14.21 crore. The mistake had resulted in short levy of tax of ₹ 6.17 crore. *ITD rectified the mistake (February 2018) under section 154 of the Act.*

The Finance Act relevant to assessment year 2011-12 provides for levy of surcharge at the rate of 7.5 per cent of income tax in the case of companies if net income exceeds rupees one crore.

3.2.3.4 In Pr. CIT-2 Chandigarh charge, the assessment of a company for the AY 2011-12 was completed under section 147[64] read with section 143(3) of the Act in March 2016 at an income of ₹ 49.93 crore. Audit examination of ITNS-150 revealed that although tax demand was computed and generated through AST system, surcharge leviable at the rate of 7.5 *per cent* and interest leviable under section 234A(3) of the Act, for delay of one month, was not levied. The system was, therefore, deficient in computing tax demand including surcharge and interest amount. Further, the correction of the error in computation by the system was also not ensured by the AO. This had resulted in short levy of tax of ₹ 2.02 crore including interest. *ITD stated (September 2018) that the mistake had been rectified (August 2018) under section 154 of the Act.*

3.2.4 Mistakes in levy of interest

We give below four such illustrative cases:

The Income Tax Act, 1961 provides for levy of interest for omissions on the part of the assessee at the rates prescribed by the Government from time to time. Section 234A of the Act provides for levy of interest on account of default in furnishing return of income at specified rates and for specified time period. Section 234B of the Act provides for levy of interest on account of default in payment of advance tax at specified rates and for specified time period. Section 234C of the Act provides for levy of interest on account of default in payment of instalments of advance tax at specified rates and for specified time period.

Further, all ITRs are first summarily processed under section 143(1) at Centralized Processing Centre[65] (CPC), Bengaluru before scrutiny assessments, thus all data pertaining to summary assessments are directly captured in Assessment Information System (AST). The work of processing, rectification, completion of assessment order in respect of scrutiny cases is done by AOs in AST module, part of ITD module, for all returns transferred from CPC. AST undertakes various assessment functions such as calculation of tax, calculation of interest under various sections of Income Tax Act, 1961, time barring checks, deductions limit validations, due date checks, etc. The payments made by assessee in respect of TDS/TCS and Advance Tax etc. are auto populated from 26AS application and OLTAS[66] application, respectively. In the case of scrutiny assessment, rectification, appeal effect orders in the field offices, figures are data-fed to the system by AOs based on the orders. With the new figures entered into different Heads of Income under Additions, computation

[64] As per section 147 of the Income Tax Act, 1961; if the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 or 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned.

[65] Centralised Processing Centre for Income tax returns (CPC ITR) at Bengaluru provides a comprehensive and end to end solution for processing the return using rules as per Income Tax Act to compute the final refund or tax due to the taxpayer.

[66] The Online Tax Accounting System (OLTAS) facilitates near real time reporting, monitoring and reconciliation of tax payments made by taxpayers through banks.

sheet for final demand is generated. If any increase in the value of above heads is to be done by the AO, the permission is needed from next higher authority through the system. However, no permission is required by AO to decrease the value under above heads in AST. AST module allows the AOs to modify the value of interest under section 234A/B/C/D and 244A under the head 'Modified'. These values can be changed (increased/ decreased) without approval of any higher authority. In cases of assessment done under Best Judgment under section 144, data are manually fed under various heads if assessee is non-filer and accordingly, computation is done. If assessee is late-filer, has filed IT return after notice under section 148, then interest under section 234A/B/C has to be calculated based on original due date for concerned Assessment year.

3.2.4.1 In Gujarat, CIT-Central Circle, Ahmedabad Charge, the assessment of a company for the AY 2012-13 was completed under section 143(3) read with section 153A(1)(b)[67] of the Act determining income of ₹ 50.42 crore in December 2016. Audit examination of ITNS-150 revealed that interest for default in payment of advance tax under section 234B was worked out manually and not through the AST, and incorrectly charged as ₹ 2.28 crore instead of ₹ 9.12 crore. Audit could not ascertain the reasons for computing the tax on income and interest manually instead of through AST resulting in levy of lower amount of interest. The omission by the AO to verify the correctness of the interest depicted in ITNS-150 resulted in short levy of interest of ₹ 6.84 crore. *ITD rectified the mistake in computation of interest in August 2017 under section 154 of the Act.*

3.2.4.2 In Gujarat, Pr. CIT-2, Ahmedabad charge, the assessment of a company for the AY 2009-10 was completed in December 2016 under section 143(3) read with section 147 of the Act determining an income of ₹ 15.18 crore. The assessee company had not filed its original return of income for AY 2009-10 as prescribed under section 139(1)[68] i.e. upto 30.9.2009. The case was reopened and a notice was issued under section 148 in March 2016. The assessee had filed its return of income in April 2016 in response to this notice. Audit examination of ITNS-150 revealed that a tax of ₹ 5.16 crore on the assessed income was worked out manually and not through the AST. However, interest under section 234A was not levied for non-filing of the original return of income. As return was not filed, interest as required to be levied for 79 months i.e. from the next day of due date of filing of ITR (1 October 2009) and upto the date of filing of return (28 April 2016). Audit could not ascertain the reasons for computing the tax

[67] Section 153A(1)(b) of the Income Tax Act, 1961, provides that in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the AO shall assess or reassess the total income in respect of each A.Y. falling within such six AYs

[68] As per section 139(1) of the Income Tax Act, 1961, every person, being a company or a person other than a company, is required to furnish a return of his income during the previous year, on or before the due date, in the prescribed form and verified in prescribed manner.

on income manually instead of through AST resulting in non-levy of interest under section 234A. The omission had resulted in non-levy of interest of ₹ 4.07 crore. *Reply of the Ministry was awaited (March 2019).*

3.2.4.3 In Delhi, Pr.CIT-2 charge, the assessment of a company for the AY 2013-14 was completed under section 143(3) of the Act in December 2016 determining an income of ₹ 9,441.09 crore and a tax of ₹ 3,058.76 crore thereon. Audit examination of ITNS-150 revealed that interest ₹ 3.61 crore for deferment of advance tax under section 234C was not computed by AST system indicating the fact that system was deficient in computing the interest for deferment of payment of advance tax. This had resulted in non-levy of interest of ₹ 3.61 crore under section 234C of the Act. *ITD while rectifying the mistake (February 2018) in computation of interest under section 154, stated that due to technical problem in AST, the system had not charged interest under section 234C. ITD further stated (July 2018) that the matter of not computing the interest pertains to system division of the Department. Audit is of the view that this issue needs to be addressed to ensure correct determination of tax demand including interest or refund payable to the assessee.*

3.2.4.4 In Pr. CIT-2, Chandigarh charge, the assessment of a company for the AY 2008-09 was completed under section 147 read with section 143(3) of the Act in March 2016 at an income of ₹ 100.29 crore. A notice was issued to the assessee under section 148 on 25 March, 2015 for filing of return of income within 30 days. Assessee stated in its response (January, 2016) that the original return filed on 30 September, 2008 may be treated as return against notice issued under section 148. As the return of income was deemed to be filed on 21 January 2016, the period of delay for levy of interest under section 234A(3) would be 9 months. Audit examination of ITNS-150 revealed that computation of tax demand was done through AST and nil interest was levied for default in furnishing of return under section 234A(3)[69] as against leviable amount of ₹ 2.98 crore for 9 months. The AO therefore made an omission in not considering the period of delay and further this points to the fact that the system was also deficient in computing correctly the period of delay of interest under section 234A(3). This had resulted in non-levy of interest of ₹ 2.98 crore under section 234A(3) of the Act. *ITD rectified the mistake (July 2018) under section 154 of the Act.*

3.2.4.5 In West Bengal, Pr. CIT-1, Kolkata charge, the assessment of a company for the AY 2014-15 was completed after scrutiny in December 2016

[69] Section 234A(3) of the Income Tax Act, 1961, provides for levy of interest for default in furnishing of return in cases where income is determined under section 147 or section 153A at specified rates and for specified time period.

at an income of ₹ 234.46 crore. Subsequently, the assessment was revised under section 154 in February 2017 at an income of ₹ 233.63 crore considering double addition of ₹ 83.03 lakh made in scrutiny assessment under section 143(3). Audit observed that the gross tax liability of the assessee as per return of income was ₹ 79.41 crore after deduction of TDS amounting to ₹ 0.63 lakh. The assessee did not pay advance tax within the scheduled dates as required by the Act and hence was liable to pay interest amounting to ₹ 4.01 crore under section 234C. However, it was found that while passing order (February 2017) under section 154, the system erroneously levied interest of ₹ 1.07 crore instead of correct amount of ₹ 4.01 crore. This showed that the system was deficient in computing interest under section 234C. The omission by the AO to verify the correctness of the interest depicted in ITNS-150 resulted in short levy of interest of ₹ 2.94 crore. *The Ministry has accepted the audit objection (January 2019). The mistake in computation of interest has been rectified (December 2017) under section 154 of the Act.*

3.2.5 Excess or irregular refunds/interest on refunds

We give below one such illustrative case:

Section 244A(1)(a) of the Income Tax Act, 1961, provides for levy of interest on the amount of refund where refund arises due to excess payment of tax, at a specified rate from the first day of the assessment year to the date of grant of refund.

3.2.5.1 In Maharashtra, Pr.CIT-1 Mumbai charge, the AO completed the scrutiny assessment of a company for the AY 2007-08 in December 2010 assessing total income at ₹ 52.88 crore against which the assessee went in appeal. The appeal order was passed in September 2016 which was given effect to vide order issued by the department under section 250 in November 2016 revising the income at ₹ 32.28 crore. Audit scrutiny of ITNS-150 revealed that interest on refund under section 244A was worked out manually and not through the AST, and was incorrectly allowed as ₹ 9.38 crore instead of ₹ 7.79 crore. Audit could not ascertain the reasons for computing the tax on income and interest manually instead of through AST resulting in excess allowance of interest. The omission by the AO to verify the correctness of the interest depicted in ITNS-150 resulted in excess allowance of interest of ₹ 1.59 crore on refund. *ITD rectified the mistake (November 2017) under section 154 of the Act.*

3.2.6 Mistakes in assessment while giving effect to appellate orders

We give below two such illustrative cases:

3.2.6.1 In Maharashtra, Pr.CIT-2, Mumbai charge, AO completed the scrutiny assessment of a banking company for the AY 2004-05 in December 2005

assessing income of ₹ 1,827.19 crore disallowing inter alia assessee's claim of bad debt under section 36(1)(vii)[70] to the extent of ₹ 402.18 crore. On appeal against the assessment order, an order giving effect to CIT (Appeals)'s order was passed in February 2011 allowing the assessee partial relief of ₹ 134.68 crore under section 36(1)(vii) revising assessed income at ₹ 1,496.87 crore. Aggrieved by the above order, the assessee appealed to ITAT which remitted (June 2013) the matter back to the AO for fresh adjudication. The assessable income was further revised (March 2015) to ₹ 1,454.79 crore after giving relief of disallowance under section 14A[71]. Subsequently, the above order of March 2015 was rectified under section 154 on the grounds that deduction allowed earlier to the assessee under section 36(1)(viia)[72] had to be withdrawn proportionately. The income was reassessed at this stage at ₹ 1,457.95 crore. As ordered by ITAT in June 2013, the AO freshly adjudicated (March 2017) the matter and rejected the scrutiny assessment of December 2005 in negating the entire disallowance of ₹ 402.18 crore and by allowing the same under section 36(1)(vii). The income was recomputed at ₹ 1,085.92 crore under section 250[73] of the Act. Audit examination revealed that in the computation of income for order under section 250 of the Act, AO had taken ₹ 1,457.94 crore as the starting point, which was inclusive of partial relief of ₹ 134.68 crore allowed vide CIT(Appeals)'s order of February 2011. Thus, while allowing deduction of ₹ 402.18 crore, the AO had allowed excess deduction of ₹ 134.68 crore. This resulted in under assessment of income of ₹ 134.68 crore involving short levy of tax of ₹ 48.32 crore. *Reply of the Ministry was awaited (March 2019).*

Section 254 of the Income Tax Act, 1961, provides, that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. Further, para 24.1 of Chapter 18 of Manual of Office Procedure (Volume II, Technical) of the Income Tax Department provides that on receipt of the Appellate Order in the Assessing Officer's office, immediate steps should be taken to revise the assessment in the light of the order.

3.2.6.2 In West Bengal, Pr. CIT-2, Kolkata charge, the assessment of an insurance company for the AY 2006-07 was completed after scrutiny in November 2008 determining loss of ₹ 108.20 crore. The assessment was revised for giving effect to the order of CIT(Appeals) in April 2012 at net loss of ₹ 666.21 crore and the same was further revised under section 254 read

[70] As per Section 36(1)(vii) of the Income Tax Act, 1961, amount of any bad debts or part thereof is allowable as deduction subject to fulfilment of conditions specified in the Act.

[71] As per Section 14A of the Income Tax Act, 1961, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income.

[72] As per Section 36(1)(viia) of the Income Tax Act, 1961, provision for bad and doubtful debts made by a scheduled or non-scheduled Indian Bank ia allowable as deduction within limits specified in the Act.

[73] Section 250 of the Income Tax Act, 1961, provides for the procedure to be followed for the hearing and disposal of the appeal preferred before the Commissioner of Income Tax (Appeals).

with sections 251[74] and 143(3) in April 2016 at net loss of ₹ 672.64 crore. Audit examination revealed that the AO, while giving effect to appellate order in April 2016, erroneously allowed a relief of ₹ 6.43 crore under section 14A. However, the ITAT only upheld the CIT (Appeal)'s order in which it was directed to reduce disallowance under section 14A from ₹ 30.28 crore to ₹ 6.43 crore and the effect of that was already given vide order passed under section 251 read with section 143(3) in April 2012. The mistake had resulted in over assessment of loss by ₹ 6.43 crore involving potential tax effect of ₹ 2.17 crore. *The Ministry has accepted the audit objection (September 2018) and stated that remedial action had been taken (July 2017) under section 154 read with sections 254/251/143(3) of the Act.*

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 who were not entitled for the same. These irregularities point out weaknesses in the administration of tax concessions/ deductions/exemptions on the part of ITD which need to be addressed. Table 3.2 shows the details of 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	66	1,796.86	Andhra Pradesh & Telangana, Assam, Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, UT Chandigarh, Uttar Pradesh, West Bengal.
b.	Irregular exemptions/ Deductions/ Rebates/ Relief/ MAT Credit	27	477.25	Andhra Pradesh & Telangana, Delhi, Gujarat, Haryana, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu, UT Chandigarh, West Bengal.
c.	Incorrect allowance of business expenditure	48	875.47	Andhra Pradesh & Telangana, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Odisha, Rajasthan, Tamil Nadu, West Bengal.
Total		**141**	**3,149.58**	

[74] Section 251 of the Income Tax Act specifies the powers of the Commissioner of Income Tax (Appeals) in disposing of an appeal.

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

We give below four such illustrative cases:

Section 72 of the Income Tax Act, 1961, provides that, where the net result of the computation under the head 'Profits and gains of the business or profession' is a loss to the assessee and such loss including depreciation cannot be wholly set off against income under any head of a relevant year, so much loss as has not been set off shall be carried forward to the following assessment year/years to be set off against the 'Profits and gains of the business or profession'.

3.3.2.1 In Maharashtra, Pr.CIT-3, Mumbai charge, the scrutiny assessment of a insurance company for the AY 2014-15 was completed in December 2016 determining taxable income at ₹ 1,124.80 crore after set off of brought forward loss of ₹ 834.95 crore and book profit of ₹ 1,999.70 crore under the special provisions of the Act. The scrutiny assessment was rectified under section 154 in January 2017 determining the final loss to be carried forward after adjusting the income of AY 2014-15 at ₹ 1,333.84 crore. However, examination of the records for the A.Ys. 2012-13 and 2013-14 revealed that after adjusting the available carried forward loss of ₹ 834.95 crore in determining the aforesaid taxable income for AY 2014-15 at ₹ 1,124.80 crore, no loss was available for being carried forward. This mistake had resulted in excess carry forward of loss of ₹ 1,333.84 crore involving potential tax effect of ₹ 453.37 crore. Further, this had also resulted in excess carry forward of MAT credit of ₹ 382.32 crore under section 115JAA of the Act. *The Ministry has accepted the audit objection (September 2018) and stated that remedial action had been taken (July 2017) under section 154 of the Act.*

3.3.2.2 In CIT (Central)-1 Delhi charge, the assessment of a company for the AY 2012-13 was completed in November 2016 under section 143(3) read with section 144C(5)[75] of the Act determining an income of ₹ 324.72 crore and a tax of ₹ 105.35 crore thereon, after allowing set off of unabsorbed depreciation of ₹ 471.71 crore. Audit examination revealed that in the preceding AY i.e. AY 2011-12, assessment was completed (July 2016) under section 143(3) read with section 144C(5) at an income of ₹ 231.96 crore after setting off brought forward unabsorbed depreciation of ₹ 415.88 crore. As such, no brought forward loss relating to AY 2011-12 was available for set off in the AY 2012-13. This omission had resulted in under assessment of income by ₹ 471.71 crore, involving short levy of tax of ₹ 238.75 crore, including interest. *The Ministry has accepted the audit objection (September 2018) and stated that remedial action had been taken under section 154 of the Act in October 2017.*

[75] As per section 144C(5) of the Income Tax Act, 1961, the Dispute Resolution Panel shall, in a case where any objection is received from the assessee under sub-section (2) of this section, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

3.3.2.3 In Gujarat, Pr. CIT-2, Ahmedabad Charge, the scrutiny assessment of a company for the AY 2014-15 was completed in December 2016 determining an income of ₹ 32.26 crore. Audit examination revealed that the assessee had claimed and was allowed set-off of unabsorbed depreciation of ₹ 252.14 crore. As per the assessment orders for AYs 2011-12, 2012-13 and 2013-14 the allowable unabsorbed depreciation available for set-off in AY 2014-15 was ₹ 28.98 crore only as against the claim of ₹ 252.14 crore allowed as set-off. This had resulted in excess allowance of set-off of unabsorbed depreciation of ₹ 223.17 crore and under assessment of income by like amount involving short levy of tax of ₹ 100.89 crore including interest. *Reply of the Ministry was awaited (March 2019).*

3.3.2.4 In Karnataka, Pr. CIT-Mangalore charge, the scrutiny assessment of a banking company for the AY 2011-12, was completed in February 2013 determining income of ₹ 1,349.89 crore. Audit examination of the assessment records, revealed that loss of ₹ 1,025.45 crore[76] was allowed to be set off as against the actual available loss of ₹ 831.72 crore[77] resulting in excess set off of loss to the extent of ₹ 193.73 crore with a consequent tax effect of ₹ 72.28 crore. *The Ministry has accepted the audit observation (July 2018) and stated that remedial action has been taken (March 2017) by passing rectification order under section 154 of the Act.*

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

We give below two such illustrative cases:

Section 115JAA of the Income Tax Act 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 Tamil Nadu, under PCIT-1 Chennai charge, the assessment of a company for the AY 2011-12 was completed under section 143(3) of the Act in March 2015 on a total income of ₹ 606.35 crore which was subsequently revised under section 154 in August 2016 at a total income of ₹ 573.25 crore. Audit examination revealed that in the revision order the AO allowed MAT credit of ₹ 38.67 crore although no MAT credit was available for set off in the AY 2011-12. This had resulted in excess allowance of MAT credit of ₹ 38.67 crore with consequential short levy of tax demand of ₹ 38.67 crore. *The Ministry has accepted the audit observation (February 2019) and stated that remedial action has been taken (December 2018) under section 143 r.w.s. 147 of the Act.*

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[76] AY 2008-09: ₹ 341.77 crore, AY 2009-10: ₹ 158.22 crore, AY 2010-11: ₹ 237.75 crore & AY 2011-12: ₹ 287.71 crore

[77] AY 2005-06: ₹ 552.21 crore, AY 2007-08: ₹ 279.51 crore

3.3.3.2 In Delhi, Pr.CIT-1 charge, the assessment of a company for the AY 2013-14 was completed under section 143(3) of the Act in January 2017 determining an income of ₹ 199.30 crore and a tax of ₹ 79.03 crore thereon. The assessee was allowed a tax credit of ₹ 21.38 crore under section 115JAA, out of which ₹ 3.59 crore pertained to AY 2010-11 and ₹ 17.79 crore to AY 2011-12. Audit examination revealed that the assessments for the AYs 2010-11 and 2011-12 were completed in April 2014 and April 2015 determining assessed income of ₹ 86.86 crore and ₹ 63.57 crore respectively under normal provisions of the Act. As such, there was no tax credit relating to AYs 2010-11 and 2011-12 available for set-off in AY 2013-14 under section 115JAA. This mistake had resulted in short levy of tax of ₹ 31.22 crore including interest. *The Ministry has accepted the audit observation (October 2018) and stated that the mistake has been rectified (July 2017) by way of passing an order under section 154 of the Act.*

3.3.4 Incorrect allowance of business expenditure

We give below five such illustrative cases:

Under sub section (1) of section 145 of the Income Tax Act, 1961, the income chargeable under the head 'Profits and Gains of Business or Profession' or 'Income from Other Sources' shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. It has judicially been held[78] *that the previous year adjustments could not be made in the current year under mercantile system of accounting.*

3.3.4.1 In Tamil Nadu, PCIT-3 Chennai charge, the scrutiny assessment of a company for the AY 2012-13 was completed in March 2015 on a total loss of ₹ 13,479.90 crore. Audit examination revealed that the assessee debited net prior period credits/charges of ₹ 576.81 crore in the profit and loss account of the relevant financial year. Since net prior period credits/charges were not related to current assessment year, the claim of ₹ 576.81 crore should have been disallowed. The omission had resulted in under assessment of income of ₹ 576.81 crore with consequential potential tax effect of ₹ 187.14 crore. *The Ministry has accepted the audit observation (February 2019) and stated that remedial action has been taken under section 143(3) read with section 263 of the Act in December 2017.*

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 license. The amount of deduction shall be equal to the appropriate fraction of the amount of such expenditure.

3.3.4.2 In Maharashtra, Pr.CIT-14 Mumbai charge, scrutiny assessments of a company for AYs 2013-14 and 2014-15 were completed at an income of

[78] *CIT Vs M/s Southern Cables and Engineering Works (289 ITR 167) (Kerala High Court)*

₹ 2,476.63 crore and ₹ 2,597.93 crore respectively. The assessee had paid onetime 3G and 2G spectrum fees for 20 years amounting to ₹ 5,768.59 crore and ₹ 2,077.92 crore respectively which was amortised in the books of accounts. However, for income tax purposes, the assessee claimed and was allowed depreciation at the rate of 25 *per cent* amounting to ₹ 1,650.74 crore and ₹ 259.74 crore on the 3G and 2G spectrum fees respectively for the period pertaining to AY 2013-14 to AY 2014-15. This was not correct since provisions of section 35ABB are applicable in case of payments made for acquiring right to operate telecommunication services which provides that such expenditure was required to be amortised. Further in AY 2011-12, in the case of same assessee, the department had disallowed depreciation on the spectrum fees and allowed amortisation under section 35ABB. The mistake in allowing depreciation instead of amortisation resulted in underassessment of income amounting to ₹1,281.69 crore with resultant short levy of tax of ₹425.53 crore. *The reply of the Ministry was awaited (March 2019).*

Section 36(1)(vii) of Income Tax Act, 1961, provides that deduction shall be allowed in respect of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year subject to the provision that, in the case of an assessee to which section 36(1)(viia) applies (scheduled banks etc.), the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.

3.3.4.3 In Kerala, Pr.CIT Thrissur charge, the assessment of a banking company for the AY 2013-14 was completed after scrutiny in February 2016 determining income at ₹ 660.03 crore and a refund of ₹ 7.02 crore was authorised. The assessee claimed and was allowed a deduction of ₹ 234.23 crore under section 36(1)(vii) in respect of bad debts written off pertaining to non-rural branches. As per Schedule 14 of Notes attached to and forming part of Balance Sheet, actual write off debited to the provision account was ₹144.49 crore only. Of this, the bad debts pertaining to non-rural branches was ₹140.84 crore only and the remaining amount of ₹ 3.65 crore written-off pertained to rural branches for which assessee had claimed deduction under section 36(1)(viia). Thus, the amount of ₹ 140.84 crore only was eligible for deduction under section 36(1)(vii) of the Act as against ₹ 234.23 crore actually allowed. The incorrect allowance of deduction has resulted in under assessment of income of ₹ 93.39 crore[79] with a short levy of tax of ₹ 30.30 crore. *The Ministry has accepted the audit objection (July 2018) and rectified the mistake (November 2017) under section 154 of the Act.*

[79] ₹ 234.23 crore – ₹ 140.84 crore

As per section 37 of the Income Tax Act, 1961, any expenditure other than capital expenditure and of the nature described in Sections 30 to 36 laid out or expended wholly and exclusively for the purpose of business or profession shall be allowed in computing the income chargeable under the head 'Profits and Gains of Business or Profession'. Expenditure incurred on behalf of the subsidiary cannot be stated to have been incurred for the business of the assessee.

3.3.4.4 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed the assessment of a company for the AY 2012-13 under section 143(3) read with section 144C(3) of the Act in April 2016 determining income of ₹ 601.08 crore under normal provisions and ₹ 1,303.55 crore under special provisions. Pursuant to the scheme of amalgamation sanctioned by the Hon'ble High Court of Hyderabad and Bombay, 'X' company was amalgamated with the assessee in April 2011. Audit examination revealed that while computing taxable income under normal provisions, the AO had wrongly allowed the expenditure of ₹ 59 crore debited to the profit and loss account on account of retirement benefit plan of employees of the subsidiary of 'X' company in USA. 'X' company was amalgamated into the assessee company but not its subsidiary company. Further, the Tax Auditor report had indicated the contention of erstwhile 'X' company that the said liability was primarily incurred by it and the amounts may be recovered from its US subsidiary after receiving the approval to the said corrections. Thus, the expenditure of ₹ 59 crore was not an allowable deduction as it did not pertain to the assessee but to the non-resident subsidiary in USA. As the assessment was completed under special provisions of section 115JB, grant of deduction of inadmissible expenditure of ₹ 59 crore resulted in under-assessment of income by like amount involving excess carry forward of MAT credit of ₹ 19.14 crore*. The Ministry accepted (March 2019) the audit objection and taken the remedial action (December 2018) under section 143(3) read with section 147 of the Act.*

3.4 Income escaping assessment 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	28	100.43	Andhra Pradesh & Telangana, Delhi, Gujarat, Karnataka, Maharashtra, Odisha, Rajasthan, Tamil Nadu, West Bengal.
b.	Income not assessed/ under assessed under normal provision	5	50.80	Gujarat, Maharashtra and Odisha.
c.	Incorrect classification and computation of capital gains	4	19.13	Kerala, Maharashtra and Tamil Nadu
d.	Incorrect estimation of Arm's Length Price	11	15.29	Andhra Pradesh & Telangana, Delhi, Gujarat, Maharashtra, Tamil Nadu, West Bengal.
e.	Omission in implementing provisions of TDS/ TCS	3	127.26	Gujarat, Karnataka, West Bengal.
f.	Unexplained investment cash credit	5	46.56	Andhra Pradesh & Telangana, Gujarat, Maharashtra and Punjab
Total		**56**	**359.47**	

3.4.2 Income not assessed/under assessed under special provisions

We give below two such illustrative cases:

Section 115JB of the Income Tax Act, 1961, provides for levy of Minimum Alternate Tax (MAT) at prescribed percentage of book profit if the income tax payable on the total income computed under the normal provisions is lesser than MAT. As per explanation 1 under section 115JB, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year subject to certain additions/ deletions. The additions, inter alia include amounts of expenditure relatable to any income under section 10 to 12. Further from AY 2008-09 onward, the computation of expenses relatable to income not forming part of total income shall be computed as per Rule 8D of Income Tax Rules.

3.4.2.1 In Maharashtra, Pr.CIT-8 Mumbai charge, assessee company filed its return of income for the AY 2012-13 declaring loss of ₹ 3,046.23 crore under normal provisions and book loss of ₹ 340.02 crore under section 115 JB. The assessment under section 143(3) read with section 92CA read with section 144C(13)[80] of the Act was completed in January 2017 assessing loss at ₹ 2,098.93 crore under normal provisions. However book income/loss under section 115JB was not computed by the AO during assessment. Scrutiny revealed that the AO had disallowed an amount of ₹ 402.94 crore under

[80] As per section 144C(13) of the Income Tax Act, 1961, upon receipt of the directions issued by Dispute Resolution panel under section 144C(5) of the Act, the AO shall, in conformity with the directions, complete the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

section 14A as per Rule 8D while computing income under the normal provisions of the Act. This disallowance needed to be added to the returned book loss of ₹ 340.02 crore to compute the book profit under section 115JB which was not done. This resulted in non-computation of book profit of ₹ 62.92 crore[81] with resultant non-levy of tax of ₹ 19.89 crore under MAT (including interest under section 234B). *ITD accepted (May 2018) the audit objection regarding non addition of 14A disallowance for computing book profit under section 115JB and stated that the mistake will be rectified. Further progress was awaited (March 2019).*

3.4.2.2 In Gujarat, Pr. CIT-2 Baroda charge, the assessments of a company for AYs 2012-13 and 2013-14 were completed under section 143(3) of the Act determining loss of ₹ 36.12 crore and ₹ 14.24 crore in March 2015 and January 2016 respectively. Audit scrutiny revealed that the assessee has neither computed book profit under section 115JB nor furnished Form 29B[82] for the AY 2012-13 and AY 2013-14. Thus, the AO failed to invoke provisions of MAT under section 115JB. The omission resulted in non-computation of book profit of ₹ 34.99 crore and ₹ 27.11 crore involving short levy of tax of ₹ 12.42 crore (₹ 7 crore: AY 2012-13 and ₹ 5.42 crore: AY 2013-14) respectively. *ITD took remedial action under section 154 in November 2017 for both the AYs 2012-13 and 2013-14.*

3.4.3 Income not assessed/under assessed under normal provisions

We give below two such illustrative cases:

3.4.3.1 In Maharashtra, Pr. CIT (Central)-1 Mumbai charge, AO completed the assessment of a company for the AY 2009-10 in March 2016 under section 153C[83] read with section 143(3) of the Act assessing income at ₹ 1,513.83 crore. Scrutiny of computation of income revealed that the assessee had claimed and was allowed deduction of ₹ 22.22 crore on account of 'Compensation for shortfall in guaranteed performance' treating the same as capital receipt. However, in the previous assessment year i.e. AY 2008-09, AO had rejected the assessee's claim for 'compensation for shortfall in guaranteed performance' of ₹ 19.28 crore to be treated as capital receipt on the grounds that the compensation had not been awarded for any permanent impairment of the windmill or upgradation of the windmills. Omission by the AO to disallow the compensation while computing the assessable income for AY 2009-10 resulted in under assessment of

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81 (-)₹ 340.02 crore+ ₹ 402.94 crore

82 Form 29B, prescribed under Income Tax Rules, 1962; is a Report that is required to be furnished by a Chartered Accountant under section 115JB of the Income Tax Act, 1961 for computing the book profits of the company.

83 Section 153C of the Income Tax Act, 1961, provides for procedure for assessment of income of a person other than the person in whose case search has been initiated as per section 153A of the Act.

income of ₹ 22.22 crore with consequent short levy of tax of ₹ 7.55 crore*. ITD initiated (March 2018) remedial action under section 263 of the Act.*

Section 14A of the Income Tax Act, 1961, provides for disallowance of expenses incurred for earning exempt income in accordance with Rule 8D of Income Tax Rules, 1962.

3.4.3.2 In Maharashtra, Pr. CIT-14 Mumbai charge, AO completed the assessment of a company for the AY 2013-14 under section 143(3) read with section 144C(13) in December 2016 determining income at ₹ 44.20 crore, after disallowing ₹ 25.85 crore under section 14A. Audit scrutiny revealed that the tax audit report had depicted the amount of deduction inadmissible in terms of section 14A at ₹ 35.97 crore. Omission by the AO to adopt the quantum of disallowance under section 14A as per the tax audit report resulted in under-assessment of income by ₹ 10.12 crore involving short levy of tax of ₹ 3.28 crore. *ITD accepted (January 2018) the audit objection. The details of remedial action taken was awaited (March 2019).*

3.4.4 Incorrect computation/classification of capital gains

We give below one such illustrative case:

Section 48 (3rd proviso) of the Income Tax Act, 1961, provides that the benefit of indexation would not be available if the long-term capital gain arose from the transfer of long term capital asset being bond or debenture other than indexed bonds issued by the Government.

3.4.4.1 In Maharashtra, Pr. CIT-2 Mumbai charge, AO completed the scrutiny assessment of a company for the AY 2014-15 in December 2016 determining income at ₹ 4,672.95 crore. Audit examination revealed that the AO had allowed loss from capital gains of ₹ 71.87 crore, as claimed by the assessee, in determining the income of ₹ 4,672.95 crore. The said loss from capital gains of ₹ 71.87 crore included long term capital loss of ₹ 66.89 crore from transfer of bonds and debentures not issued by the government, for which benefit of indexation was not permissible as per the provisions ibid. Omission by the AO to disallow the benefit of indexation resulted in over-assessment of capital loss by ₹ 65.87 crore that was allowed to be carried forward involving potential short levy of tax of ₹ 14.93 crore. *The reply of the Ministry was awaited (March 2019).*

3.4.5 Incorrect estimation of Arm's Length Price

We give below three such illustrative cases:

The computation of Arm's Length Price[84] (ALP) in relation to an international transaction under section 92C of Income Tax Act, 1961, should be referred to the Transfer Pricing Officer (TPO), if the value of international transaction as defined under section 92B of the Act exceeds ₹ 15 crore. The TPO, after hearing the assessee and considering the evidence produced by him as required on any specified points and after taking into account all relevant materials which he has gathered, shall by order in writing determine the ALP in relation to the international transaction in accordance with provisions of section 92C(3) and send a copy of his order to the AO and to the assessee.

3.4.5.1 In Maharashtra, CIT(TP)-4 Mumbai charge, the TPO passed a transfer pricing order on a company for the AY 2013-14 under section 92CA(3) of the Act in September 2016 determining adjustment of ₹ 8.24 crore to the international transactions. The arm's length price (ALP) of "provision of engineering and ancillary services" was determined at ₹ 64.22 crore on which the actual receipt from the associated enterprise (AE) was ₹ 48.08 crore. The adjustment should have been the difference between the ALP of ₹ 64.22 crore and the amount of actual receipt of Rs.48.08 crore which worked out to ₹ 16.14 crore. However, it was seen that the amount of adjustment worked out in the transfer pricing order was ₹ 8.24 crore only resulting in short adjustment of ₹ 7.90 crore with resultant short levy of tax of ₹ 2.56 crore. *The Ministry has accepted the audit objection (September 2018) and stated that remedial action had been taken under section 154 read with section 92CA(5)[85] of the Act in March 2017.*

Section 92C(1) of the Income Tax Act, 1961, provides that the Arm's Length Price(ALP) in relation to an international transaction shall be determined by any of the methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe. The methods specified may be any of a) comparable uncontrolled price method, b) resale price method, c) cost plus method, d) profit split method, e) transactional net margin method, and f) such other method as be prescribed by the Board.

3.4.5.2 In Delhi, PCIT-1 charge, the TPO passed an order on a company for the AY 2011-12 under section 92CA(3) of the Act in January 2016 determining an adjustment of ₹ 86.37 crore, as per the direction of the Dispute Resolution Panel (DRP). Audit examination revealed that while computing the transfer pricing adjustment for Advertising Marketing and

[84] As per section 92F(ii) of the Income Tax Act, 1961, Arm's length price means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

[85] As per section 92CA(5) of the Income Tax Act, 1961, the TPO may amend any order passed by him under section 92CA(3) with a view to rectifying any mistake apparent from the record, and the provisions of section 154 shall, so far as may be, apply accordingly.

promotion (AMP) expenses, the routine AMP expenses was taken as ₹ 41.75 crore instead of correct amount of ₹ 40.36 crore. The transfer pricing adjustment on AMP expenses was computed as ₹ 84.20 crore instead of correct amount of ₹ 90.59 crore. The mistake resulted in short transfer pricing adjustment on account of AMP expenses by ₹ 6.39 crore involving consequential short levy of tax of ₹ 2.12 crore. *ITD rectified the mistake in August 2016 by way of passing an order under section 154 of the Act.*

3.4.5.3 In Andhra Pradesh & Telangana, Pr. CIT (IT & TP) Hyderabad charge, the TPO passed an order on a company for the AY 2014-15 under section 92CA(3) of the Act in October 2017, proposing the adjustment of ₹ 239.31 crore on IT enabled services and ₹ 99.92 lakh on 'interest on receivables'. Audit examination revealed that Operating Revenue was adopted at ₹ 1,516.72 crore instead of ₹ 1,511.05 crore, due to inclusion of other income in Operating Revenue. This has resulted in determination of adjustment at ₹ 239.31 crore instead of correct adjustment of ₹ 244.98 crore with consequential shortfall in adjustment by ₹ 5.67 crore involving short levy of tax of ₹ 1.93 crore. *The Ministry has accepted the audit objection (February 2019) and stated that the remedial action has been taken under section 92CA(5) read with section 154 of the Act in January 2018.*

3.4.6. Omission in implementation of TDS/TCS provisions

We give below one such illustrative case:

As per section 201 of the Income Tax Act, 1961, where any person, including the Principal Officer of a company who is required to deduct any sum in accordance with the provisions of this Act; does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall be deemed to be an assessee in default in respect of such tax. Section 201(1A) of the Act further provides that such assessee in default shall be liable to pay simple interest at specified rates for specified time period prescribed under the Act.

3.4.6.1 In Karnataka, CIT (International taxation) - 1(1), Bengaluru charge, the scrutiny assessment of the assessee company for AYs 2009-10 to 2012-13 was completed under section 201(1) read with section 201(1A) of the Act in December 2015 determining interest at ₹ 304.43 crore under section 201(1A). Audit examination revealed that survey in respect of the assessee was carried out under section 133A of the Act by the TDS wing. During the course of survey, it was found that the assessee company had deducted TDS under section 195 of the Act amounting to ₹ 375.37 crore[86] for the payment made to non-residents but not remitted to Government account. It was further revealed that the AO had levied interest under section 201(1A) at ₹ 304.43 crore (at the rate of one *per cent* for the period between

[86] ₹ 121.78 crore (2009-10), ₹ 191.29 crore (2010-11), ₹ 37.25 crore (2011-12), ₹ 25.05 crore (2012-13)

AY 2009-10 to 2012-13) instead of leviable amount of ₹ 427.05 crore (at the rate of 1 *per cent* upto 30 June 2010 and 1.5 *per cent* w.e.f. 01.07.2010), resulting in short levy of interest under section 201(1A) to the extent of ₹ 122.62 crore. *The Ministry has accepted (August 2018) the audit objection and stated that remedial action has been taken by passing an order under section 154 of the Act in November 2017.*

3.4.7 Unexplained Investment/cash credit

We give below one such illustrative case:

Section 68 of the Income Tax Act, 1961, 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.

3.4.7.1 In Andhra Pradesh & Telangana, Pr. CIT-4 Hyderabad charge, the assessment of a company for the AY 2014-15 was completed under section 144 read with section 143(3) of the Act in March, 2017 determining the total income at ₹ 92.84 crore after estimating the income at 1 *per cent* of gross receipts and adding certain amounts of disallowances for which no explanation was offered by the assessee. Audit examination revealed that Assessing Officer proposed certain disallowances which, inter alia, included an amount of ₹ 49.16 crore pertaining to 'Other loans and advances'. The assessee failed to provide any explanation/any evidence in support of any of the amounts pertaining to the proposed additions. However, the Assessing Officer, while making additions in respect of the other amounts treating them as 'unexplained credits' under section 68, has omitted to disallow the amount of ₹ 49.16 crore pertaining to 'loans and advances'. This has resulted in short computation of income to the extent of ₹49.16 crore with a consequential short demand of ₹ 23.61 crore including interest under section 234B. *ITD stated in its reply (January, 2018 and April, 2018) that assessment was completed under section 144 and the AO has discretion in this matter in view of ex-parte assessment.* ITD's reply was not acceptable as the assessing officer applied his discretion only to add three items out of four proposed additions to the returned income and had left out the fourth item i.e. loans and advances untouched, though the assessee had not responded to any of the proposed additions. Further, the AO has not recorded/discussed his version in the assessment order, for the item, for which no addition was made.

3.5 Over-charge of tax/Interest

3.5.1 We noticed that AOs over assessed income in 25 cases involving over-charge of tax and interest of ₹ 235.83 crore in Andhra Pradesh & Telangana,

Delhi, Gujarat, Madhya Pradesh, Maharashtra, Odisha, Tamil Nadu, Uttar Pradesh and West Bengal. We give below five such illustrative cases:

3.5.1.1 In Maharashtra, Pr. CIT-LTU Mumbai charge, the scrutiny assessment of a banking company for the AY 2013-14 was completed in December 2016 with an assessed income of ₹ 3,567.95 crore. Audit scrutiny of the ITNS-150 form dated 29.12.2016 revealed that the department had levied surcharge at the rate of 10 *per cent* instead of correct rate of 5 *per cent* on the tax amount of ₹ 1,070.38 crore. This resulted in excess levy of surcharge by ₹ 55.12 crore. It was further seen that due to the incorrect rate of surcharge, there was levy of interest of ₹ 56.37 crore under section 234B which was otherwise not leviable since the total prepaid tax was more than 90 *per cent* of the actual demand payable. This had resulted in over assessment of tax by ₹ 111.49 crore[87]. *The Ministry has accepted (August 2018) the audit objection and stated that remedial action has been taken while passing order on giving effect to the order of CIT(Appeals) in April 2018.*

3.5.1.2 In Gujarat, Pr. CIT-Valsad Charge, the assessment of a company for the AY 2012-13 was completed in March 2016 under Section 144 of the Act determining total income of ₹ 58.45 crore inclusive of income from other sources of ₹ 4.54 crore after adjusting brought forward loss of ₹ 68.17 crore. Audit scrutiny revealed the AO has made additions of ₹ 96.39 crore on different grounds. However, while calculating tax, the AO had worked out assessed income as ₹ 58.45 crore instead of ₹ 32.76 crore resulting in over assessment of income of ₹ 25.69 crore with consequent over charge of tax of ₹ 7.94 crore. *ITD accepted the audit objection and took remedial action under Section 154 of the Act in July 2017.*

3.5.1.3 In Madhya Pradesh, Pr. CIT-I Bhopal charge, the assessment of a company for the AY 2014-15 was completed after scrutiny in December 2016 at the loss of ₹ 2.00 crore. Audit examination of Income Tax Computation Form (ITNS-150) revealed that interest for default in payment of advance tax was manually entered by AO in AST system at ₹ 33.83 crore despite the fact that assessee was assessed at loss and hence no tax and interest was to be levied. As such, it amounted to override of the system resulting in excess levy of interest of ₹33.83 crore and thereby withholding of refund due to the assessee. *ITD stated in its reply that (January 2018) the mistake in computation of interest occurred due to clerical mistake and excessive work pressure and necessary remedial action would be taken. Further reply was awaited (March 2019).*

[87] ₹ 55.12 crore + ₹ 56.37 crore

3.5.1.4 In Madhya Pradesh, Pr. CIT-I Bhopal charge, the assessment of a company for the AY 2014-15 was completed after scrutiny in December 2016 at ₹ 11.44 crore under normal provisions and at ₹ 47.63 crore under special provision of section 115JB of the Act. Audit examination of ITNS-150 revealed that interest for default in payment of advance tax was manually entered by AO in AST system at ₹ 22.11 crore despite the fact that there was no default on the part of assessee with respect to payment of advance tax. As such, it amounted to override of the system resulting in excess levy of interest of ₹ 22.11 crore and thereby withholding of refund due to the assessee. *The Ministry has accepted the audit objection (January 2019). The mistake in computation of interest has been rectified under section 154 of the Act in November 2018.*

3.5.1.5 In CIT (Central)-I Delhi charge, the scrutiny assessment of a company for the AY 2014-15 was completed in December 2016 at a loss of ₹ 1.44 crore under normal provisions and minimum alternate tax of ₹ 3.96 crore under section 115JB of the Act. Audit examination of ITNS-150 revealed that interest for default in payment of advance tax under section 234B was incorrectly computed by AST system at ₹ 1.70 crore despite the fact that total of TDS credit allowed to the assessee (₹ 72.08 lakh), relief allowed under section 90 of the Act (₹ 1.97 crore) and advance tax paid (₹ 3.00 crore) was more than the assessed tax of ₹ 3.96 crore. The AO had manually entered the interest amount of ₹ 1.70 crore under section 234B using 'modify' feature available for interest amount in AST system. This had resulted in overcharge of interest of ₹ 1.70 crore under section 234B. *The Ministry has accepted the audit objection (January 2019) and rectified (November 2017) the mistake under section 154 of the Act.*