

Chapter III: Corporation Tax

3.1 Introduction

3.1.1 This chapter discusses 356 high value corporate cases (refer para 2.3) involving 368 assessments and total tax impact of ₹ 12,476.53 crore⁴⁸ which were referred to the Ministry during August 2020 to December 2020. The Ministry/the ITD accepted 152 cases involving tax effect of ₹ 2,571.55 crore, partially accepted one case involving tax effect of ₹ 0.66 crore and did not accept 19 cases involving tax effect of ₹ 8,535.16 crore. However, out of 356 cases, the ITD has completed remedial action in 208 cases involving tax effect of ₹ 2,576.41 crore and initiated remedial action in 74 cases involving tax effect of ₹ 619.25 crore. In the remaining 74 cases, the ITD has still not taken/initiated any action as on 15 July 2021.

3.1.2 The categories of errors can be 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 subsequent paragraphs give a few illustrations of each category of the above mentioned errors.

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 point to continuing weaknesses in the internal controls on the part of the ITD which need to be addressed on priority. The cases of incorrect assessments involving arithmetical errors in computation of income and tax are difficult to accept as mere errors, in the days of calculators and IT Systems. Further, application of incorrect rates of tax and surcharge, mistakes in levy of interest under section 220(2), 234A, 234B, 234C and 234D, excess or irregular refunds etc. point to significant deficiencies in the performance of the Assessing Officers, as well as weaknesses in the internal controls in the ITD which need to be addressed. The ITD may ascertain whether the instances of irregularities noticed are errors of omission or commission while ensuring necessary action as per law in cases involving errors of commission. Table 3.1 below shows the details of sub-categories of mistakes (refer para 2.3) which impacted the quality of assessments.

⁴⁸ Includes overcharge of ₹ 112.16 crore.

Table 3.1: Sub-categories of mistakes under Quality of assessments			
Sub-categories	Cases	Tax effect (₹ in crore)	States
a. Arithmetical errors in computation of income and tax	31	193.29	Andhra Pradesh & Telangana, Delhi, Gujarat, Himachal Pradesh, Maharashtra, Odisha, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal.
b. Application of incorrect rate of tax and surcharge	17	78.55	Delhi, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal.
c. Errors in levy of interest	75	481.00	Andhra Pradesh & Telangana, Delhi, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Punjab, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal.
d. Excess or irregular refunds/interest on refunds	6	24.08	Karnataka, Maharashtra and West Bengal.
e. Errors in assessment while giving effect to appellate order	5	42.00	Delhi, Rajasthan and West Bengal.
Total	134	818.92	

3.2.2 Arithmetical errors in computation of income and tax

We noticed arithmetical errors in computation of income and tax in 31 cases involving tax effect of ₹ 193.29 crore in 10 states. We give below four such illustrative cases:

As per section 143(3) of the Act, AOs are required to make correct assessment of the total income of the assessee and determine the correct amount of tax payable by the assessee.

Case I CIT Charge : PCIT-LTU, Chennai
Assessee Name : M/s 'A' Ltd.
Assessment Year : 2015-16

The Assessing Officer (AO), while finalising the assessment in December 2017, disallowed ₹ 238.71 crore of short term capital loss claimed by the assessee, but omitted to add back the said disallowance in the income tax computation statement. The error resulted in under assessment of ₹ 238.71 crore Involving potential tax effect of ₹ 71.61 crore. *The Department agreed (August 2018) to look into the audit observation.* However, the status of action, if any, taken was awaited (May 2021).

Case II CIT Charge : Pr. CIT 5, Mumbai
Assessee Name : M/s 'B' Ltd.
Assessment Year : 2016-17

The AO, while finalising the assessment in December 2018, adopted incorrect opening/closing balance of investments and disallowed ₹ 11.43 crore under section 14A read with rule 8D instead of the correct amount of ₹ 114.31 crore. The error resulted in over assessment of loss by ₹ 102.88 crore, involving potential tax effect of ₹ 31.79 crore. The reply from the ITD/the Ministry was awaited for almost two years (May 2021).

Case III CIT Charge : Pr. CIT 5, Kolkata
Assessee Name : M/s 'C' Ltd.
Assessment Year : 2016-17

The AO, while finalising the assessment in December 2018, computed income of ₹ 170.30 crore instead of correct income of ₹ 191.44 crore. The error resulted in under assessment of income of ₹ 21.14 crore involving tax effect of ₹ 9.73 crore including interest under section 234B. *The Department intimated (August 2019) that the error had been rectified under section 154 of the Act in April 2019.* However, the status of collection of demand of ₹ 9.73 crore was awaited (May 2021).

Case IV CIT Charge : PCIT-V, Hyderabad
Assessee Name : M/s 'D' Ltd.
Assessment Year : 2016-17

The scrutiny assessment of the assessee was completed in December 2018. The AO, while computing taxable income, erroneously adopted the income from operations as ₹ 1.81 crore as against ₹ 5.08 crore as per ITR for AY 2016-17 and estimated the total income at 10 *per cent* of the same. Further, other income of ₹ 2.19 crore consisting of interest and miscellaneous income was also estimated at 10 *per cent* instead of considering the same in full. The errors resulted in under assessment of income by ₹ 6.87 crore involving potential tax effect of ₹ 2.27 crore. *The Department accepted the audit observation (January 2020) and rectified the mistake under section 154 of the Act in September 2019.*

3.2.3 Application of incorrect rates of tax and surcharge

We noticed application of incorrect rates of tax and surcharge in 17 cases involving tax effect of ₹ 78.55 crore in five states. We give below two illustrative cases:

As per Section 113 of the Act, the total undisclosed income of the block period determined under Section 158BC, shall be chargeable to tax at the rate of 60 per cent.

Case I CIT Charge : Delhi, CIT Central-2
Assessee Name : M/s 'A' Ltd.
Assessment Year : Block period 01.04.1990 to 14.02.2001

The AO, while computing the tax liability in July 2017, levied tax of ₹ 53.45 crore at the rate of 35 *per cent* instead of ₹ 91.63 crore at the correct rate of 60 *per cent*. Besides, the AO had levied surcharge of ₹ 6.95 crore at the rate of 13 *per cent* also though it was not leviable. The errors had resulted in net short levy of tax of ₹ 31.23 crore. Audit noticed (February 2021) that the Department rectified the errors under section 263 of the Act in November 2020. However, the status of collection of demand of ₹ 31.23 crore was awaited (May 2021).

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 years 21012-13 and 2013-14 provides for levy of income tax at the rate of 40 per cent in the case of foreign companies.

Case II CIT Charge : CIT, International taxation, New Delhi
Assessee Name : 'A' foreign Co.
Assessment Years : 2012-13 and 2013-14

The AO, while computing tax liability in January 2016 and January 2017, levied tax at the rate of 10 *per cent* and 20 *per cent* on receipt of ₹ 3.25 crore and ₹ 8.75 crore towards payment for motor racing drivers for AYs 2012-13 and 2013-14 respectively instead of tax leviable at the rate of 40 *per cent*. The error had resulted in short levy of tax of ₹ 4.98 crore including interest. *The Department intimated (September 2019) that the mistake has been rectified the error under section 154 of the Act in September 2019.* However, the status of collection of demand of ₹ 4.98 crore was awaited (May 2021).

3.2.4 Errors in levy of interest

We noticed errors in levy of interest in 75 cases involving tax effect of ₹ 481 crore in 13 states. We give below five 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 provides for levy of interest on account of default in furnishing return of income at specified rates and for specified time period. Section 234B provides for levy of interest on account of default in payment of advance tax at specified rates and for specified time period. Section 234C 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, the work of completion of assessment order is done by Assessing Officers (AOs) in the Income Tax Department (the ITD) systems.

Case I CIT Charge : CIT Central-3, Delhi
Assessee Name : M/s 'A' Ltd.
Assessment Year : 2014-15

The AO, while computing tax liability in December 2017, deducted ₹ 65.66 crore as tax paid whereas only ₹ 100.94 lakh on account of TDS was paid by the assessee. The AO also did not levy interest of ₹ 1.30 crore under section 234A(3) of the Act for not complying with the notice issued to assessee in May 2016. Furthermore, the AO levied interest of ₹ 29.26 crore under section 234B of the Act instead of the correct amount of ₹ 58.35 crore. These errors had resulted in short levy of tax by ₹ 95.04 crore. *The Department accepted (November 2019) the audit observation and rectified the errors under section 154 of the Act in October 2019.* However, the status of collection of demand of ₹ 95.04 crore was awaited (May 2021).

Case II CIT Charge : Pr. CIT-I, Kolkata
Assessee Name : M/s 'B' Pvt. Ltd.
Assessment Year : 2011-12

The AO, while computing tax demand of the assessee in December 2017, levied interest of ₹ 21.84 crore under section 234B instead of the correct amount of ₹ 57.07 crore. The error had resulted in short levy of interest of ₹ 35.23 crore. *The Department rectified the error under section 154/144/147 of the Act in June 2019 after issue of audit observation.* However, the status of collection of demand of ₹ 35.23 crore was awaited (May 2021).

Case III CIT Charge : PCIT-I, Bhubaneswar
Assessee Name : M/s 'C' Ltd.
Assessment Year : 2011-12

The AO, while computing tax liability of the assessee in December 2018, levied interest of ₹ 15.53 lakh under section 234A of the Act instead of the correct amount of ₹ 2.36 crore. The error had resulted in short levy of interest of ₹ 2.20 crore. Further, the AO also levied interest of ₹ 3.83 crore under section 234B instead of the correct amount of ₹ 26.34 crore, which resulted in short levy of interest of ₹ 22.51 crore under section 234B. Thus, the aggregate short levy of interest was ₹ 24.71 crore. Audit also noticed that the case was

processed manually and not through AST. *The Department accepted (January 2020) the audit observation and rectified the error under section 154 of the Act.* However, the status of collection of demand of ₹ 24.71 crore was awaited (May 2021).

Case IV CIT Charge : CIT (Intl. Taxation), Bangalore
Assessee Name : M/s 'D' Ltd.
Assessment Year : 2008-09

The AO, while computing the tax liability of the assessee in January 2018, calculated interest of ₹ 9.77 crore under section 234B instead of the correct amount of ₹ 23.91 crore. The AO considered the TDS credit as advance tax which should not have been reckoned as only TDS was actually deposited by the deductor in January 2014. The error had resulted in short levy of interest of ₹ 14.14 crore. *The Department accepted the audit observation (May 2020) and rectified the error under section 154 of the Act in March 2020.* However, the status of collection of demand of ₹ 14.14 crore was awaited (May 2021).

Case V CIT Charge : CIT Central-3, Delhi
Assessee Name : M/s 'N' Ltd.
Assessment Year : 2011-12

The AO, while computing tax liability of the assessee in December 2017, levied interest of ₹ 156.12 crore for 47 months, instead of correct amount of interest of ₹ 269.06 crore for 81 months. This had resulted in short levy of interest of ₹ 112.94 crore. The audit observation was communicated to the Department in March/April 2019. *The Department intimated (July 2019) that the mistake had been rectified under section 154 of the Act in July 2019.*

3.2.5 Excess or irregular refunds/interest on refunds

We noticed six cases relating to excess or irregular refunds/interest on refunds involving tax effect of ₹ 24.08 crore in three states. We give below one illustrative case:

Section 234D of the Act prescribes levy of interest in cases where the amount of refund issued during summary assessment exceeds the amount refundable on regular assessment at the rate of one half per cent on the excess amount so refunded. Section 244A stipulates payment of interest to the assessee by the ITD at the rate of one half per cent on the refund issuable in cases where excess tax was paid by the assessee.

Case I CIT Charge : PCIT 1, Mumbai
Assessee Name : M/s 'A' Ltd.
Assessment Year : 2013-14

The AO completed the scrutiny assessment for AY 2013-14 in October 2017 at income of ₹ 103.3 crore. The assessee was eligible for refund of ₹ 29.36 crore on 23.10.2017. However, refund of ₹ 108.55 crore was issued to the assessee

on 19.02.2015 on the basis of summary assessment. The AO, while finalising the assessment, granted interest of ₹ 8.07 crore under section 244A upto the date of assessment (23.10.2017) instead of the correct amount of ₹ 3.37 crore for the period upto the date of granting of refund (19.02.2015). The error had resulted in excess grant of interest under section 244A. Further, interest was required to be levied under section 234D for excess refund which was not levied resulting in short levy of interest of ₹ 0.74 crore. Both the errors have tax effect of ₹ 5.44 crore. *The Ministry accepted (February 2021) the audit observation and rectified the error under section 154 of the Act in July 2019.* However, the status of collection of demand of ₹ 5.44 crore was awaited (May 2021).

3.2.6 Errors in assessment while giving effect to appellate orders

We noticed errors in assessment while giving effect to appellate orders in five cases involving tax effect of ₹ 42 crore in three states. We give below one illustrative case:

As per section 115-O of the Act, in addition to the income-tax chargeable in respect of total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends on or after the 1st day of April, 2003, whether out of current or accumulated profits shall be charged to additional income-tax. Further, as per section 143(3), AO is required to make a correct assessment of the total income or loss of the assessee and determine correct amount of tax or refund, as the case may be.

Case I CIT Charge : PCIT-2, Kolkata
Assessee Name : M/s 'A' Ltd.
Assessment Year : 2015-16

The AO, while giving appeal effect in April 2018, generated refund of ₹ 131.25 crore without taking cognizance of Dividend Distribution Tax (DDT) of ₹ 38.69 crore already paid by the assessee. The error had resulted in short determination of refund of ₹ 38.69 crore. *The Department accepted (March 2019) the audit observation.* However, the status of completion of remedial action was still awaited (May 2021).

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 AO had 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 the ITD, which need to be addressed.

Table 3.2 below 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			
Sub-categories	Nos.	TE (₹ in crore)	States
a. Irregularities in allowing depreciation/business losses/capital losses	87	1,017.28	Andhra Pradesh & Telangana, Assam, Bihar, Delhi, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.
b. Irregular exemptions/deductions/ rebates/ relief/MAT credit	30	1,733.64	Andhra Pradesh & Telangana, Delhi, Jharkhand, Karnataka, Maharashtra, Rajasthan, Tamil Nadu and West Bengal.
c. Incorrect allowance of business expenditure	40	187.75	Andhra Pradesh & Telangana, Bihar, Delhi, Gujarat, Haryana, Jharkhand, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.
Total	157	2,938.67	

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

We noticed irregularities in allowing depreciation and set off and carry forward of business/capital losses in 87 cases involving tax effect of ₹ 1,017.28 crore in 14 states. 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 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'.

As per CBDT's instruction no. 09/2007 dated 11 September 2007, the AO should carry out necessary verifications at the time of undertaking scrutiny assessments with reference to physical records and the claims related to losses including unabsorbed depreciation should be linked with the assessment records so as to ensure correctness of the allowance of claims of brought forward losses and depreciation. Remedial action for earlier years, wherever necessary, should also be initiated.

Case I CIT Charge : CIT LTU Bangalore
Assessee Name : M/s 'A' Pvt. Ltd.
Assessment Year : 2015-16

The AO, while completing the scrutiny assessment in January 2019, allowed set off of brought forward unabsorbed depreciation of ₹ 468.85 crore pertaining to AYs 2012-13 to 2014-15 as claimed by the assessee. As per the assessment records of earlier years, loss of ₹ 96.50 crore only pertaining to AY 2013-14 was

available for set-off during AY 2015-16 as the assessments of AYs 2012-13 and 2014-15 were completed at positive income. The error had resulted in short computation of income of ₹ 372.36 crore involving short levy of tax of ₹ 186.91 crore including interest. *The Department accepted the audit observation (April 2019) and rectified the error under section 154 of the Act in April 2019.* However, the status of collection of demand of ₹ 186.91 crore was awaited (May 2021).

Section 72A of the Act provides that in the case of amalgamation of a company owning an industrial undertaking or a banking company referred to in clause (c) of Section 5 of Banking Regulation Act, 1949 (10 of 1949) with a specified bank, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly." Further as per sub-section 7(aa) of section 72A, Industrial undertaking means any undertaking which is engaged in (i) the manufacture or processing of goods; or (ii) the manufacture of computer software; or (iii) the business of generation or distribution of electricity or any other form of power; or (iiia) the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or (iv) mining; or (v) the construction of ships, aircrafts or rail systems.

Case II CIT Charge : Pr. CIT 1, Mumbai
Assessee Name : M/s 'B' Ltd.
Assessment Year : 2015-16

The AO, while finalising the assessment in December 2018, allowed set-off of the brought forward losses of ₹ 266.05 crore. The aforesaid brought forward losses included business losses of ₹ 212.01 crore and unabsorbed depreciation of ₹ 50.90 crore pertaining to a company amalgamated with the assessee during the relevant period. Further, there was nothing on record regarding set off of remaining loss of ₹ 3.13 crore. The assessee was engaged in the business of printing and publishing, electronic media, trading of leisure products, broadcasting, guaranteeing investing and financing, whereas the amalgamating company was a Broadcasting and Television company. Thus, the assessee was not satisfying the condition of an industrial undertaking as prescribed under section 72A, and was not a banking company either. Hence, set off of the brought forward losses of ₹ 266.05 crore of the amalgamating company pursuant to amalgamation with the assessee contravenes the provisions, *ibid*. The error had resulted in underassessment of income by ₹ 266.05 crore with a consequent short levy of tax of ₹ 131.12 crore. The Audit observation was communicated to the Department in November/ December 2019. The reply of the Department was awaited (May 2021).

Section 72 of the Act provides that if the current year's loss including depreciation cannot be wholly set off against income under any head of a relevant year, such loss shall be carried forward to the following assessment year(s) for set off against the 'Profits and gains of the business or profession'. Further, section 80 provides that no loss shall be allowed to be carried forward or set off if the return of income is not filed within the stipulated time.

Case III CIT Charge : Pr. CIT 1, Patna
Assessee Name : M/s 'C' Ltd.
Assessment Year : 2015-16

The AO, while finalising the assessment in December 2017, allowed carry forward of losses of ₹ 385.39 crore for set off in subsequent years which included business loss of ₹ 372.09 crore pertaining to AYs 2007-08, 2011-12 and 2014-15. Audit observed that the assessee had filed the income tax returns for aforesaid AYs after due date of filing of return. Hence, carry forward of business loss of ₹ 372.09 crore was not allowable. The error had resulted in potential tax effect of ₹ 126.47 crore. *The Department accepted the audit observation (May 2020) and rectified the error under section 263 of the Act in January 2021.*

Case IV CIT Charge : Pr. CIT 8, Mumbai
Assessee Name : M/s 'D' Ltd.
Assessment Years : 2014-15 and 2015-16

The AO, while finalising the assessment in December 2016 and December 2017, allowed set-off of loss of ₹ 453.28 crore and ₹ 34.98 crore respectively in AYs 2014-15 and 2015-16. However, brought forward losses of ₹ 220.35 crore only pertaining to earlier assessment years were available for set-off. The error had resulted in excess set off of losses of ₹ 267.91 crore (₹ 232.93 crore + ₹ 34.98 crore) involving tax effect of ₹ 91.07 crore (₹ 79.18 crore + ₹ 11.89 crore). *The Department accepted (March 2020) the audit observation and rectified the error under section 154 of the Act.*

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

We noticed 30 cases relating to irregular exemptions/deductions/rebate/relief/MAT credit involving tax effect of ₹ 1,733.64 crore in eight states. We give below five such illustrative cases:

Section 32AC(1) of the Act provides for deduction of 15 per cent of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2015, for assessment year commencing on the 1st day of April, 2015 as reduced by the amount of deduction allowed if any subject to fulfilment of conditions specified in the Act.

Case I **CIT Charge** : **PCIT-II, Hyderabad**
 Assessee Name : **M/s 'A' Ltd.**
 Assessment Year : **2015-16**

The AO, while finalising the assessment in December 2017, allowed deduction of ₹ 767.02 crore towards investment allowance. The assessee was engaged in the business of power generation and generation of power is not specified for deduction in the Act. Thus the assessee was not eligible for the said deduction. The error had resulted in excess determination of loss by ₹ 767.02 crore having potential tax effect of ₹ 260.71 crore. *The Department accepted the audit observation (July 2019) and rectified the error under section 263 of the Act in May 2019.*

Section 115JAA of the 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.

Case II **CIT Charge** : **PCIT 6, Chennai**
 Assessee Name : **M/s 'B' Pvt. Ltd.**
 Assessment Year : **2015-16**

The AO, while rectifying the assessment in March 2019, allowed setting off of brought forward losses of ₹ 323.66 crore and levied tax on the book profit under section 115JB. However, brought forward loss of ₹ 239.74 crore only pertaining to AYs 2012-13 and 2013-14 was available for set off. Thus, excess set off of loss of ₹ 83.92 crore had resulted in incorrect allowance of carry forward of MAT credit of ₹ 28.52 crore involving tax effect of ₹ 28.52 crore. The audit observation was communicated to the Department in October 2019. Reply of the ITD /Ministry was awaited (May 2021).

Case III **CIT Charge** : **Pr. CIT-2, Jaipur**
 Assessee Name : **M/s 'C' Ltd.**
 Assessment Year : **2011-12**

The AO, while computing tax liability of the assessee in December 2017, allowed MAT credit of ₹ 101.59 lakh pertaining to AY 2010-11. However, the assessee paid income tax finally under normal provision in AY 2010-11. Hence, no MAT credit was available for carry forward. The error had resulted in incorrect allowance of MAT credit of ₹ 1.84 crore including interest. *The Department accepted the audit observation (June 2019) and rectified the error*

under section 154 of the Act in May 2019. However, the status of collection of demand of ₹ 1.84 crore was awaited (May 2021).

Case IV CIT Charge : Pr. CIT-4, Kolkata
Assessee Name : M/s 'A' Ltd.
Assessment Year : 2011-12

The assessment of a company for AY 2011-12 was completed after scrutiny in January 2016 determining income of ₹ 603.17 crore under normal provision of the Act and Book profit at ₹ 435.91 crore under special provisions of the Act. The assessment was subsequently rectified in September 2017 to correct MAT credit available to the assessee for set-off. In the instant case since tax under normal provisions was more than the tax on profit, therefore, tax was levied under normal provisions of the Act. However, as per the assessment records, the assessee was allowed MAT credit for the AY 2011-12 even though the income was assessed under normal provisions of the Act. The error had resulted in irregular carry forward of MAT credit involving a potential tax effect of ₹ 26.77 crore. *The Department intimated (July 2018) that the mistake had been rectified under section 154 in July 2018.*

Case V CIT Charge : Pr. CIT- LTU 2, Mumbai
Assessee Name : M/s 'R' Ltd.
Assessment Year : 2014-15

The AO, while finalising the assessment in February 2018, allowed deduction of ₹ 7,430.20 crore (100 per cent) u/s 10AA, being the fifth year of claim, after making adjustment to the extent of ₹ 24.48 crore. Audit, from the scrutiny of the assessment records, observed that the refinery had commenced operation (crude processing) in FY 2008-09 relevant to AY 2009-10 and the same was confirmed and certified by the Development Commissioner, SEZ on 08.05.2009. Therefore, AY 2014-15 was the sixth year of operation and hence, the assessee was eligible for deduction at the rate of 50 per cent of the profit in AY 2014-15. The error had resulted in under assessment of income by ₹ 3,715.10 crore involving tax effect of ₹ 1,262.76 crore. *The DCIT(LTU)-2, Mumbai, while not accepting (June 2019) the audit observation, stated that:*

(a) During AY 2009-10, the assessee had claimed deduction towards pre-operative expenses for setting-up of new refinery unit. Further, project development expenditure was included in CWIP, and pursuant to trial run, some portion of CWIP pertaining to refinery SEZ was capitalised.

(b) As per Form 56F, the commencement date was certified as 01 April 2009.

(c) Refinery is complex set up comprising units such as crude distillation, Hydrotreaters for removal of Sulphur etc. Sustained operation of the refinery

is possible only when all units are proven and operating as per their design performance levels and mere production of intermediate goods is not manufacture and production of goods or working at much lower than the installed capacity does not amount to manufacture.

The contention of the Department is not acceptable on the following grounds:

(i) The majority of the expenditure is required to be capitalised in the first year of operation for any newly set up industry. Capitalisation of expenditure has no relation with the claim of deduction under section 10AA. Once the assessee fulfils all the conditions laid down under the provisions of section 10AA of the Act, it is eligible for the deduction.

(ii) The assessee intimated (January 2009) the Development Commissioner, SEZ that it had commenced operation (crude processing) since 25 December 2008 and the same was also confirmed and certified by the Development Commissioner, SEZ. Hence, FY 2008-09 is to be treated as first year of claim for deduction under section 10AA. It is immaterial whether all other units were operational or not. If the assessee considered that in December 2008 only trial run of the refinery was started and for the refinery being fully operational, stabilization of all the units was must, they should not have declared the refinery operational in December 2008 to the Development Commissioner, SEZ.

(iii) Section 10AA does not differentiate between trial run and commercial production. The section says deduction shall be allowed in respect of a unit who begins to manufacture or produce articles or things during previous year relevant to any assessment year.

(iv) The Department did not furnish any reason for two different dates- one for commencement of production under the SEZ Act, 2006 and another for claiming deduction under the Income Tax Act, 1961.

(v) A comparative trend analysis based on Annual Performance Report (APRs) of the first three years (FY 2008-09 to FY 2010-11) submitted by the assessee to the Development Commissioner, SEZ shows a continuous increase in production reflecting regular production instead of trial production, indicating that the refinery was operational in December 2008. Further, as per the APR, the assessee exported refined products to 18 countries during three months (January to March 2009).

In view of the above, deduction under section 10AA at the rate of 100 *per cent* in AY 2014-15, being the sixth year of operation, was not allowable to the assessee and hence it should have been disallowed.

Reply from the Ministry was awaited (May 2021).

3.3.4 Incorrect allowance of business expenditure

We noticed 40 cases relating to incorrect allowance of business expenditure involving tax effect of ₹ 187.75 crore in 12 states. We give below three illustrative cases:

Section 145 of the Act provides that income chargeable under the head "Profits and gains of business or profession" or "income from other sources" shall, subject to provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. A provision made in the accounts only for an accrued or known liability is an admissible deduction.

Case I **CIT Charge** : **PCIT-2, Delhi**
 Assessee Name : **M/s 'A' Pvt. Ltd.**
 Assessment Year : **2015-16**

The AO, while finalising the assessment in November 2017, allowed provisions for "Sales Tax Demand" and "Doubtful Debts" of ₹ 15 crore and ₹ 84.31 crore respectively. As the above expenditure was unascertained liabilities, the same was not admissible. The error had resulted in excess carry forward of loss of ₹ 99.31 crore involving potential tax effect of ₹ 33.76 crore. *The Department rectified the error under section 154 of the Act in March 2019 after issue of audit observation.*

As per explanation 3D under section 43B a deduction of any sum, being interest payable under clause (e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance shall not be deemed to have been actually paid.

Case II **CIT Charge** : **PCIT-V, Hyderabad**
 Assessee Name : **M/s 'B' Ltd.**
 Assessment Year : **2015-16**

The AO, while finalising the assessment in December 2016, allowed expenditure of ₹ 96.70 crore relating to "Finance Cost". Out of this, ₹ 89.13 crore was capitalized and classified under "Other Current Liabilities" being payable as per the approved moratorium schedule. Hence, it was not allowable expenditure. The error had resulted in excess determination of loss of ₹ 89.13 crore involving potential tax effect of ₹ 30.30 crore. *The Department replied (June 2020) that the mistake had been rectified by reassessing the assessment under section 144 read with section 147 of the Act in December 2019.*

As per sub section (1) of section 145 of the Act, 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 held⁴⁹ that the previous year adjustments could not be made

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in the current year under mercantile system of accounting. Further, as per section 37, any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Case III CIT Charge : PCIT-III, Hyderabad
Assessee Name : M/s 'D' Ltd.
Assessment Year : 2014-15

The AO, while finalising the assessment in December 2016, allowed expenditure of ₹ 55.38 crore towards interest on long term loans, salaries and incentives and other expenses. As the expenditures were debited to profit and loss account under prior period expenses, the same were inadmissible. The error had resulted in excess determination of loss of ₹ 55.38 crore having potential tax effect of ₹ 18.82 crore. *The Department accepted the audit observation (July 2019) and rectified the error under section 154 of the Act in May 2019.*

3.4 Income escaping assessment due to errors

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 either did not assess or under assessed total income that was required to be offered to tax. Table 3.3 below shows the sub-categories which have resulted in income escaping assessments due to errors.

Sub-categories	Nos.	TE (₹ in crore)	States
a. Income not assessed/ under assessed under special provisions	8	234.18	Delhi, Gujarat, Maharashtra and Tamil Nadu.
b. Income not assessed/ under assessed under normal provisions	17	1,069.86	Delhi, Gujarat, Haryana, Maharashtra, Punjab and West Bengal.
c. Incorrect classification and computation of capital gains	5	7,007.42	Karnataka, Maharashtra, Rajasthan and Tamil Nadu.
d. Incorrect estimation of Arm's Length Price	9	37.01	Andhra Pradesh & Telangana and Delhi.
e. Errors in implementing provisions of TDS/ TCS	6	13.70	Haryana, Karnataka, Maharashtra, Odisha and UT Chandigarh.
f. Unexplained Investment/Cash Credits	6	244.61	Haryana and Maharashtra
Total	51	8,606.78	

3.4.2 Income not assessed/under assessed under special provisions

We noticed that AO either did not assess income or under assessed income under special provisions in eight cases involving tax effect of ₹ 234.18 crore in four states. We give below one such illustrative case:

Section 115JB of the Act 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.

Case I **CIT Charge** : **Pr. CIT-3 Rajkot**
 Assessee Name : **M/s 'A' Ltd.**
 Assessment Year : **2015-16**

The AO, while finalising the assessment in December 2017, levied tax under normal provisions of the Act. However, the tax payable on book profit was higher than the tax payable on income assessed under normal provisions. The failure to charge tax on book profit had resulted in short levy of tax of ₹ 2.97 crore. *The Department rectified the error under section 154 in June 2019 after issue of audit observation.* However, the status of collection of demand of ₹ 2.97 crore was awaited (May 2021).

3.4.3 Income not assessed/under assessed under normal provisions

We noticed that AO either did not assess income or under assessed income under normal provisions in 17 cases involving tax effect of ₹ 1,069.86 crore in six states. We give below three illustrative cases:

CBDT vide Circular No. 10/2017 dated 23 March 2017 clarified that Foreign Currency Translation Reserve (FCTR) balance as on 1 April 2016 pertaining to exchange differences on monetary items for non integral operations, shall be recognised in the previous year relevant for AY 2017-18 to the extent not recognised in the income computation in the past.

Case I **CIT Charge** : **Pr. CIT 2, Mumbai**
 Assessee Name : **M/s 'A' Bank**
 Assessment Year : **2017-18**

The AO, while finalizing the assessment in March 2019, did not add the balance under Foreign Currency Translation Reserve (FCTR) as per the CBDT's above circular. The error had resulted in under assessment of business income of ₹ 2238.55 crore with consequent short levy of tax of ₹ 774.72 crore (excluding interest). *The Department accepted and rectified the error under section 263 of the Act in March 2020.* However, the status of collection of demand of ₹ 774.72 crore was awaited (May 2021).

As per section 56(2)(viib), where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issues of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value⁵⁰ of the shares, shall be chargeable to income tax under the head Income from other sources.

Case II **CIT Charge** : **CIT Central, Ludhiana**
 Assessee Name : **M/s 'B' Ltd.**
 Assessment Year : **2014-15**

The AO, while finalising the assessment in November 2016, did not add any income on account of share premium of ₹ 32 per share of 36,55,272 shares issued. The error had resulted in short computation of income by ₹ 11.70 crore involving tax effect of ₹ 4.02 crore. The Audit observation was communicated to the Department in January 2019. Reply from ITD/the Ministry was awaited (May 2021).

Case III **CIT Charge** : **Pr. CIT 6, Mumbai**
 Assessee Name : **M/s 'E' Ltd.**
 Assessment Year : **2014-15 and 2015-16**

The assessee company started power generation during trial run of power plant and earned net revenue of ₹ 344.51 crore in FY 2013-14 and ₹ 126.67 crore in FY 2014-15 from supply of this generated power. However, the assessing officer allowed the assessee to reduce this revenue from capital work in progress (CWIP) instead of assessing this revenue as income of the assessee for the concerned assessment year. Non-assessment of the revenue earned from supply of power as income of the concerned assessment year had resulted in under assessment of income of ₹ 344.51 crore in AY 2014-15 and ₹ 126.67 crore in AY 2015-16 consequential short levy of tax of ₹ 117.09 crore and ₹ 43.05 crore respectively (total short levy ₹ 160.14 crore). *The Department had accepted the audit observation (November 2019) and stated that suitable remedial action would be initiated.* However, the status of completion of remedial action was awaited (May 2021).

3.4.4 Incorrect computation/ classification of capital gains

We noticed five cases relating to incorrect computation/classification of capital gains involving tax effect of ₹ 7007.42 crore in four states. We give below one such illustrative case:

⁵⁰ Calculated as per rules 11U and 11UA

Section 50 stipulates the method of calculation of capital gain on transfer of depreciable asset. Where the full value of consideration received on transfer of the asset exceeds the written down value of the block of assets at the beginning of the previous year; such excess shall be deemed to be the capital gain arising from the transfer of short-term capital assets.

Case I CIT Charge : PCIT-4, Bangalore
Assessee Name : M/s 'A' Ltd.
Assessment Year : 2013-14

The AO, while finalising the assessment in February 2017, accepted assessee's computation and reduced the cost of acquisition of ₹ 22.32 crore from the sale consideration of ₹ 18.66 crore of a building and determined the short term capital loss of ₹ 3.65 crore. Audit observed that the written down value (WDV) of block of assets in AY 2012-13 was nil as the assessee claimed depreciation on it. Thus, the reduction of cost of acquisition was not admissible. Further, an addition of asset worth ₹ 2.11 crore was made to the block of assets during AY 2012-13 and after allowing the depreciation on the addition made, the WDV of the block of assets was ₹ 1.90 crore. Thus, after reducing WDV of the block of assets from the sale consideration, actually there was a short term capital gain of ₹ 16.76 crore instead of capital loss of ₹ 3.65 crore. The error had resulted in short computation of short term capital gain of ₹ 16.76 crore involving tax effect of ₹ 8 crore including interest. Besides, allowing short term capital loss of ₹ 3.65 crore involving potential tax of ₹ 1.18 crore including interest. The cumulative tax effect is ₹ 9.18 crore including interest. *The Department accepted the audit observation and rectified under section 144 read with section 263 of the Act in May 2019.* However, the status of collection of demand was awaited (May 2021).

3.4.5 Incorrect estimation of Arm's Length Price

We noticed nine cases relating to incorrect estimation of Arm's Length Price involving tax effect of ₹ 37.01 crore in two states. We give below one such illustrative case:

Section 92C of the Act provides that the Arm's Length Price 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.

Case I CIT Charge : CIT TPO-2, Delhi
Assessee Name : M/s 'A' Pvt. Ltd.
Assessment Years : 2014-15 and 2015-16

The Transfer Pricing Officer (TPO), while determining Arm's Length Price (ALP) in October 2017 and October 2018, did not exclude foreign exchange gain of

₹ 3.26 crore and ₹ 19.35 crore being non-operating income for the aforesaid assessment years respectively from the total operating income. The error had resulted in under adjustment of transfer pricing by ₹ 22.61 crore (₹ 3.26 crore and ₹ 19.35 crore) involving short levy of tax of ₹ 11.78 crore for these assessment years. *The Department accepted the audit observation (June 2020) and rectified the error under section 154 in August 2019 for both the assessment years. The Department also passed the rectification order based on revised TP adjustment under section 154 of the Act for AY 2014-15 in February 2020.*

3.4.6 Errors in implementation of TDS/TCS provisions

We noticed errors in implementation of TDS/TCS provisions in six cases involving tax effect of ₹ 13.70 crore in five states. We give below one such illustrative case:

Section 143(3) provides that AO is required to make a correct assessment of the total income or loss of the assessee and determine the correct amount of tax or refund as the case may be. Section 40(a)(ia) enumerates the expenses which includes professional charges that cannot be claimed as deduction, if provisions of deduction of tax at source are not complied with.

Case I CIT Charge : PCIT-4, Bangalore
Assessee Name : M/s 'A' Pvt. Ltd.
Assessment Year : 2014-15

The AO, while finalising the assessment in December 2016, did not disallow expenditure of ₹ 13.45 crore for not deducting tax at source. AO further allowed deduction of ₹ 3.03 crore, being the amount disallowed in the previous year (AY 2013-14) for non-compliance with the provisions of TDS. As no tax was deducted in respect of such disallowance in this year as well, the said deduction was not admissible. This led to further short computation of income of ₹ 3.03 crore. The errors had resulted in short computation of income of ₹ 16.48 crore (₹ 13.45 crore + ₹ 3.03 crore) involving short levy of tax of ₹ 6.60 crore including interest {₹ 4.63 crore (positive) and ₹ 1.97 crore (potential)}. *The Department accepted the audit observation and rectified the errors under section 154 of the Act in August 2018. However, the status of collection of demand was awaited (May 2021).*

3.4.7 Unexplained Investment/ Cash Credit

We noticed six cases relating to unexplained investment/cash credit involving tax effect of ₹ 244.61 crore in two states. We give below three such illustrative cases:

Section 68 of the Act 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.

Case I **CIT Charge** : **PCIT-6, Mumbai**
 Assessee Name : **M/s 'D' Pvt. Ltd.**
 Assessment Year : **2011-12**

Re-assessment of the assessee company was completed in December 2017, determining income of ₹ 112.52 crore. In the re-assessment order, out of ₹ 580.22 crore share premium received by the assessee company during financial years relevant to AYs 2009-10 and 2011-12, share premium of ₹ 112.52 crore, received during the year relevant to AY 2011-12 only, was added as unexplained cash credit. However, share premium of ₹ 467.70 crore, received during the year relevant to AY 2009-10 was not added back, though it was also considered as unexplained cash credit. This resulted in under-assessment of income by ₹ 467.70 crore with consequent short levy of tax of ₹ 155.36 crore (excluding interest). The reply from the Ministry/ITD was awaited for the last three years (May 2021).

Case II **CIT Charge** : **Pr. CIT LTU, Mumbai**
 Assessee Name : **M/s 'A' Pvt. Ltd.**
 Assessment Year : **2015-16**

The AO, while finalizing the assessment in December 2017, added back only ₹ 1.43 crore pertaining to the current year's loan out of long term borrowing of ₹ 6.45 crore on account of unexplained cash credit. However, the Department failed to add the remaining borrowing of ₹ 5.10 crore pertaining to earlier years as there was no explanation furnished by the assessee for long-term borrowing. The error had resulted in underassessment of income of ₹ 5.10 crore with consequent short levy of tax of ₹ 2.20 crore including interest. *The Department accepted (April 2018) the audit observation and agreed to initiate action under section 147 of the Act.* However, the status of completion of remedial action was still awaited (May 2021).

Case III **CIT Charge** : **Pr. CIT 9, Mumbai**
 Assessee Name : **M/s 'G' Ltd.**
 Assessment Year : **2010-11**

In the re-assessment order in December 2017, the AO discussed the information received in the investigation report on unexplained deposit of ₹ 249.06 crore for which the assessee failed to furnish a reply to the satisfaction of the AO. Therefore, unexplained deposit of ₹ 249.06 crore should have been assessed as income under section 68 of the Act. However, the assessing officer failed to assess and tax the unexplained deposit. Failure to do so had resulted in under assessment of income of ₹ 249.06 crore with consequent short levy of tax of ₹ 84.65 crore. *The Ministry*

accepted (March 2021) the audit observation and initiated remedial action under section 263.

3.5 Over-charge of tax/interest

3.5.1 We noticed that AOs over assessed income in 14 cases involving over-charge of tax and interest of ₹ 112.16 crore in Andhra Pradesh and Telangana, Delhi, Kerala, Maharashtra, Madhya Pradesh, Odisha and West Bengal. We give below three such illustrative cases:

Case I **CIT Charge** : **Pr. CIT 3, Mumbai**
 Assessee Name : **M/s 'A' Ltd.**
 Assessment Year : **2012-13**

The AO, while reassessing the income in December 2018, started computation by adopting loss at ₹ 225.08 crore instead of loss of ₹ 478.15 crore as determined in the last order i.e. order giving effect to the CIT (Appeals) order in April 2018. The error had resulted in underassessment of loss of ₹ 253.06 crore involving potential excess levy of tax of ₹ 82.11 crore. The audit observation was issued in November 2019. The reply from the Ministry/ITD was awaited (May 2021).

Case II **CIT Charge** : **PCIT, Kochi-I**
 Assessee Name : **M/s 'B' Pvt. Ltd.**
 Assessment Year : **2012-13**

The AO, while computing tax demand as per the revised order of November 2017, levied interest of ₹ 4.36 crore instead of correct amount of ₹ 2.31 crore. The error had resulted in overcharge of interest by ₹ 2.05 crore. *The Department intimated (February 2020) that the mistake had been rectified under section 154 of the Act in January 2020.*

Case III **CIT Charge** : **PCIT, Cuttack**
 Assessee Name : **M/s 'C' Ltd.**
 Assessment Year : **2012-13**

The AO, while computing tax liability in January 2018, levied interest of ₹ 8.10 crore instead of correct amount of ₹ 4.17 crore. The error had resulted in excess levy of interest of ₹ 3.93 crore. *The Department accepted (December 2019) the audit observation and rectified the error under section 154 of the Act in June 2019. However, the Department further stated that the computation of tax and interest was done through ITBA module and the AO had no control over the computation of tax payable by the assessee except to modify the interest chargeable under section 234C of the Act. Hence, DGIT (Systems) is the appropriate authority to furnish the factual position in this regard.*

As per the Audit Manual of the CBDT duly revised in 2019, Income Tax Business Applications (ITBA) has been rolled out and assessment and other ancillary works are required to be done on ITBA platform. With the launch of ITBA, the work flow would be monitored by supervisory authorities on system and would instill accountability at every level in field formation. The Department may therefore examine reasons for such errors in computation made through system and provide sufficient checks and safeguards against such errors while ensuring accuracy of computation and prevention of such irregularities.