

Chapter Summary

This chapter consist of four parts A, B, C and D containing audit observations on assessments in respect of wealth tax, gift tax, interest tax and expenditure tax respectively.

Arrears of wealth tax demand decreased by 51.86 percent from Rs.2122.17 crore in 2002-03 to Rs.1021.59 crore in 2003-04. Actual collection of wealth tax fell from 14.5 percent of the total outstanding arrears of wealth tax demand in 1999-00 to 13.3 percent in 2003-04.

(Para 5.1)

Wealth tax assessees dwindled from 2,15,717 lakh in 1999-00 to 1,35,085 lakh in 2003-04 though no major amendments have been made in the wealth tax law.

(Para 5.2)

The assessing officers committed mistakes in

◆ including taxable assets in the net wealth of the assessees resulting in short levy of wealth tax of Rs.15.30 lakh in four cases.

(Para 5.7)

◆ correlating income tax assessment records with the records of wealth tax assessments resulting in wealth escaping assessment and non-levy of wealth tax totalling Rs.3.98.crore in 58 cases.

(Para 5.8)

◆ levy of gift tax and interest amounting to Rs.32.00 lakh on deemed gift in five cases.

(Para 5.13 & 5.14)

◆ levy of interest tax in fourteen cases involving tax of Rs.12.23 crore.

(Para 5.18)

◆ assessing interest tax in 54 cases resulting in non-levy of interest tax totalling Rs.9.72 crore.

(Para 5.20)

◆ levy of interest totalling Rs.1.29 crore in 19 cases in accordance with Interest tax Act.

(Para 5.22)

CHAPTER V: OTHER DIRECT TAXES

A-Wealth tax

Revenue from wealth tax

5.1 The following table gives the position of budget estimates and actual collections compared to total arrears of wealth tax demand between 1999-2000 and 2003-04.

(Rs. in crore)

TABLE 5.1: BUDGET ESTIMATES, ACTUAL WEALTH TAX COLLECTION & ARREARS OF WEALTH TAX DEMAND

Year	Budget estimates	Actual collection	Arrears of wealth tax demand	Percentage of actual collection to the arrears of wealth tax demand
1	2	3	4	5
1999-00	145.00	132.91	858.90	14.5
2000-01	145.00	131.73	844.10	15.6
2001-02	145.00	135.36	1,361.04	9.9
2002-03	145.00	153.88	2,122.17	7.3
2003-04	145.00	135.83	1,397.88	9.7

5.1.1 Actual collection has been reduced from Rs.154 crore in 2002-03 to Rs.136 crore in 2003-04. The budget provided for the same amount of Rs.145 crore in each of the years from 1999-2000 to 2003-04 without considering the magnitude of arrears of wealth tax demand and the potential of current demand. Actual collections have not met the budget estimates in any year except in 2002-03.

5.1.2 Though the arrears of wealth tax demand have been reduced during the year, only Rs.15 crore was collected in cash while the rest represented reduction on account of verification, reconciliation and rectification of assessments.

Status of assessee and assessments

5.2 Table 5.2 below gives the comparative position of the number of wealth tax assessee and number of wealth tax assessments due for disposal and actually completed between 1999-2000 and 2003-04:

TABLE 5.2: WEALTH TAX ASSESSEES, ASSESSMENTS DUE FOR DISPOSAL AND COMPLETED

Year	No. of wealth tax assessees	No. of wealth tax assessments due for disposal	No. of wealth tax assessments completed	No. of wealth tax assessments pending	Percentage of pending wealth tax assessments to total assessments due for disposal
1999-00	2,15,717	1,25,977	66,303	59,674	47
2000-01	2,02,171	1,16,406	66,313	50,093	43
2001-02	1,51,676	1,18,530	78,982	39,548	33
2002-03	1,27,766	1,28,186	1,03,976	24,210	19
2003-04	1,35,085	1,09,777	82,702	27,075	25

(i) There is a slight increase in the number of wealth tax assessees during the year 2003-04.

(ii) Even though the number of wealth tax assessments due for disposal has declined slightly, there has been a shortfall in completion of these assessments which is indicative of inadequate attention being paid to this work. Percentage of pending wealth tax assessments to total assessments due for disposal has increased to 25 from 19 in 2002-03.

Results of audit

5.3 During the test check of assessments completed under the Wealth Tax Act, 1957, conducted between 1 April 2003 and 31 March 2004, audit noticed short levy of wealth tax of Rs.126.11 crore in 542 cases.

Audit issued 83 draft paragraphs involving undercharge of wealth tax of Rs.5.82 crore between March 2004 and October 2004 to Ministry of Finance for their comments.

Out of the 83 draft paragraphs issued to Ministry, internal audit of the department had seen only six cases but the mistakes were not detected. In three cases where the mistakes were noticed, no action was taken. Remaining 74 cases were not seen in internal audit.

All the 83 draft paragraphs issued to Ministry involving tax effect of Rs.5.82 crore have been included in this chapter. Each paragraph indicates a particular category of mistakes and starts with a suitable preamble followed by combined/consolidated tax effect of all observations of similar nature. Cases with money value of more than Rs.50 lakh each are illustrated while those with money value of Rs. five lakh or more but less than Rs.50 lakh each are given in a tabular form in Appendices.

Status of Ministry's replies

5.4 Out of 83 cases included in this Chapter, Ministry of Finance accepted the audit observations in 12 cases involving tax effect totalling Rs.23.04 lakh. In the remaining 71 cases, replies are awaited.

5.5 Net wealth incorrectly computed

Mistakes in computation of net wealth and tax

The assessing officer is required to make a correct assessment of taxable wealth of the assessee and determine the correct tax payable by him on the basis of such assessment. The Board had also issued instructions, from time to time, stressing the necessity for ensuring accuracy in the computation of wealth and tax.

With effect from 1 April 1993, net wealth of an assessee means the aggregate value of all assets wherever located belonging to the assessee as reduced by the aggregate value of all admissible debts owed by the assessee on the valuation date.

Security deposits and advance rent received from the tenants are for the security of any let out house property against any damage or loss etc. and are neither secured on the assets (house property) nor incurred in relation to the assets. Hence such security deposits are not deductible debts for the purpose of computation of net wealth. Expenditure on earnest money deposits incurred with the right of forfeiture in given circumstances is deductible.

From April 1993, where the net wealth of an individual or Hindu undivided family exceeded Rs.15 lakh, wealth tax is leviable at the rate of one percent of the amount by which the net wealth exceeded Rs.15 lakh.

The assessing officers did not comply with the above provisions or applied them incorrectly resulting in non-levy of tax totalling **Rs.19.84 lakh** in **five** cases in Bihar, Kerala, Maharashtra and West Bengal. One case involving tax effect of more than Rs. five lakh is indicated as serial number **1** of **Appendix 25**.

5.6 Mistakes in valuation of assets

Incorrect valuation of assets

The value of any asset other than cash is determined on the valuation date in the manner laid down in Schedule III to the Wealth Tax Act. However, for the purpose of making an assessment, the assessing officer may refer the valuation of any asset to a valuation officer for determining its market value in accordance with the provisions of the Act if he is of the opinion that the fair market value of the asset exceeds the value of the asset returned. The assessing officer is required to adopt the value so estimated by the valuation officer.

The assessing officers did not adopt correct value of assets in **six cases** resulting in under valuation of Rs.49.94 crore involving short levy of wealth tax of **Rs.60.88 lakh** including interest in Karnataka, Maharashtra, Tamil Nadu and West Bengal. Three cases involving tax effect of more than Rs. five lakh each are indicated at serial numbers **2 to 4** of **Appendix 25**.

5.7 Wealth escaping assessment

Non inclusion of taxable assets in the net wealth

From assessment year 1993-94, 'assets' inter alia include guest house and all residential buildings, urban land, motor cars other than those used in the business of running them on hire or as stock in trade. Further, for the assessment years 1997-98 and 1998-99, assets included commercial properties also.

The assessing officers did not include taxable assets in the net wealth resulting in short levy of tax totalling **Rs.15.30 lakh** in **four cases** in Delhi, Maharashtra, and Tamil Nadu. One case involving tax effect of more than Rs. five lakh is indicated at serial number **1** of **Appendix 26**.

5.8 Non correlation of assessment records

Wealth not assessed due to non-correlation of records of different direct taxes

The Board issued instructions (November 1973, April 1979 and September 1984) to the assessing officers for ensuring proper co-ordination amongst assessment records pertaining to different direct taxes and for simultaneous disposal of income tax and wealth tax assessment cases so that there was no evasion of tax.

The net wealth chargeable to tax comprises certain assets specified¹ under section 2(ea) of the Act subject to adjustment of any debt owed by the assessee in relation to any of the specified assets on the valuation date.

Audit scrutiny of income tax assessment records of **58 assesseees** in Andhra Pradesh, Bihar, Delhi, Gujarat Karnataka, Kerala, Maharashtra, Punjab, Tamil Nadu and West Bengal revealed that the assesseees either derived rental income from residential and commercial properties or owned one or more of the specified assets which were chargeable to wealth tax. However, neither did the assesseees file their returns of net wealth nor did the department initiate any wealth tax proceedings despite instructions of the Board. Consequently, wealth tax totalling **Rs.3.98 crore** was not levied. One case involving tax effect of more than Rs.50 lakh is illustrated below. **Fourteen** cases involving tax effect of more than Rs.five lakh but less than Rs.50 lakh in each case are indicated at serial numbers **2 to 15** of **Appendix 26**.

¹ The specified assets include following items :

- ◆ Any building or land appurtenant thereto whether used for residential purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometers from local limits of any Municipality or a Cantonment Board,
- ◆ Motor cars (other than those used by the assessee in the business of running them on hire or as stock-in-trade),
- ◆ Jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals,
- ◆ Yachts, boats and aircrafts (other than those used by the assessee for commercial purposes),
- ◆ Urban land and
- ◆ Cash in hand, in excess of fifty thousand rupees, of individuals and Hindu undivided families and in the case of other persons any amount not recorded in the books of account.

5.8.1 In Mumbai City V charge, the income tax assessment of a company, **M/s. Indusind Enterprises & Finance Ltd.**, for the assessment year 1997-98 was completed after scrutiny in March 2000 and for 1998-99 in summary manner in March 2001. Audit scrutiny revealed that the assessee had received rental income of Rs.5 crore in each of the two assessment years from commercial properties that were 'let' out. The capitalised value of this property chargeable to wealth tax was Rs.52.97 crore (after allowing basic exemption under the Act), which attracted levy of wealth tax. However, neither did the assessee file a return of wealth nor did the department initiate wealth tax proceedings. Wealth valued Rs.52.97 crore escaped assessment on which wealth tax of Rs.1.91 crore (including interest) was thus leviable.

5.9 Mistakes in levy of interest

Non/short levy of interest

Where return of net wealth for any assessment year is furnished after the specified due date or is not furnished, the assessee shall be liable to pay simple interest at the rate of one and one fourth percent (two percent upto May 2001 and one percent from 8 September 2003) for every month or part of the month from the date immediately following the due date to the date of filling the return or where no return is furnished, to the date of completion of regular assessment on the amount of tax determined in regular assessment.

Demand of tax should be paid by an assessee within the time specified in the Act. Failure to do so would attract interest at the rate of one fourth percent (two percent upto May 2001 and one percent from 8 September 2003) for every month or a part thereof from the date of default till the actual date of payment of demand. Interest for belated payment of tax was required to be calculated and charged within a week of the date of final payment of tax demand.

The assessing officers did not comply with the above provisions resulting in short levy of interest totalling **Rs.85.73 lakh in seven cases** in Bihar, Madhya Pradesh, Maharashtra, Uttar Pradesh and West Bengal and non-levy of interest of Rs.0.59 lakh in one case in Tamil Nadu. One case involving tax effect of more than 50 lakh is illustrated and two cases with tax effect of more than Rs. five lakh in each case are indicated at serial numbers **1** and **2** of **Appendix 27**.

5.9.1 In Kolkata Central III charge, assessments of a company **M/s Champdany Industries Ltd.** for the assessment years 1996-97 to 1998-99 were completed in March 2002 on the basis of returns filed by the assessee in response to notice issued for wealth escaping assessment. Audit scrutiny revealed that interest for delay in submission of return was levied short by **Rs.60.69 lakh** for three years. This had arisen because of a mistake in reckoning the period of delay from the actual filing of return instead of computing it from the due date of filing the return.

5.10 Application of incorrect rate of tax

Mistakes in application of rates of tax

Under the Wealth Tax Act, 1957, as applicable for the assessment year 1992-93, a domestic company in which public are not substantially interested is chargeable to tax at the rate of 2 percent of the net wealth

Mistakes in complying with the above provision resulted in short levy of tax of **Rs.1.79 lakh** in **two** cases in Tamil Nadu charge.

B-Gift Tax

General

5.11 The Finance Act, 1998 abolished the Gift Tax Act, 1958 with effect from 1 October 1998. Gift tax is not chargeable in respect of any gift made on or after 1 October 1998. No budget estimate for revenues from gift tax has, therefore, been made from the financial year 1999-2000. Pending gift tax assessments needed to be completed without delay.

Results of audit

5.12 During the test check of assessments completed under the Gift Tax Act, 1958, conducted between 1 April 2003 and 31 March 2004, audit noticed short levy of gift tax of Rs.0.60 crore in 11 cases.

Audit issued five draft paragraphs involving undercharge of gift tax of Rs.82 lakh to the Ministry of Finance for comments between May 2004 and August 2004.

Internal audit of the department had not seen any of the cases issued to Ministry.

All the five draft paragraphs issued to Ministry involving tax effect of Rs.82 lakh are included in the succeeding paragraphs. Reply of the Ministry of Finance are awaited.

5.13 Mistakes in levy of tax on deemed gift

Non / short-levy of tax on deemed gift

Where any property was transferred, otherwise than for adequate consideration, the amount by which the market value of the property on the date of transfer exceeded the value of the consideration was deemed to be a gift made by the transferor.

As per Schedule II to the Gift Tax Act, the value of the gifted property shall be determined in accordance with the provisions for valuation of various types of assets as prescribed in Schedule III to the Wealth Tax Act, 1957.

Assessing officers had not complied with or incorrectly applied the above provisions resulting in non-levy of gift tax of **Rs.8.61 lakh** in **one case** in Tamil Nadu, which is illustrated below

5.13.1 In Tamil Nadu, Central-II Chennai charge, the assessing officer completed the income tax assessment of an individual **Ms. G. Malliga**, for the assessment year 1998-99 after scrutiny in March 2001 at an income of Rs.1 lakh. The assessee had purchased 882 Sq.ft. of land for Rs.12.58 lakh in April 1996 and constructed a super structure by borrowing money from another individual. The assessee sold the entire property to the lender for Rs.15 lakh. The lender himself had produced a valuation certificate determining the market value of the property as Rs.44 lakh. As the land was sold at a lesser price than the market value, the difference in the

value of land and building of Rs.29 lakh was chargeable to gift tax. Omission to levy gift tax on the deemed gift of Rs.29 lakh resulted in non-levy of gift tax amounting to Rs.8.61 lakh, excluding interest.

5.14 Non/Short levy of interest for non-filing of return

Non/short levy of interest

Under the Gift Tax Act, 1974, where the return of gift for any assessment year is not furnished within the due date, the assessee is liable to pay simple interest at the rate of two percent for every month or part of a month of default comprised in the period commencing on the 1st July of the assessment year and where no return is furnished, ending on the date of regular assessment on the amount of tax determined on regular assessment as reduced by tax, if any, paid.

Assessing officers committed mistakes in following the above provisions which resulted in short levy of interest of **Rs.73.39 lakh** in **four** cases in Karnataka, Kerala, Madhya Pradesh and Tamil Nadu. Two cases involving tax effect of more than Rs. five lakh each are illustrated below.

5.14.1 In Madhya Pradesh Indore I charge, the gift tax assessment of a HUF, **M/s. Devikal Kanhaiyalal** for the assessment year 1998-99 was completed after scrutiny in March 2003 determining gift tax at Rs.1.26 crore. Interest leviable for belated filing of the return actually worked out to Rs.1.37 crore as against Rs.72.33 lakh levied by the department. Application of incorrect rate of interest resulted in short levy of interest of **Rs.64.22 lakh**.

5.14.2 In Tamil Nadu Chennai III charge, the gift tax assessment of a company, **M/s. New Ambadi Estates Pvt. Ltd.** for the assessment year 1994-95 originally completed under scrutiny in January 2000, was revised in March 2002 to give effect to appellate orders. The assessing officer, while computing the gift tax payable on the taxable gift of Rs.1.93 crore for the assessment year 1994-95 had incorrectly levied interest of Rs.69.36 lakh for non-filing of return as against Rs.77.45 lakh leviable from 1 July 1994 to 31 January 2000. This resulted in short levy of interest of **Rs.8.09 lakh**.

C-Interest Tax

General

5.15 The Finance Act, 2000 abolished the Interest Tax Act, 1974 with effect from 1 April 2000. Interest tax is, therefore, not chargeable in respect of any chargeable interest accruing or arising after 31 March 2000. No budget estimate for revenues from interest tax has been made from the financial year 2000-2001. However, pending interest tax assessments needed to be completed without delay.

Results of audit

5.16 During the test check of assessments completed under the Interest Tax Act, 1974, conducted between 1 April 2003 and 31 March 2004, audit noticed short levy of interest tax of Rs.24.35 crore in 115 cases.

Audit issued 90 draft paragraphs involving tax effect of Rs.23.28 crore between May 2004 and October 2004 to the Ministry of Finance for comments.

Out of the 90 draft paragraphs issued to Ministry, internal audit of the department had seen six cases but did not notice the mistakes and had not seen the remaining 78 cases.

All the draft paragraphs issued to Ministry, involving tax effect of Rs.23.28 crore have been included in this chapter. Each paragraph indicates a particular category of mistakes and starts with a suitable preamble followed by combined/consolidated tax effect of all the observations of similar nature. Cases with money value of more than Rs.50 lakh are illustrated and those with money value of Rs.5 lakh or more but less than Rs.50 lakh each, are given in tabular form in Appendices.

Status of replies received from Ministry of Finance

5.17 Out of 90 cases included in this chapter, Ministry of Finance accepted the audit observation in five cases involving tax effect of Rs.47.53 lakh. Replies were awaited in the remaining 85 cases.

5.18 Mistakes in assessment of chargeable interest

Mistakes in assessment/ under assessment of chargeable interest

Interest tax was to be paid by credit institutions including banking company/public financial institution on their interest income from assessment year 1992-93 till assessment year 2001-02. Interest income chargeable to tax included interest on loans and advances, commitment charges on unutilised portion of any credit sanctioned and discount on promissory notes and bills of exchange. The return of chargeable interest was required to be filed by 31 December of the relevant assessment year.

In computing the income of a credit institution chargeable to income tax under the head 'profits and gains of business or profession' or under the head 'income from other sources', the interest tax payable by the credit institution for any assessment

year shall be deducted from income under the respective heads, of the credit institution assessable for that assessment year. No such deduction was admissible from the interest income chargeable under the Interest Tax Act.

The Board issued instructions in 1995 clarifying that interest tax was to be levied on interest on debentures, bonds and securities etc.

Interest Tax Act did not permit setting off of interest receipt against interest payable.

The assessing officers did not apply the above provisions correctly resulting in short levy of interest tax totalling **Rs.12.23 crore** in **fourteen cases** in Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Tamil Nadu and West Bengal. Five cases involving tax effect of more than Rs. 50 lakh are illustrated below. **Six** cases involving tax effect of more than Rs.5 lakh but less than Rs.50 lakh each are indicated at serial numbers **1 to 6** of **Appendix 28**.

5.18.1 In Karnataka, Bangalore Central charge, the assessing officer completed interest tax assessments of a company **M/s. Fair Growth Financial Services Ltd**, for the assessment years 1994-95 and 1995-96 after scrutiny in March 2002 determining chargeable interest at Rs.15.53 crore and Rs.13.07 crore respectively. Assessing officer omitted to include interest on securities amounting to Rs.2.12 crore and Rs.2.25 crore received during the financial years relevant to assessment years 1994-95 and 1995-96. This resulted in underassessment of chargeable interest of Rs.463.84 lakh with consequent short levy of tax and interest aggregating **Rs.57.83 lakh**.

5.18.2 In West Bengal Kolkata II charge, the assessing officer completed the interest tax assessment of a banking company **M/s. Allahabad Bank Ltd** for the assessment year 2000-01 after scrutiny in March 2003 at a chargeable interest income of **Rs.653.87 crore** allowing inter alia, exemption of interest income of Rs.74.09 crore received from State Bank of India on 'food credit' on the ground that the interest so received was from another credit institution. Loans and advances extended by the assessee bank on 'food credit' was an advance under a consortium arrangement under the guidelines of Reserve Bank of India and the banks participating in the consortium were to arrange to get their share of recovery transferred from the lead bank or get an express consent from lead bank for transfer of their share of recovery. Since the State Bank of India in the instant case acted as a lead bank and the interest income on loans and advances was received after being routed through the lead bank, the interest income so received could not have been be regarded as income received from another credit institution for the purpose of allowing exemption from chargeable interest income under the Interest tax Act. The irregular allowance of exemption led to underassessment of chargeable interest income by **Rs.74.09 crore** involving undercharge of interest tax of **Rs.1.48 crore**.

5.18.3 In Gujarat, Ahmedabad VIII charge, the assessing officer completed the Interest Tax assessment of a company **M/s UTI Bank Ltd.** for the assessment year 2000-01 in summary manner in March 2003 determining chargeable interest income of Rs.268.89 crore and tax of Rs.5.28 crore. The assessee had earned interest/ document on loans and advances/ bills of Rs.296.65 crore as against Rs.268.89 crore assessed by the assessing officer. Further, interest earned from bonds, debentures and deposits with financial institutions aggregating Rs.29.84 crore was not taken into account. The assessable interest income thus worked out to Rs.326.49 crore. The mistakes resulted in underassessment of interest income of **Rs.57.60 crore** and short levy of tax of **Rs.1.25 crore**.

5.18.4 In Delhi V charge, the assessing officer completed the interest tax assessment of a bank **M/s Oriental Bank of Commerce**, for the assessment year 1999-2000 in March 2002 at a chargeable interest of Rs.864.64 crore. While computing the chargeable interest, the assessing officer did not include the interest income of **Rs.223.38 crore** that had accrued as interest on debentures/bonds during the previous year relevant to assessment year 1999-2000. The omission resulted in short levy of interest tax of **Rs.6.61 crore** including interest.

5.18.5 In West Bengal Kolkata II charge, interest tax assessments of a banking company M/s. Allahabad Bank Ltd, for the assessment years 1997-98 to 1999-2000 were completed after scrutiny between March 2000 and February 2002 by adopting chargeable interest income at Rs.504.74 crore, Rs.490.55 crore and Rs.554.33 crore respectively. The chargeable interest incomes were worked out after deducting “accrued liability” for interest tax payable of Rs.15.22 crore, Rs.9.96 crore and Rs.11.19 crore on interest and discount earned and interest paid to financial institutions for refinancing of Rs.9.91 crore, Rs.7.35 crore and Rs.5.16 crore for the respective assessment years In the interest tax assessment of the assessee for the assessment year 2000-01 completed in March 2003, deduction towards interest paid on refinancing though claimed by the assessee, was disallowed, but deduction towards interest tax liability of Rs.13.08 lakh as claimed on interest and discount earned was not added back. The aforesaid deductions are not admissible under the provisions of Interest Tax Act. Irregular allowance of deductions resulted in underassessment of chargeable interest of Rs.71.87 crore involving short levy of interest tax of Rs.1.69 crore for the three assessment years.

5.19 Incorrect application of rate of tax

Mistakes in applying correct rate of tax

Interest tax was leviable at three percent from assessment year 1992-93 to 1997-98 and at two percent thereafter, on the chargeable interest income of credit institutions.

The assessing officers did not apply correct rate of tax leading to short levy of tax of **Rs.1.58 lakh** in **one case** in Madhya Pradesh.

5.20 Non correlation of records

Chargeable interest not assessed due to non-correlation of records of different direct taxes

The Board issued instructions (November 1973, April 1979 and September 1984) for ensuring proper co-ordination amongst assessment records pertaining to different direct taxes and for simultaneous disposal of income tax and different direct tax assessments viz., wealth tax, gift tax, interest tax etc., so that there was no evasion of tax.

The Board clarified in March 1996 that 'finance' charges accruing or arising to hire purchase finance companies are in the nature of interest chargeable to interest tax. The Board had further clarified in 1998 that if the transactions are in substance in the nature of financing transactions, hire charges should be treated as interest subject to interest tax.

The assessing officers did not comply with the instructions of the Board resulting in non-levy of tax totalling **Rs.9.72 crore** in **54 cases** in Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu and West Bengal. Two cases involving tax effect of more than Rs.50 lakh each are illustrated below. Fourteen cases involving tax effect of more than Rs.five lakh but less than Rs.50 lakh in each case, are indicated at serial numbers **7 to 20** of **Appendix 28**.

5.20.1 In Delhi CIT -III charge, audit scrutiny of the income tax assessments of a company, **M/s. SREI International Finance Ltd.**, for the assessment year 2000-01 revealed that the assessee had received a sum of Rs.96.30 crore as interest, lease and hire purchase charges during the financial year which was chargeable to interest tax. However, neither did the assessee file the interest tax return nor did the assessing officer call for the same. The omission resulted in non assessment of chargeable interest totalling Rs.96.30 crore involving non levy of interest tax of Rs.3.43 crore including interest.

5.20.2 In Karnataka, Bangalore Central charge, audit scrutiny of the income tax assessments of a company, **M/s. Kirloskar Investment and Finance Ltd.**, for the assessment years 1996-97,1997-98 and 1999-2000 revealed that the assessee company derived income of Rs.13.49 crore, Rs.13.55 crore and Rs.6.88 crore from finance charges on hire purchase, bill discounting and interest on advances respectively, during relevant previous years which was chargeable to interest tax. However, neither the assessee filed the return of interest tax nor the assessing officer initiated any interest tax proceedings. Non assessment of chargeable interest of Rs.33.92 crore resulted in non levy of interest tax of Rs.3.71crore.

5.21 Irregular payment of interest

Excess payment of interest by Government

If proceedings resulting in refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of delay so attributable to him shall be excluded from the period for which interest is payable to him on such refund.

The Board issued instructions in November 1997 and August 1998 to the effect that all refund vouchers irrespective of the amount of refund should be sent by Registered Post with acknowledgement due and within 15 days of the passing of order resulting in refund.

Non compliance of the above provisions/instructions of the Board resulted in non-levy of tax of **Rs.1.16 lakh** in **one case** in Madhya Pradesh .

5.22 Mistakes in levy of interest

Non/ short levy of interest

Interest for default and deficiency in interest tax payments in advance, delays in paying demand raised and defaults/delays in filing return are leviable in the same manner and at the same rates as for the defaults of similar nature under the Income Tax Act.

With effect from 1st October 1991, where interest tax is payable on the basis of any return of interest tax after taking into account the amount of interest tax, if any, already paid under the provisions of the Act, the assessee shall be liable to pay such interest tax as self assessment tax together with interest payable for any delay or default in payment of advance interest-tax.

Incorrect application of the above provisions resulted in non/short levy of interest totalling **Rs.1.29** crore in 19 cases in Karnataka, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal. Six cases with money value of more than Rs.five lakh but less than Rs.50 lakh in each case, are indicated at serial numbers **1** and **6** of **Appendix 29**.

5.23 Cases of over assessment

Over assessment

Mistake in determining chargeable interest income resulted in over assessment of chargeable interest involving excess levy of tax of **Rs.1.10 lakh** in **one case** in West Bengal.

D-Expenditure Tax

5.24 Mistakes in computation of chargeable expenditure

Mistake in computation of chargeable expenditure

Till its abolition with effect from 1 June 2003, under the provisions of Expenditure Tax Act, 1987, there shall be charged a tax at the rate of ten percent of the chargeable expenditure incurred in a hotel wherein the room charges for any unit of residential accommodation are Rs.1200 or more (Rs.2000 or more from 1.10.1998) per day per individual. 'Chargeable expenditure' for this purpose was defined as any expenditure incurred in or payments made to the hotel in connection with the provision, inter alia, of any accommodation, residential or otherwise or food or drink by a hotel. The Act also provides that the person who carries on the business of such hotel shall collect the expenditure tax and pay it to the credit of the Central Government.

In Karnataka, Hubli charge, non observance of the above provisions resulted in non-levy of expenditure tax of **Rs.0.40 lakh**.

5.25 Non-levy of interest for delay in payment of tax demand.

Non levy of interest

Under the Expenditure Tax Act, 1987, any demand of tax should be paid by an assessee within 30 days of service of notice of demand. Failure to do so attracts simple interest at one and one half percent per month or part thereof upto 31 May 2001 and at one and one fourth percent per month or part thereof with effect from 1 June 2001 from the date of default, till the date of actual payment.

Omission to levy interest for delay in payment of tax demand resulted in short levy of interest of **Rs.6.08 lakh** in **one** case, in Tamil Nadu.

5.26 Excess levy of interest on delayed payment of Expenditure Tax

Excess levy of interest

Under the Expenditure Tax Act, 1987, the tax collected during any calendar month shall be paid to the credit of the Central Government by the 10th of the month immediately following the calendar month. Failure to do so attracts simple interest at the rate of one and one fourth percent (one and one half percent upto May 2001) for every month or part of a month by which such crediting of tax is delayed under Section 14 of the Act.

Levy of interest at incorrect rates resulted in excess levy of interest of **Rs.5.99 lakh** in **one** case, in Karnataka.