

Chapter Summary

Income tax constituted 37.11 percent of the total collection from direct taxes in 2004-05. There were 2.68 crore assesseees as on 31 March 2005, which represented a decrease of 6.94 per cent over the previous year.

(Para 4.1 & 4.2)

Audit issued 119 observations with a tax effect of Rs.42.68 crore involving various irregularities, omissions and mistakes to the Ministry of Finance.

(Para 4.4)

Assessing officers committed mistakes in:

- ◆ adoption of correct figures, applying correct rate of tax and levy of surcharge and adopting correct status of the assessee in 14 cases involving tax effect of Rs.1.50 crore.

(Para 4.6 to 4.9)

- ◆ computation of income from house property and business and assessment of firm in 16 cases involving tax effect of Rs.1.77 crore

(Para 4.10 to 4.13 and 4.16)

- ◆ computation of capital gains, depreciation, carry forward and set off of losses, and allowing income to escape assessment in 14 cases involving tax effect of Rs.2.96 crore

(Para 4.14, 4.15, 4.17 and 4.18)

- ◆ allowing reliefs and exemptions under chapter VIA in 27 cases involving tax effect of Rs.23.10 crore.

(Para 4.19 and 4.20)

- ◆ allowing refund and interest thereon in two cases involving tax effect of Rs.16.73 lakh

(Para 4.21)

- ◆ levy of interest in 34 cases involving tax effect of Rs.7.50 crore

(Para 4.22)

- ◆ overcharge of tax in five cases involving tax effect of Rs.1.83 crore

(Para 4.23)

- ◆ levy of penalty, deducting tax at source and allowing irregular credits without corresponding income being taxed in six cases involving tax effect of Rs.50.27 lakh

(Para 4.24 to 4.26)

CHAPTER IV: INCOME TAX

Number of assesses

4.1 The number of assesseees (other than companies) borne on the books of the income tax department as on 31 March of 2004 and 2005 was 2.88 crore and 2.68 crore respectively as given in **Table 2.7 of Chapter II** of this Report.

Receipts from income tax

4.2 During 2004-2005, income tax receipts were Rs.49,268 crore compared to Rs.41,387 crore in 2003-2004. **Table 2.4 of Chapter II** of this report has the details.

Status of assessments

4.3 **Table 2.11 of Chapter II** of this Report contains particulars of assessments due for disposal, assessments completed and pending. Details of demands remaining uncollected during the last five years are given in **Table 2.13** of this Report.

Results of audit

4.4 Audit issued 114 draft paragraphs involving undercharge of tax of Rs.40.85 crore and five draft paragraphs involving overcharge of tax of Rs.1.83 crore to the Ministry of Finance between April 2005 and December 2005 for comments.

Out of these 119 draft paragraphs, issued to Ministry, 113 cases involving under charge of Rs.37.50 crore and five cases involving overcharge of Rs.1.83 crore are indicated in the succeeding paragraphs. The internal audit of the department had seen 18 cases, but the mistakes were not detected.

Paragraphs with money value of over Rs. 1 crore in nine cases and those with less than Rs.1 crore in 21 cases have been illustrated. Those between Rs.10 lakh and Rs. 1 crore in 29 cases and where the tax effect is less than Rs.10 lakh in 16 cases have been given in the appendices. Paragraphs with money value of less than Rs.10 lakh in the remaining 43 cases are clubbed together indicating consolidated figures of tax effect.

Status of replies received from Ministry of Finance

4.5 Out of 118 cases included in this chapter, the Ministry of Finance have accepted audit observations in four cases involving tax effect of Rs.41.17 lakh. In one case the Ministry have not accepted the audit observation. In the remaining 113 cases, the Ministry's replies are awaited.

4.6 Non adherence to provisions of the Act

Mistakes in adoption of correct figures

Assessing officers are required to determine and assess the income correctly in scrutiny assessments. The Board have issued instructions to assessing officers and their supervisory officers to ensure that mistakes in assessments do not occur.

Audit noticed that assessing officers had adopted incorrect figures, committed mistakes in computation and in calculation of total income resulting in short levy of tax totalling **Rs.24.84 lakh in five cases** in Bihar, Madhya Pradesh, Punjab and Orissa. **The details of these cases** are indicated in **Appendix 17**.

4.7 Incorrect application of rates of tax

Application of incorrect rate of tax

Under the Income Tax Act, 1961, 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.

Audit noticed that the assessing officer did not apply the above provision correctly in **three cases** in Gujarat, Haryana and Maharashtra which resulted in short levy of tax of **Rs.32.75 lakh**

One case involving tax effect of more than Rs.25 lakh is illustrated below.

4.7.1 In Maharashtra, Mumbai City XXVI charge, the assessment of an individual, **Shri Gopal Rajgopalan**, for the assessment year 1996-97 was completed after scrutiny in February 2004 at a total income of Rs.1.07 crore. Audit scrutiny revealed that the tax was levied at the rate of 30 percent as against the rate of 40 percent applicable for assessment year 1996-97 resulting in short levy of tax of **Rs.27.06 lakh** including interest. The department has accepted the audit observation.

4.8 Surcharge

Surcharge not levied

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

Assessing officers did not levy surcharge at the rate prescribed in the Finance Acts resulting in short demand of **Rs.89.78 lakh in five cases** in Andhra Pradesh, Himachal Pradesh, Gujarat, Karnataka and Maharashtra. The details of **four cases** are indicated in **Appendix 18**.

4.9 Incorrect status adopted in assessment

Incorrect status adopted in assessment

Under the Income Tax Act, 1961, in the case of any firm, the payment of salary, bonus, commission or remuneration to any partner who is not a working partner or any payment of remuneration to any partner who is a working partner or of interest to any partner, which in either case is not authorized by or is not in accordance with the terms of the partnership deed shall not be deductible in computing the income chargeable under the head "Profits and gains of business or profession."

4.9.1 In Gujarat, Surat charge, the assessment of an unregistered firm **Shri Sai Corporation** for the assessment year 1997-98 was completed after scrutiny in March 2002 determining the taxable income at Rs.2.01 crore. Audit scrutiny revealed that payment on account of interest and remuneration aggregating to Rs.3.96 lakh made to a partner was not allowable as the status of the assessee was an unregistered firm. The amount was required to be added back to the income of the assessee. Omission resulted in underassessment of income of Rs.3.96 lakh involving short levy of tax of **Rs.2.89 lakh** including interest. The department has accepted the audit observation and raised additional demand.

4.10 Incorrect computation of house property

Incorrect computation of house property

Under the Income Tax Act, 1961 to arrive at the net annual value of the house property, municipal taxes actually paid by the assessee is deducted from the gross annual value. Further after allowing deduction of one fourth for repairs, net income from house property is worked out.

4.10.1 In Uttar Pradesh, Kanpur I Charge, the assessment of an individual **Smt. Deepti D Kothari** for assessment year 2001-02 was completed after scrutiny in January 2004. Audit scrutiny revealed that in addition to the business income and income from other sources, the assessee had also declared income from house property of Rs.43.05 lakh. To arrive at the net annual value, the assessee had deducted Rs.7.50 lakh paid as maintenance charges to the owner of the building, and treated it as municipal tax. As this was not municipal tax it should have been disallowed and added back to the income of the assessee. The omission resulted in short computation of income by Rs.7.50 lakh involving short levy of tax of **Rs.2.80 lakh**.

4.11 Liabilities not disallowed

Incorrect allowance of liabilities

Certain deductions being cess, fee or any sum payable by an assessee as employer by way of contribution to any provident fund, superannuation fund or gratuity fund etc. are deductible on actual payment basis. It is further provided that such expenditure would be allowable only if the payment is made before the due date of filing of the return.

Assessing officers allowed liabilities without expenditure being incurred resulting in short levy of tax of **Rs.60.46 lakh in three cases** in Gujarat and Maharashtra.

One case involving tax effect of more than Rs.25 lakh is illustrated below:-

4.11.1 In Maharashtra, Pune City I charge, the assessment of an Association of Persons **Ghodganga S.S.K Ltd.** for the assessment year 1999-2000 was completed after scrutiny in March 2002. Audit scrutiny revealed that during the assessment year, the assessee had made provision for central excise duty of Rs.2.83 crore. Out of this provision, an amount of Rs.61.96 lakh had not been paid

till the date of filing of the income tax return. Though the amount had been added back by the assessee, the assessing officer had failed to disallow the same. The omission resulted in under assessment of income of Rs.61.96 lakh with consequent short levy of tax of **Rs.28.35 lakh** including interest. The department has accepted the audit observation and taken remedial action.

4.12 Incorrect exemption of agricultural income

Incorrect exemption of agricultural income

Under the Income Tax Act, 1961, the total income of a person for any previous year includes all income from whatever sources derived which accrues or arises during such previous year unless specifically exempt from tax under the provisions of the Act. The Act further provides that every income disclosed should be supported by documentary evidence.

4.12.1 In Maharashtra, Mumbai City XV charge, the assessment of a firm **M/s Bahar Builders** for the assessment years 1996-97 and 1997-98 were completed after scrutiny in March 2002. Audit scrutiny revealed that the assessee had been allowed exemption of Rs.12.64 lakh for the assessment year 1996-97 and Rs.16.85 lakh for assessment year 1997-98 on account of agricultural income without documentary evidence. Thus incorrect exemption allowed resulted in underassessment of income of Rs.29.49 lakh for the two assessment years, which resulted in short levy of tax of **Rs.24.86 lakh** including interest. The department has accepted the audit observation and taken remedial action.

4.13 Mistakes in computation of business income

Mistakes in computation of business income

Under the Income Tax Act, 1961, in a scrutiny assessment, the assessing officer is required to make a correct assessment of the total income or loss of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment. Income under the head “profits and gains of business or profession” is computed in accordance with the method of accounting regularly employed by the assessee.

Assessing officers committed mistakes in computing business income resulting in short levy of tax totalling **Rs.83.69 lakh in 10 cases** in Delhi, Gujarat, Haryana, Rajasthan, Maharashtra and Uttar Pradesh. **One** case involving tax effect of more than Rs.15 lakh is illustrated below and **seven cases** each involving tax effect of more than Rs. 5 lakh are indicated at **Serial number 1 to 7 of Appendix 19.**

4.13.1 In Rajasthan, Udaipur charge, the assessment of an individual **Shri Udai Lal Anjana** for the assessment year 2001-02 was completed after scrutiny in March 2004 at an income of Rs.50.02 lakh which included income of Rs.48.54 lakh under the head “profits and gains from business or profession” Audit scrutiny revealed that the assessee included an income of Rs.4.47 lakh as income from his proprietary concern which was arrived at after deducting expenditure of Rs.35.83 lakh from net profit of Rs.40.30 lakh as shown in the audited accounts of the

proprietary concern. The expenditure of Rs.35.83 lakh relating to the proprietary concern was again claimed by the assessee in arriving at the taxable income which was not disallowed by the assessing officer. The omission resulted in under assessment of income by Rs.35.83 lakh involving under charge of tax of **Rs.18.55 lakh** including interest.

4.14 Incorrect allowance of depreciation

Incorrect allowance of depreciation

Under the Income Tax Act, 1961 in computing the business income of an assessee, a deduction on account of depreciation on the fixed assets is admissible at the prescribed rates and on the written down value.

4.14.1 In Punjab, Amritsar charge, the assessment of a firm **M/s Raghbir Chand Sharma** for the assessment year 1997-98 was completed after scrutiny in March 2000. Audit scrutiny revealed that for the assessment year 1996-97 the assessee had declared value of hotel building at Rs.92.21 lakh. The assessing officer had reduced the same to Rs.26.59 lakh and allowed depreciation of Rs.5.32 lakh in assessment year 1996-97. Hence in assessment year 1997-98 the assessee was entitled to depreciation of Rs.4.25 lakh on written down value of Rs.21.27 lakh but the assessing officer had allowed depreciation of Rs.14.75 lakh. The mistake resulted in excess allowance of depreciation of Rs.10.50 lakh involving potential tax effect of **Rs.3.93 lakh**. The department has stated that the rectification has been made.

4.15 Incorrect computation of capital gains

Incorrect computation of capital gains

Under the Income Tax Act 1961 capital gain arising from the transfer of a house property is exempt from tax subject to certain conditions.

Audit noticed mistakes in allowance of exemption resulting in short levy of tax of **Rs.10.52 lakh** in **two** cases in Andhra Pradesh and Maharashtra. **One** case involving tax effect of more than Rs.5 lakh is illustrated below.

4.15.1 In Maharashtra, Mumbai City XXI charge, the assessment of a HUF **Shri Vinodrai M Kanani** for the assessment year 1999-2000 was completed after scrutiny in January 2002 at a loss of Rs.3.71 lakh. Audit scrutiny revealed that the assessee had converted his personal house property (land) into stock in trade during the assessment year 1994-95. During the assessment year 1999-2000 the assessee had sold 1402 sq.ft of land on which capital gain of Rs.24.95 lakh was shown. The assessee claimed exemption under section 54 of the Act as the amount was reinvested in the construction of flat. Since the house property ceased to exist as residential property after conversion into stock in trade during the assessment year 1994-95 and became a commercial property, the assessee was not entitled for exemption. The incorrect allowance of exemption resulted in under assessment of income of Rs.24.95 lakh involving short levy of tax of **Rs.6.75 lakh** including

interest. The department has accepted the objection and rectified it by reopening the assessment u/s 147 of the Income Tax Act, 1961.

4.16 Mistake in assessment of firm

Mistake in assessment of firm

Under the Income Tax Act 1961, salary paid to the working partners is an allowable deduction. The Board have clarified in March 1996 that the partnership deed should either specify the amount of remuneration payable to each working partner or lay down the manner of quantifying such remuneration.

4.16.1 In Chandigarh UT charge, the assessment of a firm **M/s Indu Creation** for assessment year 2002-2003 was completed after scrutiny in March 2003. Audit scrutiny revealed that salary amounting to Rs.8.12 lakh was paid to the working partners. However neither the amount payable nor the method of quantifying the same was set down in the partnership deed. The amount of remuneration should therefore have been disallowed. Omission to disallow the same resulted in under assessment of income of Rs.8.12 lakh involving tax effect of **Rs.3.78 lakh** including interest.

4.17 Income not assessed

Income escaping assessment

Under the Income Tax Act 1961, income tax shall be charged for every assessment year in respect of total income of the previous year of every person. The term "income" has an inclusive definition under the Act and includes capital gains, unexplained investment etc.

Audit noticed short levy of tax totalling **Rs.1.21 crore** in **eight cases** in Chandigarh, Delhi, Gujarat, Jammu and Kashmir and Maharashtra as the assessing officers had not assessed all income to tax. **Two cases** involving tax effect of more than Rs.25 lakh are illustrated below. **Five cases** involving tax effect of more than Rs.10 lakh are indicated at **Serial number 8 to 12 of Appendix 19.**

4.17.1 In Delhi VIII charge, the assessment of an individual **Shri Jagdeep Singh Sahani** for the assessment year 1997-98 was completed after scrutiny in March 2000 at an income of Rs.12.88 lakh and later revised in March 2002 at the same income. Audit scrutiny revealed that foreign exchange of Rs.68.03 lakh had actually been realized from sundry debtors against the amount of Rs.1.53 lakh shown under this head in the balance sheet of the year. Thus sundry debtors amounting to Rs.66.50 lakh escaped assessment. The amount should have been treated as assessee's income from undisclosed sources. The omission resulted in under assessment of income of Rs.66.50 lakh with consequent short levy of tax of **Rs.44.42 lakh** including interest. The department has accepted the objection.

4.17.2 In Gujarat, Surat II charge, the assessment of an unregistered firm **M/s Shri Sai Corporation** for the assessment year 1998-99 was completed as

best judgement assessment and later revised under section 147 in March 2002 determining the taxable income of Rs.6.11 crore. Audit scrutiny revealed that the assessee had received deposits worth Rs.6.40 crore from 16 parties of which deposits of Rs.37 lakh was treated as undisclosed income by the assessing officer but the amount was not added to the income and brought to tax. Omission resulted in underassessment of income of Rs.37 lakh with short levy of tax of **Rs.26.97 lakh** including interest.

4.18 Incorrect computation, carry forward and set off of losses

Incorrect set off of losses

The method of computation, carry forward and set off of losses is described in **para 3.14** of this report.

Audit noticed short levy of tax totalling **Rs.1.61 crore** in **three cases** in Bihar, Delhi, and West Bengal as the assessing officers did not apply the above provisions correctly. **One case** involving tax effect of more than Rs.80 lakh is given below and another case involving tax effect of more than Rs.50 lakh is given at **Serial number 13 of Appendix 19**.

4.18.1 In Bihar, Patna I charge, the assessment of an Association of Persons, **M/s Bihar State Co-operative Milk Producers Federation Ltd.** for assessment year 2001-02 was completed after scrutiny in March 2004 at a loss of Rs.2.25 crore after setting off carried forward unabsorbed depreciation of Rs.2.93 crore and business loss of Rs.4.96 crore. The loss of Rs.2.25 crore was allowed to be carried forward. Audit scrutiny revealed that actual business loss carried forward to be set off in assessment year 2001-02 was nil and total unabsorbed depreciation carried forward to be set off was for Rs.5.78 crore. After setting off Rs.5.64 crore from current years profit an amount of Rs.14.16 lakh only remained to be carried forward. There was thus an excess carry forward of loss of Rs.2.11 crore with potential tax effect of Rs.82.75 lakh. The department accepted the audit observation and remedial action was taken.

4.19 Incorrect allowance of deduction in respect of income of cooperative society

Incorrect allowance of deduction in respect of income of cooperative society

Under the Income Tax Act 1961 while computing the total income of a cooperative society, a deduction equal to the whole of the profits attributable to business of banking or providing credit facilities to its members is allowable. It has been judicially held¹ that deduction under chapter VI A is to be allowed from the gross total income as computed after allowing set off of unabsorbed losses/depreciation

Audit noticed short levy of tax totalling **Rs.2.61 crore** in **2 cases** in Tamil Nadu and Chhattisgarh as assessing officers did not observe the provisions of the Act.

¹ M/s Kotagiri Industrial Cooperative Tea Factory Ltd. v/s CIT 224 ITR 604 SC

One case involving tax effect of more than Rs.1 crore is indicated below and **another** case involving tax effect of more than Rs.10 lakh but less than Rs.1 crore is indicated at **Serial number 14 of Appendix 19.**

4.19.1 In Tamil Nadu, Company Circle I Trichy charge, the assessment of a Cooperative society **M/s Tiruchirapalli District Cooperative Bank Ltd.** for assessment year 2001-02 was completed after scrutiny in December 2003 at nil income after allowing a deduction of Rs.8.41 crore towards income of cooperative society. The assessing officer had disallowed a sum of Rs.76.05 lakh being expenditure relating to non banking transaction and the same was treated as other income and adjusted against the carry forward losses of Rs.6.42 crore pertaining to the assessment year 2000-01. Audit scrutiny revealed that the assessee company was entitled to carry forward and set off of losses amounting to Rs.6.42 crore relating to assessment year 2000-01. As per the Apex court decision cited the carry forward of losses of Rs.6.42 crore should be set off before allowing the deduction under section 80(P)(2)(a)(i). As the entire loss of Rs.6.42 crore could be set off against the total income of Rs.8.41 crore, the amount of Rs.76.05 lakh had to be treated as income of the assessee and tax levied. The omission to set off losses before allowing the deduction had resulted in incorrect allowance of deduction of Rs.6.42 crore u/s 80P(2)(a)(i) involving a potential tax effect of **Rs.2.16 crore** and income of Rs.76.05 lakh escaping assessment with tax effect of **Rs.27.34 lakh** including interest. The department has accepted the observation.

4.20 Mistakes in computation of export profits

Incorrect allowance of deduction in respect of export profits

The method of allowance of deduction in respect of export profits has been described in **para 3.17** of this report.

Audit noticed mistakes in computation of export profits resulting in short levy of tax totalling **Rs. 20.50 crore** in **25 cases** in Gujarat, Kerala, Maharashtra, Punjab Rajasthan, and Uttar Pradesh. **Eleven** cases involving tax effect of more than Rs.15 crore clubbed together and **one** case involving tax effect of more than Rs.50 lakhs are illustrated below. **Eight cases** each involving tax effect of more than **Rs.15 lakh** are indicated at **Serial number 1 to 8 of Appendix 20.**

4.20.1 In Maharashtra Mumbai City XII, XIII, XIV, XXI and Ahmedabad V charges, assessments of 20 firms and five individuals for the assessment years between 1999-2000 and 2002-2003 were completed after scrutiny between March 2002 and March 2004 after allowing deduction on export profits. Audit scrutiny revealed that the export profits were further increased by 90 percent of export incentives including Duty Entitlement Pass Book (DEPB) credits, Duty Free Replenishment Certificate (DFRC) Premium, Modified Value Added Tax (MODVAT) and Duty Drawback credits. Since DEPB credits, DFRC premium, MODVAT credit and Duty Drawback credits are not eligible for deduction u/s 80 HHC, the same should have been excluded from the export incentives while computing the deduction. The omission to exclude the same has resulted in excess

allowance of deduction involving short levy of tax of **Rs.17.61 crore**. The department has accepted the observation in two cases and taken remedial action.

4.20.2 In Gujarat, Ahmedabad III charge, the assessment of an individual **Shri Ramesh Chandra S Patel** for the assessment year 1996-97 was completed after scrutiny in May 1998 determining an income of Rs.89.45 lakh. Audit scrutiny revealed that the assessee was allowed deduction of Rs.3.48 crore under section 80 HHC and Rs.1.29 crore under section 80IA. It was also noticed that the deduction under section 80IA was allowed without reducing the amount of deduction allowed under section 80 HHC, resulting in excess deduction of Rs.87.11 lakh under section 80IA involving short levy of tax of **Rs.52.57 lakh** including interest. The department accepted the observation and took remedial action.

4.21 Irregular refunds

Irregular refunds

Under the Income Tax Act, 1961, where, as a result of any order passed in assessment, appeal, revision or any other proceedings under the Act, refund of any amount becomes due to the assessee, the assessing officer may grant the refund or adjust or set off the refund against outstanding dues of the assessee for any assessment year.

Audit noticed that the assessing officer had allowed refund in **two cases** in Gujarat and Rajasthan involving tax effect of **Rs.16.73 lakh**. **One case** involving tax effect of more than Rs.10 lakh is given at **Serial number 1 of Appendix 21**.

4.22 Mistakes in levy of interest

Non levy/short levy of interest

The provisions regarding levy of interest for delays in filing return of income, payment of advance tax and default in payment of demand have been described in **Para 3.24** of this report.

Audit noticed short levy of interest for delays in filing return of income, payment of advance tax and default in payment of demand totalling **Rs.7.49 crore** in **34 cases** in Assam, Bihar, Gujarat, Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Rajasthan, Tamil Nadu and Uttar Pradesh. **Two cases** involving tax effect of more than Rs.1 crore are illustrated below. **Seven cases** each involving tax effect of more than Rs.10 lakh but less than Rs. 1 crore are indicated at **Serial number 2 to 8 in Appendix 21**.

4.22.1 In Assam, Guwahati charge, the assessment of **M/s G & B Enterprises and Co.** consisting of three individuals and five association of persons for the assessment year 1992-93 to 1994-95 were completed in March 2002 under best judgment assessment to give appeal effect. Audit scrutiny revealed that assessee were in default for not paying demand of Rs.15.26 crore within the thirty days period after serving notice under section 156 of the Act. These assessee were liable to pay interest of Rs.2.76 crore under section 220(2) of the Act. The

department accepted the audit observation and had levied interest aggregating to **Rs.2.76 crore**.

4.22.2 In Bihar, Patna Central charge, the assessment of an individual **Shri Umesh Dubey** for assessment years 1994-95, 1995-96 and 1996-97 were completed under best judgment assessment in March 2000. Audit scrutiny revealed that the assessee was in default in filing regular returns by 19 months, seven months and two months for the assessment years 1994-95, 1995-96 and 1996-97 respectively. Further notice under section 148 was also issued in September 1997 for the assessment years 1994-95 to 1995-96 and in April 1998 for the assessment year 1996-97 but the assessee did not file any return in compliance to the notice. The interest under section 234A was levied only for the period of notice u/s 148 to the date of assessment. No interest was levied for the delay in filing the regular return. The omission resulted in short levy of interest of **Rs.1.40 crore** for the three assessment years. The department has accepted the objection and taken remedial action.

4.23 Cases of over assessment or overcharge due to negligence on the part of assessing officer

Cases of over assessment/ overcharge

Audit noticed avoidable mistakes attributable to negligence on the part of the assessing officers resulting in over charge of tax totalling **Rs.1.83 crore** in **five cases** in Bihar, Gujarat, Rajasthan, and West Bengal. **One case** involving tax effect of more than Rs.1 crore is illustrated below. **Three cases**, each involving tax effect of more than Rs.10 lakh are indicated in **Appendix 22**.

4.23.1 In Bihar, Patna Central charge, the assessment of a firm **M/s Manas Sales Corporation** for assessment year 1994-95 was completed under best judgement in January 2003 at a total income of Rs.10.02 crore. Audit scrutiny revealed that the assessee was liable to pay interest u/s 234B for the period from April 1994 to January 2003 i.e.106 months but the department incorrectly levied interest for 118 months. The mistake resulted in excess levy of interest amounting to **Rs.1.02 crore** for default in payment of advance tax. The department has accepted the objection and taken remedial action in June 2004.

4.24 Omission to levy penalty

Omission to levy penalty

Under the Income Tax Act, 1961, no person shall pay in cash to any person any deposit or loan, if the amount is of rupees twenty thousand or more. Any person contravening these provisions shall be liable to pay penalty equal to the amount of such loan or deposit accepted or repaid. Central Board of Direct Taxes have also directed that in case where the assessing officers do not initiate penalty proceedings, they should record the reason for not doing so.

4.24.1 In Uttar Pradesh, Kanpur Central charge, the assessment of a firm **M/s Lallu Lal Jugal Kishore Jewellers** for the assessment year 2003-04 was completed after scrutiny in March 2004 at an income of Rs.5.10 lakh. Audit scrutiny revealed that as per the chartered accountants report in Form 3 CD the assessee firm had made repayment of loan or deposit of amounts exceeding twenty thousand rupees totalling Rs.7.19 lakh during the previous year relevant to the assessment year 2003-04 otherwise than by account payee cheque/bank draft. The penalty leviable to the tune of **Rs.7.19 lakh** was not levied.

4.25 Non Deduction of tax at source

Non Deduction of tax at source

Audit scrutiny revealed that assessing officers in **two** cases involving tax effect of **Rs.9.93 lakh** in the charge of Gujarat had not detected non deduction of tax at source by the assessee on payment of interest and on sales promotion gifts exceeding five thousand rupees each.

4.26 Irregular credits without corresponding income being taxed

Irregular credits

Under the Income Tax Act, 1961 any tax deducted at source shall be treated as payment of tax on behalf of the person from whose income the deduction was made and credit shall be given to him for the amount so deducted in respect of the assessment year for which such income is assessable. The related receipt from which the tax was deducted has to be taken into account in computing assessee's total income.

The assessing officer did not apply the provision in **three** cases involving tax effect of **Rs.33.15 lakh** in Gujarat and Uttar Pradesh charges. **One** case involving tax effect of more than Rs.20 lakh is illustrated below.

4.26.1 In Gujarat, Ahmedabad VI charge, the assessment of a firm **M/s Pushpak Corporation** for the assessment year 1996-97 was completed after scrutiny in the month of December 1998, determining taxable income of Rs.12.05 lakh. Audit scrutiny revealed that the assessee was allowed credit for tax of Rs.3.65 lakh deducted at source from contract receipts of Rs.1.58 crore. The assessee had offered Rs.1.18 crore only for tax. Since the assessee had total contract receipts of Rs.1.58 crore during the year and credit for entire tax deducted at source from the amount of Rs.1.58 crore was allowed, the same should have been brought to tax in the relevant assessment year. Omission to do so resulted in underassessment of income of Rs.39.80 lakh with consequent short levy of tax of Rs.22.38 lakh including interest. The department has accepted the audit observation and carried out rectification.