

# Chapter IV

## Income Tax

- ◆ Chapter summary
- ◆ Receipts from Income tax
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- ◆ Non/short levy of interest and penalty
- ◆ Cases of overassessment/overcharge

## Chapter Summary

Income tax constituted 33.9 percent of the total collection from direct taxes in 2005-06. There were 2.94 crore assesseees as on 31 March 2006, which represented an increase of 6.94 percent over the previous year.

**(Para 4.1 & 4.2)**

Audit issued 182 observations with a revenue impact of Rs. 54.17 crore involving various irregularities, omissions and mistakes to the Ministry of Finance. Ministry accepted 65 observations involving revenue impact of Rs. 18.77 crore till preparation of this Report.

**(Para 4.4 & 4.7)**

Assessing officers committed mistakes in:

- ◆ adoption of correct figures, applying correct rate of tax and levy of surcharge in 15 cases involving revenue impact of Rs. 1.56 crore.

**(Para 4.9, 4.10.1 & 4.11.1)**

- ◆ computation of business income and allowance of liability in 23 cases involving revenue impact of Rs. 5.98 crore.

**(Para 4.12.1 & 4.13.5)**

- ◆ computation of depreciation, capital gains, carry forward and set off of losses, and allowing income to escape assessment in 25 cases involving revenue impact of Rs. 3.10 crore.

**(Para 4.14.1, 4.15.1, 4.16.2 & 4.17.2)**

- ◆ allowing deduction in respect of export profit under chapter VIA in 14 cases involving revenue impact of Rs. 3.54 crore.

**(Para 4.18.1)**

- ◆ allowing refund and interest thereon in two cases involving revenue impact of Rs. 64.91 lakh.

**(Para 4.19.1)**

- ◆ levy of interest in 33 cases involving revenue impact of Rs. 10.30 crore.

**(Para 4.20.1)**

- ◆ overcharge of tax in seven cases involving revenue impact of Rs. 3.32 crore.

**(Para 4.21)**

- ◆ levy of penalty in two cases involving revenue impact of Rs. 20.39 lakh.

**(Para 4.22.1)**

- ◆ underassessment of income in summary in 52 cases involving revenue impact of Rs. 21.59 crore.

**(Para 4.23.1)**

## CHAPTER IV: INCOME TAX

- Number of assessees**                    **4.1**    The number of assessees (other than companies) borne on the books of the Income tax Department as on 31 March of 2005 and 2006 were 2.68 crore and 2.94 crore respectively as given in **Table 2.7** of **Chapter II** of this Report.
- Receipts from income tax**                    **4.2**    During 2005-06, income tax receipts were Rs. 55,985 crore compared to Rs. 49,268 crore in 2004-05 constituting of 33.89 percent of the direct taxes collection. **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 **Chapter II** of this Report.
- Results of audit**                            **4.4**    Audit issued 175 draft paragraphs involving undercharge of tax of Rs. 50.85 crore and seven draft paragraphs involving overcharge of tax of Rs. 3.32 crore to the Ministry of Finance between May 2006 and October 2006 for comments.
- 4.5**    Out of these 182 draft paragraphs, issued to Ministry, 167 cases involving undercharge of Rs. 46.95 crore and seven cases involving overcharge of Rs. 3.32 crore are indicated in the succeeding paragraphs. The internal audit of the department had seen 11 cases, but the mistakes were not detected.
- 4.6**    Paragraphs with money value of over Rs. one crore in nine cases have been illustrated. The cases with money value above Rs. 25 lakh but less than Rs. one crore in 26 cases have been shown in the tables and the cases between Rs. five lakh and Rs. 25 lakh in 97 cases given in **Appendix 17**.
- Status of replies received from Ministry of Finance**                    **4.7**    Out of 174 cases included in this chapter, the Ministry of Finance have accepted audit observations in 65 cases involving revenue impact of Rs. 18.77 crore. In 36 cases the Ministry have not accepted the audit observation. In the remaining cases, the Ministry's replies are awaited. Replies of the Ministry have been examined and suitably incorporated wherever necessary.
- Mistakes in adoption of correct figures**                    **4.8**    Assessing officers have to determine and assess the income correctly in 'scrutiny' assessments. Accounts, claims, records and all documents are to be examined in scrutiny assessments. The Board have issued instructions to assessing officers and their supervising officers to ensure that mistakes in assessments do not occur.

**4.9** 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. 62.78 lakh** in **five cases** in Bihar, Madhya Pradesh, Uttar Pradesh and West Bengal. **Four cases** each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are shown in **Appendix 17** at **serial number 1 to 4**. **One case** involving revenue impact of more than Rs. 25 lakh is shown in the **Table 4.1** below.

(Rs. in lakh)

**TABLE 4.1 MISTAKES IN ADOPTION OF CORRECT FIGURES**

Sl. No.	Name of the assessee / CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
1	2	3	4	5	6
1	Shri Mukesh Agrawal <b>Indore-I</b>	1 April 1996 to 13 November 2002	Block	Assessing officer adopted incorrect figures or left additions proposed in the assessment order.	31.60

**4.9.1** Ministry have accepted audit observation in the above case.

Application of incorrect rate of tax

**4.10** 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.

**4.10.1** Audit noticed that the assessing officer did not apply the above provision correctly in **six cases** in Gujarat, Maharashtra, Madhya Pradesh and Punjab which resulted in short levy of tax of **Rs. 67.48 lakh**. **Three cases** each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are shown in **Appendix 17** at **serial number 5 to 7**. **One case** involving revenue impact of more than **Rs. 25 lakh** is shown in **Table 4.2** below:-

(Rs. in lakh)

**TABLE 4.2 MISTAKES IN APPLICATION OF CORRECT RATE OF TAX**

Sl. No.	Name of the assessee / CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
1	2	3	4	5	6
1	M/s Chiron Behring Gmbh & Co <b>DIT (IT)</b> <b>Mumbai</b>	2002-03	Scrutiny	Tax on royalty income was levied at the rate of 10 percent as against the applicable rate of 20 percent under section 115 A	31.86

**4.10.2** Ministry have accepted audit observation in the above case.

**Non levy of surcharge**

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

**4.11.1** Assessing officers did not levy surcharge at the rate prescribed in the Finance Act resulting in short demand of **Rs. 25.55 lakh** in **four cases** in Bihar, Karnataka and Maharashtra. **Three cases** involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh each, are shown in **Appendix 17** at **serial number 8 to 10**.

**Incorrect allowance of liabilities**

**4.12** 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.

**4.12.1** Assessing officers allowed liabilities without actual payments by due date or payments being made before the due date of filing of the return, resulting in short levy of tax of **Rs. 3.04 crore** in **six cases** in Gujarat, Maharashtra and West Bengal. Three cases each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are shown in **Appendix 17** at **serial number 11 to 13**. **One case** involving revenue impact of more than Rs. one crore is illustrated below:

**4.12.2** In Maharashtra, Mumbai City I charge, the assessment of an association of persons, **M/s Ghodganga Sahakari Sakhar Karkhana Ltd.** for the assessment year 1999-00 was completed after scrutiny in March 2001. Audit scrutiny revealed that the assessee was allowed a deduction of Rs. 4.55 crore on account of interest payable on term loan under section 43B of the IT Act. However, the deduction allowed was not in order as the assessee had converted the outstanding interest into term loan and there was no actual payment envisaged. Therefore, the incorrect deduction allowed resulted in underassessment of income of Rs. 4.55 crore involving short levy of tax of Rs. 1.87 crore including interest.

**4.12.3** **One case** involving revenue impact of more than Rs. 25 lakh but less than Rs. one crore is shown in the **Table 4.3** below:

(Rs. in lakh)

**TABLE 4.3 INCORRECT ALLOWANCE OF LIABILITY**

Sl. No.	Name of the assessee/ CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
1	2	3	4	5	6
1.	M/s Bhima Sahkari Sakhar Karkhana Limited <b>Pune City-I</b>	2000-01	Scrutiny	Provident fund contribution of Rs. 1.30 crore was not paid on due dates.	74.05

### 4.13 Mistakes in computation of business income

#### Mistakes in computation of business income

**4.13.1** The Income Tax Act, 1961, provides that 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.

**4.13.2** The Income Tax Act, 1961, provides that where the gross total income of an assessee includes profits and gains derived from an industrial undertaking established after 31<sup>st</sup> March 1991 the assessee is entitled for a deduction of 30 percent of such profits and gains derived from the undertaking. It has been judicially held<sup>1</sup> that there must be direct nexus between profits and gains and export oriented industrial undertaking for application of the word ‘derived from’. The term ‘derived from’ indicates the restricted meaning given by the legislature to cover only the profits and gains directly accruing from the conduct of the business or undertaking.

**4.13.3** In computing the total income of an assessee, there shall be allowed a deduction in respect of donations made by him to certain funds, charitable institutions etc, in accordance with the provisions of section 80 G of the Act.

**4.13.4** “Dividend stripping transaction” in which shares/units are purchased “cum-dividend” and sold at a loss after receiving the dividend has been held to be a tax avoidance device, distinct from business or trading transaction. It has been judicially held<sup>2</sup> that purchase of the shares with arrear dividend was capital purchase and cost of acquisition of securities was required to be reduced by the amount of dividend. It has also been judicially held<sup>3</sup> that the loss arising from

<sup>1</sup>Cambay Electric Supply Industrial Co. Ltd. Vs. CIT Gujarat –I 113- ITR –84 (SC) and Sterling Foods V/s. CIT 237 ITR 579 (SC)

<sup>2</sup>75-ITR-191 CIT vs.-India Discount Company (SC) (1969)

<sup>3</sup> 75-ITR-544 Lupton (Inspector of taxes) v/s F.A. & A. B. Ltd. (In the Court of Appeal) (1969)

“dividend stripping transaction” did not qualify for adjustment against business income. The Income Tax Act was subsequently amended by insertion of section 94(7) with effect from the assessment year 2002-03, which states that the loss arising out of purchase and sale of securities/units shall be ignored to the extent of dividend/income.

**4.13.5** Non compliance with above provisions while computing business income resulting in short levy of tax totalling **Rs. 2.94 crore** was noticed in **17 cases** in Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Tamil Nadu and West Bengal. **11 cases** each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are indicated in **Appendix 17** at **serial number 14 to 24**. **Three cases** each involving revenue impact of Rs. 25 lakh or more but less than Rs. one crore are shown in **Table 4.4** are shown below.

(Rs. in lakh)

<b>TABLE 4.4: MISTAKES IN COMPUTATION OF BUSINESS INCOME</b>					
<b>Sl. No.</b>	<b>Name of the assessee/ CIT charge</b>	<b>Assessment year</b>	<b>Type of assessment</b>	<b>Nature of mistake</b>	<b>Revenue impact</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
1	Shri Ramesh Chandra S. Patel <b>Ahmedabad III</b>	1999-2000 2000-01	Scrutiny	While quantifying deduction under section 80 IA, income of Rs. 5.19 crore from duty drawback being not derived from industrial undertaking, was not reduced	65.18
2	HP State Co-operative bank Ltd <b>Shimla</b>	1999-2000	Scrutiny	Incorrect allowance of inadmissible deduction under section 80 G of the Income Tax Act.	49.56 (including interest)
3	Smt Suchita B. Biyani <b>Mumbai Central II</b>	2000-01	Scrutiny	Loss of Rs. 66.39 lakh sustained by the assessee was irregularly adjusted against short capital gain.	29.25

**4.13.6** Ministry have accepted the audit observation in the case at serial number 2 of the **Table 4.4** above.

**Incorrect allowance of depreciation**

**4.14** The Income Tax Act, 1961, provides that 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** Assessing officer committed mistakes in allowing depreciation resulting in short levy of tax totalling **Rs. 46.30 lakh in eight cases** in Gujarat, Haryana, Maharashtra, Madhya Pradesh, and Uttar Pradesh. **Four cases** each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are indicated in **Appendix 17 at serial number 25 to 28.**

**Incorrect computation of capital gains**

**4.15** The Income Tax Act, 1961, provides that any profit or gain arising from transfer of a capital asset effected in previous year is chargeable to tax under the head 'capital gains' and shall be deemed to be the income of the previous year in which the transfer took place. Tax on such capital gain, is chargeable at the rate prescribed.

**4.15.1** Audit noticed mistakes in computation of capital gain resulting in short levy of tax of **Rs. 30.34 lakh in four cases** in Bihar, Maharashtra and Rajasthan. **Three cases** each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are indicated in **Appendix 17 at serial number 29 to 31.**

**Income escaping assessment**

**4.16** The Income Tax Act, 1961, provides that 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.

**4.16.1** The Income Tax Act, 1961, provides that a provision made in the accounts for an accrued or known liability is an admissible deduction while other provisions do not qualify for deduction.

**4.16.2** Audit noticed short levy of tax totalling **Rs. 1.65 crore in eight cases** in Bihar, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh, as the assessing officers had not assessed all income to tax. **Five cases** each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are indicated in **Appendix 17 at serial number 32 to 36.** **One case** involving revenue impact of more than Rs. one crore is illustrated below.

**4.16.3** In Maharashtra, Mumbai City XIV charge, the assessment of a firm, **M/s Mangal Export** for the assessment year 2002-03 was completed after scrutiny in March 2005. Audit scrutiny revealed that provision of Rs. 2.17 crore had not been disallowed while arriving at the taxable income. The mistake resulted in income of Rs. 2.17 crore escaping assessment involving a short levy of Rs. 1.09 crore including interest u/s 234B.

**4.16.7** Ministry have accepted the audit observation.

**Incorrect carry forward and set off of losses**

**4.17** 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 other head of the relevant year, so much of the 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 business or profession'.

**4.17.1** No loss under the head 'business income' shall be carried forward and set off against business income of future years, unless the return of loss thereof was filed on or before the due date.

**4.17.2** Audit noticed short levy of tax totalling **Rs. 68 lakh** in **five cases** in Gujarat and Maharashtra as the assessing officers did not apply the above provisions correctly. **Three cases** involving revenue impact of more than Rs. five lakh and less than Rs. 25 lakh are indicated in **Appendix 17** at **serial number 37 to 39**. **One case** involving revenue impact of Rs. 25 lakh or more but less than Rs. one crore is shown in **Table 4.5** below.

(Rs. in lakh)

**TABLE 4.5 INCORRECT CARRY FORWARD AND SET OFF OF LOSS**

Sl. No.	Name of the assessee/ CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
1	2	3	4	5	6
1	M/s Wardha Dist. Co-op. Agriculture Rural Multipurpose Development Bank Ltd. Nagpur City II	2002-03	Scrutiny	Irregular carry forward of loss of Rs. 95.42 lakh due to late filing of return	28.18 (P)

(P denotes potential)

**4.17.3** The Ministry have accepted the audit observation in the above case.

**4.18** The method of allowance of deduction in respect of export profits has been described in **para 3.21** of **Chapter III** of this report.

**4.18.1** Audit noticed mistakes in computation of export profits resulting in short levy of tax totalling **Rs. 3.54 crore** in **14 cases** in Gujarat, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh. **Five cases** each involving revenue impact of more than Rs. five lakh and less than Rs. 25 lakh are indicated in **Appendix 17** at **serial number 40 to 44**. **Five cases** involving revenue impact of more than Rs. 25 lakh but less than Rs. one crore are shown in **Table 4.6** below:

Incorrect allowance deduction respect of export profits of in of

(Rs. in lakh)

**TABLE 4.6 INCORRECT ALLOWANCE OF DEDUCTION IN RESPECT OF EXPORT PROFITS**

Sl. No.	Name of the assessee/ CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
1	2	3	4	5	6
1	M/s Kapoor Industries <b>Mumbai, City XII</b>	1991-92*	Scrutiny	Irregular allowance of deduction of Rs. 32.92 lakh towards export profits to which the assessee was not entitled.	88.76 (including interest)
2	M/s Hero Export Ludhiana <b>Central Ludhiana</b>	2000-01	Scrutiny	Expenses of Rs. 3.29 lakh disallowed by assessing officer not considered for calculating deduction of export profit.	50.61
3	M/s Turbo Impex <b>CIT III Ludhiana</b>	2001-02	Scrutiny	Amount of Rs. 95.36 lakh on account of freight insurance, etc beyond custom station deducted from direct and indirect costs resulting in excess deduction of Rs. 76.29 lakh.	42.69
4	M/s Metropolitan Trading Company <b>Mumbai City XVIII</b>	2001-02	Scrutiny	Loss from export business was not considered to arrive at the profit eligible for deduction.	41.58
5	Shri Kanti Lal Ishwar Lal <b>Ahmedabad</b>	2001-02	Scrutiny	Profit was irregularly increased by 90 percent of premium receipt of Rs. 1.04 crore on account of DEBP license for the purpose of deduction towards export profits.	35.37

\* Originally assessed in January 1992 and subsequently revised in January 2003 in pursuance of Tribunal orders.

**Irregular refunds**

**4.19** The Income Tax Act, 1961, provides that 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, assessing officer may grant the refund or adjust or set off the refund against outstanding dues of the assessee for any assessment year.

**4.19.1** Audit noticed that the assessing officer had allowed excess refund in **two cases** in Madhya Pradesh and West Bengal involving revenue impact of **Rs. 64.91 lakh** which are shown in the **Table 4.7** below.

(Rs. in lakh)

**TABLE 4.7 IRREGULAR REFUNDS**

Sl. No	Name of the assessee/ CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
1	2	3	4	5	6
1	M/s S.R. Batliboi <b>Kolkata XIV</b>	1998-99	Scrutiny	Omission to consider the refund already made to the assessee	34.94
2	M/s M.P.Text Book Corporation <b>Bhopal</b>	1999-2000	Scrutiny	Omission to consider the refund already made to the assessee while giving appeal effect.	29.97

**Non/short levy of interest**

**4.20** 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 3.26** of **Chapter III** of this report.

**4.20.1** 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. 10.30 crore** in **33 cases** in Andhra Pradesh, Bihar, Delhi, Gujarat, Himachal Pradesh, Haryana,, Jharkhand, Karnataka, Maharashtra, Punjab, Uttar Pradesh., and West Bengal. **18 cases** each involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are indicated in **Appendix 17** at **serial number 45 to 62**. **Two cases** involving revenue impact of more than Rs. one crore are illustrated below.

**4.20.2** In Maharashtra, Thane City IV charge, the block assessment of an individual, **Shri Valji Kanji Thakkar** for the assessment year 2000-01 was completed in August 2001 and notice u/s 156 for a demand of Rs. 8.39 crore was served on the assessee on the same date. Subsequently the assessment order was rectified u/s 154 in June 2003 adjusting payment of self-assessed tax of Rs. 0.54 lakh and raising demand for balance amount of Rs. 8.38 crore. Notice was served on the assessee on the same date. Audit scrutiny revealed that

interest for non-payment of the demand raised as per the notice served in August 2001 was not levied. The omission resulted in non levy of interest of Rs. 2.20 crore.

**4.20.3** Ministry have accepted the audit observation.

**4.20.4** In West Bengal, Kolkata CIT-XI charge, the assessment of an individual **Shri Sushil Kumar Kayan**, for the assessment year 1986-87 was processed in summary manner in July 1987 determining an income of Rs. 0.80 lakh and was subsequently assessed on best judgment basis in March 2005 determining a total income of Rs. 75.51 lakh. Audit scrutiny revealed that interest leviable under the provisions of the Income Tax Act from August 1987 to March 2005 was Rs. 1.34 crore, instead of Rs. 11.56 lakh levied by the department for 212 months. The mistake resulted in short levy of interest of Rs. 1.22 crore.

**4.20.5** Ministry have accepted the audit observation.

**4.20.6** Seven cases each involving revenue impact of more than Rs. 25 lakh each but less than Rs. one crore are shown in the **Table 4.8** below:

(Rs.in lakh)

**TABLE 4.8 NON/SHORT LEVY OF INTEREST**

Sl. No.	Name of the assessee/ CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
1	2	3	4	5	6
1	Shri Neeraj Gupta <b>Delhi Central II</b>	1 Aril 1990 to 18 January 2001	Block	Non levy of interest for default in payment of demand within the specified period.	97.46
2	Shri Abdul Kareem Ladsab Telgi <b>Bangalore Central</b>	1997-98 2001-02	Scrutiny	Short levy of interest of Rs. 98.73 lakh, short levy of tax of Rs. 10.53 lakh and incorrect levy of surcharge of Rs. 16 lakh not leviable.	93.26
3	M/s D.K. Enterprises <b>Mumbai Central II</b>	1998-99	Scrutiny	Short levy of interest due to default in payment of advance tax and demand in arrear	86.95
4	H.P. State Cooperative Bank Ltd. <b>Shimla</b>	1997-98	Scrutiny	Short levy of interest for default in payment of advance tax.	80.00
5	Shri P.L.Narasimhan <b>Kolkata Central I</b>	1986-87 to 27 August 1996	Block	Omission to levy interest for default in payment of demand in arrear within the specified period.	71.95

**TABLE 4.8 NON/SHORT LEVY OF INTEREST**

Sl. No.	Name of the assessee/ CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
6	Shri Nanji K. Thakur Thane City IV	2000-01	Scrutiny	Omission to levy interest for default in payment of demand in arrear within the specified period.	54.33
7	Sri Sushil Kumar Sinha Patna Central	1994-95	Scrutiny	Non levy of interest u/s 234A for delay in furnishing of return.	32.03

**4.20.7** Ministry have accepted audit observations in the cases at serial numbers 1, 2, 3 and 6 of **Table 4.8** above.

**Cases of over assessment/  
overcharge**

**4.21** Audit noticed avoidable mistakes attributable to negligence on the part of the assessing officers resulting in overcharge of tax totalling **Rs. 3.32 crore** in **seven cases** in Bihar, Maharashtra, Uttar Pradesh and West Bengal. **Four cases**, each involving revenue impact of more than Rs. five lakh and less than Rs. 25 lakh are indicated in **Appendix 17** at **serial number 63 to 66**. **Two cases** each involving revenue impact of more than Rs. one crore are illustrated below.

**4.21.1** In Bihar, Patna charge, the assessments of an individual, **Dr Krishna Mohan Prasad**, for the assessment year 1994-95 and 1996-97 were completed on best judgment basis in March 2002. Audit scrutiny revealed that the assessing officer levied interest of Rs. 1.25 crore as against Rs. 67 lakh due from the assessee towards interest for default in filing of the return and payment of advance tax for the assessment year 1994-95. Similarly, for assessment year 1996-97, interest for default in payment of advance tax was levied at Rs. 2.41 crore as against Rs. 1.31 crore. Excess levy of interest for both the assessment years work out to Rs. 1.68 crore.

**4.21.2** Ministry have accepted the audit observation.

**4.21.3** In Maharashtra, Mumbai Central Range III charge, the block assessment of a firm, **M/s F. A. Master and Associates** for block period 1 April 1995 to 18 October 2001 was completed in October 2003 computing total income at Rs. 11.53 crore. Audit scrutiny revealed that the department levied tax of Rs. 8.13 crore as against the correct tax of Rs. 7.06 crore thus resulting in excess levy of tax of Rs. 1.07 crore.

**4.21.4** Ministry have accepted the audit observation.

**Omission to levy penalty**

**4.22** The Income Tax Act, 1961, provides that the assessing officer or the Commissioner (Appeals), in the course of any proceedings under Chapter XIV B of the Act may direct that a person shall pay by way of penalty a sum which shall not be less than the amount of the tax leviable but which shall not exceed three times of the amount of tax so leviable.

**4.22.1** Audit noticed short levy of penalty **Rs. 20.39 lakh** in **two cases** of Andhra Pradesh and Jharkhand. **One case** involving revenue impact of more than Rs. five lakh and less than Rs. 25 lakh is indicated in **Appendix 17** at **serial number 67**.

**Mistake in summary assessments**

**4.23** Though consequent to the amendment of I.T.Act 1961 with effect from 1 June 1999, no prima facie adjustment can be made by assessing officers in an assessment completed in summary manner, un-entitled benefits availed of by the assessee in summary assessments can be withdrawn and mistake can be rectified under the powers separately available to the assessing officers under the Income Tax Act.

**4.23.1** During test check of income tax assessments of other than companies, audit detected mistakes in **52 cases** of summary assessments involving revenue impact of **Rs. 21.59 crore** in Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Orissa, Punjab, Tamil Nadu, Uttar Pradesh, Uttaranchal, and West Bengal. **30 cases** involving revenue impact of more than Rs. five lakh but less than Rs. 25 lakh are indicated in **Appendix 17** at **serial numbers 68 to 97**. **Three cases** each involving revenue impact of more than Rs. one crore are illustrated below.

**4.23.2** In Orissa, Bhubaneswar charge, the assessment of a co-operative society, **Tribal Development Co-operative Corporation of Orissa Ltd** for the assessment year 2001-02 was processed in summary manner in November 2002. Audit scrutiny revealed that the brought forward loss as per auditor's report upto assessment year 2000-01 and 2001-02 was Rs. 28.87 crore and Rs. 5.23 crore respectively. After allowing deduction of Rs. 4.17 crore under section 43B, the brought forward loss for assessment year 2000-01 works out to Rs. 24.70 crore. However the assessee claimed and was allowed brought forward loss of Rs. 52.68 crore instead of Rs. 24.70 crore which resulted in excess carry forward of loss of Rs. 27.98 crore involving potential revenue impact of Rs. 11.07 crore.

**4.23.3** In Tamil Nadu, Coimbatore II charge, the assessments of an Association of Persons **M/s Erode Market Committee** for the assessment years 2003-04 and 2004-05 were processed in a summary manner in April 2004 and December 2004 determining a loss of Rs. 1.78 crore and Rs. 2.95 crore after allowing exemption of Rs. 3.57 crore and Rs. 3.38 crore towards license fee and marketing fee respectively. Audit scrutiny revealed that the exemption claimed and allowed was not in order as it was applicable only to local authorities. The

omission to do so resulted in underassessment of income to the extent of exemptions incorrectly allowed involving revenue impact of Rs. 2.33 crore (including interest and potential tax of Rs. 1.53 crore).

**4.23.4** In Orissa, Cuttack charge, the assessment of a co-operative society, **The Badamba Co-operative Society Industries Ltd** for the assessment year 2002-03 was processed in summary manner in March 2003. Audit scrutiny revealed that the assessee did not pay interest on term loan of Rs. 2.01 crore to I.F.C.I. and Rs. 1.90 crore to S.B.I. till the date of filing of returns but the same was claimed and allowed as expenditure. The mistake resulted in excess assessment of loss by Rs. 3.91 crore involving potential revenue impact of Rs. 1.40 crore.

**4.23.5** Six cases each involving revenue impact of more than Rs. 25 lakh each but less than Rs. one crore are shown in **Table 4.9** below:

(Rs. in lakh)

<b>TABLE 4.9 MISTAKES IN SUMMARY ASSESSMENTS</b>					
<b>Sl. No.</b>	<b>Name of the assessee/ CIT charge</b>	<b>Assessment year</b>	<b>Type of assessment</b>	<b>Nature of mistake</b>	<b>Revenue impact</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
1	M/s Wadia Institute of Himalayan Geology Society <b>Dehradun</b>	2003-04	Summary	Incorrect exemption of Rs. 1.80 crore u/s 10(21) for non fulfilment of condition specified under the Act.	66.07
2	M/s Gem Granites <b>Chennai II</b>	2002-03	Summary	Ninety percent of interest income of Rs. 2.82 crore was not reduced from the business profit for the purpose of allowing deduction towards export profits.	58.95
3	M/s Balasore Gramya Bank <b>Cuttack</b>	2004-05	Summary	Against the admissible provision of bad and doubtful debts of Rs. 4.73 crore the assessing officer allowed provision of Rs. 6.48 crore.	53.87(P)
4	Smt. J. Nirmala Devi <b>Coimbatore</b>	2001-02	Summary	The deduction of Rs. 1.25 crore allowed towards newly established industrial undertaking was not reduced from the profit of business while computing deduction u/s 80 HHC.	38.95

**TABLE 4.9 MISTAKES IN SUMMARY ASSESSMENTS**

Sl. No.	Name of the assessee/ CIT charge	Assessment year	Type of assessment	Nature of mistake	Revenue impact
5	M/s Kalahandi Anchalika Gramya Bank <b>Sambalpur</b>	2004-05	Summary	Against the admissible provision of bad and doubtful debts of Rs. 2.73 lakh the assessing officer allowed provision of Rs. 1.26 crore.	37.99(P*)
6	Chittoor District Cooperative Milk Producers Union Limited <b>Tirupati</b>	2000-01 2001-02	Summary	Amounts of Employees Provident Fund (Rs. 67.82 lakh) and ESI (Rs. 47.31 lakh) were not paid/ deposited within the specified due dates.	35.17(P)

(\*P denotes potential tax.)