

# Chapter III

## Corporation Tax

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## Chapter Summary

Corporation tax constituted 62.71 percent of the total collection from direct taxes in 2006-07. There were 3,99,627 corporate assessees as on 31 March 2007, which represented a slight increase of 1.80 percent over the previous year.

**(Paragraphs 3.1 and 3.2)**

Audit issued 686 observations to the Ministry of Finance involving revenue impact of Rs. 1669.38 crore highlighting various irregularities, omissions and mistakes, for comments. The Ministry had accepted 204 observations involving revenue impact of Rs. 712.44 crore till 7 December 2007.

**(Paragraphs 3.4 and 3.6)**

Assessing officers committed mistakes in:

- ◆ computation, carry forward and set off of losses in 59 cases involving revenue impact of Rs. 414.22 crore.

**(Paragraph 3.7)**

- ◆ allowance of deduction towards depreciation, actual payment and capital/non business expenditure in 113 cases involving revenue impact of Rs. 398.62 crore.

**(Paragraphs 3.8 to 3.10)**

- ◆ implementation of appellate orders and non/short levy of interest in 61 cases involving revenue impact of Rs. 199.02 crore.

**(Paragraphs 3.11 and 3.12)**

- ◆ adoption of correct figures, allowance of provisions and computation of income under special provisions in 102 cases involving revenue impact of Rs. 174.24 crore.

**(Paragraphs 3.13 to 3.15)**

- ◆ allowance of prior period expenses / deductions not admissible, exemptions and relief in 49 cases involving revenue impact of Rs. 71.63 crore.

**(Paragraphs 3.16 and 3.18)**

- ◆ deductions under chapter VIA and allowance of refund in 51 cases involving revenue impact of Rs. 24.20 crore.

**(Paragraphs 3.19 and 3.20)**

Assessees had availed unentitled benefit in summary assessments in 145 cases involving revenue impact of Rs. 149.30 crore.

**(Paragraph 3.25)**

## CHAPTER III: CORPORATION TAX

<p><b>Number of companies vis-à-vis company assesseees</b></p>	<p><b>3.1</b> Records of the Ministry of Finance, the Department of Company Affairs, indicated that there were 7,43,678 companies limited by shares at work as on 31 March 2007, which included 6,53,024 private limited companies and 90,654 public limited companies. Besides, there were 3846 companies with liability limited by guarantee and associations not for profit and 520 companies with unlimited liability. However, as per the records of the Income tax Department, the number of company assesseees as on 31 March 2007 was 3,99,627 as compared to 3,92,573 as on 31 March 2006.</p>
<p><b>Receipts from corporate tax</b></p>	<p><b>3.2</b> During 2006-07, corporation tax receipts were Rs. 1,44,318 crore as against Rs. 1,01,277 in 2005-06, constituting 62.71 percent of the total direct taxes collection aggregating Rs. 2,30,141 crore. <b>Table no. 2.4</b> of <b>chapter II</b> of this report contains the details.</p>
<p><b>Status of assessments</b></p>	<p><b>3.3</b> <b>Table no. 2.11</b> below paragraph 2.9 of this report contains particulars of assessments due for disposal, assessments completed and assessments pending.</p>
<p><b>Results of audit</b></p>	<p><b>3.4</b> Audit issued <b>665</b> draft paragraphs involving undercharge of tax of <b>Rs. 1573.64 crore</b> and <b>21</b> draft paragraphs involving overcharge of tax of <b>Rs. 95.74 crore</b> to the Ministry of Finance between May 2006 and October 2006 for eliciting their comments. The internal audit of the department had seen only <b>48</b> of these cases and had not noticed the mistakes pointed out in this report.</p> <p><b>3.5</b> <b>Six hundred and twenty four</b> draft paragraphs involving undercharge of <b>Rs. 1480.60 crore</b> and <b>21 cases</b> involving overcharge of <b>Rs. 95.74 crore</b> are indicated in the succeeding paragraphs. Each paragraph indicates a particular category of mistake and starts with a suitable preamble followed by combined/consolidated revenue impact of all observations of similar nature. Cases with money value of Rs. 10 crore or more have been illustrated in the body of the text while those of Rs. one crore or more but less than Rs. 10 crore each are given in the table under the related category.</p>
<p><b>Status of replies received from the Ministry of Finance</b></p>	<p><b>3.6</b> The Ministry of Finance have accepted the audit observations in <b>204 cases</b> involving aggregate revenue impact of <b>Rs. 712.44 crore</b>. In <b>103 cases</b>, the Ministry have not accepted the audit observation. In the remaining cases, replies have not been received. Replies of the Ministry have been examined and suitably incorporated in the report.</p>
<p><b>Incorrect computation/ carry forward/ set off of losses</b></p>	<p><b>3.7</b> Where the net result of computation under the head ‘profits and gains of business or profession’ is a loss to the assessee and such loss 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</p>

year/years to be set off against the profits and gains of business or profession of those years. No loss shall be carried forward for more than eight assessment years immediately succeeding the assessment year for which the loss was first determined.

**3.7.1** Where there has been an amalgamation of a company owning an industrial undertaking or a ship or a hotel, with another company, then the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless the amalgamated company holds continuously, for a minimum period of five years from the date of amalgamation, at least three-fourths of the book value of the fixed assets of the amalgamating company acquired in a scheme of amalgamation, and continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation. In case of non fulfilment of the above conditions, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with.

**3.7.2** Assessing officers did not apply the above provisions correctly, which resulted in short levy of tax aggregating **Rs. 414.22 crore in 59 cases** in Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Orissa, Rajasthan, Tamil Nadu and West Bengal. **Four cases** are illustrated below:

**3.7.3** In Delhi, CIT IV charge, the assessment of a company, **M/s Engineering Projects India Ltd.**, for the assessment year 2002-03 was completed after scrutiny in January 2005 determining a loss of Rs. 378.90 crore. Audit examination revealed that while making the assessment, the loss was taken as Rs. 378.90 crore against the returned income of Rs. 11.22 crore. After adjusting the brought forward losses/unabsorbed depreciation to the extent of income, the income of the assessee for the relevant previous year should have been assessed as 'nil'. Omission to do so resulted in overassessment of loss by Rs. 378.90 crore involving potential revenue impact of Rs. 135.27 crore.

**3.7.4** The Ministry has accepted (December 2007) the above observation.

**3.7.5** In Maharashtra, CIT I, Mumbai charge, the assessment of a company, **M/s Alstom Project India Ltd.**, for the assessment year 2001-02 was completed after scrutiny in December 2003 determining an income of Rs. 12.70 crore under special provisions, as the income under normal provisions was 'nil' after setting off the brought forward business loss of the amalgamating company to the extent of the available business income of Rs. 20.36 crore, and allowing carry forward of balance loss of Rs. 318.31 crore. Audit examination revealed that 75 percent of the book value of fixed assets of the amalgamating company amounting to Rs. 32.01 crore was not held by the amalgamated company as on 31 March 2001, the effective date of amalgamation as per records of the assessee company. As such the set off and carry forward of business loss claimed by the assessee and

allowed by department was not in order. The omission to disallow it resulted in underassessment of income of Rs. 338.67 crore involving potential and positive revenue impact of Rs. 118.53 crore and Rs. 6.98 crore respectively.

**3.7.6** In Andhra Pradesh, CIT III, Hyderabad charge, assessment of a company **M/s Sanghi Spinners India Limited**, for the assessment year 2003-04 was completed after scrutiny in February 2006 allowing carry forward of loss of Rs. 252.65 crore to be set off against the income of the subsequent assessment years. Audit examination revealed that for the assessment year 2003-04, the assessee company actually had a net profit of Rs. 8.58 crore which had been set off against the accumulated losses of Rs. 261.23 crore relating to the earlier years, thus determining 'nil' income for assessment year 2003-04. Thus, the loss of Rs. 252.65 crore was actually the balance of accumulated losses of earlier years and not loss incurred for the assessment year 2003-04. This mistake resulted in incorrect determination of loss of Rs. 252.65 crore involving a potential revenue impact of Rs. 92.85 crore.

**3.7.7** In Maharashtra, CIT IV, Nagpur charge, the assessment of a company, **M/s Bilt Graphics Papers Ltd.**, for the assessment year 2003-04 was completed after scrutiny in October 2005 determining an income of Rs. 7.52 crore. Audit examination revealed that the assessee had brought forward business loss of Rs. 168.64 crore pertaining to the assessment years of 1998-99 to 2002-03 which was further allowed to be carried forward though the assessee had positive income of Rs. 7.52 crore. Similarly, the assessee had also claimed and was allowed unabsorbed depreciation of Rs. 4.45 crore pertaining to the assessment year 2003-04, although positive income of Rs. 7.52 crore was available after allowing the admissible depreciation of the current year. Further, as against the loss of Rs. 31.95 crore determined after scrutiny in March 2005 for the assessment year 2002-03, total loss of Rs. 69.03 crore was irregularly allowed to be carried forward for the assessment year 2003-04. The omissions resulted in excess allowance of carry forward of business loss and unabsorbed depreciation aggregating Rs. 49.05 crore involving potential revenue impact of Rs. 18.02 crore.

**3.7.8** The Ministry has accepted (December 2007) the above observation.

**3.7.9** 12 cases are shown in **Table no. 3.1** below:

(Rs. in crore)

**Table no. 3.1: Incorrect computation of carry forward/set off of losses**

Sl no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Sussen Asia Ltd. CIT III, Pune	2003-04	Scrutiny March 2006	The assessee had claimed and was allowed carry forward of business loss and unabsorbed depreciation aggregating Rs. 15.98 crore though no such business loss and unabsorbed depreciation was available.	5.87 (P)

Sl no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
2	M/s Binani Cement Ltd. <b>CIT Central I, Kolkata</b>	2002-03	Scrutiny March 2005	As against actual assessed loss of Rs. 26.44 crore, carry forward of loss of Rs. 39.12 crore was allowed.	4.53 (P)
3	M/s EID Parry (I) Ltd. <b>CIT I, Chennai</b>	2002-03	Scrutiny March 2005	As against available loss of Rs. 25.45 crore, carry forward of loss of Rs. 32.84 crore was allowed.	3.71
4	M/s Herbal Life International Pvt Ltd. <b>CIT IV, Delhi</b>	2003-04	Scrutiny March 2006	As against carry forward loss of Rs. 73.80 lakh, loss of Rs. 7.12 crore was set off.	3.22
5	M/s Reliance Telecom Ltd. <b>CIT III, Mumbai</b>	2003-04	Scrutiny January 2006	As against carry forward loss of Rs. 39.08 crore, Rs. 47.17 crore was set off.	2.97 (P)
6	M/s Zensar Technologies <b>CIT II, Mumbai</b>	2001-02	Scrutiny January 2004	Business loss of Rs. four crore was incorrectly set off against income from other sources.	2.43
7	M/s Nav Auro Investment Pvt. Ltd. <b>CIT V, Delhi</b>	2003-04	Scrutiny December 2005	The assessing officer had incorrectly assessed the loss as Rs. 5.36 crore against the actual loss of Rs. 20.69 lakh.	1.89 (P)
8	M/s ICICI Web Trade Ltd. <b>CIT IV, Mumbai</b>	2003-04	Scrutiny October 2005	Brought forward loss of Rs. 4.03 crore, which had already been set off in the scrutiny assessment for earlier assessment year 2002-03 completed in January 2005 was again set off.	1.52
9.	M/s The Travancore Cochin Chemicals Ltd. <b>CIT, Cochin</b>	2002-03	Scrutiny January 2005	Carry forward of loss of Rs. 7.56 crore as per return filed in October 2002 was not revised to Rs. 3.63 crore as per the revised return filed in October 2003.	1.40 (P)
10	M/s Fidelity Textiles Ltd. <b>CIT I, Chennai</b>	2002-03	Scrutiny February 2005	As against available carry forward of loss of Rs. 0.66 crore, set off of Rs. 4.18 crore was allowed.	1.30
11	M/s Zora Pharma Ltd. <b>CIT IV, Ahmedabad</b>	2002-03	Scrutiny March 2005	Incorrect adoption of loss of Rs. 6.92 crore as against the correct loss of Rs. 3.51 crore.	1.22 (P)
12	M/s Pinnacle Trade & Investment Ltd. <b>CIT IV, Kolkata</b>	2001-02	Scrutiny February 2004	Although the value of the quoted shares was adopted at lower rates, this was further reduced by Rs. 2.03 crore through adjustment against the diminution in the value of shares.	1.16

*P: denotes potential tax*

**3.7.10** The Ministry has accepted (November and December 2007) the observations in the cases at **Sl. no. 1, 3, 9, 10 and 12** of **Table no. 3.1** above.

**Irregularities in allowance of depreciation**

**3.8** In computing the business income of an assessee, a deduction on account of depreciation on the cost or written down value of building, plant and machinery, furniture, fixtures etc., is admissible at the rates prescribed in the

Income Tax Rules, 1962 provided the assets are owned by the assessee and used for the purpose of the business. Written down value in respect of a block of assets is required to be reduced by the moneys payable on any asset which is sold or discarded or demolished or destroyed during the relevant previous year together with the amount of scrap value, if any. In terms of the Board's circular no. 740 dated 17 April 1996, a branch of a foreign company in India is to be treated as a separate entity for the purpose of taxation and depreciation. It has been judicially held<sup>1</sup> that charging of depreciation is mandatory before the deductions are calculated.

**3.8.1** Where in any assessment year full effect cannot be given to any depreciation allowance owing to there being no profits or gains or less profits or gains under the head 'profits and gains of business or profession', such unabsorbed depreciation shall be carried forward in subsequent year(s) and shall be set off against profits and gains from any business or profession for that year(s).

**3.8.2** Assessing officers did not apply the above provisions correctly, which resulted in short levy of tax aggregating **Rs. 158.30 crore in 54 cases** in Andhra Pradesh, Assam, Delhi, Gujarat, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttaranchal, Uttar Pradesh and West Bengal. **Two cases** are illustrated below:

**3.8.3** In Maharashtra, CIT I, Mumbai charge, the assessment of a company **M/s Associated Cement Co.**, for the assessment year 2001-02, completed after scrutiny in March 2004 determining taxable income of Rs. 43.47 crore under the special provisions of the Act, was subsequently rectified in April 2004 allowing carry forward of unabsorbed depreciation of Rs. 340.55 crore and Rs. 174.31 crore relating to the assessment years of 2000-01 and 2001-02 respectively. Audit examination revealed that in the rectification order for the assessment year 2000-01 passed in February 2003, unabsorbed depreciation of Rs. 45.82 crore pertaining to assessment years 1998-99 and 1999-2000 only was allowed to be carried forward and no unabsorbed loss/depreciation pertaining to assessment year 2000-01 was carried forward. Thus, carry forward of unabsorbed depreciation of Rs. 340.55 crore relating to assessment years 1998-99, 1999-00 and 2000-01 in April 2004 as against the available amount of Rs. 45.82 crore was not in order. The mistake resulted in excess carry forward of unabsorbed depreciation of Rs. 294.73 crore involving potential revenue impact of Rs. 103.16 crore.

**3.8.4** The Ministry has accepted (December 2007) the above observation.

**3.8.5** In Maharashtra, DIT (IT), Mumbai charge, the assessment of a company, **M/s Ballast Ham Dredging**, for the assessment year 2001-02 was completed after scrutiny in March 2004 determining an income of Rs. 30.79 crore after allowing depreciation of Rs. 22.76 crore, which also included depreciation of Rs. 22.16

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<sup>1</sup> CIT vs Mahindra Mills (243 ITR 56) (SC)

crore allowed on a vessel viz. 'HAM 316'. Audit examination revealed that the vessel 'HAM 316' was temporarily imported in India by the assessee company during January 2000 and moved out of India during December 2000. The assessee company was a permanent establishment of a foreign company covered by domestic laws of India. The assessee did not pay any consideration to its parent company to get ownership of the vessel in India, nor realised any amount when the vessel was re-exported. The assessee, therefore, had no ownership over the vessel. Besides, when the vessel was brought into India from the parent office in January 2000, the transaction was treated as a purchase, but when the vessel was transferred back to the parent office in December 2000, the transaction was not treated as a sale. Instead, the written down value of the vessel was shown as nil on 31 March 2001. For both the reasons discussed above, the assessee was not eligible to claim depreciation on the vessel. Irregular allowance of depreciation of Rs. 22.16 crore resulted in underassessment of income to that extent involving revenue impact of Rs. 15.32 crore (including interest).

**3.8.6** Six cases are shown in **Table no. 3.2** below:

(Rs. in crore)

Sl no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Ajmer Vidyut Vitaran Nigam Ltd. <b>CIT, Ajmer</b>	2003-04	Scrutiny March 2006	The assessee had claimed and was allowed depreciation of Rs. 23.04 crore on fixed assets against the correct amount of Rs. 23 lakh.	8.38 (P)
2	M/s Dakshin Haryana Bijli Vitran Nigam Ltd. <b>CIT, Hisar</b>	2003-04	Scrutiny March 2006	The assessee had claimed and was allowed depreciation of Rs. 13.65 crore on plant and machinery (contributed by consumers free of cost) on which no depreciation was admissible.	5.02
3	M/s Maharashtra State Electricity Board <b>CIT I, Mumbai</b>	2002-03	Scrutiny March 2005	The assessee had claimed and was allowed depreciation of Rs. 11.11 crore on assets which were not put to use.	3.96 (P)
4	M/s Genecol Industries Ltd. <b>CIT III, Mumbai</b>	2003-04	Best judgment assessment March 2006	The assessee was allowed depreciation of Rs. 10.21 crore as against the allowable amount of Rs. 3.12 crore worked out in the statement of depreciation enclosed with the return.	2.88
5	M/s NHPC Ltd. <b>CIT, Faridabad</b>	2001-02	Scrutiny March 2004	The assessing officer did not add back depreciation of Rs. 7.10 crore debited in the accounts under prior period adjustments.	2.81



Sl no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
6	M/s Ispat Profiles India Ltd. <b>CIT I, Kolkata</b>	2002-03	Scrutiny January 2005	Depreciation was irregularly claimed and allowed on plant and machinery which was inoperative, as the company's plant was locked since June 2000.	1.61

*P: denotes potential tax*

**3.8.7** The Ministry has accepted (December 2007) the observations in the cases at **Sl. no. 3 and 5 of Table no. 3.2** above.

**Irregular allowance of deduction not supported by actual payment**

**3.9** Deductions specified under section 43B of the Act are allowable only on actual payment for certain types of expenditure. From 1 April 1988, tax, duty or any sum payable as interest on any loan or borrowing from any public financial institution or a state financial corporation or a state industrial investment corporation actually paid by the assessee on or before the due date of filing the return of income are allowed as deduction.

**3.9.1** As per explanations 3C and 3D inserted below section 43B vide the Finance Act, 2006 with retrospective effect from 1 April 1989 and 1 April 1997 respectively, any interest which has been converted into a loan or borrowing or advance but has not been actually paid, shall not be allowed as deduction in the computation of income. It has been judicially held<sup>1</sup> that conversion of interest into loan does not amount to payment of interest for the purpose of section 43B. CBDT has also clarified<sup>2</sup> that conversion of interest into loan or borrowing or advance does not amount to actual payment.

**3.9.2** Irregular allowance of deductions towards actual payments resulted in short levy of tax aggregating **Rs. 126.07 crore in 25 cases** in Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Maharashtra, Rajasthan, Tamil Nadu and West Bengal. **Two cases** are illustrated below:

**3.9.3** In Maharashtra, CIT III, Mumbai charge, the assessment of a company, **M/s Mangalore Refinery and Petrochemicals Ltd.**, for the assessment year 2003-04, was completed after scrutiny in November 2005 determining a loss of Rs. 1251.75 crore after allowing deduction of Rs. 204.23 crore under section 43B. Audit examination revealed that the assessee had claimed and was allowed deductions of Rs. 97.36 crore and Rs. 75.99 crore against 'provision for custom duty concession availed pending future export obligations' treating it as paid against future export obligation. In this case the assessee had availed of custom duty concession against future export obligations and was required to make payment of custom duty only if the future obligations were not fulfilled. Since the

<sup>1</sup>M/s Kalpana Lamps and Components Ltd. vs CIT (255 ITR 491), (Madras High Court) 2001

<sup>2</sup> Circular no. 07/2006 dated 17 July 2006

assessee did not make actual payments towards custom duty, allowance of a deduction against provision created was not in order and the deduction claimed was required to be disallowed. The omission to disallow the deductions aggregating Rs. 173.35 crore resulted in underassessment of income to that extent involving a revenue impact of Rs. 63.71 crore.

**3.9.4** Audit examination further revealed that the assessee was allowed a deduction of Rs. 204.23 crore on account of interest claimed as paid. The total sum of interest claimed as paid included Rs. 95.17 crore being interest payable on term loans from financial institutions upto March 2002, which were converted into loans in the previous year 2002-03, and hence deemed to be paid. As the conversion into loan did not amount to repayment as per the provisions of Section 43B, the allowance of deduction was irregular. The omission resulted in underassessment of income of Rs. 95.17 crore involving potential revenue impact of Rs. 34.98 crore.

**3.9.5** Eight cases are shown in **Table no. 3.3** below:

(Rs. in crore)

<b>Table no. 3.3: Irregular allowance of deduction not supported by actual payment</b>					
Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Tamil Nadu Minerals Ltd. <b>CIT I, Chennai</b>	2002-03	Scrutiny February 2006	Deduction of Rs. 11.97 crore (including prior period expenses of Rs. 1.57 crore) was incorrectly allowed towards nomination charges which were not actually paid to the Government of Tamil Nadu.	5.99
2	M/s Shree Digvijay Cement Co. Ltd. <b>CIT, Jamnagar</b>	2002-03	Scrutiny March 2005	The assessee had incorrectly claimed and was allowed deductions of Rs. 9.62 crore on account of bonus, interest on loans etc., which did not relate to the relevant previous year. Besides, interest on sales tax/royalty/electricity duty was also irregularly allowed as deduction.	3.97
3	M/s Karnataka State Financial Corporation <b>CIT I, Bangalore</b>	1996-97  2000-01	Scrutiny February 1999  Revision after appellate order in April 2002  Scrutiny February 2003	As against the aggregate actual liability of Rs. 5.83 crore towards interest tax payments Rs. 11.11 crore were allowed in these assessment years.	3.04 <sup>^</sup>

<sup>^</sup> includes potential revenue impact of Rs. 1.08 crore pertaining to assessment year 2000-01

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
4	M/s Instrumentation Ltd. <b>CIT, Kota</b>	2003-04	Scrutiny October 2005	Deduction of Rs. 7.51 crore was incorrectly allowed towards company and employee's provident fund contribution which pertained to assessment year 2002-03.	2.76 (P)
5	M/s M/s Tidel Park Ltd. <b>CIT I, Chennai</b>	2001-02 2002-03	Scrutiny March 2004  Summary July 2004	The assessee had incorrectly claimed and was allowed deductions of Rs. 2.11 crore and R. 3.53 crore towards interest to M/s TIDCO which was not actually paid.	2.09 (P)
6	M/s Roofit Industries Ltd. <b>CIT Central I, Mumbai</b>	2002-03	Scrutiny March 2005	Deduction of Rs. 5.56 crore was incorrectly allowed towards interest on term loan to banks and financial institutions which were not paid.	1.99
7	M/s Hyundai Motor India Ltd. <b>CIT I, Chennai</b>	2001-02	Scrutiny March 2004	The assessee had incorrectly claimed and was allowed deduction of Rs. 4.63 crore towards excise duty which was not remitted to Government account before the filing of return.	1.83 (P)
8	M/s Uniworth Ltd. <b>CIT IV, Kolkata</b>	2002-03	Scrutiny March 2005	Excess liability of Rs. 3.88 crore against foreign exchange difference between sundry debtors and sundry creditors was not backed by actual remittance.	1.38 (P)

*P: denotes potential tax*

**3.9.6** The Ministry has accepted (December 2007) the observations in the cases at **Sl. no. 2 and 5** of **Table no. 3.3** above.

**Incorrect allowance of capital/non business expenditure**

**3.10** Any expenditure, not being in the nature of capital expenditure laid out wholly or exclusively for the purpose of business, is allowable as deduction in computing the income chargeable under the head 'Profits and gains of business or profession'. It has been judicially held that

- (i) if the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure<sup>1</sup>;
- (ii) loss on account of cost incurred on abandoning of technology before being put to use is not an allowable deduction as it is in the nature of capital expenditure<sup>2</sup>; and

<sup>1</sup> M/s Assam Bengal Cement Co. vs CIT (1955) (27 ITR 34) (Supreme Court)

<sup>2</sup> M/s Kanoria Chemicals & Industries Ltd. vs CIT (1995) 78 Taxman 455 (Calcutta High Court)

- (iii) expenses incurred before the commencement of business cannot be considered as revenue expenditure under section 37(1) <sup>1</sup>.

**3.10.1** Incorrect allowance of capital expenditure in working out taxable income resulted in short levy of tax aggregating **Rs. 114.25 crore in 34 cases** in Delhi, Gujarat, Maharashtra, Tamil Nadu and West Bengal. **One case** is illustrated below:

**3.10.2** In Maharashtra, CIT III, Mumbai charge, the assessment of a company, **M/s Reliance Telecom Ltd.**, for the assessment year 2003-2004 was completed after scrutiny at a loss of Rs. 209.12 crore in January 2006, which was allowed to be carried forward for future set off. Audit examination revealed that the assessee had claimed and was allowed a deduction of Rs. 233.18 crore in the computation of income towards 'loss on account of cost incurred on abandonment of technology of basic division'. Since the cost incurred on abandoning of technology of basic division was in the nature of capital expenditure, it was not an allowable deduction and was hence required to be disallowed. The omission to disallow it resulted in underassessment of income to the extent of Rs. 233.18 crore involving potential revenue impact of Rs. 85.69 crore.

**3.10.3** Nine cases are shown in **Table no. 3.4** below:

(Rs. in crore)

**Table no. 3.4: Incorrect allowance of capital/non business expenditure**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s United India Insurance Co, Ltd. <b>CIT I, Chennai</b>	2003-04	Scrutiny January 2006	The expense of Rs. 7.77 crore incurred but not reported in respect of foreign inward claims pertaining to the assessment year 1995-96, required to be disallowed as per decision of the ITAT, Chennai in assessee's own case were not disallowed.	3.86
2	M/s TISCO Ltd. <b>CIT II, Mumbai</b>	2000-01	Scrutiny March 2003	Incorrect allowance of capital loss of Rs. 8.80 crore on account of limekiln project, which was abandoned before completion.	3.39 (P)
3	M/s Central Warehousing Corporation <b>CIT I, Delhi</b>	2000-01	Scrutiny March 2006	Expenditure of Rs. 4.34 crore debited as expenditure on 'unabsorbed overheads' being capital in nature was not disallowed.	2.79
4	M/s Balmer Lawrie & Co. <b>CIT II, Kolkata</b>	2002-03	Scrutiny March 2005	Investment written off of Rs. 6.50 crore being capital in nature was not disallowed.	2.32 (P)

<sup>1</sup> CIT vs Mohan Steel Ltd. (2004) 191 CTR (ALL) 279

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
5	M/s Airport Authority of India <b>CIT I, Delhi</b>	2002-03	Scrutiny August 2004	The assessee had incorrectly claimed and was allowed capital expenditure of Rs. 4.56 crore towards compensation payable for acquisition of land.	2.17
6	M/s Bhartiya International Ltd. <b>CIT I, Delhi</b>	2003-04	Scrutiny March 2006	The assessee had incorrectly claimed and was allowed capital expenditure of Rs. 3.50 crore on account of overseas market brand development expenses.	1.77
7	M/s Bata India Ltd. <b>CIT I, Kolkata</b>	2003-04	Scrutiny March 2006	The assessing officer disallowed only the net amount of technical collaboration fees paid instead of the entire amount.	1.24
8	M/s Central Inland Water Transport Corporation Ltd. <b>CIT II, Kolkata</b>	2003-04	Scrutiny February 2006	Capital expenditure of Rs. 3.05 crore on account of 'Survey Docking Repair' was irregularly treated as deferred revenue expenditure.	1.12 (P)
9	M/s Countrywide Consumer Financial Services Ltd. <b>CIT IV, Delhi</b>	2002-03	Scrutiny February 2005	Capital loss on sale of loan portfolio was irregularly allowed by the assessing officer.	1.04

*P: denotes potential tax*

**3.10.4** The Ministry has accepted (December 2007) the observation in the case at **Sl. no. 2** of **Table no. 3.4** above.

#### Mistakes in implementation of appellate orders

**3.11** An aggrieved assessee can appeal to the Commissioner of Income Tax (Appeals) against the order of an assessing officer who shall comply with the directions given in the appellate order. Further appeal is also permitted to be made on questions of fact and law to Income Tax Appellate Tribunal and on the questions of law alone to the High Court and the Supreme Court thereafter. Any mistake committed while giving effect to an appellate order results in underassessment/overassessment of income.

**3.11.1** Assessing officers did not implement appellate orders correctly, which resulted in short levy of tax totalling **Rs. 105.68 crore** in **9 cases** in Gujarat, Haryana, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttaranchal. **One case** is illustrated below:

**3.11.2** In Haryana, CIT, Hisar charge, the assessment of a company, **M/s Parkash Industries Ltd.**, for the assessment year 1999-2000, was finalised in scrutiny manner in March 2002 determining a loss of Rs. 33.40 crore. The

assessee had filed an appeal before the Commissioner of Income Tax (Appeals) against this assessment order and was allowed a relief of Rs. four lakh in February 2006. Audit examination revealed that the assessing officer while giving effect to the appellate orders, incorrectly determined the net loss as Rs. 274.21 crore instead of Rs. 33.44 crore. The mistake resulted in overassessment of loss of Rs. 240.77 crore involving potential revenue impact of Rs. 84.27 crore.

**3.11.3 Four cases are shown in Table no. 3.5 below:**

(Rs. in crore)

<b>Table no. 3.5: Mistakes in implementation of appellate order</b>					
<b>Sl. no.</b>	<b>Assessee company/ CIT charge</b>	<b>Assessment year</b>	<b>Type/month of assessment</b>	<b>Nature of mistake</b>	<b>Revenue impact</b>
1	M/s Saurashtra Cement Ltd. Ranavav <b>CIT, Jamnagar</b>	2001-02	Scrutiny March 2004	The assessee went in appeal against disallowance of expenditure of Rs. 35.36 crore on account of interest payment against which the appellate authority disallowed only Rs. 7.07 crore. While giving effect to appellate order, the assessing officer reduced only Rs. 7.07 crore instead of balance amount of Rs. 28.29 crore.	8.39
2	M/s OTIS Elevators (India) Ltd. <b>CIT II, Mumbai</b>	1998-99	Scrutiny February 2001 Revision January 2002, March 2006 (to give effect to appellate order and ITAT order respectively)	While giving effect to appellate order in March 2006, the assessing officer disallowed the claim of the assessee for payment of Rs. 8.28 crore towards voluntary retirement scheme treating it as capital expenditure but omitted to add back it to taxable income.	6.64
3	M/s Kapil Roller Flour Mills (Private) Limited <b>CIT, Hisar</b>	Block period	Best judgement assessment 1 April 1987 to 29 May 1997 January 2000	While giving effect to appellate order, out of the total addition of Rs. 5.96 crore, addition of Rs. 1.33 crore only was made.	3.20
4	M/s NALCO <b>CIT, Bhuwaneswar</b>	2002-03	Scrutiny February 2005  Revision July 2005	Against the deduction of Rs. 187.69 crore towards export profit allowed by the appellate authority, the assessing officer allowed Rs. 191.88 crore.	1.67

**3.11.4** The Ministry has accepted (November and December 2007) the observations in the cases at **Sl. no. 1 and 2** of **Table no. 3.5** above.

**Non/short levy  
of interest**

**3.12** An assessee is liable to pay interest under different provisions of the Act for certain types of defaults on its part, namely:

**3.12.1** Where in any financial year, an assessee who is liable to pay advance tax has failed to pay such tax or where the advance tax paid by such assessee is less than ninety percent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one percent (two percent upto May 1999, one and one-half percent upto May 2001 and one and one-fourth percent upto 7 September 2003) for every month or a part thereof reckoned from 1 April next following such financial year to the date of determination of total income by processing the return of income and where a regular assessment is made, to the date of such regular assessment on the amount equal to the assessed tax, or as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

**3.12.2** Where any amount of tax is paid under sub section (1) of section 115JA by an assessee company for any assessment year, then credit in respect of tax so paid shall be allowed to him in accordance with the provisions of section 115JAA. In accordance with the provisions of sections 234B and 234C, interest should be calculated after giving credit of advance tax/TDS. There is no provision in the Act to treat MAT<sup>1</sup> credit as an advance or prepaid tax. The provisions of section 234B have been amended prospectively from 1 April 2007, allowing the set off of MAT credit against the assessed tax.

**3.12.3** The assessee should pay any demand for tax within thirty days of service of notice of the relevant demand. Failure to do so attracts simple interest at a prescribed percentage for every month or part thereof from the date of default till actual payment.

**3.12.4** Assessing officers did not comply with the above provisions, which resulted in short levy of tax aggregating **Rs. 93.34 crore** in **52 cases** in Andhra Pradesh, Delhi, Gujarat, Haryana, Kerala, Maharashtra, Punjab, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. **One case** is illustrated below.

**3.12.5** In Maharashtra, CIT III, Mumbai charge, the assessment of a company **M/s Reliance Industries Ltd.**, for the assessment year 2001-02 was completed after scrutiny in March 2003 and rectified in March 2004. Audit examination revealed that while working out the interest for default in payment of advance tax under section 234B, MAT credit of Rs. 135.03 crore was first set off against the total tax and interest was charged on the balance tax. The incorrect set off of MAT credit before calculation of interest under section 234B has resulted in short levy of interest of Rs. 59.41 crore.

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<sup>1</sup> MAT stands for Minimum Alternate Tax worked out under special provisions of section 115JA

**3.12.6 Six cases are shown in Table no. 3.6 below:****(Rs. in crore)**

<b>Table no. 3.6: Non/short levy of interest for default in payment of advance tax</b>					
<b>Sl. no.</b>	<b>Assessee company/ CIT charge</b>	<b>Assessment year</b>	<b>Type/month of assessment</b>	<b>Nature of mistake</b>	<b>Revenue impact</b>
1	M/s Mahanagar Telephone Nigam Ltd. <b>CIT II, Delhi</b>	2004-05	Scrutiny February 2005	Advance tax paid by the assessee fell short of 90 percent of the assessed tax which attracted levy of interest under section 234B.	8.41
2	M/s Soundcraft Industries Ltd. <b>CIT I, Mumbai</b>	2002-03	Best judgement March 2005	Interest for default in payment of advance tax was levied at Rs. 6.94 crore as against the correct amount of Rs. 11.56 crore.	4.62
3	M/s Reliance Ports & Terminals Ltd. <b>CIT III, Mumbai</b>	2002-03	Summary February 2003 reopened/ finalised under section 147 March 2006	Interest for default in payment of advance tax was levied at Rs. 63.68 crore as against the correct amount of Rs. 67.93 crore.	4.25
4	M/s JVG Departmental Store <b>CIT II, Delhi</b>	1995-96	Scrutiny March 1998  Fresh assessment March 2005	Interest for default in payment of advance tax was wrongly charged till the date of the original assessment in March 1998 instead upto the date of fresh assessment in March 2005.	3.04
5	M/s Damodar Valley Corporation <b>CIT III, Kolkata</b>	2003-04	Revision of scrutiny January 2006	Tax demand of Rs. 98.90 crore was not paid but was fully adjusted against the refund of a subsequent year. Belated adjustment of tax demand attracted levy of interest.	1.98
6	M/s Minal Oil and Agro Industries (P) Ltd. <b>CIT I, Ahmedabad</b>	Block period	Block assessment 1 April 1995 to 27 September 2001	The original tax demand of Rs. 40.58 crore raised in October 2003 was reduced to Rs. 10.32 crore in February 2005 after giving effect to appellate order. The fresh demand was raised without charging interest for non payment of tax demand raised earlier, for the period from November 2003 to February 2005.	1.55

**3.12.7** The Ministry has accepted (November and December 2007) the observations in the cases at **Sl. no. 1, 2, 5 and 6** of **Table no. 3.6** above.



**Mistakes in adoption of correct figures/arithmetical errors etc**

**3.13** Assessing officers have to determine and assess the income correctly in 'scrutiny' assessments. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments. The Board have issued instructions from time to time to the assessing officers and their supervising officers to ensure that mistakes in scrutiny assessments do not occur.

**3.13.1** Audit noticed that assessing officers had adopted incorrect figures, committed arithmetical errors, allowed claims twice, and did not add back inadmissible claims to income, resulting in short levy of tax of **Rs. 71.95 crore** in **40 cases** in Delhi, Jharkhand, Karnataka, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. **Two cases** are illustrated below:

**3.13.2** In Delhi, CIT I charge, the assessment of a company, **M/s Motorola Inc.**, for the assessment year 2002-03 was completed after scrutiny in March 2005 determining an income and tax liability of Rs. 60.23 crore and Rs. 23.49 crore respectively. Audit examination revealed that while computing the tax liability, the assessed income was taken as Rs. 23.49 crore against the correct figure of Rs. 60.23 crore worked in the assessment order. Consequently tax liability was worked out as Rs. 10.31 crore as against correct amount of Rs. 23.49 crore. The mistake resulted in short levy of tax of Rs. 22.25 crore including interest.

**3.13.3** The Ministry has accepted (December 2007) the above observation.

**3.13.4** In Delhi, CIT II charge, the assessment of a company, **M/s Mahanagar Telephone Nigam Ltd.**, for the assessment year 1994-95 was completed after scrutiny in November 2004 determining an income of Rs. 948.40 crore. Audit examination revealed that while making the assessment, the assessing officer disallowed Rs. 11.73 crore on account of 'Provision for pension and gratuity'. However, while computing the total taxable income, he did not add back this amount. The mistake resulted in underassessment of taxable income of Rs. 11.73 crore involving short levy of tax of Rs. 18.68 crore including interest.

**3.13.5** Eight cases are shown in **Table no. 3.7** below:

(Rs. in crore)

<b>Table no. 3.7: Mistakes in adoption of correct figures/arithmetical mistakes etc.</b>					
Sl. no.	Name of the assessee/ CIT charge	Assessment year	Type/ month of assessment	Nature of mistake	Revenue impact
1	M/s ONGC Videsh Ltd. CIT V, Delhi	2003-04	Scrutiny February 2006	Rs. 8.01 crore capitalised on account of exchange fluctuation during previous year was added back instead of being deducted from income.	5.89 (P)

Sl. no.	Name of the assessee/ CIT charge	Assessment year	Type/ month of assessment	Nature of mistake	Revenue impact
2	M/s K J S India Pvt Ltd. <b>CIT II, Delhi</b>	2003-04	Scrutiny October 2005	Claim of the assessee to carry forward unabsorbed depreciation and business loss of Rs. 11.14 crore was disallowed by the assessing officer but not given effect to while calculating tax.	4.09 (P)
3	M/s Rajasthan Renewable Energy Corporation Ltd. <b>CIT, Jaipur</b>	2003-04	Scrutiny November 2005	Income of Rs. 3.80 crore was adopted as loss.	2.79 (P)
4	M/s Mahanagar Telephone Nigam Ltd. <b>CIT II, Delhi</b>	1994-95	Scrutiny November 2004	Prior period adjustments of Rs. 28.65 crore disallowed by the assessing officer were added back to the extent of Rs. 27.15 crore.	2.41
5	M/s Timken India <b>CIT, Jamshedpur</b>	2003-04	Scrutiny March 2006	Taxable income was taken as Rs. 28.74 crore instead of Rs. 32.92 crore due to an arithmetical mistake.	2.28
6	M/s Pataka Industries (P) Ltd. <b>CIT Central I, Kolkata</b>	2003-04	Scrutiny March 2006	Expenditure towards Director's commission was allowed at Rs. 6.47 crore against actual payment of Rs. 2.21 crore.	1.57
7	M/s Cinevistas Communications Ltd. <b>CIT XI, Mumbai</b>	2001-02	Scrutiny March 2004	An amount of Rs. 3.63 crore disallowed by the assessing officer was not added back.	1.44
8	M/s Ballast Nedam Dredging <b>DIT (International Taxation), Mumbai</b>	2003-04	Scrutiny February 2006	Disallowances of Rs. 2.88 crore on account of prior period expenses, depreciation and loss on sale of assets were not added back.	1.21 (P)

*P: denotes potential tax*

**3.13.6** The Ministry has accepted (December 2007) the observations in the cases at **Sl. no. 3, 5, 7 and 8** of **Table no. 3.7** above.

**Incorrect allowance of provisions**

**3.14** A provision made in the accounts for an accrued or known liability is an admissible deduction, while other provisions do not qualify for deduction under the Act. It has been judicially held<sup>1</sup> that in order for a loss to become deductible, it must have actually arisen or be incurred and not merely anticipated as certain to occur. It has also been judicially held<sup>2</sup> that if a business liability is existing in the

<sup>1</sup> CIT vs Indian Overseas Bank, 151 ITR 466 (Madras High Court)

<sup>2</sup> M/s Bharat Earth Movers vs CIT (112 Taxman 61-2000) (Supreme Court)

accounting year, the deduction should be allowed although the liability may have to be discharged at a future date.

**3.14.1** Irregular allowance of different types of provisions resulted in short levy of tax aggregating **Rs. 55.75 crore in 27 cases** in Delhi, Haryana, Karnataka, Kerala, Maharashtra, Orissa, Uttar Pradesh and West Bengal. **One case** is illustrated below:

**3.14.2** In West Bengal, CIT IV, Kolkata charge, the assessment of a company, **M/s Gamuda WCT (India) Pvt Ltd.**, for the assessment year 2003-04 was completed after scrutiny in February 2006 determining an income of Rs. 33.43 lakh with a tax demand of Rs. 12.29 lakh. Audit examination revealed that the assessee debited in its accounts, a sum of Rs. 38.04 crore towards 'Provision for foreseeable losses on construction contracts', and it was allowed as deduction. Since mere provision does not qualify for deduction unless written off in the accounts, the said amount was required to be disallowed and added back. The omission to do so resulted in underassessment of income of Rs. 38.04 crore involving revenue impact of Rs. 19.05 crore including interest.

**3.14.3** The Ministry has accepted (October 2007) the above observation.

**3.14.4** In Delhi, CIT V charge, the assessment of a company, **M/s Pawan Hans Helicopters Ltd.**, for the assessment years 2002-03 and 2003-2004, were completed after scrutiny in December 2004 determining income at Rs. 87.02 crore and Rs. 28.28 crore respectively. Audit examination revealed that the assessee claimed and was allowed a deduction aggregating Rs. 22.68 crore against adhoc provision towards revision of pay and allowances of employees pending finalisation of settlements. As the provision was made for an unascertained liability, it was required to be disallowed. The omission to do so resulted in underassessment of income of Rs. 22.68 crore involving short levy of tax of Rs. 10.63 crore including interest.

**3.14.5** Eight cases are shown in **Table no. 3.8** below:

(Rs. in crore)

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s G E Capital Services India <b>CIT IV, Delhi</b>	2002-03	Scrutiny March 2005	Irregular allowance of deduction of Rs. 11.15 crore on account of provision and write off for non performing assets.	5.58
2	M/s IFB Industries <b>CIT IV, Kolkata</b>	2003-04	Scrutiny March 2006	As against provision for bad and doubtful debts of Rs. 1.28 crore claimed by the assessee, Rs. 12.89 crore was allowed.	2.66 2.33 (P)

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
3	M/s Coal India Ltd. <b>CIT IV, Kolkata</b>	2003-04	Scrutiny February 2006	Incorrect allowance of adhoc provision of Rs. 7.42 crore against likely rise in wages.	3.52
4	M/s Phillips Medical Systems India Ltd. <b>CIT VIII, Mumbai</b>	2003-04	Scrutiny March 2006	Incorrect allowance of provision of Rs. 4.29 crore towards doubtful debt and advances.	2.17
5	M/s ESAB India Ltd. <b>CIT VI, Mumbai</b>	2003-04	Scrutiny February 2006	Incorrect allowance of deduction of Rs. 5.80 crore towards provision for sales tax debited in profit and loss account.	2.13 (P)
6	M/s Infrastructure Leasing & Financial Services <b>CIT X, Mumbai</b>	2002-03	Scrutiny February 2005	Incorrect allowance of provision of Rs. 4.24 crore towards investments held as non strategic investment.	1.52
7	M/s Hooghly Dock and Port Engineers <b>CIT I, Kolkata</b>	2003-04	Scrutiny February 2006	Incorrect allowance of a provision of Rs. 3.30 crore towards payment of interest though no loan liability existed and there was no scope for any such liability towards interest.	1.21 (P)
8	M/s Land Base India Ltd. <b>CIT II, Delhi</b>	2000-01	Scrutiny March 2003	Incorrect allowance of provision of Rs. 2.77 crore towards construction work expenses.	1.07 (P)

*P: denotes potential tax*

**3.14.6** The Ministry has accepted (November and December 2007) the observations in the cases at **Sl. no. 1 and 2** of **Table no. 3.8** above.

**Mistake in computation of income under special provisions**

**3.15** Where in the case of an assessee being an Indian company, the total income as computed under this Act in respect of any previous year is less than 30 percent of its book profit, the total income of such assessee chargeable to tax shall be deemed to be an amount equal to thirty percent of such profit. For this purpose, book profit means the net profit as per profit and loss account prepared in accordance with the Companies Act, 1956 subject to certain additions/deletions.

**3.15.1** Where any amount of tax is paid under section 115 JA by an assessee, a credit in respect of tax so paid in excess over the tax under normal provisions of the Act shall be allowed in accordance with the provisions of section 115JAA, to be set off in a succeeding year only when tax becomes payable on the total income computed under the normal provisions of the Act. Such set off shall not be allowed beyond the fifth year immediately succeeding the assessment year in which tax credit becomes allowable.

**3.15.2** Further, where any amount of tax is paid under section 115JB by a company for any assessment year commencing on 1 April 2006 and any subsequent assessment year, then credit in respect of tax so paid shall be allowed to the company in accordance with the provisions of section 115JB from the assessment year 2006-07 onwards.

**3.15.3** If the income tax payable on the total income as computed under the normal provisions of the Act in respect of the previous year relevant to the assessment year commencing on or after 1 April 2001 is less than seven and one-half percent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income tax at the rate of seven and one-half percent.

**3.15.4** Mistakes in the computation of income under special provisions resulted in short levy of tax aggregating **Rs. 46.54 crore** in **35 cases** in Delhi, Goa, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Tamil Nadu and West Bengal. **One case** is illustrated below:

**3.15.5** In Tamil Nadu, CIT I, Chennai charge, the assessment of a company, **M/s. Tamil Nadu News Print and Papers Ltd.**, for the assessment year 2003-04, was completed after scrutiny in March 2006 determining an income of Rs. 68.07 crore under the special provisions of the Act. The assessment for the assessment year 2004-05 was processed in a summary manner in March 2005 and revised in June 2005 determining an income of Rs. 67.03 crore under the special provisions of the Act. Audit examination revealed that while completing the scrutiny assessment for the assessment year 2003-04, income under the normal provisions of the Act was arrived at Rs. 32.77 crore after deducting the carry forward losses of previous years and allowing deduction under sections 80 HHC, 80IA and 80M. The income tax and the surcharge on the income computed in the scrutiny/summary assessment under the normal provisions of the Act worked out to Rs. 12.04 crore and Rs. 8.82 crore as against Rs. 5.36 crore and Rs. 5.15 crore computed under the special provisions of the Act for the assessment year 2003-04 and 2004-05 respectively. Even though the tax under the normal provisions was higher than the tax under the special provisions, the assessments were completed by the department based on the income under the special provisions. Omission to assess the income under the normal provisions of the Act in these years resulted in aggregate short demand of tax of Rs. 13.28 crore (including interest).

**3.15.6** Five cases are shown in **Table no. 3.9** below:

(Rs. in crore)

**Table no. 3.9: Mistake in computation of income under special provisions**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Fascel Ltd. <b>CIT II, Ahmedabad</b>	2002-03	Scrutiny March 2006	Provision for doubtful debts and contingencies aggregating Rs. 13.62 crore was not added to the net profit to arrive at book profit. Besides, as against the admissible deduction of Rs. 13.36 crore on account of unabsorbed depreciation/ brought forward losses, only Rs. 1.33 lakh was allowed.	8.75
2	M/s Reliance Industries Ltd. <b>CIT III, Mumbai</b>	2003-04	Scrutiny January 2006	As against the tax credit of Rs. 6.98 crore and Rs. 56.53 crore pertaining to the assessment years 1999-2000 and 2000-01 available for set off under the special provisions of section 115JAA, tax credit of Rs. 7.87 crore and Rs. 62.16 crore respectively was allowed	6.52
3	M/s Godrej & Boyce Mfg. Co. Ltd. <b>CIT X, Mumbai</b>	2003-04	Scrutiny September 2005	The assessee company debited its profit and loss account by Rs. 25.75 crore on account of goodwill expenses of the company, Rs. 64.31 lakh on account of investment in US 64 scheme and Rs. 23.13 lakh pertaining to expenses incurred on amalgamation and demerger. All these expenses being capital in nature were required to be added back to the net profit to arrive at the correct amount of book profit.	2.10
4	M/s Tamil Nadu Cements Corporation Ltd. <b>CIT I, Chennai</b>	1997-98	Scrutiny March 2005	While computing book profit, cess and surcharge on cess of Rs. 20 crore were added as against the correct amount of Rs. two crore only.	1.76
5	M/s ONGC Videsh Ltd. <b>CIT V, Delhi</b>	2003-04	Scrutiny February 2006	Book profit under special provisions was wrongly assessed at Rs. 3.23 crore instead of Rs. 3.44 crore as worked out in the profit and loss account. Besides, the assessee charged capitalised expenditure of Rs. 16.01 crore to the profit and loss account instead of the correct amount of Rs. 2.05 crore.	1.42
6	M/s Sun Pharmaceuticals Industries Ltd. <b>CIT Central II, Ahmedabad</b>	2000-01	Scrutiny March 2005	Book profit was reduced by the written off amount of R&D expenditure of Rs. 7.01 crore which did not fall in the category of prescribed adjustments.	1.06

**3.15.7** The Ministry has accepted (December 2007) the observation in the case at **Sl. no. 1 of Table no. 3.9** above.

**Incorrect allowance of prior period expenses/ deductions not admissible**

**3.16** Income chargeable under the head “Profit and gains of business or profession” is to be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee. Where the assessee follows mercantile system of accounting, the annual profits are worked out on due or accrual basis i.e. after providing for all expenses for which a legal liability has arisen and taking credit for all receipts that have become due regardless of their actual receipt or payment. Only such expenses are allowable as deduction from a previous year’s income as are relevant to that year.

**3.16.1** Non compliance with the above provisions resulted in short levy of tax aggregating **Rs. 42.52 crore in 33 cases** in Delhi, Gujarat, Kerala, Maharashtra, Tamil Nadu and West Bengal. **One case** is illustrated below

**3.16.2** In Delhi, CIT I charge, the assessment of a company, **M/s Airport Authority of India Ltd.**, was completed for the assessment year 2002-03 after scrutiny in August 2004, determining an income of Rs. 901.53 crore. Audit examination revealed that the assessee had claimed and was allowed an expenditure of Rs. 32.93 crore on account of prior period expenses, which was not added back to the income of the assessee at the time of scrutiny. The omission to do so resulted in underassessment of income of Rs. 32.93 crore involving revenue impact of Rs. 15.66 crore.

**3.16.3** Six cases are shown in **Table no. 3.10** below:

**(Rs. in crore)**

<b>Sl. no.</b>	<b>Assessee company/ CIT charge</b>	<b>Assessment year</b>	<b>Type/month of assessment</b>	<b>Nature of mistake</b>	<b>Revenue impact</b>
1	M/s Nuclear Power Corporation of India Ltd. <b>CIT III, Mumbai</b>	2000-01	Scrutiny February 2003	Prior period expenses of Rs. 18.40 crore were not added back.	7.08
2	M/s Ispat Profiles India Ltd. <b>CIT I, Kolkata</b>	2002-03	Scrutiny January 2005	Accrual of interest of Rs. 12.35 crore was incorrectly claimed and allowed as deduction though it was admissible on actual payment only as per practice adopted by the assessee under section 145.	4.41 (P)
3	M/s NABARD <b>CIT III, Mumbai</b>	2002-03	Scrutiny January 2005	The assessee being a financial corporation was eligible for deduction of Rs. 470 crore only towards a reserve created and maintained under section 36(i)(viii) as against Rs. 478.60 crore allowed by the assessing officer.	3.07

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
4	M/s National Instruments Ltd. <b>CIT I, Kolkata</b>	2003-04	Scrutiny January 2006	The assessee had claimed and was allowed deduction of the entire expenditure of Rs. 10.08 crore instead of Rs. 2.01 crore being one fifth thereof towards voluntary retirement scheme under section 35DDA.	2.96 (P)
5	M/s Mahindra World City Developers Ltd. <b>CIT III, Chennai</b>	2003-04	Scrutiny March 2006	Legal and professional charges of Rs. 5.52 crore pertaining to earlier years were incorrectly allowed as deduction.	2.03 (P)
6	M/s Pentagon Screws & Fasteners Ltd. <b>CIT V, Delhi</b>	2002-03	Scrutiny July 2005	Hire purchase leasing finance charges of Rs. 3.90 crore pertaining to the earlier years were incorrectly allowed as deduction.	1.74

*P: denotes potential tax*

**3.16.4** The Ministry has accepted (November and December 2007) the observations in the cases at **Sl. no. 3 and 4** of **Table no. 3.10** above.

**Income not assessed**

**3.17** The total income of any previous year of a person who is a resident includes all income from whatever source derived which is received or which accrues or arises or is deemed to accrue or arise during such previous year unless specifically exempted from tax by the provisions of the Act. Further, profit and gains derived by a newly established undertaking in a free trade zone or by a newly established hundred percent export oriented undertaking from the export of articles or things or computer software are also exempt from tax subject to the fulfilment of conditions prescribed in the Act or notified by the Government from time to time.

**3.17.1** Non compliance with the above provisions resulted in short levy of tax aggregating **Rs. 37.78 crore** in **29 cases** in Andhra Pradesh, Delhi, Gujarat, Karnataka, Maharashtra, Rajasthan and West Bengal. **Eight cases** are shown in **Table no. 3.11** below:

(Rs. in crore)

**Table no. 3.11: Income not assessed**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Orissa Construction Corporation <b>CIT, Bhubaneswar</b>	2003-04	Scrutiny May 2005	The assessee exhibited in accounts contract receipts of Rs. 42.47 crore only as against the correct amount of Rs. 58.79 crore.	7.38
2	M/s Double Dot Finance Ltd. <b>CIT IV, Mumbai</b>	2000-01	Scrutiny March 2006	Non compete fee of Rs. nine crore received and offered by the assessee was not considered for taxation.	6.46



Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
3	M/s Bental Corporation Ltd. <b>CIT V, Mumbai</b>	1 January 1990 to 26 July 2000	Best judgement July 2002	During search and seizure operation department assessed the value of closing stock at Rs. 6.78 crore involving undisclosed income of Rs. 67.76 lakh. On a notice issued to the assessee to clarify the source of income, it failed to furnish the clarification and, therefore, the entire closing stock was required to be taxed.	4.59
4	M/s Tamil Nadu Small Industries Corp. Ltd. <b>CIT I, Chennai</b>	2003-04	Scrutiny December 2005	Principal loan amount of Rs. 10.85 crore was waived by the Government of Tamil Nadu was not offered for tax but was treated as capital reserve.	3.99
5	M/s Madras Fertilizers Ltd. <b>CIT III, Chennai</b>	2003-04	Scrutiny December 2005	Interest of Rs. 8.38 crore for the period from April to October 2002 on the principal amount of loan was claimed and allowed twice.	3.19
6	M/s Tamil Nadu Power Finance & Infrastructure Development Corp. Ltd. <b>CIT I, Chennai</b>	2002-03	Scrutiny March 2005	Interest and penal interest of Rs. 5.88 crore shown as accrued was not recognised as income as per NBFC Prudential norms and offered for tax.	2.66
7	M/s Indian Oil Corporation Ltd. <b>CIT X, Mumbai</b>	2001-02	Scrutiny March 2004	Interest income of Rs. 11.78 crore received by the assessee during the relevant previous year was not offered to tax	1.44
8	M/s Pharmacia India Pvt. Ltd., Mumbai <b>CIT, Faridabad</b>	2003-04	Scrutiny March 2006	The assessing officer did not take into account the business income of Rs. 2.20 crore and total income was incorrectly calculated at Rs. 9.28 crore instead of Rs. 11.48 crore.	1.11

**Irregular allowance of exemptions and excess relief**

**3.18** For computation of the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act.

**3.18.1** Mistakes in application of the above provision resulted in irregular allowance of exemptions and excess relief involving short levy of tax aggregating

**Rs. 29.11 crore in 16 cases** in Delhi, Gujarat, Maharashtra and Tamil Nadu. **One case** is illustrated below:

**3.18.2** In Maharashtra, CIT I, Mumbai charge, the assessment of a company, **M/s Housing Development & Finance Corporation Ltd.**, for the assessment year 2004-05 was completed after scrutiny in January 2006 determining an income of Rs. 610.39 crore. The assessment was rectified in March 2006 and assessed at taxable income of Rs. 566.90 crore. Audit examination revealed that in the scrutiny assessment order of January 2006, the assessing officer disallowed and added back an amount of Rs. 46.59 crore being the proportionate expenditure attributable to earning the exempted income of Rs. 86.62 crore under section 10(33). However in the rectification order of March 2006, the assessing officer inadvertently reduced the disallowed expenditure of Rs. 46.59 crore added back to the total taxable income computed after scrutiny in January 2006 resulting in underassessment of Rs. 46.59 crore involving revenue impact of Rs. 16.71 crore.

**3.18.3** Three cases are shown in **Table no. 3.12** below:

(Rs. in crore)

**Table no. 3.12: Irregular allowance of exemption**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Zylog Systems Ltd. <b>CIT I, Chennai</b>	2001-02 2002-03	Scrutiny February 2004  Summary March 2003	The assessee had incorrectly claimed and was allowed exemptions of Rs. 5.50 crore and Rs. 8.40 crore under section 10B against expenses incurred in foreign currency for providing technical service outside India towards product development for two assessment years respectively.	5.41
2	M/s Maars Software International Ltd. <b>CIT III, Chennai</b>	2000-01	Scrutiny December 2002	The assessee company had incorrectly included other income including interest income aggregating Rs. 4.01 crore towards income exempt under section 10A and claimed exemption accordingly which was irregular.	1.56
3	M/s Santhanalakshmi Investments Ltd. <b>CIT III, Chennai</b>	2002-03	Scrutiny February 2005	The assessee had claimed and was allowed deduction of Rs. 3.05 crore towards interest on fixed loans utilised for earning exempt income.	1.05

**Incorrect allowance of deductions under Chapter VIA**

**3.19** Where any deduction is allowed under Chapter VIA (80C to 80U)<sup>♦</sup> in respect of an income of the nature specified in that section which is included in the gross total income of the assessee, then, for the purpose of computing deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under chapter VIA) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and included in his gross total income.

**Incorrect allowance of deduction in respect of profits retained for export profits business**

**3.19.1** Deduction in respect of export profits is allowed on profit derived from export of specified goods or merchandise if the sale proceeds of such goods or merchandise are brought into India and received in convertible foreign exchange within the specified period, subject to other specific conditions prescribed in the section itself. As per proviso to section 80HHC inserted by Taxation Law (Amendment) Act 2005 (with retrospective effect from 1 April 1992), in case of a net loss in export business, relevant proportion of the same loss shall be set off against the export incentive for arriving at the amount of deduction admissible under section 80HHC. Both the export incentive and profit/loss from export business contribute to the amount of admissible deduction.

**Incorrect allowance of deduction towards inter-corporate dividend**

**3.19.2** Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall be allowed in computing the total income, a deduction of an amount equal to so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the former company on or before the due date. CBDT vide its circular no. 657 issued in August 1993 clarified that for assessment year 1996-97 and subsequent years, dividend from the Unit Trust of India will not be eligible for deduction towards inter-corporate dividends.

**3.19.3** Incorrect application of the provisions of chapter VIA resulted in short levy of tax aggregating **Rs. 17.52 crore** in **41 cases** in Andhra Pradesh, Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Uttar Pradesh, Tamil Nadu and West Bengal. **Five cases** are shown in **Table no. 3.13** below:

(Rs. in crore)

**Table no. 3.13: Incorrect allowance of deductions under chapter VIA**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s EID Parry (I) Ltd.  CIT I, Chennai	2003-04	Scrutiny February 2006	The assessee company had incorrectly claimed and was allowed deduction in respect of inter corporate dividend of Rs. 14.27 crore as against Rs. 10.71 crore which was actually distributed before the due date.	1.78

<sup>♦</sup> except section 80M

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
2	M/s Lindsay International Pvt. Ltd. <b>CIT III, Kolkata</b>	2003-04	Scrutiny January 2006	For claiming deduction towards export profits, the assessing officer considered export turnover as Rs. 114.98 crore as against the correct figure of Rs. 109 crore as per the accounts of the assessee.	1.42
3	M/s Mauria Udyog Ltd. <b>CIT III, Kolkata</b>	2003-04 2004-05	Scrutiny June 2006	The assessee company suffered a net loss of Rs. 2.27 crore and Rs. 9.23 crore in two assessment years respectively which was not set off against export incentives for arriving at the deduction towards export profits.	1.30
4	M/s Jakson Ltd. <b>CIT II, Delhi</b>	2003-04	Scrutiny February 2005	For claiming deduction under section 80IA, expenses aggregating Rs. 4.97 crore on account of consumable stores and installation/job expenses were incorrectly treated as manufacturing expenses.	1.15
5	M/s Securities Trading Corporation of India Ltd. <b>CIT I, Mumbai</b>	2003-04	Scrutiny February 2006	Instead of charging tax on the income of Rs. 2.83 crore from the units of UTI offered by the assessee under the head 'income from other sources', the assessing officer irregularly allowed deduction of the entire amount towards inter-corporate dividend.	1.04

**Excess allowance of refund / interest on refund**

**3.20** Where as a result of any order passed in assessment, appeal, revision or any other proceedings, refund of any amount becomes due to an assessee, this may be granted in cash or adjusted or set off against the outstanding dues to the assessee for any assessment year.

**3.20.1** Interest on excess payment of advance tax, tax deducted or collected at source and any other tax or penalty becoming refundable will be paid at the rate of one percent (since reduced to two third percent with effect from 1 June 2002 and one half-percent from 8 September 2003) for every month or part of month for the period from 1 April of the relevant assessment year to the date on which the refund is granted. No interest will be payable, if the amount of refund is less than ten percent of the tax determined under summary or on regular assessment.

**3.20.2** Where as a result of an order under section 154, 155, 250, 254, 260, 262, 263 and 264, the amount of refund on which interest was payable has been increased or reduced, the interest thereon shall be increased or reduced accordingly.

**3.20.3** If the proceedings resulting in refund is 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.

**3.20.4** Non compliance with the above provisions by the assessing officers resulted in excess allowance of refund or interest on refund totalling **Rs. 6.68 crore** in **10 cases** in Gujarat, Karnataka, Kerala, Maharashtra and West Bengal. **Two cases** are shown in **Table no. 3.14** below:

(Rs. in crore)

**Table no. 3.14: Excess allowance of refund/interest on refund**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/ month of assessment	Nature of mistake	Revenue impact
1	M/s Mangalore Refinery & Petrochemical Ltd. <b>CIT III, Mumbai</b>	1997-98	Summary March 1998  Scrutiny March 2000  Revision after appellate order March 2003	Interest on refund of Rs. 14.21 crore was worked out as Rs. 5.12 crore instead of the correct amount of Rs. 2.72 crore.	2.39
2	M/s Life Insurance Corporation of India <b>CIT I, Mumbai</b>	2000-01	Scrutiny January 2003  Revision March 2003	The assessing officer had incorrectly granted interest of Rs. 2.93 crore on refund for the period from 1 April 2003 to 15 March 2005 as against the correct amount of Rs. 1.43 crore.	1.50

**Mistakes in application of correct rate of tax**

**3.21** 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 in the relevant Finance Act.

**3.21.1** Audit noticed short levy of tax due to incorrect application of correct rate of tax in **two cases** involving revenue impact of **Rs. 4.88 crore** in Delhi and Maharashtra. **One case** is shown in **Table no. 3.15** below:

(Rs. in crore)

**Table no. 3.15: Mistakes in application of correct rate of tax**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Rolls Royce PLC <b>DIT, Delhi</b>	1997-98	Scrutiny March 2005	Tax on the income of Rs. 18.98 crore was charged at 48 percent instead of 55 percent.	4.72

**3.21.2** The Ministry has accepted (December 2007) the observation in the case at **Sl. no. 1** of **Table no. 3.15** above.

**Mistakes in  
computation of  
capital gains**

**3.22** Any profit and gains arising from the transfer of a capital asset shall be chargeable to income tax under the head 'capital gains' and is taxable in the year in which the transfer took place. The mode of computation of capital gains in respect of long-term capital asset provides for deduction, from the consideration received, of the cost of acquisition of assets and the cost of any improvement thereto and of expenditure incurred wholly and exclusively in connection with such transfer.

**3.22.1** Where full value of consideration received or accruing as a result of transfer of any capital asset falling within a block of assets, on which depreciation has been allowed under the Act, exceeds the written down value of the block of assets at the beginning of the relevant previous year, the excess shall be deemed to be capital gains arising from the transfer of short term assets.

**3.22.2** Where a capital asset is converted by the owner thereof into, or is treated by him as stock-in-trade of a business carried on by him, such conversion or treatment shall be treated as transfer and capital gain thereon shall be computed as per section 45(2). Further, as per Supreme Court's decision<sup>1</sup>, the business income shall be computed on the difference between the sale proceeds and the fair market value of the asset as on the date of conversion into stock-in-trade.

**3.22.3** Assessing officers did not apply the above provisions correctly, which resulted in short levy of tax aggregating **Rs. 2.36 crore** in **five cases** in Tamil Nadu and Maharashtra.

**Incorrect  
allowance of  
deduction  
towards bad  
debts**

**3.23** Any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year, is an allowable deduction. However, no such deduction shall be allowed unless such debts or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off, or of an earlier previous year.

**3.23.1** Mistakes in the allowance of deduction toward bad debts resulted in short levy of tax aggregating **Rs. 2.26 crore** in **three cases** in Gujarat and Maharashtra.

**3.23.2** **Two cases** are shown in **Table no. 3.16** below:

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<sup>1</sup> I.T. vs Bai Shirinbai K. Kooka (1962) 46 ITR 86

(Rs. in crore)

**Table no. 3.16: Incorrect allowance of deduction towards bad debts**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Kinetic Finance Ltd. CIT V, Pune	2002-03	Scrutiny February 2005	The assessee had claimed and was allowed deduction of Rs. 2.33 crore towards bad debts which had already been considered in the profit and loss account.	1.14
2	M/s PRS Share Finance Pvt. Ltd. Co. CIT IV, Mumbai	2001-02	Scrutiny March 2003	The assessee had claimed and was allowed deduction of Rs. 2.13 crore towards bad debts on account of short recovery of payment which was not considered in computing the income of the relevant previous year.	1.06

Excess credit of tax deducted at source

**3.24** The Income Tax Act, 1961, provides that tax deducted at source under the provision of the Act and paid to the Central Government shall be treated as a 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 on production of a certificate to that effect.

**3.24.1** Excess credit of tax deducted at source resulted in short demand of tax aggregating **Rs. 2.01 crore** in **five cases** in Delhi, Karnataka, Kerala and West Bengal. **One case** is shown in **Table no. 3.17** below:

(Rs. in crore)

**Table no. 3.17: Excess credit of tax deducted at source**

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s Usha Beltron Ltd. CIT I, Kolkata	1998-99	Scrutiny November 2004	The assessee company was merged with another company in October 1997. The assessing officer had allowed credit of tax deducted at source of Rs. 95.26 lakh attributable to income for the full year instead of Rs. 9.52 lakh allowable in respect of half yearly income actually assessed prior to the merger of the company.	1.26

**Mistakes in  
summary  
assessments**

**3.24.2** The Ministry has accepted (December 2007) the observation in the case at **Sl. no. 1 of Table no. 3.17** above.

**3.25** Consequent to the amendment of the Income Tax Act with effect from 1 June 1999, no prima facie adjustment can be made by the assessing officer in an assessment completed in summary manner. However, unentitled benefits availed of by the assesseees in summary assessments can be withdrawn and mistakes rectified under the powers separately available to the assessing officers under the Act. The Board have also issued instructions in August 1995 and in November 2006 for initiating remedial action with regard to audit observations on summary assessments.

**3.25.1** Out of **686 draft paragraphs** sent to Ministry during the year in respect of corporation tax, **145 draft paragraphs** involving revenue impact of **Rs. 149.30 crore** related to summary assessments in the states of Andhra Pradesh, Assam, Delhi, Chandigarh (UT), Gujarat, Goa, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. **Five cases** are illustrated below:

**3.25.2** In Tamil Nadu, CIT I, Chennai charge, the income tax return of a company, **M/s Eonour Technologies Ltd.**, for the assessment year 2004-05 was processed in a summary manner in December 2005 determining a loss of Rs. 25.12 crore. Audit examination revealed that the assessee had debited Rs. 40.26 crore in the profit and loss account towards impairment of assets relating to its Singapore branch. Under the Income Tax Act, any write off of capital asset amounts to capital loss and any write off of block of assets amounts to short term capital loss. As the capital loss/short term capital loss could be adjusted only against capital gains, the adjustment against the business income was irregular. This resulted in underassessment of income of Rs. 15.14 crore involving aggregate revenue impact of Rs. 15.58 crore, including potential tax of Rs. 9.01 crore.

**3.25.3** In West Bengal, Kolkata II charge, the assessment of a company, **M/s Central Inland Water Transport Corporation Ltd.**, for the assessment year 2004-05 was processed in a summary manner in January 2006 determining a loss of Rs. 46.66 crore including business loss of Rs. 41.34 crore. Audit examination revealed that the assessee had claimed and was allowed to carry forward business loss of Rs. 41.34 crore even though the return was not filed within the time limit prescribed in the Act. The mistake resulted in excess carry forward of business loss of Rs. 41.34 crore involving potential revenue impact of Rs. 14.83 crore.

**3.25.4** In Maharashtra, DIT (International Taxation) Mumbai charge, the return of a foreign company, **M/s P & O Nedlloyd BV**, based in Netherlands, for the assessment year 2004-05 was processed in a summary manner in October 2004. The company earned a freight income of Rs. 375.23 crore from operation of ships



in international traffic and had a 44 percent share in partnership with a U.K. based foreign company. Audit examination revealed that the assessee had claimed exemption of the above income under the provisions of Article 8A of the Double Taxation Avoidance Agreement between India and U.K. However, during the scrutiny assessment for the assessment year 2003-04 in December 2005, similar exemption was denied on the grounds that Articles 9(5) and 8(A) of the Indo-U.K. treaty were not applicable to the assessee, and the freight income for assessment year 2003-04 was assessed under section 172(2) considering seven and one-half percent of total freight receipts as taxable income. On similar grounds, the assessable income for the assessment year 2004-05 would work out to Rs. 28.14 crore, considering 7.5 percent of freight income of Rs. 375.23 crore. The omission to select the return for the assessment year 2004-05 for scrutiny assessment and failure to apply provisions of section 172 of Income Tax Act resulted in income escaping assessment to extent of Rs. 28.14 crore, involving revenue impact of Rs. 11.54 crore.

**3.25.5** In Orissa, CIT, Bhubaneswar charge, the assessment of a company, **M/s Orissa Sponge Iron Ltd.**, for the assessment year 2002-03 was processed in summary manner in March 2004. Audit examination revealed that the assessee made additions to the plant and machinery in July 2001 of Rs. 39.01 crore for waste heat recovery based power plant and claimed 100 percent depreciation towards additions. However, as per Income Tax Rules, the assessee is entitled to only 25 percent on such additions, and the allowable depreciation works out to Rs. 9.75 crore. Besides, the assessee had also claimed and was allowed 100 percent depreciation on addition to the buildings for waste heat recovery based power plant as against the admissible rate of 10 percent. Thus, excess claims of depreciation by the assessee on plant and machinery as well as buildings resulted in overstatement of loss involving potential tax of Rs. 11.55 crore, including potential tax of Rs. 1.11 crore.

**3.25.6** In Tamil Nadu, CIT I, Trichy charge, the assessment of a company, **M/s Tamil Nadu State Transport Corporation Ltd.**, for the assessment years 1999-2000 to 2002-03 were processed in summary manner between March 2000 and February 2003 determining 'nil' income for 1999-2000 and 2000-01 and a loss of Rs. 8.40 crore and Rs. 12.96 crore for the assessment years 2001-02 and 2002-03 respectively. The income under the special provisions of the Act was also computed as 'nil' in view of the book business loss of Rs. 2.46 crore pertaining to the assessment year 1997-98. Audit examination revealed that while the accident compensation claims were paid from the insurance fund to which the company made contribution from time to time and to the extent required for meeting claims, provision was also made in the accounts towards 'No fault liability' under the Motor Vehicles Act in respect of cases pending in the Court. Accordingly, aggregate contribution to insurance fund of Rs. 24.16 crore in these assessment years was debited to Profit and Loss account. As the amount debited in the Profit and Loss Accounts were contingent in nature, these were required to be disallowed. Omission to do so resulted in excess carry forward of losses of

earlier years resulting in an aggregate potential revenue impact of Rs. 9.00 crore for the four assessment years and also non demand of tax of Rs. 1.41 crore under special provisions for the assessment years 2001-02 and 2002-03.

**3.25.7 Twenty one cases** are shown in **Table no. 3.18** below:

(Rs. in crore)

<b>Table no. 3.18: Mistakes in summary assessments</b>					
<b>Sl. no.</b>	<b>Assessee company/ CIT charge</b>	<b>Assessment year</b>	<b>Type/month of assessment</b>	<b>Nature of mistake</b>	<b>Revenue impact</b>
1	M/s Uniworth Ltd. <b>CIT IV, Kolkata</b>	2000-01	Summary February 2006	Capital gain of Rs. 15.74 crore was irregularly set off against business loss of Rs. 32.59 crore.	9.31
2	M/s Metropolitan Transport Corporation (Chennai) Ltd. <b>CIT III, Chennai</b>	2002-03  2004-05	Summary October 2004  Summary September 2005	Deduction of Rs. 17.01 crore was irregularly claimed and allowed for contribution towards employees' provident fund which was not remitted within the due dates to the Fund account as prescribed in the respective statute.	6.12 (P)
3	M/s YKK India Ltd. <b>CIT VI, Delhi</b>	2004-05	Summary December 2004	After adjusting brought forward losses, assessment was completed at a loss of Rs. 15.65 crore as against 'nil' income.	5.61 (P)
4	M/s Hindustan Photo Films Manufacturing Company Ltd. <b>CIT I, Coimbatore</b>	2003-04  2004-05	Summary March 2004  Summary October 2004	Provisions for contingencies and provision for doubtful debts aggregating Rs. 6.60 crore and Rs. 6.79 crore respectively debited under the head 'other costs' were not disallowed.	4.50
5	M/s Tidel Park Ltd. <b>CIT I, Chennai</b>	2001-02  2002-03	Summary March 2004  July 2004	Depreciation on electrical fittings was claimed and allowed at 25 percent as applicable to plant and machinery instead of 10 percent applicable to furniture and fittings.	3.47
6	M/s Mahanadi Coal Fields Ltd. <b>CIT, Sambalpur</b>	2003-04	Summary December 2003	The assessee had claimed and was allowed deduction of Rs. 6.07 crore towards leasehold charges which was required to be disallowed and added back.	2.44

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
7	M/s All Bank Finance Ltd. <b>CIT II, Kolkata</b>	2004-05	Summary February 2006	Provision for diminution in value of investment of Rs. 6.87 crore was not disallowed.	2.32
8	M/s Ankita Deposit and Advances Pvt. Ltd. <b>CIT, Shimla</b>	2002-03 2003-04	Summary February 2003  Summary March 2004	Deduction of Rs. 5.05 crore and Rs. 17 lakh under section 80G was allowed without documentary proof. Besides, profits on the sale of shares to the extent of Rs. 4.99 crore and Rs. 33 lakh were taxed at 10 percent treating it as short term capital gain instead of business income, as the assessee was engaged in trading of shares.	2.18
9	M/s Lakshmi Machine Works Ltd. <b>CIT II, Coimbatore</b>	2002-03	Summary December 2002	While working out deduction towards export profits, the assessee considered income/turnover of export units only, disregarding income/ loss from other units.	2.11
10	M/s Tractor and Farm Equipment Ltd. <b>CIT I, Chennai</b>	2001-02	Summary July 2002	The assessee paid 2,10,000 pounds for services in India (net of tax) and 8,40,000 pounds for services rendered outside India. The assessee had deducted tax at source from the payments made for services in India but did not deduct tax at source for services rendered outside India.'	1.97
11	M/s STI India Ltd. <b>CIT II, Indore</b>	2002-03	Summary March 2003	Payment of interest of Rs. 5.60 crore on funds borrowed but not utilised for business purposes was required to be disallowed.	1.96
12	M/s HPL Cogeneration Ltd. <b>CIT III, Kolkata</b>	2003-04	Summary March 2004	Deferred tax liability of Rs. 24.89 crore was not disallowed while calculating book profits.	1.96

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
13	M/s Varun Flair Filtration (P) Ltd. <b>CIT VI, Delhi</b>	2004-05	Summary March 2005	Entire amount of brought forward loss of Rs. 4.54 crore pertaining to earlier years was set off against the income of Rs. 13.12 lakh only instead of allowing set off of balance amount in subsequent years.	1.58
14	M/s SBI Home Finance Ltd. <b>CIT III, Kolkata</b>	2003-04	Summary March 2004	Provision of Rs. 4.05 crore for depreciation in the value of investments was not disallowed.	1.49 (P)
15	M/s Jessop & Co. Ltd. <b>CIT I, Kolkata</b>	2001-02	Summary December 2002	Interest of Rs. 3.63 crore payable to a public financial institution was incorrectly allowed without its actual payment within the relevant due date of filing the return.	1.44 (P)
16	M/s Aditya Translink (P) Ltd. <b>CIT II, Kolkata</b>	2000-01	Summary March 2002	Expenditure of Rs. 2.02 crore on replacement of an entire block of plant and machinery, which was capital in nature, was not disallowed.	1.44
17	M/s Ballast Nedam International (P) Ltd. <b>CIT IV, Baroda</b>	2004-05	Summary November 2004	Tax deducted at source of Rs. 12.03 crore was not credited to Government account, making the assessee liable to pay interest for default in payment.	1.18
18.	M/s East Coast Consultancy and Infrastructure Ltd. <b>CIT I, Chennai</b>	2002-03	Summary February 2003	Depreciation on bridge built on BOT basis was claimed and allowed at 25 percent instead of 10 percent as applicable to buildings.	1.17 (P)
19	M/s Veera Venkata Lakshmi Textiles (P) Ltd. <b>CIT, Rajamundry</b>	2003-04	Summary January 2004	Against the loss of Rs. 9.84 crore returned by the assessee, loss of Rs. 3.21 crore was allowed in computation statement.	1.14 (P)
20	M/s Pioneer Wincon Ltd. <b>CIT III, Chennai</b>	2003-04	Summary January 2004	Deductions of Rs. 1.70 crore and Rs. 1.33 crore towards 'provision for stock obsolescence' and 'provision for depletion in value of work in progress' were not disallowed.	1.11 (P)

Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
21	M/s Vivek (P) Ltd. CIT VI, Delhi	2004-05	Summary January 2005	Loss was assessed at Rs. 3.04 crore as against actual business loss of Rs. 1.98 crore.	1.08

*P: denotes potential tax*

**3.25.8** The Ministry has accepted (August and December 2007) the observations in the cases at **Sl. no. 3, 5, 6 and 19** of **Table no. 3.18** above.

**3.25.9** The Ministry has not accepted (December 2007) the observations at **paragraph no. 3.25.2, 3.25.4, 3.25.6, 3.25.7** and **Sl. nos. 2, 4, 7 to 12, 14 and 16 to 21** of **Table no. 3.18** above on the grounds that the assessments in the above cases were summary assessments. The reply is not tenable as mistakes arising from summary assessments conferring otherwise unentitled benefit on the assessees and prejudicial to interest of revenue could be rectified under the powers available to the assessing officers under the Income tax Act. The Board have also issued instructions (August 1995) and reiterated the instructions (November 2006) that remedial action should invariably be initiated where an assessment was made under summary scheme and the observation pointed out by Audit could not have been considered under the provisions of section 143(1) of the Act.

**Assessments involving overcharge of tax**

**3.26** Although cases of overassessment/overcharge are being regularly featured in the reports of the Comptroller and Auditor General of India, mistakes relating to overcharge continue to occur. During test check in audit during 2006-07, overassessment of income was noticed in **20 cases** involving overcharge of tax totalling **Rs. 95.23 crore** in Andhra Pradesh, Delhi, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu and West Bengal. **Three cases** are illustrated below:

**3.26.1** In Maharashtra, CIT III, Mumbai charge, the assessment of a company **M/s Reliance Port & Terminals Ltd.**, for the assessment year 2001-02 finalised after scrutiny in November 2003 determining an income of Rs. 10.49 lakh, was subsequently revised in March 2006 at taxable income of Rs. 280.06 crore. Audit examination revealed that the interest leviable for default in payment of advance tax was calculated at Rs. 73.65 crore for the period from April 2001 to March 2006 as against the correct amount of Rs. 32.12 crore for the period from November 2003 (date of original assessment) to March 2006 (date of reassessment). The mistake resulted in overcharge of interest of Rs. 41.53 crore.

**3.26.2** In Maharashtra, CIT VIII, Mumbai charge, the assessment of a company **M/s Hotel Corporation of India**, for the assessment year 2003-04 was completed after scrutiny in March 2006 determining an income of Rs. 70.92 crore. Audit examination revealed that the entire taxable income was derived from long-term capital gain and hence was required to be charged at 20 percent instead of 35

percent as levied by department. Incorrect application of rate of tax resulted in excess levy of tax aggregating Rs. 24.22 crore (including interest).

**3.26.3** In Maharashtra, CIT III, Mumbai charge, the assessment of a company, **M/s Nuclear Power Corporation of India**, for the assessment year 2000-01, initially processed in summary manner in March 2002 determining an income of Rs. 122.44 crore and allowing refund of Rs. 86.17 crore, was completed after scrutiny in February 2003 determining taxable income of Rs. 424.61 crore. This was subsequently revised in October 2005 to Rs. 446.02 crore and demand of Rs. 10.87 crore was raised. Audit examination revealed that while computing the tax demand of Rs. 10.87 crore in October 2005, interest of Rs. 12.91 crore charged towards excess refund was not admissible. Refund payable to assessee as per order of October 2005 worked out to Rs. 88.21 crore as against Rs. 86.17 crore calculated at summary stage and as such no excess refund had been made at summary stage. The irregular charge of interest of Rs. 12.91 crore towards excess refund was required to be withdrawn.

**3.26.4** Five cases are shown in **Table no. 3.19** below:

(Rs. in crore)

<b>Table no. 3.19: Assessments involving overcharge of tax</b>					
Sl. no.	Assessee company/ CIT charge	Assessment year	Type/month of assessment	Nature of mistake	Revenue impact
1	M/s United India Insurance Company Ltd. <b>CIT I, Chennai</b>	1998-99	Scrutiny March 2004  Revision December 2004	During revision tax was levied at 40 percent instead of the correct rate of 35 percent.	5.78
2	M/s Dredging Corporation of India Ltd. <b>CIT I, Visakhapatnam</b>	2002-03	Scrutiny February 2005	Self assessment tax paid by the assessee in June 2002 was erroneously considered to be paid in June 2003 resulting in excess levy of interest.	2.00
3	M/s Gruh Finance Ltd. <b>CIT, Ahmedabad</b>	1997-98	Scrutiny March 2000  Revision July 2002	Interest on default in payment of advance tax was levied at Rs. 1.78 crore instead of the correct amount of Rs. 19.50 lakh.	1.58
4	M/s Bathina Technologies (India) <b>CIT I, Hyderabad</b>	2002-03	Scrutiny March 2005  Revision September 2005	Interest for belated filing of return was levied at Rs. 2.07 crore as against the correct amount of Rs. 73.63 lakh.	1.33
5	M/s Mahanadi Coal Fields <b>CIT II, Sambalpur</b>	2003-04	Scrutiny February 2006	Interest on default in payment of advance tax was levied at Rs. 22.45 crore instead of the correct amount of Rs. 21.29 crore.	1.17

**3.26.5** The Ministry has accepted (December 2007) the observations in all the cases of **Table no. 3.19** above.