

Highlights

Audit reviewed the assessments of sports associations/institutions and sports personalities with a view to ascertaining i) correctness of exemptions given to the sports associations and sports personalities ii) adequacy of department's efforts to bring all sports associations/institutions and sports personalities into tax net, iii) effectiveness of internal control mechanism in the department to avoid irregularities and errors in the assessments done, evasion of tax, and misuse of exemptions, iv) compliance of TDS provisions in respect of payments made to sports persons.

(Para 3.3)

Out of 2,696 cases requisitioned by audit, 1,050 cases were produced. Of these 1,050 cases, 514 pertained to miscellaneous category, whereas 245 cases related to cricket. Number of cases produced related to any other individual sport was less than 75. Further, out of 158 audit observations noticed during the review, 47.47%, 33.55%, 4.44% and 3.80% related to miscellaneous category, cricket, tennis and hockey respectively. However, the money value of the audit observations in percentage terms were 66.78, 31.86, 0.42 in the assessments relating to cricket, miscellaneous category and tennis respectively.

(Para 3.7)

Audit noticed

- Irregular exemption granted owing to non approval/notification of the assesseees in four cases involving tax effect of Rs. 8.26 crore.

(Para 3.8.2)

- Irregular exemption granted owing to non investment of accumulated income/investment made not in specified modes in seven cases involving tax effect of Rs. 20.83 crore.

(Para 3.12.2)

- Tax amounting to Rs. 5.41 crore not deducted at source from the payments made to sports personalities in Andhra Pradesh, Delhi, Gujarat, Karnataka, Kerala, Tamil Nadu and Pondicherry charges.

(Para 3.17.2)

- Mistake while giving effect to appellate orders resulted in short levy of tax by Rs. 4.57 crore in one case.

(Para 3.19.2)

- Non filing of returns in 10 cases resulted in non levy of tax amounting to Rs. 19.56 crore.

(Para 3.20.2)

- Inconsistent decisions of the department resulted in unintended benefit of Rs. 148.07 crore involving tax effect of Rs. 60.30 crore.

(Para 3.21.4)

- 3,273 sports associations and clubs receiving grants from different government agencies or affiliated to different associations in different States were required to be examined and brought under the tax net of the department.

(Para 3.22.2)

- Weak internal audit and internal control system in respect of checking year wise details of investment, its withdrawal and utilization for specified purposes within stipulated period and to check if income/ accumulated income has been applied to specified objectives for which the association/ institution was established.

(Para 3.23)

- Irregular deductions allowed to sports persons in respect of income from the Government of foreign State in seven cases even when income had not been earned in the capacity of sportsman involving tax effect of Rs. 4.51 crore.

(Para 3.24.2)

Audit recommends that

- The internal control mechanism in the department may be strengthened to check year wise details of investment, its utilization for specified purpose within stipulated period, and to check if income/ accumulated income has been applied to specified objectives for which the associations/ institutions were established.

(Para 3.32.7)

- Government may like to utilize its AST database to focus on potential cases to minimize the misuse of exemptions given to sports associations/institutions/clubs and sports personalities.

(Para 3.32.8)

- Government may like to strengthen its internal audit to avoid irregularities and errors in assessments done, evasion of tax and misuse of exemptions.

(Para 3.32.9)

Review on Assessment of Sports Associations/Institutions and Sports Personalities

3.1 Introduction

3.1.1 With a view to promoting and improving the standard of sports in India, income of an association or institution established in India and engaged in the promotion of sports or games has been exempted from levy of income tax subject to fulfilment of certain conditions. Promotion of sports and games is considered as charitable purpose within the meaning of section 2 (15) of the Income Tax Act.* Accordingly an association or institution engaged in the promotion of sports or games can claim exemption under section 11.

3.1.2 Sports personalities are assessed according to their status in general. Further, sports persons are entitled to have specific deductions and exemptions[†] in respect of income earned out of sports and games.

3.1.3 Income Tax Department (the Department) is required to ensure through the operations of the Income Tax Act (the Act) that incomes of only genuine and eligible sports institutions/associations and sports personalities are exempted from levy of income tax, and correct amount of tax is paid by the institutions/associations and sports personalities.

3.2 Law and procedure

3.2.1 Prior to its omission vide Finance Act, 2002 with effect from 1 April 2003, section 10(23) of the Act, inter-alia, dealt with the exemption in respect of any income of an association or institution established in India which may be notified by the Central Government in the official gazette having regard to the fact that the association or institution has as its object – the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may, by notification in the official gazette, specify in this behalf provided:

- the association or institution makes an application in Form No.55 to the Director General (Income tax Exemptions) for the purpose of grant of exemption or continuance thereof;
- the association or institution applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established, and the provisions of sub section (2) and sub section (3) of section 11 shall apply in relation to such accumulation;

* Central Board of Direct Taxes (Board) circular No. 395, dated September 24, 1984

[†] In respect of awards as may be approved by the Central Government in the public interest.

- the association or institution does not deposit its funds during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11;
- the association or institution does not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it;
- the association or institution applies the amount received by way of donations referred to in clause (c) of sub-section (2) of section 80G for the purpose of development of infrastructure for games or sports in India or for sponsoring of games and sports in India.

3.2.2 Section 11 of the Act deals with the exemption of income from property held for charitable or religious purposes. Further, section 2(15) defines “charitable purpose” to include relief of the poor, education, medical relief and the advancement of any other object of general public utility. Promotion of sports and games has been considered as a charitable purpose within the meaning of section 2(15), and as such, an association or institution engaged in the promotion of sports or games can claim exemption under section 11 even if it is not exempt under section 10(23)[‡].

3.2.3 For claiming exemption under section 11, conditions as discussed in the table below are to be complied with:

Section of the Act	Prescribed conditions
11	<ul style="list-style-type: none"> • Trust/institution must be for charitable or religious purpose. • The property from which income is derived should be held under trust by such charitable or religious trust/institution. • The trust must get itself registered with the Commissioner of Income tax within the prescribed time. • Where the ‘property held under a trust’ includes a business undertaking, the profits or gains earned from such business shall not be exempt under section 11, unless the business is incidental to the attainment of the objectives of the trust /institution, and separate books of accounts are maintained by such trust and institution in respect of such business.
11(1)	<p>The following income shall not be included in the total income of the previous year of the person in receipt of the income-</p> <ul style="list-style-type: none"> • income to the extent to which such income is applied for charitable or religious purposes in India ; and • the income accumulated or set apart for application to such purposes in India, by the trust/institution, shall not be in excess of 15 per cent of the income from such property; (25 per cent upto assessment year 2002-03).

[‡] Board’s circular No. 395, dated September 24, 1984

Section of the Act	Prescribed conditions
	<ul style="list-style-type: none"> income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.
11 (2)	<p>Where 85 per cent of income (75 per cent of income till assessment year 2002-03) is not applied to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person, provided:</p> <p>(a) such person specifies, by notice in writing to the assessing officer in the prescribed manner, the purpose for which the income is being accumulated or set apart, and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years (ten years up to March 31, 2001) and</p> <p>(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 11.</p>
11(5)	<p>Accumulated or set apart funds shall be invested or deposited in the specified forms and modes such as saving certificates as defined under Government Saving Certificates Act, 1959, any other securities or certificates issued under the Small Saving Schemes of the Government, deposit with the post office, scheduled banks, units of the Unit Trust of India, deposit in public sector companies etc.</p>
12A(a)	<p>The person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the expiry of a period of one year from the date of creation of the trust/institution.</p>
12(A)(b)	<p>Where the total income of the trust or institution as computed without giving effect to the provisions of section 11 and section 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited, and the person in receipt of the income furnishes along with the return of income, the report of such audit in the prescribed form.</p>

3.2.4 Under section 80RR, where the gross total income of an individual resident in India, being an author, playwright, artist, musician, actor or sportsman (including an athlete) includes any income derived by him in the exercise of his profession from the Government of foreign State, there shall be allowed, in computing the total income of the individual, a deduction from such income of an amount equal to-

Assessment year	Deduction as percentage of income as is brought into India
2001-02	60
2002-03	45
2003-04	30
2004-05	15
2005-06 & subsequent assessment years	No deduction

3.2.5 No deduction under section 80 RR shall be allowed unless the assessee furnishes a certificate, in prescribed form, along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

3.3 Objectives of the review

Audit reviewed the assessments of sports associations/institutions and sports personalities with a view to verifying the following:

- Correctness of exemptions given to sports associations/institutions as well as sports personalities and to quantify the extent of loss of revenue or underassessment of taxable income and other irregularities due to mistakes in assessments.
- Whether adequate steps have been taken by the department to bring all sports associations/institutions and sports personalities into the tax net.
- Whether there exists any internal control mechanism within the department to exercise adequate and necessary checks to avoid irregularities and errors in assessments done, evasion of tax, and misuse of exemptions.
- Whether TDS from the payments made to sports persons on winnings from sports, payment to foreign coaches etc. has been correctly deducted.

3.4 Audit methodology

3.4.1 A database of sports associations/institutions and of sports personalities was prepared from various sources such as:

- Records of DGIT (Exemptions)
- Records relating to survey operations and Central Information Branch in respect of sports associations/institutions/bodies as brought into tax net by the department
- Demand and collection register of the wards/circles
- Sports Ministry/Departments of Sports
- Sports Authority of India
- Sports Development Authority of respective states/regional sports directorates
- Apex bodies of sports associations

- Registrar of societies
- Newspapers, books & publications etc.
- Internet
- Telephone directories and
- Any other source as deemed fit.

3.4.2 The names and addresses of sports associations/institutions, sports personalities etc so identified were furnished to the CCsIT/CsIT to ascertain the assessing wards/circles where they were being assessed and whether they were filing income tax returns or not.

3.4.3 From the information gathered as above and also from the addresses of the assesseees, the assessing wards/circles where these sports associations/institutions/sports personalities could be assessed were identified.

3.4.4 The review parties visited the assessing wards/circles, and carried out necessary audit checks in respect of assessment records made available to audit.

3.4.5 Copies of the draft review report containing observations were issued to the respective Chief Commissioners of Income Tax / Director General of Income Tax (Investigation) by the Director General/Pr. Directors of Audit/Pr. Accountants General/Accountants General during the period from July 2006 to August 2006.

3.4.6 A consolidated draft review report was issued to the Ministry/Central Board of Direct Taxes (Board) for their comments in November 2006. An exit conference to discuss the audit results of this review between the office of the Comptroller and Auditor General of India and the Board was held in January 2007.

3.5 Period covered

The review covered assessments of sports associations/institutions and sports personalities completed during the period from 1999-2000 to 2005-06 and those completed upto the date of audit.

3.6 Sample size

3.6.1 Assessments of all sports associations/institutions, whose return could be located, were selected for review, whether these were completed in a summary manner or after scrutiny.

3.6.2 All sports personalities with annual income of Rs. 15 lakh and above were selected for review. Apart from the returns of sports persons, returns of sports commentators, ex-sports persons, office bearers of sports associations/institutions etc. were also examined to ascertain whether exemptions under section 80RR were availed by persons other than those specified in the Act.

3.6.3 Audit requisitioned 2,696 cases as per the database[§] prepared, of which records were produced in 1050 cases. The state wise details are given in **Appendix 13**.

3.7 Audit findings

3.7.1 Audit test checked 1050 cases in Andhra Pradesh, Assam, Bihar, Chandigarh (UT), Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal charges. Audit observed a total of 158 cases of irregularities involving tax effect of Rs. 190.92 crore (including penalty of Rs. 50.24 crore). Of these 130 cases of irregularities involving tax effect of Rs. 179.80 crore were in respect of sports associations/institutions and 28 cases involving tax effect of Rs. 11.12 crore were in respect of sports personalities.

3.7.2 Sports category wise break up of audit findings is given in Table 1 below:

Sl No.	Sports Category	Cases Requisitioned	Cases Produced	Audit Findings		Percentage of cases produced	Number of audit observations as a percentage of total	Money value as a percentage of total
		Number	Number	Number	Money value (Rupees in lakh)			
1	Athletics	214	18	1	4.95	8.41	0.63	0.03
2	Boxing	34	7	1	0.62	20.59	0.63	0.00
3	Cricket	400	245	53	12750.08	61.25	33.55	66.78
4	Chess	68	36	4	35.02	52.94	2.53	0.18
5	Football	80	26	4	42.33	32.50	2.53	0.22
6	Golf	75	48	3	74.73	64.00	1.90	0.39
7	Gymnastics	43	6	0	0	13.95	0.00	0.00
8	Hockey	149	32	6	6.13	21.48	3.80	0.03
9	Judo	48	9	1	1.19	18.75	0.63	0.01
10	Shooting	28	5	0	0	17.86	0.00	0.00
11	Swimming	18	6	1	0	33.33	0.63	0.00
12	Tennis	113	66	7	80.4	58.41	4.44	0.42
13	Volleyball	43	20	1	4.20	46.51	0.63	0.02
14	Weightlifting	61	11	1	11.12	18.03	0.63	0.06
15	Wrestling	38	1	0	0	2.63	0.00	0.00
16	Miscellaneous category*	1284	514	75	6081.46	40.03	47.47	31.86
	Total	2696	1050	158	19092.23	38.95	100	100

[§] As the database was prepared by audit from various sources, whether all the cases which were requisitioned were assessable or were having taxable income could not be ascertained.

* This category includes cases of sports bodies/sports authorities/sports councils/ clubs etc covering more than one game. Any other game not covered in the table is also included here.

Of 1,050 cases produced to audit, 514 pertained to miscellaneous category whereas 245 cases related to cricket. Number of cases produced related to any other individual sport was less than 75. Out of 158 audit observations noticed during the review, 47.47%, 33.55%, 4.44% and 3.80% related to miscellaneous category, cricket, tennis and hockey respectively. However, the money value of the audit observations in percentage terms were 66.78, 31.86, 0.42 and 0.39 in the assessments relating to cricket, miscellaneous category, tennis and golf respectively. These audit observations are featured in the subsequent paragraphs.

3.7.3 Audit observations with money value exceeding Rupee one crore have been discussed in the paragraphs; while those between Rs. 50 lakh and Rupees one crore are featured in the table in the body of the Report and those between Rs. 20 lakh and Rs. 50 lakh are included in the appendices. The audit observations with money value below Rs. 20 lakh are not individually highlighted although their tax effect is included in the Report.

3.8 Irregular exemption owing to non approval/notification in respect of sports association under section 10 (23)

3.8.1 Prior to its omission vide Finance Act, 2002 with effect from 1 April 2003, section 10(23) of the Act, inter-alia, dealt with the exemption in respect of any income of sports association or institution established in India provided the association or institution is notified by the Central Government, and the association or institution makes an application in prescribed form to the Director General (Income tax Exemptions) for the purpose of grant of exemption or continuance thereof. Further, with effect from 24 September 1984, vide Board's circular No.395, an association/institution engaged in the promotion of sports or games can claim exemption under section 11 even if it is not exempt under section 10 (23).

3.8.2 Irregular exemption owing to non approval/notification resulted in non levy of tax of Rs. 8.26 crore in four cases in Karnataka, Kerala, and West Bengal charges. Of these, two cases are detailed below:

3.8.3 In West Bengal, DIT (Exemption), Kolkata charge, assessment of Cricket Association of Bengal (CAB), for the assessment years 1979-80 to 1983-84 was completed after scrutiny in July 2002[#]. Audit scrutiny of assessment records pertaining to the assessment years 1979-80 to 1980-81 and 1982-83 to 1983-84 revealed that the assessee was not notified under section 10 (23) for these years. Further, exemption under section 11 was also not available for these years as the same was effective from September 24, 1984 only. However, audit noticed that the assessee had claimed and was allowed exemptions under section 11(1) and 11(2). Thus, irregular allowance of exemption to the assessee resulted in short levy of tax amounting to Rs. 7.29 crore including interest.

[#] Assessee had not filed income tax returns for any of these years. Assessments for these years under section 144 underwent several revisions in earlier years in pursuance of appeal orders, and ultimately were completed in July 2002.

3.8.4 The department in its reply dated 2 December 2005 stated that the exemption was granted under section 11 of the Act on the basis of Board's circular No. 395 issued on 24 September 1984 whereby promotion of sports and games has been considered as charitable activity within the meaning of section 2(15) of the Act. The reply is not tenable as the circular cited by the department was issued on 24 September 1984 only, whereas the irregularity highlighted in the para pertains to the assessment years 1979-80, 1980-81, 1982-83 and 1983-84. Retrospective effect cannot be given to a circular unless it was specifically mentioned in the circular itself. The department, however, initiated remedial action under section 154 in December 2005.

3.8.5 Another case is given in the Table 2 below.

Sl No.	Name of the assessee/ CIT charge	Assessment year(s)	Type of assessment/ date of assessment	Nature of mistake	Tax effect (Rs. in lakh)	Department's Reply
1	Kerala Cricket Association Trivandrum	2002-03	Summary 31 October 2002	Assessee was not notified under section 10(23)	80.36	The assessment has been reopened.

3.9 Irregular exemption owing to non renewal of approval under section 10(23)

3.9.1 Under the Act, approval for exemption under section 10(23), shall at any one time have effect for a period not exceeding three assessment years.

3.9.2 Non renewal of approval beyond the period of three years resulted in irregular grant of exemption involving non levy of tax of Rs. 79.65 lakh in three cases in Delhi, Orissa and Uttar Pradesh charges. Of these, two cases are given at **serial number 1 and 2 of Appendix 14.**

3.10 Exemption granted without registration

3.10.1 The provisions of section 11 shall not apply in relation to the income of any trust or institution unless the trust or institution has made an application for registration of the trust or institution in the prescribed form, and in the prescribed manner.

3.10.2 Irregular exemption owing to non registration of trust or institution resulted in non levy of tax of Rs. 1.15 crore in 13 cases in Andhra Pradesh, Delhi, Gujarat, Haryana, Kerala, Orissa, Punjab, Rajasthan and Tamil Nadu charges. Of these, one case is given in the Table 3 below:

Table 3 : Exemption granted without registration

Sl No.	Name of the assessee/ CIT charge	Assessment year(s)	Type of assessment/ date of assessment	Nature of mistake	Tax effect (Rs. in lakh)	Department's reply
1.	Kerala Cricket Association Trivandrum	2004-05 2005-06	Summary 1 August 2005	Assessee sports association not registered under section 12 A	66.74	The assessment has been reopened.

3.11 Irregular exemption owing to application of income less than prescribed limits under section 10(23) and section 11

3.11.1 The exemption under section 10(23) shall be allowed only if the association or institution applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established. Where 85[&] per cent of income is not applied for the purpose of games or sports but is accumulated or set apart for application to such purpose, such income so accumulated or set apart shall not be included in the total income of the previous year, provided assessee specifies by notice in writing to the prescribed authority in the prescribed manner, the purpose of such accumulation, and the period of accumulation does not exceed five[@] years, and the money so accumulated or set apart is invested or deposited in the form or modes specified in section 11(5).

3.11.2 Irregular exemption owing to application of income less than the prescribed limits resulted in non levy of tax of Rs. 3.35 crore in four cases in Delhi, Himachal Pradesh, Punjab and West Bengal charges. Of these, one case involving tax effect of Rs. 2.99 crore is discussed below:

3.11.3 In West Bengal, DIT (Exemption), Kolkata charge, assessment of Cricket Association of Bengal (CAB), for the assessment years 1991-92 to 1993-94 was completed after scrutiny in March 2000. Scrutiny of assessment records pertaining to the assessment years 1991-92 to 1993-94 revealed that neither was 75 per cent of the income applied for the purpose of games or sports, nor was the assessing officer informed of the same as required under section 11 (2). Further, utilization of unspent income (as required under section 11[2]) within 10 years i.e. up to assessment years 2001-02, 2002-03 and 2003-04 could also not be established as the department had not maintained the register, as prescribed by the Board's instruction No.1559 dated 23 April 1984, in order to check the accumulation of income and its proper utilization. Lack of internal controls in respect of accumulation of income, and its utilization for the specified objectives within specific period has been discussed in para 3.23.6 and 3.23.7 infra. The mistake led to short levy of tax of Rs. 2.99 crore inclusive of interest.

[&] 75 per cent up to 31-03-2003

[@] 10 years prior to 01-04-2001

3.11.4 The department did not accept the audit observation stating that since the assessee was notified under section 10(23), the entire income was to be exempted for tax purposes. The reply is not tenable as the provisions of section 11(2) and 11(3) are applicable to assessees availing the benefits of section 10(23). Department further stated in June 2006 that remedial action was being initiated.

3.12 Irregular exemption owing to non investment of accumulated income/investment made not in specified modes

3.12.1 Accumulated funds under section 11 shall be invested or deposited in the forms or modes specified in sub-section (5) of section 11. In case the trust/institution does not invest or invests or deposits its funds otherwise than in the forms or modes as specified thereunder, the benefit of the exemption will be denied.

3.12.2 Irregular exemption owing to accumulated income either not being invested or invested in the forms or modes other than those specified under section 11 (5) resulted in non levy of tax of Rs. 20.83 crore in seven cases in Chandigarh, Delhi, Gujarat, Jharkhand and Maharashtra charges. One such case is detailed below:

3.12.3 In Maharashtra, DIT (Exemption), Mumbai charge, assessments of the Board of Control for Cricket in India (BCCI), for the assessment years 2002-03 and 2004-05 were completed in summary manner in December 2002 and August 2005 respectively. Assessee had claimed exemption under section 11. Audit scrutiny revealed that out of accumulations of Rs. 87.26 crore as created pertaining to the assessment years 2002-03 and 2004-05, assessee had invested only Rs. 30.43 crore during the two years. Thus, funds accumulated during assessment years 2002-03 and 2004-05 by the assessee were not commensurate with the accretion to the investments in the Balance Sheet. As a result, there was shortfall, in the investments made, amounting to Rs. 56.83 crore. As such, assessee was not eligible for claiming exemption to the extent of shortfall in investments made under section 11. Omission had resulted in under assessment of income by Rs. 28.32 crore in the assessment year 2002-03 and by Rs. 28.51 crore in the assessment year 2004-05 with total tax effect of Rs. 20.09 crore including interest. The reply of the department is awaited.

3.12.4 Two similar cases are given at **serial number 3 and 4 of Appendix 14.**

3.13 Irregular exemption owing to carrying out business activities not incidental to the attainment of the objectives of the trust

3.13.1 Income of a trust or an institution, being profits and gains of business, shall not be included in the total income, unless the business is incidental to the attainment of the objectives of the trust/institution, and separate books of accounts are maintained by such trust/institution in respect of such business.

3.13.2 Irregular exemption owing to carrying out business activities not incidental to the attainment of the objectives of the trust resulted in non levy of tax of Rs. 78.18 lakh in four cases in Assam, Delhi, Maharashtra and West Bengal charges. One such case is given in the Table 4 below:

Table 4 : Irregular exemption owing to carrying out business activities not incidental to the attainment of the objectives of the trust

Sl No.	Name of the assessee/ CIT charge	Assessment year(s)	Type of assessment/ date of assessment	Nature of mistake	Tax effect (Rs. in lakh)	Department's reply
1.	Otters Club DIT (Exemption) Mumbai	2002-03 2004-05	Summary 21 February 2003 23 February 2005	Carrying out the activities of running card room, permit room, social functions, bar and restaurant etc., which are not incidental to the attainment of the objectives of the institution. Similar income was held as taxable during scrutiny assessment for assessment year 2003-04.	63.92	Not received

3.14 Irregular exemption granted to corpus fund without specific direction

3.14.1 Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the previous year of the person in receipt of the income.

3.14.2 However, voluntary contributions received without specific direction that these would form part of the corpus fund of the institutions were allowed exemptions in three cases in Maharashtra and Punjab charges resulting in non levy of tax of Rs. 76.98 lakh. Of these, two cases are given at **serial number 5 and 6 of Appendix 14.**

3.15 Irregular exemption owing to non fulfilment of the basic objectives of the trust/institution

3.15.1 Income derived from property held under trust wholly for charitable or religious purpose, to the extent to which such income is applied to such purpose in India, shall not be included in the total income of the previous year of the person in receipt of the income.

3.15.2 Irregular exemption owing to non application of the income for the basic objectives of charitable or religious trust/institution resulted in non levy of tax of Rs. 51.46 lakh in three cases of Tamil Nadu charge. Of these, one case is given at **serial number 7 of Appendix 14.**

3.16 Irregular allowance of depreciation

3.16.1 Under the Act, the income of charitable trust/institution is assessable under section 11 to 13 wherein income applied for object of the trust is eligible for deduction irrespective of nature of expenditure either revenue or capital. Where cost of an asset is allowed as application of income in the Income and Expenditure account itself, depreciation on such fixed asset cannot be allowed because aggregate depreciation allowed in respect of any asset for different assessment years cannot exceed the actual cost of the said asset. If allowed, it tantamounts to double deduction.

3.16.2 Incorrect allowance of depreciation on capital asset already treated as application of income (in the Income and Expenditure account) and given the benefit of deduction resulted in non levy of tax of Rs. 1.59 crore in 15 cases in Andhra Pradesh, Assam, Delhi, Gujarat, Jharkhand, Maharashtra, Orissa, Punjab and Uttar Pradesh charges. Of these, one case is given in the Table 5 below:

Table 5 : Irregular allowance of depreciation

Sl No.	Name of the assessee/ CIT charge	Assessment year(s)	Type of assessment/ date of assessment	Nature of mistake	Tax effect (Rs. in lakh)	Department's reply
1.	Punjab Cricket Association, Mohali Chandigarh II	2003-04 2004-05	Scrutiny January 2006 Summary March 2005	Incorrect allowance of depreciation even though the capital expenditure was allowed as an application of income (in the Income and Expenditure account) for the object of trust	47.84 49.71 (Potential)	Department, in its reply, stated that grant of depreciation to a trust is not a double deduction. Reply of the department is not tenable as the point raised by audit is not that depreciation is not an allowable deduction. Issue highlighted in the para is that when cost of an asset has already been allowed as application of income in the Income and Expenditure account itself, depreciation on such fixed asset cannot be allowed because aggregate depreciation allowed in respect of any asset for different assessment years cannot exceed the actual cost of the said asset. If allowed, it tantamounts to double deduction.

3.17 Omission to deduct tax at source

3.17.1 The person responsible for paying to any person any income by way of winnings from any game of any sort, in an amount exceeding five thousand rupees shall, at the time of payment thereof, deduct income tax thereon at the rates in force. Failure to deduct tax at source and delay in payment of the same to the Central Government attracted levy of interest and penalty.

3.17.2 Non deduction of tax at source from the payments made to various sports personalities resulted in non levy of tax of Rs. 5.41 crore including penalty in nine cases in Andhra Pradesh, Delhi, Gujarat, Karnataka, Kerala, Tamil Nadu and Pondicherry charges. Of these, two cases are discussed below. One similar case is given at **serial number 8** of **Appendix 14**.

3.17.3 In Kerala, Trivandrum charge, it was observed that Kerala Sports Council did not deduct tax at source from the payments made to sports persons. Tax not deducted together with interest and penalty thereon was to the extent of Rs. 2.23 crore as detailed in Table 6 below:

Amount paid for winnings from games and sports (Rs. in lakh)	Date of payment/ credit to account of recipient	Total TDS due plus interest and penalty (Rs. in lakh)	Department's reply
1,87.03	1.11.02	145.23	Department stated that awards were given to sports persons as an incentive to encourage sports personalities, and hence section 194 B was not applicable. Department further stated that cash awards given by Government of Kerala are exempted under section 10 (17A). Reply is not acceptable since the words 'game of any sort' were inserted with effect from 1 June 2001 to widen the scope of section 194 B. Thus cash prizes given to sports persons are covered under section 194 B. Further, for getting the benefit of section 10 (17A), the awards instituted by the State Government are required to be approved/notified by the Central Government which was not done in the instant case.
5.00	1.10.03	3.49	
15.29	8.12.04	10.03	
1.00	7.10.05	0.63	
104.46	14.2.06	64.09	
312.78		223.47	

3.17.4 In Andhra Pradesh charge, it was noticed that Sports Authority of Andhra Pradesh (SAAP), Government of Andhra Pradesh, disbursed Rs. 3.62 crore to sports personalities as awards/ incentives during the period from April 2001 to March 2006. However, tax was not deducted at source from the amounts disbursed. Tax not deducted together with interest and penalty thereon was to the extent of Rs. 2.61 crore. Reply of the department is awaited.

3.17.5 The cases relating to tax deducted at source as mentioned in para numbers 3.17.2, 3.17.3 and 3.17.4 are also featured in the review 'Implementation of TDS/TCS schemes'.

3.18 Income escaping assessment

3.18.1 Under the Income Tax Act 1961, if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned.

3.18.2 Audit noticed income escaping assessment in 20 cases involving short levy of tax of Rs. 4.88 crore in Andhra Pradesh, Chandigarh (UT), Delhi, Karnataka, Maharashtra and West Bengal charges. One case is detailed below:

3.18.3 In Maharashtra, DIT (E) Mumbai charge, assessments of the Board of Control for Cricket in India (BCCI) for the assessment years 1999-2000 and 2000-01 were completed after scrutiny in March 2002 and March 2003 respectively, and for assessment years 2002-03 and 2004-05 in summary manner in December 2002 and August 2005 respectively. Audit noticed that

- Interest income amounting to Rs. 4.05 crore pertaining to the assessment years 1999-2000 and 2000-01 was credited to various funds* without treating the same as income. Similar interest income was held as taxable by the assessing officer in respect of the same assessee in scrutiny assessment for assessment year 2001-02 completed in March 2004 and for assessment year 2003-04 completed in March 2006. The omission resulted in short levy of tax of Rs. 1.90 crore. Departments reply is awaited.
- Assessee, while making payments to players/umpires during the assessment years 1999-2000, 2000-01, 2002-03 and 2004-05, had deducted certain amounts and credited these to the Benevolent Fund without treating the same as income. Similar deductions from the payments made to players/umpires were held as taxable by the assessing officer in respect of the same assessee in scrutiny assessment for assessment year 2001-02 completed in March 2004 and for assessment year 2003-04 completed in March 2006. The omission resulted in short levy of tax of Rs. 27.86 lakh. Departments reply is awaited.

3.18.4 Two similar cases are given in the Table 7 below.

* Benevolent Fund International, Benevolent Fund Domestic Tournaments, General Fund etc

Table 7 : Income escaping assessment

Sl No.	Name of the assessee/ CIT charge	Assessment year(s)	Type of assessment/ date of assessment	Nature of mistake	Tax effect (Rs. in lakh)	Department's reply
1	Punjab State Sports Council Chandigarh	2002-03 2004-05 2005-06	Summary 21 March 2003 9 March 2006 20 February 2006	Exemption claimed and granted to interest income from property not held under trust. Similar exemption was disallowed in scrutiny assessment but allowed in summary assessments.	84.99	Returns were processed in summary manner. The reply is not tenable as mistakes arising from summary assessments conferring otherwise un-entitled benefits to the assessee and prejudicial to interest of revenue could be rectified under the powers separately available to the assessing officers under the Act.
2	Bombay Presidency Golf Club Limited DIT(Exemption) Mumbai	2001-02 2002-03 2004-05 2003-04	Summary 29 October 2001 28 February 2003 26 October 2004 Scrutiny 28 March 2006	The entrance fee collected was directly credited to reserve. Further, the assessee company though liable to tax under special provision (section 115 JB) was not assessed accordingly.	67.28	Reply not received.

3.18.5 Two similar cases are given at **serial number 9 and 10** of **Appendix 14**.

3.19 Mistake while giving effect to appellate orders

3.19.1 An aggrieved assessee can appeal to the CIT (Appeals) against the order of an assessing officer who shall comply with the directions given in the appellate order. Any mistake committed while giving effect to appellate order will result in under assessment/over assessment of income.

3.19.2 Mistake while giving effect to appellate orders resulted in short levy of tax of Rs. 4.57 crore in one case of Maharashtra charge as discussed below:

In Maharashtra, DIT (E) Mumbai charge, assessments of the Board of Control for Cricket in India (BCCI) for the assessment years 1999-2000 and 2000-01 were completed after scrutiny in March 2002 and March 2003 respectively. Assessing officer had denied the exemption under section 11 to the assessee during the scrutiny assessments for both the years. CIT (A), however, allowed the exemption

under section 11 in his order dated 9 November 2004 and 7 December 2004 for the assessment years 1999-2000 and 2000-01 respectively. Audit noticed that while giving effect to appellate orders, the deduction of 25 per cent under section 11 was worked out on returned income of Rs. 148.40 crore instead of taxable income as per income and expenditure account for the two years amounting to Rs. 65.74 crore. The omission resulted in total under assessment of income by Rs. 9.67 crore with tax effect of Rs. 4.57 crore including interest. Reply of the department is awaited.

3.20 Non submission/delay in submission of income tax returns

3.20.1 Every person in receipt of income derived from property held under a trust for charitable or religious purposes is under statutory obligation to file a return of such income of the previous year, if the income (without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount not chargeable to tax, in the prescribed form. Further, if any person fails to furnish the return of income as required, within the time allowed and in the manner prescribed, shall pay, by way of penalty a sum of one hundred rupees for every day during which the failure continues.

3.20.2 Non filing of return in 10 cases resulted in non levy of tax of Rs. 19.56 crore (including penalty) in Assam, Delhi, Himachal Pradesh, Kerala, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal charges. Of these, four cases are discussed below. One case is also given at **serial number 11** of **Appendix 14**.

3.20.3 In Kerala, Trivandrum charge, though Kerala Sports Council had taxable income, it did not file returns of income for the assessment years 2003-04, 2004-05 and 2005-06. This resulted in escapement of income. Based on the annual accounts and connected records with the Kerala Sports Council, tax effect worked out to Rs. 1.38 crore. The department stated that suitable action was being contemplated to bring them to tax net.

3.20.4 In Kerala, Trivandrum charge, Kerala Cricket Association, though had a taxable income, did not file returns of income for the assessment year 2001-02 and 2003-04[#]. From the examination of accounts filed by the assessee with the Kerala Sports Council, it was observed that there was income escaping assessment having tax effect of Rs. 1.04 crore. The department stated that suitable action was being contemplated to bring them to tax net.

3.20.5 In West Bengal, DIT (Exemption), Kolkata charge, Cricket Association of Bengal although had a taxable income, did not file returns of income for the assessment years 1990-91 and 1995-96 to 1998-99. As per section 144, if any person fails to submit the return under section 139(1), the assessing officer shall make the assessment of the total income to the best of his judgment, and determine

[#] Return of income was non-est

the sum payable by the assessee. The same was, however, not done by the department. This resulted in underassessment of income involving undercharge of tax of Rs. 13.37 crore including interest (as worked out on the basis of annual accounts kept in various assessment folders). In reply, department stated that no return has been filed by the Cricket Association of Bengal for the assessment years 1995-96 to 2002-03 and as such, there was no question of assessment. The department's contention is not acceptable as audit has pointed out the loss of revenue on account of non initiation of proceedings under section 144.

3.20.6 In Maharashtra, Nagpur I charge, Vidarbha Cricket Association did not furnish any return for the assessment years 2001-02 to 2005-06. Audit could collect annual reports from Vidarbha Cricket Association from which escapement of income of Rs. 9.54 crore with tax effect of Rs. 3.06 crore was noticed for assessment years 2001-02 to 2005-06. Department in its reply (December 2006) stated that assessee has since filed return of income voluntarily for the assessment year 2005-06, and for the remaining years i.e. 2001-02 to 2004-05 notice under section 148 had been issued to the assessee, and assessment proceedings were pending finalization.

3.21 Inconsistent decisions of the department resulting in unintended benefit

3.21.1 Under the Act, promotion of sports is considered as charitable purpose, and as such, income from property held for charitable or religious purposes is exempt from income tax. Up to the assessment year 2002-03, income of a notified sports association/ institution was exempt under section 10(23) which was withdrawn from the assessment year 2003-04.

3.21.2 In Maharashtra, DIT(Exemption) Mumbai charge, the Board of Control for Cricket in India (BCCI) was a notified association eligible for exemption under section 10(23) upto assessment year 1998-99. The assessee was also registered as trust under section 12A of the Act. In its returns of income, the assessee claimed exemption under section 10(23) and section 11 for assessment years 1998-99 to 2004-05. The exemptions claimed under section 10(23) and 11 were disallowed for assessment years 1998-99 to 2000-01 during scrutiny assessment on the ground that the office bearers of the association were running the organization as an end in itself, and there was no accountability of any office bearers. Further, the organization had started the process of commercialization of cricket for the personal benefit of the office bearers.

3.21.3 In appeal, CIT(A), however, allowed exemption under section 10(23) for assessment year 1998-99 on the ground that the assessing officer did not have powers to disallow the exemption to a notified association, and allowed exemption under section 11 for assessment year 1999-2000 and 2000-01. Department contested the appeal order for allowance of exemption under section 11 for assessment year 1999-2000 and 2000-01 in Tribunal, and appeal is pending.

3.21.4 Audit scrutiny revealed that though the department had contested the appeal order vide which exemption was allowed under section 11, the assessing officer allowed exemption under section 11 to the assessee during scrutiny assessment for assessment years 2001-02 and 2003-04, and for the assessment years 2002-03 and 2004-05, the returns were accepted in summary manner wherein exemption was allowed under section 11. As the department is contesting the allowance of exemption under section 11 in the ITAT, the allowance of exemption in subsequent assessment years was not justified. Thus there was inconsistency in the decisions taken by the department. Had the department acted in line with its decision to contest the appeal order as discussed above, an unintended benefit of Rs. 148.07 crore (by way of granting exemptions) would not have passed to the assessee for assessment years 2001-02 to 2004-05 involving tax effect of Rs. 60.30 crore. Reply from the Department is awaited.

3.21.5 In the exit conference, Board agreed to examine the case.

3.22 Sports associations/institutions not brought under tax net by the department

3.22.1 In order to prevent tax evasion, and to ensure widening of the tax net, department had, with effect from 1 July 1997, commissioned Central Information Branch (CIB) under a Commissioner which collects information about assesseees from different sources with respect to their potential for yielding income tax and passes it to the concerned assessing officers. Thereafter, the assessing officers are required to initiate appropriate action under the Act to call for returns and examine the specific information in assessments. Further, assessing officers are empowered under section 133A and 133B of the Act to conduct survey operations and collect information.

3.22.2 Audit gathered information in respect of 3,273 sports associations and clubs, as detailed in Table 8 below, receiving grants from different government agencies or affiliated to different associations in Andhra Pradesh, Assam, Bihar, Chandigarh, Delhi, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan and Tamil Nadu charges which were required to be examined and brought under the tax net of the department by virtue of their position as discussed in the following paragraph. Department has not confirmed/produced any evidence to establish that the said associations/clubs have been filing income tax returns during the assessment years 2001-02 to 2005-06. No information in these cases had been collected by the CIB. No survey operations had also been carried out.

Table 8 : Sports associations/institutions not brought under tax net by the department

Sl. No	CIT charge	Total cases identified	Status as ascertained by audit
1.	DIT (Exemption) Chennai	36 Sport associations	Sports associations as per list furnished by Sports Development Authority of Tamil Nadu. These associations are receiving grants for development of sports in the State of Tamil Nadu.
2.	DIT (Exemption) Chennai	809 Clubs/ District cricket associations	Clubs affiliated to Tamil Nadu Cricket Association. As per the 73 rd Annual Report of Tamil Nadu Cricket Association, these 809 clubs have conducted 3699 league matches.
3.	DIT (Exemption) Chennai	111 Private clubs	Clubs/ District Associations affiliated to Tamil Nadu Cricket Association.
4.	Pondicherry	21 Sport associations	Sport associations as per records of Pondicherry State Sport Council.
5	DIT(Exemption) Hyderabad	1545 Sport associations	Sport associations as per records of District Registrars of Assurances (Stamps and Registrations), and District Sports Authorities.
6	Guwahati I & II/ Shillong, Jorhat Dibrugarh	98 Sport associations	District and State sport associations.
7	Chandigarh I & II	28 Sport associations	Sport associations as per records of Director of Sports and Sports Council, U.T., Chandigarh.
8	Himachal Pradesh charge	49 Sport associations	Sport associations receiving grants in aid from the Government.
9	Kerala charge	469 Sport associations	Information gathered from sports authorities/ councils set up by the Central and State Governments, District Registrars of Societies, telephone directories, internet etc.
10	Goa	33 Sports associations	Sports associations receiving grant from Sports Authority of Goa.
11	DIT (Exemption) Bangalore	34 Sports associations	Sports associations receiving grant from Government and their annual income exceeds exemption limit.
12	DIT(Exemption) Mumbai Pune I Nagpur II, III	20 Sports associations/ club	Sports associations (some receiving grants from Government) have not filed their returns as seen from Return Receipt Register. Department, in respect of 8 sports associations pertaining to DIT (E), Mumbai, has accepted the audit observation, and issued notice under section 148 on October 3, 2006.
13	Others [◇]	20 Sport associations	Sports associations receiving grant from Government .

3.22.3 In respect of serial number 1, 2 and 4 above, possible amount of penalty recoverable at the rate of Rs. 100 per day for non filing of returns for the assessment years 2001-02 to 2005-06 comes to Rs. 47.41 crore. The department replied (in respect of Sl No. 1 and 2 above) that matter would be looked into and details would be gathered as to whether they are separate entities and if they are assessable to tax and granted registration under 12 (AA) of the Act, action would be taken and progress would be intimated. In respect of Sl No.4 above, department stated that these associations are non profit bodies engaged in the promotion of various sports activities, and State Council also gives funds to these bodies to meet

[◇] Jaipur (Rajasthan), Ranchi, Jamshedpur, Dhanbad, Haziaribagh (Jharkhand) charges

the various sports events expenses. Department further stated that as these are not profit earning organizations, income could not be taxed. Reply of the department is not tenable as the issue raised by the audit is non filing of income tax returns. Department has not replied to this issue. Further, if conditions, as laid down under section 11 and 12 of the Act, are not complied with, income of charitable and religious institutions is also taxable.

3.22.4 In Bihar, Delhi, Madhya Pradesh, Orissa and Punjab charges, no sports association/institution and sports personalities had been brought into the tax net during assessment years 2001-02 to 2005-06. As regards Bihar, none of the sport associations/institutions was found filing return of income, nor was any action taken by the department to bring any of the sports associations/institutions into tax net.

3.22.5 Board in its reply stated that the field authorities concerned were being asked to furnish their comments on the status and action taken in this regard.

3.22.6 Board in the exit conference stated that all such cases would be monitored and taken to their logical conclusion.

3.23 Internal audit/control mechanism

3.23.1 As a part of restructuring, the existing system of internal audit was replaced by a new chain system of internal audit in the field offices of the department with a view to strengthening the internal checks of assessments and refunds. In the new system of internal audit, a prescribed percentage of all cases, where assessments were completed during a month are to be internally audited by the end of the following month. Internal audit of one range is to be conducted by another range. Audit has observed the following in this regard:

3.23.2 Out of 109 cases checked in audit in Andhra Pradesh, only one case was seen by internal audit.

3.23.3 In Karnataka, a test check in two circle offices, revealed that no chain internal audit was conducted for the assessment years 2001-02 to 2003-04 in one circle, and from 2001-02 to 2004-05 in another circle under the jurisdiction of the Director of Income tax (Exemption). Similarly, under the charge of DIT (E), Mumbai, there were six assessing charges and there was no chain system of internal audit to check whether the assessments done by the assessing officers were in accordance with the provisions of the Act.

3.23.4 In Kerala, out of 42 cases of assessments completed during the period 2001-02 to 2005-06, only five cases were seen by the internal audit, and out of 18 cases in which mistakes were pointed out by audit, only one case was checked by internal audit, and the mistake as pointed out by audit in this case was not detected by internal audit.

3.23.5 Regarding internal audit, Board in its reply stated that functioning of the internal audit chain system was being reviewed. A proposal for revamping the internal audit was under consideration of the Board.

3.23.6 Board on 23 April 1984 had issued Instruction No.1559 regarding 'Accumulation of income derived from property held under trust-Section 11 (2) and 11 (3) of the Income Tax Act, 1961-Clarification Regarding'. In the Instruction, Board had stated, "on the recommendation of the Public Accounts Committee, the Board had occasion to have a simple study conducted on the application of section 11 (2) and 11 (3) with particular reference to the term 'utilized'. The study has revealed that there is no control or even any check exercised by Income Tax Officer once he allows accumulation of income under section 11 (2) of the Act. It would be observed that a duty is cast on the Income Tax Officer to ensure that the income which is allowed to be accumulated with his permission, is brought within the discipline of section 11 (2) read with section 11 (3). With a view to ensuring that the Income Tax Officer maintains a check on the fulfilment of provisions of section 11 (2) and 11 (3), a register is prescribed. This will ensure that for every subsequent assessment, the Income Tax Officer will be in a position to know that accumulation has been allowed in the case and that the continued fulfilment of the requirements of law has to be checked up". In the instruction, Income Tax Officers have been further advised to ensure that amount accumulated is actually utilized for the permitted purpose, and in doing so, all care must be exercised to see that the accumulated income is applied in real sense of utilization. Prescribed format of the register is as follows:

Sl No.	Name and address of the Trust/Institution-PAN Number	Assessment year in respect of which application u/s 11 (2) made	Amount accumulated/ set apart	Number of years for which income accumulated/ set apart
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3.23.7 Audit observed that the said register was not being maintained, and no mechanism existed in the department to verify the investment and utilization of the accumulated or set apart income on which exemption was allowed in the states of Assam, Delhi, Gujarat, Karnataka, Maharashtra, Uttar Pradesh and West Bengal charges. The correctness of the exemption (under section 11) allowed by the department, as such, could not be verified in audit due to non availability of details of investments made, their withdrawal and utilization for specified purpose within stipulated period. Thus, department did not have any internal control mechanism to check whether income accumulated were applied to specified object within the specified period or not. Department, in respect of Delhi charge, stated that in respect of many cases assessment was completed under section 143 (1), and no investigation was permitted under this section. Reply is not relevant as issue raised by the audit is regarding non existence of mechanism in the department to verify the accumulations and investments made, and their utilization for the specified objectives within specified time.

3.23.8 Regarding internal control, Board stated that the internal control mechanism in the department for checking year wise details of investment, its withdrawal and utilization for specific purposes within stipulated period and to check if the income was applied for the specified objectives and to withhold exemptions in the violations, cannot be said to be weak because as per Board's guidelines for financial year 2006-07, all cases having gross receipts more than a specified limit and claiming exemptions under section 11 are to be compulsorily scrutinized under section 143 (3) of the Act. Apart from it, other cases claiming exemption under section 11 may also be picked up for scrutiny if the authorities feel that there may be violations to the provisions.

3.23.9 Reply of the Board is not tenable in view of the following:

- Maintenance of register as per the Board's instruction number 1559, and selection of cases for scrutiny are different issues. Maintenance of register is required even after the assessment has been completed whether in scrutiny or summary manner as the assessing officer needs to watch the utilization of income accumulated for the specified objective within specified period. This contention of audit is supported by a case highlighted in this report (Para 3.11.3).
- Instruction number 1559 was issued on the recommendations of the Public Accounts Committee. The instruction has still not been implemented in the states of Assam, Delhi, Gujarat, Karnataka, Maharashtra, Uttar Pradesh and West Bengal charges as observed by audit.

3.23.10 Board, during the exit conference agreed to issue a circular to its field formations reiterating the existing instructions for maintenance of the register. Board also mentioned that the issue of bringing the desired information for six years under the ambit of section 44 AB of the Act would be examined.

3.24 Irregular exemption under section 80RR

3.24.1 Under section 80RR, where the gross total income of an individual resident in India, being an author, playwright, artist, musician, actor or sportsman (including an athlete) includes any income derived by him in the exercise of his profession from the Government of foreign State or any person not resident in India, and brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year, there shall be allowed, in computing the total income of the individual, deduction at prescribed percentage from such income. Further, no deduction under section 80RR shall be allowed unless the assessee furnishes a certificate in prescribed form^{*}, along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

^{*} Form No.10H

3.24.2 Audit scrutiny revealed that deduction under section 80 RR was allowed in respect of income i) which had not been earned in the capacity of sportsman, ii) certificate in the prescribed form (No.10H) had not been submitted, involving tax effect of Rs. 4.51 crore in seven cases in Chandigarh, Maharashtra and Tamil Nadu charges. Of these, two cases are discussed below:

3.24.3 Audit scrutiny of assessment records in respect of Shri Sachin R Tendulkar assessed under the charge of CIT- XIX, Mumbai revealed that aggregate deduction of Rs. 8.89 crore was allowed on foreign remittance received by him on account of sport endorsement i.e. advertisements and publicity activities as detailed in Table 9 below:

Assessment Year	Order under section & date:	Gross foreign exch. earning. (Rs. in lakh)	Percentage deduction allowed under section 80RR	Amount allowed (Rs. in lakh)	Tax effect (including interest) (Rs. in lakh)
1998-99	143(3) dt. 29.12.00	282.04	75	189.28	88.88
1999-2000	143(3) dt: 28.3.01	206.58	75	147.85	60.77
2000-01	143(1) dt: 20.3.02	92.86	75	69.64	30.70
2001-02	143(1) dt: 3/02	559.22	60	335.53	136.04
2002-03	143(1) dt: 25.1.03	237.11	45	106.70	32.66
2004-05	143(1) dt: 3.8.05	255.77	15	38.36	12.67
Total				887.36	361.72

3.24.4 As the income was not derived from the profession of sportsman, allowance of deduction was not in order. Department's argument that the assessee had derived it in the capacity of artist was not acceptable as the assessee had received this income in the capacity of a model which cannot be construed as an artist for purpose of this section. It was further observed that during scrutiny assessment in March 2006 for assessment year 2003-04, deduction under section 80RR was not allowed by the assessing officer on similar grounds. Thus, incorrect allowance of deduction under section 80RR for the assessment years 1998-99 to 2002-03 and 2004-05 amounting to Rs. 8.87 crore resulted in short levy of tax of Rs. 3.62 crore. Department in its reply (December 2006) stated that assessments in respect of assessment years 2000-01, 2001-02 and 2002-03 had been reopened, and assessment for assessment year 2004-05 had been selected for scrutiny. Department further stated that the audit observation would be kept in mind while finalizing the assessments.

3.24.5 One more case is given in the Table 10 below:

Sl No.	Name of the assessee/ CIT charge	Assessment year(s)	Type of assessment/ date of assessment	Nature of mistake	Tax effect (Rs. in lakh)
1	Shri Sunil Gavaskar Mumbai V	2001-02 2000-01 2002-03	Scrutiny 25 April 2003 Summary 29 December 2000 24 February 2003	Foreign remittances received in the capacity of commentator not covered under section 80 RR	80.34

3.25 Irregular grant of exemption to the awards received by sport personalities

3.25.1 Section 10(17A) of the Act, provides that income by way of any payment made, whether in cash or in kind; in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest, shall be exempt from income tax.

3.25.2 During test checks in Andhra Pradesh, Haryana, Maharashtra and Punjab charges, cases of awards received by the sport personalities not belonging to the above categories but not brought to tax net were noticed involving non levy of tax aggregating Rs. 87.87 lakh in 10 cases. One case involving tax effect of Rs. 23.25 lakh is given at **serial number 12 of Appendix 14.**

3.26 Other irregularities

Audit noticed mistakes with regard to irregular exemption to the income from non members of the members' club covered under mutuality concept, loss of revenue due to non issuance of notice to the assessee within stipulated time, incorrect computation of capital gain, delay in granting of registration under section 12A, undisclosed income and exemption granted without submission of mandatory audit reports. These have been discussed in subsequent paragraphs.

3.27 Irregular exemption to the income from non members of the members' club covered under mutuality concept

3.27.1 Under the Act, charitable institutions registered under section 12A are exempt from tax subject to fulfilment of certain conditions. It has been judicially held* that members' clubs are examples of mutual undertaking, and surplus i.e. excess of receipts over expenditure, cannot be said to be income for the purpose of

* (226 ITR 97 SC)

the Act. Where a club extends its facilities to non members, to that extent element of mutuality ceases to exist. Thus a members' club is assessable in respect of profits derived from affording its facilities to non members.

3.27.2 Audit noticed cases of profits derived by members' clubs by way of extending its facilities to non members but not brought into tax net in respect of members' clubs in two cases in Maharashtra and Delhi charges, involving tax effect of Rs. 2.26 crore. One case is discussed below:

3.27.3 In Maharashtra, DIT (Exemption), Mumbai charge, in respect of three sport clubs, assessing officer had observed in the scrutiny assessment[&] that the clubs were to be covered under the concept of mutuality, and receipt from non- members and other sources such as dividend, interest etc. were to be taxed. It was, however, observed in audit that returns of these clubs, for the assessment years 2002-03 to 2004-05 claiming exemption (including income from non members) under section 11, were filed and accepted in summary manner. This resulted in allowance of inadmissible exemptions under section 11. As a result, income from non members to the extent of Rs. 4.67 crore was under assessed having a tax effect of Rs. 2.17 crore. Department accepted the audit observation in respect of MIG Cricket Club, and issued notice under section 148 on 3 October 2006.

3.28 Loss of revenue due to non issuance of notice to the assessee within stipulated time

3.28.1 Where a return has been furnished under section 139 or in response to a notice issued under section 142 (1), the assessing officer shall, if he considers it necessary to ensure that the assessee has not understated the income or has not computed excessive loss or has not under paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return provided that no such notice shall be served on the assessee after the expiry of 12 months from the end of the months in which the return is furnished.

3.28.2 In Gujarat, Baroda III charge, Baroda Cricket Association had not filed the returns till the assessing officer issued notice under section 148 on 30 May 2001 for the assessment years 1991-92 to 1998-99. Accordingly, the assessee filed the returns on 27 June 2001. Thereafter, notices under section 142(1) and 143(2) were issued on 31 December 2002 for all the assessment years. All the assessments were finalized in March 2003, rejecting the exemption claimed by the assessee, and levying a tax of Rs. 2.01 crore including interest and penalty. The action of the assessing officer was confirmed in appeal. However, ITAT Ahmedabad allowed the exemptions as claimed by the assessee, and quashed the assessment orders for all the assessment years on the ground that notices under section 143(2) were not served upon the assessee within 12 months from the date of filing the return for all the assessment years.

[&] Khar Gymkhana for the assessment year 2003-04

3.28.3 Thus, failure on the part of the department in adhering to the provisions of the Act resulted in loss of revenue of Rs. 2.15 crore including extra burden of interest on refund granted under section 244A. The department, in its reply stated that the decision of the ITAT was not accepted by it, and, therefore, has filed an appeal to Gujarat High Court in April 2006.

3.29 Incorrect computation of capital gain

3.29.1 Under section 48 of the Act, where long term capital gain arises from the transfer of a long term capital asset, it shall be computed by deducting (i) expenditure incurred in connection with such transfer, (ii) the indexed cost of acquisition of the asset and indexed cost of any improvement from the full value of the sale consideration. Further the benefit of indexation is not permissible in the case of long term capital asset being bond or debenture other than capital indexed bonds issued by the Government.

3.29.2 The amount of capital gain shall be deposited in a specified bank if it is not appropriated by the assessee towards the purchase of new asset within one year before the date on which the transfer of the original asset took place. Further, the assessee shall be charged to income tax if the amount deposited is not utilized wholly or partially for the purchase or construction of the new asset within the period of three years from the date of the transfer of the original asset.

3.29.3 Non observance of the above provisions resulted in short levy of tax of Rs. 31.95 lakh in two cases in Andhra Pradesh and Maharashtra charges. One case involving tax effect of Rs. 28.38 lakh is given at **serial number 13** of **Appendix 14**.

3.30 Delay in granting of registration under section 12AA

3.30.1 Under section 12 AA(2), every order granting or refusing registration under clause (b) of sub section (1) shall be passed before the expiry of six months from the end of the month in which application was received under clause (a) of section 12A.

3.30.2 In three cases of Assam, Chandigarh and Rajasthan charges, delay in granting of approval for registration under section 12AA was observed. Two such cases are given in the Table 11 below:

Table 11 : Delay in granting of registration under section 12 AA

SI No.	Name of the assessee/ CIT charge	Date of application under section 12A	Date of approval
1.	Rajasthan Polo Club, Jaipur II	8 July 2004	Still pending (July 2006)
2.	Khanapara Krira and Sanskrtik Sanghathan Guwahati 2	26 April 2002	12 June 2003

3.31 Undisclosed income

3.31.1 Under section 158 BD of Act, where the assessing officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search and seizure was made, then, the documents seized shall be handed over to the assessing officer having jurisdiction over such other person, and that assessing officer shall assess such person under block assessment.

3.31.2 In Maharashtra, DIT (E), Mumbai charge it was noticed from the assessment folder of Mumbai Cricket Association (MCA) for assessment year 2002-03, that M/s Todays Writing Products Ltd., Kolkata had entered into an agreement with MCA in April 1999 for the sponsorship of MCA for Rs. 1.15 crore. The agreement was valid for three calendar years. It was further observed that the investigation wing of Kolkata had carried out search and seizure operation in the premises of M/s Todays Writing Products on 21 December 2000.

3.31.3 During search and seizure operation, assessing officer, Kolkata, found that M/s Todays Writing Products Ltd. had made a payment of Rs. 23.50 lakh for sponsorship of MCA. However, the parties to the agreement i.e M/s Todays Writing Products Ltd. and MCA had not done anything to enforce the agreement beyond the first year. The assessing officer (Kolkata XX), accordingly, made an addition of Rs. 91.65 lakh being the difference between the agreement value of Rs. 1.15 crore and the payment of Rs. 23.50 lakh. Consequent to this, the assessing officer from Kolkata had forwarded to the assessing officer in Mumbai having jurisdiction over the MCA, a report dated 22 June, 2004 along with a copy of block assessment order dated 31 January 2003 in respect of M/s Todays Writing Products Ltd., and copies of loose papers seized at the time of search and seizure operation for assessing MCA under block assessment.

3.31.4 In November, 2004, assessing officer, Mumbai expressed his inability to take any action stating that returns of MCA for assessment years 2000-01, 2001-02 and 2002-03 were accepted in summary manner, and no proceedings under the Act were pending against MCA, and as such details/documents could not have been called for from MCA under section 131 or 133 (6). Assessing officer had proposed to call for certain additional documents. However, no such additional documents had been called for by the assessing officer as noticed by audit. The assessing officer, Mumbai, as such, should have invoked the provision of section 158 BD.

3.31.5 The amount involved in non disclosure of income was Rs. 91.65 lakh for the assessment year 2001-02, involving tax effect of Rs. 64.34 lakh.

3.32 Conclusions and recommendations

3.32.1 Income of sports associations/institutions and sports personalities in 158 cases in the country have been under assessed by the department by way of granting exemptions although certain statutory conditions as laid down in the Act were not fulfilled by the assessee resulting in tax effect of Rs. 190.92 crore.

3.32.2 Out of 158 irregularities noticed by audit during this review, about 47 per cent and 34 per cent came from assessments related to the miscellaneous category and cricket respectively. Out of audit observations of Rs. 190.92 crore, about 67 per cent and 32 per cent came from the assessments relating to cricket and miscellaneous category respectively.

3.32.3 In 9 cases of sports personalities, non deduction of tax at source was noticed.

3.32.4 There are large numbers of sports associations/institutions, sports clubs etc. which have not been brought under tax net by the department.

3.32.5 Internal control mechanism in the department for checking year wise details of investment, its withdrawal and utilization for specified purposes within stipulated period and to check if income/ accumulated income has been applied to specified objectives for which the associations/ institution was established, and to withhold exemptions in case of violations, is weak.

3.32.6 Internal audit system of the department with respect to sports associations/institutions and sports personalities has been found to be weak as cases of mistakes in assessment, escapement of income, delay in granting of registration, non imposing of penalties in cases of delay and non submission of income tax returns, have been noticed.

3.32.7 *Audit recommends that the internal control mechanism in the department may be strengthened to check year wise details of investment, its utilization for specified purpose within stipulated period and to check if income/ accumulated income has been applied to specified objectives for which the association/ institution was established.*

In the exit conference, Board agreed to issue a circular to its field formations reiterating the existing instructions for maintenance of the register.

3.32.8 *Audit recommends that government may consider utilizing its AST database to focus on potential cases to minimize the misuse of exemptions given to sports associations/institutions/clubs and sports personalities.*

In the exit conference, Board accepted the audit recommendation.

3.32.9 *Audit recommends that government may strengthen its internal audit to avoid irregularities and errors in assessments done, evasion of tax and misuse of exemptions.*

In the exit conference, Board accepted the recommendation and stated that revamping of the internal audit system of the department was already under process.

New Delhi

Dated:

(SUDHA KRISHNAN)

Principal Director of Receipt Audit

(Direct Taxes)

Countersigned

New Delhi

Dated:

(VIJAYENDRA N. KAUL)

Comptroller and Auditor General of India