

## Chapter IV: Income Tax

### 4.1 Introduction

**4.1.1** This chapter discusses 221<sup>51</sup> high value non-corporate cases (refer para 2.3) involving 236<sup>52</sup> number of assessments with a total tax impact of ₹ 416.60 crore which were referred to the Ministry during August 2020 to December 2020. The Ministry/the ITD accepted 104 cases involving tax effect (TE) of ₹ 256.00 crore, partially accepted one case involving TE of ₹ 0.77 crore and did not accept two cases involving TE of ₹ 1.16 crore. However, out of 221 cases, AOs completed remedial action in 192 cases involving TE of ₹ 376.14 crore and initiated remedial action in 17 cases involving TE of ₹ 25.26 crore. In the remaining 12 cases, the ITD has not taken/ initiated any action as on 15 July 2021.

**4.1.2** The categories of errors can be broadly classified as follows:

- Quality of assessments
- Administration of tax concessions/exemptions/deductions
- Income escaping assessments due to errors
- Others-Overcharge of tax/interest etc.

The subsequent paragraphs give few illustrations of each category of the above mentioned errors.

### 4.2 Quality of assessments

**4.2.1** AOs committed errors in the assessments ignoring clear provisions in the Act. These cases of incorrect assessments point to continuing weaknesses in the internal controls on the part of the ITD which need to be addressed.

Table 4.1 below shows the sub-categories of errors which impacted the quality of assessments.

Table 4.1: Details of errors in quality of assessment			
Sub-categories	Cases	TE (₹ in crore)	States
a. Arithmetical errors in computation of income and tax	8	97.88	Delhi, Madhya Pradesh, Maharashtra and West Bengal
b. Incorrect application of rates of tax, surcharge etc.	33	39.85	Assam, UT-Chandigarh, Delhi, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra and Odisha

51 One case (DP no. 7-IT) is falling under both the categories of under assessment and over assessment and hence this case has been treated as two high value cases for this chapter. However, in actual, 221 high value non corporate cases were referred to the Ministry.

52 Of the 236 assessment cases, 227 cases involve undercharge of ₹ 391.72 crore and nine cases involve overcharge of ₹ 24.88 crore.

c. Errors in levy of interest	123	187.24	Andhra Pradesh & Telangana, Bihar, UT-Chandigarh, Chhattisgarh, Delhi, Gujarat, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Punjab, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal
d. Errors in assessment while giving effect to appellate orders	2	0.69	Jharkhand and Maharashtra
<b>Total</b>	<b>166</b>	<b>325.66</b>	

#### 4.2.2 Arithmetical errors in computation of income and tax

We noticed arithmetical errors in computation of income and tax in eight cases involving tax effect of ₹ 97.88 crore in four states. We give below four such illustrative cases:

*The Income Tax Act, 1961 provides that the AO is required to make a correct assessment of the total income or loss of the assessee and determine correct amount of tax or refund, as the case may be.*

**Case I**     **CIT Charge**                 :   **CIT Central 3, Delhi**  
**Status**                                         :   **Individual**  
**Assessment Years**                         :   **2011-12 to 2015-16**

The AO, while finalizing the assessments in December 2017, erroneously allowed the credit to the assessee for the amount of unpaid tax for each Assessment Year. The mistake resulted in undue credit of unpaid taxes of ₹ 45.60 crore. Further, the AO did not levy interest of ₹ 22.52 crore for late/non filing of Income Tax Returns (ITRs) by the assessee for the said AYs. The mistakes resulted in short levy of tax of ₹ 68.12 crore including interest. *The Department accepted the audit observation (November 2019) and stated that the mistakes had been rectified in October 2019 for each AY.* However, the status of collection of demand was awaited (May 2021).

**Case II**     **CIT Charge**                 :   **Pr. CIT-19 Mumbai**  
**Status**                                         :   **Firm**  
**Assessment Year**                         :   **2009-10**

The AO, while finalizing the assessment in December 2017, computed the tax on income of the assessee at ₹ 0.41 crore instead of the correct amount of ₹ 12.24 crore. The mistake resulted in short levy of tax of ₹ 11.83 crore. *The Department intimated (November 2019) that the audit objection was rectified in October 2019.* However, the status of collection of demand was awaited (May 2021).

**Case III CIT Charge : Pr. CIT (Exemption), Bhopal**  
**Status : AOP (Trust)**  
**Assessment Year : 2016-17**

The AO, while finalizing the assessment in December 2018, levied tax on income of ₹ 1.56 crore instead of the assessed income of ₹ 3.93 crore. The mistake resulted in under assessment of income of ₹ 2.36 crore involving short levy of tax of ₹ 1.08 crore including interest. *The Department intimated (November 2019) that the audit objection was rectified in May 2019.* However, the status of collection of demand was awaited (May 2021).

**Case IV CIT Charge : Pr. CIT -16, Delhi**  
**Status : Firm**  
**Assessment Year : 2016-17**

The AO, while finalizing the assessment in February 2019, incorrectly computed the demand payable by the assessee at ₹ 103.22 crore instead of correct payable demand of ₹ 115.53 crore. The mistake resulted in short levy of tax of ₹ 12.31 crore. Further, the case was processed manually and not through AST. *The Department intimated (August 2019) that the audit objection was rectified in July 2019.* However, the status of collection of demand was awaited (May 2021)

**4.2.3 Incorrect application of incorrect rates of tax and surcharge, etc.** We noticed application of incorrect rates of tax and surcharge in 33 cases involving tax effect of ₹ 39.85 crore in nine states. We give below four such illustrative cases:

*Section 4(1) of the Income Tax Act, 1961 provides that income tax is chargeable for every assessment year in respect of the total income of the previous year of an assessee, according to the rates prescribed under the relevant Finance Act.*

**Case I CIT Charge : CIT Central 2, Delhi**  
**Status : Individual**  
**Assessment Year : 2017-18**

The AO, while computing the tax demand in December 2018, charged the tax on undisclosed income of ₹ 14.12 crore at the rate of 30 *per cent* instead of the applicable rate of 60 *per cent*. Further, the AO levied surcharge on tax at the rate of 15 *per cent* instead of the applicable rate of 25 *per cent*. The mistakes resulted in short levy of tax of ₹ 7.36 crore. *The Department intimated that the audit objection was rectified in November 2019.* However, the status of collection of demand was awaited (May 2021).

*Section 4(1) of the Income Tax Act, 1961 provides that income tax is chargeable for every assessment year in respect of the total income of the previous year of an assessee, according to the rates prescribed under the relevant Finance Act. As per the rates specified in the Finance Act, 2013, the amount of income tax computed in the case of every individual or Hindu Undivided Family or Association of Persons or body of individuals, whether incorporated or not or every artificial juridical person, co-operative society, firm and local authority with total income exceeding one crore rupees, shall be increased by a surcharge at the rate of 10 per cent of such income tax for the assessment year 2014-15.*

**Case II    CIT Charge                :    CIT (Exemption) Bengaluru**  
**Status                        :    AOP (Trust)**  
**Assessment Year            :    2014-15**

The AO, while finalizing the assessment in December 2016, did not levy surcharge at the applicable rate of 10 *per cent on the tax*. The omission resulted in short levy of tax of ₹ 3.20 crore including interest. Reply of the Department/the Ministry was awaited (May 2021).

**Case III    CIT Charge                :    CIT(Exemption), Kochi**  
**Status                        :    Artificial Juridical Person**  
**Assessment Year            :    2014-15**

The AO, while finalizing the assessment in December 2016, did not levy surcharge at the applicable rate of 10 *per cent on the tax*. The omission resulted in short levy of tax of ₹ 94.13 lakh including interest. *The Department intimated that the audit objection was rectified in December 2019*. However, the status of collection of demand was awaited (May 2021).

**Case IV    CIT Charge                :    Pr. CIT-12, Mumbai**  
**Status                        :    Individual**  
**Assessment Year            :    2011-12**

The AO, while computing the tax demand in the re-assessment order in December 2017, charged the tax on undisclosed income under section 68 at the rate of 20 *per cent* instead of applicable rate of 30 *per cent*. Further, disallowance made under section 14A read with rule 8D amounting to ₹ 6.98 lakh during the original assessment completed in March 2014 was omitted to be added back while computing total income during the re-assessment. The mistake resulted in short levy of tax of ₹ 4.99 crore including interest under section 234B. *The Department intimated (February 2020) that the audit objection was rectified in October 2019*. However, the status of collection of demand was awaited (May 2021).

#### 4.2.4 Errors in levy of interest

We noticed errors in levy of interest in 123 cases involving tax effect of ₹ 187.24 crore in 16 states. We have consistently been highlighting such errors in our compliance audit report. As such, this is a recurrent and persistent error. We give below 15 such illustrative cases:

*The Income Tax Act, 1961 provides for levy of interest for omissions on the part of the assessee at the rates prescribed by the Government from time to time. Section 234A provides for levy of interest on account of default in furnishing return of income at specified rates and for specified time period. Section 234B provides for levy of interest on account of default in payment of advance tax at specified rates and for specified time period. Section 234C provides for levy of interest on account of default in payment of instalments of advance tax at specified rates and for specified time period.*

**Case I      CIT Charge                   : Pr. CIT-I, Bhubaneswar**  
**Status                        : Firm**  
**Assessment Years       : 2014-15 to 2017-18**

The AO, while finalizing assessments in December 2018, did not levy interest under section 234A aggregating to ₹ 3.35 crore for AYs 2014-15 to 2016-17. Further, the AO levied interest under section 234B at ₹ 5.21 crore (for four AYs) instead of leviable interest of ₹ 25.38 crore, which resulted in short levy of interest of ₹ 20.17 crore. Audit further noticed that the AO levied interest under section 234C at ₹ 2.81 crore (for four AYs) instead of leviable interest of ₹ 89.50 lakh, resulting in excess levy of interest of ₹ 1.92 crore. The above errors resulted in aggregate short levy of interest of ₹ 21.60 crore. *The Department accepted the audit objection (February 2020) and rectified the mistake for AY 2014-15 in February 2020, for AY 2015-16 in January 2020, for AY 2016-17 in December 2020 and for AY 2017-18 in January 2020.* However, the status of collection of demand was awaited (May 2021).

**Case II    CIT Charge                   : CIT Central-3, Delhi**  
**Status                        : Individual**  
**Assessment Year       : 2015-16**

The AO, while finalizing assessment in December 2017, levied interest of ₹ 7.32 crore under section 234A as against interest leviable of ₹ 12.68 crore. The mistake resulted in short levy of interest of ₹ 5.37 crore. The Department intimated that the audit objection was *rectified in August 2019.* However, the status of collection of demand was awaited (May 2021).

**Case III CIT Charge : Pr. CIT-16, Delhi**  
**Status : Individual**  
**Assessment Year : 2011-12**

The AO, while finalizing assessment in December 2018, levied interest under section 234B at ₹ 4.83 crore for 24 months instead of leviable interest of ₹ 18.72 crore for 93 months. Further, interest of ₹ 74.48 lakh levied under section 234C by the department was not enforceable on the assessee, as the return of income was not filed by the assessee. These mistakes resulted in short levy of tax of ₹ 13.14 crore. *The Department accepted the audit observation and rectified the mistake under section 154 of the Act in November 2019.* However, the status of collection of demand was awaited (May 2021).

**Case IV CIT Charge : Pr. CIT 1, Kolhapur**  
**Status : Individual**  
**Assessment Year : 2010-11**

The AO, while finalizing the assessment in December 2017, levied interest under section 234A at ₹ 1.22 crore instead of the leviable amount of interest of ₹ 13.22 crore. The omission resulted in short levy of interest under section 234A of ₹ 12 crore. *The Department accepted the audit observation and took remedial action in January 2019.* However, the status of collection of demand was awaited (May 2021).

**Case V CIT Charge : Pr. CIT -16, Delhi**  
**Status : Individual**  
**Assessment Year : 2011-12**

The AO, while finalizing assessment in November 2018, levied interest of ₹ 2.40 crore under section 234B as against interest leviable of ₹ 9.19 crore. Further, interest of ₹ 36.94 lakh under section 234C erroneously charged by the AO, even though the return of income was not filed by the assessee. The mistakes resulted in short levy of interest of ₹ 6.42 crore. *The Department accepted the audit objection and rectified the mistake under section 154 in November 2019.* However, while passing the rectification order, the AO, incorrectly levied interest of ₹ 8.59 crore under section 234A instead of ₹ 8.79 crore as already charged in assessment order under section 147 read with section 144 of the Act. Further, the status of collection of demand was awaited (May 2021).

**Case VI CIT Charge : Pr. CIT-1, Surat**  
**Status : Individual**  
**Assessment Year : 2010-11**

The AO, while finalizing the assessment in December 2017, did not levy interest under section 234A of ₹ 5.04 crore. *The Department intimated that the audit objection was rectified under section 154 in April 2019.* However, the status of collection of demand was awaited (May 2021).

**Case VII CIT Charge : Pr. CIT -22, Delhi**  
**Status : Individual**  
**Assessment Year : 2009-10**

The AO, while finalizing assessment in December 2016, did not levy interest of ₹ 6.45 crore under section 234A. Further, interest of ₹ 26.83 lakh under section 234C erroneously charged by the AO, even though the return of income was not filed by the assessee. The mistakes resulted in short levy of interest of ₹ 6.19 crore. *The Department intimated that the audit objection was rectified under section 154 in August 2019.* However, while passing the rectification order, the AO, did not rectify the mistake of incorrect levy of interest under section 234C. Further, the status of collection of demand was awaited (May 2021).

**Case VIII CIT Charge : Pr. CIT, Vijayawada**  
**Status : Individual**  
**Assessment Year : 2007-08**

The AO, while finalizing the assessment in December 2017, failed to rectify the incorrect interest calculated by the system under section 234A and 234B. The IT System calculated interest under section 234A at ₹ 0.94 crore as against ₹ 0.06 crore and 234B at ₹ 0.08 crore as against ₹ 2.05 crore. The AO's omission to correct the system calculated interest resulted in short levy of interest amounting to ₹ 2.85 crore. *The Ministry accepted (April 2021) the audit observation and rectified the mistake in June 2019.* However, the status of collection of demand was awaited (May 2021).

**Case IX CIT Charge : Pr. CIT -16, Delhi**  
**Status : Individual**  
**Assessment Year : 2011-12**

The AO, while finalizing assessment in December 2016, levied interest of ₹ 7.73 crore under section 234A instead of leviable interest of ₹ 7.82 crore. Further, the AO levied interest of ₹ 2.11 crore under section 234B instead of leviable interest of ₹ 8.17 crore. Further, interest of ₹ 32.51 lakh under section 234C erroneously charged by the AO, even though the return of income was not filed by the assessee. The mistakes resulted in short levy of interest of

₹ 5.83 crore. *The Department accepted the audit objection and rectified the mistake under section 154 in November 2019.* However, while passing the rectification order, the AO, again incorrectly levied interest of ₹ 7.64 crore under section 234A instead of ₹ 7.81 crore. The status of collection of demand was awaited (May 2021).

**Case X**    **CIT Charge**                :    **Pr. CIT-13, Kolkata**  
                  **Status**                         :    **Individual**  
                  **Assessment Year**           :    **2012-13**

The AO, while finalizing the assessment in December 2017, did not levy interest under section 234B amounting to ₹ 2.25 crore. *The Department intimated that the audit objection was rectified under section 154 in March 2019.* However, the status of collection of demand was awaited (May 2021).

**Case XI**    **CIT Charge**                :    **Pr. CIT (Central), Kanpur**  
                  **Status**                         :    **Individual**  
                  **Assessment Year**           :    **2016-17**

The AO, while finalizing the assessment in December 2017, levied interest under section 234A at ₹ 31.08 lakh instead of the leviable amount of ₹ 1.64 crore. The omission resulted in short levy of interest under section 234A of ₹ 1.33 crore. *The Department intimated that the audit objection was rectified under section 154 in November 2019.* However, the status of collection of demand was awaited (May 2021).

**Case XII**    **CIT Charge**                :    **PCIT -18, Delhi**  
                  **Status**                         :    **Individual**  
                  **Assessment Year**           :    **2010-11**

The AO, while finalizing assessment in December 2017, levied interest of ₹ 85.55 lakh under section 234A instead of leviable interest of ₹ 9.52 crore. The mistake resulted in short levy of interest of ₹ 8.66 crore. *The Department intimated that the audit objection was rectified under section 154 in February 2019.* However, while passing the rectification order in February 2019, the AO, again incorrectly levied interest of ₹ 9.30 crore under section 234A instead interest leviable of ₹ 9.52 crore. Further, interest of ₹ 39.57 lakh under section 234C was also incorrectly charged. However, the status of collection of demand was awaited (May 2021).



**Case XIII CIT Charge : Pr. CIT-1, Chennai**  
**Status : Individual**  
**Assessment Year : 2013-14**

The AO, while finalizing assessment in December 2018, levied interest of ₹ 4.1 lakh under section 234A instead of leviable interest of ₹ 1.21 crore. The omission resulted in short levy of interest of ₹ 1.17 crore under section 234A. *The Department accepted the audit objection and rectified under section 154 in January 2021.* However, the status of collection of demand was awaited. (May 2021).

**Case XIV CIT Charge : Pr. CIT-2, Raipur**  
**Status : Individual**  
**Assessment Year : 2010-11**

The AO, while finalizing assessment in December 2017, did not levy interest under section 234A. The mistake resulted in non-levy of interest of ₹ 38.85 lakh under section 234A. *The Department accepted the audit objection and stated (October 2019) that remedial action was initiated.* However, the status of completion of remedial action was awaited (May 2021).

**Case XV CIT Charge : Pr. CIT-Central, Kanpur**  
**Status : Individual**  
**Assessment Year : 2009-10, 2010-11 & 2011-12**

The AO, while finalizing assessment in July/August 2017 for AYs 2009-10, 2010-11 and 2011-12, levied interest of ₹ 0.0048 lakh, ₹ 0.0038 lakh and ₹ Nil under section 234A(1) as against leviable interest of ₹ 1.78 crore, ₹ 0.91 crore and ₹ 1.01 crore respectively. The mistakes resulted in short levy of interest of ₹ 3.70 crore. *The Department intimated (May 2019) that the audit objection was rectified in April 2019.* However, the status of collection of demand was awaited (May 2021).

#### **4.2.5 Errors in assessment while giving effect to appellate orders**

We noticed errors in assessments while giving effect to appellate orders in two cases involving tax effect of ₹ 0.69 crore in two states. We give below one such illustrative case:

*Section 254 of the Income Tax Act, 1961, provides, that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. Further, para 24.1 of Chapter 18 of Manual of Office Procedure (Volume II, Technical) of the Income Tax Department provides that on receipt of the Appellate Order in the Assessing Officer's office, immediate steps should be taken to revise the assessment in the light of the order.*

Case I CIT Charge : Pr. CIT, Ranchi  
 Status : Individual  
 Assessment Year : 2009-10

The AO, while giving effect to the appellate order in December 2016, erroneously computed tax of ₹ 66.43 lakh instead of the leviable amount of ₹ 1.10 crore. The omission resulted in short levy of tax of ₹ 43.70 lakh including interest. *The Department intimated that the audit objection was rectified in October 2017.* However, the status of collection of demand was awaited (May 2021).

### 4.3 Administration of tax concessions/exemptions/deductions

**4.3.1** The Act allows concessions/exemptions/deductions to the assessee in computing total income under Chapter VI-A and for certain categories of expenditure under its relevant provisions. We observed that the AOs had irregularly extended benefits of tax concessions/exemptions/ deductions to ineligible beneficiaries. Table 4.2 below shows the sub-categories which have impacted the administration of tax concessions/exemptions/ deductions.

Table 4.2: Sub-categories of mistakes under administration of tax concessions/exemptions/deductions			
Sub-categories	Nos.	TE (₹ in crore)	States
a. Irregular exemptions/ deductions/relief given to individuals	02	1.66	Gujarat
b. Irregular exemptions/ deductions/relief given to AOPs/Firms/Societies/Trusts	03	2.85	UT-Chandigarh, Gujarat and Odisha
c. Incorrect allowance of Business Expenditure	02	1.11	Maharashtra and Odisha
d. Irregularities in allowing depreciation/ business losses/ capital losses	11	27.83	Delhi, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Tamil Nadu
<b>Total</b>	<b>18</b>	<b>33.45</b>	

### 4.3.2 Irregular exemptions/deductions/relief given to Individuals

We noticed irregular exemptions/deductions/relief given to Individuals in two cases involving tax effect of ₹ 1.66 crore in one state. We give below one such illustrative case:

*According to section 10(37) of the Income Tax Act, 1961, in computing the total income of a previous year of any person, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land falling within any of the following clauses shall not be included- (i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2; (ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his; (iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India; (iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.*

**Case I      CIT Charge                    : Pr. CIT-5, Ahmedabad**  
**Status                            : Individual**  
**Assessment Year                : 2016-17**

The AO, while finalizing the assessment in December 2018, allowed exemption to the assessee amounting to ₹ 2.75 crore on account of profit from sale of agriculture land, in contravention of the provisions of the Act. The mistake resulted in under assessment of long-term capital gain of ₹ 2.62 crore with consequent short levy of tax of ₹ 85.24 lakh. *The Department intimated (March 2021) that remedial action initiated under section 263.* However, the status of completion of remedial action was awaited (May 2021).

#### **4.3.3 Irregular exemptions/deductions/relief given to AOPs/Firms/Societies/Trusts**

We noticed irregular exemptions/deductions/relief given to AOPs/firms/societies/trusts in three cases involving a tax effect of ₹ 2.85 crore in three states. We give below one such illustrative case:

*Section 36(1)(viii) of the Act provides that against any provision for bad and doubtful debts made by a scheduled bank (not being a bank incorporated by or under the law of country outside India) or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding 7.5 per cent of the total income computed before making any deduction under this clause and chapter VIA and an amount not exceeding 10 percent of the aggregate average advance made by the rural branches of such bank computed in the prescribed manner shall be allowed as deduction.*

**Case I      CIT Charge                    : Pr. CIT, Cuttack**  
**Status                            : Co-operative Society**  
**Assessment Year                : 2015-16**

The AO, while finalizing the assessment in November 2017, allowed provision of bad and doubtful debt of ₹ 1.28 crore as claimed by the assessee. However, assessee was eligible for deduction of ₹ 12.08 lakh only as per the provisions

of the Act. The mistake resulted in under assessment of income of ₹ 1.16 crore involving a tax effect of ₹ 54.97 lakh. *The Department intimated (March 2019) that remedial action under section 263 of the Act was initiated.* However, the status of completion of remedial action was awaited (May 2021).

#### **4.3.4 Incorrect allowance of business expenditure**

We noticed incorrect allowance of business expenditure in two cases involving tax effect of ₹ 1.11 crore in two states. We give below one illustrative case:

*As per provisions of section 37(1) of the Act, any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession, shall be allowed as deduction in computing the income chargeable under the head "Profits and Gains of Business or Profession"*

**Case I      CIT Charge                    : Pr. CIT 19, Mumbai**  
**Status                             : Firm**  
**Assessment Year                : 2009-10**

The AO, while finalizing the assessment in December 2016, disallowed purchases made from certain parties as these parties were involved in providing accommodation entries. However, the AO failed to disallow the expense of ₹ 74 lakh, paid to the same parties for labour charges, since the parties were not doing any genuine business. The omission resulted in underassessment of income of ₹ 74 lakh involving short levy of tax of ₹ 48.55 lakh including interest. *The Department accepted the audit objection and rectified the mistake under section 154 in October 2019.* However, the status of collection of demand was awaited (May 2021).

#### **4.3.5 Irregularities in allowing depreciation/business losses/capital losses**

We noticed irregularities in allowing depreciation/business losses/capital losses in 11 cases involving tax effect of ₹ 27.83 crore in seven states. We give below three such illustrative cases.

*The CBDT vide instruction no. 09/2007 dated 11.09.2007 has directed all officers that instances have come to the notice of the Board in which substantial loss of revenue has occurred due to incorrect allowance of depreciation and incorrect set off of brought forward losses. The Assessing Officers should, therefore, carry out necessary verifications at the time of undertaking scrutiny assessments with reference to physical records and the claims related to losses including unabsorbed depreciation should be linked with the assessment records so as to ensure correctness of the allowance of claims of brought forward losses and depreciation.*

**Case I      CIT Charge                   : Pr. CIT Central, Bangaluru**  
**Status                         : Firm**  
**Assessment Year           : 2016-17**

The AO, while finalizing assessment in December 2018, allowed setting off of brought forward loss pertaining to AY 2012-13 even though no loss was available for that AY. The mistake resulted in excess set-off of loss of ₹ 26.44 crore involving short levy of tax of ₹ 12.32 crore including interest. *The Department accepted the audit observation and rectified the mistake under section 154 in October 2019.* However, the status of collection of demand was awaited (May 2021).

*Section 32 of the Act provides that if any assets falling within a block of assets is acquired by the assessee during the previous year and it is put to use for the purpose of business or profession for a period of less than 180 days in that previous year, the deduction in respect of such assets shall be restricted to 50 per cent of the amount calculated at the percentage prescribed in the case of block of assets comprising such asset.*

**Case II     CIT Charge                   : Pr. CIT-II, Bhubaneswar**  
**Status                         : AOP**  
**Assessment Year           : 2015-16**

The AO, while finalizing the assessment in December 2017, allowed depreciation on assets amounting to ₹ 19.17 crore instead of the available amount of depreciation of ₹ 12.27 crore. The mistake resulted in excess allowance of depreciation of ₹ 6.90 crore involving tax effect of ₹ 3.75 crore including interest. *The Department intimated that the audit objection was rectified under section 154 in June 2019.* However, the status of collection of demand was awaited (May 2021).

**Case III    CIT Charge                   : PCIT-16, Mumbai**  
**Status                         : Firm**  
**Assessment Year           : 2014-15**

The AO, while finalizing assessment in December 2016, allowed setting off of brought forward loss of ₹ 23.60 crore pertaining to AY 2013-14 even though the available loss for AY 2013-14 was only of ₹ 13.56 crore. The mistake

resulted in excess allowance of set-off of brought forward loss of ₹ 10.04 crore and consequent under assessment of income of ₹ 10.04 crore involving short levy of tax of ₹ 3.41 crore. *The Department intimated that the mistake was apparent and remedial action was initiated under section 154 in February 2020.* However, the status of completion of remedial action was awaited (May 2021).

#### 4.4 Income escaping assessments due to errors

**4.4.1** The Act provides that the total income of a person for any previous year shall include all incomes from whatever source derived, actually received or accrued or deemed to be received or accrued. We observed that the AOs did not assess or under assessed total income that was required to be offered to tax. Table 4.3 below shows the sub-categories which have resulted in income escaping assessments.

Table 4.3: Sub-categories of mistakes under income escaping assessments due to errors				
Sub-categories	Nos.	Tax Effect (₹ in crore)	States	
a. Incorrect classification and computation of Capital Gains	05	8.26	Andhra Pradesh, UT-Chandigarh, Delhi, Haryana and Rajasthan	
b. Incorrect computation of income	19	19.36	Delhi, Gujarat, Haryana, Himachal Pradesh, Maharashtra, Madhya Pradesh, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal	
c. Errors in implementing provisions of TDS/TCS	01	0.19	Jharkhand	
d. Unexplained Investment/cash credit	04	4.80	Haryana and Maharashtra	
<b>Total</b>	<b>29</b>	<b>32.61</b>		

#### 4.4.2 Incorrect classification and computation of Capital Gains

We noticed incorrect classification and computation of Capital Gains in five cases involving tax effect of ₹ 8.26 crore in five states. We give below one illustrative case:

*Section 54F of the Income Tax Act, 1961, provides that where the capital gain arises from the transfer of any long-term capital asset, not being a residential house and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, the amount of capital gain so arising shall not be charged to tax subject to certain conditions*

**Case I    CIT Charge            :   Pr. CIT, Guntur**  
**Status                    :   Individual**  
**Assessment Year    :   2014-15**

The AO, while finalizing the assessment in December 2016, allowed a deduction of ₹ 14.34 crore to the assessee for investing in purchase of vacant site in contravention to the provisions of the Act. The mistake resulted in under assessment of Long Term Capital Gain (LTCG) of ₹ 14.34 crore with a consequential short levy of tax of ₹ 5.10 crore including interest. *The Department accepted the audit observation and rectified the mistake under section 147 in December 2018.* However, the status of collection of demand was awaited (May 2021).

#### **4.4.3 Incorrect computation of income**

We noticed incorrect computation of income in 19 cases, involving tax effect of ₹ 19.36 crore in 10 states. We give below three illustrative cases:

*Section 143(3) of the Act provides that in a scrutiny assessment, the Assessing Officer (AO) is required to make a correct assessment of the total income or loss of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment. Section 56(2)(vii)(b), provides that where an individual receives income from any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration, shall be chargeable to income-tax under the head income from other sources.*

**Case I    CIT Charge            :   Pr. CIT-I, Kanpur**  
**Status                    :   Individual**  
**Assessment Year    :   2015-16**

The AO, while finalizing the assessment in November 2017, did not add back the difference of amount as per the stamp duty value of the property and value of property as per sale deed. The mistake resulted in under assessment of income by ₹ 9.29 crore involving tax effect of ₹ 4.17 crore including interest. *The Department intimated that the audit objection was rectified the mistake under section 147/143(3) in December 2019.* However, the status of collection of demand was awaited (May 2021).

**Case II CIT Charge : Pr. CIT Central-2, Delhi**  
**Status : Individual**  
**Assessment Year : 2015-16**

The AO, while finalizing the assessment in December 2018, did not include the addition of ₹ 4.66 crore made on account of accommodation entries, which was discussed in the assessment order. The omission resulted in under assessment of income by equal amount involving short levy of tax of ₹ 2.31 crore including interest. *The Department intimated that the audit objection was rectified under section 154 in November 2019.* However, the status of collection of demand was awaited (May 2021).

**Case III CIT Charge : PCIT, Udaipur**  
**Status : Firm**  
**Assessment Year : 2015-16**

The AO, while finalizing the assessment in November 2017, did not add back the difference of amount as per the stamp duty value of the property and value of property as per sale deed. The mistake resulted in under assessment of income by ₹ 9.51 crore involving tax effect of ₹ 4.28 crore including interest. *The Ministry accepted (March 2021) the audit observation and intimated that notice under section 148 was issued to the assessee in May 2019 for taking remedial action.* However, the status of completion of remedial action was awaited (May 2021).

#### **4.4.4 Errors in implementing provisions of TDS/TCS**

We noticed mistakes in implementing provisions of TDS/TCS in one case involving tax effect of ₹ 0.19 crore in Jharkhand State. The case is illustrated below:

*As per section 194C of the Act, if any amount is paid to a sub-contractor during the course of business of plying, hiring or leasing of goods carriages no tax will be deducted if (a) the sub-contractor does not own more than ten goods carriages at any time during the previous year, (b) the sub-contractor submits a declaration to the payer in Form No. 15I and (c) the payer furnishes the details of above payment to the designated CIT in Form No. 15J on or before June 30 after the expiry of the financial year.*

**Case I CIT Charge : Pr. CIT, Ranchi**  
**Status : Individual**  
**Assessment Year : 2013-14**

The AO, while finalizing the assessment in March 2016, erroneously allowed an expense of ₹ 46.51 lakh towards transportation charges on which the assessee had not deducted tax at source (TDS). The omission resulted in



irregular allowance of expense by equal amount involving tax effect of ₹ 19.41 lakh including interest. *The Department intimated that the audit objection was rectified under section 147/143(3) in November 2018.* However, the status of collection of demand was awaited (May 2021).

#### 4.4.5 Unexplained Investment/cash credit

We noticed four cases relating to unexplained investment/cash credit involving tax effect of ₹ 4.80 crore in two states. We give below two illustrative case:

*Section 68 of the Income Tax Act, 1961 provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*

**Case I    CIT Charge                :    CIT, Gurugram**  
**Status                        :    Firm**  
**Assessment Year           :    2016-17**

The AO, while finalizing the assessment in December 2018, added ₹ 3.50 crore to the income of the assessee towards unexplained credit instead of adding back the unexplained credit of ₹ 5.00 crore. The omission resulted in under assessment of income of ₹ 1.50 crore and short levy of tax of ₹ 69.04 lakh. *The Department intimated (January 2019) that the error has been partly rectified under section 154 in August 2018 by making an addition of ₹ 25 lakh and the remaining part would be reassessed under section 147.* Further reply of the Ministry/ITD was awaited (May 2021).

**Case II    CIT Charge                :    PCIT-19, Mumbai**  
**Status                        :    Individual**  
**Assessment Year           :    2015-16**

The AO, while finalizing the assessment in December 2017, added back ₹ 0.84 crore to the income of the assessee towards unexplained income instead of adding back unexplained income of ₹ 5.88 crore, as discussed in the assessment order. The omission resulted in under assessment of income of ₹ 5.04 crore involving short levy of tax of ₹ 2.28 crore including interest under section 234B. *The Department intimated that the audit objection was rectified under section 154 in February 2019.* However, the status of collection of demand was awaited (May 2021).

#### 4.5 Over charge of tax/interest

4.5.1 We noticed over assessment of income in nine cases involving overcharge of tax/interest of ₹ 24.88 crore in Delhi, Madhya Pradesh, Odisha, Rajasthan and West Bengal. We give below two such illustrative cases.

*Section 143(3) provides that Assessing Officer is required to make a correct assessment of the total income or loss of the assessee and determine the correct amount of tax or refund as the case may be.*

**Case I**    **CIT Charge**                :   **Pr. CIT 10, Delhi**  
                  **Status**                                :   **Individual**  
                  **Assessment Year**                :   **2015-16**

The AO, while finalizing the assessment in December 2017, levied interest under section 234C at ₹ 5.09 crore instead of leviable interest of ₹ 18.86 lakh. The mistake resulted in excess levy of interest of ₹ 4.90 crore. *The Department intimated that while allowing the effect of appeal order in March 2019, the interest under section 234C had been reduced to ₹ 0.05 lakh from ₹ 5.09 crore.* Audit, however, noticed that while giving effect to the appeal order, the AO levied interest under section 234C at ₹ 0.05 lakh instead of leviable interest of ₹ 18.86 lakh. Further reply of the Ministry/ITD was awaited (May 2021).

**Case II**    **CIT Charge**                :   **Pr. CIT-3, Jaipur**  
                  **Status**                                :   **Firm**  
                  **Assessment Year**                :   **2016-17**

The AO, while finalizing the assessment in December 2018, adopted the assessed income at ₹ 2.63 crore instead of ₹ 1.61 crore. The mistake resulted in over assessment of income by ₹ 1.02 crore involving over charge of tax of ₹ 32.33 lakh including interest. *The Department accepted the audit observation and rectified the mistake under section 154 in June 2020.*

#### 4.6 Recommendations


(i) *Application of incorrect rates of tax and surcharge, errors in levy of interest, excess or irregular refunds etc. point to weaknesses in the internal controls in the ITD which need to be addressed.*

(ii) *While the Ministry has taken action to initiate correction in the cases pointed out by the Audit, it may be mentioned that these are only a few illustrative cases, test checked in audit. In the entire universe of all assessments, including non-scrutiny assessments, such errors of omission or*

*commission cannot be ruled out. The CBDT not only needs to revisit its assessments, but also put in place a fool proof IT system and internal control mechanism to avoid recurrence of such errors in the future.*

*(iii) The CBDT may examine whether the instances of “errors” noticed are errors of omission or commission and if these are errors of commission, then the ITD should ensure necessary action as per law.*


**New Delhi**  
**Dated: 6 August 2021**



**(Monika Verma)**  
**Director General (Direct Taxes-I)**

**Countersigned**

**New Delhi**  
**Dated: 23 August 2021**



**(Girish Chandra Murmu)**  
**Comptroller and Auditor General of India**

