

CHAPTER III

CORPORATION TAX

Chapter Summary

This Report includes 288 high value cases with tax effect of ₹ 2,104.1 crore issued to the Ministry between August and November 2010 eliciting their comments. The Ministry has accepted observations in 95 cases involving revenue impact of ₹ 248.4 crore as of December 2010.

(Paragraphs 3.1 and 3.1.2)

These cases of incorrect assessment point towards weaknesses in the internal controls on the assessment process being exercised by the Income Tax Department. The major mistakes in assessments were on account of:

- ♦ Arithmetical errors in computation of income and tax in eight cases involving tax effect of ₹ 16 crore.

(Paragraph 3.2.1)

- ♦ Application of incorrect rates of tax and surcharge in two cases involving tax effect of ₹ 4.6 crore.

(Paragraph 3.2.2)

- ♦ Mistakes in levy of interest in eight cases involving tax effect of ₹ 15 crore.

(Paragraphs 3.2.3 and 3.2.4)

- ♦ Irregular exemptions/deductions in 24 cases involving tax effect of ₹ 753.2 crore.

(Paragraph 3.3.1)

- ♦ Incorrect allowance of business expenditure in 70 cases involving tax effect of ₹ 634.6 crore.

(Paragraph 3.3.2)

- Mistakes in allowance, carry forward and set-off of depreciation and business loss/capital loss in 43 cases involving tax effect of ₹ 305.8 crore.

(Paragraph 3.3.3)

- ♦ Income was not assessed/under assessed under special provisions in 14 cases involving tax effect of ₹ 27.6 crore.

(Paragraph 3.4.1)

- ♦ Excess tax was levied in 11 cases involving tax effect of ₹ 75.9 crore.

(Paragraph 3.5)

CHAPTER III

CORPORATION TAX

3.1 RESULTS OF AUDIT

This Report includes 288 high value cases with tax effect of ₹ 2,104.1 crore issued to the Ministry¹⁹ between August and November 2010 to elicit their comments.

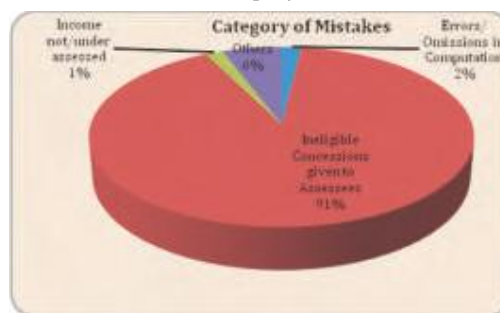
3.1.2 The Ministry has replied in respect of 99 cases²⁰ accepting our observations in 95 cases involving aggregate revenue impact of ₹ 248.4 crore as of December 2010. Out of these 95 cases, the Department completed remedial action²¹ in 75 cases involving tax effect of ₹ 216.7 crore and initiated remedial action in 14 other cases involving tax effect of ₹ 20.7 crore. These cases have been featured in paragraphs 2.5.4, 2.5.5 and 2.5.6 of Chapter II of this Report. Replies of the Ministry, wherever received, have been examined and suitably incorporated in the report.

3.1.3 This Chapter discusses 199 cases of which 184 cases involve undercharge of ₹ 1,784.8 crore and 15 cases involve overcharge²² of ₹ 82 crore. The errors in most of the assessments were committed despite clear provisions in the Act. These cases of incorrect assessment point towards weaknesses in the internal controls on the assessment process being exercised by the Income Tax Department.

3.1.4 The categories of mistakes have been broadly classified as follows:

- Errors and omissions in computation,
- Ineligible concessions given to assessee,
- Income not/under assessed and
- Others²³.

Chart 3.1: Category of Mistakes



¹⁹ Ministry of Finance, Central Board of Direct Taxes

²⁰ The department has not accepted the audit observations in three summarily processed cases as a matter of principle citing the Assessing officers' limitations. However, rectificatory action has been initiated/completed without contesting the facts of the case.

²¹ The Assessing Officer (AO) initiates remedial action by issuing a notice to the assessee, who is then given an opportunity to present his case. After considering all the facts, the AO issues a rectificatory order raising the rectified demand for tax/refund, as the case may be. At this stage, remedial action is said to have been taken.

²² Overcharge is on account of arithmetical errors in computation of income, incorrect application of rates, income not assessed due to waiver of loan/interest not considered as income, excess levy of interest.

²³ Category "Others" shown in the chart include issues regarding mistakes in assessment while giving effect to the appellate orders, omission in implementing provisions of TDS/TCS and cases relating to overcharging of tax and remission/waiver of loan/interest on loan not being assessed.

The category wise details (tax effect) are depicted in Chart 3.1. In the subsequent sections of this chapter, the first paragraph in respect of each category indicates the nature of mistakes made by the assessing officer (AO). It starts with a preamble followed by the combined revenue impact of all observations of similar nature. The four categories are further sub-divided and the sub-category wise description is also given. Interesting cases are illustrated in the subsequent paragraphs of this Chapter.

3.2 ERRORS/OMISSIONS IN COMPUTATION

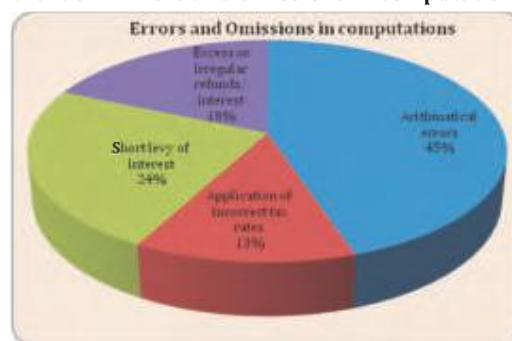
We found that there were cases where the AOs adopted incorrect figures, committed arithmetical errors,

The AOs are to make correct assessment of the total income of the assessee and determine the correct amount of tax payable by assessee.

applied incorrect rates resulting in a tax effect of ₹ 35.6 crore in 18 cases in Delhi, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu and

Chart 3.2: Errors and Omissions in Computations

West Bengal. There was underassessment of tax of ₹ 29.5 crore and overcharge of tax of ₹ 6.1 crore in 14 and four cases respectively. The sub-category wise details (based on tax effect) are depicted in Chart 3.2. Four sub-categories are discussed below:



3.2.1 ARITHMETICAL ERRORS IN COMPUTATION OF INCOME AND TAX

The AOs committed arithmetical errors in computation of income and tax in eight cases with tax effect of ₹ 16 crore in Delhi, Maharashtra, Tamil Nadu and West Bengal. One case is illustrated below:

CHARGE: ASANSOL WEST BENGAL; AY: 2003-04

As per section 143(3) of the Act, AOs are to make correct assessment of the total income of the assessee and determine the correct amount of tax payable by the assessee.

The AO in the case of **Eastern Coalfields Limited**²⁴ took the value of closing stock as ₹ 1.1 crore instead of correct figure of ₹ 10.9 crore. Further, hire charges of cars of ₹ 3.3 crore disallowed was not added back in computation

of income resulting in potential short levy of tax of ₹ 4.8 crore.

²⁴ Assessed at 'Nil' income after setting off of brought forward loss of ₹ 541.9 crore in March 2006.

3.2.2 APPLICATION OF INCORRECT RATE OF TAX AND SURCHARGE

We found that the AOs applied incorrect rates of tax and surcharge in two cases with tax effect of ₹ 4.6 crore in Gujarat and Maharashtra. One case is illustrated below:

CHARGE: CIT-II, MUMBAI, MAHARASHTRA; AY: 2003-04

Section 2(42A) defines 'short term capital asset' as an asset which has been disposed off by the assessee within thirty six months. Section 4 prescribes the rate at which income tax is to be charged.

The taxable income of **Lord Krishna Bank Limited**²⁵ (Now HDFC Bank Limited) included short term capital gains of ₹ 7.4 crore which were charged to tax at the rate of 10 per cent instead of applicable rate of 35 per cent. Incorrect application of rate of

tax resulted in short levy of tax of ₹ 2.7 crore.

3.2.3 MISTAKES IN LEVY OF INTEREST

We noticed short levy of interest for delays in filing return of income and payment of advance tax in five cases aggregating tax effect of ₹ 8.5 crore in Delhi, Gujarat and Maharashtra. One case is illustrated below:

CHARGE: CIT - III DELHI; AY: 1998-99

Section 234A provides that where return is furnished after the due date or is not furnished interest is to be levied at the prescribed rates. In such cases section 144 prescribes that the AO can make the assessment to the best of his judgement.

The assessment of **Sarvodaya Realtors (P) Ltd**²⁶ was completed on the basis of 'Best Judgement' in March 2006. The assessee had not filed the return; however, no interest was levied. The omission resulted in short levy of interest of ₹ 6.2 crore.

3.2.4 EXCESS OR IRREGULAR REFUNDS/ INTEREST ON REFUNDS

We found that in three cases, excess or irregular refunds/interest on refunds was levied with tax effect of ₹ 6.5 crore in Kerala, Maharashtra and Orissa. Two cases are illustrated below:

A. CHARGE: LTU, MUMBAI, MAHARASHTRA; AY: 2006-07

As per section 234D in case no refund is due on regular assessment after the summary assessment then assessee will be liable to pay interest on the refund given to him at the time of summary assessment.

In the case of **Deposit Insurance Credit Guarantee Corporation Limited**²⁷, a refund of ₹ 14.5 crore was made at the

²⁵ Assessed at an income of ₹ 42.2 crore in December 2008.

²⁶ Assessed at an income of ₹ 14.6 crore in March 2006.

²⁷ Initially assessed at an income of ₹ 2,626.2 crore in summary manner. Subsequently assessed at an income of ₹ 3,071.3 crore in scrutiny assessment in December 2008.

time of summary assessment. In the scrutiny assessment, the assessed income was increased and as a result no refund was due to the assessee. The AO incorrectly charged interest of ₹ 11.3 crore on such refund against the chargeable interest of ₹ 7.4 crore. This resulted in overcharging of interest of ₹ 3.9 crore.

B. CHARGE: KOCHI, KERALA; AY: 1996-97

Section 244A provides that where refund of any amount becomes due to the assessee, he shall be entitled to the interest at prescribed rates from the 1st day of April of the assessment year/ date of payment of tax to the date on which refund is granted.

The assessment of **The Federal Bank Limited**²⁸ was completed after several revisions in December 2007. The AO while calculating the interest payable to the assessee wrongly reckoned

the date of refund of ₹ 29.9 crore as 18 May 2002 whereas the refund was made on 18 May 2001. This resulted in grant of excess interest of ₹ 3.6 crore.

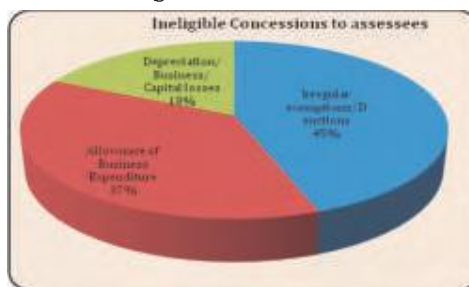
3.3 INELIGIBLE CONCESSIONS GIVEN TO ASSESSEES

We noticed that ineligible concessions were given to assesseees in 137 cases with tax effect of ₹ 1,693.6 crore in Andhra Pradesh, Assam, Delhi, Gujarat, Goa, Haryana, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab,

Deductions are allowed to the assessee in computing the total income under chapter VI A of the Act and for certain categories of expenditure under relevant provisions of the Act.

Rajasthan, Tamil Nadu and Uttar Pradesh, Uttarakhand and West Bengal. The sub-category wise details (based on tax effect) are depicted in Chart 3.3. Sub-categories are discussed below:

Chart 3.3: Ineligible Concessions to assesseees



3.3.1 IRREGULAR EXEMPTIONS/DEDUCTIONS

The Act allows deductions from the assesseees's income on certain categories of expenditure. We found that Corporate assesseees in 24 cases were given irregular exemptions/deductions having tax effect of ₹ 753.2 crore in Andhra Pradesh, Assam, Delhi, Karnataka, Maharashtra, Orissa, Rajasthan, Tamil Nadu and West Bengal. Three cases are illustrated below:

²⁸ Original scrutiny assessment was completed in March 1999. The latest rectification done in December 2007 resulted in refund of ₹ 5.9 crore.

A. CHARGE: CIT - I, DELHI; AY: 2007-08

As per section 80IA deductions are allowed to assesseees in respect of profits and gains from Industrial undertakings or enterprises engaged in infrastructure development subject to the provisions of this section.

In the case of **Bharat Sanchar Nigam Limited**²⁹ deduction under section 80IA was incorrectly computed. Deduction of ₹ 11,664.9 crore was allowed instead of correct amount of ₹ 8,878.6 crore, resulting in under assessment of income by ₹ 2,786.3 crore with short levy of tax of ₹ 567.6 crore including interest.

B. CHARGE: CIT - II, MUMBAI, MAHARASHTRA; AY: 2005-06

As per section 36(1)(vii) Banks are allowed provision for bad and doubtful debts at a particular percentage of the total income and in terms of section 36(1)(vii) deduction on account of bad debts is allowed only if the assessee had debited the amount of such bad debts to the provision for bad debts.

Bank of Baroda³⁰ was allowed excess deduction for bad and doubtful debts amounting to ₹ 103.6 crore against the allowable deduction of ₹ 5.2 crore due to adoption of incorrect figure of opening balance in the provision for

bad debts. This resulted in short levy of tax of ₹ 39 crore including interest.

C. CHARGE: CIT - SALEM I, TAMIL NADU; AY: 2006-07

As per section 80IA deductions are allowed to the assesseees in respect of profits and gains from Industrial undertakings or enterprises engaged in infrastructure development on their Gross Total Income. According to section 80B Gross Total Income means total income computed in accordance with the provisions of the Act after setting off brought forward business losses and unabsorbed depreciation.

Madras Aluminium Company Limited³¹ was allowed deduction of ₹ 108.8 crore without setting off the carried forward business loss and unabsorbed depreciation. The mistake resulted in under assessment of business income with potential tax effect of ₹ 36.4 crore.

3.3.2 INCORRECT ALLOWANCE OF BUSINESS EXPENDITURE

We found 70 cases of irregular allowance of expenditure having tax effect of ₹ 634.6 crore in Andhra Pradesh, Assam, Delhi, Gujarat,

²⁹ Assessed at an income of ₹ 2,302.4 crore in December 2009.

³⁰ Assessed at an income of ₹ 805.5 crore in December 2008.

³¹ Assessed at an income of ₹ 93 crore in December 2008.

Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab, Tamil Nadu and West Bengal. One case is illustrated below:

CHARGE: CIT-I CHENNAI, TAMIL NADU; AY: 2006-07

In accordance with the provisions of section 43B, deduction of certain expenditure is allowed only when the same has actually been paid in the previous year.

Tamil Nadu Electricity Board³² was allowed an expenditure of ₹ 181.9 crore towards payment of electricity tax though it was not deposited into the Government account.

This mistake resulted in potential short levy of tax of ₹ 61.2 crore.

3.3.3 IRREGULARITIES IN ALLOWING DEPRECIATION/BUSINESS LOSSES/CAPITAL LOSSES

The AOs committed mistakes in allowance, carry forward and set off of depreciation and business loss/capital loss. We found 43 such cases having tax effect of ₹ 305.8 crore in Andhra Pradesh, Delhi, Haryana, Himachal Pradesh, Goa, Gujarat, Kerala, Maharashtra, Orissa, Rajasthan, Uttar Pradesh and West Bengal. Three cases are listed below:

A. CHARGE: CIT I KOLKATA – WEST BENGAL; AY: 2003-04

As per section 47 (vib) of the Act transfer of capital assets by a company formed as a result of de-merger of a parent entity shall not be regarded as transfer for the purpose of determining capital loss.

J.K. Industries Limited³³ was allowed long term capital loss of ₹ 503.6 crore. The capital loss was not allowable as the assessee company which was formed from its parent company through splitting and de-merger had transferred its unit to other

entities of the same group. Such transfer can not be considered for the purpose of determining capital loss. Accordingly, the capital loss should not have been allowed. Thus, irregular allowance of long term capital loss has resulted in potential short levy of tax of ₹ 105.8 crore.

B. CHARGE: CIT-I DELHI; AY: 2005-06

As per section 72, net loss of an assessment year can be carried forward and set-off against profits and gains of the following eight AYs.

In the case of **Bharti Televentures Limited³⁴**, the AO on the basis of filed return allowed to set off brought forward business

loss of ₹ 153.9 crore and unabsorbed depreciation of ₹ 109 crore of the amalgamating company. However, the assessed business loss to be set off was only ₹ 55.3 crore. The omission resulted in excess set-off of loss of ₹ 207.6 crore with potential tax effect of ₹ 76 crore.

³² Assessed at a loss of ₹ 885.6 crore in December 2008.

³³ Assessed at 'Nil' income in March 2006.

³⁴ Assessed at an income of ₹ 860.2 crore in December 2007.

C. CHARGE: CIT-FARIDABAD, HARYANA, AY: 2006-07

As per section 72, net loss of an assessment year can be carried forward and set-off against profits and gains of the following eight AYs.

National Hydroelectric Power Corporation Ltd.,³⁵ was allowed brought forward losses/unabsorbed depreciation of ₹ 734.1 crore returned by it without reducing the additional

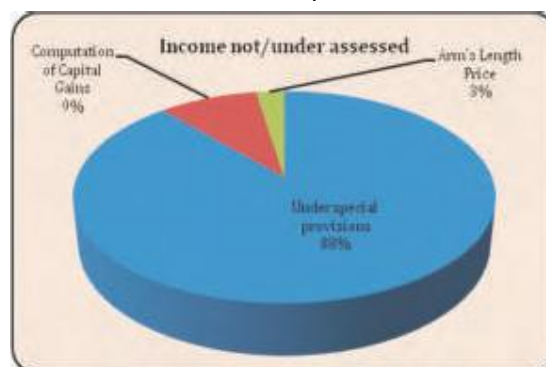
income of ₹ 131.7 crore determined in the assessment year 2005-06. This resulted in over-assessment of loss by ₹ 131.7 crore with potential short levy of tax of ₹ 44.4 crore.

3.4 INCOME NOT/UNDER ASSESSED

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.

Income was not assessed or under assessed in 17 cases with tax effect of ₹ 31.2 crore in Delhi, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Tamil

Chart 3.4: Income not/under assessed



Nadu and West Bengal. The sub-category wise details (based on tax effect) are depicted in Chart 3.4. Sub-categories are discussed below:

3.4.1 INCOME NOT/UNDER ASSESSED UNDER SPECIAL PROVISIONS INCLUDING MAT³⁶

There was non-compliance with the provisions relating to assessment of income under special provisions of the Act in 14 cases with tax effect of ₹ 27.6 crore in Delhi, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and West Bengal. Two cases are illustrated below:

³⁵ Assessed at a loss and book profit of ₹ 668.4 crore in December 2008.

³⁶ MAT: Minimum Alternate Tax of ten percent is levied on the Book Profit of Corporates which is arrived at by making prescribed additions to the Net Profit in case the regular tax payable by the corporate is less than a specified percentage of the book profit.

A. CHARGE: CIT - I, JODHPUR, RAJASTHAN; AY: 2006-07

As per section 115JB Book profit is to be computed for being taxed (MAT) after making the relevant additions to the net profit.

In the case of **Jodhpur Vidyut Vitaran Nigam Limited**³⁷ the AO, while computing the book profit, determined the amount of depreciation incorrectly. As a result, the amount of book profit was computed as ₹ 9.4 crore against the correct amount of ₹ 89.4 crore. The mistake resulted in short levy of tax of ₹ 9 crore including interest.

B. CHARGE: CIT BHOPAL, MADHYA PRADESH; AY: 2007-08

As per Section 115 JAA Tax credit is available in the subsequent assessment year for the tax paid under section 115JB in an earlier assessment year.

H.E.G. Limited³⁸ was allowed tax credit of ₹ 4.07 crore pertaining to assessment year 2006-07 though the tax was not levied on book profit under provisions of section 115JB and as such tax credit was not allowable. This omission resulted in short levy of tax of ₹ 4.6 crore including interest.

3.4.2 INCORRECT CLASSIFICATION AND COMPUTATION OF CAPITAL GAINS

We found two cases of incorrect classification and computation of capital gains having tax effect of ₹ 2.8 crore in Andhra Pradesh and Tamil Nadu. One case is illustrated below:

CHARGE: CIT - I CHENNAI, TAMIL NADU; AY: 2003-04

Section 45 provides that any gains arising from transfer of a capital asset shall be taxed under the head "Capital gains" in the year in which the transfer takes place. In terms of decision in the case of **V.S.M.R. Jagdish Chandran vs CIT** (227 ITR 240) when an asset is sold along-with the debt created on that asset, the amount of debt can not be considered to be the cost of acquisition or cost of improvement.

Digivision Electronics Limited³⁹ while computing the capital gains claimed a deduction of ₹ 3.7 crore as cost of improvement. This should have been disallowed as the amount of ₹ 3.7 crore was paid towards the debt created by the assessee themselves which can not be considered as cost of improvement. Besides, an amount of ₹ 1.6 crore was also claimed towards expenses

incurred in connection with sale of property without proper evidence. Failure to disallow these expenses resulted in capital gains escaping assessment with short levy of tax of ₹ 1.7 crore and potential tax effect of ₹ 13.4 lakh.

³⁷ Assessed at 'Nil' income in December 2008.

³⁸ Assessment was processed in summary manner at an income of ₹ 43.8 crore in July 2008.

³⁹ Assessed at 'Nil' income in March 2005.

3.4.3 INCORRECT ESTIMATION OF ARM'S LENGTH PRICE⁴⁰

We noticed one case of incorrect estimation of arm's length price having tax effect of ₹ 80.6 lakh.

CHARGE: CIT – I, PUDUCHERRY, TAMIL NADU; AY: 2004-05

AO shall compute the total income having regard to the arm's length price fixed by the Transfer Pricing Officer under section 92C(3).

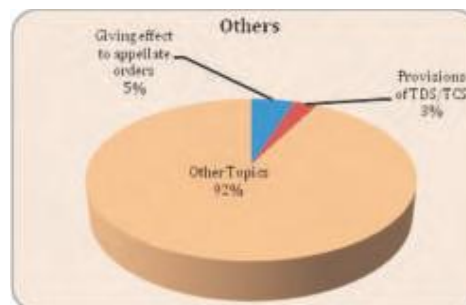
The AO in the case of **Tweezerman (India) Pvt. Limited⁴¹** while computing income from international transaction considered the arm's length price at ₹ 3.5 crore as adopted by the assessee instead of ₹ 5.2 crore as determined by the Transfer Pricing Officer. This resulted in short levy of tax of ₹ 80.6 lakh including interest.

3.5 OTHERS

The issues relating to mistakes in assessment while giving effect to the appellate orders, omission in implementing provisions of TDS/TCS and cases relating to overcharge of tax and remission/waiver of loan/interest on loan not being assessed have been discussed in this category.

There were 27 other cases with tax effect of ₹ 106.4 crore. There was short levy of tax of ₹ 30.5 crore in 16 cases and excess levy of tax of ₹ 75.9 crore in 11 cases in Andhra Pradesh, Delhi, Gujarat, Orissa, Rajasthan and West Bengal. The

Chart 3.5: Others



sub-category wise details (based on tax effect) are depicted in Chart 3.5. Sub-categories are discussed below:

3.5.1 MISTAKES IN ASSESSMENT WHILE GIVING EFFECT TO APPELLATE ORDERS

We found that in four cases with a tax effect of ₹ 5.4 crore the appellate orders were not correctly implemented in Gujarat, Maharashtra and West Bengal. One case is discussed below:

⁴⁰ Arm's length price means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

⁴¹ Assessed at an income of ₹ 4.1 crore in December 2006.

CHARGE: CIT-IV, NAGPUR, MAHARASHTRA; AY: 2001-02

The AOs during implementation of appellate orders are to make correct assessment of the total income of the assessee and determine the correct amount of tax payable by assessee.

The AO disallowed ₹ 5.9 crore in the assessment of **Ballarpur Industries Limited**⁴² which was subsequently allowed by the CIT (A) in June 2004.

Accordingly, the AO had implemented this order by allowing a deduction of ₹ 5.9 crore in August 2004. Thereafter, the ITAT reverted back the case to the AO for de-novo consideration. The AO while giving effect to the appellate order in December 2008 adopted total income as per orders giving effect to the CIT(Appeal)'s orders and allowed the relief of ₹ 5.9 crore again. This resulted in double allowance of relief of the same amount resulting in potential tax effect of ₹ 2.3 crore.

3.5.2 OMISSION IN IMPLEMENTING PROVISIONS FOR DEDUCTION OF TDS/TCS

We found that AOs failed to implement provisions for deduction of TDS/TCS in two cases with a tax effect of ₹ 2.9 crore in Andhra Pradesh and Tamil Nadu. Both the cases are discussed below:

A. CHARGE: CIT-III, HYDERABAD, ANDHRA PRADESH; AY: 2005-06

As per provisions of section 40(a)(ia) deduction of expenditure (while making such payments) where TDS has not been deducted shall not be allowed.

The AO allowed **Venkat Pharma Limited**⁴³ an expenditure of ₹ 2.9 crore towards commission payment on export sales. As the tax was not deducted at source on this amount, the same should have been disallowed. Failure to disallow this

expenditure resulted in short levy of tax of ₹ 1.5 crore including interest.

B. CHARGE: CIT-I, COIMBATORE, TAMIL NADU; AY: 2006-07

As per provisions of section 40(a)(ia) deduction of expenditure (while making such payments) where TDS has not been deducted shall not be allowed.

Shanthi Gears Limited⁴⁴ was allowed expenditure of ₹ 4.1 crore towards interest payment (₹ 1.6 crore in foreign currencies) and advertising (₹ 2.5 crore which included ₹ 49.4 lakh in foreign currency) on which tax was not

deducted at source. Omission to disallow expenditure of ₹ 4.1 crore resulted in short levy of tax of ₹ 1.4 crore.

⁴² Scrutiny assessment was completed in March 2004.

⁴³ Assessed at an income of ₹ 37.3 lakh in September 2006

⁴⁴ Assessed at an income of ₹ 34.1 crore in May 2008.

3.5.3 OTHER TOPICS

OVER-CHARGE OF TAX

A. CIT- SAMBALPUR, ORISSA; AY: 2006-07

As per provisions of section 143(3) of the Act, the AOs are to make correct assessment of the total income of the assessee and determine the correct amount of tax payable by assessee.

The AO in the case of **Mahanadi Coal Fields Limited**⁴⁵ first disallowed expenditure of ₹ 6.7 crore shown in the Profit and Loss Account towards reclamation of land and ₹ 53.5 crore shown as provision for the above purpose in

the Balance Sheet and thereafter further addition of ₹ 53.5 crore was made to the income towards the same provision. This resulted in over-charging of tax of ₹ 28.5 crore.

B. CHARGE: CIT- I MUMBAI, MAHARASHTRA; AY: 2005-06

As per provisions of section 143(3) of the Act, the AOs are to make correct assessment of the total income of the assessee and determine the correct amount of tax payable by assessee.

The AO in the case of **Maharashtra State Financial Corporation**⁴⁶ disallowed an expenditure of ₹ 58.1 crore towards unpaid liability of interest under section 43B of the Act. As this amount was neither debited

nor any provision created in the books of accounts, adding back of this expenditure was irregular. This resulted in over-charging of potential tax of ₹ 21.3 crore.

3.5.4 WAIVER/REMISSION OF LOAN NOT ASSESSED TO TAX

The income from waiver/remission of loan was not assessed to tax and the interest was not correctly levied in 21 cases with a tax effect of ₹ 98.1 crore in Andhra Pradesh, Delhi, Maharashtra, Orissa, Rajasthan, Tamil Nadu and West Bengal. One case is discussed below:

CHARGE: CIT-I TRICHY, TAMIL NADU; AY: 2005-06

The waiver/remission of loan/ interest on loan is to be taxed in terms of provisions of section 41(1) of the Act. The cessation of a liability is deemed income as per decision in *T.V. Sundaram Iyenger & Sons Limited vs CIT [222 ITR 344] (SC)*.

Sea Horse Hospitals (P) Limited⁴⁷ received waiver of loan of ₹ 2.8 crore from the bank. The cessation of liability is a deemed income. Omission to assess the same resulted in short levy of tax of ₹ 76.2 lakh with potential tax effect of ₹ 26.9 lakh.

⁴⁵ Assessment completed in December 2008.

⁴⁶ Assessed at 'Nil' in December 2007.

⁴⁷ Assessed at a loss of ₹ 73.4 lakh in December 2007.