

**CHAPTER III**  
**CORPORATION TAX**

## Chapter Summary

This Report includes 302 high value cases with tax effect of ₹ 3,548.4 crore issued to the Ministry between June and October 2011 eliciting their comments. The Ministry/Department has accepted observations in 148 cases involving revenue impact of ₹ 2,083.3 crore as of 15 December 2011.

### (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 39 cases involving tax effect of ₹ 1,395.8 crore.

### (Paragraph 3.2.1)

- ◆ Mistakes in levy of interest and application of incorrect rates of tax and surcharge in 11 cases involving tax effect of ₹ 12.4 crore.

### (Paragraphs 3.2.2 & 3.2.3)

- Mistakes in allowance, carry forward and set-off of depreciation and business loss/capital loss in 39 cases involving tax effect of ₹ 352.8 crore.

### (Paragraph 3.3.1)

- ◆ Incorrect allowance of business expenditure in 34 cases involving tax effect of ₹ 213.1 crore.

### (Paragraph 3.3.2)

- ◆ Irregular exemptions/deductions in nine cases involving tax effect of ₹ 12.9 crore.

### (Paragraph 3.3.3)

- ◆ Income was not assessed/under assessed under normal provisions in eight cases involving tax effect of ₹ 93.2 crore.

### (Paragraph 3.4.1)

- ◆ Income was not assessed/under assessed under special provisions in 18 cases involving tax effect of ₹ 98,8 crore,

**(Paragraph 3.4.2)**

- ◆ Excess tax was levied in four cases involving tax effect of ₹ 12,7 crore,

**(Paragraph 3.5.5)**

## CHAPTER III

### CORPORATION TAX

#### 3.1 RESULTS OF AUDIT

This Report includes 302 high value cases pertaining to corporation tax with tax effect of ₹ 3548,4 crore issued to the Ministry<sup>30</sup> between June and October 2011 to elicit their comments.

**3.1.2** The Ministry / Department has replied in 154 cases<sup>31</sup> accepting our observations in 148 cases involving aggregate revenue impact of ₹ 2,083,3 crore as of 15 December 2011. Out of these cases, the Department effected recovery of ₹ 2,1 crore in four cases, completed remedial action<sup>32</sup> in 91 cases involving tax effect of ₹ 419 crore and initiated remedial action in 30 other cases involving tax effect of ₹ 817,5 crore. These cases have been featured in paragraphs 2.4.4, 2.4.5 and 2.4.6 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 177 cases of which 173 cases involve undercharge of ₹ 2,297,1 crore and four cases involve overcharge<sup>33</sup> of ₹ 12,7 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
- Others

**Chart 3.1: Categories of mistakes**



<sup>30</sup> Ministry of Finance, Central Board of Direct Taxes

<sup>31</sup> The department has not accepted the audit observations in six cases on different grounds which have been appropriately rebutted.

<sup>32</sup> 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.

<sup>33</sup> Overcharge is on account of arithmetical errors in computation of income, incorrect application of rates and excess levy of interest.

The category wise details (based on tax effect) are depicted in Chart 3.1. In the subsequent paragraphs 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

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

We found that there were 51 cases in Delhi, Goa, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and West Bengal where the AOs committed arithmetical errors in computation of income and tax, levy of interest, applied incorrect rates and allowed excess or irregular refunds resulting in a tax effect of ₹ 1,408.7 crore as shown in the Table 3.1 below.

**Table 3.1: ERRORS/OMISSIONS IN COMPUTATION**

Sl. No.	Sub Category	No. of cases	Tax Effect (₹ in crore)
1.	Arithmetical errors in computation of income and tax	39	1395.8
2.	Mistakes in levy of interest	8	9.9
3.	Application of incorrect rate of tax and surcharge	3	2.5
4.	Excess or irregular refunds/Interest on refunds	1	0.5
<b>Total</b>		<b>51</b>	<b>1,408.7</b>

Four sub-categories are discussed below:

#### 3.2.1 ARITHMETICAL ERRORS IN COMPUTATION OF INCOME AND TAX

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

The AOs committed arithmetical errors in computation of income and tax in 39 cases with tax effect of ₹ 1395.8 crore in Delhi, Haryana, Goa, Gujarat, Jharkhand, Kerala, Maharashtra, Punjab, Tamil Nadu and West Bengal. Five cases are illustrated below:

**A. CHARGE: CIT X, MUMBAI, MAHARASHTRA; AY: 2007-08**

In the case of **Maharashtra State Electricity Distribution Company**<sup>34</sup>, while computing the revised income in March 2010, the AO erroneously started computation considering the total income as per assessment order of December 2009 at ₹ 495,1 crore instead of correct income of ₹ 2161,5 crore. The mistake involved short levy of tax of ₹ 746 crore including interest. *The Department accepted the observation (November 2010).*

**B. CHARGE: CIT PATIALA, PUNJAB; AY: 2007-08**

The Board has issued instructions to the assessing officers to ensure correct assessment of the total income or loss of the assessee in a scrutiny assessment.

**Punjab State Electricity Board**<sup>35</sup> was allowed carry forward of brought forward losses of ₹ 6206,4 crore besides current years loss of ₹ 1049,2 crore. The brought

forward losses of ₹ 6206,4 crore were inclusive of returned loss of ₹ 2161,9 crore for the AY 2005-06 as against assessed loss of ₹ 666,6 crore. The mistake resulted in excess carry forward of loss of ₹ 1495,3 crore involving potential tax effect of ₹ 503,3 crore. *The Department rectified the mistake (January 2011).*

**C. CHARGE: CIT IV, MUMBAI, MAHARASHTRA; AY: 2007-08**

While determining total income of **Hindustan Organic Chemicals Ltd**<sup>36</sup>, the Department considered returned income at (-) ₹ 38,7 crore as a starting point instead of correct figure of 'Nil' income after setting off brought forward loss of ₹ 38,7 crore. The mistake resulted in excess carry forward of losses of ₹ 77,4 crore involving potential tax effect of ₹ 26,1 crore. *The Department rectified the mistake under section 154 of the Income Tax Act (August 2010).*

**D. CHARGE: CIT II, MUMBAI, MAHARASHTRA; AY: 2007-08**

**Tata Sons Ltd**<sup>37</sup>, had received ₹ 110,6 crore on account of interest on refunds against which it offered the net amount of ₹ 53,4 crore for taxation after reducing the amount of ₹ 57,2 crore being interest charged by the Department. The AO did not accept assessee's claim and decided to add back ₹ 57,2 crore to the income. However, while computing taxable income, the AO omitted to add back the same. Omission resulted in short levy of tax of ₹ 25,6 crore including interest.

<sup>34</sup> Assessed at income of ₹ 495,11 crore in December 2009, Revision under section 154 in March 2010 at income of ₹ 30,42 crore allowing set off of unabsorbed depreciation of ₹ 459,90 crore

<sup>35</sup> Assessed at 'Nil' income in December 2009,

<sup>36</sup> Assessed at a loss of ₹ 34,88 crore in November 2009,

<sup>37</sup> Assessed at an income of ₹ 2640,32 crore in December 2009.

### E. CHARGE: CIT I, CHENNAI, TAMIL NADU; AY: 2007-08

In the scrutiny assessment of **India Cements Ltd<sup>38</sup>**, a demand of ₹ 20,2 crore was raised after adjusting ₹ 56,4 lakh and ₹ 10 crore towards TDS and Advance Tax respectively. However, refund of ₹ 12,2 crore made as per the summary assessment in July 2008 was not added back to the demand. Omission resulted in short levy of tax demand of ₹ 13,4 crore including interest.

#### 3.2.2 MISTAKES IN LEVY OF INTEREST

Section 234B provides for levy of interest for default in payment of advance tax at the rates prescribed by the Government from time to time.

We noticed short levy of interest for delays in filing return of income and payment of advance tax in eight cases aggregating tax effect of ₹ 9,9 crore in Delhi and Maharashtra. One case is illustrated below:

### CHARGE: CIT V, PUNE; MAHARASHTRA, AY: 2006-07

**Thermax Ltd<sup>39</sup>** was charged the interest under section 234B for 33 months as against 45 months for the period from April 2006 to December 2009. This resulted in short levy of interest for 12 months amounting to ₹ 1,6 crore. *The Department rectified the mistake under section 154 of the Income Tax Act (February 2011).*

#### 3.2.3 APPLICATION OF INCORRECT RATE OF TAX AND SURCHARGE

Under section 4 of the Act, Income Tax is chargeable for every assessment year in respect of the total income of the previous year of an assessee according to the rates prescribed in the relevant Finance Act.

We found that the AOs applied incorrect rates of tax and surcharge in three cases with tax effect of ₹ 2,5 crore in Madhya Pradesh and Maharashtra. One case is illustrated below:

### CHARGE: CIT-VI, MUMBAI, MAHARASHTRA; AY: 2006-07

The assessing officer levied surcharge on **Netscape Software Pvt Ltd<sup>40</sup>** at the rate of 2,5 per cent instead of actual rate of 10 per cent applicable for assessment year 2006-07. The mistake resulted in short levy of tax of ₹ 1,0 crore including interest.

<sup>38</sup> Assessed at an income of ₹ 229.64 crore in December 2009 under MAT provisions.

<sup>39</sup> Assessed at income of ₹ 221,46 crore in December 2009.

<sup>40</sup> Assessed at an income of ₹ 34.04 crore in November 2008.

### 3.2.4 EXCESS OR IRREGULAR REFUNDS/INTEREST ON REFUNDS

Section 244A(1) of the Act provides for interest on refund if the refund amount is not less than ten percent of tax determined on regular assessment or in summary manner.

We found that in one case, excess interest of ₹ 53.0 lakh on refund was made in Maharashtra as illustrated below:

#### CHARGE: CIT I, PUNE, MAHARASHTRA; AY: 2007-08

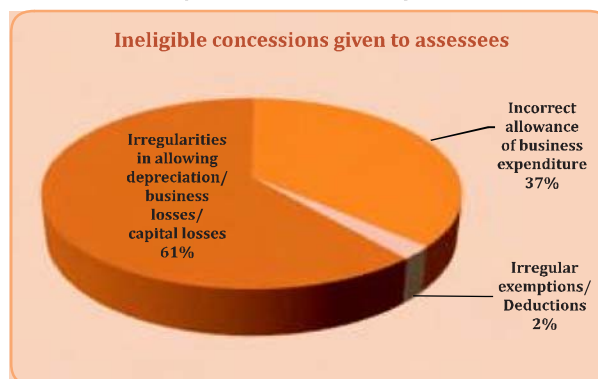
**Bharat Forge Ltd.**<sup>41</sup> was granted interest of ₹ 53 lakh<sup>42</sup> on the amount of refund which was less than ten *per cent* of the tax payable. The interest granted on refund was irregular.

### 3.3 INELIGIBLE CONCESSIONS GIVEN TO ASSESSEES

Exemptions/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.

We noticed that ineligible concessions were given to assesseees in 82 cases with tax effect of ₹ 578.8 crore in Andhra Pradesh, Assam, Bihar, Delhi, Gujarat, Goa, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal. The sub-category wise details (based on tax effect) are depicted in Chart 3.2. Sub-categories are discussed below:

Chart 3.2: Ineligible concessions given to assesseees



#### 3.3.1 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 39 such cases having tax effect of ₹ 352.8 crore in Andhra Pradesh, Delhi, Haryana, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. Four cases are illustrated below:

<sup>41</sup> Initially assessed at an income of ₹ 291.04 crore after scrutiny in December was revised in January 2010 to enhance the interest granted under section 234B and 234C, with no change in total income,

<sup>42</sup> During rectification made in January 2010 due to revision of interest charged under section 234C and 234D



**A. CHARGE: CIT X MUMBAI, MAHARASHTRA; AY: 2007-08**

Section 74 of the Act provides that where in respect of an AY, the net result of the computation under the head 'Capital gains' is a loss to the assessee, the whole loss shall be carried forward to the following AY for set off against income, if any, under the head 'capital gains' assessable for that AY.

**Central Bank of India<sup>43</sup>**, was allowed carry forward of long term capital loss of ₹ 3323,9 crore against the available long term capital loss of ₹ 2190,2 crore only. The mistake resulted in excess carry forward of long term capital loss of ₹ 1133,7 crore involving

potential tax effect of ₹ 127,2 crore. **The Department issued notice under section 154 of the Income Tax Act (April 2010).**

**B. CHARGE: CIT X MUMBAI, MAHARASHTRA; AY: 2007-08**

Section 72 provides for carry forward and set off of net loss of an assessment year against profits and gains of the following eight AYs. As regards carry forward and set off of accumulated loss and unabsorbed depreciation allowance in the case of amalgamation, de-merger, etc provisions of section 72A shall apply where Assessing officer should ensure that claim for set off made by assessee is in accordance with the provisions of law and as per the records of the Department.

**Reliance Communications Ltd(RCL)<sup>44</sup>**, was allowed set off of brought forward business losses of ₹ 244,9 crore and unabsorbed depreciation of ₹ 2615,9 crore pertaining to Reliance Infocom Limited (RIC), which was merged with RCL on 31 March 2006 as per the scheme and arrangement sanctioned by Honourable High Court of Bombay and Ahmedabad. The carried forward losses and unabsorbed

depreciation of RIC from assessment years 2000-01 to 2006-07, included the loss for the AYs 2000-01 to 2003-04 pertaining to basic telecom undertaking of Reliance Telecom Ltd (RTL) which was merged with RIC on 6 March 2003. Cross verification of case records of RIC and RTL revealed that the carried forward loss from RTL to RIC and subsequently from RIC to the assessee required to be reduced by ₹ 233,2 crore. Omission involved potential tax effect of ₹ 78,5 crore. **The Department rectified the mistake (January 2011).**

<sup>43</sup> Assessed at income of ₹ 583,21 crore in December 2008

<sup>44</sup> Assessed at an 'Nil' income in June 2009.

**C. CHARGE: CIT-LTU, BANGALORE, KARNATAKA, AY: 2006-07**

Under the Act, an assessing officer is required to determine and assess the income or loss correctly in scrutiny assessments and allow set off and carry forward of losses accordingly.

**Canara Bank<sup>45</sup>** claimed and was allowed unabsorbed depreciation/loss of ₹ 126.3 crore relating to AY 2005-06 against positive income of ₹ 1158.6 crore. The omission to disallow the loss resulted in under assessment of income of ₹ 126.3 crore involving a tax effect of ₹ 54.5 crore including interest. **The**

**Department rectified the mistake under section 154 of the Income Tax Act (February 2011).**

**D. CHARGE: CIT-IV, HYDERABAD, ANDHRA PRADESH, AY: 2005-06**

Under the Act, deduction under Chapter VIA shall be allowed from the income arrived at after setting off unabsorbed depreciation.

**Lanco Kondapalli Power (P) Limited<sup>46</sup>** was allowed 100 per cent deduction of ₹ 108.4 crore under section 80IA and thereafter brought forward unabsorbed depreciation was set off against income of ₹ 7.4 crore

from short term capital gains and other sources allowing carry forward of balance unabsorbed depreciation of ₹ 47.7 crore to subsequent AYs. This resulted in excess allowance of deduction of ₹ 55.1 crore under section 80IA and thereby incorrect set off and carry forward of unabsorbed depreciation of ₹ 55.1 crore involving potential tax effect of ₹ 20.2 crore. **The Department rectified the mistake under section 154 of the Income Tax Act (July 2010).**

**3.3.2 INCORRECT ALLOWANCE OF BUSINESS EXPENDITURE**

We found 34 cases of irregular allowance of expenditure having tax effect of ₹ 213.1 crore in Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Tamil Nadu and West Bengal. Five cases are illustrated below:

**A. CHARGE: CIT-VII MUMBAI, MAHARASHTRA; AY: 2006-07**

Section 37(1) of the Act stipulates that any expenditure incurred wholly and exclusively for the purpose of business or profession is allowed in computing the business income of the assessee. However, provision for expenses is not allowable.

**National Textile Corporation (South Maharashtra) Ltd<sup>47</sup>** being a BIFR case was allowed a provision of ₹ 142.6 crore towards

<sup>45</sup> Assessed at income of ₹ 1328.84 crore in February 2008.

<sup>46</sup> Assessed at 'Nil' income in December 2007.

<sup>47</sup> Assessed at a loss of ₹ 242.24 crore in December 2008.

interest on loans taken from holding company NTC (HC) Ltd. The mistake resulted in potential tax effect of ₹ 48 crore,

**B. CHARGE: CIT-IV, AHMEDABAD, GUJARAT, AY: 2003-04 & 2005-06**

Under Section 35ABB of the Act, any expenditure of a capital nature for acquiring license/right to operate telecommunication services incurred and paid in any previous year either before the commencement of business or thereafter, shall be allowed a deduction equal to the appropriate fraction of such expenditure paid in each of the relevant previous years.

**Facel Limited, [now known as Vodafone Essar (Gujarat) Limited]**<sup>48</sup> was allowed expenditure aggregating ₹ 131.1 crore incurred under the New Telecom Policy 1999 (NTP). This expenditure on license fee was capital in nature and treated as such till

1999. Subsequently, it was incorrectly allowed as revenue expenditure owing to the NTP stipulating the expenditure to be made on revenue sharing basis. Omission resulted in short levy of tax of ₹ 36.9 crore. **The Department took remedial action under section 143(3) read with section 147 of the Income Tax Act for the AY 2005-06.**

**C. CHARGE: CIT-LTU, CHENNAI, TAMIL NADU, AY: 2007-08**

Section 36(1)(viiia) provides for deduction towards provision for bad and doubtful debts to a scheduled bank of an amount not exceeding seven and one half percent of the total income or of an amount not exceeding ten percent of the aggregate of the advances made by its rural branches computed in the prescribed manner.

**Indian Overseas Bank**<sup>49</sup> was allowed deduction of ₹ 211.7 crore towards provisions for bad and doubtful debts which included provisions of ₹ 139.7 crore for bad and doubtful debts, ₹ 79.5 crore for standard assets and ₹ 0.9 crore for

country wise risk and written back amount of ₹ 8.4 crore towards excess provision for restructured accounts. Since provision for bad and doubtful debts only was admissible, other provision should have been disallowed. Omission to do so resulted in short levy of tax of ₹ 24.2 crore,

<sup>48</sup> Assessed at income of ₹ 73.29 crore in November 2007 for AY 2003-04 under special provisions and at income of ₹ 191.71 crore in December 2007 for AY 2005-06 under normal provisions,

<sup>49</sup> Assessed at loss of ₹ 1635.59 crore in December 2009 followed by revision in June 2010.

**D. CHARGE: CIT-III, MUMBAI, MAHARASHTRA, AY: 2007-08**

Section 36(1)(viii) of the Act provides for deduction in respect of a special reserve created and maintained of an amount not exceeding 40 per cent of the profits of an assessee being a financial corporation from the business of long term finance for industrial or agricultural development of infrastructure facility in India.

**National Bank for Agriculture and Rural Development (NABARD)**<sup>50</sup>

was allowed deduction of ₹ 456.4 crore under section 36(1)(viii) of the Act whereas the amount transferred to the special reserve as per the profit and loss appropriation account was ₹ 410.0 crore

only. Excess allowance of deduction resulted in short levy of tax of ₹ 15.6 crore. **The Department issued notice under section 154 of the Income Tax Act (October 2010).**

**3.3.3 IRREGULAR EXEMPTIONS/DEDUCTIONS/REBATE**

Chapter VIA and Section 10 of the Act provide for certain deductions/ exemptions in computing total income of an assessee subject to fulfilment of conditions specified therein.

We found that in nine cases, corporate assesseees were given irregular exemptions/ deductions having tax effect of ₹ 12,9 crore in Assam, Gujarat, Haryana, Karnataka, Maharashtra, Odisha, Tamil Nadu and West Bengal. Two

cases are illustrated below:

**A. CHARGE: CIT BHUBANESWAR; ODISHA, AY: 2007-08**

Section 80G of the Act provides that deduction shall be allowed in respect of any sums paid by the assessee during the relevant previous year as donations to approved authorities specified in the Act.

**Orissa Mining Corporation**<sup>51</sup>

claimed and was allowed deduction of ₹ 14,4 crore under section 80G. Out of this an amount aggregating ₹ 7,5 crore was paid during the years which were not relevant to AY 2007-08. Besides, depreciation of

₹ 44,3 lakh on plant machinery was irregularly allowed. The mistakes involved short levy of ₹ 3,9 crore. **The Department accepted the observation.**

<sup>50</sup> Assessed at income of ₹ 976,77 crore in December 2009.

<sup>51</sup> Assessed at an income of ₹ 107,02 crore in December 2009. Revision at income of ₹ 107,02 crore in February 2010.

**B. CHARGE: CIT I, AHMEDABAD, GUJARAT, AY: 2007-08**

Section 88E of the Act provides for deduction on the income arising from the taxable securities transactions entered into in the course of the business of an assessee of an amount equal to the amount calculated by applying the average rate of income tax.

**Amrapali Capital & Finance Services Ltd.<sup>52</sup>**

claimed and was allowed tax rebate of ₹ 1,3 crore under section 88E. Income of ₹ 4,4 crore earned from securities transactions included

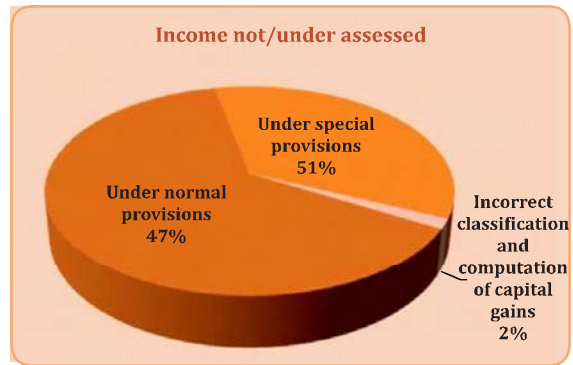
brokerage commission of ₹ 2,7 crore and other income of ₹ 10,7 lakh. The tax rebate allowable with reference to gross income and income from securities transaction worked out to ₹ 46,7 lakh only. The excess allowance of rebate resulted in short levy of tax of ₹ 1,1 crore including interest. *The Department rectified the assessment under section 143(3) r.w.s 147 in May 2010.*

**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.

**Chart 3,3: Income not/under assessed**

Income was not assessed or under assessed in 29 cases with tax effect of ₹ 197 crore in Delhi, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal. The sub-category wise details (based on tax effect) are depicted in Chart 3,3. Sub-categories are discussed below:



**3.4.1 INCOME NOT/UNDER ASSESSED UNDER NORMAL PROVISIONS**

Section 5 of the Act provides that the total income of a person for any previous year includes all income from whatever source derived which is received or deemed to be received or which accrues or arises during such previous year unless specifically exempted from tax under the provision of the Act.

There was non-compliance with the provisions relating to scope and assessment of income under normal provisions of the Act in eight cases with tax effect of ₹ 93,2 crore in

<sup>52</sup> Assessed in summary manner in February 2009 at an income of ₹ 4,38 crore including income from house property.

Delhi, Gujarat, Haryana, Jharkhand, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal. One case is illustrated below:

**CHARGE: CIT LTU, MUMBAI, MAHARASHTRA; AY: 2007-08**

**Deposit Insurance & Credit Guarantee Corporation**<sup>53</sup> adjusted interest of ₹ 76.8 crore and ₹ 36.7 crore allowed in October 2006 on refunds of ₹ 133.9 crore and ₹ 58.2 crore relating to AYs 1990-91 and 1991-92 respectively against the demand of AY 2004-05. Interest on refunds forming part of income, was not offered to tax in AY 2007-08. The mistake resulted in income of ₹ 113.5 crore escaping assessment involving short levy of ₹ 58.1 crore including interest. **The Department rectified the mistake (April 2011).**

**3.4.2 INCOME NOT/UNDER ASSESSED UNDER SPECIAL PROVISIONS**

Section 115JB provides for levy of Minimum Alternate Tax (MAT) at prescribed percentage of the book profit if the tax payable on total income under the normal provisions is less than such percentage of the book profit arrived at after certain additions and deletions as prescribed.

There was non-compliance with the provisions relating to assessment of income under special provisions of the Act in 18 cases with tax

effect of ₹ 98.8 crore in Delhi, Gujarat, Haryana, Kerala, Maharashtra, Rajasthan, Tamil Nadu and West Bengal. Three cases are illustrated below:

**A. CHARGE: CIT II, MUMBAI, MAHARASHTRA; AY: 2006-07**

One of the additions under special provisions is the provision made to the contingent liabilities and the amount or amounts set aside as provision for diminution in the value of any asset, if debited to Profit and Loss Account are to be made with retrospective effect from the date of inception of section 115JB i.e., from 1 April 2001.

**Dena Bank**<sup>54</sup> made additions of provisions for depreciation on investment amounting to ₹ 270.6 crore and for amortisation of premium on investment of ₹ 20 crore. Omission to make these additions resulted in short

computation of book profit of ₹ 290.6 crore involving short levy of tax of ₹ 24.5 crore. **The Department accepted the observation.**

<sup>53</sup> Assessed at income of ₹ 3263.70 crore in October 2009

<sup>54</sup> Assessed at income of ₹ 21.86 crore under normal provisions and at book profit of ₹ 181.24 crore in December 2008.

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

From 1 April 2007, the book profit shall be increased by the amount of deferred tax and income tax and the provision therefore if debited to the Profit and Loss Account.

The book profit of **Bharat Aluminium Company Ltd.**<sup>55</sup> was reduced by ₹ 109.8 crore and ₹ 3.4 crore on account of 'Deferred Tax' and 'Dividend Distribution Tax' respectively. As these are not allowable

expenses, the mistake resulted in short computation of book profit by ₹ 113.2 crore involving short levy of tax of ₹ 16.9 crore including interest. **The Department took remedial action under section 154 of the Income Tax Act (October 2010).**

**C. CHARGE: CIT II, MUMBAI, MAHARASHTRA; AY: 2007-08**

From 1 April, 2006 onwards, sub-section (1A) of section 115JAA of the Act provides that where the tax is paid under sub-section (1) of section 115JB by an assessee, being a company, then credit in respect of tax so paid shall be allowed in accordance with the provisions of section 115JAA.

While revising the assessment of **Tata Sons Ltd.**<sup>56</sup> in March 2010, the assessee was allowed MAT credit of ₹ 14.4 crore, relevant to AY 2005-06 on the basis of assessee's application. The irregular allowance of MAT credit resulted in short levy of tax of ₹ 14.4 crore.

**3.4.3 INCORRECT CLASSIFICATION AND COMPUTATION OF CAPITAL GAINS**

We found two cases of incorrect classification and computation of capital gains having tax effect of ₹ 4.3 crore in Maharashtra and Tamil Nadu. One case is illustrated below:

<sup>55</sup> Assessed at income of ₹ 923.03 crore under special provisions in November 2009.

<sup>56</sup> Assessed at income of ₹ 2640.32 crore in December 2009, Revision under section 154 at income of ₹ 2640.32 crore in March 2010.

**CHARGE: CIT – I MUMBAI, MAHARASHTRA; AY: 2006-07**

Section 111A of the Act provides for levy of tax at concessional rate of 10 *per cent* upto assessment year 2008-09 and 15 *per cent* thereafter on short term capital gains arising from sale of equity share in a company or unit of an equity oriented fund through a recognized stock exchange on which securities transaction tax (STT) has been paid. Further, short term capital loss can be carried forward for set off for a period of eight assessment years immediately succeeding the assessment year when the loss was incurred for the first time against income under the head capital gains.

**Housing Development Finance Corporation Ltd<sup>57</sup>**, set-off short term capital loss (STT paid) of ₹ 12.5 crore from short term capital gain (non-STT paid) of ₹ 14.7 crore instead of setting off the same first from the STT paid short term capital gains and thereafter with the non STT paid capital gains. Omission to do so resulted in short levy of tax of ₹ 2.8 crore. *The*

***Department found the observation prima facie acceptable.***

**3.4.4 UNEXPLAINED INVESTMENT**

Under Section 69B of the Act, where an assessee has made investment not fully disclosed in the books of account and the assessee offers no explanation about such investment or the explanation offered by the assessee was not found satisfactory, such amount may be deemed to be the income of the assessee for relevant financial year.

We found one case of unexplained investment having tax effect of ₹ 70.1 lakh in West Bengal as illustrated below:

**CHARGE: CIT – CENTRAL II KOLKATA, WEST BENGAL; AY: 2004-05**

**Higain Consultancy Services (P) Ltd,<sup>58</sup>** as per its books of accounts, had advanced money against purchase of ₹ 151.1 lakh to M/s. Rameswarlal Sajjan Kumar. However, no such reference was found in the books of accounts of the latter. This was required to be considered as income from an undisclosed source and taxed accordingly. ***The Department rectified the mistake under section 263 (December 2009).***

<sup>57</sup> Assessed at income of ₹ 1117.25 crore in December 2008, Assessed income included STCG of ₹ 17.112 crore earned from sale of shares and mutual funds.

<sup>58</sup> Assessed at loss of ₹ 12.76 lakh in November 2006. Assessed income included STCG of ₹ 17.112 crore earned from sale of shares and mutual funds.

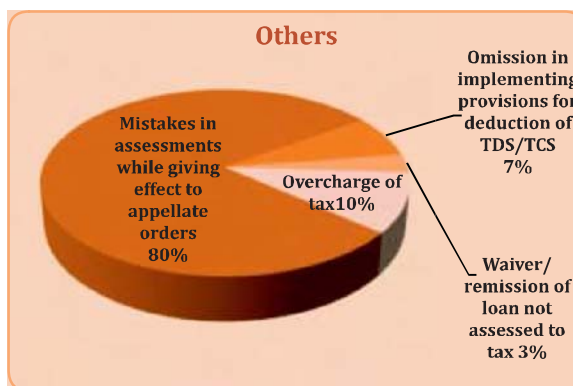


### 3.5 OTHERS

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

Chart 3.4: Others

There were 15 other cases with tax effect of ₹ 125.3 crore (short levy of tax of ₹ 112.6 crore in 11 cases and excess levy of tax of ₹ 12.7 crore in 4 cases) in Andhra Pradesh, Delhi, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. The sub-category wise details (based on tax effect) are depicted in Chart 3.4. Sub-categories are discussed below:



#### 3.5.1 MISTAKES IN ASSESSMENT WHILE GIVING EFFECT TO APPELLATE ORDERS

Under Section 254 of the Act, an aggrieved assessee can appeal to the Commissioner of Income Tax (Appeals) against the order of an assessing officer who shall comply with the directions given in the appellate order. Further appeal is also permitted to be made on questions of fact and law to Income Tax Appellate Tribunal. Any mistake committed while giving effect to an appellate order results in under assessment/over assessment of income.

We found that in five cases with a tax effect of ₹ 99.4 crore the appellate orders were not correctly implemented in Delhi, Gujarat, Maharashtra, Rajasthan and Tamil Nadu. Two cases are discussed below:

##### A. CHARGE: CIT-V, DELHI, AY: 2004-05

While giving effect to the appellate order passed in March 2007 in the case of **Power Grid Corporation of India Ltd.**<sup>59</sup> under section 250, loss under normal provisions was computed at ₹ 858.3 crore instead of the correct amount of ₹ 1002.1 crore<sup>60</sup>. This mistake resulted in underassessment of loss by ₹ 143.8 crore involving potential tax effect

<sup>59</sup> Assessed at loss of ₹ 930.22 crore in November 2006.

<sup>60</sup> The assessed loss of ₹ 930,21,57,144 was to be increased by ₹ 719,00,000 which is the amount of relief allowed by the CIT(A), instead, it was decreased.

of ₹ 51,6 crore. **The Department rectified the mistake under section 154 of the Income Tax Act (December 2010).**

**B. CHARGE: CIT-I, JODHPUR, RAJASTHAN; AYS: 2002-03 & 2003-04**

**Jodhpur Vidyut Vitran Nigam Ltd.**<sup>61</sup> revised the returned loss in December 2006 for AYs 2002-03 and 2003-04 at ₹ 62,6 crore and ₹ 22,9 crore respectively. However, while giving effect to the appellate order of December 2009, the assessing officer adopted loss of ₹ 85,2 crore and ₹ 78,1 crore initially returned by assessee instead of adopting loss as declared by the assessee in the revised return for both the assessment years respectively. Thus over computation of loss aggregating ₹ 77,9 crore for two assessment years involved potential tax effect of ₹ 28,4 crore.

**3.5.2 OMISSION IN IMPLEMENTING PROVISIONS FOR DEDUCTION OF TDS/TCS**

Under the provisions of the Act, any person responsible for making payment to other persons shall deduct/collect tax at source while making such payment at the rates prescribed in the Act.

We found that AOs failed to implement provisions for deduction of TDS/TCS in five cases with a tax effect of ₹ 9,2 crore in Gujarat, Haryana, Maharashtra, Uttar Pradesh and Tamil Nadu. One case is discussed below:

**CHARGE: CIT-III, MUMBAI, MAHARASHTRA; AY: 2007-08**

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

**Tulip Hospitality Services Ltd**<sup>62</sup> claimed and was allowed aggregate deduction of ₹ 17 crore under section 40(a)(ia) including deduction of TDS amounting to ₹ 17,0 crore allowable in

AY 2006-07 and ₹ 5,4 crore on account of interest payment allowable in AY 2008-09. Irregular allowance of deduction in AY 2007-08 involved tax effect of ₹ 5,7 crore. **The Department rectified the mistake under section 154 of the Income Tax Act (May 2010).**

<sup>61</sup> Assessed at loss of ₹ 85,23 crore and ₹ 78,12 crore respectively in March 2010 after giving effect to appellate order passed in December 2009.

<sup>62</sup> Assessed at a loss of ₹ 36,23 crore in December 2009

### 3.5.3 WAIVER/REMISSION OF LOAN NOT ASSESSED TO TAX

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 decisions in T.V. Sundaram Iyenger & Sons Limited vs CIT [222 ITR 344] (SC) and Solid Containers Ltd. vs DCIT [308 ITR 417(Bom)(2009).

The income from waiver/remission of loan was not assessed to tax and the interest was not correctly levied in one case in Maharashtra as discussed below:

#### CHARGE: CIT-I MUMBAI, MAHARASHTRA; AY: 2007-08

**Ashok Alcochem Ltd**<sup>63</sup> had outstanding working capital loan of ₹ 12.3 crore as on 31 March 2006. During the relevant previous year, Dena Bank waived ₹ 6.6 crore towards principal loan liability and ₹ 8.5 crore towards interest liability under one time settlement scheme (OTS) which should have been treated as income. Instead the assessee credited waiver of principal loan of ₹ 6.6 crore towards capital reserves directly to the balance sheet without bringing the same to profit and loss account and claimed deduction of ₹ 5.3 crore towards interest liability which was already waived by the Bank. The mistakes resulted in underassessment of income of ₹ 11.9 crore involving potential tax effect of ₹ 4 crore.

### 3.5.4 OVER-CHARGE OF TAX

Cases of over assessment/over charge due to negligence on the part of the assessing officers are being regularly featured in the reports of the Comptroller and Auditor General of India.

We noticed over assessment of income in four cases involving overcharge of tax aggregating ₹ 12.7 crore. One case is discussed below:

#### CIT II, JABALPUR, MADHYA PRADESH; AY: 2006-07

**Northern Coal Fields Limited**<sup>64</sup> was levied interest of ₹ 8.6 crore under section 234C for default in payment of advance tax although the assessee company had already paid the required advance tax in time. The mistake resulted in overcharge of interest of ₹ 8.6 crore. ***The Department rectified the mistake under section 143(3)/263 of the Income Tax Act (November 2010).***

<sup>63</sup> Assessed at a loss of ₹ 27,17 lakh in December 2009

<sup>64</sup> Assessed at income of ₹ 2687,25 crore in April 2008