

### Chapter III: Analysis of assessments relating to Corporation Tax

#### 3.1 Introduction

**3.1.1** Chapter III discusses 332 high value cases pertaining to corporation tax with tax effect of ₹ 2,193.75 crore (304 cases involving undercharge of ₹ 2,031.69 crore and 28 cases involving overcharge<sup>27</sup> of ₹ 162.06 crore) issued to the Ministry between July and November 2013. Table 3.1 shows the details of broad categories of mistakes and their tax effect:

Table no. 3.1: Category of mistakes and tax effect			(₹ in crore)
Category	Cases	Tax effect	
a. Quality of assessments	122	774.41	
b. Administration of tax concessions/exemptions/deductions	146	1,005.48	
c. Income escaping assessments due to omissions	36	251.80	
d. Over-charge of tax/Interest	28	162.06	
<b>Total</b>	<b>332</b>	<b>2,193.75</b>	

**3.1.2** Under each broad category, we indicate sub-categories for the purpose of highlighting mistakes of a similar nature. Each sub-category starts with a preamble citing the provisions of the Act, followed by illustration of important case(s).

#### 3.2 Quality of assessments

**3.2.1** AOs committed errors in the assessments despite clear provisions in the Act. These cases of incorrect assessments point out weaknesses in the internal controls on the part of ITD which need to be addressed. Table 3.2 shows the sub-categories of mistakes which impacted the quality of assessments.

Table 3.2: Details of errors in quality of assessments				(₹ in crore)
Sub-categories	Cases	TE	States	
a. Arithmetical errors in computation of income and tax	61	585.88	Andhra Pradesh, Delhi, Goa, Gujarat, Jammu & Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal	
b. Mistakes in levy of interest	34	57.81	Andhra Pradesh, Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal	
c. Excess or irregular refunds/ interest on refunds	10	37.35	Delhi, Gujarat, Kerala, Maharashtra, Tamil Nadu and West Bengal	

<sup>27</sup> Overcharge is on account of mistakes in adoption of correct figures, arithmetical errors in computation of income, incorrect application of rates of tax/interest etc.

d. Incorrect application of rates of tax and surcharge	7	9.40	Andhra Pradesh, Delhi, Karnataka, Maharashtra and West Bengal
e. Mistakes in assessment while giving effect to appellate order	10	83.97	Gujarat, Maharashtra and Uttarakhand
<b>Total</b>	<b>122</b>	<b>774.41</b>	

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

We give below five such illustrative cases:

Section 143(3) provides that AOs have to determine and assess the income correctly. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments. CBDT has also issued instructions from time to time in this regard.

**3.2.2.1** In Delhi, CIT-V charge, AO while completing the assessment of **NTPC Limited** for the assessment year (AY) 2009-10 after scrutiny in December 2011 at income of ₹ 6462.11 crore, disallowed deduction of ₹ 534.20 crore on account of 'provision for pay revision' but adopted the same as ₹ 5.34 crore. The mistake resulted in underassessment of income by ₹ 528.86 crore involving short levy of tax of ₹ 179.75 crore.

**3.2.2.2** In Maharashtra, CIT-I Kolhapur charge, AO completed the assessment of **The Sangli Bank Limited** for the AY 2007-08 after scrutiny in December 2009 at nil income and allowed carry forward of business loss and unabsorbed depreciation of ₹ 388.37 crore. While calculating the tax, AO erroneously adopted amount of business loss and unabsorbed depreciation at ₹ 388.37 crore, as mentioned in the return of income filed by the assessee, instead of correct figure of ₹ 129.15 crore. The mistake resulted in incorrect carry forward of business loss and unabsorbed depreciation of ₹ 259.22 crore involving potential tax effect of ₹ 87.25 crore. *ITD rectified (March 2012) the mistake under section 154.*

**3.2.2.3** In Maharashtra, CIT-VII Mumbai charge, AO while completing the assessment of **Tata Tele Services (Maharashtra) Limited** for AY 2007-08 after scrutiny in December 2009, at loss of ₹ 75.43 crore, erroneously adopted business income of ₹ 100.05 crore as business loss before setting off brought forward losses and disallowed ₹ 24.62 crore but did not add back the same to the business income. The mistakes resulted in underassessment of income by ₹ 124.67 crore involving potential tax effect of ₹ 67.35 crore. *ITD accepted the audit observation and initiated remedial action (March 2013) under section 154/155.*

**3.2.2.4** In Maharashtra, CIT-VII Mumbai charge, AO while computing taxable income in the case of **Siemens Information Systems Limited** for AY 2007-08 after scrutiny in October 2011 at income of ₹ 162.27 crore, disallowed deduction of ₹ 140.01 crore under section 10A but adopted the same as ₹ 14.01 crore. The mistake resulted in underassessment of income by ₹ 126 crore involving short levy of tax of ₹ 65.74 crore including interest. *ITD accepted and rectified (September 2012) the mistake under section 154.*

**3.2.2.5** In Gujarat, CIT-II Baroda charge, AO while completing the assessment of **Uttar Gujarat Vij Company Limited** for AY 2008-09 after scrutiny in December 2010 at loss of ₹ 2.59 crore, adopted positive income of ₹ 11.96 crore as (-) ₹ 11.96 crore and added back ₹ 9.37 crore. The incorrect adoption of positive income as negative income resulted in underassessment of income of ₹ 21.33 crore and overassessment of loss of ₹ 2.59 crore involving positive tax effect of ₹ 9.65 crore and potential tax effect of ₹ 0.88 crore. *ITD took remedial action (March 2013) under section 154.*

### **3.2.3 Mistakes in levy of interest**

We give below five such illustrative cases:

Act provides for levy of interest for different omissions on the part of the assessee at the rates prescribed by the Government from time to time.

**3.2.3.1** In Delhi, DIT-I (International Taxation) charge, AO while calculating tax demand in the case of **Ericsson Radio System AB** for AY 2007-08 after scrutiny in October 2011 at income of ₹ 1,043.75 crore, incorrectly levied interest of ₹ 87.0 crore under section 234B instead of correct amount of ₹ 92.16 crore. The mistake resulted in short levy of interest of ₹ 5.16 crore. *ITD rectified (December 2012) the mistake under section 154.*

**3.2.3.2** In Madhya Pradesh, CIT-I Indore charge, AO while completing search assessment of **Zoom Developers Private Limited** under section 153A read with section 143(3) in December 2010 for AY 2003-04 to AY 2009-10, at incomes of ₹ 3.05 crore, ₹ 4.85 crore, ₹ 6.53 crore, ₹ 15.22 crore, ₹ 35.22 crore, ₹ 39.76 crore and ₹ 93.03 crore respectively, did not levy interest under section 234A for delay of eleven months in filing returns in response to notices issued under section 153A. The mistake resulted in non-levy of interest of ₹ 4.56 crore under section 234A. *ITD rectified (December 2012) the mistake under section 154.*

**3.2.3.3** In Delhi, DIT-I (International Taxation) charge, AO while calculating tax demand in the case of **Huawei Technologies Company Limited** for AY 2008-09 after scrutiny in September 2011 at income of ₹ 339.17 crore, levied interest of ₹ 4.23 crore under section 234B instead of correct amount of ₹ 8.47 crore. The mistake resulted in short levy of interest of ₹ 4.24 crore. *ITD rectified (September 2012) the mistake under section 154.*

**3.2.3.4** In Maharashtra, CIT-IV Mumbai charge, AO while calculating tax demand in the case of **CLSA India Limited** for AY 2008-09 after scrutiny read with section 144C in February 2012 at income of ₹ 397.83 crore, levied interest of ₹ 2.88 crore under section 234B for the period from April 2008 to August 2009 instead of correct amount of ₹ 6.49 crore for the period from April 2008 to February 2012. The mistake resulted in short levy of interest of ₹ 3.62 crore under section 234B. *ITD accepted and rectified (May 2012) the mistake under section 154.*

**3.2.3.5** In Tamil Nadu, CIT-LTU Chennai charge, AO while completing the revised assessment of **Cholamandalam MS General Insurance Company Limited** for AY 2008-09 in February 2012 at income of ₹ 73.32 crore (originally assessed at income of ₹ 74.75 crore after scrutiny in December 2011), levied interest of ₹ 6.68 crore under section 234B for the period from April 2009 to December 2011 instead of ₹ 9.11 crore leviable for the period from April 2008 to December 2011. The mistake resulted in short levy of interest of ₹ 2.43 crore under section 234B. *ITD rectified (October 2012) the mistake under section 154.*

### **3.2.4 Excess or irregular refunds/interest on refunds**

We give below two such illustrative cases:

Section 234D provides for levy of interest on refund if refund is granted in excess to the assessee.

**3.2.4.1** In Kerala, CIT Kochi charge, AO while completing the assessment of **The Federal Bank Limited** for AY 2009-10 after scrutiny in December 2011 at income of ₹ 1,101.62 crore, did not levy interest on excess refund of ₹ 180.87 crore for the period from November 2010 to December 2011. The mistake resulted in non levy of interest of ₹ 12.66 crore under section 234D. *ITD accepted (January 2013) the mistake and initiated remedial action.*

**3.2.4.2** In Maharashtra, CIT-III Mumbai charge, AO while giving effect to appellate order in case of **ICICI Bank Limited** for AY 2002-03, did not levy interest on excess refund of ₹ 85.45 crore for the period from 31 March 2003 to 25 February 2005. The mistake resulted in non levy of interest of ₹ 11.64 crore under section 234D. *ITD accepted and rectified (February 2013) the mistake under section 154.*

### **3.2.5 Mistakes in assessment while giving effect to appellate orders**

We give below two such illustrative cases:

Under section 254, an aggrieved assessee can appeal to the CIT (Appeals) against the order of AO 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 ITAT. Any mistake in implementation of an appellate order results in under assessment/over assessment of income.

**3.2.5.1** In Maharashtra, CIT LTU Mumbai charge, AO while giving effect to the appellate order in February 2012 in case of **Industrial Development Bank of India Limited** for AY 2008-09, did not add back ₹ 538.61 crore relating to provisions for depreciation on investment, non performing assets and standard assets in computation of book profit. Omission resulted in underassessment of book profit of ₹ 538.61 crore involving short levy of tax of ₹ 61.02 crore. *ITD issued notice under section 148 for rectifying the mistake (March 2013).*

**3.2.5.2** In Maharashtra, CIT-II Mumbai charge, AO while giving effect to the appellate order in February 2012 in case of **HDFC Bank Limited** for AY 2009-10 (originally assessed at ₹ 5,060.94 crore under scrutiny assessment completed in December 2011) reduced taxable income to ₹ 3,137.02 crore after allowing deduction of ₹ 1,696.74 crore towards bad and doubtful debts. While rectifying the order giving effect to appellate order in February 2013, AO allowed deduction of ₹ 246.24 crore on account of provision for doubtful debts as against ₹ 222.89 crore considered by assessee while computing the said deduction for AY 2009-10. The mistake resulted in underassessment of income of ₹ 23.35 crore involving tax effect of ₹ 7.92 crore. *ITD accepted and rectified (March 2013) the mistake under section 154.*

### **3.3 Administration of tax concessions/exemptions/deductions**

**3.3.1** 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 assessing officers have irregularly extended benefits of tax concessions/exemptions/

deductions to beneficiaries that are not entitled to the same. These cases point out weakness in the administration of tax concessions/ deductions/ exemptions on the part of ITD which need to be addressed. Table 3.3 shows the sub-categories which have impacted the Administration of tax concessions/exemptions/deductions.

Table 3.3: Sub-categories of mistakes under Administration of tax concessions/exemptions/deductions			(₹ in crore)
Sub-categories	Nos.	TE	States
a. Irregularities in allowing depreciation/ business losses/capital losses	66	268.05	Andhra Pradesh, Assam, Chandigarh UT, Delhi, Gujarat, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu and West Bengal
b. Irregular exemptions/ Deductions/Rebates/ Relief	36	338.42	Andhra Pradesh, Delhi, Goa, Gujarat, Haryana, Karnataka, Maharashtra, Rajasthan, Tamil Nadu and West Bengal
c. Incorrect allowance of business expenditure	44	399.01	Andhra Pradesh, Bihar, Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal
<b>Total</b>	<b>146</b>	<b>1,005.48</b>	

### 3.3.2 Irregularities in allowing set-off and carry forward of depreciation and business/capital losses

We give below four such illustrative cases:

Section 32(2)(b) provides for carry forward and set-off of unabsorbed depreciation upto eight assessment years following the assessment year for which the aforesaid allowance was first computed.

**3.3.2.1** In Delhi, CIT-I charge, AO completed the assessment of **Bharti Infratel Limited** for AY 2009-10 in November 2011 determining loss of ₹ 125.83 crore after disallowing ₹ 121.67 crore in respect of lease rent equalisation charge and book profit of ₹ 443.19 crore under special provisions of the Act. Assessee in its computation sheet determined loss at ₹ 247.50 crore which included brought forward unabsorbed depreciation of ₹ 157.27 crore and current year loss of ₹ 90.23 crore. AO accepted the same and adopted current year loss at ₹ 247.50 crore instead of correct amount of ₹ 90.23 crore. AO determined loss at ₹ 125.83 crore instead of 'nil' income after allowing eligible set-off of unabsorbed depreciation of ₹ 31.44 crore. The mistake resulted in overassessment of loss of ₹ 125.83 crore and incorrect carry forward of unabsorbed depreciation of ₹ 31.44 crore involving potential tax effect of ₹ 53.45 crore. The *Ministry accepted the audit observation and has taken remedial action (January 2013)*.

Section 73(4) provides for carry forward and set-off of speculative loss against the profits and gains of another speculation business upto four succeeding assessment years with respect to assessment year for which the loss was first computed.

**3.3.2.2** In Gujarat, CIT-I Ahmedabad charge, AO completed assessment of **Adani Agro Private Limited**, for AY 2006-07 after scrutiny in December 2008 at nil income after allowing set-off of brought forward loss and unabsorbed depreciation. Assessee set off brought forward speculative loss of ₹ 9.54 crore pertaining to AY 2001-02 against available profit earned from speculative business in AY 2006-07 and carried forward remaining amount of speculative loss of ₹ 80.16 crore. As speculative loss is eligible for carry forward and set off upto four AYs (in this case upto AY 2005-06), the set off of ₹ 9.54 crore and carry forward of ₹ 80.16 crore is not in order. The mistake resulted in positive tax effect of ₹ 4.28 crore including interest and potential tax effect of ₹ 26.98 crore. *ITD took remedial action (September 2011) under section 143(3) read with section 263.*

Section 72(3) provides for carry forward and set-off of business loss upto eight succeeding assessment years with respect to assessment year for which the loss was first computed.

**3.3.2.3** In West Bengal, CIT-IV Kolkata charge, AO while completing assessment of **JCT Limited**, for AY 2009-10 after scrutiny in December 2011 at loss of ₹ 66.40 crore under the head 'Income from business', allowed carry forward of business loss of ₹ 42.02 crore pertaining to AY 2001-02. The mistake resulted in incorrect allowance of carry forward of business loss of ₹ 42.02 crore involving potential tax effect of ₹ 14.28 crore. *ITD rectified (June 2012) the mistake under section 154.*

Section 32(1)(iii) provides for additional depreciation to the assessee engaged in business of manufacture or production of any article or thing, on any new machinery or plant (other than ships and air crafts) acquired and installed after 31 March 2005 at prescribed rates in force.

**3.3.2.4** In Tamil Nadu, CIT-I Chennai charge, AO revised the scrutiny assessment of **Kasthuri & Sons Limited** for AY 2006-07 and AY 2007-08, in July 2009 and February 2010, at income of ₹ 95.35 crore and ₹ 123.77 crore respectively, and allowed additional depreciation of ₹ 4.36 crore and ₹ 13.39 crore on new plant and machinery in respective AYs. As the assessee was not involved in the business of manufacturing or production of any article or thing, it was not eligible for additional depreciation. The mistakes resulted in short levy of tax by ₹ 5.98 crore. *ITD took remedial action (December 2011) for AY 2006-07 under section 143(3) read with section 147 and initiated remedial action for AY 2007-08 under section 143(3) read with section 263.*

### 3.3.3. Irregular exemptions/deductions/rebate/relief

We give below two such illustrative cases:

Section 10A provides for deduction to industrial undertakings on profits and gains derived from the export of articles or things or computer software subject to fulfilment of the prescribed conditions. Further, as per proviso to section 92C(4), if the total income having regard to arm's length price is enhanced, no deduction under section 10A shall be allowed in respect of increased quantum of income.

**3.3.3.1** In Maharashtra, CIT-II Mumbai charge, AO completed the assessment of **Tech Mahindra Limited** for AY 2007-08 after scrutiny in February 2011 at income of ₹ 128.05 crore after allowing deduction of ₹ 578.70 crore under section 10A as against ₹ 658.70 crore claimed by the assessee. Assessee made upfront payment of discount of ₹ 524.94 crore to British Telecommunications PLC and debited the same to profit and loss account. AO referred the case to Transfer Pricing Officer (TPO) who recommended for adjustment of discount payment under Arm's length price<sup>28</sup> (ALP). AO accepted the order of TPO but did not make any addition on the ground that the assessee had already disallowed the said amount of discount payment. Assessee in its computation claimed deduction under section 10A on profit before exceptional items i.e. on enhanced profit on account of upfront payment of discount specifically disallowed by TPO. The mistake resulted in excess allowance of deduction of ₹ 457.36 crore involving short levy of tax of ₹ 153.95 crore. *ITD took remedial action (March 2013) under section 143(3) read with section 147.*

**3.3.3.2** In Tamil Nadu, CIT-III Chennai charge, AO completed the assessment of **Mega Soft Limited** for AYs 2006-07, 2007-08 and 2008-09 after scrutiny in December 2008, February 2009 and December 2011 respectively allowing deduction of ₹ 8.24 crore, ₹ 35.8 crore and ₹ 8.94 crore under section 10A in respect of XIUS unit at Hyderabad. However, as per revision orders passed in AY 2005-06 (January 2008), the XIUS unit at Hyderabad was categorized as a non-STPI unit. Thus the assessee was not eligible to claim deduction under section 10A. Omission to disallow the same resulted in excess allowance of deduction of ₹ 8.24 crore, ₹ 35.8 crore and ₹ 8.94 crore involving short levy of tax by ₹ 2.77 crore, ₹ 12.05 crore and ₹ 2.36 crore in AYs 2006-07, 2007-08 and 2008-09 respectively. *ITD took remedial action (March 2013) for AY 2007-08 under section 143(3) read with section 147 and has initiated remedial action (March 2013) for AY 2006-07 under section 148.*

<sup>28</sup> Arm's Length Price is "a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises in uncontrolled conditions" [section 92F(ii) of Income Tax Act].



### 3.3.4 Incorrect allowance of business expenditure

We give below five such illustrative cases:

Section 43B provides for deduction towards certain expenditure only when the same has actually been paid in the previous year on or before the due date of filing return of income.

**3.3.4.1** In West Bengal, CIT-III Kolkata charge, AO while revising the scrutiny assessment of **ITC Limited** for AY 2005-06 in January 2010 at income of ₹ 22.9 crore, allowed double deduction of ₹ 270.07 crore pertaining to excise duty attributable to closing stock, claimed first in profit and loss account and subsequently under section 43B on the basis of actual payment. The mistake resulted in short levy of tax by ₹ 135.11 crore. *ITD has rectified (March 2013) the mistake.*

**3.3.4.2** In Rajasthan, CIT Udaipur charge, AO while completing assessment of **Hindustan Zinc Limited**, for AY 2008-09 after scrutiny in December 2010 at income of ₹ 4899.57 crore, allowed deduction of debit balance of ₹ 71.18 crore<sup>29</sup> on account of excise duty paid. As these amounts remained in balance after adjustment of liability of excise duty paid either through PLA or Cenvat credit and were in the nature of advance payment, AO should have disallowed the same. The mistake resulted in underassessment of income of ₹ 71.18 crore involving tax effect of ₹ 24.19 crore. *ITD has not accepted the audit observation stating that the assessee claimed deduction under section 43B on paid basis and added back the same in subsequent year in computation of income to avoid double deduction.* The reply is not tenable on the grounds that section 43B was not applicable in the instant case as the assessee had adopted “net basis” accounting system.

Section 37(1) provides for allowance of business expenditure while computing income chargeable under the head profits and gains of business or profession. Section 40(a)(ia) provides for disallowance of any expenditure incurred by assessee and charged to profit and loss account, on which tax has not been deducted at source.

**3.3.4.3** In Andhra Pradesh, CIT-III Hyderabad charge, AO while finalizing the assessment of **VST Industries Limited** for AY 2006-07 after scrutiny in November 2008 at income of ₹ 63.49 crore, allowed ₹ 43.89 crore towards extra ordinary expenditure<sup>30</sup> which was claimed to have been paid to Outside Contractual Manufacturers (OCMs). As the interest amount of ₹ 12.69 crore was not actually paid to OCMs and tax was not deducted at source on the

<sup>29</sup> ₹ 48.40 crore in respect of excise duty paid on capital goods, ₹ 10.58 crore in respect of excise duty paid through PLA and ₹ 12.20 crore in respect of excise duty paid through RG 23 A & C.

<sup>30</sup> Extra ordinary expenditure of ₹ 43.89 crore comprised of excise duty of ₹ 31.20 crore and interest of ₹ 12.69 crore which was reimbursed to OCMs.

amount of ₹ 31.20 crore paid to OCMs, both the claims should have been disallowed. The mistakes resulted in under assessment of income of ₹ 43.89 crore involving short levy of tax of ₹ 19.35 crore including interest. *ITD took remedial action (June 2011) under section 143(3) read with section 263.*

Section 195 provides for tax deduction at source from payment of interest or any other sum made to a non-resident or a foreign company as per prescribed rates. Section 44 B provides for computing profits and gains of shipping business of a non-resident assessee.

**3.3.4.4** In Tamil Nadu, CIT-III Chennai charge, AO while completing the assessment of **Poompuhar Shipping Corporation Limited** for AY 2008-09 after scrutiny in December 2010 at income of ₹ 14.86 crore, allowed deduction of ₹ 305.51 crore and ₹ 440.79 crore relevant to AY 2007-08 and AY 2008-09 respectively on account of 'Charter Hire Payments'. As tax was not deducted under section 195 on amounts of ₹ 23.47 crore and ₹ 23.62 crore relevant to AY 2007-08 and AY 2008-09 paid towards 'Charter Hire Payments in foreign currency', both the payments should have been disallowed. Further, ₹ 1.76 crore (7.5 per cent of ₹ 23.47 crore) and ₹ 1.77 crore (7.5 per cent of ₹ 23.62 crore) are liable to be taxed as deemed income under section 44B. Omissions resulted in short levy of tax of ₹ 17.38 crore. *ITD took remedial action (March 2013) for AY 2007-08 under section 143(3) read with section 147.*

Section 36(1)(viii) provides for deduction in respect of a special reserve created and maintained by a specified entity, an amount not exceeding 20 per cent of the profits of an assessee being a banking company from the business of long term finance for industrial or agricultural development of infrastructure facility in India.

**3.3.4.5** In Karnataka, CIT Mangalore charge, AO completed the assessment of **Corporation Bank** for AY 2010-11 after scrutiny in February 2012 at income of ₹ 1592.96 crore after allowing deduction of ₹ 118.20 crore under section 36(1)(viii) of the Act. As the assessee had created a special reserve of ₹ 78.0 crore for FY 2009-10, it was eligible for deduction only to the extent of reserve created. The excess allowance of deduction resulted in underassessment of income of ₹ 40.20 crore involving short levy of tax of ₹ 16.81 crore including interest. *ITD has accepted (March 2013) the audit observation and initiated remedial action.*

### 3.4 Income escaping assessments due to omissions

**3.4.1** 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 assessing officers did not assess/under assessed total income that require to be offered to tax. Table 3.4 shows the sub-categories which have resulted in Income escaping assessments.

Table 3.4: Sub-categories of mistakes under income escaping assessments due to omissions (₹ in crore)			
Sub-categories	Nos.	TE	States
a. Income not assessed/under assessed under special provision	17	94.78	Andhra Pradesh, Goa, Gujarat, Karnataka, Maharashtra, Tamil Nadu and West Bengal
b. Income not assessed/under assessed under normal provision	15	136.80	Delhi, Gujarat, Kerala, Maharashtra, Odisha, Rajasthan, Tamil Nadu and West Bengal
c. Incorrect classification and computation of capital gains	4	20.22	Karnataka and Maharashtra
<b>Total</b>	<b>36</b>	<b>251.8</b>	

### 3.4.2 Income not assessed/under assessed under special provisions

We give below two such illustrative cases:

Section 115JB provides for levy of Minimum Alternate Tax (MAT) at prescribed percentage of the book profit if the tax payable under the normal provisions is lesser than MAT. As per Finance Act 2009, the section has been retrospectively amended to the effect that provision for diminution in the value of assets shall be added back while computing book profit.

**3.4.2.1** In Maharashtra, CIT-II Mumbai charge, AO rectified the assessment of **Dena Bank** for AY 2002-03, in March 2010 at income of ₹ 51.28 crore under normal provisions and book profit of ₹ 170.89 crore under special provisions (initially completed after scrutiny in December 2009 at income of ₹ 689.54 crore under normal provisions and book profit of ₹ 594.53 crore under special provisions). While computing book profit, AO did not add back the provisions aggregating to ₹ 498.58 crore debited towards diminution in the value of various assets like non-performing assets, standard assets, depreciation of investment, amortization on premium and deferred tax liability. The mistake resulted in short levy of tax of ₹ 57.50 crore including interest under section 234D. *ITD accepted (August 2010) the audit observation.*

**3.4.2.2** In West Bengal CIT-II Kolkata charge, AO while completing the assessment of **National Insurance Company Limited** for AY 2007-08 at income of ₹ 239.75 crore under special provisions of the Act, disallowed claim of ₹ 87.79 crore on account of 'Reserve for unexpired risk' but did not add back the same to the book profit. The mistake resulted in short levy of tax of ₹ 12.64 crore. *ITD rectified (March 2013) the mistake under section 147 and section 251.*

### **3.4.3 Income not assessed/under assessed under normal provisions**

We give below two such illustrative cases:

Section 5 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 provisions of the Act.

**3.4.3.1** In Tamil Nadu, CIT LTU Chennai charge, AO while completing the assessment of **Neyveli Lignite Corporation Limited** for AY 2007-08 after scrutiny in December 2009 at income of ₹ 1427.71 crore, did not assess surcharge income of ₹ 118 crore recoverable from Electricity Boards for delay in payments of bills due. Assessee was giving incentives to Tamil Nadu Electricity Board (TNEB) for making prompt payment which was claimed as expenditure. Similarly, the surcharge recoverable from Electricity Boards for effecting prompt payment was to be offered as income. Omission to assess surcharge income of ₹ 118 crore resulted in short levy of tax of ₹ 39.72 crore. *ITD accepted and rectified (March 2013) the mistake under section 143(3) read with section 147.*

Section 145 provides that the income of an assessee from business or profession shall be computed in accordance with method of accounting regularly employed by the assessee.

**3.4.3.2** In Odisha, CIT Sambalpur charge, AO completed the assessment of **Mahanadi Coal Fields** for AY 2009-10 after scrutiny in December 2011, at income of ₹ 2,778.87 crore which was subsequently rectified under section 154 at income of ₹ 2,763.73 crore in March 2012. As per notes on accounts closing stock for each mine was valued at cost or net realisable value whichever is lower. The closing stock of raw coal was valued at ₹ 414.41 crore instead of ₹ 466.89 crore certified as 'value of raw coal for group as a whole' by tax auditor. Assessee being a single entity, uniform system of accounting was applicable to all its mines. The mistake resulted in undervaluation of closing stock of ₹ 52.48 crore involving short levy of tax of ₹ 17.84 crore. *ITD accepted (October 2011) the audit observation.*

### 3.4.4 Incorrect classification and computation of capital gains

We give below one such illustrative case:

Section 50B provides for taxability of any profits or gains arising from a slump sale as capital gains (sale consideration minus the net worth of the undertaking). The nature of gains is determined by the period of holding of the undertaking (long term if the undertaking has been held for more than 36 months).

**3.4.4.1** In Maharashtra, CIT Central-II Mumbai charge, AO completed the assessment of **Oricon Enterprises Limited**, for AY 2007-08 after scrutiny in December 2009 at nil income under normal provisions and book profit of ₹ 4.06 crore under special provisions of the Act. Assessee transferred its packaging division under slump sale to its subsidiary unit, Oriental Containers Limited (formerly known as Oricon Packaging Private Limited) in lieu of 29.50 lakh fully paid up equity shares with face value of ₹ 10 each of subsidiary unit. As per the books of accounts, the equity shares were valued at ₹ 27.62 crore and net worth of the packaging division was (-) ₹ 24.40 crore<sup>31</sup>. While computing Long Term Capital Gain (LTCG), AO adopted full value of consideration at ₹ 2.95 crore instead of ₹ 27.62 crore and arrived at LTCG of ₹ 2.95 crore instead of ₹ 52.02 crore [₹ 27.62 crore - (-) ₹ 24.40 crore]. This resulted in short computation of LTCG by ₹ 49.06 crore involving tax effect of ₹ 11.01 crore. *ITD took remedial action (March 2013) under section 143(3) read with section 147 by adding (-) ₹ 24.40 crore under LTCG.* However action is pending for consideration of paid up equity shares at ₹ 27.62 crore as reflected in the balance sheet.

### 3.5 Over-charge of tax/Interest

**3.5.1** We noticed that AOs over assessed income in 28 cases involving overcharge of tax of ₹ 162.06 crore in Andhra Pradesh, Assam, Delhi, Gujarat, Haryana, Maharashtra, Rajasthan, Tamil Nadu and West Bengal. We give below two such illustrative cases:

Section 143(3) provides that AOs have to determine and assess the income correctly. Different types of claims together with accounts, records and all documents enclosed with the return are required to be examined in detail in scrutiny assessments.

**3.5.1.1** In West Bengal, CIT Asansol charge, AO completed the assessment of **Eastern Coalfield Limited** for AY 2008-09 after scrutiny in December 2010 at nil income after allowing set off of brought forward loss of ₹ 894.67 crore. The assessee claimed paid liability of ₹ 1.05 crore on account of 'provision for Leave Encashment' and added back ₹ 122.35 crore on account of unpaid liability of 'provision for Leave Encashment'. However, while computing

<sup>31</sup> (-) ₹ 24.40 crore = ₹ 127.40 crore - (-) ₹ 151.80 crore

taxable income of the assessee, AO again added back the provision amount of ₹ 123.40 crore. The mistake resulted in potential overcharge of tax of ₹ 41.94 crore.

Section 234B provides that if an assessee has to pay advance tax and he has not paid such tax or if the advance tax paid by him is less than 90 per cent of the assessed tax, he shall pay simple interest at the rate of 1 per cent every month or part of a month.

**3.5.1.2** In Delhi, CIT LTU charge, AO while completing the assessment of **Mahanagar Telephone Nigam Limited** for AY 2008-09 after scrutiny in November 2011 at income of ₹ 892.02 crore, levied interest of ₹ 22.81 crore under section 234B without considering TDS of ₹ 152.75 crore and advance tax of ₹ 165 crore at the credit of assessee. As the advance tax paid by the assessee is more than 90 *per cent* of assessed tax, interest cannot be levied under section 234B. The mistake resulted in overcharge of interest of ₹ 22.81 crore. *ITD rectified (December 2012) the mistake under section 154.*