

## Chapter 4: Compliance issues relating to provisions of Income Tax Act

### 4.1 Introduction

During examination of assessment records in respect of Entertainment Sector, audit noticed mistakes relating to application of provisions of the Act/Rules, escapement of income, irregular allowance of expenses and deductions, irregular claim/set off/carry forward of losses, incorrect computation of profits/tax and other issues.

Audit noticed that in 592 cases the provisions of the Act were not followed correctly involving tax effect of ₹ 1,922.93 crore. The mistakes noticed in assessments and corresponding tax effect are given in the Table below and detailed audit findings in this regard are discussed in succeeding paragraphs.

Nature of Mistakes	No. of Cases	Tax Effect (₹ in crore)
Absence of justification in making additions	208	-
Income escaping assessment	83	643.39
Incorrect/ irregular allowance of expenses and deductions	179	826.75
Irregular claim/ set off/ carry forward of losses	31	80.81
Mistakes in computation of book profit u/s 115JB and MAT credit u/s 115JAA	25	91.38
Mistakes in computation of tax and other issues	66	280.60
<b>Total</b>	<b>592</b>	<b>1,922.93</b>

### 4.2 Absence of justification in making additions

While making additions to the income of assesseees on ad hoc basis, AOs were adopting different approaches in respect of disallowance although the grounds of the additions were same. We noticed 208 assessment cases in five states<sup>45</sup> where there was no uniformity in making additions to the income of assesseees on ad hoc basis in the assessment orders. These additions were largely made on percentage basis ranging from five *per cent* to 20 *per cent* on ad hoc basis for varied reasons such as 'want of vouchers', unsubstantiated expenses, absence of third party vouchers etc. However, no specific justification or the basis of additions was recorded in the assessment orders by the AOs for the differential treatment even though the grounds of addition were same. Illustrations in respect of Maharashtra and Karnataka states are discussed below (see box 4.1).

<sup>45</sup> Maharashtra (129 cases), Karnataka (55 cases), Andhra Pradesh & Telangana (15 cases), Uttar Pradesh (5 cases), Madhya Pradesh (4 cases)

**Box 4.1: Illustrations of absence of justification in making additions**

- (a) We noticed in 129 cases in the Film Circle (ACIT-16(1), Mumbai) in Maharashtra that the additions to the tune of ₹ 13.75 crore were made on ad hoc basis where (i) addition of only 1 *per cent* of total expenses was made in two assessment cases; (ii) 2.5 *per cent* of total expenses was added in one assessment case; (iii) lump sum addition of ₹ 1 lakh to ₹ 1.50 lakh was made in four assessment cases; while in remaining 122 cases, there were variation in the additions made by AOs ranging from 5 *per cent* to 50 *per cent*.
- (b) We noticed in 55 assessment cases in Karnataka that the additions to the tune of ₹ 9.86 crore were made on ad hoc basis. These additions were largely made on percentage basis ranging from 5 *per cent* to 20 *per cent*. In 28 cases, additions were made in terms of amounts only. No specific justification or basis of additions was recorded by AOs in the assessment orders.

This indicated that there was no consistency in making ad hoc additions by the AOs despite the fact that the grounds of additions were same and in some cases even the AOs were same. No speaking orders were made by AOs in their assessment orders to logically arrive at the different percentage of additions especially in similar issues. Further, where significant expenses were incurred, the ratio of ad hoc addition was one *per cent* to 2.5 *per cent* as compared to ad hoc addition ranging from five *per cent* to 50 *per cent* in lesser expenses claimed by assessee. Thus, assessments made by AOs were inadequate and additions made were subjective and arbitrary.

### **4.3 Income escaping assessment**

Sections 28 to 59 of the Act deal with the manner in which the income from any business, profession, capital gains and other sources have to be computed. Deductions allowable against these sources of income are required to be disallowed and added back to the income of the assessee to fulfil the conditions prescribed in the Act.

Audit noticed that in 83 cases, income was not computed in accordance with the laid down provisions, involving tax effect of ₹ 643.39 crore as discussed in succeeding paragraphs.

#### **4.3.1 Unexplained credit not brought to tax**

As per Section 68 of the Act, where any sum is found credited in the books of an assessee and the AO found no explanation about the nature and source thereof or the explanation offered by the assessee is not, in the opinion of

the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that year.

We noticed in 18 cases in six states<sup>46</sup> that ITD had not made additions under section 68 of the Act although the amount credited in the books of the assessee remained unexplained. This had resulted in short levy of tax of ₹ 305.31 crore. Four cases are illustrated below (see box 4.2).

**Box 4.2: Illustration of Unexplained credit not brought to tax**

**(a) Charge: PCIT-16, Mumbai**

**Assessee: M/s M. I. Marathi Media Ltd.**

**Assessment Year: 2013-14**

The scrutiny assessment was completed in February 2016 at a loss of ₹ 6.56 crore. The assessee had credited an amount of ₹ 88.24 crore as interest free inter corporate deposit received from M/s Prosperity Agro India Ltd. (PAIL) in AY 2013-14. However, the Balance Sheet of PAIL did not reflect any such deposit given to the assessee. Hence, the entry in assessee's books denotes an unexplained credit and the same should have been added to the income of assessee under the provisions of Section 68. Omission to do so had resulted in short levy of tax of ₹ 38.65 crore including interest.

**(b) Charge: PCIT-10, Chennai**

**Assessee: M/s Gemini Industries and Imaging Ltd.**

**Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2015 at an income of ₹ 14.19 crore. In FY 2011-12 the assessee had issued 36,00,010 shares of face value of ₹ 100 and premium at ₹ 900 per share to three persons as shown below:

Sl. No.	Name of person	No. of shares as on 31/03/2011	Shares issued in 2011-12	No. of shares as on 31/03/2012
1	A. Ravishankar Prasad	9,25,000	24,69,295	33,94,295
2	A. Manohar Prasad	29,09,794	5,04,705	34,14,499
3	P.Kiran	-	6,26,010	6,26,010
	<b>Total</b>	<b>38,34,794</b>	<b>36,00,010</b>	<b>74,34,804</b>

However, audit noticed from the records of A. Manohar Prasad that his actual investment in the assessee company was at ₹ 34.15 crore only as on 31 March 2012 (₹ 100 x 34,14,499 shares) which indicated that he had not paid any premium for the shares allotted to him. However, a premium of ₹ 45.42 crore was shown as received by the assessee from Manohar

46 Andhra Pradesh & Telangana, Assam, Karnataka, Maharashtra, Odisha and Tamilnadu

Prasad. Similarly, from the records of A. Ravishankar Prasad, audit noticed that that no such investment was made by him in the assessee company. However, an investment of ₹ 246.93 crore including premium (₹ 1,000 x 24,69,295 shares) has been shown against his name.

Therefore, the face value and premium of ₹ 292.35 crore (₹ 45.42 crore + ₹ 246.93 crore) shown in the books of assessee were in nature of unexplained cash credit under section 68 of the Act and should have been added back to assessed income. The omission had resulted in short levy of tax to the tune of ₹ 118.11 crore including interest.

Besides, audit noticed that the opening balance of share premium amounting to ₹ 233.77 crore was also not paid by above mentioned shareholders. Therefore, the share premium amount of ₹ 233.77 crore shown in the balance sheet for the year 2011-12 by the assessee was also required to be treated as unexplained cash credit under section 68 of the Act and required to be added back to assessed income of the assessee company. The omission had resulted in short levy of tax to the tune of ₹ 103.15 crore including interest.

**(c) Charge: PCIT-1, Hyderabad**

**Assessee: M/s Arka Leisure & Media Entertainment Pvt. Ltd.**

**Assessment Year: 2013-14**

The scrutiny assessment was completed in March 2016 at a loss of ₹ 19.39 crore. Audit noticed that the assessee had shown in its books of accounts (as on 31 march 2013) an amount of ₹ 15.22 crore and ₹ 14.99 crore being share premium received from M/s Agri Gold Farm Estates India Private Limited (AGFEIPL) and M/s Dream Land Ventures India Private Limited (DLVIPL) respectively. However, the books of account of AGFEIPL showed 'nil' investment in assessee company, while, as per books of account of DLVIPL, it had invested only ₹ 8.40 crore as against ₹ 14.99 crore shown in the books of the assessee. Thus, there was a difference of ₹ 21.81 crore in the books of the assessee to that of the books of two allottee companies with respect to the amount invested in shares. Consequently, the excess amount of ₹ 21.81 crore shown in the books of assessee should have been treated as unexplained credits under section 68 of the Act and added back to the income of assessee. The omission resulted in underassessment of income of ₹ 21.81 crore involving tax effect of ₹ 7.07 crore.

**(d) Charge: PCIT-1, Bhubaneswar**  
**Assessee: M/s N.K Media Ventures (P) Ltd.**  
**Assessment Years: 2012-13 & 2014-15**

The scrutiny assessments were completed in March 2015 and December 2016 determining loss of ₹ 5.68 crore and ₹ 6.15 crore respectively. Audit noticed that the share application money of ₹ 2.80 crore and ₹ 3.35 crore and unsecured loan of ₹ 3.74 crore and ₹ 4.57 crore were shown in the Balance Sheet as at 31 March 2012 and 31 March 2014 respectively. However, neither the assessee had furnished documentary evidence in support of the share application money/unsecured loans nor the same was called for by the AO during the scrutiny assessment. In the absence of verification of the above, share application Money of ₹ 6.15 crore (₹ 2.80 crore + ₹ 3.35 crore) and unsecured loan of ₹ 8.30 crore (₹ 3.74 crore + ₹ 4.56 crore) were required to be added to the income as unexplained cash credit. Omission had resulted in incorrect allowance of unexplained cash credit to the extent of ₹ 14.45 crore (₹ 6.15 crore + ₹ 8.30 crore) involving total tax effect of ₹ 4.98 crore including interest.

**4.3.2 Income not offered for tax**

In 65 assessment cases in 14 states<sup>47</sup> involving tax effect of ₹ 338.08 crore, we found that the ITD had not brought to tax the amount which was realized as income of the assessee under various provisions of the Act. Four cases are illustrated below (see box 4.3).

**Box 4.3: Illustrations of cases where income not offered for tax**

**(a) Charge: PCIT (Central)-3, Mumbai**  
**Assessee: M/s The Board of Control for Cricket in India (BCCI)**  
**Assessment Years: 2010-11 to 2014-15**

As per Rule 115 of the Income Tax Rules, the rate of exchange for the calculation of the value in rupees of any income accruing or arising to the assessee in foreign currency shall be the Telegraphic Transfer (TT) buying rate of such currency as on the date on which the tax was required to be deducted.

The scrutiny assessments of the assessee for AYs 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 were completed in February 2013, December 2013, December 2013, March 2016 and December 2016 at assessed income of ₹ 874.18 crore, ₹ 856.83 crore, ₹ 1,304.57 crore, ₹ 1,371.65 crore and ₹ 1,131.09 crore respectively. As per the clause of 'Invitation to Tender' for

47 Andhra Pradesh & Telangana, Assam, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Punjab, Rajasthan, Tamilnadu and Uttar Pradesh

auction of IPL franchise, BCCI had to receive the instalments of franchisee fee in Indian Rupees converted at the TT selling exchange rate published by the SBI at the time of payment. Audit noticed that the instalments were paid by franchisees<sup>48</sup> in Indian rupees by using same exchange rate of 1 USD = 40 INR (Exchange rate as on the date of agreement with franchisee) for every year. However, BCCI did not recover the fee as per current prevailing exchange rate. Similarly, the ITD also had not assessed the income considering the provisions of Rule 115. As such, income of BCCI from franchisee fee from FY 2009-10 to 2013-14 was received less by ₹ 325.78 crore resulting in short levy of tax of ₹ 100.67 crore.

**(b) Charge: PCIT-2, Bengaluru**  
**Assessee: M/s Kasthuri Medias Pvt. Ltd.**  
**Assessment Year: 2014-15**

As per Section 50C of the Act, if a property is sold below the value fixed by the stamp valuation authority, then the value assessed by such authority shall be the deemed value of consideration for the purpose of calculating capital gain.

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 7.41 crore. The assessee, while computing the capital gain, had adopted a consideration of ₹ 1.50 crore on sale of commercial property as against the fair market value of ₹ 4.52 crore<sup>49</sup> as per stamp valuation authority and the same was also allowed by the AO. This had resulted in under assessment of capital gain of ₹ 2.59 crore (net of indexed cost of acquisition of ₹ 1.93 crore) with consequent tax effect of ₹ 58.60 lakh.

**(c) Charge: CIT (Exemptions), Chandigarh**  
**Assessee: M/s Himachal Pradesh Cricket Association**  
**Assessment Year: 2014-15**

The scrutiny assessment was completed in December 2016 at an income of ₹ 12.30 crore. Audit noticed that during the year, assessee had received consideration amounting to ₹ 11.24 crore from BCCI which was not offered as income and considered as advance in their books. Whereas the TDS of ₹ 22.47 lakh on the said amount was claimed by the assessee and also allowed by the ITD while computing the tax. The mistake had resulted in escapement of income of ₹ 11.24 crore involving tax effect of ₹ 5.08 crore escaping assessment.

48 M/s Indiawin Sports Pvt. Ltd. (ISPL), M/s Knight Riders Sports Pvt. Ltd. (KRSPL) and M/s Jaipur IPL Cricket Pvt. Ltd. (JICPL)

49 Calculated by extrapolating the stamp duty paid by the purchaser @ one per cent of the value fixed as per reverse mechanism.

**(d) Charge: PCIT-1, Lucknow**  
**Assessee: Ganga Dutta Upadhyaya**  
**Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2015 at an income of ₹ 26.92 lakh. Audit noticed that the assessee had received total income of ₹ 10.90 crore as reflected in its 26AS, however, it had accounted ₹ 7.93 crore only in the profit and loss account and claimed the entire TDS of ₹ 15.63 lakh deducted thereon. The AO did not add back the remaining amount of ₹ 2.97 crore to the income of the assessee. The omission had resulted in underassessment of income of ₹ 2.97 crore involving tax effect of ₹ 1.24 crore.

#### **4.4 Incorrect/ irregular allowance of expenses and deductions**

Provisions of the Act allow the assessee to claim various expenses and deductions on fulfilment of certain prescribed conditions. If these conditions were not fulfilled, the corresponding expense/deductions were required to be disallowed by the assessing officer. We noticed 179 cases involving tax effect of ₹ 826.75 crore where Incorrect/irregular allowance of expenses and deductions were made by ITD.

##### **4.4.1 Non/short deduction or non-deposit of TDS**

As per Section 40(a)(ia) of the Act, no deduction of expenditure is allowed in computing the income chargeable under the head “Profits and gains of business or profession” on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in section 139(1).

We noticed in 50 assessment cases in 14 states<sup>50</sup> involving tax effect of ₹ 591.25 crore that the assessee had claimed expenses although the applicable TDS thereon was not deducted or, after deduction, not deposited to the government account within prescribed time limit. However, the ITD had not disallowed these expenses. Five cases are illustrated below (see box 4.4).

50 Andhra Pradesh & Telangana, Goa, Gujarat, Haryana, J&K, Karnataka, Kerala, Maharashtra, NER, Odisha, Rajasthan, Tamilnadu, Uttar Pradesh and West Bengal

**Box 4.4: Illustrations of non/ short deduction or non-deposit of TDS**

**(a) Charge: PCIT-4, Chennai**

**Assessee: M/s New Generation Media Corporation Pvt. Ltd.**

**Assessment Year: 2014-15**

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 43.66 lakh. The assessee had claimed the expenses of ₹ 8.36 crore towards 'design & development and service charges' and ₹ 11.25 crore towards 'equipment hire charges' on which TDS was not deducted and the same was confirmed from Form 26Q as well as 26AS of corresponding assessee. However, the expenditure was not disallowed under section 40(a)(ia) of the Act. The omission had resulted in underassessment of ₹ 19.61 crore with consequent short levy of tax of ₹ 8.86 crore including interest.

**(b) Charge: PCIT-1, Hyderabad**

**Assessee: Celebrity Cricket League**

**Assessment Years: 2012-13 & 2014-15**

The scrutiny assessments of the assessee for AY 2012-13 and AY 2014-15 were completed in March 2015 and September 2016 at a loss of ₹ 24.86 crore and at nil income respectively. Audit noticed from Form 26Q as well as books of accounts of the assessee that the assessee had claimed 'professional or technical services' amounting to ₹ 5.77 crore and ₹ 5.49 crore in AY 2012-13 and AY 2014-15 respectively on which TDS was not deducted. However these expenditure were not disallowed under section 40a(ia) of the Act. Omission had resulted in underassessment of ₹ 5.77 crore and ₹ 5.49 crore with consequent short levy of tax of ₹ 1.78 crore and ₹ 1.70 crore (aggregated tax effect of ₹ 3.48 crore) for AY 2012-13 and AY 2014-15 respectively.

**(c) Charge: PCIT (Central), Bengaluru**

**Assessee: K. Manju**

**Assessment Years: 2007-08 to 2012-13**

The scrutiny assessments for AY 2007-08 to 2012-13 were completed in March 2014 at income of ₹ 1.10 crore, ₹ 1.14 crore, ₹ 1.57 crore, ₹ 0.76 crore, ₹ 3.64 crore and ₹ 1.26 crore respectively. Audit noticed that AO, while discussing the assessment order, had disallowed the expenditure of ₹ 6.83 crore from AY 2008-09 to 2012-13, on which no tax was deducted at source. However, while computing the taxable income, the same was not added back to the income of the assessee. Further, AO had adopted the undisclosed income of the assessee at ₹ 2.23 crore instead of ₹ 6.84 crore, resulting in under assessment of income of ₹ 4.62 crore. The omissions had

resulted in under assessment of income of ₹ 11.45 crore involving a tax effect of ₹ 6.09 crore.

**(d) Charge: PCIT, Panaji**

**Assessee: Goa Cricket Association**

**Assessment Years: 2009-10, 2010-11 & 2011-12**

The scrutiny assessments for AYs 2009-10, 2010-11 and 2011-12 were re-opened under section 147<sup>51</sup> wherein the claim of exemption under section 11 on the ground of non-registration of the assessee as a charitable trust as per the provisions of section 12AA was disallowed. Before the conclusion of the re-opened proceedings for the said AYs, the TDS Officer communicated (December 2012) that the assessee was in default in deduction of TDS under sections 194C, 194J and 194-I of the Act. Despite timely communication, the AO did not act on the information received for disallowing the related expenditure aggregating to ₹ 17.03 crore<sup>52</sup>. The omission resulted in short computation of income of equal amount involving short levy of tax aggregating to ₹ 9.19 crore.

**(e) Charge: PCIT-1, Kolkata**

**Assessee: R. P. Techvision (India) Pvt. Ltd.**

**Assessment Year: 2013-14**

The audit noticed from Tax Audit Report that total tax of ₹ 21.05 crore was deducted by the assessee while making payments for commission, contractors, fee for professional & technical service and rent but the same was not deposited to the Government Account. It was further noticed that out of ₹ 21.05 crore, only ₹ 59.01 lakh<sup>53</sup> was disallowed during scrutiny assessment completed in March 2016. Thus, the balance amount of ₹ 20.46 crore was required to be added back for not depositing the TDS to Government Account. Irregular allowance of expenditure of ₹ 20.46 crore resulted in under assessment of income of ₹ 20.46 crore involving short levy of tax of ₹ 6.64 crore.

**4.4.2 Allowance of deductions without fulfilling the prescribed conditions.**

Audit noticed in 48 assessment cases in 10 states<sup>54</sup> that assessee were allowed excess deduction resulting in loss of revenue of ₹ 68.10 crore. Four cases are illustrated below (see box 4.5).

51 March 2014 (AYs 2010-11 & 2011-12) and March 2016 (AY 2009-10)

52 AY 2009-10: ₹ 5.96 crore; AY 2010-11: ₹ 6.37 crore; AY 2011-12: ₹ 4.70 crore

53 ₹ 33.26 lakh for advertisement and ₹ 25.75 lakh for business promotion

54 Andhra Pradesh & Telangana, Goa, Gujarat, Haryana, Karnataka, Maharashtra, Rajasthan, Tamilnadu, Uttar Pradesh and West Bengal

**Box 4.5: Illustrations of allowance of deduction without fulfilling the prescribed conditions**

**(a) Charge: PCIT (Exemption), Kolkata**  
**Assessee: M/s Cricket Association of Bengal**  
**Assessment Year: 2012-13 to 2014-15**

As per Section 13(8) read with provision of section 2(15) of the Act, advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business in any assessment year, the exemption under section 11 of the Act is not applicable for that assessment year.

The scrutiny assessments of the assessee for AYs 2012-13, 2013-14 and 2014-15 were completed in November 2014, January 2016 and December 2016 respectively at an income of ₹ Nil after allowing exemption under section 11 of the Act. The assessee had claimed and was allowed exemption of ₹ 34.75 crore under section 11 of the Act from AY 2012-13 to AY 2014-15 although it had received subsidy of ₹ 98.02 crore from BCCI which was commercial in nature and, hence the AO should have disallowed the exemption claimed by the assessee and brought the same to tax. It is pertinent to mention that in the case of BCCI and other eight state cricket associations<sup>55</sup>, AO had considered their activities as commercial after hosting of Indian Premier League (IPL) and disallowed the exemption and taxed the subsidies received from BCCI as commercial receipts. However, in the instant case, AO had allowed the exemption to the assessee, i.e., M/s Cricket Association of Bengal despite the transaction being commercial in nature. The mistake had resulted in underassessment of income of ₹ 34.75 crore for AY 2012-13 to AY 2014-15 with consequent short levy of tax of ₹ 13.71 crore including interest.

The ITD in its reply (March 2018) stated that the assessee-society is a member of the national body, Board of Control for Cricket in India (BCCI), which regulates and promotes the sport of cricket in India and the main object of the assessee-society is to promote the sport of cricket in the State of West Bengal. The assessee, being a State Cricket Association, is entitled to revenue on sale of tickets, advertisement, contractual income etc. when it conducts international matches. It is entitled to all in-stadia sponsorships, advertisements and beverage revenue, etc. It earns income under the following head:- (1) Subscription from members (2) Sale of tickets

55 (1) Mumbai Cricket Association (Maharashtra) (2) Rajasthan Cricket Association (Rajasthan) (3) Punjab Cricket Association (Punjab) (4) Tamil Nadu Cricket Association (Tamil Nadu) (5) Kerala Cricket Association (Kerala) (6) Gujarat Cricket Association (Gujarat) (7) Uttar Pradesh Cricket Association (Uttar Pradesh) and (8) Jharkhand Cricket Association (Jharkhand)

(3) Revenue from advertisements (4) Receipts from BCCI (5) Interest from bank deposits (6) Revenue from contractual payments like beverage. It uses all these incomes to promote the sport of cricket in the State of West Bengal. The assessee-society, being a member of BCCI, hosts the matches which are conducted by BCCI and sell tickets to the cricket viewers. The role of the assessee is only to provide stadium for conducting matches. Other than that, it has no role in conducting the international matches and Indian Premier League matches. The other activity of the assessee-society is to conduct training programmes, inter-university, inter-school and inter-association matches and provide coaching classes for college students at district level in the State of West Bengal. Expenditures involved in such activities were met out of surplus funds remaining with the assessee-society. It also receives funds from BCCI for meeting these expenditures, being the host. Therefore, it cannot be said that the assessee is conducting any business activity. In view of the above, proviso to Section 2(15) of the Act is not applicable and the assessee is eligible for exemption under Section 11 of the Act for all the assessment years under consideration.

The reply of the department is not tenable as the department itself stated that the assessee sold its advertisement rights and other commercial rights to various corporate to borne the expenditure for one day matches, T-20 matches and Indian Premier League matches. As the assessee sold its advertisement rights and commercial rights to various corporates, the income from such sale of advertisement rights and commercial rights were required to be considered as commercial income. Further, deduction of TDS under section 194C by the BCCI implies that the payment made by the BCCI to the assessee was purely on contractual basis. So, the receipt from the BCCI was required to be treated as commercial income of the assessee. Hence, as per provisions of Section 2(15) of the Income Tax Act, 1961 the assessee was not eligible for exemption of tax.

**(b) Charge: CIT-6, Hyderabad**

**Assessee: M/s Sri Venkateswara Cine Chitra Pvt. Ltd.**

**Assessment Year: 2013-14**

The scrutiny assessment of the assessee was completed in March 2016 at nil income. The assessee had offered income of ₹ 13.86 crore and claimed production cost of ₹ 15.70 crore against the movie 'Ongole Gita' which was released on 1<sup>st</sup> February 2013. As the film was not released within 90 days before the end of the financial year, the assessee was eligible for claiming cost of production only to the extent of ₹ 13.86 crore as per the provisions of Rule 9A. However, AO allowed full expenditure of ₹ 15.70 crore on

account of production cost to the assessee. The mistake had resulted in allowing excess expenditure of ₹ 1.84 crore with short levy of tax of ₹ 59.74 lakh.

The ITD partially accepted audit observation (January 2018) stating that the publicity and positive prints expenses of ₹ 87.65 lakh included in the production cost were otherwise allowable under section 37 of IT Act. The reply is not tenable. As per rule 9A, the cost of production has to be restricted to the extent of income realized by the assessee.

**(c) Charge: PCIT-3, Mumbai**  
**Assessee: M/s Cinepolis India Pvt. Ltd.**  
**Assessment Year: 2014-15**

The scrutiny assessment was completed in December 2016 at a loss of ₹ 15.16 crore. Audit noticed that the Government of Punjab, Bihar, Maharashtra and Madhya Pradesh had exempted the assessee from collection of entertainment tax due to which the assessee treated the collection of entertainment tax of ₹ 13.08 crore as capital receipt and claimed exemption thereon. The said claim of exemption was also allowed by the AO. However, it was seen from the 'Entertainment Tax Exemption Agreements' entered into between the assessee and the states that the said exemption was related to the multiplex projects which required heavy capital and long gestation period to make profits. Consequently, the amount of exemption received by the assessee on account of entertainment tax was required to be adjusted against the block of assets of multiplex under the provision of explanation 10 of Section 43(1) of the IT Act. Omission had resulted in underassessment of income of ₹ 13.08 crore with consequent potential tax effect of ₹ 4.44 crore.

**(d) Charge: PCIT-2, Bengaluru**  
**Assessee: M/s Big Animation India Pvt. Ltd.**  
**Assessment Years: 2013-14 & 2014-15**

The scrutiny assessments for AY 2013-14 and AY 2014-15 was completed in February 2016 & July 2016 at a loss of ₹ 20.54 crore and ₹ 24.06 crore respectively. Audit noticed that during the AY 2014-15, the assessee had debited in the profit and loss account the operational expenses of ₹ 23.96 crore which included ₹ 19.33 crore towards amortised cost of movies. Out of the above amount, ₹ 15.34 crore pertained to the 50 per cent amortised cost of animated movie titled as 'Krishna and Kans'. However, the accounting policy of the assessee envisaged amortization of the inventories cost of release movies & serials over a period of 10 years on straight line basis, commencing from the year in which it was licensed for broadcasting. However, for the movie 'Krishna and Kans', the cost was

amortised over the period of two years i.e. ₹ 15.34 crore being 50 per cent of total cost was amortised each in two assessment years (AY 2013-14 and AY 2014-15) which was irregular, as it was required to be amortised over the period of 10 years. Omission to do so has resulted in underassessment of income of ₹ 24.54 crore involving cumulative tax effect of ₹ 8.16 crore in both the assessment years.

#### 4.4.3 Expenses not allowable under various provisions of the Act

Audit noticed in 81 assessment cases in 15 states<sup>56</sup> that though the expenses were not allowable to the assessee under various provisions of the Act, the ITD had allowed the expenses leading to the short demand of ₹ 167.41 crore. Four cases are illustrated below (see box 4.6).

##### Box 4.6: Illustrations of expenses not allowable under various provisions of the Act

###### (a) Charge: PCIT-2, Ahmedabad

**Assessee: M/s Fuse Plus Media Pvt. Ltd.**

**Assessment Year: 2011-12**

The scrutiny assessment of the assessee was completed in January 2014 at an income of ₹ 6.59 crore. The assessee had debited an amount of ₹ 2.26 crore towards 'Product Development Expenses' which was capital in nature as the assessee had derived enduring benefit from it. Hence, the same was required to be capitalised. Omission had resulted in under-assessment of income of ₹ 1.70 crore (after giving the benefit of depreciation @ 25 per cent being an intangible assets) with consequent short levy of tax of ₹ 75.49 lakh.

###### (b) Charge: CIT-4, Hyderabad

**Assessee: M/s Prakash Arts Pvt. Ltd.**

**Assessment Years: 2013-14 to 2014-15**

The scrutiny assessments of the assessee were completed in March 2016 and November 2016 at an income of ₹ 3.92 crore and ₹ 4.06 crore respectively. The assessee had incurred expenditure of ₹ 16.12 crore (₹ 12.95 crore towards 'Hoarding erection & maintenance' and ₹ 3.17 crore towards 'Bus shelter erection & maintenance'). Since the above expenses were in nature of capital expenditure, the same were required to be capitalised.

56 Andhra Pradesh & Telangana, Assam, Bihar, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, J&K, Karnataka, Maharashtra, Odisha, Rajasthan, Tamilnadu and Uttar Pradesh

The omission had resulted in excess allowance of expenditure of ₹ 13.70 crore (after giving the benefit of depreciation @ 15 *per cent* being plant and machinery) with consequential short demand of ₹ 3.96 crore.

**(c) Charge: CIT-2, Delhi**

**Assessee: M/s Bharti Telemedia Ltd.**

**Assessment Year: 2013-14**

Audit noticed that the assessee had debited interest expenses of ₹ 43.20 crore under the head 'Finance Cost' in profit and loss accounts during AY 2013-14. The above expenses included ₹ 16.40 crore towards interest provision on disputed entertainment tax and ₹ 26.80 crore towards interest provision on disputed licence fee. Thus, the expenses being unascertained liability should have been disallowed and added back to the income of the assessee. Omission to do so had resulted in over assessment of loss amounting to ₹ 43.20 crore involving potential tax effect of ₹ 14.02 crore. The ITD in its reply (October 2017) stated that the provisions were recognised when the company had a present obligation as result of past event and determined based on the best estimates required to settle the obligation at the balance sheet date. It had also quoted a decision of Hon'ble ITAT in case of M/s Bharti Airtel Services Ltd.

The reply was found not to be acceptable. As per notes to profit & loss accounts, the interest expenses were the provision of contingent nature created during the year, and hence, the same was not allowable. The decision quoted by ITD was relating to provision made by the assessee in respect of diminution in the value of stock and hence, it was not relevant in the instant case.

**(d) Charge: PCIT-16, Mumbai**

**Assessee: M/s UTV Software Communication Ltd.**

**Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2016 at nil income. Audit noticed that the assessee had taken short term borrowing of ₹ 113.76 crore and claimed interest expense of ₹ 88.84 crore. As per Cash Flow Statement for AY 2011-12, the assessee had capitalised interest of ₹ 34.72 crore (i.e. approximately 57.81 *per cent* of total interest) in the books of account and claimed remaining interest expenses of ₹ 25.33 crore as revenue expenditure. Audit also noticed that the assessee had inventory i.e. Capital Work in Progress (CWIP) of ₹ 402.24 crore in the AY 2012-13 (Previous Year ₹ 555.70 crore) and also there was no change in accounting method during

current year. Hence, the proportionate interest of ₹ 50.63 crore (57 per cent of the total interest of ₹ 88.84 crore) against the CWIP should have been capitalised during AY 2012-13 also. Omission had resulted in under assessment of income of ₹ 50.63 crore involving short levy of tax of ₹ 22.34 crore including interest.

#### 4.5 Irregular set off/carry forward of losses

We noticed in 31 cases involving tax effect of ₹ 80.81 crore where irregular set off/ carry forward of losses were allowed by ITD. The cases are discussed in succeeding paragraphs:

##### 4.5.1 Losses adjusted against additions made under section 68 and 69 of the Act

As per Section 115BBE of the Act, where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of (a) the amount of income-tax calculated on income referred to in the above sections, at the rate of 30 per cent; and (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a). It also stipulates that notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

Audit noticed in seven cases in Delhi and Maharashtra states that the additions made by AOs were set off against the losses, which was in contravention of the Section 115BBE of the Act. The mistake had resulted in loss of revenue of ₹ 24.31 crore. Three cases are illustrated below (see box 4.7).

#### Box 4.7: Illustrations of losses adjusted against additions made under section 68 and 69 of the Act

##### (a) Charge: PCIT (Central)-1, New Delhi

**Assessee: M/s International Recreation & Amusement Ltd.**

**Assessment Year: 2015-16**

The scrutiny assessment of the assessee was completed in December 2016 at an income of ₹ 2.50 crore. The AO made additions of ₹ 34.53 crore to the income of the assessee on account of "Unaccounted Cash Receipts" under section 68 of the Act which was required to be taxed @ 30 per cent

as per provision of sub section (1) of Section 115 BBE of the Act. However, current year loss of ₹ 32.03 crore was set off against the above additions. The mistake had resulted in under-assessment of income of ₹ 32.03 crore involving short levy of tax of ₹ 13.17 crore including interest. ITD replied (March 2018) that the said provision is applicable only from the AY 2017-18 onwards and this case been assessed for AY 2015-16.

Reply of the department is not tenable as provision for non-deduction of any expenditure or allowance was already there in section 115BBE when it was introduced by Finance Act 2012. The losses in current year are arrived at after allowing business expenditure. Hence, current year losses cannot be set-off against the income assessed under section 68 of the Act. Moreover, ITD has found the same issue acceptable and re-opened the case under section 148 in respect of M/s INX News Pvt. Ltd. which is illustrated below.

**(b) Charge: PCIT-3, Delhi**

**Assessee: M/s INX News Private Limited**

**Assessment Year: 2013-14**

The scrutiny assessment was completed in March 2016 at nil income after setting off of brought forward losses of ₹ 36.85 crore. Audit noticed that AO had added an amount of ₹ 12.20 crore to the income of assessee on account of "Share Application Money" under section 68 treating it as bogus transfer of money. However, the AO allowed the set off of brought forward losses against the above additions made under section 68. The mistake had resulted in under assessment of income of ₹ 12.20 crore involving short levy of tax of ₹ 5.38 crore including interest. ITD had initiated remedial action under section 148 of the Act in March 2018.

**(c) Charge: PCIT-16, Mumbai**

**Assessee: M/s Naurang Godavari Entertainment Ltd.**

**Assessment Year: 2013-14**

The scrutiny assessment of the assessee was completed in March 2016 at an income of ₹ 7.84 crore. The AO had made addition of ₹ 13.56 crore under section 68 of the Act and ₹ 1.70 crore under other provisions of the Act. However, the business loss of ₹ 7.42 crore which was required to be set off against addition of ₹ 1.70 crore, had been set off against the total addition, resulting in underassessment of income of ₹ 5.72 crore with consequent short levy of tax of ₹ 2.52 crore including interest.

#### 4.5.2 Excess set off of losses

Under section 72 of the Income Tax Act, 1961, where the net result of computation under the head 'Profits & Gains of Business or Profession' is a loss to the assessee and such loss cannot be wholly set off against income under any other head of the relevant year, so much of the loss as had not been set off shall be carried forward to the following assessment year/years, to be set off against the profits and gains of business or profession of those years. Audit noticed in 13 assessment cases in six states<sup>57</sup> that excess set off of the losses was allowed resulting in short demand of tax/ interest of ₹ 24.21 crore. Three cases are illustrated below (see box 4.8).

##### **Box 4.8: Illustrations of irregular claim/ set off/ carry forward of loss**

###### **(a) Charge: PCIT-16, Mumbai**

**Assessee: M/s Star Entertainment Media Ltd.**

**Assessment Year: 2013-14**

The scrutiny assessment was completed in March 2016 at an income of ₹ 40.52 crore which was rectified in May 2016 under section 154 of the Act at an income of ₹ 27.66 crore. The AO had allowed the set off of brought forward losses of ₹ 49.63 crore as against available losses of ₹ 18.64 crore. As such, there was excess set off of losses of ₹ 30.99 crore involving short levy of tax of ₹ 13.02 crore including interest.

###### **(b) Charge: CIT-1, Kochi**

**Assessee: M/s Indo Asian News Channel Pvt. Ltd.**

**Assessment Year: 2014-15**

The scrutiny assessment was completed in November 2016 at nil income after setting off of losses pertaining to AY 2011-12 of ₹ 75.17 lakh and AY 2012-13 of ₹ 3.97 crore. However, as per assessment order of AY 2012-13, the income was assessed at ₹ 5.50 crore, hence, set off of losses pertaining to AY 2012-13 against current year income was irregular. The mistake had resulted in excess allowance of losses of ₹ 3.65 crore (after allowing loss for AY 2011-12 of ₹ 75.17 lakh and for AY 2013-14 of ₹ 31.03 lakh) involving short levy of tax of ₹ 1.58 crore including interest.

ITD in its reply (January 2018) stated that in AY 2012-13, addition was made under section 68 of the Act on protective basis, hence set off of loss relating to AY 2012-13 was in order. Reply of the ITD is not tenable as there was no loss for AY 2012-13 to be carried forward in the subsequent years.

<sup>57</sup> Andhra Pradesh & Telangana, Kerala, Madhya Pradesh, Maharashtra, Tamilnadu and West Bengal

**(c) Charge: PCIT-16, Mumbai**  
**Assessee: M/s Crest Animation Studios Ltd.**  
**Assessment Year: 2011-12**

The scrutiny assessment was completed in May 2015 at an income of ₹ 113.79 crore. Audit noticed that the AO had allowed the set off of business loss of ₹ 19.22 crore as against the available losses of ₹ 8.99 crore. The mistake had resulted in underassessment of ₹ 10.23 crore involving tax effect of ₹ 4.65 crore.

#### **4.5.3 Irregular allowance of carry forward of losses**

Audit observed in 11 assessment cases in eight states<sup>58</sup> that excess losses were allowed for carry forward for future set off resulting in potential loss of revenue of ₹ 32.29 crore. Three cases are illustrated below (see box 4.9).

##### **Box 4.9: Illustrations of irregular allowance of carry forward of losses**

**(a) Charge: PCIT-3, Kolkata**  
**Assessee: M/s Bangla Entertainment Pvt. Ltd.**  
**Assessment Year: 2011-12**

The scrutiny assessment of the assessee was completed in March 2014 at a loss of ₹ 5.80 crore. Audit noticed that the assessee had filed return of income for AY 2011-12 beyond the time limit prescribed under section 139(1). Hence the loss was not allowable to be carried forward under the provisions of section 80. However, the assessee was allowed to carry forward the loss. This had resulted in irregular allowance of carry forward of loss of ₹ 5.80 crore involving potential tax effect of ₹ 1.79 crore. ITD accepted the objection (January 2016) and took remedial action under section 263 of Act.

**(b) Charge: PCIT, Trivandrum**  
**Assessee: M/s Asianet Satellite Communications Ltd.**  
**Assessment Year: 2014-15**

The scrutiny assessment was completed in December 2016 at nil income. Audit noticed that the AO had allowed unabsorbed depreciation of ₹ 178.72 crore as against the available unabsorbed depreciation of ₹ 120.46 crore to be carried forward to subsequent year. As such, there was excess carry forward of unabsorbed depreciation of ₹ 58.26 crore

58 Andhra Pradesh & Telangana, Assam, Gujarat, Karnataka, Kerala, Maharashtra, Tamilnadu and West Bengal

involving potential short levy of tax of ₹ 18.96 crore. ITD rectified the mistake under section 154 of the Act (January 2018).

**(c) Charge: PCIT-13, Mumbai**

**Assessee: M/s Super Fight Promotions Pvt. Ltd.**

**Assessment Year: 2014-15**

The scrutiny assessment was completed in November 2016 at a loss of ₹ 2.73 crore. Audit noticed that there was change in share holding pattern of the assessee company due to which it was not eligible for carry forward of the available losses for the subsequent years under section 79 of the Income Tax Act. However, the assessee had claimed and the AO allowed the brought forward loss of ₹ 10.10 crore, resulting in underassessment of income of ₹ 10.10 crore involving tax effect of ₹ 3.12 crore.

**4.6 Mistakes in computation of book profit under section 115JB and MAT credit under section 115JAA of the Act**

Section 115JB of the Act specifies the manner of computing the book profits in cases where the tax under normal provision is less than that of MAT provision. Further, as per section 115JAA(1A) of the Income Tax Act, where any amount of tax is paid under section 115JB(1) or minimum alternate tax (MAT) by an assessee, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section. Further, the set-off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of section 115JB.

**4.6.1 Under assessment of book profits**

Audit noticed in 21 cases in Gujarat, Karnataka and Maharashtra that there was mistake in computation of income under section 115JB resulting in underassessment of income and consequent short demand of tax/ interest of ₹ 87.30 crore. Three cases are illustrated below (see box 4.10).

**Box 4.10: Illustrations of under assessment of book profits**

**(a) Charge: PCIT-3, Bengaluru,**

**Assessee: M/s IDG Media Pvt. Ltd.**

**Assessment Years: 2013-14 & 2014-15**

The scrutiny assessment was completed in December 2015 and March 2016 at nil income for both AYs. Audit noticed that though the assessee had adjusted the unabsorbed depreciation of ₹ 1.64 crore against the book profit of AY 2012-13, it again claimed the same unabsorbed depreciation while computing the book profits for the AYs 2013-14 and 2014-15. The same was also allowed by the AO. This had resulted in underassessment of book profit aggregating to ₹ 3.28 crore involving tax effect of ₹ 69.75 lakh.

**(b) Charge: PCIT-16, Mumbai**

**Assessee: M/s Bang Bang Films Pvt. Ltd.**

**Assessment Year: 2014-15**

The scrutiny assessment of the assessee was completed in October 2016 at a loss of ₹ 1.52 crore. Audit noticed that the assessee had not routed the consideration of ₹ 22.28 crore on transfer of business on slump sale basis through profit and loss account but directly shown it in the computation of income for adjusting the loss. As such profit and loss was not prepared in accordance with the provisions of Part II and III of Schedule VI of the Companies Act 1956. This had resulted in underassessment of book profits by ₹ 17.62 crore (₹ 22.27 crore - ₹ 4.66 crore i.e. loss as per P&L account) with consequent short levy of tax of ₹ 4.85 crore including interest.

**(c) Charge: PCIT-11, Mumbai**

**Assessee: M/s Scod 18 Networking Pvt. Ltd.**

**Assessment Year: 2014-15**

The scrutiny assessments were completed in December 2016 at an income of ₹ 10.44 crore. Audit noticed that in AY 2014-15, the assessee had changed its accounting policy pertaining to treatment of Set Top Box (STB) due to which assessee adjusted surplus amount of ₹ 21.85 crore from reserves. Further, as per Accounting Standard (AS)-06, any changes the resultant surplus or deficit in past year due to change in depreciation method should be charged to Profit & Loss Accounts which was not done. Omission to do so had resulted in underassessment of income of ₹ 21.85 crore involving tax effect of ₹ 4.58 crore.

#### 4.6.2 Irregular allowance of MAT credit under section 115JAA

We noticed in four cases in Gujarat, Maharashtra and Tamilnadu states that assesseees were allowed excess set off of MAT credit of ₹ 4.08 crore. One case is discussed below (see Box 4.11).

**Box 4.11: Illustrations of irregular allowance of MAT credit under section 115JAA**

**Charge: CIT-10, Chennai**

**Assessee: M/s Mavis Satcom Ltd.**

**Assessment Year: 2012-13**

The AO had allowed MAT credit of ₹ 2.11 crore relating to AY 2012-13 although the assessee had paid tax under normal provisions in that year and there was no MAT credit available for set off. The mistake had resulted in loss of revenue of ₹ 2.87 crore including interest.

#### 4.7 Mistakes in computation of tax

We noticed mistakes in computation of tax and other issues in 66 cases involving tax effect of ₹ 280.60 crore as discussed in succeeding paragraphs.

##### 4.7.1 Mistakes in levy of tax/surcharge/interest

Audit noticed in 29 assessment cases in 11 states<sup>59</sup> that there was mistake in computation of tax/interest resulting in loss of revenue of ₹ 144.76 crore. Seven cases are illustrated below (see box 4.12).

**Box 4.12: Illustrations of mistake in levy of tax/ interest**

**(a) Charge: PCIT-16, Mumbai**

**Assessee: M/s Star India Pvt. Ltd.**

**Assessment Year: 2012-13**

The scrutiny assessment of the assessee was completed in January 2017 at an income of ₹ 898.79 crore. Audit noticed that the AO had levied interest of ₹ 2.52 crore under section 234B of the Act, instead of ₹ 59.93 crore which resulted in short levy of interest of ₹ 57.41 crore.

**(b) Charge: PCIT (Central)-3, Mumbai**

**Assessee: M/s The Board of Control for Cricket in India (BCCI)**

**Assessment Year: 2014-15**

The scrutiny assessment of the assessee was completed in December 2016 at an income of ₹ 1131.09 crore. Audit noticed that though the assessed income was more than ₹ one crore, the surcharge @ 10 per cent was not levied. Omission had resulted in loss of revenue of ₹ 34.95 crore.

59 Andhra Pradesh & Telangana, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Punjab, Tamilnadu and Uttar Pradesh

**(c) Charge: PCIT (Exemption), Ahmedabad**  
**Assessee: M/s Gujarat Cricket Association**  
**Assessment Year: 2014-15**

The scrutiny assessment was completed in December 2016 at an income of ₹ 83.56 crore. Audit noticed that though the income was more than ₹ one crore, the AO had not levied the surcharge. This had resulted in loss of revenue of ₹ 2.78 crore. ITD had initiated remedial action under section 154 of the Act in September 2017.

**(d) Charge: CIT (Exemptions), Chandigarh**  
**Assessee: M/s Haryana Cricket Association**  
**Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2015 at an income of ₹ 27.29 crore. Audit noticed that surcharge was not levied which led to short demand of ₹ 57.34 lakh.

**(e) Charge: PCIT, Hyderabad**  
**Assessee: M/s Orissa Cricket Association**  
**Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2015 at an income of ₹ 25.94 crore. Audit noticed that the tax of ₹ 10.88 crore was leviable. However, ITD levied tax of ₹ 10.23 crore resulting in short levy of tax of ₹ 64.29 lakh.

**(f) Charge: PCIT-16, Mumbai**  
**Assessee: M/s Zee Entertainment Enterprises Ltd.**  
**Assessment Year: 2011-12**

The scrutiny assessment was completed in February 2016 at an income of ₹ 835.96 crore. Audit noticed that assessment was rectified under section 154 by disallowing MAT credit allowed during scrutiny assessment. While computing tax demand in the rectification order, the AO erroneously computed tax at ₹ 138.44 crore instead of actual tax liability of ₹ 173.95 crore resulting in short levy of tax of ₹ 35.51 crore. Further, there was also short levy of interest under section 234D of ₹ 70.48 lakh on refund issued earlier. The mistakes resulted in short levy of tax ₹ 36.21 crore.

**(g) Charge: PCIT (Central)-3, Delhi**  
**Assessee: M/s Pearls Broadcasting corporation Ltd.**  
**Assessment Year: 2011-12**

The block assessment of the assessee was completed in March 2016 at an income of ₹ 83.11 crore. Audit noticed that the AO had raised the total demand of tax of ₹ 38.37 crore instead of correct amount of ₹ 44.72 crore

due to short levy of interest under section 234B(3) and non-levy of interest under section 234A(3). The mistakes had resulted in short levy of demand of ₹ 6.35 crore. ITD had accepted the observation and rectified the mistake under section 154 of the Act in September 2017.

#### 4.7.2 Incorrect grant of TDS credit/ relief under section 90/91

Audit noticed in seven cases in Karnataka, Kerala and Maharashtra states that the AO had incorrectly allowed the TDS credit/ relief under section 90/91 resulting in loss of revenue of ₹ 23.51 crore. One case is illustrated below (see box 4.13).

##### Box 4.13: Illustrations of incorrect grant of TDS credit/ relief under section 90/91

**Charge: PCIT (Central)-2, Mumbai**

**Assessee: M/s Sony Pictures Networks India Pvt. Ltd.**

**Assessment Year: 2012-13**

The scrutiny assessment was completed in January 2017 at an income of ₹ 434.21 crore. Audit noticed that the assessee had claimed and was allowed foreign tax credit relief of ₹ 21.52 crore under section 90 of the Act on royalty income of ₹ 324 crore received from Multi Screen Media Singapore (MSMS) on which no tax was deducted in Singapore by MSMS. However, it was seen from profit and loss account as well as 3CEB Report<sup>60</sup> that no royalty income was received by the assessee from Multi Screen Media Singapore (MSMS) during the Assessment year. Since, Singapore incentive scheme covered only royalty payment for nil withholding tax whereas other payments made by a Singapore entity required withholding tax for which credit in India was allowed. Thus the tax credit claimed by the assessee should have been disallowed. Omission had resulted in loss of revenue of ₹ 21.52 crore.

#### 4.7.3 Mistake in computation due to adoption of wrong figures

Audit observed in 30 assessment cases in eight states<sup>61</sup> that the AO had adopted wrong figures in assessment which led to loss of revenue of ₹ 112.33 crore. Seven cases are illustrated below (see box 4.14).

<sup>60</sup> Report furnished by the accountant relating to International transactions

<sup>61</sup> Andhra Pradesh & Telangana, Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Tamilnadu and West Bengal

**Box 4.14: Illustrations of mistake in computation due to adoption of wrong figures**

**(a) Charge: PCIT-16, Mumbai**

**Assessee: M/s Crest Animation Studios Ltd.**

**Assessment Year: 2011-12**

The scrutiny assessment was completed in May 2015 at an income of ₹ 113.79 crore. Audit noticed that the AO had made addition of ₹ 111.97 crore to the income of assessee while completing the assessment. The addition, inter alia, includes amount of ₹ 89.16 crore (being 50 per cent of 'other expenses' of ₹ 178.32 crore) against which the assessee did not offer any explanation. Audit further noticed from the Income Tax Return (ITR) of the assessee that it had already added back an amount of ₹ 170.06 crore to its income which was included in other expenses of ₹ 178.32 crore. Thus, the AO should have disallowed 50 per cent of ₹ 8.26 crore (₹ 178.32 crore - ₹ 170.06 crore), i.e., ₹ 4.13 crore. The AO, however, disallowed ₹ 89.16 crore instead of ₹ 4.13 crore. The mistake had resulted in over assessment of income of ₹ 85.03 crore (₹ 89.16 crore - ₹ 4.13 crore) involving excess levy of tax of ₹ 70.61 crore including interest and penalty.

**(b) Charge: PCIT-1, Baroda**

**Assessee: M/s Divine Multimedia (India) Limited**

**Assessment Year: 2013-14**

The scrutiny assessment was completed in March 2016 at an income of ₹ 2.41 crore. Audit noticed that the AO had mentioned in the assessment order the unverifiable transaction of ₹ 7.48 crore in respect of seven parties, to be added to the income of assessee. However, while computing the taxable income, AO adopted the unverifiable amount of ₹ 2.13 crore instead of ₹ 7.48 crore, resulting in under assessment of income of ₹ 5.35 crore with consequent short levy of tax of ₹ 2.36 crore including interest. ITD had accepted the audit observation and initiated the remedial action under section 154 of the Act in April 2018.

**(c) Charge: PCIT-2, Bengaluru**

**Assessee: M/s Siddaramanna Shailendra Babu**

**Assessment Year: 2012-13**

The scrutiny assessment of the assessee was completed in March 2015 at a loss of ₹ 5.74 crore. Audit noticed that AO adopted the figure of returned loss at ₹ 11.52 crore as against the actual loss of ₹ 1.15 crore and after making the addition of ₹ 5.78 crore the AO determined the loss at

₹ 5.74 crore instead of income of ₹ 4.63 crore. The mistake had resulted in underassessment of income of ₹ 4.63 crore as well as allowing incorrect carry forward of loss of ₹ 5.74 crore with consequent total tax effect of ₹ 3.70 crore.

**(d) Charge: PCIT-10, Chennai**

**Assessee: M/s Thirupathi Brothers Film media Pvt. Ltd.**

**Assessment Year: 2012-13**

The scrutiny assessment of the assessee was completed in March 2015 at an income of ₹ 3.93 crore. Audit noticed that the assessee filed revised return of income at ₹ 3.93 crore as against original return of income of ₹ 1.92 crore. However, in assessment order, income was taken at ₹ 1.93 crore instead of correct revised income of ₹ 3.93 crore. The mistake had resulted in short assessment of income amounting to ₹ 2 crore with consequent total tax effect of ₹ 88.25 lakh including interest. ITD rectified the mistake under section 154 of the Act (October 2017).

**(e) Charge: PCIT (Central)-3, Mumbai**

**Assessee: M/s The Board of Control for Cricket in India (BCCI)**

**Assessment Years: 2014-15**

The scrutiny assessment was completed in December 2016 at assessed income of ₹ 1,131.09 crore. Audit noticed that assessee had credited ₹ 108.02 crore towards 'Income from Media Rights' which was net of TV and other production cost of ₹ 59.32 crore. However, while computing the income, the assessee had again claimed the production cost of ₹ 59.32 crore as expenses and the same was allowed by AO. The mistake had resulted in under assessment of Income of ₹ 59.32 crore involving short levy of tax of ₹ 20.16 crore.

**(f) Charge: CIT-10, Chennai**

**Assessee: M/s Mavis Satcom Ltd.**

**Assessment Year: 2012-13**

The scrutiny assessment was completed in March 2015 at an income of ₹ 5.46 crore. Audit noticed that the AO had adopted the income of ₹ 2.26 crore as per original return of income instead of revised return of income of ₹ 8.59 crore while computing the taxable income. The mistake had resulted in under assessment of income of ₹ 6.33 crore involving short levy of tax of ₹ 2.79 crore including interest.

**(g) Charge: PCIT-3, Delhi**

**Assessee: M/s Digivision Entertainment Pvt. Ltd.**

**Assessment Year: 2014-15**

The scrutiny assessment of the assessee was completed in December 2016 at a loss of ₹ 7.76 crore. Audit noticed that assessee had filed its return of income at 'nil' after setting off of brought forward losses of ₹ 7.76 crore of previous AYs. As such, the income should have been assessed at nil income as against allowing loss of ₹ 7.76 crore. The mistake had resulted in irregular allowance of carry forward of loss of ₹ 7.76 crore involving potential tax effect of ₹ 2.64 crore. The ITD had initiated the remedial action under section 154 of the Act in March 2018.

#### **4.8 Conclusion**

- The assessing officers made ad hoc additions to the income of the assesseees by applying varying percentages ranging from five *per cent* to 20 *per cent*, thereby making the additions to the income subjective and arbitrary. There was no or inadequate justification for the same.
- Audit noticed in 384 cases where Assessing officers did not comply with the provisions laid down in the Act with respect to allowances of deductions/expenses/set off and carry forward of losses/ MAT, mistakes in computation of tax and interest etc., involving tax effect of ₹ 1,922.93 crore, which impacted quality of assessments.

#### **4.9 Recommendations**

Audit recommends:

- a. The CBDT may ensure that assessment orders are self explanatory (speaking orders) while arriving at ad hoc additions and thus also avoiding non-uniformity in ad hoc additions in similar cases.
- b. CBDT may ensure that the provisions/conditions laid down in the Income Tax Act with respect to allowances of deductions/expenses/ set off and carry forward of losses/MAT etc. are duly complied with by the Assessing Officers in order to improve the quality of assessments.

The CBDT while agreeing to the recommendation during Exit Conference (June 2018) stated that with the implementation of Income Tax Business Application (ITBA), the Assessing Officer is required to follow a more detailed and comprehensive approach while making additions/disallowance to compute taxable income.

- c. CBDT may make it mandatory for the Assessing Officers, at all stages of assessments, to auto generate tax demand through its assessment module having in built checks and validations to prevent recurring and avoidable mistakes in computation of tax and interest.

The CBDT while agreeing to the recommendation during Exit Conference (June 2018) stated that, it has been made mandatory for the AOs to pass the assessment orders through ITBA, which has in-built checks and validation to prevent arithmetical error in computation of tax and interest.



(Neelesh Kumar Sah)

Principal Director (Direct Taxes-II)

New Delhi

Dated: 05 February 2019

Countersigned



(Rajiv Mehrishi)

Comptroller and Auditor General of India

New Delhi

Dated: 06 February 2019