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Report of the Comptroller and Auditor General of India

Allowance of Depreciation and Amortisation

Union Government
Department of Revenue - Direct Taxes
Report No. 20 of 2014

Report of the Comptroller and Auditor General of India

for the year ended March 2013

Performance Audit on Allowance of Depreciation and Amortisation

Union Government
Department of Revenue - (Direct Taxes)
Report No. 20 of 2014

Laid on the table of Lok Sabha/Rajya Sabha on……..

Table of Contents

Preface

This Report for the year ended March 2013 has been prepared for submission to the President under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit of Allowance of Depreciation and Amortisation of the Department of Revenue – Direct Taxes of the Union Government in 2010 to 2013.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2010 to 2013 conducted during July to September 2013.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Audit wishes to acknowledge the cooperation received from the Department of Revenue - Central Board of Direct Taxes at each stage of the audit process.

Executive Summary

- Income Tax Act, 1961, (Act) lays down diverse provisions on depreciation and/or amortisation for tax purposes as deduction to an assessee/ a company in the course of its business with the intention for promoting economic growth within the Country. It is important to ensure that these provisions are properly utilised as per the existing tax laws to avoid any major revenue loss. The objective of this study was to focus on whether the systems and procedures are sufficient and in place to ensure compliance with the provisions of the Act/Rules and instructions issued by Central Board Direct Taxes (CBDT) in this regard. The study also seeks assurance that adequate internal control mechanism exists within the Income Tax Department (ITD) for monitoring the allowance of depreciation in general and under special circumstances viz., amalgamation, demerger, reconstruction etc.

- We audited assessments completed during the period FY 10 to FY 13 and all cases of scrutiny assessments, appeal and rectification cases etc, within the selected units. We covered all circles/wards taken up for regular audit during the period from July to September 2013. We checked 87,023 records of the assessees. This report contains 725 cases of deficiencies in the implementation of provisions of the Act with tax effect of ₹ 2,464.06 crore.

- Rates of depreciation on different assets/ block of assets as provided in the Act differ from those prescribed under the Companies Act 1956 for the same assets. We found that depreciation as per the Act was higher in 6,267 cases and lower in 5,926 cases by a difference aggregating ₹ 57,665.41 crore and ₹ 11,754.80 crore respectively. We suggested harmonising these rates as assessees and ITD make additional efforts in computation of taxable income. The intended purpose for allowing depreciation in the Act has also not been evaluated *(paragraph 2.2).* Due to non-existence of proportionate allowance of depreciation depending upon the use of assets, assessees have claimed unintended benefits. We observed that 986 assessees made additions of various assets worth ₹ 1,41,725.45 crore in the month of March and claimed depreciation of ₹ 15,617.86 crore instead of allowable depreciation of ₹ 2,602.61 crore on *pro rata* basis for the month of March only, the assets being purchased in the month of March itself *(paragraph 2.3).* Besides this, there are inconsistencies in allowance of depreciation on assets owned by Charitable / Religious Trusts and Association of Persons *(paragraph 2.4).*

- A number of mistakes were noticed in compliance with the provisions of the Act dealing with allowance of depreciation and amortisation and the relevant circulars/instructions issued by CBDT/ Judicial decisions delivered by the Apex court and jurisdictional High Courts.

  - 20 assessees claimed and were allowed depreciation on assets which were not owned by them at all and resulted in under assessment of income to that extent involving tax effect of ₹ 92.79 crore *(paragraph 3.2).*
  - Assessing Officers (AOs) allowed depreciation to 35 assessees on assets which were not used in the business which resulted in under assessment of income to that extent involving tax effect of ₹ 43.96 crore *(paragraph 3.3).*
  - We noticed mistakes in determination of actual cost or written down value of assets in 29 cases, which resulted in excess allowance of depreciation involving tax effect of ₹ 85.47 crore *(paragraph 3.4).*
  - In 18 cases while calculating depreciation, AOs did not deduct capital investment subsidies received from the cost of the assets which resulted in under assessment of income to that extent involving tax effect of ₹ 35.65 crore *(paragraph 3.6).*
  - 44 assessees committed mistakes in adoption of correct figure of depreciation in computation of income involving tax effect of ₹ 212.97 crore *(paragraph 3.8).*
  - In 142 cases, AOs allowed depreciation at the rates which were higher than the rates provided in Appendix I to Income Tax Rules 1962. The mistake resulted in excess allowance of depreciation involving tax effect of ₹ 107.85 crore *(paragraph 3.9).*
  - In carrying forward/setting off of depreciation which resulted in under assessment of income to that extent, we found that in 87 cases, tax effect was ₹ 694.65 crore *(paragraph 3.11).*
  - 26 assessees irregularly claimed and was allowed capital expenditure as revenue expenditure which resulted in under assessment of income to that extent involving tax effect of ₹ 344.97 crore *(paragraph 3.13).*

- The Act also provides for additional depreciation to assessees and here also we found mistakes in assessments done by AOs. We found that AOs committed mistakes in grant of additional depreciation in 99 cases resulting in under assessment of income to that extent involving tax effect of ₹ 656.19 crore *(paragraph 3.19).* In case of 13 assessees, AOs did not allow additional depreciation during tax holiday which resulted in over assessment of income to that extent involving tax effect of ₹ 3.33 crore *(paragraph 3.20).*

- Regarding allowance of amortisation to assessees, we found that in case of 12 assessees, AOs irregularly allowed amortisation expenses under section 35D which resulted in under assessment of income to that extent involving tax effect of ₹ 6.70 crore (paragraph 4.2). We also found that four assessees irregularly claimed and were allowed expenses towards amortisation under section 35DDA which resulted in under assessment of income to that extent involving revenue impact of ₹ 5.38 crore *(paragraph 4.3).*

- We have also highlighted the control issues of the ITD relating to allowance of depreciation and amortisation *(paragraphs 5.2 to 5.4).*

- The allowance of depreciation and amortisation under the Act is intended to promote economic growth within the country but in absence of any monitoring mechanism within ITD, the purpose remained to be achieved. Besides, AOs committed mistakes in applying provisions relating to depreciation and amortisation correctly which resulted in under assessments. CBDT needs to improve the quality of assessments and explore the possibility of capacity building for AOs for reducing the incidence of mistakes.

Summary of Recommendations

Regarding systemic issues of allowance of depreciation

1. The Ministry may consider providing the rates of depreciation under the Act in conformity with the rates of depreciation applicable as per the Companies Act.

(Paragraph 2.2)

2. The Ministry may consider providing for depreciation on pro-rata basis in the Act depending upon usage of the assets during the relevant previous year subject to the condition that depreciation at 50 *per cent* of the normal depreciation may be allowed only when asset is put to use at least for a certain fixed period.

(Paragraph 2.3)

3. The Ministry may clarify whether the depreciation is to be allowed in addition to capital expenditure on assets towards application of income thereon in the case of Charitable/ Religious Trusts.

(Paragraph 2.4)

4. CBDT may clarify the applicability of Section 32 (2) of the Act relating to carry forward and set-off of unabsorbed depreciation allowance pertaining to the period AY 98 to 02.

(Paragraph 2.5)

Regarding assessment of allowance of depreciation and amortisation

5. CBDT may devise a mechanism to improve the quality of assessments and explore the possibility of capacity building for Assessing Officers for reducing the incidence of mistakes.

(Paragraphs 3.2 to 3.20 and Paragraphs 4.2 to 4.4.)

Regarding internal control mechanism

6. CBDT may consider modifying the e-filing of returns so that information relating to additions to fixed assets made during the relevant previous year is available with AOs at the time of assessment.

(Paragraph 5.2)

7. CBDT may make it mandatory for all AOs to obtain a statement of unabsorbed depreciation assessment year-wise as per latest assessment order and make it a part of the assessment order after due verification at the time of finalizing the assessment.

(Paragraph 5.3)

8. CBDT may evolve an effective mechanism to verify and ensure the correctness of written down value of the block of assets carried over.

(Paragraph 5.4)

Chapter I: Introduction

1.1 Introduction

Depreciation is a method of allocating cost of a tangible asset over its useful life. In every business, apart from current costs, the cost of capital assets employed in the business has to be recouped over the period of productive use of the assets. Therefore, most of the businesses depreciate long term assets for both accounting and tax purposes. Amortisation is paying off debt in regular installments over a period of time. This method measures the consumption of value of intangible asset such as a patent or a copyright. The amortisation and depreciation are often used interchangeably and are similar accounting concepts which are technically not a correct practice because amortisation refers to intangible assets and depreciation refers to tangible assets.

The Income Tax Act, 1961 (Act) provides for depreciation on the assets viz buildings, machinery, plant or furniture, being tangible assets and know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 01 April, 1998.

Paying off of a debt in regular installments or allowance of deduction of capital expenses over a specific period of time (usually over the asset's life) is recorded as amortisation in the financial statements of an entity as a reduction in the carrying value of the intangible asset in the balance sheet and as an expense in the income statement.

The entities like individuals, Firms, Association of Persons, Trusts etc maintain their accounts and claim depreciation as per the Act. However, Companies maintain their accounts as per the Companies Act 1956 but for purpose of Income Tax, they compute and claim the depreciation as per the Act.

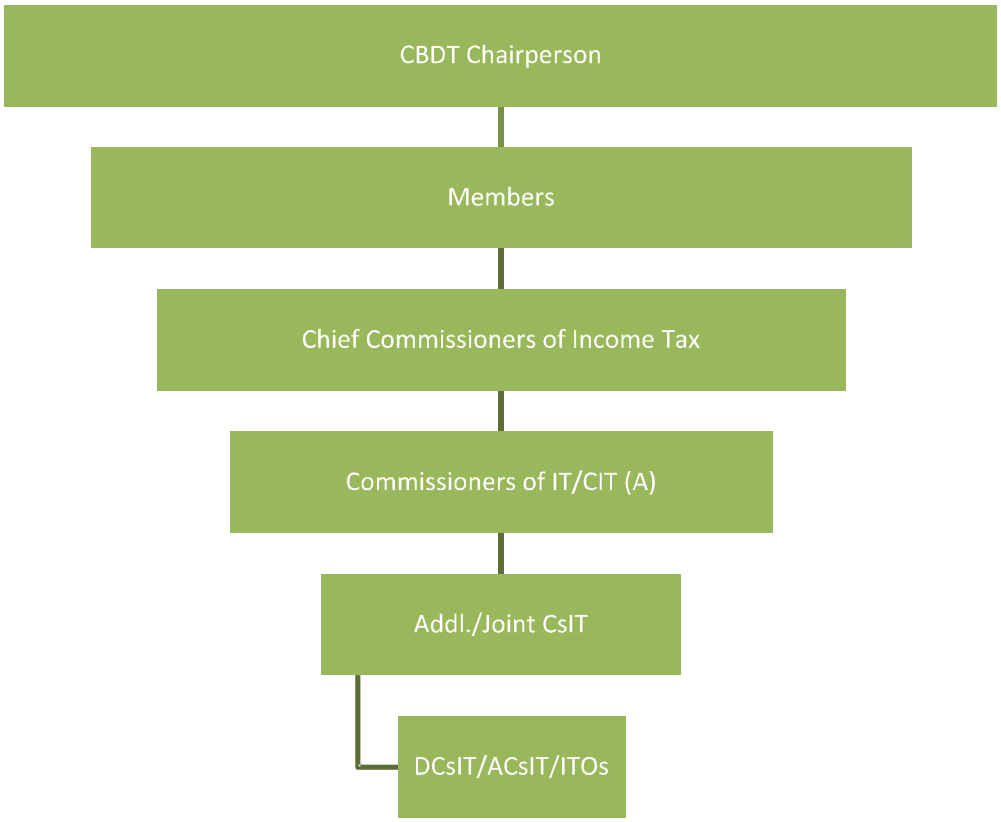
The Act lays down diverse provisions on depreciation and/or amortisation for tax purposes as deduction to an assessee/a company in the course of its business with the intention for promoting economic growth within the country.

1.2 Organizational set up

Central Board of Direct Taxes (CBDT), as a part of Department of Revenue, Ministry of Finance (Ministry), is the apex body charged with administration of Direct Taxes. CBDT is headed by the Chairperson and comprises of six

Members. In addition to their functions and responsibilities, the Chairperson and Members are responsible for exercising supervisory control over field offices of the CBDT, known as Zones. Chief Commissioner of Income Tax (CCIT) heads the field office whose jurisdiction is generally co-terminus with the state. Each CCIT is assisted by CsIT, Additional/Joint CsIT, Deputy CsIT, Assistant CsIT and ITOs.

Graph 1.1: Organogram of CBDT



1.3 Revenue forgone on account of accelerated depreciation

The Receipt Budget of Government of India includes a separate Budget document titled "Statement of Revenue Forgone", which seeks to enlist the revenue impact of tax incentives or tax subsidies being a part of the tax system. The rates of depreciation under the Act differ from those provided under Companies Act. The revenue forgone, inter alia, on account of accelerated depreciation[1] where rate under Act is more than Companies Act, is worked out by first determining the difference between the depreciation/deduction debited to the profits and loss account by the

[1] The word 'accelerated depreciation' has been used in the Receipt Budget of Government of India.

Companies and then allowing depreciation/deduction admissible thereon under the Act and applying tax rates on the sum so worked out.

Revenue forgone figures on account of accelerated depreciation in the Receipt Budget for the years starting from FY 09 to FY 13 are shown in Table 1.1.

Table 1.1: Revenue forgone on account of accelerated depreciation

(₹ in crore)

Financial Year	Total Revenue Forgone	Revenue Forgone on account of Accelerated depreciation	% of Revenue Forgone on account of Accelerated depreciation to total Revenue Forgone
FY 09	1,04,471	21,175	20.27
FY 10	1,18,023	29,308	24.83
FY 11	94,738	33,243	35.09
FY 12	1,01,140	34,320	33.93
FY 13	1,13,466	37,831	33.34

Note: The revenue forgone figures are as per Receipts Budget. For FY 13, figures of revenue forgone are projected.

The above table indicates that percentage of revenue forgone on account of accelerated depreciation to total revenue forgone ranged between 20.27 to 35.09 *per cent* during FY 09 and FY 13.

1.4 Why we chose the topic

Depreciation/amortisation play a significant role in determining and presenting the financial position and results of operation of an enterprise. In capital intensive sectors, the taxable income becomes negative particularly in the initial period due to sizeable amount of depreciation. Since the revenue forgone on account of accelerated depreciation is more than 30 *per cent* of total revenue forgone during FY 11 to FY 13, we decided to evaluate the system of allowance of depreciation and amortisation as provided in the Income Tax Act, 1961.

Previously, we had reviewed the Scheme of Depreciation Allowance in the year 1991[2]. We had also examined the applicability of provisions relating to depreciation in the year 2004[3]. Therefore, we decided to review the system of allowance of depreciation and amortisation to see whether the deficiencies pointed out earlier still exist.

[2] C&AG Audit Report No. 5 of 1993 (Para No. 2.01 on the Scheme of Depreciation Allowance)

[3] C&AG Audit Report No. 13 of 2005 (Chapter 2 – Efficiency and effectiveness of administration and implementation of Selected Deductions and Allowances under Income Tax Act)

1.5 Audit objectives

The Performance Audit is intended to focus on whether:

a. the systems and procedures are sufficient and in place to ensure compliance with the provisions of the Act/Rules and instructions issued by CBDT in this regard;

b. adequate internal control mechanism exists for monitoring the allowance of depreciation in general and under special circumstances viz., amalgamation, demerger, reconstruction etc;

c. there are lacunae or ambiguities in the provisions of the Act, if any, in the administration or policy relating to depreciation and amortisation.

1.6 Legal framework

Provisions relating to allowance of depreciation and amortisation are available in Sections 2(11), 32, 43(1), 43(6), 43A, 35D, 35DD, 35DDA and 72A of the Act and are briefly described in **Appendix 1**. Besides, the allowances are also governed by latest judicial pronouncements as well as Circulars/Instructions issued by the CBDT. Appendix I & IA to the Income Tax Rules, 1962, provide for rates of depreciation on different assets, owned and used by the assessee in the course of business.

1.7 Audit scope

The Performance Audit covered assessments completed during the period FY 10 to FY 13 and upto the date of audit. In case of major audit observations, assessment records of previous assessment years (AYs) were also linked wherever found necessary.

1.8 Sample selection

All cases of scrutiny assessments, appeal and rectification cases, except cases where salary was the only source of income and there was no impact of depreciation on income, within the selected units were examined in audit. All circles/wards taken up for regular audit during the period from July to September 2013 were treated as selected units.

1.9 Audit findings

We have checked 87,023 records of the assessees pertaining to the period FY 10 to FY 13 including the period up to the date of audit. Audit findings have been discussed in subsequent Chapters viz; Systemic issues, Allowances of Depreciation and Amortisation and Internal Controls. While making comments on any specific irregularity/ mistake/ lacunae in the Act etc in this Report, relevant Codal provision/ Judicial pronouncement/ Circular/

Instruction have been appropriately mentioned in the beginning of the paragraph.

1.10 Constraints

ITD did not produce all the records requisitioned in audit. **Appendix 2** depicts the status of the non-production of records in different states all over India. Another hindrance in identifying the assessees for examination in audit was the non-maintenance of records of the assessees in company circles availing benefit of depreciation and amortisation as well.

1.11 Acknowledgement

We held an entry conference with CBDT on 04 September 2013 wherein we explained the audit objectives, scope and the main focus of audit examination. The Indian Audit and Accounts Department acknowledges the co-operation of ITD in facilitating the audit by providing the necessary records and information in connection with the conduct of this Performance Audit.

We issued draft Performance Report to the Ministry in April 2014 for their comments. After receipt of Ministry's reply in May 2014, we held exit conference on 29 May 2014 to discuss our findings and recommendations vis-à-vis Ministry's comments. We again issued draft Performance Report in June 2014 containing Ministry's views and audit stand thereon for their further comments. We received further comments from the Ministry in June 2014 which have also been appropriately incorporated in the report together with audit comments thereon.

Chapter II: Systemic issues on Depreciation

2.1 Introduction

Income Tax Act, 1961 (Act) deals with various provisions relating to allowance of depreciation. We have come across cases where unintended benefits were given to the assessees due to certain provisions of the Act being deficient, unclear and ambiguous. This has also led to contradictory judicial pronouncements. The present chapter deals with systemic issues relating to allowance of depreciation.

Rates of depreciation on different assets/ block of assets as provided in the Income Tax Rules 1962, differ from those prescribed under the Companies Act 1956 for the same assets. While computing the taxable income, additional efforts are made by disallowing depreciation as per Companies Act and then allowing depreciation as per the Act. Accelerated depreciation under Income Tax Act does not guarantee conservation of funds to replace plant and machinery as intended, in the absence of any monitoring mechanism.

2.2 Harmonisation of rates of depreciation

The rates of depreciation prescribed under the Income Tax Rules, 1962 for various assets/block of assets are different from those prescribed under the Companies Act, 1956[4]. The depreciation worked out at the rates prescribed under the Companies Act, 1956 is debited to the Profit and Loss account of a company to determine the true profit or loss of the business or the true cost of production etc. and ultimately is available for replacement of capital assets.

It has been judicially held[5] that depreciation is allowed to replace the value of an asset to the extent it has depreciated during the relevant period of accounting and as the value has, to that extent, been lost, the corresponding allowance for depreciation takes place. CBDT has also clarified[6] that the depreciation is provided to enable the industry to conserve sufficient funds to replace plant and machinery at the expiry of its useful life.

The Kelkar Task Force[7], in its Report (December 2002), *inter alia*, recommended that depreciation claims under the Act be restricted to those charged to the Profit and Loss account in accordance with the provisions of

[4] The Companies Act 1956 was repealed by the Companied Act 2013 but during course of audit, the Companies Act, 1956 was effective.
[5] P.K. Badiani Vs. Commissioner of Income Tax, Bomb (1976) 4SCC562,
[6] CBDT Circular No. 14/2001
[7] Constituted by Government of India for the study of 'Direct Taxes Reforms including rationalization of tax structure'.

the Companies Act. This was intended to minimize the divergence between the depreciation amounts charged to the Profit and Loss account and those claimed for tax purposes. Though the recommendation was partly implemented by way of revision of the rates of depreciation under the Act, effective from AY 07, the disparity between the two Acts continued.

We compared the data compiled from various charges on the depreciation debited to Profit and Loss accounts as per the Companies Act vis-à-vis the depreciation allowed by ITD. The comparison revealed that depreciation as per the Income Tax Act was higher in 6,267 cases and was lower in 5,926 cases by a difference aggregating ₹ 57,665.41 crore and ₹ 11,754.80 crore respectively. The depreciation allowed was at par in 10,441 cases in both as per Companies Act and the Income Tax Act. The details of depreciation allowed as per both the Acts vis-a-vis difference between them are shown at **Appendix 3A, Appendix 3B** and **Appendix 3C**.

While computing the taxable income, additional efforts are made by disallowing depreciation as per Companies Act and then allowing depreciation as per the Act. There is a need to synchronize the rates prescribed under the Income Tax Rules with the objectives of providing depreciation with a condition that it is restricted to the corresponding amount debited in the Profit & Loss account available for replacement of a specific asset.

CBDT may consider providing the rates of depreciation under the Act in conformity with the rates of depreciation applicable as per the Companies Act. If any incentive is intended by way of depreciation, it may be expressly given by way of incentive instead of depreciation. ITD may carry out a cost benefit analysis on the issue to ascertain the effectiveness of this incentive mechanism and decide on harmonizing the depreciation rates with those under the Companies Act.

Income Tax Act, 1961, does not provide for allowance of depreciation on pro rata basis depending on the usage of assets. This led to unintended benefits of deduction to the assessees for the period for which asset was not used.

2.3 Unintended benefit of depreciation for the period when asset is not used

Section 32 of the Act provides for depreciation on actual value or written down value (WDV) of assets at the rates prescribed in Appendix I of Income Tax Rules, 1962, if the asset is used for 180 days or more and at 50 *per cent* of

the normal rate if the asset is used for one day or more but less than 180 days during the relevant previous year.

We observed from compilation of 986 cases from various charges as shown in **Appendix 4** that assessee made additions of various assets worth ₹ 1,41,725.45 crore in the month of March in different FYs and claimed depreciation of ₹ 15,617.86 crore instead of allowable depreciation of ₹ 2,602.61 crore on *pro rata* basis for the month of March only, the assets being purchased in the month of March itself.

Similarly, additions worth ₹ 31,621.10 crore were made in 450 cases as shown in **Appendix 4A**, in the month of September in different FYs, on which depreciation was allowed for the whole year.

Thus, the assessee got unintended benefit of deduction even for the period for which asset was not used.

While there is no concept of allowance of depreciation on *pro rata* basis in proportion to actual period of usage (as prescribed under Companies Act) in the Act, the provisions of the Act allow assessees to claim depreciation even for those periods during which the assets were neither acquired/kept ready for use nor put to actual use. Consequently, the purpose of amending the Act to reduce the allowance of depreciation and increase the taxable profits remained largely unachieved, as the anomaly continued to exist with the allowance of depreciation at 50 *per cent* even if the asset is purchased on the last day of the relevant previous year and put to use only for a day.

CBDT may consider providing for depreciation on pro-rata basis in the Act depending upon usage of the assets during the relevant previous year subject to the condition that depreciation at 50 *per cent* of the normal depreciation may be allowed only when asset is put to use at least for a certain fixed period.

There were inconsistencies in allowance of depreciation on assets owned by Charitable/Religious Trust and Association of Persons due to ambiguity in law and conflicting judicial decisions which had adverse impact on tax revenues

2.4 Inconsistencies in allowance of depreciation on assets owned by Charitable/ Religious Trusts and Association of Persons

Section 11 of the Act provides for exemption to a Charitable or Religious Trust, subject to certain conditions, in respect of income from property held thereunder, to the extent such income is applied or accumulated for

charitable or religious purposes. CBDT has clarified[8] that for the purpose of such exemption, the income of a trust is to be taken in the commercial sense, and not as computed under the provisions of the Act. In other words, the income that is eligible for exemption is the one that has been determined as per the books of account.

While the Bombay[9], Punjab and Haryana[10] and Delhi[11] High Courts held that depreciation would be allowable as a deduction even in such cases where the capital expenditure had been allowed as an application of income for charitable purposes, Kerala High Court[12] had taken a contrary view holding that such depreciation should be added back to the income of the trust as disclosed in its books of account in view of Apex court's decision[13] that under general principles of taxation, double deduction was not intended, unless clearly expressed.

In Karnataka charge, the application of law/court rulings was not uniformly followed during assessments of Trusts/AOPs. While some AOs disallowed the depreciation claims on the cost of assets already allowed as application of income, others allowed the depreciation claims of the assessees, on the strength of varied judicial decisions (including Appellate/Tribunal orders). Para 3.15 on 'Irregular claim of depreciation against income fully exempt from tax' of this report also describes such cases of double deductions.

Absence of enabling provisions and often conflicting judicial decisions on similar issues had adverse impact on tax revenues as noticed in allowance of depreciation in addition to capital expenditure on assets towards application of income in the case of Charitable / Religious Trusts.

Ambiguities in law and contradictory stand taken by judicial authorities on the application of significant provisions relating to assessment of the Charitable Trusts need to be resolved so as to clarify whether depreciation to Trusts is to be allowed or not. This issue having already been highlighted vide *para 5.2 on 'Inconsistencies in allowance of depreciation' of Report No.20 of 2013 of the Comptroller and Auditor General of India on 'Exemptions to Charitable Trusts and Institutions'* still requires clarification from the Ministry.

[8] CBDT Circular dated 19 June 1968
[9] CIT vs Institute of Banking Personnel Selection (264 ITR 110)
[10] CIT vs Market Committee, Pipli (330 ITR 16)
[11] DIT vs. Vishwa Jagriti Mission (73 DTR (Del) 195)
[12] Lissie Medical Institutions vs. CIT (76 DTR (Ker) 372)
[13] Escorts Ltd vs. Union of India (199 ITR 43)

Carry forward and set-off of unabsorbed depreciation for the AY 98 to AY 02 as per the Act and amendment made in the Act for AY 03 onwards led to conflicting judicial decisions. The issue has not yet been settled.

2.5 Incorrect set off of unabsorbed depreciation

According to section 32(2) as applicable for the AY 98 to AY 02, unabsorbed depreciation could be carried forward and set off against business income for a period of eight years only. The brought forward unabsorbed depreciation relating to the period prior to AY 98, if any, was to be aggregated with the unabsorbed depreciation of AY 98 and was required to be treated as unabsorbed depreciation of AY 98. With effect from AY 03, Section 32(2) was amended to allow the carry forward and set off of the unabsorbed depreciation for an indefinite period.

In the case of DCIT vs. Times Guaranty, the ITAT, Mumbai Special Bench held that unabsorbed depreciation of AY 98 to AY 02 is not eligible for relief granted by amendment to Section 32(2) in AY 03 and the same could be set off only against the business income and for eight years only. However, the Gujarat High Court in the case of General Motors India Pvt. Ltd. Vs DCIT 2010 Taxman 20 (Gujarat) has given ruling that any unabsorbed depreciation available to an assessee on 01 April 2002 will be dealt with in accordance with the provisions of Section 32(2) as amended by the Finance Act, 2001.

The ruling of Gujarat High Court has made the statute that existed during the period AY 98 to AY 02 regarding carry forward and set off of unabsorbed depreciation, redundant and non-existent. However, the decision rendered by the Gujarat High Court in the above case was not accepted by the ITD who filed Special Leave Petition (SLP) with the Supreme Court. Supreme Court has dismissed the SLP on 11 March 2013 stating that question of law is kept open.

The issue has not been settled yet. The stand taken by ITAT, Mumbai Special Bench in the case of DCIT vs. Times Guaranty and by Gujarat High Court in the case of General Motors India Pvt. Ltd will still continue to apply.

CBDT may clarify the applicability of Section 32 (2) of the Act relating to carry forward and set-off of unabsorbed depreciation allowance pertaining to the period AY 98 to AY 02 whether depreciation is to be carried forward for set-off beyond 8 years or not.

2.6 Recommendations

We recommend that

a. The Ministry may consider providing the rates of depreciation under the Act in conformity with the rates of depreciation applicable as per the Companies Act.

The Ministry stated (May 2014) that the Companies Act generally provides depreciation on straight line method based on the estimated life and residual value of the assets. However, the Income Tax Act provides depreciation normally on written down value method to certain specified assets for achieving certain economic and social objectives. Vide IT (Sixth Amendment) Rules, 2005, the rates of depreciation for eligible assets have been rationalised after taking into account estimated life and gradual reduction in rates of income tax over the years. Further, the rates of depreciation specified under the Companies Act are for the purpose of ascertaining the correct amount of commercial profit earned by a company whereas the Income Tax Act prescribes rates of accelerated depreciation which is more than the commercial depreciation for encouraging investment in certain sectors/areas like manufacturing, clean energy, pollution control equipment's etc. As the policy objectives are different, the proposal for aligning the rate of depreciation under the Income Tax Act on the lines of Companies Act is not feasible.

Audit is of the opinion that though the policy objectives are different, there is a need to examine depreciation norms in totality and align the rates under the two Acts wherever possible, as the existing practice involves preparing different sets of accounts and it also deprives the exchequer of its legitimate tax revenue.

The Ministry further replied (June 2014) that if the rates of depreciation are aligned with the Companies Act, the requirement of preparing separate statement of depreciation for income-tax purposes will not be eliminated because of the provisions under the Act.

Audit is of the opinion that the more the alignment of depreciation rates is made, the less will be the chances of errors in calculation of depreciation.

b. The Ministry may consider providing for depreciation on pro-rata basis in the Act depending upon usage of the assets during the relevant previous year subject to the condition that depreciation at 50 *per cent* of the normal depreciation may be allowed only when the asset is put to use at least for a certain fixed period.

The Ministry stated (May 2014) that the Act provides 50 per cent of allowable depreciation when the asset is not put to use for not more than 180 days. The existing provision is simple and easy to monitor administratively. Further, the provision for allowing 50 per cent of depreciation on the assets purchased at the fag end of the previous year encourages the tax payer to invest its income in productive asset instead of distributing the same to the owners.

Audit is of the view that the Ministry may make provision for allowance of 50 *per cent* of allowable depreciation only when asset is put to use at least for three months with a view to minimise the loss to Government exchequer. Further, for easy monitoring the provision on depreciation, the Ministry may use existing IT tools.

The Ministry further stated (June 2014) that in case condition of three months is imposed for claiming depreciation, it is likely that in the last quarter of the year, the assessees would postpone the investment in assets to the next year and this may not be desirable for the growth and development of the country

Audit is of the opinion that the comments of the Ministry are based on presumptions only.

c. The Ministry may clarify whether the depreciation is to be allowed in addition to capital expenditure on assets towards application of income thereon in the case of Charitable/ Religious Trusts.

The Ministry stated (May 2014) that in the scheme of Trust taxation, first the income has to be computed after deduction of expenses and thereafter, exemption is granted to the extent the income is applied. There are, therefore, two aspects involved:- one of deduction and the other of condition of application. Capital expenditure of the Trust is application of income, and to the extent that it is so applied, the amount applied is excluded from the income. This may, therefore, not be a case of double deduction. Further, the judicial decisions on interpretation of current law relating to taxation of the Trusts has been of varying nature, the claim of depreciation in the case of Trusts in respect of assets for which relief by way of application of income is claimed, can only be denied if the law is specifically amended.

Audit is of the opinion that Ministry may initiate action to make requisite amendment in the Act with a view to avoid the concept of double deduction and contradictory decisions of the Judiciary on the same issue.

The Ministry stated (June 2014) that the matter will be examined by CBDT.

d. CBDT may clarify the applicability of Section 32(2) of the Act relating to carry forward and set-off of unabsorbed depreciation allowance pertaining to the period AY 98 to 02.

The Ministry stated (May and June 2014) that the matter has been referred to Central Technical Committee for forming Departmental View and taking further necessary action, if required.

The Ministry's final stand is awaited.

Chapter III: Allowance of Depreciation

3.1 Introduction

Section 32 of the Act provides for allowance of depreciation on assets for tax purposes as deduction to an assessee. Appendix I & IA to the Income Tax Rules, 1962 (Rule), provides for rates of depreciation on different assets, owned and used by the assessee during the course of business. The present chapter deals with audit issues relating to deficiencies in applying the provisions of the Act and relevant Rules/Judicial pronouncements by the Assessing Officers (AOs) during assessments. Category wise details of mistakes in assessment are shown in Table 3.1.

Table 3.1: Nature of mistakes with its tax effect

	Nature of Mistakes and Para Number of the Report	Cases	Tax effect (₹ in crore)
1.	Depreciation claimed and allowed on assets not owned/leased out by the assessee *(Para 3.2)*	20	92.79
2.	Depreciation claimed on assets not used in business *(Para 3.3)*	35	43.96
3.	Mistakes in determination of actual cost or written down value of assets *(Para 3.4)*	29	85.47
4.	Depreciation allowed on assets disposed off *(Para 3.5)*	9	1.99
5.	Capital investment subsidies not deducted from cost *(Para 3.6)*	18	35.65
6.	Mistakes in carrying over the written down value of assets *(Para 3.7)*	6	7.15
7.	Mistakes in adoption of correct figure and errors in computation *(Para 3.8)*	44	212.97
8.	Adoption of incorrect rate of depreciation *(Para 3.9)*	142	107.85
9.	Excess allowance of depreciation on assets used for less than 180 days *(Para 3.10)*	29	25.03
10.	Mistakes in carry forward/set off of depreciation *(Para 3.11)*	87	694.65
11.	Mistake in carry forward and set off of unabsorbed depreciation relating to amalgamating companies *(Para 3.21)*	5	35.45
12.	Irregular claim of capital expenditure as revenue expenditure *(Para 3.13)*	26	344.97
13.	Depreciation allowed on ineligible items *(Para 3.14)*	27	34.29
14.	Irregular Claim of depreciation against income fully exempt from tax *(Para 3.15)*	48	27.28
15.	Mistakes in grant of additional depreciation *(Para 3.19)*	99	656.19
16.	Other mistakes *(Para 3.16 – 3.18, 3.20)*	84	30.82
	Total	**708**	**2436.51**

3.2 Depreciation claimed and allowed on assets not owned/lease out by the assessee

Section 32 of the Act provides for depreciation at prescribed rate on Written Down Value (WDV) of tangible or intangible assets including business or commercial right of similar nature subject to fulfillment of certain conditions. Primary condition is that the asset must be owned, wholly or partly, by the assessee. In case of co-ownership of the asset, co-owners are entitled to claim depreciation to the extent of value of the asset owned by each co-owner. In case of the Partnership firm, only the firm is entitled to claim depreciation on immovable assets brought by the Partners as their capital contribution. As regards ownership in case of finance lease, it has been judicially held[14] that only the lessee can be treated as owner of the asset in case of a finance lease. It is he who is entitled to claim depreciation as per law. No depreciation can be allowed to the lessor in such a case of a genuine finance lease. Where a building is taken on lease, depreciation is allowable only on the capital expenditure incurred on the building by the assessee.

In Chandigarh UT, Chhattisgarh, Gujarat, Karnataka, Kerala, Maharashtra, Rajasthan and Tamil Nadu charges, we found that 20 assessees claimed and were allowed depreciation on assets which were not owned by them at all. Irregular allowance of deprecation on assets not owned by the assessees, resulted in under assessment of income to that extent involving tax effect of ₹ 92.79 crore (See Box 3.1).

Box 3.1: Illustrative cases on assets not owned/leased out by assessees

a. In Gujarat, CIT II Ahmedabad charge, **M/s Mundra International Container Terminal Ltd.**, for AY 08 and AY 09, claimed and was allowed depreciation of ₹ 74.72 crore on 'infrastructure usage facility' @ 25 *per cent* on WDV treating the same as 'intangible asset' which was not in order on the ground that the 'right to use infrastructure facility' was not similar to 'intangible assets' as stated in section 32 of the Act. Instead, it was deemed right to use a tangible asset i.e. infrastructure. Further, the owner of the infrastructure **(Mundra Port & SEZ Ltd.)** also claimed depreciation on the same asset like marine structure and dredging CT for the same AY as seen from their Balance Sheet and as such depreciation claimed by the assessee should have been disallowed. Omission to do so resulted in excess allowance of depreciation of ₹ 74.72 crore involving short levy of tax of ₹ 25.25 crore.

ITD did not accept (February 2013) the audit observation stating that the assessee claimed and was allowed depreciation on the license to use the infrastructure

[14] M/s IndusInd Bank Ltd vs Addl CIT Special Bench of ITAT Mumbai, read with Supreme Court decision in the case of M/s ABB Ltd. The decision was re-affirmed by ITAT Bench Pune in the case of M/s Bajaj Auto finance Ltd vs ACIT.

facility and not as the owner of the infrastructure. Further, the licenses, franchisees etc. are categorized as intangible assets under the block of assets. The reply is not tenable as the assessee had claimed the depreciation on Infrastructure Usage facility as an intangible asset, which is not in the nature of a business or commercial rights as mentioned under the provisions of section 32(1) (ii) of the Act.

b. In Maharashtra, CIT-7, Mumbai charge, **M/s Vizag Seaport Pvt. Ltd.**, for the AY 08, claimed and was allowed depreciation of ₹ 17.53 crore on 'Project berth' at the rate of ten *per cent* treating the same as building which was not in order. The 'Project berth' belonged to **Vishakhapatnam Port Trust** and as such the assessee was not the owner of the berth and therefore not entitled for depreciation. Omission to disallow the depreciation on asset not owned by the assessee resulted in under assessment of income of ₹ 17.53 crore involving potential short levy of tax of ₹ 5.90 crore. ITD accepted the observation and took remedial action (January 2013) under Section 147.

c. In Maharashtra, CIT-3, Mumbai charge, **M/s Reliance Corporate IT Park Ltd.** for the AY 11, received total lease rent of ₹ 37.14 crore comprising of principal amount of ₹ 15.69 crore and finance charge of ₹ 21.45 crore during relevant previous year. The assessee had offered entire lease rent for taxation and had claimed depreciation of ₹ 34.75 crore on Plant and Machinery given on finance lease. As per provisions ibid, the assessee, being lessor, was not entitled for depreciation and as a corollary to this, the principal amount of ₹ 15.69 crore was not taxable. Omission to disallow the depreciation on assets not owned by the assessee resulted in under assessment of income of ₹ 19.06 crore with consequent potential short levy of tax of ₹ 5.89 crore.

d. In Karnataka, CIT-I Bangalore charge, **M/s Cisco Systems Capital (India) Pvt. Ltd.** for AY 09, claimed depreciation of ₹ 68.32 crore on networking equipment given on 'Finance Lease' by categorising them under 'computers including software'. AO while finalizing the assessments disallowed excess claim of depreciation of ₹ 51.24 crore categorising the same as Plant and Machinery. However, no depreciation was allowable on the 'Finance Lease' assets since the assessee being lessor would not be considered as owner in view of the decision cited above. Omission to disallow the depreciation resulted in excess allowance of ₹ 17.08 crore involving short levy of tax of ₹ 9 crore.

The audit observations indicate that certain AOs are allowing depreciation on assets without examining the element of ownership of the assets, as per one of the requirements for claiming the depreciation.

3.3 Depreciation claimed on assets not used in business

Where the asset is not used for the purpose of business, depreciation under section 32 of the Act shall not be allowed. Further, where the asset is not

used exclusively for the purpose of business, depreciation shall be allowed proportionately with regard to such usage of the asset.

In Andhra Pradesh, Chandigarh UT, Delhi, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal charges, 35 assessees claimed and were allowed depreciation on assets which were not used in the business. Irregular allowance of deprecation on assets not used in the business resulted in under assessment of income to that extent involving tax effect of ₹ 43.96 crore (See Box 3.2).

Box 3.2: Illustrative cases on depreciation claimed on assets not used in business

a. In Maharashtra, CIT-5, Mumbai charge, **M/s Maharashtra State Road Development Corp. Ltd.** for AY 08, was allowed depreciation of ₹ 333.93 crore which included depreciation of ₹ 46.31 crore on three incomplete projects viz ₹ 9.15 crore on Bandra Worli Sealink Project, ₹ 35.23 crore on Nagpur Ahmedabad Sinnar Ghoti Mumbai Project, and ₹ 1.93 crore on Kalyan Bhiwandi Shilphata. Since these projects were not completed by the end of FY 07, allowance of depreciation on these projects was irregular. Irregular allowance of depreciation aggregating ₹ 46.31 crore involved potential short levy of tax of ₹ 15.59 crore. ITD accepted (July 2013) the observation and took remedial action under Section 147 of the Act.

b. In West Bengal region, CIT-IV charge, Kolkata, in respect of **M/s Durgapur Chemicals Ltd.** for AY 10, depreciation of ₹12.83 crore was allowed during assessment (December 2011) on new assets which were installed but not put to use for production. This resulted in excess allowance of depreciation of identical amount involving potential tax effect of ₹ 4.36 crore.

Illustrations above indicate that ITD is allowing depreciation on assets without examining of the fact whether the asset was used by the assessee during the course of business on which depreciation was claimed.

3.4 Mistakes in determination of actual cost or written down value of assets

Under section 43(1) of the Act, "Actual Cost" of an asset means its actual cost to the assessee including the expenses on installation etc, if the part of the cost is met directly or indirectly by the third person, the cost to the assessee will be reduced by such amount borne by that person.

We noticed mistakes in 29 cases in determination of actual cost or written down value of assets in Andhra Pradesh, Chandigarh, Chhattisgarh, Delhi, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal charges, which resulted in excess allowance of depreciation involving tax effect of ₹ 85.47 crore (See Box 3.3).

Box 3.3: Illustrative case on Mistakes in determination of actual cost or written down value of assets

a. In Madhya Pradesh, CIT Bhopal charge, **M/s Madhya Kshetra Vidyut Vitaran Co. Ltd.** added twice the assets available at the beginning of the year to the new assets added during the previous year relevant to AY 11. Thus excess claim of depreciation amounting to ₹ 121.48 crore after setting off the current year's losses resulted in short levy of tax of ₹ 38.82 crore.

b. In Karnataka, CIT Mysore charge, AO finalized the assessment of **M/s Chamundeshwari Electricity Supply Company Ltd.**, for AY 10, at loss of ₹ 239.39 crore after disallowing depreciation of ₹ 12.49 crore claimed on capital subsidy / grant received on account of fixed assets. The assessee filed revised depreciation statements for AY 09, showing closing WDV at ₹ 231.33 crore and accordingly the depreciation claim pertaining to AY 10 worked out to ₹ 35.97 crore against which depreciation of ₹ 56.64 crore was allowed in assessment. The omission resulted in over assessment of loss by ₹ 20.66 crore involving potential tax effect of ₹ 7.02 crore.

From the above, it is evident that AOs while finalizing the assessment committed mistakes in determining the actual cost of WDV of assets which resulted in excess allowance of depreciation.

3.5 Depreciation allowed on assets disposed of

As per Section 43(6) of the Act, WDV of any block of assets in respect of any previous year means aggregate of the WDV of all the assets falling within that block of assets at the beginning of the previous year and adjusted by increase in the actual cost of any asset falling within that block, acquired during the previous year and by the reduction of the moneys payable in respect of any asset falling within that block which is sold or discarded or demolished or destroyed during that previous year together with the amount of scrap value, so that amount of such reduction does not exceed the WDV as so increased. Further, as per explanation below Sub-Section 4 of Section 41, moneys payable in respect of any building, machinery, plant or furniture include any insurance, salvage or compensation moneys payable or the price for which such assets are sold.

In Bihar, Chandigarh UT, Gujarat, Jharkhand, Maharashtra, Kerala, Tamil Nadu and Uttar Pradesh charges, nine assessees claimed and were allowed depreciation on assets disposed of. Irregular allowance of depreciation on assets disposed of resulted in under assessment of income to that extent involving tax effect of ₹ 1.99 crore (See Box 3.4).

Box 3.4: Illustrative cases on depreciation allowed on assets disposed of

a. In Tamil Nadu, CIT-II, Chennai charge, **M/s Indowind Energy Ltd**, for AY 11, had sold energy saving devices for a consideration of ₹ 3.13 crore during the relevant previous year and irregularly claimed and was allowed depreciation of ₹ 1.25 crore thereon. Irregular allowance of depreciation involved potential tax effect of ₹ 1.06 crore.

b. In Maharashtra, CIT-1, Mumbai charge, in the case of a company **M/s Spenta International Ltd.**, for AY 07, a fire broke out at company premises at Palghar in December 2004 damaging 38 knitting machines and stock in hand. The company filed a claim of ₹ 4.39 crore with insurance company. Initially the company got ₹ 1 crore as advance in FY 06 and thereafter the block of 'Plant and machinery' was credited by ₹ 3.19 crore in the books of account. However, while calculating depreciation, no reduction was made from the WDV of Plant and Machinery destroyed by fire. Irregular allowance of depreciation of ₹ 87.23 lakh in FY 06 and ₹ 44.35 lakh in FY 07 resulted in short levy of tax of ₹ 55.31 lakh including interest.

The cases mentioned above indicate that the AOs allowed depreciation on the assets which were already disposed of and the assessees were no longer in possession thereof.

3.6 Capital investment subsidies not deducted from cost

As per Explanation 10 to Section 43(1) of the Act, where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

In Andhra Pradesh, Bihar, Chhattisgarh, Maharashtra, Karnataka, Tamil Nadu, Uttar Pradesh and West Bengal charges, we noticed that 18 assessees while calculating the depreciation did not deduct capital investment subsidies received from the cost of the assets. Non deduction of capital investment subsidies from the cost of the asset resulted in under assessment of income to that extent involving tax effect of ₹ 35.65 crore (See Box 3.5).

Box 3.5: Illustrative cases on Capital investment subsidies not deducted from cost

a. In Uttar Pradesh, Lucknow charge, AO for AY 11, wrongly allowed depreciation of ₹ 86.57 crore to **M/s Madhyanchal Vidyut Vitran Nigam Ltd.**, as against ₹ 9.38 crore admissible under the Act. We noticed that the depreciation allowed of ₹ 86.57 crore included depreciation on the cost of assets, which was

directly met out of the grants received from the Government/APDRP and Public contributions. The omission to disallow such claim resulted in excess computation of loss of ₹ 77.19 crore involving potential tax effect of ₹ 23.85 crore.

b. In Maharashtra, CIT-10 Mumbai charge, **M/s Maharashtra State Electricity Transmission Company Ltd.**, for AY 08, received capital subsidy of ₹ 101.03 crore towards cost of fixed assets comprising of ₹ 32.45 crore as outright contribution and grant of ₹ 68.58 crore. However, the AO did not reduce capital subsidy so received from the cost of asset and allowed depreciation on full value. The omission resulted in excess allowance of depreciation of ₹ 15.15 crore involving short levy of potential tax of ₹ 5.15 crore. ITD took remedial action (March 2013) under Section 143(3) read with Section 263 of the Act.

In above cases, capital subsidy/grants/contributions received by the assessee from different sources reduced the actual cost/WDV of the assets, even then the AOs allowed depreciation on full value of the assets.

3.7 Mistakes in carrying over the written down value of assets

Written Down Value of an asset or block of assets as worked out as per provision of Section 43(6) of the Act is required to be carried over correctly to the next year as opening WDV to give a true and fair view of the accounts.

We observed in Andhra Pradesh, Bihar, Maharashtra and Tamil Nadu charges that six assessees committed mistakes in carrying over the WDV of assets to the next year as opening WDV which resulted in excess allowance of depreciation involving tax effect of ₹ 7.15 crore (See Box 3.6).

Box 3.6: Illustrative case on mistakes in carrying over the WDV of assets

In Andhra Pradesh, CIT-III Hyderabad charge, **M/s Salivahana Green Energy Ltd.**, for AY 11, adopted opening WDV of the block of assets at ₹ 69.70 crore in the depreciation schedule for AY 11 as against closing WDV of ₹ 53.39 crore of the assets as on 31 March 2009. Excess carry over of WDV of ₹ 16.31 crore involved short levy of tax of ₹ 5.95 crore.

AOs omitted to check the correctness of the written down value of assets carried over to the next year by the assessees in above cases.

3.8 Mistakes in adoption of correct figure and errors in computation

Section 143(3) of the Act provides that in a scrutiny assessment, the AO is required to make a correct assessment of the total income or loss of the assessee and determine the correct sum payable by him or refundable to him on the basis of such assessment.

We found in Andhra Pradesh, Madhya Pradesh, Delhi, Chandigarh, Kerala, Gujarat, Uttar Pradesh, Maharashtra, Orissa, West Bengal and Tamil Nadu charges that 44 assessees committed mistakes in adoption of correct figure of depreciation in computation of income involving tax effect of ₹ 212.97 crore (See Box 3.7).

Box 3.7: Illustrative cases on mistakes in adoption of correct figure and errors in computation

a. In Madhya Pradesh, CIT Bhopal charge, in the case of **M/s MPMKVVNL**, AO adopted depreciation for the AY 10 at ₹ 613.81 crore instead of correct amount of ₹ 99.07 crore as per the Act. The mistake resulted in excess allowance of depreciation of ₹ 514.74 crore involving tax effect of ₹ 154.42 crore.

b. In Delhi, CIT- IV Delhi charge, **M/s Idea Cellular Towers Infrastructure Ltd.** for AY 11 claimed depreciation @15 *per cent* on passive infrastructure assets treating them as "Plant and Machinery". AO considered Plant and Machinery as building and allowed depreciation @10 *per cent* and added back ₹ 11.21 crore only in the income which was correctly worked out to ₹ 74.72 crore towards 5 *per cent* excess claimed. The mistake resulted in excess allowance of depreciation of ₹ 63.51 crore involving potential tax effect of ₹ 21.59 crore.

c. In Tamil Nadu, CIT-I Chennai charge, while finalising the assessment of **M/s Dhanus Technologies Ltd.**, for the AY 11, AO disallowed interest payment of ₹ 2.85 crore instead of depreciation of ₹ 28.10 crore which was required to be disallowed. The mistake resulted in excess allowance of depreciation to the extent of ₹ 25.25 crore, involving short levy of tax of ₹ 11.58 crore including interest under section 234B.

Therefore, AOs committed mistakes in adoption of correct figure of depreciation in computation of income which resulted in under assessments.

3.9 Adoption of incorrect rate of depreciation

Depreciation on any block of assets shall be calculated at the rates specified in Appendix I and in respect of any class of assets relating to power generation undertakings at the rates indicated in Appendix I A to the Income Tax Rules, 1962.

We observed in Andhra Pradesh, Bihar, Chandigarh, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal charges that 142 assessees claimed and were allowed depreciation at rates which were higher than the rates admissible under the Act. The mistake resulted in excess allowance of depreciation involving tax effect of ₹ 107.85 crore (See Box 3.8).

Box 3.8: Illustrative cases on adoption of incorrect rate of depreciation

a. In Andhra Pradesh, CIT-IV Hyderabad charge, **M/s Ushodaya Enterprises**, for the AY 08 and AY 09, claimed and was allowed depreciation on Cinematographic films/TV serials at 25 *per cent* treating them as intangible assets. Since the film library is not in the form of technical knowhow or copyrights but merely TV programs contained in CDs/storage media which were being used as tools in the business activity and hence the same should have been treated as Plant and Machinery, attracting depreciation at 15 *per cent*. The mistake resulted in short computation of income aggregating ₹ 116.78 crore involving tax effect of ₹ 52.79 crore. ITD took remedial action (May 2011) under section 263 of the Act for the AY 08.

b. In Kerala, CIT-Trivandrum charge, in the case of **M/s Asianet Satcom Ltd.** for AY 09, AO allowed depreciation on set top boxes and modems supplied to Cable TV/Internet subscribers at the rate of 60 *per cent* applicable to computers instead of 15 *per cent* treating them as Plant and Machinery. Omission resulted in excess allowance of depreciation of ₹ 6.16 crore involving potential tax effect of ₹.2.09 crore. ITD accepted and rectified (August 2013) the mistake under section 263 of the Act.

The above cases indicate that AOs allowed depreciation at rates which were higher than the rates admissible under the Act. This resulted in excess allowance of depreciation.

3.10 Excess allowance of depreciation on assets used for less than 180 days

Proviso to section 32(1) of the Act provides for depreciation @ 50 *per cent* of the normal rate on asset which is acquired and put to use during the relevant previous year for the purposes of business or profession for a period of less than 180 days.

In Andhra Pradesh, Bihar, Chandigarh, Karnataka, Maharashtra, Rajasthan, Tamil Nadu and West Bengal charges, we observed that 29 assessees while calculating business income claimed depreciation at normal rate of depreciation though the assets were used less than 180 days. Excess allowance of depreciation resulted in under assessment of income to that extent involving tax effect of ₹ 25.03 crore (See Box 3.9).

Box 3.9: Illustrative cases on excess allowance of depreciation on assets used for less than 180 days

a. In Andhra Pradesh, CIT-III Hyderabad charge, AO, in the case of **M/s Sagar Cements Pvt. Ltd.**, for AY 10, allowed depreciation on Plant and Machinery at normal rate though the same were put to use for less than 180 days for the

purpose of business. The mistake resulted in excess allowance of depreciation of ₹ 37.64 crore involving potential tax effect of ₹ 12.79 crore.

b. In Karnataka, CIT LTU Bengaluru charge, AO, in the case of **M/s IBM India (P) Ltd.,** for the AY 07, disallowed software expenses of ₹ 99.36 crore treating the same as capital asset, and thereafter allowed depreciation of ₹ 59.62 crore thereon at full rate of 60 *per cent.* We observed that the amount on which AO allowed depreciation was required to be bifurcated depending upon the use of assets for more than 180 days and the lesser period. Consequently, the allowable depreciation worked out to ₹ 47.40 crore, as against ₹ 59.62 crore allowed by AO. The mistake resulted in excess allowance of depreciation of ₹ 12.22 crore, involving short levy of tax of ₹ 6.38 crore.

The above cases indicate that AOs allowed normal rate of depreciation though the assets were used less than 180 days.

3.11 Mistakes in carry forward/set off of depreciation

As per provisions of the Act, where for any AY, depreciation/unabsorbed depreciation cannot be set off against business income or any other income in the relevant previous year, it shall be carried forward indefinitely and set off against any income taxable in the succeeding assessment years. Further, section 72A(4)(b) of the Act provides that in the case of a demerger where the loss and unabsorbed depreciation is not directly relatable to the undertakings transferred, the accumulated loss and unabsorbed depreciation shall be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings are retained by the demerged company and resulting company and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company as the case may be.

In Andhra Pradesh, Chandigarh, Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Rajasthan, Tamil Nadu and West Bengal charges, we observed mistakes in carry forward/set off of depreciation in 87 cases which resulted in under assessment of income to that extent involving tax effect of ₹ 694.65 crore (See Box 3.10).

Box 3.10: Illustrative cases on mistakes in carry forward/set off of depreciation

a. In Maharashtra, CIT-3 Mumbai charge, in the case of **M/s Idea Cellular Ltd.** for the AY 10, the AO allowed set off of brought forward unabsorbed depreciation of ₹ 740.51 crore as against available brought forward unabsorbed depreciation of ₹ 137.24 crore. During the year, demerger of the company took place and 13.98 *per cent* of the total asset was transferred to **Idea Cellular Tower Infrastructure Ltd. (ICTIL)** i.e. resulting company. Therefore, ₹ 19.19 crore (being 13.98 *per cent* of ₹ 137.24 crore) was required to be transferred to the resulting company and as such

only 86.02 *per cent* of unabsorbed depreciation was available for set off. Excess set off of unabsorbed depreciation of ₹ 622.46 crore resulted in under assessment of income to that extent involving short levy of tax of ₹ 266.08 crore including interest.

b. In Rajasthan, CIT-2 Jaipur charge, while finalising the assessment of **M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd.**, for AY 11, AO set off brought forward unabsorbed depreciation of ₹ 101.57 crore out of ₹ 958.06 crore pertaining to the period up to AY 03 and the balance of ₹ 856.49 crore was allowed to carry forward to subsequent years. We observed that the unabsorbed depreciation of ₹ 958.06 crore was reduced to ₹ 733.08 crore during scrutiny assessment for AY 10. Thus, there was excess carry forward of unabsorbed depreciation of ₹ 224.98 crore pertaining to earlier periods. Further, while completing scrutiny assessment for the AY 11, the unabsorbed depreciation of ₹ 134.81 crore pertaining to AY 10 was allowed to be carried forward to subsequent years which was not available at all. Excess carry forward of ₹ 359.80 crore involved potential tax effect of ₹ 122.29 crore. ITD accepted the observation and issued notice under Section 154 on 24 September 2013.

c. In Tamil Nadu CIT-III Chennai charge, in the case of **M/s Thiru Arooran Sugars Ltd**, for AY 11, AO set off entire income of ₹ 97.78 crore towards brought forward business loss and unabsorbed depreciation pertaining to earlier years as against the available amount of ₹ 7.04 crore relating to unabsorbed business loss and ₹ 34.24 crore pertaining to unabsorbed depreciation. The mistake resulted in excess set off of unabsorbed depreciation of ₹ 56.50 crore involving a tax effect of ₹ 26.42 crore.

d. In West Bengal, CIT-I Kolkata charge, in the case of **M/s West Bengal State Electricity Transmission Company Ltd.,** for AY 10 and AY 11, AO allowed carry forward of unabsorbed depreciation of ₹ 155.37 crore pertaining to AY 08 whereas the actual amount of unabsorbed depreciation was ₹ 79.00 crore. The mistake resulted in excess allowance of carry forward of unabsorbed depreciation of ₹ 76.37 crore involving potential tax effect of ₹ 25.96 crore

The above cases indicate that AOs committed mistakes in carry forward/set off of depreciation which resulted in under assessment of income.

3.12 Mistake in carry forward and set off of unabsorbed depreciation relating to amalgamating companies

As per the provisions of section 72A, the brought forward losses of amalgamated company will be eligible for set off against the income of the amalgamating company subject to fulfillment of certain conditions.

We found mistakes in carry forward/set off of unabsorbed depreciation relating to amalgamating companies in five cases in Andhra Pradesh, Kerala, Orissa and Tamil Nadu charges which resulted in under assessment of income to that extent involving tax effect of ₹ 35.45 crore (See Box 3.11).

Box 3.11: Illustrative case on mistake in carry forward and set off of unabsorbed depreciation relating to amalgamating companies

In Andhra Pradesh, CIT-III Hyderabad charge, in the case of **M/s SHV Energy Pvt. Ltd**, for AY 10, AO allowed carry forward and set off of unabsorbed depreciation of ₹ 49.51 crore relating to amalgamated company (M/s SHB Energy LPG Infrastructure Pvt. Ltd.) instead of correct amount of ₹ 17.64 crore. Besides, brought forward business loss of ₹ 14.18 crore (pertaining to AY 01) was also set off though no such loss was available for set off. Excess set off of ₹ 46.05 crore of unabsorbed depreciation/ brought forward business loss resulted in understatement of income to that extent involving potential tax effect of ₹ 15.65 crore.

The above cases indicate that AOs committed mistakes in carry forward/set off of depreciation relating to amalgamating companies which resulted in under assessment of income.

3.13 Irregular claim of capital expenditure as revenue expenditure

Capital expenditure is not allowable while computing taxable income, unless the law expressly so provides. It has been judicially held[15] that payment of non-compete fees falls within the capital field and therefore deduction cannot be allowed as a revenue expenditure. Instead, depreciation is allowed on Know-how, Patents, Copyrights, Trade marks, Licences, franchise or Commercial rights of similar nature.

During test check in Andhra Pradesh, Chandigarh, Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Orissa, Rajasthan and Tamil Nadu charges, we found that 26 assessees irregularly claimed and were allowed capital expenditure as revenue expenditure which resulted in under assessment of income to that extent involving tax effect of ₹ 344.97 crore (See Box 3.12).

Box 3.12: Illustrative cases on irregular claim of capital expenditure as revenue expenditure

a. In Maharashtra, CIT-3 Mumbai charge, in the case of **M/s Idea Cellular Ltd.** for the AY 10, AO allowed deduction of ₹ 543.98 crore on account of non-compete fee which was not allowable as revenue expenditure in terms of judicial pronouncement. Omission to disallow non-compete fee as revenue expenditure resulted in under assessment of income of ₹ 543.98 crore involving tax effect of ₹ 245.91 crore including interest. Further, during the year under consideration, the assessee had received fixed assets under finance lease. The assessee in his books of accounts had capitalized ₹ 147.62 crore being principal component paid to the

[15] Sharp Business System vs Commissioner Of Income Tax (Special Bench I of Delhi High Court – 05 November 2012)

lessor under finance lease and claimed as revenue expenditure which was reduced to ₹ 142.76 crore in the revised return and allowed accordingly. The assessee was entitled for depreciation on this amount and was not entitled for deduction of the amount as revenue expenditure. This omission resulted in under assessment of income of ₹ 121.35 crore with consequent short levy of tax of ₹ 54.86 crore including interest. Total short levy of tax worked out to ₹ 300.77 crore including interest.

b. In Tamil Nadu, CIT Salem charge, AO allowed **M/s Rasi Seeds (P) Ltd.**, for AY 10, ₹ 76.16 crore as sub-license fee debited to the Profit and Loss account. Audit observed that the assessee had incurred expenditure of ₹ 76.16 crore for entering into sub-licence agreement with **M/s Mahyco Monsanto Biotech (I) Ltd.** for employing the technology for BT Genes and for transfer of technology and use of trademark, which was in the nature of capital expenditure qualifying for depreciation @ 25 *per cent* only. Omission to treat the same as capital expenditure and restricting the deduction to the extent of eligible depreciation resulted in excess allowance of deduction of ₹ 57.12 crore involving tax effect of ₹ 19.41 crore. The ITD did not accept (August 2013) the audit observation stating that it was allowable as revenue expenditure. The reply is not tenable in view of codal provisions of the Act.

c. In Karnataka, CIT-LTU, Bangalore charge, in the case of **M/s Canara Bank,** for AY 09, AO allowed expenditure of ₹ 15.89 crore, charged to its Profit and Loss account, towards creation of new logo under brand building initiative undertaken with the objective of increasing the customer base. As the expenditure incurred involved enduring benefit to the assessee, it should have been treated as capital attracting depreciation admissible to an intangible asset. Omission resulted in under assessment of income of ₹ 11.91 crore involving short levy of tax of ₹ 5.35 crore.

The above cases indicate that AOs irregularly allowed claim of capital expenditure as revenue expenditure which resulted in under assessment of income.

3.14 Depreciation claimed and allowed on ineligible items

Depreciation is allowable on capital assets used for the purpose of business. However, no depreciation is allowable on land though it is a capital asset. Likewise, goodwill is not an intangible asset and hence will not qualify for depreciation allowance, as held by the Supreme Court[16].

We observed in Andhra Pradesh, Chandigarh, Delhi, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and West Bengal charges that 27 assessees claimed and were allowed depreciation on items which were not eligible for depreciation. Irregular allowance of

[16] M/s B.C. Srinivas Setty vs CIT (128 ITR 294)

depreciation resulted in under assessment of income to that extent involving tax effect of ₹ 34.29 crore (See Box 3.13).

Box 3.13: Illustrative cases on depreciation claimed and allowed on ineligible items

a. In West Bengal region, CIT-I Kolkata charge, **M/s Infinity InfoTech Parks Ltd.,** for AYs 08, AY 10 and AY 11, engaged in the business of 'development of IT Park and providing services relating thereto' was allowed depreciation on the unsold buildings built by them leading to allowance of depreciation on 'trading stock' and not on 'capital asset' used for the purpose of business. This resulted in total excess allowance of depreciation ₹ 16.19 crore involving tax effect of ₹ 5.50 crore. ITD did not accept (October 2013) the observation on the ground that the business of the assessee was to provide services and the said assets were being used for that purpose. This is not tenable as the business of the assessee was 'development of IT Park and providing services relating thereto' which included developing, constructing and selling of building 'unit wise' and 'floor space basis'. Hence, the assessee was not eligible for depreciation as the constructed building had no use for the purpose of the business of the assessee.

b. In Karnataka, CIT-I, Bangalore charge, in the case of **M/s Fibres and Fabrics International Pvt. Ltd.**, for AY 07 and AY 08, revealed that the assessee was allowed depreciation aggregating to ₹ 8.61 crore, claimed on goodwill, though it did not qualify as an intangible asset. The mistake resulted in under assessment of ₹ 8.61 crore, involving a total tax effect of ₹ 4.06 crore.

The above cases indicate that AOs allowed depreciation on ineligible items which resulted in under assessment of income.

3.15 Irregular claim of depreciation against income fully exempt from tax

No deduction is allowable against the income which is exempt from tax. Further, in the case of trust/ society whose income is claimed as exempt by application of income under Section 10 or 11, no depreciation is admissible as it will amount to allowance of double deduction.

We observed in Bihar, Haryana, Karnataka, Tamil Nadu, Uttar Pradesh and Uttarakhand charges that 48 assessees claimed and were allowed depreciation against income fully exempt from tax which resulted in under assessment of income to that extent involving tax effect of ₹ 27.28 crore (See Box 3.14).

Box 3.14: Illustrative cases on Irregular claim of depreciation against income fully exempt from tax

a. In Uttarakhand, CIT Dehradun charge, **M/s Institute of Management Studies** was registered under the Societies Registration Act 1960 and availed exemption for AY 11 under Section 12AA of the Act wherein the income of the assessee was exempt. However, AO while finalising the assessment irregularly

allowed depreciation of ₹ 10.67 crore which resulted in double deduction to that extent involving tax effect of ₹ 3.30 crore.

b. In Tamil Nadu, CIT-II Madurai charge, in the case of **M/s Govel Trust,** for AY 11, AO allowed depreciation of ₹ 6.75 crore on assets whose cost was already claimed as application of income which resulted in allowance of double deduction involving tax effect of ₹ 2.07 crore. ITD did not accept (August 2013) the observation stating that the scheme of taxation of Charitable Trust was different from taxation of other taxable entities. The deduction of depreciation did not amount to double benefit/ double deduction. The reply is not tenable as the case law reported in 328 ITR 421 (P&H) mainly dealt with granting of exemption for the Profits and Gains from business incidental to the objectives of the Trust u/s 11(1), (2) and (3) when the exemption contemplated u/s 11(4A) was not applicable, and not about the allowing of depreciation to the Trust.

Thus, AOs irregularly allowed depreciation against income fully exempt from tax which resulted in under assessment of income.

3.16 Allowance of depreciation on non-commercial vehicle

In case of new commercial vehicles, acquired on or after the 01 January, 2009 but before the 01 October 2009 and put to use before the 01 October 2009 for the purposes of business or profession, depreciation is allowable at the rate of 50 per cent.

We observed in Gujarat, Karnataka, Kerala and Tamil Nadu charges that 29 assessees was allowed depreciation on non-commercial vehicle at higher rate applicable to commercial vehicles which resulted in under assessment of income to that extent involving tax effect of ₹ 10.91 crore (See Box 3.15).

Box 3.15: Illustrative case on Allowance of depreciation on non-commercial vehicle

In Tamil Nadu, CIT-LTU Chennai charge, **M/s Sundaram Finance Ltd.,** a leasing and finance company having income from lease, rent, bills discounting and service charges, leased out motor vehicles either on operating lease or finance lease only to its customers. For AY 11, the assessee availed depreciation of ₹ 25.72 crore on motor cars at the rate of 50 *per cent* as against ₹ 7.72 crore at the normal rate of 15 *per cent*. Since the company was not using these vehicles in the business and was not running them on hire, the allowance of depreciation thereon at higher rate was not in order. This resulted in excess allowance of depreciation of ₹ 18.01 crore involving short levy of tax of ₹ 8.26 crore.

ITD replied (August 2013) that depreciation at 50% is allowable on new commercial vehicle as per Sl. No.3 (via) of depreciation schedule. The reply is not tenable as the motor cars were not used for the purpose of running them on hire, they are not required to be treated as commercial vehicles for the purpose of allowance at higher rate of depreciation.

Thus, AOs allowed depreciation on non-commercial vehicle at higher rate applicable to commercial vehicles which resulted in under assessment of income.

3.17 Depreciation claimed against let out property

The Act allows 30 *per cent* standard deduction and interest paid on borrowed capital to cover all expenditure related to the income under the head "Income from House Property". Hence, no depreciation is admissible thereon.

In Karnataka, Tamil Nadu, Bihar, Uttarakhand charges, we found that six assessees irregularly claimed depreciation against let out property which resulted in under assessment of income to that extent involving tax effect of ₹ 1.85 crore (See Box 3.16).

Box 3.16: Illustrative case on Depreciation claimed against let out property

In Karnataka, CIT-III Bangalore charge, in the case of **M/s Renaissance Holdings and Developers Pvt. Ltd.** for AY 10, AO allowed depreciation of ₹ 2.02 crore on buildings let out, though its rental income was assessed under the head 'Income from House Property'. Omission resulted in under assessment of income to that extent, involving tax effect of ₹ 85.81 lakh.

3.18 Other mistakes relating to depreciation

While computing tonnage income of a tonnage tax company under section 115VL, provisions of Section 30 to 43B shall apply as if every loss, allowance or deduction had been given full effect to for that previous year itself. Assesses/AOs are also required to comply with certain other provisions relating to depreciation in their claims for depreciation.

In Andhra Pradesh, Chandigarh (UT), Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu and West Bengal, we noticed that 36 assessees had not complied with certain other provisions relating to depreciation in their claims for depreciation which involved tax effect aggregating ₹ 14.73 crore (See Box 3.17).

Box 3.17: Illustrative case relating to Tonnage Tax Scheme

In Andhra Pradesh, CIT-I Vishakhapatnam charge, **M/s Eversun Sparkle Maritime Services Pvt. Ltd.** opted out of Tonnage Tax scheme from AY 11. However, unabsorbed depreciation pertaining to the period of tonnage tax scheme i.e., from AY 06 to AY 10 was allowed to be carried forward which is in contravention to the aforesaid provisions. The mistake resulted in understatement of income of ₹ 5.44 crore involving tax effect of ₹ 1.85 crore. ITD accepted (October 2013) the audit observation and took remedial action.

3.19 Mistakes in grant of additional depreciation

Under the Act[17], an assessee engaged in the business of manufacture or production of any article or thing is entitled to additional depreciation equal to twenty *per cent* of the actual cost of any new machinery or plant (other than ships, land, aircraft etc.), which has been acquired and installed after 31 March 2005 subject to certain conditions prescribed under Section 32(1)(iia) of the Act. From AY 2013-14, assessees engaged in the business of generation or generation and distribution of power are also eligible for additional depreciation.

It was noticed in Andhra Pradesh, Bihar, Chandigarh, Chhattisgarh, Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Rajasthan, Tamil Nadu, Uttarakhand and West Bengal charges that while computing additional depreciation, AOs committed mistakes in grant of additional depreciation in 99 cases resulting in under assessment of income to that extent involving tax effect of ₹ 656.19 crore (See Box 3.18).

Box 3.18: Illustrative cases on mistakes in granting additional depreciation

a. In West Bengal, CIT-I Kolkata charge, in the case of **M/s West Bengal State Electricity Distribution Co Ltd.,** for AY 09 and AY 10, AO allowed additional depreciation of ₹ 362.47 crore and ₹ 46.40 crore respectively on new plant and machinery. The assessee was engaged in the business of 'generation and distribution of electricity' which did not fall in the category of manufacturing of any article and things and as such was not eligible for additional depreciation. Irregular allowance of additional depreciation of ₹ 408.87 crore resulted in under assessment of income to that extent involving short levy of tax aggregating ₹ 138.97 crore.

b. In Tamil Nadu, CIT-LTU Chennai charge, in the case of **M/s Neyveli Lignite Corporation**, for AY 10 and AY 11, AO allowed additional depreciation of ₹ 162.30 crore and ₹ 109.35 crore respectively on dumper, crane, dozer, crawler and pick & carry mobile crane, etc. We noticed that the assessee was engaged in coal mining and power generation which were not manufacturing activity. Thus, the assessee was not eligible for additional depreciation. Omission resulted in short levy of tax aggregating ₹ 92.34 crore for both the AYs.

On this being pointed out, ITD replied (August 2013) that Supreme Court held[18] that the process of extraction of coal would amount to 'production'. The reply is not tenable as new sub-section (29BA) to Section 2, inserted with effect from 01 April 2009, defined 'Manufacture' to mean a change in non-living physical object or article or thing, resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

[17] As per provision below Section 32(1)(iia) of the Income Tax Act.
[18] CIT vs SESA Goa Ltd., (271 ITR 331)

bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure. Since the trade name of coal or physical or chemical properties are not changed in coal mining, the assessee was not entitled to claim additional depreciation on these equipments.

c. In Gujarat, CIT-I Vadodara charge, **M/s Gujarat State Electricity Corporation Ltd** engaged in generation of power, for AY 11, was allowed depreciation of ₹ 642.14 crore which included additional depreciation of ₹ 203.43 crore on new plant and machinery purchased and installed for generation of power by the assessee during the relevant previous year. Since plant and machinery used for generation of power was not covered under clause (ii) of Section 32(1) of the Act, the assessee was not eligible for additional depreciation. The incorrect allowance of additional depreciation of ₹ 203.43 crore resulted in excess allowance of MAT credit of ₹ 69.14 crore.

The AO did not accept (August 2013) the observation stating that by virtue of second proviso to the Rule 5(1A) of the Income Tax Rules, 1962, the company had an option to claim depreciation as if the provision of clause (ii) of section 32(1) of the Act were applicable subject to the conditions that the same rates of depreciation are to be applied for all the subsequent years. Since the assessee has been claiming depreciation as per clause (ii), the assessee had claimed additional depreciation u/s 32(1)(iia) correctly. The reply is not tenable as the Act specifically excluded assets under 'generation of electricity' covered under clause (i) of section 32(1) from availing additional depreciation. Option given under Rule 5(1A) of the Income Tax Rules for units generating electricity is meant for depreciation under section 32(1) and not for additional depreciation covered under section 32(1)(iia) which is a separate provision for promoting manufacturing units. Rules framed under the Act cannot over rule the provisions of the same Act. Further, AO disallowed additional depreciation claimed on power generating equipments by Gujarat Alkalies & Chemicals Limited assessed in the same Circle for AY 11.

d. In Delhi, CIT-V Delhi charge, **M/s NTPC Sail Power Company Pvt. Ltd.**, engaged in the business of power generation, for AY 11, was allowed additional depreciation of ₹ 853.89 crore on plant and machinery partly at 20 *per cent* and partly at 10 *per cent*, though no additional depreciation was allowable. Omission resulted in excess allowance of depreciation of ₹ 203.17 crore involving potential tax effect of ₹ 69.06 crore.

Thus, AOs committed mistakes in grant of additional depreciation resulting in under assessment of income.

3.20 Non claim of additional depreciation during tax holiday

From 2002-03 onwards, depreciation is mandatory and shall be allowed or deemed to have been allowed irrespective of claim made in the Profit & Loss Account or not. In respect of newly established undertakings in Free Trade Zones, units established in Special Economic Zones, newly established 100 *per cent* export-oriented undertakings etc., the Written Down Value (WDV) of the assets used for the purpose of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the depreciation for the tax holiday period.

We found in Andhra Pradesh, Chandigarh, Maharashtra and West Bengal charges that in case of 13 assessees, AO did not allow additional depreciation during tax holiday which resulted in over assessment of income to that extent involving tax effect of ₹ 3.33 crore (See Box 3.19).

Box 3.19: Illustrative case on non claim of additional depreciation during tax holiday

In Maharashtra, CIT-Central Circle 3 Mumbai charge, **M/s Elder Pharmaceuticals Ltd.,** for AY 09 and AY 10, engaged in manufacturing of pharmaceutical products having units at Uttarakhand and Himachal Pradesh being in tax holiday, was exempt from tax under section 80IC of the Act. The assessee made additions of ₹ 16.94 crore and ₹ 9.96 crore to the block of asset 'Plant and Machinery' during the relevant previous years on which depreciation admissible was allowed but additional depreciation of ₹ 3.27 crore in AY 09 and ₹ 1.89 crore in AY 10 was not allowed. Omission resulted in overstatement of income to that extent involving potential tax effect of ₹ 1.59 crore.

3.21 Recommendation

We recommend that CBDT may devise a mechanism to improve the quality of assessments and explore the possibility of capacity building for Assessing Officers for reducing the incidence of mistakes.

The Ministry stated (May 2014) that CBDT has taken various administrative steps to improve upon the quality of assessments till now which are as follows:

- *CBDT has laid emphasis on improving the quality of assessments by incorporating the strategy for ensuring quality in scrutiny assessment cases in the Central Action Plan (CAP) document. Post-assessment, practice of review and inspection has been standardized therein. Each CCsIT/DGsIT is required to forward analysis of 50 quality assessments of his charge along with suggestions for improvement to the concerned Zonal Member. Further, quality cases are being compiled and published annually which provides valuable guidance to AOs to*

strive upon to improve quality of orders being framed. These steps have been initiated from FY 2011-12 onwards.

- *To discourage AOs from making high-pitched assessments, Member (IT) issued a communiqué to all CCsIT/DGsIT wherein it was emphasized upon that in cases of deliberate omission or commission on part of AO in making frivolous additions, the supervisory officer may bring the matter to the notice of Competent Authority for administrative action. Supervisory officers were also advised to play effective role in this regard.*
- *Range heads are required to effectively monitor cases during the progress of scrutiny assessment and in appropriate cases, they may invoke provisions of section 144A of the IT Act to issue suitable directions to the AO to enable him to frame a judicious order.*
- *System of Review and Inspection by the supervisory officers, post-assessment, is also used as an effective tool to monitor the quality of scrutiny-assessments, being framed.*

Further regarding initiatives to be taken to enhance capacity building of AOs so as to equip them to handle assessment work, the Ministry (May 2014) also stated that specific inputs may kindly be taken from Director General of Income Tax (HRD) as this issue is being specifically being dealt by that Directorate.

Audit is of the view that the Ministry should pursue the matter regarding enhancement of capacity building with Director General of Income Tax (HRD) so that mistakes in assessments are minimised.

The Ministry while describing the role of Director General of Income Tax (HRD) in imparting various training at all levels, emphasized (June 2014) the implementation of National Judicial Reference System for enhancement on knowledge.

Chapter IV: Allowance of Amortisation

4.1 Introduction

Sections 35D, 35DD and 35DDA of the Act provides for amortisation on preliminary expenses, expenditure in case of amalgamation or demerger and expenditure incurred under voluntary retirement scheme respectively. Present chapter deals with cases relating to amortisation where AOs did not apply relevant provisions correctly. Category wise details of mistakes in assessment are shown in Table 4.1.

Table 4.1: Nature of mistakes with its tax effect

	Nature of Mistakes and Para Number of the Report	Cases	Tax effect (₹ in crore)
1.	Claim of amortisation expenses u/s 35D *(Para 4.2)*	12	6.70
2.	Claim of amortisation expenses u/s 35DDA *(Para 4.3)*	4	5.38
3.	Claim of amortisation expense u/s 35ABB *(Para 4.4)*	1	15.47
	Total	**17**	**27.55**

4.2 Mistake in claim of amortisation expenses under section 35D

Section 35D of the Act provides that where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs, after the 31 March 1970, any expenditure specified in sub-section (2) thereunder, before the commencement of his business, or after the commencement of his business, in connection with the extension of his 'industrial undertaking' or in connection with his setting up a new unit, shall be allowed a deduction of an amount equal to one fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the business commences or the extension is completed or the new unit commenced production. The word 'industrial' was omitted by the Finance Act, 2008, from 01 April 2009 thus making the normal 'undertaking' like *service providers* eligible for deduction under section 35D for the expenses incurred from AY 10 onwards.

Further, the said expenditure is, *inter alia*, allowed at five *per cent* of the "capital employed" for the purpose of extension/new business, being the aggregate of share capital and long term borrowings (including debentures) having a tenure of minimum seven years.

Test check of assessment records in Andhra Pradesh, Chhattisgarh, Gujarat, Karnataka, and Tamil Nadu charges revealed that 12 assessees irregularly claimed and were allowed amortisation expenses under section 35D which resulted in under assessment of income to that extent involving tax effect of ₹ 6.70 crore (See Box 4.1)

Box 4.1: Illustrative cases on mistakes in claim of amortisation

a. In Karnataka, CIT-III Bangalore charge, **M/s Subex Ltd.,** for AY 09, had acquired two foreign subsidiaries at an investment of ₹ 1,420.66 crore, by raising capital through issue of Global Depository Receipts (GDRs)[19] and Foreign Currency Convertible Bonds (FCCBs), having a tenure of only five years. The assessee incurred ₹ 57.79 crore as expenditure thereon and claimed deductions. AO allowed deduction of ₹ 11.37 crore[20] as amortisation. For the purpose of reckoning capital employed, only the value of GDRs was eligible, since FCCBs had lesser tenure than prescribed in the Act. Hence, the expenditure eligible for amortisation worked out to ₹ 58.64 lakh, being five *per cent* of ₹ 11.73 crore, the value of GDRs and thereby allowable deduction would be ₹ 11.73 lakh (being 20 *per cent* of ₹ 58.64 lakh*)* instead of ₹ 11.37 crore. Excess allowance of deduction resulted in over assessment of loss of ₹ 11.25 crore, involving potential tax effect of ₹ 3.82 crore.

b. In Gujarat, CIT-I Ahmedabad charge, **M/s Bhagwati Banquets & Hotels**, engaged in Hotel business (service sector), for AY 09 to AY11, claimed and was allowed deduction aggregating ₹ 3.51 crore, being one fifth of total of IPO expenses written off of ₹ 5.85 crore, the proceeds of which was used for putting up a new project at Surat. Since the assessee's business was in the nature of providing service (hospitality) and was not engaged in any 'industrial' activity as envisaged in section 35D(1)(ii) of the Act and the expenses claimed were relating to the period prior to AY 10, assessee was not eligible for the deduction. The mistake resulted in incorrect allowance of deduction of ₹ 3.51 crore involving tax effect of ₹ 1.62 crore including interest. AO did not accept (September 2012) audit observation stating that no definition of industrial undertaking was given in the provisions of 35D. The reply was not tenable as the word "industrial" was removed from the provision with effect from 01 April 2009 permitting assessees engaged in the business of any sector to avail the benefit u/s 35D.

Thus, AOs allowed irregular amortisation expenses under section 35D which resulted in under assessment of income.

4.3 Mistakes in claim of amortisation expenses u/s 35DDA

Section 35DDA of the Act provides that where an assessee incurs any expenditure by way of payment to an employee under any voluntary retirement scheme, he shall be allowed deduction equal to one fifth of such expenditure for a period of five years beginning with the year in which such expenditure is incurred. While computing tonnage income of a tonnage tax company under section 115VG, provisions of section 30 to 43B shall apply as if every loss, allowance or deduction had been given full effect to for that previous year itself.

[19] Raising capital in international markets by issuing shares in foreign countries
[20] As against one-fifth deduction of ₹11.56 crore

During test check in Orissa, Rajasthan and West Bengal charges, we found that four assessees irregularly claimed and were allowed expenses towards amortisation under section 35DDA which resulted in under assessment of income to that extent involving revenue impact of ₹ 5.38 crore (See Box 4.2).

Box 4.2: Illustrative case on mistakes in claim of amortisation u/s 35DDA

In Rajasthan, CIT Kota charge, **M/s Chambal Fertilizers and Chemicals Ltd.** claimed and was allowed deduction of ₹ 60.42 lakh every year from AY 08 to AY 10, being one-fifth of ₹ 3.02 crore of the expenditure incurred on VRS expenses related to ISCL, India Steamship Ltd (shipping division) which was merged (amalgamated) with the assessee company from 01 September 2004 and the expenditure of ₹ 3.02 crore pertained to the period prior to merger of ISCL (shipping division) under the scheme of voluntary retirement. We observed that assessee company (resultant company) opted for tonnage tax scheme under Chapter XII G of the Act in respect of its shipping division from 01 April 2005 and as such the assessee was not entitled for amortisation of any expenses incurred on VRS being the income of its shipping division computed in the manner laid down under the section of 115VG. Irregular allowance of amortisation of VRS expenses resulted in under assessment of income of ₹ 1.81 crore (₹ 60.42 lakh per year from AY 08 to AY 10) involving tax effect of ₹ 68.38 lakh including interest. ITD accepted the observation and stated that remedial action u/s 148 was being taken.

Thus, AOs allowed irregular amortisation expenses under section 35DDA which resulted in under assessment of income.

4.4 Other interesting case

Under section 35ABB of the Act, amortisation is allowed in respect of any expenditure of a capital nature, incurred for acquiring any right to operate telecommunication services either before the commencement of the business or thereafter in equal installments for each of the relevant previous years. For this purpose, in a case where the license fee is actually paid before the commencement of the business to operate telecommunication services, "relevant previous years" means the previous years beginning with the previous year in which such business commenced; in any other case, the previous years beginning with the previous year in which the licence fee is actually paid, and the subsequent year or years during which the licence for which the fee is paid, shall be in force (See Box 4.3).

Box 4.3: Illustrative case on incorrect allowance of amortisation

In CIT-3, Mumbai charge, scrutiny assessment of a company, **M/s Idea Cellular Ltd.** for the AY 10, had claimed and was allowed deduction of ₹ 144.45 crore on account of amortisation cost under Section 35ABB in respect of fixed licence fees.

This included amortised cost of ₹ 34.23 crore in respect of licence fee of ₹ 684.59 crore paid for circles which had not yet commenced operations. In view of the provision ibid, deduction of ₹ 34.23 crore on account of amortisation of licence fees was not an allowable deduction. Omission to disallow the deduction resulted in under assessment of income of ₹ 34.23 crore with consequent short levy of tax of ₹ 15.47 crore including interest of ₹ 3.84 crore under Section 234B.

4.5 Recommendation

We recommend that CBDT may devise a mechanism to improve the quality of assessments and explore the possibility of capacity building for Assessing Officers for reducing the incidence of mistakes.

The Ministry reiterated (May 2014) its comments to the recommendations made in Para 3.21 of this Report.

Chapter V: Internal Control Mechanism

5.1 Introduction

Internal control is necessary to improve policy formulation and implementation. An effective system of internal controls serves as a means to obtain reasonable assurance that the steps and action undertaken by the ITD meet their established goals and objectives. We have tried to highlight the control issues of the ITD relating to allowance of depreciation and amortisation in this Chapter.

There is no mechanism available in the ITD to verify the veracity of claim of the assessees for depreciation in respect of additions made to the block of assets in previous year.

5.2 Non-availability of data relating to additions made to fixed assets during the relevant previous year

Section 44 AB of the Act requires the assessee to furnish Tax Audit Report (TAR) in Form No 3CD vide Rule 6G(2) of Income Tax Rules, 1962 by an accountant along with the return of income. Further, Clause 14(d) of TAR requires the assessee to furnish the details of additions to/deletions from the fixed assets during the previous year viz., the date of purchase, the date when it was put to use, subsidy/ grant/ reimbursement received thereon, change in rate of exchange of currency, etc. Verification of ownership and usage of assets are important aspects to be examined before allowing depreciation.

The requirement of furnishing details of ownership and usage of assets under Section 32(1) of the Act, along with the return of income, was removed with effect from 01 April 1988, with the introduction of the concept of block of assets. Further, in the present system of mandatory e-filing of returns, there is no provision for furnishing the details of ownership and usage of assets, except in respect of those cases which are selected for scrutiny assessments. Even in such cases, only the basic details of assets are required to be furnished in the TAR without attaching documentary evidence thereto.

We observed in Chhattisgarh, Karnataka, Madhya Pradesh and West Bengal charges, that 165 assessees made additions of ₹ 1,038.92 crore to fixed assets during the relevant previous year but did not disclose in Form 3CD, Clause 14(d), inter alia, the relevant details such as the dates on which additions were made and the assets put to use for more / less than 180 days etc, which put a question mark on the correctness of the claim of the

assessee with regard to admissibility of depreciation at full/half rate, on the assets acquired, classification thereof under the correct block and determination of the cost thereof actually borne by the assessee (See Box 5.1).

Box 5.1: Illustrative cases on non-availability of data relating to additions to fixed assets made during the relevant previous year

a. In Madhya Pradesh, Indore charge, **M/s Sharda Solvent Ltd,** for AY 11, made additions of ₹ 26.12 crore and irregularly claimed and was allowed depreciation of ₹ 3.58 crore on new plant and machinery, the details thereof were not furnished at the time of assessment stating that it was under preparation.

b. In Chhattisgarh, Bilaspur charge, **M/s Mangal Sponge & Steel Pvt Ltd**, for AY 10, claimed and was allowed depreciation of ₹ 1.05 crore @ 100 *per cent* on electrostatic precipitator as per computation whereas in Annexure III forming part of 3CD report and Schedule 'E' of balance sheet, the depreciation worked out to ₹ 52.53 lakh @ 50 *per cent* and ₹ 40.44 lakh @ 15 *per cent* respectively. We observed that no evidence regarding purchase of the asset and putting the same to use was available in the assessment records. In the light of inconsistent claim of depreciation and in the absence of any evidence, the AO should have disallowed the entire depreciation.

In respect of cases pertaining to Karnataka charge, ITD stated that the required details were thoroughly verified during assessments. In one case, AO pointed out that the books of accounts, bills and vouchers maintained by the assessees often ran into large volume of data which was not practically possible to check and retain all the available data and as such the books of accounts/vouchers were returned to the assessees after a test check. The reply is not tenable for the reason that nothing was forthcoming from Form 3CD or available in the assessment records to indicate that the claims of depreciation had been regulated correctly after test check of the requisite details.

The majority of the cases are summarily processed and not selected for scrutiny by ITD. The TAR did not always provide or keep on record to indicate that the requisite details were called for at the time of assessment by AOs for verification of additions made to the block of assets during the relevant previous year. There is no mechanism available in ITD to verify the veracity of claim of the assessees for depreciation in respect of additions made to the block of assets irrespective of the fact that the case was selected for scrutiny or not.

In all assessment cases including those where the books of accounts, bills and vouchers maintained by the assessees are voluminous, AO should ensure that

the TAR in the prescribed format contains the requisite details and is brought on record. CBDT may consider modifying the e-filing of returns so that requisite information/records are available with ITD.

ITD does not have any mechanism/database or maintain register/records for keeping a watch over the correct status of unabsorbed depreciation carried forward for future set off despite CBDT's specific instruction issued in September 2007 in this regard.

5.3 Non-linking/availability of records relating to unabsorbed depreciation of earlier years

The Act provides for carry forward of unabsorbed depreciation for set off against the income of the following AYs. AST Module, being used by the ITD to fulfill the requirement of summary processing of cases, does not provide for automatically picking up data from earlier years to ensure the correctness of the claims for set off of unabsorbed depreciation. As regards scrutiny assessments, AOs verify the claim made by the assessees from the records available with them or accept the same without any verification.

CBDT has also issued instruction[21] in this regard for the AOs to carry out necessary verifications at the time of scrutiny assessments with reference to physical records and link past assessment records so as to ensure the correctness of the claims of brought forward losses and depreciation. Audit has been regularly pointing out mistakes in allowing set-off of brought forward unabsorbed depreciation even then such mistakes persist.

We observed in Gujarat and West Bengal charges that the AOs allowed set off of unabsorbed depreciation in 8 cases without examining the genuineness of the assessees claim for which assessees were not eligible at all or were eligible for comparatively more or less amount of unabsorbed depreciation (See Box 5.2). In this regard, paragraph 3.11 of this report may also be referred to.

Box 5.2: Illustrative cases on Non-linking/availability of records relating to unabsorbed depreciation of earlier years

a. In West Bengal, CIT-I Kolkata charge, **M/s West Bengal State Electricity Distribution Co. Ltd**, for AY 10 and AY11, was allowed carry forward of depreciation aggregating ₹ 817.74 crore pertaining to AY 08 for future set off as per relevant TARs as against the actual amount of ₹ 222 crore available for carry forward from the AY 08 as per notification[22] issued after restructuring of

[21] Instruction.9/2007 dated 11 September 2007
[22] Govt of West Bengal Notification 327-PO/O/III/3R-29/2006 dated 13 Oct 2008

West Bengal State Electricity Board into transmission and distribution companies. Thus, there was lack of internal control to verify the figures provided by the Chartered Accountants in respect of carry forward of unabsorbed depreciation of ₹ 595.74 crore involving potential tax effect of ₹ 202.49 crore.

b. In Gujarat, CIT I Vadodara charge, AO disallowed the claim of **M/s Chemstar Organics India Ltd** for depreciation of ₹1.66 crore for AY 11 stating that the company's operation had been suspended for the last 7 years due to bank and GIIC having taken adverse possession of the units and hence there was no business or manufacturing activities by the company. In doing so, the AO did not take any action in respect of the immediate previous six years. This resulted in excess allowance of carry forward of unabsorbed depreciation of ₹ 6.94 crore involving short levy of tax of ₹ 2.36 crore.

On the issue of availability of any mechanism/ register/ record regarding unabsorbed depreciation within the ITD, 35 AOs in respect of Delhi charge confirmed the fact that no mechanism/ register/ record was available in ITD to verify the genuineness of the claim of unabsorbed depreciation by the assessees in their return of income.

ITD does not have any mechanism/ database or maintain register/ records for keeping a watch over the correct status of unabsorbed depreciation carried forward for future set off despite CBDT's specific instruction issued in September 2007 in this regard. AO either rely on the information provided in the return of income or the past records, made available by the assessee itself. Similar is the situation in respect of unabsorbed depreciation in the case of amalgamation and demerger of a Company. ITD has no mechanism to validate the data on unabsorbed depreciation relating to earlier years, furnished by the assessee in its e-return or AST Module.

ITD may maintain the records of carry forward of unabsorbed depreciation for future set off in respect of each assessee including the amalgamation and demerger cases of companies, which would help in assessing and reviewing their impacts, from time to time to minimize mistakes in carry forward and set off of unabsorbed depreciation pertaining to earlier years at AO's level. This can be achieved if ITD introduces a section in Individual Running Ledger Account (IRLA) or in profile of assessees in ITD System to keep and maintain the data regarding unabsorbed depreciation or loss available to assessee which may be linked with the loss determined in the current AY so that the data is updated on real time basis and unabsorbed depreciation allowed set off correctly.

ITD may make it mandatory to all AOs to obtain a statement of unabsorbed depreciation assessment year-wise as per latest assessment order and make

it part of the assessment order after due verification at the time of finalizing the assessment.

ITD does not have any effective mechanism to ensure the correctness of WDV carried over for the purpose of allowance of depreciation or set off of unabsorbed depreciation thereon. In absence of this, AOs committed mistakes in carrying over the WDV.

5.4 Need for verification of Written Down Value

In the case of any block of assets, depreciation at prescribed rate is admissible on the closing written down value (WDV). Closing WDV, in the case of assets acquired before the previous year, means the actual cost to the assessee less all depreciation actually allowed to him under the Act which would naturally be the opening WDV of that block of asset for the next/current year and so on. The depreciation statement given in the TAR in Form 3CD does not take cognizance of change in WDV due to revision or appeal effect etc. Further, it is not mandatory for AOs to obtain the depreciation statement of earlier years and verify the WDV considering allowance and disallowance of depreciation in earlier years.

We noticed mistakes in carrying over the WDV in six cases in Andhra Pradesh, Bihar, Maharashtra and Tamil Nadu. In this regard, paragraph 3.7 of this report may also be referred to.

ITD does not have any effective mechanism to ensure the correctness of WDV carried over for the purpose of allowance of depreciation or set off of unabsorbed depreciation thereon.

An effective mechanism may be evolved to verify and ensure the correctness of written down value of the block of assets carried over.

Recommendations

We recommend that

a. CBDT may consider modifying the e-filing of returns so that information relating to additions to fixed assets made during the relevant previous year is available with AOs at the time of assessment.

The Ministry stated (May 2014) that in the return of income of assessees having business income (ITR – 4, 5 and 6) the income from business is computed in Schedule BP of such returns. Item no. 12 of schedule BP allows for deduction on account of depreciation u/s 32 of the Act. The computation of such depreciation as per the Act is provided in separate schedules DPM (Depreciation on Plant and Machinery), DOA (Depreciation on other Assets) and DEP (Summary of

Depreciation on Assets) of the return. Schedule DPM and schedule DOA under block of assets has separate columns for addition of fixed assets for a period of 180 days or more (column 4 in both the schedules) and for addition of fixed assets for a period of less than 180 days (column 7 in both the schedules) for the purpose of computation of depreciation. Thus, the information relating to addition to fixed assets made during the previous year is duly captured in the returns of income for each block of asset separately. In addition, for auditable cases, the audit report furnished by the Chartered Accountant has a detailed schedule of assets including additions if any, at an individual asset level. These audit reports are also e-filed and are available to AO.

Audit is of the view that despite capturing details of unabsorbed depreciation in e-filing, mistakes in assessments still persists. The Ministry may make efforts to minimize the mistakes in future.

The Ministry while reiterating its earlier stand, stated (June 2014) that the steps taken in annual Central Plan documents for error free assessment would reduce/minimize mistakes committed by AOs

b. CBDT may make it mandatory for all AOs to obtain a statement of unabsorbed depreciation assessment year-wise as per latest assessment order and make it a part of the assessment order after due verification at the time of finalizing the assessment.

c. CBDT may evolve an effective mechanism to verify and ensure the correctness of written down value of the block of assets carried over.

*In respect of recommendations **b** and **c** above, the Ministry stated (May 2014) that in cases subjected to detailed scrutiny, AOs are required to do in-depth examination of all relevant issues which have a bearing on the assessment being framed. Allowing proper set-off of unabsorbed depreciation, being brought forward from earlier assessment years or arriving at correct value of Written-down value are amongst the important issues which an AO is required to examine. In this regard, AO is expected to refer to documents of the taxpayer and more importantly, the records being maintained in the Department to arrive at correct figures. Further, the assessments being framed are subject to Review and Inspection (though not in all cases) by the supervisory authorities. In cases, where any loss of revenue due to lapses on part of AO is observed, remedial measures as per provisions of the Act are taken to safeguard the interest of revenue. Also, CBDT has been repeatedly laying emphasis on passing of 'zero error assessments' from audit point of view. Therefore, as the*

existing mechanism is largely satisfactory, no specific intervention is needed.

Audit is of the view that the instructions issued by the CBDT so far are not serving the purpose as mistakes in allowance of depreciation still continue to occur. Audit reiterates its stand for making a statement of unabsorbed depreciation and written down value of the block of assets carried over mandatory as part of latest assessment order after due verification. This may also be included in check list of Internal Audit Wing of ITD for effective monitoring.

New Delhi
Dated: 30 July 2014

(MANISH KUMAR)
Principal Director (Direct Taxes)

Countersigned

New Delhi
Dated: 30 July 2014

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

Appendix-1

(Refer para 1.6)

Legal Framework

Section	Brief of the provisions
32(1)	Depreciation is allowed on fixed assets viz buildings, machinery, plant or furniture, being tangible assets and know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, subject to fulfillment of following condition; **1.** The assets must be owned, wholly or partly, by the assessee, **2.** The asset should be actually used for the purpose of business or profession of the assessee, **3.** Asset should be used during the relevant previous year Depreciation is to be computed at the prescribed percentage provided in Appendix-I r.w.r. 5(1) of ITR on the Written Down Value (WDV) of the asset, except for power sector, which in turn is calculated with reference to actual cost of the assets. In case of undertaking engaged in generation or generation and distributors of power, the depreciation will be allowed on actual cost (i.e., on straight line method) at the rates provided in Appendix IA read with Rule 5(IA). However assessee can exercise option before due date of filing of return u/s 139(1) to claim depreciation on Written Down Value Method at the rates provided in Appendix I.
43(6) **(WDV)**	'Written Down Value' means **1.** In the case of assets acquired in the previous year, the **actual cost** to the assessee. **2.** In the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act. **3.** In the case of any **block of assets**, the WDV shall be computed in the following manner: (i) The aggregate of all the assets falling within a block at the beginning of the year shall be calculated. (ii) The aggregate of written down value of the assets shall be increased by the actual cost of assets falling within that block which was acquired during the previous year. (iii) The sum so arrived shall be reduced by the money payable in regard to any asset which is sold, discarded or destroyed during the previous year, (iv) In case, the written down value, of any block is reduced to 'Nil', then no depreciation will be allowed.

2(11) (Block of assets)	Act defines the term "Block of assets" as a group of assets falling within a class of assets comprising tangible assets like being buildings, machinery, plant or furniture and intangible assets like being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature in respect of which the same percentage of depreciation is prescribed.
43(1) (Actual Cost)	"Actual Cost" of an asset means its actual cost to the assessee including the expenses on installation, etc. If the part of the cost is met directly or indirectly by the third person, the cost to the assessee will be reduced by such amount born by that person. Besides, **(i)** If An asset is acquired by way of gift or inheritance, its actual cost to the assessee shall be its actual cost to the previous owner as reduced by the depreciation actually allowed in respect of this asset for any assessment year up to the assessment year 1988-89. The depreciation that would be allowable as if that asset was the only asset in the relevant block of assets. **(ii)** If any amount if paid or payable as interest in connection with the acquisition of any asset, the amount of interest related to the period after the asset has been first put to use, shall not be included in the cost of the assets.
Proviso 1 to Section 32(1)	Where an asset acquired during the previous year is put to use for the purpose of business or profession for a period of less than 180 days in that previous year, depreciation allowance shall be restricted to 50% of the amount calculated at prescribed rates.
Proviso 4 to Section 32(1)	Aggregate deduction in respect of depreciation of tangible or intangible assets allowable to predecessor and the successor in the case of succession or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger shall not exceed the depreciation for the year calculated at the prescribed rate and such deduction shall be apportioned between the predecessor and successor, or the amalgamating company and the amalgamated company or the demerged company and the resulting company in the ratio of the number of days for which the assets were used by them.
Explanation 1 to Section 32(1)	Where the business or profession is carried on in a building not owned by assessee and any capital expenditure is incurred for construction of any structure or for renovation, improvement or extension of the building, then depreciation will be allowed in respect of such capital expenditure at the rates prescribed for "building".

Explanation 5 to Section 32(1)	The allowance of deprecation u/s 32 (1)(i) & 32 (1)(ii) is mandatory irrespective of fact whether or not the assessee has claimed the depreciation in computing the total income.
32(1)(iia)	In case of any new machinery or plant (excluding ships and aircrafts) acquired and installed after March 31, 2005 by an assessee engaged in the business of manufacture or production of any article or thing additional depreciation of 20% of actual cost shall be allowed. No such additional deduction will be allowed in respect of machinery or plant if it is used earlier by any other person or where the whole of actual cost of which is allowed as deduction in computing income chargeable under the head profit and gain of business or profession of any one previous year.
32(1)(iii)	When such asset on which depreciation is allowed is sold discarded or demolished in a previous year, and if the insurance, salvage, compensation or sale value, as the case may be, receivable in respect of such asset falls short of the written down value, such difference would be allowed as deduction [Terminal Depreciation]. The condition for allowing such deduction is that such deficiency is actually written off in the books of account.
32(2)	In case of inadequate profit or loss any depreciation which could not be fully allowed for want of profit, the amount which could not be given full effect of shall be carried forward in the subsequent year and shall form part of the depreciation of such subsequent previous year. (This condition is subjected to Sec. 72(2) & Sec. 73(3).
35D	Where an assessee incurs any expenditure specified under subsection (2) of section 35D either before the commencement of his business or after the commencement of business in connection with the extension of industrial undertaking or setting up of new industrial unit, deduction shall be allowed equal to one-fifth of such expenditure for a period of five years beginning with the year in which the business commences or extension of the undertaking is completed or the new industrial unit commences production or operation as the case maybe.
35D(3)	The deduction is restricted to 5% of the cost of the project or where the assessee is an Indian company, at the option of the company, of the capital employed in the business of the company.
35D(4)	In case of non-corporate assessee or a co-operative society, the deduction would not be allowed unless the accounts of the assessee are audited for the year/s in which such expenditures are incurred and a report in prescribed form is furnished along with the return of income for the first year in which such deduction is claimed.

35D(5) & (5A)	In case of amalgamation or demerger of the company the deduction would be allowed to amalgamated or resulting company and in such case no further deduction would be allowed to amalgamating or demerged company.
35DD	Where an Indian company incurs any expenditure wholly and exclusively for the purpose of amalgamation or demerger of an undertaking, deduction equal to one-fifth of such expenditure for a period of five successive years beginning with the previous year in which such amalgamation or demerger takes place shall be allowed.
35DDA (1)	Where an assessee incurs any expenditure by way of payment to an employee under any scheme in connection with his voluntary retirement deduction shall be allowed equal to one fifth of such expenditure for a period of five years beginning with the year in which such expenditure is incurred.
35DDA (2) & (3)	In case of amalgamation or demerger of the company, the deduction would be allowed to the amalgamated or resulting company as if the deduction were allowed to amalgamating or demerged company as the case may be.
35DDA (4)	In case of partnership firm or proprietary concern is succeeded by the company in reorganization of business, the deduction would be allowed to such succeeded company provided conditions laid down in provisions of Section 47(xiii) or Section 47(xiv) as applicable are adhered to and no further deduction would be allowed to the partnership firm or proprietary concerns the case may be. in case of a private limited company or unlisted public company under reorganization of business is succeeded by a limited liability partnership fulfilling the conditions laid down in proviso to clause (xiiib) of Section 47, then the deduction shall be allowed to the successor limited liability partnership and no further deduction would be allowed to private limited company or unlisted public company as the case may be. (applicable from A.Y. 2011-12)
72A(1)	In case of an amalgamation of a company with another company, then, notwithstanding anything contained in any other provision of this Act, and subject to fulfillment of condition laid down in subsection 2 of Section 72A of the Income Tax Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.
72A(4)	In the case of a demerger, where the loss and unabsorbed depreciation is directly relatable to the undertaking transferred, the accumulated loss and the allowance for unabsorbed depreciation of

	the undertakings transferred shall be allowed to resulting company, and, where the loss and unabsorbed depreciation is not directly relatable to the undertaking transferred, the loss and unabsorbed depreciation shall be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.
72A(6)	In case of reorganization of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (*xiii*) of Section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (*xiv*) of Section 47, then, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose of previous year in which business reorganization was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.
43A	In case where any asset acquired from a country outside India for the purpose of business or profession, then any change in the rate of exchange during any previous year after the acquisition of such asset at the time of making payment shall be adjusted against the cost of that asset. The amount so arrived after the adjustment shall be taken as actual cost of the asset.

Appendix 2

(Refer Para:1.10)

Non production of records

Sl. No.	State	Cases requisitioned	Cases produced	Cases not produced	% of non production
1	Andhra Pradesh	6,342	5,423	917	14.46
2	Assam	4,298	4,286	12	0.28
3	Bihar	2,347	2,193	154	6.56
4	Chhattisgarh	1107	1,098	9	0.81
5	Delhi	14,666	9,912	4,754	32.41
6	Gujarat	2,966	2,911	55	1.85
7	Jharkhand	589	558	31	5.26
8	Karnataka	2,294	2,092	132	5.93
9	Kerala	2,208	2,023	185	8.38
10	Madhya Pradesh	1,405	1,405	0	0
11	Maharashtra	13,119	12,268	851	6.49
12	Orissa	1,307	1,119	188	14.38
13	Punjab, Haryana & HP	9,100	8,210	890	9.78
14	Rajasthan	4,287	4,010	277	6.46
15	Tamil Nadu	6,760	6,414	346	5.12
16	Uttarakhand	1,759	1,660	99	5.63
17	Uttar Pradesh	8,120	6,658	1,462	18
18	West Bengal	16,135	14,783	1,352	8.38
	Total	**98,809**	**87,023**	**11,714**	**11.86**

Appendix 3A

Cases where depreciation as per Income Tax Act is more

(Refer Para: 2.2)

(₹ in lakh)

Sl. No.	State	Cases where depreciation as per Income Tax Act is more	Depreciation debited to profit & loss account	Depreciation claimed as per Income Tax Act	Depreciation allowed as per Income Tax Act	Difference
(1)	(2)	(3)	(4)	(5)	(6)	(6-4)
1	Andhra Pradesh	636	2,72,841.69	4,94,561.23	4,87,209.3	2,14,367.61
2	Assam	90	2,800.29	7,405.58	7,453.16	4,652.87
3	Bihar	75	10,852.4	19,569.28	18,646.39	7,793.99
4	Chhattisgarh	2	59.56	120.31	120.31	60.75
5	Delhi	705	2,36,217.03	4,97,135.30	4,90,950.70	2,54,733.67
6	Gujarat	570	3,15,375.55	98,83,225.65	7,58,898.51	4,43,522.97
7	Jharkhand	58	13,252.21	32,183.16	32,183.16	18,930.95
8	Karnataka & Goa	506	2,23,748.25	8,50,221.02	8,50,221.02	6,26,472.77
9	Kerala	311	1,16,946.2	1,81,532.35	1,79,827.13	62,880.93
10	Madhya Pradesh	26	19,967.42	38,982.81	90,456.5	70,489.08
11	Maharashtra	1,295	25,83,803.22	53,08,372.94	5,308,372.94	27,24,569.7
12	Orissa	129	69,315.86	1,06,184.79	96,026.76	26,710.9
13	Punjab, Haryana & HP	180	3,64,482.21	5,66,471.36	5,66,163.49	2,01,681.28
14	Rajasthan	72	29,759.88	52,168.63	52,166.99	22,407.11
15	Tamil Nadu	542	3,49,575.79	5,84,767.87	5,77,692.74	2,28,116.95
16	Uttarakhand	47	5,44,462.61	11,11,152.71	11,11,152.71	5,66,690.10
17	Uttar Pradesh	486	1,97,609.64	3,32,166.54	3,32,166.54	1,34,556.9
18	West Bengal	537	2,03,048.91	375922.39	360951.58	157902.67
	Total	**6,267**	**55,54,118.72**	**2,04,42,143.92**	**1,13,20,659.93**	**57,66,541.20**

Appendix 3B

Cases where depreciation as per Companies Act is more

(Refer Para: 2.2)

(₹ in lakh)

Sl. No.	State	Cases where depreciation as per Companies Act is more	Depreciation debited to profit & loss account	Depreciation claimed as per Income Tax Act	Depreciation allowed as per Income Tax Act	Difference
(1)	(2)	(3)	(4)	(5)	(6)	(4-6)
1	Andhra Pradesh	313	155,788.00	136.44	279.83	1,55,508.17
2	Assam	135	4,951.01	3,048.54	3,166.34	1,784.67
3	Bihar	63	2,461.76	2,047.16	2,067.66	394.1
4	Delhi	832	1,44,565.51	87,148.13	82,764.54	61,800.96
5	Gujarat	474	2,12,539.90	4,88,553.21	1,68,413.83	44,126.07
6	Jharkhand	9	65,739.46	50,188.80	50,188.80	15,550.66
7	Karnataka and Goa	638	2,42,560.81	1,49,478.52	1,49,478.52	93,082.29
8	Kerala	436	1,96,179.19	1,73,431.80	1,13,581.43	82,597.76
9	Madhya Pradesh	35	1,066.46	591.98	591.98	474.48
10	Maharashtra	1,482	21,85,992.11	16,11,994.29	16,11,994.29	5,73,997.82
11	Orissa	123	1,27,048.33	90,250.95	90,250.95	36,797.38
12	Rajasthan	18	42,480.00	26,621.00	26,621.00	15,859.00
13	Tamil Nadu	178	2,33,837.70	1,80,089.60	1,79,935.30	53,902.40
14	Uttarakhand	39	1,546.84	1,150.95	1,264.42	282.42
15	Uttar Pradesh	646	1,02,080.44	81,176.85	81,176.85	20,903.59
16	West Bengal	505	68,159.34	50,024.61	49,740.13	18,419.21
	Total	**5,926**	**37,86,996.86**	**29,95,932.83**	**26,11,515.87**	**11,75,480.98**

Appendix 3C

Cases where depreciation as per Companies Act and Income Tax Act is same
(Refer Para 2.2)

(₹ in lakh)

Sl. No.	State	Cases where depreciation as per Act and Companies Act is equal	Depreciation debited to profit & loss account	Depreciation claimed as per Act	Depreciation allowed as per Act	Difference
(1)	(2)	(3)	(4)	(5)	(6)	(6-4)
1	Andhra Pradesh	438	2,929.96	2,929.96	2,929.96	
2	Assam	246	2,839.93	2,839.93	2,839.93	
3	Bihar	6	82.87	82.87	82.87	
4	Delhi	757	7,043	7,042	7,043.23	0.00449
5	Gujarat	218	32,988.51	32,988.51	32,988.51	
6	Karnataka and Goa	626	10,984	10,984	10,984	
7	Kerala	260	20,629.30	22,468.11	20,629.30	
8	Maharashtra	5,262	43,059	43,059	43,059	
9	Orissa	259	8,575.81	8,575.81	8,575.81	
10	Tamil Nadu	78	10,817.95	7,482.70	10,817.95	
11	Uttarakhand	43	1,665.63	1,665.63	1,665.63	
12	Uttar Pradesh	1,858	1,59,595	1,59,595	1,59,595	
13	West Bengal	390	1972.08	1972.08	1972.08	
	Total	**10,441**	**3,03,183.04**	**3,01,685.60**	**3,03,183.27**	

Appendix 4

Details of assets purchased during the month of March
(Refer Para 2.3)

(₹ in lakh)

Sl. No.	State	Assessees	Total additions made	Depreciation (including additional depreciation) allowed	Allowable depreciation on pro-rata basis for one month (for March)	Excess allowance of depreciation
(1)	(2)	(3)	(4)	(5)	(6)	(5-6)
1	Andhra Pradesh	102	1,55,517.10	24,745.98	4,113.83	20,632.15
2	Assam	4	959.36	360.81	60.65	300.16
3	Bihar	19	3,603.78	301.34	50.11	251.23
4	Chhattisgarh	5	100.02	7.50	1.24	6.26
5	Delhi	24	16,163.60	808.18	134.70	673.48
6	Gujarat	99	75,896.49	6,254.11	1,041.91	5,212.20
7	Jharkhand	24	16,273.68	1,285.38	214.08	1,071.30
8	Karnataka and Goa	200	31,566.09	2,873.10	478.85	2,394.25
9	Kerala	48	4,693.14	794.27	117.03	677.24
10	Madhya Pradesh	8	750.69	179.72	29.97	149.75
11	Maharashtra	163	26,58,945.01	4,06,736.23	67,778.71	3,38,957.52
12	Orissa	16	4,651.53	374.45	62.41	312.04
13	Punjab, Haryana & HP	49	28,718.13	2,635.13	439.15	2,195.98
14	Rajasthan	14	1,862.10	618.84	103.13	515.71
15	Tamil Nadu	37	15,408.79	4,323.42	719.85	3,603.57
16	Uttarakhand	20	685.04	47.54	7.92	39.62
17	Uttar Pradesh	26	10,603.94	2,791.33	467.52	2,323.81
18	West Bengal	128	1,11,46,146.59	11,06,648.99	1,84,440.31	9,22,208.68
	Total	**985**	**1,41,72,545.08**	**15,61,786.32**	**2,60,261.37**	**13,01,524.95**

Appendix 4A

Details of assets purchased during the month of September
(Refer Para 2.3)

(₹ in lakh)

Sl. No.	State	Assessees	Total additions made	Depreciation (including additional depreciation) allowed	Allowable depreciation on pro-rata basis for one month (for March)	Excess allowance of depreciation
(1)	(2)	(3)	(4)	(5)	(6)	(5-6)
1	Maharashtra	143	7,79,880.23	2,52,576.81	1,47,336.47	105240.39
2	West Bengal	25	2,878.63	455.42	265.22	190.20
3	Assam	1	115.43	13.08	7.63	5.45
4	Delhi	224	8,467.03	1,333.01	777.59	555.42
5	Bihar	8	453.45	103.42	60.33	43.09
6	Karnataka	13	6,577.43	966.46	563.77	402.69
7	Haryana	1	23,52,007.00	Not available	Not available	1,121.00
8	Kerala	22	1,748.92	261.04	152.25	108.74
9	Uttarakhand	5	418.97	90.23	52.64	37.59
10	Uttar Pradesh	8	9,563.24	2,852.46	1,660.69	1,191.77
	Total	**450**	**31,62,110.33**			**1,08,896.34**

Abbreviations

ACIT	Assistant Commissioner of Income Tax
ACT	Income Tax Act, 1961
AO	Assessing Officer
AOP	Association of Persons
AST	Assessment module of IT system
AY	Assessment Year
BOT	Built, Operate and Transfer
CBDT	Central Board of Direct Taxes
CCIT	Chief Commissioner of Income Tax
CIT	Commissioner of Income Tax
DIT	Directorate of Income Tax
FY	Financial Year
ITAT	Income Tax Appellate Tribunal
ITD	Income Tax Department
ITO	Income Tax Officer
JCIT	Joint Commissioner of Income Tax
TDS	Tax Deducted at Source
UT	Union Territory
WDV	Written Down Value