SEVENTY-FIFTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1981-82)

(SEVENTH LOK SABHA)

IRREGULAR ALLOWANCE OF RELIEF IN RESPECT OF NEWLY ESTABLISHED UNDERTAKINGS

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

[Paragraphs 2.13 (i)&(ii) of the Report of the Comptroller and Auditor General of India for the year 1979-80—Union Government (Civil), Revenue Receipts, Vol. II, Direct Taxes]

Presented in Lok Sabha on.....

Laid in Rajya Sabha on.....

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Corrigenda for the Seventy Fifth Report (Seventh Lok Sabha) of PAC (1980-81)

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(1981-82)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Seventy-Fifth Report of the Public Accounts Committee (Seventh Lok Sabha) on paragraphs 2.13(i) & (ii) relating to Direct Taxes included in the Report of the Comptroller & Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes.

2. This Report bring into focus the defective wording of Rule 19A of the Income-tax Rules, 1962 which lays down the method for computation of capital employed in an industrial undertaking for purposes of deductions in respect of profits and gains from newly established industrial undertakings as admissible under Section 80J of the Income-tax Act, 1961. The Committee have pointed out that the distinction between the concept of capital employed in an industrial undertaking in contra-distinction to capital employed by an assessee admitted by the Ministry to be distinct concepts, had not been duly considered while framing the rule. The absurd proposition inherent in the scheme of Rule 19A was brought out by the Bombay High Court in the case of Indian Oil Corporation Ltd. vs. ITO (92 ITR 241).

3. The Committee have recommended that whenever instructions are issued by the Board to the field staff following the judgement of a Court giving a particular interpretation, the instructions should be suitably embodied in a public notice for the information and guidance of the general public.

4. The Committee have observed that a retrospective amendment of a substantial nature gives rise to important questions of propriety in so far as it unsettles settled cases and defeats rights acquired in good faith. The Committee have recommended that Government should avoid proposing retrospective amendment to the Income-tax Law unless the drafting error is manifest and the loss of revenue is substantial so as to justify a retrospective amendment.

5. The Committee have emphasised the need for simplifying the plethora of tax concessions/tax holiday provisions in the Income-tax Act in the light of an extensive study of their precise impact on industrial development. Such a study may usefully indicate the number of small sector companies and non-MRTP and non-FERA companies who have availed of the tax holiday under Section 80J and the percentage thereof to the total number of such companies. It would also be worthwhile to attempt a correlation of allowances for export market development and reduction under Section 80J to see how far new export oriented undertakings are being set up.

6. The Report of the Comptroller & Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes, was laid on the Table of the House on 17 March, 1981. The Public Accounts Committee (1981-82) examined these paragraphs at their sittings held on 12 and 13 October, 1981. The Committee considered and finalised this Report at their sitting held on 2 March, 1982. Minutes of the sittings form Part II* of the Report.

7. A statement containing conclusions/recommendations of the Committee is appended to this Report (Appendix II). For facility of reference these have been printed in thick type in the body of the Report.

8. The Committee place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the Comptroller & Auditor General of India.

9. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) for the cooperation extended by them in giving information to the Committee.

NEW DELHI;

SATISH AGARWAL
Chairman

March 8, 1982
Phalguna 17, 1903(*S*)

Public Accounts Committee.

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REPORT

Irregular allowance of relief in respect of newly established undertakings Audit Paragraph

1.1 Under the provisions of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a newly established industrial undertaking, the assessee becomes entitled to tax relief in respect of such profits and gains upto six per cent per annum of the capital employed in the industrial undertaking, in the assessment year in which the undertaking begins to manufacture or produce articles and also in each of the four assessment years immediately succeeding the initial assessment year. The Rules framed under the Act provide that any borrowed money and debt due by the person carrying on the business shall be deducted from the value of assets in the computation of capital for this purpose.

1.2 In the case of an assessee-company which started a new industrial unit in the previous year relevant to the assessment year 1975-76, while computing the capital, the department did not deduct, from the value of the assets, the proportionate amounts of other debts relatable to the unit out of the total debts incurred by the company. This resulted in excess computation of capital to the extent of Rs. 71,81,884 in the assessment year 1975-76 and consequent excess allowance of relief of Rs. 4,30,913. In the absence of profit in the new industrial undertaking the excess relief of Rs. 4,30,913 was allowed to be carried forward.

The Ministry of Finance have accepted the objection.

1.3 A new industrial undertaking of an assessee-company which was entitled to the relief in the previous year relevant to the assessment year 1970-71 had suffered a loss of Rs. 2,98,511 as per the profit and loss account of the year and was not, therefore, entitled to the relief. In the statement claiming the relief the assessee, however, showed the figure of loss as profits and on the basis of that statement the department incorrectly allowed a relief of Rs. 2,98,511 leading to undercharge of tax of Rs. 1,64,181 and excess refund of tax to that extent.

The Ministry of Finance have accepted the objection.

(Paras 2.13 (i) & (ii) of the Report of the Comptroller and Auditor General of India, for the year 1979-80 Union Government (Civil) Revenue Receipts Vol. II-Direct Taxes).

Methodology for computation of capital employed in a new industrial undertaking-Interpretation of Section 80J|*Rule* 19*A*(3)

1.4 The assessees in question are M|s. Avery India Limited and M|s. Brooke Bond India Ltd. The assessee company M|s. Avery India Limited engaged in the industrial activity of manufacturing weighing machines, counting machines and test machines. The other assessee company namely

M|s. Brooke Bond India Ltd. is engaged *inter alia* in manufacturing and trading in coffee.

1.5 As per information made available to the Committee, it is seen that M|s. Avery India Ltd., the assessee in the first case, started a new industrial undertaking in Faridabad for manufacturing weighing machines, where production commenced during the previous year relevant to the assessment year 1975-76. In computing the capital employed in the new unit, the value of the assets as on 1-1-1974 (first day of the relevant previous year) had been taken at Rs. 1,24,51,540 and liabilities representing provision for employees' share of gratuity to the extent of Rs. 4,600 had been deducted therefrom and six per cent of the balance of Rs. 1,24,46,940 i.e. Rs. 7,46,816 had been calculated as relief allowable under Section 80J. From the balance sheet of the Faridabad unit, it was noticed that the liabilities as on the first day of the previous year to the extent of Rs. 1,24,46,940 were shown as Head Office Account. This meant that funds of the Head Office of the company were invested in the new unit. The consolidated accounts of the whole company showed deductible liabilities (being borrowed funds and debts owed) as on the first day of the relevant previous year to be an amount of Rs. 3,44,51,918 as detailed below :—

Consumers deposit	1,11,14,893
Provision for taxation	49,21,491
Provision for Contingencies	10,84,276
Proposed dividends	28,39,201
Provision for gratuity	24,40,160
Sundry creditors	97,69,183
Advance bills on contractors	22,45,705
Unclaimed dividends	37,010
	3,44,51,918

The current liabilities of Rs. 3,44,51,918 constituted 57.7 per cent of the total liabilities of the company amounting to Rs. 5,96,27,200 (including share capital reserves and surplus).

1.6 According to Audit, in the absence of any details of the financing of the new undertaking and the resources being consolidated for the whole company in its accounts, 57.7 per cent of the total liabilities of Rs. 1,24,46,940 in the accounts of the Faridabad unit should have been considered as debts owed by the new industrial unit and a corresponding amount of Rs. 71,81,884 (57.7 per cent of Rs. 1.24 crores) should have been deducted from the value of the assets of the new unit in accordance with the view taken in the Indian Oil Corporation case and generally followed by the Department. This resulted in excess computation of capital to the extent

of Rs. 71,81,884 in the assessment year 1975-76 and consequent excess allowance of relief of Rs. 4,30,913 as shown below :—

"Assets of the unit as on 1-1-1974	Rs.	1,24,51,540
Less liabilities for gratuity		4,600
		1,24,46,940
Proportionate deduction under Rule 19A(3) i.e. 57.7%		71,81,884
Capital employed in the unit		52,65,056
Relief allowable @ 6% on the capital employed		3,15,903
Relief allowed by the department		7,46,816
Excess relief allowed	Rs.	4,30,913

1.7 It has also been pointed out that going strictly by the words used in Rule 19A(3) of the Income Tax Rules all the liabilities of Rs. 3,44,51,918 should have been deducted and no relief under Section 80J would be admissible.

1.7A The mode of computing capital employed for purposes of Section 80J is prescribed in Rule 19A of Income Tax Rules, 1962, which *inter alia* provides as under :

19A (1) For the purpose of Section 80J, the capital employed in an industrial undertaking.....should be computed in accordance with sub-rules (2) to (4).....

(2) The aggregates of the amounts representing the *value of the assets;* as on the first day of the computation period, *of the undertaking*....shall be ascertained in the following manner:—

.....

.....

(3) From the aggregate of the amount as ascertained under sub-rule (2) shall be *deducted the aggregate of the amounts,* as on the first day of the computation period, *of borrowed money and debts owned by the assessee* (including amounts due towards any liability in respect of tax)."

According to this Rule, the capital employed in an industrial undertaking would be the value of the assets (on the first day of the computation period *of the undertaking* less the borrowed moneys and debts owed *by the assessee* on that day. The capital employed is, thus, only owned capital, even long term borrowings are deducted and going strictly by the words used total borrowings of the assessee have to be deducted from the value of assets of the new undertaking.

1.8 In Indian Oil Corporation case, however, the Bombay High Court has observed that the strict interpretation of the rule requiring deduction of all borrowings of the assessee from the value of assets of the new undertaking would lead to absurd results and held that only such portion of the

borrowings of the assessee as is relatable to the new undertaking on a *pro rata* basis should be deducted. This view was accepted by the Board who also issued specific instructions to that effect to the field offices. The relevant extracts from the CBDT Instruction No. 941 of 25 March, 1976 are reproduced below :—

> "Attention is invited to the decision of the Bombay High Court in the case of Indian Oil Corporation Ltd., *V.* Raj Gopalan, I.T.O., Company Circle II(1) Bombay and others (92 ITR 241).
>
> The Board has considered the implications of the judgement and it has been decided to accept the interpretation given by the Bombay High Court for a harmonious working of rule 19A of 1962.
>
> This may please be brought to the notice of all Officers under your charge"

1.9 During evidence the Committee enquired what, according to the CBDT, was the correct position in law in regard to the proportion of debts of an undertaking to be taken into account for computing the "capital employed" for the purposes of section 80J of Income-tax Ac, 1961. The Chairman, CBDT explained :—

> "The opening para of Rule 19A reads, the capital employed in an industrial undertaking or.....". We have therefore to compute the capital employed in respect of the industrial unit, and while doing so we should take the debts relating to that industrial unit. Otherwise there would not be any relief under Section 80J."

He added :

> "Since the word used here is "assessee" probably the entire debts of the assessee should be deducted, but this does not appear to be the intention of Section 80J."

1.10 On being pointed out by the Committee that Rule 19A(3) as worded required deduction of entirety of the debts of an assessee and not only the debts of an industrial undertaking, a representative of the CBDT stated in evidence :

> "I submit that two views are possible. One view is that you confine to the capital and the loans given to the particular industrial undertaking. The other view is as expounded by you, if there are various other liabilities in respect of that only one undertaking can claim relief under Section 80(J)."

He added :

> "On a reading of the rule I would submit that you have to construe the industrial unit as an independent unit and you will have to take the liability related to it. In other words, you may not be justified in entertaining the view that the entire liabilities in respect of the other units should be adjusted against it."

1.11 Asked whether on a reading of Rule 19(A)(3) it was possible to interpret that the entire debts of an assessee had to be deducted from the assets of an undertaking, the Chairman, CBDT deposed :

> "What the hon. Member is saying, on a literal interpretation, I think this is correct, that probably the entirety of the debts of the assessee, that is the entire liability of the assessee has to be set off from the assets. But I would like to qualify it that it does not appear to be the intention of the legislature. If an interpretation which leads to a set of results that does not appear to be in consonance with the intention of the legislature, we have got to interpret it in some other way. This rule relates to industrial undertakings only and their liabilities.

1.12 In the same context, another representative of the CBDT stated :

> "On a literal interpretation what is said is absolutely correct. But we have to find out the intention and the intention, I think, is clear."

1.13 On being asked, what the intention was while framing the rule, the Chairman, CBDT stated :

> "Where an assessee sets up a new industrial undertaking then, while computing the profits of their unit some concession should be given and that concession should be related to the capital employed. Now, the capital employed is to be taken in respect of only one particular industrial unit. If debts or liabilities relating, to some other unit are to be deducted from the capital employed, then the intention will not be achieved."

1.14 The Bombay High Court in their judgement in Indian Oil Corporation Ltd. V. S. Rajagopalan, ITO and others had pointed out the absurdity in the strict wording of Rule 19A. In the judgment reported in 1973 (92 ITR 241) the Bombay High Courts had *inter alia* observed :

> ". . The petitioner contends that under Rule 19A(3) the capital of a new industrial undertaking is to be computed by deducting from the aggregate assets of the undertaking "borrowed moneys and debts due by the assessee" pertaining to the said undertaking. The petitioner states that it owns 4 industrial undertakings. Its grievance is that in respect of each of the new industrial undertaking of the petitioner, the respondent No. 1 computed the aggregate of the assets employed in that industrial undertaking and deducted there from not only the borrowings pertaining to that industrial undertaking, but the petitioner's entire borrowings in respect of all its undertakings. The result is that the total borrowings in respect of its activities always exceeded the aggregate of the assets of each individual industrial undertaking and, therefore, the respondent No. 1 completely denied to the petitioner the relief in respect of every one of its various industrial undertakings. The petitioner contends that this has been on a wrong interpretation of Rule 19A.

Section 80J(1) provides that the assessee is to be allowed a deduction of 6 per cent per annum on the capital employed in the industrial undertaking from the gross total income of the assessee. Rule 19A provides for computation of capital employed in an industrial undertaking. Sub-rule (1) provides that for the purpose of Section 80J the capital employed in an industrial undertaking shall be computed in accordance with sub-rules (2) to (4). Sub-rule (2) provides that the aggregate of the amounts representing the values of the assets as on the first day of the computation period of the undertaking shall first be ascertained. Sub-rule (3) provides that from the aggregate of the amount so ascertained under sub-rule (2) shall be deducted the aggregate of the amounts as on the first day of the computation period of borrowed moneys and debts due by the assessee. At first look sub-rules (2) and (3) appear to provide that from the aggregate value of the assets of each undertaking the aggregate of the liabilities of the assessee shall be deducted. The assessee in this case owns 4 industrial undertakings. The result of such interpretation would be that from the assets of each industrial undertaking the entire borrowings of the assessee in respect of all the industrial undertakings are to be deducted for arriving at the capital employed in an industrial undertaking. On the face of it this is an absurd proposition. If you want to arrive at the capital employed by an assessee in a particular industrial undertaking, you cannot arrive at it by deducting from the assets of that particular undertaking the liabilities not only of that industrial undertaking, but also of three other industrial undertakings. This is mathematically, absurd

What you want to find is the capital employed in an industrial undertaking. This cannot be mathematically done by deducting from its assets the liabilities of other undertakings. One will, therefore, have to give a reasonable interpretation to sub-rule (3) by adding after the words "borrowed moneys and debts due by the assessee" the words in respect of the industrial undertaking in which the capital employed is to be computed'. We accordingly hold, that, on a true interpretation of Rule 19A, in respect of each undertaking, the liabilities of the assessee in respect of that industrial undertaking only are to be deducted from the aggregate value of the assets of the same industrial undertaking. The controlling words in sub-rule (I), *viz.* "for the purpose of Section 80J the capital employed in an industrial undertaking..... shall be computed....." must govern sub-rules (2) and (3).

Mr. Joshi invited our attention to the case of Commissioner of Income-tax *V.* Veeraswami Nainar, wherein a quotation from the judgment of Rowlatt J. in Cape Brandy Syndicate *V.* Inland Revenue Commissioners has been reproduced. It reads as under:

"....in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Mr. Joshi contended that we cannot add any words to a taxing law to arrive at the correct conclusion, even if it leads to absurd results. In our view all that Rowlatt J. held was that one has not to put any beneficient interpretation on the provisions of a taxing statute on the basis of a presumed intention of the legislature. He has not said that commonsense must not find a place in the interpretation of a taxing statute. Our attention has been invited to a judgment of the Privy Council in the case of Mohammed Ewaz *V.* Brij Lal, where their Lordships took the view that if a construction would cause great difficulty and injustice which it cannot be suppose the legislature contemplated and would be inconsistent with the language and tenor of the rest of the Act, the words should be read distributively, and be construed to void an absurd construction. In order to void a mathematical absurdity. we have construed rule 19A(3) in the manner indicated hereinabove."

1.15 During evidence the Committee pointed out that the Bombay High Court had held that for a reasonable interpretation of sub-rule (3) the words 'in respect of the industrial undertaking in which the capital employed is to be computed' should have been added after the words "borrowed moneys and debts due by the assessee". Asked why at the time of amending Section 80J this amendment was not made, a representative of the CBDT stated :

"It would have been better if those words were included. They were not included merely on the ground that we were giving retrospective effect. Otherwise, we could have used those words."

1.16 In the same context, the Chairman CBDT added :

"The point appears to be correct and I do agree that the amendment to Section 80J which was brought about was not quite happily worded. We should have added the words 'the borrowed moneys and debts' owed by the assessee in respect of that industrial undertaking. But as my colleague. . . .has pointed out, the intention has always been there and the language, I may submit here, is not as clear as has been held in the case which the Hon. Member has just now read. If we read the entire rule as such *i.e.* if we read paras 1, 2 and 3 of Rule 19A together there does not appear any doubt that the debts to be deducted from the assets, meant the debts of the assessee relating to that industrial undertaking. These words should be read there, although I do agree that the amendment was not very happily worded."

1.17 As to the reasons why no change was made in the wording of Rule 19(A)(3) when the same was incorporated in Section 80J, the Chairman, CBDT stated :

"Since in that judgment it was interpreted that the liabilities or the borrowings would relate only to that particular undertaking and since we were making an amendment with a retrospective effect,

we thought that the interpretation of the High Court would hold good even after the amendment. All that we have done is that we have bodily lifted it from the Rule and put it in the Act."

1.18 In reply to a question why the relevant rules were not amended following the particular interpretation given by the Bombay High Court, a representative of the CBDT stated :

"....at that time, it was taken as the correct view. Hence it was felt that there was no need to amend the rule.

In this particular case what happened was this. We interpreted the rule by making our intention clear. We circulated it to the field organisation as representing the correct view. In retrospect I think it would have been better to clarify that in the rule itself. We felt the objective had been achieved by accepting the judgment and issuing a circular stating that that was the correct view in the law that is existing."

1.19 The Committee pointed out that the Bombay High Court Judgment had clearly brought out the drafting error in Rule 19A(3) and after the judgment had been accepted by the Department as correct interpretation of the legislative intention, the rule should have been amended, a representative of the CBDT stated :

"I think it should have been amended."

1.20 Asked why it was not amended, the witness stated :

"I won't be able to say anything more as to why it was not considered by us."

The Chairman, CBDT, however, clarified :

"In this particular case, I would submit that our intention, and, the intention, according to the judgment of the court, were identical. We thought that probably it was not necessary to amend the rules. But, by way of clarification, it would have been better if a clarificatory amendment had been brought forward. At that stage, there was a lapse to a certain extent on our part. How it happened—I won't be able to say as this is a nine years' old matter. I have told you that our intention as well as the intention as interpreted by the High Court were identical. Probably it was thought that at that stage no amendment was necessary."

1.21 The Committee enquired whether while interpreting the new Section 80J(IA), the Courts could take a view which was contrary to that of the Bombay High Court judgment in IOC case. To this the Chairman, CBDT replied :

"That view is certainly possible and court may take such view also."

1.22 Asked what would be the Department's stand in that event, the Chairman, CBDT stated :

"To bring about a clarificatory amendment. We hope that courts will uphold our view."

1.23 In a further note on the subject, the Ministry of Finance have explained :

"The Board accepted the judgment of the Bombay High Court and in pursuance thereof instruction No. 941 was issued on 25-3-76. In view of this and as there was no decision of any High Court contrary to the Bombay High Court decision, the law on the point was considered settled. What Finance (No. 2) Act, 1980 did was only to transfer the provision of rule 19A to the main section. As there was no change in the Board's view of the matter, it was not considered necessary to further clarify the position."

1.24 The Committee wanted to know whether notwithstanding the clear language of clause 3 of Section 80J(IA), the Supreme Court was bound to read the section in the same manner as interpreted by the Bombay High Court in the case of Indian Oil Corporation. A representative of the CBDT stated :

"When an amendment is made with retrospective effect from 1-4-1972, the act has to be read as if on that date, that is on 1-4-1972 this provision was there. Now with that provision we have to read the statute as on 1-4-1972. These very words were used in the rule as well as in the law. The Bombay High Court decision would be very much applicable as these words are the same."

1.25 Asked what would be the effection the working of the incentive scheme in case the Supreme Court did not accept the view of the Department, the representative of the CBDT stated :

"That will amount to denying all the tax benefits."

He added :

"If there is one industrial undertaking, it will not make and difference at all, but if there are more than one, in those cases, it will depend on the size of the various industrial undertakings and the capital invested. If the capital invested and the liabilities *i.e.* the debt; equity ratio is very large it can happen that in many cases it may become negative."

Retrospective amendment of Section 80J

1.26 Section 80J was inserted by the Finance (No. 2) Act, 1967 and it came into effect from 1st April, 1968. According to the Ministry of Finance the provision in section 80J for granting a tax concession for newly established undertaking was intended to stimulate new investment and also to bring about diversification of the industrial structure. This section provides for a 'tax holiday' concession in respect of profit derived by tax payer from an industrial undertaking newly set up in India which manufactures

or produces articles or operates a cold storage. Under an amendment made by the Finance Act, 1979, benefit of 'tax holiday' concession was withdrawn in relation to industrial undertakings which manufacture or produce any articles specified in the list given in the Eleventh Schedule to the income-tax Act, 1961. The concession is also available in relation to profits derived by an Indian company from the business of an approved hotel satisfying certain conditions or from playing any ship. Where the tax payer is a company, the tax holiday consists in the exemption from tax of the profits upto 7.5 per cent p.a. of the capital employed in the industrial undertaking, hotel or ship for five successive years commencing from the assessment year relevant to the accounting year in which the undertaking goes into production or operation or the hotel starts functioning or the ship is first used for the purpose of the business. In the case of industrial undertaking owned by non-corporate taxpayers, the quantum of exemption is reduced to 6 per cent p.a. of the capital employed. There is a special dispensation in the case of co-operative societies inasmuch as the period of 'tax holiday' is seven years as against five years in the case of other categories of taxpayers.

1.27 Any deficiency in the 7.5 per cent return on the capital in the case of companies or as the case may be, 6 per cent per annum return in the case of other categories of taxpayers, is allowed to be carried forward and deducted from the profits of subsequent years upto the period of eight years including the initial year.

1.28 The Committee have been informed that the provisions relevant to the tax holiday were for the first time brought on the Statute Book by the Taxation Laws Amendment Ordinance, 1949 (IX of 1949) by inserting a new Section 15C in the Indian Income Tax Act, 1922. In order to give effect to the provisions contained in Section 15C, in the Central Board of Revenue *vide* their Notification No. 58 dated 5th October, 1949 promulgated the Indian Income-tax (Computation of Capital of Industrial Undertakings) Rules, 1949. These rules provided that the capital employed was to be computed by taking the aggregate of assets and deducting there from any 'borrowed moneys or debt due by the assessee. After repeal of the old Act, Section 84 of the Income-tax Act, 1961 and Rule 19 of the Income Tax Rules, 1962 adopted same principles as were there under the old Act. Subsequently, the Finance (No. 2) Act, 1967 omitted Section 84 w.e.f. 1st April, 1968 and substituted section 80-J in its place. The method of computation of capital in Rule 19 was found to involve elaborate calculations and led to delay in completion of assessments and protracted litigation. Shri Bhootalingam in his interim report on 'Simplification and Rationalisation of the Tax Structure' had recommended in para 4.8 that the method for computing average amount of capital employed in the business should be simplified by bringing it in line with the basis adopted for calculation of capital for the levy of surtax on companies, namely, by taking it to be the 'own capital and long term borrowings as at the beginning of the year but ignoring the fresh introduction of capital in the course of the year'. The new basis for computation of capital for the purposes of Section 80J was adopted by framing Rule 19-A. It was provided that the capital employed for the purposes of tax holiday should be computed by reducing the aggregate of the liabilities (borrowed moneys, debts due and any liabilities for taxes) as on

the first day of the computation period, but exclusive of any debentures and long term borrowings from the approved sources, from the aggregate values of assets used for the purposes of the undertaking as on the first day of the said period.

1.29 However, the provisions of Rule 19-A were amended by the Income-tax (3rd Amendment) Rules, 1971 so as to exclude the debentures and long term borrowings altogether from the capital base for the purpose of determining the capital employed. Thus the *status quo ante* was restored. Such amendment was justified on the ground that as interest payable on debentures and long term borrowings was already allowable as deduction in arriving at profits of industrial undertakings, hotel etc. under section 36(i)(iii), the inclusion of such debentures etc. again in the capital base and exemption of profits upto 6 per cent thereof amounted to a double benefits. This amendment came into force w.e.f. 1st April, 1972.

1.30 Apart from the Bombay High Court, which pointed out the absurdity in the wording of Rule 19A(3) of the Income Tax Rules, 1962, several other High Courts gave different judgments in regard to the validity of Rule 19A. Chronological sequence of the judgments of various High Courts on the validity of Rule 19A is given below :—

"(i) Century Enka Ltd. *Vs.* ITO (107 ITR 123) dated 12-9-1975. The learned Single Judge of the Calcutta High Court held that Rule 19A(1) and (2) of the Income-tax Rules 1962 providing for the computation of capital employed in an industrial undertaking or a hotel business for the purpose of Section 80J, in so far as it directs that the aggregate amount representing the value of the assets as on the 1st day of the computation period should be taken as a basis, is beyond the scope of Section 80J and is *ultra vires to* that extent.

(ii) Century Enka Ltd. *Vs.* ITO (107 ITR 909) dated 29-4-1976. The learned Single Judge of the Calcutta High Court held that 'capital employed' in Section 80J would include even borrowed capital and that rule 19A(3) was *ultra vires* of the said Section in as much as it could not take away the benefit being conferred under the Section.

(iii) M|s. Madras Industrial Linings Ltd. *Vs.* ITO (110 ITR 256), dated 5-7-1977. The Madras High Court held that the exclusion of borrowed capital from the capital employed for the purpose of Section 80J through Rule 19A(3) amounted to an excessive delegation of legislative power.

In the case of CIT *Vs.* Warner Hindustan Ltd. (117 ITR 68) dated 18-1-78, the Andhra Pradesh High Court decided a question of law in reference whether the deduction under Section 80J was allowable on the value of the assets as on the first day of the computation period without being reduced by the borrowed moneys and debits due by the assessee, in favour of the Revenue. The High Court observed that when the section itself does not provide for the manner in which the computation of the capital

employed is to be made and says that it shall be "computed in the prescribed manner", the question of the rule yielding to the section does not arise.

(v) Kota Box Manufacturing Company *Vs.* ITO (123 ITR 638) dated 5-4-1978. The Allahabad High Court followed the decisions of the Calcutta and Madras High Courts.

(vi) Ganesh Steel Industries *Vs.* ITO (125 ITR 258) dated 7-6-80. The Punjab and Haryana High Court followed the earlier decisions of Calcutta and Madras High Courts.

In the case of CIT *Vs.* Anand Bahri Steel and Wire Products [(1981) 21 CTR] dated 11-12-1980. The Madhya Pradesh High Court decided the issue entirely in favour of the Department. The Court pointed out that the other High Courts have fallen into an error in giving an extended meaning to the expression 'capi al employed'. The fact that a rule corresponding to Rule 19A(3) existed from 1949 when Section 15C was inserted in the Income-tax Act, 1922, and that the same was valid without dispute till 1977, itself show that the rule was in accordance with the intention of the legislature. When Parliament enacted Section 80J it would have taken into account how section 15C of the earlier Act was being interpreted and administered by the authorities concerned. The High Court pointed out that the fact that Section 80-J was enacted in similar terms interpretation hitherto being given to Section 150 went to show that Parliament approved of that interpretation."

1.31 To get over the above decisions of the various High Courts, the Income Tax Act, 1961 was amended by Finance Act, 1980 incorporating the provisions of Rule 19A in Section 80J itself retrospectively from 1st April, 1972.

1.32 In view of the conflicting judgments of different High Courts, the Board in their Instruction No. 1238 dated 21st February, 1979 clarified that the department was contesting the adverse decisions. The relevant instruction is reproduced below :—

"In recent past, the controversy regarding interpretation of the term "capital employed" in Section 80J read with Rule 19A has arisen after the two decisions of the Calcutta High Court both in the case of Century Enka Ltd. *Vs.* ITO (107 ITR 123 and 107 ITR 909) which decisions have been followed by the Madras High Court Madras Industrial Linings Ltd. *Vs.* ITO 110 ITR 256) and also by the Allahabad High Court in Kota Box Manufacturing Company *Vs.* ITO (1978 TIR 640). It has been held that the Rule, 19A(3) is *ultra vires* the rule-making power of the Board inasmuch as it provides for exclusion of borrowed money employed as capital in a new industrial undertaking from the quantum of capital employed. A number of writs on the same issue have been filed by the assessee in the Supreme Court which are reading after admission—[M/s. Bharat Steel Tubes Ltd. Gedore Tools India Ltd., M/s. Catalyst

and chemicals India (West Asia) Ltd. and M|s. Western Enterprises and another (WP No. 501 and 502 of 1977, 1895 to 1897 and 2648 of 1978 and WP Nos. 3810 to 3813 of 1978)].

The Department is contesting the adverse decisions of the aforesaid High Courts. Against the single Judge's decision in the case of Century Enka Ltd. appeal has been filed before the Division Bench of the Calcutta High Court and the same is pending. Against the Madras decision petition for special leave to appeal has been filed in the Supreme Court. Against the Allahabad decision by certificate of the High Court, an appeal has been filed in the Supreme Court. As huge stakes of revenue are involved and the controversy is still unsettled, it is necessary to keep the matters alive in all cases of assessees even within the jurisdiction of the Calcutta, Madras and Allahabad High Courts. For that purpose, the Board consider that the ITOs may continue to follow the existing Departmental view, till such time as an authoritative pronouncement in the subject is available from the Supreme Court subject, of course, to the recovery of tax raised in assessment orders not being enforced within Calcutta, Madras and UP charges till the decision of the Supreme Court. The fact that recovery is not being enforced in view of the High Court decision may be specifically brought out in the relevant orders."

1.33 The Committee enquired why it was felt necessary to propose retrospective amendment of Section 80J. In a note, the Ministry of Finance have stated :

"It was considered necessary to propose retrospective amendment of section 80J particularly in view of the following :—

(i) Section 80J specifically provided that capital employed will be computed in accordance with the rules and the rules clearly provided that borrowed capital will be excluded from the capital base for the purpose.

(ii) The then Finance Minister had in his Budget Speech for the year 1971-72 unequivocally stated that he proposed to exclude borrowed capital from the capital base for the purpose of determining the "tax holiday" profits.

(iii) The "tax holiday" provisions have been on the Statute Book in one form or the other from 1942 and the exclusion of borrowed capital from the capital base during the period 1949 to 1968 was never doubted.

(iv) The prospective application of the proposed amendment was estimated to result in substantial loss of revenue."

1.34 Explaining the provisions of the Finance Bill, 1980 with regard to the amendment of Section 80-J retrospectively, the Pink Book (Memo-

randum explaining the provisions of the Finance No. 2 Bill, 1980) gave the following reasons :—

"*Modification of the provisions relating to tax holiday.*—Under the existing provisions, a 'tax holiday' concession is granted in respect of profits derived by a taxpayer from an industrial undertaking (including a cold storage plant) newly set up in India. The concession is also available in relation to profits derived by an Indian company from the business of an approved hotel satisfying certain conditions or from plying a ship. The tax holiday concession consists of exemption from tax of the profits up to 6 per cent annum (7.5 % per annum in the case of a company) of the capital employed in the undertaking, hotel or ship for five successive assessment years commencing from the assessment year relevant to the accounting year in which the undertaking goes into production or starts operation of the cold storage plant or the hotel starts functioning or the ship is first put to use. In the case of co-operative societies, the tax holiday period extends to 7 years as against 5 years in the case of other categories of taxpayers. The benefit of this tax concession will be available in respect of industries which go into production before 1st April, 1981 as also hotels which start functioning before that date and ships which are brought into use on or before that date. However, an industrial undertaking which begins to manufacture or produce any article specified in the list in the Eleventh Schedule to the Income-tax Act after 31st March, 1979 is not eligible for this tax concession.

The capital employed in the industrial undertaking or the ship or the hotel is computed on the basis laid down in the Income-tax Rules. Speaking generally, it is calculated on the basis of the owned capital and reserves only, i.e. with reference to the value of the total assets of the taxpayer as reduced by the liabilities including long-term borrowings. There has been a cleavage of opinion among the courts whether the rule is *ultra vires* the provision relating to tax holiday in the Income-tax Act. Some of the High Courts have taken a view that the rule is *ultra vires* the provision and that long-term borrowings should also form part of the capital employed. In this connection, it may be mentioned that from 1948 to 1969, the rule provided for the computation of the capital employed only on the basis of owned capital. An amendment made in 1968 extended the definition of 'capital employed' so as to include long-term borrowings as well. The position was, however, reversed in 1971 on the consideration that there is no justification for including the long-term borrowings in the capital base as interest paid on such borrowings is allowed as deduction in computing the taxable income. It is accordingly proposed to make the position clear in law by incorporating the provisions of the rule in the Act itself with retrospective effect. It is considered that the proposed amendment will eliminate unnecessary litigation in this regard.

The proposed amendment takes effect from 1st April, 1972 and will accordingly apply in relation to the assessment year 1972-73 and subsequent years."

1.35 One of the reasons given for the retrospective amendment of Section 80-J was that the prospective application of the proposed amendment would result in substantial loss of revenue. During evidence, the Committee enquired whether any calculations about the loss of revenue were made when Section 80-J was proposed to be amended retrospectively. A representative of the CBDT stated :—

"We have not done it. At that time when the provisions of the Finance Bill were being processed, no estimate was made of the likely loss of revenue if the view taken by certain High Courts was ultimately held up."

He further clarified :

"That was the position at the time of formulation of the Budget proposals. When the matter was before Parliament there was lot of discussion and we were asked to make a guesstimate. We said that it was not possible to have a real dependable estimate. But a guesstimate was made."

1.36 As to the reasons why retrospective amendment was proposed, the representative of the CBDT stated :

". . . . there were lot of litigations going on and many of the assessments were held up. These were cases pending at an appeal stage. The intention of the Government was spelt out by the Finance Minister in the Budget Speach. The main consideration was to clarify the position so that the uncertainly would go, the litigation was avoided, the position in the matter crystalised and we could collect our revenue . . . . we did not meticulously work out the actual revenue loss."

1.37 Asked whether the position should not have been clarified earlier with a view to dispel the uncertainly and avoid litigation, the witness replied :

"I agree."

1.38 In reply to a further question why the Department could not wait till the Supreme Court gave its judgement on the issue, the representative of the CBDT stated :—

"Litigation would have gone on for another few more years . . ."

1.39 On being asked why the Department having waited for 5 years, after the judgement of Calcutta High Court in 1975, should have felt it necessary to resort to a retrospective measure, the witness stated :

"It might have been better to make amendment at that time."

He added :

"Even in 1980 we were not specially examining this question. We were examinining Dadekar Committee's recommendations. In

that process we said there was some area of litigation. Let us try to remove it, otherwise this litigation would go on preliferating."

1.40 In reply to a question whether the Board still held the view of the Bombay High Court as good after amendment of Section 80-J incorporating the provisions of Rule 19A therein, the Ministry have informed the Committee that "a reference to the Ministry of Law has been made and their advice as and when received, will be communicated."

1.41 The Committee called for details regardnig the number of assessees who had claimed relief under Section 80-J but had paid the disputed tax, the quantum of such disputed tax as well as the number of assessees who had not paid the disputed tax since 1970-71. The Committee also desired to know the approximate liability involved by way of refund to those assesses who had paid disputed taxes, if Section 80-J was struck down by the Supreme Court. The Ministry have furnished the requisite information which shows that a total amount of Rs. 45.41 crores has been paid by the assessees (company and non-company) who have been disputing their liability before the appellate authorities during 1970-71 to 1979-80. The number of such assessees is 987 in the Corporate sector and 355 in the non-corporate sector the break up of the tax paid being Rs. 44.49 crores and Rs. 0.92 crore respectively. In case the validity of amendment of Section 80-J is struck down by the Supreme Court, that much amount would become refundable to these assessees who have paid disputed taxes. The number of assessees who have not paid the disputed tax is 748 in the Corporate sector and 177 in the non-corporate sector and the amount of disputed tax is Rs. 65.52 crores and Rs. 1.08 crores respectively.

1.42 The Committee desired to know whether the CBDT took into consideration the hardship to assessees caused by retrospective amendment *vis-a-vis* the revenue impact of the measure. In a note, the Ministry of Finance have stated :

> "While processing the report of the Dandekar Committee on tax measures to promote employment, the Board took note of the observations of the Committee that section 80-J by linking tax holiday to the 'capital employed' induced capital intensity. The Committee recommended that the tax holiday provision should be revised and that it should be de-linked from 'capital employed'. The recommendation was accepted and a new section 80-I was proposed to be introduced in the Income-tax Act according to which the base for computing the tax holiday profits was changed from 'capital employed' to a percentage of taxable profits derived from the new industrial unit, ship or approved hotel to which the provision applied. While examining the Committee's report, note was also taken of the observation of the Committee that the scheme of tax holiday in the form in which it existed gave rise to some practical difficulties and extensive litigation. The computation of 'capital employed' was not free from difficulty and disputes over the question whether borrowings could be ignored in the computation of capital for the purposes to tax holiday were yet to be resolved. There was cleavage of opinion among the High Courts whether the Rule

19A(3) was *ultra vires* the rule making powers of the Board. As a new section 80-I was being introduced for computation of tax holiday profits, it was considered desirable at the same time to make the position clear in so far as section 80-J and rule 19A were concerned by incorporating the provisions of the rule in the Act itself with retrospective effect as this would obviate unnecessary litigation in this regard.

In the above circumstances, at the time when section 80-I was amended by Finance (No. 2) Act, 1980 the revenue impact of the retrospective operation of the amended section was not estimated."

1.43 The Committee asked whether the Board was aware of the number of assesses affected adversely by the retrospective amendment. In a note, the Ministry of Finance have stated :

"No figures are available of the number of assessess affected adversely by the retrospective amendment of section 80-J."

Revenue impact of the tax holiday provisions

1.44 In 1965, Chapter VIA, consisting then of four sections was added to the Income-tax Act, and it gave reliefs not by way of rebate of tax at the average rate of tax but as straight deductions from total income. Many reliefs have been added since 1965 and the Chapter now runs from Section 80A to 80-VV. From the information made available to the Committee, it is seen that the total relief of tax under all these sections of Chapter VIA during the period 1974-75 to 1978-79 is as follows :—

Year	Total Tax relief	No. of assessments u/s 80 J	Relief under Section 80J
			(Rs. in crores)
1974-75	49.9	704	2.70
1975-76	47.0	550	1.99
1976-77	64.3	427	2.08
1977-78	66.0	400	2.47
1978-79	53.0	458	3.70

1.45 Referring to the total quantum of tax relief involved under various sections contained in Chapter VIA of the Income Tax Act, the Committee desired to know whether any evaluation had ever been made by the Department about the achievement of the objective in view. The Chairman, CBDT stated :

"EARC (Economic Affairs Reforms Commission) is looking into it and we do hope that something for simplification will come out."

1.46 In reply to a question whether such elaborate drafting which made the law more complicated was necessary, the witness stated :

> "One view that has been expressed to us is that in case we reduce or delete these concessions and at the same time reduce the rate of tax also, probably that will make the law simpler. I, however, do not know what final view the EARC will take."

1.47 On being asked whether, in view of the negligible amount involved, it was worthwhile to retain Chapter VIA in the Act in its present form, the Chairman, CBDT stated :

> "I agree that wherever the relief given is so small in terms of tax, probably we could make the law simpler."

1.48 Pointing out that the objective of making the provisions for tax holiday was acceleration of industrial progress of the country, the Committee enquired whether any study had been undertaken to find out if the benefits and concessions granted to the industry from year to year, had had any impact. The Finance Secretary deposed :

> "These amendments have been made from time to time so far as various incentives are concerned. It is not merely Section 80-J but also various other sections which contain provisions regarding the investment allowance and various other benefits which are given to the industry, which have to be taken into consideration if one has to evaluate the benefits which have been achieved in real terms from these provisions. So, my own feeling is that a study if it has to be undertaken, should not merely be confined to Section 80-J but it should cover various other sections pertaining to the industry. There is no doubt about it that year after year either as a result of representations which are made by the industry or as a result of the changing situations, the Finance Ministers announce either additional incentives or modifications thereof. Sometimes, they revert back to the old position and sometimes, new modifications are made. A detailed study with regard to the benefits that accrue particularly as a result of all the provisions which are contained in the Act, would be of great value."

The Chairman, CBDT added :

> "With regard to the Study, I may mention that we were about to undertake such a study to find out the loss of revenue under various sections ; but at that time EARC came into existence and we thought we would postpone it till the report of EARC was received. The Hon. Committee has suggested that we should undertake the study immediately. We will do that. In case it is possible, we will do this year ; otherwise we will undertake it early next year."

1.49 The Committee desired to be furnished with information on the following points :

(a) What is the impact of this tax concession on the industrial development in the country ? What is the total relief in one year and how many parties avail of it ?

(b) Has the Ministry made an estimate of how many of the small sector companies and non-MRTP and non FERA companies had made use of the deductions available under Section 80-J ?

(c) Has the Board instituted any measures to enable it to make an analysis along these lines, of deductions to be allowed under the new Section 80-I ?

(d) Has a correlation been attempted by the Board between allowances for export market development under Section 35B and deductions under Section 80-J to see how far new export oriented undertakings are being set up ?

In a note, the Ministry of Finance have stated :

(a) (i) No study has been made in the C.B.D.T. to evaluate the impact of the tax concession contained in section 80-J on the industrial development of the country.

(ii) Apart from the figures given in the Dendekar Committee's Report and the All India Income-tax Statistics, there is no information available in CBDT indicating the total relief allowed in one year and how many parties availed of it.

(b) C.B.D.T. has not made an estimate of how many of the small sector companies and not MRTP and non-FERA companies made use of the deduction available under section 80-J.

(c) Board has not taken any measures for analysis of the deduction to be allowed under the section 80-I on the lines indicated above.

(d) No correlation has been attempted of allowances for export market development and deduction under section 80-J to see how far new undertakings are being set-up which are export oriented.

Findings of the Dandekar Committee

1.50 From the publication entitled "All India Income Tax Statistics, 1978-79" brought out by the Directorate of Inspection (Research, Statistics and Publications), it was noticed that during the year 1978-79 459 assessees had claimed a total deduction of Rs. 6,50,71,000 under Section 80-J on which a tax relief amounting to Rs. 3,70,43,000 was given. The relief in earlier years viz., 1976-77 and 1977-78 amounted to Rs. 2.08 crores and Rs. 2.47 crores. The Committee pointed out during evidence that these relief did not appear to be very substantial and enquired to what extent the purpose of enacting this measure had been fulfilled. A representative of the CBDT replied :

"This point.....was considered by the Dandakar Committee. They concluded that the All India statistics do not present the correct picture. They made an analysis of some of the companies. They came to the conclusion that the loss of income tax every year under 80J is of the order of Rs. 20 crores."

1.51 Explaining the discrepancy between the two sets of statistics, the witness stated :

> "I will tell you why the statistics are sometimes not complete in certain respects. While computing the total income the I.T.O. gives deduction under section 80-J. When the assessment form is made, the net income is put there and the deduction under Section 80-J is not always indicated separately. Although there would be some forms in which it is separately indicated, it has to be given in a specified case. It is not so given in some forms."

1.52 On the question of collection of statistics, the Director of Inspection stated in evidence :

> "The function of the statistical section is to confine to the statistics available from the Commissioners in the assessment forms. It is not possible for our Section to check up the figures and the information contained in the assessment forms which is to be taken as authentic information."

1.53 In the same context the Chairman, CBDT stated :

> "So far as the assessment forms are concerned, the ITOs are supposed to send them to the Director of Inspection, whenever assessments are completed. My experience is that these assessment forms are not sometimes filled up carefully with the result that the rebates allowed to the assessees under various sections are not specifically shown. Director of Inspection has to mechanically compile the statistics. In so far as the despatch of the assessment forms is concerned it has to be done by the Income tax Officer and he is responsible for that."

1.54 On being pointed that, if the forms filled by the ITOs are never to be checked by anybody while compiling the statistics the same will lose their credibility, the Chairman, CBDT stated :

> "It is unfortunately so."

1.55 In a further note on the Dandekar Committee's findings in regard to annual loss of income-tax revenue on account of relief under section 80-J, the Ministry of Finance, have explained :

> "The Dandekar Committee observed that the All India Statistics published by the Income-tax Department contained, information regarding the total amount allowed as deduction under section 80-J of the Income-tax Act and its effect on tax revenue. According to the then latest available data from this source, the deduction allowed towards tax holiday amounted to Rs. 3.68 crores in 1976-77 with the tax effect of Rs. 2.00 crores. However, it was felt that these figures were not complete. In order to have a comprehensive picture of the revenue cost of tax holiday, information was obtained by the Committee on a census basis from the Income-tax Department

for all companies which claimed any deduction under section 80-J for the years 1975-76 and 1976-77. The relevant figures for the respective years are as follows:—

(Rs. crores)

	1975-76	1976-77
Deduction allowed under section 80J of the I.T. Act (Including deficiency in tax holiday profits carried forward from preceding years)	33.30	33.64
Tax effect	15.52	18.30

Allowing for the fact that the figures covered only corporate assessees, the total amount of revenue cost of tax holiday for 1976-77 was estimated by the Committee at Rs. 20 crores. With the amendment made in the law in 1979 whereby tax holiday was granted to new industrial undertakings producing articles not coming within the prohibited category (as listed in the Eleventh Schedule to the Income-tax Act), the revenue cost of tax holiday for later years was estimated at not more than Rs. 14-15 crores annually.

In order to assess the impact of the investment allowance and tax holiday provisions on employment, the Committee sponsored a study at the Indian Institute of Management, Ahmedabad, on the basis of data specially collected by the Income-tax Department in respect of 95 selected public limited companies for assessment years 1977-78 and 1978-79. Of the 95 companies covered in the study, 90 claimed benefit on account of either or both the provisions. The total benefit claimed amounted to Rs. 22.90 crores in 1977-78 and Rs. 35.68 crores in 1978-79. The benefit claimed on account of investment allowance amounted to Rs. 12.24 crores in 1977-78 and Rs. 20.54 crores in 1978-79, that under tax holiday amounted to Rs. 10.66 crores in 1977-78 and Rs. 15.14 crores in 1978-79. The following details were given :—

Deduction claimed by 90 selected companies from taxable profit on account of investment allowance and tax holiday.

Incentive Provision	Assessment year 1977-78	(Rs. crores) Assessment year 1978-79
Investment Allowance	12.24	20.54
	(7.07)	(11.86)
Tax Holiday	10.66	15.1
	(6.16)	(8.74)

Note : Figures in brackets indicate the "tax effect of the deductions."

1.56 In another note, the Ministry of Finance have stated :

"The Committee had apparently to resort to a census, as it felt that the figures given in the Report containing All India Income-tax Statistics were not complete. The latter figures are compiled with reference to ITNS 150|150A forms and will only give the information on the basis of figures given against part F of page 2 under the heading "Deductions under Chapter VIA (Part F mentioned here can also be seen in the Income Tax Assessment|Refund from pointed on 10-6-1981). As the source material, from which these figures are compiled, is not retained for long periods, the process of reconciliation is rendered difficult. Further the ITNS 150|150A forms in respect of rectifications, appellate effects, are not, generally sent to the statistician whilst in the census this information could have also been taken into account.

1.57 The Committee enquired whether the Board was systematically collecting information on allowances and rebates|reliefs given under Section 14 to 59 dealing with computation of income, which include such allowances as given for "Export markets development", "Agricultural development allowance", "Rural development allowance", "Scientific research" etc. and whether the department could make available a list of organisations recognised under Section 35, 35 CCA etc. which have assets| annual turnover exceeding Rs. 50 lakhs. The Ministry have in a note stated :

"Some elements of information on allowances etc. covered by Sections 32 to 36 of the Income-tax Act are included in ITNS 150 and 150A. Assessment forms which are the source documents for all India Income-tax statistics. However, these items of information are not part of the statistical tabulation programme.

There are four prescribed authorities u|s 35 of the I.T. Act viz. Indian Council of Medical Research, Indian Council of Agricultural Research, Secretary, Department of Science and Technology and Indian Council of Social Sciences Research. These prescribed authorities were requested to furnish the list of the institutions recommended by them for recognition u|s 35 of the I.T. Act which have assets|annual turnover exceeding Rs. 50 lakhs. Two of these prescribed authorities viz. Indian Council of Agricultural Research, and Department of Science and Technology have stated that whilst they have the list of institutions recommended they are not in a position to identify out of them cases where the assets|turnover exceed Rs. 50 lakhs and this will have to be done by calling for accounts which they do not receive in all cases. Another prescribed authority viz. Indian Council of Social Sciences Research has stated that whilst recommending approval, they insisted on certain clauses as under :—

(i) The funds collected by the Institute|Society|Organisation under this exemption will be utilised exclusively for promotion of research in social sciences.

(ii) The Institute|Society|Organisation shall maintain separate accounts of the funds collected by them under the exemption.

(iii) That the Institute|Society|Organisation will send an annual Import to the ICSSR showing the funds collected under the exemption and the manner in which the funds were utilised.

But there is no clause requiring these institutions to send the annual accounts showing assets|turnover to the ICSSR. The Council has further stated that it feels that before asking the institutions for this information, it will have to put a clause to this effect in their recommendation. As such, ICSSR and other authorities are being advised to insert a clause in their recommendation in future. In this view, they are not presently able to classify the cases of assets|turnover involving over Rs. 50 lakhs.

Indian council of Medical Research has furnished a list of 25 instituitions where the assets turnover involved are Rs. 50 lakhs or above in at least one of the three years viz. 1978-79, 1979-80 and 1980-81.

Streamlining the system of compilation of statistics

1.58 The Committee pointed out that there was a wide variation in the figures of revenue loss on account of tax holiday as worked out by the Dandekar Committee (Expert Committee on tax Measures to promote employment) compared with the figures given in the All India Income tax statistics brought out by the Department. A representative of CBDT testified :

"It is Sir. There is a lot of discrepancy between the two."

The Finance Secretary added :

"I fully appreciate the point made here, the figures which have been published in this publication do not seem to tally with the figures which have been given in the Dandekar Committee Report. It is the duty of the Statistics Department to take note of the statistics which may have been collected in some other context and where there may have been variance between the two types of statistics. I agree, we should conduct a study of 90 companies and try to find out where we went wrong; and if we have gone wrong, then we have to correct our statistics. And if necessary we have to give some sort of a footnote to indicate the limitations of the statistics which are being published.....If the Directorate of Statistics is compiling these figures just mechanically, without taking note of the fact that these figures in some cases are not reliable, it will be a sorry state of affairs. We will have to see that whatever statistics are published are correct.

1.59 Asked if any steps were being taken to streamlining the system of compilation of statistics, the Chairman, CBDT replied :

"I would like to say something about the efforts we are making. The statistics that we present should no doubt be correct. We

have taken a decision in the Board that instead of obtaining the information *ex-post-facto* i.e. on the basis of assessments completed, we should get one information from the return itself. It will obviate the delay that occurs in the compilation of these All Indian Statistics. We are going to bring in this new procedure with effect from 1-4-1982. We have taken another step in that direction. The companies, because they are very few and are always represented by Chartered Accountants and other qualified people, will also append alongwith the return the details of various concessions that they are claiming for that year. On the basis of that we will be able to know the total amount of concessions allowed in various assessment years and what is the loss of revenue relating thereto. That will give more accurate figures than those obtained at present."

1.60 In a note subsequently furnished at the instance of the Committee, the deficiencies noticed and the steps being taken or contemplated to improve the system of collection of data|statistics have been outlined as under :—

"The All India Income Tax Statistics (AIITS) based on "assessed income" are being published on a financial year basis. The publication presents the consolidated data as contained in the assessment forms received by the Statistics wing of the DI(RS&PR), concerning original assessments made by the Department during that financial year. Since under the I.T. Act at present, an assessment has to be completed within a period of 2 years following the close of the relevant assessment year, the statistics published for a financial year cover data of assessments relating to 3 assessment years. Since the assessment forms numbering several lakhs are being received from a *wide* net-work of assessment officers the present system, besides suffering from some inherent deficiencies, has also developed certain unavoidable delays and other shortcomings over the years.

Some of the major deficiencies are listed below :—

(i) As the statistics for any financial year relate to more than one assessment year (the proportions of coverage also varying from one F.Y. to another), they cannot be related directly to the tax policy of any particular assessment year. Accordingly, the data do not aid in the review of the impact of changes in tax policy made during any particular assessment year.

(ii) Since Income-tax returns relevant for a particular assessment year are disposed of during a span of 3 years, valid and complete statistics relevant for an assessment year and useful for tax review can at best be generated only with a lag of about 5 years even with the best of computer facilities.

(iii) Over the years, as the basic administrative work of the ITOs had become more extensive and complex, the ITOs do not find it possible to devote adequate attention to statistical reporting with the consequential adverse impact on coverage and quality of data.

It was thus considered worthwhile to go in for a statistical system which fully takes into account the inherent features of tax administration and which also simultaneously provides for expedition in collection, tabulation and publication of statistics.

In the case of summary assessments which now account for over 75 per cent of all assessments, "income returned" in the tax returns of such cases is identical with "income assessed" by ITOs. This identity of data also applies to information concerning deductions, rebates, etc. "Scrutiny assessments" being subject to rectification, appeal, revision, etc. are open to variation before assessment can be taken as final.

In the light of the above inherent features, a new scheme of collection of income-tax statistics based on "returned income" is under examination by the Board. It is proposed to introduce this new scheme w.e.f. 1-4-1982."

1.61 In reply to a question regarding the computerisation of the system of data collection, the Ministry of Finance have explained :

"Since 1968, All India Income Tax Statistics are being processed on the Honeywell-400 system installed in the Government Computer Centre of the Department of Statistics at R. K. Puram. This system having become obsolete and almost non-functional, has now been phased out by them by substitution of a more powerful system. Since the computer programmes concerning income-tax statistics have been designed for the Honeywell-400 system, they are being processed for the last two years partly on a similar computer available with the ONGC office at Dehradun. These developments have naturally caused us significant problems in the transportation, handling and processing of data. Efforts are also on hand to orient the processing of these statistics on a more generalised system of computers.

The lack of an inhouse computer for the Income-tax Department has greatly handicapped the Department particularly the Statistical Wing, in meeting the *ad-hoc* and urgent demands for data processing and also in computerising other areas of statistics. It is also high time for this large Department to acquire and develop its *own expertise* in the field of computers.

The Board has recently authorised the DI (RS&PR) in principle to acquire appropriate computer system now available indigenously. The Directorate is presently on the job of

identifying a suitable indigenous computer system in consultation with the Department of Electronics. Until the inhouse computer is obtained and made operational the various statistical jobs will require to be handled by hiring computer-time from other agencies.

Once the computer system and the team of experts to be recruited are in position, the Department could handle efficiently the various statistical activities which could be extended to other administrative activities depending on efficiency achieved in the main field of statistics. This will ensure early release of valid statistics on all the important aspects of tax administration. It will also greatly facilitate improved tax administration and collection."

Irregular allowance of relief in respect of newly established undertakings

1.62 The Audit objection in the case of M|s. Brooke Bond India Limited is that relief u/s 80J had wrongly been allowed for assessment year 1970-71 as in the relevant period the accounts revealed that the undertaking had suffered a loss of Rs. 2,98,511 and was not entitled to relief under section 80J.

1.63 Brooke Bond India Ltd. is a company assessed to income-tax in the CIT, West Bengal-I, Calcutta. It filed a return of income for the assessment year 1970-71 on 29-6-1970 declaring a total income of Rs. 4,64,01,392. A claim of deduction under section 80J amounting to Rs. 4,21,754 was made for this year. Subsequently a revised return of income was filed on 9-2-1972 returning a total income at Rs. 4,63,61,959. The 80J relief continued to be Rs. 4,21,754. The assessment order was passed on 12-3-1973 on a total income of Rs. 4,68,31,280 in which the assessee's claim for 80J was disallowed as the conditions laid down in Rule 19A were not fulfilled. The matter ultimately went up to the Tribunal which held that the claim of the assessee for relief under section 80J needed a second look in the light of the Calcutta High Court's decision in the case of M/s. Dunlop Rubber India Limited. The Tribunal's decision was given on 31-1-1976. The effect to this decision was given after going into the claim of the company for deduction under section 80J. The order giving effect to it was passed on 1-11-1976. The relief under section 80J has been allowed to two separate units of the assessee as below :—

1. *Tundla Factory Unit*		
Relief under section 80 J for 1970-71	Rs. 3,63,693	
Relief under section 80 J for the year 1968-69 and 1969-70	Rs. 85,194	4,48,887
2. *Ghatkesar Factory*		
Deduction under section 80J		2,98,511
Total:		7,47,398

1.64 The sources of income of the newly established undertaking viz. Ghatkesar Unit is production of instant coffee. The unit is entitled to tax holiday relief under section 80J from assessment year 1969-70 onwards. However, such relief is to be carried forward in the absence of profit from the unit. During the assessment years 1968-69, 1969-70 and 1970-71, the unit was allowed relief under section 80J to the extent of Rs. 13 lakhs, Rs. 2.64 lakhs and Rs. 4.49 lakhs respectively.

1.65 Asked about the present foreign share holding of the company, the Ministry have stated that the same was reduced to 40 per cent from August 1979 i.e. relevant to the previous year ending June 1980. The percentage of foreign share holding during the accounting year relevant to the assessment year 1970-71 was 75 per cent.

1.66 The Audit paragraph has brought out that in the statement claiming the relief under Section 80-J, the assessee had irregularly shown the figure of loss of Rs. 2,98,511 as profits, and on the basis of this statement by the assessee the Income Tax Officer had allowed the deduction. Explaining how the mistake occurred, the Ministry of Finance have stated that the statement made by the assessee company duly certified by the auditor showed that the new unit (Ghatkesar factory) had sustained a loss to the extent of Rs. 2,98,511. The assessing Income Tax Officer had taken this figure as profit and allowed a deduction under section 80-J to this extent. This mistake was thus attributable only to the carelessness of the Income Tax Officer. The Ministry have further stated that the impugned order was required to be checked by the special Audit party but it was not actually checked.

1.67 The Committee called for information on the following points :

(a) Why was the case not checked by internal audit though it was required to be checked by special audit party ?

(b) Was Inspecting Assistant Commissioner required to check this case ? Did he do so ?

(c) What action is being taken to avoid such careless mistakes taking place and remaining undetected in such important cases ?

In a note, the Ministry of Finance have stated :

"(a) & (b) The ITO who passed the order on 1-11-1976 failed to include this case in the list of immediate and priority cases for audit to be sent to the IAC (Audit) every month.

The case was to be checked by the Special Audit Party. However, as this case was not included in the list sent to them, it could not be checked by the Special Audit Party. IAC (Audit) was not required to check this case.

(c) It may be pointed out that in this particular case, there has not been any loss of revenue. The deficiency under Section 80J of Rs. 2,98,511 which was wrongly allowed in assessment year 1970-71, was actually required to be carried forward to the next assessment year 1971-72. As a result of the remedial

action taken now, it has been so carried forward and the relief allowed in assessment year 1971-72. Thus, the relief, which was due, had to be allowed in 1971-72, though not in assessment year 1970-71 and, thus, there has actually been no loss of revenue on that account.

However, in order to ensure that all auditable cases are reported to Internal Audit, instructions have been issued on 7-4-1977 that all the ITOs should send lists of immediate and priority cases decided during the month to their range IACs while sending the monthly progress reports to them and it would be the responsibility of the range IACs to ensure that all the ITOs under them send the lists regularly.

The Internal Audit Parties also have been advised to vertify the correctness of the lists with reference to the Demand and Collection Registers of the ITOs when they take up the audit of any particular circle so that any omissions in the lists are made good with reference to the Registers. With the appointment of IACs (Assessment) all large income cases will now be assessed at the level of IACs. Thus, the chances of mistake creeping in the computation of total income will be far less than before. Further, with effect from 1-1-1979, the IACs (Audit) have been asked to recheck all cases wherever the income exceeds certain limits. The limit is Rs. 50 lakhs and above in Bombay City, West Bengal, Tamil Nadu and Gujarat charges, Rs. 25 lakhs and above in Andhra Pradesh and Karnataka, and Rs. 10 lakhs and above in other charges of Commissioners of Income-tax."

1.68 During evidence the Committee enquired whether any action had been taken against the Income Tax Officer who had made such a careless mistake in this case. A representative of the CBDT deposed :

"He went into the assessment records. This mistake was committed due to sheer inadvertancy. Loss is taken as profit in the unit. This, he has stated, was due to oversight and he has regretted. The Commissioner of Income-tax felt that his explanation is not satisfactory and he has asked him to be more careful in future. Rs. 2.98 lakhs loss was erroneously assumed to be profit it. Regarding 1970-71 assessment where we had allowed this claim, there was a tribunal order. The point was whether the assessee industrial undertaking was entitled to no relief under 80J at all. The matter went in appeal. The tribunal said that relief has to be allowed; has to be computed; our objection was that it was a 'composite business'. The tribunal held that it could be computed A Chartered Accountant was asked to go into it, to find out capital employed and all that. The eligible tax concession has been worked out for each of these years. It was a loss in that year; and the amount worked out was Rs. 3.23 lakhs and odd. Audit pointed out that it was a loss. the relief could not have been allowed. Refund allowed in that particular year was stated to be wrongly allowed."

1.69 The Committee pointed out that the mistake in this particular case was pointed out by the Receipt Audit and would have otherwise gone undetected. The Committee therefore enquired about the system of checking in the Department. Explaining the position, a representative of the Central Board of Direct Taxes stated :

> "There is the system of internal check by Internal Audit Party. There is also Special Audit checking. They have to check every case of refund. Unfortunately, this particular case was not included in the list of cases to be checked. That is why it happened to be left out. The Special Audit Party checks cases of refunds issued in a particular year. If it exceeds a particular amount it has to be checked by Internal Audit or by Special Audit Party. If it is included it could have been checked; it was not included..... There was a failure to locate the case and the case remained unattended to by the Special Audit Party. It was found out by the Revenue Audit."

Strengthening of Internal Audit System

The Committee called for information regarding the scope of working of the Internal Audit. The Ministry of Finance have in a note explained :

> "When Internal Audit was first introduced in 1954 its scope was limited to checking the arithmatical accuracy of computation of income and determination of tax. However, after 1960 when audit by C&AG was introduced, the scope of internal audit has now become co-extensive with that of Receipt Audit. Thus, now Internal Audit is expected to check whether the assessing officers have followed Board's instructions clarifying legal issues and also whether they have missed any obvious legal or binding judicial decisions. There are only 150 internal audit parties (including 40 special parties) as against 256 audit parties of the Receipt Audit. So it is not possible for Internal Audit to check all cases. Therefore, it has been decided that Internal Audit should check only high revenue yielding cases which are, categorised into 2 groups—'Priority' and 'Immediate'. Priority case has been defined as follows :
>
> (i) All company assessment irrespective of income.
>
> (ii) All cases of registered firms where the total income or loss assessed is Rs. 75,000 or more.
>
> (iii) Other non-company cases where the total income or loss assessed is Rs. 50,000 or more.
>
> (iv) Refund cases not included in (i), (ii), and (iii), where the refund is Rs. 10,000 or more.
>
> (v) Wealth tax cases where the tax assessed is over Rs. 10,000.
>
> (vi) Gift-tax cases where the tax assessed is Rs. 10,000 and above.
>
> (vii) Refund cases where the refund is over Rs. 10,000.

An 'Immediate' case is defined as under:

(i) All company cases,

(ii) Non company cases where total income is over Rs. 1 lakh,

(iii) Wealth-tax, Gift-tax and Estate Duty cases where the assessed tax or duty is over Rs. 20,000.

According to existing instructions Audit parties are expected to take audit of only 'Priority' and 'Immediate' cases in the first instance. Time permitting, they are to look into non-priority cases.

Internal Audit Parties are expected to check all priority cases not specifically assigned to Special Audit Parties. Special Audit Parties, wherever sanctioned, are expected to check all Company cases involving total income or loss assessed at Rs. 25,000 or more. SAPs are also expected to check immediate cases of Central Circles, Special Circles and other important revenue yielding cases at the discretion of the CII. Estate Duty cases where the principal value of the Estate is over Rs. 1 lakh also fell within the jurisdiction of the SAPs."

1.71 Organisational set up of Internal Audit in the Income Tax Department is as follows :—

I. Headquarters :
Member CBDT (Revenue Audit)
Director of Inspection (Audit)

II. Field Organisation :

Commissioner of Income-tax
I.A.C. (Audit)

Chief Auditor	ITO (Internal Audit)	ITO (Special Audit)

1.72 The existing strength of the organisation is as under :

Designation	No. of sanctioned posts.
IAC (Audit)	27
Chief Auditor (Partly Group A and partly Group B)	30
ITOs (Internal Audit including one ADI in the Directorate of Inspection (IT&A) All Group B	39
Special Audit Parties, each consisting of one ITO Group A Senior Scale 2 Inspectors and one UDC or Tax Assistant.	40
Internal Audit parties consisting of one Inspector 3 UDCs or Tax Assistants and one LDC	110

1.73. Explaining the need for augmenting the number of audit parties, the Chairman, Central Board of Direct Taxes stated during evidence :

"The position of ministerial staff is very bad because of various constraints. While we have been adding the number of ITOs, we have not matched it by complementary staff. On account of that, we are not able to draft or divert ITOs to serve in Special Audit Parties. This is one of the reasons why we have not been able to attend to the immediate and priority cases, not to speak of the ordinary assessments which we should take up.

We have been taking certain steps to see that the working of this organisation improves. We have created the post of IAC (Audit), some years back. We had decided that in addition to supervisory work of the Audit parties, the IACs should themselves deal with certain category of cases. Because of shortage of manpower, we have fixed the monetary limit at a high amount. For West Bengal, Bombay, Tamil Nadu and Gujarat, the IAC (Audit)'s limit for re-checking is Rs. 50 lakhs. For Delhi and Karnataka the limit is Rs. 25 lakhs. For the mofussil charges it is Rs. 10 lakhs. We have recently mooted a proposal for adding 22 posts of IACs, who could re-check the cases checked by the Internal Audit Parties. If we are able to get the posts sanctioned, then the position will certainly improve."

1.74 The Committee wanted to know the precise requirements of manpower for efficient running of this organisation and whether the question had been studied on the basis of established norms of work. The Chairman, Central Board of Direct Taxes explained in evidence :—

"So far as ministerial staff is concerned, as Director of Management Services I had studied this problem in 1977. We find that the ratio of complementary ministerial staff to the ITO, fixed in 1968-69, has become out-dated. At that time the quota was 4.3 persons for each ITO. Because of the increase in work and complexities of law, we find that this quota of 4.3 persons is not up to the mark. The work study was conducted by me as Director, Management Services, in 1977-78. The Report was submitted in 1978 to the Government. We required more than 10,000 additional hands. Our requirement should be 9 clerks per I.T.O. This study was test checked by S.I.U.

This work should have been taken up by the Staff Inspection Unit. But as the problem was very acute at that time they had entrusted this study to the Directorate of Organisation and Management Services. This study was test checked and they came to the conclusion after a lot of deliberation and probing into the matter that we required immediately 5,000 clerks of all cadres.

The matter went upto the Expenditure Department. They cut down our requirement to 3,500. But later on it was thought, that since the entire staff could not be added in one year, it should be spread over to two years 1979-80 and 1980-81. But even that

has not been so far implemented because somehow an impression was created, which to my mind, is a wrong impression that about 14 lakhs assessees were going out of the tax net. We assigned the study to the DOMS. They studied the problem in depth. They came to the conclusion that whatever work or number of assessees which will go out of the tax net, would be more than offset by the number of assessees that would be added normal growth on account of the special effort made through Survey etc. Now again we are pushing up the proposal for an addition of at least 3,500 clerks.

The entire shortage that we have worked out is based on a scientific study. We have evaluated each and every job that is done by the Income Tax Officer right from the issue of an Advance Tax Notice upto the stage the tax is collected and Recovery Certificate issued. This comprehensive study is based on that. Inspite of that we have not been able to get the required staff. I was saying that we have had in the recent past a number of officers. But complementary staff has not been given with the result that as against 4.3 clerks per I.T.O. we have now got 2 clerks per I.T.O. because of the increase in the number of officers. With that it is difficult for any one to manage especially with the present complies laws and the mistakes that are bound to arise."

1.75 Giving his own assessment of the situation, the Finance Secretary stated :—

"So far as the Income-tax Department is concerned, one of the material factors for assessing the requirement of staff is the number of assessees and if we analyse the number of assessees from year to year we find that it has been going up. It was going up in a very limited manner or at a very small rate of growth between the years 1974-75 and 1979-80 but 1980-81 shows a considerable increase in the number of assessees. However, I quote the figures I have got before me.

1974-75—the number of assessees was 36.37 lakhs; in 1975-76 it was 37.96 lakhs, in 1976-77—it came down to 37.59 lakhs and in 1977-78 it was 39.58 lakhs; In 1978-79 the number was 39.72 lakhs and in 1979-80 it was 41.76 lakhs. So it was ranging between 36 to 41 lakhs during these six years or so. The 1980-81 figures which are available show a considerable increase as compared to those for 1979-80. The figure as I have got before me as in February 1981 is 45.93 lakhs.

Now, there is no doubt about it that the Government has to look very sympathetically to the need for increased staff, particularly in a revenue-earning department. This need has also been appreciated because at the officers' level very recently the Government has sanctoined 285 posts so far as Group A is concerned—200 posts of ITO, 24 posts of Asstt. Commissioners

and 61 posts of Commissioners. This is as against the old strength of 2210 posts in Group A. So there has been a considerable increase which has been sanctioned very recently....."

In the light of that it also becomes very necessary that we should add to the clerical strength as well.

A study was made and we can very well appreciate the desire on the part of everybody first to say that there is a need for increased staff. But it has to be scrutinised and as he himself indicated, it was scrutinised by SIU. At that stage more or less a tentative decision was taken that the number of posts will be increased by 3500 and they should be added 1750 in one year and 1750 in the next year because even if one sanctions the posts immediately, it will not be possible to fill all that number in one stroke. That was the tentative conclusion which was arrived at. What I understand is that at that very time—more or less at the same time, the Finance Minister announced the increase in the exemption limit of—the taxable income.. ...15 lakhs assessees will go out of the taxation net. So you will appreciate that if this large number of income-tax assessees goes out of the income-tax net, practically one has to reconsider what is requirement of the clerical strength which has been put forward by the Income Tax Department. So the Income Tax Department was asked to make that exercise and I am told that the latest position is—that is what Mr.....mentioned to you—that they have now completed that exercise as to whether the number of assessees which will be going out of the income tax net is 14 lakhs or it is a lesser number. Secondly there is also the increase in the number of assessments which is taking place which I have just indicated. In 1980-81 there was a considerable increase in the number of income-tax assessees. Once this exercise is completed—I was told that it has been completed at the Board level—it will be clear as to what further requirement of clerical staff is necessary. After answering the Government's queries as to the total number of income-tax assessees, viz. how many will be going out of the income-tax net and how many will be added. Board will be able to put forward their proposals. I am sure with the support we are likely to get from the PAC recommendation or even before that, we would be able to process the case because the Government is fully aware of the fact that there is a need for increasing the clerical strength including the inspectoral strength in the Income-tax Department. So we should be able to take quick action as soon as the proposal come up from the Board to the Government. I am not trying to distinguish thereby the Board and the Government. Still the formalities remain of the Board itself putting up the proposal to the Government and giving a realistic assessment as to what their requirement now will be in the light of the fact that a number of Income-tax assessees may be going out of the net and at the same time taking into account the fact that even with regard to those who go out

of the net, may be there are certain problems which would still remain with the Income Tax Department—they have to sometimes give them certificates for the income-tax deductions and there may be certain other requirements of the income-tax law which have to be complied with. Taking all these factors into consideration, once realistics demand comes up we will try our best to see that the demand is met and the orders are issued as early as possible.

One more thing which I would like to mention in this connection is that the Government as well as the Board naturally will be more interested in ensuring that mistakes do not occur at the start that is, when the assessment itself is finalised. At that very time an attempt has to be made that the number of mistakes is decreased. That can be decreased only if there is a proper strength of the officers as well as the clerks. In this matter, one can take care of the realistic requirements of the Income-tax Department at the assessment level. Then, of course, the internal audit's work will become less. In fact, it can diminish as a result of less mistakes occurring at the assessment level itself.

I would further submit that even at the internal audit level if more mistakes get detected, then the working of the revenue audit will get facilitated. This requires strengthening of the staff."

1.76 In a note subsequently furnished at the instance of the Committee the Ministry of Finance have made the following proposals for augmenting the strength and improving the efficiency of the Internal Audit Organisation :—

(a) A proposal to create-25 additional posts of IACs (Audit) is under examination of the Finance Ministry.

(b) The Ministry's proposal to sanction special pay to the ITOs working in the Internal Audit set up has not been accepted by the Department of Personnel. However, a further attempt would be made to approach the Department of Personnel at a higher level. Without incentive of special pay to ITOs, the Board is of the view that the desired efficiency of the organisation cannot be achieved.

(c) The Director of Inspection (IT&A) is overall incharge of the Internal Audit in adition, he has other functions to discharge A new post of DI (Audit) has just been created to look after audit work exclusively to enable him to concentrate on audit work only.

(d) The DI (Audit) would be incharge of audit work throughout the country. All IACs (Audit), ITOs (Internal Audit) and Chief Auditors will be placed under his direct control. This step is likely to increase the efficiency of the Internal Audit work.

1.77 In a further case the Ministry have furnished the following data regarding the number of assessments under Income-tax Act and other direct tax Acts completed the number of priority and immediate cases to be audited and those actually checked by the Internal Audit from 1975-76 to 1979-80 :—

Year	Total No. of assessments completed	Total No. of priority and immediate cases to be audited			No. of priority and immediate cases checked	% of Col. 6 to Col. 5 (Total)
		Opening Balance	Additional	Total		
1	2	3	4	5	6	7
1975-76	43,83,838	51397	217272	268669	218367	81.2
1976-77	43,43,851	50302	258822	309124	238607	77.1
1977-78	44,74,203	66779	307111	373881	298159	66.3
1978-79	39,04,457	125841	245514	371355	250872	67.5
1979-80	39,12,000	121503	232916	354419	226532	64.0

The number of objections raised by Internal Audit and their tax effect from 1977-78 to 1980-81 is as follows:—

Year	No. of objections	Tax Effect
1977-78	57944	41.42 crores
1978-79	42477	30.52 crores
1979-80	60790	46.45 crores
1980-81	31932	32.21 crores

1.78 The Committee called for details of additional revenue realised by the Department as a result of the efforts of the Internal Audit Organisation vis-a-vis the expenditure incurred thereon during each of the last 3 years. In a note, the Ministry of Finance have stated :—

> "Internal Audit Parties raise objections of under-assessment as well as over-assessment. When the objections of under-assessment are accepted and given effect to by the assessing officers, additional demand is raised whereas when the objections of over-assessment are given effect to, they result in refund to the assessees. When additional demand is raised as a result of the Internal Audit objections, it is on par with the normal demand raised on completion of assessments etc. No separate figures of collection of this demand are available as this collection merges with the entire collection made by the Department.

However the date regarding cases in which rectificatory action was carried out on the objections raised by Internal Audit during the last three years is as under :—

(Rs. in crores)

	Year	No. of cases	Amount
Under-assessment	1978-79	28,463	17.69
	1979-80	29,336	21.42
	1980-81	22,966	21.49
Over-assessment	1978-79	7,356	3.85
	1979-80	6,362	2.92
	1980-81	4,077	2.81

As regards expenditure, since Internal Audit Parties are part and parcel of the Income-tax Department as a whole, no separate figures about the expenditure incurred on them is maintained. However, on the basis of the number of posts sanctioned for Internal Audit and the amount of salary relatable to them, the expenditure per annum works out to Rs. 1,01,77,440.

The above figure does not include the expenditure involved in travelling allowance and other incidental charges."

1.79 The Committee desired to know the details of the disciplinary or other penal action taken against Income tax Officers and other senior officers on the basis of audit objections raised by the Internal Audit during the last 5 years. The Committee also wanted details of the major penalties imposed on different officers following objections raised by Internal Audit. In a note, the Ministry of Finance have stated :

"On the basis of the information supplied by the Commissioners of Income-tax so far, it is seen that simple warning was issued to 25 official of the Department and adverse entry was made in the confidential character rolls of two officials. No case where action was taken under CCS (Conduct) Rules has been reported."

1.80 As to the system of follow-up action on the objections raised by Internal Audit, the Ministry have in a note stated :—

"After completion of audit of any particular Income-tax circle, the audit parties prepare an Internal Audit Report which is sent to the concerned ITO to take up follow up action. The objections raised are also kept in the relevant files of the assessees so that whenever that case is taken up by the ITO, he does not miss the objections raised. Particulars of the objections raised are entered in a register to be maintained by the ITOs who have to take the follow up action, as well as in the office of the IAC (Audit). The ITO (Internal Audit) and the ITO incharge of the Special Audit Party are made responsible to pursue the follow up action on the objections raised by the

parties with the concerned ITOs. The ITOs after taking remedial action are expected to send compliance report to the IAC (Audit). If no such compliance reports are received in the office of the IAC (Audit) within three months, the matter is taken up by the IAC (Audit) with the concerned ITO and the Range IAC.

The objections raised are divided into two categories, major and minor, according to the tax effect. Objections having substantial tax effect are categorised as major. Every month the ITOs have to send a report regarding the disposal and pendency of the major objections raised by the Internal Audit to the IAC (Audit). On the basis of such reports the IAC (Audit) prepares a report and furnishes the same to the CIT. Director of Inspection (IT&Audit) gets such monthly reports from the Commissioners which depicts the pendency and disposal of major objections in each CIT's charge. On the basis of these reports, monthly reviews are issued by the Director of Inspection (Audit). These reviews identify the Commissioners' charges where settlement of objections is lagging behind. Where the performance of any charge is very unsatisfactory, the Member incharge of Audit in the CBDT take up the matter with the concerned CIT. The same procedure is followed in regard to settlement of minor objections where the progress is monitored by the DI (Audit) every three months after getting the reports from the CITs who in turn that the reports from ITOs under them.

In order to have control over the settlement of Internal Audit objections by individual ITOs, the Commissioners have been asked by the Board vide their Instruction No. 1400 dated 25th June, 1981 that they should make a monthly and quarterly review of the disposal of major and minor objections respectively ITO-wise under their jurisdiction so that they may be able to locate the IT Circles in which the follow-up action is lagging behind.

Settlement of major Internal Audit objections forms part of the Action Plan. According to the Action Plan, arrear major objections (i.e. objections brought forward on 1st April) are to be completed hundred per cent and in regard to the current objections (i.e. objections raised during the year) the target is 50 per cent. The progress made in reaching the targets is reviewed every three months at the Board level."

1.81 The Committee enquired whether the Department had analysed the nature of objections raised by the Internal Audit Organisation in different charges and circles with a view to identifying the types of mistakes generally detected. The Committee also desired to know whether any and if so what remedial action had been taken on some of the glaring cases during the last three years. The Ministry have in a note, stated :

"Director of Inspection (Audit) has to conduct inspection of audit work in various Commissioners' charges. During such inspections, he makes a review of the quality and type of objections raised by the Internal Audit. On the basis of such inspections,

if it comes to the notice of DI (Audit) that some mistakes of a particular type are recurring frequently, he orders a review of assessments involving those points. Some examples of such action taken are indicated below :—

(i) In order to put a curb on avoidable payment of interest, instructions were issued by DI (Audit) on 7-7-1976 that Internal Audit should bring to the notice of the Commissioners of Income-tax concerned all instance of avoidable payment of interest Under Section 214, 243 and 244.

(ii) Instructions were issued on 12-10-1976 by (IT&A) that in view of the change in the rates from the assessment year 1974-75, the Internal Audit while checking the cases of HUFs should find out whether any number of the HUF had taxable income/ wealth and whether the correct tax rates have been applied in case of such specified HUFs.

(iii) The Director of Inspection (IT&A) issued instruction on 30th March, 1977 that Internal Audit should carry out a general review of incorrect allowance of development rebate in the case of textile Mills.

(iv) With effect from assessment year 1975-76 separate exemption given in respect of agricultural land for Wealth tax purposes was withdrawn and linked with existing exemption in respect of specified financial assets. Since a number of cases were detected where this change in law had been overlooked, instructions were issued by Director of Inspection (IT&Audit) on 22nd November, 1978 to ITOs to avoid such mistakes and for Internal Audit to check this point.

(v) Director of Inspection (IT) issued a circular on 17th October, 1978 that ITOs and Internal Audit parties should be on the guard to detect and tax deemed gifts mentioned in section 4(1) of the Gift Tax Act, details of which were mentioned in the Circular.

(vi) Legal position regarding assessability of clubs of Wealth-tax was clarified by Director of Inspection (IT&A) vide Circular dated 13th December, 1978 so that corrective action could be taken by the field officers.

(vii) As a result of the amendment of the Wealth Tax Act in 1977, the minimum exemption limited in the case of individuals and HUFs was made the same viz. Rs. 1 lakh. As a result of this change, a large number of HUFs which were not liable to pay WT would become liable to tax for the first time from 1977-78. The Internal Audit was asked by DI(IT&Audit) in his Circular dated 29th December, 1977 to bring to the notice of the ITOs the omission to tax such HUFs.

The above examples are only illustrative and not exhaustive. The above steps were taken with a view to see that types of mistakes noticed are corrected wherever detected

by Internal Audit and secondly to alert the other ITOs to avoid such mistakes. The Annual Internal Audit Report which is brought out by Director of Inspection (IT&A) also incorporates some of the important major objections raised by Internal Audit, for the benefit of the personnel working in the Internal Audit as well as of the assessing officers."

Export and Import earning of FERA Companies

1.82 Referring to the reply furnished to the Committee in October, 1980 (vide paras 2.11 and 2.12 of the 28th Report—Seventh Lok Sabha), the Committee wanted to know if the figures of foreign capital in India had been computed for the years beyond 1973-74 and if so what was the annual accretion to foreign capital in India during each of the last 5 years. The Department of Economic Affairs stated in reply that the Reserve Bank had since compiled the data for the period ending 1975-76.

1.83 In a letter written to the Governor Reserve Bank of India in January, 1981, the Finance Minister pointed out that the latest data available in respect of foreign investment in India pertains to 1974. This information to my mind, appears to be quite inadequate for the purpose of policy decisions. As foreign investments is an important policy area, I shall be grateful if the Reserve Bank of India could arrange to update the present information and take other suitable steps to ensure this on a continuing basis.

1.84 In his reply dated 23rd June, 1981 the Governor, Reserve Bank of India stated :—

"The Reserve Bank conducted full census of foreign assets and liabilities as on June 30, 1948 and December 31, 1961 and for the inter-census periods made annual estimates from annual reports filed by enterprises having foreign investment. With the coming into force of the Foreign Exchange Regulation Act, 1974 (FERA) prescribing maximum foreign shareholding for different kinds of enterprises, the annual reporting by enterprises has become increasingly unsatisfactory, with the result that reasonably reliable data on outstanding foreign investment have not become available for the period subsequent to 1976.

The FERA marks a watershed in the area of our foreign investment policy. As the dilution of foreign shareholding in accordance with the FERA provisions is now nearly completed, the present is, in my view, an appropriate time to organise a full census of the country's foreign assets and liabilities. Such a census would provide bench mark data for preparation of annual estimates for subsequent years. Accordingly, I have instructed the Bank's Economic Department to conduct such a full census with March 31, 1981 as a reference date and compile annual estimates of foreign investment in India thereafter drawing basically on the information available with the Bank's Exchange Control Department."

1.85 In reply to a question, the Department of Economic Affairs have informed the Committee that since 1970 the foreign investment policy

of the Government has been that while foreign investment and collaboration will be allowed in certain areas where indigenous technology is not available, no permission would be given for issue of "free shares" either against import or services and similar non-monetary supplies. Thus, there could have no non-cash inflow as far as foreign investment is concerned during the last decade. In dealing with foreign investment in the country the question of non-cash outflow would not also arise. A statement showing the remittances made to foreign companies on various accounts like dividend, interest, etc. is given below :—

Statement showing remittances made by foreign companies

(Rs. in crores)

Year	Profits	Dividends	Royalty	Technical know-how	Interest	Total
1965-66	13.50	19.40	2.95	6.68	..	42.83
1966-67	14.47	28.77	5.13	10.43	..	58.80
1967-68	15.95	32.70	4.32	14.68	..	67.65
1968-69	12.96	30.25	4.78	17.97	..	65.96
1969-70	12.72	31.41	5.80	13.05	9.28	72.26
1970-71	13.12	43.48	5.23	20.63	12.80	95.26
1971-72	9.94	38.87	5.86	13.90	12.13	80.70
1972-73	15.54	39.08	7.33	11.33	15.60	88.88
1973-74	21.91	37.51	6.21	14.08	16.27	95.98
1974-75	7.19	18.46	8.46	12.56	36.70	83.37
1975-76	20.36	24.84	10.49	25.66	24.65	106.00
1976-77	19.30	48.47	15.88	37.80	25.11	146.65
1977-78	10.13	68.01	19.50	28.14	22.70	148.48

1.86 In a further note giving the latest position about collection of data of private investment in the country, the Ministry of Finance have stated that the Reserve Bank has since taken action to compile data with reference to the documents available with its Exchange Control Deptt. A statement is attached showing the names of all FERA companies currently operating in the country. It shows the paid up capital of these companies and the share of non-residents (Appendix-I).

1.87 It has been further stated :

"With reference to the basic data contained in this statement, the Bank would regularly update the information taking into account approvals given for sale of non-resident shares, transfer to other parties, disinvestment, etc. Data regarding remittances are uptodate to a reasonable degree. For any individual company there is a complete record of all remittances and can be depended upon to take any decision relating to that company or

problem. The Bank is also engaged in a study of FERA companies and this would deal with :

(1) Impact of FERA process ;

(2) Impact on the capital market ;

(3) Impact on foreign exchange with reference to inward flows and outward remittances.

It is anticipated that this study will be available within six months.

As for non-FERA companies and the share of non-residents and other outstanding liability like loans, suppliers' credit, etc. the Bank is taking steps to bring about quinquennial Surveys as is the practice with certain other Central Bank in the world.

While every effort is being made to improve the data base to facilitate policy formulation, we could also take note of the fact—as clarified during oral evidence—that foreign capital forms a very small part of our industrial structure and investment. Moreover, policies governing foreign collaboration/investment are decided with reference to normative criteria like indigenous technology development, promotion of exports etc."

1.88 Referring to the Ministry's reply that there would be no non-cash inflow of foreign capital during the last decade, the Committee enquired whether issue of bonus capital did not fall in this category. The Committee further enquired about the amount of bonus capital issued by FERA companies since 1970 and what was the highest percentage of bonus capital in a FERA company. In a note, the Ministry have stated that since 1970 the policy of the Government is not to approve issue of free shares'. By 'free share' it is meant issue of shares for non-cash considerations like 'goodwill', supply of equipment, spares or know how services. No share is allowed to be issued against provisions of these services/supplies. A bonus share is not a 'free share' in this sense. Bonus shares are allowed to be issued against the reserves—cash reserves—of the company subject to the issue conforming to bonus guidelines. The cash reserves also belong to the shareholders. In the normal course a company could have declared a higher dividend and these could have been allowed to be remitted in the case of non-residents. Some companies adopt a dividend declaration policy which permits them to plough back a part of the profits after tax. The issue of bonus shares will therefore have to be seen as one against deferred dividends and not as 'free shares'.

1.89 The statement given below shows the number and value of bonus issues approved for all companies in India showing separately the number of FERA companies and the value of the bonus shares approved. The highest bonus share was issued by M/s. Abbot Laboratories in 1979. The company was allowed to issue a bonus share of Rs. 79 lakhs against the then existing equity of Rs. 1 lakh. The company had not declared any bonus during all the years since its establishment in India and had been keeping the amount as reserves.

Approvals granted for issue of Bonus shares to Non residents during the years from 1970 to 1980 by the controller of Capital Issues

(Rs. in lakhs)

Year	(All companies) Total Bonus Issues sanctioned		Total Bonus Issues to FERA Companies included in Column 2	
	No.	Amount	No.	Amount
1	2	3	4	5
1970	162	4057.29	21	699.25
1971	122	4119.01	20	694.46
1972	93	3385.68	15	784.55
1973	151	6021.72	23	879.60
1974	174	7478.79	34	1796.81
1975	201	7786.93	32	883.28
1976	226	12262.26	32	2069.74
1977	231	12015.78	32	2931.80
1978	234	9990.09	24	2901.45
1979	263	8764.62	23	809.88
1980	255	13163.59	27	2068.67

1.90 The Committee enquired as to what extent such bonus issues contributed to the increasing remittances abroad (total rose from Rs. 43 crores in 1965-66 to Rs. 1.48 crores in 1977-78), particularly under the head dividends (Rs. 68 crores for 1977-78), the Ministry have stated :—

"Issue of bonus shares will no doubt increase the remittance on account of dividend to the extent of the increase in the value of non-resident shares. The percentage of non-resident holding will not undergo any change. It is however difficult to correlate this to the trend in dividend remittance during the period from 1970 to 1980. The increase could have come about on other accounts also. The total remittance of Rs. 43 crores in 1965-66 included a sum of Rs. 19.40 crores on account of dividends. In 1977-78 while the total remittance was Rs. 148.48 crores that on account of dividend was Rs. 68 crores. The whole increase cannot be attributed to issue of bonus shares. The increase is partly due to investments approved. From about 1974 has FERA process started to operate and Branches began to get themselves converted into Indian companies with permissible non-resident holding. The remittance on account of profit declined while that on account of dividend increased. Another factor was that in July, 1974 there was an ordinance restricting dividend declaration and this was lifted on 6th July, 1976. In view of this the dividends during 1974-75, 1975-76 and 1976-77 were depressed and the lifting of the restriction on dividends tended to increase the dividend during 1977-78. The increase of dividend of Rs. 68 crores would have to be seen in the light of all

these factors and cannot be attributed solely to issue of bonus shares."

1.91 In reply to a question regarding the measures devised by the Ministry of Finance to monitor the terms of trade (as being favourable or adverse to the country) in so far as they related to operations of foreign knowhow invested in India especially by foreign companies the Ministry have stated :

"The concept 'terms of trade' has a special connotation in dealing with the problems of international trade. Generally it refers to the unit value realisation of a country for its exports *vis-a vis* the value it has to pay for its imports. In dealing with the problems of developing countries often the point is made that the 'terms of trade' are adverse meaning thereby that while the unit value realised against primary commodities have tended to decline, the value of manufactures imports is going up more than proportionately. This concept may not have a direct bearing on the issues of foreign investment and import of technology. Developing countries are not exporters of technology though some countries like India have been exporting some amount of technology to developing and also developed countries. The volume of exports and imports of technology are not of the same magnitude nor comparable.

The question therefore will have to be viewed as one concerning the policy adopted by the Government regarding import of technology. We are not dealing in a competitive market and technology market is said to be 'oligopolistic' in nature i.e. a few sellers in the market handling a proprietary product. Policy of the Government is to deal with cases on merits. Our preference is for outright purchase of technology. If necessary, we will allow licensing arrangements providing for payment of recurring royalty. Where technology is closely held and cannot be obtained except on the basis of equity participation minority participation is allowed. Each case of import of technology is examined by a Technical Evaluation Committee consisting of representatives drawn up from various Technical Departments in Government. The T.E.C. considers proposals in the light of indigenous R&D availability and with reference to the reasonableness of the terms proposed. It would thus be seen that the present procedure provides for a check of each item at the time of application. For renewal of collaboration also a similar and detailed examination of technology assimilation, etc. is undertaken. By the very nature of the problems it would be difficult to have system of monthly or annual checks or monitoring."

1.92 Under the provisions of Section 80-J of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a newly established industrial undertaking, the assessee becomes entitled to tax relief in respect of such profits and gains upto six per cent per annum of the capital employed in the industrial undertaking in respect of the previous year relevant to the assessment year. The method of computation of capital employed for the purposes of Section 80-J is

prescribed in Rule 19A of the Income-tax Rules, 1962. According to this Rule, the capital employed in an industrial undertaking would be the value of the assets (on the first day of the computation period) of the under taking less the borrowed moneys and debts owed by the assessee on that day. Unfortunately, the language used in Rule 19-A is such that it lends itself to an interpretation, not exactly in consonance with the section.

1.93 The wordings used in Rule 19A suggest that for determining the "capital employed" in an industrial undertaking, the "aggregate of the amounts of borrowed moneys and debts owed by the assessee" has to be deducted from the "aggregate of the amounts representing the value of the assets . . of the undertaking". Thus, although the assets are relatable only to an undertaking, the borrowed moneys and debts, going strictly by the language of Rule 19A, can be interpreted to mean the entire debts of assessee. Therefore, in cases where an assessee has more than one undertaking, his total debts relatable to all the undertakings are liable for deduction from the assets of the newly established undertaking. Even though such an interpretation would lead to absurdity, the fact remains that the language used in Rule 19A was susceptible of such interpretation and that plea was in fact raised by the Department before the Bombay High Court in Indian Oil Corporation Vs. ITO. Apparently the distinction between the concept of capital employed in an industrial undertaking in contradistinction to the capital employed by an assessee—admitted by the Ministry to be two distinct concepts—had not been duly considered while framing the Rule.

1.94 The Bombay High Court, in the case of Indian Oil Corporation Ltd., Vs. S. Rajagopalan, ITO and others (92 ITR 241) pointed out the absurd proposition (inherent in the scheme of Rule 19A. The Court inter alia observed:

> "At first look sub-rules (2) and (3) appear to provide that from the aggregate value of the assets of each undertaking the aggregate of the liabilities of assessee shall be deducted. The assessee in this case owns 4 industrial undertakings. The result of such interpretation would be that from the assets of each industrial undertaking the entire borrowings of the assessee in respect of all the industrial undertakings are to be deducted for arriving at the capital employed in an industrial undertaking. On the face of it, this is an absurd proposition. If you want to arrive at the capital employed by an assessee in a particular industrial undertaking, you cannot arrive at it by deducting from the assets of that particular undertaking the liabilities not only of that industrial undertaking, but also of three other industrial undertakings. This is mathematically absurd."

The Bombay High Court had further stated that for a reasonable interpretation of sub-rule (3) the words "in respect of the industrial undertaking in which the capital employed is to be computed" should have been added after the words "borrowed moneys and debts due by the assessee.

1.95 The Committee consider that the Bombay High Court had clearly brought out the drafting error in Rule 19-A(3) and after the judgment had been accepted by the Department as correct interpretation of the legislative

intention, the rule should have been suitably amended. The Chairman, Central Board of Direct Taxes admitted in evidence that this was a lapse on the part of the Department and a clarificatory amendment should have been brought forward soon after the IOC case was decided by the Bombay High Court in 1973. In fact, the Committee find that even when Section 80 J of the Indian Income-tax Act, 1961, was amended in 1980 retrospectively with effect from 1 April, 1972, to incorporate the provisions of rule 19 A in the Act itself, the Department did not take the opportunity of making suitable changes in the wording of Rule 19A for making the meaning clear and unambiguous. Thus, the drafting lacuna in Rule 19(A), which had been adversely commented upon by the Bombay High Court in IOC case was allowed to creep in the amended section 80J as well. The Committee are anguished that the Board should take upon itself the task of implementing correct intent of Parliament through circulars rules instead of bringing necessary amendments to the law in time before the Parliament. Clearly the attitude of the Board as far as framing of Rule 19 A is concerned was negative in so far as the Board admitted that a part of the provision of the Rule was against the Section itself. The Committee disapprove the attitude of the Board and at this stage can only emphasise the need for more care in bringing forward necessary amendments in the main Act or the Rules, whenever authoritative pronouncements are handed down by the Courts in the country and in which it is felt that there have been drafting errors.

1.96 The interpretation placed by the Bombay High Court on the provisions of Rule 19A(3) to the effect that what was to be deducted in the computation of capital employed in the industrial undertaking was the aggregate amount of the borrowed monies and debts owed by the assessee, was accepted by the Board and an instruction to that effect was issued on 25th March, 1976. The Committee would recommend that when such instructions are issued by the Board to the field staff following the judgement of a Court giving a particular interpretation, the instructions should be suitably embodied in a public notice for the information and guidance of the general public. The wordings of Rule 19 A(3) have been embodied in Section 80J without making any change and without explicitly adding the words "in respect of the industrial undertaking in which the capital employed is to be computed" implied by the Bombay High Court and the Ministry of Finance have expressed an opinion during evidence that the Bombay High Court decision "would be very much applicable" to the provision made in the Section also. The Committee would, therefore, recommend that a suitable public notice bringing out the position should be issued even now.

1.97 Section 80J bases the tax holiday relief on the "capital employed". In working out this capital employed, Rule 19 A(3) provided in effect for the exclusion of borrowed capital. Since the Section itself did not make any distinction between the owned capital and/or the borrowed capital, the Calcutta High Court, in Century Enka Ltd. Vs. ITO decided on 29th April 1976, held that Rule 19 A(3) in so far as it directed exclusion of borrowed capital was ultra-vires, being beyond the power of rule making authority. This view was subsequently followed by Madras, Allahabad, Punjab and Haryana High Courts. The Andhra Pradesh and Madhya Pradesh High Courts, however, took an opposite view and upheld Rule 19 A(3). The decisions of the former group of High Courts, were not

accepted by the Board and the Board issued instructions in February 1979 stating that the "adverse decision were being contested". The Department also directed the I.T.Os to continue to follow the existing departmental view till such time as an authoritative pronouncement on the subject was available from the Supreme Court, subject to the recovery of tax raised in assessment orders not being enforced within Calcutta, Madras and UP charges. In 1980 the relevant portion of Rule 19A(3) was incorporated in Section 80J itself retrospectively from 1-4-1972.

1.98 The Calcutta High Court struck down the rule in 1976. The Madras High Court followed that decision in 1977. Apparently, it was at that stage that the department had to decide between two courses—either to contest the decisions in appeal or to amend the Act to get over the adverse decisions. The department opted for the former course and went in appeal before the Supreme Court. While, however, the matter was pending before the Supreme Court the department, in 1980, proposed a retrospective amendment to the Act to get over the adverse decisions. The Committee cannot but observe that having gone to the Supreme Court, it was not proper for the department to attempt to pre-empt the decision of the highest Court in this manner.

1.99 The Committee consider that a retrospective amendment of a substantial nature gives rise to important questions of propriety in so far as it unsettles settled cases and defeats rights acquired in good faith. In this connection, the Committee would recall the observation made in para 10.10 of their 34th Report (1980-81) to the effect that while proposing retrospective legislation Government needs to bear in mind that it is likely to cause hardship to honest and unsuspecting assessees and is also apt to adversely affect the cred bility of the Government.

1.100 The Committee have been given to understand that one of the reasons for proposing retrospective legislation in this case was that "the prospective application of the proposed amendment was estimated to result in substantial loss revenue". This reasoning appears to be an after thought in so far as the representative of the Central Board of Direct Taxes had te tified before the Committee that when the provisions of the Finance Bill, 1980, were being processed no estimate was actually made of the likely loss of revenue if the view taken by certain Courts was ultimately upheld. It is only in answer to the Committee's specific enquiries that the Ministry of Finance have now ascertained that a total amount of Rs. 45.41 crores had been paid as tax by the assessees who have been disputing their liability before the appellate authorities during the years 1970-71 to 1979-80. If the Calcutta High Court view were upheld by the Supreme Court only that part of aforementioned amount of tax related to this issue and only in respect of the assessment years 1972-73 to 1979-80 would became refundable. Parliament were not informed that the magnitude of the problem in terms of the revenue was not very substantial for which retrospective amendment was made. The Committee are distressed that for the failure to furnish full facts and figures to the Parliament relevant to a retrospective amendment of a fiscal statute a 'guesstimate', and not correct calculations, easily possible, were made. The Committee consider that Government should avoid proposing retrospective amendment to the Income-tax law unless the drafting error is manifest and the loss of revenue is substantial

as to justify retrospective amendment. Further, such amendment must be made at the earliest opportunity. The Committee urge that the revenue implications should invariably be gone into in such cases and clearly indicated to the Parliament in the legislative proposals in future."

1.101 The Committee find that 987 assessees in the corporate sector and 355 assessees in the non-corporate sector have claimed relief under section 80 J but have paid the disputed tax amounting to Rs. 44.49 crores and Rs. 0.92 crore respectively during the period 1970-80. The number of assessees who have not paid the disputed tax since 1970 is 748 in. the corporate sector and 177 in the non-corporate sector and the amount of disputed tax is Rs. 65.52 crores and Rs. 1.08 crores respectively. The matter being sub judge, the Committee would not like to express any opinion on the issues involved in the cases before the Supreme Court. The Committee would however like to be informed of the decision of the Supreme Court and implications in regard to the relief admissible under Section 80 J.

1.102 The Committee find that tax holiday provisions were introduced in 1965 when Chapter VI A, consisting then of four sections was added to the Income-tax Act and it gave reliefs not by way of rebate of tax at the average rate of tax but as straight deductions from total income. Many more reliefs have since been added and the Chapter now runs from Sections 80 A to 80 VV. The total relief of tax under all these sections of Chapter VIA was of the ordtr of Rs. 66 crores in 1977-78. In 1978-79 this figure came to Rs. 53 crores. On an overall view, the reliefs do not appear to be very substantial. A partinent question that arises is whether the objective of the various tax relief measures aiming at accederated socio-economic growth had been realised or these provisions have only cluttered the law book. The Commitee consider that the need for simplifying the plethora of tax concessions tax holiday provisions in the light of an extensive study of their precise impact on industrial development is overdue. The Committee therefore recommend that the Special Cell in the CBDT should be forthwith entrusted with this task so that the much needed simplification of the relevant provisions of the Act could be effected as quickly as possible. Such a study may usefully indicate the number of small sector companies and non-MRTP and non-FERA companies who have availed of the tax holiday under Section 80 J and their percentage to the total number of such companies. It would also be worthwhile to attempt a correlation of allowances for export market development and reduction under Section 80 J to see how far new export oriented undertakings are being set up.

1.103 In this connection, the Committee are surprised to note that the statistical data given in the departmental publication entitled "All India income-tax Statistics" has been found to be incorrect and unreliable. During the year 1979-80, 458 assessees are stated to have claimed a total deduction of Rs. 6.50 crores under Section 80J on which tax relief amounting to Rs. 3.70 crores was given. The Dandekar Committee which had collected information on the revenue cost of tax-holiday, had however estimated that the loss of income-tax every year under Section 80 J would be of the order of Rs. 20 crores. Explaining the wide variation between the two sets of statistic, it was stated that the Director of Inspection who was responsible for compiling the All India Income-tax Statistics, had to compile the statistics from the assessment forms, which were never checked whereas the

Dandekar Committee statistics had been collected on a census basis. As it transpires on a recheck, both the figures have been found to be erroneuos. It was admitted that the present system under which assessment forms numbering several lakhs are being received from a wide net work of assessment, officers, not only suffers from some inherent deficiencies but has also developed certain unavoidable delays and other shortcomings over the years. The fact stands out that the methodology adopted for collection of statistical information needs to be rectified urgently not only in the interest of credibility of the Department itself but also for purposes of future planning and legislation. The Committee cannot, therefore, empthasise too strongly the need for devising a statistical system which fully takes into account the inherent features of tax administration and which simultaneously provides for expedition in collection, tabulation and publication of the statistical data. The Committee are doubtful if the new scheme of collection of income tax statistics based on "returned income" proposed to be introduced w.e.f. 1 April, 1982 would fully take care of these imperatives with the present paucity of staff. The Committee note that the Board have also agreed in principle to acquire an appropriate computer system for meeting the urgent demands for data processing. The Committee expect that the matter would be expedited and advance action also taken to provide training for the personnel needed for the purpose.

1.104 The Committee recommend that the All India Income-Tax Statistics published by the Department every year should be laid on the Table of both the Houses of Parliament.

1.105 In paragraph 2.13(ii) of the Audit Report, the Audit had brought out a case where in the statement claiming relief under Section 80 J, the assessee (M|s Brooke Bond India Ltd.) had indicated a loss of Rs. 2.98,51 in a new unit but the assessing ITO had taken this figure as profit and allowed a deduction under Section 80J to this extent. In this particular case although there was no loss of revenue, it nevertheless brings into focus the defective working of the Internal Audit organisation of the Department.

1.106 The mistake in this case was attributable to the carelessness of the Income Tax Officer but it remained undetected and was brought to light only by the Receipt Audit. In terms of the existing procedure this case was required to be checked by the Special Audit party but it was not actually checked as the ITO who passed the order failed to include this case in the list of immediate and priority cases for audit to be sent to the IAC (Audit) every month. The officer concerned has been warned to be more careful in future.

1.107 The Committee find that there is an elaborate system of checks by the Internal Audit obtaining in the Department. But the coverage is limited only to 'priority' and 'immediate' cases, with the result that majorty of cases go unchecked. Thus the mistakes committed at the level of ITOs are not likely to came to notice until the case falls in one of the two categories namely 'priority' or immediate'. Even in this limited area, there is a perceptible fall in the percentage of priority and immediate cases already checked by internal audit. The figure has come down from 81.2 per cent in 1975-76 to 77.1 per cent in 1976-77, 66.3 per cent in 1977-78, 67.5 per cent in 1978-79 and 64.1 per cent in 1979-80. This is obviously an unsatisfactory situation.

1.108 The Committee have been informed that the Department is fully aware of the need for strengthening of the internal audit organisation but the Department's efforts to secure additional manpower have not yet fructified. The Committee desire that keeping in view the importance of a streamlined system of internal audit, the Ministry of Finance should take an early decision in regard to the projected requirements of additional manpower. The results of the steps taken in this direction may be communicated to the Committee.

1.109 The Committee note that a new post of Director of Inspection (Audit) has been created to look after audit work exclusively to enable him to concentrate on audit work only. All IAOs (Audit) ITOs (Internal Audit) and Chief Auditors will be placed under his direct control. The Committee trust that unification of control of the internal audit department under an officer responsible directly to the Board would help to tone up the efficiency of the system and provide the much needed concurrent check over of recurring cases of loss of huge amounts of revenue due to the Government.

1.110 The Committee consider that much more attention needs to be paid to the speedy settlement of audit objections by individual ITOs/ Commissioners. The Board should, therefore, undertake a sample study of the average time taken in disposal of major audit objections in certain selected difficult charges for devising necessary remedial measures.

1.111. During evidence before the Committee the Chairman of the Central Board of Direct Taxes reitrated the plea of overall shortage of staff in the Income-tax department. In Para 8.27 of their 34th Report (1980-81)- the Committee have already recommended that the complaint of the department about its being understaffed should be properly evaluated and that in a revenue earning department Government should not labour under a false sense of economy in not providing adequate manpower if it is needed to optimise speed and efficiency. The figures of requirements of additional staff quoted before the Committee, however, varied so widely, from 3500 to 10,000, that the Committee could not but feel that the Income-tax departments computation of their needs were more in the nature of bargaining rather than being based on any scientific study of the requirements. As the Finance Secretary stated during evidence, one of the material factors for assessing the requirements of staff in the Income-tax department is the number of assessees. According to the budget speech of the Finance Minister (1981-82) the effect of the raising of the exemption limit of tax from 1981-82 would be that "about 14 lakhs of taxpayers will go out of the tax net." This same figure has been mentioned again in para 6.20 of the Economic Survey, 1981-82, issued by the Government of India in February 1982. The Committee consider that it was patently wrong on the part of the Chairman, Central Board of Direct Taxes, to not only belittle the statement but also to say that the impression that 14 lakhs of assessees were going out of the tax net was to his mind, a wrong impression. Apart from that, it is an admitted fact that the strength of the officers in the Income-tax department has been raised substantially in recent years. The cost of collection of direct taxes is almost 2 per cent as against less than 1 1/2 per cent for indirect taxes over 90 per cent of the collections from income-tax and corporation tax are paid directly by the assessees by way of advance tax or deductions at source or payment on the basis of self-assessment and the collection on

the basis of regular assessments made by the Income-tax department represent under 9 per cent of the total collections. As many as 75 per cent of the assessments were completed as summary assessments during the year 1979-80, and the scope of summary assessments has been enlarged still further thereafter. While, therefore, reiterating their recommendation that the justified requirements of additional manpower in the income-tax department should be met, the Committee would also like to sound a word of caution and suggest that the number of assessees as well as the various other factors mentioned above, should be duly taken into account and a proper scientific study made of actual requirements of additional manpower for efficient functioning of the department.

1.112 The Committee are surprised to find that a comprehensive census of assets and liabilities of foreign companies has not been carried out since December 1961 and Government have had to rely only on the annual reports filed by enterprises having foreign investment. It has been realised that "with the coming into force of the Foreign Exchange Regulations Act, 1974 (FERA) prescribing maximum foreign share-holding for different kinds of enterprises, the annual reporting by enterprises has become increasingly unsatisfactory with the result that reasonably reliable data on outstanding foreign investment have not become available for the period subsequent to 1976".

1.113 The Committee have been informed that since the FERA marks a water shed in the area of our foreign investment policy, a full consus of the country's foreign assets and liabilities which would provide benchmark data for preparation of annual estimates for subsequent years, would now be undertaken by the Economic Department of Reserve Bank of India with March 31, 1981 as the reference date. The statement given in Appendix I gives the names of 172 Companies which applied under Section 29 of the Foreign Exchange Regulations Act, 1973 and in which non-resident interest is presently more than 40 per cent. The Committee observe that the total paid up capital of such companies amounted to Rs. 552.50 crores of which the capital hold by non-residents amounted to Rs. 313.04 crores. 13 of these Companies still have 90 to 100 per cent non-resident holding while as many as 21 have non-resident holding between 70 per cent and 90 per cent. The Committee have been further informed that the Reserve Bank is presently engaged in a study of FERA companies with a view to ascertaining the impact of FERA process, impact on the capital market and on the inward and outward flow of remittances. The Committee would suggest that Parliament be apprised of the findings of the above study, the measures taken to improve the data base with regard to the operations of FERA companies and the efforts made to dilute the extent of share holding therein by non-residents in keeping with the objectives of the statute.

NEW DELHI
March 8, 1982
Phalguna 17, 1903 (S)

SATISH AGARWAL
Chairman
Public Accounts Committee

APPENDIX I

(*See* Paragraph 1.86)

List showing the names of Indian companies which applied under Section 29 of the Foreign Exchange Regulation Act, 1973 and in which non-resident interest is presently more than 40 per cent.

(Rs. in lakhs)

Sl. No.	Name of the Company	Total paid up capital	Capital held by non-residents	Percentage non-resident holding
1	2	3	4	5
1.	Audco India Ltd., Bombay	125.00	62.50	50.00
2.	Asbestos Cement Ltd., New Delhi	246.67	182.50	73.99
3.	Arora Matthey Ltd., Calcutta	24.90	12.20	49.00
4.	Alkali & Chemical Corp. of India Ltd., Calcutta (Equity :	481.24	245.43	51.00
	(Pref :	31.00	..	..
5.	Associated Bearing Co. Ltd. Bombay	588.24	300.00	51.00
6.	Atic Industries Ltd., Atul	600.00	300.00	50.00
7.	Asnew Drums Ltd., Bombay.,	15.00	7.16	47.93
8.	Ashok Leyland Ltd., Madras	1650.00	835.10	50.61
9.	Abbott Laboratories (I) Pvt. Ltd. Bombay	90.00	90.00	100.00
10.	Ark Investments Ltd., Madras	52.00	51.95	99.90
11.	Angus Co. Ltd., Calcutta (Equity :	73.36	71.56	97.45
	(Pref :	37.50	35.15	93.7
12.	The Assam Co. (India) Ltd., Calcutta	350.00	259.00	74.00
13.	The Assam Frontier Tea Ltd., Calcutta	300.00	222.00	74.00
14.	Brakes India Ltd., Madras	299.00	146.51	49.00
15.	Bayer India Ltd., Bombay.	811.00	413.62	51.00
16.	Bellis & Marcom (I) Ltd., Calcutta (now known as APE Bellis India Ltd.,)	63.68	31.20	49.00
17.	Bengal Linn (Industrial Furnace) Ltd., Calcutta	8.34	4.17	50.00
18.	Burroughs Wellcome & Co. Pvt. Ltd., Bombay	50.00	50.00	100.00
19.	Dr. Beck & Co. (India) Ltd., Poona	96.47	47.23	49.00
20.	Buckau Wolf New India Engineering Works Ltd., Poona	133.05	66.35	49.87
21.	Bakelite Hylam Ltd., Secunderabad (Equity :	215.94	107.97	50.00
	(Pref :	3.76	3.76	100.00
22.	BASF (India) Ltd., Bombay (Equity :	140.00	70.00	50.00
	(Pref :	17.50	8.75	50.0
23.	Boots Co. (India) Ltd., Bombay	226.42	120.00	53.00
24.	The Jorehaut Tea Co. Ltd., Calcutta	30.00	22.20	74.000

1	2	3	4	5
25.	Ciba Geigy of India Ltd., Bombay	926.25	602.06	65.00
26.	Chloride India Ltd., Calcutta	806.83	409.63	50.77
27.	Cominco Binani Zinc Ltd., Bombay	378.00	151.27	40.02
28.	Consolidated Pneumatic Tool Co. (India) Ltd., Bombay	143.21	91,37	63.80
29.	Chemical & Fibres of India Ltd., Bombay	748.36	411.60	55.00
30.	Carborandum Universal Ltd., Madras	302.10	151.05	50.00
31.	Cynamid India Ltd., Bombay	455.94	250.77	55.00
32.	Coromandal Fertilizers Ltd., Secunderabad	1533.12	720.63	47.00
33.	C.E. Fulford (India) Pvt. Ltd., Bombay	16.00	16.00	100.00
34.	Ceat Tyres of India Ltd., Bombay	445.28	223.30	50.15
35.	C.A. Willner & Co. Pvt. Ltd., Bangalore	1.502	1.50	99.20
36.	The Calcutta Electric Supply Corp. (India) Ltd., Calcutta.			
	(Equity	719.50	277.08	38.51
	(Pref:	320.70	180.73	56.35
37.	C.W.S. (India) Ltd., Cochin	100.00	74.00	74.00
38.	Cemindia Company Ltd., Bombay	80.01	40.81	51.00
39.	Dagger Forest Tools Ltd., Thana	78.00	37.89	48.58
40.	Dewarance Macneill & Co. Ltd., Calcutta	29.29	13.99	47.76
41.	Dunlop India Ltd., Calcutta			
	(Equity :	1499.67	752.17	50.16
	(Pref :	70.00	0.12	0.17
42.	Drayton Greaves Ltd., Bombay	7.35	3.60	49.00
43.	Doom Dooma India Ltd., Calcutta	175.00	129.50	74.00
44.	Darjeeling Plantation Industries Ltd., Calcutta	60.00	44.40	74.00
45.	Electric Lamp Manufacturers Pvt. Ltd., Calcutta	55.00	55.00	100.00
46.	E. Hill & Co. Pvt. Ltd., Mirzapur	10.81	8.00	74.00
47.	English Electric Co. of India Ltd., Madras	450.00	300.00	66.67
48.	E. Merck (India) Pvt. Ltd., Bombay	100.00	60.00	60.00
49.	Ennore Foundaries Ltd., Madras	282.81	167.11	59.08
50.	The EIMCO-KCP Ltd., Madras	5.60	2.80	50.00
51.	Eyre Smelting Pvt. Ltd., Calcutta	10.00	7.40	74.00
52.	Empire Plantations (India) Ltd. Calcutta	66.00	44.00	73.33
53.	Everest Tea Co., Ltd., Calcutta (now Darjeeling Consolidated (I) Ltd.,)	24.00	16.00	66.67
54.	Flender Macneill Gears Ltd., Calcutta	35.70	17.85	50.00
55.	Frick India Ltd., Faridabad	60.00	30.60	51.00
56.	Bombay Tyres International Company Ltd., Bombay	450.00	333.00	74.00
57.	Fibreglass Pilkington Ltd., Bombay	259.20	129.63	50.01
58.	Allied Industrial Technology Pvt. Ltd., Ahmedabad	2.00	1.48	74.00
59.	Gedore Tools (India) Pvt. Ltd., New Delhi	235.30	120.00	51.00
60.	Groz-Beckert Saboo Ltd., Chandigarh	77.00	46.20	60.00
61.	Guest Keen Williams Ltd., Howrah	1459.92	857.25	58.72
62.	General Electic Co. of India Ltd., Calcutta	720.00	480.00	66.67
63.	Contermann Peipers (India) Ltd., Calcutta	90.00	54.00	60.00
64.	Greaves Foseco Ltd., Bombay	65.02	132.51	50.00

1	2	3	4	5
65.	Grindwell Norton Ltd., Bombay	231.53	115.76	50.00
66.	Goodyear India Ltd., New Delhi	748.28	448.42	59.93
67.	Glaxo Laboratories (India) Ltd., Bombay			
	(Equity :	1440.00	1080.00	75.00
	(Pref :	80.00	80.00	100.00
68.	Greaves Dronsfield Ltd., Bombay	5.00	2.50	50.00
69.	Cannon Norton Metal & Diamond Dies Ltd. Bombay	2.50	1.05	41.68
70.	Garg Associates Pvt. Ltd., Ghaziabad	4.00	2.00	50.00
71.	Godricke Group Ltd., Calcutta	300.00	222.00	74.00
72.	George William Sons (Assam) Ltd., Calcutta	350.00	245.00	70.00
73.	Hindustan Ferrodo Ltd., Bombay	249.29	183.33	73.87
74.	Holman Climax Manufacturing Ltd., Calcutta	25.00	15.00	60.00
75.	Hein Lehman (I) Ltd., Calcutta	55.50	27.50	49.00
76.	Hooghly Ink Co. Ltd., Calcutta	15.00	7.96	53.48
77.	Hoechst Pharmaceuticals Ltd., Bombay	510.77	255.39	50.00
78.	Hindustan Pilkington Glass			
	(Equity :	180.00	101.00	56.13
	(Pref:	32.00	26.50	82.80
79.	Herdillia Chemical Ltd., Bombay	735.00	347.13	47.23
80.	Hindustan Level Ltd.' Bombay	2916.39	1487.36	51.00
81.	Hindustan Gum & Chemical Ltd., Bhiwani (Harnyana)?.	30.00	15.00	50.00
82.	Hi-Bred (India) Pvt. Ltd., New Delhi	5.75	2.87	50.00
83.	Hindustan Dorr-Oliver, Bombay	66.00	44.00	66.67
84.	Indian Gum Industries Ltd., Bombay	61.25	30.00	49.00
85.	Indian Aluminium Co. Ltd., Calcutta	2969.91	1650.88	55.56
86.	Indian Card Clothing Co. Pvt. Ltd., Poona	216.72	160.37	74.00
87.	Indian Explosives Ltd., Calcutta	2898.37	1461.33	50.30
88.	Ingersoll-Rand(India) Pvt. Ltd., Bombay	197.30	146.00	73.99
89.	Indabrator Ltd., Bombay	35.00	17.15	49.00
90.	Indofil Chemical Ltd., Bombay	139.72	74.75	53.50
91.	India Foils Ltd., Calcutta	190.00	140.00	73.68
92.	J. Stone & Co. (India) Ltd. Calcutta. (now known as Stone Platt Electrical (I) Ltd.,)	89.28	53.57	60.00
93.	Johnson & Johnson Ltd., Bombay	144.00	108.00	75.00
94.	Jai Electronic Industries Pvt. Ltd., Nasik	14.36	7.01	49.00
95.	Jhunjhunwala Jarvis Ltd., Bombay	2.43	1.22	50.00
96.	Jokai (India) Ltd., Calcutta	250.00	185.00	74.00
97.	K.S.B. Pumps Ltd., Bombay	95.00	48.45	51.00
98.	Kanthal India Ltd., Calcutta	40.00	19.59	49.00
99.	Kirloskar Cummins Ltd., Poona			
	(Equity:	420.00	210.00	50.00
	(Proef:	70.00	..	..
100.	Kerala Balers Ltd., Kerala			
	(Equity:	5.00	2.45	49.00
	(Pref:	4.00	..	..
101.	Kulkarni Black and Deckor Ltd., Kolhapur	5.00	2.10	41.96
102.	Lucas T.V.S. Ltd., Madras	600.00	306.00	51.00

1	2	3	4	5
103.	I.M. Van Mopped Diamond Tools India Ltd., Coonoor	10.00	4.90	49.00
104.	Lakshman Isola Ltd., Bangalore	75.00	37.50	50.00
105.	Lugri Indian Co. Pvt. Ltd., New Delhi	2.00	1.10	55.00
106.	Maschemeijer Aromatics (I) Pvt. Ltd., Madras	10.00	4.00	49.00
107.	Molins of India Ltd., Mohali	100.00	50.84	50.84
108.	Monasanto Chemicals Of India Pvt. Ltd., Bombay	1.35	1.00	73.97
109.	Motor Industries Co. Ltd., Bangalore.	1268.38	646.88	51.00
110.	Mohindra Sintered Products Ltd., Poona	56.40	27.63	49.00
111.	Mather & Plant (I) Ltd., Bombay	120.01	72.00	70.00
112.	Merck Sharp & Dohme of India Ltd., Bombay	180.00	108.00	60.00
113.	Madras Fertilizers Ltd., Madras	1364.68	668.69	49.00
114.	May & Baker (India) Pvt. Ltd., Calcutta	300.00	180.00	60.00
115.	Malcha Properties Ltd., Calcutta	1.00	0.50	50.00
116.	Makum Tea Co. (India) Ltd., Margherita	106.06	74.81	70.54
117.	Mysore Chipboards Ltd., Mysore	39.80	20.06	50.40
118.	The Majuli Tea Company (India) Ltd., Calcutta	45.00	33.30	74.00
119.	Malayalam Plantations (India) Ltd., Calcutta	300.00	222.00	74.00
120.	Moran Tea Co. (I) Ltd., Calcutta	70.00	51.80	74.00
121.	McLeod Russel (I) Ltd., Calcutta	200.00	148.00	74.00
122.	Nowrosjee Wadia & Sons (Pvt.) Ltd., Bombay	50.00	47.86	95.72
123.	Nevelle Wadia Pvt. Ltd., Bombay	10.00	10.00	100.00
124.	NGEFMALG Engineering Co. Ltd., Bangalore	14.00	7.00	50.00
125.	Namdang Tea Co. (India) Ltd., Assam	119.56	88.31	73.86
126.	O/E/N/ India Ltd., Cochin	72.80	32.76	45.00
127.	Oil India Ltd., Calcutta	280.00	1400.00	50.00
128.	Organon (India) Ltd., Calcutta	97.55	47.80	49.00
129.	Otis Elevator Co. (India). Bombay,	157.50	88.20	56.00
130.	Porritts & Spencer (Asia) Ltd., New Delhi	98.05	58.05	59.20
131.	Parke Davis (India) Ltd., Bombay	336.00	280.00	83.33
132.	Pfizer Ltd., Bombay	1004.59	703.21	70.00
133.	Pashtany Tejaraty Co. (India) Pvt. Ltd., Amritsar	1.50	1.50	100.00
134.	Plasser (India) Ltd., New Delhi	100.00	7.40	74.00
135.	R.H. Windsor (I) Ltd., Bombay.	82.64	52.15	51.00
136.	Reichhold Chemicals (India) Ltd., Madras	30.76	13.84	45.00
137.	Roche Products Ltd., Bombay	300.00	267.00	89.00
138.	Richardson Hindustan Ltd., Bombay	150.00	82.00	55.00
139.	Reyrolle Burn Ltd., Howrah	50.00	25.00	50.00
140.	Sundaram Clayton Ltd., Madras	227.61	111.45	48.96
141.	Spirrax Marshall Ltd., Poona	7.00	3.57	51.00
142.	Senapathy Whitley (I) Bangalore	84.00	40.60	48.33
143.	Saurashtra Cement & Chemical Industries Ltd., Ranavav.			
	(Equity:	400.00	203.40	50.85
	(Prof :	50.00	1.10	2.20

1	2	3	4	5
144.	S.F. India Ltd., Calcutta	85.00	51.00	60.00
145.	Sesa Goa Pvt. Ltd., Goa	367.50	367.50	100.00
146.	Sandvik Asia Ltd., Poona	192.50	105.60	54.86
147.	Singlo (India) Tea Co. Ltd., Calcutta	60.00	44.00	73.33
148.	Stewart Holl (India) Ltd., Calcutta	60.00	44.40	74.00
149.	Schrader Scovill Duncan Ltd., Bombay	92.40	46.20	50.00
150.	Siemens India Ltd., Bombay	720.00	367.20	51.00
151.	Sansar Machines Ltd., New Delhi	31.00	15.35	49.50
152.	Sandoz (India) Ltd., Bombay	250.00	150.00	60.00
153.	Tribeni Tissues Ltd., Calcutta	635.70	324.21	51.00
154.	Tractor & Farm Equipment Ltd., Madras	200.00	98.00	49.00
155.	Tractor Engineers Ltd., Bombay	85.00	42.50	50.00
156.	Tullis Woodrofee & Co. Ltd., Madras	3.40	1.66	49.00
157.	Tata Dilworth Secord Meaghor & Associates, Bombay	3.00	1.47	49.00
158.	Tea Estates India Pvt. Ltd., Coonoor	220.00	162.80	74.00
159.	Toyo Engineering India Ltd., New Delhi	50.00	25.00	50.00
160.	Union Carbide India Ltd., Calcutta	3258.30	1658.92	50.92
161.	Uni-Sankyo Ltd., Hyderabad	16.66	8.16	49.00
162.	Uhde India Ltd., Bombay	15.00	11.10	74.00
163.	Vickers Sperry of India Ltd., Bombay	132.00	59.31	44.93
164.	Western Thomson (India) Ltd., Madras	5.92	2.90	49.00
165.	Widia India Ltd., Bangalore	137.36	72.00	52.42
166.	Warner Hindustan Ltd., Bombay	229.32	115.28	50.30
167.	Whiffens (India) Ltd., Bombay	5.54	2.77	50.00
168.	Waldies Ltd., Calcutta	73.14	45.57	62.30
169.	Warren Tea Ltd., Calcutta	325.01	239.42	73.67
170.	Wyeth Laboratories Ltd., Bombay	90.00	66.60	74.00
171.	Zauri Agro Chemicals (Equity	142.64	800.10	64.38
	(Pref:	412.49	..	..
172.	E.M. Allcock & Mohatta Pvt. Ltd., Calcutta	4.00	1.96	49.00
	Grand Total :	55250.022	31303.83	

Notes : This list does not include the following categories of companies :—

(1) Where companies have ceased their activities and are in the process of winding-up.

(2) Where permissions under Section 29(2)(c) of FERA have been granted on "non-repatriation" capital and income basis.

(3) Where non-resident interest exceeding 40% is held by persons of Indian origin on non-repatriation basis.

(4) Companies established in the Free Trade Zone.

Particular of companies who have since diluted their bon-resident interest holding to 40 per cent or less.

Sl. No.	Name of the Company	Total paid up capital	Capital held by non-resi-dents	Percentage non-resi-dent holding
1.	Automatic Machine Co. (India) Pvt. Ltd., Bombay	5.02	2.01	40.00
2.	Bell Punch (India) Pvt. Ltd, Calcutta	1.54	0.62	40.00
3.	Cutler Hammer India Ltd., Calcutta (now known as Bhartia Cutler-Hammer Ltd.)	40.00	..	..
4.	Eastern Scales Pvt. Ltd., Calcutta	6.20	2.48	40.00
5.	Geoffrey Manners & Co. Ltd.' Bombay	228.00	115.00	40.00
6.	Mysore Lamp Works Ltd., Bangalores.	67.37	..	..
7.	Metal Box Co. of India Ltd. Equity	864.13	331.44	48.36
	(Pref:	80.00	..	..
8.	Needle Industries (India) Ltd., Madras	48.00	18.99	39.56
9.	Polydor of India Ltd., Bombay	30.00	12.00	40.00
10.	South India Paper Mills Pvt. Ltd., Manjangud (Karnataka)	12.50	3.11	24.90
11.	Thomas Mouget & Co. Ltd., Durgapur	39.323	15.695	39.92
12.	Turner Morrison & Co. Ltd., Calcutta	60.00	22.98	38.30
13.	Wheels India Ltd., Madras	219.32	78.77	35.91
14.	Borax Morarjee Ltd., Ambernath	53.33	..	..
	Total :	1814.733	603.095	

APPENDIX II

CONCLUSIONS/RECOMMENDATIONS

S. No.	Para No.	Ministry/Deptt. Concerned	Conclusion/Recommendation
1	2	3	4
1	1.92	(Deptt. of Revenue)	Under the provisions of Section 80J of the Income-tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived from a newly established industrial undertaking, the assessee becomes entitled to tax relief in respect of such profits and gains upto six per cent per annum of the capital employed in the industrial undertaking in respect of the previous year relevant to the assessment year. The method of computation of capital employed for the purposes of Section 80J is prescribed in Rule 19A of the Income-tax Rules, 1962. According to this Rule, the capital employed in an industrial undertaking would be the value of the assets (on the first day of the computation period) of the undertaking less the borrowed moneys and debts owed by the assessee on that day. Unfortunately, the language used in Rule 19A is such that it lands itself to an interpretation, not exactly in consonance with the section.
2	1.93	-do-	The wordings used in Rule 19A suggest that for determining the "capital employed" in an industrial undertaking, the "aggregate of the amounts of borrowed moneys and debts owed by the assessee" has to be deducted from the "aggregate of the amounts representing the value of the assets.....of the undertaking." Thus, although the assets are relatable only to an undertaking, the borrowed moneys and debts, going

1	2	3	4
			strictly by the language of Rule 19A, can be interpreted to mean the entire debts of assessee. Therefore, in cases where an assessee has more than one undertaking, his total debts relatable to all the undertakings are liable for deduction from the assets of the newly established undertaking. Even though such an interpretation would lead to absurdity, the fact remains that the language used in Rule 19A was susceptible of such interpretation and that plea was in fact raised by the Department before the Bombay High Court in Indian Oil Corporation vs. ITO. Apparently the distinction between the concept of capital employed in an industrial undertaking in contradistinction to the capital employed by an assessee—admitted by the Ministry to be two distinct concepts—had not been duly considered while framing the Rule.
3	1.94	(Deptt. of Revenue)	The Bombay High Court, in the case of Indian Oil Corporation Ltd. vs. S. Rajagopalan, ITO and others (92 ITR 241) pointed out the absurd proposition inherent in the scheme of Rule 19A. The Court *inter alia* observed :
			"At first look sub-rules (2) and (3) appear to provide that from the aggregate value of the assets of each undertaking the aggregate of the liabilities of assessee shall be deducted. The assessee in this case owns 4 industrial undertakings. The result of such interpretation would be that from the assets of each industrial undertaking the entire borrowings of the assessee in respect of all the industrial undertakings are to be deducted for arriving at the capital employed in an industrial undertaking. On the face of it, this is an absurd proposition. If you want to arrive at the capital employed by an assessee in a particular industrial undertaking, you cannot arrive at it by deducting from the assets of that particular undertaking the liabilities not only of that industrial undertaking, but also

of three other industrial undertakings. This is mathematically absurd."

The Bombay High Court had further stated that for a reasonable interpretation of sub-rule (3) the words "in respect of the industrial undertaking in which the capital employed is to be computed" should have been added after the words "borrowed moneys and debts due by the assessee."

4	1.95	-do-	The Committee consider that the Bombay High Court had clearly brought out the drafting error in Rule 19A(3) and after the judgement had been accepted by the Department as correct intepretation of the legislative intention, the rule should have been suitably amended. The Chairman, Central Board of Direct Taxes admitted in evidence that this was a lapse on the part of the Department and a clarificatory amendment should have been brought forward soon after the IOC case was decided by the Bombay High Court in 1973. In fact, the Committee find that even when Section 80J of the Indian Income-tax Act, 1961, was amended in 1980 retrospectively with effect from 1 April, 1972, to incorporate the provisions of rule 19A in the Act itself, the Department did not take the opportunity of making suitable changes in the wording of Rule 19A for making the meaning clear and unambiguous. Thus, the drafting lacuna in Rule 19(A), which had been adversely commented upon by the Bombay High Court in IOC case was allowed to creep in the amended section 80J as well. The Committee are anguished that the Board should take upon itself the task of implementing correct intent of Parliament through circulars/rules instead of bringing necessary amendments to the law in time before the Parliament. Clearly the attitude of the Board as far as framing of Rule 19A is concerned was negative in so far as the Board admitted that a part of the provision of the Rule was against the Section itself. The Committee disapprove the attitude of the Board and at this stage can only emphasise the need for more care in bringing forward necessary amendments in the main Act or the Rules,

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			whenever authoritative pronouncements are handed down by the Courts in the country and in which it is felt that there have been drafting errors.
5	1.96	(Deptt. of Revenue)	The interpretation placed by the Bombay High Court on the provisions of Rule 19A(3) to the effect that what was to be deducted in the computation of capital employed in the industrial undertaking was the aggregate amount of the borrowed moneys and debts owed by the assessee, was accepted by the Board and an instruction to that effect was issued on 25th March, 1976. The Committee would recommend that when such instructions are issued by the Board to the field staff following the judgement of a Court giving a particular interpretation, the instructions should be suitably embodied in a public notice for the information and guidance of the general public. The wordings of Rule 19A(3) have been embodied in Section 80J without making any change and without explicitly adding the words 'in respect of the industrial undertaking in which the capital employed is to be computed" implied by the Bombay High Court and the Ministry of Finance have expressed an opinion during evidence that the Bombay High Court decision "would be very much applicable" to the povision made in the Section also. The Committee would, therefore, recommend that a suitable public notice bringing out this position should be issued even now.
6	1.97	-do-	Section 80J bases the tax holiday relief on the "capital employed". In working out this capital employed, Rule 19A(3) provided in effect for the exclusion of borrowed capital. Since the Section itself did not make any distinction between the owned capital and/or the borrowed capital, the Calcutta High Court, in Century Enka Ltd. vs. ITO decided on 29th April, 1976, held that Rule 19A(3) in so far as it directed exclusion of borrowed capital was *ultra-vires,* being beyond the power of the rule-making authority. This view was subsequently followed by Madras, Allahabad, Punjab and Haryana High Courts. The Andhra Pradesh and Madhya

			Pradesh High Courts, however, took an opposite view and upheld Rule 19A(3). The decisions of the former group of High Courts were not accepted by the Board and the Board issued instructions in February 1979 stating that the "adverse decisions were being contested". The Department also directed the ITOs to continue to follow the existing departmental view till such time as an authoritative pronouncement on the subject was available from the Supreme Court, subject to the recovery of tax raised in assessment orders not being enforced within Calcutta, Madras and UP charges. In 1980 the relevant portion of Rule 19A(3) was incorporated in Section 80J itself retrospectively from 1-4-1972.
7	1.98	-do-	The Calcutta High Court struck down the rule in 1976. The Madras High Court followed that decision in 1977. Apparently it was at that stage that the department had to decide between two courses—either to contest these decisions in appeal or to amend the Act to get over the adverse decisions. The department opted for the former course and went in appeal before the Supreme Court. While, however, the matter was pending before the Supreme Court the department, in 1980, proposed a retrospective amendment to the Act to get over the adverse decisions. The Committee cannot but observe that having gone to the Supreme Court, it was not proper for the department to attempt to pre-empt the decision of the highest Court in this manner.
8	1.99	-do-	The Committee consider that a retrospective amendment of a substantial nature gives rise to important questions of propriety in so far as it unsettles settled cases and defeats rights acquired in good faith. In this connection, the Committee would recall the observation made in para 10.10 of their 34th Report (1980-81) to the effect that while proposing retrospective legislation Government needs to bear in mind that it is likely to cause hardship to honest and unsuspecting assessees and is also apt to adversely affect the credibility of the Government.
9	1.100	-do-	The Committee have been given to understand that one of the reasons for proposing retrospective legislation in this case was that "the prospective application of the proposed amendment was estimated to

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			result in substantial loss of revenue". This reasoning appears to be an after thought in so far as the representative of the Central Board of Direct Taxes had testified before the Committee that when the provisions of the Finance Bill, 1980, were being processed no estimate was actually made of the likely loss of revenue if the view taken by certain Courts was ultimately upheld. It is only in answer to the Committee's specific enquiries that the Ministry of Finance have now ascertained that a total amount of Rs. 45.41 crores had been paid as tax by the assessees who have been disputing their liability before the appellate authorities during the years 1970-71 to 1979-80. If the Calcutta High Court view were upheld by the Supreme Court only that part of aforementioned amount of tax related to this issue and only in respect of the assessment years 1972-73 to 1979-80 would become refundable. Parliament were not informed that the magnitude of the problem in terms of the revenue was not very substantial for which retrospective amendment was made. The Committee are distressed that for the failure to furnish full facts and figures to the Parliament relevant to a retrospective amendment of a fiscal statute a 'guesstimate' and not correct calculations, easily possible, were made. The Committee consider that Government should avoid proposing retrospective amendment to the Income-tax law unless the drafting error is manifest and the loss of revenue is substantial so as to justify retrospective amendment. Further, such amendment must be made at the earliest opportunity. The Committee urge that the revenue implications should invariably be gone into in such cases and clearly indicated to the Parliament in the legislative proposals in future."
10	1.101	(Deptt. of Revenue)	The Committee find that 987 assessees in the corporate sector and 355 assessees in the non-corporate sector have claimed relief under section 80J but have paid the disputed tax amounting to Rs. 44.49 crores and Rs. 0.92 crore respectively during the period 1970-80. The number of

			assessees who have not paid the disputed tax since 1970 is 748 in the corporate sector and 177 in the non-corporate sector and the amount of disputed tax is Rs. 65.52 crores and Rs. 1.08 crores respectively. The matter being *sub-judice*, the Committee would not like to express any opinion on the issues involved in the cases before the Supreme Court. The Committee would however like to be informed of the decision of the Supreme Court and its implications in regard to the relief admissible under Section 80J.
11	1.102	-do-	The Committee find that tax holiday provisions were introduced in 1965 when Chapter VIA, consisting then of four sections was added to the Income-tax Act and it gave reliefs not by way of rebate of tax at the average rate of tax but as straight deductions from total income. Many more reliefs have since been added and the Chapter now runs from Sections 80A to 80VV. The total relief of tax under all these sections of Chapter VIA was of the order of Rs. 66 crores in 1977-78. In 1978-79 this figure came to Rs. 53 crores. On an overall view, the reliefs do not appear to be very substantial. A partinent question that arises is whether the objective of the various tax relief measures aiming at accelerated socio-economic growth had been realised or these provisions have only cluttered the law book. The Committee consider that the need for simplifying the plethora of tax concessions/tax holiday provisions in the light of an extensive study of their precise impact on industrial development is overdue. The Committee therefore recommend that the Special Cell in the CBDT should be forthwith entrusted with this task so that the much needed simplification of the relevant provisions of the Act could be effected as quickly as possible. Such a study may usefully indicate the number of small sector companies and non-MRTP and non-FERA companies who have availed of the tax holiday under Section 80J and their percentage to the total number of such companies. It would also be worthwhile to attempt a correlation of allowances for export market development and reduction under Section 80J to see how far new export oriented undertakings are being set up.

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12	1.103	Deptt. of Revenue	In this connection, the Committee are surprised to note that the statistical data given in the departmental publication entitled "All India Income-tax Statistics" has been found to be incorrect and unreliable. During the year 1979-80, 458 assessees are stated to have claimed a total deduction of Rs. 6.50 crores under Section 80J on which tax relief amounting to Rs. 3.70 crores was given. The Dandekar Committee which had collected information on the revenue cost of tax holiday, had however estimated that the loss of income-tax every year under Section 80J would be of the order of Rs. 20 crores. Explaining the wide variation between the two sets of statistics, it was stated that the Director of Inspection who was responsible for compiling the All India Income-tax Statistics, had to compile the statistics from the assessment forms, which were never checked whereas the Dandekar Committee statistics had been collected on a census basis. As it transpires on a recheck, both the figures have been found to be errenous. It was admitted that the present system under which assessment forms numbering several lakhs are being received from a wide network of assessment officers, not only suffers from some inherent deficiencies but has also developed certain unavoidable delays and other shortcomings over the years. The fact stands out the methodology adopted for collection of statistical information needs to be rectified urgently not only in the interest of credibility of the Department itself but also for purposes of future planning and legislation. The Committee cannot, therefore, emphasise too strongly the need for devising a stalistical system which fully takes into account the inherent features of tax administration and which simultaneosuly provides for expedition in collection, tabulation and publication of the statistical data. The Committee are doubtful if the new scheme of collection of income tax statistics based on "returned income" proposed to be introduced w.e.f. 1 April, 1982 would fully take care of these imperatives with the present paucity of staff. The Committee note that the Board have also agreed in principle

			to acquire an appropriate computer system for meeting the urgent demands for data processing. The Committee expect that the matter would be expedited and advance action also taken to provide training for the personnel needed for the purpose.
13	1.104	-do-	The Committee recommend that the All India Income-Tax Statistics published by the Department every year should be laid on the Table of both the Houses of Parliament.
14	1.105	-do-	In paragraph 2.13(ii) of the Audit Report, the Audit had brought out a case where in the statement claiming relief under Section 80J, the assessee (M/s. Brooke Bond India Ltd.) had indicated a loss of Rs. 2.98,511 in a new unit but the assessing ITO had taken this figure as profit and allowed a deduction under Section 80J to this extent. In this particular case although there was no loss of revenue, it nevertheless brings into focus the defective working of the Internal Audit organisation of the Department.
15	1.106	-do-	The mistake in this case was attributable to the carelessness of the Income Tax Officer but it remained undetected and was brought to light only by the Receipt Audit. In terms of the existing procedure this case was required to be checked by the Special Audit party but it was not actually checked as the ITO who passed the order failed to include this case in the list of immediate and priority cases for audit to be sent to the IAC (Audit) every month. The officer concerned has been warned to be more careful in future.
16	1.107	-do-	The Committee find that there is an elaborate system of checks by the Internal Audit obtaining in the Department. But the coverage is limited only to 'priority' and 'immediate' cases, with the result that majority of cases go unchecked. Thus the mistakes committed at the level of ITOs are not likely to come to notice until the case falls in one of the two categories namely, "priority' or 'immediate'. Even in this limited area,

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			there is a perceptible fall in the percentage of priority and immediate cases already checked by internal audit. The figure has come down from 81.2% in 1975-76 to 77.1 per cent in 1976-77, 66.3 per cent in 1977-78, 67.5 per cent in 1978-79 and 64.1 per cent in 1979-80. This is obviously an unsatisfactory situation.
17	1.108	Deptt. of Revenue	The Committee have been informed that the Department is fully aware of the need for strengthening of the internal audit organisation but the Department's efforts to secure additional manpower have not yet fruitified. The Committee desire that keeping in view the importance of a streamlined system of internal audit, the Ministry of Finance should take an early decision in regard to the projected requirements of additional manpower. The results of the steps taken in this direction may be communicated to the Committee.
18	1.109	-do-	The Committee note that a new post of Director of Inspection (Audit) has been created to look after audit work exclusively to enable him to concentrate on audit work only. All IACs (Audit) ITOs (Internal Audit) and Chief Auditors will be placed under his direct control. The Committee trust that unification of control of the internal audit department under an officer responsible directly to the Board would help to tone up the efficiency of the system and provide the much needed concurrent check over of recurring cases of loss of huge amounts of revenue due to the Government.
19	1.110	-do-	The Committee consider that much more attention needs to be paid to the speedy settlement of audit objection by individual ITOs/Commissioners. The Board should, therefore, undertake a sample study of the average time taken in disposal of major audit objections in certain selected/difficult charges for devising necessary remedial measures.
20	1.111	-do-	During evidence before the Committee the Chairman of the Central Board of Direct Taxes reiterated the plea of overall shortage of staff in the

Income-tax department. In Para 8.27 of their 34th Report (1980-81)— the Committee have already recommended that the complaint of the department about its being understaffed should be properly evaluated and that in a revenue earning department Government should not labour under a false sense of economy in not providing adequate manpower if it is needed to optimise speed and efficiency. The figures of requirements of additional staff quoted before the Committee, however, varied so widely, from 3,500 to 10,000, that the Committee could not but feel that the Income-tax departments computation of their needs were more in the nature of bargaining rather than being based on any scientific study of the requirements. As the Finance Secretary stated during evidence, one of the material factors for assessing the requirements of staff in the Income-tax department is the number of assessees. According to the budget speech of the Finance Minister (1981-82) the effect of the raising of the exemption limit of tax from 1981-82 would be that "about 14 lakhs of taxpayers will go out of the tax net". This same figure has been mentioned again in para 6.20 of the Economic Survey, 1981-82 issued by the Government of India in February 1982. The Committee consider that it was patently wrong on the part of the Chairman, Central Board of Direct Taxes, to not only belittle the statement but also to say that the impression that 14 lakhs of assessees were going out of the tax net was, to his mind, a wrong impression. Apart from that, it is an admitted fact that the strength of the officers in the Income-tax department has been raised substantially in recent years. The cost of collection of direct taxes is almost 2% as against less than 1/2 per cent for indirect taxes. Over 90 per cent of the collections from income-tax and corporation tax are paid directly by the assessees by way of advance tax or deductions at source or payment on the basis of self-assessment and the collections on the basis of regular assessments made by the Income-tax department represent under 9 per cent of the total collections. As many as 75 per cent of the assessments were completed as summary assessments during the year 1979-80, and the scope of summary assessments has been enlarged still further thereafter. While, therefore, reiterating their recommendation that the justified requirements

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			of additional manpower in the income-tax department should be met, the Committee would also like to sound a word of caution and suggest that the number of assessees as well as the various other factors mentioned above, should be duly taken into account and a proper scientific study made of actual requirements of additional manpower for efficient functioning of the department.
2.1	1.112	Deptt. of Revenue	The Committee are surprised to find that a comprehensive census of assets and liabilities of foreign companies has not been carried out since December 1961 and Government have had to rely only on the annual reports filed by enterprises having foreign investment. It has been realised that "with the coming into force of the Foreign Exchange Regulations Act, 1974 (FERA) prescribing maximum foreign shareholding for different kinds of enterprises, the annual reporting by enterprises has become increasingly unsatisfactory with the result that reasonably reliable data on outstanding foreign investment have not become available for the period subsequent to 1976."
2.2	1.113	-do-	The Committee have been informed that since the FERA marks a water shed in the area of our foreign investment policy, a full census of the country's foreign assets and liabilities which would provide benchmark data for preparation of annual estimates for subsequent years, would now be undertaken by the Economic Department of the Reserve Bank of India with March 31, 1981 as the reference data. The statement given in Appendix I gives the names of 172 Companies which applied under Section 29 of the Foreign Exchange Regulations Act, 1973 and in which non-resident interest is presently more than 40 per cent. The Committee observe that the total paid-up capital of such companies amounted to Rs. 552.50 crores of which the capital held by non-resident's amounted to Rs. 313.04 crores. 13 of these Companies still have 90 to 100 per cent non-resident holding while as many as 21 have non-resident holding between 70 per

cent and 90 per cent. The Committee have been further informed that the Reserve Bank is presently engaged in a study of FERA companies with a view to ascertaining the impact of FERA process, impact on the capital market and on the inward and outward flow of remittances. The Committee would suggest that Parliament be apprised of the findings of the above study, the measures taken to improve the data base with regard to the operations of FERA companies and the efforts made to dilute the extent of share holding therein by non-residents in keeping with the objectives of the statute.

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