EIGHTY-FIFTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1981-82)

(SEVENTH LOK SABHA)

CORPORATION-TAX, INCOME-TAX AND WEALTH TAX

(MINISTRY OF FINANCE)

(DEPTT. OF REVENUE)

Presented in Lok Sabha on .. ..

laid in Rajya Sabha on .. ..

LOK SABHA SECRETARIAT
NEW DELHI

March, 1982/*Phalguna*, 1903 (*S*)

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CONTENTS

PAGE

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE . . . . . . (iii)

INTRODUCTION . . . . (v)

REPORT

INTRODUCTORY . . . . (ix)

I Incorrect allowance of depreciation 1

II Non-completion of reopened or cancelled assessments . . . 5

III Omission/delay in revising surtax assessment 11

IV Loss of revenue 20

V Mistakes in assessments of firms and partners 23

VI Clubbing of income 29

VII Loss of revenue due to loss of return filed by an assessee 35

VIII Application of incorrect rates 38

IX Failure to issue demand notices 43

APPENDICES

I Extract of the decision of the Income-Tax Appellate Tribunal, Chandigarh Bench in Lalchand Bhalla v/s I.T.O. 46

II Ministry of Finance (Deptt. of Revenue) Notification No. F No. 238/26/77-A & PAC-I, dt. 16-11-77 49

III Central Board of Direct Taxes Notification No. F No. 326/51/78/W.T., dt. 5-7-78 51

IV Central Board of Direct Taxes Notification No. F No. 326/48/79/W.T., dated 22-10-80 52

V Recommendations and Conclusions 53

PART II

Minutes of the sittings of the Public Accounts Committee (1981-82) held on 4th March, 1982 (AN) 77

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2. Shri D. C. Pande—*Chief Financial Committee Officer*
3. Shri Ram Kishore—*Senior Legislative Committee Officer.*

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*Ceased to be a Member of the Committee consequent on his appointment as a Minister of State with effect from 15-1-1982.

**Ceased to be a Member of the Committee consequent on his appointment as a Deputy Minister with effect from 15-1-1982.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this 85th Report of the Public Accounts Committee (7th Lok Sabha) on paragraphs 2.10 (iv), 2.21, 2.28, 3.9(i), 3,11, 3.17, 4.12 and 4.17(ii) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume-II, Direct Taxes, respectively relating to Incorrect allowance of depreciation, Non-completion of reopened or cancelled assessments, Omission| delay in revising surtax assessment, Loss of revenue, Mistakes in assessments of firms and partners, clubbing of income, Loss of revenue due to loss of return filed by an assessee, Application of incorrect rates and Failure to issue demand notices.

2. Recalling the information given by the Ministry of Finance to the Committee, as early as 1968, that the ratio of the Supreme Court Judgement in K. L. Johar's case (STC-Vol. XVI/1965/213) laying down that no depreciation allowance could be given to the lessee in respect of assets acquired on hire purchase basis was equally applicable to income tax, the Committee have expressed their unhappiness that even after 13 years the concession continues to be given under executive instructions and the law on the point has not been suitably amended. The Committee have strongly recommended that necessary amendments to the law should be suggested without any further delay.

3. Referring to the tendency to make highly inflated assessments, the Committee have observed that the making of very high additions to the returned incomes without proper enquiry, and without any rhyme or reason, is a grave malady which causes harassment to the taxpayers, adds to arrear demand, leads to extensive and unnecessary litigation and gives a bad image to the department. The Committee have recommended that it should be made clear to the assessing authorities that additions should be made only after proper scrutiny and that these should be based on a reasoned judgement. The Income-tax authorities must realise that even a best judgement assessment is a quasi-judicial decision and it cannot be made whimsically or arbitrarily.

4. The Committee have recommended inclusion of a time limit for completion of assessments under the Surtax Act.

5. While pointing out that the omissions to issue demand notice not only postpone or delay collection of taxes but may also have the unhealthy possibility of notices not being issued for malafide considerations, the Committee have observed that when the demand and collection register is required to be filled up by the Wealth Tax Officer as soon as any assessment is completed and assessment order is passed, it should be possible for the Wealth Tax Officer to ensure, while making these entries, that the notice of demand has also been simultaneously prepared and despatched to the assessee. The Committee have suggested that periodical review of the demand and collection register should also be insisted upon so that cases where notices of demand have not been issued, can be promptly located and action taken at the earliest possible time. The Ministry of Finance should ensure that the assessing officers issue demand notices almost simultaneously with the passing of assessment orders in all cases.

6. In a case, in response to the notice issued by the Income-tax Officer, the assessee claimed that a return of income had already been filed and payment of tax on self-assessment basis had also been made by the assessee 6 years earlier. Nevertheless, the Income-tax officer proceeded to complete the assessment without verifying the veracity of the assessees claims which, as it turned out later, were true and duly authenticated by departmental receipts. The Committee have observed that this is a case of sheer callousness and harassment and the Income-tax officer seems to have become a law unto himself rather than acting in a quasi-judicial capacity. This is not the only case where a return duly filed by a assessee was misplaced or where a payment of tax already made by the assessee was not linked and given credit for. These are matters of common occurrence which put the taxpayers to considerable harassment. The Committee have strongly recommended that the Ministry of Finance should take exemplary action in such glaring cases and also bring about improvements in systems and procedures to ensure proper linking of the returns filed by the taxpayers and the taxes paid by them.

7. The Committee considered and adopted this Report at their sitting held on 4 March, 1982. The Minutes of the sitting of the Committee form Part-II of the Report.

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

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

10. 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 ;
March 12 1982,
Phalguna 21 1903 (*Saka*)

SATISH AGARWAL
Chairman
Pulic Accounts Committee

REPORT

INTRODUCTORY

The Report of the Comptroller and 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 17-3-1981. It contains 100 paragraphs with several sub-paragraphs thereunder.

2. The Committee selected 12 of these paragraphs* for seeking detailed information, both written and oral, from the Ministry of Finance. In the past, the Committee's attention has been mainly confined to paragraphs so selected. For the remaining paragraphs, the Committee's practice has been to make a general recommendation exhorting Government to take suitable action in these cases as well. This year, making a major departure from the past practice, the Committee called for written replies to all paragraphs, exculding paragraphs in Chapter I containing statistical information, not selected for detailed examination.

3. The Ministry of Finance have sent written replies to all the 165 non-selected sub paragraphs. After considering these replies, the Committee have made specific suggestions/recommendations in respect of few cases which have been dealt with in the chapters that follow.

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*Paragraphs 2·05(i), 2·09, 2·13(i), 2.13(ii), 3·07(v), 3·15(ii), 4·02, 4·06 (i), 4·07(i), 4·07(ii), 4·08(i), and 4·09.

I

INCORRECT ALLOWANCE OF DEPRECIATION

1.1. Audit Paragraph

It has been judicially held that several persons having specified fractional shares in a depreciable asset cannot claim proportionate fractional depreciation in respect of the same depreciable asset. According to the high court concerned, a fractional share in the asset will not suffice for granting depreciation allowance.

A company constructed a multi-storeyed building equipped with various utilities viz., air conditioning plant, lifts and tubewells etc. on its own land under co-ownership with 24 other companies who contributed towards the cost of construction of the building. The aforesaid company leased out office flats in the building to the 24 co-owners according to their share of contribution towards construction retaining a certain portion for itself. In terms of the lease deed executed, the co-owners owned their respective office flats and also various utilities in the proportion of office flats owned by them. In the assessment of the aforesaid company for the assessment years 1973—74 and 1974-75 depreciation allowance of Rs. 89,368 and Rs. 77,924 respectively, calculated on the assessee's share of the value of utility assets viz. air conditioning plant, lifts and tubewells were allowed by the department as claimed. Since the assessee did not own the assets exclusively but was only a co-owner of a fractional share in the said asset, on depreciation allowance was admissible in terms of the judicial pronouncement which held that fractional share would not suffice for granting an allowance depreciation on an asset. The incorrect allowance resulted in total tax under-charge to the extent of Rs. 96,611 for the two assessment years.

[(Para 2.10(iv) of the Report of the Comptroller and Auditor General of India for the year 1979-80 Union Government (Civil)-Revenue Receipts, Volume II, Direct Taxes)]

1.2 In their written note to the Committee, the Ministry of Finance stated:

> "While resisting the audit objection, Audit as was informed on 5-12-80 that the case of Banarsi Dass Gupta V's CIT (81 ITR 170) on which they were relying was not well argued before the Allahabad High Court. Hence, it cannot be said that the decision lays down a binding precedent.

In its rejoinder dated 18-8-81, Audit wanted to know whether the decision (supra) was acceptable to the Board. Particulars regarding appeal against the referred High Court decision is being ascertained.

Meanwhile asst. for A.Y. 1973-74 has been rectified u/s 154 on 15th February 1980 raising additional demand of Rs. 54,157. For A.Y. 1974-75 remedial action has been taken u/s 147 on 8th February, 1980 and additional demand of Rs. 44,999 raised. These demands have been fully recovered by adjustment against refund for 1962-63. The remedial action taken is as a measure of abundant precaution. Audit in their vetting comments have desired to know Ministry's views whether depreciaion is admissible on a fractional share and whether the judgement in the case of Banarsi Dass Gupta (81 ITR 170) was appealed against. This general issue raised by audit above is already under consideration of the Ministry. However, in this particular case remedial action has already been taken as already mentioned above."

1.3 On a similar question relating to the allowance of depreciation on plant and machinery acquired on hire purchase basis, the Public Accounts Committee had recommended in paragraph 1.257 of their 3rd Report (4th Lok Sabha) the "keeping in view the recent judgement of the Supreme Court" (M/s. G. L. Johar and Co V/s Dy. Commercial Tax Officer, Coimbatore—1965 STC 541—a case under madras General Sales Tax Act) that the ownership could not vest in the hire-purchaser, the C.B.D.T. would review their instructions and would take an early decision whether or not the law itself required any amendment."

1.4 In their Action Taken note on the above recommendation of the Public Accounts Committee, the Ministry of Finance had informed the Committee in December 1968 as follows:—

"The Central Board of Revenue had issued instructions in 1943 that in the case of depreciable assets acquired on hire-purchase basis, depreciation allowance should be allowed to the lessee and not the owner-lessor. These orders were later extended in 1959 to the grant of development rebate in such cases. The above instructions were again reiterated by the Board in 1963.

The C&AG has objected to the allowance of depreciation and development rebate in the above cases on the ground that the lessee of the depreciable assets was not their legal

owner and, therefore, the allowances were not admissible. This was on the strength of the Supreme Court's decision in the case of K. L.Johar & Co. vs. Deputy Commercial Tax Officer, Coimbatore (1965) S.C.J. 541 (a case under the Madras General Sales Tax Act) in which it was held that under a hire-purchase agreement, the sale was completed only when all the conditions in the agreement were fulfilled and the last instalment had been paid.

Prior to this judgment, of the Supreme Court, there were conflicting decision of high Courts on the subject, under the Income-tax Act. While the Madhya Pradesh High Court held that the hirer under a hire-purchase agreement did not become the owner till all the instalments had been paid (47 ITR 756), the Andhra Pradesh High Court in the case reported in 58 ITR 95 reached a contrary conclusion which supported the view taken by the Board in the circulars mentioned above.

The question whether Board's instructions required any modification in view of the Supreme Court's decision under the Madras General Sales Tax Act, was examined by the Board in consultation with the Ministry of Law after the receipt of the audit objection. The Board were advised that although the decision related to sales tax, the ratio underlying it, is equally applicable to income-tax.

The matter was further examined and it has been decided to sponsor an amendment to the Income-tax Act to secure the grant of development rebate and depreciation allowance in respect of assets acquired on hire-purchase basis. However, this will have to await the passing of the Hire Purchase Bill, 1968, which is already before Parliament, into law."

1.5 The Hire Purchase Act was enacted in 1972. The Committee understand that in November, 1981, the Central Board of Direct Taxes informed Audit that the decision to amend the Income-tax Act would be taken by the Ministry of Finance after a final view emerges on the Hire Purchase Act, 1972, which according to the Ministry of Law has not yet come into force, pending a decision on the recommendation of the Banking Law Committee.

1.6 The Allahabad High Court case [Banarsi Dass Gupta vs. CIT (81 ITR 17)] on which the audit objection to the allowance of depreciation on a fractional share in the ownership of an asset is based, was decided in September, 1970. It is amazing that even after more

than 11 years, in December, 1981, the Ministry of Finance should not only be unable to give their own considered view on the point but also be unaware as to whether the decision of the High Court was accepted or appealed against. The Ministry have stated in their written reply that remedial action has been taken "as a measure of abundant caution." The audit objection was raised in February, 1979. Surely, there was enough time to examine the point in the context of the Allahabad High Court decision and in consultation, if necessary, with Audit and the Ministry of Law, to take a firm view in the matter rather than keep the issue pending and then rush in to reopen the assessment as a precautionary measure. There is no provision in law to reopen an assessment u/s. 147 of the Income-tax Act, as a precautionary measure and therefore such act of the ITO is palpably illegal and without jurisdiction. The Committee have no doubt that the cloak of precautionary or protective assessments has been used to hide departmental inefficiency. This reflects adversely on the functioning of CBDT in clarifying legal issues for the guidance of field formations. The Committee would like the Income Tax Department to reopen assessments strictly in accordance with law.

1.7 On the question of allowance of depreciation on assets acquired on hire-purchase basis the decision of the Supreme Court in K. L. Johar's case [STC Vol. XVI/1965 (213)] was given in 1965. The Ministry of Finance had also informed the Committee in December, 1968, after consulting the Ministry of Law, that the ratio of this decision of the Supreme Court was equally applicable to Income-tax. It would follow that the Ministries of Finance and Law accepted the position that in accordance with the Law, as it stood, no depreciation allowance could be given to the lessee in respect of assets acquired on hire-purchase basis. The Committee are unhappy to note that even after 14 years the concession continues to be given under executive instructions and the law on the point has not been suitably amended. The Committee would strongly recommend that necessary amendment should be suggested without any further delay.

1.8 The Committee note that the Hire-purchase Act passed in 1972 has not yet come into force. The Committee would like to know the precise reasons for this.

II

NON-COMPLETION OF RE-OPENED OR CANCELLED ASSESSMENTS

2.1 *Audit Paragraph*

Under the provisions of the Income-tax Act, 1961 for and upto the assessment year 1970-71, no time limit for making fresh assessment under Section 146 of the Act or in pursuance of an order in appeal or revision, setting aside or cancelling an assessment, was prescribed.

The assessments of a company for the assessment years 1963-64, 1964-65, 1966-67 and 1969-70 were completed on 6th March, 1968, 26th March, 1969, 10th March, 1971 and 6th March, 1972 as best judgment as assessments on total incomes of Rs. 13,21,016, Rs. 50,000, Rs. 18,52,338 and Rs. 3,49,415 raising demands of Rs. 7,67,758, Rs. 25,300, Rs. 15,23,997 and Rs. 2, 70,660 respectively. The assessments for the assessment years 1965-66, 1967-68, 1968-69 and 1970-71 were completed as regular assessments on 12th March, 1970, 24th February, 1972, 24th February, 1972 and 19th September, 1973 on total incomes of Rs. 23,10,840, Rs. 16,02,252, Rs. 11,36,478 and Rs. 84,970 raising demands of Rs. 17,21,000, Rs. 10,41,460, Rs. 7,38,712 and Rs. 71,863 respectively. The assessments for all these years were either re-opened or set aside during the period January, 1969 to March, 1975. It was seen in audit in January, 1980 that fresh assessments had not been made in any of these cases. As a result, income of the assessee for the assessment years 1963-64 to 1970-71 had remained unassessed and total demand of nearly Rs. 61.61 lakhs raised against the assessee for different years had remained unrealised for periods ranging from 5 to 11 years, reckoned from the dates of original assessments. The assessee had not paid any tax on regular assessments ever since the first year of its accounts ended 31st May, 1962 relevant to the assessment year 1963-64.

The paragraph was sent to the Ministry of Finance in September, 1980; their reply is awaited (December, 1980).

[Paragraph 2.21 of the Report of the Comptroller and Auditor General of India, for the year 1979-80 Union Government (Civil) Revenue Receipts Volume II, DirectTaxes].

2.2 In their written notes to the Committee, the Ministry of Finance stated:

"Objection was accepted to the extent that set aside assessments should have been completed expeditiously. Re-

garding the alleged unrealised revenue of Rs. 61.61 lakhs, Audit has taken the total demands raised on original assessments as the basis, which are now cancelled. The position of income returned, income assessed and demand raised for the 8 years was intimated to Audit. This showed that the original assessments had been made on very high income. In fact reassessments for 1963-64 and 1964-65 had been made on 30th December, 1978 and 27th September, 1980 on total income of Rs. 33,218|- and Rs. 20,100/- only. Hence, the figure of Rs. 13,12,016/- and Rs. 50,000 assessed U's 144 for 1963-64 and 1964-65 and taken by audit in their computation of unrealised revenue had become irrelevant. It was also noticed that for 1969-70 and 1970-71 whereas the original assessments have been made U/s 144/143(3) on total incomes of Rs. 3,49,415/- and Rs. 84,970|- the assessee has returned losses for these years. Audit's allegation that the unrealised revenue in these pending assessments is Rs. 61.61 lakhs was therefore not accepted. Meanwhile the Income Tax Officer has been directed to complete the remaining set aside assessments expeditiously."

2.3 The following table indicates the particulars of the original assessments of the Company for the assessment years 1963-64 to 1970-71 as intimated by the Ministry of Finance to Audit:—

Assessment year	Income Returned	Income assessed	Date of original assessment	Sections under which completed	Demand
	Rs.	Rs.			Rs.
1963-64 . . .	11,585	13,21,016	6-3-68	144	7,67,758
1964-65 . . .	10,267	50,000	26-3-69	144	25,300
1965-66 . . .	60,303	23,10,840	12-3-70	143(3)	17,21,000
1966-67 . . .	38,868	18,52,338	10-3-70	144	15,23,997
1967-68 . . .	44,897	16,02,252	24-2-72	143(3)	10,41,460
1968-69 . . .	22,453	11,36,478	24-2-72	143(3)	7,38,712
1969-70 . . .	22,937 (loss)	3,49,715	6-3-72	144	2,70,660
1970-71 . . .	2,13,777 (loss)	84,970	19-9-73	143(3)	71,863

2.4. According to the Ministry's written reply sent to the Committee in December, 1981 reassessments had been made only for the assessment years 1963-64 and 1964-65; fresh assessments for all the other assessment years were still pending. For the assessment years 1963-64 and 1964-65 the total incomes determined on reassessment were Rs. 33,218 and Rs. 20,100 against the total incomes of Rs. 13,21,016 and Rs. 50,000 determined in the original assessments on the basis of best judgment assessment.

2.5 In another case pointed out in para 3.18 of the Audit Report 1979-80, the original assessments of a firm for the four assessment years, 1943-44 to 1946-47, completed during the years 1948 and 1949 and set aside by the Income-tax Appellate Tribunal in March, 1953, were made afresh only in 1976 i.e., after a lapse of 23 years. The fresh assessments had to be cancelled again for procedural reasons, and these have yet to be finalised.

2.6 The Income-tax Act, 1981, did not, prior to the assessment year 1971-72, contain any time limit for the completion of such cancelled or set aside assessments. A time limit of two years for that purpose was introduced only from 1-4-1971 through the newly introduced section 153(2)(A) of the Act. The Central Board of Direct Taxes had, however, earlier issued a circular No. 10-P(V-68) of 1968 dated 15th October, 1968 laying down an administrative time limit of two years for completion of such assessments.

2.7 It is apparent from these cases that the administrative time limit fixed by the Board was not really observed by the field formations and a large number of cancelled or set-aside assessments pertaning to the assessment years up to 1970-71 were allowed to remain pending for indefinitely long periods. The case reported in para 8.18 of the Audit Report involving a delay of over 28 years is perhaps the worst of such cases. According to the information given by the Ministry of Finance to the Committee in January, 1981 the total number of such cancelled and set-aside assessments of assessment years up to 1970-71 outstanding as on 30-11-1980 was 8,569. These figures were, however, stated to be not complete.**

2.8. The Committee cannot but observe that such inordinate delays in completion of cancelled and set-aside assessments are neither fair to Revenue nor to the taxpayers. Going by the assessments originally made in the particular cases commented upon in

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*1Para 3.10 of the P.A.C.'s 38th Report (7th Lok Sabha).

the Audit Report tax demands of about Rs. 70 lakhs have remained pending because of non-completion of the cancelled or set-aside assessments in these cases.

In their written reply, the Ministry of Finance have tried to belittle the importance of the audit objection on the ground that the figure of Rs. 61.61 lakhs of unrealised revenue mentioned in para 2.21 of the Audit Report is based on original assessments which had been made on very high income. The conclusion drawn by the Ministry is actually based only on the reassessments made for the assessment years 1963-64 and 1964-65. For these two years the demand included in the aforesaid figure of Rs. 61.61 lakhs was only of the order of Rs. 7.93 lakhs. The Committee would like to know how the Ministry could, on its own, and before actual completion of assessments for all the other six years involving demands of over Rs. 53 lakhs, come to the conclusion that the original assessments were highly inflated, or that the original demands were unrealistic.

2.9. As for the harrassment of the tax payers involved in such cases the Committee would like to recall the observations of the Supreme Court of India in I.T.O. 'A' Ward, Calcutta, vs Ramnarayan Bhojnagarwala (103 ITR 797), wherein commenting on a case where the Income-tax Officer had failed to take action on a set-aside order for a period of over 5 years, the Supreme Court pointed out, "There is no valid reason why the Income-tax Officers should have delayed so long and indeed administrative officers and tribunals are taking much longer time than is necessary, thereby defeating the whole purpose of creating quasi-judicial tribunals calculated to produce quick decisions especially in fiscal matters. Five years to dawdle over a decision on a small matter directed by an appellate authority amounts to indiscipline subversive of the rule of law. We hope that the Administration takes serious notice of delays caused by tax officers' lethargy, under some pretext or the other, in speeding up inquiries into incomes and finalizing assessments . . . . . The Law must move quickly not merely in the courts but also before tribunals and officers charged with the duty of expeditious administration of justice." The Committee are pained to note that even these observations of the Supreme Court have not woken up the Ministry of Finance or the Central Board of Direct Taxes.

2.10. During evidence before the Committee last year the Board had given an assurance that most of the pending cases upto the

assessment years 1970-71 would be completed "by 1981-82".* The Committee do hope that this assurance would be kept up. They would like to be informed of the actual progress as on 31-3-1982, together with detailed reasons for cases still pending as on that date.

2.11. Of the two assessments which have since been completed, the assessment or the assessment year 1963-64 is clearly indicative of vexatious and/or unrealistic additions in the original best judgement assessment. The income returned for that year was Rs. 11,585. The best judgement assessment was made on an income of Rs. 13,21,016. The income determined on reassessment is Rs. 33,218 only. The Ministry of Finance have not given any details of the additions made by the Income-tax Officer in the original assessment, his reasons for doing so, and the reasons for the steep reduction of the total income in the reassessment. The Committee would like to have these details.

2.12. The Public Accounts Committee have repeatedly** pointed out that the tendency on the part of the Income-tax officers to make overpitched assessments is one of the reasons or poor public relations in the Income-tax department on the one hand and for unlimited litigation as well as heavy arrears of demand on the other. In reply to the Committee's recommendations contained in para 11.31 of their 186th Report (5th Lok Sabha), the Ministry of Finance had drawn*** the attention of the Committee to the newly introduced section 144B of the Income-tax Act, 1961, according to which additions exceeding Rs. 1 lakh could now be made only with the previous approval of the Inspecting Assistant Commissioner. According to the Chokshi Committee, this provision has merely resulted in delays in completion of assessments and duplication of proceedings without substantially curbing the highpitched assessments or reducing the scope of litigation. The Chokshi Committee have in fact, recommended deletion of this provision.†

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*Para 3.49 of PAC 38th Report (7th Lok Sabha).

**—Paras 1·34 to 1·36 of he PAC's 17th Report (4th Lok Sabha)

—Paras 1·80, 4·25 and 4·26 of the PAC's 73rd Report (4th Lok Sabha)

—Paras 1·55 and 1·56 of the PAC's 100th Report (4th Lok Sabha)

—Para 11·31 of the PAC's 186th Report (5th Lok Sabha)

*** 61st Report of PAC Sixth Lok Sabha—Page 38.

†Direct Tax Laws Inquiry Committee—Final Report, September 1978, pp. 161-62.

2.13. It is clear from the written reply of the Ministry of Finance in this case that, notwithstanding their earlier replies to the recommendations of the Committee quoted above, the Ministry of Finance themselves carry an impression that the tendency to make highly inflated assessments persists. That is also perhaps, one of the reasons for the high rate of reliefs obtained by the assessees from the appellate authorities. The figures given at page 17 of the Audit Report 1979-80 would indicate that during the years 1977-78, 1978-79 and 1979-80 while the assessees succeeded before the tribunal in 38 per cent, 52 per cent and 46 per cent of their cases, the department suceeded in 20 per cent, 20 per cent and 18 per cent of their cases only. The Committee would reiterate that the making of very high additions to the returned incomes without proper enquiry, and without any rhym or reason, is a grave malady which causes harassment to the taxpayers, adds to arrear demand, leads to extensive and unnecessary litigation and gives a bad image to the department. The Committee would strongly recommend that this matter should be examined afresh taking into account the aforesaid recommendation of the Chokshi Committee and it should be made clear to the assessing authorities that additions should be made only after proper scrutiny and that these should be based on a reasoned judgement. The Income-tax authorities must realise that even a best judgement assessment is a quasi-judicial decision and it cannot be made whimsically or arbitrarily.

III

OMISSION/DELAY IN REVISING SURTAX ASSESSMENTS

3.1. *Audit Paragraph:*

Pursuant to the recommendations of the Public Accounts Committee contained in Paragraph 6.7 of their 128th Report (Fifth Lok Sabha), the Central Board of Direct Taxes issued instructions in October 1974, that surtax assessment proceedings should be initiated along with the income-tax proceedings finalised within a month of the completion of the relevant income-tax assessments. The Board further laid down that the surtax assessments should not be kept pending on the ground that the additions made in income-tax assessments were disputed in appeal.

(i) The taxable income of an assessee company or the assessment year 1974-75 was determined as Rs. 35,42,351 in June 1978. As the chargeable profits, Rs. 12, 62,660 exceeded the statutory deduction of Rs. 2 lakhs, the company was assessable to surtax on the net chargeable profits of Rs. 8,33,016. However, the assessee did not furnish any return of chargeable profits, nor did the assessing officer initiative necessary proceedings to levy surtax. The Register of Pending Action maintained by the assessing officer also did not show any pendency in this respect. The chargeable profits of the company therefore, escaped assessment to surtax which would amount to Rs. 2,39,000.

The Ministry of Finance have accepted the objection in principle.

(ii) In another case, the taxable income of an assessee-company for the assessment year 1973-74 was determined at Rs. 35,43,460 in the revised assessment finalised on 22nd January, 1979. As the chargeable profits of Rs. 18,21,672 exceeded the statutory deduction of 10 per cent of the capital, the company was assessable to surtax on the net chargeable profits of Rs. 4,67,800. However, neither the assessee filed the return of chargeable profits, nor did the assessing officer initiate necessary proceedings for levy of surtax. The net chargeable profits of Rs. 4,67,800 therefore, escaped taxation with consequent non-levy of surtax of Rs. 1,19,170.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been made and that the amount of additional tax raised and collected is Rs. 1,19,170.

(iii) In a third case, it was noticed in audit in December, 1979 that even though the income-tax assessments of an assessee company, for the assessment years 1973-74, 1974,75 and 1975-76 had been completed on 7-6-1977, 26-4-1978 and 23-9-1978 respectively, the surtax assessment initiated on 3-10-1978 for all the three years, had not been finalised (till audit) resulted in demands of Rs. 82,600, Rs. 1,62,400 and Rs. 4,43,000 not being raised for 11,5 and 15 months respectively.

While accepting the objection the Ministry of Finance have stated that the surtax assessments for all the three years have been completed in September 1980, raising a demand of Rs. 4,14,858.

(iv) The provisional assessment of surtax of a company for the assessment year 1975-76 was made in February 1976 levying a tax of Rs. 6,35,863. he income-tax assessment for the year was completed in September, 1978 with taxable income of Rs. 1,34,39,660 and tax payable thereon as Rs. 77,60,579. Ten per cent of the capital being Rs. 27,25,846 surtax of Rs. 9,72, 282 was leviable on the chargeable profits of Rs. 29,41,801. It was noticed in audit that the surtax assessment was not revised on the basis of the income-tax assessment. Omission to revise the surtax assessment resulted in short levy of surtax of Rs. 3,36,419.

The Ministry of Finance have accepted the objection in principle.

(v) In another case of an assessee-company, the income-tax assessments for the assessment year 1971-72 to 1974-75 were completed in 1978 on the basis of which the chargeable profits of the company exceeded the statutory deduction by an aggregate sum of Rs. 5.99.170, during these four years. However, the assessee did not furnish any return of chargeable profits nor did the assessing officer initiate necessary proceedings to levy the surtax. The chargeable profits of the company, therefore, escaped assessment leading to undercharge of surtax of Rs. 1,72,077 in the four assessment years.

The Ministry of Fianace have accepted the objection in principle.

(vi) In the case of an assessee-company provisional surtax assessments for the assessment years 1975-76 and 1976-77 were made by the department in October 1976 and December 1986 wherein surtax demands of Rs. 3,33,425 and Rs. 6,85,927 respectively were raised.

Regular income tax assessments for the said assessment years were completed in March 1978 and January 1979 respectively on the basis of which surtax of Rs. 4,51,990 and Rs. 7,40,485 respectively would be leviable. No action was, however, taken by the department to revise the provisional surtax assessments or to make regular surtax assessments as required under the Board's instructions. The omission in this regard led to short levy of surtax of Rs. 1,73,123 in the assessment years 1975-76 and 1976-77.

The Ministry of Finance have accepted the objection in principle.

(vii) The provisonal surtax assessment of a company for the assessment year 1975-76 was completed in February 1976 levying surtax of Rs. 4,91,321. The income-tax assessment for the year was completed in September 1978 with total income of Rs. 2,79,26,820 and tax levied thereon was Rs. 1,61,27,739. In the provisional assessment for surtax, no adjustments on account of dividends paid out of the general reserve was made in computing the capital. Further, as a result of certain adjustments in the income tax assessment there was in increase in the chargeable profits for the year. As the surtax assessment of the year was not finalised on the completion of the income-tax assessment, there was a short levy of surtax of Rs. 1,17,327, the surtax on final assessment being leviable at Rs. 6,08,648.

The Ministry of Finance have accepted the objection in principle.

(viii) The income-tax assessment of an assessee-company for the assessment year 1975-76 was finalised in September 1978 assessing the income at Rs. 29,62,800. However, the surtax assessment proceedings were not initiated simultaneously though the surtax return had been filed on 3rd July, 1975. In January 1979 only a provisional assessment of surtax was made on the basis of the return filed by the assessee, without taking into consideration the income as already assessed. There was a mistake in calculation of tax in provisional assessment which resulted in undercharge of surtax by Rs. 58,530. Further as only provisional assessment was made in January 1979 on the basis of the return filed by the assessee without considering the higher amount of income assessed in the income-tax proceedings, there would be delay in raising and collection of additional surtax of Rs. 94,272 till the regular assessment is finalised.

The Ministry of Finance have accepted the objection, the amount of additional tax raised is Rs. 58,530.

(ix) In the case of a company, the regular assessment under the Income- tax Act, 1961 for the assessment year 1973-74 was made in August 1974 on a total income of Rs. 1,51,42,738. The income-tax assessment was revised in December 1974 reducing the income to Rs. 1,51,28,243 and again in March, 1976 further reducing the income to Rs. 1,49,41,037. In July, 1976, however, the income-tax assessment was revised for the third time enhancing the assessed income to Rs. 1,56,51,819 on account of certain income from technical services, crroneously claimed and treated as exempt in the earlier assessments, being brought to tax. As against four income-tax assessments, only two surtax assessments for the corresponding periods were made in November 1974 and June 1975 with reference to the total income of Rs. 1,51,42,738 determined in August, 1974 and Rs. 1,51,28,243 determined in December 1974. As per the last surtax assessment made in June 1975 a demand of Rs. 7,63,252 was raised. However, this assessment was not revised thereafter, particularly when the income tax assessment underwent the third revision in July 1976 when the income was enhanced to Rs. 1,56,51,810. Had a surtax assessment been made on that basis, the surtax due would have been determined as Rs. 8,29,616. Non-revision of the surtax assessment resulted in under-assessment of surtax of Rs. 66,064 in the assessment year 1973-74.

While accepting the objection the Ministry of Finance have stated that the assessment in question has been revised and that the amount of additional demand raised and collected is Rs. 66,064.
(Paragraph 2.28 of the Report of the Comptroller and Auditor General of India, for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume-II, Direct Taxes).

3.2. In reply to aforesaid Audit observations, the Ministry of Finance in their written notes to the Committee stated item-wise as follows:—

"2.28(i) & (ii) Non-levy of surtax: The objection has been accepted in principle dated 6-11-80. Paoceedings have been initiated under Section 8 of the S.T. Act. Audit however has been informed that there may not be any revenue effect because of the total income of the assessee has been reduced by ITAT to Rs. 22,30,150/- as against Rs. 35,36,150/-

originally assessed. After giving set off of earlier losses and making adjustments in the total income as provided in the Schedule, there may not be chargeable profits liable to surtax.

In thier vetting comments Audit have desired to know the reasons for delay in finalisation of the sur-tax assessment.

It has been ascertained that this case been transferred from Madhya Pradesh to the Commissioner of Income-tax Bombay City-III.

(ii) The objection was accepted. The assessment was revised under Section 6(i) on 14-3-80. The additional demand raised and collected is Rs. 1,19,170.

Delay in computation of surtax assessments for assessment years 1973-74 *to* 1975-76:

(iii) The Income-tax Officer had initiated the sur-tax proceedings for all the years immediately after completion of the assessment for 1975-76. While the case was being processed for S.T. assessments, the Income-tax assessments for 1974-75 and 1975-76 were reopened under Section 147(b) on 12-3-79. The time limit for their completion was upto 12-3-80. Since the reopened assessments were pending, the surtax assessments remained pending. The fact that there was some delay in completion of the S.T. assessment, has been accepted.

The surtax assessments for all the 3 years have been completed on 29-9-80 raising a demand of Rs. 4,14,858/- as against the revenue effect of Rs. 4,43,000/- pointed out by Audit.

Omission to revise surtax assessment:

(iv) The objection was accepted in principle. Audit was informed that there was no revenue loss as there is no time barring provision in Sur-tax Act.

The Audit in their vetting comments desired to know the reasons for delay in completion of Sur-tax assessment and this Ministry's view regarding inclusion of time limit for completion of assessment in sur-tax Act. As regards the first

point the reasons are being ascertained and the question for inclusion of time limit in the Sur-tax Act, the matter is now under consideration.

Non-levy of surtax for Assessment years 1971-72 *to* 1974-75:

(v) The objection has been accepted in principle in view of the fact that there is no time limit for initiating action under Section 8(a) of Sur-tax Act and that Instruction No. 773 dated 22-10-74 on which audit has relied for making the objection is merely an administrative instructions for expediting the completion of S.T. assessment alongwith Income-tax Assessment Notice Under Section 5(2) of the Company Profits (Surtax) Act 1964 has been issued.

The Audit in their vetting comments desired to know the reasons for delay in the completion of surtax assessment and this Ministry's views regarding inclusion of time limit for completion of assessment in Sur-tax Act. As regards the first point the reasons are being ascertained and the question for inclusion of time limit in the surtax Act. the matter is now under consideration.

Delay in revising surtax assessments on completion of Income-tax assessment:

(vi) The objection was accepted in principle on 25-11-80. Sur-tax assessments in question were completed, raising additional demand of Rs. 1,55,657.

Delay in finalising surtax assessment:

(vii) The objection was accepted in principle. Audit was informed that there is no loss of revenue as there is no time limit for initiating action under Section 8(a) of S.T. Act. Further, Instruction No. 773 dated 22-10-74 is merely administrative instruction for expediting the surtax assessments along with Income-tax assessments.

Under assessment of surtax in provisional assessment and also delay in making final assessment despite completion of income tax assessment:

(viii) The audit objection was accepted. The assessment in question was revised under Section 6(2) of the S.T. Act on 18-4-80. The additional demand raised is Rs. 58,530/-, the

same as reported in the D.P. Audit was, however, informed that such delays do not result in revenue loss as surtax cases are not barred by limitation.

The demand of Rs. 36,000/- has already been recovered.

The audit in their vetting comments desired to know the reasons for delay in completion of surtax assessment and this Ministry's views regarding inclusion of time limit for completion of assessment in Sur-tax Act. As regards the first point the reasons are being ascertained and the question for inclusion of time limit in the surtax act, the matter is now under consideration.

Incorrect computation of chargeable profits:

(ix) The objection was accepted. The assessment in question was revised under Section 13 of the Sur-tax Act. The additional demand raised and collected is Rs. 66,064."

3.3 Surtax is levied under the Companies (Profits) Surtax Act, 1964 on the chargeable profits of a company in so far as these profits exceed the statutory deduction. Chargeable profits are computed in the manner laid down in the First Schedule to the Act by making certain adjustment on the income computed for purposes of income tax. The Surtax Act provides for the companies voluntarily filing returns of chargeable profits as well as for the Income-tax Officers calling for such returns by notice. The Act does not provide for any time limit for the completion of surtax assessments.

3.4. The Pubic Accounts Committee have, in the past, taken adverse note of cases where the assessees failed to file surtax returns voluntarily and the Income-tax Officers did not also call for such returns with the result that surtax assessments remained to be completed long after the corresponding income-tax assessments had been made. In para 6.7 of their Eighty Eighth Report (Fifth Lok Sabha) and again in Para 6.7 of their One Hundred Twenty Eighth Report (Fifth Lok Sabha) the Committee emphasized that surtax assessments should be taken up along with the connected income-tax assessment of the companies.

3.5. In pursuance of the aforesaid recommendations of the Committee, the Central Board of Direct Taxes issued instructions on 22

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*Page 36 of the Public Accounts Committee One Hundred Fifty Third Report (Fifth Lok Sabha).

October, 1974*. These instructions laid down that proceedings for completion of regular surtax assessments should be taken up along with income-tax proceedings so that the surtax assessments are also finalised immediately after the income-tax assessments are completed. The instructions also pointed out that the fact that additions made in the income-tax assessments were being disputed in appeal should not be a ground for not finalising the surtax assessments. It was further laid down that the time lag between the date of completion of income-tax assessments and surtax assessments should ordinarily not exceed a month unless there are special reasons justifying the delay.

3.6. The present Audit para again points out a large number of cases where income-tax assessments were completed/revised during the year 1976, 1977 or 1978 but no action had been taken to complete the corresponding surtax assessments with the result that considerable amounts of surtax remained to be assessed and collected.

3.7. The Committee regret to point out that their earlier recommendations on this subject and the instructions issued by the Central Board of Direct Taxes in pursuance thereof do not seem to have had any effect and the chronic failure in taking up surtax assessments still continues to occur. In all the cases pointed out in the Audit Para the Income-tax Officers failed to take action on completion/revision of the income-tax assessments either to call for the surtax returns or to complete or revise surtax assessments as the case may be. Apparently in all these cases the Board's instructions were not followed.

3.8. Since Audit carried out only a test check, the Committee have a reasonable apprehension that the Board's instructions are not being followed by the field formations at all. The Committee would like to know the number of surtax assessments pending on 31-3-1981 and the number of cases in which the corresponding income tax assessments stand completed.

3.9. The Committee are particularly pained to know that in their written replies the Ministry of Finance have themselves tended to belittle the importance of the Board's instructions by saying that these are "merely administrative" instructions. Even while accepting the audit objection the Ministry of Finance seem to find solace in the argument that there is no loss of revenue as "there is no time-barring provision in the Surtax Act." In fact there is no indication

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*Page 36 of the Public Accounts Committee one hundred Fifty Third Report (Fifth Lok Sabha).

in any of the written replies of the Ministry of Finance as to whether the precise reasons for this persistent inaction on the part of the Income-tax officers have been ascertained or whether any positive steps have been thought of to improve matters.

3.10. The Committee would strongly recommend that the suggestions about the inclusion of a time limit for completion of assessments under the Surtax Act should be seriously considered and given effect to. In the meanwhile the Board's instruction of 1974 should be given its due importance and its observance should be insisted upon.

IV

LOSS OF REVENUE

Audit Paragraph:

4.1. (i) Under the provisions of the Income-tax Act, 1961, interest on 12 year National Defence Certificates to the extent to which the amounts of such certificates do not exceed the maximum amount which is permitted to be deposited therein, *viz.* Rs. 50,000, is not to be included in computing the total income.

In the case of an unrecognised "Pension and Gratuity Fund" assessed in the status of an "association of persons", it was seen in audit that interest on 12-year National Defence Certificates of the face value of Rs. 39 lakhs was exempted from tax for the assessment years 1971-72, 1972-73 and 1973-74. Omission to tax the interest on the unexempted portion of the investment of Rs. 38.5 lakhs involving under-assessment of tax of Rs. 6,90,000 for the three years was pointed out by Audit in June 1975.

While accepting the objection Ministry of Finance have stated that the assessment for the assessment year 1973-74 has been revised raising an additional demand of Rs. 2,32,643. The remedial action for the assessment years 1971-72 and 1972-73 got barred by limitation after receipt of the audit objection. (Paragraph 3.09 (i) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes).

4.2. In their written notes to the Committee the Ministry of Finance stated:

> "The objection was accepted. The assessment for 1973-74 was revised under section 147 (b) on 27-4-79. The additional demand raised is Rs. 2,32,643 as against Rs. 6,90,000/- pointed out by Audit. The difference occurs due to the fact that remedial action for 1971-72 and 1972-73 got barred by limitation after receipt of the objection."

4.3. The Committee understand from Audit that the original assessments in respect of the assessment years 1971-72, 1972-73 and 1973-74 were completed on 31-1-1974, 31-1-1974 and 19-6-1974 respectively. The audit objection was initially raised on 21-5-1975.

Notices under section 148 of the Income-tax Act, 1961, were issued in respect of the assessment years 1971-72 and 1972-73 in March 1977. The Ministry of Finance have now stated that the remedial action for these two assessment years got barred by limitation and that the assessment for the year 1973-74 was revised under section 147 (b) on 27-4-1979.

4.4. The assessments for the years 1971-72 and 1972-73 were completed in January, 1974. The audit objection was raised in May/June, 1975. Notices under Section 128 were issued in March, 1977. If, as stated by the Ministry of Finance, remedial action for these two assessments years got barred by limitation, it would only mean that after the issue of notices in March 1977, no action was taken for one whole year Section 153 (2) (b). Apparently, there was delay both in initiating remedial action after the receipt of the audit objection, as well as in completing such action after the issue of notices. As a result, revenue of Rs. 4,57,357 was lost. The Committee would like the Ministry of Finance to give the reasons for these inexcusable delays, surprisingly not indicated in the written reply furnished to the Committee. The Committee would also like the Ministry of Finance to take appropriate action to fix responsibility in the matter and inform the Committee accordingly.

4.5 When the audit objection was raised in May/June, 1975, there was ample time to take remedial action in respect of all the assessment years. The inaction on the part of the departmental officers continued till 1978, when the remedial action for two assessment years got time-barred. The Ministry of Finance** had stated before the Committee last year that the Central Board of Direct Taxes had, in March 1977, reiterated their earlier instructions to the effect that the Commissioners of Income-tax are personally responsible for careful examination and issue of instructions to the Income-tax officers on the most appropriate remedial action to be taken within a month of the local audit report in regard to audit objections involving revenue of over Rs. 25,000 or more in incme-tax/corporation tax cases and Rs. 5,000 or more in other direct taxes cases. Apparently, even after the reiteration of these instructions in March, 1977, the supervisory officers have not been giving required attention to the audit objections resulting in avoidable losses of revenue as in this case. The Committee would like to know whether the Ministry of Finance

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**Para 5·12 and 5·13 of the PAC's 38th Report (7th Lok Sabha).

have enquired into the role played by the Inspecting Assistant Commissioner and the Commissioner of Income-tax in the present case.

4.6. The Committee would also emphasize that in view of the limitations of time laid down in the fiscal laws for remedial action, it is essential that audit objections, those raised by Internal Audit as well as those raised by Revenue Audit, should be given prompt attention at various levels from the income-tax officer right upto the Commissioners of Income-tax so as to make sure that the points involved are properly examined and the most appropriate remedial action is taken well in time.

V

MISTAKES IN ASSESSMENTS OF FIRMS AND PARTNERS

Audit Paragraphs:

5.1. Under the Income-taxAct, 1961, firms are classified into registered firms and unregistered firms. A registered firm pays only a small amount of tax on its income; the rest of its income is apportioned among the partners and included in their individual assessments. An unregistered firm pays full tax on its total income. Where at the time of completion of the assessments of the partners, the assessment of the firm has not been completed, the share income from the firm is included in the assessments of the partners on a provisional basis and revised later to include the final share income when the assessments of the firm is completed. For this purpose, the Income-tax Officers are required to maintain "Register of cases of provisional share income" so that these cases are not omitted to be rectified. Instances of default in the revision of the partners assessments in such cases have been commented upon in paragraph 61(i) of Audit Report 1975-76, paragraph 59 of Audit Report 1976-77, paragraph 53(b) (ii) of Audit Report 1977-78 and paragraph 54 of Audit Report 1978-79.

Pursuant to the paragraphs featured in the Audit Reports in the past, the Public Accounts Committee have from time to time expressed concern at the delay in the revision of provisional assessments of partners' share incomes after completion of the firms' assessments and have taken a serious note of the failure to keep a proper watch over such cases. Their recommendations/observations are contained in paragraph 65 of their 21st Report (Third Lok Sabha), paragraph 45 of their 28th Report (Third Lok Sabha), paragraph 2.224 of their 51st Report (Fifth Lok Sabha) and Chapter VIII of their 186th Report (Fifth Lok Sabha). The Central Board of Direct Taxes also issued instructions in the matter in March 1973.

(i) The assessments of a registered firm for the years 1973-74 and 1974-75 were re-opened under Section 147 of the Income-tax Act, 1961, and the re-assessment were finalised in 18-11-1977. However, the assessments in the case of 3 partners of the firm assessed by the same Income-tax Officer were not rectified to include the revised share of income from the firm till October 1979. No note

3686 LS—3.

of the pending action had also been kept either in the assessment records of the partners or in the register prescribed by the Board in 1973 for this purpose. This resulted in short levy of tax to the extent of Rs. 40,256 in the hands of these three partners for the assessment years 1973-74 and 1974-75.

(ii) In another case, the assessment of an individual for the assessment year 1968-69 originally completed in March 1972 at Rs. 1,22,460 was set aside in appeal. Fresh assessment was made in March 1976 and finally revised in August 1978 for giving effect to appellate orders. Total income as finally computed in August 1978, amounted to Rs. 85,000 which included his provisional share income of Rs. 16,705 from a firm.

However, the firm's assessment case was not consulted in finalising his assessment in August 1978 not was a record of the fact that the share income from the firm had been adopted on provisional basis kept in the prescribed register to watch subsequent revision after consulting the firm's completed assessment.

The firm's original assessment for 1968-69 completed in March 1972 had been set aside in March 1975 in appeal and fresh assessment had been finalised in March 1978, according to which the assessee's share income amounted to Rs. 93,694.

Omission to include final share of income from the firm in the assessments of the assessee resulted in undercharge of tax of Rs. 61,661.

(iii) In the case of another registered firm the share incomes of its four partners were assessed on provisional basis for the assessment years 1972-73 and 1973-74 subject to revision on the completion of assessment of the firm. The assessment of the firm for the assessment year 1972-73 was completed/rectified in March 1975/January 1976 while that for the year 1973-74 was completed in March 1976 but the assessments of the partners on the basis of final share incomes were not revised even after a period of 13 to 25 months from the completion of revised assessments of the firm. It was also noticed that no note for such a revision had been kept by the Income-tax Officer. This resulted in short demand of tax of Rs. 86,823.

(iv) In 40 other cases spread over assessment years 1970-71 to 1974-75, the assessments were completed by taking provisional share incomes from the firms subject to rectification. Though the assessments of the firms had been finalised later, no action was

taken to rectify the partners' assessments by adopting their determined shares, even after the lapse of a period of 13 to 48 months of the completion of assessments of the firms. This resulted in under-assessment of tax of Rs. 1,59,619. The total under-charge of tax was Rs. 3,48,359.

The Ministry of Finance have accepted the objection in 9 cases; their reply is awaited in the remaining 39 cases (December 1980).

[Paragraph 3.11 of the Report of the Comptrolltr and Auditor General of India, for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume-II, Direct Taxes]

5.2. In reply to aforesaid Audit observations, the Ministry of Finance in their written notes to the Committee, stated item-wise as follows:

"(i) The objection was accepted. The assessments in question were rectified under Section 155 on 28-11-1979 and 15-1-1980. The additional demand raised and collected is Rs. 40,256.

(ii) The objection was accepted in principle. The case of the firm M/s Deep Narain Shed Sharan Lal was pending before the Settlement Commission under Section 245(c) (1). If the disputed determined share had been included in the income of the partner assessee, it would have resulted in an infructuous demand. There was ample time to amend the order of the assessment of the partner assessee under Section 155(1)(a) after receipt of order from Settlement Commission under Section 245D(4). However, on receipt of the audit objection the case was rectified on 30-7-1979, raising an additional demand of Rs. 61,661/- as against the undercharge of Rs. 51,309/- reported in the draft para. The assessee's appeal is pending before the commissioner of Income Tax (Appeals) as well as before the Settlement Commission under Section 345C of the Income-tax Act. Hence, out of additional demand raised of Rs. 61,661 only Rs. 2539/- has been collected on 21-7-1980.

(iii) On 4-2-1981 the objection was accepted in 4 cases involving 8 assessments. However, in these 4 cases, the additional demand raised for 1973-74 has been wiped off as a result of set aside of the order of the assessment of firm by Commissioner of Income-tax (Appeals). Ap-

peal against order for assessment year 1972-73 is still pending before Commissioner of Income-tax (Appeals). The objection for 1973-74 stands mitigated.

(iv) The objection was accepted on 14-10-1981 in 8 cases of of patiala charge. Assessments have been revised under Section 154. The additional demand raised and collected is Rs. 10,463, the same as reported in the Draft Para.

The objection was also accepted in respect of the remaining 22 cases of Jullundur charge. The assessments have been revised under Section 154. The additional demand raised consequently has also been collected.

As regards 6 assessments of the 9 assessees, the first observation of audit regarding delay in revising share income of four assessees by adopting the determined shares was accepted.

The second observation that in four out of 6 assessments, the pendency of the provisional assessment was not entered in the provisional share income register. Audit was intimated that in the case of Darshan Singh, entry in respect of 1973-74 had been made in the prescribed register. For 1974-75, similar objection having been raised by Internal Audit Party on 13-6-77, a notice under Section 154 was first issued on 13-6-77 i.e. before Audit pointed out the pendency. In the remaining two assessments, objection was accepted.

Audit was further intimated that in all the cases, the period of limitation for completion of assessment under Section 154 had not expired at the time of Audit. As such, the objection was sustainable only from the point of view of delay involved. Audit was requested to settle it".

5.3. In the case of registered firms share incomes of the partners from the firms are included in their individual assessments. The partners' assessments have, therefore, to be revised where the firms' assessments are completed subsequently, or undergo a process of rectification or revision. The Public Accounts Committee have, on many an occasion in the past, pointed out failures to revise partners' assessments in such cases to the detriment of revenue.

5.4. In February 1959, the then Central Board of Revenue prescribed the maintenance of a register, called 'Register of cases of provisional share incomes' in each income-tax office to keep a watch on the assessments of partners in cases where share income from firms were included on a provisional basis for want of completed assessments of firms. Subsequently, the Board also informed the Committee (*) that it had taken a serious view of the continuing lapses and had issued instructions that the Commissioners should ensure that the register prescribed in 1959 was properly maintained. The Board also stated that the Inspecting Assistant Commissioners and Internal Audit Parties had been instructed to make a special check in this regard.

5.5. Since the matters did not still improve, the Committee, in para 2.224 of their Fifty-first Report (Fifth Lok Sabha) suggested that a register to watch timely intimation of the correct share income by the officer assessing the firm should also be introduced and that the proper maintenance of both the registers should be checked by the Inspecting Assistant Commissioner, as well as the Internal Audit so as to ensure that the interests of revenue are properly safeguarded.

5.6. In compliance with the above recommendations of the Committee, the department issued fresh instructions in March 1973 (**). In these instructions it was also laid down that where a partner is assessed in a different ward an intimation of the correct share income resulting from the firms' assessment must be sent by the Officer assessing the firm within one month of completion of the firms' assessment. It was also laid down that administratively the time limit for rectification in the partners' cases shall be 3 months from the date of receipt of the intimation of the correct share income. The Range Inspecting Assistant Commissioners and the Internal Audit parties were required to check up the prescribed registers to point out cases where the prescribed time limits had not been observed.

5.7. The Committee are distressed to note that despite their earlier recommendations and the action taken in pursuance thereof the situation has not improved. It is clear from the cases pointed out in the Audit Para that the prescribed registers are not properly maintained, the cases are not noted therein and the time limits prescribed by the Board are not at all observed.

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*Para 8·3 of Public Accounts Committee's One hundred and eighty-sixth Report (Fifth Lok Sabha).

**Page 67 of Public Accounts Committee's One hundred fiftieth Report (Fifth Lok Sabha).

5.8. In their written replies to the Committee, the Ministry of Finance have not indicated whether they have made any attempt to find out the reasons for this state of affairs. The Committee would suggest that the Board should make a thorough study of some of these cases to understand the basic reasons for this continuing default and to devise effective remedial measures.

5.9. According to the departmental instructions both the maintenance of the prescribed registers as well as the compliance with the administrative time limits were to be checked up by the Range Inspecting Assistant Commissioners and the Internal Audit. It is amazing that the Ministry of Finance have not indicated in their written replies the extent of failure of these two organs. The Committee would recommend that the role of these two organs, should be particularly examined in relation to some of these cases so as to tone up their efficiency.

5.10. The Committee are pained to note the sense of complacency shown by the Ministry of Finance in their written replies in taking shelter under the plea that "the period of limitation for completion of assessments under section 154 had not expired at the time of audit. As such the objection was sustainable only from the point of view of delay involved". The Committee trust that the Ministry of Finance do not mean seriously to suggest that remedial action need be taken only when the statutory limitation period is about to lapse. Moreover, the fallacy in this argument is apparent from the fact that if Audit had not pointed out these cases before the expiry of the statutory period of limitation the department would not have acted in the absence of any notes to that effect in their precribed registers and revenue would surely have been lost. The Committee would, therefore, suggest that the administrative instructions and the time limits laid down by the Board in 1973 are salutary and their observance should be insisted upon and suitable action taken against the recalcitrant officers.

VI

CLUBBING OF INCOME

6.1 *Audit Paragraph*:

Omission to include income of spouse|minor children.

(i) Under the provisions of the Income-tax Act, 1961, in computing the total income of an individual, there shall be included all child of such individual from the membership of the spouse/minor child of such individual from the membership of the supouse/minor child in a firm carrying on a business in which such individual is a partner. Further, it has been judicially held that even where an individual represents a joint family, the partnership is not between the family and the other partners but between the individual personally and the other partners. In such cases, the Karta may be accountable to the family for the income received but the partnership is exclusively one between the contracting members. It follows that even in such cases the clubbing provisions of the Act are attracted.

In 4 cases in 2 Commissioners' charges spread over the assessment years 1975-76 to 1978-79, such incomes of spouse|minor children were not included in the total incomes of the assessees concerned resulting in undercharge of tax of Rs. 1,06,829.

(ii) The Act further provides that if both the husband and the wife are partners in a firm, the share income from the firm of the spouses and of their minor children should be included in the income of that spouse whose total income excluding such share income is greater.

In 8 cases in 4 Commissioners' charge spread over the assessment years 1973-74 to 1978-79, such incomes of spouse|minors were not included in the total income of the other spouse whose total income excluding such share income was greater. This resulted in undercharge of tax of Rs. 1,26,251.

(iii) The Act as amended from 1st April, 1976, further provides that the income arising to a minor child of an individual from the admission of the minor to the benefit of partnership is to be included in computing the income of that individual even if such individual is not a partner in the firm.

In 22 cases in 10 Commissioners' charges spread over the assessment years 1973-74 to 1978-79, such incomes of minor children were not included in total incomes of the assessees concerned. The omission to do so resulted in tax undercharge of Rs. 5.20,140.

(iv) Further, according to an amendment made from 1st April, 1976, in computing the total income of an individual, income arising directly or indirectly to the spouse of such individual by way of salary, commission, fees or other form of remuneration whether in cash or in kind from a concern in which the individual has substantial interest, is to be included in his total income.

In one case in one Commissioner's charge such income was not so included in the total income of the assessee concerned for the assessment years 1976-77 to 1978-79 resulting in tax undercharge of Rs. 29,280.

The paragraph was sent to the Ministry of Finance in September, 1980; their reply is awaited (December, 1980).

[Paragraph 3.12 of the Report of the Comptroller and Auditor General of India for the year 1979-80 Union Govt. (Civil), Revenue Receipts, Volume II Direct Taxes.]

6.2 In their written notes to the Committee the Ministry of Finance stated as follows:

"(1) Out of 35 cases pointed out in this D.P. The objection was initially accepted in 15 cases, not accepted in 8 cases and in five cases, Audit was asked not to raise the point as a 'mistake' or 'irregularity' in view of the Gujarat High Court decision reported in (118 ITR 122). Remedial action, where ever necessary, has been taken.

(2) Acceptance of objection in six more cases of Haryana Charges was conveyed on 5th March, 1981. Remedial action was also taken.

(3) The objection in the case of Smt. Sakina Abdul Tayab Baliwala was not accepted. Shri Abdul Taiyab B. Baliwala, the assessee's husband, was originally a partner in Central Tools and Equipment Co. w.e.f, 1947, He became also a Directors in M/s. Alekandra Engg. Works in 1950. This company was manufacturing different kinds of Engg. Goods. After retirement from the directorship in 1957, he started another partnership in 1958 in another firm also dealing in similar type of business. In 1966, he retired. After closing down the business of Hillman Engg. Works, he joined the assessee firm as an employee. At the time of joining M/s. Union

Tools and Engg. Co. as an employee, Shri Baliwala had experience of 20 years from technical point of view. Audit was also informed of the decision of the Madras Bench of ITAT in ITO V|s. Smt. Thilakasarasa (accepted by Deptt.) wherein they have held that the word 'qualifications' as occurring in proviso to Sec. 64(1) (ii) was to be viewed w.r.t, the equipment necessary for successfully doing a job and a university degree or academic attainment is not always necessary. It is also found that the entire technical work connected with the business of firm looked after by A. E. Baliwala and his experience and knowledge in the Engg. industry cannot be disputed The work 'qualification' occurring u/s 64(1) (ii) cannot be held to have a narrow meaning, but has to be given wide interpretation.

On 8-6-81, Audit decided not to pursue the objection in the above case.

In their vetting comments, Audit observed as follows:

There are 35 cases in this paragraph. Replies of the Ministry in respect of 31 paras have been received. We have no comments in respect of 30 paras.

In the case of Shri S. S. Krishnamurthy the audit objection has not been accepted by the Ministry in view of Gujarat High Court decision in the case of Dinubhai Ishwarlal Patel (118 ITR 122).

But the Allahabad High Court decision in the case of Madhav Prasad has been dissented by Gujarat High Court in 112 ITR 492. In view of the conflicting judgments, the Ministry are requested to please indicate in their reply to Public Accounts Committee which of the judgments have been accepted by them and in respect of the judgment not accepted whether they have contemplated an appeal. Whether any instructions have been issued to the Income Tax Officer in the light of these 2 decisions.

In the following four cases Ministry's reply to the draft paragraphs have not been received. In the absence of Ministry's reply, we are not in a position to offer any comments.

1. S/Shri Paras Ram Jain
2. Mukendan Lal
3. Lakkan Pal
4. Gopi Nath

In respect of the four cases mentioned by Audit in the last para of the vetting comments, we informed the Comptroller and Auditor General on 20th December, 1981 that vide letter dated 6-1-1981 the four cases were not accepted along with the case of Shri S. S. Krishnamurthy included in para (ii) of the D.P. They were, therefore, informed that the Ministry would consider the vetting comments forwarded in the case of S. S. Krishnamurthy as relating to these four cases also. Allahabad High Court in Madho prasad *vs.* Commissioner of Income-tax (112 ITR 492) and Additional Commissioner of Income-tax *vs.* Yashwant Lal (119 ITR 18) has ruled that the income of minor child is includible with the father's individual income even when the father is a partner in his capacity as Karta. On the other hand, the Punjab and Haryana High Court in Commissioner of Income Tax *vs.* Anand Swarup (121 ITR 873) and the Gujarat High Court in Dhinubhai Ishwar Lal Patel *vs.* Income-tax Officer (118 ITR 122) have followed the decision of the Andhra Pradesh High Court in Commissioner of Income-tax *vs.* Sanka Sankaraiah (113 ITR 313) in expressing the view that the income of the spouse or the minor child is to be clubbed with the income of the assessee only when the assessee is a partner in his individual capacity. Therefore, these latter decisions have disagreed with the view taken by Audit. However, the Ministry has not accepted the decision of the Gujarat High Court in 118 ITR 122 which is being contested before the Supreme Court. Special Leave petition in the case of Anand Swarup is also pending before the Supreme Court.

It will, therefore, be seen that the point involved is a controversial legal issue which has not yet been finally settled by the Supreme Court.

However on reconsideration of the issue and in view of the Board's existing instructions, the objections in the case of S. S. Krishnamurthy and 4 others are accepted. Remedial action has been taken in these cases as under:—

(i) S. S. Krishnamurthy: Action u/s. 148 had been taken on 21-3-1979 and demand raised and collected is Rs. 26,316|-.

(ii) Shri Lakkan Lal Gupta: Action has been taken u/s 148 on 28-7-1979 for all the years concerned and additional demand raised and collected is Rs. 19,574/-

(iii) Shri Muknedan Lal Beriwal: Action u|s. 148 has been taken and demand raised and collected is Rs. 25,520/-

(iv) Shri Paras Kumar Jain: Remedial action u/s. 147 (b) to re-open the assessment has been taken on 14-3-80. Particular regarding re-assessment are still awaited.

(v) Gopinath: Remedial action has been taken u|s. 143 (b) on 22-2-1980 raising additional demand of Rs. 21,120/-".

6.3. As pointed out by Audit, the question involved in the five controversial cases is whether the clubbing provisions of section 64(1) (iii) under which the share income received by a minor child admitted to the benefits of a partnership is to be clubbed with the income of the father are attracted or not in a case where the father is a partner in a representative capacity as Karta of a Hindu undivided family. Since partnership is a creature of contract and a Hindu undivided family has no contractual capacity it has been held by the Supreme Court that even in such a situation the father is a partner in his individual capacity as far as the partnership is concerned; the fact that he is accountable to the Hindu undivided family for the share income in the firm does not change that position. Relying on that ruling the Allahabad High Court has decided that the clubbing provisions are attracted in such a case. The Andhra Pradesh, the Gujarat and the Punjab and Haryana High Courts have, however, taken a contrary view.

6.4. The Audit have further pointed out that the Central Board of Direct Taxes issued a public circular No. 174 dated 12-8-1975 (Appendix) taking the position that the clubbing provisions are attracted in such cases. The Board, subsequently in September, 1976, also issued instructions to the same effect to all the Commissioners of Income tax.

6.5. The Committee note that the point whether the clubbing provisions of section 64(1)(iii) are or are not attracted in a case where the father is a partner in a representative copacity as the Karta of a Hindu undivided family is controversial as different High Courts have taken different views. The Ministry of Finance have not accepted the view that the clubbing provisions are not attracted in such a case and the decisions to that effect are being contested in appeal. The Central Board of Direct Taxes have also issued a public circular as well as instructions to all the Commissioners of Income-tax to the effect that the clubbing provisions are attracted in such cases. In view of the stand taken by the Ministry and the instruc-

tions issued by the Board, the Committee fail to understand how the Board resisted the audit objection on the ground that there was no mistake or irregularity. Surely, the Minisry of Finance does not mean to say that the instructions of the Board, expressing a view that is being pleaded by the Ministry before the Supreme Court of India, need not, necessarily, be complied with by the field formations and failures in that regard should not be pointed out by Audit as mistakes or irregularities. The stand taken by the Board in this case appears to the Committee to be highly inconsistent.

6.6. The Committee are also not happy with the Ministry's reply to the effect that some of the High Court decisions have disagreed "with the view taken by Audit". The view taken by Audit is the view taken by the Central Board of Direct Taxes itself in their public circular, as well as their instructions to their field formations. That is also the view which is being pleaded by Government before the Supreme Court. For the Ministry, therefore, to say that "the view taken by Audit" has not been accepted by some of the High Courts is wholly misleading. The Committee would suggest that where an audit objection is based on the Board's own view or even where the view taken in an audit objection is accepted by the Board it would be more appropriate for the Board to urge and canvass it as their own view so as to give effective guidance to the field formations.

6.7. It is apparent that litigation on this point has been going on for quite some time in different High Courts. The Committee would like to reiterate their recommendation contained in para 1.37 of their 28th Report (7th Lok Sabha) to the effect that in such cases involving divergence of opinion among different High Courts the matter should be taken directly to the Supreme Court for an expeditious settlement of the point of law involved to avoid harassment both to the department and the taxpayers.

VII

LOSS OF REVENUE DUE TO LOSS OF RETURN FILED BY AN ASSESSEE.

7.1 *Audit Paragraph*:

Under the provisions of the Income-tax Act, 1961, as it stood upto the assessment year 1967-68, all assessments should be completed within the time limit of four years from the end of the assessment year in which tht income was first assessable.

In the case of an individual assessee, the assessing officer having found that no return had been filed for the assessment year 1967-68, issued a notice to her for furnishing the same. In response, the assessee filed a return in June 1976 showing income of Rs. 2,47,970 but claimed that the return had already been filed by her in January 1968 and that the department having failed to frame an assessment for this assessment year within the prescribed time limit of four years, the case was already time barred. The assessing officer without examining these facts made an assessment in January 1977 on a total income of Rs. 2,80,860 with a tax demand of Rs. 1,92,108. The assessee went in appeal against the assessment. In course of the appeal proceedings she produced a receipt granted by the department in January 1968 in acknowledgment of the return and also a copy of the challan for Rs. 1,33,157 in support of payment of tax on self-assessment made in February 1968 on the basis of the returned income. The Appellate Assistant Commissioner set aside the assessment in November 1977 with a direction to verify factual accuracy of the appellant's observations. The assessment proceeding were ultimately dropped in February 1978, with the approval of the Commissioner, as being bad in law and the tax demand of Rs. 1,92,108 raised against the assessee was vacated. The loss of the return filed by the assessee and the department's failure to frame an assessment within the time limit prescribed under the Act led to a net loss of revenue of Rs. 58,951 after considering credit of Rs. 1,33,157 deposited by the assessee towards payment of tax on self-assessment.

The Ministry of Finance have accepted the objection.

[Paragraph 3.17 of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil) Revenue Receipts, Volume II, Direct Taxes]

7.2. In a written note the Ministry of Finance also informed the Committee that the objection raised by Audit had been accepted.

7.3. The Committee understand from Audit that in response to the notice issued under section 148 of the Income-tax Act, 1961, the assessee had made a statement that she had already filed a return on 6-1-1968 and also paid a tax of Rs. 1,33,157 under section 140A on 2-2-1968. Nevertheless, the Income-tax officer proceeded to make an assessment under section 143 (3)/147 and in his assessment order dated 18-1-1977 he did not even discuss these points raised by the assessee. The assessee was thus forced to seek redress from the appellate authority.

7.4. In this case, in response to the notice issued by the Income-tax officer the assessee claimed that a return of income had already been filed and payment of tax on self-assessment basis had also been made by her 6 years earlier. Nevertheless, the Income-tax officer proceeded to complete the asessment without verifying the veracity of the assessees claims which, as it turned out later, were true and duly authenticated by departmental receipts.

The Committee cannot but observe that this is a case of sheer callousness and harrassment and the Income-tax officer seems to have become a law unto himself rather than acting in a quasi-judicial capacity. What pains the Committee all the more is the fact that the Ministry of Finance have merely stated that the objection has been accepted; they have nothing to say about the highhanded action of the Income-Tax Officer or about their own reaction to it.

7.5. Elsewhere in this report* the Committee have made a mention of the public image of the Income-tax department. This is not the only case where a return duly filed by an assessee was misplaced or where a payment of tax already made by the assessee was not linked and given credit for. These are matters of common occurrence which put the tax-payers to considerable harassment. In fact, para 1.08(i) (a) of the Audit Report 1979-80, mentions an amount of as much as Rs. 8.84 crores, which

*Paragraph 12 of Chapter II—Page 12.

is claimed to have been paid by the taxpayers but is pending verification/adjustment. The Committee would strongly recommend that the Ministry of Finance should take exemplary action in such glaring cases and also bring about improvements in systems and procedures to ensure proper linking of the returns filed by the taxpayers and the taxes paid by them. The Committee would like to be informed of the disciplinary action taken against the I.T.O. who made the assessment in the case under discussion.

VIII

APPLICATION OF INCORRECT RATES:

8.1. *Audit Paragraph*: The Schedules to the Income-tax Act, 1961 and to the Wealth-tax Act, 1967, as amended by the Finance Act, 1973, prescribed a higher rate of tax (income-tax as well as wealth-tax) for every Hindu undivided family having at least one member with assessable income and/or net wealth, with effect from the assessment year 1974-75 Omissions to levy tax at higher rates in cases of such specified Hindu undivided families have been pointed out in the Audit Reports 1975-76, 1976-77, 1977-78 and 1978-79.

In paragraph 61.3 of the Audit Report 1977-78 it was pointed out that in January 1979 the Board ordered a review by the department generally of income-tax and wealth-tax cases from the assessment years 1974-75 onwards with a view to locating cases of under-assessment of tax due to incorrect application of rates of tax in cases of specified Hindu undivided families. Under-assessment of income-tax of Rs. 9.29 lakhs in 1041 cases and of Wealth tax of Rs. 3.93 lakhs in 132 cases. noticed in an incomplete review upto March 1979 was also pointed out. Results of a complete review are awaited (December 1980).

In the meanwhile, such mistakes continued to be noticed in the course of test audit in the period April 1979 to March 1980. In fifteen cases of specified Hindu undivided families in eight Commissioners' charges where such mistakes were pointed out in audit, there was under-assessment of wealth-tax of Rs. 2,36,219 in the assessment years 1974-75 to 1978-79.

The Ministry of Finance have accepted the audit objection in all these cases. Additional demands for wealth tax raised in these accepted cases is of Rs. 2,31,455.

[Para 4.12 of the Report of the Comptroller and Auditor General of India for the year 1979-80 Union Government (Civil)—Revenue Receitps—Volume II—Direct Taxes].

8.2. In their written note to the Committee, the Ministry of Finance stated as follows:—

1. R. Srinivesa Murthy	Objection was accepted Assessments were rectified on 6-6-1979 under Section 35 of the Wealth-tax Act raising an additional demand of Rs. 13,979. A sum of Re. 3,186 was collected on 6-6-79.
2. R. Shivram	Objection was accepted. The assessments were rectified on 6-6-79 raising an additional demand of Rs. 9917. A sum of Rs. 6479 was collected on 25-1-80 and 18-2-1980.
3. K. M. Naganna	Objection was accepted. Assessments were rectified on 17-7-1980 under Section 35 of the Wealth-tax Act raising an additional demand of Rs. 18,161.
4. M. K. Panduranga Setty	Objection was accepted. Assessments were rectified on 19-5-80 raising an additional demand of Rs. 17,199.
5. R. K. Patel 6. C. K. Patel 7. V. B. Patel	Objection was accepted. The assessments were rectified under Section 35 of the Wealth-tax on 2-1-79 raising an additional demand of Rs. 13,159, Rs. 26,035 and Rs. 17,993 respectively. The additional demand raised was collected on 10-3-1979.
8. Rama Shankar Rajesh Kumar	Objection was accepted. Assessments were rectified on 13-6-1979 raising an additional demand of Rs. 12,786 which was collected on 14-6-79.
9. Shrenikbhai Kasturbhai	Objection was accepted. Assessment was rectified on 15-10-1979 under section 35 of Wealth-tax Act raising an additional demand of Rs. 32,408. The assessment has been set aside on some other grounds.
10. Y. Kappor	Objection was accepted. Assessments were rectified on 29-5-79 under Section 35 of the Wealth-tax Act raising an additional demand of Rs. 16,832 which was collected on 2-7-19.

11. Devi Charan Gupta	Objection was accepted. Remedial action was initiated under Section 17 of the Wealth-tax Act on 26-4-79.
12. Ram Niwas Garg	Objection was accepted. The assessment was rectified under Section 35 of the Wealth-tax Act on 16-11-79 raising an additional demand of Rs. 12,187.
13. M/s. S. K. Rampuria (HUF)	Objection was accepted. Assessments were rectified on 12-2-80 under Section 35 of the Wealth-tax Act raising an additional demand of Rs. 1401 which was collected on 2-1-1981.
14. S. K. Chitnavis	Objection was accepted. Assessment was rectified under Section 35 of the Wealth-tax Act on 8.5.80 raising an additional demand of Rs. 7.477 which was collected by way of adjustment against refund granted on excess payment of self-assessment payment.
15. M. Sivaprakasam	Objection was accepted. Assessments were rectified under Section 35 of the Wealth-tax Act on 27-8-80 raising an additional demand of Rs. 11,362."

8.3. With a view to arresting the tendency on the part of certain Hindu undivided families to reduce their tax liability by effecting partition of their properties or my settlements/gifts, the Finance Act 1973 prescribed, for the first time, a separate rate schedule for such families having one or more members with independent total income/net wealth exceeding the non-taxable minimum. These rates were higher than those prescribed for other Hindu undivided families.

8.4. The higher rates were applicable with effect from the assessment year 1974-75. Instances noticed in test audit of cases where

these higher rates should have been applied but were not actually applied have been pointed out in the successive Audit Reports as under:

Audit Report	Para Nos.	No. of cases	Tax effect
			Rs.
1975-76	53(i) 94(i)	165	3,85,869
1976-77	51(iii) 80(i)	53	2,45,078
1977-78	61·2(i)	97	5,57,801
1978-79	62(i)	25	4,22,668
1979-80	4·12	15	2,36,219
		355	18,47,575

8.5. In view of this continuing and large scale failure to apply the higher rates of tax both in income-tax and wealth-tax assessments the Central Board of Direct Taxes issued repeated instructions on the subject. Their instruction No. 1118 issued on 16th November, 1977 (Appendix II) laid down that the UDCs/Supervisors/Head-clerks should review the tax calculations for the assessment year 1974-75 and onwards with a view to finding out mistakes in the application of rates of taxes in the case of specified Hindu undivided families. Since the omissions continued to be noticed in Audit the Board issued further instructions on the subject on 5th July, 1978 (Appendix III) and 22nd October, 1980 (Appendix IV).

8.6. The Committee understand from Audit that in view of the continuing default in this regard, the Board, at the instance of Audit, also issued instructions in 1979 asking for a complete review of the assessments of Hindu undivided families from the assessment year 1974-75 onwards to find out the cases where higher rates were not applied and to take suitable remedial action. According to the reports sent by the Ministry of Finance to Audit in February 1980, the Committee understand that a review carried out in 61 Commissioner's charges revealed omissions in 717 cases of income-tax and 151 cases of wealth-tax involving a tax effect of Rs. 7,81,000 (income-tax) and Rs. 5,90,000 (wealth-tax). The Ministry of Finance have not reported the results of the review in the remaining charges.

8.7. The higher rates of income-tax and wealth-tax in respect of Hindu undivided families having one or more members with independent income of wealth exceeding the exemption limit were

introduced with effect from the assessment year 1974-75. Despite the issue of repeated instructions by the Central Board of Direct Taxes on the subject, omissions to apply these higher rates have continued to be noticed in audit year after year. In consequence of the repeated failures in this regard the Board have had to order a review of all completed assessments of Hindu undivided families for the assessment year 1974-75 and onwards. The review carried out in some of the charges alone has again revealed substantial under-assessments resulting from omissions to apply higher rates. The omissions noticed during this partial review are apparently in addition to those already pointed out in the Audit Reports. The review is yet to be completed in a number of charges. The Committee would like to be apprised of the results thereof.

8.8. Apart from the question of substantial under-assessments of tax this case is indicative of certain basic weaknesses in the systems of organization in the department. In the normal circumstances whenever rates of taxes are revised through the annual Finance Act the revised rates should automatically be applied by the Income-tax Officer in the assessments for the respective assessment years. In this case, not only this has not happened, but even repeated instructions of the Central Board of Direct Taxes have failed to secure total compliance. The review ordered by the Board is a device of desperation; it could be done only at the cost of current work and it cannot, in any case, ensure that the omissions would not continue in the subsequent assessment years. What is required is a thorough study of the prescribed systems and procedures, such as the duties and responsibilities assigned to the Income-tax Officers themselves and to the different levels of staff under them in the matter of completion of assessments, the records designed to ensure that such obvious mistakes do not occur, the part played by the organisational controls like the Inspecting Assistant Commissioners and the Internal Audit, etc. to find out the precise reasons for such simple, obvious, but costly and repeated mistakes and to effectively put a stop to them. The Committee would strongly recommend that such a study should be carried out and the duties and responsibilities of different levels in the assessing units as well as in the inspecting organs like the Inspecting Assistant Commissioners and the Internal Audit should be clearly defined.

IX

FAILURE TO ISSUE DEMAND NOTICE

9.1 *Audit Paragraph:*

Undue delay in action causing loss of revenue

Any tax, interest, penalty, fine or any other sum payable as a result of any order passed under the Wealth-tax Act, 1957 is required to be served upon the assessee through a notice of demand specifying the sum payable without which the assessee is not liable to pay any such sum.

In five cases, orders of regular assessments levying wealth-tax aggregating Rs. 80,710 for the assessment years 1967-68 to 1974-75 were passed within the period from January to March, 1979. The connected notices of demand were, however, not issued or served upon the assessees upto the date of audit in December, 1979. The omission to issue the notices of demand resulted in undue postponement of demand of Rs. 38,087.

The Ministry of Finance have accepted the audit objection.

[Para 4.17 (ii) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts Volume-II, Direct Taxes].

9.2. In their written notes to the Committee the Ministry of Finance stated:

> "Objection was accepted in principle. However the amount of revenue collection postponed was only Rs. 38,087".

9.3. Under Section 30 of the Wealth-tax Act, 1957, the Wealth tax Officer is required to serve upon the assessee a notice of demand in the prescribed form in respect of any tax, interest, penalty, fine or any other sum which is payable in consequence of any order passed under the Wealth-tax Act. The prompt issue of such a notice is necessary to ensure that the assessed tax is collected as early as possible and also to ensure that recovery proceedings could be started later on, if found necessary, where the assessee becomes a defaulter.

9.4. In parargraph 68(ii) of the Audit Report 1974-75 also a case was reported where there was a delay of over two years in the issue of notice of demand. After examining that case the Public Accounts Committee had in paras 1.13 to 1.15 of their 6th Report (Sixth Lok Sabha) recommended that the reasons for the delay should be gone into and the department should review the existing arrangements to satisfy themselves that adequate checks exist to rule out the possibility of such clerical errors. In their Action Taken Note dated 23-5-78* the Ministry of Finance had stated that the procedure of making entries in the Demand and Collection Register had since been changed.

9.5. The Committee regret to note that the Ministry of Finance have found solace in the fact that the collection postponed in this case was only Rs. 38,087. They have not bothered to find out the defect in the system which allows such omissions to take place and go unnoticed for such long periods.

9.6. It is regrettable that omissions to issue demand notices continue to be noticed despite the earlier recommendations of the Committte on this subject and the action taken thereon by the Ministry of Finance. Such omissions not only postpone or delay collection of taxes but may also have the unhealthy possibilities of notices not being issued for malafide considerations.

9.7. The Demand and Collection Register is required to be filled up by the Wealth-tax Officer as soon as any assessment is completed and the assessment order is passed. It should be possible for the Wealth-tax Officer to ensure while making these entries that the notice of demand has also been simultaneously prepared and despatched to the assessee. A periodical review of the Demand and Collection register should also be insisted upon so that cases where notices of demand have not been issued can be promptly located and action taken at the earliest possible time. The Ministry of Finance should ensure that the assessing officers issue demand notices almost simultaneously with the passing of assessment orders, in all cases and let the Committee know what system of review exists by which omissions of this type do not go unnoticed over a period of years and failures are taken serious note of.

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*89th Report of the Public Accounts Committee (6th Lok Sabha) page 7.

9.8. The Committee would also recommend that instead of the Board resting content with the issue of instructions it should take serious notice of failure coming to notice to ensure compliance with the instructions.

NEW DELHI;
March 4, 1982
Phalguna 13, 1903 (*Saka*)

SATISH AGARWAL
Chairman
Public Accounts Committee.

APPENDIX I

(*See* paragraph 6.4)

Clubbing of minor son's/wif's shares of income from firm where father/husband is a partner as karta of the Hindu undivided family under section 64—Guidelines therefor.

1. Doubts have been expressed by certain Commissioners of Income-tax regarding the scope and applicability of sub-section (1) of section '64.

2. In this connection the decision of the Income-tax Appellate Tribunal, Chandigarh Bench in the case of Lalchand Bhalla *vs.* ITO in II Appeal No. 400 of 1973-74, dated 30-11-1974 may be referred to where the Appellate Tribunal has discussed the applicability and scope of sub-section (1) of section 64. An extract of the said decision of the Appellate Tribunal is enclosed.

CIRCULAR : No. 174 (F. No. 237/20/75-A & PAC-II) Dated 12-8-1975.

Extract from Tribunal's Decision in Lal Chand Bhalla *vs.* ITO.

The other item pertains to the income amounting to Rs. 20,301 that directly arose to minor Rajinder Mohan during the year of account under consideration from his having been admitted to the benefits of partnership in the firm Permanand Bhalla & Co. to the extent of 20 per cent share in the firm's profits. The assessee is the father of the said minor and is one of the three adult partners in the said firm. Each of the adult partners purports to represent the respective Hindu undivided family whose Karta that adult partner is. The Commissioner considered the Income-tax Officer's order erroneous as he failed to include in the assessee individual's assessable total income, the share income earned by Rajinder Mohan as aforesaid.

The contention of the assessee before us was that as the share income earned by Lal Chand from the said partnership firm was not earned by him as an individual, there arose no question of applicability of section 64 (1) (ii) to his case. It is common case of

the parties that the said share-income of Lal Chand is assessed and taxed not in his hands as an individual but in the hands of the Hindu undivided family know as Lal Chand Bhalla & Sons whose "karta" he is. From this, the assessee's learned counsel wishes us to infer that the Income-tax Officer's order suffered from no error when he did not include the said amount of Rs. 20,301 in the computation of the assessee's income.

We are unable to agree. The fact remains that the assessee admittedly had income from sources other than his partnership of the said firm and according to the instrument of partnership, dated 6-3-1971, Lal Chand is a partner and that his minor child Rajinder Mohan has been admitted to the benefits of that partnership. That being the position, no other requirement of law was there, in our opinion for applying section 64(1) (ii) to the instant case. Shri Vaish, appearing for the assessee, felt that by adopting the said approach for interpreting the meaning and scope of section 64 (1) (ii) we are making out a new case which was not present to the mind of the learned Commissioner himself and that it would not be correct for the Tribunal to sustain the Commissioner's order on a ground not mentioned in his order. We are afraid, the Cmmissioner's order is rather brief and we are unable to reach therein that he purported to base his order, so far as the item of minor's income is concerned on any other ground which ground according to the assessee is unsustainable. We, therefore, do not agree that a new case is being made out by us. A reference of section 64(2) would, on the other hand, suggest that the Legislature was fully concious that an individual could be member of a Hindu undivided family. Thus, if an individual being a "karta" or an ordinary member of a Hindu undivided family became a partner of any firm on basis of investment of capital drawn from the Hindu undivided family's funds so that his share of profits in the said firm and the interest earned on such capital contribution was in law to be assessed as income in the hands of the Hindu undivided family concerned such individual did not cease to be a partner in the firm so far as section 64(1) was concerned.

It was also contended on the assessee's side that section 64 was enacted to suppress a certain mischief, i.e. that earlier an individual partner was able to reduce his tax liability by parting with a portion of his share of profits in the firms in favour of his spouse or minor child by bringing in the spouse as a partner, or by admitting minor child to the benefits of the partnership. The argument ran that

there was no scope for such mischief when the individual's income from the partnership was fully assessed as the income of the Hindu undivided family only. We fear, we are not impressed by this argument. The object of the Legislature as to suppression of a particular mischief need, in our opinion, be gone into only when the language used by the Legislature admits of more than one meaning. In that case, of course, the object of the Legislature can be looked to and also an interpretation beneficial to the assessee can be adopted in a case of a deeming provision like the instant one. We, however, agree with the learned departmental representative that section 64(1) is not open to two meanings so far as the present controversy is concerned as to the Income-tax Officer's or the learned Commissioner's order being erroneous is concerned. The assessee is a partner in the firm in question. He is a partner as an individual as Hindu undivided family could not in law be a party to an agreement of partnership. The fact that Hindu undivided family as the sole beneficial interest in the share income earned by the assessee individual from the said firm does not exclude the applicability of section 64(1) to the case

APPENDIX II

Instruction No. 1118

(*See paragraph* 8.5)

F. No. 238/26/77-A&PAC-I

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 16*th Nov.* 1977

From

A. S. Thakur,
Under Secretary to the Govt. of India,
Ministry of Finance (Deptt. of Revenue),
Central Board of Direct Taxes,
NEW DELHI.

To

All Commissioners of Income-tax.

Subject : Application of correct rates of Income-tax and Wealth-tax in respect of the HUFs which have at least one member having taxable income/wealth for the assessment year.

It has come to the notice of the Board that there has been a large scale failure on the part of the Departmental officials to apply the higher rates of Income-tax and Wealth-tax leviable on HUFs which have at least one member having taxable income/wealth for the relevant assessment year, as the case may be. It is also noticed that such failure is fairly wide-spread not only in the assessments made for the assessment year 1974-75 when the higher rates were prescribed for the first time, but in later years also. That such failure should happen in spite of instructions highlighting the changes in rates of tax made by the annual Finance Acts and specific columns provided in the return forms for this purpose is a matter of great concern.

2. It has, therefore, been decided that the U.D.Cs/Supervisors/Head Clerks should review the tax calculations for the assessment

years 1974-75 and onwards while checking tax calculations during the current year with a view to finding out mistakes in the application of rates of taxes in the case, of such HUFs. in order to take remedial action before it gets barred by limitation. A foot note should be recorded in the current ITNS 154/W.T. assessment form in the cases of such HUFs that the tax calculations for 1974-75 assessment and onwards have been reviewed.

These instructions may be brought to the notice of all concerned.

The receipt of these instructions may kindly be acknowledged.

Yours faithfully,

Sd/—

(A. S. Thakur)

Under Secretary, Central Board of Direct Taxes

APPENDIX III

(See paragraph 8.5)

INSTRUCTION NO. 1193

F. No. 326/51/78-W.T.

GOVERNMENT OF INDIA

CENTRAL BOARD OF DIRECT TAXES

NEW DELHI, the 5th July, 1978.

To

All Commissioner of Income-tax & Wealth-tax.

Sir,

Subject : Separate Rate Schedule for ordinary Wealth-tax in the case of certain Hindu undivided families.

Attention is invited to Para 49 & 50 of the Board's Circular No. 126, dated the 28th November, 1973 (F. No. 131/(21)/73-TPL) wherein it has been clarified that under the Finance Act, 1973, a new Rate Schedule of ordinary wealth-tax has been prescribed in the case of Hindu undivided families having one or more members with independent net wealth exceeding Rs. 1 lakh and that these rates would take effect from 1st April, 1974, so as to apply in relation to assessment year 1974-75 and onwards. The Revenue Audit have brought to the notice of the Board many cases where the prescribed higher rates have not been applied correctly.

2. The Board desire that necessary instructions in this regard should be reiterated amongst all the assessing officers in your charge to ensure the application of correct rates. Remedial measures for rectification etc. may also be taken wherever necessary.

Yours faithfully,

Sd/—

(H. N. MANDAL)

UNDER SECRETARY

CENTRAL BOARD OF DIRECT TAXES

APPENDIX IV

(*See* paragraph 8.5)

Instruction No. 1363

F. No. 326|48|79-WT

Government of India

Central Board of Direct Taxes

New Delhi, the 22nd October, 1980.

To

All Commissioners of Income-tax and Wealth-tax

Sir,

SUBJECT.—Application of correct rates of Income-tax and Wealth-tax in respect of Hindu undivided families which have at least one member having taxable income/wealth—Avoidance of mistakes in applying higher rates.

The Revenue Audit have brought to the notice of the Board cases where inspite of Instruction No. 1118 dated 16-11-1977 and 1193 dated 5-7-1978 the prescribed higher rates have not been applied correctly.

2. While the Board would like to reiterate the above instructions, they further desire that the Assessing Officers dealing with the cases of Hindu undivided families must obtain a declaration in writing from the assessees whether any member has taxable wealth. The fact of higher rates being applied in respect of the specified Hindu undivided family should also be highlighted in the assessment order invariably to avoid mistake in calculation of tax.

3. These instructions may be brought to the notice of all concerned.

Yours faithfully,

Sd/-

(S. R. GUPTA)

Under Secretary

Central Board of Direct Taxes

APPENDIX V

Conclusions and Recommendations

S. No.	Para No.	Ministry concerned	Recommendations
1	2	3	4
1	1.6	Finance	The Allahabad High Court case [Banarsi Dass Gupta v/s. CIT (81 ITR 170)] on which the Audit objection to the allowance of depreciation on a fractional share in the ownership of an asset is based, was decided in September, 1970. It is amazing that even after more than 11 years, in December, 1981, the Ministry of Finance should not only be unable to give their own considered view on the point but also be unaware as to whether the decision of the High Court was accepted or appealed against. The Ministry have stated in their written reply that remedial action has been taken "as a measure of abundant caution". The audit objection was raised in February, 1979. Surely, there was enough time to examine the point in the context of the Allahabad High Court decision and in consultation, if ecessary, with Audit and the Ministry of Law, to take a firm view in the matter rather than keep the issue pending and then rush in to reopen the assessment as a precautionary measure. There is no provisions in law to reopen an assessment u/s 147 of the Income-tax Act. as a precautionary measure and, therefore, such act of the ITO is palpably illegal and without jurisdiction.

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			The Committee have no doubt that the cloak of precautionary or protective assessments has been used to hide departmental inefficiency. This reflects adversely on the functioning of CBDT in the clarifying legal issues for the guidance of field formations. The Committee would like the Income Tax Department to reopen assessments strictly in accordance with the law.
2	1.7	Finance	On the question of allowance of depreciation on assets acquired on hire-purchase basis the decision of the Supreme Court in K. L. Johar's cease [STC Vol XVI/1965 (213)] was given in 1965. The Ministry of Finance had also informed the Committee in December, 1968, after consulting the Ministry of Law, that the ratio of this decision of the Supreme Court was equally applicable to Income-tax. It would following that the Ministries of Finance and Law accepted the position that in accordance with the Law, as it stood, no depreciation allowance could be given to the lessee in respect of assets acquired on hire-purchase basis. The Committee are unhappy to more than even after 14 years the concession continues to be given under executive instructions and the law on the point has not been suitably amended. The Committee would strongly recommend that necessary amendment should be suggested without any further delay.
3	1.8	Law	The Committee note that the Hire-purchase Act passed in 1972 has not yet come into force. The Committee would like to know the precise reasons for this.

4	2.4	Finance	According to the Ministry's written reply sent to the Committee in December, 1981 reassessments had been made only for the assessment year 1963-64 and 1964-65; fresh assessments for all the other assessment years were still pending. For the essessment years 1963-64 and 1964-65 the total incomes determined on reassessment were Rs. 33-218 and Rs. 20-100 against the total incomes of Rs. 13, 21,0I6 and Rs. 50,000 determined in the original assessments on the basis of best judgement assessment.
5	2.5	-do-	In another case pointed out in para 3.18 of the Audit Report 1979-80, the original assessments of a firm for the four assessment years, 1943-44 to 1946-47, completed during the years 1948 and 1949 and set aside by the Income-tax Appellate Tribunal in March, 1953, were made afresh only in 1976 *i.e.*, after a lapse of 23 years. The fresh assessments had to be cancelled again for procedural reasons, and these have yet to be finalised.
6	2.6	-do-	The Income-tax Act, 1961, did not, prior to the assessment year 1971-72 contain any time limit for the completion of such cancelled or set aside assessments. A time limit of two years for that purpose was introduced only from 1-4-1971 through the newly introduced section 153(2)(A) of the Act. The Central Board of Direct Taxes had, however, earlier issued a circular No. 10-P(V-68) of 1968 dated 15th October, 1968 laying down an administrative time limit of two years for completion of such assessments.

1	2	3	4
7	2.7	Finance	It is apparent from these cases that the administrative time limit fixed by the Board was not really observed by the field formations and a large number of cancelled or set-aside assessments pertaining to the assessments years upto 1970-71 were allowed to remain pending for indefinitely long periods. The case reported in para 3.18 of the Audit Report involving a delay of over 28 years is perhaps the worst of such cases. According to the information given by the Ministry of Finance to the Committee in January, 1981** the total number of such cancelled and set-aside assessments of assessment years upto 1970-71 outstanding as on 30-11-1960 was 8,569. These figures were, however, stated to be not complete.
8	2.8	--do-	The Committee cannot but observe that such inordinate delay in completion of cancelled and set-aside assessments are neither fair to Revenue nor to the taxpayers. Going by the assessments originally made in the particular cases commented upon in the Audit Report tax demands of about Rs. 70 lakhs have remained pending because of non-completion of the cancelled or set-aside assessments in these cases. In their written reply, the Ministry of Finance have tried to belittle the importance of the Audit objection on the ground that

** Para 3.10 of the PAC's 38th Report (7th Lok Sabha).

			figure of Rs. 61.61 lakhs of unrealised revenue mentioned in para 2.21 of the Audit Report is based on original assessments which had been made on very high income. The conclusion drawn by the Ministry is actually based only on the reassessments made for the assessments years 1963-64 and 1964-65. For these two years the demand included in the aforesaid figure of Rs. 61.61 lakhs was only of the order of Rs. 793 lakhs. The Committee would like to know how the Ministry could, on its own, and before actual completion of assessments for all the other six years involving demands of over Rs. 53 lakhs, come to the conclusion that the original assessments were highly inflated, or that the original demands were unrealistic.
9	2.9	-do-	As for the harassment of the tax payers involved in such cases the Committee would like to recall the observations of the Supreme Court of India in I.T.O. 'A' Ward, Calcutta, vs. Ramnarayan Bhojnagarwala (103 ITR 797), wherein commenting on a case where the Income-tax officer had failed to take action on a set-aside order for a period of over 5 years, the Supreme Court pointed out, "There is no valid reason why the Income-tax officers should have delayed so long and indeed administrative officers and tribunals are taking much longer time than is necessary, therby defeating the whole purpose of creating quasi-judicial tribunals calculated to produce quick decisions especially in fiscal matters. Five years to dawdle over a decision on a small matter directed by an appellate authority amounts to indiscipline subversive of the rule of law. We hope that the Administration takes serious notice of delays caused by tax officers' lethargy, under some pretext or the other, in speeding up

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			inquiries into incomes and finalizing assessments. The Law must move quickly not merely in the courts but also before tribunals and officers charged with the duty of expeditious administration of justice." The Committee are pained to note that even these observations of the Supreme Court have not woken up the Ministry of Finance or the Central Board of Direct Taxes.
10	2.10	Finance	During evidence before the Committee last year the Board had given an assurance that most of the pending cases upto the assessment years 1970-71 would be completed "by 1981-82".* The Committee do hope that this assurance would be kept up. They would like to be informed of the actual progress as on 31-3-1982, together with detailed reasons for cases still pending as on that date.
11	2.11	-do-	Of the two assessments which have since been completed, the assessment for the assessment year 1963-64 is clearly indicative of vexatious and/or unrealistic additions in the original best judgement assessment. The income returned for that year was Rs. 11,585. The best judgement assessment was made on an income of Rs. 13,21,016. The income determined on reassessment is Rs. 33,218 only. The Ministry of Finance have not given any details of the additions made by the Income-tax Officer in the original assessment, his reasons for doing so, and the reasons for the steep reduc-

*Para 3.49 of PAC, 38th Report (7th Lok Sabha).

			tion of the total income in the reassessment. The Committee would like to have these details.
12	2.12	-do-	The Public Accounts Committee have repeatedly** pointed out that the tendency on the part of the Income-tax officers to make overpitched assessments is one of the reasons for poor public relations in the Income-tax department on the one hand and for unlimited litigation as well as heavy arrears of demand on the other. In reply to the Committee's recommendations contained in para 11.31 of their 136th Report (5th Lok Sabha), the Ministry of Finance had drawn*** the attention of the Committee to the newly introduced section 144B of the Income-tax Act, 1961, according to which additions exceeding Rs. 1 lakh could now be made only with the previous approval of the Inspecting Assistant Commissioner. According to the Chokshi Committee, this provision has merely resulted in delays in completion of assessments and duplication of proceedings without substantially curbing the highpitched assessments or reducing scope of litigation. The Chokshi Committee have, in fact, recommended deletion of this provision.†

**—Paras 1.34 to 1.36 of the PAC's 17th Report (4th Lok Sabha)

—Paras 1.80, 4.25 and 4.26 of the PAC's 73rd Report (4th Lok Sabha).

—Paras 1.55 and 1.56 of the PAC's 100th Report, (4th Lok Sabha).

—Para 11.31 of the PAC's 136th Report (5th Lok Sabha).

***—61st Report of PAC—Sixth Lok Sabha—page 38.

†Direct Tax Laws Inquiry Committee-Final Report, September, 1978, PP. 161-162.

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13	2.13	Finance	It is clear from the written reply of the Ministry of Finance in this case that, notwithstanding their earlier replies to the recommendations of the Committee quoted above, the Ministry of Finance themselves carry an impression that the tendency to make highly inflated assessments persists. That is also perhaps, one of the reasons for the high rate of relief obtained by the assessees from the appellate authorities. The figures given at page 17 of the Audit Report 1979-80 would indicate that during the years 1977-78, 1978-79 and 1979-80 while the assessees succeeded before the tribunal in 38 per cent 52 per cent and 46 per cent of their cases, the department succeeded in 20 per cent 20 per cent and 18 per cent of their cases only. The Committee would reiterate that the making of very high additions to the returned incomes without proper enquiry, and without any rhyme or reason, is a grave malady which causes harassment to the taxpayers, adds to arrear demand, leads to extensive and unnecessary litigation and gives a bad image to the department. The Committee would strongly recommend that this matter should be examined afresh taking into account also the aforesaid recommendations of the Chokshi Committee and it should be made clear to the assessing authorities that additions should be made only after proper scrutiny and that these should be based on a reasoned judgement. The Income-tax authorities must realise

			that even a best judgement assessment is a quasi-judicial decision and it cannot be made whimsically or arbitrarily.
14	3.3	-do-	Surtax is levied under the Companies (Profits) Surtax Act, 1964 on the chargeable profits of a company in so far as these profits exceed the statutory deduction. Chargeable profits are computed in the manner laid down in the First Schedule to the Act by making certain adjustments on the income computed for purposes of income tax. The Surtax Act provides for the companies voluntarily filing returns of chargeable profits as well as for the Income-tax Officers calling for such returns by notice. The Act does not provide for any time limit for the completion of surtax assessments.
15	3.4	-do-	The Public Accounts Committee have, in the past, taken adverse note of cases where the assessees failed to file surtax returns voluntarily and the Income-tax Officers did not also call for such returns with the result that surtax assessments remained to be completed long after the corresponding income-tax assessments had been made. In para 6.7 of their Eighty Eighth Report (Fifth Lok Sabha) and again in Para 6.7 of their One Hundred Twenty Eighth Report (Fifth Lok Sabha) the Committee emphasized that surtax assessments should be taken up along with the connected income-tax assessment of the companies.
16	3.5	-do-	In pursuance of the aforesaid recommendations of the Committee, the Central Board of Direct Taxes issued instructions on 22 October, 1974*. These instructions laid down that proceedings for comple-

*Page 36 of the Public Account Committee One Hundred Fifty Third Report (Fifth Lok Sabha).

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			tion of regular surtax assessments should be taken up along with income-tax proceedings so that the surtax assessments are also finalised immediately after the income-tax assessments are completed. The instructions also pointed out that the fact that additions made in the income-tax assessments were being disputed in appeal should not be a ground for not finalising the surtax assessments. It was further laid down that the time lag between the date of completion of income-tax assessments and surtax assessments should ordinarily not exceed a month unless there are special reasons justifying the delay.
17	3.6	Finance	The present Audit para again points out a large number of cases where income-tax assessments were completed/revised during the years 1976, 1977 or 1978 but no action had been taken to complete the corresponding surtax assessments with the result that considerable amounts of surtax remained to be assessed and collected.
18	3.7	-do-	The Committee regret to point out that their earlier recommendations on this subject and the instructions issued by the Central Board of Direct Taxes in pursuance thereof do not seem to have had any effect and the chronic failure in taking up surtax assessments still continues to occur. In all the cases pointed out in the Audit Para the Income-tax Officers failed to take action on completion/revision of the income-tax assessments either to call for the surtax returns

			or to complete or revise surtax assessments as the case may be. Apparently in all these cases the Board's instruction were not followed.
19	3.8	Do.	Since Audit carried out only a test check, the Committee have a reasonable apprehension that the Board's instructions are not being followed by the field formations at all. The Committte would like to know the number of surtax assessments pending on 31-3-1981 and the number of cases in which the corresponding income tax assessments stand completed.
20	3.9	Do.	The Committee are particulerly pained to know that in their written replies the Ministry if Finance have themselves tended to belittle the importance of the Board's instructions by saying that these are "merely administrative" instructions. Even while accepting the audit objection the Ministry of Finance seem to find solace in the argument that there is no loss of revenue as "there is no time-barring provision in the Surtax Act." In fact there is no indication in any of the written replies of the Ministry of Finance as to whether the precise reasons for this persistent in action on the part of the Income-tax officers have been ascertained or whether any positive steps have been thought of to improve matters.
21	3.10	Do.	The Committee would strongly recommend that the suggestion about the inclusion of a time limit for completion of assessments under the Surtax Act should be seriously considered and given

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			effect to. In the meanwhile the Board's instruction of 1974 should be given its due importance and its observance should be insisted upon.
22	4.4	Finance	The assessments for the years 1971-72 and 1972-73 were completed in January, 1974. The audit objection was raised in May/June, 1975. Notices under Section 148 were issued in March, 1977. If, as stated by the Ministry of Finance remedial action for these two assessments years got barred by limitation, it would only mean that after the issue of notices in March 1977, no action was taken for one whole year [Section 153 (2) (b)]. Apparently, there was delay both in initiating remedial action after the receipt of the audit objection, as well as in completing such action after the issue of notices. As a result, revenue of Rs. 4,57,357 was lost. The Committee would like the Ministry of Finance to give the reasons for these inexcusable delays, surprisingly not indicated in the written reply furnished to the Committee. The Committee would also like the Ministry of Finance to take appropriate action to fix responsibility in the matter and inform the Committee accordingly.
23	4.5	-Do-	When the audit objection was raised in May/June, 1975, there was ample time to take remedial action in respect of all the assessment years. The inaction on the part of the departmental officers continued till 1978, when the remedial action for two assessment

			years got time-barred. The Ministry of Finance had stated before the Committee last year that the Central Board of Direct Taxes had, in March 1977, reiterated their earlier instructions** to the effect that the Commissioners of Income-tax are personally responsible for careful examination and issue of instructions to the Income-tax officers on the most appropriate remedial action to be taken within a month of the local audit report in regard to audit objections, involving revenue of over Rs. 25,000 or more in income-tax/corporation tax cases and Rs. 5,000 or more in other direct taxes cases. Apparently, even after the reiteration of these instructions in March, 1977, the supervisory officers have not been giving required attention to the audit objections resulting in avoidable losses of revenue as in this case. The Committee would like to know whether the Ministry of Finance have enquired into the role played by the Inspecting Assistant Commissioner and the Commissioner of Income-tax in the present case.
24	4.6	-do-	The Committee would also emphasize that in view of the limitations of time laid down in the fiscal laws for remedial action, it is essential that audit objections, those raised by Internal Audit as well as those raised by Revenue Audit, should be given prompt attention at various levels from the Income-tax officer right upto the Commissioners of Income-tax so as to make sure that the points involved are properly examined and the most appropriate remedial action is taken well in time.

**Para 5.12 and 5.13 of the PAC's 38th Report (7th Lok Sabha).

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25	5·7	Finance	The Committee are distressed to note that despite their earlier recommendations and the action taken in pursuance thereof the situation has not improved. It is clear from the cases pointed out in the Audit Para that the prescribed registers are not properly maintained, the cases are not noted therein and the time limits prescribed by the Board are not at all observed.
26	5·8	-do-	In their written replies to the Committee, the Ministry of Finance have not indicated whether they have made any attempt to find out the reasons for this state of affairs. The Committee would suggest that the Board should make a thorough study of some of these cases to understand the basic reasons for this continuing default and the devise effective remedial measures.
27	5·9	-do-	According to the departmental instructions both the maintenance of the prescribed registers as well as the compliance with the administrative time limits were to be checked up by the Range Inspecting Assistant Commissioners and the Internal Audit. It is amazing that the Ministry of Fiance have not indicated in their written replies the extent of failure of these two organs. The Committee would recommend that the role of these two organs, should be particularly examined in relation to some of these cases so as to tone up their effeciency.
28	5·10	-do-	The Committee are pained to note the sense of complacency shown by the Ministry of Finance in their written replies in taking

			shelter under the plea that "the period of limitation for completion of assessments under setion 154 had not expired at the time of audit As such the objection was sustainable only from the point of view of delay involved". The Committee trust that the Ministry of Finance do not mean seriously to suggest that remedial action need be taken only when the statutory limitation period is about to lapse. Moreover, the fallacy in this argument is apparent from the fact that if audit had not pointed out these cases before the expiry of the statutory period of limitation the department would not have acted in the absence of any notes to that effect in their prescribed registers and revenue would surely have been lost. The Committee would, therefore, suggest that the administrative instructions and the time limits laid down by the Board in 1977 are salutancy and their observance should be insisted upon and suitable action taken against the recalcitrant officers.
29	6.5	-do-	The Committee note that the point whether the clubbing provisions of section 64 (1) (iii) are or are not attracted in a case where the father is a partner in a representative capacity as the Karta of a Hindu undivided family is controversial as different High Courts have taken different views. The Ministry of Finance have not accepted the view that the clubbing provisions are not attracted in such a case and the decisions to that effect are being contested in appeal. The Central Board of Direct Taxes have, also issued a public circular as well as instructions to all the Commissioners of Income-tax to the effect that the clubbing provisions are attracted in such cases. In view of the stand taken by the Ministry and the

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			instructions issued by the Board, the Committee fail to understand how the Board resisted the audit objection on the ground that there was no mistake or irregularity. Surely, the Ministry of Finance does not mean to say that the instructions of the Board, expressing a view that is being pleaded by the Ministry before the Supreme Court of India, need not, necessarily, be complied with by the field formations and failures in that regard should not be pointed out by Audit as mistakes or irregularities. The stand taken by the Board in this case appears to the Committee to be highly inconsistent.
30	6.6	Finance	The Committee are also not happy with the Ministry's reply to the effect that some of the High Court decisions have disagreed "with the view taken by Audit". The view taken by Audit is the view taken by the Central Board of Direct Taxes itself in their public circular, as well as their instructions to their field formations. That is also the view which is being pleaded by Government before the Supreme Court. For the Ministry, therefore, to say that "the view taken by Audit" has not been accepted by some of the High Courts is wholly misleading. The Committee would suggest that where an audit objection is based on the Board's own view or even where the view taken in an audit objection is accepted by the Board it would be more appropriate for the Board to urge and canvass it as their own view so as to give effective guidance to the field formations.

31	6.7	-do-	It is apparent that litigation on this point has been going on for quite some time in different High Courts. The Committee would like to reiterate their recommendation contained in para 1.37 of their 28th Report (7th Lok Sabha) to the effect that in such cases involving divergence of opinion among different High Courts the matter should be taken directly to the Supreme Court for an expeditious settlement of the point of law involved to avoid harassment both to the department and the taxpayers.
32	7.3	-do-	The Committee understand from Audit that in response to the notice issued under section 148 of the Income-tax Act, 1961, the assessee had made a statement that she had already filed a return on 6-1-1968 and also paid a tax of Rs. 1,33,157 under section 140A on 2-2-1968. Nevertheless, the Income-tax Officer proceeded to make an assessment under section 143 (3)/147 and in his assessment order dated 18-1-1977 he did not even discuss these points raised by the assessee. The assessee was thus forced to seek redress from the appellate authority.
33	7.4	-do-	In this case, in response to the notice issued by the Income-tax Officer the assessee claimed that a return of income had already been filed and payment of tax on self-assessment basis had also been made by her 6 years earlier. Nevertheless, the Income-tax Officer proceeded to complete the assessment without verifying the veracity of the assessees claims which, as it turned out later, were true and duly authenticated by departmental receipts.

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			The Committee cannot but observe that this is a case of sheer callousness and harassment and the Income-tax Officer seems to have become a law unto himself rather than acting in a quasi-judicial capacity. What pains the Committee all the more is the fact that the Ministry of Finance have merely stated that the objection has been accepted; they have nothing to say about the highhanded action of the Income-Tax Officer or about their own reaction to it.
34	7.5	Finance	Elsewhere in this report* the Committee have made a mention of the public image of the Income-tax department. This is not the only case where a return duly filed by a assessee was misplaced or where a payment of tax already made by the assessee was not linked and given credit for. These are matters of common occurrence which put the tax payers to considerable harassment. In fact, para 1.08 (i) (a) of the Audit Report 1979-80, mentions an amount of as much as Rs. 8.84 crores, which is claimed to have been paid by the tax payers but is pending verification/adjustment. The Committee would strongly recommend that the Ministry of Finance should take exemplary action in such glaring cases and also bring about improvements in systems and procedures to ensure proper linking of the returns filed by the tax payers and the taxes paid by them. The Committee would like to be informed of the disciplinary action taken against the I.T.O. who made the assessment in the case under discussion.

35	8.7	-do-	The higher rates of income-tax and wealth-tax in respect of Hindu undivided families having one or more members with independent income or wealth exceeding the exemption limit were introduced with effect from the assessment year 1974-75. Despite the issue of repeated instructions by the Central Board of Direct Taxes on the subject, omissions to apply these higher rates have continued to be noticed in audit year after year. In consequence of the repeated failures in this regard the Board have had to order a review of all completed assessments of Hindu undivided families for the assessment year 1974-75 and onwards. The review carried out in some of the charges alone has again revealed substantial under-assessments resulting from omissions to apply higher rates. The omissions noticed during this partial review are apparently in addition to those already pointed out in the Audit Reports. The review is yet to be completed in a number of charges. The Committee would like to be apprised of the results thereof.
36	8.8	-do-	Apart from the question of substantial under-assessments of tax this case is indicative of certain basic weaknesses in the systems of organization in the department. In the normal circumstances whenever rates of taxes are revised through the annual Finance Act the revised rates should automatically be applied by the Income-tax Officer in the assessments for the respective assessment years. In this case, not only this has not happened, but even repeated instructions of the Central Board of Direct Taxes have failed to secure total compliance. The review ordered by the Board

*Paragraph 12 of Chapter II—Page 12.

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			is a device of desperation; it could be done only at the cost of current work and it cannot, in any case, ensure that the omissions would not continue in the subsequent assessment years. What is required is a thorough study of the prescribed systems and procedures, such as the duties and responsibilities assigned to the Income-tax Officers themselves and to the different levels of staff under them in the matter of completion of assessments, the records designed to ensure that such obvious mistakes do not occur, the part played by the organisational controls like the Inspecting Assistant Commissioners and the Internal Audit, etc. to find out the precise reasons for such simple, obvious, but costly and repeated mistakes and to effectively put a stop to them. The Committee would strongly recommend that such a study should be carried out and the duties and responsibilities of different levels in the assessing units as well as in the inspecting organs like the Inspecting Assistant Commissioners and the Internal Audit should be clearly defined.
37	9.5	-do-	The Committee regret to note that the Ministry of Finance have found solace in the fact that the collection postponed in this case was only Rs. 38,087. They have not bothered to find out the defect in the system which allows such omissions to take place and go unnoticed for such long periods.
38	9.6	-do-	It is regrettable that omissions to issue demand notices continue to be noticed despite the earlier recommendations of the Committee

			on this subject and the action taken thereon by the Ministry of Finance. Such omissions not only postpone or delay collection of taxes but may also have the unhealthy possibilities of notices not being issued for malafide considerations.
39	9·7	-do-	The Demand and Collection Register is required to be filled up by the Wealth-tax Officer as soon as any assessment is completed and the assessment order is passed. It should be possible for the Wealth-tax Officer to ensure while making these entries that the notice of demand has also been simultaneously prepared and despatched to the assessee. A periodical review of the Demand and Collection register should also be insisted upon so that cases where notices of demand have not been issued can be promptly located and action taken at the earliest possible time. The Ministry of Finance should ensure that the assessing officers issue demand notices almost simultaneously with the passing of assessment orders in all cases and let the Committee know what system of review exists by which omissions of this type do not go unnoticed over a period of years and failures are taken serious note of.
40	9.8	-do-	The Commttee would also recommend that instead of the Board resting content with the issue of instructions it should take serious notice of failures coming to notice to ensure compliance with the instructions.

PART II

MINUTES OF THE 59TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 4 MARCH, 1982 (AM)

The Committee sat from 16.00 hrs. to 17.30 hrs.

PRESENT

Shri Satish Agarwal—*Chairman*

2. Shri Mahabir Prasad
3. Shri Ashok Gehlot
4. Shri M. V. Chandrashekara Murthy
5. Shri Hari Krishna Shastri
6. Shri K. P. Unnikrishnan
7. Shri N. K. P. Salve
8. Prof. Rasheeduddin Khan
9. Shri Indradeep Sinha

REPRESENTATIVES OF THE OFFICE OF C&AG

1. Shri R. S. Gupta—Director of Receipt Audit-I
2. Shri N. Sivasubramaniam—Director, Receipt Audit-II

SECRETARIAT

1. Shri D. C. Pande—Chief Financial Committee Officer
2. Shri K. C. Rastogi—Senior Financial Committee Officer
3. Shri Ram Kishore—Senior Financial Committee Officer

The Committee took up for consideration the draft 85th Report on Corporation Tax, Income Tax and Wealth Tax and adopted the same with amendments/modifications as shown in the Annexure.

The Committee then adjourned.

ANNEXURE

Amendments/modifications made by the Public Accounts Committee in the draft Eighty-fifth Report on Direct Taxes.

Page	Para	Line(s)	Amendments/modifications
1	2	3	4
6	1.6	12-13	*For* tne words 'the Committee under stand.... audit objection was raised. *Read* 'The audit objection was raised'
		18	*For* the words 'then rush in for a precautionary assessment'
			Read 'then rush in)to reopen the assessment as a precautionary measure. There is no provision in law to reopen the assessment under section 147 of the Income Tax Act as a precautionary measure and therefore, such act of the Income Tax Officers is palpably illegal and without jurisdiction.'
6		23-25	*For* the words 'the Income Tax Department....to have become in the Income-tax department'
			Read 'the Income-tax Department to reopen asess ment strickly in accordance with the law.'
7	1.7	3	*After* the word 'case' insert [STC Vol.XVI/1965 213)]
11	2.4	8-9	*For* the words 'assessment on best judgement basis' *Read* 'aassessments on the basis of best judgement assessment'
16	2.12	5-7	*Omit* 'this provision applies....Moreover'
	2.13	16	*For* the words 'their earlier professions in reply' *Read* 'their earlier replies'
17	2.13	1	*For* '38, 52 and 46%' *Read* 38%, 52% *and* 46%
		2	*For* ' 20, 20 and 18% *Read*' 20%, 20% and 18%
31	3.10	3	*For* 'in' *Read* 'under'
46	5.10	1 (from bottom)	*Add* at the end 'and suitable action taken against the recalcitrant officers'
55	6.6	15	*For* the word 'somewhat' *Read* 'wholly'

1	2	3	4
	6.7	3 (from botton)	*For* the words 'and in different jurisdictions' *Read* 'in different High Courts'
57-62			*Omit* Chapter VII and renumber Chapter VIII accordingly.
66	8.4	13	*For* the word 'callousness' *Read* 'callousness and harassment'
67	8.5	4	*For* the word 'inconvenience' *Read* 'harassment'
		9	*For* 'could' *Read* 'would'
		1 (from botton)	*Add* 'the Committee would like to be informed of the disciplinary action taken against the Income-tax Officer who made assessment in the case under discussion'.
75	9.8	2	*Delete* 'any'
		7	*For* 'this has' *Read* 'this has not'

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